

DOMESTIC RELATIONS AND PERSONS

CHAPTER 176

SENATE BILL NO. 2245
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

SUPPORT PAYMENT TRANSMITTAL

AN ACT to amend and reenact subsection 1 of section 14-08-07 of the North Dakota Century Code, relating to transmittal of support payments by clerks of court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 14-08-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. In any action wherein a court decrees that payments for child support or alimony combined with child support be made, the court shall provide in its decree that such payments be paid to the clerk of court as trustee for remittance to the recipient or person or public agency providing support for such recipient. The clerk of court shall remit such payments within ten working days of receipt. The clerk of court shall maintain records listing the amount of the payments, the date when the payments shall be made, the names and addresses of the parties subject to the decree, and any other information necessary for the proper administration of the decree. Upon the filing with the clerk of court of notice of the assignment of a recipient's support rights to a state, payments must be credited and transmitted pursuant to the assignment and in conformity with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651, et seq., as amended]. The parties subject to the decree shall immediately inform the clerk of court of any change of address or change of any other condition which may affect the proper administration of sections 14-08-07 through 14-08-10. Whenever there is failure to make the payments as required, the clerk of court shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request a district judge of the judicial district, on a form provided by the judge, to issue a citation for contempt of court against the person who has failed to make the payments and the citation shall be served on that person as provided by the North Dakota Rules of Civil Procedure.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 177

SENATE BILL NO. 2366
(Senator Maixner)
(Representative Rydell)

ADULT ABUSE PROTECTION ORDERS

AN ACT to create and enact a new subsection to section 27-07.1-17 of the North Dakota Century Code, relating to the jurisdiction of the county court; and to amend and reenact subsection 1 of section 14-07.1-02 and section 14-07.1-08 of the North Dakota Century Code, relating to actions for an adult abuse protection order.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 14-07.1-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. An action for a protection order commenced by a verified application alleging the existence of adult abuse may be brought in district court or county court by any spouse, family member, former spouse, parent, child, persons related by blood, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they have been married or have lived together at any time or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of an adult abuse protection order. An action may be brought under this section, regardless of whether a petition for legal separation, annulment, or divorce has been filed.

SECTION 2. AMENDMENT. Section 14-07.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-08. Emergency relief. When the court is unavailable an application may be filed before a local magistrate, as defined by subsection 3 of section 29-01-14, who may grant relief in accordance with section 14-07.1-03, upon good cause shown in an ex parte proceeding, if it is deemed necessary to protect the applicant or

others from abuse. Immediate and present danger of abuse to the applicant or others shall constitute good cause for purposes of this section. Any order issued under this section shall expire seventy-two hours after its issuance, unless continued by the ~~district~~ court, or the ~~issuing court~~ local magistrate in the event of continuing unavailability of the ~~district~~ court. At that time, the applicant may seek a temporary order from the ~~district~~ court. Any order issued under this section and any documentation in support thereof shall be immediately certified to the ~~district~~ court. Such certification to the ~~district~~ court shall have the effect of commencing proceedings under section 14-07.1-02 and invoking the other provisions of this chapter.

SECTION 3. A new subsection to section 27-07.1-17 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Adult abuse protection order proceedings. The county court has concurrent jurisdiction with the district court pursuant to chapter 14-07.1.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 178

HOUSE BILL NO. 1151
(Committee on Social Services and Veterans Affairs)
(At the request of the Governor and the Attorney General)

GUARDIAN AD LITEM IN CUSTODY ACTIONS

AN ACT to create and enact a new section to chapter 14-07.1 of the North Dakota Century Code, relating to the appointment of a guardian ad litem to represent a minor in an action for a protection order involving custody, support or visitation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-07.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Appointment of guardian ad litem for minor. The court, upon the request of either party or upon its own motion, may appoint a guardian ad litem in an action for a protection order to represent a minor concerning custody, support or visitation if either party or the court has reason for special concern as to the immediate future of the minor. The guardian ad litem may be appointed at the time of a temporary protection order or at any time prior to the full hearing. The role of the guardian ad litem shall consist of investigation and making a recommendation and report to the court. At no time shall the involvement of the guardian ad litem alter the requirements set forth in section 14-07.1-03. The appointment of the guardian ad litem shall expire immediately after the full hearing unless the court retains the right, upon specific finding of need, to continue the appointment of a guardian ad litem to participate in visitation. The guardian ad litem shall have access to records before the court except as otherwise provided by law. The court may direct either or both parties to pay the guardian ad litem fees established by the court. If neither party is able to pay the fees, the court may direct the fees to be paid, in whole or in part, by the county of venue. The court may direct either or both parties to reimburse the county, in whole or in part, for the payment.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 179

SENATE BILL NO. 2367
(Senator Maixner)
(Representative Rydell)

DOMESTIC ASSAULT ARRESTS

AN ACT to amend and reenact sections 14-07.1-06 and 29-06-15 of the North Dakota Century Code, relating to arrest without warrant for domestic assault.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-07.1-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-06. Penalty for violation of a protection order - Arrest without warrant. Whenever a protection order is granted pursuant to section 14-07.1-02 or 14-07.1-03 and the respondent or person to be restrained has been served a copy of the order, a violation of the order is a class A misdemeanor and also constitutes criminal contempt of court subject to penalties therefor. A peace officer may arrest any person without a warrant if:

1. The person has committed the offense of violating a protection order, whether or not the violation was committed in the presence of the officer; or
2. The peace officer has probable cause to believe the person, within the preceeding four hours of the ascertainment of probable cause, has assaulted that person's spouse, other family member, former spouse, or any person with whom the person resides, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this subsection without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.

A peace officer may not be held criminally or civilly liable for making an arrest pursuant to this section if the officer acts in good faith on probable cause and without malice.

SECTION 2. AMENDMENT. Section 29-06-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-06-15. Arrest without warrant - Peace officer - Officer in the United States customs service or the immigration and naturalization service.

1. A peace officer, without a warrant, may arrest a person:
 - a. For a public offense, committed or attempted in the officer's presence; and for the purpose of this subdivision a crime shall be deemed committed or attempted in the officer's presence when what the officer observes through the officer's senses reasonably indicates to the officer that a crime was in fact committed or attempted in the officer's presence by the person arrested.
 - b. When the person arrested has committed a felony, although not in the officer's presence.
 - c. When a felony in fact has been committed, and the officer has reasonable cause to believe the person arrested to have committed it.
 - d. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.
 - e. For the public offenses, not classified as felonies and not committed in the officer's presence as provided for under section 29-06-15.1.
 - f. On a charge, made upon reasonable cause, of driving or being in actual physical control of a vehicle while under the influence of alcoholic beverages.
 - g. If the peace officer has probable cause to believe the person, within the ~~preceeding~~ preceding four hours of the ascertainment of probable cause, has assaulted ~~his or her~~ that person's spouse, other family member, former spouse, or any person with whom the person resides, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this subdivision without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.
2. An officer of the United States customs service or the immigration and naturalization service, without a warrant, may arrest a person if all of the following circumstances exist:
 - a. The officer is on duty.

- b. One or more of the following situations exist:
- (1) The person commits an assault or other crime, defined and punishable under chapter 12.1-17, against the officer or against any other person in the presence of the officer.
 - (2) The officer has reasonable cause to believe that a crime, as defined in paragraph 1, has been committed and reasonable cause to believe that the person to be arrested has committed it.
 - (3) The officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the person to be arrested has committed it.
 - (4) The officer has received positive information from an authoritative source that a peace officer holds a warrant for the person's arrest.
- c. The officer has received training in the laws of this state equivalent to the training provided for a police officer under chapter 12-62.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 180

SENATE BILL NO. 2303
(Senators Waldera, Mathern)
(Representatives J. DeMers, Rydell)

ADULT ABUSE REPORTS

AN ACT to provide immunity from liability for reporting, assisting, or providing services with respect to abused, neglected, or exploited adults; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Immunity from liability - Penalty for false reports. Any person, other than the alleged violator, participating in good faith in the making of a report, assisting in an investigation, or providing preventive or remedial services with respect to the abuse, neglect, or exploitation of adults who are unable to protect their own interests, is immune from any civil or criminal liability that might otherwise result from those actions. Any person who willfully, as defined in section 12.1-02-02, makes a false report, or causes a false report to be made pursuant to this section is guilty of a class B misdemeanor unless the false report is made to a law enforcement official, in which case the person who causes the false report to be made is guilty of a class A misdemeanor.

Approved April 10, 1987
Filed April 14, 1987

CHAPTER 181

SENATE BILL NO. 2432
(Senators Stenehjem, Heinrich)
(Representatives Rydell, J. DeMers)

CHILD SUPPORT INCOME WITHHOLDING

AN ACT to create and enact a new section to chapter 14-08.1 of the North Dakota Century Code, relating to child support orders; to amend and reenact five new sections to chapter 14-09 of the North Dakota Century Code, as created by section 1, section 3, section 5, subsections 3 and 8 of section 7, and section 13 of House Bill No. 1903, as approved by the fiftieth legislative assembly, relating to income withholding for the enforcement of child support obligations; to amend and reenact section 14-09-09.6 and subsection 3 of section 57-38.3-02 of the North Dakota Century Code, relating to voluntary income withholding and set off of debts owed to the state against income tax refunds; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-08.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Support order to be judgment.

1. Any order directing any payment or installment of money for the support of a child is, on and after the date it is due and unpaid:
 - a. A judgment by operation of law, with the full force, effect, and attributes of a judgment of the district court, including the ability to be entered in the judgment book pursuant to rule 58 of the North Dakota Rules of Civil Procedure and otherwise enforced as a judgment;
 - b. Entitled as a judgment to full faith and credit in any jurisdiction which otherwise affords full faith and credit to judgments of the district court; and
 - c. Not subject to retroactive modification.

2. Failure to comply with the provisions of a judgment or order of the court for the support of a child may be punished as civil contempt. All remedies for the enforcement of judgments apply. A party or the party's assignee may also execute on the judgment, and the obligor is entitled only to the exemptions from process set forth in section 28-22-02.

SECTION 2. AMENDMENT. The new section to chapter 14-09 of the North Dakota Century Code as created by section 1 of House Bill No. 1903, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

Definitions. For the purposes of this Act, unless the context or subject matter otherwise requires:

1. "Delinquent" means not paid in full within fifteen days of the date the child support was ordered to be paid a situation which occurs on the first working day after the day upon which a child support payment was identified as due and unpaid, and the total amount of unpaid child support is at least equal to the amount of child support payable in one month.
2. "Disposable income" means gross income less deductions required by law for taxes and social security.
3. "Income" means any form of payment, regardless of source, owed to an obligor, including, but not limited to, an earned, unearned, taxable or nontaxable income, ~~workman's~~ workmen's compensation, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.
4. "Income payor" means any person, partnership, firm, corporation, association, political subdivision, or department or agency of the state or federal government owing income to an obligor and includes an obligor if the obligor is self-employed.
5. "Obligee" means a person including a state or political subdivision to whom a duty of support is owed.
6. "Obligor" means any person owing a duty of support.
7. "Public authority" means the department of human services in execution of its duties pursuant to subsection 12 of section 50-09-02.

SECTION 3. AMENDMENT. The new section to chapter 14-09 of the North Dakota Century Code as created by section 3 of House Bill No. 1903, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

Provision of notice of impact of act to obligors. Each ~~decree~~ ~~or~~ judgment ~~or~~ order issued by a court in this state which includes an order for support of minor children must include a statement that a delinquency in payment of the support due will result in an income withholding order being issued in accordance with this Act.

SECTION 4. AMENDMENT. The new section to chapter 14-09 of the North Dakota Century Code as created by section 5 of House Bill No. 1903, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

Hearing upon obligor's request.

1. If the obligor files a request for a hearing within ten days of the date of the notice made pursuant to section 4 of this Act, the court shall hold a hearing within ten working days after the date of the request. If at the hearing the obligor establishes that there has been a mistake in the identity of the obligor, ~~or excusable neglect beyond the control of the obligor~~, the court may order that no income withholding order issue. If at the hearing the obligor establishes that there is an overstatement in the amount of support stated to be owed by the obligor, the court may amend the amount to be withheld. In the absence of a finding of a mistake of fact, the court shall order that the income withholding order issue. Payment of overdue support after issuance of notice under section 4 of this Act may not be the basis for an order that no income withholding order issue.
2. An obligor is not precluded, by subsection 1, from seeking appropriate relief from a judgment or order affecting a child support obligation nor is the court precluded from granting such relief. An obligor's request for such relief, whether made by motion under rule 60(b) of the North Dakota Rules of Civil Procedure or otherwise, may not be considered during the hearing described in subsection 1.

SECTION 5. AMENDMENT. Subsections 3 and 8 of the new section to chapter 14-09 of the North Dakota Century Code as created by section 7 of House Bill No. 1903, as approved by the fiftieth legislative assembly, are hereby amended and reenacted to read as follows:

3. That the amount to be withheld may not exceed fifty percent of the obligor's disposable income from this income payor, but a payment of an amount less than the ordered amount must be accompanied by a written calculation disclosing any of the obligor's income and disposable income which is payable by the income payor.

8. That failure to comply with the income withholding order will subject the income payor to penalties provided under section 14 15 of this Act.

SECTION 6. AMENDMENT. The new section to chapter 14-09 of the North Dakota Century Code as created by section 13 of House Bill No. 1903, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

Interstate income withholding - Form - Service on income payor - Termination of order. The provisions of sections 6 through 8 and section 14 15 of this Act are applicable to income withholding orders issued at the request of another state made pursuant to section 10 of this Act.

SECTION 7. AMENDMENT. Section 14-09-09.6 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.6. Voluntary wage assignment income withholding for support - Definitions-- Limitations.

1. In this section, unless the context or subject matter otherwise requires-
 - a- "Employer" means an individual or entity which has a duty to pay wages to an obligor, whether or not an employer-employee relationship exists, and includes the state and federal governments and the political subdivisions of the state-
 - b- "Wage" means any form of earned income, whether commissions, earnings, salaries, pensions, annuities, retirement benefits, return of contributions, draws, shares, profits, bonuses, dividends, or otherwise, whether rendered in cash or in-kind, and specifically includes benefit payments from insurance policies as well as all gain derived from capital, labor, or both combined, including profit gained through sale or conversion of capital assets-
- 2- An obligor may execute a voluntary assignment of document voluntarily authorizing income withholding from current or future wages income due the obligor from an employer income payor in an amount sufficient to meet any child support obligation imposed by a court or otherwise. An assignment income withholding authorization made under this section is binding on the employer income payor one week after service upon the employer income payor by personal service or by certified mail of a true copy of the executed assignment income withholding authorization. The employer income payor shall deduct the sum or sums specified and pay them as specified by the assignment income withholding authorization and any applicable

imposition of a support obligation by a court. In addition, the employer income payor may deduct a fee of one dollar per month to cover the employer's expense involved in holding and transmitting the assignment from the obligor's income to cover expenses involved in transmitting payment. Compliance by an employer income payor with an assignment income withholding authorization issued under this section discharges the employer's income payor's liability to the obligor for that portion of the obligor-employee's wages obligor's income. The employer income payor may not use the assignment income withholding authorization as a basis for any disciplinary action against the obligor.

SECTION 8. AMENDMENT. Subsection 3 of section 57-38.3-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Debt" means any liquidated sum due and owing, or required to be collected by, any claimant agency which has accrued through contract, subrogation, tort, or operation of law, regardless of whether there is an outstanding judgment for that sum.

SECTION 9. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 182

HOUSE BILL NO. 1535
(Representatives O'Shea, Hill)
(Senators Keller, Freborg)

CHILD CUSTODY INVESTIGATION COSTS

AN ACT to create and enact a new subsection to section 50-01-09 of the North Dakota Century Code, relating to the duties of a county social service board; and to amend and reenact section 14-09-06.3 of the North Dakota Century Code, relating to investigative reports and the assessment of costs in contested child custody proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-06.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-06.3. Custody investigations and reports - Costs.

1. In contested custody proceedings the court may, upon the request of either party, or, upon its own motion, order an investigation and report concerning custodial arrangements for the child. The court shall designate a person or agency responsible for making the investigation and report, which designees may include the county social service board, public health officer, school officials, and any other public agency or private practitioner it deems qualified to make the investigation.
2. The investigator may consult any person who may have information about the child and any potential custody arrangements, and upon order of the court may refer the child to any professional personnel for diagnosis.
3. The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ~~ten~~ thirty days before the hearing. The investigator shall make available to any such counsel or party the complete file of data and reports underlying the investigator's report and the names and addresses of all persons whom the investigator has consulted. A party may call the

investigator and any person whom ~~he~~ the investigator has consulted for cross-examination at the hearing. A party may not waive ~~his~~ the party's right of cross-examination before the hearing.

4. The court ~~may~~ shall enter an order for the costs of any such investigation against either or both parties, except that if the parties are indigent the expenses shall be borne by the county.

SECTION 2. A new subsection to section 50-01-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

To charge and collect fees and expenses for services provided by its staff in accordance with policies and fee schedules adopted by the department of human services.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 183

HOUSE BILL NO. 1903
(Select Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)
(Approved by the Committee on Delayed Bills)

CHILD SUPPORT WITHHOLDING

AN ACT to create and enact fourteen new sections to chapter 14-09 of the North Dakota Century Code, relating to income withholding for the enforcement of child support obligations; to amend and reenact section 14-09-09.3 of the North Dakota Century Code, relating to income payor's obligations in child support enforcement; to repeal sections 14-09-09.1, 14-09-09.2, 14-09-09.4, 14-09-09.8, and 14-09-09.9 of the North Dakota Century Code, relating to wage assignments for the enforcement of child support and enforcement of out-of-state orders for wage withholding; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. For the purposes of this Act, unless the context or subject matter otherwise requires:

1. "Delinquent" means not paid in full within fifteen days of the date the child support was ordered to be paid.
2. "Disposable income" means gross income less deductions required by law for taxes and social security.
3. "Income" means any form of payment, regardless of source, owed to an obligor, including, but not limited to, an earned, unearned, taxable or nontaxable income, workman's compensation, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.
4. "Income payor" means any person, partnership, firm, corporation, association, political subdivision, or department or agency of the state or federal government

owing income to an obligor and includes an obligor if the obligor is self-employed.

5. "Obligee" means a person including a state or political subdivision to whom a duty of support is owed.
6. "Obligor" means any person owing a duty of support.
7. "Public authority" means the department of human services in execution of its duties pursuant to subsection 12 of section 50-09-02.

SECTION 2. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Income withholding order. When a judgment or order requires the payment of child support, or the payment of alimony and child support, it may be enforced by an income withholding order, as provided in this Act, in addition to any other remedies provided by law.

SECTION 3. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Provision of notice of impact of Act to obligors. Each decree or judgment issued by a court in this state which includes an order for support of minor children must include a statement that a delinquency in payment of the support due will result in an income withholding order being issued in accordance with this Act.

SECTION 4. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Procedure - Notice to obligor. If an obligor is delinquent, the clerk of court shall serve a notice and a copy of this chapter on the obligor by first-class mail at the obligor's last known address. The notice must state:

1. That the obligor is delinquent in the payment of child support and therefore subject to an income withholding order on all income.
2. The amount of child support owed and the amount of arrearage.
3. The total amount of money that will be withheld by the income payor from the obligor's income and that the amount is the sum of both of the following:
 - a. The obligor's current monthly support obligation.
 - b. The amount the obligor is ordered to pay toward any outstanding arrearage, or if no order exists, then an amount equal to twenty percent of the obligor's

current support obligation for application towards any arrearage subject to the limitations of section 7 of this Act.

4. That the income payor may withhold an additional sum of one dollar to cover the income payor's expenses.
5. That if not contested pursuant to section 5 of this Act, the income withholding order will be issued immediately, without further order of the court.
6. That the obligor may contest the issuance of the income withholding order by filing a written request for hearing within ten days of the date of the notice made under this section.

SECTION 5. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Hearing upon obligor's request. If the obligor files a request for a hearing within ten days of the date of the notice made pursuant to section 4 of this Act, the court shall hold a hearing within ten working days after the date of the request. If at the hearing the obligor establishes that there has been a mistake in the identity of the obligor, or excusable neglect beyond the control of the obligor, the court may order that no income withholding order issue. If at the hearing the obligor establishes that there is an overstatement in the amount of support stated to be owed by the obligor, the court may amend the amount to be withheld. In the absence of a finding of a mistake of fact, the court shall order that the income withholding order issue. Payment of overdue support after issuance of notice under section 4 of this Act may not be the basis for an order that no income withholding order issue.

SECTION 6. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Form - Effect of income withholding order. The income withholding order must be issued in the name of the state of North Dakota, be attested in the name of the judge, sealed with the seal of the court, subscribed by the clerk, and directed to all current and subsequent income payors of the obligor. The income withholding order is binding on the income payor until further notice by the clerk and applies to all current and subsequent periods in which income is owed the obligor by the income payor. The income withholding order has priority over any other legal process against the same income.

SECTION 7. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Service of income withholding order on income payor. The clerk of court shall serve the income withholding order and a copy of this chapter on the income payor in the manner provided for

service of a summons in a civil action and upon the obligor by first-class mail to the obligor's last known address, within fifteen days of the date of the notice made pursuant to section 4 or 11 of this Act. If a hearing was held under section 5 or 12 of this Act, the income withholding order and the copy of this chapter must be served within fifteen days of the date of the court's determination. The income withholding order must be sent no later than forty-five days following the notice given pursuant to section 4 or 11 of this Act. An income withholding order may also be issued and served at the request of the obligor. The income withholding order shall state all of the following:

1. That the obligor is delinquent in the payment of support and that the income payor is therefore required to withhold a stated sum from the obligor's income at the time the obligor is paid for transmittal to the clerk of court within ten days of the date the obligor is paid.
2. That the income payor may also withhold and retain an additional sum of one dollar from the obligor's income to cover expenses involved in transmitting payment.
3. That the amount to be withheld may not exceed fifty percent of the obligor's disposable income from this income payor.
4. That the income payor shall begin withholding no later than the first pay period that occurs fourteen days after service of the income withholding order.
5. That if the income payor is served with more than one income withholding order issued under this chapter on a single obligor and the combined total amount to be paid under the income withholding orders exceeds fifty percent of the obligor's disposable income the income payor shall withhold the maximum amount permitted, and transmit to the clerk of court that portion thereof which the obligee's claim bears to the combined total of all claims.
6. That the income payor shall notify the clerk of court in writing of the termination of a duty to pay income to the obligor within fifteen days of such termination. Such notification must include the name and address of the obligor's subsequent income payor, if known.
7. That if the income payor is subject to income withholding orders for more than one obligor, the income payor may combine in a single payment the amounts for all obligors who have been ordered to pay the same clerk of court with identification of the amount attributable to each obligor.
8. That failure to comply with the income withholding order will subject the income payor to penalties provided under section 14 of this Act.

SECTION 8. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Amendment - Termination of income withholding order. Upon amendment, termination, or stay of an income withholding order, the clerk of court shall send appropriate notice to the income payor. An income withholding order is to be amended by the clerk when the total amount of money to be withheld is changed by elimination of arrearages or by court-ordered change in amount of child support. An income withholding order is to be terminated when the duty to support ceases and all child support arrearages have been paid. An income withholding order may be stayed by the clerk of court when the location of the obligee is unknown to the clerk, preventing transmittal of the support.

SECTION 9. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interstate income withholding - Initiation by this state to other state. On application of a resident of this state, an obligee or an obligor of a support order issued by this state, or an agency to which an obligee has assigned support rights, the public authority shall promptly request the child support enforcement agency of another state in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding against such income. The public authority shall compile and transmit to the child support agency of the other state all documentation required to enter an order for this purpose. The public authority shall also transmit to the child support agency certified copies of any subsequent modifications of the support order. If the public authority receives notice that the obligor is contesting the income withholding in another state, it shall immediately notify the individual obligee of the date, time, and place of the hearings and of the obligee's right to attend.

SECTION 10. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interstate income withholding - Duties of the agency upon receipt of request from other state.

1. Upon receipt of a support order of another state with the documentation specified in subsection 2 of this section from a child support agency of another state, the public authority shall file the order and documentation with a clerk of district court of any county in which the obligor resides or derives income.
2. All of the following documentation is required for the filing of a support order of another state for issuance of an income withholding order:

- a. A certified copy of the support order with all modifications.
- b. A certified copy of an income withholding order, if any, in effect.
- c. A copy of the portion of the income withholding statute of the state which issued the support order which states the requirements for obtaining income withholding under the law of that jurisdiction.
- d. A sworn statement of the obligee or assignee of the obligee or a certified statement of the clerk of court of the arrearages and any assignment of support rights.
- e. The name, address, and social security number of the obligor, if known.
- f. The name and address of the employer or other income payor of the obligor upon whom the income withholding order is to be served.
- g. The name and address of the agency or person to whom the payments collected by income withholding are to be transmitted.

SECTION 11. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interstate income withholding - Notice to obligor. Upon filing of the documentation required by section 10 of this Act, the clerk of court shall serve a notice and a copy of this chapter on the obligor by first-class mail at the obligor's last known address. The notice must state that an income withholding order has been requested by another state. The notice must further include the information, if available, required under subsections 2 through 6 of section 4 of this Act.

SECTION 12. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interstate income withholding - Hearing upon request of obligor. If the obligor files a request for hearing within ten days of the date of the notice made pursuant to section 11 of this Act, the court shall hold a hearing within ten working days of the date of the request. At the hearing contesting the proposed income withholding order, the documentation filed with the court, pursuant to section 10 of this Act, shall constitute prima facie proof, without further proof or foundation, that the support order is valid, that the amount of current payments and arrearages is as stated, and that the obligee would be entitled to income withholding

under the law of the state which issued the support order. If, at the hearing, the obligor establishes that there has been a mistake in the identity of the obligor or an overstatement of the amount of support stated to be owed by the obligor, the court may order that no income withholding order issue. In the absence of a finding of mistake of fact, the court shall order that the income withholding order issue. Payment of overdue support after issuance of notice under section 11 of this Act may not be the basis for an order that no income withholding order issue. Issuance of an income withholding order does not confer jurisdiction on the courts of this state for any purpose other than issuance and enforcement of income withholding orders.

SECTION 13. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interstate income withholding - Form - Service on income payor - Termination of order. The provisions of sections 6 through 8 and section 14 of this Act are applicable to income withholding orders issued at the request of another state made pursuant to section 10 of this Act.

SECTION 14. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Administration of income withholding. The supreme court shall develop procedures for the accurate documentation and monitoring of support payments made through income withholding under this chapter. Procedures must be developed for the clerks of court to promptly distribute amounts withheld pursuant to an income withholding order and to promptly refund erroneously withheld amounts.

SECTION 15. AMENDMENT. Section 14-09-09.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.3. Child support - Duties and liabilities of employer income payor under wage assignment order or order to withhold and transmit earnings income withholding order.

1. Any employer income payor failing to comply with any requirements in sections 14-09-09-1 and 14-09-09-2 section 7 of this Act may be punished by the court for civil contempt. The court shall first afford such employer income payor a reasonable opportunity to purge itself of such contempt.
2. Any employer income payor who shall fail or refuse to deliver earnings income pursuant to an order under section 14-09-09-1 or section 14-09-09-2 income withholding order, when such employer income payor has had in its possession such earnings income, shall be personally liable for the

amount of such earnings income which the employer income payor failed or refused to deliver, together with costs, interest, and reasonable attorney's fees.

3. Any employer who dismisses, demotes, disciplines, or in any way penalizes an obligor-employee on account of any proceeding to collect child support, on account of any order or orders entered by the court in such proceeding, ~~or~~ on account of the employer's compliance with such order or orders, or on account of an income withholding order, shall be liable to the obligor-employee for all damages, together with costs, interest thereon, and reasonable attorney's fees resulting from the employer's action. The employer may be required to make full restitution to the aggrieved obligor-employee, including reinstatements and backpay.
4. An employer income payor may be enjoined by a court of competent jurisdiction from continuing any action in violation of sections 14-09-09.1 and 14-09-09.2 section 7 of this Act.
5. Any proceeding against an employer income payor under this section must be commenced within ninety days after the employer's income payor's act or failure to act upon which such proceeding is based.
6. Compliance by an employer income payor with an order issued under sections 14-09-09.1 and 14-09-09.2 income withholding order operates as a discharge of the employer's income payor's liability to the obligor-employee obligor as to that portion of the obligor-employee's wage obligor's income so affected.

* SECTION 16. REPEAL. Sections 14-09-09.2 and 14-09-09.4 of the North Dakota Century Code, and sections 14-09-09.1, 14-09-09.8, and 14-09-09.9 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

SECTION 17. EFFECTIVE DATE. This Act becomes effective on March 1, 1987.

Approved December 5, 1986
Filed December 8, 1986

- * NOTE: Section 14-09-09.8 was also amended by section 1 of House Bill No. 1034, chapter 570.

CHAPTER 184

SENATE BILL NO. 2490
(Senators Stenehjem, Nalewaja)
(Representatives Cleveland, J. DeMers)

CHILD CUSTODY MEDIATION

AN ACT to authorize court ordered mediation in certain contested child custody, support, or visitation proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Purpose. The purpose of this Act is, through mediation, to enable the parties in contested child custody, support, or visitation proceedings to resolve the dispute voluntarily.

SECTION 2. Mediation authorized - Exception. In any proceeding involving an order, modification of an order, or enforcement of an order for the custody, support, or visitation of a child in which the custody or visitation issue is contested, the court may order mediation at the parties' own expense. The court may not order mediation if the custody, support, or visitation issue involves or may involve physical or sexual abuse of any party or the child of any party to the proceeding.

SECTION 3. Appointment of mediator. For any mediation ordered under this Act, the court shall appoint a mediator from a list of qualified mediators approved by the court.

SECTION 4. Qualifications of mediators. The supreme court shall adopt rules establishing the minimum qualifications of a mediator. To be included on a list of qualified mediators approved by the court, a person must possess the minimum qualifications.

SECTION 5. Privacy. The mediator shall conduct the mediation proceedings in private. The mediator may not exclude counsel from participation in the mediation proceedings.

SECTION 6. Confidentiality. Any communication, verbal or written, in a mediation proceeding under this Act is confidential and inadmissible as evidence in any proceeding. A mediator appointed under this Act may not be a witness and the notes and work product of the mediator are not subject to discovery or subpoena in

the proceeding in which the contested child custody, support, or visitation is at issue.

SECTION 7. Mediation agreement. The mediator shall reduce to writing any agreement of the parties. The mediator shall inform the parties of their right to review the agreement with counsel before they sign the agreement. After the agreement is signed by the parties, the mediator shall present the agreement to the court. The agreement is not binding upon the parties until approved by order of the court.

SECTION 8. Failure to agree. The mediator may report to the court at any time that the parties are unable to reach an agreement. The mediator may recommend to the court that a full hearing on the custody, support, or visitation issue be held within thirty days. The mediator may not make a substantive recommendation to the court concerning the contested issue of custody, support, or visitation.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 185

SENATE BILL NO. 2039
(Legislative Council)
(Interim Budget Committee on Human Services)

CHILDREN'S SERVICES COORDINATING COMMITTEE

AN ACT to establish a children's services coordinating committee to develop a plan for a coordinated delivery of services to children and adolescents; to provide a continuing appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Children's services coordinating committee - Membership - Meetings. The children's services coordinating committee consists of the governor or a designee of the governor; the attorney general or a designee of the attorney general; the superintendent of public instruction; the executive director of the department of human services; the state health officer; the director of job service North Dakota; the director of institutions; the director of vocational education; the chairman of the governor's committee on children and youth; the executive director of the Indian affairs commission; and a designee of the chief justice. The governor or the governor's designee shall act as chairman of the children's services coordinating committee. The children's services coordinating committee shall meet at least once each month and may establish subcommittees as it deems necessary to carry out its purposes.

SECTION 2. Support services. Each executive branch agency, department, and office shall provide at the request of the governor any support services required for the children's services coordinating committee. The governor may appoint one person who is employed by an executive branch agency, department, or office represented on the children's services coordinating committee as secretary and reporter of the children's services coordinating committee.

SECTION 3. Plan for coordinated delivery of services to children and adolescents. The children's services coordinating committee shall develop a plan for a coordinated delivery of services to children and adolescents, including children and adolescents who are abused, neglected, emotionally disturbed, mentally ill, runaways, homeless,

dependent upon alcohol or drugs, delinquent, deprived, or unruly. The children's services coordinating committee shall submit the plan to the legislative council at the first meeting of the legislative council occurring after November 10, 1988. The plan shall include:

1. A clarification of the policies and procedures which address the appropriate role and responsibilities of each state, regional, and local agency, department, institution, and office in the delivery of educational, mental health, protective, rehabilitative, and related social services to children and adolescents;
2. Definitions and definitive criteria for identification of children and adolescents who are at risk and in need of educational, mental health, protective, rehabilitative, and related social services;
3. A description of governmental services authorized for children and adolescents, a description of additional services specifically recommended for authorization, and an inventory of available nongovernmental resources;
4. Recommendations for specific new mechanisms to improve coordination of public and private services for children and adolescents and their families, including the development of regional children's services coordinating committees;
5. Training methods and standards for the training of personnel serving children and adolescents, including identification of existing training resources and cross-training in matters of sexual abuse, substance abuse, child and family treatment, and prevention;
6. Data collection systems for the effective evaluation and oversight of services to children and adolescents;
7. Mechanisms to facilitate coordination with the state board of higher education to address the need for training of professionals in the various disciplines which evaluate and treat children and adolescents at risk;
8. Policies and procedures developed in cooperation with and with input from parent groups of local school districts for the coordination of state activities with public school programs directed toward children and adolescents at risk and their families;
9. Policies and procedures for the coordination of other state activities with public school programs directed toward the prevention of child abuse and neglect, drug and alcohol abuse, adolescent pregnancy, and suicide prevention; and

10. Any additional matters that may be necessary or appropriate, including recommendations to the legislative assembly for changes in law.

SECTION 4. Duty to review alternatives. The children's services coordinating committee shall review and consider the recommendations contained in the final report of the governor's commission on children and adolescents at risk and such other sources and model programs as the committee may find to be useful.

SECTION 5. Authority to accept and expend grants, gifts, and services - Continuing appropriation. The children's services coordinating committee may apply for and accept any funds, grants, gifts, or services made available for the purpose of planning programs for services for children and adolescents by any federal agency or department or any private agency or individual. Funds received by the children's services coordinating committee pursuant to this section must be deposited in the state treasury in a special fund designated as the children's services coordinating committee fund. There is hereby appropriated out of the children's services coordinating committee fund any moneys that may become available through grants or gifts to the children's services coordinating committee for the purpose of carrying out the provisions of this Act. No expenditure of such moneys may be undertaken without prior approval of the budget section of the legislative council.

SECTION 6. EXPIRATION DATE. This Act is effective through June 30, 1989, and after that date is ineffective.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 186

SENATE BILL NO. 2048
(Legislative Council)
(Interim Indian Jurisdiction Committee)

RECIPROCAL RECOGNITION OF JUDGMENTS

AN ACT to provide for the reciprocal recognition of certain state and tribal court judgments, decrees, and orders; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Reciprocal recognition of certain state and tribal court judgments, decrees, and orders - Conditions. The district courts and county courts shall recognize and cause to be enforced any judgment, decree, or order of the tribal court of the Three Affiliated Tribes of the Fort Berthold Reservation in any case involving the dissolution of marriage, the distribution of property upon divorce, child custody, adoption, an adult abuse protection order, or an adjudication of the delinquency, dependency, or neglect of Indian children if the tribal court had jurisdiction over the subject matter of the judgment, decree, or order. The tribal court judgment, decree, or order must be rendered by a judge who meets the qualifications for admission to practice law in this state. A state court may inquire as to the facts of the case or tribal law only to the extent necessary to determine whether the tribal court had jurisdiction over the subject matter of the judgment, decree, or order. Recognition and enforcement of tribal court judgments, decrees, and orders under this section is conditioned upon recognition and enforcement of state court judgments, decrees, and orders by the tribal court of the Three Affiliated Tribes and tribal law enforcement agencies under the same limitations provided by this section for recognition and enforcement of tribal court judgments, decrees, and orders by state courts.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 1989, and after that date is ineffective.

Approved March 12, 1987
Filed March 16, 1987