

**Commission on Child Support
Commission Meeting, Rapid City, SD
September 21, 2016**

Call to Order: The meeting was called to order by Senator Rusch. Other members present were Representative Gosch, Tom Lee, Dan Todd, Gail Stoltenburg, Corey Wipf and Jennifer Hanna. Members not present: Judge Joni Cutler.

Other staff present: David McVey, Attorney for Department of Social Services; Carmin Dean, Program Specialist I with Division of Child Support; and Suzanne Starr, Director of Division of Policy and Legal Services for Unified Judicial System.

Approval of Minutes from August 24, 2016 meeting: Motion to approve minutes, Dan Todd. Second by Corey Wipf. Motion carried.

Guidelines: Dr. Venohr attended the meeting by conference call. She covered her working document report dated September 9, 2016 with the Commission. The Commission will need to decide whether to leave the guidelines as is or make changes. Dr. Venohr advised one of the federal requirements is to consider economic data on the costs of raising a child. Dr. Venohr explained the differences between the BR3 and BR4 models. She also mentioned updating the guidelines to \$30,000 income level. Dr. Venohr provided a side by side comparison of proposed guideline changes using the BR3 and BR4 with different factors for the Commission to review.

Dr. Venohr discussed building in a self-support reserve back into the guidelines. She stated SD used to have this but it was removed when the 2008 Commission discussed the increase in minimum wage. Linda Lea Viken advised the 2008 Commission was not aware the SSR was removed at that time. Dr. Venohr stated if the proposed regulations are approved, states will be required to have a self-support reserve included in their guidelines. Dr. Venohr stated IL, MT, WY and MN are a few of the states that have a self-support reserve.

Dr. Venohr provided information regarding incarcerated individuals. Some states establish a \$0 or \$50 obligation. Dr. Venohr stated the proposed regulations indicate the actual income of an individual is to be used when establishing a child support obligation. The Commission discussed 25-7-6.4, rebuttable presumption of employment at minimum wage statute. The statute allows for the person to rebut the presumption of using minimum wage for their income when they are earning less than minimum wage. This would apply to anyone earning less than minimum wage, not just incarcerated individuals.

Commission discussed the information presented by Dr. Venohr. Consensus by the Commission was to stay with the BR3 model, increase the guidelines to \$30,000 and add the self-support reserve back into the guidelines. Prior to making a final decision, the Commission is waiting for follow up from Dr. Venohr.

The Commission discussed excluding overtime from income when calculating the child support obligation. Currently 25-7-6.3 allows for it to be excluded if not regular and recurring. Commission members felt this was similar to second job income as it is often times easier for a parent to work overtime instead of obtaining a second job to meet their expenses. The Commission stated if the overtime was available when the family was intact, then it would still be included.

Commission discussed what is considered full-time employment. Testimony was given at a public hearing regarding a teacher whose summer job was included in calculating the child support obligation by a referee. The teacher stated because her teaching job didn't equal 2,080 hours per year, the referee stated she was not full-time. Commission discussed the possibility of amending 25-7-6.4 to include a definition of full time employment.

Senator Rusch advised the Commission the letters submitted to the Commission would be discussed during the public hearing due to time limitation of the meeting. Senator Rusch called for a recess until the public hearing.

Public hearing: Senator Rusch called the Commission back to order and had the Commission introduce themselves.

Public testimony was given by several individuals. Testimony consisted of:

- Why does a person have to pay child support when the child spends equal amount of time with each parent and their income is less than the other parent. Commission advised without looking at the exact calculation they could not explain this. There may be other factors such as retirement contribution which reduced the other parent's income.
- Percentages used in calculations need to be eliminated.
- Custodial parents should be required to submit receipts for reimbursement before receiving the child support.
- Noncustodial parent should be able to claim the child on their tax return.
- Self-employed individuals being able to deduct the entire cost of a new vehicle on their tax return at the end of the year. The deduction reduces the person's income so it appears they haven't earned any income.
- Increase the 10 day objection period on referee reports. This is too short of a time frame and is hard for people to acquire an attorney when the attorney hasn't been involved in the process. The attorney has a steep learning curve.
- When the custodial parent's income increases substantially, it increases the amount of child support the noncustodial parent has to pay which is detrimental to the non-custodial parent. Is there any way for a financial hardship to be looked at? Obtaining a second job is difficult as it will interfere with visitation.
- 25-7-6.21, credit against child support obligation for disability benefits a child receives on behalf of the non-custodial parent. The non-custodial parent is currently incarcerated and therefore not entitled to receive disability retirement benefits. Custodial parent applied for the benefits and children are receiving on behalf of noncustodial parent's disability. The custodial parent felt this shouldn't be counted as paying the child support.
- Abatement – a certain percentage should be given for every night of visitation even if it is less than the 10 days under current statute.

No further public testimony was given.

Commission letters: Commission discussed the letters which were submitted to the Commission. A couple of the letters focused on enforcement of visitation. Commission stated they are unable to address these issues. The individuals would need to initiate an action in Circuit Court to enforce the visitation provisions. If the individual is unable to hire an attorney, there are pro se forms available on

UJS website. A judicial determination of violation has to be made and then a bench warrant issued before law enforcement can become involved in the matter.

If daycare is incurred by both parties, there is an offset between the amounts and then the difference is to be allocated between the parties. Commission is unsure why this wasn't done in the particular instance presented in the letter. Without reviewing the complete facts, the Commission was unable to address further.

Adjourn: Senator Rusch asked if there was any further testimony. Hearing none, Senator Rusch called for the meeting to adjourn.

DRAFT