

**South Dakota Commission on Child Support  
Commission Meeting, Pierre, SD  
July 20, 2016**

Judge Joni Cutler, Chair, welcomed everyone to the meeting. Roll call was taken. Senator Rusch, Tom Lee, Cory Wipf, Judge Cutler, Gail Stoltenburg, and Dan Todd were present. Representative Gosch was not present.

Judge Cutler asked for a motion to approve the last meeting's minutes. Motion was made to approve. Second was made and all approved.

Gail Stoltenburg introduced the non-commission members – Suzanne Starr, UJS Director of Policy and Legal Services; David McVey, DSS Legal; and Carmin Sommer, Program Specialist with DCS.

Judge Cutler reminded everyone why we are here and purpose of why the Commission was established. Judge Cutler had everyone introduce themselves and give a little bit about themselves.

Judge Cutler advised a member resigned from the Commission and in the process of finding a new one. Gail advised the custodial parent contacted her a few days after the last meeting and declined to continue. There have been a few recommendations and waiting for appointment by the Governor. Judge Cutler advised she is attempting contact Representative Gosch to find out what his role is going to be as we do need a member of the House due to legislation. Gail will also try to continue to contact him.

Gail explained the public hearing process that will occur tonight. Any testimony given tonight will be discussed during the next meeting.

Judge Cutler asked Gail to explain the items in the binder. Gail proceeded with identifying the items in the binder.

Judge Cutler called for a short break.

Judge Cutler called the Commission back to order. Dr. Jane Venohr from the Center for Policy Research joined the commission by phone. Dr. Venohr stated she was the economist who helped SD develop the 2008 schedule which was the time when the recession started. Jane referred everyone to the PowerPoint presentation and proceeded to go through it.

Dr. Venohr stated the Commission will have to determine whether or not to update the child support schedule based upon the economic data she provides. Dr. Venohr stated SD deviates from the guidelines about 4% of the time, IA is at 3% and WY is about the same. She stated in most states deviations are probably under reported as the worker doesn't receive the information from the courts. Gail advised the report was run but she is having some further checking with staff and supervisors to ensure they are entering the deviation information. Jane stated NV's guidelines are a percentage of gross income and everything is a deviation (child care, insurance, etc). They are at about 40% for deviations.

Dr. Venohr stated the current Child Support Commissioner, Vickie Turetsky, is an advocate for low income families. The proposed rules are more aimed at the low income cases and were released in

November 2014. The proposed rules have gone through OCSE and working their way through the process but it is unknown if they will be released during the current administration or not. If the proposed rules are passed, states will have one year after passage to implement the changes. The next Commission would be able to address any changes. One of the proposed rules is to use income imputation as a last resort. Gail stated DCS does everything possible to determine actual income for calculating.

Dr. Venohr advised that MN, NE and MT have a self-support reserve. They look at the obligor's income and subtract out the self-support reserve. WY doesn't have a self-support reserve but is looking at it.

39 states use the income shares model which is what SD uses. If a \$1,000 month is spent on the child when intact, they should still spend the same amount when the parents separate. The child should receive the same standard of living regardless of the parents' relationship status. IL just passed the income shares model and so they will become the 40 state. When a state changes the model, most change to the income shares model.

When Dr. Venohr works with a state to update guidelines, she also looks at how much inflation there has been. Prices have increased 9.654% from 2008-2016. This doesn't mean the schedule has to increase by this much. Wages have also increased. As income increases, families spend less on child rearing.

SD schedule doesn't include childcare and includes the first \$250 medical expenses. The schedule doesn't include health insurance costs. \$250 per child per year comes from the national medical survey. It is what they found to be typically spent on a child during the course of the year. However, a child enrolled in Medicaid is around \$60 per year. Dr. Venohr recommends states wait until the dust settles from the ACA and the proposed rules are finalized before making any changes in this area.

Dr. Venohr briefly explained the difference between the BR3 and BR4. Basically, the BR3 looked at expenditures while the BR4 looks at outlays. With the BR4, the child support obligation is lower for low incomes and gets higher for higher incomes than the BR3.

Dr. Venohr compared SD's minimum wage, average wage and child support obligations with the surrounding states. SD has one of the higher minimum wage amounts and also has the highest minimum wage obligation. Dr. Venohr stated if SD uses the BR4 instead of the BR3, there will be some decreases in the lower incomes and there will be increases in the higher incomes.

Dr. Venohr advised the Commission they will need to answer:

1. Should the schedule be updated.
2. What economic data should be used? BR3, BR4, USDA, or a splice?
3. What is the appropriate minimum amount? Should it be less or more?
4. What is the consequence if the minimum wage goes up?

Dr. Venohr asked if there are any other issues or questions. There were none. Judge Cutler advised since the Commission is just starting this process, there may be questions later on. Dr. Venohr stated she will need direction by the August meeting so she can have something drafted by the September meeting. Judge Cutler asked if there were any questions. Senator Rusch asked if the committee in 2012 anticipated SD was ending up with orders larger than other states. Dr. Venohr advised there wasn't much knowledge at that time and states didn't want to make many changes as they were still feeling the

impact of the recession. In 2012, the low income was talked about a little bit but there wasn't much information available regarding the low income ranges at that time.

Judge Cutler thanked Dr. Venohr for the information.

Judge Cutler then asked Tom Lee and Suzanne Starr to report on the referee issues.

Tom Lee provided the following referee issues:

- Referees are concerned with the very high minimum obligation amount. There isn't any hope in getting it paid off.
- Referees are getting differences of opinion on shared parenting. A lot of attorneys and pro se people think it is only a matter of reducing the child support obligation and not realizing it is also the responsibility of sharing all other expenses. Even Judges don't seem to fully understand the requirements. People are not reading the fine print. Some people think if each parent has the child for 150 day, then they have meet shared parenting. People need to be made aware there has to be an agreement as to how the expenses of the child are going to be met. If they don't have all of the requirements, then they don't have an agreement. Tom Lee advised Tim Dougherty had some suggestions at the referee meeting and maybe he will be providing to the Commission.
- Forrest Allred is a detailed referee and there was discussion regarding the statute for second job income. School teachers were given as an example as they have 3 months off during the summer. Suzanne stated teaching would be the primary job and the job during the summer is that considered the second job? Or if the person is earning more at the summer job should that be the full time job? Forrest is considering 2,080 hours per year as being full time so he includes the second job income.
- 3 years of prior period support – Tom stated he is getting push back on cases in which the parent hasn't exercised the right to establish child support and paperwork is being put in from of the parent asking them if they want 3 years of prior period support. Tom asks the person when they first decided they wanted the support. He doesn't feel it should be put right in front of the person.
- DCS currently per caps the child support obligation when the child shifts from one parent to the other or a caretaker. There is a paperwork burden as people don't read any more. There is a lot of paperwork in the modification packet. Is this putting people off from petitioning for modification?
- Tom stated he is having difficulty in getting people served. Mail is being returned 3 or 4 weeks after he sends it out. He stated the address on the petition may be more of a true address as the other person is aware of where the person is at. Gail mentioned the statute where the person has to keep DCS advised of their current address. Tom advised he has used it a few times. Tom stated is frustration and probably can't be dealt with at this level but wants to make the Commission aware of it.
- Tom asked if the commission is still comfortable with terminating the child support obligation at age 18 or 19, if still in high school? That has been the standard for a long time and doesn't have a position but is something which could be looked at.
- Referees are supposed to base their recommendation on tax returns. Self-employed are sometimes difficult to determine their income.

- Tom asked about increasing the guidelines for incomes higher than \$20,000. Automate it to some degree so the custodial parent doesn't have to build a huge case that the child is expensive to raise.
- Interest on child support – Tom stated it was talked about at the last Commission. Is there a way to simplify? Lump it together at the end of the year?
- Incentives for people who pay – Some people try hard to do the best they can for their children and others seem to be dedicated to running away to avoid. Tom stated he wish there was a way to have an incentive for people who pay.
- Tom mentioned people will file for modification to try to get their child support reduced and the obligation ends up going up. He would like to find a way to resolve this issue.

Suzanne added the referees discussed incarcerated individuals as well and wanted to see if there was a way to not impute them at minimum wage.

Judge Cutler asked if there are any questions regarding Tom's information. Gail advised Dr. Venohr was checking to see if she has data to extend the guidelines out further and if so, she could provide it. Judge Cutler and Tom stated that would help.

Gail stated as far as the second job income, we are ok with the Feds. When the statute changed allowing the exclusion of second job income, SD DCS provided this information to the Federal Office of Child Support so they are aware of the exclusion.

Dan Todd asked Tom if there has been any notice by publication. Tom stated they haven't discussed that. Some people don't pick up their mail, others have their parents screen their mail, etc. Gail stated a Judge in Rapid City just recently ordered notice by publication in a case.

Judge Cutler requested the members to take the information heard today and prioritize for the next meeting.

Linda Lea Viken, family law attorney from Rapid City, was present during the meeting and asked if she could address the Commission as she is unable to attend the public hearing tonight. Judge Cutler advised she could.

Linda Lea stated she had the privilege to serve on every child support commission since the inception except for the 2012 Commission. She stated the standard order used to be \$50 per child. There is a lot that goes into this and a lot of decisions have to be made. Linda Lea stated the Commission has always lowered what was recommended. Linda Lea recommended breaking back down the incomes from \$0 – minimum wage. There are also the add ons for daycare and health insurance that have to be remembered.

Linda Lea is interested in hearing more about the shared parenting. When you use the cross credit, you significantly reduce the child support. The parent who has the lower income still has those expenses. Linda Lea and many other family law attorneys received phone calls from parents wanting shared parenting to reduce the child support. They explain to them what the requirements are for shared parenting.

Exclusion of second job income was an incentive for people. People would get a second job to meet expenses and then the support obligation would be increased.

Linda Lea stated service is an issue and she doesn't know how to resolve either. There are so many pro se people coming in and they don't understand or know the process.

Linda Lea stated in regards to the age of emancipation, it costs less for the 2<sup>nd</sup> and 3<sup>rd</sup> child. She stated it is the economy of scale.

Linda Lea has had several occasions with the Supreme Court regarding incomes above the guidelines. She has done what the Supreme Court asked by separating all of the child's expenses out and is being told she didn't do it right with no further clarification. She stated if the scale can be moved up would be best.

Linda Lea stated calculation of interest on child support is an issue.

Linda Lea stated there is a Supreme Court decision on incarceration. It is a voluntary reduction of income but does it do the parent any good when they come out and have a huge bill. You don't want the child to suffer. She always looks at it if they are still together and he went to jail, you wouldn't have the income.

Linda Lea stated referees are put in the position of taking high income cases when the matter should be in court. Judges are referring these cases to the referees and it becomes very cumbersome for the attorneys due to discovery issues. Referee system was supposed to be a simplified process for modification so the parties didn't have to go to court.

Linda Lea advised depreciation can be added back in and there is a consideration if a payment is made on the asset that year. Since accelerated depreciation can now be done, they have a zero net income. Linda Lea asked how depreciation is handled to be looked at again. The depreciation is simply paying for the asset they got.

Linda Lea stated if there are any questions or background information needed, she is more than willing to assist. Linda Lea thanked the Commission. Judge Cutler thanked Linda Lea for coming and providing the information.

Judge Cutler asked if there was anything further. No further comments. The Commission recessed until the Public Hearing.