

South Dakota Commission on Child Support

Recommendation options summary by section of SDCL

(Cross referenced with Recommendation options – numbered)

25-5-18.1. Parental duty to support child.

Recommendation 3 – Amend to clarify age of emancipation from child support:

Option 1

- a. Age 18
- b. Age 19

Option 2: Include “alternative instruction” as schooling qualifying for continued child support past the age of 18

Option 3: Remove “full-time” from consideration when the child is a student over the age of 18

25-7-6.2. Support obligation schedule.

Recommendation 1 – Amend guideline schedule to adjust for inflation:

1. Utilizing inflationary changes in prices for the Midwest Region from July 2021 to March 2025
2. Utilizing the inflationary increases in 1 as well as adjusting for income changes in South Dakota (as determined by realigning national data to South Dakota incomes using 2023 Census data).

Recommendation 5 – Amend to clarify the method for calculating support obligations for incarcerated individuals with no income:

1. If a parent’s actual income during incarceration is \$0, the resulting obligation set at the minimum obligation amount established in the schedule
2. All obligations set at the minimum obligation amount established in the schedule

25-7-6.4. Rebuttable presumption of employment at minimum wage.

Recommendation 7 – Amend to presume a parent is capable of being employed and earning an annual gross income of 1,820 hours multiplied by the state’s current minimum wage

25-7-6.10. Factors considered for deviation from schedule.

Recommendation 15 – Amend to allow the federal tax consequences of claiming the child as a dependent as a factor for deviation

25-7-6.13. Modification of prior orders of support.

Recommendation 6 – Amend to update date for allowable modifications without a change in circumstances and codify that child support obligations do not revert to the pre-incarceration amount upon release and that a Petition for Modification must be filed to adjust the obligation post-release

25-7-6.14. Abatement of portion of child support--Modification.

Recommendation 10 – Amend to simplify the considerations for an abatement:

- Remove consideration of the fixed obligations of the custodial parent attributable to the child
- Change consideration of the costs of the noncustodial parent from non-duplicated to all costs
- Remove burden of proof of increased non-duplicated fixed costs for the noncustodial parent

Recommendation 13 – Amend to change the threshold for an abatement:

- Remove threshold of six or more nights per month
- Change consideration for abatement from nights to time spent with the child
- Replace 38-66 percent abatement range with formula based on hours spent with the child:
 - Less than two hours = at least 25 percent of basic obligation
 - Two to six hours = at least 50 percent of basic obligation
 - More than six hours = 100 percent of basic obligation
 - Nights = 100 percent of basic obligation
- Include days per month the child spends with the noncustodial parent in the calculation for abatement

25-7-6.19. Credit for child support arrearages for parent with primary physical custody during period of custody.

Recommendation 9 – Amend to include a court order as grounds to allow credit against accumulated arrears for times when the obligor had physical custody

25-7-6.26. Effect of failure to furnish financial information--Imputation of income.

Recommendation 8 – Amend to clarify the court may use any of the listed factors to impute a parent's income

25-7-6.27. Shared parenting child support cross credit.

Recommendation 14 – Repeal of section in its entirety eliminating shared parenting cross credits (includes amendments to 25-7-6.14 and 25-7-6.28)

25-7-6.14. Abatement of portion of child support--Modification.

Recommendation 14 – Amend to remove mention of shared parenting cross credit allowed under SDCL 25-7-6.27

25-7-6.28. Child residence with parent for a night--Residence for days.

Recommendation 14 – Amend to remove SDCL 25-7-6.27

25-7A-6. Hearing requested by parent--Referee's report--Objections--Order of court--Service--Objection to court's modification.

Recommendation 4 – Amend to allow referees to make a finding of adjudication of paternity when DNA testing has been done which shows at least 99 percent probability the individual is the biological father of the child

25-7A-21.1. Order establishment case--Limitation on prior-period support obligations or arrearages.

Recommendation 2 – Amend to change prior-period support timeframe:

Option 1: One year calculated at state's current minimum wage

Option 2: No prior-period support

Option 3: Three years calculated at state's current minimum wage

25-8-5. Custodian's recovery of support from noncustodian--Period support recoverable.

Recommendation 2 – Amend in conjunction with changes to SDCL 25-7A-21.1:

Option 1: One year calculated at state's current minimum wage

Option 2: No prior-period support

Option 3: Three years calculated at state's current minimum wage

New Section of 25-7A

Recommendation 11 – Add a section to allow referees to serve parties by email upon agreement of the parties

New Section of 25-7A

Recommendation 12 – Add a section to allow referees to only file with the court all exhibits entered into the hearing records upon a filed objection to the referee's report