

**Commission on Child Support
Public Hearing Minutes
Thursday, August 26, 2021
6:00 p.m.-8:00 p.m. CDT
Kneip Building – Conference Room #3
700 Governors Drive
Pierre, SD 57501
Join Zoom Meeting
<https://state-sd.zoom.us/j/93043743852?pwd=b2RRRXpuOTFUWFJyczE2Q3AwY1k5Zz09>
Meeting ID: 930 4374 3852
Passcode: 663345**

Commission Members Present: Chairman Justice Scott Myren; Virgena Wieseler, Department of Social Services (DSS) Chief of Children and Family Services; Lindsey Riter-Rapp, South Dakota State Bar. The following members participated via Zoom: Senator Arthur Rusch; Representative Mike Stevens; Terri Williams, Child Support Referee; Amber Kinney, Custodial Parent.

Commission Members Absent: Michael Bierle, Non-custodial Parent.

Others Present: Carmin Dean, Nichole Brooks, Jeremy Lippert, Marilyn Kinsman, and Max Wetz as DSS support staff; Suzanne Starr, Unified Judicial System; and Dr. Jane Venohr, Center for Policy Research (via Zoom). Tom Pischke, Jessica Steidel, Robert Contreras, Paul Van Sloten, Lee Ann Pierce, Lisa Sittig, and Meghin Lehrkamp were present via Zoom to provide testimony. Carrie Wheelhouse, Jason Henkelfelt, and Joe Melligan were present in person to provide testimony.

Reconvene / Public Hearing: The Commission on Child Support was called back to order by Chairman Justice Myren at 6:00 p.m. CDT for purposes of the evening Public Hearing. Roll was called and introductions of Commission members were made.

Chairman Justice Myren stated the purpose of the Public Hearing is for the Commission to conduct its required review of South Dakota's child support guidelines as per state and federal requirements. Discussions during the public hearings will be limited to potential changes to the child support guidelines and statutes. This public hearing is not intended to address individual child support cases, parenting time, or custody concerns; the Commission does not have the ability to change those things. The Public Hearing is to address changes to the system that may be appropriate to address to the Legislature. A total of three public hearings are being held to gather input including this one in Pierre today, one in Sioux Falls on September 30, and another in Rapid City on October 27. The public has been invited to provide input by writing, in person, remotely, and by providing written comments via e-mail to DCS@state.sd.us. Comments must be received by November 1, 2021. Hearing locations and times were also publicized on the Department of Social Services' website, the boards and commissions portal, and in a newsletter. The public is invited to provide input digitally via Zoom without coming to testify in person. Chairman Justice Myren asked those who were appearing via Zoom to indicate if they would like to make comments, adding it does not preclude anyone from commenting.

Three people in the room stated they wish to address the Commission. Chairman Justice Myren stated the Commission would first hear testimony from those in the room, then would open the floor to individuals who pre-registered to testify virtually. He asked those who are providing testimony to limit their discussion to 10 minutes to allow an opportunity for all comments to be

heard. The floor will be opened again for another 10 minutes after hearing all who are interested in testifying.

Public testimony was given by several individuals:

Carrie Wheelhouse addressed the Commission stating she appreciates the Commission looking into child support and reviewing the guidelines every four years. Carrie is the mom of three daughters, two are biological, she has full legal and physical custody of them. The biological father left when their daughter was age two and moved out of state. The court charged him with contempt for not paying and now an automatic payment is withheld. The system works for W-2 employees. Carrie is also the mom of a step-daughter whom she has full custody of. The step-daughter's mom left the state and moved to Wyoming and has zero contact with her daughter. Since January 2018, a total of eight child support payments have been received; she is \$36,000 in arrears. She is a self-employed hairstylist and there is an active warrant out for her arrest. She runs bank accounts under her mom's name and social security number. She pays \$200 every six months so parental rights cannot be terminated. Carrie received the first stimulus payment. Carrie has gone through the court system. A modification for support order has been filed three times. The case gets dismissed as the step-daughter's mom fails to appear, which costs time and more money. The Judge finally made a ruling that she cannot refile. If a petition is dismissed, the person should not be allowed to refile for three years. Carrie stated it should have to be proven there is a substantial change before getting to the hearing. Carrie contacted Child Support and the worker indicated they were not in the office due to COVID and nothing could be done. Carrie contacted Wyoming directly and received an email the same day telling her she cannot contact Wyoming directly. Virgena Wieseler asked Carrie to confirm what agency was being referred to when she was told due to COVID, nothing could be done. Carrie stated it was the South Dakota Division of Child Support. Due to COVID, staff were working remotely. Carrie was advocating for herself and family and trying to take the pressure off of the system by contacting Wyoming directly; it was disheartening to be told she cannot talk to the other state. The system fails for the self-employed.

Jason Henkelfelt shared that his daughter's mother is self-employed and claims she makes less than minimum wage. He believes she makes more than minimum wage; but he is not sure how to prove it. Jason is required to pay child support on his 18 year old daughter who has enough high school credits to graduate and is taking college credits. Since she is age 18, he has no ability to look at her high school or medical records; she can change her last name, but he still has to pay child support since she is considered a high school student. Jason wants to help with college expenses, but questioned how he can do so while paying child support.

Joe Melligan has two daughters, ages 18 and two. There had been no formal agreement in place for the first 15 years, then he and the mother of the 18 year old daughter had a falling out, and now she requested arrears through the Division of Child Support Services totaling \$19,000. His driver license is now restricted, too. People need help to get ahead. Joe pays support for his two-year old child. He has the ability to work overtime and his paychecks are not always consistent. Monthly payments are enormous, but he can't continue to work all the overtime hours. It's to the point that working a lot seems punitive. What it boils down to is, what does it cost to raise a kid? Joe has to have a house, food, clothes, for the child, and the child's mother does the same. No one cares that the non-custodial parent has to provide these things, too. When you end up in court, money goes to the attorneys, not the kids. Joe stated that between the three people in the back of the room, they have spent \$100,000 to get things straightened out. That doesn't go to the kids. There needs to be an equal balance to the whole thing. When you get into the child support process, emotions get high, one person pits against the other, kids are in between, and the custodial parent doesn't have enough money. Thanks for including the public in this discussion.

There are people like us three in the room that struggle. We all want to do what's right for the kids, to do what's best for the kids, to make sure they've got everything they want. Joe's child support is \$900 per month for his two year old child. He provides a room, clothes, toys, and mom provides the same. If Joe takes a vacation, he gets paid for 40 hours and that should be taken into account. If he were to lose his license, he would also lose his job. Child support keeps racking up. He runs the risk of losing his license, and he needs a job. It's physically daunting. He's looking at jail time if he doesn't meet his obligation. Then he would need to hire an attorney. It's hard to find a job to support himself, his kids, and pay an attorney.

Tom Pischke thanked the Commission for holding the meeting and taking public input; it's a daunting task and he appreciates the work of the Commission. He described the child support system as kind of like those tables for infants when they are learning shapes for circles, triangles, and squares and trying to put a square peg through the round hole; it doesn't do justice. During history of social economic times, parents got divorced, and dads moved out and supported kids financially. At the time, people were trying to escape paying for expenses. Those laws no longer fit. Many people want to spend time and money outside of child support. We want to have expenses to raise that child; the current system misses the ball when coming to that conclusion. Tom has no problem paying for the essentials. It's expensive to raise kids; however, he has no say in anything that goes on regarding how she spends the money. There's no accountability with the system. Child support is given to your ex and she can do whatever she wants with it. It's assumed it's going to children, but there's no proof. Tom shared that it wasn't that expensive [to raise children] when they were married. It's an income-based system where we income share but it's really more of a wealth distribution. Why make more money? It takes the same amount of money to raise a child. The more Tom makes, the more the system takes. Tom said he is a great guy, a loving parent, he attends football games, baseball games, and gymnastics. He wants to be there without government intervention. This Commission and the Legislature should work on how to maximize time with children. Tom indicated the abatement obligation amounts are fine for people who don't spend any time with their kids. When he first got divorced, he had his kids every other weekend and got nothing for toys, diapers, food, baby wipes, etc. Housing prices are going up. The price of used cars are going up. You can't base decisions just on expenses incurred. It should be that custodial parents buy, not both the custodial and non-custodial parent. As a representative in 2016, Representative Pischke brought an abatement bill to the House to deal with child support as an attempt through HB 1147. He asked that the Commission look at that bill or something similar.

Jessica Steidel is in a shared parenting situation and has a higher income than her ex and was ordered to pay child support. She did not receive any letters. After about three months of paying child support, she found out she was labeled as a "non-custodial parent"; she pays child support; do not label her a non-custodial parent. Another concern is how medical premiums are calculated. Jessica has four children ages 21, 18, and 10 year old twins. They have been covered on insurance for years. When the insurance premium was computed when the child turned 18, they took the single rate minus the family rate which left \$330. Divide that by four children ($\$330/4=\115). They only attributed \$115 for the two minor children and determined her ex was not responsible for assistance with the insurance premium for the older children (ages 18 and 21) who are in college. Now Jessica pays 100% of the cost of insurance. The insurance premium is the same premium for two children as it is for four or more children. Jessica stated she sent an email message to the Division of Child Support noting suggested verbiage change. Jessica also has concerns about imputation of income. After seventeen years of marriage and four children later, her ex filed for divorce. They did shared parenting with no court order. After seven months, her ex obtained an attorney and took her to court for full custody of their 16 year old and shared custody for the 10 year old children. It was denied. The court ordered a shared parenting plan of

50/50. In January 2020, Jessica was paying \$550 to her ex, paying all medical, dental, and vision insurance. Her ex was not paying his proportionate share of 33%. When you have a detailed shared parenting agreement, the court may deem it necessary to grant a cross credit. A modification was filed and her income had increased. The ex became a self-employed tile worker and reduced his income to \$17,000; he made \$46,000 when they were married. Jessica requested a deviation from the child support referee. The referee used AGI on the tax document showing net of \$1,207 per month. Jessica subpoenaed bank records and other documentation for proof, but the referee denied the deviation. Jessica requested a parenting plan. It was also denied. She provided proof of payment of expenses to show the ex was not paying. Her child support increased from \$550 per month for three children to \$767 per month for two children, and she is also responsible for each of the children's first \$250 in medical expenses, rest is 82%/18%. Jessica asked the Commission to define in codified law what a detailed shared parenting plan is; define duties and responsibilities of raising a child; define what the expense of a child is; define what "may grant a cross credit" means; and define substantial negative effect.

Paul Van Sloten stated he listened to earlier topics. To the extent a child goes to both mom and dad's home, they have the same fixed overhead costs, e.g., home, food, etc., in both homes. If a non-custodial parent is unable to provide, he could be determined unfit and not able to take care of the child. Paul has five children, one of whom has chosen to live with him. Paul spent \$50,000 in legal fees which could have gone to the children. There should be a push towards 50/50; most of the cost is fixed expenses unless a parent is not involved at all. Both parents should share costs to maintain a home; share the same burdens. There should be a caveat about paying for child support. No money has been saved for college; now Paul is on the hook for making necessary provisions to pay for child support, college, and a car. Some of that child support could have been earmarked for education. By abatement, you put both parents at a battle to get as many overnights as possible. Paul hasn't seen the four youngest children in five months. It gives an incentive to the custodial parent to keep control of the children; it should not be a financial reward. Many men experience what Jessica [previously testified] has experienced. There ought to be some way to measure if both parents are actively involved. Go to path A for non-involvement and path B for those involved. Representative Stevens asked if the issue was the amount the economist says it takes to raise a child, or is it no input in how the proportionate share is spent? Paul stated he has five kids. He is behind on alimony; over 50%, or almost 75% of income was taken from him and given to his ex-wife. He asked for a modification and has not been afforded that. His driver license was taken. Both parents bear a big percent of cost to have all the food, clothes, shelter, no matter which parent the child is with. Paul asked the Commission to look at both parents incurring the same costs. There is an assumption that the custodial parent assumes the full cost of raising a child, but each has a proportionate share of the amount. If the custodial parent says the non-custodial parent has to put money into a college fund, that should be deducted from the support to be paid. If an order states the custodial parent and non-custodial parent should put X in a college account for the child, the child wins.

Lisa Sittig has a shared parenting agreement for her 10 year old son. During the last seven years they had a good shared parenting situation. They stayed out of the court system and things were working; there were no child support and court order contentions. Lisa is a scientist and comes at things from numbers. One concern is when one or both parents make more money, then it costs more money to raise the child. It creates a system of wealthy distribution. The support obligation should be the two parents coming together to meet the child's needs. Lisa brought up costs that may not be calculated, e.g., day care, general costs, daily living, paying for home, groceries, health insurance. None of that changes when you get a raise. None of those things change unless you get to the low end of the scale. For the support obligation, there should be an average number somewhere for certain services; the number doesn't need to increase to the tune of parents

making higher incomes. There should be an opportunity to not go through state government. Both the custodial parent and the non-custodial parent understand the tug of war for time. Develop a schedule to incentivize parents to obtain more time. Raising kids is raising kids. It wasn't that expensive when married, and now it's a huge obligation. Representative Stevens asked if the child's standard of living should change depending which parent the child is with. Lisa stated when children go back between homes, it's hard. Discipline is different, things that are accessible are different, clean vs messy, etc. The child readjusts to each home. You watch the child physically change when they come back into the home. Teach the norms. When you have two households, it might not be fair for the child to have a lot of things at one house and not the other, (not talking basic needs) but it's OK. Support obligations should be the basics – what does the child need? Cars and college expenses should be additional over the basics. Parents should have autonomy over how to raise a child.

Brent Fuhrmann stated shared parenting is hard when you are paying a fair amount of money to the other household, and when the child comes to your household, you also pay for things when they are with you. He understands wanting to maintain a child's lifestyle of when two people were married, but he has to say no to buying his child an iPhone as he pays so much in child support. His ex is remarried and they can provide a different lifestyle for his daughter, and his daughter adjusts to it. He supplies his daughter with a lot of clothing. He was hospitalized for a period of time and wasn't able to pay child support so his driver license was taken. He didn't know that could happen. Everyone's circumstance is different. How does taking away a driver license help someone when they can't get to work to pay the child support? Brent agreed with comments regarding being based on time with the child; if you give me more money, I will give you more time. If it is under seven nights, the rate goes up and you end up paying more child support. He understands the child needs to be taken care of. If he gets a raise, he's immediately taken back for mediation to take more child support.

Having received testimonials from all participants who wished to testify, both onsite and virtually, Chairman Justice Myren allowed more time for those who were interested to provide additional testimony.

Carrie Wheelhouse returned to provide additional testimony. People talk about paying money to a custodial parent; where does the money go? It costs the same to raise the child. It's never going to be equal. What does it cost as a basic living expense for the child based on the location of that state? Self-employment of a parent is an area where the state is extremely lacking, i.e., parent filed fraudulent tax returns – made 10 times more than what was reported. The tax preparer doesn't have to verify income; bases tax filing on information provided. Carrie's step-daughter's mom reported making \$7,000 per year. Carrie subpoenaed for her records, but she did not show up for the hearing. Give only what the basic cost is to raise the child; the household will never be fair.

Tom Pischke returned to provide additional testimony. He brought legislation forward previously on driver license concerns. It doesn't make sense that you lose your license and can't get to work. He suggested if the Commission wants to fix the problem, to move away from an income shares system and give the non-custodial parent the opportunity to be a parent, give them a chance to pay the child's expenses. If the non-custodial parent doesn't pay, then put it into the system. Take the child support obligation from both parents' checks. Give it to Child Support and let them run the program, and submit documentation to be reimbursed. Need to define what child expenses are. Unsure if the BR5 study can be trusted, e.g., are housing expenses built in, are expenses included for both?

Jessica Steidel returned to provide additional testimony. Jessica agreed with Lisa about the child support obligation paying for basics. What should it look like in both homes? Jessica pays \$800 per month for care of her children. Together they have a combined income of \$115,000 (82%). There is no oversight requiring him to increase her child's standard of living. What percentage of his housing is attributed to him and the portion she should help him pay for? He lives in a trailer paying \$900 a month, he's happy and wants to live that way. Jessica pays \$2,500 per month for her home. He is not utilizing the child support for all the children's expenses. Also, multiplying by 1.5% is because it costs 50% more to raise a child in two homes. The higher income maker pays more money by agreeing to shared parenting. Why would a parent want to agree to shared parenting when they have to pay more? An increase in the child support obligation through BR5 would affect Jessica and costs would increase. Everyone has expenses going up; it will adversely affect everyone in the system.

Paul Van Sloten returned to provide additional testimony. There is no requirement to have the same standard of living. There should be a set standard. When it is calculated, one may think the standard of living for the child is raised, but it's not happening. If a person is paying child support, and is not paying if they are hospitalized, their driver license is taken away which causes job loss, setting them up for failure. It could be any license taken away; they automatically fail.

Robert Contreras addressed the Commission for the first time to testify. Do not assume someone in prison can pay even the minimum. He had a friend in prison who was being paid \$0.25 an hour for building a house. Robert has three kids and is paying \$800 per month. He has no choice on how much he gets to see his kids and would love to have more contact with them. He is only allowed to talk to them a certain amount of time each day. He requested to buy the kids school supplies and the other parent refuses to allow him to pay for anything other than child support. Speaking up may be held against him in court one day, it may reflect bad on his custody case and the kids would be taken away even longer. The only punishment there is, is less time with his kids.

Chairman Justice Myren asked if anyone else wished to testify.

Meghin Lehrkamp provided testimony for the first time. She stated the last gentleman that spoke is spot on. You are not allowed to take your kids to school, shopping for clothes or school supplies. The other parent just wants money for child support.

Lisa Sittig returned to provide additional testimony. Take into account expenses of both households in shared parenting situations where the child is expected to reside in both households. Non-custodial would pay 100% of obligation at their residence, and 40% for certain parts at the other household. Find a way to factor in both homes so you are getting an obligation for both.

Chairman Justice Myren asked if anyone else wished to address the Commission. Hearing none, he stated he hoped people felt they were given enough time to address the Commission. The Commission will be available until 8:00 p.m. to hear public testimony today. Providing testimony today does not preclude anyone from testifying again. Virgena Wieseler thanked everyone who testified for providing input.

Tom Pischke asked to speak again. The current child support system is used as a weapon against the other parent. It allows poor behavior. The system sets up some for adversarial relationships.

Carrie Wheelhouse thanked the Commission for taking this on and looking to better it; it means a lot to her. It won't help every single situation but kudos for taking it on.

Robert Contreras asked if there is an opportunity for members of the public to serve on a subcommittee. Chairman Justice Myren advised the subcommittees do not include members of the public.

Chairman Justice Myren asked Lee Ann Pierce her thoughts. Lee Ann stated she just wanted to listen in. She has been a child support referee since 1994 and has done thousands of cases. In prior years she has not been able to attend Commission meetings due to geographical challenges. Lee Ann shared that a non-custodial parent who pays \$800 per month to support 3 children, equates to paying \$8.88 per day per child for support ($\$800/3 \text{ kids}/30 \text{ days}$).

Chairman Justice Myren called for the public hearing to end at 8:00 p.m. CDT.

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