

**Commission on Child Support  
Public Hearing Minutes**

**Thursday, September 30, 2021**

**Rushmore Room**

**811 E. 10<sup>th</sup> Street**

**Sioux Falls, SD 57103**

**Join Zoom Meeting**

**<https://state-sd.zoom.us/j/94014011890?pwd=K0tWQ3JXa3duZlVOSjE2OTVSZG5Tdz09>**

**Meeting ID: 940 1401 1890**

**Passcode: 114898**

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

**Commission Members Absent:** Senator Arthur Rusch

**Others Present:** Carmin Dean, Nichole Brooks, Marilyn Kinsman, and Kristen Campbell, Department of Social Services (DSS) support staff; Suzanne Starr, Unified Judicial System (UJS); Jeremy Lippert, DSS Director of Legal Services (via Zoom); and Dr. Jane Venohr, Center for Policy Research (via Zoom). Frank Smith, Andrew Braam, Tillien Bartscher, Matthew Brandt, Matt Doyle, Tom Pischke, Lisa Pischke, Jessica Steidl, and Tom Keller were present in person to provide testimony. Sharese Whitesell, Robert Contreras, Michael Warnken, and Dustin Letcher were available via Zoom to provide testimony. Claudia (unknown last name) was on Zoom to provide comments and was having technical issues with Zoom.

**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. Chairman Justice Myren asked that comments for people who have already provided comments be limited to things not already addressed; the Commission has heard comments and is taking all comments into consideration. The Public Hearing is to address changes to the system that may be appropriate to address to the Legislature. The public has an opportunity to provide testimony during three public hearings that are held to gather input including one held in Pierre last month, one in Sioux Falls today, and another in Rapid City on October 27. The public is invited to provide input by writing and mailing comments to DCS at 700 Governors Drive in Pierre, in person, remotely via Zoom, and by providing written comments via e-mail to [DCS@state.sd.us](mailto:DCS@state.sd.us). Comments are due November 1, 2021. To get the word out, the Department of Social Services has published public service announcements and press releases, information was placed in the September State Bar Newsletter and will appear again in the October newsletter, notices are on the Boards and Commissions portal on OpenSD.gov where information and actions of the Commission are posted. Two people signed up via Zoom to testify. There are several other people on Zoom who may want to address the Commission. If you do, raise your hand. People who wish to testify in

person, should sign the sign in sheet. When you testify, state and spell your first and last name and provide your comments.

Chairman Justice Myren first called on the two individuals who signed up to provide testimony via Zoom.

Sharese Whitesell addressed the Commission stating she is a practicing attorney in Dakota Dunes, South Dakota and is also licensed in Iowa, and Nebraska. Sharese only wanted to hear what other people have to say and did not wish to provide testimony.

Chairman Justice Myren called on the second individual who signed up to provide testimony via Zoom. Hearing no response, Chairman Justice Myren addressed the people in the room who signed up to provide testimony and asked them to limit comments to five minutes to start. After everyone who wishes to testify has an opportunity to provide testimony, more time can be allowed for other comments.

Frank Smith appeared in person to provide testimony. He is only allowed to see his kids an hour a week when allowed. He was found in contempt for not paying child support in January and February 2018. He proved in court that he paid the child support due, yet he is only allowed to see his kids an hour a week. He only now can afford an attorney. He asked the Commission to consider 50/50 custody as a standard for child support, even if it's not 50/50 parenting; it should be based on 50/50 custody. This would decrease the friction on divorced families. If an attorney would not have gotten involved, perhaps he and his ex may have remained married. He stated they took his income for one year, and multiplied it times two.

Andrew Braam also appeared in person to provide testimony. Andrew stated he is from Clear Lake. He is a parent and does not like the use of custodial and noncustodial; he is just a parent. Andrew thanked the members for serving on the board and stated he hoped the previous gentleman could come back up to speak again as this board has the ability to make recommendations to the Legislature regarding recalculations. There are a lot of other laws surrounding the calculations; it's a real complex issue. Child support to a lot of people is just a calculation, but a lot more can be done. South Dakota has the potential to be a leader in the law, based upon 1940's situations where men were working and women stayed home. 2021 is a different environment, predicated on enforcement. There is a public perception of dead beat dads that may be a myth. Andrew has done research and a lot of time and money is spent; it comes down to motivation. The driver license and occupational license are taken. People have problems. They may or may not be good fathers, but throw a child support judgement at them and it's a whole other ballgame. He got divorced. He had lots of bills, and had to move and paid \$1,000 rent; child support on top of that. He wishes more could be done there. It's as though all of a sudden, a box of Fruit Loops is now \$1,000 per month. Regarding license revocation, he gets it; hunting licenses, too, it's in the news, but there should be a little more grace. People need to be out working. It causes damage on the parent and child relationship. Two people get divorced. Kids are over here. Now dad can't afford to see them. There are real families and situations. Families want to pay and take care of their kids lives. The child support system today is over handed. The power of government is over your face. Wealth transfer, like federal payouts, lots of other advantages, other things that aren't factored in. The custodial parent gets advantage. Andrew did not get federal stimulus payments; but his ex did. The child support obligation is based on enforcement, ex has difficulty in paying meds to him and he has to take her to small claims action. He gets \$50 here and there and has to figure out how to garnish her wages. If he lost his job, Andrew would rush into court as fast as possible. He stated that he thinks more reform is needed. Look at the bigger picture.

Tillien Bartscher appeared in person to provide testimony. Tillien would like South Dakota to change. Back in 2013 both Houses (Congress) passed the equal law for men and women who have a child together, to be treated equally. He is on disability and still pays child support. If a female asks for it, she gets it, but if he asked for it, it gets denied. Tillien would like to see more equality, especially when a law was passed in 2013.

Matthew Brandt also attended in person to provide testimony. He stated perhaps it is more a complaint than a process. He has been paying \$1,087 monthly for the past four years. His son turned 18 and the support order was modified and child support went up. His son's mom had the same income and was approved by Access to Justice; he was denied. Matthew indicated it is unfair and biased; every man is denied. Everything should be equal.

Chairman Justice Myren again called on the individual who signed up to provide testimony via Zoom. The individual did not respond when called upon.

Matt Doyle appeared in person to provide testimony. His complaint is regarding when child support is figured out, rent and other bills are figured in. It's not one sided. Figures should equal the same for both parents. Both parents need a two bedroom house; consider both, not just one.

Tom Pischke also appeared in person to provide testimony. Tom thanked the Commission for their service on the Commission. He stated although it was requested that people who have already provided comments be limited to things not already addressed, there are some points he would like to repeat; Rob is new and there are other people in the room. He shared the system is geared towards an era where men worked and women stayed home. It's not the same society today; both parents work and make about the same. Both send the kids to daycare and both participate in raising the children. It's like putting a square peg in a round hole. It only works if one parent takes the kid and the other parent washes their hands of it. Listening to the economist from the meeting there was a presumption of zero time sharing. People have to understand there will be money spent even if only for overnight. Kids need basic necessities. They need to be fed. When you have visitation, you have expenses not taken into consideration. It's based upon a wealth distribution system; a narcissistic system. Abatements need to be fixed. If you have the kids for two to eight overnights, you do not get an abatement. Tom emailed the subcommittee a copy of the legislation he had introduced a few years ago to fix this issue. There is no recognition for time that is spent overnight with the kids. He is spending money on his kids when he has them. For example, he recently bought a duck hunting license, weighters, and shells for his kid figuring it's better to teach his kid the pastime of hunting than playing video games. The current system does not help out in that. In the current proposal before the Commission regarding BR5, it lowers some on the lower end, and raises some on the higher end. It's going to hurt people in the middle class. He makes \$55,000. His ex makes \$80,000. If the kids need something, they will get it. He will buy them whatever they need. Abatements are 50/50 in the summer and he only gets 50% on the days he has the kids; he feels it should be 100% on the days he has the kids. Virgena Wieseler told Tom she hears his comments; his comments have been heard. He brought comments before the Commission in August and DCS took that to heart and even formed a subcommittee to do a further review. She added that as was heard today, this area needs clarity. She reaffirmed that the Commission hears the concerns and is listening and has taken comments received to heart. Representative Stevens stated there are three categories to costs: variables; duplicated fixed costs; and non-duplicated costs. One thing the subcommittee looked at was, from his point of view, to get more clarity about what types of things those are that can be considered. Statutes do not currently have guidelines. The Commission was looking at statistics and deviation factors and found that for Sioux Falls and Rapid City, one out of 4 cases were granted a deviation. In his county, it was 4%. Representative Stevens asked if this is an abatement issue or deviation

issue. It would be helpful to the subcommittee to have examples sent to us, showing this is a cost over and above, like extracurricular activities for kids. This information would be helpful to child support referees, too. This is an area we need to develop and add more clarity. More information can make it more realistic. Tom gave examples of bicycles and clothes. The list goes on and on. Some expenses are practical. There are hobbies the kids are involved in. If you have the kids 50/50 in the summer, you get standard 50% for days you have them during the month. You get 50% for 15 days; should be 68% or 100% for the whole month. Custodial and noncustodial parents have expenses and there needs to be a way to deal with that. The 12 referees hear about this across the state. The Commission needs to hear it, too. Representative Stevens asked Tom to submit actual items for consideration to the subcommittee adding that written comments are helpful. Chairman Justice Myren stated the Commission will do its best in addressing abatements and added it reminded him of a quote, "Take your kids hunting and you'll never have to hunt for your kids."

Lisa Pischke provided in person testimony. She is a parent, not custodial and noncustodial labels. She and her ex did not go the court route when they divorced; already doing something wrong if need to get the courts involved. She and her ex have been co-parenting for a little over seven years now and have never had a support order. She appreciated hearing comments from others who testified about how society has changed. Both parents have a job, both are parenting, both have households, etc. The system is missing a function or formula that is not being captured. Under joint custody, there are two of everything. As long as they are both involved, they have the same expenses, i.e., two houses, two utility bills. It's uncertain how much of the support goes toward those things. Nonduplicated costs include health insurance, day care, school expenses, etc. and it's easier to split. If joint physical custody, one parent is raising the child, they get support, there's no duplicating costs. Something is missing in the formula. For any overnights, there are expenses. Health insurance and school expenses are easier to split in joint physical custody. The schedule is right for no parenting time. Lisa does not understand how it feels to be paying an unjust amount and then have no decision on how the child support is spent. She agrees with her ex on how to spend the money on certain things e.g., baseball and golf, but if they don't agree and it's something she wants the kids to do, e.g., equestrian, maybe she needs to pay for it herself. As a custodial parent you get to make all of those decisions; the noncustodial parent does not. There are two homes, two hobbies, and the money is going all in one direction. A lot of people spoke about not being able to do what they want with their kids. They got divorced. When they were finally able to take a vacation it was awesome. She can't imagine being a noncustodial parent and going to do things. She gets to make her own decisions on what she spends money on. She loves hunting and fishing, but weighters are expensive. She cannot imagine asking someone to chip in with the expense. But when paying child support, the custodial parent gets to make all the decisions. The noncustodial parent pays a percentage of the order, then duplicate costs; two homes, two cars, two other things, two values, hobbies and interest areas. All decisions are made on one side. Lisa stated it is mostly observations at this point. She may send an email and share spreadsheets.

Jessica Steidl provided in person testimony. She stated so much has been happening in the past 24 hours. Jessica handed out several handouts with each titled, *South Dakota Child Support Responsibility Worksheet*. (See Attachment A.) Jessica's concern is regarding imputing income under [SDCL 25-7-6.26](#) and other related statutes. [SDCL 25-7-6.4](#), the rebuttal presumption of employment and minimum wage, doesn't refer back to the new federal policy. There is nothing that would make a referee to deviate for failure to provide financial information. [SDCL 25-7-6.7](#) under employment, discusses deviations and no longer refers back to new federal policy. In the section referring to deviations, refer back to that as well. Jessica's husband filed for divorce and there has been legal issues since then. [Justice Myren told Jessica the Commission members

who are on Zoom do not have the information she provided as a handout.] In one example, under a “cross credit” calculation with shared parenting with a 1.5 times multiplier for the obligation, it increases the higher income earners wages. In the calculation provided, the overall increase was \$256 without any oversight on how it is being spent. Abatements are a different section than shared parenting. She provided different calculations, and used a 1.5 multiplier because it costs more money to have a child in two homes. Jessica suggested not to do the multiplier. In reference to the shared parenting law you have a regular obligation which allows for abatements. Jessica pays more for shared parenting. It doesn’t make sense to give up her kids and pay less. Higher income earners should probably give up their kids. The shared parenting law conflicts with when to apply abatement. For the example of abatement schedule, she did not give it a multiplier of 1.5. Jessica is against the multiplier unless a law is created. The state of Arizona has a shared parenting law, [ARS25-403.02](#), Parenting Plans. Jessica asked Commission members to visit Arizona’s Parenting Plans law and think about that when proposing guidelines and incorporate a plan for shared parenting for South Dakota. Parents should do these things together and work as a team. If you don’t meet the 14 factors to the court, you don’t get shared parenting. She wouldn’t mind paying more for sports if it went to the kids; he just pockets it because he can. If the Commission moves forward with the proposed draft, her obligation will increase. Jessica would like the Commission to look at the 1.5 multiplier and abolish it and follow what Arizona did. She agrees the cost of living has gone up and doesn’t know how to fix it. Attorneys told her she could quit her job.

Dustin Letcher provided testimony via Zoom. Dustin has been divorced for five years and has twin girls. After becoming divorced he took out a lot of student loans and went to school to become a physician’s assistant. The payment for student loans will likely be \$1,200 per month. He took out the loans to support himself and the kids. He went to school to better his kids’ lives. Nothing is taken into consideration for this; it was not considered during the last modification. Daycare has been available consistently when the other parent works but they get full-time daycare. Could help with that and could potentially eliminate it if he could watch the kids, but he gets stuck with the bill and cannot see the kids. When the standard is set, the parent coordinator couldn’t change the substance of the report; has to either accept it or wait four months to go to court. A referee, someone who is not a judge, can change an order. There needs to be something where it’s only able to be changed by a judge. It would be nice to simplify some of this stuff to some extent. Both are paying. This process is being weaponized to some extent.

Claudia (unknown last name) was having technical issues with Zoom, but indicated she is a noncustodial parent. She questioned how many noncustodial parents were incarcerated last year due to nonpayment and if there is any federal or college debt forgiveness being applied.

Tom Keller. Tom is a divorce lawyer and referee and understands where people are coming from. Tom spoke on a number of issues. Justice Myren asked Tom if he would be able to put his comments in writing for the Commission. Tom stated he would. See Attachment B.

Justice Myren again asked if anyone on Zoom wished to address the Commission. Hearing none, people who already provided testimony in the room were given another opportunity to speak.

Jessica Steidl provided additional testimony. Jessica stated she worked up a sheet in 2020 and will email it to show what Tom as talking about. In regard to abatements, it’s comical how apply 1.5 at 50/50, but give abatements for shared plans. Recommended to a custody evaluator. They tried to mediate in court; dad wants two more days. Evaluator says should have shared custody for two years, with overnights being eight days. He wants two more days per month. She pays

\$719 and he wants abatement of \$318. It's money motivated. It's not in the best interests of the children. Everyone is trying to get into 10 days so they can have 66%. Motivation has to be fixed. Lisa Pischke provided additional testimony and clarified that she did not mean to increase the obligation. Whatever the factor is for those expenses, e.g., housing and cars, cover each; both households need those things so should not be considered in the obligation calculation. In reference to the 1.5 multiplier, a great disparity in income throws a wrench in it. Support both households. If no joint custody, then basic needs of housing should be included in the support obligation. If joint custody, that comes out of the calculation as you both handle that on their own. She stated she did not mean to imply the obligation should be increased. It should come down.

Justice Myren again asked if anyone on Zoom wished to address the Commission. Hearing none, other people who already provided testimony in the room were given another opportunity to speak.

Matt Doyle provided additional testimony and stated a credit deal happened to him. He had custody of his son and paid child support for six months (time it took to get through court) even though his son lived with him.

Tom Pischke provided additional testimony stating he would like to get rid of the cross credit. It doesn't make sense that the obligation is higher than a basic calculation. In 2017, DCS brought forward legislation to increase obligations by 8% which he worked to kill. At the very least, the 1.5 should be lowered. Better off as noncustodial parent, not having time with your kid. There should be an adjustment. Shared parents don't like cross credit. Custodial parents have not said their child support is too low. Raising support 10% is not going to be a good deal.

Jessica Steidl returned to provide additional testimony. Jessica paid October support on time and will not receive a credit for the \$719 she paid on time, because she followed the rules. Attorney said she's a rule follower and should not have paid.

Carolyn Waldo appeared via Zoom to provide testimony. Carolyn indicated via chat that there seems to be a lot of things that need updating and looking at how other states are addressing it. She is also a concerned parent. Reference was made to Title IV-D funding and if there is a process for those being followed and if any fraudulent claims were made and had to be fixed. She is concerned and doesn't want that to affect others.

Michael Warnken appeared via Zoom to provide testimony. He has no confidence in financial arrangements being properly calculated in California and HUD 1 when applying for housing. Call abruptly ended.

Robert Contreras sent a chat message asking about topic points. Chairman Justice Myren referred him to [OpenSD.gov](https://www.opensd.gov).

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

**ATTACHMENT A**

**South Dakota Child Support Responsibility Worksheet**

		A	B	C
		Noncustodial	Custodial	Combined
Annual Gross Income		Father	Mother	
	Gross - SE Deductable taxes			
<b>1</b>	<b>MONTHLY GROSS INCOME</b>	<b>\$1,476</b>	<b>\$7,724</b>	
<b>2</b>	<b>Deductions:</b>			
	a. Minus Fed Income Tax (1 withholding allowance)	-\$43	-\$1,115	
	b. Minus Social Security & Medicare (0.0765)	-\$113	-\$591	
	c. Minus Retirement Contributions (10%)	\$0	\$772	
	d. Minus Other Support Order Payments	\$0.00	\$0.00	
	e. Plus/Minus Spousal Support Payments	\$0.00	\$0.00	
	f. Plus/Minus Other (Pension)	\$0.00	\$0.00	
	f. Plus/Minus Other (other)	-\$113.00	\$0.00	
<b>3</b>	<b>Monthly Net Income (Result of lines 1a thru 1f)</b>	<b>\$1,207</b>	<b>\$5,246</b>	<b>\$6,453</b>
<b>4</b>	<b>Percentage Share of Net Income</b>			
	(Line 2 divided by Line 2C for each parent)	18%	82%	100%
	Number of Children to be Supported in this Action			2
<b>5</b>	<b>Basic Combined Obligation (2C Amt. from schedule)</b>			<b>\$1,598</b>
<b>6</b>	<b>Each Parent's Share (4a x 5C and 4b x 5c)</b>	<b>\$288</b>	<b>\$1,310</b>	
<b>7</b>	<b>Basic Obligation using NCP's Net Income Only</b>	<b>\$379</b>		
	Lesser of 6 or 7, if NCP income falls in the bolded area, otherwise NA			
<b>8</b>	<b>NCP's Basic Obligation</b>	<b>\$288</b>		
	(Enter lower amount of 6a or 7a if income fall in bolded area only, otherwise NA)			
<b>9</b>	<b>Medical Insurance (Children's Portion)</b>	<b>A</b>	<b>B</b>	<b>C</b>
	Medical (414.31-164.55)			
	Dental (65.37-21.80)			
	Vision (30.98 - 10.68)			
	<b>\$266 Total cost of Childrens' portion insurance premiums</b>			
	A. Noncustodial Parent Pays ----- Cost \$ _____ x 4b =	\$48		
	B. Custodial Parent Pays ----- Cost \$ _____ x 4a =		\$218	
<b>10</b>	<b>The reasonable cost of insurance attributable to the child(ren) is equal to or less than 8% of the monthly net income, after proportionate medical support credit is applied, of parent ordered to maintain insurance.</b>			
	\$97 Noncustodial Parent 8% Limit \$ (8% x 3a)			
	\$420 Custodial Parent 8% Limit \$ (8% x 3b)			
<b>20</b>	<b>RECOMMENDED CHILD SUPPORT ORDER</b>	<b>\$336</b>		
	(Line 18 - larger amount minus smaller amount,	\$127.50	38%	\$208.02
	plus/minus Deviations from Line 19. Parent with	\$167.76	50%	\$167.76
	the larger amount owes the difference)	\$221.44	66%	\$114.08

### South Dakota Child Support Shared Responsibility Worksheet

		A	B	C
		Mother	Father	
	Annual Gross Income			
<b>1</b>	<b>MONTHLY GROSS INCOME</b>	\$7,724	\$1,476	
	a. Minus Fed Income Tax (1 withholding allowance)	-\$1,115	-\$43	
	b. Minus Social Security & Medicare (0.0765)	-\$591	-\$113	
	c. Minus Retirement Contributions (10%)	-\$772	\$0	
	d. Minus Other Support Order Payments	\$0	\$0	
	e. Plus/Minus Spousal Support Payments	\$0	\$0	
	f. Plus/Minus Other	\$0	\$0	
	f. Plus/Minus Other	\$0	\$0	
	f. Plus/Minus Other	\$0	-\$113	
<b>2</b>	<b>Monthly Net Income (Result of lines 1a thru 1f)</b>	\$5,246	\$1,207	\$6,453
<b>3</b>	<b>Percentage Share of Net Income</b>			
	(Line 2 divided by Line 2C for each parent)	82%	18%	100%
<b>4</b>	<b>Number of Children to be Supported in this Action</b>			2
<b>5</b>	<b>Basic Combined Obligation (2C Amt. from schedule)</b>			\$1,598
<b>6</b>	<b>Shared Responsibility Combined Obligation (5C x 1.5)</b>			\$1,598
<b>7</b>	<b>Each Parent's Share (Line 6C x each parent's Line 3)</b>	\$1,310	\$288	
<b>8</b>	<b>Nights With Each Parent (must total 365)</b>	183	182	365
<b>9</b>	<b>Percentage With Each Parent (Line 8 divided by 365)</b>	50%	50%	100%
<b>10</b>	<b>Each Parent's Basic Obligation</b>	\$655.18	\$144	
	(Column A = 7A x 9B. Column B = 7B x 9A)			
<b>11</b>	<b>Base Shared Responsibility Obligation</b>	\$511	\$0	
	(Subtract the smaller amount on Line 10 from the larger amount.)			
	Enter difference for parent with the larger amount.			
	Enter 0 for parent with the smaller amount.)			

12	Additional Costs Paid by Each Parent	A	B	C
	a. Work/Job Search/Training/Education Related Child Care Costs Minus Federal Tax Credit= $((60*0.58*5)*48)/12$			\$0
	b. Health Insurance Costs (Children's Portion)	\$266		
			\$0	
			\$0	
			\$0	
	The reason child(ren) is equal to or less than 8% of the monthly net income, after proportionate medical support credit is applied, of parent ordered to maintain insurance.			
	Mother's 8% Limit \$ (8% x 2a)			
	0.08 \$419.66			
	Father's 8% Limit \$ (8% x 2b)			
	0.08 \$96.57			
	c. Other Add-ons/Deducts	\$0		
13	Total Additional Costs to Apportion (Line 12a+b+c)	\$266	\$0	\$266
14	Each Parent's Share of Apportioned Costs Line 13C x Line 3 for each parent)	\$218	\$48	
15	Each Parent's Net Share of Additional Expenses (Line 14 minus Line 13, if negative amount enter \$0)	\$0	\$48	
16	Amount Transferred for Additional Expenses (Subtract smaller amount on Line 15 from the larger amount. Parent with the larger amount owes the other parent the difference)	\$0	\$48	
17	Total Amount Transferred (Line 11 + Line 16 for each parent)	\$511	\$48	
18	Guidelines Child Support Order (Subtract smaller amount on Line 17 from the larger amount. Parent with the larger amount owes the other parent the difference)	\$463	\$0	
19	Deviations: Amount +/- for each parent Reasons: Subtracted from item 12b			
	Kyles personal share of Medical Insurance	\$0		
	Kyles personal share of Dental Insurance	\$0		
	Kyles personal share of Vision Insurance	\$0		
		\$0		
20	<b>RECOMMENDED CHILD SUPPORT ORDER</b>	<b>\$463</b>		

Under a "cross credit" calculation with Shared Parenting w/a 1.5 times multiplier, increases the Mother (higher income earner) from \$463 to \$719 a month. An overall increase of \$256 to the other parent with out any oversight on how it is spent.

### South Dakota Child Support Responsibility Worksheet

		A	B	C
		Noncustodial	Custodial	Combined
		Mother	Father	
Annual Gross Income				
Gross - SE Deductable taxes				
<b>1</b>	<b>MONTHLY GROSS INCOME</b>	\$7,724	\$1,476	
<b>2</b>	<b>Deductions:</b>			
	a. Minus Fed Income Tax (1 withholding allowance)	-\$1,122	-\$44	
	b. Minus Social Security & Medicare (0.0765)	-\$591	-\$113	
	c. Minus Retirement Contributions (10%)	-\$772	\$0	
	d. Minus Other Support Order Payments	\$0.00	\$0.00	
	e. Plus/Minus Spousal Support Payments	\$0.00	\$0.00	
	f. Plus/Minus Other (Pension)	\$0.00	\$0.00	
	f. Plus/Minus Other (other)	\$0.00	-\$113.00	
<b>3</b>	<b>Monthly Net Income (Result of lines 1a thru 1f)</b>	\$5,246	\$1,207	\$6,453
<b>4</b>	<b>Percentage Share of Net Income</b>			
	(Line 2 divided by Line 2C for each parent)	82%	18%	100%
<b>5</b>	<b>Basic Combined Obligation (2C Amt. from schedule)</b>			2 \$1,598
<b>6</b>	<b>Each Parent's Share (4a x 5C and 4bx 5c)</b>	\$1,312	\$288	
<b>7</b>	<b>Basic Obligation using NCP's Net Income Only</b>	\$1,435		
	Lesser of 6 or 7, if NCP income falls in the bolded area, otherwise NA			
<b>8</b>	<b>NCP's Basic Obligation</b>	\$1,312		
	(Enter lower amount of 6a or 7a if income fall in bolded area only, otherwise NA)			
<b>9</b>	<b>Medical Insurance (Children's Portion)</b>	A	B	C
	Medical (414.31-164.55)			
	Dental (65.37-21.80)			
	Vision (30.98 - 10.68)			
	\$266 Total cost of Childrens' portione insurance premiums			
	A. Noncustodial Parent Pays ----- Cost \$ _____ x 4b =	\$218		
	B. Custodial Parent Pays ----- Cost \$ _____ x 4a =		\$48	
<b>10</b>	<b>The reasonable cost of insurance attributable to the child(ren) is equal to or less than 8% of the monthly net income, after proportionate medical support credit is applied, of parent ordered to maintain insurance.</b>			
	\$420 Noncustodial Parent 8% Limit \$ (8% x 3a)			
	\$97 Custodial Parent 8% Limit \$ (8% x 3b)			
<b>20</b>	<b>RECOMMENDED CHILD SUPPORT ORDER</b>	\$1,264		
	(Line 18 - larger amount minus smaller amount, plus/minus Deviations from Line 19. Parent with the larger amount owes the difference)	\$480.35	38%	\$783.73
		\$632.04	50%	\$632.04
		\$834.29	66%	\$429.79

### South Dakota Child Support Shared Responsibility Worksheet

		A	B	C
		Mother	Father	
	Annual Gross Income			
1	<b>MONTHLY GROSS INCOME</b>	\$7,724	\$1,476	
	a. Minus Fed Income Tax (1 withholding allowance)	-\$1,115	-\$43	
	b. Minus Social Security & Medicare (0.0765)	-\$591	-\$113	
	c. Minus Retirement Contributions (10%)	-\$772	\$0	
	d. Minus Other Support Order Payments	\$0	\$0	
	e. Plus/Minus Spousal Support Payments	\$0	\$0	
	f. Plus/Minus Other	\$0	\$0	
	f. Plus/Minus Other	\$0	\$0	
	f. Plus/Minus Other	\$0	-\$113	
2	Monthly Net Income (Result of lines 1a thru 1f)	\$5,246	\$1,207	\$6,453
3	Percentage Share of Net Income (Line 2 divided by Line 2C for each parent)	82%	18%	100%
4	Number of Children to be Supported in this Action			2
5	Basic Combined Obligation (2C Amt. from schedule)			\$1,598
6	Shared Responsibility Combined Obligation (5C x 1.5) <small>Due to Multiplier there is an increase in CS Obligation of \$799 - Mother is responsible for an additional \$655.18 and Father \$143.82</small>			\$2,397
7	Each Parent's Share (Line 6C x each parent's Line 3)	\$1,966	\$431	
8	Nights With Each Parent (must total 365)	183	182	365
9	Percentage With Each Parent (Line 8 divided by 365)	50%	50%	100%
10	Each Parent's Basic Obligation (Column A = 7A x 9B. Column B = 7B x 9A)	\$982.77	\$216	
11	Base Shared Responsibility Obligation (Subtract the smaller amount on Line 10 from the larger amount. Enter difference for parent with the larger amount. Enter 0 for parent with the smaller amount.)	\$767	\$0	

12	Additional Costs Paid by Each Parent	A	B	C
	a. Work/Job Search/Training/Education Related Child Care Costs Minus Federal Tax Credit= $((60*0.58*5)*48)/12$			\$0
	b. Health Insurance Costs (Children's Portion)	\$266		
			\$0	
			\$0	
			\$0	
	The reason			
	child(ren) is equal to or less than 8% of the monthly net income, after proportionate medical support credit is applied, of parent ordered to maintain insurance.			
	Mother's 8% Limit \$ (8% x 2a)			
	0.08 \$419.66			
	Father's 8% Limit \$ (8% x 2b)			
	0.08 \$96.57			
	c. Other Add-ons/Deducts	\$0		
13	Total Additional Costs to Apportion (Line 12a+b+c)	\$266	\$0	\$266
14	Each Parent's Share of Apportioned Costs Line 13C x Line 3 for each parent)	\$218	\$48	
15	Each Parent's Net Share of Additional Expenses (Line 14 minus Line 13, if negative amount enter \$0)	\$0	\$48	
16	Amount Transferred for Additional Expenses (Subtract smaller amount on Line 15 from the larger amount. Parent with the larger amount owes the other parent the difference)	\$0	\$48	
17	Total Amount Transferred (Line 11 + Line 16 for each parent)	\$767	\$48	
18	Guidelines Child Support Order (Subtract smaller amount on Line 17 from the larger amount. Parent with the larger amount owes the other parent the difference)	\$719	\$0	
19	Deviations: Amount +/- for each parent Reasons: Subtracted from item 12b			
	Kyles personal share of Medical Insurance			
	Kyles personal share of Dental Insurance			
	Kyles personal share of Vision Insurance			
20	<b>RECOMMENDED CHILD SUPPORT ORDER</b>	<b>\$719</b>		

## ATTACHMENT B

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MEMO TO: 2021 CHILD SUPPORT COMMISSION  
FROM: THOMAS M. KELLER  
RE: SUGGESTED CHANGES TO CHILD SUPPORT LAWS

Thank you for the opportunity to address the commission at the Sioux Falls location on September 30<sup>th</sup>. I am putting my notes to paper in the respective categories.

1. SDCL 25-7-6.19 Credit for arrears during time NCP had the minor child. As pointed out, this only allows for a credit against “arrears” that accumulated during the time a non-custodial parent (NCP) had the minor child 4 months or more in a row. The concern is that someone who doesn’t pay child support (even though it is owed) is allowed to have those arrears wiped out, while someone who actually pays his or her child support does not have the right to have those payments credited. The intent is to have zero child support during that time, so long as it is 4 months or more in a row. Solution: remove the word “arrearages” from the phrase “the court may credit the obligor for child support arrearages which accumulated during the period....”
2. SDCL 25-7-6.19 Credit for Social Security or disability payments. Similar to the above – if the obligor parent is disabled or retired, he or she receives a credit (up to the monthly child support amount) in any month when the CP receives funds for the minor child due to the obligor’s disability or retirement. The problem is the “in the month” language – oftentimes, someone who is applying for disability waits awhile before applying, but cannot pay child support. Ideally, this statute should allow a credit beyond the monthly amount, and to reimburse the NCP if he or she paid child support during a month in which a disability payment is also received (as oftentimes, once disability is awarded, several months of back-due payments are included. If the NCP paid support during that time, he or she is not reimbursed for those funds, but if the NCP did not pay during that time, he or she may be credited for those past-due payments). Solution: Add a sentence that says something like – “The obligor shall receive a credit for any actual payments made during the period of disability from sources other than the disability or Social Security, but only to the extent to which they exceed the monthly amount owed in any such month, which credit may be applied to arrears or reimbursed to the obligor.”
3. Cross-credit. There are a few things that should be considered in this. First, it says “if a custody order by a Court....” and I think the referees ought to be able to do this if the parties agree. So maybe “If the parties agree in a child support referee

hearing or if a custody order by the court.....” We also spoke about capping the amount of the combined income that would be multiplied by 1.5 because of the absurd results that occur where (if one parent is very high income and the other is low) the actual amount paid under cross-credit exceeds the amount owed under a direct payment using traditional guidelines.

4. Ancillary and related to the above is the “hybrid” situation – where one child is in joint physical custody/cross-credit and the 2<sup>nd</sup> or 3<sup>rd</sup> child is not. If Parent A pays under the cross-credit, and then we do an “entirely new” child support calculation for child 2, parent A often pays MORE than he or she would if Parent B had both children all the time. Well, that’s obviously not right that having shared parenting of one child raises your child support. The key is that they cannot be two “separate” calculations. My proposed solution is that you do the dominant calculation first (if there are 4 kids and Parent B has 3 of them, you do a “3-child” calculation for the first 3 kids, and then do a cross-credit calculation, but only for the difference in the guidelines between a 3-child and a 4-child calculation. On the other hand, if one child is in joint and one is primarily with one parent, I think you do the cross-credit first, and then a straight pro-rated addition (example: combined income of \$4,000, one child child support is \$897, two child child support is \$1,295. So you would do a cross-credit of the \$897 (multiply by 1.5, etc.). Once you completed that part, you would do a direct pro-rata share of the remaining \$398 (the difference between one-child and two-child totals). So, whatever the cross-credit calculation was, you would add the NCP’s pro-rata share of \$398 to that amount to achieve the final figure.
5. Abatement statute is 25-7-6.14. My thoughts – abatement could start way lower than 10 overnights (as people suggested, it really comes down to whether or not the NCP needs to have a place large enough and with enough beds and bedrooms to have the kids overnight – this extra expense is not considered in the child support formula anywhere, but really does distinguish active parents from those that never see their children, and as people suggested, there is a world of difference between having your kids 9 overnights a month and 0). This is probably something that an economic expert would be needed to figure out.

In addition, the referees are not on the same page on this statute. The literal language says that a court order must already set forth the overnights and the percentage of abatement before a referee can consider anything. I don’t like that – parents don’t like that either. I think the solution is to add this to the list of “deviations” rather than a separate statute – it can be category (7) of SDCL 25-7-6.10 listing the abatements to ensure that referees must canvass this subject in every hearing. Many referees try to use this if parents have agreed to share time with the kids (the thinking being that, once the child support order is signed by a judge, there will be an “order” setting forth the number of overnights and degree of deviation/abatement, and if someone doesn’t like it, they can appeal the referee’s ruling). So the new language should dictate that the child support referee shall canvass this subject and make recommendations for a deviation if the NCP

qualifies. There can also be some teeth to the 38-66% language – a sentence that indicates “the degree to which the NCP pays for additional activities and time with the children, including lodging, activities, sports and recreation, over and above the basic obligation, should determine the degree of abatement.”

6. SDCL 25-7-6.15 – travel costs are, right now, a separate consideration. Those should be included in the deviations under 25-7-6.10, rather than mandating a separate consideration by a judge. (In my own hearings, I go through all the deviation categories, as well as “time spent with the non-custodial parent” and “transportation costs” thus creating 8 categories for deviation rather than the statutory 6).
7. Further on the deviations, the South Dakota case of Muenster v Muenster established the rule that income may not be “imputed” to either parent in deciding whether a parent is unemployed or underemployed. One can only use an actual prior position, and a voluntary reduction from that prior position, to determine whether a parent has voluntarily reduced his or her income. This should be amended to allow a referee/judge to decide if a parent is earning less than he or she could be. The phrase that is used in spousal support is “income-earning capacity of the parties” rather than anything else. It would be nice to be ABLE to consider earning capacity rather than actual earnings. So maybe the deviation under 6.10(6) should read “The voluntary and unreasonable act of a parent which causes the parent to be unemployed, underemployed, or earning less than his or her capacity, unless the reduction of income is due to incarceration.” The existing language (even though there is a specific case that says going back to school does – within the context of providing for one’s children – constitute a voluntary and unreasonable reduction of income), that sure seems contrary to the actual language of the statute. Since when it is “unreasonable” to start one’s own business, or get married and stay home with subsequent children, or go back to school to earn an advanced degree? It isn’t unreasonable in terms of life choices, but it should be clear that we’re talking about “unreasonable” solely in the context of the requirement to support one’s children. As my example reflected, it might be completely reasonable to go back to school to go from an RN degree to a Physician’s Assistant or CNP if one’s children are 6 and 8, but “deciding to go back to school” for a two-year degree when your kids are 17 and 16 is not so reasonable in light of the obligation of support.
8. Should student loan payments be an automatic deduction from wages? We encourage people to save for retirement by deducting their 401(k)/IRA contributions (to a maximum of 10%) but give nothing for student loan obligations, even though we do consider the newer, higher income earned. That seems unfair somehow. Young people have student loans, older people contribute to retirement. Perhaps a student loan obligation, up to a maximum of 10%, and proof that the payments are actually being made, could be an additional deduction from gross wages under SDCL 25-7-6.7. Student loans are not dischargeable in

bankruptcy, but are generally not considered in the “overall financial condition” deviation by most referees.

9. I tell the commission every four years that there should not, ever, be a “free pass” when the new set of rules occurs. This causes all kinds of headaches – let’s assume that the commission changes are passed by the 2022 legislature to take effect 7/1/22 – someone going through a divorce in the spring of 2022 can agree, for instance, to accept \$200 a month child support in return for not contesting custody. Then three months later, the CP petitions to raise the child support back up. I’m NOT advocating for cheating the system, but it happens. And it happens the other way, too. NCP says, “I will pay you \$1,100 a month in support for our one child if you agree to joint physical custody (or drop alimony, or whatever).” Then, if there is no alimony at the time of the divorce, there can never be any, ever, but the NCP comes back four months later and reduces the child support to \$150. This can happen in the context of property settlements as well – let me keep the car, and I’ll keep your child support low. Give me the car and I’ll pay you an extra \$300 in child support. The general rule should ALWAYS apply – a substantial change in circumstances is necessary to modify child support within the 3-year window, so at least folks can rely on receiving it for that period of time. Even if the guidelines change to reflect increased costs (or decreased costs) of child-raising, I doubt it would meet my own “substantial change” language for the vast majority of people. Perhaps the commission report can state that “only if application of these guidelines creates a substantial change in circumstances for either parent may he or she petition for modification based solely on the implementation of these guidelines.”
10. Taxes. Previous iterations of the guidelines allowed the referees to consider which parent claimed the minor child/children for tax purposes. It appears that this is going to be a larger and larger consideration for future tax returns – a parent who earns almost nothing receives a \$7,000 tax refund/stimulus. This is true even if the NCP is paying 70% of the cost of raising the children. The reason that they eliminated this was because the referees were applying it differently throughout the state, but a well-drafted statute (again, in the deviations) could fortify this. Not sure of the specifics (would need an economist to determine). But we use a standard 25% reduction in the daycare costs to reflect the tax advantage to the parent who has daycare expenses, we should be able to apply a percentage to tax refunds as well. For example (and this is using the exact language from the former statute): SDCL 25-7-6.10(9) (7 and 8 being overnights and travel costs): “Whether the federal income tax dependent deduction for such minor child is allocated to the benefit of the support obligor or the custodial parent.” And add to that that the referee/court should, absent a showing that it would cause a substantial hardship, “apportion any direct child tax credits or stimulus payments, but not the dependency exemption, on a pro-rata basis, giving the obligor credit on his or her monthly support obligation for 1/12<sup>th</sup> of his or her pro-rata share of the above.” It could/should also state that this deviation “only applies if the parties

have not made any other arrangements for apportioning of the child tax credit or stimulus payments, and the custodial parent claims all children for tax purposes.”

Thank you all for your time and service. Thanks for giving me the time to address this.

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