

**Commission on Child Support
Meeting Minutes
Friday, January 7, 2022
10:00 a.m. – 12:00 p.m. CST
Kneip Building – Conference Room #3
700 Governors Drive
Pierre, SD 57501**

Join Zoom Meeting

<https://state-sd.zoom.us/j/92212179687?pwd=a29HL25WaDZVUUhLNnRocDg1WE10QT09>

Meeting ID: 922 1217 9687

Passcode: 070975

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

Commission Members Absent: Terri Williams, Child Support Referee and Amber Kinney, Custodial Parent.

Others Present: Nichole Brooks, Alex Mayer, Kristen Campbell, Marilyn Kinsman, Jeremy Lippert, and Carmin Dean (via Zoom); Department of Social Services (DSS) support staff; and Dr. Jane Venohr, Center for Policy Research (via Zoom). Jessica Steidl and Tom Pischke were available to provide testimony via Zoom.

Call to Order: Chairman Justice Myren called the meeting to order at 10:02 AM CST. Roll was called and a quorum was determined. Commission members were welcomed and introductions of Commission members and onsite attendees were made.

Executive Order 2021-16: Chairman Justice Myren stated as the Department of Social Services (DSS) was working on the final report and the legislation for the 2022 legislative session, DSS had concerns surrounding the decreases in the guidelines for specific income brackets, particularly the decrease in child support for children in lower-income households when there has been an increase in the cost of living. To allow the Commission to reconvene and complete the report per SDCL 25-7-6.12 and related sections, Governor Noem signed Executive Order 2021-16 on December 30, 2021, extending the effective date of Executive Order 2020-29, giving the Commission until March 31, 2022 to conclude its business. A copy of the Executive Order is included in the meeting materials.

Approval of January 7, 2022 Agenda and November 18, 2021 Meeting Minutes: A motion was made by Representative Stevens to approve the January 7, 2022 agenda and November 18, 2021 meeting minutes. Seconded by Lindsey Riter-Rapp. Motion carried.

Public Comment at 10:20 a.m. – 10 minutes for the public to address the Commission: Chairman Justice Myren invited the public to provide input regarding child support guidelines during the 10-minute period set aside for the public to address the Commission. No one was present in the room to provide testimony. Chairman Justice Myren then called on Jessica Steidl, Zoom participant.

Jessica Steidl provided testimony via Zoom. Jessica stated she has concerns about the child support calculator and referred members to page three of the *Side-by-Side Comparisons* document. When there is a combined net income of \$5,901 and there are three children, the existing child support obligation is \$1,762. When children reach teenage or adolescent years, two children could be shared parenting, cross-credit and the third child could be primary with one parent. The parents and attorneys calculate a child support obligation for two children and multiplier, ($\times 1.5 = \$2,277$) and for one child (\$1,065), and ultimately, the child support obligation is \$3,342. Jessica stated \$1,065 is counted twice. If doing shared parenting calculation for two children, take $\$1,518 \times 1.5\% = \$2,277$ plus 100% increase = \$2,521. If parents are fighting over money, it depends on how it is calculated. Is it \$2,521 or difference of \$831 per month? Is the first child 100% primary so would get \$1,065 for first child and add \$800 for shared kids? Jessica stated this has to be addressed; it is very common. She suggested legislation that if it is a shared parenting situation along with a primary parent of the same children, to apply shared parenting for the first child and then add only the difference between other children. Everyone should have a guide regarding how to do the calculation in that situation.

Chairman Justice Myren called on Tom Pischke, Zoom participant, to provide testimony. Tom stated he was just here and watching and had nothing to add from previous comments he had made.

At 10:18 AM CST, Chairman Justice Myren asked if anyone else wished to provide public comments. Hearing none, he stated the public comment period would remain open until 10:30 as published. Chairman Justice Myren asked Kristen Campbell to alert him if anyone else appears on Zoom who wishes to provide comments during the 10-minute public comment period, and proceeded to the next item on the agenda.

Dr. Jane Venohr, Center for Policy Research: Chairman Justice Myren referred members to the January 6, 2022 memo from Dr. Jane Venohr, Center for Policy Research, and asked Dr. Venohr to address considerations for guidelines changes.

- **Considerations for Guidelines Changes:** Dr. Venohr stated she was asked to prepare an updated schedule with no decreases [Option A] and an updated schedule with increases at every income level [Option B].

In Option A the schedule was updated to show no decreases by taking the greater of the existing guidelines schedule and the proposed schedule that was approved at the November 2021 Commission meeting. The self-support reserve remains at \$871 and is based on the 2016 federal poverty guidelines for one person and adjusted for South Dakota's 2014 price parity. Option A reflects no change in lower incomes.

In Option B the schedule was updated to show an increase at every income. The underlying principle is a version of vertical equity where all incomes should be treated equally. The traditional concept of vertical equity is that if low incomes are taxed at 15%, then high incomes should also be taxed at least at the same rate as lower incomes. In Option B, the concept is NOT the percentage of income assigned to child support that should be vertically equitable; rather the percentage change in the order amount from the existing amount should be vertically equitable. To do this, a minimum increase between the existing and proposed schedule was determined. This minimum increase is the increase from the existing to proposed schedule at median South Dakota income. The 2019 Census finds that the median income of two-parent families with minor children is \$93,434 per year. When converting to net income using the 2022 federal income tax withholding formula, this would be a net (after-tax income) of \$6,549 per month. The percentage increase between the existing schedule and

the schedule approved at the November meeting for one child = 2.7%; two children = 6.5%; three children = 7.8%, four children = 7.8%; five children = 9.5%; and six children = 12.5% increase. In Option B the concept is that at every level, there should be at least a 2.7% increase for one child; at least a 6.5% increase for two children, and so forth. The more children there are, the more the percentage increases. The existing schedule is based on 1998-2004 data. Since that time, child-rearing expenditures for more children have been losing some economies of scales e.g., the second child is cheaper than the first child; today people have bigger houses; people eat out more often. Over time, raising three children costs more than it used to but one child does not cost as much. In Option B calculations, Dr. Venohr took the proposed schedule approved at the November Commission meeting and the existing schedule multiplied by the percentage increase of the November schedule for median South Dakota income, with an exception at low incomes where the increase is never more than \$50 per month. The increase in the basic obligation cannot be more than the increase in net income. The emboldened areas still show the low-income adjustment, but it was also increased using this algorithm. Option B meets federal requirements.

Justice Myren asked if Commission members had questions about the information Dr. Venohr provided. Hearing none, he turned the meeting back over to Dr. Venohr to provide an overview of the *Side-by-Side Comparisons* document.

Dr. Venohr referred members to the last two columns, *Option A: % of Income* and *Option B: % of Income*. On the first row, if you take $\$79 / \$950 = 8.3\%$, rounded to 8%. Option B is a little more [9%]. This is the traditional way to look at vertical equity. It shows what is required to pay as tax. An income of \$1,200 shows under both Options A and B, 26% of the income would go toward child support. The percentage decreases between 26% to 12% as combined net income increases. It focuses on the percent of income assigned to child support. Dr. Venohr reminded Commission members this is how the schedule will be viewed in the future: what percentage of income is assigned to child support at a particular income level.

- **Guidelines Discussion:** Chairman Justice Myren addressed the members stating they had received materials from Dr. Venohr and have now heard her remarks. He opened the meeting for discussion regarding the will of the Commission on the issue before them.

Representative Stevens shared concerns about how incredibly complicated it can get reviewing so many materials. He asked if there may be a simple way to explain why we are doing this e.g., is it to not have decreases? Chairman Justice Myren stated his belief that Representative Stevens' interpretation was correct and deferred the question to Dr. Venohr as the economist. Dr. Venohr responded that it is a policy decision.

Representative Stevens asked how a person with three children would be affected. Dr. Venohr responded that from a practical level, it's where the November-approved schedule produced decreases. The November-approved schedule is based on the best data available and updates to the self-support reserve. The issue is that the low-income vulnerable parents do not consistently have earnings, e.g. marginally employed which affects payments and enforcement actions. Options A and B are not going to affect how much a family receives. The order does not automatically change when support goes up. If the Commission were to adopt the November-approved schedule, some orders would go down. It may not affect what people get except in situations where support is being paid in full or above the proposed level, but it reduces how often enforcement actions would be taken. The Commission heard during public hearings that some calculations are imputed at minimum wage when the person actually makes more than minimum wage i.e., self-employed may be assumed at minimum

wage, gets a lower payment and pays it, but he/she actually makes more than minimum wage. Options A and B are better options for very low-income custodial parent families. Those that are receiving payments above the proposed November amounts will likely continue to do so. This is a policy decision that is up to the Commission and Legislature.

Representative Stevens asked why one group would be treated differently than others i.e., November-approved guidelines with decreases vs Option A with no decreases or Option B vertical equity. It would seem Option B would be easiest to explain as an across the board percentage increase.

Dr. Venohr stated Option A reflects no decreases and would be the easiest to explain with the concept that no family should incur a decrease in child support. Option B becomes more challenging as the percent increase does not mathematically work with the self-support reserve.

Representative Stevens asked if there is an option for the lower end to not get less money, but everyone gets the same. Dr. Venohr stated there is an option to create an Option C by using Option B but keeping the same amount of existing schedule at lower incomes.

Rob Simmermon stated he has never been in favor of a decrease. He expressed liking Option A and stated if special exceptions are made for lower income levels, then it is not fair to not make exceptions for higher incomes as well. It does not seem fair to treat low-income differently than higher incomes.

Senator Rusch stated theoretically it is harder for lower-income people to pay so he likes the idea of child support being reduced to a lower level as it is easier to pay, and more likely to be paid.

Chairman Justice Myren reminded members the guidelines approved in November were based on the best economic data available and the updated self-support reserve. The concern facing us now is present day inflation proportionate to low-income. He questioned how to tell a low-income parent or custodial parent who is receiving \$79 per month, that they will only get \$50 per the November-approved guidelines. The November-approved guidelines reduce the support amount but expenses are increasing with inflation. Chairman Justice Myren asked if there is a policy the Commission wants to recommend for no decreases to the low-income levels to reflect the present perception of current costs and economy since expenses to raise a child are not going down. Economic data is based on the past. Chairman Justice Myren asked Dr. Venohr if there is a way to keep all the current economic data as a basis along with self-support reserve, but when creating the schedule, there would be no reduction to anyone's child support obligation. Dr. Venohr responded that is Option A.

Representative Stevens said from a fairness standpoint it is hard to tell someone who is getting \$79 now that they will only get \$50. Costs have gone up yet the child support amount is reduced [November-approved guidelines]. He does not disagree with the data and is not disputing it but questioned if every level should go up by the same percentage; nobody would be penalized by support going down.

Rob Simmermon stated inflation and cost of living increases affect both noncustodial and custodial parents the same. He asked if it could it be a flat percentage increase across the board, not by economic data.

Lindsey Riter-Rapp shared she is leaning toward Option A but will defer to those who will explain to the Legislature. She added that if child support decreases from \$79 to \$50, it harms lower-income brackets. In the higher income brackets, the support payment won't go down, but she does not necessarily believe it should be the same percentage for every member.

Chairman Justice Myren stated Terri Williams, Child Support Referee, was not able to participate in the meeting today. Prior to the meeting Terri had shared with Chairman Justice Myren and Virgena Wieseler that after reviewing the meeting materials, she was in favor of Option A.

Virgena Wieseler told members the Department of Social Services brought this back to the Commission for reconsideration due to concerns regarding decreases in child support within lower income levels. In the November-approved guidelines some cases would be reduced over \$200 due to the proposed increase to the self-support reserve. The Commission heard public comments regarding concerns about reductions. Rob Simmermon also indicated there should not be reductions to lower-income levels. Staff in the Department were asked to review the report and they shared concerns about a reduction to the lower levels as well. Some payments are not being made now, but about 50% are, and those amounts would go down. Again, as the Department reviewed the report, concerns were raised about the reduction of child support so we are asking if it could be reviewed for no decrease. As the Department reviewed [the options provided by Dr. Venohr], Virgena and the Department were supportive of Option A for no decrease at the lower income levels.

Chairman Justice Myren stated member Amber Kinney, representing noncustodial parents, was not able to attend the meeting. No preference was received from Amber. He asked if there was consensus and entertained a motion. He also shared that at 10:30 AM when the end of the public comment period was reached, no other individuals were present to provide testimony and no other participants on Zoom had indicated a desire to speak.

Senator Rusch questioned if he heard correctly that only 50% are actually paying within the lower income levels. Virgena Wieseler stated her understanding is 50%. The idea is to not hurt those who are receiving child support by reducing the amount of the child support order. She reminded members there is a modification process available so if there is a hardship, a petition for modification could be done based on the financial situation of the parents.

Senator Rusch stated people may have trouble paying child support, but they have trouble paying rent, too. He voiced that he is not opposed to reductions at lower levels to make it more likely that people will pay. Virgena Wieseler pointed out that in the November-approved schedule, a custodial parent who receives child support from a noncustodial parent with a combined net income between \$1,101 - \$1,150, their child support would be reduced from \$266 to \$77 which is a significant decrease. Senator Rusch stated it is difficult to balance custodial vs noncustodial equities. Chairman Justice Myren stated the Commission is tasked to do this. Rob Simmermon stated it would not sit well with someone getting less; all low-income kids would suffer.

Dr. Venohr voiced hearing consensus of low-income concerns and comments for a flat across the board increase. South Dakota could do this, but Dr. Venohr cannot support this option mathematically, except to use an inflationary rate which is about 13% - 17% now. If South Dakota chooses a flat across the board increase, it's just kicking the can down the road. Using an inflationary increase, the low-income levels would have a much higher percentage of their

income assigned to child support (about 29%) and higher incomes would have a lower percentage of their income assigned to child support (about 12%).

Lindsey Riter-Rapp shared understanding that Option A looks at economic data, but as a policy matter, there are no decreases, particularly at the lower income levels, due to cost of living increases. As a general matter, it is not good for any level to go down as it is known that the cost of living has gone up.

Representative Stevens moved to adopt Option A. Lindsey Riter-Rapp seconded. Chairman Justice Myren indicated there is a motion to adopt Option A and opened the floor for discussion by members of the Commission.

Rob Simmermon asked if the only changes are those listed in shaded areas on the table. Dr. Venohr responded that there are other changes and provided an example for a combined income level of \$3,251 - \$3,300. The existing guidelines schedule is \$805 compared to \$765 listed in the November-approved schedule. Option A also lists \$805.

Rob Simmermon stated he would like to find data to calculate and determine what an inflationary number would be to get it closer to the data Dr. Venohr provided. Dr. Venohr responded that if the Commission chooses a 17% across the board increase, it would mean less of a percentage increase to very high incomes but lower incomes would have more of a percentage increase i.e., if used 17% inflation, in the \$3,000 level, the lower incomes would equate to about 29% of income instead of 25% and higher incomes would equate to about 12% income instead of 10%. Lower incomes would be penalized more than higher incomes. Dr. Venohr does not recommend that as a policy from an economic standpoint. Twenty-nine percent would be more than what the family spends. It is a policy decision though.

Rob Simmermon asked why child support increases would differ if someone has one, two, or three children. Dr. Venohr gave examples of costs changing since 1998 e.g., cell phones, housing, perhaps moved, families spend differently now than they did in 1998. The existing schedule is based on how dollars were spent in 1998. People with two children spent less in the past compared to today. Economies of scale have changed such as not having as many hand me down clothes, no longer sharing bedrooms, eating out more, when take-out meals, kids get pizza as it is cheaper than individual menu items. It may look like more of an increase when there are more children; however, that is because people in the past grew up with shared bedrooms which is not the norm this day and age when families can afford it.

Chairman Justice Myren redirected members to the motion on the floor to adopt Option A and asked if there was further discussion.

Senator Rusch asked for a brief summary of what Option A does. Dr. Venohr stated Virgena Wieseler and Chairman Justice Myren summarized it well. Option A incorporates updated economic data while ensuring there was not a decrease in support. It does no harm to families receiving full child support right now.

Chairman Justice Myren asked if there was further discussion on the pending motion [to adopt Option A]. Hearing none, he asked Marilyn Kinsman to call the roll. Chairman Justice Myren, Virgena Wieseler, Lindsey Riter-Rapp, Representative Stevens, and Senator Rusch responded aye. Rob Simmermon responded nay. Motion carried. Terri Williams and Amber Kinney were absent.

Chairman Justice Myren asked each member individually if they had anything else to bring forward for the Commission to address. Virgena Wieseler, Lindsey Riter-Rapp, Representative Stevens, Senator Rusch, and Rob Simmermon all indicated none.

Dr. Venohr recommended changing the draft legislation for SDCL 25-7-6.2 to keep language in the emboldened area and also clarify that \$871 is used as the self-support reserve to make it clear that SD is compliant with the federal requirement to provide a self-support reserve or consider the basic subsistence needs of the noncustodial parent through another means. Currently, the emboldened area does not clarify this.

Next Steps: Virgena Wieseler stated next steps include re-drafting the legislation and finalizing the report to include changes approved today regarding Option A. Once Dr. Venohr updates and returns the draft final report and Jeremy Lippert makes updates to the legislation, the documents will be sent to members of the Commission to provide input. The turnaround time will be tight. Chairman Justice Myren asked members to add review of these documents to the top of the list when received in order to allow time for the Department to get them finalized and forwarded to the Governor and Legislature for their consideration.

Adjourn: Motion to adjourn by Lindsey Riter-Rapp. Seconded by Virgena Wieseler. Members voted unanimously to adjourn. Motion carried. Meeting adjourned at 11:38 AM CST.