

2026 South Dakota Legislature

Draft 17

Requested by: **Senator Pischke**

1 **An Act to revise and repeal provisions related to the shared parenting child support**
2 **cross credit.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 25-7-6.14 be AMENDED:**

5 **25-7-6.14.** If the child resides with the obligor six or more nights in a month
6 pursuant to a custody order, the court may, if deemed appropriate under the
7 circumstances, grant an abatement of not less than thirty-eight percent nor more than
8 sixty-six percent of the basic child support obligation for the nights the child resides with
9 the obligor. It shall be presumed that the parenting time is exercised.

10 In deciding whether an abatement is appropriate, the court or child support referee
11 shall consider the fixed obligations of the custodial parent that are attributable to the child
12 and to the increased non-duplicated costs of the noncustodial parent that are associated
13 with the child's time with the noncustodial parent. The burden is on the noncustodial
14 parent to demonstrate the increased costs that the noncustodial parent incurs for non-
15 duplicated fixed expenditures, including routine clothing costs, costs for extra-curricular
16 activities, school supplies, and other similar non-duplicated fixed expenditures.

17 The order granting the abatement must specify the number of nights that the
18 abatement is allowed and the amount of the abatement. To calculate an abatement, the
19 court or child support referee shall:

- 20 (1) Determine the basic child support calculation, excluding additional costs including
21 health insurance or child care, and annualize the same;
- 22 (2) Divide the annual amount in subdivision (1) by three hundred sixty-five days to
23 calculate the daily child support amount;
- 24 (3) Multiply the daily child support amount in subdivision (2) by the number of
25 overnights the child spends with the noncustodial parent on a monthly basis; and
- 26 (4) Multiply the amount in subdivision (3) by the abatement percentage utilized. The
27 figure must be annualized and subtracted from the monthly child support
28 obligation.

1 ~~No abatement may exceed the child support cross credit allowed under § 25-7-~~
 2 ~~6.27.~~

3 If the noncustodial parent does not exercise the extended parenting time during a
 4 particular year, the noncustodial parent is required to repay the abated amount of child
 5 support to the custodial parent.

6 **Section 2. That § 25-7-6.28 be AMENDED:**

7 **25-7-6.28.** For the purposes of §§ 25-7-6.14 and ~~25-7-6.27~~, a child resides with
 8 a parent for a night if the child sleeps:

- 9 (1) At the residence of that parent at night, whether or not the parent is present; or
 10 (2) In the company of the parent, if the child does not sleep at a parent's residence.

11 If, in a calendar year, due to a parent's nighttime work schedule, a child resides
 12 with a parent for days, but not nights, the court may condition the abatement on the
 13 required days rather than nights. In those instances, on a school day, the child is treated
 14 as residing at the primary residence registered with the school.

15 **Section 3. That § 25-7-6.27 be REPEALED.**

16 ~~If a custody order by the court, contains a detailed shared parenting plan which~~
 17 ~~provides that the child will reside no less than one hundred eighty nights per calendar~~
 18 ~~year in each parent's home, and that the parents will share the duties and responsibilities~~
 19 ~~of parenting the child and the expenses of the child in proportion to their incomes, the~~
 20 ~~court may, if deemed appropriate under the circumstances, grant a cross credit on the~~
 21 ~~amount of the child support obligation based on the number of nights the child resides~~
 22 ~~with each parent. The shared parenting child support cross credit shall be calculated as~~
 23 ~~follows:~~

- 24 ~~(1) Multiply the parents' combined child support obligation under the schedule by 1.5~~
 25 ~~to establish the parents' combined shared parenting child support obligation;~~
 26 ~~(2) Multiply the combined shared parenting child support obligation by each parent's~~
 27 ~~percentage share of the parents' combined net incomes to establish each parent's~~
 28 ~~shared parenting child support obligation;~~
 29 ~~(3) Multiply each parent's shared parenting child support obligation by the percentage~~
 30 ~~of nights the child resides with each parent based on a three hundred sixty five~~
 31 ~~day calendar year to establish each parent's prorated shared parenting child~~
 32 ~~support obligation;~~
 33 ~~(4) Offset the parents' prorated shared parenting child support obligations; and~~

1 ~~(5) — The parent with the larger prorated shared parenting child support obligation shall~~
2 ~~pay the difference between these amounts.~~

3 ~~In deciding whether a shared parenting child support cross credit is appropriate,~~
4 ~~the court shall consider whether it would have a substantial negative effect on the child's~~
5 ~~standard of living.~~

6 ~~It is presumed that the parenting time is exercised. If the parenting time exercised~~
7 ~~substantially deviates from the parenting time ordered, either party may petition the court~~
8 ~~for a modification of the support order without showing any other change in circumstances.~~

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