**Amendments to Child Support Statutes**

**Proposed by South Dakota’s Child Support Referees**

**That § 25-7-6.4 be AMENDED:**

~~Except as provided in § 25-7-6.26 it~~ It is presumed for the purposes of ~~determination of~~ determining child support that a parent is capable of being employed ~~a minimum of one thousand eight hundred twenty hours per year, and the parent's child support obligation must be~~ ~~calculated at a rate~~ and earning an annual gross income of not less than one thousand eight hundred twenty hours ~~at~~ multiplied by the current state minimum wage.

**That § 25-7-6.26 be AMENDED:**

~~If a parent in a child support establishment or modification proceeding fails to furnish income or other financial information, the parent is in default. Income not actually earned by a parent may be imputed to the parent pursuant to this section. Except in cases of physical or mental disability or incarceration for one hundred eighty days or more, it is presumed for the purpose of determining child support in an establishment or modification proceeding that a parent is capable of being employed a minimum of one thousand eight hundred twenty hours per year at the state minimum wage, absent evidence to the contrary. Evidence to rebut this presumption may be presented by either parent.~~

~~Income may be imputed to a parent when the parent is~~ ~~unemployed, underemployed, fails to produce sufficient proof of income, has an unknown employment status, or is a full-time or part-time student, whose education or retraining will result, within a reasonable time, in an economic benefit to the child for whom the support obligation is determined, unless the actual income is greater.~~

~~In all cases where imputed income is appropriate, the amount imputed must be based upon the following:~~

~~(1) The parent’s residence;~~

~~(2) The parent’s recent work and earnings history;~~

~~(3) The parent’s occupational, educational, and professional qualifications;~~

~~(4) Existing job opportunities and associated earning levels in the community or the local trade area;~~

~~(5) The parent’s age, literacy, health, criminal record, record of seeking work, and other employment barriers;~~

~~(6) The availability of employers willing to hire the parent; and~~

~~(7) Other relevant background factors.~~

~~Income is not imputed to a parent who is physically or mentally disabled to the extent that the parent cannot earn income; who is incarcerated for more than one hundred eighty days; who has made diligent efforts to find and accept suitable work or to return to customary self-employment, to no avail; or when the court makes a finding that other circumstances exist that make the imputation inequitable, in which case the imputed income may only be decreased to the extent required to remove such inequity.~~

~~Imputed income may be in addition to actual income and is not required to reflect the same rate of pay as actual income.~~

A parent’s income may be imputed if the parent fails to produce sufficient proof of income, or the parent’s employment status is unknown, or the parent is unemployed or underemployed. In determining the amount of income to impute to a parent, the court may consider any factor relevant to the parent’s ability to earn income including the parent’s education, occupational skills, experience, age, health, criminal record and employment opportunities in the geographical area where the parent resides.

The amount imputed may be based on the parent’s past income or data on wage rates for various occupations and locations published by the United States Bureau of Labor Statistics or any other federal or state government agency, or job advertisements.

No income may be imputed to a parent who has been sentenced to serve a term of incarceration or confinement of one hundred eighty days or more. Otherwise, unless a parent is disabled, the amount imputed may not be less than the current state minimum wage multiplied by one thousand eight hundred twenty hours.

**That § 25-7-6.19 be AMENDED:**

Notwithstanding the provisions of § 25-7A-17 or 25-7-7.3, if, by agreement of the parties or court order, the obligor had primary physical custody of the child for more than four consecutive months, the court may credit the obligor for child support arrearages which accumulated during the period the obligor had actual physical custody of the child.

**That § 25-7-14 be AMENDED:**

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

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

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

(1) Determine the basic child support calculation, excluding additional costs including health insurance or child care, and annualize the same;

(2) Divide the annual amount in subdivision (1) by three hundred sixty-five days to calculate the daily child support amount;

(3) Multiply the daily child support amount in subdivision (2) by the number of overnights the child spends with the noncustodial parent on a monthly basis; and

(4) Multiply the amount in subdivision (3) by the abatement percentage utilized. The figure must be annualized and subtracted from the monthly child support obligation.

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

If the noncustodial parent does not exercise the extended parenting time during a particular year, the noncustodial parent is required to repay the abated amount of child support to the custodial parent.25-7-6.14.

**That a NEW SECTION be added to Chapter 25-7A:**

If a party agrees, the referee may send copies of any notice or report required to be served on the party under § § 25-7A-5 or 25-7A-22 by electronic mail, using the email address provided by the party.

**That a NEW SECTION be added to Chapter 25-7A:**

If a party files an objection to the referee’s report, the referee shall file with the court all exhibits entered into the record in the hearing before the referee. The referee shall file the exhibits within ten days after receiving notice of the objection.