

Minutes of the
Department of Human Services
Child Support Guidelines Advisory Committee
June 26, 2018
9:00 – 10:45
Fort Union Room, State Capitol

Members present: Jim Fleming, Brad Davis, Jamie Goulet, Lisa Kemmet, Leah duCharme, Betsy Elsberry, Paulette Oberst, Cynthia Schaar, Judge Gary Lee, Referee Scott Griffeth, Tara Fuhrer (Note: Several members participated remotely via phone and GoToMeeting functionality.)

Members absent: Sen. Oley Larson, Sherri Peterson, Rep. Robin Weisz

Welcome

Fleming welcomed members to the last committee meeting.

Fleming said the first thing to address is approval of the minutes from the previous meetings. Meeting minutes from each meeting were previously emailed to members for review. Fleming indicated a couple revisions were made to the minutes based on comments from Elsberry, but the revisions were not substantive. duCharme indicated she had a couple of proposed changes, but nothing substantive. There were no other comments about the meeting minutes. Fleming indicated, hearing no other comments, the meeting minutes are approved.

Fleming indicated that prior to the meeting Oberst emailed members the issues for consideration and drafts for review. The issues and draft language are to be considered by the committee at today's meeting.

1. Child Support Guidelines Section -01 Definitions.

Issue: Consider whether to change the calculation of the hypothetical state income tax obligation in light of potential changes to the calculation of the hypothetical federal income tax obligation. See -01(6)(b), which provides that the hypothetical state income tax obligation is a function (14%) of the hypothetical federal income tax obligation.

Fleming indicated that at the last meeting, the group approved changing the hypothetical state income tax obligation to 11% (it is currently 14%). The draft language provided by Oberst would implement that change. Fleming asked if the group had any concerns with the draft language. Fleming indicated since there are no concerns with the draft language and the item was previously voted on, it is considered done.

In response to a question from Judge Lee, Oberst indicated there will be revised worksheets and schedules when the new guidelines are finalized. In response to a question from Judge Lee about when the new guidelines would be issued, Fleming outlined the rulemaking process, indicating the process will most likely conclude sometime in the summer of 2019, but may conclude earlier.

2. Child Support Guidelines Section -02 General Instructions.

Issue: Consider removal of -02(9) if it can be interpreted as “forcing” parents to have a child support obligation, even against their wishes.

Fleming said at the last meeting the group voted to remove subdivision nine of this section. This draft simply shows the language was struck through.

5. Child Support Guidelines Section -10 Child Support Amount.

Issue: Consider whether to change the schedule of amounts.

Fleming indicated a draft was prepared for review at this meeting based on the proposal at the last meeting. Fleming went over the draft. The request that was made was to begin the one child obligation at 10% of the \$900 level and then to keep the percentage consistent across the schedule from left to right as the number of children increase. The percentage increases up to the \$1,300 level. The amount varies depending on which line is applicable. The result is the cliff effect is reduced. The minimum wage line is the \$1,100 line and this change reduces the obligation for one child at that line to \$190 (from \$238). Fleming noted the changes to the federal tax liability might change where the minimum wage line falls in the future. Schaar moved to approve the draft changes. Judge Lee seconded the motion. Fleming asked if there was further discussion from the group. Roll call vote was taken, and the motion carried (11 yes, 0 no, 3 absent and not voting).

4. Child Support Guidelines Section -09 Criteria for Rebuttal of Guideline Amount.

Issue: Consider whether to create a deviation for equal and split residential responsibility cases where the payment amount, after offsetting the obligations, is nominal.

Fleming indicated Child Support has seen more situations where the parents have comparable incomes and the net difference after application of the offset is nominal, for example \$5 or \$10. Fleming questioned whether it is worth the effort to enforce and have money change hands at that point. Fleming indicated sometimes the adjustments made by attorneys and parties in these cases to try to get the net due after the offset to zero can be problematic. For example, in one case there was a very small difference due after the offset and the language in the judgment indicated that since the difference was so small, it would just be considered zero. However, the obligations didn't actually

net to zero, so the clerk didn't know how to enter each obligation on the automated system.

Fleming read the draft language prepared by Oberst which creates an additional deviation. The language that would be inserted following Section -09(2) for the new deviation (o) would read, "the improved convenience to the parents, and negligible impact to the child, of a nominal increase in the child support obligation of the parent with the smaller obligation as determined under section 75-02-04.1-08.2, not to exceed [twenty-five] dollars per month, in order for the obligation of each parent to be equal prior to the application of the payment offset provided in that section and eliminate any net amount being due except during months when the obligation is assigned to a government agency." Fleming indicated the bracketed twenty-five is a placeholder for the committee to discuss what the number should be.

Judge Lee asked what it costs child support to administer a case monthly where there is an offset involved. He indicated that seems relevant information to have when the group is determining where to draw the line regarding the bracketed amount. Fleming said it would be hard to come up with a number regarding the monthly operating expense. Some amounts come in easily, while some take more work. It is difficult to scale because enforcement efforts on cases can be so different. Fleming noted the time employers spending dealing with income withholding is an issue. Schaar said she hears from employers, judges, and private attorneys that it seems like a waste of time to deal with these nominal amounts each month.

Oberst indicated she would be willing to go up to \$100. Elsberry said she would propose the amount be higher than \$25, because if you refer to the schedule of amounts, from one line to the next, the difference is greater than \$25. If it is left at \$25, it would very rarely apply. Davis proposed making it a percentage of the support obligation. Fleming said it might be more difficult to calculate if it was a percentage. Davis said there is no doubt it would be more complicated.

Fleming asked if there is general support for the idea that there ought to be a provision that says if it is close enough to zero we shouldn't need to fuss with it. If we can agree on that, then we would just need to discuss the amount. There was consensus to adopt the provision, but the group did not approve of the \$25 amount.

Goulet said she liked the idea for it to be closer to \$100. Schaar said she has concerns about it being \$100, because \$100 is a lot of money to low income parents. She would like to see it between \$50 and \$100. Fleming said in an establishment case, Child Support would not pursue the deviation. Oberst said in review cases, our general rule is that if it is a legitimate deviation under the guidelines and the facts of the case support it, we would preserve the deviation. Schaar said if this deviation starts getting applied routinely, there might be more requests for hearings.

Oberst said a percentage is not as clean as having a specified dollar amount. A deviation would probably be something the parents would agree to, she doesn't envision the court forcing this on a lot of cases. Fleming said he thinks one of the temptations for even legitimate motivations is to net the amount to zero, so it doesn't have to be fussed with. Ref. Griffeth said the goal is to reduce complications and collections and he would favor setting a specific dollar amount over a percentage for ease of calculation. Schaar moved to adopt the draft changes but remove "twenty-five" and insert "seventy-five". Ref. Griffeth seconded the motion. Fleming asked if there was further discussion. Hearing no further discussion, roll call vote was taken and the motion carried (11 yes, 0 no, 3 absent and not voting).

3. Child Support Guidelines Section -08.1 Regarding Extended Parenting Time.

Issue: Consider whether to change the formula for calculating the extended visitation adjustment.

Fleming indicated there is no draft language for this issue. The issue to consider is whether the group is comfortable with the current formula. Fleming said extended parenting time has been regulated by a legislative statement of intent since 1999. Fleming read the language in Section -08.1.

Fleming explained the prior version of this committee decided it is best to link the visitation schedule for purposes of this section to the court order, as opposed to the visitation that is actually exercised after the order is signed. Fleming said he didn't know how it would go any other way because it can't be based on a fluctuating amount. Schaar said she thinks it is best to follow the language of the order. Fleming said the first subsection sets forth the threshold, which is currently 60 of 90 consecutive nights or an annual total of 164 nights. The next subsection discusses the method of calculating where the parenting time nights for each child is counted. The important part here is you take those nights times .32. This is the number the department's research and statistics division came up with in 1999 that constitutes the child's costs that are not being incurred to the other parent.

Fleming indicated the group asked at the last meeting to have some calculations prepared. Fleming created a spreadsheet with three income levels and one, two, and three child calculations. The way the calculator is set up, you can enter different numbers of nights to see what the change would be. The total amount due is reflected in the bottom line for the group to see what the impact ultimately is. Fleming went over numbers at the \$1,300 level, \$2,500 level, and \$4,000 level.

Ref. Griffeth asked if the tables take into consideration the greater amount of visitation in the summer schedules. Fleming said it does regarding the 60 out of 90 consecutive nights consideration. Ref. Griffeth said his initial thought is that a standard amount of parenting time is built into the current tables and if we lower the current bar too much we might trigger a lot more calculations.

Elsberry asked if we could see what 153 nights would do when applied to the table. She came up with the number based on the obligor having a long weekend every other weekend, Friday night through Monday morning, plus one overnight prior to the weekend the obligor has parenting time and two overnights during the off week, and equal over the summer. Elsberry indicated the number doesn't take into consideration holiday parenting time. This is one example of a schedule where the parties don't have equal but the nonprimary parent has a good amount of parenting time. Fleming did the calculation and it leads to an obligation of \$251 at the \$1,300 income level.

Fleming said he felt strongly about keeping the .32. However, beyond a certain minimum threshold, he isn't sure if there is a need for the trigger and we can just plug the number in.

Schaar said she wants to keep it simple. Oberst agreed. Child Support takes the order as it comes, and the parenting time has already been determined. Oberst liked the idea of having a minimum threshold where the calculation would not be applicable until it is met. Oberst proposed using 50 nights as the minimum threshold. Fleming showed the numeric impact of having a threshold at different amounts of nights, including 30 and 60. Fleming showed how the rounding required in the guidelines can have a bigger impact on the bottom line than the calculation of the credit.

duCharme said another way to look at it is to determine at what percentage of parenting time we expect parents to get a credit – 40%? 45%? Fleming said he isn't sure why we wouldn't scale it just based on how many nights. Mathematically, it is simple to do. Goulet said if we do 50 nights, we would probably hit it in every divorce. Fleming said that's where the theory behind the .32 yields what is practical. At what point is it worth the time and energy to do the calculation? Ref. Griffith said he is in favor of making a change but doesn't have a position on whether it is 50 or 60 nights. Judge Lee said he doesn't know where the issue has ever come up for him. There are certain costs the custodial parent will have whether the child is there or not. Every dollar we take away from the custodial parent, goes against those costs. Judge Lee said the standard visitation schedule in his area is well beyond 60 nights a year so if we adopted this it would kick in almost every time. Fleming said he isn't opposed to updating this section because we are seeing more co-parenting in cases. If there are revisions to the threshold that would be beneficial, we can get behind it as a program, but it is hard for Child Support to guess where the threshold should be because it is out of our area. Judge Lee said if this starts becoming an issue it is going to be a fight against expanded parenting time because the custodial parent is going to start seeing the amount of support reduced the more parenting time that is ordered. Elsberry said she saw it in the opposite way, it might lessen the fighting because people might be more agreeable to one parent having primary residential responsibility and the other extended parenting time. duCharme said she could see it both ways.

Judge Lee proposed adopting an aggregate calculation. Schaar agreed. Elsberry agreed. Fleming asked at what number per year of overnights should this become an

issue. Schaar moved the group adopt a threshold of 150 nights. Elsberry seconded the motion but clarified that it is eliminating the consecutive night aspect: 150 nights regardless of whether they are consecutive. Oberst noted that would leave out the summer visitation, the child that does go from Memorial Day to Labor Day. Fleming asked if there was further discussion.

duCharme said she would amend it to 146 nights – which is 40% of the overnights per year. duCharme said 100 nights might apply in too many cases which would increase arguments.

Judge Lee said there are going to be arguments made no matter what direction we go. There will be problems no matter where the line is drawn. Fleming said he feels more supportive of the lower number. Roll call vote was taken to amend Schaar's motion of 150 nights to 100 nights and the motion carried (8 yes, 3 no, and 3 absent and not voting). Fleming indicated the motion on floor is to use 100 aggregate nights per year and opened the floor for further discussion. Roll call vote was taken, and the motion carried (8 yes, 3 no, 3 absent and not voting).

Fleming indicated this was the final issue for the group to address. Fleming thanked the group for their time and participation.

7. Adjourned.

The meeting adjourned at 10:45.