

NEVADA CHILD SUPPORT GUIDELINES COMMITTEE PUBLIC MEETING TO REVIEW CHILD SUPPORT ENFORCEMENT GUIDELINES IN ACCORDANCE WITH ASSEMBLY BILL 278 OF THE 2017 LEGISLATIVE SESSION.

The public meeting to review child support enforcement guidelines was brought to order by committee chair Kim Surratt at 1:00 p.m. on Thursday, June 28, 2018. This meeting was video-conferenced between the Legislative Counsel Building, 401 South Carson Street, Hearing Room 3138, Carson City, NV and the Grant Sawyer State Office Building, 55 East Washington Avenue, Hearing Room 4401, Las Vegas, NV. The meeting was also accessible via teleconference.

MEMBERS PRESENT:

Kathleen Baker, Washoe County District Attorney's Office
David Castagnola for Nova Murray, Social Service Specialist III, Division of Welfare and Supportive Services
Karen Cliffe, Clark County District Attorney's Office
Ellen Crecelius, Chief Financial Officer, Division of Health Care Financing and Policy
Charles Hoskin, Family Division of the Eighth Judicial District Court
Jim Shirley, Family Division of the Eleventh Judicial District Court
Kim Surratt, Family Law Section of the State Bar of Nevada
Senator Michael Roberson
Bridget Robb, Presiding Judge of the 2nd Judicial District Court

MEMBERS ABSENT:

Senator Patricia Farley
Assemblyman Ozzie Fumo
Assemblyman Keith Pickard
Lidia Stiglich, Justice, Nevada Supreme Court
Dawn Throne, Family Law Section of the State Bar of Nevada

MEMBERS PRESENT VIA TELEPHONE:

Joseph Sanford, Churchill County District Attorney's Association

STAFF PRESENT:

Joy Tomlinson, Administrative Assistant IV, Division of Welfare and Supportive Services (DWSS)
Stephanie Dicke, Administrative Assistant III, DWSS
Rebecca Lindelow, Family Services Supervisor, DWSS
Kiersten Gallagher, Social Services Manager, DWSS
Amy Crowe, Deputy Attorney General

GUESTS PRESENT – NORTH

None

GUESTS PRESENT – SOUTH

None

GUESTS PRESENT VIA TELEPHONE:

None

Agenda Item #1 – Call to Order and Roll Call

The public meeting to review child support enforcement guidelines was brought to order by committee chair Kim Surratt at 1:00 pm. Roll call was taken. David Castagnola was present in Nova Murray's place. It was determined a quorum was not present. Ms. Surratt stated the committee would wait a few minutes to see if a quorum could be attained. Ms. Surratt called the meeting back to order at 1:05 pm as Judge Shirley and Judge Robb arrived to complete the quorum. Senator Roberson arrived during discussion on Agenda Item #5.

Agenda Item #2 – Public Comment

Ms. Surratt called for public comment in Las Vegas: no public comment.

Ms. Surratt called for public comment over the telephone: no public comment.

Ms. Surratt called for public comment in the north: no public comment.

Agenda Item #3 – Approval of meeting minutes (June 12, 2018)

Kathleen Baker motioned to approve the meeting minutes. Ms. Cliffe seconded the motion. Motion passed unanimously.

Agenda Item #4 – Discussion and recommendations on how to calculate child support obligations in split-parenting cases.

Ms. Surratt asked for input from the committee regarding the language for this agenda item. See Exhibit A.

- Judge Hoskin suggested moving the last sentence of the Amicus brief to the end of paragraph for split-parenting.

Judge Shirley motioned to approve the edits for split-parenting. Judge Hoskin seconded motion. Motion passed unanimously.

Agenda Item #5 – Discussion and recommendations on how to calculate child support obligations for incarcerated or involuntarily institutionalized parents and parents recently released from incarceration or institutionalization.

Ms. Surratt asked the committee for input regarding the language for this agenda time. See Exhibit A.

- Ms. Baker requested clarification on number three, subsection four.
- Ms. Cliffe clarified that Clark County is aware when someone is incarcerated. Addressed how they modify when the obligor is released from incarceration or institutionalization.
- Ms. Surratt asked the committee if there should be a set minimum.

- Ms. Karen suggested removing subsection four.
- Ms. Castagnola stated the IV-D program regulations do require a review when an obligor is released from incarceration.
- Judge Hoskin suggested requiring the obligor to review the case and request a review if needed.
- Ms. Surratt asked for the committee's input on subsection 2.
- Karen Cliffe explained that Clark County does not provide hearings for every incarcerated person. They are treated the same as nonincarcerated obligor's.
- Ms. Baker stated there were conflicting statements in subsection two.
- Ms. Cliffe stated 1b should be removed.
- Ms. Surratt stated she liked language that states, you still could be required to pay support even when you are incarcerated. Ms. Surratt also stated she wanted to keep the language in 1a, keep language from subsection 2, delete subsection 3, and keep some of the language in subsection 4.
- Judge Hoskin suggested using "shalls" instead of "mays."
- Ms. Surratt stated the committee needs to keep subsections 5 and 6.
- Ms. Surratt suggested removing subsection 3 and stated the review hearing may be conducted upon request. She also suggested removing subsection 3 and 4.
- Judge Robb suggested placing the responsibility on obligor, to show the minimum child support amount is too high.
- Ms. Surratt suggested using the lowest minimum amount on the chart.
- Ms. Surratt reread the suggested edits.
- Judge Robb suggested keeping the last sentence of subsection 3.
- Ms. Surratt clarified that subsection 4 will be removed and subsection 5 and 6 will stay.
- Ms. Surratt reread the suggested changes to the committee.

Judge Shirley motioned to approve the changes. Ms. Robb seconded the motion. Motion passed unanimously.

Agenda Item #6 – Discussion and recommendations for language providing that the adoption of child support regulations does not constitute a substantial change in circumstances warranting a modification.

Ms. Surratt presented proposed language to the committee for discussion. See Exhibit A.

- Ms. Surratt stated she did not think it would hurt to adopt this language.
- Judge Robb stated she preferred Wisconsin's language as it is simpler.

Ms. Surratt called for a motion. Judge Robb motioned to approve the language. Judge Shirley seconded the motion. Motion passed unanimously.

Agenda Item #7 – Discussion and recommendations for edits, errors, or omissions on the master document.

Ms. Surratt asked the committee to look through the Master Document for any final edits or errors.

- Ms. Crecelius suggested using the current Federal Poverty Guidelines.

Ms. Surratt called for a motion. Ms. Crecelius motioned to make this change. Judge Robb seconded motion. Motion passed unanimously.

- Ms. Surratt clarified when the Federal Poverty Guidelines are updated.
- Committee reviewed language and suggested taking out verbiage that is unclear.

Judge Robb motioned to adopt new language. Judge Shirley seconded the motion. Motion passed unanimously.

Agenda Item #8 – Discussion and recommendations for final report of committee.

Ms. Surratt explained to the committee that she would make the edits that night and submit the final draft to Ms. Amy Crowe Friday morning. She told the committee members they could attend any workshops the Division of Welfare and Supportive Services has regarding the final document. Ms. Baker clarified that there would be no future meetings. Ms. Surratt verified that all meetings through September will be cancelled and the committee will reconvene to discuss serial parenting. Ms. Surratt will have staff notify the committee of those new meeting dates.

Agenda Item #9 – Discuss and approve ideas for future agenda.

There were no future ideas to approve.

Agenda Item #10 – Public Comment

Ms. Surratt called for public comment in Las Vegas: no public comment.

Ms. Surratt called for public comment over the telephone: no public comment.

Ms. Surratt called for public comment in Carson City: no public comment.

Agenda Item #11 – Adjournment

Ms. Surratt called for a motion for adjournment. Judge Shirley motioned to adjourn. Ms. Baker seconded motion. Motion passed unanimously. Meeting adjourned at 2:24 pm.

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Exhibit A

NEVADA CHILD SUPPORT GUIDELINES

INTRODUCTION PROVISIONS:

Any child support order must be based on the payor's earnings, income, and other evidence of ability to pay.

It is presumed that the basic needs of a child are met by the formulas set forth in these regulations. This presumption may be rebutted by evidence proving that the needs of a particular child are not met or are exceeded by the applicable formula.

If the amount of the awarded support for a child is greater or less than the amount which would be established under these guidelines, the court shall:

- (a) Set forth findings of fact as to the basis for the deviation from the formula; and
- (b) Provide in the findings of fact the amount of support that would have been established under the applicable formula.

STIPULATIONS AND ORDERS:

Parents have the right to stipulate to a child support obligation for their child(ren) that does not comply with the following guidelines. However, in order to be binding, a stipulation must be in writing and:

- a. Set forth the current gross monthly income of each parent;
- b. Specify what the child support obligation would be under these guidelines;
- c. Provide notice to both parents that, if either parent seeks a review of the child support obligation upon a material change in circumstances or for regular periodic review, a court will be bound by the child support guidelines in effect at the time of the review;
- d. Certify that the recipient parent is not receiving public assistance and has not applied for public assistance;
- e. Certify that the basic needs of this particular child are met or are exceeded by this child support award; and
- f. Be approved and adopted as an order of the court.

A court presented with a proposed stipulation of the parents for a child support obligation that does not comply with these guidelines may reject the stipulation, even if it complies with the requirements set forth above, if the court believes that the stipulation is a product of coercion or does not meet the needs of the child. Additionally, the receipt of public assistance by the recipient or the parent entitled to receive child support under the guidelines will constitute a change of circumstances that will allow the review of the child support obligation and the

modification of the child support obligation in accordance with the child support guidelines then in effect.

If the parties do not agree to the amount of support required, the Court shall determine the amount of support according to the following guidelines.

STEP ONE TO ASSESS CHILD SUPPORT: DETERMINE WHO IS THE OBLIGOR/OBLIGEE

“Obligor” means a person who incurs a legal obligation for child support as a result of a court order.

“Obligee” means a person who is entitled to receive child support as a result of a court order.

When an individual has primary physical custody of a minor child that individual is an obligee. The non-primary physical custodian is an obligor.

When individuals have joint physical custody of a minor child they are each an obligor. The child support formula set forth in these guidelines shall be applied to each joint physical custodian’s respective gross monthly income to obtain their respective obligations. Then, the respective obligations shall be offset so that the obligor with the higher obligation pays the other obligor the difference.

When potential obligors have two (2) or more children and they both have joint physical custody of at least one of the children but not all of the children, the obligors shall each calculate their child support obligation under the formula set forth below based on the number of children to whom each obligor owes a child support obligation.

STEP TWO TO ASSESS CHILD SUPPORT: DETERMINE GROSS INCOME

First, the amount of gross income of each obligor must be determined by stipulation of the parties or by the Court upon consideration of all relevant financial information or other information relevant to the obligor’s earning capacity. The Court may direct either party to furnish financial information or other records, including income tax returns for prior years.

GROSS INCOME DEFINITION:

“Gross income.”

(a) “Gross income” for purposes of calculating child support means all of the following:

1. Salary and wages, including money earned from overtime pay if that overtime pay is substantial, consistent and can be accurately determined.
2. Interest and investment income not including the principle.

3. Social Security disability and old-age insurance benefits under Federal Law.
 4. Income from a pension or retirement plan.
 5. Net proceeds resulting from worker's compensation or other personal injury awards intended to replace income.
 6. Unemployment insurance.
 7. Income continuation benefits.
 8. Voluntary deferred compensation, employee contributions to any employee benefit plan or profit-sharing, and voluntary employee contributions to any pension or retirement account whether or not the account provides for tax deferral or avoidance.
 9. Military allowances and veterans benefits.
 10. Any and all compensation for lost wages.
 11. Undistributed income of a corporation, including a closely-held corporation, or any partnership, including a limited or limited liability partnership, in which the parent has an ownership interest sufficient to individually exercise control or to access the earnings of the business, unless the income included is an asset under [*section regarding imputed income*] In this paragraph:
 - a. "Undistributed income" means federal taxable income of the closely held corporation, partnership, or other entity plus depreciation claimed on the entity's federal income tax return less a reasonable allowance for economic depreciation.
 - b. A "reasonable allowance for economic depreciation" means the amount of depreciation on assets computed using the straight-line method and useful lives as determined under federal income tax laws and regulations.
- Note:** Income considered under this subsection is subject to the adjustments under [*section regarding adjustments*].
12. All other income of the obligor, whether taxable or not, except that gross income does not include any of the following:
 - a. Child support received.
 - b. Foster care payments under Federal Law.
 - c. Kinship care payments under Federal Law.
 - d. Public assistance benefits under Federal Law, except that child care subsidy payments under Federal Law, shall be considered income to a child care provider.
 - e. Supplemental Nutrition Assistance Program (SNAP) under Federal Law.
 - f. Cash benefits paid by counties under Federal Law.
 - g. Supplemental Security Income and state supplemental payments under Federal Law.
 - h. Payments made for social services or any other public assistance benefits.

- i. Compensation for losses, both general and special damages, in personal injury awards not intended to replace income.

This subsection defines gross income used in establishing a child support order under this chapter and may not be used to limit income withholding, or the assignment of worker's compensation benefits for child support.

Note: This paragraph clarifies that although the portion of worker's compensation awards not intended to replace income is excluded from gross income in *establishing* a child support order, the full worker's compensation benefit is assignable for the *collection* of child support.

IMPUTATION OF INCOME:

If the Court determines, after taking evidence, that the obligor who has an obligation for support is underemployed or unemployed without good cause, the Court may impute income to that obligor.

If income is imputed, the Court must take into consideration the specific circumstances of the noncustodial and custodial parent to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, education attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers will to hire the noncustodial parent, prevailing earnings level in the local community and other relevant backgrounds factors in the case.

STEP THREE: CONSIDERATION OF MEDICAL SUPPORT AND CHILD CARE:

The Court shall consider the reasonable costs of reasonable child care expenses paid by either or both parents and shall make an equitable division thereof.

Every court order for the support of a child issued or modified in this State, must include a provision specifying that individuals responsible for a child are required to provide medical support for the child and any details relating to that requirement.

As used in this section, "medical support" includes, without limitation, the cost of coverage for medical, vision and dental under a plan of insurance for the child that is reasonable in cost and accessible, meaning the payment of any premium.

For the purpose of this subsection:

- (A) The term "plan of insurance" includes the child being provided coverage under a public plan of insurance such as Medicaid or a reduced fee plan such as Nevada Check Up.
- (B) Payments of cash for medical support under a plan of insurance are "reasonable in cost" if:

- (i) The cost to each parent who is responsible for providing medical support is not more than 5 percent of the gross monthly income of the parent or the cost of adding a dependent child to any existing coverage for health care or the difference between individual and family coverage, whichever is less, is not more than 5 percent of the gross monthly income of each parent.
 - (ii) The plan policy, including the copayment, deductible and maximum out of pocket costs, shall also be assessed to determine if it is reasonable in cost.
- (C) Coverage for health care under a plan of insurance is “accessible” if the plan:
- (i) Is not limited to coverage within a geographic area; or
 - (ii) Is limited to coverage within a geographic area and the child resides within that geographic area.

STEP FOUR: DETERMINE CHILD SUPPORT BASED ON GROSS INCOME

LOW INCOME PAYERS:

“Low-income payer” means a payer for whom the Court has determined that the payer’s total economic circumstances limit his or her ability to pay support at the level set forth in section (a) above. Once low-income payer status is determined, the child support obligation shall be established by use of a yearly schedule based on changes in the federal poverty guidelines during the preceding year. This schedule shall be approved by the Child Support Guidelines Committee no later than January 31 of each year and shall be published by the Administrative Office of the Courts.

If a payer’s monthly income is below the lowest level set on the schedule, the Court may set a child support obligation that is appropriate based upon the payer’s total economic circumstances, balancing the payer’s need for self-support and the payer’s obligation to support the child.

[INSERT LOW INCOME CHART]

CHILD SUPPORT CALCULATIONS OTHER THAN LOW INCOME:

Except as set forth in (low-income section), a parent’s “Base support obligation” means the dollar amount determined according to the following schedule:

- (1) For one child, the sum of
 - a. 16 percent of the first \$6,000 of a parent’s gross monthly income, plus
 - b. 8 percent of the portion of the parent’s gross monthly income for any gross monthly income from \$6,001 to \$10,000, plus
 - c. 4 percent of the portion of the parent’s gross monthly income for any gross monthly income in excess of \$10,000.
- (2) For two children, the sum of

- a. 22 percent of the first \$6,000 of a parent's gross monthly income, plus
 - b. 11 percent of the portion of the parent's gross monthly income for any gross monthly income from \$6,001 to \$10,000, plus
 - c. 6 percent of the portion of the parent's gross monthly income for any gross monthly income in excess of \$10,000.
- (3) For three children, the sum of
- a. 26 percent of the first \$6,000 of a parent's gross monthly income, plus
 - b. 13 percent of the portion of the parent's gross monthly income for any gross monthly income from \$6,001 to \$10,000, plus
 - c. 6 percent of the portion of the parent's gross monthly income for any gross monthly income in excess of \$10,000.
- (4) For four children, the sum of
- a. 28 percent of the first \$6,000 of a parent's gross monthly income, plus
 - b. 14 percent of the portion of the parent's gross monthly income for any gross monthly income from \$6,001 to \$10,000, plus
 - c. 7 percent of the portion of the parent's gross monthly income for any gross monthly income in excess of \$10,000.
- (5) For each child in excess of 4 children, the sum of
- a. An additional 2 percent of the first \$6,000 of a parent's gross monthly income, plus
 - b. An additional 1 percent of the portion of the parent's gross monthly income for any gross monthly income from \$6,001 to \$10,000, plus
 - c. An additional 0.5 percent of the portion of the parent's gross monthly income for any gross monthly income in excess of \$10,000.

STEP FIVE: DETERMINE IF AN ADJUSTMENT IS NEEDED:

The child support obligation may be further adjusted by the Court pursuant to the specific needs of the child and the economic circumstances of the parents based upon the following factors and specific findings of fact:

- (a) Any special educational needs of the child;
- (b) The legal responsibility of the parents for the support of others;
- (c) The value of services contributed by either parent;
- (d) Any public assistance paid to support the child, including social security benefits available to the child;
- (e) The cost of transportation of the child to and from visitation;
- (g) The relative income of both households; and
- (h) Any other necessary expenses for the benefit of the child
- (i) The party's ability to pay.

***** Wisconsin Language: Adjustment for child's social security. The court may include benefits received by a child under 42 USC 402(d) based on a parent's entitlement of federal disability or old-age insurance benefits under 42 USC 401 to 433 in the parent's gross income and adjust a parent's child support obligation by subtracting the amount of the child's social security benefit. In no case may this adjustment require the payee to reimburse the payer for any portion of the child's benefit.**

INCARCERATION

(1) For purposes of this section, the following definitions shall apply:

(A) “Incarcerated or involuntarily institutionalized” includes, but is not limited to, involuntary confinement for any period exceeding 180 consecutive days to the state prison, a county jail, State or Federal prison, a juvenile facility operated by the Division of Child and Family Services, or a mental health facility.

(B) “Suspend” means that the payment due on the current child support order, an arrears payment on a preexisting arrears balance, or interest on arrears created during a qualifying period of incarceration pursuant to this section is, by operation of law, set to no less than the minimum child support allowed by law.

(2) Incarceration or involuntarily institutionalization shall be considered as a substantial change of circumstances to warrant a child support order to be reviewed and, if appropriate adjusted based on the noncustodial parent’s ability to pay. All cases of incarceration or involuntarily institutionalization of the obligor qualify for automatic finding of a substantial change in circumstances and a review hearing shall be conducted. Incarceration or involuntary institutionalization shall not be treated as voluntary unemployment and income shall not be imputed to the person who is incarcerated or involuntarily institutionalized.

(3) If child support is either suspended or reduced during incarceration or involuntary institutionalization, the money judgment or child support obligation shall resume on the first day of the first full month after the release of the person owing support in the amount previously ordered, and that amount is presumed to be appropriate. This section does not preclude a person owing support from seeking a modification of the child support order based on a change in circumstances or other appropriate reason.

(4) (A) A local child support agency enforcing a child support order under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.) may, upon written notice of the proposed adjustment to the support obligor and obligee along with a form provided for the support obligor or obligee to object to the administrative adjustment to the local child support agency, administratively adjust account balances for a money judgment or order for support of a child suspended pursuant to subdivision (1) if all of the following occurs:

(1) The agency verifies that arrears and interest were accrued in violation of this section.

(2) The agency verifies that the person owing support does not have the means to pay support while incarcerated or involuntarily institutionalized.

(3) Neither the support obligor nor obligee objects, within 30 days of receipt of the notice of proposed adjustment, whether in writing or by telephone, to the administrative adjustment by the local child support agency.

(B) If either the support obligor or obligee objects to the administrative adjustment set forth in this subdivision, the agency shall not adjust the order, but shall file a motion with the court to seek to adjust the arrears and shall serve copies of the motion on the parties, who may file an objection to the agency’s motion with the court. The obligor’s arrears shall not be adjusted unless the court approves the adjustment.

(C) The agency may perform this adjustment without regard to whether it was enforcing the child support order at the time the parent owing support qualified for relief under this section.

- (5) This section does not prohibit the local child support agency or a party from petitioning a court for a determination of child support or arrears amounts.
- (6) This section applies to every money judgment or child support order issued or modified on or after the enactment of this section.

EMANCIPATION

A. If a child support order is for one child only, the ongoing child support obligation shall terminate when the child turns 18, or, if the child is still in high school, until graduation or age 19, whichever comes first, unless there exists a statutory basis to terminate the obligation to provide ongoing support sooner or to extend the obligation to provide ongoing support.

B. If the most recent child support order is for more than one child, and allocates a specific amount of the total support obligation to each child, the ongoing child support amount allocated for the subject child shall terminate the month following the date that child turns 18, or, if the child is still in high school, the month after the child graduates or turns 19, whichever comes first, unless there exists a statutory basis to terminate the obligation to provide ongoing support sooner or to extend the obligation to provide ongoing support.

C. If the most recent child support order is for more than one child, and does not allocate a specific amount of the total child support obligation to each child, if one child emancipates, in order to adjust the existing ongoing child support obligation, a stipulation must be submitted to the court or a motion must be filed with the court for modification of the existing child support order. Any modification of the ongoing child support obligation must be in compliance with the child support guidelines for the remaining non-emancipated child(ren). Regardless of the date of emancipation, any change to the existing child support obligation will only be effective as of the date the motion requesting modification was filed, unless the parties agree otherwise in a stipulation.

The following notice MUST be included in any unallocated child support order when more than one child is the subject of the order.

NOTICE: If you want to adjust the amount of the child support obligation set out in this order, you **MUST** file a motion for review and modification or submit a stipulation to the court. If a motion to modify is not filed or a stipulation is not submitted, the obligation to pay the amount of ongoing child support set out in this order will continue until all of the children that are the subject of this order have emancipated. Any modification made pursuant to a motion for modification shall only take effect as of the date the motion was filed, unless otherwise agreed to by the parties in a stipulation.

PENALTIES:

- Do not adopt language in NRS 125B.095

Modifications Based on New Statutes:

Language from Illinois:

“...The court may grant a petition for modification that seeks to apply the changes made to subsection (a) of Section 505 by Public Act 99-764 to an order entered before the effective date of Public Act 99-764 only upon a finding of a substantial change in circumstances that warrants application of the changes. The enactment of Public Act 99-764 itself does not constitute a substantial change in circumstances warranting a modification.”

Language from Wisconsin:

A modification of a provision in this chapter shall not in and of itself be considered a substantial change in circumstances sufficient to justify a revision of a judgment or order [of child support].

Note from Kim:

Potential to be replacement language re modifications from NRS -125.080(3) that was deleted?