

MINUTES

April 13, 2018

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 Friday, April 13, 2018. This meeting was video-conferenced between the Legislative Counsel Bureau, 401 South Carson Street, Hearing Room 2135, Carson City, NV and the Grant Sawyer State Office Building, 555 East Washington Avenue, Hearing Room 4412, Las Vegas, NV. The meeting was also accessible via teleconference.

MEMBERS PRESENT:

Kathleen Baker, Washoe County District Attorney's Office
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
Nova Murray, Deputy Administrator, Division of Welfare and Supportive Services
Assemblyman Keith Pickard
Senator Michael Roberson
Joseph Sanford, Churchill County District Attorney's Association
Kim Surratt, Family Law Section of the State Bar of Nevada
Dawn Throne, Family Law Section of the State Bar of Nevada

MEMBERS ABSENT:

Senator Patricia Farley
Assemblyman Ozzie Fumo
Bridget E. Robb, Family Division of the Second Judicial District Court
Jim Shirley, Family Division of the Eleventh Judicial District Court
Lidia Stiglich, Justice, Nevada Supreme Court

STAFF PRESENT:

Joy Tomlinson, Administrative Assistant IV, Division of Welfare and Support Services
Rebecca Lindelow, Family Services Supervisor, DWSS
Kiersten Gallagher, Social Services Manager, DWSS
Amy Crowe, Senior Deputy Attorney General

GUESTS PRESENT – NORTH

None

GUESTS PRESENT – SOUTH

None

GUESTS PRESENT VIA TELEPHONE:

Michael McDonald
Jimmy Carr

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 p.m. Roll call was taken. Senator Roberson arrived during discussion for agenda item #9.

Agenda Item #2 – Public Comment

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

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

Ms. Surratt called for public comment over the telephone. Public Comment was heard from Jimmy Carr. Mr. Carr stated he wanted to bring his written comment for proposed change to the Nevada Child Support formula, which is relevant to agenda item #5 and 6. See Exhibit A. He stated his suggestion is derived from Exhibits 29-32 of Jane Venohr's Report. Mr. Carr stated his suggestion does not label any parent as high income. He also mentioned one benefit of this change is that there are no drastic increases or decreases of support at certain income levels. In addition, Mr. Carr added other benefits of not labeling are the simplification and it is one less thing for parents to argue about. Mr. Carr urged the committee to adopt a single formula and strike any reference to high income calculations. Lastly, he suggested the committee reinsert "household" into the deviation factor for relevant income of each parent.

Agenda Item #3 – Approval of Meeting Minutes (March 23, 2018)

Assemblyman Pickard motioned to approve the meeting minutes. Ms. Baker seconded motion. Motion passed unanimously.

Agenda Item #4 – Discussion and recommendations on the proposed offset on Gross Monthly Income by the child care and health care expenses from Judge Hoskin.

Ms. Surratt asked Judge Hoskin to present his updated language for gross monthly income. See Exhibit B. Judge Hoskin presented the updated language for gross monthly income and the changes he made. The committee discussed additional changes they would like to see in the language before it is adopted, listed below.

Assemblyman Pickard suggested adding "reasonable cause or apportionment/a portion thereof" to 13a and b. Judge Hoskin and Ms. Surratt stated they believe the language is fairly stated without adding that phrase.

Assemblyman Pickard motioned to adopt language, but wants to revisit one half of the reasonable cost of child care and health care versus the full amount, which will be based on the committee's math calculations. Ms. Baker seconded motion. Motion passed unanimously.

Ms. Surratt tabled this agenda item and suggested it be included on the next meeting's agenda for further discussion and possible action.

Agenda Item #5 – Discussion and recommendations on Mr. Sanford's proposal on High Income Calculations.

Ms. Surratt asked Mr. Sanford if he had a chance to create a high-income calculation for the committee. Mr. Sanford stated he did not have the calculation information prepared for this meeting. He referenced Mr. Carr's public comment, as it mirrors his suggestion. Mr. Sanford volunteered to run numbers and provide information to the committee at the next meeting.

Mr. Sanford had concerns regarding having a different income split based on the number of children. Ms. Baker stated she did not see this addressing the issue of self-support and would like to see a self-support provision in this calculation.

Ms. Surratt tabled this agenda item and suggested it be included on the next meeting's agenda for further discussion and possible action.

Agenda Item #6 – Discussion and recommendations on proposed percentages for average income calculations from Ms. Surratt.

Ms. Surratt tabled this agenda item and suggested it be included on the next meeting's agenda for further discussion and possible action.

Agenda Item #7 – Discussion and recommendations on allowing modifications of child support based on child development milestone and not just a change in income as proposed in public comment at the last hearing.

Ms. Surratt stated she had placed this item on the agenda based on Ms. McDonald's public comment. Mr. Pickard stated he has had many cases where they have touched on developmental milestones and provided some examples. Ms. Surratt stated that, at the early stages, children change quickly and parties may need a review sooner during a child's early years. Judge Hoskin mentioned change in income would happen at different milestones, as certain milestones (i.e. child care) are considered part of gross income.

Mr. Pickard offered to draft milestones and present at the next meeting. Ms. Surratt tabled this agenda item and suggested it be included on the next meeting's agenda for further discussion and possible action.

Agenda Item #8 – Discussion and recommendations on guidance for the courts regarding how to calculate a deviation for additional dependents in the home, where the payor does not have a court ordered support obligation.

Ms. Surratt tabled this agenda item and suggested it be included on the next meeting's agenda for further discussion and possible action.

Agenda Item #9 – Discussion and recommendations on proposed language from Mr. Pickard from Marshal Willick for a child support calculation for shared, split, and serial parenting.

Assemblyman Pickard stated he and Judge Hoskin were working on this agenda item but did not get anything printed out to present to the committee. He suggested using a per-child distribution of the support amount with the assumption that the calculation has been agreed upon.

- Once the calculation has been mapped out, the next step would be to determine the first parents assumed support obligation by determining the parent's gross monthly income (GMI). Then determine the number of children, calculate the support then divide the support by the number of children.
- Look at the second parent's obligation, determine their GMI, determine the number of children, calculate the support, divide the support by the number of children.
- Look at the custodial situation and apply those arrangements to each of the obligations.

Assemblyman Pickard suggested coming up with a simple way to calculate that pro se litigants can understand. Judge Hoskin brought up how the number on the front end are not matching with the number on the back end. He stated the committee should not propose inconsistencies in the calculations. Judge Hoskin stated he likes Assemblyman Pickard's idea but suggested a per-child order, which would make implementing Assemblyman Pickard's easier. Ms. Surratt stated the calculation is about how much money is available for the children and how to split the money up between those children.

Assemblyman Pickard suggested targeting the front end and create a language/calculation that is simple and easy to understand for everyone. Mr. Sanford stated he likes the ability for every judge throughout the state to have each of the children provided for. He stated he was concerned about how to make a per-child order that makes sense to the typical family. Assemblyman Pickard proposed the committee to stay with the percentage they are currently using and make additional adjustments in the next cycle of the committee. Ms. Murray suggested calculating support for the additional children by subtracting the support owed for the first child from the obligor's GMI.

Ms. Cliffe stated she was concerned how this calculation would work with the IV-D program as most of their clients are receiving aid from the State and there is little contact with them. Ms. Cliffe then explained to the committee how they deal with situations where there are multiple children from different parties involved.

Judge Hoskin and Ms. Cliffe volunteered to draft language and present the language at the next meeting.

Ms. Surratt tabled this agenda item and suggested it be included on the next meeting's agenda for further discussion and possible action.

Agenda Item #10 – Discussion and recommendations regarding proposed language from Ms. Baker and Judge Hoskin regarding emancipation of children and self-adjusting orders.

Ms. Baker presented her language to the committee regarding emancipations. See Exhibit C. She deferred to Judge Hoskin stating he had a good suggested change. The committee discussed changes they would like made to the language.

- Add "the parties may stipulate, or a motion must be filed with the court."

Ms. Baker volunteered to make edits to the language and provide the redraft at the next meeting. Ms. Surratt tabled this agenda item and suggested this item be included on the next meeting's agenda for further discussion and possible action.

Agenda Item #11 – Review and approve final language from Ms. Surratt for defining split, serial, and shared parenting.

Ms. Surratt explained the definitions she provided were taken from Wisconsin and used as a place holder for the committee to discuss. She stated she would redraft the definitions based on the discussions by the committee. Assemblyman Pickard stated if the committee adopted the calculation he is proposing, the labels would be irrelevant. Ms. Throne stated a per-child order would do away with deviations for other children. Assemblyman Pickard suggested keeping that deviation for cases when a special needs child is involved.

Ms. Surratt tabled this agenda item and suggested it be included on the next meeting's agenda for further discussion and possible action.

Agenda Item #12 – Discussion and recommendation regarding proposed language from Ms. Throne regarding self-determination and stipulated orders with disclosure of Gross Monthly Income for future modifications.

Ms. Throne stated she is unable to provide the revision for consideration. She volunteered to have the redraft ready to present at the next meeting.

Ms. Surratt tabled this agenda item and suggested it be included on the next meeting's agenda for further discussion and possible action.

Agenda Item #13 – Discuss and approve ideas for future agenda items.

Ms. Surratt asked the committee members if they had any other items they would like added to the agenda. Judge Hoskin suggested putting the finalized language into a different format that is closer to how the committee will submit its draft. Assemblyman Pickard stated the committee should be able to submit its draft to the Legislative Counsel Bureau which will format the draft accordingly. Ms. Surratt stated she would add an agenda item to look at the master document. Ms. Throne asked about adding an agenda item to look at the formula. Ms. Surratt stated it is included in agenda item #6.

Agenda Item #14 – Discuss and approve future meeting date(s).

Ms. Surratt proposed the committee meet again on April 20 and 27th. The committee agreed on meeting on April 27th. Ms. Surratt also stated she would look at adding another meeting date between the May 4th and May 25th meeting.

Agenda Item #15 – Public Comment

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

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

Ms. Surratt called for public comment over the telephone. Public Comment was heard from Jimmy Carr. Mr. Carr wanted to explain his suggested calculations for high-income earners. He stated those numbers were created to mirror Nevada's presumptive maximum for child support. Mr. Carr stated he would feel more comfortable keeping the brackets the same with all number of children. He does not suggest taking out the low-income information that is currently in the calculations.

Public Comment was heard from Michael McDonald. Mr. McDonald stated he is still working with other states and countries to create a report for the committee. He also suggested the committee discuss the Title IV-D provision. Mr. McDonald suggested working on parental involvement and changing child support percentages to a low flat rate per child. He stated this would stop parties from fighting over their children.

Agenda Item #16 – Adjournment

Ms. Surratt called for a motion for adjournment. Assemblyman Pickard motioned for adjournment. Mr. Sanford seconded motion. Motion passed unanimously. Meeting adjourned at 2:25 p.m.

EXHIBIT A

James Carr
Reno, Nevada 89521
February 3, 2018

Child Support Guidelines Committee
Division of Welfare and Supportive Services
1470 College Parkway
Carson City, Nevada 89706

Dear Child Support Committee Members,

SUBJECT: Improper awards of child support to a noncustodial parent

This letter is written to express my thoughts, concerns and suggestions regarding comments and proposals available on the Committee's webpage, such as "Proposed Revision to Nevada Child Support Guidelines," "Gradual Change Letter," and "Multiplication Factor Letter." Suggestions within these documents could result in a parent with primary physical custody of a child incurring a child support obligation for that child, and some of these comments ask the Committee to accomplish this by revising or ignoring standing Nevada policy on child custody. Child support awards of this nature could arise when applying the "Proposed Revision to Nevada Child Support Guidelines" formula or similar child support formulas in situations with a large difference in parental income. Of course, this type of child support award would harm the child by reducing the main household's ability to provide for the child – everything from extracurricular activities to college savings would be negatively affected. I offer reasons aside from the obvious harm to the child as to why the Committee should avoid drafting guidelines that improperly award child support to a noncustodial parent, and I offer suggestions on how the Committee may accomplish this.

Regardless of anyone's dissatisfaction with Nevada's current child custody definitions and policies, it is not within the scope of this Committee's responsibilities to revise any child custody policies or child support policies that remain codified in statute; misguided public requests for the Committee to make sweeping policy changes outside the area of child support should be weighed accordingly. It may be reasonable to develop a formula that tapers a noncustodial parent's child support obligation as the division of time share approaches the 60/40 percent point at which current Nevada policy would call it a situation of joint custody. However, it would be completely unreasonable, inherently harmful to children, and contrary to applicable statute to create a child support calculation scheme that would result in child support awards to a parent with visitation, particularly when the primary parent has physical custody of the child well in excess of 60 percent of the time.

Nevada's child custody policies found in NRS 125C and *Rivero v. Rivero* should be highly regarded in any child support guidelines the Committee issues. Child support guidelines should also be consistent with NRS 125B.030 by ensuring child support would only flow to a parent with physical custody. The fact that the Legislature made no changes to NRS 125B.030 when it established the Committee clearly supports the conclusion that the Legislature intended for the Committee to develop guidelines for how child support is calculated without redirecting the flow of child support to a parent with visitation. Furthermore, 2015 changes involving NRS 125C.003, which affirm *Rivero's* 146-day cutoff between primary and joint physical custody, clearly support the conclusion that the Legislature is content with the *Rivero* definition of custody. NRS 125B.030, taken together with NRS 125C and *Rivero*, effectively

precludes child support guidelines that would award child support to any parent having a time share of less than 146 days per year because that parent would have visitation – not physical custody. The committee should establish child support guidelines within these boundaries.

I urge the Committee to adopt child support guidelines similar to those proposed by Judge Robb because these proposed guidelines accomplish the goal of federal compliance without attempting to reinvent the wheel and without overstepping any boundaries regarding child custody. I am especially impressed with Judge Robb's proposal and its revisions because it still allows some judicial discretion and allows for deviations based on household income. Of course, some changes to the Judge's proposal may be necessary to encourage consistent child support orders, discourage frequent deviations and address calculations for situations of high-income* and joint physical custody, but it offers an excellent starting point. Alternatively, it may be reasonable for the Committee to consider other states' guidelines or the "Proposed Revision to Nevada Child Support Guidelines" if and only if the Committee ensures that any guidelines adopted by our state are tailored to fit – not revise – our state's current child custody policies and definitions.

Whichever path the Committee chooses, I hope the resulting guidelines will expressly disallow reverse child support – child support that flows to a noncustodial parent and has the effect of harming rather than helping the child. To avoid orders of reverse child support that do not represent the best interest of the child, the Committee should clearly state in the guidelines: Notwithstanding any formulary or other child support calculation or deviation therefrom, a court shall not order a parent having more than 219 days of child custody per year to pay child support for that child to the other parent.

Thank you for taking the time to consider my comments and suggestions for the Nevada Child Support Guidelines.

Sincerely,

James Carr

*The brackets proposed for high-income parents could result in unusual child support calculations. For example, a parent with gross monthly income of \$8332 per month would pay \$333 per month more in child support than a person with gross monthly income of \$8333. Similar awards could occur at other bracket thresholds, and changes may need to be made to avoid unfair calculations. I also suggest defining high-income and its brackets as multiples of the poverty threshold instead of using concrete dollar amounts; this would automatically adjust for inflation/cost of living.

EXHIBIT B

“Gross income.”

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

1. Salary and wages.
2. Interest and investment income.
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, 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.
13. The following shall be deducted prior to determining gross income for purposes of calculating child support:
- a. The reasonable costs of [*one-half of??*] child care for the subject child(ren).
 - b. The reasonable costs of [*one half of??*] health care for the subject child(ren).
- (b) 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.

EXHIBIT C

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, the only way to adjust the existing ongoing child support order is to file a motion 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.

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. If a motion to modify is not filed, 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.