

Meeting Minutes Draft

NEVADA CHILD SUPPORT GUIDELINES COMMITTEE PUBLIC MEETING TO REVIEW CHILD SUPPORT ENFORCEMENT GUIDELINES IN ACCORDANCE WITH NRS 425.620.

The public meeting to review child support enforcement guidelines was brought to order by committee chair, Kim Surratt at 9:01 am. on Friday, October 15, 2021. This meeting was video conferenced via Zoom Webinar.

MEMBERS PRESENT:

Kathleen Baker, Washoe County District Attorney's Office
Margot Chappel, Deputy Administrator, Division of Welfare and Supportive Services (DWSS)
Karen Cliffe, Clark County District Attorney's Office
Assemblywoman Lesley Cohen
Jack Fleeman, Family Law Section of the State Bar of Nevada
Senator Dallas Harris
Charles Hoskin, Presiding Judge of the 8th Judicial District Court
Senator Keith Pickard
Bridget E. Robb, Presiding Judge of the 2nd Judicial District Court
Lidia Stiglich, Justice, Nevada Supreme Court
Jeff Stroup Actuarial Economist, Division of Health Care and Financing and Policy
Kim Surratt, Family Law Section of the State Bar of Nevada

MEMBERS ABSENT:

Assemblywoman Mellissa Hardy
Joseph Sanford, Churchill County District Attorney's Association
Jim Shirley, Family Division of the Eleventh Judicial District Court

STAFF PRESENT:

Cathy Kaplan, Chief of Child Support Enforcement Program, DWSS
Kim Smalley, Social Services Program Specialist III, DWSS
Joy Tomlinson, Administrative Assistant IV, DWSS
Rebecca Lindelow, Family Services Supervisor, DWSS
Kiersten Gallagher, Social Services Manager, DWSS
Ryan Sunga, Deputy Attorney General

GUESTS PRESENT

Andrew Pastor
Giovanni Andrade
Jeanette Lacker
Jennifer Matabikwa-Walker
Tracy Donovan
Marshal Willick
Alec Raphael
Robert Gardner

Peggy Liou
Lynn Conant
Adam Hughes
Jeffrey Messmore

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 9:01 am. It was determined a quorum was present. Jeff Stroup filled in for Ellen Crecelius. Senator Harris joined the meeting at 9:08 am. Ms. Surratt reminded all committee members they must keep their cameras on for the duration of the meeting.

Agenda Item #2 – Public Comment

No public comment was given.

Agenda Item #3 – Approval of meeting minutes (September 17, 2021).

Ms. Surratt asked the minutes be updated to show that Justice Stiglich was present for the entire meeting and to reference her as Justice Stiglich. Judge Robb requested the minutes be updated to say either someone moved or made a motion.

Ms. Surratt asked for a motion to approve the meeting minutes. Justice Stiglich made a motion to approve the meeting minutes. Assemblywoman Cohen seconded the motion. Mr. Fleeman abstained as he was not present for the meeting. Motion passed unanimously.

Agenda Item #4 – a. Discussion and recommendations on maintenance of the hearing videos and minutes from the Commission in a public location for preserving the “intent” of the work of the commission.

Ms. Chappel stated the DWSS website was in the process of being updated back to 2017. The meeting minutes have been remediated for compliance with the ADA and should be posted next week. Within the next three weeks, the YouTube videos of each meeting recording will be made available on the website.

No vote was taken on this agenda item.

b. Public Comment

No public comment was given.

Agenda Item #5 – a. Discussion and recommendations on cleaning up language in the regulations on what is part of the “formula” versus what is an adjustment after the formula.

Ms. Surratt asked for Judge Hoskin and Senator Pickard to present the language they provided. Judge Hoskin stated that he moved NAC 425.130 into NAC 425.140, so 425.130 was part of the calculation before the calculation ended. Senator Pickard stated they added both the language “among other things” and then the last of those factors is “any other factor the court deems relevant

to the consideration.” This was to give the court discretion to do what is fair under the circumstances. Judge Hoskin stated the intent is to eliminate the existing NAC 425.130 and incorporate it into NAC 425.140.

Judge Robb asked if the language could be changed so the court does not need to consider these things and make specific findings. Judge Hoskin asked if Judge Robb was asking to add “if applicable” to the language. Judge Robb verified “if applicable” was her suggested change to the language.

Judge Hoskin suggested changing the language to findings are necessary on relevant pieces of those factors rather than completely applicable. Judge Robb and Senator Pickard stated they like the suggestion.

Senator Pickard and Judge Hoskin agreed to update the language and present at the next committee meeting.

Assemblywoman Cohen asked if the committee needed to address change of circumstances with daycare costs in this language? Judge Robb stated there was a workaround where the judges can split the childcare cost 50/50 or 30/70, whatever is appropriate. Ms. Baker stated that unless a specific dollar amount is listed, they would be unable to enforce the childcare or health insurance costs.

No vote was taken on this agenda item.

b. Public Comment

Public comment was heard from Marshall Willick. Mr. Willick stated the Academy Chapter ran an analysis of the announced complaints and problems that have been showing up in both ongoing appeals and recent decisions. They came up with six subject areas that they think would be helpful to the committee.

Ms. Surratt asked Mr. Willick to make sure his comments were specific to agenda item number five.

Mr. Willick stated the Academy Chapter took a different approach to NAC 425.130 and 425.140 by changing the order of the regulations and calculations, which they think will eliminate some of the confusion among the courts and lawyers. They would leave medical support and cost of childcare as separate items to be done after the formula. It would be an additional line in an order after the calculation is performed. Mr. Willick asked if there was someone on the committee he could submit the documents to.

Ms. Surratt asked Mr. Willick to submit his suggestions to Senator Pickard and Judge Hoskin to consider for their next proposal of the language.

Agenda Item #6 – a. Discussion and recommendations on adding language to NAC 425.025(1) on “Gross Income” to clarify self-employed income is “after deduction of all legitimate business expenses, but without deduction for personal income taxes, contributions for retirement benefits, contributions to a pension or for any other personal expenses.

Ms. Surratt asked for Ms. Baker's input on this agenda item. Ms. Baker stated this topic has become an issue in several of her hearings specifically from custodial parents, who do not understand the concept of business expenses. She just wanted to see if the committee wanted to clarify the language for lay people.

Senator Pickard stated he had the same issue with a judge who did not understand how the tax code works. He stated he agreed that this language needs to be clarified. Ms. Chappel stated DWSS is very supportive of this language change. Ms. Cliffe agreed that the clarification was needed. She asked if adding this language would create more litigation.

Senator Pickard made a motion to adopt the language as written. Ms. Surratt read the language, so the record was clear. The new language would read, "after deduction of all legitimate business expenses, but without deduction for personal income taxes, contributions for retirement benefits, contributions to a pension or for any other personal expenses." Mr. Fleeman seconded the motion to adopt the language. Motion passed unanimously.

b. Public Comment

No public comment was given.

Agenda Item #7 – a. Discussion and recommendations/clarification of NAC 425.025(1)(m), the inclusion of alimony in "gross income" in the regulations versus NAC 425.025(2) that does not exclude or deduct alimony paid from the obligor's income.

No discussion or action was taken on this agenda item.

b. Public Comment

Public comment was heard from Marshall Willick. Mr. Willick stated the alimony problem is a bit more nuanced than most litigators and even some judges have seen. Alimony and child support could be paid by the same obligor to the same obligee or could be in opposite directions and could even include payments from third parties for either child support or alimony flowing either in or out to or from either an obligee or an obligor. We believe that the best approach would be to specify the order of calculation, which should regularize and take care of the nuances of the variations in the fact patterns. In practice, the first mortgage approach, in other words, income not including funds already directed elsewhere by pre-existing court order, appears to be used in most courts and is probably the fairest approach. He asked who he could provide the suggested phrasing the Academy Chapter came up with.

Ms. Surratt asked Mr. Willick to provide his suggested phrasing to herself and Senator Pickard.

Agenda Item #8 – a. Discussion and recommendations on NAC 425.125(1) to determine if the "without good cause" language needs to be modified to include individuals who are unemployed or underemployed because their household members make sufficient money for the person to not work.

Ms. Surratt asked for Ms. Baker's input on this agenda item. Ms. Baker stated there has been an issue with the obligor being absent from court and the child support agency having no information

verifying whether the obligor is working or if they have any work history. She asked if any of the committee members knew how to address this issue.

Senator Pickard stated he thought this agenda item was to address the language addressing good cause. He also stated Ms. Baker's issue sounds like an evidentiary standard that is required. You need to make specific findings about that individual and that may require empowering the court to take the individual into custody to compel that information be disgorged.

Ms. Cliffe stated Clark County very rarely imputes income, especially with the new NAC. If Clark can't find any income historically or at present, they use the low-income table and that support amount is generally set at \$84/\$85, depending on what chart they're looking at. If income is zero, no income is imputed. If income is discovered later then that would be a modification, because obviously that is a change of circumstance.

Ms. Surratt stated she would be taking this agenda item off the next agenda unless language is proposed.

No vote was taken on this agenda item.

b. Public Comment

Public comment was given by Marshall Willick. Mr. Willick stated in the regular family courts, there is indeed confusion, despite the comments at the last meeting from a couple commission members that there shouldn't be, about income imputation and its relation to remarriage of an obligor with reliance on a new spouse's income. We believe this could be resolved by taking the first subsection of 425.125 adding it to the end of 425.120, with guidance that imputing income refers to the obligor parent personally. The without good cause limiter for underemployment should be eliminated entirely because an obligor may have a very good faith reason, such as, irrelevance of personal earnings based on remarriage, but still have income imputed appropriately under the regulations. Mr. Willick asked who he should provide the suggested rephrasing to.

Ms. Surratt asked Mr. Willick to provide the language to her.

Agenda Item #9 – a. Discussion and recommendations on NAC 425.100(2) and if “basic needs of a child” should be defined.

No discussion or action was taken on this agenda item.

b. Public Comment

Public comment was given by Marshall Willick. Mr. Willick stated there's an ongoing problem with inconsistent terminology, which leads to some uncertainty as to what is and is not being assumed to reference in various subsections, including the words, base, basic needs, schedule, and guidelines. He suggested uniform references and cross references. He believes this is easily resolved by specifying that adjustments are to the guidelines schedule and using the reference guideline schedule in all places where the schedule, as opposed to the entire regulatory scheme, is the intended reference.

Ms. Surratt asked Mr. Willick provide the redline document to her for the next meeting.

Agenda Item #10 – a. Discussion and recommendations/clarification of NAC 425.100(3) and the language “established pursuant to the guidelines” and if that language means with or without “adjustments” per the guidelines. Discuss edits to language to make this clear.

Ms. Baker stated this topic came up at a meeting with member of the bar. Senator Pickard stated this was addressed by Mr. Willick in his public comment about being clear with terminology. He stated he looks forward to seeing AAML’s suggested changes.

No vote was taken on this agenda item.

b. Public Comment

Public comment was given by Marshal Willick. Mr. Willick stated Senator Pickard and Ms. Surratt are correct. That is exactly what they were hoping to address by the terminology changes and the order of calculation.

Agenda Item #11 – a. Discussion and recommendations on the language in NAC 425.115(3) for joint physical custody and the recent legislative proposal to change the language to one-half of the difference versus the full difference in child support values.

Ms. Surratt asked Senator Pickard to address his suggestion to change this language. Senator Pickard stated he is increasingly running across this in his practice, where there is a disparity that isn't huge; and yet one person is asked to shoulder the majority. He wanted to reopen the discussion, because dividing it in half is a fairer approach.

Ms. Surratt stated she agrees this approach is fairer. Judge Robb stated she has received comment on this issue, and she stated she agrees this is a fairer approach.

Ms. Surratt asked if there was a motion on this agenda item. Senator Pickard made a motion to alter the language of NAC 425.115(3) and adopt the recent legislative proposal that would modify the language so that the obligor pays one half of the difference to the obligee. Ms. Surratt clarified for the record that Senator Pickard was referring to the item that is specific to this agenda item. Judge Robb seconded the motion.

Judge Hoskin stated his only concern is that the committee would be opening the door for modifications once this legislation kicks in. Senator Pickard stated the committee should add language to suggest that this change on its own does not constitute a significant change for purposes of modification. Judge Hoskin stated he went back and looked at NAC 425.170(3) and the committee already dealt with this potential. He withdrew his comment.

Ms. Cliffe asked if there was any appetite to run the math on various scenarios to see what the new calculation would look like. Senator Pickard withdrew his motion. Judge Robb withdrew her second to Senator Pickard’s motion.

Senator Pickard asked if this change would require a change to the calculator that is available online. Ms. Chappel stated the NVKids system would do the calculation and the math.

Ms. Cliffe volunteered to run the samples and present to the committee at the next meeting.

A vote was taken on this agenda item but withdrawn.

b. Public Comment

No public comment was given.

Agenda Item #12 – a. Discussion and recommendations/clarification on the low-income schedule provided in NAC 425.145 and discussion of use of the table as a “minimum” child support obligation.

No discussion or action was taken on this agenda item.

b. Public Comment

Public comment was given by Marshall Willick. Mr. Willick stated he believed this is one of the places that the reordering will be useful. Essentially, they're suggesting it may be fruitful to open the regulations with escape clauses for non-application of the guidelines schedule.

Ms. Surratt stated she was going to remove this item from the next agenda.

Agenda Item #13 – a. Discussion and recommendations on NAC 425.150(1) to determine if the old deviation factor of “amount of time the child spends with each parent” should be reinstated.

Ms. Surratt asked for Ms. Baker’s input on this agenda item. Ms. Baker stated if the parent is spending a significant amount of time with the child but not enough to make it joint physical custody, that should be something considered as an adjustment factor.

Mr. Fleeman stated this is adding a layer of ambiguity as to what the court should do, and he would be opposed to this type of language as it is very confusing. Senator Pickard agreed with Mr. Fleeman. Ms. Surratt stated this issue is the difference between the private bar versus the District Attorney. Judge Robb stated she is very resistant to moving that goalpost. Ms. Cliffe stated Clark County very rarely used this deviation factor when it was in existence, and this is not something Clark is requesting be added to the NAC.

Ms. Baker asked that the minutes reflect that time spent is no longer considered an adjustment factor under the NAC.

b. Public Comment

Public comment was given by Marshall Willick. Mr. Willick suggested reading the 1992 report. Discussion of this statutory factor was the reverse of what the committee is discussing here. Not so much a decrease because of increased time spent with the child, but the possibility of an increase in child support where you have a non-custodial parent who spends no time whatsoever with the child because the existing guidelines provided a support amount which already implied a certain minimum level of support of the child while in the non-custodial parent’s custody.

Agenda Item #14 – a. Discussion and recommendations on NAC 425.150(d) to determine if “public assistance” should be defined and if so how to define it.

Ms. Cliffe stated that she and Ms. Baker were tasked with reviewing both NAC 425.150 and 425.110. She stated they provided revision for both these sections.

Ms. Cliffe provided the changes to NAC 425.110(d). Ms. Surratt read the suggested language.

425.110(d): Contain a certification by the obligee that he or she is not currently receiving Temporary Assistance for Needy Families/cash assistance and has not applied for Temporary Assistance for Needy Families/cash assistance;

Ms. Surratt stated she was concerned with the use of the slash as she thought LCB would have an issue with it. Senator Pickard agreed with Ms. Surratt and stated slashes don't lead to clarity when interpreting.

Ms. Cliffe provided the changes to NAC 425.150. She stated public assistance was removed out of the Temporary Assistance for Needy Families. The State suggested leaving the section as is and Ms. Cliffe stated she agreed with that suggestion because there may be instances that the respondent is receiving food stamps or Medicaid. Perhaps the court may want to use that as an adjustment factor downwards.

Ms. Baker suggested referring to the definition of public assistance in NRS 422A.065. Ms. Cliffe and Ms. Chappel agreed with Ms. Baker's suggestion.

Ms. Surratt stated she would leave this item on the next agenda so the committee could see the changes discussed before voting on the language. Ms. Cliffe stated she would make the changes discussed at the meeting.

No vote was taken on this agenda item.

b. Public Comment

No public comment was given.

Agenda Item #15 – a. Discussion and recommendations on NAC 425.150(1)(e) and whether it should be expanded to cover the cost of the parent to travel for visitation.

Ms. Surratt asked for Ms. Baker's input on this agenda item. Ms. Baker stated this issue has come up because small children are not necessarily able to go and visit a parent who lives in another state.

Judge Hoskin stated judicial officers have the ability to consider the cost of transportation in the totality of what the court is doing for adjustments. He stated if the courts get too specific on those issues, then they may lose the ability to have discretion.

Ms. Baker stated the adjustment factor is the cost of transportation of the child to and from visitation, and it sounds like it limits it to that cost and whether or not to say the cost of transportation to facilitate visitation. Judge Hoskin suggested looking to the catch-all in NAC 425.150(1)(g), which is where he would put the transportation for the parent in those cases.

Assemblywoman Cohen asked if the language could be changed to state, "to the cost of transportation to and from visitation" and take out "of the child." Judge Hoskin argued that he has discretion with the language now and there is no need to change the language.

Ms. Baker stated all of the adjustment factors are discretionary, because it says may be adjusted. She stated that even if the committee were to make any changes to the cost of transportation, NAC 425.150(1)(d) or (e) would still be discretionary for the court to determine what that should be.

No vote was taken on this agenda item.

b. Public Comment

No public comment was given.

Agenda Item #16 – a. Discussion and recommendations on NAC 425.150(1)(g) to determine if the “other necessary expenses” should be further defined to discuss what is not intended to be covered, i.e. tuition, extracurricular activities, life insurance, etc.

No discussion or action was taken on this agenda item.

b. Public Comment

No public comment was given.

Agenda Item #17 – a. Discussion and recommendations on NAC 425.155 to include discussion of individuals incarcerated for the months pending resolution of charges and if the court should set an amount to be paid upon release at the current low-income schedule amount.

Ms. Surratt asked for Ms. Baker’s input on this agenda item. Ms. Baker stated she has found a number of parties incarcerated and are pending arraignment or their trial or sentencing. They are often there for a significant period of time. She asked if we don't know that they're going to be there for 180 days, and they could actually be there for a year or longer, do we need to have the finding that they must be incarcerated for at least 180 days before we can use this provision of the NAC.

Ms. Surratt asked Ms. Baker if she was saying the language is not broad enough to capture people that are being held before there is an actual conviction. Ms. Baker stated perhaps Ms. Cliffe’s approach of looking at their ability to pay maybe the answer to it. Ms. Chappel stated setting a minimum, which includes zero dollars in the income rate, should resolve this issue. Ms. Surratt asked Ms. Baker if she agreed with Ms. Chappel that no additional changes are needed in this section. Ms. Baker stated she agrees with Ms. Chappel. Ms. Surratt stated she would remove this item from the next agenda.

No vote was taken on this agenda item.

b. Public Comment

No public comment was given.

Agenda Item #18 – Discuss and approve ideas for future agenda items.

Ms. Surratt asked if the committee had any agenda items they wanted to add. No new items were provided.

Agenda Item #19 – Public Comment

Public comment was given by Andrew Pastor. Mr. Pastor discussed NAC 425.150(1)(f), the phrase that says, “so long as the adjustment does not exceed the total obligation of the other party.” He stated that the term “other party” is defined in NAC 425.115(2) to be the obligor. If one party has primary physical custody, however, in 425.115(3), the other party is defined as the person receiving the money. There seems to be some disconnect between 425.115 and 425.150, with regard to how the other party is defined. Furthermore, in the case of a high-income earner, where one party has a much higher income than the other, it doesn't really make any sense to limit the adjustment that could be made to a high-income earner's obligation, if the other party is the party receiving the money.

Agenda Item #20 – Adjournment.

Ms. Surratt requested a motion to adjourn. Judge Hoskin made a motion to adjourn the meeting. Judge Robb seconded the motion. Meeting adjourned at 11:28am.