

**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 Kim Surratt, representing the Family Law Section of the State Bar of Nevada, at 1:01 p.m. on Friday, October 20, 2017. This meeting was video-conferenced between the Nevada State Legislative Building, 401 South Carson Street, Hearing Room 2135, Carson City, NV 89701 and Grant Sawyer State Office Building, 555 East Washington Avenue, Hearing Room 4412, Las Vegas, NV 89101.

**MEMBERS PRESENT:**

Kathleen Baker, Washoe County District Attorney's Office  
Karen Cliffe, Clark County District Attorney's Office  
Ellen Crecelius, Deputy Director, Department of Health and Human Services  
Assemblyman Ozzie Fumo  
Charles Hoskin, Family Division of the Eighth Judicial District Court  
Nova Murray, Deputy Administrator, Division of Welfare and Supportive Services  
Assemblyman Keith Pickard  
Bridget E. Robb, Family Division of the Second Judicial District Court  
Joseph Sanford, Churchill County District Attorney's Association  
Jim Shirley, Family Division of the Eleventh Judicial District Court  
Kim Surratt, Family Law Section of the State Bar of Nevada  
Dawn Throne, Family Law Section of the State Bar of Nevada

**MEMBERS NOT PRESENT:**

Lidia Stiglich, Justice, Nevada Supreme Court  
Senator Patricia Farley  
Senator Michael Roberson

**LEGAL REPRESENTATION:**

Linda Anderson, Deputy Attorney General

**GUESTS PRESENT – NORTH**

Jenelle Gimlin, Chief of Child Support Enforcement, Division of Welfare and Supportive Services (DWSS)  
David Castagnola, Social Service Program Specialist III, DWSS  
Stephanie Lee, Administrative Assistant IV, DWSS  
Joy Tomlinson, Administrative Assistant III, DWSS  
Peter Jaquette, Attorney

**GUESTS PRESENT – SOUTH**

Rebecca Lindelow, Family Services Supervisor, DWSS  
Kiersten Gallagher, Social Services Manager, DWSS

### **Agenda Item #1 – Call to Order and Roll Call**

Kim Surratt called the meeting to order at 1:01pm.

Roll call was taken.

### **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 via teleconference. Public comment was heard from Melissa Porter. She is concerned with the child support calculation regarding 50/50 custody arrangement. She stated she is aware of a case pending in the Supreme Court regarding this issue. She is concerned the child support offices and private attorneys only require the non-custodial parent's employer to complete the financial information, employment history, salary, etc. This gives the custodial parent ability to lie about their financials. Ms. Porter asked what protections the non-custodial parents have against the custodial parent and the possibility of false income being provided. Another concern of Ms. Porter's is how retroactive modification isn't the same across the board and considered upon the actual request for modification.

### **Agenda Item #3 – Approval of Meeting Minutes (September 26, 2017)**

Assemblyman Pickard moved to adopt the amended minutes that were presented at the meeting. Judge Robb seconded the motion. Motion passed unanimously.

### **Agenda Item #4 – Discussion of the recommendations detailed in Exhibit 44 of the 2015 written report of Jane Venohr, Ph.D. to the State of Nevada Child Support Enforcement Program entitled, “Review of the Nevada Child Support Guidelines” (hereinafter “Exhibit 44”).**

No discussion on Agenda Item #4

### **Agenda Item #4a – Discussion and recommendations as to what formula to use for child support after elimination of the presumptive maximum amounts (pursuant items 2,3, and 5 of Exhibit 44 and the Action Items from the September 26, 2017 meeting).**

Ms. Surratt referred back to the last meeting where the committee made a decision to eliminate caps. In addition to eliminating caps, a formula must be created for replacement. Wisconsin's formula was reviewed and considered to help replace and/or adjust Nevada's current formula(s). Judge Hoskin believes this analysis would be better served if a determination is made as to whether to utilize the percentages currently in place and move forward from there. Ms. Surratt referenced item number three on page 84 of Jane Venohr's report which states, “determine whether the base guidelines percentages/formula should be changed. The how is to review the economic evidence on child-rearing expenditures available in Jane Venohr's report and new

studies of child-rearing expenditures as they become available.” Ms. Surratt referenced Exhibit 6: Major Factors and Assumptions underlying State Child Support Guidelines on page eleven of Ms. Venohr’s report. The report includes a comparison of other states to Nevada regarding child support rearing costs, economic data on the cost of raising children, and what the guideline models are. Equality is not seen between the brackets, partially due to child-rearing costs and where states are getting their numbers. Assemblyman Pickard does not believe the information is detailed enough in terms of the economic data and wants to know where percentages would start. As the income goes up, there would be a substantial increase to the amount of average child support payments. The committee must determine a percentage that makes sense without having to use the brackets. Assemblyman Pickard also stated the other option is to follow other state’s models and take gross income with consideration of taxes. Judge Robb is concerned if taxes are removed from the gross income, the payor could maximize their taxes with the understanding of getting a refund at the end of the year. Ms. Surratt agrees with Judge Robb but believes the percentage cannot be a flat 18%. Ms. Cliffe shared Wisconsin’s statute Department of Children and Families (DCF) 150.03 and verified their state’s formula is similar to Nevada’s. They do calculate based on gross monthly income. In Wisconsin’s model, the maximum percentage of child support for one child is 17%, two children are 25%, and three children are 29% which is exactly like Nevada with the exception of the self-support reserve. That is a deviation factor for Wisconsin. One of Wisconsin’s statutes “Deviation From Standard Factors” (767.511, 1m, bp) states the needs of each party in order to support himself or herself at a level equal to or greater, Ms. Cliffe wanted to clarify Wisconsin does take the gross income but the deviation factors are noted in section 1m under 767.511 in Wisconsin’s statutes.

Mr. Sanford thinks the initial question is going to be does the committee believe 18% is fair or unfair. The committee’s discussion in previous meetings has determined 18% is unfair at the higher levels. However, he wanted to know if 18% will change for everyone. Ms. Surratt reviewed the below chart and broke down the percentage of income based off the presumptive maximum amount. The chart (minus the percentages) can be located on page 38 of Jane Venohr’s report Exhibit 26.

| Exhibit 26: Presumptive Maximums (effective July 1, 2016 - June 30, 2017) |               |                            |             |
|---------------------------------------------------------------------------|---------------|----------------------------|-------------|
| Gross Income is at Least                                                  | But Less Than | Presumptive Maximum Amount | % of income |
| \$0                                                                       | \$4,235       | \$681 per child            | 16%         |
| \$4,235                                                                   | \$6,351       | \$749 per child            | 18%-12%     |
| \$6,351                                                                   | \$8,467       | \$820 per child            | 13% - 10%   |
| \$8,467                                                                   | \$10,585      | \$886 per child            | 10% - 9%    |
| \$10,585                                                                  | \$12,701      | \$955 per child            | 9% - 7%     |

|          |          |                   |         |
|----------|----------|-------------------|---------|
| \$12,701 | \$14,816 | \$1,022 per child | 8% - 7% |
| \$14,816 | No Limit | \$1,092 per child | 8% - X% |

Ms. Cliffe referred back to Wisconsin’s statutes. DCF 150.04 “Determining the child support obligation in special circumstances” Subsection 5: “Determining the Child Support Obligation of a High-Income Payer”

(c) The court may apply the following percentages to the portion of a payer’s monthly income available for child support that is greater than or equal to \$7,000 and less than or equal to \$12,500:

1. 14% for one child
2. 20% for 2 children
3. 23% for 3 children
4. 25% for 4 children
5. 27% for 5 or more children

Ms. Surratt indicated most states create a high income floor and asked what percentage the committee wants to start at. Child rearing costs, economic factors, etc. need to be considered. She likes how Wisconsin’s model handles high-income, however, believes a floor needs to be created and anything above the floor income can be determined by a judge. Judge Hoskin said the committee needs to start determining a specific number for low-income parents and what need is required for the child first, then, formulate the number to see how it compares to a high-income. He believes the cost of rearing children in Nevada needs to be determined before a number can be decided. Ms. Crecelius stated the USDA amounts could be used and adjusted to the cost of living in Nevada. In addition, she will see if it is possible to convert the national analysis into something applicable to Nevada. Assemblyman Pickard and Judge Robb liked the approach Ms. Crecelius suggested. Judge Robb established the bulk of clientele are low-income families. She sees litigants on the low-end and believes the committee needs to spend their energy on low-income parents first. Once the lower income amounts are determined, then the committee should work on the higher income payors because they are the exception, not the rule.

Ms. Surratt referred back to Wisconsin’s chart:

**Chapter DCF 150**  
**APPENDIX C**  
**Child Support Obligation of Low-Income Payers**  
**at 75% to 150% of the 2017 Federal Poverty Guidelines**

| 1 Person with Monthly Income Up To: | One Child |                      | Two Children |                      | Three Children |                      | Four Children |                      | Five Children |                      |
|-------------------------------------|-----------|----------------------|--------------|----------------------|----------------|----------------------|---------------|----------------------|---------------|----------------------|
|                                     | Percent   | Child Support Amount | Percent      | Child Support Amount | Percent        | Child Support Amount | Percent       | Child Support Amount | Percent       | Child Support Amount |
| \$754.00                            | 11.22%    | \$85                 | 16.50%       | \$124                | 19.14%         | \$144                | 20.46%        | \$154                | 22.44%        | \$169                |
| \$780.00                            | 11.43%    | \$89                 | 16.80%       | \$131                | 19.49%         | \$152                | 20.84%        | \$163                | 22.85%        | \$178                |
| \$806.00                            | 11.63%    | \$94                 | 17.11%       | \$138                | 19.84%         | \$160                | 21.21%        | \$171                | 23.27%        | \$188                |
| \$833.00                            | 11.84%    | \$99                 | 17.41%       | \$145                | 20.20%         | \$168                | 21.59%        | \$180                | 23.68%        | \$197                |
| \$860.00                            | 12.05%    | \$104                | 17.71%       | \$152                | 20.55%         | \$177                | 21.97%        | \$189                | 24.09%        | \$207                |
| \$887.00                            | 12.25%    | \$109                | 18.02%       | \$160                | 20.90%         | \$185                | 22.34%        | \$198                | 24.50%        | \$217                |
| \$914.00                            | 12.46%    | \$114                | 18.32%       | \$167                | 21.25%         | \$194                | 22.72%        | \$208                | 24.92%        | \$228                |
| \$941.00                            | 12.66%    | \$119                | 18.63%       | \$175                | 21.61%         | \$203                | 23.10%        | \$217                | 25.33%        | \$238                |
| \$968.00                            | 12.87%    | \$125                | 18.93%       | \$183                | 21.96%         | \$213                | 23.47%        | \$227                | 25.74%        | \$249                |
| \$995.00                            | 13.08%    | \$130                | 19.23%       | \$191                | 22.31%         | \$222                | 23.85%        | \$237                | 26.16%        | \$260                |
| \$1,022.00                          | 13.28%    | \$136                | 19.54%       | \$200                | 22.66%         | \$232                | 24.22%        | \$248                | 26.57%        | \$272                |
| \$1,049.00                          | 13.49%    | \$142                | 19.84%       | \$208                | 23.01%         | \$241                | 24.60%        | \$258                | 26.98%        | \$283                |
| \$1,076.00                          | 13.70%    | \$147                | 20.14%       | \$217                | 23.37%         | \$251                | 24.98%        | \$269                | 27.39%        | \$295                |
| \$1,103.00                          | 13.90%    | \$153                | 20.45%       | \$226                | 23.72%         | \$262                | 25.35%        | \$280                | 27.81%        | \$307                |
| \$1,130.00                          | 14.11%    | \$159                | 20.75%       | \$234                | 24.07%         | \$272                | 25.73%        | \$291                | 28.22%        | \$319                |
| \$1,157.00                          | 14.31%    | \$166                | 21.05%       | \$244                | 24.42%         | \$283                | 26.11%        | \$302                | 28.63%        | \$331                |
| \$1,184.00                          | 14.52%    | \$172                | 21.36%       | \$253                | 24.77%         | \$293                | 26.48%        | \$314                | 29.05%        | \$344                |
| \$1,211.00                          | 14.73%    | \$178                | 21.66%       | \$262                | 25.13%         | \$304                | 26.86%        | \$325                | 29.46%        | \$357                |
| \$1,238.00                          | 14.93%    | \$185                | 21.96%       | \$272                | 25.48%         | \$315                | 27.24%        | \$337                | 29.87%        | \$370                |
| \$1,265.00                          | 15.14%    | \$192                | 22.27%       | \$282                | 25.83%         | \$327                | 27.61%        | \$349                | 30.28%        | \$383                |
| \$1,292.00                          | 15.35%    | \$198                | 22.57%       | \$292                | 26.18%         | \$338                | 27.99%        | \$362                | 30.70%        | \$397                |
| \$1,319.00                          | 15.55%    | \$205                | 22.88%       | \$302                | 26.54%         | \$350                | 28.37%        | \$374                | 31.11%        | \$410                |
| \$1,346.00                          | 15.76%    | \$212                | 23.18%       | \$312                | 26.89%         | \$362                | 28.74%        | \$387                | 31.52%        | \$424                |
| \$1,373.00                          | 15.97%    | \$219                | 23.48%       | \$322                | 27.24%         | \$374                | 29.12%        | \$400                | 31.94%        | \$438                |
| \$1,400.00                          | 16.17%    | \$226                | 23.79%       | \$333                | 27.59%         | \$386                | 29.49%        | \$413                | 32.35%        | \$453                |
| \$1,427.00                          | 16.38%    | \$234                | 24.09%       | \$344                | 27.94%         | \$399                | 29.87%        | \$426                | 32.76%        | \$468                |
| \$1,454.00                          | 16.58%    | \$241                | 24.39%       | \$355                | 28.30%         | \$411                | 30.25%        | \$440                | 33.17%        | \$482                |
| \$1,481.00                          | 16.79%    | \$249                | 24.70%       | \$366                | 28.65%         | \$424                | 30.62%        | \$454                | 33.59%        | \$497                |
| \$1,508.00                          | 17.00%    | \$256                | 25.00%       | \$377                | 29.00%         | \$437                | 31.00%        | \$467                | 34.00%        | \$513                |

Effective March 1, 2017

Appendix C will be adjusted based on the 2018 federal poverty guidelines effective March 1, 2018.

Note: DCF 150.04 (4) (b) provides:

The department shall revise the schedule in Appendix C every year based on changes in the federal poverty guidelines since the schedule was last revised. The department shall publish revisions to the schedule in the Wisconsin Administrative Register.

She believes Assemblyman Pickard’s comment is the most relevant. The self-reserve should be taken out first before the math calculation is done. This method is what gets you the reasonable amounts on the low income level. The chart starts out at 11.22% and goes to 17%. Assemblyman Pickard suggested the committee look at the self-support reserve based on the federal poverty level and cost of living in Nevada. At the same time, determining what adjustment need to be made to child expenses. He believes these two data points would be very helpful to start the calculation discussion.

**Agenda Item #4b – Discussion and recommendations as to how to set a minimum order with a self-support reserve/low-income adjustment (pursuant to item 7 of Exhibit 44 and the Action Items from September 26, 2017 meeting).**  
 Ms. Surratt referenced Exhibit 6 of Jane Venohr’s report.

| Exhibit 6: Major Factors and Assumptions underlying State Child Support Guidelines<br>(Nevada Child Support Guidelines Compared to Other States) |                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                  | Nevada                                                        | Other States                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Guidelines models                                                                                                                                | Flat percentage of obligated parent's gross income            | <ul style="list-style-type: none"> <li>42 states use a model that factors in both parents' incomes.</li> <li>3 percentage-of-obligor income states rely on smaller percentages at higher incomes, which is consistent with expenditures patterns.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Economic data on the cost of raising children                                                                                                    | Based on WI's percentages, which are from van der Gaag (1981) | <ul style="list-style-type: none"> <li>Varies. Most states rely on more recent data.</li> <li>Most states update to the price level of the year of the update.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Other assumptions about child-rearing costs                                                                                                      | Unclear                                                       | <ul style="list-style-type: none"> <li>Most states recognize that the percentage of income devoted to child-rearing expenditures declines as income increases. For gross-income states, the declining percentages are exacerbated by progressive federal tax rates.</li> <li>Highly variable child-rearing expenses (<i>i.e.</i>, child care expenses, the cost of the child's health insurance premium, unreimbursed medical expenses, and extraordinary education expenses) are not usually included in the basic schedule/formula, but the actual amount of the expense is prorated between the parents and added or subtracted to the base award amount, depending on which parent incurs the expense.</li> <li>Some states with exceptionally high or low incomes or a high or low cost of living adjust the measurement of child-rearing expenditures, which are based on national data, to reflect that state's income or costs.</li> </ul> |
| Presumptive maximum for higher incomes                                                                                                           | Updated annually                                              | <ul style="list-style-type: none"> <li>Most states provide that the highest amount on their schedule or percentage formula is a "floor" for very high incomes, and court discretion above that amount.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Minimum order                                                                                                                                    | \$100 per month per child                                     | <ul style="list-style-type: none"> <li>\$50 per month per order is typical.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Low-income adjustment or self-support reserve                                                                                                    | None                                                          | <ul style="list-style-type: none"> <li>Most states set the guidelines amount for obligated parents with poverty and/or near-poverty income below what it costs to raise a child.</li> <li>The most common low-income adjustment is a self-support reserve that relates to the federal poverty guidelines level for one person.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Income available for support                                                                                                                     | Gross income                                                  | <ul style="list-style-type: none"> <li>Use of gross income requires tax assumptions when translating some measurements of child-rearing expenditures to a gross-income basis.</li> <li>For the conversion, most states use the prevailing federal and state income tax rate and FICA.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Age of the child                                                                                                                                 | Deviation factor                                              | <ul style="list-style-type: none"> <li>A few states (<i>e.g.</i>, Kansas, and Washington) vary the guidelines amount by the age of the child.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Shared parenting responsibility or expense                                                                                                       | Deviation factor                                              | <ul style="list-style-type: none"> <li>Most states provide a presumptive formulaic adjustment for shared physical custody.</li> <li>Some adjustments are triggered by as little as a few overnights per year.</li> <li>A few states incorporate a standard amount of visitation into their core child support schedules.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

The committee discussed whether to add factors to the formula or allow them to be deviation factors. For example, child care, medical expenses, etc.

Judge Hoskin summed up the two positions, of whether or not the self-support reserve should be a deviation, stating the self-support reserve will only come about on the low income level. He believes the committee can come up with a formula for lower income levels that would take into consideration the self-support reserve. Also, the formula would need to allow the IV-D Program to function properly and put orders in place to be enforced. He stated the debate is not about whether self-support should be a deviation or non-deviation, but rather that it is a small portion that will fall under self-support.

Judge Robb agreed with Judge Hoskin. However, believes the debate is a semantics debate. She referred back to the Wisconsin's Appendix C (see example on page 5) and asked how the schedule was accomplished. Ms. Crecelius answered they are adjusted yearly based on the Federal poverty guidelines. The chart is based on the number of children and can meet the need of the children and the individuals who are paying child support. Ms. Cliffe stated the Wisconsin chart is adjusted yearly. The chart is provided in the same child support guidelines along with deviations. Agrees the chart is very helpful. Judge Robb suggested using the chart and potentially changing the numbers to better suit Nevada.

Ms. Surratt referred back to the Wisconsin chart because it shows the self-supporting reserve amount she was working towards. It looks like it is already contemplated at the low income level. Mr. Sanford is concerned the committee went back to the bracket problem of high income level individuals. Starting at 100 percent of the Federal poverty guidelines would encapsulate a large number of people who will be in the \$0 category with a desire not to make exactly 100 percent of the poverty level. Ms. Surratt understood the chart differently. The chart shows a monthly income up to \$754 which is 75 percent of the federal poverty level. There is no \$0. It starts out at \$85 for one child. Mr. Sanford said one of the states from last meeting's testimonies calculated the way he previously stated. Ms. Surratt reminded the committee the chart only goes up to \$1,508 per month. DCF 150.03 from Wisconsin states if the payor's monthly income available for child support is below the lowest income level in appendix C (see chart above) the court may set an order at an amount appropriate for the payor's total economic circumstances. This amount may be lower than the lowest support amount in appendix C. Assemblyman Pickard likes this model because it focuses on the small window of the low income payors at 75% - 150% of the 2017 federal poverty guidelines. Above 150%, the payors can be placed back into the ordinary calculation. He asked if the self-support reserve is backed into these numbers. Ms. Surratt stated she believes there are self-support reserves built into the chart. Assemblyman Pickard stated intuitively he agrees with the chart but would like more information on it.

Ms. Surratt asked if there was a motion on this agenda item. She inquired if committee needs time to think about this topic. Ms. Murray stated she would contact the federal government regarding their premise for calculating child support. She will pass the information on to Ms. Cecelius to determine how they came up with their chart and explain the process at the next

meeting. Ms. Surratt would like to see Wisconsin's methodology with Nevada's current percentages to determine a hypothetical chart. This would help the committee ensure they are on the right track. Ms. Crecelius agreed she would try to put together some examples for the next meeting. Ms. Murray mentioned the federal government requires assurance from states that they have taken into consideration the cost of rearing children in that state when setting these guidelines. Ms. Surratt motioned to use this methodology as a starting point for drafting where the committee is going with Nevada's child support guidelines. Judge Hoskin seconded motion. Motion passed unanimously.

Assemblyman Pickard wanted to clarify Ms. Crecelius would provide different examples to figure out the appropriate numbers for Nevada based on the United States Department of Agriculture's (USDA) poverty guideline. The committee will then determine whether the self-support will be backed into the new guidelines. Ms. Surratt confirmed example charts will be provided next meeting for the committee to assess. The committee will then decide if they want a self-support reserve and how it will be factored in. Ms. Surratt thinks the committee needs to see all the Wisconsin language and data encapsulated into one document so the committee can start working on the language they want to use. Judge Robb volunteered to work on encapsulating the information.

**Agenda Item #4c – Discussion and recommendations as to how to address the treatment of incarcerated parents or parent recently released from prison (pursuant to item 8 of Exhibit 44).**

Ms. Surratt read action item #8 on Exhibit 44 in the Jane Venohr report.

- *Explicitly address the treatment of incarcerated parents or parents recently released from prison.*
- *Why? Many of the guidelines deviations were for incarcerated parents. Most incarcerated parents have no to little income. Even the minimum orders are beyond what an incarcerated parent can pay. Setting reasonable orders will limit the amount of arrears that accumulates during incarceration that, in turn, can also reduce the barriers to re-entry and re-integration upon release.*
- *How? Review and codify current practices and other states' provisions and adapt, if appropriate for Nevada.*

Ms. Surratt referenced the Federal Final Rule which requires states to have a specific provision that does not impute income to incarcerated individuals with regards to child support amounts. She brought up California's language on incarceration. Please see Exhibit #1 attached. The Federal Final Rule did not give specific language regarding expectations. She believes exceptions are important to consider and Nevada needs a detailed definition of incarceration, suspension, etc.

Judge Hoskin asked what California is doing with the child support while someone is incarcerated. Ms. Surratt confirmed California suspends the child support obligation and it is

automatic by operation of law. If Nevada only uses the language that income cannot be imputed, then many cases will be undecided. Judge Hoskin disagreed. He does not believe child support should stop because someone is incarcerated. He stated money is still needed for the children.

Assemblyman Pickard thinks a deviation factor should be created requiring the incarcerated individual to provide proof he or she is not receiving income. Parents are obligated to pay support and if they put themselves in a situation where they cannot pay support they should have to figure out how to pay. They would have the burden to prove they are unable to pay child support.

Ms. Cliffe stated they modify incarcerated parents child support obligations on a continually basis. There is no statutory guideline to make it automatic like California. Clark County modifies all incarcerated parents orders, if available, to zero. There is language stating 30 days after their release child support starts at the statutory minimum. Judge Robb disagreed with that language because it has been overturned by the Nevada Supreme Court. Legally that cannot be done, at least, with an order that comes out of the Second Judicial District. She likes the idea of reinstating the obligation, however, believes it needs to be done by statute rather than relying on what is written in an order.

Judge Hoskin said the support of children should be valued and be incorporated into the guidelines along with requirements from the Federal guidelines. He motioned the committee take the language mandated by the Federal Final Rule including 180 days of incarceration, incorporate additional language from California's Family Code 4007.5 excluding no exception for domestic violence, add by operation of law, actively modify the order to zero, add language that requires the payor to notify Child Support Enforcement when they are incarcerated, and add language stating an obligations is reinstated/modified when someone is released from incarceration. Assemblyman Pickard seconded motion. Motion passed unanimously. Ms. Surratt volunteered to create the language this motion is proposing to present at the next meeting.

**Agenda Item #4d – Discussion and recommendations as to whether the child support arrears policies on interest and penalties should be changed and to if so to what they should be changed to (pursuant to item 15 of Exhibit 44).**

Assemblyman Pickard believes the penalties are unfair. Sometimes there are misunderstandings and payments were made but the payor is being charged penalties for the payments. The party that has been deprived of support should receive the money he or she paid out of pocket for the child's needs with interest. He suggested eliminating penalties as part of the calculation, however, courts should have discretion to add penalties if the non-payment was willful and to move forward with the interest on a compound basis. Currently interest is set at prime plus two and he would like to see a flat interest rate. Assemblyman Pickard disagrees with flat interest rate and believes following the variable interest rate is appropriate. Ms. Murray mentioned that interest may not be part of the Nevada Revised Statute (NRS) that is being replaced and would need to be addressed during the next legislative session as a bill. Judge Robb motioned the committee do away with penalties. Assemblyman Fumo seconded motion. Ms. Throne asked

what would be done for the individuals who have penalty judgments that cannot be changed. Also, she asked how would it be made fair for everyone. Ms. Surratt stated the committee cannot retroactively impact the payors. Motion passed unanimously.

Ms. Surratt moved to table the issue of interest and confirm for the next meeting that interest is not part of the repeal. Assemblyman Pickard provided interest is pursuant to NRS 125B.140 (c) (1) and penalties are pursuant to NRS 125B.095. He thought interest was one of the sections to repeal as well. Ms. Murray stated that NRS 125B.140 was not repealed. Ms. Surratt read Assembly Bill No. AB278 which does not repeal interest. Assemblyman Pickard clarified for the record that NRS 125B.140 cannot be modified. Ms. Murray suggested creating some legislation for the next session.

#### **Agenda Item #5 - Discuss North Dakota's review of child support orders every 18 months instead of every three years for "right size orders"**

Ms. Surratt liked how North Dakota changed their time frame to review child support orders from three years to 18 months. Judge Hoskin stated most of his reviews have been 20% changes due to change of circumstance requests. Judge Hoskin does not think changing the review to 18 months would be a workload concern. Judge Robb motioned to keep the review of child support orders to three years. Judge Shirley and Assemblyman Pickard seconded the motion. Judge Robb clarified her motion was to keep the mandatory three year review at three years not 18 months. Motion passed unanimously.

#### **Agenda Item #6 – Discuss and Approve Ideas for Future Agenda Items**

Economic information to address for agenda items # 4a, 4b, and 4c will be kept on the agenda for next meeting. Ms. Surratt will draft wording for the motion for incarcerated individuals. Surratt. Ms. Bakers requested discussion regarding parent's authority to have self-determination. Judge Hoskin suggested putting items 9-16 of Jane Venohr's report on the agenda and push the items out if the committee is not able to discuss any of them at the next meeting. Judge Robb asked to include Wright v. Osborne and shared custody. Ms. Cliffe requested to discuss self-adjusting orders.

#### **Agenda Item #7 – Discuss Future Meeting Dates Calendar through July 2018**

Ms. Surratt moved to put dates on the committee calendar for committee based on rooms at LCB and not on holidays. Assemblyman Pickard seconded the motion. Motion passed unanimously.

#### **Agenda Item #8 - 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 via teleconference. Public comment was heard from Melissa Porter. She requested the committee add shared custody cases through the district attorney's office that the district attorney actually send the employment verification forms to both the parent's employers rather than just the non-custodial parent's employer to the agenda. This will give the actual correct income amount and the amount of time that each parent has been employed by their respective employers.

**Agenda Item #9 – Adjournment**

Ms. Surratt requested a motion of adjournment. Judge Robb motioned for adjournment. Assemblyman Pickard seconded motion. Meeting adjourned at 3:13pm.

# EXHIBIT #1

**CALIFORNIA FAMILY CODE - FAM**

**DIVISION 9. SUPPORT [3500 - 5700.905]**

*( Division 9 enacted by Stats. 1992, Ch. 162, Sec. 10. )*

**PART 2. CHILD SUPPORT [3900 - 4253]**

*( Part 2 enacted by Stats. 1992, Ch. 162, Sec. 10. )*

**CHAPTER 2. Court-Ordered Child Support [4000 - 4253]**

*( Chapter 2 enacted by Stats. 1992, Ch. 162, Sec. 10. )*

**ARTICLE 1. General Provisions [4000 - 4014]**

*( Article 1 enacted by Stats. 1992, Ch. 162, Sec. 10. )*

**4007.5.**

(a) Every money judgment or order for support of a child shall be suspended, by operation of law, for any period exceeding 90 consecutive days in which the person ordered to pay support is incarcerated or involuntarily institutionalized, unless either of the following conditions exist:

(1) The person owing support has the means to pay support while incarcerated or involuntarily institutionalized.

(2) The person owing support was incarcerated or involuntarily institutionalized for an offense constituting domestic violence, as defined in Section 6211, against the supported party or supported child, or for an offense that could be enjoined by a protective order pursuant to Section 6320, or as a result of his or her failure to comply with a court order to pay child support.

(b) The 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 under federal and state law. This section does not preclude a person owing support from seeking a modification of the child support order pursuant to Section 3651, based on a change in circumstances or other appropriate reason.

(c) (1) 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 blank 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 (a) if all of the following occurs:

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

(B) The agency verifies that neither of the conditions set forth in paragraph (1) or (2) of subdivision (a) exist.

(C) 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.

(2) 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.

(3) 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.

(d) 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.

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

(1) "Incarcerated or involuntarily institutionalized" includes, but is not limited to, involuntary confinement to the state prison, a county jail, a juvenile facility operated by the Division of Juvenile Facilities in the Department of Corrections and Rehabilitation, or a mental health facility.

(2) "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 zero dollars (\$0) for the period in which the person owing support is incarcerated or involuntarily institutionalized.

(f) This section applies to every money judgment or child support order issued or modified on or after the enactment of this section.

(g) The Department of Child Support Services shall, by January 1, 2016, and in consultation with the Judicial Council, develop forms to implement this section.

(h) On or before January 1, 2019, the Department of Child Support Services and the Judicial Council shall conduct an evaluation of the effectiveness of the administrative adjustment process authorized by this section and shall report the results of the review, as well as any recommended changes, to the Assembly Judiciary Committee and the Senate Judiciary Committee. The evaluation shall include a review of the ease of the process to both the obligor and obligee, as well as an analysis of the number of cases administratively adjusted, the number of cases adjusted in court, and the number of cases not adjusted.

(i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

*(Added by Stats. 2015, Ch. 629, Sec. 2. Effective October 8, 2015. Repealed as of January 1, 2020, by its own provisions.)*