

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 9:04 am. on Friday, February 18, 2022. 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
Ellen Crecelius, Actuarial Economist, Division of Health Care and Financing and Policy
Jack Fleeman, Family Law Section of the State Bar of Nevada
Charles Hoskin, Family Division of the Eighth Judicial District Court
Senator Keith Pickard
Bridget E. Robb, Family Division of the Second Judicial District Court
Joseph Sanford, Churchill County District Attorney's Office
Lidia Stiglich, Justice, Nevada Supreme Court
Kim Surratt, Family Law Section of the State Bar of Nevada

MEMBERS ABSENT:

Assemblywoman Lesley Cohen
Assemblywoman Mellissa Hardy
Senator Dallas Harris
Jim Shirley, Family Division of the Eleventh Judicial District Court

STAFF PRESENT:

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

GUESTS PRESENT

Alec Raphael
Linda Anderson
Marshal Willick

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 9:04 am. It was determined a quorum was present. 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 (October 15, 2021, November 19, 2021, December 10, 2021, and January 7, 2022).

Ms. Surratt asked for a motion to approve the October 15, 2021 meeting minutes. Judge Robb made a motion to approve the meeting minutes. Justice Stiglich seconded the motion. Judge Robb stated she is no longer the Presiding Judge of the 2nd Judicial and asked the minutes be corrected. Judge Hoskin stated he is not the Presiding Judge of the 8th Judicial as well. Motion passed unanimously.

Ms. Surratt asked for a motion to approve the November 19, 2021 meeting minutes. Judge Robb made a motion to approve the meeting minutes. Mr. Sanford seconded the motion. Motion passed unanimously.

Ms. Surratt asked for a motion to approve the December 10, 2021 meeting minutes. Judge Robb made a motion to approve the meeting minutes. Mr. Sanford seconded the motion. Motion passed unanimously.

Ms. Surratt asked for a motion to approve the January 7, 2022 meeting minutes. Ms. Baker made a motion to approve the meeting minutes. Mr. Sanford seconded the motion. Judge Robb asked that Agenda Item #7 in the meeting minutes be changed to reflect GAAP for General Accepted Accounting Process instead of gap, as that is what she was referencing. Motion passed unanimously.

Agenda Item #4 – Discussion and recommendations on the Master Document for approved language changes. See Exhibit 1

No discussion or action on this agenda item. No vote was taken on this agenda item.

Agenda Item #5 – a. Discussion and recommendations on whether income from bonuses should be included in Gross Income and how the receipt of a bonus impacts child support and in particular the language in NAC 425.025(1). See Exhibit 2

Ms. Surratt asked Senator Pickard to present his new changes to NAC 425.025(1). Senator Pickard presented his revised language. The new language reads:

(a) **Monetary compensation incident to employment, Salary and wages**, including, without limitation, **salary, wages, commissions, and** money earned from **bonuses or overtime pay** if such **overtime pay compensation** is substantial, consistent and can be accurately determined.

Mr. Pickard made a motion to adopt the change to the language in NAC 425.025(1). Judge Robb seconded the motion. Motion passed unanimously.

Ms. Surratt stated she would incorporate these changes into the master document.

b. Public Comment

No public comment was given.

Agenda Item #6 – a. Discussion and recommendations on NAC 425.025(1)(k)(1) and the calculation of “reasonable allowance for economic depreciation.” See Exhibit 3

Ms. Surratt asked for discussion on this agenda item. Senator Pickard asked for input from the committee on deleting the “economic depreciation” language from NAC 425.025(1)(k) entirely. Mr. Sanford suggested swapping NAC 425.025(1)(k)(1) and 425.025(1)(k)(2). Judge Hoskin stated he has never utilized this NAC to calculate child support. Ms. Surratt stated the committee could delete NAC 425.025(1)(l)(1) and 425.025(1)(k)(2) and let the court look at undistributed income. Judge Robb stated a business should be able to deduct reasonable business expenses before anything is declared to be income. She stated the committee was looking at what a “reasonable expense” was.

Senator Pickard stated he does not think NAC 425.025(1)(l)(1) and 425.025(1)(k)(2) need to be deleted. He suggested leaving the language alone. Judge Robb stated she agrees with Senator Pickard. Ms. Surratt asked the committee if there was anything from Ms. Wood’s email that needs to stay on the agenda for discussion. Justice Stiglich stated she agreed with the earlier suggestion of swapping NAC 425.025(1)(k)(1) and 425.025(1)(k)(2) as the language would flow better. Ms. Surratt stated she agreed with the suggestion and asked for a motion.

Judge Robb made a motion to swap NAC 425.025(1)(k)(1) and 425.025(1)(k)(2). Justice Stiglich seconded the motion. Motion passed unanimously.

b. Public Comment

No public comment was given.

Agenda Item #7 – a. Discussion and recommendations on AAML recommended changes to NAC 425.100. See Exhibit 4

Ms. Surratt asked Mr. Willick to present the suggested language changes from AAML. Mr. Willick presented the suggested language changes for NAC 425.100. He stated the AAML is recommending clarity of language throughout the regulations.

Senator Pickard asked Mr. Willick if there is an approach that suggested meeting the needs of the child is the base and then use the adjustment factors from there. Or are the adjustment factors part of the calculation. Mr. Willick stated Mr. Meador’s guess was that a child support order is intended to meet the basic needs of a child. He stated that if the committee decides that the guidelines as a whole are intended to complete a child support order, then the language should state that.

Senator Pickard stated he would rather leave the discretion to the courts. Ms. Surratt asked if the committee had any other questions for Mr. Willick.

Ms. Surratt asked for committee comment on the language. Mr. Sanford stated he was given the task of coming up with other words beside schedule to use in the regulations. He stated the calculation is in a confusing order. He stated there is no current provision that has the final calculation language in it. Mr. Sanford suggested adding an additional section to discuss the final calculation.

Ms. Surratt stated the NRS and federal guidelines uses the language guidelines and the feds look at the regulations as a whole as the guidelines. Senator Pickard suggested the committee change deviation to adjustments in the regulations. He stated the “basic needs” language was about making sure whatever the results were would meet the basic needs of the child.

Mr. Sanford stated when the committee created the table and the percentages, it was not based off of the basic needs of the children. He stated it was based off recreating what a couple, who was together, would spend on their child, together. Ms. Cliffe stated she does not feel comfortable certifying the basic needs a child are met based on the low-income schedule. She stated the low-income schedule focuses more on the ability to pay.

Mr. Willick stated AAML created a 425.XX which talks about the order of the calculations and leads to the conclusion of what the total calculations should be. Ms. Surratt stated this language change from AAML has its own agenda item and asked Mr. Willick to hold off on his comments until she moves to that agenda item. Ms. Surratt asked the committee if they were okay with Mr. Sanford moving forward with his suggestion of a new section and working on new language to address the guideline schedule.

Ms. Surratt asked for committee comment on the suggested language “Providing in the findings of fact the basis for the adjustment from the guideline schedule.” Judge Robb stated that all the sections state that the judges need to make findings of fact that support the basis for the adjustment, and she thinks this language might be duplicative. Mr. Sanford stated he thought this language is changing from deviation to adjustment.

Ms. Surratt asked if there was a motion to change any reference of “deviation” to “adjustment” within NAC 425. Judge Robb made a motion to change any reference of “deviation” to “adjustment” within NAC 425. Ms. Cliffe seconded the motion. Motion passed unanimously.

b. Public Comment

No public comment was given.

Agenda Item #8 – a. Discussion and recommendations on AAML recommended changes to NAC 425.110. See Exhibit 5

Ms. Surratt asked Mr. Willick to present the suggested language changes from AAML. Mr. Willick presented the suggested language changes for NAC 425.100. He stated the AAML is recommending clarity of language throughout the regulations.

Ms. Cliffe stated that the stipulation language came from the State as they did not want stipulations to be rejected because they fell below the guidelines. Ms. Surratt agreed with Ms. Cliffe. She stated the language suggestion from AAML is good guidance for the committee.

b. Public Comment

No public comment was given.

Agenda Item #9 – Discussion and recommendations on AAML recommended changes to NAC 425.115. See Exhibit 6

Ms. Surratt asked Mr. Willick to present the suggested language changes from AAML. Mr. Willick presented the suggested language changes for NAC 425.115. He stated the AAML is recommending structural reordering to offer two off ramps for stipulations and low-income schedule before proceeding to adjustments, childcare, and medical.

Ms. Surratt asked for comments from the committee. Ms. Cliffe stated she likes these suggested changes. Ms. Baker stated she thought the committee’s initial discussion on the guidelines was that it would be the percentage of child support owed plus or minus childcare or health insurance costs. She stated the committee never discussed splitting the health insurance. Ms. Surratt stated reorganization is addressed in another agenda item. Ms. Cliffe suggested adding “calculation of obligation” into the language. Ms. Surratt stated she liked Ms. Cliffe’s suggestion.

Mr. Sanford stated he was concerned that creating a regulation for low-income would cause childcare costs and health insurance costs to not be addressed. Ms. Surratt stated she agreed with Mr. Sanford. Ms. Surratt asked if there were any comments on the edits in section 3 and 4. Senator Pickard stated he likes those suggested changes. Judge Robb stated she agrees with Senator Pickard.

Ms. Surratt asked if there was a motion regarding the language changes. Judge Robb made a motion to approve the language changes in section 3 and 4 of NAC 425.115. Senator Pickard seconded the motion. Motion passed unanimously.

b. Public Comment

No public comment was given.

Agenda Item #10 – a. Discussion and recommendations on AAML recommended changes to NAC 425.120. See Exhibit 7

Ms. Surratt asked Mr. Willick to present the suggested language changes from AAML. Mr. Willick presented the suggested language changes for NAC 425.120. He stated the AAML is recommending adding subsection 3 to state specifically that the imputed income is for the obligor specifically.

Ms. Surratt asked for comments from the committee. Judge Hoskin stated in NAC 425.120 and 425.125 the “good cause” language was deleted. He stated this will have an effect on how the court looks at this scenario. Senator Pickard stated he agrees with Judge Hoskin. He stated he does not want to take out the “good cause” language. Senator Pickard stated he does not like the “if after taking evidence” language, as he was told by a judge that they do not take evidence in motion hearings. Mr. Fleeman stated he likes the “if after taking evidence” language and thinks it should stay.

Ms. Surratt asked the committee for comments regarding the moving of the language from NAC 425.125 to NAC 425.120(3). Ms. Cliffe stated she likes the flow of the language in NAC 425.120(3). Mr. Sanford stated he agrees with Ms. Cliffe. Senator Pickard stated LCB likes to have discreet sections, so concepts are not combined. He stated the separation looks natural.

Ms. Surratt asked for comments on adding “in accordance with the earning capacity of that obligor.” Ms. Cliffe stated this language is too narrow. Senator Pickard stated that it does make sense to address imputation when determining income. Judge Robb stated she does agree with Ms. Cliffe. She stated this language is too narrow and is going to cause more problems. Ms. Chappel stated she agreed with Judge Robb.

Ms. Surratt asked if there were any motions on adopting these language suggestions. No vote was taken on this agenda item.

b. Public Comment

No public comment was given.

Agenda Item #11 – a. Discussion and recommendations on AAML recommended changes to NAC 425.125. See Exhibit 8

Ms. Surratt asked Mr. Willick to present the suggested language changes from AAML. Mr. Willick presented the suggested language changes for NAC 425.125. He stated the AAML is recommending these changes as part of the structural changes within the guidelines. He stated the “good cause” elimination was to cause additional judicial discretion. Mr. Willick stated the language added to the end was to target the actual obligor rather than any other parties.

Ms. Surratt asked for comments from the committee on the suggested language changes in NAC 425.125. She stated the committee decided in the last agenda item that 425.125(1) will not be deleted. She stated the inclusion of “without good cause” was added to the regulations intentionally. Ms. Chappel stated she agrees with Ms. Surratt regarding the “good cause” language.

No vote was taken on this agenda item.

b. Public Comment

No public comment was given.

Agenda Item #12 – a. Discussion and recommendations on AAML recommended changes to NAC 425.130. See Exhibit 9

Ms. Surratt asked Mr. Willick to present the suggested language changes from AAML. Mr. Willick presented the suggested language changes for NAC 425.130. He stated the AAML is recommending these changes as part of the structural changes within the guidelines. He stated these changes were to organize the steps a judge should follow to establish a child support obligation.

Ms. Surratt stated there is a change in language to delete “the court must consider” and “and make an equitable division thereof.” She stated “equitable division” seems to be a better language choice than “allocate.” Ms. Surratt asked the committee for comments on changing “equitable division”

to “allocate.” Judge Robb stated the suggested language is not helpful or instructive on how the division should be made, where “equitable” may trigger the idea that it is supposed to be fair. She stated she prefers the original language. Judge Hoskin agreed with Judge Robb. Senator Pickard stated the committee has already addressed this issue.

No vote was taken on this agenda item.

b. Public Comment

No public comment was given.

Agenda Item #13 – a. Discussion and recommendations on AAML recommended changes to NAC 425.135. See Exhibit 10

Ms. Surratt asked Mr. Willick to present the suggested language changes from AAML. Mr. Willick presented the suggested language changes for NAC 425.135. He stated the AAML is recommending these changes as part of the structural changes within the guidelines. He stated these changes were to indicate the order of steps.

Mr. Sanford asked if there was a reason why the AAML wanted the calculation to be done in a specific order other than the calculation is the sum of it. Mr. Willick stated the problem with breaking out childcare and health insurance from deviations to their own calculation is there is confusion as to what to do in which order.

Ms. Baker stated ability to pay is applied to the equitable division of childcare costs or health insurance costs. Senator Pickard stated he looked at the adjustments as the final ability of the court to exercise discretion to right size the award. He stated the committee should probably put the adjustments at the end of the calculation where they were intended to be. Ms. Surratt stated she agreed with Senator Pickard. Judge Robb stated she would suggest a reordering so Medical Support comes before Childcare. Ms. Chappel stated she agrees with Judge Robb as everyone needs medical care and some families may not need childcare.

Mr. Sanford stated he would recommend there be no specific order at all as everything in the calculations needs to be considered. He stated he is concerned with creating an order that is added in error because it is not done in the right order. Senator Pickard suggested using the phrasing “the court shall also” to fix this problem.

No discussion or action was taken on this agenda item.

b. Public Comment

No public comment was given.

Agenda Item #14 – a. Discussion and recommendations on AAML recommended changes to NAC 425.150. See Exhibit 11

Ms. Surratt asked Mr. Willick to present the suggested language changes from AAML. Mr. Willick presented the suggested language changes for NAC 425.150. He stated the AAML is recommending these changes as part of the structural changes within the guidelines. He stated these changes were to indicate the order of steps a district court judge should take.

Ms. Surratt asked for committee comments on 425.150(1). Senator Pickard stated he does not feel comfortable deleting the language “economic circumstances of the parties.” Judge Hoskin stated this language is duplicative as the circumstances are listed under 425.150(1). Mr. Sanford stated he agrees with Senator Pickard. Ms. Surratt stated this section was crafted significantly based on the language out of the Federal Final Rule. Judge Robb stated she was concerned about the language “are exceeded by” as this will come up in every argument from now on. Judge Hoskin stated this language does create a specific argument on a regular basis that will require additional analysis. He stated this will open the door to a lot of litigation on this very specific issue and it will be subject to a lot of appellate review. Senator Pickard agreed with Judge Robb and Judge Hoskin.

Mr. Willick stated this was not a policy choice from AAML. He stated this was a matter of unifying language the committee had already used. He pointed to NAC 425.100 and stated the language was copied from this section.

Ms. Surratt asked for committee comments on 425.150(1)(f). She stated the committee wanted the judges to use their discretion to figure out “relative income of both households.” Judge Hoskin stated he has concerns with the first inclusion as it limits what can be considered in both households. He stated this will limit the courts’ discretion. Judge Robb stated she agrees with Judge Hoskin.

Ms. Surratt asked for committee comments on 425.150(1)(h). She stated she did not know the benefit of adding “actually” to the language. Mr. Sanford suggested changing “ability” to “inability” to provide guidance to the judges. Ms. Surratt stated she agreed with Mr. Sanford. Senator Pickard stated he had in mind that “ability to pay” included an upward deviation when the court thought it was appropriate. Ms. Surratt stated the upward deviation was contemplated in the “relative income of both households.” She stated “ability to pay” came from the federal requirement that we have right sized orders.

Ms. Surratt stated she does not mind the use of “inability.” Judge Hoskin asked if the committee wants to limit the courts’ ability to make a determination that the best interest of a child is served by an obligor paying more because they have those resources. Ms. Surratt asked why that does not fall under 425.150(1)(f). Judge Hoskin stated he does not like the additional language added at the end of 425.150(1)(h). Ms. Surratt asked Judge Hoskin if he saw unintended consequences by using the word “inability.” Judge Hoskin stated he did not see unintended consequences. Ms. Cliffe stated she agrees with Mr. Sanford’s suggested language.

Ms. Surratt asked if anyone wanted to make a motion to change “ability” to “inability.” Mr. Sanford made a motion to change the language. Judge Robb seconded the motion. Motion passed unanimously.

b. Public Comment

No public comment was given.

Agenda Item #15 – a. Discussion and recommendations on AAML recommended changes for reorganizing NAC Chapter 425. See Exhibits 12 and 13

Ms. Surratt asked Mr. Willick to present the suggested language changes from AAML. Mr. Willick presented the reorganization changes for NAC 425. He stated the committee may need to clarify their intentions with the guidelines.

Ms. Surratt asked for committee comments. She asked for someone to volunteer to work with Mr. Sanford on the reorganization of NAC 425. Mr. Fleeman volunteered to help Mr. Sanford on this agenda item.

No vote was taken on this agenda item.

b. Public Comment

No public comment was given.

Agenda Item #16 – a. Discussion and recommendations on the proposed language for NAC 425.115(3) for joint physical custody to change the language to one-half of the difference versus the full difference in child support values.

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 the proposed language for NAC 425.115(4) for scenarios in which a parent has primary physical custody of one child each.

No discussion or action was taken on this agenda item.

b. Public Comment

No public comment was given.

Agenda Item #18 – 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

No public comment was given.

Agenda Item #19 – a. Discussion and recommendations on formulas to address serial parenting.

No discussion or action was taken on this agenda item.

b. Public Comment

No public comment was given.

Agenda Item #20 – Discuss and approve ideas for future agenda items and the next meeting date/time.

Ms. Surratt asked the committee if they were okay with Ms. Surratt picking a date for the next meeting and sending a meeting request out. She asked the committee members to respond to the meeting request so a quorum will be present at the next meeting.

Agenda Item #21 – Public Comment

No public comment was given.

Agenda Item #22 – Adjournment

Ms. Surratt adjourned the meeting at 11:59am.