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 Mtatabikwa-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.

Agenda Item #2 – Public Comment

No public comment was given.

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

Ms. Surratt: We are going to move on to the next agenda item which is approval of the meeting minutes from September 17, 2021. I believe there are a couple edits that need to take place. One, that Justice Stiglich was present for the entire meeting and two, she needs to be referenced as Justice Stiglich. Are there any other additional edits that anybody notes for the meeting minutes?

Judge Robb: Just a note there were some spelling and grammar issues. I didn't call them out individually. But one of the issues that does bother me is one either moves or makes a motion. One does not motion and that is in the minutes several times that someone motioned. If we can have that corrected, I would appreciate it.

Ms. Surratt: Absolutely we can correct that. All right that's noted. Any additional edits? All right hearing none with the edits. Do I have anybody willing to make a motion for the approval of those minutes?

Justice Stiglich: Move to approve the minutes.

Ms. Surratt: All right thank you Justice Stiglich for the motion. Is there a second?

Assemblywoman Cohen: I'll second.

Ms. Surratt: All right thank you Assemblyman Cohen. Do we have any additional discussion? Hearing none. All in favor say aye. Anybody opposed? Hearing none. Motion passes.

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. Surratt: All right the next item on our agenda. Now just for cleanup purposes or just to note, we have, based on the last meeting, provided in the agenda under each agenda item the ability to take public comment on specific items. For those of you that are listening in attendance, when we

take public comment on those individual items it needs to stay relevant to the agenda item that we are on at that time. We cannot have you speaking generally about other agenda items. But that will be the proper time for us to get additional information from you on those specific items. Depending on how much public comment we have, I may provide more than two minutes per person and because I want to actually solicit the information from the public on each of these items.

I see that we have Senator Harris with us now. So, I will mark you as present in our meeting minutes.

Agenda item number four is discussion and recommendation 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. Do we have any committee members able to comment on this? I see Margot Chappel shaking her head yes, so you may go ahead and speak.

Ms. Chappel: Thank you. Good morning committee members and chair. We have an established website already on the dwss.nv.gov. It is in the process of being updated back to 2017. The minutes from the meetings have been remediated for compliance with the ADA and so those should go up next week. Then, within the next three weeks, we should have YouTube videos of each meeting available. All of that is in process. This is our committee, so we own that and will continue to support the committee's materials to be posted online.

Ms. Surratt: Thank you very much. Any additional committee comments or input on that? I will say for my comment, I believe that satisfies what the issue was and absolutely assists and aids in the future work of this committee too. We won't be trying to restate what our intent is in each hearing. Thank you, we appreciate your efforts on that.

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: We will move on to agenda item number five, discussion and recommendations on cleaning up the language and the regulations and what is part of the "formula" versus what is an adjustment after the formula. Judge Hoskin and Senator Pickard worked on some language for us if you'd like to reference that work for us at this time.

Judge Hoskin: I'll start, and I'll let Senator Pickard clarify where we need some clarification. The intent was to incorporate 425.130, regarding the childcare costs, into 425.140. I went back and reviewed it and I moved 425.130 into 425.140, so that it was part of the calculation before the calculation ended. After some discussions with Senator Pickard, he suggested the very last portion of the language under subsection f to add a non-exclusive list of things for the court to consider. My only concern was when we're adding lists, we remove some discretion. So, from my standpoint, I had a little hesitation. The language does include "among other things" which makes me feel a little less anxious regarding an additional list. Senator Pickard if you want to address that.

Senator Pickard: One of the comments we regularly get with any legislation that we provide to the courts is that we often lack the guidance necessary. I hear that both from the appellate level as well

as the district court level. The idea was to offer a non-exhaustive list of things that we typically hear when arguing about this adjustment and so that was the genesis of the desire to create the list. We 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. I agree with Judge Hoskin, we want to make sure that the district court has enough discretion to do what is fair under the circumstances; but we need to also provide some guidance. The idea here is to cover the main issues that are addressed in the typical childcare discussion and then provide the court the ability to look at any other factor, as that would weigh in. That's how we came up with the list that we had and by doing this we can eliminate 425.130 and simplify the understanding of the process of the calculation.

Ms. Surratt: Okay, thank you. Do we have any additional committee comments on that?

Margot Chappel: Could that language could be projected on the zoom screen?

Ms. Surratt: Yes, I can do that. They were provided with the agenda as materials, but I can get that on the screen for you hold on just a moment.

Judge Hoskin: I know Senator Pickard mentioned it. But i just want to make sure the record is clear; the intent is to eliminate existing 425.130 and incorporate it into 425.140.

Ms. Surratt: Judge Robb you had your hand up for comment?

Judge Robb: I did. I agree with Judge Hoskin. The way the language reads right now, this is yet another laundry list of findings that I believe are required pursuant to the language of the statute. If I'm reading this correctly, it says that the district court is to set for specific findings concerning all of these issues, among others. So, we can add to this list, but we are required to make these findings. My regular order, with regard to child support, is now running to five pages and I've got to make additional findings pursuant to the statute here. I appreciate the guidance, but do we need to continue with these kind of laundry lists? Many times, these factors aren't applicable, yet I still need to make the finding. Can we tweak the language so that the court needs to consider these things and make specific findings?

Judge Hoskin: If applicable? Is that what you're suggesting judge?

Judge Robb: I am suggesting "if applicable" so that we can get rid of some of this. For example, child custody findings one and two are almost never relevant to my findings; yet I must make a specific finding with regard to them. I'd prefer to cut out all of that excess verbiage.

Senator Pickard: Just so I'm understanding, you're suggesting that the cost of the childcare proposed, and the cost of reasonable alternatives are things that would never be considered?

Judge Robb: No, that is not what I said.

Judge Hoskin: She's talking about 125c.004, the wishes of the child and the nomination.

Judge Robb: I was merely making an analogy.

Senator Pickard: Got it. I missed that; I apologize. I certainly agree we don't want to create unnecessary effort. Judge Robb you appear to be like Judge Hoskin, where if you are given a directive, you follow it and so your orders can get fairly long. I, as a practitioner, don't mind that.

I would rather have specificity, particularly where we're trying to make sure it's clear to the litigants. But there's no pride of authorship here to the extent that I'm not married to any particular list. I just was trying to cover the arguments that I typically make or hear when these become an issue. By the same token, we hear regularly that if we don't provide guidance then we leave it up to the appellate courts to become the legislators and so we take heat for that. It's a balance and I'm just making a suggestion to try to find where we can best strike that balance.

Judge Robb: Understood, Senator. And yes, if you say shall, I do it.

Judge Hoskin: Is it possible, looking at the language that's proposed, to perhaps put some language in there that findings are necessary on relevant pieces of those factors rather than completely applicable? I'd like to do that across the board with every finding that I have to make only. Do we have that power here?

Ms. Surrat: Instead of listing the 100 things that don't apply in every single case?

Judge Robb: I like that tweak Judge Hoskin. That would alleviate some of my concern.

Judge Hoskin: While I'm on board with fewer lists are better. I do understand Senator Pickard's desire here. I think there may be a middle ground here, if we specify that only those relevant factors need to be in the findings of the court. That may solve the problem from my standpoint, and it sounds like from yours as well.

Judge Robb: It does, thank you.

Senator Pickard: I have no problem with that. I think if we were to recraft this to suggest that the court shall make findings on all relevant factors such as. We could accomplish that. I just want to make sure that the new judges, that are currently struggling with how to use this formula, have some guidance. I appreciate that balancing and we can certainly, Judge Hoskin and I, come up with language to better suit the desires of this committee.

Ms. Surratt: So, what I'm hearing is that with this input from the committee on the next agenda we'll have some modified language to discuss. Are there additional comments? Senator Harris.

Senator Harris: Thank you, Chair. I don't practice in this area and so I wanted to make sure we didn't create a new problem by adding relevancy. Is there going to be some issue over which factors are relevant since we've added this? Or is that something that we don't think would be added ambiguity?

Ms. Surratt: The lovely part of practicing in family law is there is a lot of discretion and what's relevant or isn't relevant is basically our entire practice. Unfortunately, because it's best interest of a child and it's looking at these gray areas like that, so many families are so different that we've had to structure family law that way to what's relevant/what's not relevant. We've got factors where we talk about special needs and if you have a family without special needs, what they're talking about is the judge not having to say specifically, this child does not have special needs. I mean is it helpful? Sometimes, but when a majority of your families don't have it, then you're just writing things to write things. Judge Hoskin, you had an additional comment?

Judge Hoskin: No, it was similar to what I was going to indicate. There's a lot that we do, that we haven't considered whether it was relevant or not in creating the statute or the regulation, which results in and I'm with Judge Robb. I don't know that I've issued a decree in the last four or five years that's less than 35 or 40 pages. Just because, half of those pages are probably on findings that had nothing to do with the case that's in front of me. But the appellate courts have reviewed them in such a way that they need this to tell them that this doesn't apply in this case, simply, so the factors are moved forward. I think it's a good question, Senator, because we don't want unintended consequences with what we're doing here. I haven't thought it through that way. Between now and the time we come back, Senator Pickard and I will have that conversation and I will brainstorm with some of my colleagues to see if we can come up with something that may be an unintended consequence that we're not thinking of here today.

Senator Pickard: Senator, I just want to tag on to that. I think that you raise a really good point. You're coming at this from a legal education, but not within the family law structure and so you can offer insights to things that those of us that practice in this area just take for granted. I think that Judge Hoskin just pointed to something that feeds into Judge Robb's angst. Which is the Supreme Court will tend to, and no offense Justice Stiglich, give direction in a specific case because they think they need specific findings. If it's a reported case now becomes a directive for every case. If we can act now to make it clear what we're trying to accomplish and give the courts enough guidance to exercise their discretion, in a way that the appellate courts can appreciate, then I think we've addressed both of those issues in the balance. So, I look forward to hearing from you when we come up with this next iteration.

Senator Harris: All right. Well, I'm happy to hear that you all love the ambiguity and live in it. I hear relevancy and automatically in my head I'm screaming, no judge that was a relevant factor. I can't believe you didn't even touch it. So, I want to make sure we're not getting to a point where now orders are saying I find this isn't relevant and so they just don't speak to it at all. Then, that becomes an issue of litigation itself in the appellate court. But I trust you all to handle that.

Ms. Surratt: That's a very fair statement and very much the reason why we have such a diverse committee. I love it. All right, Assemblywoman Cohen, I saw your hand for a second there.

Assemblywoman Cohen: Thank you. I will admit, I am still absorbing as a practitioner 425, so maybe this really isn't an issue. But do we need to address change of circumstances with daycare costs? Because daycare can, for some families, change so frequently. I want to make sure that we're not going to set the court up for having some families that are constantly back in front of the court because of the change in daycare costs.

Ms. Surratt: I'll comment and then we'll take comments from everybody else. My comment would be twofold. One, the issue of language regarding modification, which we went through on the committee, we decided we didn't have jurisdiction over, or we didn't have power over as a committee. Two, it reminds me of the emancipation discussion. Can you draft an order for a change in the future when you don't have the facts in from the future? I think that same discussion applies to that. I don't know how we can structure it, and have it stay constitutionally sound based on the discussion we have in emancipation. I would still love for us to come up with a better solution on the emancipation part of it. We just aren't there, and I feel like that's the exact same conversation here. Further comments from others.

Judge Robb: There is a workaround that I believe judges in the north are using, so that if there is a change, the order doesn't need to be modified. Rather than a straight dollar amount, you say that the parties are going to, for example, split the medical premiums 50/50 or 30/70 whatever is appropriate. You can do the same thing with childcare costs. The parties are going to split those childcare costs using percentages rather than strict dollar amounts. That way, the order floats and you don't need to go back and modify it every single time there's a change.

Ms. Surratt: Any additional comments from the committee?

Ms. Baker: Just to comment with respect to the work around that Judge Robb just pointed out. From an enforcement standpoint, unless the agency has specific dollar amounts, we would be unable to clearly enforce the childcare or health insurance premium costs. That would be something the parties would need to be working on. So, while i think that that is a viable way to address it, it does cause some pretty significant problems if they bring it to Child Support Enforcement Program to enforce the order.

Ms. Surratt: Any additional comments from the committee?

Ms. Baker: When we finished talking about the childcare provision, I apologize, I was not able to attend the last meeting, I did notice that the notes talked about incorporating both the child care and the health insurance premium costs as part of the formula. I don't know whether that's still to come or whether there's something that I'm missing and that was decided against.

Judge Hoskin: I can probably address both of those. In my review, the healthcare is not a mandate to be included, the way that it's currently written. We discussed it at the last meeting and determined that perhaps it wouldn't fit as part of the calculation, since it wasn't mandated to be included. Getting back to Assemblywoman Cohen's comment, the way I see it currently, you have to show a change of circumstance with the childcare costs in order to get that review. That's at least how I would look at it. Now, if the committee thinks we need to take another look at that, then we probably need to make some adjustments to 425.170.

Ms. Surratt: Any additional comments from the committee?

Ms. Baker: I do have a question with respect to the health care versus the medical support. Are those two separate things, Judge Hoskin? Because I see medical support addressing with the requirement that parties have medical support for their children. I thought that was part of the formula versus the issue of whether unreimbursed medical costs must be shared. Just some clarification, please.

Judge Hoskin: In 425.135, it is essentially a mandate to include those issues in the order, but not necessarily, to include as part of the calculation of the child support. The hope was in incorporating 425.130 into 425.140 that we would clarify for the judicial officers what was expected with regard to the formula. And that 425.135 isn't essentially something that we're dealing with as far as calculating child support.

Ms. Surratt: Additional comments from the committee?

Ms. Baker: My recollections of the previous committee meetings is we were trying to get rid of deviations. We now have adjustments, and one of the deviations was for the cost of the child's

health insurance that is no longer an adjustment. Where does this fit in? Does it fit in as part of the formula or is it just something sort of new and different that we add in that isn't an adjustment? The court that I'm in front of right now, really tends to look at the health insurance sort of as an adjustment, because it's not set out as part of the formula and I don't know where else we would put it.

Ms. Surratt: Additional comments from the committee? I'll comment. I believe I'm of the same mindset that medical insurance is supposed to be a mandated part of it. How we ended up with the exact language we ended up with was in part because of the needs and requirements of DWSS. We learned during our committee meetings that the issue of the medical insurance was critical for them and a critical issue in terms of compliance with the federal government. So, I tend to agree with you. I also tend to worry that we're going to get 425.140 to be so expansive and so long that it's unwieldy. Part of it was how it was drafted by LCB at the end. Any additional thoughts or comments on that?

Senator Pickard: I recall this back in the first iteration and we were talking about what the requirements of 125b.020 were and it's mirrored in 125c.001, where the parents have an outstanding obligation to provide the medical support for their children. 125b.020, specifically talks about providing health care. Because this is a pre-existing duty, it doesn't have to be part of the child support calculation. It's a duty that the court may order based on the equities of the case. Both parties have an equivalent duty to cover that and then the court can do what the court thinks is fair in terms of assessing or allocating those costs. My recollection is that we decided not to include that in the calculation particularly given the case law that said that deviation is the exception, not the rule. If one party is ordered to provide the insurance, then that party provides the insurance, so long as it isn't greater than five percent of their Gross Monthly Income (GMI). That was addressed in the statute and not within the purview of this committee, so we left it alone.

Ms. Surratt: I agree.

Ms. Cliffe: I want to second everything senator Pickard just said.

Ms. Surratt: Any additional comments from the committee? Before we go into public comment, I want to just summarize that Senator Pickard and Judge Hoskin are going to rewrite the language based on input and comments during this meeting. We will keep this on the agenda for the next meeting

Ms. Chappel: Chair Surratt, can I entertain having comments from our staff, please?

Senator Pickard: I think that's a great idea. What we do here will affect them on a more regular basis than the typical practitioner, since that's only a subset of what we do. If you guys want to weigh in just send the comments to Judge Hoskin and I. We would love to hear from you.

Ms. Chappel: Thank you.

Ms. Surratt: Any time your staff wants to comment, there's multiple routes. There is getting on the agenda, appearing here as an attendee and participating in public comment, or there is providing direct input to any of the members of this committee. Not all of us all at one time, we cannot communicate with the public that way, without being in violation of the public meeting laws. But

individually you can reach out to a committee member. They'll take your input and they'll make sure it's conveyed to me or to co-chair Senator Pickard in order to get it on the agenda.

Ms. Chappel: Thank you very much.

Ms. Surratt: We always welcome the comments.

Ms. Chappel: It's my understanding they're both on this meeting, so I will invite them to make comments or to let us know that they will submit comments in writing to Judges Hoskin and Senator Pickard.

Ms. Surratt: I am about to open up public comment. Before I do that, one administrative item is we have Jeff Stroup here on behalf of Ellen Crecelius as a proxy. We will mark her as present through a proxy. Now for public comment on agenda item number five.

b. Public Comment

Marshall Willick: Good morning, Madam Chair, members of the committee. My name is Marshall Willick. I'm the observer from the Academy Chapter. Pursuant to the requests that were made at the last meeting, we did an analysis of the announced complaints and problems that have been showing up in both ongoing appeals and recent decisions. We came up with six subject areas that we think would be helpful. It might be useful if I could have somebody to submit some of this to in writing, although, I'll be happy to mention some of that verbally as well.

Ms. Surratt: Mr. Willick, I'm going to stop you for just a second. I'm going to let you do your summary of information from American Academy of Matrimonial Lawyers (AAML). Unfortunately, because we have to stay specific to the agenda item are any of the AAML comments specific to the agenda item number five?

Mr. Willick: Yes. We took a slightly different approach to the 425.130 and 425.140 medical support and cost of childcare problem by changing the order of the regulations and calculations, which we think would eliminate some of the confusion among courts and lawyers as to what is to be calculated in what order. We think it can be most easily rectified by reorganization of the order of steps which will lead to more consistent interpretation of how to perform calculations across a range of fact patterns. For example, a phrase could be added to 425.100 or maybe 425.140 specifying that child support should be calculated after all other transfers of funds, such as alimony, between the same parties. We have more to say about the order of calculations, but basically, we would leave medical support and cost of childcare as separate items to be done after the formula, which might eliminate Judge Robb's too many factors consideration, as well. It would simply be an additional line in an order after the calculation is performed. There is more to say about all of that, but I don't want to exhaust my time so if I could have some ability to provide detail in writing and somebody to direct it to, I'd be happy to do that.

Ms. Surratt: Yes sir, thank you, Marshall Willick, for the input from the AMML. I would suggest that you submit that suggestion to Senator Pickard and he and Judge Hoskin will consider it for their next proposal on this item. If you need to get it to me instead, I'll get it to them.

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: The next agenda item number is 6. It is 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. This item was on the last agenda. The discussion was not to make that clarification, but out of respect for Ms. Baker, we wanted to make sure you had some input in the meeting before a final decision was made on that.

Ms. Baker: This came up because it has become an issue in a number of our hearings. It may just be our hearings, but we've had a number of discussions from mostly custodial parents, who do not understand the concept of business expenses. The court is still using that when they are adjusting it, but I thought it would be helpful to clarify for lay people. If this committee has determined not to add it, I would submit to that decision.

Ms. Surratt: Any further discussion from the committee? Senator Pickard, do you have your hand raised?

Senator Pickard: I was actually somewhat hesitant when I saw this on the last agenda. Then, I lived through a real-world experience where the judge I was before did not understand how the tax code works, in terms of business expenses. There were things, such as, coffee machines and vehicle costs and various items, that are depreciated from taxes, that are allowed under the IRS code. There was an explanation, well these are office expenses, but the admission was that it was a one-person office in the home. We can be really creative as business owners and how we work with the IRS code to include personal expenses and this member of the bench had no real understanding of how that worked. So, I have become a sudden proponent of this kind of clarification. I think it will be very helpful to explain that legitimate business expenses are expenses that go to the operations of the business, so costs of goods sold, the costs that are actually unavoidable as an operational expense, but don't meet a personal need only. So things like the coffee machine, the carpet cleaner, and the things that went into the home expense that can be written off those are not legitimate business expenses. When we're talking about an individual who works from home, those are the kinds of discussions I think we really could use in the discussion about gross income. I've become a proponent of this idea.

Ms. Surratt: Thank you. Ms. Chappel you are next.

Ms. Chappel: The program is very supportive of this language change.

Ms. Surratt: Thank you, Ms. Chappel. Any other comments from the committee? Ms. Cliffe.

Ms. Cliffe: I agree with Senator Pickard, as well as, Ms. Baker. The clarification would be beneficial. I am concerned that it might still create quite a bit of ambiguity and questions in terms of what is considered a legitimate business expense. I think we've all discussed it and we know what would be considered a legitimate business expense. But I'm just wondering if by adding the verbiage we're adding more litigation. I support what the committee wants to do in either direction; I'm just not sure if this clarification will add more litigation.

Ms. Surratt: Thank you, Ms. Cliffe. Mr. Fleeman.

Mr. Fleeman: I wasn't here at the last meeting, so I was curious as to what the opposition was? It sounded like it was opposed by most of the committee members last time.

Ms. Surratt: I'll do my best to summarize it. I don't know that it was a strong oppose as much as it was, are we making changes for the sake of making changes when we have some case law and we have other places to go to for it. But in terms of litigation around it, my response would be, that was the exact language from the old statute, which we operated under for many, many years without extreme litigation over it. Yes, you had cases where they fought about it because somebody was always trying to push something as legitimate that wasn't. But I wouldn't say it's going to be an increased amount of litigation over what we had before on the issue, at least not in my foresight. Additional comments from the committee? Do we have a proposal from the committee for a motion?

Senator Pickard: I will move to adopt this language as written. I think that it's broad enough, but clear enough to get to the point.

Ms. Surratt: For clarification of the motion you just made, I want to read it, because there is a missing quotation mark in the agenda. Under 425.025(1) for gross income to clarify that, 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."

Senator Pickard: That's correct.

Ms. Surratt: Do I have a second on Senator Pickard's motion?

Mr. Fleeman: I'll second.

Ms. Surratt: Do we have any further discussion? All in favor say, aye. Anybody opposed? Any absentees? Motion passes. For the next meeting, I will keep it on the agenda just for the purposes of demonstrating the exact language we are proposing so we can approve it and it's in writing. Do we have any public comment on agenda item number six at this time?

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.

Ms. Surratt: We will move on to agenda item number seven, which is 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. I don't remember which committee member was assigned to work on this. Do we have any comments from the committee at this time? I think what is best on this item is that we move into public comment. I think that's what we are actually seeking at this time on ways to

deal with this issue, if I don't have any objection from the committee. We'll take public comment on agenda item number seven.

b. Public Comment

Ms. Surratt: Mr. Willick, I'm going to allow you five minutes on this if you need it.

Mr. Willick: Thank you, although, I think I can be briefer, especially if I have the ability to supply something in writing. 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. When we tried to put this by a diagram, we came up with at least eight different scenarios. Which would lead to, again, unintended consequences, if they weren't fully thought out in advance depending on trying to define your way into solution to the alimony problem. This is the second area where 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. The various alimony possibilities are related to the multi-family problem which this committee briefly addressed but elected in its last go around, some years ago, not to address at that time. 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. This comes back to Judge Hoskin's question, whether to provide for it explicitly in the regulations in place of or in addition to the more general support of others adjustment factors? Which essentially boils down to a question of whether greater uniformity or greater discretion is intended by this committee. We have created a suggested phrasing, and I can supply it as you've directed to Senator Pickard and Judge Hoskin, with a copy to you. This might make it a little clearer than can be done in a verbal presentation. This is again related to the order of calculations and somewhat to the terminology which we haven't discussed in great detail.

Ms. Surratt: Thank you. Yes, if you could provide it to Senator Pickard and myself. They'll take it into consideration for the purposes of the order of the calculation, and I will take a look at it in terms of applicability to the rest of the agenda and other items where it may fall that way. I appreciate your time, Mr. Willick.

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: We will move on to agenda item number eight, 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. We did have discussion during the last meeting regarding this issue. Ms. Baker we left it on the agenda to get any further input and comments from you.

Ms. Baker: One of the issues that has come up in enforcement cases is where we do not have the non-custodial parent/obligor present and we have no information verifying whether they are

working or not and whether they have any work history. In those cases, we usually like to try and set some kind of obligation, which would mean some kind of imputation of income so that's a gap in here that I think we're struggling to fill, because we don't know whether they're underemployed or unemployed because they aren't present at all. If anybody has any suggestions on how to possibly address that, maybe it's not in the NAC, but it certainly is a struggle. The court doesn't have the authority in those cases under the NAC to say, I'm going to find that they're capable of making this amount of money, because they can't make this first finding.

Ms. Surratt: Thank you. Senator Pickard, I see your hand is raised.

Senator Pickard: I need some understanding because what you just described Ms. Baker seems to be different from what's written in the agenda item. When I read this, I'm thinking in terms of a parent whose spouse makes enough money that that parent decides they're going to staying home with the children. They don't need to work and now their income is technically zero. It may very well be good cause for them to stay home. Imputation may or may not be important in that situation. But that seems to be different from what you just described in terms of an obligor who isn't there. You haven't obtained the financial information from that individual, so you have no basis to know what the actual income is, if they actually make any income or we just need to impute income in order to move forward. I don't know that those are the same things, so can you help me in understanding the difference between those two scenarios.

Ms. Baker: When I was looking at this, I actually was not thinking about the issue of a spouse who is staying home because their husband or wife can support them. I think that is also a situation that falls into this category, but I think that they are two separate scenarios. It's not on the agenda here, but when I had brought it up, I was thinking about the other scenario so I went ahead and put that in there. I agree that I think that if a stay-at-home parent is able to be supported by their spouse or person living with them, and they don't have to work, that could be a good cause for taking care of the kids. But I think what is happening, at least in my court, is that the judicial officer does not feel there is enough direction here to be able to move forward with an imputation of income, given the necessity to make finding number one.

Senator Pickard: I personally believe that if a parent is staying home and they have a joint custodial award, I guess the custodial award doesn't really matter as long as their income is being considered. If they are home because their spouse makes enough money, I think we should be imputing income. What I thought we were dealing with was the language without good cause in there, which suggests that's the condition in which imputation will occur. Good cause could be, I don't need this. I've got kids. Why go spend money on childcare because I'm working, when I could be home because we don't need the money. Those situations, I think, warrant imputation of income because it's unfair to the other parent to be shouldering all of the expense. Now I understand, we have the adjustment factor for household income, which is usually where this is resolved. That's what I thought we were going with the good cause language. But I think you have an evidentiary problem, Ms. Baker, with what you're describing. So, I understand your judicial officer's hesitance to impute income when we don't have enough facts about that obligor anyway.

Ms. Surratt: But the cause itself.

Senator Pickard: I would think from an evidentiary standpoint, if you don't have the input required from that individual. You don't know if they fall, for example, within the low-income table. You

don't know if maybe they're disabled, though not on the public role. There may be a host of reasons why imputation would be inappropriate. I would think that would be more of a question of an evidentiary standard that's required. You need to make specific findings about that individual and if that requires empowering the court to take the individual into custody for purposes of compelling that information to be disgorged. That would be more appropriate than simply saying, well he's not here let's impute income. I think that opens up a pandora's box moving forward.

Ms. Surratt: Ms. Cliffe, do you have any insight from the south? I always put you on the hook on some of this stuff.

Ms. Cliffe: In Clark, we very rarely impute income and especially with the new NAC. We review the totality of non-custodial parent situation. Fortunately, we do have access to Social Security Benefits, unemployment, public assistance. Being able to view whether they're receiving state Medicaid or food stamps. We look at their education, we look at all of those things. There's not necessarily a finding, but if we're unable to find historically any income, or we're unable to find any present income, at that point we're not really imputing income. We don't have evidence of income, so at that point we do use the low-income table and that support amount is generally set at $84/$85, depending on of course what chart we're looking at. Income is zero, and we will not impute income after reviewing all of those various databases. If income is discovered later then that would be a modification, because obviously that is a change of circumstance. So that's how we satisfy all of those sorts of cases.

Ms. Surratt: Any further discussion from the committee?

Ms. Baker: I would just say that our court also tends to look at the low-income schedule. But in essence that's imputing some income to be able to qualify for the low-income schedule. Or using it as a minimum, which we as a committee eliminated. I think it's problematic, and it may be more endemic to the enforcement programs than it is to private practice. It is problematic figuring out what to do when you don't have any income and you don't have any parties in front of you and no information.

Ms. Cliffe: Just to clarify, we don't necessarily use it as a minimum. We understand there's not a statutory minimum. Let's say we're at $84, there's one child on the case. We review whether the respondent has a history of incarceration. We review the petitioner's application for employment information at the time they met, what's that education background historically. We look at whether the respondent has other cases. Are they making payments on those cases? What are those orders set at? Going back to that serial parenting situation, how many other cases or children does the respondent have? At that point, it's not necessarily $84, the appropriate amount may be $40 or $50 for that case. I just want to emphasize; we do not have a statutory minimum here in Clark.

Ms. Surratt: Any additional comments or questions from the committee? At this time, what I am hearing is that we won't keep this item on the agenda, unless future proposed language arises that somebody has a brilliant idea to help cure this problem of non-participatory individuals within the court system. We would love to cure across the board, of course. It may be worth asking our auditor, when we do another audit, if any other states have ways of dealing with those cases or assisting with those cases. Not sure what the federal commentary is on that, but I'm sure it plays into the ability to pay language. If you create an order that is an inappropriate amount, they are

unable to pay. Then we're backpedaling right back into the same problems. At this time, I will take public comment on agenda item eight.

b. Public Comment

Mr. Willick: We're not looking at this from the DA court point of view. So, we didn't address that at all. But 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. Some courts are imputing income to the unemployed spouse in accordance with the earning capacity of the parent. Others are treating some or all of the unemployed parent's new spouse's income as income for the guideline schedule computation based on their reading of 425.150(f). 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 proposed alteration to 425.150(f), we've addressed separately. The without good cause limiter for underemployment, we believe 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. We have a suggested rephrasing of the provision which we believe will accomplish both of those ends. We believe that restructure would self-solve the retirement aspect, as well. Since earning capacity is necessarily reduced when someone reaches normal retirement age. The remaining sections of 425.125, which are the factors for calculating underemployment can be dropped much lower in the regulations to simply detail how to do such a calculation if imputation is determined to be necessary. Again, we can supply that in writing, which I think will be clearer than a verbal presentation.

Ms. Surratt: Thank you, sir. If you could provide that to me, I will make sure the exact language ends up attached to the next agenda, which will allow this committee to consider it at that point.

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

Ms. Surratt: Agenda item nine, discussion and recommendations on NAC 425.100(2) and if "basic needs of a child" should be defined. We did discuss this at the last committee meeting, and we had several members not present. Does anybody have any additional comments to give on that agenda item? Ms. Baker.

Ms. Baker: I did want to clarify; I was not concerned with "basic needs of the child" in terms of a definition. I was actually looking at what is now item 16 on our agenda. I do not think it's necessary to have a definition for basic needs of the child.

Ms. Surratt: That's the reason we kept it on here, to make sure we got that input from you because we weren't really sure ourselves. We appreciate it. Is any further committee comment? Seeing none. Then, we will go to public comment on agenda item nine.

b. Public Comment

Mr. Willick: We did an analysis of all of the language actually used, and we realized that there was some difficulty, because it went from the commission to either the LCB or a subset, then, came back in a slightly different order. We believe there's an ongoing problem with inconsistent

terminology. Leading to some uncertainty as to what is and is not being assumed to referenced in various subsections, including the words, base, basic needs, schedule, and guidelines. We suggest uniform references and cross references. For example, 425.100 speaks of guidelines, but 425.140 speaks of a schedule, leading some judges to believe that there are multiple steps for adjustments at more than one place in a court hearing. Which some of the members of the commission at the last meeting, didn't believe should happen. For example, as to income differences between the parties, which was the example that was being used during the last meeting. We believe 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. Once again, this is probably clearer by redline. But we believe that the elimination of words that are not properly cross-referenced in other subsections will eliminate confusion that are leading to some of the decisions that we are looking at as problematic.

Ms. Surratt: Can you provide that red line to me? For the next meeting, I'm going to start another master document. So, those of you that were not with us when we first started the child support commission, we kind of started working off of a master version of the NACs with red lines so that we could start tracking what we were doing through the meetings. The end result of this then has to go to DWSS for them to do their public comment in public meetings, before it can go to LCB. I will start accumulating that for use in the next agenda.

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. Surratt: Agenda item 10, 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. Do we have any committee members willing to comment on this item? Hearing none, I will move on to public comment next. Based on not hearing anything, we'll decide after public comment if we have enough comment for me to keep this on the agenda or not. Do we have any public comment on agenda item number 10?

Ms. Baker: I brought this up because we had a family bench bar meeting at which a number of the Second Judicial judges and members of the bar participated. This was a question that was raised in that meeting. Was the intention with respect to meeting the basic needs of the child? Was it relying specifically on the percentage prior to making the adjustments or was it presumed that the basic needs of the child would be met when you took the percentages and then made the adjustments? I said I would raise it at the next committee meeting I was at to see if anybody has any input.

Ms. Surratt: Okay, thank you any additional comments or questions from the committee

Senator Pickard: I think that this is something that Marshall Willick was just speaking about. I think this speaks very well to his point that being clear about the order and what is part of the calculation and then what is done subsequent to the calculation. I think that effort is probably timely and important, so I'm looking forward to seeing the AAML suggestions.

Ms. Surratt And I would probably say language choices, as Mr. Willick pointed out about inconsistencies in the language. If we get some of those things fixed, perhaps we'll be on the right page. Before I move on to public comment, any other comments from the committee? We will move on to public comment on agenda item number 10.

b. Public Comment

Mr. Willick: Senator Pickard and Ms. Surratt are correct. That is exactly what we 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: Agenda item 11, 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. Senator Pickard.

Senator Pickard: This is something that harkens back to the original bill that created this committee. One of the things, that has haunted us in this process is deciding what's fair. When we're talking about dividing or adjusting, we've typically followed the Wright v. Osborne approach, which is, if somebody's making more than the other, we figure out what the difference is, and we pay that to the other person who makes less. Whereas, that is arguably a disproportionate share of the difference. Then we have the argument, well that person is less able why should they meet in the middle. It was a policy decision but I'm increasingly running across that in my practice, where we have a disparity that isn't huge; and yet we're asking one person to shoulder the majority. I just wanted to reopen the discussion, because in my view I think that dividing it in half is a fairer approach. But I just wanted to get the input from the committee to see if there's any appetite to address that.

Ms. Surratt: Thank you, Senator Pickard. I will give my comment real quick. I believe it's much fairer to do the approach that is suggested in this agenda item. I would also state though that this is a very heated topic. I'm surprised by how strong of opinions there are on both sides of it. Part of it through the commission work was to just go back to the old way of doing it because that's what felt comfortable to everybody. That's really kind of where we went with joint physical because we didn't want to stray too far from it. After talking to individuals in public comment, in great detail, some of the miners out of Elko and Winnemucca, I became far more convinced that it was much fairer to equalize them. Like a balance sheet, is the best way I can describe that versus you owe the difference because you're the higher earner. We equalize everything else in Family Law on the balance sheet, but this doesn't seem to work in that same way. I've heard comments from individuals who stated, well it doesn't make any sense. If I owe you, I owe you and that's all there is to it. I'm going to owe you that full difference, but that's not what we were trying to achieve through this Child Support Statute. You're trying to achieve that each party has equal amount of money and in order to do that you have to balance it. You can't just take the difference, because now one has more than the other. It's been an ongoing problem, but I will take additional committee comments if anybody has any. Judge Robb.

Judge Robb: I too have received quite a bit of comment with regard to this particular issue. I have become convinced, as have you, that the balance sheet approach is the better way to go and the fair way to adjust between the two income levels.

Ms. Surratt: Thank you, Judge Robb. Any additional comments? Does anybody want to make a motion?

Senator Pickard: I will make the motion to alter the language of NAC 425.115(3) for joint physical custody. 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: For clarification of the record, there were other items in that legislation, I believe. It's just specific to this item.

Senator Pickard: Yes, that's correct.

Ms. Surratt: Do I have a second? Judge Hoskin are you a second? Let's get a second and then we can do discussion. Do I have a second?

Judge Robb: I'll second.

Ms. Surratt: Judge Robb seconds. Any discussion?

Judge Hoskin: My only concern is are we opening the door on the modification side? That everybody that has a joint physical custody child support obligation, once this legislation kicks in, now we're modifying all of them at one time. Is that something that we're contemplating as part of this change?

Senator Pickard: That's a great point. One that I hadn't considered in this context. We probably should add language to suggest that this on its own does not constitute a significant change for purposes of modification.

Ms. Surratt: We of course put that into the last changes we made. I understand there was at least one appeal done on it. I don't know the resolution of that; if it succeeded or not. I was one of the only committee members other than the other private attorney who voted against that provision. As I stated, I feel like my position on this committee is as a representative of the private bar and the private public. My concern as to whether or not the courts can be overloaded with something is not something for me to consider. Additional discussion on that item? Ms. Cliffe.

Judge Hoskin: I'm sorry, Ms. Cliffe. Let me just throw in we may not need it. I went back and looked at 425.170(3) and we've already dealt with that potential. I withdraw my comment.

Ms. Cliffe: Before we vote on this today is there any appetite to maybe run the math with individuals in various income levels. To see what this new calculation would look like both with a high and low-income earner. Present the math so people really understand this change and how it will impact them as a family.

Ms. Surratt: I think that is fair. Yes, Senator Pickard.

Senator Pickard: I'll be happy to withdraw the motion for that purpose.

Ms. Surratt: Judge Robb, do you withdraw your second?

Judge Robb: I do.

Ms. Surratt: Then, we're back where we can do that. I also think it might not be harmful for us to hear a little bit of public comment on it too before we have a final vote on it. This makes it a little bit harder how the order is with public comment versus our committee.

Senator Pickard: Something that Ms. Cliffe comment raised in my own mind; was it will also require a change to the calculators that are available online. That's going to be something that we'll want to make sure that they're looking at. That's something that's going to take several people, particularly those in the private sector, that have calculators on their websites to have to adjust. Getting public comment might be helpful. So, we look at the calculation under obligor A, we look at the calculation under obligor B and we determine what the difference is. Now, we divide it by two and the obligor who earns more or has the larger obligation pays that half of the difference to the other so party.

Ms. Chappel: The new NVKids data system will do the calculations and the math. Just so you all know.

Ms. Surratt: Without a big fiscal note is what I'm hearing. That makes things much better. Do I have a volunteer to run some scenarios to have them prepared for the next meeting?

Ms. Cliffe: I am happy to run the samples, both with the guidelines as they stand and then what this change would do. I'll pick them at various income levels, both from the low-income chart percentages, as well as, what it would look like on the high-income side.

Senator Pickard: I'm happy to volunteer supporting that effort, Ms. Cliffe, if you'd like it.

Ms. Surratt: Do we have additional committee comments before I move on to public comment? Hearing none. Can we please now take public comment on agenda item number 11?

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.

Ms. Surratt: Agenda item 12. 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. We had discussion last time regarding this issue and quite a bit of committee comment. With missing members of the committee, we kept this on the agenda to keep discussing it. Do we have further comments from anybody on the committee? Ms. Baker.

Ms. Baker: I would agree, this is probably a training issue that can be easily addressed that way.

Ms. Surratt: Thank you. Additional committee comments? We will move on to public comment. And unless I hear additional reasons within public comment, I will be removing it from the agenda

with the hope that the clarification is out there with our meeting minutes and the YouTube videos being placed on the DWSS website. Do we have any public comment on agenda item number 12?

b. Public Comment

Mr. Willick: Whether or not the commission chooses to change the phrasing to specifically allow a zero amount, we believe this is one of the places that the reordering will be useful. Essentially, we're suggesting, as was done in the 16.2 drafting, it may be fruitful to open the regulations with escape clauses for non-application of the guidelines schedule. There are two in the current regulations: one relating to stipulations, the other relating to low-income obligors. Then, move on to the guideline schedule, then adjustments to that schedule and then the sums calculated outside or in addition to the guideline schedule sums.

Ms. Surratt: Thank you, Mr. Willick. Based on those comments, I'm going to still remove it from the agenda as a specific item. It's going to stay within an agenda item regarding the order and language of the NAC, for the next meeting.

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: Agenda item number 13, 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. This was out of courtesy of the fact that we did not have all our committee members last meeting that we kept this on the agenda. Do we have any further comment from the committee on this agenda item? Ms. Baker.

Ms. Baker: This was an issue that I brought forward. I find, at least in our court, that one of the adjustment factors the court wants to use is time spent. Not everybody goes into court to do a joint physical custody arrangement and if you're not doing joint physical custody there's a very difficult time to acknowledge that the other parent has responsibility for caring for the child. I think it's something that would be helpful to consider, 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, with discretion to the court.

Ms. Surratt: Additional comments from the committee? Mr. Fleeman.

Mr. Fleeman: I wasn't present last time. I read the minutes, but it seems like it would kind of muddy the waters. Primary custody takes that into account in terms of joint physical custody, like under *Bluestein* and some of the other cases. If it's very close to 40%, the court can still make a determination of joint physical custody. I think this is kind of just adding a layer of ambiguity as to what the court should do. So, I would be opposed to this type of language. I think it's just very confusing.

Ms. Surratt: Thank you, Mr. Fleeman. Senator Pickard.

Senator Pickard: I am going to weigh in on the same side as Mr. Fleeman on this. When we were dealing with 125c.003, we kind of reinstated the 40%. But we converted it to a forward-looking instead of a backward-looking analysis. We made the policy decision that 40% is a sufficient

demarcation for that consideration. We're talking about if you have less than 40% of the time, it's not going to be sufficient to call it joint physical custody. Now, *Bluestein* has allowed the courts to apply the label wherever the court deems it necessary, and I don't disagree with that. When we're discussing joint versus primary, we've already made that policy decision in 125c.003. I don't know that putting the adjustment factor in would do anything other than muddy the water. Because we've already made that policy decision in the statute and we don't have the ability in our purview to play with that. Ultimately, we would be creating a discord with the statute and I think that would be a mistake.

Ms. Surratt: I will comment. This is that difference between the private versus the DA's world of dealing with clients or individuals, who do not have a custody decision like we do. We will always have taken that step in the private world, but they're dealing with people showing up with no custody orders yet still child support obligations. I don't know if the heart of the problem is the difference between our world versus their world. Is that the part that needs to be fixed or is causing concern? Do we have additional comments?

Senator Pickard: I agree with that and that's what I assumed was happening. I'm just pointing out that what I want to avoid is creating discord within the statutory scheme. That was one of the main reasons that we pushed AB263 back in 2015, because there were so many. I'm just resisting this notion of creating a disparity simply because there is a difference. I think maybe what we do instead is provide the IV-D Courts with some guidance on the custodial arrangement, even though they don't have jurisdiction to make a custody decision. They can certainly look back to the factors of 125c.003(1)(a) as guidance for determining where that line is drawn. What I want to avoid is creating a standard in the guidelines that then contradicts or could be interpreted to contradict what we've done in the statute.

Ms. Surratt: Thank you. Judge Robb.

Judge Robb: We are talking about moving the guidepost. The reason as I understand that that factor was originally there was back at a time when if you had more than 50 percent custody you were the primary physical custodian. That idea has already been subsumed within the *Rivero* definition of primary physical custody. We're already looking at a 40% custodial parent still having what would be considered joint physical custody. They are getting the credit for the time that they are doing. Now, what we're looking at is giving credit for even fewer hours spent with the child at the detriment of the party who is actually the primary physical custodian. I am very resistant to moving that goalpost, until we are looking at is this party spending 25%, for example, of time with the child. That is inappropriate to use that as a consideration. I think it's already subsumed within the law that we have. I don't think it's a good idea to try and resurrect that particular consideration to be used to go beyond that 40%.

Ms. Surratt: Thank you. Additional comments? Ms. Cliffe.

Ms.Cliffe: Clark very rarely used this deviation factor when it was in existence. This is not something that we are requesting be added to the NAC. Of course, we'll support what the commission decides. But it's not one that we'll use regularly even if it's added back in.

Ms. Surratt: Thank you. Ms. Baker.

Ms. Baker: My only request would be that we make it very clear in our minutes that time spent is no longer considered an adjustment factor under the NAC, as it is used a lot in my courtroom.

Ms. Surratt: Restate that for me for a second. You're asking that we put it just on the record or that we actually codify something into the NACs regarding that?

Ms. Baker: No, I don't think we would codify. Adjustment factor does not include time spent. But I do think that in terms of our meeting minutes that we're very clear that this was a discussion and that the consensus of the committee is that time spent is no longer an adjustment factor to be considered in calculating a child support obligation.

Ms. Surratt: That I do believe is starting to shape up in the minutes. I suppose we could make a motion that our minutes state that, but I believe that is wrapping up in the minutes and we have clear intent of this committee at this point. Do we have additional discussion? For the sake of asking, are there any motions or are we moving on to public comment? We will move on to public comment for agenda item number 13.

b. Public Comment

Mr. Willick: This is not one of the comments from my role as academy observer, but from my prior role as the reporter for the 1992 and 1996 versions of this commission. I'll suggest that if you go back and you read the 1992 report, you will find that our discussion of this statutory factor was the reverse of what you're 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. It might be appropriate for a court to actually use this factor as an increase in the child support payable to the custodial parent who has 100% of the out-of-pocket requirements to care for a child.

Ms. Surratt: Committee, we do have an agenda item later at the end, regarding discussing future items. Based on any of the public comment on items that I did not have remain on the agenda, you can discuss it during that agenda item and let me know whether you would like to keep it on the agenda.

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. Surratt: Agenda item number 14, discussion and recommendations on NAC 425.150(d) to determine if “public assistance” should be defined and if so how to define it. We did discuss this last time, and I believe Ms. Cliffe was going to work on language for us.

Ms. Cliffe: Just for purposes of the agenda, I noticed that we only mentioned NAC 425.150. Both, Ms. Baker and I were tasked with reviewing that, but it also included NAC 425.110. It was both of those sections and we've provided our revisions to those sections for today's meeting. Since it's not on the agenda are we able to address NAC 425.110?

Ms. Surratt: Yes. I believe in terms of defining public assistance wherever you believe that needs to happen. At the moment, it was defined within the subsection included on the agenda, but I believe we're fine to discuss where it needs to be corrected across the board.

Ms. Cliffe: It would be easier just to very quickly discuss NAC 425.110(d).

Ms. Surratt: Would you like me to share it on the screen? Would that be helpful to the committee? Let me do that and hopefully I have it right. Do you see 425.110 on the screen?

Ms. Cliffe: So, subsection d was the only section that was revised. Previous language was a broader public assistance language. This is very specific to state TANF cash assistance. Ms. Baker and I met; the state was online as well. I believe we were all on board with this verbiage, so if the committee could review it.

Ms. Surratt: For purposes of the record, I'll read it out loud we're talking about just subsection d, correct?

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. Cliffe: To clarify, the slash is for those that maybe don't understand Temporary Assistance for Needy Families. We wanted to identify that it's only the cash assistance we're concerned about not the Medicaid, the food stamps, and things of that nature.

Ms. Surratt: I'll make one comment before I solicit other comments. I am not sure if LCB is going to have issues with the use of a slash within statutory construction or not. These are the things you get experience with over the years of them knocking things out. I'll take comments on this now. Senator Pickard.

Senator Pickard: We generally try to stay away from slashes because it doesn't usually lead to clarity in terms of interpretation. What I would suggest is reversing the order and say, "receiving cash assistance such as Temporary Assistance for Needy Families." I also had the question, are we going beyond TANF or if we would include things like SNAP benefits or other benefits that might be available to families. Because ultimately those do add to the economic circumstances of the individuals. If we're not including anything other than TANF, I would just like to get on the record why that is.

Ms. Cliffe: That's where NAC 425.150 comes into play where maybe we just have a generalized public assistance. But in terms of NAC 425.110, it's about providing the authority for parties to stipulate. The prior language was public assistance and so what was happening was a petitioner was receiving food stamps and they were unable to stipulate to a lower child support amount because of the receipt of food stamps. That's what we call a non-referable aid code. The State does not have a position whether the parties stipulate if petitioner is receiving Medicaid or food stamps. The only referable aid code is cash. That's where the State steps in and says, you can't stipulate to a zero order because the petitioner is receiving cash. But with all other benefits, we do not have a position. It would just be the TANF that we're addressing in NAC 425.110(d).

Ms. Surratt: Additional comments? Ms. Chappel.

Ms. Chappel: Yes, we're in concurrence with Clark County.

Ms. Surratt: Thank you. Additional comments? Let's go ahead and move on to 425.150 edits, Ms. Cliffe.

Ms. Cliffe: 425.150 edits, that would be subsection d. For consistency, we removed the public assistance out of the Temporary Assistance for Needy Families. But there was a comment when Ms. Baker and I met, from the State about leaving that section as it stands. I like 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. If we are very specific that it's only TANF, then we run into the situation where the respondent is receiving food stamps and medical and a lot of other sorts of benefits from the State, would the court like to consider those as adjustment factors downwards? I'm amenable to leaving NAC 425.150 alone, but again any feedback from the committee would be wonderful.

Ms. Surratt: Additional comments? My personal perspective as a private attorney is that this affects me so little that I just want to do whatever works for the DAs to make it work well for DWSS. It's really truly not going to be applicable to the cases I see.

Ms. Cliffe: In terms of NAC 425.110, the ability for parties to stipulate, it would be helpful to specify it's TANF, so we don't have those rejected stipulations for 425.150. Despite the fact that Ms. Baker and I made that change, I do like the commentary from our session to just leave this section alone. No change, but Ms. Baker, I'll defer to you on this one as well.

Ms. Surratt: Ms. Chappel, I see your hand raised too or Ms. Baker, either one.

Ms. Baker: Ms. Cliffe and I did discuss the possibility of leaving NAC 425.150 as just public assistance and I think that would be helpful. I think the confusion for some people is they don't understand the definition of public assistance in 422a..065 and I don't know if we have any appetite for referencing that statute so that there is clarity for what that would contain or not.

Ms. Cliffe: I like the idea of referencing 422A.065.

Ms. Chappel: The State is in agreement with that suggestion.

Ms. Surratt: Any further discussion from the committee? Instead of making a motion right now, I think we need to put the exact language in front of the committee to make that vote. Then, I can incorporate it into the master document. I am going to leave it on the agenda for right now, so that we can make those modifications.

Ms. Cliffe: We will make the changes as directed in this session. NAC 425.110 to remove the forward slash and NAC 425.150(d), we will revert the language back to the original language but also with the reference to NRS 422A.065. I'll have copies of that for the next meeting.

Ms. Surratt: Any additional comments before I move on to public comment? Yes, Assemblywoman Cohen.

Assemblywoman Cohen: I'm looking through 422A.065 and it's not a statute that I usually look at. Could I get some information? If there's housing assistance is that encompassed in that? I see there's reference to "benefits provided pursuant to any other public welfare program administered

by the division pursuant to additional federal legislation." If one of you who happens to know this Statute well could just let me know?

Ms. Cliffe: I'm sorry, I guess I don't understand the question.

Assemblywoman Cohen: Are housing benefits included in NRS 422A.065 part of the definition of public assistance?

Ms. Cliffe: I'm looking at the definition right now. It should be subsection g, which is the general benefits provided pursuant to any other public welfare program. We'll just be referencing NRS 422A.065 in NAC 425.150. I imagine something along the lines of as defined in NRS 422A.065.

Assemblywoman Cohen: Thank you. Like I said it just isn't one of the statutes that I'm very familiar with, so I wanted to make sure that was included.

Ms. Surratt: Judge Hoskin.

Judge Hoskin: My only hesitation is I thought we were trying not to reference other statutes that could potentially change as part of what we're doing. I don't have a problem if it's clear that way. I just recall that was part of our discussion in the initial committee, so I wanted to raise that in case anybody wanted to comment.

Ms. Surratt: Any additional comments?

Ms. Cliffe: I agree with Judge Hoskin's sentiments. The good news is this statute has not changed since I've been here. It looks like the last revision may have been in 2013. So, we might be safe if we want to make this one exception, but I will defer.

Ms. Surratt: Additional comments? I think we're safe to reserve the motion until the next meeting, just when we have it exactly as needed in front of us. We'll be able to hear the public comment before a final decision is made on this. If we could now move to public comment on agenda item number 14?

b. Public Comment

No public comment was given.

Ms. Surratt: I see Judge Shirley in our attendee list and I just attempted to move you to panelist. You are just by phone, but to do what the Attorney General's office would like us to do, we need you by video. So, I can't count you as officially present, but I do note that you are here and you are part of our committee.

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: Agenda item number 15, discussion and recommendation on NAC 425.150(1)(e) and whether it should be expanded to cover the cost of the parent to travel for visitation. This is an item we did discuss at the last meeting and Ms. Baker, we kept it on the agenda to have further comment from you.

Ms. Baker: This came up because oftentimes with small children, they are not necessarily able to go and visit a parent who lives in another state. If the idea is to support contact between the children and the parents, then we might want to be clear that it is the cost of transportation to facilitate contact between the children and the parent. Which would include, the parent coming to see the child, as well.

Ms. Surratt: Additional committee comments? Ms. Chappel.

Ms. Chappel: I would just state, and this is an opinion as a committee member, that it might not seem fair if the budget of the custodial parent is limited to make the cost of transportation applicable to what they receive. So, as long as it's not going to cause a hardship to the child and the family, I would think it could be allowable, but it might be a case-by-case basis.

Ms. Surratt: Judge Hoskin.

Judge Hoskin: I think that goes into; we have the ability as judicial officers to consider the cost of transportation in the totality of what we're doing for adjustments. And I think if we get too specific on those issues, then we're going to lose the ability to have the discretion. I would prefer not to make a change to it because I have an ability to make a case-by-case determination with the language the way that it is now. And I think if we add the additional proposed language, I may not have that ability.

Ms. Surratt: Thank you. Ms. Baker.

Ms. Baker: So, right now the adjustment factor is the cost of transportation of the child to and from visitation. That sounds like it limits it to that cost and whether or not we want to say the cost of transportation to facilitate visitation.

Ms. Surratt: Judge Hoskin

Judge Hoskin: I'm looking to the catch-all in NAC 425.150(1)(g), which is where I would put the transportation for the parent in those cases. I think it's appropriate, but I don't know in all cases it's not appropriate. I can think of examples on both sides of it. But if we're limiting and either requiring it or completely eliminating it, then I don't have the discretion in those individual cases.

Ms. Surratt: Assemblywoman Cohen

Assemblywoman Cohen: Why couldn't it be changed "to the cost of transportation to and from visitation" and take out of the child. That way there's more flexibility and no one would improperly presume that we specifically only meant child. We know sometimes people will think if something isn't specifically stated it's not an option. That way it leaves transportation very flexible for those cases where the court has the discretion to determine if there should be costs to the parent who's helping with transportation.

Judge Hoskin: I have that discretion now. I get the point that you're getting to, but I also have those cases where people are coming in and saying. this clearly means that a parent gets to transport and parent's new spouse gets to transport, because that's the cost of going on the visitation. I think that when we originally put this together, the cost of the child was considered by the committee as necessary to consider. But the other costs were going to be left discretionary. Certainly, I'll apply

whatever law we end up doing. I'm just saying that if the intent is to limit the court's case-by-case determination, then more specificity will accomplish that.

Ms. Surratt: Ms. Baker.

Ms. Baker: It seems to me that all of the adjustment factors are discretionary, because it says may be adjusted. So, I think that even if we 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.

Ms. Surratt: Additional comments? Hearing none. Do we have any proposed motions on this item? Hearing none. Again, this will be another item that, dependent on public comment, I'll make an additional decision whether or not to keep this on the agenda. When we do future agenda items at the end, we can clarify exactly what we're going to keep on the agenda. Can we please take public comment on agenda item number 15?

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.

Ms. Surratt: Agenda item number 16, 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. We did have discussion on this during the last meeting. In deference to the members that were not present, we kept it on the agenda. Do we have any further discussion on item number 16? Hearing none. We will go on to public comment. I will consider this agenda item done, unless I hear something in public comment that causes us to keep this on the agenda. Can we please take public comment on agenda item number 16?

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: Agenda item number 17, 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. Again, we discussed this a little bit last time, but Ms. Baker, we really needed your input on this and suggested language.

Ms. Baker: When we look at NAC 425.155, it talks about the obligor being incarcerated for a period of 180 consecutive days or more to be able to trigger this particular provision. What we have found is that we have a number of parties incarcerated and are pending arraignment or their

trial or sentencing. They are often there for a significant period of time. I did notice in the minutes, Ms. Cliffe talked about not really using 425.155, but looking at the ability to pay for those particular individuals. I certainly think that is an option, but we are clearly in court because the individual is in custody. I apologize, but I don't have my language. I think I sent you some language, but don't have it in front of me. The question is 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? I would point out that at least in terms of policy for DWSS, it really talks about a change in circumstances when they will be incarcerated. Which sounds like that's a starting point before we move forward on a modification based on incarceration.

Ms. Surratt: I have a question for you, because the language that's in NAC 425.155 is that if the obligor is incarcerated or involuntarily institutionalized, are you suggesting that language isn't broad enough to capture people that are being held before there is an actual conviction? Or is it 180 days causing problems? Is it too long? I'm trying to get to the heart of which part's the problem.

Ms. Baker: I think the 180 days, we got from California and came up with a minimum amount for us to modify. If someone's going to be incarcerated for less than 180 days, then we don't necessarily want to change their child support obligation because it's a temporary situation. If they're going to be incarcerated longer, then that it is not so temporary, and we should probably look at modification. But I think this is narrow. As I indicated perhaps Ms. Cliffe's approach of just looking at their ability to pay maybe the answer to it.

Ms. Chappel: It is the program's opinion that setting a minimum which includes zero dollars in the income rate should resolve this issue.

Ms. Surratt: Meaning, based on the other changes we have within the agenda you would not need additional changes to this section?

Ms. Chappel: Correct.

Ms. Surratt: Ms. Baker is that consistent with what you're thinking?

Ms. Baker: It is.

Ms. Surratt: We won't need a motion on this or change to section 425.155, based on other changes we're making within our agenda. Do we have any additional comments from the committee? Hearing none. I will move on to public comment on agenda item number 17.

b. Public Comment

No public comment was given.

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

Ms. Surratt: Agenda item number 18, discuss and approve items for future agenda items. Anything from the committee that you want included or changed or brought back into the agenda at this time?

Ms. Chappel: I know you've been taking notes about things that are going to be on the next agenda. It might be helpful to review those items so we can identify anything else to add.

Ms. Surratt: I can do that. I'm going to go through the agenda items and tell you if I feel like they're done and they're not coming back or if they are coming back. Agenda item number four is done; we will not keep it. Agenda item five, we are going to keep on the agenda. Agenda item 6, keep. Agenda item 7, keep. Agenda item 8, keep. Agenda item 9, keep. Agenda item 10, keep. It's really within other items now because of the reorganization. Agenda item 11, we will keep. Agenda item 12, we are done and will not return. Agenda item 13, we are done and will not return. Agenda item 14, we are keeping, mainly just to get the final language in front of us for a vote. Agenda item 15 is done. Agenda item 16 is done. Agenda item 17 is done. When I say done, I mean it's not returning on the agenda. Is everybody on board with me? Any additional new items? For those of you that are listening within the public, we're going to go to public comment. But please note, that this committee is all ears for potential items to place on the agenda. If they are items that this committee has thoroughly vetted, there is a likelihood I won't put it on the agenda. I will reference you to the prior meeting minutes and videos, we will have up on the internet here soon.

Agenda Item #19 – Public Comment

Andrew Pastor: I'm talking about NAC 425.150(1)(f). I know that this was discussed previously on the September 17, 2021, meeting, but I believe that the portion that I would like to discuss was not addressed. The last portion of that subsection has to do with the phrase "so long as the adjustment does not exceed the total obligation of the other party." I'd like to point out that the term other party is defined in NAC 425.115(2) to be the obligor if one party has primary physical custody. In that section the other party is the party paying the obligee. 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. By way of example, if somebody has a monthly obligation of $10,000, according to their income under 425.140, the party receiving the money would have either no obligation if they're the primary caregiver or a much smaller obligation if it's joint custody. It certainly doesn't make any sense to limit the adjustment that can be made based on the other party's income, if that other party means the party receiving the money. I'd just like to point that out. It seems to me that the term other party needs to be revised.

Ms. Surratt: Thank you for your public comment, Mr. Pastor. That's extremely helpful for this committee and I do believe it fell within one of our agenda items. We will be able to address it on the next agenda within the reorganization and the definitions and the clarifying language. We appreciate your time. Those of you that are also listening today, but did not participate, please know that we welcome your comments. We welcome you to give us suggestions and ideas. Especially, when those ideas come with specific language changes for us; it is extremely helpful. We are deep into these child support statutes at this point and we are blind to some of the inconsistencies, because we've seen the language 500 times.

Agenda Item #20 – Adjournment.

Judge Hoskin: So moved.

Judge Robb: Second.

Ms. Chappel: We'll have Joy send out an announcement when all of the meeting minutes have been posted. I put the link to that website in the chat (https://dwss.nv.gov/Support/cs_meeting_minutes/).

Ms. Surratt: Mr. Fleeman.

Mr. Fleeman: I'm not sure that it matters, but at the beginning we voted on adopting the meeting minutes. I didn't vote during that. There was no offer of abstention or I would have abstained. I wasn't here at the last meeting.

Ms. Surratt: I will record your abstention. As soon as we figure out the next date for the next meeting, we will get notice out to everybody.

Meeting adjourned at 11:28am.