

CHILD SUPPORT COORDINATING COUNCIL SUBCOMMITTEE
Meeting Minutes - November 2, 1999
AMENDED

Members Present:

Hon. Mark Armstrong
David Byers
Kat Cooper for Hon. Michael Jeanes
Bryan Chambers for Jerry DeRose
Conrad Greene
Leona Hodges
William Hurst
Hon. Laura Knaperek
Dana French for Noreen Sharp

Nancy Mendoza for John Clayton
David Norton
Commissioner David Ostapuk
Hon. David Petersen
Hon. Rhonda Repp
Chuck Shipley
Russell Smolden
Bianca Varelas

Members Absent:

Hon. Linda Aquirre
Jodi Beckley

Hon. Robert Duber
Hon. Rebecca Rios

Staff:

Megan Hunter
David Sands

Isabel Gillett

Guests:

Todd Bright
Judy Bushong
Glenn Davis
Lauren Eiler
Paul Geisheker
Karen Gendron
Barbara Guenther
Ron Johnson
Jane McVay
Dot Reinhard
Rabeya Sen
Stefan Shepherd
Eddie Sissons
Chris Sotiriou
Keri Sparks
Linda Zelonky

Division of Child Support Enforcement
Clerk of the Superior Court-Maricopa
Senate Council to Minority
Clerk of the Superior Court-Maricopa
Single Parents Association
Custodial Parent
Senate Research
State Bar of Arizona
DCSE
Office of the Auditor General
ACADV
JLBC
Arizona Justice Institute
Parent
House Research
ACADV

Call Meeting to Order

The meeting was called to order by Senator David Petersen at 10:04 am.

Announcements

Senator Petersen introduced three new members of the group and the positions in which they serve as follows: Honorable Laura Knaperek, House of Representatives, Co-Chair; Russell Smolden, Parent; and Leona Hodges, Acting IV-D Director, DCSE.

Pat Harrington announced the first meeting of the Finance Workgroup would commence immediately following this meeting.

Nancy Mendoza informed the group that a nomination for the Governor's Spirit of Excellence Award was submitted on behalf of the Council honoring the work of the Centralized Payment Processing Workgroup. Notification was received that they are a finalist.

Approval of Minutes

David Norton moved that the Family Violence section of the minutes be amended to reflect that a central repository for orders of protection exists, but lacking is a method of getting the information from the various county agencies to the central repository. A second to the motion was made by Chuck Shipley. The minutes were approved as amended.

WORKGROUP REPORTS

Family Violence Indicator

Kat Cooper

Kat Cooper updated members on the progress of the Family Violence Indicator (FVI) Workgroup. The Workgroup was established to examine how the State IV-D agency and the courts will coordinate in the implementation of a Federal mandate in terms of placing a non-disclosure indicator on the Federal Case Registry via the State Case Registry. The workgroup continues the effort to meet the Federal requirements placed on the states and how to best protect the interests of all parties.

Two recommendations were previously adopted by this Council: 1) to use orders of protection as the basis for putting the indicator on the system to protect addresses; and 2) to place the indicator on all TANF "good cause" cases.

The Workgroup's third recommendation is to replace the term FVI with the term Non-Disclosure Indicator (NDI). This will serve the purpose of protecting families outlined by the feds and at the same time addresses the concerns of individuals that placing the FVI on someone indicates guilt of violence. The federal system will recognize both the NDI and FVI. Concern was raised by a member of the Arizona Coalition Against Domestic Violence that using NDI reduces the seriousness of domestic violence.

David Byers explained the efforts being made by various agencies to collect data on orders or protection and place them in a central repository. The data can then be matched with ATLAS

for placement of the FVI or NDI.

Nancy Mendoza apprized the members on the historical background of the Federal Parent Locator Service and its relationship to the FVI or NDI. She also explained that Federal law sets forth that only authorized users have access to this information and that an override process has been provided for.

The group is working to define the criteria Arizona will consider as reasonable evidence, and to decide when to turn off the FVI or NDI.

The Council approved of changing the Family Violence Indicator (FVI) to Non-Disclosure Indicator (NDI).

Statute Clean-up

David Sands

A.R.S. § 12-910

Administrative reviews - The child support agency is obligated to hold an administrative review on the request of a party. The agency determination is then subject to a judicial review which currently includes the right to a jury trial. The proposed change simply makes an exemption for jury trial in child support cases.

A.R.S. § 23-1068

Presently, workers compensation benefits are exempt from attachments, garnishments and executions. The proposed change makes those benefits subject to assignment for the payment of child support.

A.R.S. § 25-322

This statute currently refers to payments being received by the Clerk of Court and the Support Payment Clearinghouse. In the past, payments were made to both, but all payments are now made through the Support Clearinghouse. This proposal strikes reference to the clerk in that statute as it is now unnecessary.

A.R.S. § 25-502 also refers to amounts paid and mentions the Clerk of Court again. The group is researching how to fix this statute. The language could be left as is or it could be amended to indicate that payments will be made to the Support Payment Clearinghouse but allows for the Clerk of Court to collect payments in certain circumstances. The Workgroup will continue to work on this matter and report it back to the Council as a whole.

A.R.S. § 25-330

When sections of Titles 8 & 12 were brought into Title 25 in previous legislation some

lingering references to Title 12 did not get changed in statute. This recommendation removes reference to Title 12 and instead references Title 25.

A.R.S. § 25-502

This section deals with specialized child support arrest warrants. These warrants are broader than civil arrest warrants that were previously used. A.R.S. § 25-502 provides that the court *shall* issue a child support arrest warrant in certain instances. A.R.S. § 25-681 describes more broadly what the warrant is, how it works, and in what situations it applies. This statute uses the term *may* instead of *shall*. The proposed change would make those statutes consistent by using the term *may* in both statutes. This change would allow the court judicial discretion to make that decision as it may not always be appropriate to issue a warrant.

A.R.S. § 25-504

The proposed change would strike language that allowed employers to calculate the wage assignment amount to send in each month by simply multiplying the child support order by 12 and dividing by the number of pay periods that applied to that business. This has caused problems with the Support Payment Clearinghouse. If more than a month's payment is received in any given month, the system may not know what to do with the excess and could send it to a suspense account. More damaging results occur when less than a full month's amount is received. This causes the arrearage referred to as the "26/52" pay period provision in which the pay period frequency does not match the ATLAS system thereby causing it to appear as an underpayment by an individual. The statutory language presently provides an employer the method by which to cause employees to fall short several months of the year. This statute would keep the accounts accurate for the obligors. This change is merely trying to make a small step to show that employers need to pay monthly. It is a suggestion, not mandatory or a requirement.

The Division of Child Support Enforcement has investigated fixing this problem internally through ATLAS programming. Due to the systems inability to discern if the shortfall for a particular month is due to the employer's pay cycle or to the possibility that the employee did not work the entire month, internal changes are not possible. Payroll processing professionals have indicated that most companies would not have to change pay cycles, but they would only have to take out deductions from the first two pays of each month.

A.R.S. § 25-504

Removed references to Clerk of Court but the Workgroup will take another look at this in light of this meeting.

A.R.S. § 25-510

This proposal helps the statute represent what exists today in the collection of support payments. Until the Support Payment Clearinghouse was set up to receive all support payments, it was set up to accept payments in only IV-D cases. The transition to include all payments

occurred in December 1998. At that time language was adopted to allow the possibility that the payments would go to both the Clerk of Court and the Support Payment Clearinghouse. This proposal strikes the temporary or conditional provisions of this statute and simply says that the Support Payment Clearinghouse will receive all payments.

A.R.S. § 25-510

This statute deals with the allocation of support payments to various debts that have been set up. When non IV-D cases were put into the ATLAS system for distribution of payments, it was not clear that the existing algorithm provided under federal law for IV-D cases would appropriately disburse payments to the various debts that might exist in a non IV-D case. Last year the Legislature passed a hierarchy for how payments should be distributed in non IV-D cases through the Support Payment Clearinghouse and included the handling fee clerks used to receive for handling cases. Now the Support Payment Clearinghouse handles all payments. Currently this statute set out the handling fee in an annual amount instead of a monthly amount creating problems. The Workgroup suggests removing the clerk references and providing for a specific fee called a monthly fee instead of an annual fee.

Various Council members expressed their interest in revisiting the notion of continuing to charge the handling fee. The Workgroup will continue its research.

DCSE Legislation

A.R.S. § 25-320

Propose referencing the definition of *support* in A.R.S. § 25-320 to A.R.S. § 25-500. They are attempting to eliminate multiple definitions of support and direct individuals to look in A.R.S. § 25-500 for the definition.

A.R.S. § 25-500

Propose defining arrearage in this section as it presently does not exist.

A.R.S. § 25-500

Propose clarifying that spousal maintenance will be enforced by DCSE only when it is contained within a child support order. This places DCSE in compliance with directives from the Feds and only affects IV-D cases. They will continue investigation into interstate and tax issues and bring it back next month.

A.R.S. § 25-503

This statute addresses under what grounds a person can request a modification. The Balanced Budget Act of 1997 mandated that states have until 2001 to comply with the changes to the enforcement of medical support. The Governor must certify to the Secretary of Health &

Human Services that we have a state plan that conforms to federal law and if she does not certify that, then we as a state lose our eligibility for Temporary Assistance to Needy Families (TANF). DCSE has enhanced the previous language to meet the federal language. Congress has created a National Medical Support Enrollment Notice to be used uniformly across the United States. The Feds do not allow much flexibility for the states.

In this light, it needs to be made clear that if a prior support order did not contain medical support, or it did contain medical support but was not being actively enforced and now is, DCSE has the responsibility to enroll the child(ren) in the medical insurance if the obligor now has an employer who provides that insurance. The additional medical insurance coverage constitutes a change in circumstances which is substantial and continuing. Obligor can then come in and request a modification on this basis. DCSE will continue work in this area.

DCSE is also proposing new language related to how they are going to enforce medical support. In the past, multiple notices had to be sent out. To conform to new federal language, on new orders, obligors would be required to provide new information about their health care coverage plan, effective date of coverage, a description of the coverage, the name of the employer and any other needed information, forms or documents related to health care insurance, within 30 days after the support order is established. The court would include this in their order, then an administrative order would be used to go forward.

Members discussed problems arising from medical insurance choices, who gets to choose among medical insurance plans and what methods the obligor has available to discover options. Additionally, if there's a change in insurance availability that constitutes a change in circumstances and that allows the party to go back for a modification.

A.R.S. § 25-816

This proposal centers around caretaker cases where the biological mother is no longer custodian of the child(ren). In these cases, another party, such as a grandparent, has physical custody of the child. In some instances an individual wants to establish paternity for that child(ren) and this proposal would make it possible for father to establish paternity. The statute's purpose is to direct the custodian to bring the child(ren) in for paternity testing. Research will continue.

A.R.S. § 36-322

This proposal would allow birth certificates to be amended following a voluntary acknowledgment of paternity. If a new paternity acknowledgment has been entered, the Department of Health Services can then be changed the birth certificate to reflect that.

A.R.S. § 46-408

This proposal would lengthen the time from 15 to 30 days that a custodial parent can contest the distribution of support. This only affects those on public assistance.

A.R.S. § 46-441.01

This proposal would allow the redirection of payments when the custodial parent is incarcerated. Currently, DCSE does not have the ability to redirect the payment to the person having actual physical custody of the child(ren). Information will be sent out on this issue to members before the next meeting for their review.

Senator Gleason's Proposal

A.R.S. § 25-503.01

This amendment was originally suggested by Representative Gleason. He asked the Council to review the bill before he files it. Presently, in statute there's a provision that allows a court on good cause to order a parent responsible to pay support to put up security when there's a history of non-payment. This proposal is similar. It allows the court to order a self-employed obligor to forward not more than six months payment into an escrow account maintained by DCSE. If the month ends and the payment has not been received for that month, then the money would be released from the escrow account to cover that month per a judge's order. This amendment resulted from the difficulty of getting regular payments from a self-employed individual who is not honoring wage assignments when issued to them in the capacity of their ownership of their company. The bill will be fine tuned and brought back to the Council next month.

Intrastate Orders Workgroup

This Workgroup is currently attempting to allow for an easier transfer of cases and/or files from one court to another without hampering enforcement activities. Child support enforcement agencies had the capacity to take a support order from one county and to file it in another county if that is was determined to be the best place to enforce the order. Duplicate case numbers and incomplete files cause a problem. In addition, not all issues of the order can be addressed in the second county. The Workgroup will continue working on this.

Sunset Legislation

David Sands reported that this Council will expire, or sunset at the end of calendar year 2000. Legislation formed the Council in 1994 and provided that the group would sunset at the end of 1997. Recognizing the value of this committee, in 1997, legislation was changed to grant the life of this committee another three years. That means the Council is currently prepared to sunset at the end of year 2000. To continue this committee, this next legislative session is the only time to ask that legislation be passed to continue the committee. David Byers suggested lengthening the life of the committee beyond three years.

Child Support Guidelines

Staff member Megan Hunter advised the members of the historical aspects of the Guidelines and the current status of the Guidelines review. Members were given a copy of a *Findings of a Case File Review* prepared by Policy Studies, Inc. of Denver, Colorado. The review fulfilled a Federal requirement that states conduct a case file review every 4 years to ensure that deviations from the guidelines are limited. Arizona's deviation rate is 15% while the national average is 17%. The case file review suggests that application of Arizona's present guidelines results in the determination of appropriate child support amounts. Based on this information, the Domestic Relations Unit, Administrative Offices of the Court (AOC), has made only two recommendations for changes to the guidelines. These recommendations, in effect, tweak the guidelines to bring them up to current economic standards.

Seven public hearings will be held through each region of the state and the Guidelines Workgroup will meet at least six times to provide feedback along with any additional suggestions for improvement.

Public Comment

Karen Gendron, a single parent who has experienced the divorce process, addressed the committee on her concerns regarding post secondary educational support. Currently, obligors are not required to pay child support after the child has reached the age of 18 unless ordered by the court. The impact of this on families who historically don't get along is that the child ends up not knowing where the tuition for college will come from. She pointed out that fifteen states have statutory provisions for post-secondary education beyond the age of 18. She requested further research by the Council that would allow a court to decide this matter on a case by case basis. Judge Armstrong stated that unless the parties come to agreement on this issue the judges do not order child support beyond the age of 19.

Paul Geisheker also spoke as a concerned parent. He described his objections to the income shares method of child support calculation currently used in Arizona. He pointed out that self-employed individuals do not receive benefits which distorts the balance with a custodial parent who does receive benefits. Discussion centered around various methods that self-employed individuals can employ to adjust their income. The Guidelines Workgroup will address these issues at their meetings.

Another concerned parent, Chris Sotiriou expressed his concern that judges do not listen to the public. He stated that he became homeless due to the amount of child support that he was court-ordered to pay.

Next Meeting of the Council

The next meeting of the Council will be held on December 14, 1999 in Conference Room 345 A/B of the Arizona Courts Building from 10 a.m. - 2 p.m.

Adjournment

The meeting was adjourned by Senator Petersen at 2:08 p.m.