

# FAMILY COURT IMPROVEMENT COMMITTEE - CHILD SUPPORT GUIDELINES REVIEW SUBCOMMITTEE

## Minutes

October 5, 2020 10:00 a.m. (Virtual Meeting)

Arizona State Courts Building

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## Present:

**Telephonic:** Judge David Gass (chair), Carol Park Aden, Judge John Assini, Laura Belleau, Judge Bruce Cohen, Kellie DiCarlo, Judge Joseph Goldstein, Tiffany Harvey, Jennifer Mihalovich, Janet Sell, Rosa Torrez, Steve Wolfson

**Absent/Excused:** Mary Boyte Henderson, Jeff Fine, Vance Simms

**Presenters/Guests:** Judge Marianne Bayardi, Phoenix Municipal Court; Judge Elizabeth Finn, Glendale Municipal Court; Chris Gorman, Gorman Consulting Group, LLC; Melissa Loughlin-Sines, Henry + Horne; Teri Munn, Administrative Office of the Courts; Dr. Jane Venohr, Center for Policy Research

**Administrative Office of the Courts (AOC) Staff:** Theresa Barrett, Angela Pennington, Kathy Sekardi

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## I. REGULAR BUSINESS

### A. Welcome and Opening Remarks

The October 5, 2020, meeting of the Family Court Improvement Committee – Child Support Guidelines Review Subcommittee (FCIC-CSGRS) was called to order at 10:08 a.m. by Judge David Gass, chair. This seventh meeting of the subcommittee was a virtual meeting, with all attendees being online, on the phone, or both. Kathy Sekardi performed the roll call and discussed “housekeeping” issues.

<p><b>Motion:</b> To approve the minutes of the August 24, 2020, meeting. <b>Moved by</b> Janet Sell. <b>Seconded by</b> Steve Wolfson. Motion passed unanimously.</p>
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## II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

### A. Review of the Arizona Child Support Guidelines Follow-up from the August 24<sup>th</sup> Meeting

Dr. Jane Venohr, Center for Policy Research, again updated the subcommittee on her research results. She informed the members her team had received the ATLAS data and will begin work to analyze it. They are also working on cleaning data that had previously been received. The ATLAS data is both IV-D and non-IV-D. While they cannot get payment information on private cases, this fulfills the federal requirement to analyze payment data. Dr. Venohr informed the

members that Betson had completed his economic report. This will feed in to the final report which will include both the analysis of the case file review and the economic data.

Dr. Venohr then discussed the current schedule for combined adjusted gross income, which currently goes to \$20,000. While most states go to \$30,000, Dr. Venohr suggested the schedule could increase to \$34,000. She stated the data supports an increase to at least \$30,000. Judge Gass, after hearing members questions, informed members this policy decision would require members to decide what that number would be, \$30,000 or \$34,000. Next the discussion moved to attributed income issues. Per Arizona statute, imputation of income is full-time employment at minimum wage. Questions have been raised as to what exactly is “full-time employment.” U.S. labor market data provides evidence that specific occupations offer less than 40-hour work weeks. Additional data from within the state backs this assumption, especially in industries and geographic areas affected the most by the Covid-19 pandemic. Dr. Venohr believes judges should consider local employment opportunities and state labor market data when imputing income.

It was noted Arizona has one of the highest self-support reserve tests in the country. It was also noted that if Arizona were to attribute income at less than full-time it could drive people below the self-support reserve test limits. A discussion about whether full-time must be 40 hours ensued. The Income issues work group is looking at this issue, as well as underemployment versus un-employment.

Dr. Venohr moved to a chart showing the preliminary frequency of child tax-related benefit sharing. While the data is still being cleaned, early findings suggest that 70% of parents split or rotate claiming the child(ren). The only exception noted was when the father is the primary residential parent.

Also discussed briefly were the deviations rate, which was down to 29% when differences less than \$50 were excluded, and parenting time adjustments which have dropped slightly from 2013 and 2007.

A member requested information on income deductions for other children. Dr. Venohr clarified an adjustment was made for 5% of fathers and 7% of mothers.

Lastly, charts showing the side-by-side comparison of the existing and proposed BR5 updates was shared. A member asked for data on spousal maintenance, specifically how often it is assigned and what the median amount is when ordered. Dr. Venohr will conduct research and report back.

## **B. Changing Legal Custody and Visitation to Legal Decision-Making and Parenting Time**

Judge Gass provided an update on the Family Court Improvement Committee’s (FCIC) decision to change the language in Title 25 from “custody” and “visitation” to “legal decision-making” and “parenting time”, except when referencing grandparents’ rights.

<p><b>Motion:</b> To adjust the child support guidelines to reflect the statutory language. <b>Moved by</b> Janet Sell. <b>Seconded by</b> Laura Belleau. Motion passed unanimously.</p>
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### **C. Guidelines Paragraph 26. Income Benefits Received by or on Behalf of a Child**

Janet Sell discussed a proposal that adoption subsidies and a child's Social Security Income (SSI) should not be counted as income to the parent who receives it. She stated there is case law on adoption subsidies that says it is not income to either one of the parents, but to the extent that there is an adoption subsidy it may be divided amongst the parents in proportion to the income but should not be considered income.

There was brief discussion amongst the members. It was noted that from paragraph (a) to paragraph (b) it moves from a child's SSI to a child's Social Security Disability or Insurance benefit as a result of a benefit paid on behalf of parent. If it is a derivative benefit, it should count towards the support obligation.

It was decided that work on this section will continue and it will be resubmitted to the subcommittee.

### **D. Proposed Federal Rule Regarding Child support and Incarcerated Parents**

Changes to Federal Rule § 302.56 have been proposed but not yet adopted, which allows for changes in how to treat child support for incarcerated parents. It states that incarceration may not be treated as voluntary unemployment. Exceptions to this rule include

- Incarceration due to intentional non-payment of child support.
- If the incarceration is due to a crime in which the child receiving the child support was a victim.

It was recommended that the subcommittee not take any current action but rather annotate the report to state that a future iteration of this committee will need to make changes as appropriate if adopted.

### **E. Proposed Changes to the Language of Arizona Child Support Guidelines: Appendix Paragraph 27 – Federal Tax Exemption for Dependent Children**

Due to the 2017 Tax Cuts and Jobs Act, there are no longer exemptions on federal income tax, but tax credits, or as referred to "tax benefits." Members stated the procedure for claiming the child(ren) related tax benefits needs to be clarified and will take more than a restyling, but also a reorganization. Developing recommended changes was assigned to the Tax Issues workgroup and will be presented again at a later date.

### **F. Workgroup Reports**

#### **Expenses and Cost Associated Parenting Time Workgroup**

Chris Gorman presented for the Expenses and Cost Associated Parenting Time Workgroup. The workgroup proposed changes to Table A. These changes included: reducing equal parenting time to 164 days or more and to have 0% go up to 20 days, reducing the number of steps, and minimizing the impact and severity of the changes from the prior table.

**Motion:** To approve the amendment to Parenting Time Table A. **Moved by** Judge Bruce Cohen. **Seconded by** Janet Sell. Motion passed by a vote of 11 – 1.

It was noted, based on the aforementioned approval, Sections 11 and 12 also need to be adjusted. This includes changing the definition of equal parenting time, revising the math, removing the reference to 143 days and above, and removing the reference of Table B and replacing it with “a deviation may be appropriate.” Discussion continued, and it was decided to change “164 days or more” to “164 days – 200 days.” Additionally, it was decided to change section 12 to read, “If the time spent with each parent is essentially equal, when both parents have 164 days of parenting time or more, the expenses...”

A member questioned whether the cost of supervised visitation should be considered in regard to the child support obligation. Mr. Gorman volunteered the Expenses and Cost Associated Parenting Time Workgroup to take this issue under advisement.

**Motion:** To approve the amendment to Child Support Guidelines Sections 11 and 12. **Moved by** Janet Sell. **Seconded by** Carol Park Aden. Motion passed unanimously.

#### **Tax Issues Workgroup**

Ms. Park Aden spoke briefly about Health Spending Accounts (HSA) and Flexible Spending Accounts (FSA) and whether to add it separate line item to the child support worksheet for HSAs and FSAs. There was minimal discussion by the subcommittee.

**Motion:** To take no action to adjust the child support worksheet and append the subcommittee’s final report to show that the issue was considered and rejected. **Moved by** Janet Sell. **Seconded by** Tiffany Harvey. Motion passed unanimously.

#### **G. Open Discussion – Crossover Issues**

Judge Gass moved the conversation back to the earlier motion of incarcerated parents. He asked to have a formal motion made to acknowledge that the subcommittee discussed the issue but decided not to take any action.

**Motion:** To not make any changes in regard to the federal rule changes about incarcerated parents and defer the issue to a future recurrence of this subcommittee. **Moved by** Janet Sell. **Seconded by** Carol Park Aden. Motion passed unanimously.

Judge Gass asked the chairs of the Deviations Issues and Income Issues work groups if they had any business to discuss. Neither had any action items to present.

### III. OTHER BUSINESS

#### A. Announcements/Call to the Public

- No one responded to the call to the public.

#### B. Next Meeting. November 9, 2020 10 a.m. Virtual Meeting

The meeting adjourned at 2:06 p.m.