

FAMILY COURT IMPROVEMENT COMMITTEE - CHILD SUPPORT GUIDELINES REVIEW SUBCOMMITTEE

Minutes

June 30, 2020 10:00 a.m. (Virtual Meeting)

Arizona State Courts Building

Present:

Telephonic: Judge David Gass (chair), Carol Park Aden, Laura C. Belleau, Mary K. Boyte Henderson J.D., Judge Bruce R. Cohen, Kellie E. DiCarlo, Commissioner John J. Assini (proxy for Joi Hollis, Ph.D.), Jennifer A. Mihalovich, Janet W. Sell, Jessica Beresford (proxy for Vance Simms), Rosa Torrez, Steve Wolfson J.D.

Absent/Excused: Judge Joseph Goldstein

Presenters/Guests: Donald Bays, Henry & Horne; Chris Gorman, Gorman Consulting Group, LLC, Melissa Loughlin-Sines, Henry & Horne; Dr. Jane Venohr, Center for Policy Research

Administrative Office of the Courts (AOC) Staff: Theresa Barrett, Angela Pennington, Susan Pickard

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The June 30, 2020, meeting of the Family Court Improvement Committee – Child Support Guidelines Review Subcommittee (FCIC-CSGRS) was called to order at 10:06: a.m. by Judge David Gass, chair. This fourth meeting of the subcommittee was a virtual meeting, with all attendees being online, on the phone, or both. Susan Pickard noted there were no members of the public on the call. She noted absent committee members and introduced Melissa Loughlin-Sines as a guest.

Judge Gass thanked the committee for their effort on the workgroups and spoke briefly about their different projects. He then moved to the minutes. Before the vote, Ms. Pickard noted a correction to the FCIC-CSGRS Subcommittee minutes.

<p>Motion: To approve the minutes of the June 8, 2020, with the noted corrections. Moved by Janet Sell. Seconded by: Steve Wolfson. Motion passed unanimously.</p>

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Economic and Case File Reviews Update and Q & A

Dr. Jane Venohr, Center for Policy Research, reported that a preliminary schedule, based upon the new Betson-Rothbart (BR5) measurements adjusted for inflation and tax changes, would

be ready to present at the July 28 meeting. At that time, comparison data will be provided for assumption review and adjustment. Dr. Venohr anticipates that there may be a significant increase for incomes at and above \$20,000 per month.

Dr. Venohr indicated that her team is still working on the case file data. This data will help inform the subcommittee's discussions about calculation adjustments when income is less than the self-support reserve test and for the additional dependent deductions. It will also provide information on the frequency and attributes of these situations, including Table B and distribution of tax benefits. In addition to the case file data, the team is also receiving a data extract from ATLAS, the State's Title IV-D system.

Dr. Venohr then took questions from the members.

- Do you have spousal maintenance data?
 - If it was considered during the child support order, we do. That information can be summarized.
- Will we have data on how many of the cases are at or below minimum wage, as this is an indicator of attribution?
 - Yes. This is a federal requirement, to analyze how often income is imputed. We will note how many have minimum wage income, for both parents.
- When you referred to tracking tax information through the case files, were you referring to the dependent exemptions which are still being allocated, even with the changes to tax laws?
 - Yes, specifically the child income tax credit. This will affect mainly the middle, as the lower incomes would only receive a partial credit, if any, and the higher incomes wouldn't be eligible.
- What assumptions will you be asking the subcommittee to review?
 - In the PowerPoint from my first meeting, there is a table that lists all the assumptions. Major assumptions include taxes and expenditure ratios. A third might be how medical expenses are addressed.
- The issue of whether to adopt BR5 has been brought up. Will you have any other schedules based on alternatives to BR5?
 - Yes, I will have 2 or 3 alternative schedules at the end of July, and possibly another 1 or 2 in August. I would highly encourage that members not make a final decision until we have gone through more of the alternative schedules.
- What information is included in the case file review? Does it include both decisions that are issued by the courts and agreements by the party, ordered by decree?
 - It is my understanding that the clerks do not organize the case file by how the decision was made, but rather, the documents are filed simply in numerical order. The case file information was requested by date range.
- Will you have any information on parenting time adjustments from the case file information?
 - We will know in a few weeks after we are done reviewing the data.

There were no further questions and the discussion moved to Table B. Dr. Venohr stayed on the line for this portion of the meeting.

B. Decision Points – Parenting Time Adjustment Table

Judge Gass opened the discussion indicating that during his participation in the various workgroup meetings he heard general agreement that Table B should be eliminated.

Chris Gorman stated the Expenses & Cost Associated with Parenting Time Workgroup had been working on Table B and concurred with the idea Table B was not needed.

Steve Wolfson clarified that Table B was developed to address the circumstance where parties had 50/50 parenting time, but one parent provided for all of the child's expenses including those that would normally transfer between households. He suggested that if Table B is going to be eliminated, additional language that would grant court discretion to not use the Table A adjustments would need to be added to the guidelines. Mr. Gorman agreed to have the workgroup discuss Mr. Wolfson's comments at their next meeting.

A motion was made and seconded. Before the vote, it was suggested that the vote be deferred until Dr. Venohr's research is complete. Dr. Venohr recommended treating the motion as a preliminary recommendation. Judge Gass asked and Ms. Sell answered that she was comfortable enough to move forward with her motion.

Motion: To eliminate Table B with a recommendation for discussion to use a deviation when appropriate in place of Table B. **Moved by** Janet Sell. **Seconded by:** Jennifer Mihalovich. Motion passed, 9 to 1 .

More discussion took place regarding Table B, and how best to address this issue and make it more effective. It was mentioned that the workgroup has already discussed how to build the intent of Table B into the guidelines.

C. Workgroup Reports

Income Issues Workgroup

Steve Wolfson reported that the workgroup's focus has been on the language in section 8 of the guidelines regarding the presumptive cap, calculation of a basic child support obligation, and burden of proof to show why the court should order an amount higher than the presumptive amount. Ms. Pickard shared the language the workgroup developed. Discussion ensued. Important points included:

- suggestions for including language to provide further guidance
- the need to leave this in its own section
- the need to calculate the basic child support calculation before deviations
- the burden of proof for the deviation

Mr. Wolfson will take the input back to the workgroup for continued work and return with a revised proposal at a later date.

He also shared that there are two other proposals nearing completion in this workgroup: 1) adjustments within the calculation regarding credit for health insurance provided by a step-

parent, and 2) language providing court discretion to consider the impact of net vs gross income regarding spousal maintenance received which is no longer taxable.

Tax Issues Workgroup

Carol Park Aden thanked Mr. Gorman and Mr. Wolfson for the work their workgroups have done as presented at this meeting. She noted that she would be reaching out to them to discuss health insurance coverage for children and tax implications.

Ms. Aden presented the workgroup's proposal that the child and dependent care tax credit be stricken from the child support worksheet. Instead, when it is relevant, the child and dependent care tax credit should be considered off the worksheet and the net amount be put in the respective column. The workgroup believes this could simplify the calculation especially for *pro se* litigants. Ms. Aden then opened the floor for discussion.

The workgroup members cannot justify the complexity of the calculation for the *de minimis* resulting credit. This tax credit:

- doesn't apply in low income situations
- is incorrectly applied, if a flex spending account or pre-tax dollars are used to pay for childcare
- can fall into a gray area for non-custodial parents
- can change based on income year to year for parents with 50-50 parenting time

Judge Gass suggested adding language to provide the court discretion to consider the credit when the issue is raised. Ms. Aden stated that the workgroup could be on board with that suggestion.

Motion: To eliminate the child and dependent care line item from the worksheet, subject to modification or reversal if replacement language to provide for a child care credit within the guidelines is not achieved. **Moved by:** Carol Park Aden. **Seconded by:** Laura Belleau. Motion passed unanimously.

Deviation Issues Workgroup

Janet Sell reported that the workgroup has been discussing equitability in orders for multiple families with multiple children and proposals are being drafted. Ms. Sell would like to present those proposals in the context with the case review results from Dr. Venohr. The cases that require this adjustment are those with parents whose incomes are mostly minimum wage or close to minimum wage. It is expected that the statistics presented by Dr. Venohr will reinforce the proposal.

Expenses & Cost Associated Parenting Time Workgroup

Chris Gorman gave an update on the activities of the Expenses & Cost Associated with Parenting Time workgroup. The workgroup is considering adding a 30-day grace period on both ends of the Table A. The goal is to amend Table A to have the most common parenting plans fall in the middle of a "step", to have wider steps, and fewer steps. Additionally, the workgroup has discussed Flex Spending Accounts (FSA) and Health Savings Accounts (HSA) and believes that these would be better dealt with on the income side than the expense side. Mr. Gorman has discussed this issue with Mr. Wolfson.

Judge Gass asked for clarification on the steps. Mr. Gorman explained to make their goal, they would need a 20- or 30-day increment. With a 30-day increment, it would be 6 steps with 4 steps having changes. The first step is 0 and the last would be 50-50. A member commented that “the wider the step, the bigger the cliff” that exists, so the workgroup should consider balancing the steps. The workgroup does believe this will provide more equitable plans.

Restyling Workgroup

Judge Bruce Cohen let the committee know that they have a vision and framework for the restyling, but most of their work is in language. The substantive work is dependent upon the work of the other workgroups. They will be postponing their meetings until more of the work from the other workgroups is done.

D. Principle of Fairness: Gross vs. Net Income

Judge Gass tabled this issue until the next meeting.

III. OTHER BUSINESS

A. Announcements/Call to the Public

- No one responded to the call to the public.

B. Next Meeting. Tuesday, July 28, 2020 10 a.m.

Virtual Meeting

The meeting adjourned at 2:26 pm.