

SUPPORT ENFORCEMENT COMMISSION

Date: April 1, 2022

Time: 1:30pm - 5:00 pm

Location: DHHR/DIAMOND Building
350 Capitol Street, Rooms B-10 & 11
Charleston, WV 25301-3703

Purpose: To review the Child Support Guidelines and to file a report with the Legislature as to whether any changes need to be made to the Guidelines.
[WV Code §48-13-101 et seq., § 48-17-101 et seq]

Members Present:

Physically: Commission Members: Ann Haight, Marjorie McDiarmid, Melody Pendergrass, Allyson Hillard, Heather Wood

DHHR Personnel: Tina Mitchell, Garrett Jacobs, Kim Bentley, Eric Thomas, Kim Rider

By Video Conference:

Commission Member: Megan Hatfield

Vendor: Jane Venhor

Absent: Commission Member: Shane Holmes

Commissioner Jacobs: greeted the members and thanked them for their participation. He stated the guidelines (a.k.a. formula) have not been updated since 1999. The last time a prior Commission reviewed the formula and submitted the report to the Legislature, the Legislature chose not to make any changes. He listed several things to think about when reviewing the formula: the cost of raising a child; the number of deviations from the formula by the Family Court Judges; unemployment statistics; and the number of times the Judge attributed income to the obligor.

Kim Bentley, Assistant General Counsel: provided a sample formula to and explained, step-by-step, how the formula works. The example was based on 1 child and 2 parents earning a minimum wage. The formula uses the monthly gross incomes of the parties, and deducts spousal and child support already owed for another family. The income shows \$25,012.34 is the income had the family remained intact. The formula showed that if Mom had the child, the Dad would owe \$447 per month to Mom. If Dad had the child, Mom would owe Dad \$223.41 per month.

She went on to discuss cases where the Judge attributes income to the obligor and the issues that arise when the obligor does not earn a minimum wage. The employer cannot withhold the full amount of child support, interest then accrues on the arrearage the obligor now owes.

The Federal Office of Child Support Enforcement (a.k.a. Feds) instructs the States to look at the totality of the obligor's circumstances. For example, does the obligor live out a dirt road from town with no transportation to get to and from work?

Commissioner Jacobs: We hired Jane Venhor to review the economic factors, the formula of surrounding states and report back to us her conclusions.

Jane Venhor: She provided two documents for the Commission to review. The 1st document is the Report itself, dated January 10, 2022. The 2nd document is an addendum to the report because of inflation and updates to the child support table.

Section I - Overview

The formula is used for every case, but can be rebuttable, based on the circumstances of the parties.

1. There are 14 factors to be considered - education, homelessness
Addendum - Page 52 - 101
 - A. Guidelines Model
 - B. Economic Study
 - C. Adjust to Current Price Levels
 - D. Adjust for WV Incomes/Price Levels
 - E. Exclude Childcare Expense & Out-of-Pocket Healthcare Costs
 - F. Conversion of Expenditures to Gross Income
 - G. Consideration of Very High Incomes
 - H. Consideration of the Self-Support Reserve
 - I. Federal Changes to the Guidelines Requirement to Address the Child's Health Care
 - J. Impact of Updating the Table
 - K. Comparing Alternative Updates to the SSR
 - L. Findings from the Analysis of Economic Data & Updated Child Support Table/Formula
 - M. Findings from the Analysis of Case File Data and Labor Market Data
 - N. WV's Compliance with Expanded Federal Requirements

Turner - 2003

Obligated Parent in SC - alcohol, marginal income

- civil contempt - put in jail

- ability to pay

US Supreme Court - did not address hiring an attorney for the incarcerated

individual.

- Court came up with things to consider when imputing income.

2. Do not treat incarceration as voluntary unemployment.

(Page 104-106 - Recommendations)

Analyze Administrative case data:

1. Update Table - taxes, self-reserve, etc.
2. Document Analysis of Data
3. Self-Support from \$500 to \$1100
4. Page 2 of Report - can deviate for cost of living.
5. Produce a sum certain - cannot use a percentage
6. Provide health insurance - WV meets standards
7. Section 1 - Kim Bentley
 - " 2 - Data - economic
 - 3 - Venhor - technical
 - 4 - Meeting new Federal Requirements
 - 5 - Case Comparison of Cases/Incomes
 - 6 - Conclusion

****Recommendation #2 - WV isn't with the rest of the States - national data**

Section II - Federal Requirements

Dr. McDiarmid - Deviations - using IV-D cases as representative - how confident are you that these represent all cases?

Ms. Venhor - Non-IV-D - small percentage of cases (45 C.F.R. 302.56 (e) & (h)).
Used IV-D to make sure we meet IV-D compliance and keep funding.

Dr. McDiarmid - WV cases are more Non-IV-D than IV-D?

Ms. Venhor - Paragraph II - Analysis

To keep deviations to a minimum [payment (Page 7)]

Could only go with IV-D data

1. Increase
2. Not divorcing
3. Never Married
4. Less Kids

Paragraph III: - has to be input - do it thru Commissioner

Economic Data and Low Income Adjustment

Method - Reviewed a year's worth of data, reviewed all court orders. The data is not representative of Non-IV-D cases but it excluded closed cases. Federal requirement - review payments analysis.

****Improve how to record this data in the computer system.**

Exhibit 5 - most are 1-2 children.

Obligated Parent is usually the father.

3rd Party Custodian - more worried with reunification and not support so it's normally set at \$0.

Incarceration - do not consider it voluntary unemployment. Federal Regulations say the State must look at the person's ability to pay.

Example:

\$8.75 minimum wage

\$1417 per month

20% had income imputed

Default cases

15 Judges out of 24 - deviation is much less.

47% overstates deviation

Dr. McDiarmid - I'm not criticizing the methodology - just mentioning it.

Commissioner Jacobs - 47% is not accurate.

AGC Bentley - I wonder if it was based on a 30-hour work week - was that considered as a deviation?

DC Eric Thomas - I looked at the ISSF in the computer system and at order - we may have received better information in Court that caused a change but not a deviation per se.

Ms. Venhor - it's not an issue with the Federal Office of Child Support Enforcement.

Page 33 - Payment Data Analysis - 88% make a payment

People who worked under the table

Due to Covid the economy closed down, restaurant workers, had no income.

Analysis of Economic Data - Most States start with gross income. The table only considers what is spent on that family. \$527 for 1 child in 1999 - it did not include medical or extraordinary medical expenses, cost of child care. Look at the Addendum on Page 2:

The Roth-Barth method pulls out child expenses. It compares:

- married couple - no kids

- married couple - with kids

Roth-Barth subtracts to show difference and that's the kids' portion.

Expenditure Data - 2013 to 2016

Price levels increased 69% from 1986 to 1989 Expenditure Data. However, it really wasn't that much because incomes rose too.

Burrow Labor Statistics - realigned the schedule

US Family vs. WV Family

25% \$15,000

Price Parity - 88%
12% less than national average on prices.

Policy Decisions:

How to adjust incomes

- a. Price Parity vs.
- b. Child care expenses, medical expenses

When WV switched from the Mellon Formula to the Income Shares Model - looked at how the income was adjusted, medical expense, single tax payer is at a higher rate than a married couple.

Line 6 - 2022 Tax Rate - important change - Self Support Deduction in Worksheet - \$1133.

****Get Jane's Slides - Child Rearing**
Roth-Barth - most states use this method.

\$126,000 - higher income - 15%
Consumer Expenditure Report - Page 54 of Report
It does include mortgage payment and interest. It includes a second mortgage.
Consumer Expenditure - calculates taxes for them in its data (Page 60).

Lower Income Families - \$40,000
Spend more than their incomes on the kids. Adjusts with a cap.

Show Impact:

Dr. McDiarmid - Issue - Legislature in the last Session made it 50/50 custody assumption. All calculations will be extended calculations. Current presumptions of having 2 households go to 1.5% for non-basic. The Mellon formula adopted the 1.5 multiplier. Is there any economic data that the 1.5 is correct? Have you studied this - what are your thoughts?

****Ms. Venhor:** It's an approximation of a duplicator. Will send us a copy of an article from Alabama that updates this. I am doing this for Illinois.

Joint Custody - guidelines

IV-D Agency - if a parent does not show-up for hearings, does not make payments, why would you assume that parent will show up for parenting times? Lots of obligors live out-of- state.

Dr. McDiarmid - the 1.5 multiplier strikes me that it is not appropriate.

Ms. Venhor - See Page 65 - 1 Child

WV has lower housing costs and cost of living. KY just updated their tables, based on the 4th Study. They are going to recommend the 5th Study to WV.

Worked with Steven Veno, Commissioner and Lilly Peteson, Child Support Director on their Guidelines review.

The Self-Support Reserve is outdated

2019 Median Income	US	WV	MD
	\$100,000	\$82,000	\$136,000

\$22,000 is almost poverty level for women.

Covid is a game-changer with the labor force participation
See Chapter 2 - kids at home, home schooled

Case Scenario:

Assume Males are the obligated parent (owe the child support).

\$15,000 & \$20,000 - these incomes were picked at random
(20% increase at high income level - North Dakota data.)

Case 8 - no change - the formula for income above \$15,000 child support goes down - it was an extrapolation - most states show high increases for high income cases based on the new data - an increase of 7-8%.

Self-Support Reserve

Ms. Venhor: WV already meets this requirement - See Page 7 of the Addendum.

Income - \$750 - Order amount is \$50

Income - \$1,500 per month - Self-Support is \$895.

WV Compliance

WV is meeting this requirement.

Incarceration - she does not know what to recommend. The Wyoming Statute - case law is good enough - they do not need legislation. California needs to put it in their statute.

Incarceration - Look at Page 80 - the individual must be incarcerated for at least 180 days. [§42 C.F.R. 303.8]

****Recommend:** Change the \$500 to \$1133.
Federal Regulations require an ability to pay.

Page 89 - Medical Support

Track public health care now accepts Medicaid & CHIP as medical support instead of a cash payment. Issue is it's difficult to determine the child's portion. This new rule gives flexibility.

Conclusion

Section 6 - Page 106

1. Update Table - Income difference or Price Parity
2. Update the Self-Support Deduction
3. Make changes to comply with expanded Federal Rules.
 - a. 14 Factors
 - b. Prohibit Treatment

AGC Bentley - One component - 1 comment from the website in 45 days of publication
- \$1,000/month obligee thought it wasn't high enough.

Agreed with that comment.

Commissioner Jacobs - do we want to keep Income Shares of change?

Dr. McDiarmid - USDA formula would be better but I do not think the Legislature would accept it.

Ann Haight - We've got to raise collections. Our numbers are based on 1999 data. It needs to be updated to get better data.

AGC Bentley - Realign vs. Price Parity

Judge Wood - No significant difference in calculation. Use income better overall.

Commissioner Jacobs - Page 103 - Looking at the examples - there is no significant difference.

Dr. McDiarmid - I like the Price Parity

AGC Bentley - \$5750 per month - variety -
\$130 per month - higher is Price Parity

Judge Wood - High income individuals are not the ones who are not paying. Low income individuals cannot or will not pay.

Dr. McDiarmid - Legislature will focus on the high income cases.

Judge Wood - Legislature will be looking at Worksheet B, child support awards will be lower due to joint custody.

****AGC Bentley** - All in agreement that the Tables need to be updated: Vote of Members - yes

Dr. McDiarmid - Go with Version 5? Judge Wood Agreed - Vote of members: Yes

AGC Bentley - Anyone for Realign vs Price Parity?

Judge Wood - It depends on other factors before we can decide.

Commissioner Jacobs - Self-Support Resolve

Allyson Hilliard - \$130 - small amount - Price Parity

\$20,000 per month

Use Price Parity

Judge Wood - Lower Income - is the one to focus on. Getting HUD, Food Stamps - obligor is trying to pay \$300 but cannot. Need to set reasonable amount for child support because obligor does not have enough money.

Dr. McDiarmid - Self-Support has to go up.

Judge Wood - Just above \$40,000 gets hit the most. 2 kids in 2 households.

Commissioner Jacobs - If your 2nd or 3rd mom, you get less.

Judge Wood - There is less of a difference than you think.

AGC Bentley - Price Parity is lower on the high end by \$200

Dr. McDiarmid - Go up to _____, then go with 800 figure. The 900 was (fill in blank) - Didn't get this. Do either of you remember?

Judge Wood - Those 2 are low. You can't pay rent on \$800. Actual poverty is \$1100. Minimum wage is \$1200 x 80% of our minimum wage. Talk to Legislature about State Minimum Wage vs. Federal Minimum Wage - $\$1256 \times 80\% = \1004 .

Commissioner Jacobs - Double the Self-Support - roughly equals to 80%.

AGC Bentley - Self Support only comes into play if the income is under \$1550. Where did the \$1550 come from?

Judge Wood - I cannot remember. Attributed income - they have the ability to go out and work.

Dr. McDiarmid - Some refuse to disclose income.

Judge Wood - Once I attribute, a person will be back soon, "I can't find a job, no one will hire me, felony conviction", for modification or contempt.

Cannot decide or know who can or cannot pay. You can fix cases where people work, but still can't pay.

Commissioner Jacobs - Incarceration - US Supreme Court Case - must have an ability to pay. When we find out, we file for downward modification.

AGC Bentley - the problem is knowing when they will be in jail and for how long.

Judge Wood - The issue is when to restart the obligation.

AGC Bentley - The problem with some Judges not wanting to do expedited modifications.

Tina Mitchell - how do we know the person is incarcerated?

Commissioner Jacobs - some interfaces tell us.

AGC Bentley - the interfaces do not show who comes in and left 2 hours later.

Tina Mitchell - Medical Card - working with prisons to get an interface.

Dr. McDiarmid - Prisons - people are going to be there awhile.

Judge Wood - Would be good to retroactively modify to date of incarceration

Tina Mitchell - If big arrearage, no motivation to pay/work.

Judge Wood - Work under the table.

AGC Bentley - Construction industry - no reporting of hiring

Dr. McDiarmid - Federal law - cannot retroactively modify.

Ann Haight - Based on if parties were together

Commissioner Jacobs - Prior BCSE policy: the individual should not benefit from their bad behavior. Did not file modifications based on incarceration.

AGC Bentley - Orders dealing with incarcerated individuals is all varied- \$0, \$50,

attributed minimum wage

Judge Wood - Punishment factor for some Judges.

Bentley - How can we compare?

Commissioner Jacobs - Consider resources, not just incarceration

AGC Bentley - Not in statute, depends on the Judge

Dr. McDiarmid - Judges have gaffed

Judge Wood - Get a statute to deal with incarceration

JudgeWood/Dr. McDiarmid - Use actual language -Just say we are not imputing - that's all we need to say.

Commissioner Jacobs & Kim Bentley - will work on drafting legislation

Allyson Hilliard - steal from KY, OH or VA

Commissioner Jacobs - Impute - other requirement - 14 factors - already covered most of these.

Judge Wood - Issue - problems are from attorneys who do not use correct language, normally private attorneys.

Commissioner Jacobs - Judge has the flexibility

Dr. McDiarmid - None - we don't have will marks or sway a Judge.

Judge Wood - Although looked at that

Allyson Hilliard - 48 - 1, 2, 5 - con contribute - use Federal minimum wage

Judge Wood - I use Federal - in code

40 hours - majority don't work 40 hrs. - no min. wage. Person gets 40 hours/52 weeks. No paid time off, no sick leave. Use it to make realistic.

Allyson Hilliard - Trying to make it cheaper by using Federal.

AGC Bentley - Sign reimbursement expense - mileage parking

Where do we go from now?

Dr. McDiarmid - Health care issue - 48-12-101 (8) - change to apply to all health care

Judge Wood - Do you want to keep the \$250? If going 50/50, \$250 is not in extended shared parenting.

Commissioner Jacobs - Where are we & where do go from here? Do we want to take a couple weeks, Virtually or in-person? Want a couple weeks or a moth before next meeting? Appointments run out in June. Come back in a month, in-person.

Meeting Adjourned

Here is a list of the decisions to be made (provided by Ms. Venhor)

Considerations for Commission

1.Update the table?

a. Update using income differences or price parity?

2.Update the self-support reserve in worksheet?

3.Make changes to comply with expanded federal rules?

a. 14 factors to consider when imputing income

- b. Prohibit treatment of incarceration as voluntary unemployment