

# **INTERIM JOINT COMMITTEE ON JUDICIARY**

## **Minutes of the 5th Meeting of the 2019 Interim**

**October 4, 2019**

### **Call to Order and Roll Call**

The 5th meeting of the Interim Joint Committee on Judiciary was held on Friday, October 4, 2019, at 10:00 AM, in Room 154 of the Capitol Annex. Representative Jason Petrie, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Whitney Westerfield, Co-Chair; Representative Jason Petrie, Co-Chair; Senators Danny Carroll, Alice Forgy Kerr, Gerald A. Neal, John Schickel, Wil Schroder, Dan "Malano" Seum, Stephen West, and Phillip Wheeler; Representatives Charles Booker, Kevin D. Bratcher, McKenzie Cantrell, Joseph M. Fischer, Angie Hatton, Jeff Hoover, Joni L. Jenkins, Nima Kulkarni, Stan Lee, Derek Lewis, Savannah Maddox, C. Ed Massey, Chad McCoy, Reginald Meeks, Patti Minter, Kimberly Poore Moser, Jason Nemes, Brandon Reed, and Maria Sorolis.

Guests: Commissioner Bryan Hubbard, Cabinet for Health and Family Services; Dr. Jane Venohr, Center for Policy Research; Stacy Tapke, Kenton County Attorney; Galen Myers, Kenton County Attorney's Office; Brian Ulrich, National Parents Organization; Jennifer Warawa, Licensed Clinical Social Worker; Dr. Jonathan Warawa, University Professor.

LRC Staff: Dale Hardy, Matt Trebelhorn, Raleigh Dixon, and Yvonne Beghtol.

### **Approval of the Minutes**

Representative Reed made a motion to approve the September 13, 2019 minutes, seconded by Senator Schickel, and passed by voice vote.

### **Child Support Guidelines**

Commissioner Hubbard, Department for Income Support, reviewed the state child support guidelines, as required quadrennially by federal law, the goal and objectives of the review, and the Child Support Guidelines Review Commission membership. Commissioner Hubbard presented the federal requirements for guidelines issued in 1989 and additional requirements added in 2016. Kentucky is compliant with all federal requirements, with the exception of the consideration of a parent's basic subsistence needs.

Chairman Petrie reviewed the basics of how child support is calculated, and distributed the worksheet and table used for calculation.

Commissioner Hubbard continued by comparing the existing child support table, the proposed table, and guidelines from other states. In review of the economic studies of child-rearing expenditures, Commission Hubbard noted that Kentucky's table was based on a study from 1984, and announced that the proposed changes are based on the most current Betson-Rothbarth table, published in 2010. Graphs illustrating the combined monthly support obligation by both parents, and comparisons of monthly child support between Kentucky and the seven surrounding states for one, two, and three children were offered. The Cabinet for Health and Family Services (CHFS) recommends providing a self-support reserve (SSR) to consider the basic subsistence needs of the noncustodial parent, and at the state's discretion, the custodial parent and children. Based on the federal poverty rate in Kentucky, CHFS proposes \$915 per month for SSR. A minimum child support order of \$60 per month would apply if income is below the SSR. Commissioner Hubbard reviewed the process of phasing in and out of the guidelines based on adjustment of income, as well as the expected impacts of implementing the proposed SSR.

CHFS also recommends a shared parenting-time formula to take into consideration shared expenses. Commissioner Hubbard advised that 38 states currently provide a shared parenting formula, and reviewed policies, advantages, and disadvantages for Kentucky, and the proposed formula for Kentucky. An illustration was presented showing the projected decrease of monthly child support based on the timesharing threshold. After speaking with the director of the Oregon Child Support Enforcement Program, Commissioner Hubbard reported that there has been a significant reduction in litigation related to child support between parents as a result of the application of this formula, and there has not been a significant adverse effect on the collections of the Oregon Child Support Enforcement Agency. In fact, Oregon's director reports that collections have increased since the formula has been implemented. A table representing the percentage of adjustment made to child support based on the number of overnights spent with the obligor was presented. Equal income with equal timesharing results in zero child support. A chart representing the major considerations for determining which formula to use was presented. A graph illustrating the change of obligation from one parent to the other based on the different formulas considered was presented.

Commission Hubbard concluded by stating the Kentucky Child Support Guidelines Commission would like to recommend updating the child support table, provide a self-support reserve, and provide a shared parenting-time formula.

In response to Representative Hatton, Commissioner Hubbard confirmed that the shared parenting-time formula would adjust the amount owed by a parent who has custody of their child 3 nights per week.

Representative Massey commended Commissioner Hubbard for the increase on the child support guidelines for higher monthly incomes.

In response to Chairman Petrie, Commissioner Hubbard verified that the consideration of parent's basic subsistence needs would be addressed in the recommendations being made by the Kentucky Child Support Guidelines Commission.

In response to Chairman Westerfield, Dr. Jane Venohr, Center for Policy Research, stated that the recommended table is based on the fourth Betson-Rothbarth study, which is more current than the 1972/1973 consumer expenditure report that is currently in use.

In response to Representative Cantrell, Commissioner Hubbard believes there will be a short term increase in litigation due to obligors wanting the new formulas to be taken into consideration.

In response to Senator Wheeler, Commissioner Hubbard confirmed that currently when a child support adjustment results in more than a 15% variation one party may go to the court and ask for adjustment.

Chairman Petrie clarified that the 15% stays in effect, deterring individuals from taking up court time for a minimal amount. Commissioner Hubbard confirmed that if the recommendations made today are implemented trial attorneys should be able to look at the guidelines and be able to determine the amount without having to go through litigation.

### **Child Support Enforcement**

Stacy Tapke, Kenton County Attorney, and Galen Myers, Child Support Division Director, gave a presentation regarding child support enforcement. Ms. Tapke began by clarifying that child support is not an obligation of the Attorney General's Office and is not funded through the Prosecutor's Advisory Council. Funding for child support enforcement comes through contract agreements with the Cabinet for Health and Family Services. During FY19, county attorneys handled 269,076 cases, resulting in the collection of \$364 million. Ms. Tapke presented a chart showing the number of cases and amounts collected in each of the 25 counties with the highest caseloads, and the correlation between the population and number of cases. Ms. Tapke stated that Kentucky's return of \$6.33 for every dollar spent on enforcement ranks Kentucky as 11<sup>th</sup> in the nation as far as return on investment. The tools used to enforce child support on administrative and judicial levels were presented. Ms. Tapke agrees with Commissioner Hubbard on the reasons why the child support guidelines need to be updated. In agreement with Chairman Petrie, Ms. Tapke stated that having set guidelines keeps individuals from preferring one judge or one county over another. In regards to shared parenting, there has already been an increase in custody orders mandating shared parenting and county attorneys expect continued increases. Not having guidance on adjustments to the guidelines based on shared parenting has presented challenges for attorneys dealing with child support. Ms. Tapke reminded members that

daycare and healthcare costs are important factors to consider. Chairman Petrie noted that these factors are included on the Child Support Guidelines and worksheet he distributed. Ms. Tapke ended by stating that updates to the guidelines are absolutely needed and needs to be a priority for Kentucky's children.

In response to Senator Seum, Commissioner Hubbard stated that the central office for the Division of Income Support in Frankfort oversees the 120 county child support collection offices, which are run by 113 individual county attorneys, and are funded through state and federal dollars. Kentucky contributes 34% of the child support cost, and the federal government contributes 66%. Ms. Tapke stated that the county attorney can handle a prosecutorial case as a felony or misdemeanor non-support case if necessary. A public defender is not automatically assigned, but the defendant may qualify for a public defender.

In response to Senator Carroll, Ms. Tapke clarified that the split parenting formula is currently used to determine the child support amount, but shared parenting is more structured and appears to factor in more of an equal parenting situation. Chairman Petrie added that the current guidelines were set up assuming one parent would have the child only on weekends and specific holidays, and would have to go to court to ask for a deviation from the guidelines if they actually have more time with child. Shared parenting allows the time with the child to be considered from the beginning. Ms. Tapke stated that, if the custody schedule changes, the proposed shared parenting formula would not require a modification of the custody agreement before modifying the child support. Senator Carroll noted that there is a presumption that 50/50 shared custody is what the judge has to start with. The judge has the authority to make adjustments based on circumstances.

Senator Wheeler commented that, in his opinion, county attorneys are willing to work toward an equitable resolution, when dealing with an individual who is going through a sickness or hard time. Their goal is not to place people in jail, but to make sure the child receives the support needed.

In response to Representative Massey, Commissioner Hubbard stated that there is nothing in CHFS' proposals that require a judge to mandate child support if both parties agree that no child support is necessary.

In response to Chairman Petrie, Ms. Tapke has found that Indiana has gone to private collection agencies for collection of child support owed to the state. Private agencies have had success in getting a portion of what is owed, with a percentage going to the collection agency. She will continue to look into other methods that Kentucky may find beneficial.

## **National Parents Organization**

Brian Ulrich, National Parents Organization, stated that the federal tax code contains a mini child support system pertaining to the filing of year end taxes. The custodial parent can claim head of household, providing them with a higher deduction. They also qualify for the federal earned income credit, and can claim a child tax credit. A chart depicting the disposable income, after federal taxes, for the recipient of the credits compared with the payer of child support was presented. Based on equal income, the recipient of the credits or deductions has approximately \$4,000 more disposable income yearly.

In response to Chairman Petrie, Mr. Ulrich stated that the head of household standard deduction and the earned income credit are in law and assigned based on having custody of a child. The child tax credit can be allocated between the two parties.

In response to Representative Hatton, Mr. Ulrich confirmed that taking turns with filing for the allowable credits would fix the situation, if it is agreed upon. Chairman Petrie stated that, although Kentucky regularly includes this procedure in court orders, it would be beneficial to include it in statute. Representative Hatton added that if one particular parent would receive a high credit, then both parents can share, in the best interest of the children. Chairman Petrie added a parent who is behind in child support forfeits the credit to the other parent, which encourages payment of child support.

Mr. Ulrich addressed self-support reserve and ability to pay. Minnesota has 120% of federal poverty level as their SSR calculation. Minnesota is considering raising the SSR to 200%. Following other states is not resulting in a reasonable SSR. Mr. Ulrich urged the committee to reconsider what a reasonable level is to be able to provide a subsistence existence, and recognize that many non-custodial parents have significant time with their children.

Mr. Ulrich addressed parenting time off set for support obligations and agrees that it needs to be put into law. While the Oregon model offers a good relief offset for shared parenting time, the NPO proposes proportionate parenting time offset as the parenting time increases. This method would go from no offset with 0 parenting time to a full offset at equal shared parenting.

In response to Senator Seum, Mr. Ulrich is not aware of any penalties in other states to be enforced when a party makes a false claim.

Representative Nemes mentioned that there needs to be a statute with severe punishment for a parent who makes inappropriate claims in court. Jennifer Warawa, Licensed Clinical Social Worker and Clinical Director of Family Preservation with the NPO, advised that addressing false allegations is a major aspect that needs to be addressed. Chairman Petrie added that false allegations and parental alienation that takes place inside custody agreements needs to be punished.

Senator Wheeler advised of a situation where a woman claimed a man as the father. He paid child support for 14 years before it was determined to be a false claim. There was no recourse for him to take in reclaiming the \$76,000 he paid. Senator Wheeler would like to have this addressed in statute.

In response to Chairman Petrie, Commissioner Hubbard advised that the commission members were in consensus that the SSR be proposed. Raising the SSR minimum would be acceptable. Dr. Venohr referred to the Oregon formula, and advised that the proposed 45° curve in the timesharing formula suggested by Mr. Ulrich would increase the percentages, which may increase litigation. Dr. Venohr added that the SSR can be applied to both parents when there is equal custody.

Ms. Warawa concluded by stating that getting full credit for custody contributions is fair. The offset for shared parenting addresses this and makes it fair for both parents.

Dr. Jonathan Warawa, University Professor, commended the Oregon model for having no offset with no shared parenting, 50/50 if equally shared, and adjustments for those areas in between.

### **Adjournment**

There being no further business the meeting adjourned at 11:40 AM.