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Minutes of the
Department of Human Services
Child Support Guidelines Advisory Committee
June 20, 2018
9:00 – 4:30
Fort Union Room, State Capitol

Members present: Jim Fleming, Brad Davis, Jamie Goulet, Lisa Kemmet, Leah duCharme, Betsy Elsberry, Paulette Oberst, Sherri Peterson, Cynthia Schaar, Judge Gary Lee (present from 9:00 - 4:00), Referee Scott Griffeth, Tara Fuhrer, Rep. Robin Weisz

Members absent: Sen. Oley Larsen and Bill Woods

Welcome

1. Introduction of members who were unable to attend the June 6th meeting.

Judge Lee introduced himself and the members briefly introduced themselves again.

Fleming indicated Bill Woods informed him he would not be able to participate in this committee.

Jay Hansen, from Minot, was present as a visitor. He is interested in the issue regarding equal residential responsibility calculations on the agenda.

Fleming indicated the group will be covering the items in the agenda but may not go in order. Fleming gave an overview of how the day will proceed. The group may address some of the items where we are close to consensus first. The group will do roll call votes. There are several new issues to be addressed. Fleming referenced information sent out by Oberst prior to the meeting regarding the issue of extended visitation and multiple family calculations. Fleming noted the item about whether child support can be reserved was saved so that Judge Lee could participate in the discussion.

2. Review of federal regulations pertaining to quadrennial review.

Federal regulations (45 C.F.R. § 302.56(h)(2)) require analysis of case data, gathered through sampling or other methods. Oberst indicated this requirement is not new and began the discussion by reviewing the results of the court order analysis that was recently conducted. Oberst provided handouts to the group and referenced them periodically. Oberst explained that as part of the quadrennial review of the guidelines, an analysis of how the guidelines are being applied and of the deviations in the guidelines must be done. In addition to looking at case data for deviations, Oberst explained that this time around, we must look at rate of defaults, rate of imputed

income, application of the self-support reserve, and payment rates based on case characteristics. Oberst referred to a handout which provided members with information about the recent court order analysis that was conducted. The analysis looked at orders entered on or after September 1, 2015, because that was the effective date of the guidelines after the last quadrennial review. The sample size had to be large enough so statistically valid conclusions could be drawn. The initial sample size was 264 orders. Upon manual review of the orders, it was apparent that some were not applicable to the analysis. For example, some orders that were recorded on the automated system as North Dakota orders were orders entered in other states based on the other state's guidelines. In the end, 254 orders were analyzed. Oberst indicated the analysis took into consideration who secured the order: Child Support – 135 orders (53.1%); private attorneys – 109 orders (42.9%); parties acting pro se – 9 orders (3.5%) and in one order it was unable to be determined what person/entity secured it. Child Support also looked at the average amount of the support obligation in the sample. The average amount was \$598.41, and the median amount was \$431.00. Oberst indicated the type of residential responsibility was also tracked. Most orders, 152 (59.8%) resulted in primary residential responsibility being awarded to the mother. Equal residential responsibility orders resulted in 58 orders (22.8%). Oberst indicated she thought more orders would reflect equal residential responsibility. Primary residential responsibility to the father resulted in 13 orders (5.1%). There were only a few orders in which split primary residential responsibility was ordered.

Fleming said we must remember this is only on orders since September 2015. Fleming noted that he has a hand out which tabulates the number of offsets and the difference in income and the universe was only about 2,000 offset cases. Fleming indicated the information seems to reveal that in the last three years the volume of equal residential responsibility cases has spiked considerably. In response to a question from Peterson, Oberst explained the difference between split residential responsibility and equal residential responsibility. Elsberry asked if this average obligation amount was for one child or multiple. Oberst said the average was based on a sample that included cases with both situations, one child and multiple children.

13. Analysis of case data on the application of and deviation from the guidelines and other factors specified in federal regulations.

Oberst moved on to discuss the application of the guidelines and the deviations. She explained that the child support amount that results from the application of the guidelines is presumed to be the correct amount of support. The presumption is rebuttable. If the amount is rebutted, it is referred to as a deviation from the guidelines. The list of deviations in the guidelines is intended to be a finite list; however, it seems there are more additional deviations, not sanctioned by the guidelines, that are created by parties and attorneys each time the court order analysis is done. Deviations can be upward or downward. The court must consider the best interests of child and determine the presumptive amount before determining which deviation is applicable. Actual deviations are infrequent. Of the 254 orders, there was a deviation only explicitly

referenced in 13 orders. Of those 13, only three deviations were clearly among the deviation factors listed in the guidelines. The other 10 were created by the parties and approved by the court. In almost all cases where the parties created deviations, the parties had equal residential responsibility and one party's obligation was manipulated, either upward or downward, to match the other party's obligation so that the obligations would net to zero after the offset. There seems to be a desire on the part of the parents to get to the point where there is no money changing hands in equal residential responsibility cases.

Oberst discussed the rates of default. Oberst noted that just because an order was styled as a default, did not mean it was entered without consideration of any financial information of the obligor. In virtually every case reviewed, the obligor's income was specified in the order or it was known the obligor was unemployed and income would need to be imputed. Oberst said that for purposes of North Dakota orders, default does not mean the amount was picked out of the air. It is almost always based on income information. Child Support usually has access to some type of income information. Overall there were 105 cases obtained by stipulation and 107 cases that were styled as default orders. The remaining 42 orders were contested and entered following some type of litigation, a hearing or trial.

Fleming indicated he believes the federal Office of Child Support Enforcement's (OCSE) view of child support imputation practices at the state and county level is partly driven by the complaints received, which can give them a slanted view of things. Fleming indicated in some larger cities, for example Chicago, there are high unemployment and poverty rates. In the drive to get support orders established, OCSE was concerned that states are defaulting too quickly and not giving obligors a chance to cooperate and be involved in the process. In North Dakota, we do not do this. Our policies are clear that we need to exhaust all sources of income. Schaar indicated she is seeing more homeless people in her practice area than she has in the past.

Oberst discussed the rate of imputed income. Oberst explained imputation of income under the guidelines and indicated that income may be imputed to an obligor who is unemployed or underemployed. Income equal to the greatest of minimum wage, 60% of the state's statewide average earnings, or 90% of the obligor's greatest average gross monthly earnings in the specified look back period, can be imputed to an obligor. Oberst noted situations where imputation is not allowed (e.g., incarceration or receipt of SSI/SSDI). Oberst indicated the guidelines also allow imputation of a greater amount if the obligor voluntarily changed jobs resulting in reduced income or if the obligor fails to provide income information.

Oberst indicated that of the 254 orders reviewed, income was imputed in 75 orders (29.5%) of the time. Income was not imputed in 175 orders and there were four orders in which it was unclear if income was imputed. Income was imputed more often by Child Support than private attorneys. Imputed income was either based on minimum wage or 60 percent of statewide average earnings, with the latter only representing a

small amount of the orders. Oberst noted that the 90 percent imputation was not used in this sample, which she thought was significant regarding the group's discussion about the length of the look back period. Oberst indicated she also did not review any orders where imputation was based on noncooperation of the obligor or a voluntary change of employment.

Oberst briefly discussed the application of the low-income adjustment. Oberst explained that application of the low income adjustment is not really an issue for this review because the guidelines were amended only recently, January 1, 2018, to provide for a self-support reserve for low-income obligors. Oberst noted if the obligor's net monthly income under the guidelines is \$700 or less, the child support obligation is zero. Because the self-support reserve is so new, it has not had much of an impact yet. There were 24 orders in the sample entered after January 1st, but the obligor's income exceeded \$700 per month so the self-support reserve was not applicable.

Oberst discussed the comparison of payments by case characteristics. Oberst explained that since the orders in the sample were entered at different times, Child Support had to further filter the sample to establish a common timeframe to look at accruals and collections. Oberst indicated a decision was made to use a seven-month period from October 1, 2017 through April 30, 2018, as the timeframe for reviewing payment history. This resulted in a smaller amount of cases: 233. Overall, there were 26 orders with no payment received during the relevant period and 106 orders in which full payment ordered was received. In the remaining cases, some of the amount due was paid. When broken down by how the order was secured, of the orders in which zero was paid, 18 (69.2%) were entered by default versus four (15.4%) that were entered by stipulation. The indication appears to be that stipulated orders are better payers. Of the orders where full payment was received, 71 (67%) were entered by stipulation. Orders where zero was paid, 20 (76.9%) were based on imputed income. Of the orders in which full payments were received, 14 (13.3%) were based on imputed income. This information tracks with what OCSE has been saying for a while, that cases where income is imputed are typically not good paying cases.

Davis said it is not the imputation that is the problem, it is just the type of person we are dealing with. Some people just don't want to pay. We are only imputing at minimum wage or sixty percent of their ability. Fleming said in general he agrees with Davis. The numbers are interesting.

Oberst indicated this case analysis project was a joint effort of her, a regional office worker, and the quality assurance unit. Oberst asked if the group had any questions or comments.

In response to the deviation analysis, duCharme noted that in her experience, medical support and child care are usually dealt with separately, not as a deviation to child support. Elsberry agreed. duCharme indicated that sometimes it is easier to keep it separate because the child care cost changes a lot. Davis indicated sometimes

deviations are cumbersome to ask for. Davis said one good part about making it part of the child support obligation is that then Child Support can enforce it. Judge Lee noted that ordering child care costs can be somewhat coercive because some parents want the child to go to daycare and some want the child to stay at home or sometimes the parents don't agree on where the child should go to daycare. It can result in a power struggle or argument about the difference in costs associated with each daycare.

Rep. Weisz asked what the rationale was for changing the self-support reserve. Fleming said OCSE wanted the states to recognize that the obligor needs money to live on or they won't be able to pay. Categorically, there is a self-support reserve inherently in the obligor model. We technically have always had a self-support reserve. However, we looked at the SSI income model for eligibility and went with what that is set at. Now with this reserve, there will be a court documented reason why support can't be paid because the obligor can show they do not have the minimum amount of income required.

12. Consideration of economic data on the cost of raising children and other factors specified in federal regulations.

Oberst referenced a handout on the cost of raising children analysis. Federal regulations require the review to consider economic data on cost of raising children. Oberst indicated she usually used a USDA publication as the source document report which discusses expenditures on children by families. The data in the latest report was based on 2015 numbers. Oberst wanted more recent data so she ended up using data from the Bureau of Labor Statistics with a 2.1% increase for 2016 and a 2.1% increase for 2017. Expenditure data was collected from numerous categories: housing, food, transportation, clothing, health care, child care and education, etc. Over 30,000 households were sampled. The survey breaks down the information by expenditure categories. Some general conclusions can be drawn. Oberst indicated the data shows the child-rearing expenses follow the same pattern for two-parent households as for single-parent households. Expenses increase as household income increases. While the dollar amount of expenses increases as income increases, the percentage decreases. Expenses for necessary items, such as housing and food, did not vary as much among income levels as expenses for discretionary items. Housing is by far the largest expense for children. For low and middle income groups, the second largest expense is for food. For high income groups, child care and education were the second largest expense. Expenditures on children generally increase as children get older. When there are multiple children in the household, economies of scale come into play. Children may share a bedroom and clothes and toys are handed down. Geography also affects child-rearing.

Oberst indicated the analysis focused on estimated expenditures on a child by husband-wife families in urban Midwest (includes North Dakota), the estimated expenditures on a child by husband-wife families in rural areas, and the estimated expenditures on a child by single-parent families in the United States. Oberst went over several charts which

analyzed different scenarios in each group of focus. Estimated expenditures on child by two-parent families in urban Midwest: scenario #1, before-tax income of \$37,600, bottom line monthly cost of raising one child is \$820 and two children \$1,640 and scenario #2, before-tax income of \$81,700, bottom line monthly cost of raising one child is \$1,098 and two children \$2,195. Estimated expenditures on a child by two-parent families in rural areas: scenario #1, before-tax income of \$36,100, bottom line monthly cost of raising one child \$706 and two children \$1,412 and scenario #2, before-tax income of \$79,500, bottom line monthly cost of raising one child is \$932 and two children \$1,863. Estimated expenditures on a child by single-parent families, overall United States: scenario 1, before-tax income of \$24,400, bottom line monthly cost of raising one child is \$831 and two children is \$1,662. Comparison of obligee's costs to obligor's support obligation as applied to different monthly net incomes scenarios ranged from 25% to 62% for one child and 22% to 43% for two children.

Fleming referenced the court order analysis and said the analysis discussed the average order being \$581 and the median, \$431, that is the bottom line number for whatever number of children. Fleming noted it would be nice to know what the number would be for one child orders, considering the information from these charts. Fleming indicated for one child average it would probably not be at that \$400 level.

Rep. Weisz asked if the cost of raising the child is from birth to eighteen. Oberst said yes. Rep. Weisz questioned whether the cost is calculated based on today going forward 18 years or today going back 18 years. Oberst thinks it is based on today going forward. Rep. Weisz said this cost would include inflation then, but it doesn't reflect the difference in income the obligor would make at that time. If inflation is included in factoring what it will cost 18 years going forward, whatever costs they are including, we must look at the obligor's side as far as the obligation goes.

Oberst said the other thing we need to look at are employment and unemployment rates and what people earn at different skill levels. Oberst referred to a Jobs Report handout from Job Services of North Dakota. This shows the not seasonably adjusted employment rates. The first page shows statewide, for April 2018, total employment was 423,000 and is broken down by industry. Oberst noted she was surprised government was the single highest category and she was surprised that construction wasn't higher. The handout also showed the data broken down by metro area. Federal regulations require the group to consider the data, but there are no requirements on what exactly to do with it or how to act on it. Oberst noted if anyone has any conclusions to draw from the data, this is the time to discuss them. There were no comments from the group.

Oberst referred to another handout which discussed labor force and unemployment statistics in North Dakota. Oberst noted some county unemployment rates are higher than the statewide average and are reflected in the chart on the handout. Oberst noted Rolette county's rate and that she was surprised at Eddy county's rate. There was discussion among various members about what population makes up the labor force.

Elderly people would probably not be included or people who are not looking for work. Oberst said there are various factors that affect these rates. There are geographical factors to consider. Fleming indicated North Dakota is blessed with a very low rate across the board. States with higher rates in certain areas might need to spend more time on this issue. North Dakota can afford to impute at minimum wage full time because there are more jobs available and it isn't as hard to find work as it may be elsewhere. Rep. Weisz indicated we are basically a fully employed state because the unemployment rate is so low. It would be hard to argue that you can't be working if you are physically able to.

Oberst indicated the group must also consider the impact of guidelines on custodial and noncustodial parents with income below 200% of the federal poverty level. Oberst referred to a handout. Using 2017 federal poverty level guidelines for contiguous 48 states, three charts were developed. The first reflects the net monthly household income amount for a household size of two (obligee and one child) with household income at 100%, 150%, and 200% of the federal poverty level. The second reflects the net monthly household income amount for a household size of three (obligee and two children) with household income at 100%, 150%, and 200% of the federal poverty level. The third chart reflects a household size of one (obligor) at 100% of the federal poverty level (obligation amount for one child \$186, two children \$226), 150% of the federal poverty level (obligation amount for one child \$290, two children \$353), and 200% of the federal poverty level (obligation amount for one child \$384, two children \$476).

Oberst asked if anyone had any questions about the information in the charts. Fleming noted in these situations both households are impacted, it would be hard to be the obligor or the obligee. Oberst noted that a lot of people who have minimum wage jobs are working two jobs part time. Goulet said she read a study that someone who works a full time minimum wage job can't even afford a two bedroom apartment in any state in the United States. Fleming said it is challenging because in some of these cases even if the parents were living together it might still be hard to make ends meet.

Rep. Weisz noted that at 100% of the federal poverty level, the obligor basically nets where the self-support reserve will be. Fleming said it would be nice if the parents would be self-sufficient but in a lot of these scenarios it is going to end up with the custodial parent being eligible for public assistance. Kemmet asked if we remember the percentage of income at the lower levels on the old schedule of amounts. Davis had a copy of the old schedule of amounts. Kemmet said she thinks 20% at \$800 is high. It seems too high at the lower income levels. Davis asked if it was contemplated that if the reserve was increased, the amount would just drop off like that. Fleming said by and large, for the states that have a self-support reserve, the amount does just drop off. He noted that some states have a minimum support order, but he would encourage we don't adopt that because most times it is not worth the transactional costs to enforce that low amount. We must consider that the custodial parent is also asked to support the child with only \$200 per month from the other parent. Kemmet said obligors at this level complain they can't afford to pay their child support. Rep. Weisz said usually the

state is the one to pay the difference because the custodial parent is going to be on assistance because they can't make it either. The question is do you allow more leeway to the obligor, so they can survive and then transfer more cost to the state. It is a hard situation. Fleming noted that Temporary Assistance for Needy Families has a five year lifetime limit, so it won't always be available to the custodial parent.

This discussion was revisited later in the day (see number 11).

14. Consideration of Supreme Court decision in Schiele v. Schiele case.

Oberst provided a copy of the opinion, Schiele v. Schiele, 2015 ND 169, and provided a summary of the case. Mom was awarded primary residential responsibility of the child, but the child lived in a facility and not with mom. Mom sought support from Dad and the trial court ordered Dad to pay. The Supreme Court upheld Dad's duty to pay child support. The Supreme Court cited many provisions in the guidelines in support of why Dad's obligation to pay support was appropriate. Oberst said the way the Court was relying on the guidelines here, in her opinion, was not appropriate. The guidelines are about how much will be paid. Here, the Court was using the guidelines to explain why there should be an obligation. Justice Sandstrom dissented, noting that there is a rebuttable presumption allowed for under state law (N.D.C.C. § 14-09-09.7(4)) and that on the undisputed facts in the record, where neither parent is in fact supporting the child, the presumption was rebutted in this case. The question is should a parent who doesn't have the child in his or her home be receiving support from the other parent. Is this something we can address in the guidelines or is this more an issue with state law? Does something need to be changed to assist in determining when we get to the point of applying the guidelines?

Fleming indicated he has done research on who truly owns child support. The right belongs to the child and the parent receives it in a representative capacity. Arrears are owed to the obligee because that person presumably dipped into his or her own resources to cover the cost.

Judge Lee asked why the money doesn't go to the facility that is taking care of the child. Fleming said they need to be legally entitled to it. The majority was looking at the custody decree and saying it was applicable and binding even if the child was not technically in the obligee's home. In many residential settings in foster care cases you would see an assignment. In this case, custody was not removed from the parents, so it was not considered a foster care setting.

Ref. Griffith questioned that since this was a Medicaid case, there should be an assignment. Oberst said in Medicaid cases, medical support rights are assigned, not necessarily child support rights. Also, not every Medicaid case is referred to Child Support. Oberst said she doesn't think this is a guidelines issue. There isn't anything in the guidelines that should address this. Schaar said her office faces this issue a lot in cases where one parent has ordered primary residential responsibility and the child

doesn't live with that parent. Fleming noted the state can propose an administrative change of payee where there is a change of legal guardianship. If the child informally goes with a relative, we rely on the idea that the custodial parent will do the right thing and forward the money on to whoever the child is with, or ask for payments to be redirected. Elsberry said maybe there needs to be a legislative change to say there is primary residential responsibility, equal residential responsibility, and an alternative that reflects no residential responsibility ordered. Judge Lee said you can award primary residential responsibility to an institution. The applicable law says it can be awarded to a person or entity. The state hospital could be awarded primary residential responsibility, for instance.

Davis said Fleming's scenario where a custodial parent no longer has actual possession of the child is common and there are informal arrangements where a family member takes the child. Schaar said the problem is often the people involved are low income and can't afford to formally change the custody arrangement via guardianship or court order, or just don't take the time to do it. Fleming said he thinks the guidelines were used in a clumsy way in this case. Oberst noted in those cases where we do have to send money to county social services, they don't want it because it messes up their bookkeeping. They don't really know what to do with it in some cases. The institution in this case, in Grafton, might not have wanted the money. Davis said there are circumstances where we can step in and stay the support. Davis said he thinks in a lot of cases the money is being transferred appropriately to the person who has the child.

Fleming asked if the group felt like this was an issue that could be addressed in the guidelines or if there was further discussion on this topic. Multiple members indicated they didn't believe it was. Group's consensus was no change would be made.

4. Child Support Guidelines Section -02 General Instructions.

Issue: Consider removal of Section -02(9) if it can be interpreted as "forcing" parents to have a child support obligation, even against their wishes.

Fleming indicated the group had a discussion at the last meeting about the equal protection considerations. If unmarried or never married parents are not compelled to address child support when they separate, but divorcing parents are required to address it, there is an equal protection issue there. Also, there is inconsistency statewide on waivers, suspensions, or reserving the issue of child support. Our program already sometimes gets accused of getting involved where we don't belong. This issue may need to be addressed legislatively. The inconsistency causes issues because people marry and divorce and then remarry in different districts and are treated differently depending on the district or judge.

Oberst indicated in the case that prompted this issue, the judge specifically cited this section as the reason that child support could not be stayed.

Ref. Griffith said if the issue is addressed legislatively, he would like to see the statute also address what happens when child support is reserved and then a party moves to establish it. It should address whether the support can be requested retroactively or prospectively. Fleming said he would suggest in those cases it be established prospectively, but that we might not want to mandate in statute that it be prospective only. The orders should be clear when a party can go back to court and address it.

Judge Lee indicated that N.D.C.C. § 14-09-09.32 says any waiver of current or future support is void. Judge Lee said he interprets this to mean any kind of relief; anything that relieves the person of that duty would be void. Judge Lee said he would like consistency, too. Some judges will approve agreements, and some won't. There is judge shopping in certain counties. Judge Lee indicated that in his opinion, a suspension or reservation should be temporary. There should be a timeframe in which the person has to come back to court and renew or establish the obligation. The parties should not be able to reserve the issue forever. Otherwise, it is a backdoor way of a permanent waiver situation. Judge Lee indicated he allows parties to reserve the issue of child support in certain cases, but only on a temporary basis.

Fleming said the Child Support program reserves the issue of child support in Medicaid cases all the time. It needs to be permitted, otherwise you have a Medicaid referral and if the parties opt out, we lack the authority to establish child support on our own. It would be problematic to have a statute which requires a party to come back in to establish child support within a certain timeframe. Also, there still would be nothing that compels parents who are not divorced or never been married to go to court.

Davis questioned whether parties could not mention reserving it, and just leave it out altogether. Fleming said the issue should be addressed legislatively because some districts and judges feel it's legally permitted and some don't. Fleming said it is common practice to reserve child support in some jurisdictions now, so if that were changed it would be problematic.

Schaar indicated she has seen cases where it's reserved and a few months later a party is coming in to establish it. Judge Lee indicated he used to see that a lot, where people would waive it and then come back in later and ask to establish it.

duCharme indicated an issue she sees is in equal residential responsibility cases, the parties want to figure out their own way of addressing child support and there is no way of doing that outside of the guidelines. There is no deviation in the guidelines to allow them to not have an obligation in those cases. Elsberry said in those cases she uses the reserved language and specifies that child support can only be established on a prospective basis. Elsberry said she makes her clients aware that the other party may be able to come back at any time and ask that child support be established. She said she is seeing it more in cases where parents typically have equal and are getting along well, and they just don't want to have the obligations established.

Fleming indicated the statute Judge Lee noted was established in part for those situations where one party is being coerced to sign something. Fleming indicated he struggles with the idea that parents who have never been married and separate, that nobody is making them go to court, but they are being forced to address child support in divorce situations. Child Support deals predominantly with a nonmarried population, why can they keep the courts out of their business, but divorced people can't?

Davis said he has seen a lot of cases where he believes people are manipulated into signing stipulations to stay, or not opening cases or closing them after service, because someone is pressuring them.

Oberst indicated she sees cases where the parties are manipulating the facts, so they can get to the net income which is a zero offset in equal residential responsibility cases. She would prefer the reserve option be there so parties don't go the other route more often and get the court to sign off on a stipulation which is based on false information, and essentially a fraud on the court.

Fleming asked Oberst if she thought the general instruction should be changed. Oberst said she has not known any other case like the case where the court cited this provision as a reason for not approving a stay. Judge Lee said he would have used the statute to reject the stipulation, not the guidelines. Oberst indicated she thinks the judge who used it was turning the intent of the guidelines provision on its head. Fleming proposed repealing the whole provision. Oberst thought it could be repealed because we really don't rely on it for anything. Fleming said the guidelines are the math, the law determines when they should be applied. The guidelines shouldn't determine when they are applied.

Fleming made a motion to remove -02(9). Schaar seconded the motion. Roll call vote was taken, and the motion carried (13 yes, 0 no, and 2 absent and not voting).

Judge Lee indicated prior to the guidelines, there were many abuses with how child support was used, reserving child support was sometimes used as a negotiation tool to get property or more visitation. The children ended up getting used as pawns. The statute says any agreement purporting to relieve an obligor of child support is void and not allowed, it's black and white, it's clear, but that's not the practice statewide. duCharme questioned whether the guidelines could include a deviation, so that every order has a child support component to it but make it easier to deviate downward or do something other than the guideline amount if certain circumstances are met. Fleming said the reservation is part of the judgment and the other party can request a hearing on that, it is something that needs court approval. Fleming said some judges feel they lack the authority to approve the reservation. A proposed law change could clarify that to say that the reservation is an option for the judge to approve. Judge Lee noted that there are so many issues in a divorce: property, spousal support, debt, etc. If it looks like something is being traded in one area, so it looks like you don't have to do something in another area, hopefully the court can see that.

Issue: Consider addressing extrapolation of income.

Fleming indicated he attempted to contact the legislator who wanted to address extrapolation and did not get a response. This item is considered withdrawn because it doesn't have a sponsor.

3. Child Support Guidelines Section -01 Definitions.

Issue: Consider whether/how provisions in the federal Tax Cuts and Jobs Act of 2017 (TCJA) affect the determination of gross income and net income:

Standard deduction substantially increased, personal/dependent exemptions eliminated, child tax credit increased. Section -01(6)(a) regarding determination of hypothetical federal income tax obligation includes these items in the calculation.

Schaar asked what will happen in 2025, based on the discussion at the last meeting. Peterson said nobody knows at this point, it is possible many changes could be made before then. Fleming indicated if something does change the department can go back into the guidelines and change it to deal with that.

Oberst passed out a draft of revised language for Section -01(6) based on the discussion at the last meeting. The draft removes 6(a)(3) and most of 6(a)(4). Oberst also provided a document with scenarios which showed what the tax amounts would be in 2017 and 2018 with the new tax law changes. Oberst went over scenario 1: Alpha's gross income, all from wages, is \$18,000 and one child before the court. In scenario 1a, there was no dependency exemption allowed to be claimed by Alpha. The bottom line under 2017 and 2018 was the same and amounted to a \$290 obligation in each calculation. However, the actual state tax liability in this scenario was 11%, not 14%, which is what is currently used in the guidelines as the hypothetical amount.

In scenario 1b, the same income amount was used, and Alpha could claim the dependency exemption for the child based on court order. In the 2017 calculation, the exemption is taken into consideration, but not in the 2018 calculation. The bottom line is an obligation amount of \$316 in 2017 and \$290 in 2018. State tax rate still at 11%, not 14%.

In scenario 1c, the same income amount was used, Alpha allowed to claim dependency exemption for child based on court order plus dependency exemption for child in Alpha's home. Bottom line is an obligation amount of \$316 in 2017 and \$290 in 2018. State tax rate is still at 11%, not 14%.

In scenario 2, increased the obligor's gross income, all from wages, to \$25,000. One child before the court. In scenario 2a, no dependency exemption allowed to be claimed

by Alpha. The bottom line is the support obligation is the same for 2017 and 2018, \$400. State tax in this scenario in 2017 is 10% and in 2018 is 11%.

In scenario 2b, the same income amount was used, Alpha gets dependency exemption for child based on court order. The bottom line is a support obligation of \$416 in 2017 and \$400 in 2018. State tax in this scenario is 11% in both 2017 and 2018.

In scenario 2c, the same income amount was used, Alpha gets a dependency exemption for child based on court order plus an exemption for child in Alpha's home. The bottom line is an obligation of \$416 in 2017 and \$400 in 2018. There still is not much of a difference. The state tax is still 11% in both years.

In scenario 3, Alpha's gross income, all from wages, was increased to \$35,000. One child before the court. In scenario 3a, no dependency exemption allowed to be claimed by Alpha. Bottom line is an obligation amount of \$495 for both years. State tax is different now, 9% for 2017 and 10% for 2018.

In scenario 3b, the same income amount was used, Alpha gets exemption for child based on court order. The bottom line is an obligation of \$511 in 2017 and \$495 in 2018. State tax is still 9% for 2017 and 10% for 2018.

In scenario 3c, the same income amount was used, Alpha gets an exemption for child based on court order plus dependency exemption for child in Alpha's home. The bottom line is an obligation of \$527 in 2017 and \$495 in 2018. You can see how the required rounding in the guidelines really affects this calculation. State tax is still 9% and 10% respectively.

Oberst said she hopes this information makes the committee feel more comfortable taking the tax exemption and child tax credit out of the calculation. Oberst proposed changing the hypothetical state income tax obligation from 14% to 11%.

Davis said we should not leave the child tax credit out. Oberst asked Davis how we will apply it if we aren't tying it to the exemption. In response to a question from Kemmet, Oberst explained the history of the language in section Section -01(6)(a)(2)-(4) which addresses application of the exemptions and child tax credits. Davis is concerned that our hypothetical is getting too far from reality. Oberst indicated that is the point of a hypothetical, we aren't pretending it's a real number. Oberst indicated if we are applying the guidelines to an out of state obligor, we aren't worried about it. These are sophisticated and complicated guidelines to begin with, the more we try to refine them, the more we tinker with them, the more complicated we make them. Ease of administration is a legitimate consideration when we are talking about how we are going to craft these guidelines. Peterson said she agreed with Oberst and that even if the parent can claim the child per the court order, there are many times that they don't.

Judge Lee asked if the new tax plan eliminates the child tax credit. duCharme said no, it increases it.

Davis said he is struggling because he is all about simplicity, but the child tax credit is big and can make a big difference in the income. Davis said if 11% is the reality as far as the state income tax obligation goes, then he is in support of changing that amount.

Judge Lee questioned that if the tax credit still exists, why would we do away with it? It is the reality. Maybe adding other kids from other families may complicate matters, but in those cases where we are dealing with only the children of the relationship before the court, it doesn't complicate anything.

Oberst said that the current guidelines tie the tax credit to the exemption and she isn't sure how we would divorce the two. Judge Lee said he would just put language in the order that specifies whether the obligor or obligee gets the credit. Peterson said that if the custodial parent wants to claim the child, that person can do so if they have the child most of the time during the year, regardless of what the divorce order says. The only way the noncustodial parent could claim the child for the tax credit is if the custodial parent signs the appropriate release. The IRS will back whichever parent has the child more of the time; it doesn't care what the court order says. Judge Lee said this is just for purposes of determining a hypothetical, so Peterson's point is irrelevant to him. For child support purposes, he could order who gets to claim the credit. duCharme said the presumption might be that it would always go to the custodial parent. Judge Lee said tax filing issues are a whole separate problem from determining child support. For purposes of determining child support, it should be considered. Davis said he would like to get rid of the whole section for simplicity reasons but thinks it will make a big difference in some cases. Oberst asked how he would put the tax credit back in - drafting wise - where would you insert it? Davis was not sure. Fleming said if we don't factor in the tax credit, we inflate their tax liability, which lowers their net income for guidelines purposes, which ultimately might lower the obligation. The obligor is the one who benefits by not considering the credit.

Peterson asked if we can require people to bring in their tax returns and go off that. Oberst said that might be too reliant on cooperation. Fleming commented that people can get creative on their returns.

Fleming inquired where the group was at in this discussion and if the group was ready to vote. Kemmet made a motion that the group adopt the draft changes, which removed Section -01(6)(a)(3) and most of (4). Schaar seconded the motion. Roll call vote was taken, and the motion carried (12 yes, 1 no, 2 absent and not voting).

Issue: Consider whether to change the calculation of the hypothetical state income tax obligation in light of potential changes to the calculations of the hypothetical federal income tax obligation. Section -01(6)(b) provides that the

hypothetical state income tax obligation is a function (14%) of the hypothetical federal income tax obligation.

Oberst made a motion to amend Section -01(6)(b) to remove “fourteen” and insert “eleven”. Judge Lee seconded the motion. Roll call vote was taken, and the motion carried (13 yes, 0 no, and 2 absent and not voting).

Issue: Consider whether to change the deduction for lodging expenses and non-commuting mileage. Section -01(6)(h)(2) and (3).

Schaar moved to adopt the draft changes regarding lodging expenses in Section -01(6)(h)(2) to remove “eighty-three” and insert “ninety-three”. Goulet seconded the motion. Roll call vote was taken, and the motion carried (13 yes, 0 no, and 2 absent and not voting).

7. Child support Guidelines Section -08 Regarding Income of Spouse.

Issue: Consider whether “may not” would be more appropriate than “should not.”

Schaar made a motion to adopt the proposed language in the draft to remove “should” and insert “shall” to reflect the prohibitory nature of this section. duCharme seconded the motion. Roll call vote was taken, and the motion carried (13 yes, 0 no, and 2 absent and not voting).

8. Child Support Guidelines Section -08.1 Regarding Extended Parenting Time.

Issue: Consider whether to change “nights” terminology to “overnights” throughout.

Judge Lee asked if we defined overnight. Elsberry said that is a fair question. Judge Lee said in the world of search warrants, night is anything that happens after 10:00 pm. Ref. Griffeth said he would not be opposed to a specific definition of overnight if it helps. Rep. Weisz proposed specifying a minimum number of hours that qualifies as an overnight. duCharme indicated that a while back, the language about equal residential responsibility was changed so that it is close enough and we weren’t counting the nights anymore. Why do we want to make this more specific? Fleming said we were more nuanced given the language in that section previously requiring it to be exactly equal, now it is an equal amount of time as determined by the court.

Schaar made a motion to adopt the proposed language in the draft which removes “nights” and inserts “overnights”. Goulet seconded the motion. Roll call vote was taken, and the motion carried (13 yes, 0 no, and 2 absent and not voting).

6. Child Support Guidelines Section -07 Regarding Imputing Income Based on Earning Capacity.

Issue: Consider whether to shorten the look-back period when imputing income based on previous earnings. Section -07(3)(c).

Oberst indicated Child Support really isn't using (3)(c) very much – at least not in the orders in the sample analysis. Goulet gave an example of an oil field worker that had no success finding another job in the oil patch. The obligor found a lower paying job and starts working, requests a review, and qualifies for a review but because of the current job and obligor's underemployed status, Child Support is forced to impute. We are reaching back far enough to use the oil field earnings. Another example is an obligor who is currently unemployed and requests a review, we must look back so far and impute at 90 percent of their oil field earnings. Oberst noted we would only use the look back if the person is underemployed or unemployed. Goulet said she was surprised by the court order analysis which suggested it wasn't used much, because she feels like she uses it a lot. Kemmet indicated she would change a couple of words, to include the current calendar year and one previous year, instead of two. Oberst indicated that's where she started in the past and got push back from other Child Support workers. Ref. Griffeth said if the review is done on January 2nd and there is no tax return for the previous year, you would be left with two days in the current year and one year for which there is no return. duCharme said as a private attorney it would cause problems in discovery because they don't have access to what Child Support does.

Goulet said another idea is to remove the 90 percent imputation altogether or increase the 60 percent imputation. Why does it have to be 60 percent of statewide earnings? Oberst said the use of 60 percent is constant since 1995. She said changing it from community to statewide helped because there was a reliable source of income information to use. Oberst said she honestly doesn't know why it is 60 percent instead of 75, or some other amount. Goulet said that sometimes not all occupations are easily represented in the job report. Oberst agreed, noting that the information is based on surveys. Davis said we would still have the 100 percent if they were noncooperative. duCharme said she has used the 90 percent imputation a few times and doesn't feel strongly about it. Elsberry said she doesn't really use it. duCharme said when she did use the 90 percent, she liked having the longer look back period. She thinks the statewide employee imputation section is more difficult to prove from an evidentiary standpoint. Fleming said if the external members on the committee don't feel strongly about this issue, he would like to have an internal discussion with Child Support workers about it and see if any recommendation for a change should be made to the department. Davis asked if this was tied to voluntariness. Oberst indicated not this section. Fleming said since there is internal interest on this and not a lot externally, we will discuss this internally and not develop a recommendation of the advisory committee.

Issue: Consider whether to change the formula for calculating the extended visitation adjustment.

Fleming referenced an email Oberst sent to the group prior to the meeting with information about the history of the extended visitation adjustment which included statistical research. In 1999, the legislature adopted a statement of intent explaining what "extended" meant. The thresholds in the definition of extended parenting time in the guidelines are derived from the legislative statement of intent.

At the previous meeting, there was a request made to find out what happens in other jurisdictions. Fleming indicated there are seven obligor model states and provided a handout about what the other six states are doing regarding extended visitation. Alaska can adjust for 27 consecutive days. Arkansas allows for an adjustment where the child spends more than 14 consecutive days with the noncustodial parent. Mississippi provides that where the noncustodial parent spends a great deal of time with the children, thereby reducing the financial expenditures of the custodial parent, is a deviation factor. Nevada provides a deviation factor. Texas provides the amount of time of possession of and access to a child constitute a deviation factor. Wisconsin provides a formula for 110-146 overnights and another formula for 147-218 overnights. Fleming said recognizing that the section is applied with less frequency than some would like, there is research behind the 32% factor. Fleming recognized there is a cliff effect in the guidelines when you have the child 45% of the time but not 50% of the time. The threshold is set by legislative intent. If the committee decides to recommend something different, the department will look at the request and determine if, as an initial matter, the department supports the recommendation. If so, since the statement of intent cannot be repealed, the department will find a way to address the legislative committee and can note it was a recommendation of the advisory committee to take a course of action different than the statement of intent. Rep. Weisz indicated prior legislatures don't bind any future actions. Fleming said what the history told him was that the 32% still makes some sense. We could still hang on to that number and revisit the threshold. Davis said the logic behind the 32% was to keep the custodial parent's budget neutral, so sticking with the legislative intent and sticking with the logic of the 32% is the savings for the period the child is not in the custodial parent's home. Davis proposed reducing the obligor's income by 32% for the period the child is on visitation with the obligor. Fleming asked Davis what is gained from doing that. Davis said he isn't sure, he was just proposing that idea. Rep. Griffith said he likes Mississippi's approach which lets the parties deal with it. Fleming said he thinks changing it to a deviation, without any parameters, is not a good idea because it would be completely unregulated and lead to inconsistencies. Having a threshold sets a certain level to get to the point of an adjustment. If it's less than 30 nights, you aren't even talking about a month's worth of time. Judge Lee indicated that a standard order from his district says every other weekend, maybe one night a week every other week, split holidays, and extended summer visitation. If this is the norm in most jurisdictions and the guidelines already have that built into them, then you must get to a high number to get past that. Davis said the obligor who lives across the country and has the child 60 days in a row will get the credit but the obligor who lives across town and has the child random times totaling 120 nights a year doesn't get it. It doesn't seem fair.

Kemmet asked what Elsberry sees. Elsberry said she mainly sees the adjustment for the 60 of 90 nights when the parent lives out of state.

duCharme said Minnesota breaks the adjustment down into three tiers based on the percentage of time. Each tier includes a different deduction. They are changing this now to the exact number of overnights per year. duCharme asked if we could do calculations to see what happens when we lower the threshold (e.g., 150 nights or 146 nights). Elsberry thinks if we are going to consider giving a credit for in kind support, as we discussed at the last meeting regarding Hansen's situation, then it should apply here. Fleming indicated we can do the calculations. The threshold was saying it must hit a certain level of magnitude before it makes a difference.

Davis said changing the threshold is not going to make a whole lot of difference. If an obligor has visitation 40% of the year, reduce their income by 32% for that 40% of time. The research to determine the 32% was used to determine what would be cost neutral for the custodial parent. The current calculation doesn't take into consideration the additional cost to the other parent. Davis indicated we need to consider the additional cost incurred by the noncustodial parent otherwise it won't make a difference big enough to matter.

Fleming said Child Support will run some scenarios and see how it makes a difference. The variable will be different number of nights and different income levels. Fleming said he would venture to guess the 32% number is still close to accurate. The issue will be discussed again at the next meeting.

10. Child Support Guidelines Section -09 Criteria for Rebuttal of Guideline Amount.

Issue: Consider whether to remove the deviation for child care and incorporate a child care component into the presumptively correct support amount instead.

duCharme indicated if she could come up with a better solution she would, but she didn't have a proposal today.

11. Child Support Guidelines Section -10 Child Support Amount.

Issue: Consider whether to increase the self-support reserve.

Schaar made a motion to increase the self-support reserve from \$700 to \$800. Oberst seconded the motion. Roll call vote was taken, and the motion carried (13 yes, 0 no, 2 absent and not voting).

Issue: Consider the effect of the self-support reserve on obligors who are minors and on the multiple-family calculation.

Davis raised issues with the self-support reserve. Davis doesn't like that we no longer impute to high school students. Davis said he would sit down and meet with those children and their parents. Now we can't impute to minors. He doesn't think it's a bad idea to have a change in the guidelines or exceptions to the self-support reserve for the individuals who aren't having to self-support. If someone doesn't have to pay for those necessities, they can contribute a little bit in child support.

Davis said the other issue is with the multiple-family calculation. Davis provided a handout with a scenario where obligor has three children in three different households. Davis explained his handout and indicated there should be an exception for someone who is able to pay but their income is brought down because of the math involved in the multiple-family calculation.

Oberst said Child Support didn't sit down and do different scenarios with the self-support reserve but this outcome logically flows from it.

Oberst provided a handout with a hypothetical scenario. Alpha is receiving workers' compensation wage replacement benefits and his monthly net income is \$900. There is one child before the court and Alpha has another child in his home. Under the previous guidelines, Alpha's obligation for the child before the court would have been \$160 (because there was no self-support reserve). Oberst provided a Schedule C which reflected the calculation. Under the current guidelines with the self-support reserve, Alpha's obligation for the child before the court would be \$93. Oberst provided a Schedule C which reflected the calculation.

In response to a question from Rep. Weisz, Fleming explained the original obligation amount is a hypothetical, it is based on a hypothetical amount for the other family, not based necessarily on what the court order provides.

Oberst said the first family is assigned a hypothetical obligation when the 2nd family comes before the court. The obligor's income is reduced by the hypothetical obligation. Davis said he supports how multiple families is calculated. Davis's problem is that the self-support reserve affects the calculation. Davis said the impact in his example with the self-support reserve makes his obligation go down \$60. Maybe we should have exceptions to the self-support reserve when we are doing a Schedule C.

Schaar said she is okay with the impact. Kemmet said she thinks it is an unintended consequence but not a bad one. Oberst said even if it was considered at the time, we probably wouldn't have changed our position. It is not a bad consequence.

Davis said if we ratchet up it is going to affect more cases and if that is what the intent is, that is fine. Oberst said she doesn't think we have enough experience with the self-support reserve at this point to determine the effect or if changes are needed. Fleming said it is easy to identify potential issues, but a lot harder to come up with ways to fix it.

Fleming said there is a lot of good in our multiple-family calculation. We do not prioritize the first family to court, which a lot of states still do. If the effect is that the self-support reserve results in the obligor paying less, that is why it was created. Davis said okay. Oberst said it was her idea internally to the department to preclude imputing income to minors. Oberst said when she proposed it, she was thinking of the minor obligor that is himself or herself in foster care. Not all teenagers have parents who are supportive. Oberst said these are children, not grown-ups, and she would much rather see them in school full time or in extracurricular activities, things that are giving them exposure to opportunities that will be useful later in life. This is not a group of obligors to use to set an example; that is not Child Support's role. Oberst said she will never be convinced that imputing income to minors is a good idea.

In response to a comment from Elsberry that a teenage obligee would likely be giving up extra-curricular activities, Oberst indicated the minor mom does have access to services and assistance the minor dad does not have access to. Peterson asked if there is an exception if the child is not going to school. Oberst said no, right now the guidelines preclude imputing income to a minor, period. Kemmet said this is a small percentage of the case load. She thinks it's a good thing not to impute to them. Davis noted that if the minor has actual income, we could establish against them. Fleming noted that assumptions for what a minor must pay for self-support couldn't be applied across the board. We don't know what their parents are requiring them to pay.

Judge Lee said the minor should have to pay support because they made a choice to have unprotected sex and have a child. They are receiving in kind income by living with mom and dad. Rep. Weisz said life doesn't change at all for a boy, but it sure does for the girl. It seems like there should be some consequence for the boy. Fleming asked if there is a proposal on reinstating imputing income to minors. Kemmet does not want to impute to minors. Schaar says it occurs so rarely it is not worth the effort to put into it. If there is going to be a complicated rule - is he in school - is he living with his parents - it is a lot of leg work that will not help the custodial parent that much.

Schaar questioned the ability of enforcing an order requiring the obligor to work. Ref. Griffeth said that is a good question, what would happen at an order to show cause with a minor obligor?

Fleming inquired if anyone wanted to draft language which provided for imputation to minor obligors. No member volunteered to draft language. Based on the discussion, the group consensus was that no change would be made.

Davis said he struggles with the self-support reserve because it is a cliff. At \$749 you don't pay; at \$751 you do and not only that, but you end up paying over \$100 per month. Davis thought it might be better to have amounts that trickle down so there is not such a big drop off. Fleming said it is painful for both parents involved at this income level. It's not fair that the custodial parent must pay 80% of the costs either. The provision that said at any income level you must pay something was repealed

deliberately. Elsberry said it is hard for her to analyze this when we aren't considering the obligee's income. Although it may be a high obligation for the obligor at this level, maybe the \$160 is worth a lot to the obligee. Fleming indicated switching to the income shares model would be an enormous cost. It has been discussed many times. In addition, one could argue why should the expectations of the obligor be connected to how hard working their ex is – it should be based on the obligor's income. There are situations where the obligee maybe wasn't treated well during the marriage and didn't make a lot and now does, and consequently, now the obligor gets a break? That doesn't seem fair. Davis said there have been comparisons over decades and it was determined there was not much difference between income shares and obligor model regarding the ultimate obligation reached. The one point where it makes the difference is when the obligee's income is three times higher and our guidelines address that.

Fleming said if we make a change to increase the self-support reserve, there seemed to be some support in the discussion earlier in the day to reduce the obligation levels at those below minimum wage imputation, \$1,100, and above the \$800 level. If we start at 10% instead of 21% for one child, how fast does it accelerate? Where does it hit 20%? Where does it hit 23%? If someone is supportive of doing those reductions, that person needs to figure out where we make changes and where we leave it alone.

Rep. Weisz proposed 10% at \$900, 14% at \$1,000, 18% at \$1,100, and 22% at \$1,200. This proposal still leaves it capped at 23%. Fleming said 23% was the historic peak.

Kemmet proposed dropping it a bit more: 20% at \$1,200.

Rep. Weisz said the custodial parent has an argument that they need more money, so dropping it too much might not be good either. Davis said he supports Rep. Weisz's proposal. Schaar said she doesn't think it would make much difference between the two proposals.

Schaar and Kemmet think it should end at \$1,300 because that is the average.

Fleming said for next meeting a proposal will be prepared for the new schedule for income lines at the \$900 – \$1,200 levels with the amount due at \$1,300 staying the same. The new amounts will reflect 10% at \$900, 14% at \$1,000, 18% at \$1,100, 20% at \$1,200. So, for example, at the \$900 level, the percentage amount will be reduced by 11% across the chart for one child, 14% for two children, 19% for three children, and so on.

5. Child Support Guidelines Section -06.1 Determination of Support Amount in Multiple-family Cases.

Issue: Consider whether to revise the multiple-family calculation to increase the adjustment and to make it more understandable.

Fleming indicated this issue was based on a point raised by Kemmet and Ref. Griffith at the last meeting. Kemmet said it seems like not enough credit is given. Fleming said having two children in two different homes is more expensive than two in the same. Fleming referenced an email sent out by Oberst and the information provided about the multiple-family calculation. It is easier to understand the calculation on a worksheet than when using the calculator. Kemmet said that since the obligation is reduced more, the more kids that are in different homes, it kind of works itself out. Fleming indicated this section is embedded in the online calculator and asked if there is more anyone wants to talk about. The group consensus was that no change would be made.

Issue: Consider whether to allow obligors who don't itemize for tax purposes to deduct their employee expenses to create parity with those obligors who do itemize. Section -01(6)(i).

Oberst provided a hand out which discussed recent changes to moving, mileage, and travel expenses because of the Tax Cuts and Jobs Act. Oberst indicated that right now the guidelines only address employer reimbursed out of pocket expenses which don't have anything to do with whether the obligor is allowed to itemize. What this item talks about is creating a new deduction. Oberst indicated Davis brought this item forward. Davis indicated he and Oberst had previously discussed this issue and he thought his understanding of the issue was corrected at that time and it wasn't really an issue anymore. Davis said his issue was that some obligors were able to deduct, and some were itemizing and couldn't. Davis indicated it is not an issue he thought warranted further discussion at this point. Peterson indicated people can still itemize. Before people could reduce the income because it was an expense they were reimbursed for, they can no longer take that back out of their income. That is about a W2 person, not a self-employed person. Oberst asked if the tax law changes affect what is there for subsection (i) now? Peterson did not think so. Davis said he is fine not making a change. The group consensus was no change.

9. Child Support Guidelines Section -08.2 Regarding Equal Residential Responsibility.

Issue: Consider whether to change the formula for determining the support to be paid. A proposal is to reduce each parent's obligation by half for the reason that each parent has the children in the parent's care for 50 percent of the time; this proposal assumes that the "other" 50 percent of the obligation should be considered paid in kind.

Fleming indicated this item was added at his request. The discussion at the last meeting pointed out that when it is a 50/50 situation, the liability for the actual expenses provided in the guidelines becomes a lot more negotiable and subject to disagreement. The guidelines assume that the custodial parent, and each parent in an equal residential responsibility situation, is covering his or her share of support in kind. If you cut that amount in half, then the previous committee discussion indicated there is a

need to address what other in-kind expenses each parent needs to be covering. The full offset works because whether each parent provides their portion of the in kind, we deem it to be so because the offset takes care of that. What we have saves parties from litigation. Fleming indicated that because of the discussion at the last meeting, he no longer has the inclination to change this section. There are benefits to leaving it alone because to do anything else means we have to start determining how to deal with the other expenses. We need to keep in mind, the offset is only for the convenience of having both people not exchange money. It made sense to use the offset; it is a traditional legal remedy for split custody/equal. It is only about how they pay, it does not affect the gross obligation. Both parents have obligations. Fleming passed out a handout, which includes a chart which reflects the number of offset cases in North Dakota according to the records of the State Disbursement Unit. There are 1,977 offsets on the records of the State Disbursement Unit. Fleming gave an overview of the data. The first chart provided the number of offsets at different levels per \$500 increments. The second chart provided the number of offsets per \$100 increments under \$1,000. Fleming indicated that 78.45% of the offsets amounts are under \$500. So, cases like Hansen's, where there is a large disparity in income and net amount due after the offset, are not the typical case.

Fleming asked if there was any further discussion from the group on this issue. Ref. Griffeth made a motion not to make any changes to the equal residential responsibility section. duCharme seconded the motion. Roll call vote was taken, and motion carried (8 yes, 4 no, and 3 absent and not voting).

Fleming acknowledged the visitor, Hansen, and said he recognized this was not the outcome Hansen wanted and said he appreciated Hansen's attendance and for sharing his concerns.

15. Any issues raised by committee members during the meeting.

Elsberry asked if we would vote to approve the meeting minutes from the first two meetings at the next meeting. Fleming said we would.

16. Date of next meeting.

June 26th at 9:00, Fort Union Room, State Capitol.

17. Adjourned.

Meeting adjourned at 4:30.