Statute Review Committee
August 16, 2013
Minutes

The meeting was called to order at 11:00 a.m.

Present by telephone:
Judge Abbot, Chair of the Commission on Child Support
Quillian Baldwin, Superior Court of Troup County
Rep. Timothy Barr
Scott Stapleton, DCSS
Shirley Champa, DCSS ADA

Present in person:
Judge Key, Chair of the Committee
Sen. Chuck Hufstetler
Katie Connell
Rep. Alisha Morgan
Pat Buonodono, Commission Staff Attorney
Eric John, Director of Council of Juvenile Court Judges
Julia Fisher, DCCS
Tracy Mason, AOC
Catherine Finch, AOC
Judge Lisa Rambo

1. Mission and Purpose

Pat Buonodono stated our mission and purpose is to look at making recommendations to the Commission regarding statutory revision proposals that we will go over today; more may come up. The Commission will refer those approved to the Legislature. Anything that is approved at the Committee level will be drafted into proposed legislation and we will present that to the Commission for approval.

Judge Key stated that in terms of timing we will review the issues today, give some direction to staff, do some prioritizing, and staff will then have all this legislation ready for our next Committee meeting, and then it goes to the Commission. Following some discussion and advice from the legislators on the Committee, we agreed that our goal date for finalized versions of any proposed legislation will be November 1, and we will have a little cushion if it's not ready by then. Judge Key pointed out that as much work as everyone, including the Legislature, did on this when the bill was passed, they would appreciate as much time as possible to look at this and get constituent input before it goes to chambers.

Pat mentioned the survey that was enclosed in the packet. Staff used this at a recent training, and received 37 responses. Some of the comments we received requested a standard percentage deviation for parenting time; limits on what a custodial parent can request for child care and

schooling expenses; lower support awards for low income noncustodial parents; no one knows how to ask for a low income deviation; and that the earned income credit be listed as income. Judge Key suggested that since some of these will be addressed by the issues listed on the agenda, we move forward and come back to the above list at the end if necessary.

On the Agenda, we moved to item III.A. Pat explained that a "technical change" means that the change does not alter the meaning or intent of the statute, and a "substantive change" means the change will alter the meaning or intent of the statute; these issues will require more discussion and research.

Pat went through the technical issues:

A.1. Inconsistency between the federal statute and Georgia's statute for how often we have to review the child support guidelines. The federal statute says four years and our state law says two years. Intent was originally to be more proactive in looking at the statutes but realistically it's expensive to do the reviews and it is not in our budget to do them more frequently than every four years. We have to ask DCSS to increase our contract for those years in which we have to do the review, which we have done for next year. We do have one due in 2014. So we would like to bring Georgia law into line with what the federal law says.

Judge Key opened the floor for comments or objections on the staff recommendation and received none. Staff will draft revision.

A.2. Language Corrections in O.C.G.A. 19-6-15
2.a. Language corrections in the child support statute itself. We are asking for these because by inference mostly, the child support obligation is a monthly obligation. It's set up that way in the child support worksheets and tables, but it doesn't really say that anywhere. So we need to clarify that in the statute. We just want to insert the word "monthly" into all of these subsections that are listed. Code sections were provided for review. There is a lot of confusion, especially with pro se litigants, about this issue.

Judge Key opened the floor for comments or objections on the staff recommendation to make these revisions and receive none. Staff will draft revision.

2(b). The statute says that "eligibility for or enrollment of the child in Medicaid or the Peachcare for Kids program shall not satisfy the requirement that the final child support order provide for the child's health care needs." Pat has had a lot of superior court judges and attorneys push back on this and say that's not realistic, and everyone is using these alternatives, even though they are supposed to be stopgap measures. We don't know how the Affordable Care Act is going to affect any of this.

Judge Rambo handles a lot of child support enforcement cases and the ADA for Child Support Enforcement has always told her that if a parent can get health insurance coverage through their employer at a cost of not more than $5.00 per child, then it's considered reasonable. That is the number they give and they can never acquire that, so they are on these other alternatives.

Judge Key: this issue is more substantive than technical. Judge Baldwin has been conflicted before where one parent wants to provide health insurance and the other parent wants to use Peachcare, as an example, and the judge has to decide, from a taxpayer perspective – why should we use Peachcare if one of the parents is eligible for group health insurance? But the reality is that there are a lot of people who are eligible who are eligible for group health insurance that really can't afford it. What the code section seems to suggest that if a parent can get group health insurance, then that's what they have to get for purposes of child support calculations and they can't take Peachcare.

Katie Connell also believes this should be a substantive issue. We would have a hard time getting this change through because it seems like we are giving everyone permission to utilize Peachcare or Medicaid even if that's not our intention. She's not sure we need to be empowering people through the statute to do it. Judge Rambo agrees. Maybe the prohibition isn't the right solution either.

Pat asked if we could table this until we see the effect the Affordable Care Act will have on Peachcare and Medicaid because more children will probably end up with private insurance.

Rep. Morgan said she would find the legislative background on this section.

Judge Abbot stated we need to consider that healthcare is a mandated inclusion we can't leave out if someone has it or can get it. We haven't done a very good of defining what reasonable cost is.

2.c. Inconsistency between GA law and the federal Income Withholding Order form. Pat recommended tabling this. She explained that the income withholding form for support that the federal government requires everyone to use anytime that child support is paid through an income deduction order and via the Family Support Registry conflicts with our Georgia Statutes. Georgia still requires an income deduction order signed by the judge, and we do not allow the filing of social security numbers with the court, and social security numbers are required to be on this form. In Georgia we are using this federal income withholding form simply as a notice document. It goes only to the employer with the information filled in so the employer knows who to withhold from, etc. But the feds have asked us for comments on this form, so this issue was tabled until such time as they have completed this form and then if we still have an issue with it we can come back to it.

2.d. Should new orders for other children issued between an original order and a modification of children with the same NCP be included in the definition of pre-existing orders? Pre-existing orders are defined in subsection (a)(18)(b). Anytime that there is a pre-existing child support order, if it's actually being paid, that's taken into consideration when calculating support for a subsequent child with a different parent. The problem with that is if that first order gets modified, it can't be considered as a pre-existing order. This is because of the language of the order. This needs clarification. Staff will draft revisions.

2.e. If you are calculating child support, alimony received is included as income but not allowed as a deduction to the payor. Alimony is taxable to the person who receives it, and tax deductible

to the person who pays it. It should be an adjustment to income in both directions. So it would be a deduction from the gross income of the person who is paying it. A deduction for alimony paid may be requested as a deviation on Schedule E, but only in a prior case.

Judge Key suggested it would be in Schedule B. General discussion with the group. Judge Abbot said alimony is only considered on Schedule E and only for pre-existing orders, not in the instant case.

Judge Rambo stated that just as in the case with daycare expenses, how long the alimony will last is problematic. Typically now it's just a few years. Katie Connell agrees. Even if alimony is only going to be for two years, it's in the order until a modification.

Judge Key mentioned that this is an over-arching issue in a lot of areas. We know that when the judge rules today, we have an event that is going to occur two or three years from now, that's going to alter what the child support should be and we can't plan for it.

Katie Connell asked Judge Abbot to clarify if the current law says the alimony has to have been received from a former spouse, not the one at issue. Judge Abbot responded that it usually applies to the payor, when you are deviating. So it's whether or not there should be a deviation for alimony that was previously ordered; not in the present case. It has been a complicated issue from early on. She's not sure why the deviation was even included; except that it was something that a legislator (who was likely paying alimony) wanted in there.

Judge Abbot does agree that there is a problem locking people into child support amounts when circumstances are going to change in 2-3 years. That's been the problem with the statute from the very beginning. Let's summarize this by saying that this is something that needs to be explored.

Judge Key asked if anyone objected to flagging this to do some additional work on it. We may wind up with a bill that has mostly clean things in it that we need to do to fix things that are not too complicated or controversial, and then deal with others separately in some way.

Sen. Hufstetler asked if we had a consensus on what we think is reasonable for both sides? It sound like if you're paying the alimony you should get credit for that but it also sounds like if you end it in two years, there should be something done to say you're not paying it anymore. Is that what we're saying? Catherine Finch said it also applies that if you're receiving it and it is counted as part of your income, you're going to be impacted in two years in terms of your income. Should alimony even be considered if it's short term?

Judge Key stated there are clearly two separate issues we are talking about. One is whether and to what extent alimony flowing in any direction should be included in the calculations, and secondly, should there be some way to modify the child support upon the occurrence of a fixed event without having to hire a lawyer and file a modification.

Judge Baldwin thinks we need to review our whole statute – it's too complicated. From his standpoint, when he's just not sure, he does what he thinks is the best thing because the statute

doesn't seem to be clear which way to go. Should we try to get some kind of response from lawyers that do domestic work as to some of the problems that they are having and shouldn't we then divide those problems up into our group as much as possible and let them work on that one thing? Not looking to change it all in this legislature, but looking at the next legislature. Change what needs to be changed now, but try to get this where it's more understandable in various situations than it has been.

Judge Abbot agrees and said that only a very small percentage of cases involve alimony. But this has always been a problem with the statute and if someone wants to take it on and come up with new language on how to deal with that, whether it's a credit or a deviation – we need to put it all in one place. Not in 2014, but maybe 2015.

Lisa Rambo agrees. As far as time frames are concerned on alimony and daycare expenses, most people by the time that two years rolls around and their alimony is ending, they are still recovering from a divorce or whatever the situation was that provoked all this. If in some way we could set it up so that those changes are anticipated, we would be doing a favor; people shouldn't have to come back for a modification in these situations.

Judge Abbot said she discussed this with Tennessee judges and asked them about when a child aged out of daycare and you still have that listed as a mandatory expense, and they said they did not see a high rate of modification, but I wonder if that might have changed over the last several years since we adopted the guidelines. Perhaps we should figure out whether daycare could be a discretionary add-in, rather than a mandatory one. The courts are treating it as though you have to add it in. Maybe we can look back at what TN has done as they've had a few more years on this statute.

Katie Connell – in her experience the two biggest issues where we are setting people up for needing to modify strictly with the passage of time – daycare is going to end or the other big one is not alimony, but when children age out. It's going to happen through nothing other than time passing and the statute does not easily address those issues without the litigants having to file a modification suit.

Judge Key – this is an important procedural issue. I don't know if we can get to the legislation this year. I was asking Katie if this is something that the Family Bar may have an interest in looking at and offering some suggestions since they're doing it every day.

Katie would be happy to take the issue to the Family Bar and see if we can't get some sort of consensus/recommendation or maybe even further identification of other of those types of issues.

Judge Key asked whether everyone was okay with leaving this with Katie Connell and Julia Fisher to have some discussions about moving forward with this issue. They assented to take it on.

During lunch there was a discussion of how to incorporate upcoming changes; Pat explained how the judges in Bartow County handle impending changes such as a child aging out. They have the parties do one worksheet for the current status, and another worksheet for the changed status

(say, when the oldest child is no longer eligible to receive support). They specify in their order that $____ shall be paid under worksheet A, and that as of a specific date, $___ shall be paid pursuant to worksheet B. They do limit how far into the future they will go to 18-24 months.

Katie Connell has had this done many times, by agreement. It's not an automatic modification or self-executing order because you have a worksheet that anticipates this one specific change, that this is no more self-executing than saying child support shall end when a child reaches the age of majority.

B.1. Employers are telling NCPs they have to go get a new court order to stop income deduction when child support obligation ends. This is along the lines of the issue we have been discussing. Pat explained that employers are refusing to stop income deduction without a court order. Judge Key said that in Troup County, the judges are allowing a one page order stopping withholding to be entered under the original case number, so the NCP doesn't have to file a modification. But it still costs them about $250 to do it.

Judge Key says that even if the order says child support will terminate when the child turns 18 or finishes high school, the employer doesn't know when the child finishes high school. There are some open ended questions there. You can only estimate when a 12 year old is going to graduate from high school.

Judge Key asked what we do to address this first item. In Troup County, it would be an issue between the Superior Court judges and the clerks to find a way to make that work without a new case being filed. Pat asked if she could visit and get more information on what they are doing. Judge Key said he would ask Jackie Ward, who is their clerk how they do it and why they do it that way.

Judge Key asked Judge Abbot if this is something the Superior Court Judges and clerks could work out that perhaps we could have a mechanism to file a one page consent order and file it under the same case number, to make it easier without having to hire a lawyer. Judge Abbot mentioned the case of Eubanks v. Rabon, a Supreme Court case that required lawyers and judges to acknowledge emancipation looking forward as opposed to having it done later. If at the outset everybody is doing what they need to do in terms of emancipation, the income deduction order could incorporate those revised amounts on the date. But this is hard to do because you don't know if they're still going to be in high school.

Judge Key said the income deduction order is more the problem than the support order itself. Whatever we talk about doing around this issue is something that both the Superior Courts and the Clerks Association would buy into. Judge Abbot believes the Clerks Association will be most important. We have some clerks who are highly sophisticated and some who are not, so we will have to address that. It seems to her that this is an educational issue across the state. If people are not getting orders that anticipate emancipation and set the amount, then we really need to do some work with the bar on that. She requires it in every case.

The other attorneys at the table do not do this, so Judge Abbot may be the exception. She pointed out that even though Eubanks was decided under the old guidelines, it also applies under

the new guidelines. She doesn't require anything but the two page worksheet for emancipations. Only required schedule is A. All the judges in Chatham County require the emancipation worksheets.

Per Judge Abbot, you would have to show why that amount would remain intact even though one child ages out. We can't do per capita awards anymore. Everyone needs to look at the Eubanks case to see how it applies to their cases. If judges around the state are not doing this, it's an education issue for the judges. Judge Abbot will take on the issue of this training.

Judge Abbot wonders if this might not be a USCR issue. If we would adopt through the Superior Court the child support addendum which was brilliantly done by Deborah Johnson years ago, and which I hope most courts are using, which had all the emancipation language in it, we could build into that that the IDO should step down every time. And that becomes a court order. If we could adopt that through USCR we could avoid legislation on this.

Judge Key asked Pat to get a copy of the addendum and the Eubanks case to him. Judge Abbot spoke some more about the addendum and suggested we could add language that any income deduction order will be automatically decreased by this amount. She wants to think on this, hoping to bypass having to go to the legislature.

Judge Key says the problem with automatic change is that if the children are young going in, the financial considerations will have changed considerably by the time they are in their mid to late teens. We have to be careful with the language that we use. Judge Abbot said the TN judges said that people's expenses had increased – teenagers cost more – she's not sure if you want to do automatic age out issues and we certainly don't want to imperil the right to modify.

B.2. Should we add language to the statute making it mandatory to continue withholding at the full amount if current child support if there is an outstanding arrearage when the current support obligation ends? Judge Key has used IDOs that calls for a specific amount for a period of time that includes an arrearage, and when the arrearage is paid it goes back to a different amount. Julia Fisher says this is what DCSS does. Judge Key says if the Judge orders the arrears to be paid by IDO in this fashion, do you need legislation to allow for that?

Katie asked if this is a legislative issue or a matter of presenting the order requiring what you need to accomplish. Pat said the IDO template on our website, which we would like the judges to use, has this as optional language. She will provide this to the Committee.

Judge Key asked if anyone believes the judge does not have authority to order payment of an arrearage by IDO after basic child support obligation ends. No – we all agree judge has the authority. It is an educational issue with the bench and the bar; most superior court judges exercise discretion – it may remain at the full amount or it may go to some lesser amount.

Judges and agents need to be educated on this.

B.3. Pat said staff would like to make child support presumptive in DV cases if the parties to a petition for TPO have children. That takes the potential of retaliation by an abuser if the CP

applies for child support. It would take this decision out of her hands and make it part of the law. Pat spoke to Greg Loughlin, Director of the GA Commission on Family Violence, about it; he's going to circulate the idea through some of the DV advocates that he works with, and Pat wants to leave it with them but would like to do is talk to the Commission and see if the Commission would back such a proposition if it was made by GCFV. No objections.

B.4. The low income deviation is not well defined; people don't know to ask for it. This has been worked on extensively by this Commission. Pat asked if there's a way we can more clearly define "extreme economic hardship" or if it's just an educational issue, Elaine and I will make a point of trying to do more education specific to this issue.

Julia Fisher stated the law requires the low income NCP to make the request, so they are often poor and uneducated and certainly unfamiliar with this law. DCCS policy does not allow agents to suggest the deviation to the NCPs. Suggested either party may ask or the court may apply the deviation. Judge Abbot agrees with this.

Judge Abbot said sometimes people who are not specifically "low income" are still struggling and suffering economic hardship so we definitely need to give the courts discretion to grant this whether it's requested or not. She does it all the time.

Judge Abbot believes the amounts of child support that are being ordered are not always reasonable. The judges get stacks of hundreds of orders at a time. The orders say $400-500/month and the NCPs are working at minimum wage if they are working at all.

Judge Key specifies that we are talking about two separate issues. One is to give the court authority to apply this deviation, and the other is redefining or clarifying "extreme economic hardship." Pat will draft legislation to allow the judge to apply the deviation.

B.5. Child support tables only go up to six children. Tabled until later.

B.6. If a child is allowed to receive child support until up to age 20 if still in secondary school, staff would like to see that extended for youth who are participating in a program under the federal Individuals with Disabilities Education Act, and youth who are engaged in federal Job Corps programs. Katie Connell thinks this is a good idea and asked if it should apply to children who are actively enrolled in a GED program.

Julia Fisher did some research as to what is defined as a secondary educational program. GED does not apply because the child is not required to take a GED. It is considered post-secondary education in Georgia law. GED programs are housed under technical colleges under the university system. Pat noted the problem with a GED class is they can take class for four hours per week; it's not full time education.

Judge Key suggests this as a 2014 issue. But he also sees room for abuse and controversy around this.

B.7. Should the statute be changed as to how to use variable income to calculate child support? If someone receives a bonus, but they never know when they are going to get it or if it's sporadic, or if they get the earned income credit which can be up to $6,000 but they may not get it every year, do we want to change the statute as to how that variable income is used in calculating support. Stowell v. Huguenard. Judge Abbot thinks the statute is clear that you can do a lump sum award from variable income but she's not sure the statute has been correctly interpreted. We could put in some contingencies. Judge Abbot thinks this is not a huge issue for most courts. Staff will review the statute in this regard and with relation to this case, and provide a written report.

B.8. Can work related child care be changed to a formula or removed from the statute? Can limitations be put on the amounts for daycare, private schooling? These questions came to us from the survey we did at our last training. Judge Key asked if it is even permissible under federal law to remove the daycare expense from the child support calculation. Judge Abbot said this was a huge deal when it was added and making it mandatory was what we had to do to conform to the Georgia statute. Judge Abbot would like to make it discretionary. We want children to receive child support and we want them to get good daycare, but it often drives the amounts up to where they are not payable. She would like to see what other states are doing right now with the daycare issue. Right now we have no guidance, no standard of reasonableness given the parties' income. Judge Key clarified that what Judge Abbot wants is discretion in the amount of child care expenses. Judge Abbot wants it not to be mandatory. She is talking about DCSS cases where the judge often gets no evidence. Judge Key stated that very often the judges have to take the CP's word on where the child is going and the amount.

9. Pat reported that in a deprivation (child welfare) case, even if no support is ordered, failure to financially support the child can be used to terminate parental rights down the road. She asked someone at DCSS whether they are enforcing temporary child support orders that are issued by the juvenile court in these child welfare cases and the answer was that they don't enforce temporary orders. When DFCS refers a person over to DCSS, if they don't appear in the office to sign paperwork within three weeks, the case is closed. Judge Rambo said her circuit is doing a better job of this. Julia Fisher said they do collect on temporary orders, but will not file a contempt. Judge Key says that if a judge issues a temporary order in Juvenile Court you should be able to file it in Superior Court and make it enforceable in the Superior Court. In one circuit, DCSS sends a child support manager to court on custody days. They hook up with mom. In most of these cases we can affect reunification if we can create a stream of income.

B.10. There is a discrepancy in treatment of SSI income received by children; if added to NCP's income it results in a fairer child support award. Julia brought this question re discrepancy of SSI income received by children; if added to the NCP's income it results in a fairer child support award. 19 states include RSDI (post work retirement or disability of parent) in gross income because the child is getting it and it goes to that household. She believes it is fairer. Pat would like to flag this to follow up at a later date.

Judge Key stated that, having gone through the issues, what will happen next is staff will draft as much as they can and will circulate as much in advance as possible.

Judge Abbot is concerned that we need a sponsor for any proposed legislation. Legislators on the Commission said they would be happy to do it.

Judge Abbot thinks we will just have minor tweaks for next year.

Judge Key doesn't think we'll have anything controversial this year so the Commission will hopefully be able to support these. We have a lot of challenging issues for next year.

Our next meeting will be on September 13, 2013 at 11:00 a.m. in this room.

The meeting adjourned at 1:00 p.m.