

**Georgia Commission on Child Support
Statute Review Subcommittee
Kathleen “Katie” Connell, Esq., Co-Chair
Hon. Connie Williford, Co-Chair
Friday, July 15, 2022
10:00 a.m.**

Meeting Minutes

The Statute Review Subcommittee (“Subcommittee”) of the Georgia Commission on Child Support (“Commission”) met via videoconferencing using Zoom webinar. Ten (10) of the fourteen (14) Subcommittee members attended. Study Committee members in attendance were:

Katie Connell, Co-Chair	Hon. Connie Williford, Co-Chair	Hon. Lisa Colbert
Hon. Emory Palmer	Regina Quick, Esq.	Christina Scott, J.D.
Mara Block, Esq.	Jason Naunas, Esq.	Hon. Amanda Petty
Charles Spinardi, Esq. (as designee of Byron Cuthbert)		

Executive Program Manager, Elaine Johnson, Staff Attorney, Noelle Lagueux-Alvarez, and Program Coordinator, Latoinna Lawrence, served as staff for the meeting. Ten (10) guests, including Legislative Counsel, Holly Carter, and members of the public attended this open meeting.

Co-Chair Connell opened the meeting, welcoming all and noting that the last time this Subcommittee met was on November 16, 2018, in anticipation of the 2019 legislative session. Staff member, Latoinna Lawrence, reviewed procedural rules for this virtual meeting. At the beginning of the meeting, Staff attorney, Noelle Lagueux-Alvarez, noted that quorum had not yet been reached, but a few minutes later confirmed that a quorum of Subcommittee members had been achieved. There were no previous minutes for review during this meeting. The minutes from this Subcommittee’s last meeting, held on November 16, 2018, were approved by e-vote, and are posted on the Commission’s website.

Co-Chair Connell introduced her new Co-Chair, Judge Connie L. Williford of the Superior Court for the Macon Judicial Circuit, noting that Judge Williford will specifically lead the work on the parenting time deviation. Judge Williford was on the bench during this meeting and had to excuse herself with the hopes of returning before the meeting ended.

The Subcommittee listened to a report on the work of the Low-Income Deviation Study Committee by Judge Emory Palmer, Chair of that Study Committee. Judge Palmer’s report touched on the topic of the 2022 Economic Study and Co-Chair Connell called on staff to give an explanation and update on the 2022 Economic Study especially for the benefit of the many new members of this Subcommittee. Judge Palmer noted that much of the Low-Income Deviation Study Committee’s recommendations call to await the final report from the economist conducting the 2022 Economic Study which is due on September 30, 2022. One recommendation from the Low-Income Deviation Study Committee was to investigate improving the ease-of-use of that deviation and as it functions in Georgia’s child support calculator under current law. Executive Program Manager, Elaine Johnson, noted that a work group had been formed to address that issue and gave a report on the results of that work group, noting that its recommendations will be discussed by the Commission’s Technology and Calculator Subcommittee at a meeting that will be held on August 3, 2022.

Next, the Subcommittee had a discussion around amending the statute as it pertains to adjusting a parent's income based on the inclusion of a pre-existing child support order. Specifically at issue was whether the child support guidelines statute should be amended so that when a child support order is being established or modified, the judge may consider all child support orders obligating a parent—not just those that pre-date the initial order in the current case—and whether judges may consider pre-existing child support amounts that have been ordered, but that are not being paid.

Subcommittee member, Regina Quick, suggested that this discussion is mooted by O.C.G.A. 19-11-12 (f), which under current statutory framework makes the child support guidelines consistent with a provision of the Child Support Recovery Act. She went on to say that the policy choice was made to allow the judge to consider all financial circumstances of the payor, on the same level as best interests of the child. Ms. Quick asked Elaine Johnson to add this topic to the August 3rd Technology and Calculator Subcommittee meeting agenda, so that subcommittee could consider whether the calculator can be set up to exclude any so-called pre-existing order that doesn't comply with the statute.

Subcommittee member, Mara Block, spoke in favor of the specificity of the pre-existing order adjustment as it currently stands and noted the ability of the judge to grant a deviation, if needed. Co-Chair Connell opened the floor up to the Superior Court Judges on the Subcommittee, and neither Judge Palmer nor Judge Petty thought that amending this adjustment is needed at this time.

Co-Chair Connell concluded the discussion by stating that it seems to be more of an implementation issue rather than a statutory issue and doesn't see a necessity to amend the statute and that the Subcommittee would not take up this issue any further at this time.

Co-Chair Connell reminded the Subcommittee members that there were new members on the Subcommittee who might need a brief overview of the economic study, which staff attorney Noelle Lagueux-Alvarez gave regarding the requirements behind the study. She explained that both state law and federal regulations require that the study be conducted every four years. It is a comprehensive review of our guidelines statute and the basic child support obligation (BCSO) table used in the calculation of child support. A contract is entered into with an economist to conduct the study that uses economic data and indicators to make sure the BCSO table is economically sound for what it takes to raise a child in Georgia. As part of that review, staff collects case sampling data of child support orders and their related worksheets, and that data is provided to the economist for the study.

Co-Chair Connell went into further details of the history of the study and how it has progressed from 12 to 15 counties. Subcommittee member Mara Block asked what would happen if a legislator proposed a piece of legislation that contradicts federal regulations. Co-Chair Connell explained that it would then become a matter of educating the legislators on any federal requirements and how failing to follow the requirements could affect federal funding for Georgia.

Staff attorney, Noelle Lagueux-Alvarez, gave a report on the status of the LIFE Act, formerly the "Heartbeat Bill" from 2019 legislation in HB 481, in light of a recent U.S. Supreme Court decision and a case pending in the 11th Circuit Court of Appeals, and explained the LIFE Act's impact on Georgia's Child Support Guidelines Statute, O.C.G.A. 19-6-15, with the addition of definition (a.1). She explained that the statutory language from HB 481 redefines a child to include an unborn child, including any unborn child with a detectable human heartbeat. After birth, the provisions of O.C.G.A. 19-6-15 shall apply in full. The language from O.C.G.A. 19-6-15, with the addition of definition (a.1) is setting up a retrospective, expense-based scenario for an unborn child that she believes is calling for reimbursement of expenses from the father of the unborn child to the mother. Ms. Lagueux-Alvarez explained that our traditional child support is prospective, is largely based on generalized economic data and, in contrast, this new provision is talking about direct expenses and speaks of obligating specifically the father. She stated

that she does not think the addition of child support for an unborn child—or what she is referring to as “gestational child support” for brevity and clarity—affects the child support guidelines calculation once the child is born.

Charles Spinardi, DCSS, noted that the federal OCSE’s position is that birthing expenses and prenatal support issues are not within the federal scheme of IV-D work activities for funding. And that, IV-D child support agencies cannot spend funds on the collection of this type of support. So, it's going to cause problems for Georgia.

Co-Chair Connell commented that this new definition is a wholly unique subset of child support, and she is not sure if it is the Commission's job to reconcile it, but she stated that whether a person agrees with the Heartbeat Bill in its totality or not, with respect to child support this may create a new type of child support that is not consistent with anything else in our statute or public policy related to child support. Co-Chair Connell noted that the Subcommittee will keep this development (generally, reimbursement of direct pregnancy expenses from the father to the mother) on its radar and reconsider it once the 11th Circuit has issued its ruling.

Member Mara Block asked if the Commission has reached out to the drafters to discuss the impact that HB 481 would have on child support to try to see if there's a meeting of the minds or a conversation about what their intent was. Co-Chair Connell stated that matter has not been on a Commission agenda to address this directly with the drafters of the legislation. Ms. Block followed up by asking if the Subcommittee could ask the Commission to reach out and start that conversation? Co-Chair Connell recommended she report on this matter at the next Commission meeting and that this issue has come up for discussion.

Co-Chair Connell went on to the next agenda item of extraordinary expenses and asked staff member Elaine Johnson to speak on that issue. Ms. Johnson explained that during routine child support guidelines training the question has been asked if extraordinary medical, educational, and special expenses for child rearing may be amended in the statute to state that these expenses may be included on Schedule E of the calculator, or that they may also be addressed only in the child support order, as is done with work-related childcare expenses on Schedule D of the calculator. It was explained to staff by a mediator during training that parents are often listing the expenses in the final order, but not in the worksheet because of their propensity to change from year to year.

Co-Chair Connell asked for discussion by the members. Judge Petty commented that in 99% of private child support cases she sees that parents include a provision for extracurricular activities outside the worksheet. Member Christina Scott commented that she sees this same thing quite often in mediations, and Judge Palmer stated that it comes up a lot in his courtroom as well. Co-Chair Connell noted that extraordinary medical expenses are addressed in other areas of the statute so it wouldn't be detrimental to not include them in Schedule E of a child support worksheet. She also noted that deviations on Schedule E are not required, and that parents often utilize the practice of not including these three deviations in the worksheet to reach agreements, avoiding points of friction. Regina Quick noted that judges should consider the 7% statutory threshold and that she is aware of case law on the subject. Co-Chair Connell agreed, and further noted that the 7% is automatically calculated in the online child support calculator pursuant to the statute. She asked Ms. Quick to provide the caselaw to the subcommittee. Co-Chair Connell asked that this item be included on the next agenda for further discussion.

Co-Chair Connell, who previously served as the Chair of the Parenting Time Deviation Study Committee, gave a report on the work of that Study Committee, and presented the major findings and summary of recommendations in its Final Report. Co-Chair Williford was unavailable to return to the meeting to lead any further discussion on this topic due to her conflicting court schedule. Co-Chair

Connell noted that there may be some areas where Dr. Venohr should be asked to weigh in on some questions.

Member Christina Scott asked for information to understand the protocol on how the discussions of this Subcommittee and the items identified by the Parenting Time Study Committee will be moved forward as they relate to potential changes to the statute. Co-Chair Connell stated that no changes to the statute are going to happen without first being discussed by this Subcommittee, agreed upon, and then recommended to the Commission and that this subcommittee is the forum for that work.

Member Regina Quick asked what was the problem or presenting issue that the current use of parenting time as a deviation was not working and if there was any data that says the existing Schedule E deviation is not working? And if we must go instead back to “Schedule C,” and require Superior Court judges, and more importantly, an army of pro se litigants to do even more calculations under the child support guidelines. Co-Chair Connell replied that her understanding of the answer to that question is that when records are pulled of existing orders, there are lots of deviations being made across Georgia to account for parenting time and federal regulators like to see a lower number of deviations because if deviations are used frequently, it indicates there is a flaw in the underlying calculation. In other words, the deviations should be few and far between as opposed to being used in the ordinary course of establishing child support.

Member Mara Block asked if we need more information from Dr. Venohr before we really have enough data to think about parenting time. Co-Chair Connell stated the Study Committee certainly included areas where Dr. Venohr should be asked to weigh-in and asked staff to speak to this question and whether we will hear back from her on some of these issues. Staff Attorney Noelle Lagueux-Alvarez explained that the Parenting Time Deviation Study Committee Final Report came after the scope of service for the contract with Dr. Venohr was set, but that staff made sure that these topics were included in the scope of service. She added that Dr. Venohr was specifically asked to include recommendations on how Georgia should handle low-income deviations and parenting time deviations. She added that not every single specific question as the Parenting Time Deviation Study Committee phrased it was included because, again, the report postdated the signing of the contract, but in general, these items were included and Dr. Venohr was asked to opine on them.

Co-Chair Connell ask the members if there were any other matters that they wanted to bring to the attention of the Subcommittee for consideration. No additional recommendations were made by any of the members.

Co-Chair Connell noted that the next three meeting dates have been set as follows: Monday, August 22; Thursday, September 22; and Friday, October 21, all starting at 10 a.m. [Since this meeting took place, the August 22nd meeting was rescheduled for Friday, August 12, 2022, at 9:30 a.m.]

The meeting was adjourned at 11:54 a.m.