

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

CHILD SUPPORT COMMISSION  
October 14, 2010

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The Child Support Commission met at 2:30 p.m. on Thursday, October 14, 2010, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing. Commission members present: Senator Brad Ashford, Chairperson; Senator Tim Gay; Judge Vicky Johnson; John A. Kinney; Charles Lamphear; William Mackenzie; Judge Paul Merritt; Troy Reiners; and Lori Tworek; Byron Van Patten; Janice Walker; Commission members absent: None. []

SENATOR ASHFORD: Well, good afternoon. Thanks for coming. I apologize for being a little late but it's within the five-minute rule, so we're okay. Wasn't 2:00, was it, we're supposed to be here? (Laughter) Okay. Well, I'm glad we have experts here today to talk about this issue, the guidelines issue. I appreciate Stacey's organizing the meeting and her work and Christina. So before we get started, why don't we just go around the room and so everyone can meet everybody else, and why don't we start with Troy. []

TROY REINERS: My name is Troy Reiners. I'm the director of the Nebraska Child Support Payment Center, which is one of the business (inaudible) in the State Treasurer's Office. []

SENATOR ASHFORD: Thanks. []

JANICE WALKER: I'm Janice Walker and I'm the State Court Administrator. []

CHARLES LAMPHEAR: I'm Charles Lamphear, retired economist. []

SENATOR GAY: I'm Senator... []

SENATOR ASHFORD: Are economists ever retired? []

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CHARLES LAMPHEAR: Oh, you bet. (Inaudible) golf course. []

SENATOR ASHFORD: Are they? []

SENATOR GAY: Senator Tim Gay, Chairman of the Health and Human Services Committee. []

SENATOR ASHFORD: Go over here. []

BYRON VAN PATTEN: I'm Byron Van Patten. I'm with Health and Human Services. I'm the IV-D director. []

WILLIAM MACKENZIE: Bill Mackenzie, deputy Sarpy County Attorney. I'm supervisor of our Child Support Enforcement Division. []

LORI TWOREK: Lori Tworek, custodial parent, trying to get child support for 12 years now. []

PAUL MERRITT: Paul Merritt, district judge here in Lancaster County. []

SENATOR ASHFORD: Thanks, Judge. Ron? []

RON HARRIS: Hi. Ron Harris, pays child support. []

SENATOR ASHFORD: Stacey has put together an agenda and I think I have...I can make some comments for the record, but I think we all know why we're here. We've been...the Child Support Advisory Commission legislation was passed in '97. Our job is to review, the Child Support Advisory Commission's job is to review the child support guidelines and to make recommendations to the Supreme Court for changes. Federal law requires that the guidelines be reviewed and so forth and so on. I'm going to ask

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Stacey if you would start out. You're first on the agenda to talk about the review of recent legislation. And then case law, John Kinney. []

STACEY CONROY: I think he's not quite here yet. []

SENATOR ASHFORD: Okay. John Kinney is going to come and talk about the recent case law. Before Stacey gets started, does anyone have any comments they'd like to make on what we're doing? []

LORI TWOREK: May I say something? I just...first off, I'd like to thank everybody for being here. As a custodial parent, and I know you're a noncustodial parent, but I wanted to just let you know that it's hard trying to get child support. For 12 years now the noncustodial parent in my case is like...doesn't want to pay, and I'll just let you know right now, as of today or as of yesterday, October 13, right now he owes \$49,496.32. There are loopholes in the state of Nebraska and I'd be more than happy to talk about that outside the meeting if anybody would like to know what those loopholes are, but there are loopholes. And I'm thankful to be here because I want to be able to give my side of the story. Going through the guidelines, last night I was going through the guidelines, most of them do not pertain to me as the custodial parent except for figuring out how much child support I'm supposed to get each money, but a few don't, a few do. But it's tough as a custodial parent, so... []

SENATOR ASHFORD: And what we might do, and I think your comments are critical, so what I think we'll do is at the end we're going to have some discussion and then we'll...you're certainly free to, we'll see where we are with time,... []

LORI TWOREK: Okay. []

SENATOR ASHFORD: ...but to give us your comments. []

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LORI TWOREK: Okay. []

SENATOR ASHFORD: And they may not be directly related to guidelines, but I think it's important for this committee to know what's going on out there... []

LORI TWOREK: Right. []

SENATOR ASHFORD: ...and... []

LORI TWOREK: Right, and I do understand this is just pertaining to guidelines but... []

SENATOR ASHFORD: I think it's important that you're here... []

LORI TWOREK: Right. []

SENATOR ASHFORD: ...and we will leave time... []

LORI TWOREK: Okay. Much appreciate it. []

SENATOR ASHFORD: ...for your comments. []

LORI TWOREK: Thank you. []

SENATOR ASHFORD: Okay. And if Ron wants to talk about issues as well. Yeah, why don't we go around the room and...I'm sorry. Why don't we, for the record, we are being recorded obviously so why don't we go around the room and...didn't we do that? []

CHRISTINA CASE: So when you speak... []

SENATOR ASHFORD: We just did. We just introduced... []

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CHRISTINA CASE: Yeah, but when you speak, tell your... []

SENATOR ASHFORD: Oh, we don't even know... []

CHRISTINA CASE: ...say your name so... []

SENATOR ASHFORD: Oh, we have to do that? Okay. []

CHRISTINA CASE: ...so the transcribers know... []

SENATOR ASHFORD: Oh, we don't even have that, we don't even have that capability.  
[]

CHRISTINA CASE: ...know who's speaking. Thank you. []

SENATOR ASHFORD: Oh, I'm sorry. We're not even...why is that the case, Janice?  
Don't we have a technology that allows us to identify people better than that? I thought  
we...Supreme Court. []

CHRISTINA CASE: Well, I can do a fairly good job. []

SENATOR ASHFORD: Okay. (Laughter) []

CHRISTINA CASE: If you forget, I'll be there. []

RON HARRIS: Voice recognition. []

LORI TWOREK: Voice recognition, yeah. []

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SENATOR ASHFORD: I thought we had voice recognition software or something. []

JANICE WALKER: If you had your cameras on today... []

SENATOR ASHFORD: No, but I thought we had something that we...all right. Let's move on, if we could. Any other comments? John is here. Stacey, why don't you go ahead, if you would, please. []

STACEY CONROY: Okay. All right. Well, in your yellow folder, you've got a handout that says "Review of Child Support Legislation." We've got several bills that have been enacted since the last time the commission met in 2006. I'm just going to highlight some of these because some of them are child support related but not directly related to guidelines issues. So in 2007-08, there was an amendment to allow the obligor of an order or a support lien to release or subordinate the order or lien by filing a current certified copy of the support order in the county office where the lien was registered. And there was also an amendment to allow people who are incarcerated to have their support orders modified due to an involuntary change in income and...because you're not supposed to get the modification if it's only voluntary. Then in...also in 2007 the Treasurer's Office had some changes to college child support payments and disburse them through electronic processes. Maybe Troy can update us on that. And then for employers with more than 50 employees that have at least 1 person who has a child support obligation, then they have to remit the child support payments electronically. We had a big bill in 2008, in LB1014, and it had a lot of provisions that related to this: authorize county judges and separate juvenile court judges to appoint child support referees; remove the requirement that the court consider a separate financial plan when determining the amount of child support; and this changed the current certified copy of the child support payment history will be prima facie evidence of the payments being current, and that's valid for 30 days. That was a change in 2008. And we'll move on to 2009 and '10. In LB288, we changed again the law for incarcerated persons to have a modification. We excepted people who are incarcerated because they had victimized

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the child who was the subject of the support. And then we added independent contractor to the New Hire Reporting Act so that they can be subject to income withholding. There was a change for Department of Revenue so that there's continuous submittal of past-due payments instead of a yearly reporting of those payments, and also support payments that become due during the time which the individual receives public assistance are the only ones that are assignable to the state. The cash medical support, there were lots of changes to that area of the law and there was some language added to ensure that that support is used on behalf of the child for which it was ordered; narrowed the standard for accessibility to healthcare coverage in distance and in time, and that can be adjusted for people who are in more rural parts of the state. And these, a lot of these laws were changed based on a federal mandate. And there was also a mandate that cash medical support be ordered in situations where healthcare coverage is either not available or inaccessible to the children, but that's only for cases where there is Title IV-D services, where there are Title IV-D services in play. Cash medical support is not ordered if it would reduce the party's income below the subsistence limitation. And we had another law to comply with federal mandates in 2010 and that was to...oh, for HHS to modify child support orders in healthcare coverage cases within three years of the entry of the order, and they can review those orders if there is a substantial change in circumstances that has lasted for three months and is expected to last for an additional six months. And there was another law that was passed but it didn't pertain to the guidelines so much. It was more about the Parenting Act and when mandatory mediation can be waived. So I think those are the relevant things that have happened since the commission met last. []

SENATOR ASHFORD: And we've had quite a bit of activity in this area around financial issues and HHS, quite frankly, and the courts and the bar have all worked very hard on those issues and have come to us very well prepared and, you know, I think resulted in some of these things being done that were both federally mandated and seemed like appropriate measures to take. So I think a lot of credit goes to them. Yes, Janice. []

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JANICE WALKER: I was going to ask Stacey...oh, this is Janice Walker. []

SENATOR ASHFORD: Yes. []

JANICE WALKER: Of the items that you've mentioned here, the changes in statute over the last four years, did I understand you to say that all of these or only some of these may affect the child support guidelines? []

STACEY CONROY: This is Stacey. Only some of them affect the guidelines,... []

JANICE WALKER: Okay. []

STACEY CONROY: ...and some of those changes I think have been made in the guidelines. Looked like the guidelines had been amended in 2009 to reflect some of the changes. []

JANICE WALKER: Okay. []

SENATOR ASHFORD: And by affecting the guidelines, they affect the application, don't necessarily affect the... []

STACEY CONROY: The language of the guidelines, right. []

SENATOR ASHFORD: ...or the numbers themselves. []

STACEY CONROY: Correct. []

SENATOR ASHFORD: Or the economics of it. []

STACEY CONROY: Correct. []



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SENATOR ASHFORD: Okay. Do we have any other questions of Stacey? John Kinney is here. John, can you go over the case law? I appreciate your willingness to help us in this area. []

JOHN KINNEY: Absolutely. I do... []

STACEY CONROY: (Inaudible) pass those out (inaudible). []

JOHN KINNEY: Yeah, I do have some written...I have ten copies and so if we run out of copies we can probably get some more made. []

STACEY CONROY: Yeah. []

JOHN KINNEY: For the record, this is John Kinney, and I was asked to put together a brief summary of the case law on child support. And basically, when I looked at this, I had an eye towards case law that would have an impact on the guidelines or that reviewed the guidelines and found them lacking in some way or needing some further explanation in some way. And so I'll get right into it. The 2007 cases that I looked at, there was really no...there were no cases. And again, this is subjective. These are my opinions, you know, based on my experience and looking at some of the cases. There didn't...there were child support cases decided, appellate cases decided in 2007, but it didn't look like any of them were caught up in the language of the guidelines or were having problems with the guidelines. In fact, none of the cases over the last four years have really questioned the guidelines or second-guessed the guidelines or had particularly revealing or earth-shattering issues with the guidelines. But in 2008 there is a case, Gress v. Gress, which I thought I would bring to the commission's attention. The income averaging issue may be an issue and I'll get to the reason why we might want to talk about income averaging a little bit. The guidelines currently state that there's sort of a presumption of using three-year income averaging when income fluctuates

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substantially, and in these economic times I do believe that there are going to be some fluctuations in people's incomes. I think that we probably anecdotally, in just the people we talk to, realize that people's incomes are changing dramatically, and in these economic times they're changing for the worse in some cases. People are losing their jobs, and more importantly I think for this commission's contemplation is they're getting other jobs but those jobs are paying far less than they had before. I don't think that's a surprise to anybody. In the Gress case, the court or the trial court was faced with a husband wanting to use eight-year income averaging. The Supreme Court looked at that and said eight-year income averaging may be a more accurate, you know, survey of this person's average income but we're going to use three-year income averaging because the trial court did that. The trial court followed the guidelines and it wasn't an abuse of discretion for the trial court to follow the guidelines and use three-year income averaging. In this case, the husband wanted to take advantage, if you can say it that way, of Paragraph R, which is the basic subsistence language in the guidelines, that you can't be impoverished by an imposition of a child support order, and the court said that, yes, you may have day care and other expenses that you're paying out that would put you below the poverty guidelines, but since you didn't present evidence--this is the world that I live in--you didn't present evidence of it so we can't decide and help you. So that's what the Gress case decided, in a nutshell, and I'll get to a little bit more about the three-year income averaging. Simpson v. Simpson, I only mention it because it was sort of shocking to me. You know, we have this guideline...these guidelines that say that we should look at income from all sources when we determine somebody's child support. It's sort of an IRS-type notion. The IRS, when they want to tax you, they include income from all sources. And in this case--and I didn't...I had read the case several months ago, I didn't go back and reread the entire case, I looked at a summary--but believe it or not, this gentleman--and it was a modification action--was getting significant money from what they called expatriate income, \$14,000 a month, and the trial court didn't include it because there were expenses incurred by the former husband because of his living outside the country. You know, that's one of those cases that's very fact specific and I just thought that that was a little unusual that when we think about including income

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from all sources that that income would not be included and that person was allowed to include some what seemed to be fairly vague expenses compared to the guy who was asking for his day-care expenses to be used to get him to the poverty...below the poverty guidelines. I hope I'm not going on and on about some of this stuff, but the reason why the Simpson case was cited here is because--and maybe some of you folks can help me with this--my understanding is that in 2011, because of federal laws that were enacted recently, the entire health insurance premium that an employee receives from his employer, in other words they're...you know, they're paying a certain amount of the health insurance premium but their employer is usually covering a large portion of the premium, that's going to be reported on their W-2 starting in 2011. That doesn't mean that's going to be taxed, but it's going to be reported in a portion of their W-2. The plan is apparently by 2014 that health insurance premium that your employer pays for you is actually planned it's going to be a revenue source for the federal government. They're going to start taxing that as income to you because your employer is paying that health insurance premium. Now there's other changes where everybody has to opt in, but I cite the Simpson case because I think we might want to think about how the child support guidelines are going to consider income from all sources if we start to consider the amount that an employee receives from his employer for the health insurance premium. In some cases, employers are providing \$1,000, \$1,200 a month in health insurance premium coverage. If you add that to somebody's income, that changes their child support significantly. It's just something to think about, and I'll move on. Rutherford v. Rutherford... []

SENATOR ASHFORD: Could I ask you, John,... []

JOHN KINNEY: Sure. []

SENATOR ASHFORD: ...on that issue, is there any...it doesn't...is it relevant? The health insurance beneficiary may be the child, the noncustodial child, for example, in those. Does that... []

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JOHN KINNEY: Well, there's...in that premium that an employee would pay, they would pay different premiums that are attributable to coverage on their spouse and on their dependents. []

SENATOR ASHFORD: Right. []

JOHN KINNEY: And so their premium amount, as reported in that new W-2 that they start getting in 2011, it would fluctuate based upon how many people they're claiming that they need to get covered, and that's...that's how...and it could change. Depending on the enrollment period for a particular employer, that may change throughout the year as you add people or kids or your spouse to your health insurance or as you subtract them, as the case may be. I don't know if that answers your question but that's how... []

SENATOR ASHFORD: How does health insurance figure into the award, the award of child support generally? []

JOHN KINNEY: Well, that's interesting because four years ago we made a significant change in how we handle that. []

SENATOR ASHFORD: Right. []

JOHN KINNEY: It used to be a line-item deduction, what I would say sort of above the line. []

SENATOR ASHFORD: Right. []

JOHN KINNEY: It would be a deduction from your income. And so when we went to calculate child support, we would just reduce the... []

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SENATOR ASHFORD: Cost. []

JOHN KINNEY: ...the cost from your income. What... []

SENATOR ASHFORD: It wasn't viewed as a benefit. It was viewed as a cost. It wasn't income. []

JOHN KINNEY: It was just subtracted from your income,... []

SENATOR ASHFORD: Right. Right. []

JOHN KINNEY: ...the amount that you paid for coverage attributable to a minor child. []

SENATOR ASHFORD: Right. []

JOHN KINNEY: And then, when Jane Venohr came and testified, she said that really isn't a fair measure of the economic impact of the health insurance premium; we need to allocate the health insurance premium attributable to minor...coverage on minor children between the parties. And so we took the net income percentage of each party and we used it as a multiplier on the health insurance premium, and we allocated it to the parties. So if a payor, child support payor, was paying the health insurance premium, he would pay slightly less in child support. If the payee was paying the health insurance premium, she would receive slightly more child support. []

SENATOR ASHFORD: More. []

JOHN KINNEY: And that's the way that it was allocated then. []

SENATOR ASHFORD: And then that is how it is now. []

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JOHN KINNEY: Right, that is the way it is. []

SENATOR ASHFORD: And do you think this change in tax law or this...or, more than that, the change in how employers are addressing health insurance premiums generally would impact the guidelines now or is the change we made before enough of a change? Do we need to address health insurance premiums again somehow or is it adequate? []

JOHN KINNEY: Well, the problem is, is that we're going to be speculating on what's going to be happening in the future because we really...the change hasn't come down yet and we know that there's going to be a change in 2011 before there might be a new administration, but my... []

SENATOR ASHFORD: Aside from the taxes,... []

JOHN KINNEY: Yeah. Right. []

SENATOR ASHFORD: ...the economics of it. Yeah. []

TROY REINERS: Troy Reiners. Correct me if I'm wrong, but are not the tables that are being accessed based upon net, even though we're given consideration for those health...those premium...insurance premiums are being paid. But as far as when you access the tables, you're looking at the net after that's been deducted, in which case then I don't believe it would have as much of an impact on what they're going to pay in the long run, because you're going to the tables based upon the net. So if the NCP is paying that premium, yes, by doing the change we made before, that (inaudible) allow to give him some sort of credit on it, but if the CP is paying those payments then he will end up paying more because he's not going to get the credit. But both of those amounts are subtracted out of their gross and we go to the tables after viewing the net. I mean, am I mistaken here or...? []

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JOHN KINNEY: I think what we're doing is we're speaking a little bit in apples and oranges, and here's what I think. When I mention this notion of changes in the federal law, I'm talking about the portion of the premium that none of these employees ever feel, touch, know anything about. They usually don't even think about it. And what I'm saying is that there may come a time in the next one to three years where all of a sudden that shows up on your W-2 and you pay taxes on it, okay, and it's includable in income for you. And the government, I think, the federal government and probably the state government is looking for new revenue sources and so they...if we start to include that in the child support calculation and add that to people's income, just like the IRS might, that is an issue for purposes of the calculation. It has nothing to do really with the employee portion of the health insurance premium that's a below-the-line allocation to the two parties. When you talk about the child support guidelines, you're talking about combined monthly net income. You're correct. When you look at that number on the left-hand side of the guidelines, you're talking about the combined net income of the two parents and then you use whatever you, you know, you can go to two kids, you come down, that child support number is multiplied by the payor's percentage of the combined monthly net income. That's a separate issue from whether we include the full amount of the health insurance premium in somebody's income when we calculate child support. Am I making sense on that? I just mention the issue as something to think about, but the health insurance premium that the employee pays is totally different. It's a different issue. []

SENATOR ASHFORD: Judge. []

PAUL MERRITT: Two things I think: To hear you say although they may start showing that on the W-2s in the next year or two, at least what you know about this is it won't take effect, scheduled to take effect in 2014 if they're going to tax it. []

JOHN KINNEY: That's my understanding of the current law,... []

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PAUL MERRITT: Okay. []

JOHN KINNEY: ...is that they're going to start identifying it in 2011 and it's currently scheduled to be taxed in 2014. []

PAUL MERRITT: Okay. Then I have two comments. That's something for the committee...the commission to worry about in 2014 when it comes before them. (Laughter) But it seems to...it seems to...well, but... []

SENATOR ASHFORD: Well, that's probably...that sounds pretty dispositive. (Laughter) []

PAUL MERRITT: Well, but it seems that we should somehow, in the report to the Supreme Court, we should put this in there as something that's going to be coming up next time. []

SENATOR ASHFORD: Yeah. []

PAUL MERRITT: But, and correct me if I'm wrong, I think the issue becomes...and under Section 4-204 we talk about total monthly income, and the question is going to be whether we're going to include that or whether we're going to recommend that it be excluded as part of the total monthly income. That's all above the line. []

SENATOR ASHFORD: Right. []

PAUL MERRITT: Right now we have an exclusion for certain things and we just want to determine, four years from now probably, once we have a better handle on exactly what we're talking about here, whether that employer contribution to health insurance, which is probably helping the employer and nobody else because they're getting able to write it off now, or somehow they're probably writing it off anyway but it has a different effect



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on their taxes somehow, that whether we want that to be included on somebody's income. And some of these employers are paying a lot of money... []

SENATOR ASHFORD: Uh-huh. []

PAUL MERRITT: ...and so that can really bump somebody's gross income up. []

SENATOR ASHFORD: Well, at the high end, high-end premiums for high-end policies are, you know, tens of thousands of dollars a year. []

JANICE WALKER: Well, Judge Merritt, I would say for you judges... []

PAUL MERRITT: Yes. []

JANICE WALKER: ...and the employees of the judicial branch, if you have a family policy, my portion of that, as the employer, is \$19,000 a year, and I don't think we consider that a Cadillac policy. []

PAUL MERRITT: I know I don't. []

JANICE WALKER: (Laugh) So for some of our employees, that would double their salary almost. []

SENATOR ASHFORD: And that's really what I'm asking. I think from a policy perspective, and we can move on, but it is, again, the sort of trend, John, isn't it, towards wages staying somewhat stagnant and other costs, employee costs, going up, such as insurance and other benefits. []

JOHN KINNEY: Right. []

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SENATOR ASHFORD: Those costs are going up. Insurance premiums are going up faster than wages I mean, right? Am I out of line when saying that? []

TROY REINERS: No, you're not. []

SENATOR ASHFORD: And so, you know, how does that affect child support, I guess? And we've addressed that a little bit last time and we'll note it this time maybe or decide to do something else with it. Okay. Thanks. If you want to go on, John. []

JOHN KINNEY: Okay. The case in 2009 that I noted is something that judges and litigators are very familiar with. The Supreme Court has said in countless ways, over and over, that when a trial court makes a decision it has to attach the child support guidelines, the worksheets, and has to identify any deviations from the guidelines. And I noted when I walked in I saw this cool chart. There is no way for anybody to put together this data that gives us the child support guideline statistics of when the guidelines are being followed and when they're being deviated from unless trial courts do what the Supreme Court has said over and over. And I don't know if we want to say anything in the guidelines that...and maybe they're already in there that...but the Supreme Court, I think, and the Court of Appeals are very frustrated with any order that comes up on appeal that doesn't have worksheets attached and doesn't have any deviations clearly identified in the order. And I'll move on. []

WILLIAM MACKENZIE: John, I'm just... []

JOHN KINNEY: Sure. []

WILLIAM MACKENZIE: William Mackenzie here. The appellate courts have said we're not going to handle them anymore. []

JOHN KINNEY: Right. []

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WILLIAM MACKENZIE: I mean they've washed their hands of it and have said it's going to go back to the district court. So I think they've resolved that issue. []

JOHN KINNEY: Right, and that's what this case said, is that there are all sorts of issues in this appeal that we could consider but we're not even...we're just...it's not even going to be a briefed...you know, nobody is going to give oral arguments. It's going to be a dismissal of the appeal without any consideration of the facts. And you're right, and I think it's been years, I mean this has just come up so much that I think there's a level of frustration there. And I don't know if we want to mention something in the guidelines and, frankly, it may already be in there that you must attach your worksheets, but I don't know. []

WILLIAM MACKENZIE: My opinion is that the appellate courts have done that. []

JOHN KINNEY: Yeah. []

WILLIAM MACKENZIE: I don't know that we need to kick the dead horse again, but... []

JOHN KINNEY: I don't disagree. I mentioned this 2010 case only because it's my case. It's not reported. And I'm not going to grind an axe at all, but this goes back to the income averaging issue. This gentleman that I represented had \$386,000 of income in 2007 and his income in '08 and...or actually in '06 was when he had his big year, and then '07 and '08 it was just almost a fraction of that figure. What I'm concerned about in these economic times is not this case in particular but there are cases that say that if your income over that three-year income averaging period is slowly creeping up or even going up rather significantly, we're not going to let you income average; we're going to take your last year. Because obviously, you're, like a lot of people in life,... []

SENATOR ASHFORD: You're going up. []

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JOHN KINNEY: ...doing better and better and better. []

SENATOR ASHFORD: Yeah. []

JOHN KINNEY: But the same is not true if you're doing worse and worse and worse. If you're doing worse and worse and worse and you're trending downward, there's no taking the last worst year. It's income averaging for that guy. And two years ago, three years ago that might not have been such a big deal, but I'm wondering if in these times there might be something that we say about income averaging. It would be controversial, I think, but I'm just not sure that people are making the same amounts of money in the stock market and other areas that they used to. I'll just throw that out for discussion. And with that, I'm done. I've taken up too much time. []

SENATOR ASHFORD: But I would like to discuss that. Does anybody have any thoughts about John's point there, how we should address it, if we should address that issue? []

CHARLES LAMPHEAR: This is Charles Lamphear. I'd like to speak to it. If this individual had high incomes in prior years, prior to 2006, then if he had a seven-year average it could work against him, because the lower incomes the last two years are weighting heavily the average. So it can be either way. For some, this could be beneficial; for others, it could hurt if you go to a seven-year or a five-year, whatever. []

JOHN KINNEY: And I would say that maybe the issue is not so much the particular... []

CHARLES LAMPHEAR: Not the average (inaudible). []

JOHN KINNEY: Well, what I'm saying is that we seem to have tied ourselves to three-year income averaging in the child support guidelines. Maybe we give trial courts

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more discretion to consider a broader array of years and give them more flexibility. []

SENATOR ASHFORD: Would there have to be a burden? I mean would they have to establish a reason for that? Yeah. []

TROY REINERS: Troy Reiners. I mean this is kind of obscure, but what about maybe weighting it or, you know, weighting the... []

\_\_\_\_\_ : Over the years. []

CHARLES LAMPHEAR: Well, it is. It is weighted with those two years of very low income, if you do a three-year average year, it's...that's beneficial to this individual. (Inaudible) three years. []

TROY REINERS: Well, I mean more... []

CHARLES LAMPHEAR: If they go back and use seven years, if he had high incomes, it would hurt his case. []

SENATOR ASHFORD: But if the trend is this person is not going to make anywhere near that first year... []

TROY REINERS: Yeah, my deal was putting more weight on the most recent, so based upon timing is, you know, what I was...I mean it wouldn't...you know, you could do it on a three-year, you could do it on a five-year, but if you still weight and say the most recent year carries this much, the second year, you know back, meaning that the...which once again it can impact either way. []

CHARLES LAMPHEAR: (Inaudible). []

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TROY REINERS: But you're getting the more current data that you're going off of rather than historic that...so I would think it would bring it closer to what would be appropriate.

[]

CHARLES LAMPHEAR: Well, my guess is, and I'm certainly ignorant of the cases, but my guess is that probably almost every case is a special case. I would like...I would think that having some discretion would make a lot of sense rather than just having a mechanical kind of formula to do it. []

TROY REINERS: I'm not against NCPs, but, you know, some of them can see ahead and say, well, if I can also impact my own income. And so knowing that, you know, three years from now my child is going to have graduated and I'm not of here, if they're self-employed, if they're...I mean there are ways where people can impact their income to make it appear as if all of a sudden now I'm not making as much. So I'm just, you know, not saying that happens... []

JOHN KINNEY: Do you mean to say that people deliberately (laughter) underperform in their jobs so they don't have to pay as much? []

TROY REINERS: It isn't a matter of how they perform. []

SENATOR ASHFORD: Perform necessarily. []

TROY REINERS: It's a matter of how it's reported. []

LORI TWOREK: It's reported. []

TROY REINERS: So...correct. []

JANICE WALKER: There could be performance issues too. (Laughter) []

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SENATOR ASHFORD: Judge, what do you think, what do you think about the idea of giving more discretion to the court then? []

PAUL MERRITT: Well, I think there has...I think it needs to be, as said, a case-by-case basis. To just...to pull 100 and...and I'm not being critical because I haven't read the opinion in a long time, to pull three years ago when you're making six digits and for two years most recent where you've made in five digits and the most recent ones going down even, I mean there's more to look at there than just figures. Looking at figures for me, as a judge, if I'm told just look at the figures, that's easy. And I just say tell me what the figures are, I don't care who these people, I don't care what they're doing, I don't care what's happened to them and stuff like that; I'm just going to look at the figures. And there's a problem with that. I don't think we have three years. When you say three years, is that where you're saying bring in the two years of tax returns and what you're doing is looking at the last two years of tax returns and then his current income? I mean I can't find it, but that doesn't mean it's not there. Supreme Court does say nationwide, at least in your summary. Bill, do you have...do you remember it being a three-year? []

WILLIAM MACKENZIE: Our courts typically do a three-year. I was curious--and William Mackenzie speaking here--John, what was...since it was your case, what were the...what was the type of work that the person did that fluctuated...? []

JOHN KINNEY: It was interesting only because my career is so tedious and boring that things like this are interesting. He was a life insurance settlement broker, so he would go to folks who had long-term life insurance policies and he would pool together investors to purchase those policies and pay the person who eventually is going to die. And those people who are the investors became the beneficiaries of those policies. There's a name for that but I can't remember exactly what it is. But if he hit a deal, it was a big deal, I mean, and...but it was a one-shot thing. []

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SENATOR ASHFORD: Somebody would have to die, of course, and... []

JOHN KINNEY: Well, right. But if he made the deal, it would be, you know, a significant amount of money. []

SENATOR ASHFORD: Yeah. []

TROY REINERS: It's a viatical contract. []

SENATOR ASHFORD: Yeah. []

TROY REINERS: STOLI thing. []

SENATOR ASHFORD: Yeah. We know how to make money on all parts of life, don't we? []

WILLIAM MACKENZIE: Well, I guess the point is I think, and the judge is right, you can't just look at the figures. I mean there are sports people, there are authors, there are people that work in real estate. Their incomes may be very high one year and very low the next, and that's just kind of...that's the nature of the game. And I think the court, in those type of cases, probably look at a longer term than three years would be appropriate. I think it's important to give the courts discretion. I think they have the discretion to do it regardless of what the appellate courts have said. I think if Judge Merritt had a case before him where it would be appropriate to look back five or six years and he did so and he spelled out why, I don't think he would be criticized on appeal. There are other cases where maybe someone is intentionally reducing their income, and then there are cases maybe where they become ill or something and they're not able to do the type of work that they did before. And under those circumstances, I think an appellate court...or a trial court would be appropriate, would appropriately look more at the current year's income as opposed to averaging it if



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there's no hope that that person is going to earn, you know, \$350,000 in the future. So I think the discretion is there now with the trial courts and I'm not sure that we need to sound off on that. []

PAUL MERRITT: This is Paul Merritt. Again, and I don't think I probably read Duin. []

JOHN KINNEY: Oh yeah, it's an unreported case. []

PAUL MERRITT: Is that what it's called, Duin? []

JOHN KINNEY: Yeah, Duin v. Duin. []

PAUL MERRITT: Okay, D-u-i-n, because it's unreported, although I do read a lot of those just to see what they're about, scan them, but I don't recall reading that one yet. A good example...I think we have pretty good latitude, quite frankly, but a good example is...used to be, and not anymore, but it used to be when you had a divorce with somebody from Goodyear the first thing you would hear from the person, the person working at Goodyear, was, yeah, I've gotten overtime over the last five years but they're going to stop it now; we're not going to get any more overtime. And I got to the point where I said, you know, I'm sorry, I've been hearing that there's not going to be any more overtime for three years and there's still overtime so we're going to consider overtime, and when there's not overtime for the necessary amount you come in and show me there hasn't been overtime. And no one has said you can't do that and I've never had a problem with that. I mean, yeah, I've had a problem with it, people didn't appreciate that approach, but...well, one side didn't, but I think we have discretion. Again, I have to read the opinion. I don't know if the opinion is just these are the only thing we looked at, was these figures, we didn't look at anything else, I'd be real surprised if that's what the opinion says but you would know better than I. There may have been other factors that were considered by the appellate court or by the trial court in making its determination. Usually there are. []

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JOHN KINNEY: My view from reading Gress v. Gress and what the Court of Appeals did in Duin v. Duin, it seems to be a default to three-year income averaging because that's what most courts around the country are using. It's quite possible that it's not mentioned specifically in the guidelines that it's the case law that is sort of coming up with three-year income averaging. []

SENATOR ASHFORD: I mean we can note it. I don't know why we can't note the fact that we're assuming or we affirm or we acknowledge that the courts have discretion, as Bill suggests, to look at these other factors. Let's think about some language and we can...thank you, John. Let's move on to...yeah, we have some state guideline comparisons. []

STACEY CONROY: Right. You have a handout in your yellow folder again entitled "Review of Child Support Guideline Divisions in Surrounding States." You know, all of them have been revised very recently. I've got them here. I didn't make copies for everyone just because it's a lot of paper, but if you want to see them you can see them. These are the main changes they made. Colorado didn't do much. They addressed when there's a spouse of a parent who's taking care of the health insurance and... []

SENATOR ASHFORD: What does not a lot mean? Oh. Go ahead. []

STACEY CONROY: There weren't a lot of changes made in Colorado. []

SENATOR ASHFORD: Oh. []

STACEY CONROY: This one. []

SENATOR ASHFORD: Oh. Oh, I'm looking at the wrong one. I'm sorry. Do I have that somewhere? []

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STACEY CONROY: Yeah, it's right up there. []

SENATOR ASHFORD: Oh, thanks. I just thought you were just saying not a lot (laugh) and then that was... []

STACEY CONROY: There weren't a lot of changes... []

SENATOR ASHFORD: ...we were going to go by that or... []

STACEY CONROY: ...made in Colorado. []

SENATOR ASHFORD: Okay. []

STACEY CONROY: They had, you know, this was their four-year review and this was the changes they made. Iowa made some significant changes. I don't know if I need to read through all of these but one thing that might be significant for us is the last one there in Iowa. There's a medical support table that appears in the guidelines. It's another table that helps the court make those determinations, and I have that here and that might be an issue we want to (inaudible) look at what Iowa did. In Kansas, they added the 2010...or 2009-2010 tax schedules, and then they also added...they addressed the birthing expenses, judgment collection, and that's something that Byron Van Patten is going to talk about later. There's about eight states that do that and Kansas is one of them. []

WILLIAM MACKENZIE: Can I just interrupt? I don't... []

STACEY CONROY: Yeah. []

WILLIAM MACKENZIE: ...I don't like to do that. William Mackenzie. I notice that Kansas

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addressed a dental issue. There was a case, I don't remember the name of it, out of Nebraska here not that long ago where the...I believe it was the Supreme Court indicated that health insurance costs do not include dental care unless the court specifically addressed that issue, trial court specifically addressed that issue. So if the attorneys drafted an order that said health insurance, and then one of them later on complains because the other parent isn't taking care of the dental, the appellate court said the dental needed to be specifically spelled out in the order or its...or we're not going to consider it health, health related. I thought that was curious at best, but that might be something that the commission may want to address because I think that...I think that that should be corrected. []

SENATOR ASHFORD: It's a major issue, children's health issue obviously, and it's interesting that they...that was an addition in Kansas? That was not...obviously, is that what they did? []

STACEY CONROY: That was (inaudible)...that was a...I don't think it was a very major change. It was an update in the instructions on how to do it, but I've got it here if you want to (inaudible). []

WILLIAM MACKENZIE: Well, and again... []

SENATOR ASHFORD: But the issue Bill is raising is whether or not it's included at all. []

STACEY CONROY: In ours. []

WILLIAM MACKENZIE: And that addresses orthodontic and optometric expenses, and I think the case I'm thinking of also addressed, but since those were not spelled out in the order, the noncustodial didn't have to pay for them. So I think that might be something that we need to change. []

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SENATOR ASHFORD: Yeah, that's a major issue. Yeah. []

TROY REINERS: Yeah, Bill, are you basically saying Nebraska... []

WILLIAM MACKENZIE: Yes. []

TROY REINERS: ...dental? So I mean essentially I didn't have to assist paying for my daughter's Invisalign braces? []

WILLIAM MACKENZIE: I won't comment on your case, but I can bring to the commission... []

TROY REINERS: (Laugh) No, I'm just curious. I mean not about that. I'm curious like in Nebraska is that the case? Because I find that hard to believe. I mean I think most people have always thought dental is medical. I mean I know I have, I mean. And so (inaudible) humor on the part about my daughter. (Laugh) []

WILLIAM MACKENZIE: Well,...William Mackenzie again. In my office, our dental is separate from our healthcare expenses. []

TROY REINERS: It is. []

WILLIAM MACKENZIE: So when you look at your healthcare expenses, you know, it comes out of your paycheck once a month, there's one figure for health insurance and our dental is actually free for our individual employees, but if it is a family plan, there's a separate cost for that. So... []

TROY REINERS: And I think it should be addressed, that it should be included if it's not being. That's what my thoughts are. []

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WILLIAM MACKENZIE: And I'll be happy to track that case down if the commission wants. []

SENATOR ASHFORD: Yeah, I think that's important to do. []

WILLIAM MACKENZIE: Okay. []

JOHN KINNEY: I'm confused about this issue. This is John Kinney. Uninsured medical expenses are allocated between the parties according to their respective percentages of net income, and uninsured medical expenses includes optical, orthodontic, dental, medical, and counseling. That's always been the case. What I think we're talking about here is the... []

SENATOR ASHFORD: Insurance. []

JOHN KINNEY: ...insurance premium. Is that...are we talking about the same thing? And the insurance premium for dental would be treated the same...I think what these other...what the states said is that we're going to treat that insurance premium for dental the same way we treat a health insurance premium. That's what we're talking about here. We're not talking about uninsured. []

SENATOR ASHFORD: So it's a different issue but... []

JOHN KINNEY: Yeah. And the only thing I would say is that I don't think that employers identify the amount of the dental insurance premium attributable to coverage on minor children. Maybe they do. I think they give you one premium amount for dental insurance so... []

SENATOR ASHFORD: But Bill is raising a point that came up in a case that...where their coverage was not included. []

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WILLIAM MACKENZIE: It wasn't...as I recall, it wasn't ordered. The appellate court ruled that the man didn't have to pay it because it wasn't specifically spelled out in the order, dental, optometric, ophthalmological, whatever, and I read that to be those words have to be spelled out in an order setting forth which parent is to pay what and, you know, and what they're both to share expenses on. So... []

SENATOR ASHFORD: Well, let's see if we can track it down. []

WILLIAM MACKENZIE: Okay. []

SENATOR ASHFORD: Stacey. []

STACEY CONROY: Judge had... []

SENATOR ASHFORD: Oh, sorry, Judge. []

PAUL MERRITT: Paul Merritt. Well, what we may do, if that's the issue, in where it says health insurance we'll just make a definition of what health insurance means and then we don't have to have it in every order. We'll just have it in health insurance. Because our health insurance, in one section talks about health insurance, and I think dental insurance and vision insurance, I view those differently in my orders. If I have contested cases, I just say, for purposes of this order, health insurance means, and it's all those things that you just mentioned. But then are we talking about healthcare? Now healthcare can be...that's where it talks about unreimbursed reasonable healthcare costs. Healthcare to me is a broader term than health insurance. And so whether it should be or not I don't know, but I think you could interpret them as being broader terms. So I think what we're maybe looking at is doing a definition under health insurance and say this is what health...for purposes of the guideline, health insurance means, and then all those terms that maybe I have in my order which tries to capture

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everything that a child...may happen to him or her during their minority. Maybe that's the place to put it. Then you don't have to worry about orders or anything like that. And, quite frankly, if you put it in there, you're going to get a read from the Supreme Court right away whether they agree or don't agree that there should be a carte blanche. What that's going to do for attorneys then, though, is that when you go below the line, we're going to have to change that from health...we're going to have to say health insurance but we're going to have to make sure everybody understands that that term "health insurance" also applies if they're paying parts of dental and vision. They may do that already and we just don't know it, because I accept that when they come in and they say that's what their part is. I just throw that out there. []

SENATOR ASHFORD: Okay. Stacey, do you want to... []

STACEY CONROY: Okay. Yeah. Missouri updated in 2008. One of the things, the fourth down, was they allow consideration to deviate when the income is above \$20,000 for monthly income, and they increase that from \$20,000 to \$30,000. They address overnight stays for the noncustodial parent and kind of clarified how that is calculated and then they put a maximum credit for those overnights at 34 percent. Now what that's 34 percent of you probably know better than I, but...and they increase some of their figures on their schedule. South Dakota updated... []

WILLIAM MACKENZIE: Oh, there's a question for you. []

STACEY CONROY: Oh, sure. []

SENATOR ASHFORD: Yes, Janice. []

JANICE WALKER: Sorry. I just had a quick question that Missouri says the definition of "split," which I presume means joint custody, means when one or more but not all of the children primarily reside with each of the parents. []



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PAUL MERRITT: That's not joint custody. []

SENATOR ASHFORD: That's not joint, that's split. The kids are...children are split between one parent or the other. []

JANICE WALKER: Okay. So if you have two children, one lives with each parent the primary amount of time, that's not considered joint custody. []

SENATOR ASHFORD: Well, not in Missouri anyway. []

PAUL MERRITT: Well, it's not considered it here either... []

SENATOR ASHFORD: No. []

PAUL MERRITT: Unless they have joint legal custody and then split physical custody. Sometimes... []

JANICE WALKER: Okay. []

PAUL MERRITT: ...sometimes that happens, not often. We don't see much split custody here. It's frowned upon, I think is a good characterization. []

JANICE WALKER: Okay. So the words "split custody" I guess was what kind of threw me. I was trying to make that be joint custody, meaning it's split equally between. Okay, forget it. []

SENATOR ASHFORD: You're right, we don't...I mean we don't see it often, ever. Okay, South Dakota. []

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STACEY CONROY: South Dakota updated in 2009, changed some of their tables. They expanded from \$10,000 to \$20,000. Now four years ago we expanded from \$10,000 to \$15,000. []

SENATOR ASHFORD: Right. []

STACEY CONROY: They put in an adjustment for the low income and they actually put in their tables a shaded area where they had those low-income figures set aside. And I have that if you want to see it. They did the incarceration change that we made a couple years ago in statute. []

WILLIAM MACKENZIE: Well, actually...I'm sorry. William Mackenzie. []

STACEY CONROY: Right? []

SENATOR ASHFORD: They took it away. []

STACEY CONROY: Oh, sure. []

WILLIAM MACKENZIE: It looks like it's saying that... []

SENATOR ASHFORD: Yeah, they excluded it. []

WILLIAM MACKENZIE: ...their prisoners are imputed at minimum wage. []

STACEY CONROY: That is voluntary. []

SENATOR ASHFORD: Well, I think they went the other way, Stacey. []

STACEY CONROY: Right. We've made it so it's involuntary. They made it so it is a

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voluntary. []

SENATOR ASHFORD: Well, we made it so it's not included in income, right? []

STACEY CONROY: They can modify if they are... []

SENATOR ASHFORD: Incarcerated. []

STACEY CONROY: ...incarcerated,... []

SENATOR ASHFORD: Unless they... []

STACEY CONROY: ...because it's considered involuntary. But in South Dakota it's considered... []

SENATOR ASHFORD: Unless they...the children involved were...they're victims. And this, they excluded incarceration as a basis for a deviation. So there must have been a question due to the voluntary act that reduces income, correct? They went the other way. []

STACEY CONROY: Right. Right. Okay. Yes, they did. []

SENATOR ASHFORD: That's just a policy issue I guess. []

STACEY CONROY: And then they did also make the medical support provision changes to conform to the federal requirements. Those were the major ones that I (inaudible) happened in South Dakota. []

JANICE WALKER: This is Janice. Just a clarification: The expansion of the schedule from \$10,000 to \$15,000 that we did four years ago, that was monthly salary, is that not

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correct? []

WILLIAM MACKENZIE: It's net income, monthly net income. []

JANICE WALKER: Yes. []

SENATOR ASHFORD: Monthly combined net income. []

JANICE WALKER: And I guess I would ask those of you who are practitioners, has that been an adequate expansion? Should we have, in other words, have gone to \$20,000?  
[]

SENATOR ASHFORD: Well, that's a question we need to answer here. []

JANICE WALKER: Yeah. []

SENATOR ASHFORD: I mean have we gone...is it the right... []

STACEY CONROY: Missouri goes to \$30,000. I looked at all of them. This is Stacey again. Missouri goes to \$30,000; Kansas goes to \$15,000, like we do; Colorado and Iowa are both at \$20,000; and South Dakota is at \$20,000. I did call Wyoming to see if they had made any changes recently. I haven't heard back from them yet, but I couldn't find anything on the Internet. []

SENATOR ASHFORD: John, any thoughts? []

JOHN KINNEY: It happens. I mean you do bump up against cases where... []

SENATOR ASHFORD: Yeah, it does happen, so I mean should we be addressing that issue again this year? I mean it seems like \$15,000...I don't know what it...I don't know

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all the...I haven't seen all the states, but the surrounding states are higher. []

STACEY CONROY: Kansas is at \$15,000 as well, but the others are higher. []

SENATOR ASHFORD: Right, but other than Kansas, they're higher. I don't know. And then you have to think about the economics of the cost of raising...just all the economic factors that go into that number. Correct. []

STACEY CONROY: But we also...this is Stacey. In 2006, didn't we put in a formula for how it can be calculated if it goes beyond the table, beyond the \$15,000? And how is that working? Is that... []

SENATOR ASHFORD: Is that adequate? Judge. []

PAUL MERRITT: Paul Merritt. I can't remember the last time I tried a case where the net income was over \$15,000 a month. I mean those cases get settled most of the times. You know, maybe in Omaha they try them regularly, but I just haven't seen it. And this may not be a factor but if we're going to increase it at this time...and when we just heard a bunch of stuff about recession and incomes going down, if we're going to increase it we would probably have to have an economist help us with that and figure out where we're going to go for that. []

SENATOR ASHFORD: Well, yeah, I don't think you...I think you would because I don't think we can just take a... []

PAUL MERRITT: Okay. And we know how much that cost us four years ago. []

SENATOR ASHFORD: Right. []

PAUL MERRITT: And so, again, I'm not saying we shouldn't do it. I'm just saying I think

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that's a factor. I just haven't had it where it's been an issue. The formula we have seems to have worked, at least up to this point. The practitioners would have a better idea of whether that formula is working or not than I would. I just haven't seen it as an issue in my court. []

SENATOR ASHFORD: John, does the formula work for you? []

JOHN KINNEY: I have to agree with his Honor. I really think that when those cases come up, you run into what I call the three pony rule. You know, a kid really only needs one pony. (Laughter) And so, you know, when you get to the child support amounts that are that high, you're just able to settle it because the child support, you know, is adequate for that child or those children. And believe it or not, the three pony rule, if you put it into Westlaw search, you get about 20 cases. It is an actual concept that, you know, there's only so much it takes to economically raise a child. []

SENATOR ASHFORD: Raise a kid. []

JOHN KINNEY: And so I don't think there's any need to go to \$20,000 or \$25,000 based on my experience. One thing that I do look at, there is this section (C) that says that to assist the court and not as a rebuttable presumption, the court may use the amount at \$15,000 plus 10 percent of the net income above \$15,000 for one, two, and three children, and then it sort of goes on from there. []

SENATOR ASHFORD: Uh-huh. []

JOHN KINNEY: I've always wondered if our guidelines meant to say that the support amount that the payor pays is the amount at \$15,000 plus 10 percent of the net income above \$15,000. In other words, is it the 10 percent that's paid above the amount, or do you apply the percentages to 10 percent? []

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PAUL MERRITT: Where are you, John? []

JOHN KINNEY: I'm on section (C). I don't know that I'm being very clear, but what I'm saying is... []

PAUL MERRITT: It's 4.203 in the guidelines. []

JOHN KINNEY: Okay. Okay. Yeah, it's page 2 on the materials we have. []

PAUL MERRITT: Okay. []

JOHN KINNEY: I just...I never was sure that we were really clear. You go to the table and you find the amount for \$15,000 and then let's say somebody has \$18,000 of combined net income. Do you say that the child support amount that the payor pays is 10 percent of the net income above \$15,000, or do you multiply the percentages against that 10 percent of net income above \$15,000? Am I making myself clear? []

PAUL MERRITT: If...I thought it...just looking at it now and I haven't thought about it. []

SENATOR ASHFORD: Does everybody have...does every...I don't have it. Does everybody have the statute? []

CHARLES LAMPHEAR: Yeah. Same (inaudible). This is what was mailed out so I don't think they're included in the envelopes here. []

PAUL MERRITT: Judge, do you know? I mean I can't say. We'd have to go back and look at the minutes. But I thought...my feeling would be it would be the percentage of what the child support is at \$15,000 and then use that percentage and add it to that, is what I would guess it would mean, not that you take a percentage of the income over that. But 10 percent of the income...I mean surely...I mean I don't know. I wouldn't think

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it would be...10 percent of the income. []

JOHN KINNEY: So let's say the combined monthly income was \$25,000, so the amount of net income above \$15,000 would be \$10,000. Ten percent of that would be \$1,000. Does that mean the payor is paying \$1,000 plus the child support amount that comes from the \$15,000 figure in the tables? Or do you apply the percentages towards that \$1,000? In other words, if he's making 85 percent of the monthly net income, is it \$1,000 multiplied by .85? I've never...I've never understood. I never...I should have raised it four years ago but I've never understood if that's what that...what is meant by that paragraph. Now does that make it more clear? []

WILLIAM MACKENZIE: William Mackenzie. Clearly, we wrote that, we didn't make it clear. But in the four years since I've been doing child support, I've never had to use this because the people I deal with aren't in the \$15,000-a-month bracket. We did have a football player once, that was more than four years ago, but I don't see that socioeconomic strata in my courtroom much. []

SENATOR ASHFORD: But if it's an issue, we should address it somehow and I don't know exactly how we would. []

JOHN KINNEY: Right. I think we could address it with one phone call to Ms. Venohr, because I believe that she did enough of these... []

SENATOR ASHFORD: Okay. []

JOHN KINNEY: ...that she knows what would... []

SENATOR ASHFORD: Was that her suggestion to the language? []

JOHN KINNEY: Yes, because she's done it in other states, I believe. []



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SENATOR ASHFORD: Okay. Why don't we do that and then we can, if there needs to be some further clarification, we can do it. []

STACEY CONROY: I did speak to her before we met. Do you want me to call her and ask her? Does somebody else want to talk to her? []

SENATOR ASHFORD: You can call her, Stacey,... []

STACEY CONROY: Okay. []

SENATOR ASHFORD: ...or John can call her. []

STACEY CONROY: Okay. I can call her. Okay. []

SENATOR ASHFORD: John probably has plenty to do, and so does Stacey, so... []

STACEY CONROY: I've got her number in case any...she's not at the same place anymore so if you want to talk to her please let me know. []

SENATOR ASHFORD: Well, let's find out what she was getting at there. Okay. Where do we go now? []

STACEY CONROY: We've got Byron. []

SENATOR ASHFORD: Byron's here so let's go to that. Let's go to the collection of birthing costs. []

WILLIAM MACKENZIE: And before we do that, Stacey, I just have a question. William Mackenzie again. Is it...maybe you have in your possession a copy of the worksheets

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for the other surrounding states. I think it would be interesting to, since we don't have an economist here, we haven't done the studies that we did four years ago, to compare different income figures for the parents and run them through our guidelines as we have them now, run them through those surrounding states, see how they differ. They may not differ much, in which case I think we'll feel pretty good about things, or they may differ, in which case that might point us in a different direction. I don't know if you have those available, whether you could either e-mail them to us or photocopy them for us. []

STACEY CONROY: I do have them available. []

WILLIAM MACKENZIE: It's my experience, from looking at several states, that our guidelines are much simpler than the other states. We complicated them four years ago by adding another page to a lot of them and whatnot, but nonetheless they're still simpler because, for instance, Kansas has a different support for the age of the child. At younger age the support amount is set lower than if the child is, say, 14 or 15, because they realize that the costs of raising a 14- or 15-year-old is a lot higher than it is for a 4-month-old or a 4-year-old. And that's another issue I think we probably ought to look at, as to whether it's appropriate to deviate from these...from the guidelines that we have now depending on the age of the child. []

BYRON VAN PATTEN: This is Byron Van Patten. Periodically, University of Indiana sends us a survey, sends every state a survey and about five or six scenarios of different family situations and ask us to run those scenarios through our guidelines calculations, send it back to them where they accumulate the data. They don't do it every year, I'm not sure when they last did it, but they...we probably do have that information available as a rough comparison of some states. You know, it's probably two or three years old. []

SENATOR ASHFORD: I think that would be interesting. If you can get it, Byron, it'd be...  
[]

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BYRON VAN PATTEN: Yeah, I think I can. []

SENATOR ASHFORD: Any other questions? Let's go on. Byron, if you can talk about birthing costs. []

BYRON VAN PATTEN: Okay. Yeah. Historically, the department, the county and authorized attorneys, pursued reimbursement for Medicaid birthing expenses in paternity situations here in Nebraska. We've done that for a number of years. In the spring of 2008, federal government started looking at the issue, both here in Nebraska and across the country, and decided that if the birthing expenses were not tied to the child support guidelines, where we did not look at the parents' ability to pay in establishing the (inaudible) for medical reimbursement, it wasn't allowable IV-D activity, which essentially meant in Nebraska we could not establish or we could not ask a county or authorized attorneys to establish any new birthing expense judgments, nor could we enforce any birthing expense judgments entered after 1989. We had historically been collecting roughly \$1.6 million, \$1.7 million towards Medicaid and now a little money trickles in on individuals who decide to pay on their own judgments still out there. It's just that the IV-D agency cannot...or none of its agents can enforce it, receive any federal money to reimburse that. The chart in your packet shows that there are about seven or eight states now that continue to do that. Some states, such as Michigan, have done a...collect, obviously a lot larger than us, collect millions of dollars and that's towards reimbursing Medicaid costs. Kansas, I did a lot of work with the IV-D director at Kansas during this time period, and Wisconsin. Wisconsin has a very complicated formula for doing that. I'm not familiar with the Kansas formula but it took Kansas roughly about a year after probably some time last year to make the necessary changes to their guidelines so they could once again establish birthing...judgments for birthing expenses. I believe Bill could probably speak more to the point of that than I, that sometimes the county attorneys pursued those, sometimes they didn't. It depended. But obviously, you know, some births are \$5,000 to \$10,000 and some are hundreds of

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thousands of dollars that Medicaid is paying. You know, it's fairly low in what we call our distribution protocol, so current child support or spousal support and an ongoing medical support judgment is before that, but ultimately we do get to that and we work collecting, like I said, \$1.7 million a year on that. []

WILLIAM MACKENZIE: William Mackenzie. If Kansas has recently added that to their guidelines, I guess I'd like to see the language they've put into the guidelines. Because, you know, I guess, what is it, copying is a form of flattery, but you know if it worked for them perhaps it would work for us. We wouldn't need to reinvent the wheel. And as Byron said, it is a lower protocol or lower level of priority because child support obviously comes first, spousal support is up there, the medical, and basically what's left is the money that goes to reimbursing the state for medical expenditure that's birth related. But you know, a lot of these people probably can't afford to pay it and the court can address that at the time that the order is entered, say they're already at the poverty guidelines, we're not going to order it. But then again, we have a number of people that are earning \$30,000, \$40,000, \$50,000, \$60,000 a year that can afford to pay it and, really, it is their child and I think it's appropriate that they pay their share of that child's medical expenses, even from birth. []

SENATOR ASHFORD: And that would take a statutory change, correct? I mean... []

WILLIAM MACKENZIE: You think it will take statutory change or just the guidelines? []

SENATOR ASHFORD: Will it take a statutory change or just... []

BYRON VAN PATTEN: I think those guidelines. []

SENATOR ASHFORD: Can you just do it... []

JANICE WALKER: This is Janice. Didn't you say that Kansas did it in their...in their

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guidelines. []

STACEY CONROY: Yes. This is the language that they use. []

SENATOR ASHFORD: What did they say? Can you say it, read it? []

STACEY CONROY: Yeah. If a judgment for birth expenses is awarded, the presumed amount is the parent's proportionate share as reflected in line D-2 of the worksheet. If a parent's proportionate share of the birth expenses is more than 5 percent of the parent's current gross annual income, projected over five years, the parent may request deviation from the presumed amount. []

WILLIAM MACKENZIE: So they're trying to take into account the income of a parent, which I think is something you have to do. You can't... []

BYRON VAN PATTEN: That's what the federal requirement is. []

WILLIAM MACKENZIE: Right. You can't just stick a parent with a \$50,000 judgment if he's working at Burger King because you're never...you're going to spend more money trying to collect it than the money you're going to actually get, unless his hits the lottery or something. []

BYRON VAN PATTEN: And we certainly saw a lot of those. []

PAUL MERRITT: Senator, I'm not sure I understood the reason you can't. I mean this is a judgment already. I mean and this occurs, I suspect, primarily in paternity actions. []

BYRON VAN PATTEN: Almost always in paternity actions. []

PAUL MERRITT: Okay. And...I mean I remember we do child support enforcement on a

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rotating basis in Lancaster County, month to month to month, and I remember signing all kinds of orders where it said judgment is X amount of dollars for birthing expenses. Why do you say you can't collect that? []

BYRON VAN PATTEN: Because the federal government, who provides two-thirds of our money, says we can't. []

PAUL MERRITT: No, I mean why do they...why do they say you can't collect a judgment of the law of the state of Nebraska? []

BYRON VAN PATTEN: Because they believe these judgments have to be done according to guidelines, pursuant to...I believe it's a federal regulation from 1989. We were probably out of compliance in 1989 through 2008. []

PAUL MERRITT: Again, my only concern becomes if we're talking about somehow changing the guidelines, not...I mean if all we need is putting their language in the guidelines, but if we're talking about Kansas says provision for inclusion of child expenses judgment amount in the calculation of child support, that's what it said. Now if it's in the calculation of child support then that means it may have some effect on the tables. I don't know. Or else it goes into the form somehow. And then... []

STACEY CONROY: This looks like this is in their worksheet. []

PAUL MERRITT: If it's in the worksheet... []

WILLIAM MACKENZIE: Is it in the worksheet? []

PAUL MERRITT: If it's in the worksheet, how long is it? I mean eventually they're going to pay it, hopefully, the goal is they're going to pay it off, and so once they pay it off do they have to come back in again to get a modification then? I assume the...once they've

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paid off that debt, if they're getting credit for it, and I presume that's what they get, is credit for it, that's why they say don't take them below a subsistence level, once they've paid that then the person who is receiving child support probably should have received more because they no longer had that debt. What we're doing basically is giving this judgment a priority over any other judgment by including it in the worksheet. Am I seeing that right? []

BYRON VAN PATTEN: That's possible. I'm not familiar with the Kansas process at all. []

PAUL MERRITT: No, I mean but...I mean that's what we would be doing if we were giving a credit in the worksheet. We're just saying here's a judgment that we're going to give the payor credit for because we want he or she to pay this right away. Whether they pay or not, who knows? []

BYRON VAN PATTEN: Uh-huh. []

PAUL MERRITT: And so if they don't pay it, they've got credit for something they're not paying and, therefore, reduced their child support. I don't know. I just...I think that it may be something...when it says it's calculated in child support, we need to see, I agree, we need to see the worksheet and what they've got so we can figure out how they've done that. []

BYRON VAN PATTEN: And there are other states out there that also do it like that. The Wisconsin formula is very complex, so... []

PAUL MERRITT: All these other states that have zero, they're not...they didn't change their guidelines either? []

BYRON VAN PATTEN: I would say it was...prior to the federal interpretation in 2008, it might have been about a 50-50 thing where about 50 percent of the states did not

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pursue judgments for birthing expenses and the other 50 percent did. []

SENATOR ASHFORD: And that's...oh, wait, so there maybe subsequent changes coming. []

BYRON VAN PATTEN: Yeah. This chart is up to date as of about two or three months, states that are currently...pursue it. []

SENATOR ASHFORD: How much does that mean to the...well, we don't know because we don't know how much money is out there but... []

PAUL MERRITT: And the Legislature has not mandated that this happen, right, our Legislature? Okay. []

WILLIAM MACKENZIE: Byron, what are the costs to the state for these births? Do you know what those birth-related expenses amount to per year? []

BYRON VAN PATTEN: Don't quote me, but I think you're talking roughly, for a normal birth, maybe \$10,000. []

WILLIAM MACKENZIE: I mean as a statewide figure. Do you have any... []

BYRON VAN PATTEN: No, I don't. []

WILLIAM MACKENZIE: Okay. []

SENATOR ASHFORD: It's a lot of money. []

SENATOR GAY: It's a lot of money. []



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SENATOR ASHFORD: Yes, Janice. []

JANICE WALKER: This is Janice Walker. I thought about this as Stacey went through the legislation. In 2007-2008, LB554, it says it amended 43-1407 to make the father liable for the reasonable expenses of the child associated with the birth of the child. Is that something different than this? Any expenses paid by a medical assistance program are presumed medically reasonable for purposes of civil proceedings. Is... []

WILLIAM MACKENZIE: It's...William Mackenzie again. From speaking with Byron earlier, it's my understanding that the federal government wanted/needed us to put something actually in the guidelines that addressed this issue as part of figuring out child support, etcetera, or they figured it wasn't a IV-D function. []

BYRON VAN PATTEN: Wasn't a IV-D function that... []

WILLIAM MACKENZIE: Am I quoting right or paraphrasing right? []

BYRON VAN PATTEN: Yeah, somehow or other, you know, someone who's earning minimum wage would not pay as much on it as someone who's earning, as Bill said, \$20,000 a month. []

SENATOR ASHFORD: I get the difference. I mean that statute change is a federal...that bill came to us from HHS. That was a... []

BYRON VAN PATTEN: And it was looking primarily towards those ongoing health insurance,... []

SENATOR ASHFORD: Yeah. []

BYRON VAN PATTEN: ...ongoing medical expenses. []

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SENATOR ASHFORD: This is a little...this is where there's...this would go into the guidelines. That's what you're suggesting other states have done. []

BYRON VAN PATTEN: At least...I don't know for sure if it has to go in the guidelines but it has to be tied somehow or other as a separate worksheet or something where the parent's income is taken in consideration in establishing this judgment. []

SENATOR ASHFORD: But that doesn't obviate...does that obviate the collection of the judgment for the birthing expenses that Judge Merritt is talking about? It's just a different process? What does that do to the judgment that's out there? Does it give priority to that judgment? []

BYRON VAN PATTEN: Any judgments out there currently we are trying to collect on. []

SENATOR ASHFORD: (Inaudible) like to do with it? What should we do with it? Should we look at other examples of what Kansas has done? I don't... []

PAUL MERRITT: I've heard--excuse me, Paul Merritt--two things here. It may not be that we're going...it may not be--we haven't looked at Kansas--that what you're talking about is coming up with something to be paid but rather saying, for example, in determining...let's say the birthing expenses are \$3,500 for the child and rather than saying...let's use \$4,000. It's easier for my math. Rather than saying, okay, for you, father, we're going to have you pay \$2,000 of it and that becomes a judgment against you, rather than doing that it says we've looked at your income and, based upon your income and how much child support you're going to pay and what that does to your sum, so we're going to order you to pay \$1,000. Maybe that's what it's talking about here, is you use...you can show that I have in fact looked at what this person's...available to this person as income after they pay child support and that's going to affect not how you collect it but, rather, how we set the judgment as to the

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amount. []

BYRON VAN PATTEN: Right. []

PAUL MERRITT: Now I don't know if there's a formula they use for that, but at least (inaudible) one of these things that says I have considered the guidelines and determined that appropriate judgment is \$1,000, rather than right now I think what they try to do or used to try to do is split it, have the... []

BYRON VAN PATTEN: That was a normal process. []

PAUL MERRITT: Is have the state pay half, if you will, and have the biological father pay half of it. That's what the judgment used to be. []

BYRON VAN PATTEN: Yes. That was the most common practice. []

PAUL MERRITT: So maybe that's what they're just talking about. Just figure how much income is left to them and then from that figure out what you think is fair. Because they're not saying you have to set a certain amount or have a set formula, just that you have to look to the guidelines in determining the amount. I mean, do the feds have something specific, specific language? []

BYRON VAN PATTEN: No, they do not have specific language. They're not necessarily in favor of these types of judgments. And, however, from state perspective, it's certainly advantageous to have these type of judgments. []

TROY REINERS: Byron, I'm curious. Do the medical judgments still show up on the monthly billing statements. Because isn't it that we cannot generate an income withholding order. Troy Reiners. []

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BYRON VAN PATTEN: We can't use any of the traditional enforcement (inaudible). []

TROY REINERS: Measure, right. They are still being reported on the billing statements that go out. []

BYRON VAN PATTEN: Yes. They'll do a billing but we can't use income withholding, tax intercept, administrative attachment of a bank account, or anything like that. []

JANICE WALKER: And the reason...this is Janice, the reason is because it's not contained in our guidelines. []

BYRON VAN PATTEN: There's no...there's no correlation between the amount of the judgment and the parent's income, not contained within the guidelines. []

JANICE WALKER: Okay. []

SENATOR ASHFORD: And they're, therefore, under federal rules, you can't enforce it in those ways. []

BYRON VAN PATTEN: Can't enforce it. []

JANICE WALKER: Okay. []

SENATOR ASHFORD: Okay. So it's the process of calculating it through the guidelines that allows it to be... []

BYRON VAN PATTEN: (Inaudible) our guidelines (inaudible). []

TROY REINERS: And could that not be a separate, you know, thing to figure that may not impact the actual child support? Because prior to this it wasn't. I mean it was

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basically just an extra judgment that they were paying on. So couldn't we make that a separate thing and just basically build it into the guidelines but not necessarily have an impact? []

SENATOR ASHFORD: The question is whether that's compliant or not, and I don't know. I'd have to defer to Byron. []

BYRON VAN PATTEN: And I'd have to go to the regional office... []

SENATOR ASHFORD: Yeah. So... []

BYRON VAN PATTEN: ...to see what was compliant or not. []

SENATOR ASHFORD: But it is...these are dollars. Yeah, Judge. []

PAUL MERRITT: I would think that...excuse me, Paul Merritt. If I'm understanding Byron right, what we could do is just add a paragraph and not have it saying...have no effect on the calculation of child support, have no effect on the tables themselves, but just say that if it's determined to birthing expenses, the court is to consider the child support worksheet prepared in this case in determining a fair and reasonable assessment of child...of birthing...allocation of birthing expenses, just something probably as simple as that. If that will work,... []

BYRON VAN PATTEN: That might work. []

SENATOR ASHFORD: Yeah. []

PAUL MERRITT: ...we could just do that real easy by just adding that type of a paragraph. []

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SENATOR ASHFORD: Well, it's dollars. Tom, we can do that? []

TROY REINERS: That was...yeah, that's what I thought,... []

PAUL MERRITT: Yeah. []

TROY REINERS: ...just put a separate thing in there. []

SENATOR GAY: We'll check it out. []

SENATOR ASHFORD: Yeah, you want to check? []

SENATOR GAY: Sure. []

SENATOR ASHFORD: Okay. Senator Gay is going to check it out, too, so... []

WILLIAM MACKENZIE: I think...William Mackenzie. I think, if I'm listening or understanding Byron correctly, the feds are not wanting us necessarily to do this. It's a break. []

SENATOR ASHFORD: I get it. []

WILLIAM MACKENZIE: They're putting a break on this saying, states, you can't do it as far as we're concerned, as part of your IV-D program unless you've put it in your guidelines so you can justify it as being part of the child support system. []

SENATOR ASHFORD: Right. []

WILLIAM MACKENZIE: So it's not... []

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SENATOR ASHFORD: We don't want you to go off and do this independently of that. []

WILLIAM MACKENZIE: There are so many things the feds push at us to do. This is one...this is not one of those things. []

BYRON VAN PATTEN: That's correct. []

WILLIAM MACKENZIE: This is kind of the opposite. []

SENATOR GAY: Right. But they are allowing, they are. They're not prohibiting. []

WILLIAM MACKENZIE: They're allowing. []

BYRON VAN PATTEN: Yes, uh-huh. []

SENATOR ASHFORD: Okay. []

SENATOR GAY: Senator Ashford. []

SENATOR ASHFORD: Yes. []

SENATOR GAY: Tim Gay. I think what we will do is, Byron, we'll have our legal counsel check with you and see. Sounds like a waiver is all you need. If you get a waiver or an amendment, you can go seek a waiver, is that what you're saying roughly, to go collect those birthing fees? []

BYRON VAN PATTEN: Yeah. So... []

SENATOR GAY: Okay. So we could check into that, looking for revenue, and then get back with your committee I guess. Would that be what we'd need to do? []

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SENATOR ASHFORD: Okay. Yeah, I think so, yeah. []

SENATOR GAY: All right. []

SENATOR ASHFORD: Time lines, we may...we're going to have some more...a little more discussion, but time lines, we need to...what is this, middle of October, we need to sort of be done by January what? []

STACEY CONROY: Well, we're supposed to do this every four years. []

SENATOR ASHFORD: Well, that part but... (Laugh) []

STACEY CONROY: January 1 would be the...would probably be the technical deadline, though... []

SENATOR ASHFORD: We can go beyond that. []

STACEY CONROY: ...when I talk to Jane Venohr, Dr. Venohr, who did this last time, she does it all over the country, she said they're really only concerned that the process has started in that time. So if we need to go beyond that time...and it's just going to the Supreme Court anyway so... []

JANICE WALKER: Right. []

SENATOR ASHFORD: Well, that's not a "just" but... []

JANICE WALKER: And that's not just. []

STACEY CONROY: (Laugh) No, it's a "just" but... []



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SENATOR ASHFORD: ....that is where it's going. That is where it's going, of course, and... []

JANICE WALKER: Senator, this is Janice. []

SENATOR ASHFORD: Yes, Janice. []

JANICE WALKER: My recollection--Judge Merritt may recall this, as well--last time we did this we had to have it finished by the end of December because Senator Bourne was ending his term and would no longer be Chair of the Judiciary. Is that not correct? []

PAUL MERRITT: That is right. []

JANICE WALKER: That's not...I don't think we are in that problem right now. []

SENATOR ASHFORD: Well, who knows, but. []

JANICE WALKER: Who knows, but... []

SENATOR ASHFORD: You never know, I mean. []

JANICE WALKER: But I think he was actually leaving the Legislature, and so... []

SENATOR ASHFORD: Yeah, he was, and we don't...I think it's unconstitutional to recall a state senator. Is that right, Senator Gay? We could change that of course. []

STACEY CONROY: So if the Supreme Court has a deadline that they want us to adhere to, maybe they could tell us. But we've started the process. We intend to be done by then. []

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SENATOR ASHFORD: I think that's fine. I think if we game towards that and if we can move...we can go beyond that. I'm not sure. There's an awful lot for us to do at this point. I mean we have suggested that the cost of hiring an economist to address these guidelines now is not...maybe we can go without that at this point. And that's sort of the direction that I think we should go, but I...unless there's a sense that we need to do that, I think we've got...and that's my sense. I don't know. Does anybody feel at this point that there's a need to go outside and get at more help? Because that would prolong the process and it would be costly. So with that I think...does anybody have any other issues that we have not raised? Yes, Janice. And then I'm going to ask Stacey--and then we're going to go to comments--but to Stacey to kind of go back over her notes so that we can decide what action steps we're going to take with what we've done. Yes, Janice. []

JANICE WALKER: This is in your yellow packet and it is a memo from me to the Child Support Commission. And I was so late getting this to Stacey that she couldn't send it out in the mailing. But this is something that...several months ago the Supreme Court received a request from an attorney to make a change in the worksheet, and I think there had been some other requests prior to that. When this one was received, the Supreme Court said, you know, the Child Support Commission is going to be looking at the guidelines and we're going to be making changes. Let's just give this to them and they can include it in whatever recommendations they have for us. So that's what this is. And I would put this in the category of the most miniscule change you can ever imagine. It's moving a line in worksheet 5. And we have a proposed new worksheet 5, and if you go to the very last page in this it shows a little calculation of what this means. And I'm really unable to explain. What he's saying... []

SENATOR ASHFORD: Who suggested this? []

WILLIAM MACKENZIE: Ken Schroder. []

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JANICE WALKER: Ken Schroder. That's correct. And he's saying on line 6, under "total obligation," you shouldn't have a line under the mother and you shouldn't have a line under the father. Rather, you should have one in the middle that is a total. Do you understand? []

WILLIAM MACKENZIE: Yes. William Mackenzie. I spoke with Mr. Schroder some months ago about this issue. He asked me if I could make sense of worksheet 5, line 6. And I said I could not, that the line should be in the middle, you know. So he apparently had contacted or indicated that he was going to contact your office about this. []

JANICE WALKER: He did. []

WILLIAM MACKENZIE: I think what it is, is it's a typographical error is what it is, in the worksheet, and it...because the deviation sheet is used primarily if not exclusively by the judges, the attorneys don't deal with it every day, and so I think it took awhile for it to come up. But we did identify it and I think it's simply a typographical error that needs...that we should recommend that change be made. []

JANICE WALKER: Thank you for explaining it. []

SENATOR ASHFORD: Well, that seems pretty clear. Do we have a motion to make that change? []

TROY REINERS: I already put "approved" on mine. []

SENATOR ASHFORD: Oh, okay. Well, then it's done. []

WILLIAM MACKENZIE: I will make the motion that we adopt the change proposed in the correspondence from Janice Walker to the commission. []

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SENATOR ASHFORD: Okay. Any second to that? All those in favor? (Ayes) Opposed, none. Okay. Done. Stacey, would you go over your notes, I mean? And we can mail some summary out, as well, but just generally go over what we're... []

STACEY CONROY: Yes. Well, we talked about the income fluctuation, income averaging issue that came out of the case law. We thought maybe it would be good to note that in our report, if any report goes out, that that's an issue that may need to be addressed in the future, particularly in light of a possible change to how insurance premiums are documented and calculated in one's income. Then we talked a bit about the deviations from the guidelines. That was in one of the cases that you brought up. Now I did include in your yellow packet a case file study. Byron and his people put together the data that came out of JUSTICE on where deviations from the guidelines occur and what they are. I mean that's something that the federal government, the federal regulation wants the state to consider in reviewing the guidelines every four years. So you have that data there. You mentioned that it's maybe a problem getting all of the data reported, so that may be something we want to consider in our recommendations. We also talked about the dental and orthodontic and ophthalmic coverage being specifically stated in the order. We may want to include a definition of health insurance that includes those different kinds of coverage so that it's more clear. []

WILLIAM MACKENZIE: And could I interject just briefly? William Mackenzie. []

STACEY CONRAD: Yes. []

WILLIAM MACKENZIE: Judge, how do you deal with mental health treatment? Is that something you assume is in there with medical? Or is that something that has to be addressed separately and do you think the commission should address that separately? []

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PAUL MERRITT: I presume it's within health insurance itself that they also have coverage for mental health issues. But if we're going to do a definition, then I think we should include it so it's clearer, because those costs can also be significant. For counseling. I mean even for modifications, for example. We see a lot of children that are in counseling because of all kinds of things going on. And if there's insurance available at a reasonable price to either person, they should be paying for that or providing that. And I think we need to make sure that's covered. And I see that often. I see counseling often, but I also see almost as often that it's being paid for by the insurance policy, the health insurance policy that is being provided, almost 80-90 percent of the time. []

SENATOR ASHFORD: Okay. We'll do that. Go ahead, Stacey. []

STACEY CONROY: And we also talked about the worksheets in other states and their tables and if we can do some comparisons by running our numbers through. []

SENATOR ASHFORD: That's a way of checking. I think Bill's point is very well-taken. It would make me feel more comfortable if we did have some way of checking what we're doing, and reviewing the worksheets is a good way to do and using that method. I think that's a great idea. []

STACEY CONROY: And Byron said maybe he had some data that was a little bit older but might serve as a comparison. []

BYRON VAN PATTEN: It would be national. []

SENATOR ASHFORD: I think that would be helpful to circulate that. Yes, sir. []

PAUL MERRITT: Paul Merritt. If we're going to do that--and I think it's a good idea also--then I think we need to do the same thing for before our guidelines changed, for those same states, and figure it out so we can see. You know, if it looks like it's drastic

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now, well, was it just as drastic last time that we looked at it and we decided we weren't going to build a Cadillac, that we were continue to drive forward? []

SENATOR ASHFORD: Yeah, let's take the time to do that. []

STACEY CONROY: Is there maybe...does everybody want to be involved in that or is there a subcommittee (inaudible)? []

SENATOR ASHFORD: Well, why don't we do this. Why don't we...we can have a subcommittee but why don't we gather the information, and you know, Bill, if you would--and Stacey--work on it. And anybody want to chime in? Judge Merritt maybe. And look at it and then we'll figure out the best way to make the check. And then circulate that information to everybody, and then we can, you know, think about it and talk about it next time. Bill and Judge Merritt, is that all right if we just...I don't think it's a big...I mean we'll do the work but if we can... []

PAUL MERRITT: Well if Stacey is going to do the work, I'm willing to sit on the committee. (Laughter) []

SENATOR ASHFORD: Maybe "we" is not the...maybe Stacey is the better way to say it, and Christina. "We" is a little bit of a stretch--but our team. But in any event let's do that and then circulate that information. What else, Stacey? []

STACEY CONROY: I did put in everyone's folder the USDA expenditures on children for...this is the 2009 report. This is what Dr. Venohr recommended that I give to everyone as an economic data piece to our review. So I...there is a page in there--it's table 4--and that's on page 29, and that is the table that addresses the Midwest. So there's some data that's specific to our area. I don't know how to interpret that and compare it to our guidelines. This is based on gross income. Ours is based on net income. []

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SENATOR ASHFORD: Would you take a look at those and then let's give it a look, and then we can report back to Stacey in the next couple weeks and then we can...if there's something that is alerting there, we can... []

CHARLES LAMPHEAR: This is Charles Lamphear. Stacey, do you know whether the general CPI was used by the economist or whether it was a regionalized Consumer Price Index? Or do you have any idea in the guidelines? []

STACEY CONROY: In our guidelines or in this? []

CHARLES LAMPHEAR: In our guidelines. What inflation index was used? []

STACEY CONROY: When it was created in the first place? I don't know but I've got... []

CHARLES LAMPHEAR: Could you ask her or...? []

SENATOR ASHFORD: Yeah. []

STACEY CONROY: We've got a lot of history from her report that she gave four years ago. That's probably in there. So I can probably find out or call her. []

CHARLES LAMPHEAR: My guess is it's a general CPI because there's a bias. There's a downward or an upward bias in all of these guidelines because every...all the deviations are below the guidelines. And so I just wondered if the general CPI was used. Just ask her. []

STACEY CONROY: Okay. []

SENATOR ASHFORD: That's interesting. They are, aren't they. []

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CHARLES LAMPHEAR: And it's a bias. So maybe the guidelines have really got to be looked at. []

SENATOR ASHFORD: What is that? What would you...what is the concern there, generally? []

CHARLES LAMPHEAR: Well, I don't know...I guess if the...what was used, what kind of index, CPI or whatever, was used in the formulation of the guidelines. Because statistical equations underlie the guidelines. That's how they were calculated. And so we need to...I think we need to know what was on the right-hand side of the equation of those regression runs that came up with the guidelines. []

PAUL MERRITT: How can you tell they're all below the guidelines? []

CHARLES LAMPHEAR: Well, just look at the table at the top. []

TROY REINERS: Isn't this just the count of cases that...the count of cases that deviated versus the count of cases that did not? []

CHARLES LAMPHEAR: (Inaudible) cases? []

TROY REINERS: Yeah. []

CHARLES LAMPHEAR: Oh, okay. []

TROY REINERS: I believe. I mean... []

CHARLES LAMPHEAR: Okay, these are cases... []



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PAUL MERRITT: So you can't tell (inaudible). []

TROY REINERS: No, you can't tell where they fell or if they... []

CHARLES LAMPHEAR: Well, it would be interesting to see (inaudible). []

TROY REINERS: ...if they paid above or below are correct. []

PAUL MERRITT: I was going to say, because there are cases where people deviate upwards also (inaudible) distinction here. []

TROY REINERS: Well, this is just the numbers, I think. []

PAUL MERRITT: This just deals with deviations. []

CHARLES LAMPHEAR: It would be interesting to see the deviations, both sides, and see whether there is a bias in the amounts in comparison to the guidelines. []

STACEY CONROY: Is that data that's collected? []

BYRON VAN PATTEN: Not to my knowledge but I can check. []

TROY REINERS: When all the deviations... []

\_\_\_\_\_: (Inaudible) just to look at those deviations. []

BYRON VAN PATTEN: I think it's a simple field of deviation or not deviation. I don't think (inaudible). []

JANICE WALKER: I don't think the amounts are... []

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WILLIAM MACKENZIE: William Mackenzie. And I looked at this data from my county and I would question that. I don't believe it's accurate. It shows that there are more deviations than not. In my experience we handle 20-30 cases a month. We deviate less than 10 percent of the time. It's always for a good reason. Maybe a second family that the parent has. It may be a child's medical needs that may require us to go up a little bit. It may be that the other parent has agreed to cover the health insurance costs of the child because the child has medical needs that make that health insurance especially important to carry. And in return for paying for a Cadillac policy, we're going to cut the child support down because it's in the best interest of the child. I don't believe that the data, out of Sarpy County at least, is accurate. I don't...I'm not saying it isn't but I really question that it is. And again, under the case law--and under the guidelines, I believe now--if a court is to deviate from the guidelines in setting support, it must specifically spell out...well, first of all, it must provide a worksheet that says what the support would be if the guidelines were (inaudible). That's the first thing it has to do. And then it has to either, if it wants to deviate, has to spell out why the deviation is being ordered and why it's in the best interest of the child to do so. So those...it's like a two-pronged test or steps that the trial court must do. If the court can't show that it's in the best interest of the child, then the court can't order a deviation. And then there's the worksheet 5 which we looked at a little bit ago which is the other way the court can address the deviation if it doesn't want to spell it out in the order. So it depends on whether it's a right-brained or a left-brained judge, I guess, which way they want to go. But I'm not really concerned about the deviations because I think under the way the case law is now and the way our trial courts work, they are going to follow the law. I won't say it was always as carefully crafted as it--ten or 15 years ago--as it is now, but I think the courts have made drastic improvements, and they're not just...people are not just able to come in. Well, as I saw ten years ago, the parents agreed although the support should be \$800 a month, they've agreed to \$300 a month because that's really all the mom thinks she needs. That doesn't fly anymore. That may have flown ten years ago but it doesn't fly anymore. So John will correct me if they think I'm wrong or if their experience is different, but

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that's been mine. []

CHARLES LAMPHEAR: But from this--Charles Lamphear--but from this sheet you don't know whether the deviation is, you know, a few pennies or several hundreds of dollars (inaudible) deviation. []

WILLIAM MACKENZIE: Well, it would have to be at least 10 percent to be considered a deviation. []

CHARLES LAMPHEAR: To be a deviation. But other than that, you don't know how...whether it's 20 percent or 30 percent. []

SENATOR ASHFORD: I think...can we try to get together on that? I'd like to...I mean, it's just... []

CHARLES LAMPHEAR: I think we ought to look at it, myself. []

STACEY CONROY: I don't think the data is collected. It sounds like the data is not collected. []

BYRON VAN PATTEN: I don't believe it is. I can double-check that. []

CHARLES LAMPHEAR: Because that would be a good test of whether the guidelines are really working. []

SENATOR ASHFORD: Right. []

WILLIAM MACKENZIE: Well, we have one judge here. Judge, what's your guesstimate as to what percentage of the cases you handle do you allow a deviation? []

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PAUL MERRITT: Well, there's two things. Number one, the parties come in, and as Mr. Mackenzie said, and want to deviate. And if they want to deviate, one of two things has to happen. Well, first they have to testify as to the basis of the deviation. And then I have to agree that they've articulated a basis. And then they have to have in their proposed decree that basis for the deviation, or worksheet 5, to show it. Quite frankly what happens with some cases is they get a worksheet 5 to show what they want the child support to be and they work from the bottom up. I mean, that's how they do it in some cases. And I'm not offended by that if I've, in fact, I've heard an articulated basis for it. But I'm going to say that the number of worksheet 5's that I see, I'd be surprised if it's 20 percent of the cases, because everybody knows the guidelines are the guidelines are the guidelines, and you've got to show a really good reason to deviate from them. And most people don't mess with it. []

SENATOR ASHFORD: When does it become significant, Doctor, I mean, you know? And if that's what you're asking. I mean, it seems...yeah, is it...the guidelines... []

CHARLES LAMPHEAR: Well, look at '06-07: 6,000 followed guidelines, 3,000 deviated. That's 50 percent of the boat. That to me is huge. []

JANICE WALKER: I have doubts about this data. []

BYRON VAN PATTEN: The information is only as good as its input by the clerks. []

JANICE WALKER: I have big doubts about this data. []

SENATOR ASHFORD: Well, wait a second. Where did the data come from? JUSTICE. I thought...well, that's your deal. []

JANICE WALKER: I know. That's why I'm saying I have some concerns about...I mean, these numbers just look... []

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SENATOR ASHFORD: Wrong. []

JANICE WALKER: ...wrong. And... []

SENATOR ASHFORD: Because they are significant, as Charles has suggested. []

JANICE WALKER: And I think...and Stacey, I think we had some conversation with the JUSTICE people about there may not be a good understanding by clerks. []

SENATOR ASHFORD: We need to recheck this because... []

STACEY CONROY: This is accurate for what we have. This is what we have. []

SENATOR ASHFORD: Well, but if the deviation is this significant as Dr. Lamphear said to us, the question is going...if there's no other information that people look at, they're going to say, well, wait a second. I mean, are these guidelines...? What...? Even though I agree that in practice that is not the case, there seems to be...could we check? At least look at JUSTICE? I mean, why is JUSTICE giving us this information if it's not right? []

JANICE WALKER: I'm not saying that JUSTICE is giving it to you wrong. I'm saying it was put in wrong. []

SENATOR ASHFORD: Someone inputted it as a deviation when it really was not a deviation? Okay, I don't want to overly... []

STACEY CONROY: Could be, or it's not indicated what type of deviation it is. []

SENATOR ASHFORD: Okay, but I don't want to overburden us with something that is not significant to our deliberations, but I think it's worth another check because I think

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Dr. Lamphear has brought up an excellent point, so let's think again. []

JANICE WALKER: We'll talk again to the (inaudible) analysts, but... []

PAUL MERRITT: Even if it were correct, the numbers, I don't think it would necessarily mean the guidelines were wrong, because guidelines set the... []

SENATOR ASHFORD: They're just guidelines. []

PAUL MERRITT: They set...well, they're more than just guidelines when you read Supreme Court cases, but they at least set the parameters from where you start. So, if nothing else, they're our starting point, and if there is deviations, so I'm not sure that that means that the guidelines themselves are wrong. []

SENATOR ASHFORD: Right. It would be interesting to see what... []

PAUL MERRITT: It would be interesting to see why they were (inaudible), the basis for the deviations . []

SENATOR ASHFORD: What or what the national trend is. I mean, if this is somewhat of a trend anyway. But let's just investigate it further. And let's do this. I promised everybody we would be out of here at 4:30. Let's try to do that. Let's go to public comments. Do we have public comments at all? Yes, sir. And why don't you come up here and give us your name and...well, I just think we need to explain that. Yes, sir. []

TEDD BISH: I'm Tedd Bish from Giltner, Nebraska. I am a father who pays child support. Troy can check any records that I have, that I've been current as long as I've been divorced. I paid my ex-wife up-front a settlement that I agreed to, and she agreed to stay in close vicinity so we could raise our children together, and she agreed to that. The judge said that she needed to stay in that area. And a year later, she broke the

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decree, she broke the order. I put a restraining order on her. The judge put a restraining order on her. He put a contempt of court on her if she moved or took the child out of school. She went ahead and did this. We came back to court and the judge looked straight at her and said, I could throw you in jail but I'm not going to. I felt like, right there, I felt bad for my kids because I protect my kids. I stand up for my kids and I will do everything possible to protect my kids. At that point the judge proceeded to go on and allow her to move after he put a restraining order on her. She moved to Norfolk, two hours away from where I live. He was kind enough to allow me to continue my visitations with my children. Once a week after school until bedtime I'd get to see them, and then every other weekend and holidays, every other holiday. I have since then have missed maybe five times during the week to go see my kids, taking off of work, taking ten hours out of my day to go spend time with my kids. My children have continually...and the judge also, in the first part of our divorce, he granted us joint physical custody--which was stated that hardly ever happens. She broke the law and he took my joint physical custody away from me. I ask why. I get no answer because you can't ask a judge. He has full latitude of decision making, so I take this. I do what I can as a father. I do what was my responsibility. I pay half medical expenses. I pay half day care. I have never been late. I've paid everything that is owed. My concern is, is that my ex-wife now, after being paid full settlement, I am strapped with a mortgage because I am a farmer. I have to buy my land back that I already owned once and I have to pay for it again. So I have a \$14,000 land payment along with child support, half expenses, and now she thinks she needs to come after me for more child support. I told the judge when I was in his courtroom that if he wanted to be fair, make it fair. Make it an account. Have us both put the same amount of money in the checking account and pull out of there for the kids' expenses. I said I will match anything that she puts in there. He refused to do that. I challenge this committee to make it fairer. Make the person--I'm not going to make it gender--make the parents that are receiving this money accountable for where that money is going. My kids don't need a roof over their head. They had one when they left my house, when they took my kids out of my house. I did this divorce against my will. I did not want this divorce. There was no reason for this divorce. I hate

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the law that we have a no-fault divorce. That is wrong. []

SENATOR ASHFORD: Tedd, thank you. Thanks. Does anyone have any questions of Tedd? I understand what you're saying. We appreciate you coming down and we will take note of what you've told us. Does anyone have any questions? []

WILLIAM MACKENZIE: I just have one question. []

SENATOR ASHFORD: Yes, Bill. []

WILLIAM MACKENZIE: When your ex-wife moved, how far away did she move from where you live? []

TEDD BISH: One hundred and seventeen miles. []

WILLIAM MACKENZIE: Was your child support adjusted at all after that fact? []

TEDD BISH: No. It was kept the same and the judge ordered her to pay all the medical. []

WILLIAM MACKENZIE: Okay, so... []

TEDD BISH: Now they're readjusting it and now they're saying that I'm supposed to pay the medical. []

WILLIAM MACKENZIE: Okay. Thank you. []

SENATOR ASHFORD: Tedd, thank you very much. Appreciate you coming over. Judge Merritt. []



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PAUL MERRITT: It's not a question of the gentleman, but Stacey might get this for our consideration. There is a statute in Nebraska dealing with under what circumstances the court can order an accounting by the custodial parent of the distribution of funds, and it sets forth the criteria. So that may be something that everybody wants to at least look at in consideration of the testimony we just heard. []

SENATOR ASHFORD: Thank you. I think that's an important point and we'll do that. Lori, did you have a comment you'd like to make? []

LORI TWOREK: I did. Lori Tworek here. As I stated in the beginning of this meeting, it's taken 12 years to go after the noncustodial parent child support. There are loopholes. In my situation--again, everybody is different. Each child support case is different. One loophole was the unclaimed property. And I had to go through the omnibus office. The situation was the noncustodial parent had unclaimed property since 2005. When I talked to child support enforcement, they didn't know that it was out there because the Social Security number was not there. His Social Security number was not even attached to this unclaimed property. I had to appeal this on my own to get it. And my caseworker fought this. She goes, no, the noncustodial parent has to appeal it; he can appeal it. I fought her on this and I actually did get the bond money released to child support. That was a loophole because I thought the system, the computer systems talked to each other each--however HHS does that. That was a loophole that the omnibus office looked into. They agreed with me. The other issue that I'm finding is in Douglas County the attorneys that are hired by the state of Nebraska to go after the noncustodial parents, the prosecuting attorneys have told me directly that they can go after the noncustodial parents as misdemeanors only, as Class II misdemeanors. There is a statute in Nebraska, and I didn't bring copies--I apologize. It's 28-706, criminal nonsupport; penalty; exceptions. As a Class IV penalty, "criminal nonsupport is a Class IV felony if it is in violation of any order of any court." The attorneys will not prosecute these noncustodial parents as a Class IV felony. Their hands are tied. They are telling me their hands are tied. And I don't understand why they cannot go after, especially the

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noncustodial parent in my case, when he owes \$49,000, why they will not prosecute him as a Class IV felony, in Douglas County, the biggest county in the state of Nebraska. I don't get that. I don't understand when you have attorneys who are hired by the state of Nebraska, it's a statute on the books. I have never gotten a reason as to why it's gotten to the point that it has in my case. Nobody has said, look, we don't know why it got to \$49,000. He's gotten slapped on the wrist. He's been sentenced twice to six months, the max sentence. He has been early released both times. He's done work release. The first paycheck that he has gotten went to court fees, so I did not see any of it. It went to court fees. The second paycheck went to work release because they said they come first, but yet it's for child support. So my caseworker and I were confused onto that. The third paycheck went to work release and I finally got child support. Towards the end of his sentence he was sick and he no longer worked, so then he was released. My concern is if you have attorneys who are hired by the state of Nebraska, if there is a statute on the books why can they not go after him as a Class IV felon? I don't understand that. []

SENATOR ASHFORD: You know I think you raise two good points and we are going to be meeting again and we'll be in communication, but I think Stacey and I can follow up in Douglas County and find out what's going on. []

LORI TWOREK: Okay, because I've been to Senator Nordquist's office. I don't know if he's able to... []

SENATOR ASHFORD: And he may have done some work on it. []

LORI TWOREK: Yeah. I don't know, but it concerns me when there's loopholes. And suspending driver's licenses don't work. I mean the other issue I brought up with them is, is there up to a point when the amount becomes such a certain amount, can we make it a guideline? Can we make it a law that they go to prison automatically? Because \$49,000 could go to her college fund. He's lied directly to her face. It's gotten

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to a point where 12 years of trying to find this guy... []

SENATOR ASHFORD: Do they know where he is? []

LORI TWOREK: Oh, he's in Nebraska. I've even had her use across state lines to go work. I went to Governor Heineman twice. You know, it's just...it's frustrating. And I understand the noncustodial parents issue, but again each case is different. And I understand the guidelines, but when you look at each case and you look at...like when I first started my case, he made lots of money. I mean he was making tons of money. But then he started to get involved in drugs again, and that plays, you know, another situation in drugs. You know, it's to a point where I learn something new every time I follow up on my case. I learn more than my caseworker does. If I didn't know about this unclaimed property, which surprised me that the computer did not find this--it's been sitting there since '05, that was the loophole--I mean I was shocked. That was money that could have gone to, like, groceries for my daughter. I mean we struggle as it is, and if I didn't have Medicaid I wouldn't have insurance for my daughter. []

SENATOR ASHFORD: I think...yes, Janice. []

JANICE WALKER: Could I just ask a question? That unclaimed property, did I understand from you that it was a bond? []

LORI TWOREK: It was bond money. []

JANICE WALKER: That was in the court. []

LORI TWOREK: It was in the court. Now what the bond money was from I don't know, because any time that there is...any time he gets arrested--and he's been arrested so many times that I lose track--but if there is bond money out there, I go to the caseworker and I say, look, there is bond money. He's been arrested; let's go after the bond money.

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And more than likely it is applied to child support. But what this bond money was from, since 2005, I have no idea. Yeah. []

RON HARRIS: I was going to make a comment. Ron Harris, noncustodial parent. Just so you feel better, my ex-wife moved to Denver, Colorado, with my two boys, and it was tough. You know, I try to drive there or fly there when I can. And I did want to just say that there's \$50 a month for travel expenses taken off my child support, which is something. And obviously, you know, you and I are always looking for what's fair. And it's never going to be exactly fair I've figured out. And accountability is something...you know, as an accountant it would be great to have a joint account that you could pull from and put money into, but that...I mean that's dreamland, a perfect scenario where, you know, you feel like you're working in a system that really works. So just so you feel better, you have a...well, there's one of you up here I guess is what I wanted to say. []

SENATOR ASHFORD: Thanks, Ron. It's helpful. Yes. []

LORI TWOREK: Lori Tworek. I do have one other concern. []

SENATOR ASHFORD: Yes, Lori. []

LORI TWOREK: In regards to the child support enforcement, the one issue that I have is when the noncustodial parent tells the court system that he has a job and he provides the information, my caseworker always tells me that it takes the state six weeks before they can actually go back to the employer to collect the money, if he's working, to get the paycheck. Six weeks. In that six weeks' time, that person may have already quit the job. It's like job hopping. []

SENATOR ASHFORD: I don't know about six weeks but, Bill, do you know about that?  
[]

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WILLIAM MACKENZIE: Well, I understand where that figure comes from. Typically what we'll do is we'll verify employment. It's great to get information over the phone from a parent or something like that, but we'll verify it. And we'll send a verification letter out to that would-be employer asking them to verify that he's there, how many hours he works, what his pay is, where he lives, whether health insurance is available. If so, how much that costs. That kind of information. It may take them a week, two weeks, three weeks, to get that back to us. We can't control how fast they get that back to us. If we can verify that, we will send a notice to withhold out to the employer, and then it's up to them, as to what their pay schedule is, when the next payday is that they will implement the income withholding. So six weeks, that's a ballpark figure. It can...it doesn't have to be that long. It could be two weeks. But six weeks is...they're probably telling you kind of the worst-case scenario, hoping that it will end up better than that. []

LORI TWOREK: Right. []

WILLIAM MACKENZIE: It just takes time to do those steps. []

LORI TWOREK: Yeah. Lori Tworek. That was my concern because he is job-hopper, and two or three weeks he's gone. And I'm like, well, there goes the child support and I'm out of luck, so. []

SENATOR ASHFORD: It's a good discussion and we can...we'll take it up further when we meet again, which Stacey or Christina, can you send out some times? Hopefully we can wrap everything up at the next meeting. And Tedd, thank you for coming, and Judge Merritt raised a good issue, a potential solution, with an accounting. But it doesn't answer all of your issues. Ron made a good point. So let's continue the discussion at the next meeting, probably in December I would guess, and hopefully we can wrap this up. Thank you all very much. []