

2026 South Dakota Legislature

Senate Bill 163**AMENDMENT 163A
FOR THE INTRODUCED BILL**

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

1 **An Act to ~~repeal provisions related to the shared parenting child support cross credit~~**
2 **revise provisions related to child support.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 25-7-6.4 be AMENDED:**

5 **25-7-6.4.** ~~Except as provided in § 25-7-6.26, it~~ It is presumed for the purposes of
6 determination of determining child support that a parent is capable of being employed a
7 minimum of one thousand eight hundred twenty hours per year, and the parent's child
8 support obligation must be calculated at a rate and earning an annual gross income of not
9 less than one thousand eight hundred twenty hours at multiplied by the current state
10 minimum wage.

11 **Section 2. That § 25-7-6.13 be AMENDED:**

12 **25-7-6.13.** All orders for support entered and in effect prior to July 1, ~~2022~~ 2026,
13 may be modified in accordance with this chapter, without requiring a showing of a change
14 in circumstances from the entry of the order. If a parent incarcerated for more than one
15 hundred eighty days is released from incarceration, the child support obligation in effect
16 at the time of release must continue in effect until either parent files a petition for
17 modification.

18 **Section 3. That § 25-7-6.19 be AMENDED:**

19 **25-7-6.19.** Notwithstanding the provisions of § 25-7A-17 or 25-7-7.3, if, by
20 agreement of the parties, or by court order, the obligor had primary physical custody of
21 the child for more than four consecutive months, the court may credit the obligor for child

1 support arrearages ~~which~~ that accumulated during the period the obligor had actual
2 physical custody of the child.

3 **Section 4. That § 25-7-6.26 be AMENDED:**

4 ~~**25-7-6.26.** If a parent in a child support establishment or modification proceeding
5 fails to furnish income or other financial information, the parent is in default. Income not
6 actually earned by a parent may be imputed to the parent pursuant to this section. Except
7 in cases of physical or mental disability or incarceration for one hundred eighty days or
8 more, it is presumed for the purpose of determining child support in an establishment or
9 modification proceeding that a parent is capable of being employed a minimum of one
10 thousand eight hundred twenty hours per year at the state minimum wage, absent
11 evidence to the contrary. Evidence to rebut this presumption may be presented by either
12 parent.~~

13 ~~Income may be imputed to a parent when the parent is unemployed,
14 underemployed, fails to produce sufficient proof of income, has an unknown employment
15 status, or is a full time or part time student, whose education or retraining will result,
16 within a reasonable time, in an economic benefit to the child for whom the support
17 obligation is determined, unless the actual income is greater.~~

18 ~~In all cases where imputed income is appropriate, the amount imputed must be
19 based upon the following:~~

- 20 ~~(1) The parent's residence;~~
21 ~~(2) The parent's recent work and earnings history;~~
22 ~~(3) The parent's occupational, educational, and professional qualifications;~~
23 ~~(4) Existing job opportunities and associated earning levels in the community or
24 the local trade area;~~
25 ~~(5) The parent's age, literacy, health, criminal record, record of seeking work, and
26 other employment barriers;~~
27 ~~(6) The availability of employers willing to hire the parent; and~~
28 ~~(7) Other relevant background factors.~~

29 ~~Income is not imputed to a parent who is physically or mentally disabled to the
30 extent that the parent cannot earn income; who is incarcerated for more than one hundred
31 eighty days; who has made diligent efforts to find and accept suitable work or to return
32 to customary self-employment, to no avail; or when the court makes a finding that other
33 circumstances exist that make the imputation inequitable, in which case the imputed
34 income may only be decreased to the extent required to remove such inequity.~~

1 ~~Imputed income may be in addition to actual income and is not required to reflect~~
2 ~~the same rate of pay as actual income.~~ A court may impute a parent's income for purposes
3 of child support if:

4 (1) The parent does not produce sufficient proof of income;

5 (2) The parent's employment status is unknown;

6 (3) The parent is underemployed; or

7 (4) The parent is unemployed.

8 The income amount imputed may not be less than the current state minimum wage
9 multiplied by one thousand eight hundred twenty hours.

10 To determine the amount of income to impute to the parent, the court may consider
11 any factor relevant to the parent's ability to earn income, including the parent's age,
12 criminal record, education, experience, health, occupational skills, the employment
13 opportunities in the geographical area where the parent resides.

14 The amount of income imputed may be based on the parent's past income data,
15 data on wage rates for various occupations and locations published by the United States
16 Bureau of Labor Statistics or any other federal or state government agency, or job
17 advertisements.

18 No income may be imputed to a parent who has been sentenced to serve a term
19 of incarceration or confinement of more than one hundred eighty days, or to a parent who
20 is physically or mentally disabled to the extent that the parent cannot earn income.

21 **Section 5. That § 25-7-6.27 be AMENDED:**

22 **25-7-6.27.** If a custody order by the court, contains a detailed shared parenting
23 plan, which provides that the child will reside no less than ~~one hundred eighty~~ one hundred
24 twenty nights per calendar year in each parent's home, and that the parents will share
25 the duties and responsibilities of parenting the child and the expenses of the child in
26 proportion to their incomes, the court may, if deemed appropriate under the
27 circumstances, grant a cross credit on the amount of the child support obligation based
28 on the number of nights the child resides with each parent. The shared parenting child
29 support cross credit shall be calculated as follows:

30 (1) ~~Multiply the parents' combined child support obligation under the schedule by 1.5~~
31 ~~to establish the parents' combined shared parenting child support obligation;~~

32 (2) ~~Multiply the parents' combined shared parenting child support obligation under the~~
33 schedule by each parent's percentage share of the parents' combined net incomes
34 to establish each parent's shared parenting child support obligation;

1 ~~(3)~~(2) Multiply each parent's shared parenting child support obligation by the percentage
2 of nights the child resides with each parent based on a three hundred sixty-five
3 day calendar year to establish each parent's prorated shared parenting child
4 support obligation;

5 ~~(4)~~(3) Offset the parents' prorated shared parenting child support obligations; and

6 ~~(5)~~(4) The parent with the larger prorated shared parenting child support obligation shall
7 pay the difference between these amounts.

8 In deciding whether a shared parenting child support cross credit is appropriate,
9 the court shall consider whether it would have a substantial negative effect on the child's
10 standard of living.

11 It is presumed that the parenting time is exercised. If the parenting time exercised
12 substantially deviates from the parenting time ordered, either party may petition the court
13 for a modification of the support order without showing any other change in circumstances.

14 **Section 6. That § 25-7A-6 be AMENDED:**

15 **25-7A-6.** If a parent served with a notice of support debt under § 25-7A-5 makes
16 a timely request for a hearing, the secretary of social services ~~shall~~ must file the notice of
17 support debt, proof of service thereof, and response thereto in the office of the clerk of
18 the circuit court in the county of residence of that parent. The matter ~~shall~~ must be set
19 for hearing before a referee who is a member in good standing of the State Bar Association
20 and is appointed by the court, pursuant to statute, and after due notice to all parties by
21 first class mail.

22 The referee shall make a report to the court, recommending the amount of the
23 debt due to the state, if any, and the monthly support obligation of the parent and the
24 arrearage debt due to the obligee or another state who has applied for support
25 enforcement services, the provision of medical support, or genetic testing costs. If genetic
26 testing showing a ninety-nine percent or higher likelihood of paternity, or a voluntary
27 acknowledgment of paternity, is presented as evidence during the hearing, the referee
28 must make a finding of adjudication of paternity and include the finding in the report to
29 the court.

30 The referee shall file the report with the court and cause copies thereof to be served
31 by mailing to the parties and the secretary. Any party shall have ten days from the date
32 of service of the report in which to file objections to the report. If a party files an objection,
33 the other party ~~shall have~~ has an additional five days from the date of service of the
34 objections to file additional objections. If no objection is filed, the circuit court may

1 thereafter, and without further notice, enter its order. If any objection is filed, the circuit
2 court ~~shall~~ must fix a date for hearing on the report, with the hearing to be solely on the
3 record established before the referee. The circuit court may thereafter adopt the referee's
4 report, or may modify it, or may reject and remand it with instructions or for further
5 hearing. The secretary shall serve the parent the court's order by certified mail, return
6 receipt requested, at the parent's last known address, and shall file proof of service.

7 If the circuit court's order modifies the referee's report and no hearing was held
8 before the court before entry of its order, any party has ten days from the date of service
9 of the order in which to file an objection to that modification. If an objection is filed, the
10 circuit court ~~shall~~ must fix a date for hearing on the objection and after the hearing ~~shall~~
11 must enter its order. The secretary shall serve the order by certified mail, return receipt
12 requested, at the parent's last known address, and shall file proof of service.

13 **Section 7. That § 25-7A-21.1 be AMENDED:**

14 **25-7A-21.1.** In any order establishment case, the custodian is ~~limited~~ not entitled
15 to a prior-period support obligation or arrearage ~~not exceeding three years~~ before either
16 the date of application with any Title IV-D agency, the date of filing with a court of
17 competent jurisdiction, or the date of a written demand served personally or by registered
18 or certified mail, return receipt requested, upon the noncustodial parent at the
19 noncustodial parent's last known address, whichever occurs earlier.

20 **Section 8. That a NEW SECTION be added to chapter 25-7A:**

21 If a party agrees, the referee may send copies of any notice or report required to
22 be served on the party under § 25-7A-6 or 25-7A-22 by electronic mail, using the email
23 address provided by the party.

24 **Section 9. That a NEW SECTION be added to chapter 25-7A:**

25 If a party files an objection to the referee's report pursuant to § 25-7A-6 or 25-7A-
26 22, the referee must file with the court all exhibits entered into the record in the hearing
27 before the referee and all financial and legal documents received by the referee. The
28 referee shall file the exhibits and documents within ten days after receiving notice of the
29 objection. The referee shall maintain the exhibits and documents for thirty days following
30 a signed order.

31 **Section 10. That § 25-8-5 be AMENDED:**

1 **25-8-5.** The custodian may recover support ~~for a period of three years before~~ after
2 the date of application with any Title IV-D agency, the date of filing with a court of
3 competent jurisdiction, or the date of a written demand served personally or by registered
4 or certified mail, return receipt requested, upon the noncustodial parent at the
5 noncustodial parent's last known address, whichever occurs earlier.

AMENDED