

2026 South Dakota Legislature

House Bill 1045**AMENDMENT 1045G
FOR THE HOUSE JUDICIARY ENGROSSED BILL**

1 **An Act to revise certain provisions related to child support.**

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

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

4 **25-7-6.4.** ~~Except as provided in § 25-7-6.26, it~~ It is presumed for the purposes of
5 determination of determining child support that a parent is capable of being employed a
6 ~~minimum of one thousand eight hundred twenty hours per year, and the parent's child~~
7 ~~support obligation must be calculated at a rate~~ and earning an annual gross income of not
8 less than one thousand eight hundred twenty hours ~~at~~ multiplied by the current state
9 minimum wage.

10 **Section 2. That § 25-7-6.10 be AMENDED:**

11 **25-7-6.10.** Deviation from the schedule in § 25-7-6.2 must be considered if raised
12 by either party and made only upon the entry of specific findings based upon any of the
13 following factors:

- 14 (1) The income of a subsequent spouse or contribution of a third party to the income
15 or expenses of that parent but only if the application of the schedule works a
16 financial hardship on either parent;
- 17 (2) Any financial condition of either parent that would make application of the schedule
18 inequitable. If the total amount of the child support obligation, including any
19 adjustments for health insurance and child care costs, exceeds fifty percent of the
20 obligor's monthly net income, it is presumed that the amount of the obligation
21 imposes a financial hardship on the obligor. This presumption may be rebutted
22 based upon other factors set forth in this section;
- 23 (3) Any necessary education or health care special needs of the child;
- 24 (4) The effect of agreements between the parents regarding extra forms of support for
25 the direct benefit of the child;

- 1 (5) The obligation of either parent to provide for subsequent natural children, adopted
 2 children, or stepchildren. However, an existing support order may not be modified
 3 solely for this reason;~~or~~
- 4 (6) The voluntary and unreasonable act of a parent that causes the parent to be
 5 unemployed or underemployed, consistent with the provisions of § 25-7-6.26; or
- 6 ~~(7) The federal income consequences arising from claiming the child as a dependent.~~

7 **Section 3. That § 25-7-6.13 be AMENDED:**

8 **25-7-6.13.** All orders for support entered and in effect prior to July 1, ~~2022~~ 2026,
 9 may be modified in accordance with this chapter, without requiring a showing of a change
 10 in circumstances from the entry of the order. If a parent incarcerated for more than one
 11 hundred eighty days is released from incarceration, the child support obligation in effect
 12 at the time of release must continue in effect until either parent files a petition for
 13 modification.

14 **Section 4. That § 25-7-6.19 be AMENDED:**

15 **25-7-6.19.** Notwithstanding the provisions of § 25-7A-17 or 25-7-7.3, if, by
 16 agreement of the parties, or by court order, the obligor had primary physical custody of
 17 the child for more than four consecutive months, the court may credit the obligor for child
 18 support arrearages ~~which~~ that accumulated during the period the obligor had actual
 19 physical custody of the child.

20 **Section 5. That § 25-7-6.26 be AMENDED:**

21 **25-7-6.26.** ~~If a parent in a child support establishment or modification proceeding~~
 22 ~~fails to furnish income or other financial information, the parent is in default. Income not~~
 23 ~~actually earned by a parent may be imputed to the parent pursuant to this section. Except~~
 24 ~~in cases of physical or mental disability or incarceration for one hundred eighty days or~~
 25 ~~more, it is presumed for the purpose of determining child support in an establishment or~~
 26 ~~modification proceeding that a parent is capable of being employed a minimum of one~~
 27 ~~thousand eight hundred twenty hours per year at the state minimum wage, absent~~
 28 ~~evidence to the contrary. Evidence to rebut this presumption may be presented by either~~
 29 ~~parent.~~

30 ~~Income may be imputed to a parent when the parent is unemployed,~~
 31 ~~underemployed, fails to produce sufficient proof of income, has an unknown employment~~

~~status, or is a full-time or part-time student, whose education or retraining will result, within a reasonable time, in an economic benefit to the child for whom the support obligation is determined, unless the actual income is greater.~~

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

~~(1) The parent's residence;~~

~~(2) The parent's recent work and earnings history;~~

~~(3) The parent's occupational, educational, and professional qualifications;~~

~~(4) Existing job opportunities and associated earning levels in the community or the local trade area;~~

~~(5) The parent's age, literacy, health, criminal record, record of seeking work, and other employment barriers;~~

~~(6) The availability of employers willing to hire the parent; and~~

~~(7) Other relevant background factors.~~

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

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

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

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

(3) The parent is underemployed; or

(4) The parent is unemployed.

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

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

The amount of income imputed may be based on the parent's past income data, data on wage rates for various occupations and locations published by the United States

1 Bureau of Labor Statistics or any other federal or state government agency, or job
2 advertisements.

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

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

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

14 The referee shall make a report to the court, recommending the amount of the
15 debt due to the state, if any, and the monthly support obligation of the parent and the
16 arrearage debt due to the obligee or another state who has applied for support
17 enforcement services, the provision of medical support, or genetic testing costs. If genetic
18 testing showing a ninety-nine percent or higher likelihood of paternity, or a voluntary
19 acknowledgment of paternity, is presented as evidence during the hearing, the referee
20 must make a finding of adjudication of paternity and include the finding in the report to
21 the court.

22 The referee shall file the report with the court and cause copies thereof to be served
23 by mailing to the parties and the secretary. Any party shall have ten days from the date
24 of service of the report in which to file objections to the report. If a party files an objection,
25 the other party ~~shall have~~ has an additional five days from the date of service of the
26 objections to file additional objections. If no objection is filed, the circuit court may
27 thereafter, and without further notice, enter its order. If any objection is filed, the circuit
28 court ~~shall~~ must fix a date for hearing on the report, with the hearing to be solely on the
29 record established before the referee. The circuit court may thereafter adopt the referee's
30 report, or may modify it, or may reject and remand it with instructions or for further
31 hearing. The secretary shall serve the parent the court's order by certified mail, return
32 receipt requested, at the parent's last known address, and shall file proof of service.

33 If the circuit court's order modifies the referee's report and no hearing was held
34 before the court before entry of its order, any party has ten days from the date of service

1 of the order in which to file an objection to that modification. If an objection is filed, the
2 circuit court ~~shall~~ must fix a date for hearing on the objection and after the hearing ~~shall~~
3 must enter its order. The secretary shall serve the order by certified mail, return receipt
4 requested, at the parent's last known address, and shall file proof of service.

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

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

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

10 If a party files an objection to the referee's report pursuant to § 25-7A-6 or 25-7A-
11 22, the referee must file with the court all exhibits entered into the record in the hearing
12 before the referee and all financial and legal documents received by the referee. The
13 referee shall file the exhibits and documents within ten days after receiving notice of the
14 objection. The referee shall maintain the exhibits and documents for thirty days following
15 a signed order.