



2026 South Dakota Legislature
House Bill 1045
ENROLLED

AN ACT

ENTITLED An Act to revise certain provisions related to child support.

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

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

25-7-6.4. It is presumed for the purposes of determining child support that a parent is capable of being employed and earning an annual gross income of not less than one thousand eight hundred twenty hours multiplied by the current state minimum wage.

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

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

- (1) The income of a subsequent spouse or contribution of a third party to the income or expenses of that parent but only if the application of the schedule works a financial hardship on either parent;
- (2) Any financial condition of either parent that would make application of the schedule inequitable. If the total amount of the child support obligation, including any adjustments for health insurance and child care costs, exceeds fifty percent of the obligor's monthly net income, it is presumed that the amount of the obligation imposes a financial hardship on the obligor. This presumption may be rebutted based upon other factors set forth in this section;
- (3) Any necessary education or health care special needs of the child;
- (4) The effect of agreements between the parents regarding extra forms of support for the direct benefit of the child;
- (5) The obligation of either parent to provide for subsequent natural children, adopted children, or stepchildren. However, an existing support order may not be modified solely for this reason;

- (6) The voluntary and unreasonable act of a parent that causes the parent to be unemployed or underemployed, consistent with the provisions of § 25-7-6.26; or
- (7) The federal income consequences arising from claiming the child as a dependent.

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

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

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

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

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

- 25-7-6.26.** 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

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

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

Section 6. That § 25-7A-6 be AMENDED:

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

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

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

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

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

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

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

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

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

An Act to revise certain provisions related to child support.

I certify that the attached Act originated in
the:

House as Bill No. 1045

Received at this Executive Office
this _____ day of _____,
2026 at _____ M.

Chief Clerk of the House

By _____
for the Governor

Speaker of the House

The attached Act is hereby
approved this _____ day of
_____, A.D., 2026

Attest:

Chief Clerk of the House

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

President of the Senate

Attest:

Filed _____, 2026
at _____ o'clock ___ M.

Secretary of the Senate

Secretary of State

House Bill No. 1045
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State