

# LEGISLATIVE RESEARCH REPORT

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## CHILD SUPPORT GUIDELINES IN OTHER STATES

PREPARED FOR SENATOR ALBERT KOOKESH

BY TIM SPENGLER, LEGISLATIVE ANALYST

You were interested in child support guidelines in other states. Specifically, you wanted to know if other states codify their child support guidelines in statute. Additionally, you wanted to know how many states consider the income of *both* parents when deciding child support payment amounts. Briefly, about half of the states have established guidelines in statute, and most (35) states take into consideration both parents' incomes when deciding child support award amounts.<sup>1</sup>

### ***Background on Federal Guidance and Mandates***

Historically, the rationale and methodology behind calculating child support payments developed differently across the country's legal jurisdictions.<sup>2</sup> As a result, divorcing couples and their children were subject to child support award processes that were often amorphous and inconsistent, which often times led to inadequate financial support from the obligor parent (the payer of the support). In the 1930s, recognizing that federal entitlement programs for the impoverished were being burdened by the victims of insufficient support awards, the federal government began providing guidance to the states. Federal involvement through legislation increased over subsequent years, culminating in the Child Support Enforcement Amendments of 1984 (P.L. 98-378), the Family Support Act of 1988 (P.L. 100-485), and subsequent amendments to those laws, which collectively provide the child support mandates under which modern state child support guidelines have been developed.

States comply with federal mandates through the adoption of child support guidelines in statute, regulation, court rule, or some combination of the three. The federal mandates seek to address the problems of earlier child support regimes by accomplishing the following four main goals:

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<sup>1</sup> Much of the background information in this report was taken from a previous report from our agency.

<sup>2</sup> Information in this section is summarized from Laura W. Morgan, "Child Support Guidelines," National Legal Research Group, 1999; accessed through the FindLaw online library at <http://library.findlaw.com/1999/Jan/1/241469.html#consistent>. Ms. Morgan served as the Chair of the Child Support Committee of the Family Law Section of the American Bar Association from 1997 to 2003. She maintains the website "Support Guidelines.com" (<http://www.supportguidelines.com/>), which provides extensive information on child support matters.

- (1) increase the adequacy of child support awards;
- (2) increase the consistency and predictability of child support awards;
- (3) increase compliance through perceived fairness of child support awards; and
- (4) increase the ease of administration of child support cases.

Pursuant to federal regulations, at a minimum, state guidelines must accomplish the following:

- Consider all earnings and income of the absent parent;
- Be based on specific descriptive and numeric criteria and result in the computation of the support obligation;
- Provide for the health care needs of the children, through health insurance coverage or other means; and
- Provide that in any judicial or administrative proceeding for the award of child support, there shall be a rebuttable presumption that the amount of the award, which would result from the application of the state's guideline, is the correct amount of child support to be awarded.<sup>3</sup>

Under federal law, the child support awards resulting from state guidelines enjoy a “rebuttable presumption” of correctness. That is, in order to deviate from the guideline amounts, the party challenging the award must establish that the application of the guideline is somehow unreasonable or unjust to their particular circumstances. Courts also must extensively record and justify deviation from the guidelines.

### ***States with Child Support Guidelines in Statute***

According to the National Conference of State Legislatures, the following 24 states establish their child support guidelines statutorily through their legislatures: California, Colorado, Florida, Georgia, Illinois, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Nevada, New Hampshire, New Mexico, New York, Ohio, Oklahoma, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming.<sup>4</sup> Some of these states also concurrently establish guidelines in regulation (often through a child support commission).

The remaining 26 states (including Alaska) establish their child support guidelines by court rule or agency regulation. These states are Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Jersey, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, and Wisconsin. In Alaska, child support guidelines are provided in the Alaska Court Rules, Rules of Civil Procedure 90.3. We provide, as Attachment A, a table from the National Conference of State Legislatures that details which branch of government establishes child support guidelines in each state. The table includes relevant statutory and court rule citations from all states.

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<sup>3</sup> 45 C.F.R. § 302.56 and 45 C.F.R. § 302.56(f-g).

<sup>4</sup> We corresponded with Rochelle Finzel, children and families program manager, National Conference of State Legislators, at (303) 364-7700. The information NCSL provided on this matter was compiled in 2005, so some changes may have occurred since then.

### ***Thirty-five (35) States Consider the Income of Both Parents in Determining Child Support Payments***

In order to meet both federal requirements and the goal of providing adequate support, states have largely implemented two basic child support calculation models, respectively known as the *income shares* and the *percentage of income*. These models are used for calculating the amount of a child support award to be paid by the obligor parent.

The *income shares* model is used in 35 states and is based on the income of both parents. Alaska, along with 11 other states, employs the *percentage of income* model, which (usually) bases the award only on the non-custodial parent's income.<sup>5</sup> Three states (Delaware, Hawaii, and Montana) use the *Melson Formula* to calculate child support awards. This formula is generally thought to be more complex than the other models.<sup>6</sup>

The ***income shares*** model is based on the concept that a child should receive the same proportion of parental income that he or she would have received if the parents lived together. In an intact household, the income of both parents is generally pooled and spent for the benefit of all household members, including any children. Thus, the *income shares* model **calculates support as the share of each parent's income** estimated to have been allocated to the child if the original household were intact.

Using the *income shares* model, computation of child support is basically a four-step process:

- (1) The income of the parents (gross or net) is determined and added together.<sup>7</sup>
- (2) A "basic child support obligation" is computed based on the combined income of the parents, using a table or grid in the guidelines. The amounts in the table are derived from economic data on household expenditures on children.
- (3) A "presumptive child support obligation" is then computed by adding expenditures for work-related child care expenses and extraordinary medical expenses to the basic child support obligation. Other add-ons and deductions may also be calculated.
- (4) The presumptive child support obligation is prorated between each parent based on his or her proportionate share of total income. The obligor's share is payable as child support, while the obligee's share is retained and presumed to be spent directly on the child.

Distinguishing features of the *income shares* model include the following:

- It embodies the underlying economic assumption that as income increases, the proportion of income spent on child support decreases.
- It illustrates that both parents are sharing in the support of the child, thereby potentially increasing the perception of fairness to both parents.
- Compared to the *percentage of income* model, the *income shares* model can more easily take into consideration adjustments for shared and split custody, health care

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<sup>5</sup> The states that employ the *percentage of income* model are Alaska, Arkansas, Georgia, Illinois, Massachusetts, Minnesota, Mississippi, Nevada, North Dakota, Tennessee, Texas, and Wisconsin.

<sup>6</sup> The Melson Formula was developed by a Delaware Family Court judge; additional information on the formula can be found online at <http://courts.delaware.gov/Help/Support/SupportChapter8.pdf>.

<sup>7</sup> Whether the calculation is based on gross or net income varies among states.

needs, child care expenses, other children (previous or subsequent) needing support, and children's ages by the manipulation of income, add-ons and deductions and then allocating these costs between the parents. Because these factors can be built into the *income shares* formula, there is less reason for deviation from the guidelines' presumptive award. Limiting deviation meets the ideal of perceived fairness, as well as the federal requirement that the number of cases in which deviation is granted be limited. Limited deviation also meets the goals of consistency and predictability.

The ***percentage of income*** model (used in Alaska and 11 other states), stipulates that in *primary custody* arrangements—those in which the custodial parent has physical custody for over 70 percent of the year—**support amounts are based solely on the income of the non-custodial spouse** (obligor) and the number of children involved. In Alaska, and a number of other states, in *shared custody* situations—those in which each parent has custody for at least 30 percent of the year—the calculation includes the income of both parents, with the *percentage of income* model applied separately to each, then adjusted for the time each has physical custody. The parent with the higher calculation in this scenario becomes the obligor.

Proponents of the *percentage of income* model argue that both parents are assumed to contribute to the child's upbringing in the same proportion as the obligor. The custodial parent is making the contribution in the manner he or she would have made had the parties not divorced. Thus, there is no need to adopt a more complex formula. Many have argued, however, that it is inherently unfair for the custodial parent's income not to affect the presumptive amount. Typically, under this model, only a large disparity between the custodial parent's income and the non-custodial parent's income will be viewed as a justifiable factor upon which to base a deviation. Some states, including Alaska, address this concern in part by considering the income of both parents in shared custody situations. Those incomes are multiplied by the percentage of time each parent has physical custody, and, as we noted earlier, the role of obligor is assigned to the parent with the larger calculated amount.

Opponents of the *percentage of income* model also argue that it generally does not directly adjust for child care, extraordinary medical expenses, or whether other children are being supported in the obligor's household. Most states using this model have attempted to address a number of the above concerns by explicitly identifying these issues as factors for courts to consider as exceptions or deviations, or as expenses to be shared equally or reimbursed by one of the parties.

Despite their differences, child support guideline models have certain aspects in common. First, most of the guidelines incorporate a "self-support" reserve for the obligor.<sup>8</sup> Second, all the guidelines have a provision relating to imputed income.<sup>9</sup> Third, by federal regulation, all the guidelines take into consideration the health care expenses for the children, by insurance or other means. Lastly, most guidelines have incorporated into the presumptive child support formula special additions for child care expenses, special formulas for shared custody, split custody, and extraordinary visitation, and special deductions for the support of previous and subsequent children.

We hope you find this information to be useful. Please let us know if you have questions or need additional information.

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<sup>8</sup> A self-support reserve means that the obligor is allowed to retain a certain amount of income below which level, support is minimal. For example, under the Washington state *income shares* model, the formula is not applied for obligors with net earnings of less than \$500 per month.

<sup>9</sup> Imputed income is benefits that accrue even though no money is received. For example, an employee receives imputed income when an employer offers free health insurance and life insurance coverage or the use of a company car.

## **Attachment A**

“Which Branch of Government Establishes Each States’ Child Support Guidelines,” a table including statutory and court rule citations, National Conference of State Legislatures, compiled in 2005


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## Which Branch of Government Establishes Each States' Child Support Guidelines

State and Statute Section	Legislature	Court	Agency	Commission	Comment
Alabama Ala. R.J.A. R. 32		X			The Administrative Director of Courts reviews the guidelines and makes recommendations to the Alabama Supreme Court.
Alaska Ak. Rules of Civ. Pro. Rule 90.3(I)		X			
Arizona Ar. Rev. Stat. §25-320		X			The Chief Justice of the Arizona Supreme Court appoints a committee to review guidelines. The committee makes recommendations to the S.Ct. for approval.
Arkansas Ar. Code Ann. § 9-12-312		X			The Chief Justice of the Arkansas Supreme Court appoints a committee to review guidelines. The committee makes recommendations to the S.Ct. for approval.
California Cal. Fam. Code §4050 et seq.	X				The Legislature statutorily amends the guidelines based on the recommendations of the Judicial Council (§68500).
Colorado Colo. Rev. Stat. Ann. §14-10-115	X			X	The Legislature statutorily amends the guidelines based on the recommendations of a 17 member child support commission.
Connecticut Conn. Gen. Stat §46b-215a-c			X	X	The Legislature created the Commission for Child Support Guidelines; an 11 member commission established to promulgate child support guidelines. Such guidelines are reviewed by the legislative regulation review committee, which is responsible for approving all "agencies" rules and regulations.
Delaware Fam. Ct. Civ. R. 52		X			

Washington, D.C. D.C. Code Ann. § 16-916.2	X			X	The Council of the District of Columbia provides for the guidelines in code amending such based on the recommendations of a 15 member child support guidelines commission.
Florida Fla. Stat. Ann. §61.3	X				
Georgia Ga. Code Ann. §19-6-15	X			X	The General Assembly provides for the guidelines in code amending such based on the recommendations of a commission appointed by the Governor.
Hawaii Hawaii Rev. Stat. 576D-7			X		The Family Court establishes the guidelines in consultation with child support enforcement agency (Attorney General's Office).
Idaho Idaho Code 32- 706A			X		
Illinois 305 ILCS 5/12- 4.20c	X			X	The General Assembly statutorily amends the guidelines based on the recommendations of the Child Support Advisory Committee.
Indiana Ind. Stat. Ann. §33-2.1-10-1 to 9			X	X	The Indiana Supreme Court adopts amendments to the guidelines based on the recommendation of a 12 member child support advisory committee.
Iowa Iowa Code Ann. §598.21			X		
Kansas K.S.A. §20-165			X		
Kentucky Ky. Rev. Stat. Ann. §403.213	X			X	The General Assembly statutorily amends the guidelines based on the recommendation of a 10 member commission.
Louisiana La. Rev. Stat. Ann. §9:315.12	X				
Maine Me. Rev. Stat. Ann. tit. 9 §311 After October 1, 1997 tit. 19-A §2001	X				
Maryland Md. Code Ann., Fam. Law §12- 202(c)	X				The General Assembly provides for the guidelines in code amending such based on the recommendations of the Child Support Enforcement Administration of the Department of Human Resources.

Massachusetts Mass. Gen. Laws Ann. ch. 208 §28		X			
Michigan Mich. Comp. Laws §552.519. Sec. 19(1) & (3)(a)(vi)		X			Michigan law creates a friend of the court bureau within the state court administrative office, under the supervision and direction of the supreme court. Such bureau is responsible for establishing and reviewing the child support guidelines.
Minnesota Minn. Stat. Ann. §518.551	X				The Legislature statutorily amend the guidelines based on the recommendation of the department of human services.
Mississippi Miss. Code Ann. §43-19-101 (5)	X				The Legislature statutorily amend the guidelines based on the recommendation of the department of human services.
Missouri Mo. Stat. Ann. §452.340(7)		X			
Montana Mont. Code Ann. §40-5-209			X		
Nebraska Neb. Rev. Stat. §42-364.16		X			
Nevada Nev. Rev. Stat. §125B.070	X				The Legislature statutorily amends the guidelines based on the recommendations of the State Bar of Nevada.
New Hampshire N.H. Rev. Stat. Ann. § 458-C: 6	X				The Legislature statutorily amends the guidelines based on the recommendations of the division of human services, department of health and human services.
New Jersey N.J. Stat. Ann. §2A: 17-56.25 Admin. R. 5:6A			X		
New Mexico	X			X	The Legislature statutorily amends the guidelines based on the recommendations of "an appropriate executive or legislative commission or executive department."
New York N.Y. Soc. Serv. Law §111b(10)	X				The Legislature statutorily amends the guidelines based on the recommendations of the Department of Social Services.
North Carolina N.C. Gen. Stat. §15-13.4(c1)		X			The Conference of Chief District Judges is required to establish the guidelines. In addition, the conference must get specific input prior to amending and must report its findings to the General Assembly.
North Dakota			X		

N.D. Code Ann. §14-09-09.7					
Ohio Ohio Rev. Code Ann. §3113.21.5(G)	X			X	The General Assembly provides for the guidelines in code amending such based on the recommendations of the department of human services. The department, in turn, is required to establish a child support guideline advisory commission to assist the department in completing the review.
Oklahoma Okla. Stat. Ann. §119.1	X				The Legislature statutorily amends the guidelines based on the recommendations of the Judiciary Committees of the Senate and the House of Representatives.
Oregon Or. Rev. Stat. §25.270			X		
Pennsylvania Pa. Con. Stat. Ann. §1910.16- 1 (Rules of Civic Procedure)		X			
Rhode Island R.I. Gen. Laws §15-5-16.2		X			The family court is responsible for establishing guidelines by an administrative order.
South Carolina S.C. Code of Laws §20-7- 852(D)			X		
South Dakota S.D. Codified Laws Ann. §25- 7-6.12	X				The Legislature statutorily amends the guidelines based on the recommendations of the department of social services. (In the year 2000, the Governor is responsible for establishing a commission to review the guidelines and report its recommended changes to the Legislature.
Tennessee Tenn. Code Ann. §36-5-101 (2) & (3)		X	X		Guidelines were originally established by the department of children's services. However, the Tenn. Supreme Court is permitted to modify the guidelines. If the court fails to review the guidelines, then the agency is required to review and make recommendations to the court.
Texas Tex. Fam. Code Ann. §111.001	X			X	The Legislature statutorily amends the guidelines based on the recommendations of a 25 member or more advisory committee appointed by the Texas Supreme Court.
Utah Utah Code Ann. §78-45-7.13	X			X	The Legislature statutorily amends the guidelines based on the recommendations of an 11 member advisory committee appointed by the Governor. [Committee reports to the Legislative Judiciary Interim Committee.]

Vermont Vt. Stat. Ann. tit.15 §654			X		
Virginia Va. Code Ann. §20-108.2 (H)	X			X	The General Assembly provides for the guidelines in code amending such based on the recommendations of a panel of representatives organized by the Secretary of Health and Human Services.
Washington Wash. Rev. Code Ann. §26.19.025	X				
West Virginia W. Va. Code §48A-1B-1	X				
Wisconsin Wis. Stat. Ann. §49.22(9)			X		
Wyoming Wyo. Stat. Ann. §20-6-305	X				The Legislature statutorily amends the guidelines based on the recommendations of the department of family services.

**Denver Office**

Tel: 303-364-7700 | Fax: 303-364-7800 | 7700 East First Place | Denver, CO 80230

**Washington Office**

Tel: 202-624-5400 | Fax: 202-737-1069 | 444 North Capitol Street, N.W., Suite 515 | Washington, D.C. 20001

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