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Report of the
Judiciary Committee on Child Support Guidelines

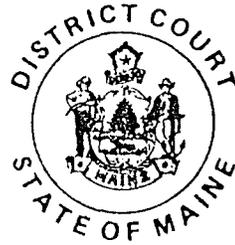
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RECOMMENDATIONS ON ADOPTION OF CHILD SUPPORT GUIDELINES

September 1988

Harriet P. Henry, Chair
Margaret J. Kravchuk
Dana A. Cleaves

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September 27, 1988

Box 1354
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Hon. Joseph C. Brannigan
Senate Chair, Judiciary Committee
State House Station 3
Augusta, ME 04333

Hon. Patrick E. Paradis
House Chair, Judiciary Committee
State House Station 2
Augusta, ME 04333

Through

Chief Justice Vincent L. McKusick
Chief Judge Bernard M. Devine

Dear Senator Brannigan and Representative Paradis:

In 1987, the Judiciary Committee asked Chief Justice Vincent L. McKusick for input from the Judicial Department with respect to L.D. 1332, "An Act Concerning Child Support Payments and the Method Used by the Courts in Setting Payments". A Child Support Guidelines Committee was created for that purpose. The attached report and suggested legislation is the result of that Committee's research and deliberations.

In reaching these conclusions, the Committee evaluated suggestions made at meetings of the Supreme Judicial Court, the Superior Court, the District Court, the Administrative Court, and the Judicial Department's Mediation Service. The Committee also met with representatives of the Maine Department of Human Service, the Maine Attorney General's office, the Family Law Section of the Maine bar Association, and with the principal author of the bill, attorney Roderick Potter.

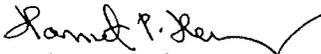
The Committee analyzed statutory provisions from various states that represented different prototypes of Child Support Guidelines. In addition, individual members of the Committee discussed the pros and cons of different types of guidelines with national experts in the field. The Committee preliminarily

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concluded that the Vermont statutory scheme was the most appropriate for Maine. To learn more about the Vermont experience in the use of its guidelines, the entire Committee met with the Chief Administrative Judge of the General Jurisdiction Trial Court, the Honorable Stephen E. Martin, along with representatives of the Vermont Department of Human Services and the Attorney General's office. The preliminary conclusion was reinforced. The proposed legislation draws heavily from the Vermont Child Support Guidelines statute.

We were pleased to have had an opportunity to comment on Child Support Guidelines in general and L.D. 1332 in particular. If we can be of any more assistance to the Judiciary Committee, we would be available at your convenience.

Sincerely,


Maine Child Support
Guidelines Committee:
Harriet P. Henry, Chair
Margaret Kravchuk
Dana Cleaves

cc: Members of Judiciary Committee
Hon. Robert Clifford
Hon. Morton Brody
Hon. Edward Rogers
Hon. Stephen E. Martin
Roderick Potter, Esq.
Colburn Jackson
Donald Gannon
William Hewitt
Tom Henderson

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I RECOMMENDATIONS

The following recommendations are submitted by the Maine Judiciary Child Support Guidelines Committee after extensive research and consultation with all three levels of court, representatives of the Maine Department of Human Services, the State Mediation Service, members of the Maine State Bar Association, including members of the Family Law Section, persons involved in drawing up child support guidelines in other jurisdictions, and various technical support personnel and organizations throughout the United States.

A discussion of the various options available to policy makers in drawing up guidelines and rationale for the Committee's preference are outlined in the body of this report.

A draft of suggested legislation to implement these recommendations is included at the end of this report. The draft proposal is modeled after the Vermont Child Support Guidelines statute, 15 V.S.P. Sections 653 -663, with modifications to reflect conditions peculiar to Maine.

1. The Maine Legislature should enact Legislation adopting a guideline approach to the establishment of child support obligations. The Maine Department of Human Services should be charged with drawing up the actual support schedules to be utilized in the guidelines and monitor the continuing statistical validity of such figures. The actual figures used in any schedule prepared by the Department should reflect policy decisions made by the Legislature. The initial implementation of and any modification there after of such schedule should be after public hearings and in conformance with the Administrative Procedures Act.

2. The schedules so promulgated shall be presumed as a matter of law to represent the needs of minor children in administrative actions of the Department of Human Services in setting child support obligations for the non custodial parent. Deviation from such schedules shall be in accordance with Departmental regulations or after modification by a court. Judges shall give these guidelines presumptive weight in initially establishing child support orders, reviewing support level awards previously established by the Department of Human Services, and in modifying child support awards.

3. The income shares model, based on gross income, should be adopted in drawing up the support schedules.

4. Gross income shall be as defined by statute. Imputed income of unemployed or underemployed parents and the amount of income attributable to passive assets shall be considered in court imposed support orders.

5. Direct child care expenses attributable to employment shall be pro rated in proportion to the parent's income.

6. Income may be imputed to the parent providing primary residential care when all minor children have reached an age determined by the Legislature.

7. The schedule shall reflect the fact that the minor children spend 70% of the time with the parent providing primary residential care.

8. Deviation from the 70/30 assumption and shared parental rights that exceed more than the 70/30 ratio cannot be definitively established by the guidelines.

9. Obligators whose annual income falls below \$6,000 shall not be responsible for more than 10% of their gross income for child support in a child support award.

10. The guidelines do not apply to parties whose combined income exceeds \$120,000 a year.

11. The incremental cost for a medical and health insurance policy for minor children shall be deducted from the gross income of the obligor. After a \$150 disregard of ordinary medical expenses per year, the remaining costs not covered by insurance shall be paid in accordance with the proportional income of the parties.

12. The child support schedule shall contain one age category for minor children in establishing a support award.

13. In considering the guideline, judges shall take into account the following considerations:

- a. The total support obligation established under the guidelines for child support, and its inter-relation with the division of property and spousal support;
- b. The financial resources of the child.
- c. The financial resources and needs of the parent providing primary residential care;
- d. The standard of living the child would have enjoyed had the marital relationship not been discontinued;
- e. The physical and emotional condition of the child;
- f. The educational needs of the child;
- g. The financial resources and needs of the parent not providing primary residential care;
- h. Inflation with relation to the cost of living;
- i. Income of the domestic associate or present spouse of each parent;
- j. The existence of other persons actually financially dependent upon each parent.

14. Parties shall fill out an affidavit of assets and a child support calculation form to be submitted to the court in advance of any hearing on initial child support or a modification of a child support order. The parties shall perform the initial calculations for child support prior to hearing. A party shall be allowed to argue why the level of support so calculated should be higher or lower.

15. Spousal maintenance may be awarded where there is a great discrepancy in the income of the respective parents if the discrepancy would result in a lower standard of living for the minor children, or for other good cause shown.

16. Support awards should be revised periodically. Recommendations with respect to the mechanism for revision are reserved for further study.

Public hearings and the widest possible dissemination of proposed guidelines should be made available to member of the public and the bar before implementation of such guidelines.

II REPORT OF THE CHILD SUPPORT GUIDELINES COMMITTEE

1. Creation of Child Support Guidelines Committee:

The Maine Judiciary Child Support Guidelines Committee was created June 1987 in response to a request to Chief Justice Vincent L. McKusick by the Hon. Joseph C. Brannigan and the Hon. Patrick E. Paradis, Senate and House Chairmen of the Maine Judiciary Committee of the 113th Legislature, to review and comment on L.D. 1332, "An Act Concerning Child Support Payments and the Method Used by the Courts in Setting Payments." The Judiciary Committee was particularly interested in having the benefit of judicial experience and knowledge with respect to the multitude of issues raised by the bill and the effect this bill would have on the Judiciary. Acting on behalf of Chief Justice McKusick, Chief Judge of the District Court, Bernard M. Devine, appointed District Court Judge Harriet P. Henry, Chair, and District Court Judge, Margaret J. Kravchuk, and Administrative Court Judge, Dana A. Cleaves, members of the Child Support Guidelines Committee.

2. History of Child Support Guidelines :

Undoubtedly well ahead of most jurisdictions in the nation, the Maine Department of Human Services established guidelines in 1979 for Departmental use to establish support levels to assess the non custodial parent of children receiving Aid to Dependent Children. These guidelines, to the extent that the courts were aware of their existence, were either forgotten or ignored. A pioneer in the field, the Family Court of Delaware by judicial order established the use of child support guidelines in 1979. With the exception of California and Delaware, in that era the use of guidelines was the exception rather than the rule.

The use of Child Support Guidelines in the administration of welfare grants was mandated by Congress in 1984 simultaneously with the requirement that child support cases be given expedited hearings. The interrelationship of support guidelines and expedited judicial process was implicitly recognized in the Child Support Amendments of 1984 (P.L. 98-378) wherein States were required by October 1, 1986 to develop suggested guidelines for judges and other officials who determine support awards. This mandate was coupled with the requirement to provide, by October 1, 1985, expedited judicial or administrative procedures for hearing child support cases.

Discretion was left to the individual states as to what type of guidelines a state wished to adopt and whether such guidelines should be promulgated by the legislative, executive, or judicial branch of government. Technical assistance was made available to the states under a grant from the the Office of Child Support Enforcement, U.S. Department of Health and Human Services under contract to the National Center for State Courts. The National Center, in turn, engaged Robert D. Williams, Policy Studies, Inc., Denver, Colorado who served as the principal investigator in a major research project. The results of this study are contained in Robert G. Williams, Development Guidelines for Child Support Orders: Final Report, U.S. Department of Health and Human Services, Office of Child Support Enforcement, March 1987. (Hereinafter referred to as Williams Report.)

The Maine Department of Human Services drew from information contained in the 1985 Interim Report of Robert Williams in drawing up the guidelines adopted by the Department in the fall of 1986. These guidelines were not binding on the judiciary but the judiciary became aware of their existence by virtue of the statutory requirement that the State must be advised of child support litigation if the custodial parent has or will receive State Assistance. (19 M.R.S.A. 776 Sec. 3)

Members of the Maine Judiciary initially considered the ramifications of Child Support Guidelines in 1986. An informal committee comprised of Superior Court Judge William Brodrick and District Court Judge Harriet Henry met with William Hewitt, a Staff member of the New England Regional Office of the National Center for State Courts, in the fall of 1986. (This technical assistance was provided to Maine at no charge from the National Center for State Courts). Mr. Hewitt explained the philosophy and mechanism of child support guidelines and walked those present through the guidelines of several jurisdictions such as Colorado, New Jersey, Delaware, Wisconsin, and Washington. Mr. Hewitt was particularly well qualified to address the group inasmuch as he was the architect of the Washington State Guidelines and has been assisting other states in drawing up their guidelines.

Child Support Guidelines were an agenda item at a meeting of the District and Administrative Courts during the September Judicial Conference in September 1986. At that meeting copies of several types of guidelines were distributed to the judges as well as selected critiques of different child support guidelines in general and Robert Williams's work in particular. The enthusiasm of the judges for support guidelines at that time could only be described as restrained. Some judges did experiment with the guidelines in their own courts thereafter.

After its creation in June of 1987, the Maine Judiciary Child Support Guidelines Committee reconsidered information previously available and did an in depth examination of this material and other information on the subject. The Committee met with Attorney Roderick Potter, the moving force behind L.D. 1332. The Committee tentatively decided that it would ask every trial judge to use child support guidelines in ten contested support cases from September 1987 to January 1988 so that each judge might have a better understanding of the pluses and minuses of the child support guidelines and report back to the Committee as to whether guidelines were useful, how often did a judge deviate from the suggested schedule, and what were the reasons for deviation. The basic provisions of LD 1332 with slight modifications were used in the test. The results of this experiment were discussed at the January and April 1988 meetings of the District and Administrative Court Judges. The comments of the judges and comments from attendees at a panel on Child Support Guidelines, held in connection with a recent MBA Family Law program, have been taken into consideration in the Committee's recommendations.

The entire Committee met with the Administrative Judge of the Vermont Superior Court, Stephen E. Martin, and members of the Vermont Department of Social Welfare and the Attorney Generals Office, Larry Winship and Jeff Cohen. In Maine the Committee had a very productive meeting with Colburn Jackson and

Donald Gannon of the Child Support Enforcement Division of the Maine Department of Human Services, and Assistant Attorney-General, Brian McNally. A meeting was also held with representatives of the Court Mediation Service to learn of their experience with child support guidelines. The mediators have been using Maine Department of Human Services' 1986 Guidelines as a starting point in mediation negotiations. In addition, each member of the Judiciary Child Support Guidelines Committee has individually and extensively contacted persons involved in guidelines throughout the United States and has attended various conferences and symposiums of national scope with respect to this subject matter. The observations and recommendations contained herein reflect the input enumerated above.

3. Why Guidelines?

The rationale for guidelines, other than the Congressional mandate for their use by AFDC Grantors are: (1) assuring an adequate support level for minor children, (2) instituting a predictability and consistency of child support awards for persons in similar circumstances, (3) speeding up the judicial process, and (4) eliminating a lot of lying on projected and actual expense testimony.

Experiences reported by the mediators in Maine have been that awards under the guidelines tend to be higher than when left to the sole discretion of the judge. The mediators further felt that the guidelines were usually considered maximums rather than minimums, and there was a tendency to negotiate the suggested level down rather than up in mediation sessions. On a national basis, experience has indicated that support awards are higher under the guidelines than awarded under the sole discretion of a judge. This tendency has not been as marked in Maine.

4. Guidelines as Infringement on a Judge's Discretion.

The use of guidelines has been attacked as an infringement on the discretionary powers of a judge. To this argument, a judge from the Probate and Family Court Department in Massachusetts responded.

Do federally mandated guidelines mean a \$7 calculator can be substituted for a judge? Hardly.

Every state and the District of Columbia have put child support guidelines into place, recognizing the serious shortcomings in the traditional manner in which courts establish support orders.

But the *judge* is still the ultimate determiner of what is fair. Whether the guidelines established in a single jurisdiction are presumptive or only advisory, the discretion of the court is preserved. (Hon. Edward M. Ginsburg, Family Advocate, Vol 10, No.4, Spring 1988)

5. How Guidelines are Established:

The federal mandate does not dictate which branch of government should establish guidelines. In most states that have adopted guidelines in the last several

years an interdisciplinary, inter-departmental Child Support Guidelines Committee or Commission, well represented by members of the public and the bar, has been established by either the Legislature, the Governor, or the Judicial Department. The Committee is usually staffed and public hearings are held initially and to review the final recommendations.

In Maine, the Department of Human Services unilaterally established guidelines modeled after the William's income shares model. (See infra.) The actual implementation of the support schedules were promulgated in accordance with the Administrative Procedures Act. While the Judiciary Child Support Guidelines Committee is composed of only three judges, it has been an out reach committee that has taken into consideration the opinions of the members of the Maine judiciary and many other constituencies.

6. Description of Child Support Guidelines Models.

The decision to adopt child support guidelines is the beginning rather than the end of the process of establishing such guidelines. There are several basic models to choose from and infinite possibility of variations within a particular model. A description of several different models are briefly described below.

A. Cost Share Model:* An example of the Cost Share model is the guidelines adopted by the Oregon Supreme Court in Smith v. Smith, 626 P. 2d 342 (1981). In cost share models, the needs of the children are specified first, based on a minimum standard of living or based on a review of actual household expenditures. The dollar amount so determined is apportioned between the parents usually based on their respective incomes.

The Oregon Supreme Court indicated that determination of need is made in the context of not merely preventing the child from becoming a public charge. "Thus we have considered, at least as far as practical 'Comforts and luxuries of life' that the child would have enjoyed had it not been for the dissolution."

In Oregon, once the mathematical calculation is completed, the ultimate award is tempered based on judicial consideration of the particular circumstances of the parties, including six enunciated factors:

- (1) Interrelation of child support with the division of property and spousal support;
- (2) Indirect forms of child support, including payments for medical care, life insurance in the child's name on the parents life, a trust for the child's education, insurance for hospital, medical, or dental expenses, and so forth.
- (3) The income of the domestic associate or present spouse of each parent;
- (4) The amount of assets of parent, including the amount of equity in real or personal property;
- (5) The existence of and support obligations to other dependents of each parent;
and

(6) The special hardships of each parent.

* 36 *Juvenile and Family Court Journal*, Vol 3, No. 3 (Fall 1985) p. 33-4;
Robert Williams, *Development of Guidelines for Child Support Orders*, U.S. Department of Health
and Human Services, Office of Child Support Enforcement, March 1988, p.11-65.

B. The Income Shares Model.**

The income shares model is based on the concept that the child should receive the same proportion of parental income he or she would have received if the parents lived together, therefore, implicitly allowing the child to benefit to a degree from the standard of living which the two parents would have enjoyed had the household remained intact. The needs of a child are identified pursuant to a published schedule of the percentage of income that parents in different income groups spend on their children. This percentage is multiplied by the combined income of the parties. The amount each parent is responsible for is pro-rated between the parents in proportion to their respective incomes.

There are many variations in the Income Share Model such as what data is used to draw up the basic schedule, whether the schedule is based on gross or net income, number of age groups included on the schedule, establishment of a poverty self reserve, how medical expenses and cost of insurance are factored in, how child care expenses are treated.

** 36 *Juvenile and Family Court Journal*, Vol 3, No. 3, p. 35; *Development of Guidelines for Child Support*, Robert G. Williams, U.S. Department of Health and Human Services, Office of Child Support Enforcement, March 1988.

C. The Wisconsin Model (Percentage of Gross Income Standard)***

Child support orders are based on the gross income of the obligor and the number of children to be supported. The applicable percentages are 17% for one child, 25 % for two children, and 29% for three, 31% for four, and 34% for five or more. The payment obligation is not adjusted for the income of the custodial parent.

There are significant advantages to such a simple approach. It is easy to use and requires a minimum of discovery, thus reducing court costs and encouraging settlements. Furthermore, as a presumptive standard, no findings are required by the court to support its use. Its disadvantage is that it does not specifically address the issue of child care costs, remarriage, second family, and shared physical custody

Although adopted in 1983, Wisconsin has left in place an alternate mechanism for establishing child support orders. These are the guidelines previously developed by the Department of Health and Human Service which are based on the Delaware Child Support Formula. These guidelines allow the Court to review and consider a broader range of factors and thus resolve the unusual or more complicated cases.

D. The Melson Formula (Delaware)****

The basic principles underlying the Melson formula are summarized as follows:

1. Parents are entitled to keep sufficient income to meet their most basic needs in order to encourage continued employment.
2. Until the basic needs of the children are met, parents should not be permitted to retain any more income than required to provide the bare necessities for their own self support.
3. Where income is sufficient to cover the basic needs of the parents, all dependent children are entitled to share in any additional income so they can benefit from the absent parent's higher standard of living.

The Melson formula incorporates both the cost sharing and the income sharing theories. Reduced to bare bones, the formula further determines the net income of both parents based on their gross income minus mandatory deductions, certain limited business expenses and benefits such as medical and health which redound to the immediate benefit of the children. The formula allows for the imputation of income to a parent if that parent is failing to realize his or her earning potential. That imputation is done by one of three methods: (1) an attribution of up to 50 % of the income of a parent, spouse, or co-habitator; (2) the established earning potential of the parent; (3) or the parent's value as a homemaker.

The Melson formula establishes the primary support needs of the children and allocates to each parent a share of this need based on their proportion of net income available for support after subtracting their self-support allowance. Encompassed in the children's primary support need is again a fixed minimum sum established by the guidelines plus child care costs incurred by a working custodial parent and any extraordinary medical expenses for the child. If the parents have a net income available after meeting their primary support obligations to all dependents -- including that owed to a current family--then the Court awards additional support under the concept known as standard of living adjustment (SOLA) . The rationale for the standard of living adjustment is the mandate under Delaware law that the court consider among other things, " ...the manner of living to which the parties have been accustomed while they were living under the same roof."

The completeness of the formula allows its application not only in situations where one parent has sole custody of all children, but also where there is a split physical custody, with each parent having one or more of the children, or shared custody arrangements where one child resides with a parent on a rotating basis. Furthermore, the formula provides a specific quantitative method for bringing second families into the calculations.

The primary disadvantage of the Melson formula is the direct result of its completeness. Because it takes into consideration so many factors, it requires more

evidence than those guidelines that consider only one obligator's income and the

number of children. Finally to ensure fairness and updating support orders, the formula requires re-calculation based on changing circumstances, rather than any use of an escalator clause.

*** 36 *Juvenile and Family Court Journal*, p. 35

E. The Cassetty Formula (Texas)

The Cassetty Formula envisions an income equalization approach designed to " ...ensure that the children of divorced parents will suffer the least economic hardship possible and will continue to enjoy a standard of living which is as close as possible to that which they enjoyed prior to the divorce. " To date, this formula has been used only in Texas.

The Cassetty Formula subtracts from each parent's income the poverty level standard of the number of persons in each household. The difference is labeled surplus. The surplus income of the custodial parent is subtracted from that of the non custodial parent and divided by the total number of persons involved (parents and children) to determine the per person share for the surplus income. Child support is then ordered by multiplying the per person share by the number of people in the custodial parent's household, including the parent.

The difficulty in the formula is that the custodial parent also receives a share in order to equalize the standard of living between the two households. This is a problem inasmuch as Texas does not allow court ordered alimony and requires the segregation of child support from any support order awarded to a spouse.

In addition to raising the specter of alimony, the equalization procedure may carry through even when one or both parties are remarried. In such cases the income of the new spouse may be included together with the poverty level exclusion for the needs of the spouse and children of the new union before the "surplus" and the number of shares to be awarded to the custodial parent's household. Continuing this adjustment process as legal strangers are brought into the picture may result in the shifting of the child support obligation from both natural parents to the custodial parent and step- parent. Such a shift may be unacceptable under most state laws where, at best, step-parents have only a secondary legal obligation.

****36 *Juvenile and Family Court Journal*, p. 37

F. The Massachusetts Model*****

The Massachusetts Model is a variation of the Income Shares Model, with one dramatic provision not found in any other child support guideline formula. The guidelines take into consideration the fact that to maintain a domicile and reasonable standard of living for the minor children, the custodial parent would choose to work. In those cases a disregard of gross income of the custodial parent is

to be applied up to a maximum of \$15,000. After the income of the custodial parent exceeds the \$15,000 disregard and after consideration of day care expenses, the support order is reduced by the percentage that excess represents in relation to the combined incomes of both parents minus the \$15,000 disregard.

*****Family Advocate Vol. 10, No.4, (Spring 1988) p. 9

III FACTORS CONSIDERED IN JUDICIARY COMMITTEE ON CHILD SUPPORT GUIDELINES RECOMMENDATIONS

1. Decision Whether to Adopt Child Support Guidelines. Selection of Guideline Model for Maine.

After examining the various child support guideline models, the Judiciary Child Support Guidelines Committee selected the income shares model as most worthy of detailed analysis and trial use. The Committee was also influenced by the fact that the Maine Department has adopted and been using an income shares model in the standards promulgated by DHS. Trial judges were asked to fill out a form and calculate child support using the schedule outlined in L.D. 1332 for ten contested cases. The experiments was conducted between September 1987 and January 1988. Simultaneously the Committee carefully studied and compared the provision in the law and experience in action of the use of child support guidelines in various other jurisdictions that have adopted guidelines.

As a result of the experiment, the Committee has reached the conclusion that child support guidelines are very useful in speeding up the judicial process, enhancing predictability, and assuring adequate child support awards. Although the test sample was relatively small, the Committee found that support indicated in the guidelines was appropriate in well over two thirds of the cases processed in the experiment. This figure is replicated in the experience of other states. Although endorsing the concept of child support guidelines in principle, the Committee has serious reservations about the drafting and many provisions of L.D. 1332. In the sections below, the Committee has attempted to outline the major policy questions that must be resolved before any guidelines should be imposed and alternate options that were considered before the Committee made its recommendations.

2. Branch of Government That Should be Responsible for Establishing Child Support Guidelines

By Statute:

Colorado, Illinois, and Minnesota have enacted statutes mandating use of specific guidelines as rebuttable presumptions applied to both welfare and non welfare cases. They are binding on the judiciary unless findings of fact are made to justify exceptions. This mode of implementation has the advantage of providing universal authority for the guidelines.

The two main disadvantages are that the technical nature of guidelines does not readily lend itself to the legislative process in development; and statutes are less flexible and more difficult to change than judicial or administrative rules.

By Court Rule:

The advantages of implementing by court rule are that courts are unusually well situated to develop guidelines because they are neutral and therefore in a better position to balance competing interests in designing guidelines, court rules have as much force with the judiciary as statutes, and rules are more easily changed than a statute.

The disadvantages is that some courts lack the authority to use the court rule mechanism for child support guidelines.

Administrative Regulations:

The advantage of implementation by administrative regulation is that all states are required by federal law to have guidelines to deal with welfare recipients, the administrative process is the most expeditious method of implementing guidelines, and this method retains the flexibility to change the guideline readily.

The disadvantage is that courts are not bound by administratively established guideline unless required by statute and the guidelines may apply only to IV-D (welfare cases). Similarly administrative agencies may not have either the authority or the wide range of discretion to consider factors in setting child support obligations that a judge has in deciding custody, visitation, and division of property and indebtedness.

Hybrid and Diversity of Approach:

Some states used hybrids of these three basic approaches in their implementation of child support guidelines. See Williams Report, p. II-10

3. The Task of Drawing Up Guidelines :

In many states that have adopted guidelines there have been broad-based, interdisciplinary commissions or committees appointed to carry out this task. These bodies contain members of the judiciary, the interested governmental departments, attorneys, and members of the public. This has the advantage of building the broadest consensus as the guidelines are developed which may be significant in the successful implementation of any guidelines adopted.

The Committee believes, that while this route is highly desirable, that time for any such Blue Ribbon Commission has passed. Instead it is recommended that the Legislature resolve broad policy questions on options brought to its attention by this Report. To the extent possible, the Judiciary Child Support Guidelines Committee and the Department of Human Services, in the areas of the Department's concern which are narrower than those of the judiciary, should attempt to bring joint recommendations to the Legislature's attention. Widest dissemination among the judges, the bar, the Department of Human Services and the public on any proposed legislation, court rule, or support schedule should be undertaken with an opportunity for public hearings and comment before final implementation of any child support guidelines schedule.

4. Rebuttable Presumptions or Advisory?

At the moment, 23 states have guidelines that are rebuttable presumptions, but in three of these states, including Maine, guidelines are only advisory to the courts. 21 states have guidelines that are advisory only, and five states have no statewide guidelines. No state has promulgated mandatory guidelines.

Understandably, many judges prefer advisory guidelines rather than those that are rebuttable presumptions. Furthermore, although over two thirds of the cases can equitably be handled by guidelines, there are many matters and inter-related considerations that must be reserved for a judge's decision, even with a very detailed and complex guideline structure. If an opportunity is given to parties to argue for deviation and, if granted or denied, ask for specific findings of fact, the litigants will be fully protected and the integrity of the guideline schedule preserved.

Michigan has a phrase in its guideline statute which indicates that a judge "shall consider guidelines. "This may be only a question of semantics but it should assure universal consideration of the guidelines if not universal applicability. Guidelines have worked best in states in which there has been enthusiastic endorsement by the trial judges.

Among his proposals for welfare reform, Senator Daniel Moynihan has proposed legislation now pending in Congress making rebuttable presumption guidelines mandatory in all states for all support awards. If this provision should be enacted and passes constitutional muster, then the questions of semantics will become moot.

If guidelines are treated as a rebuttable presumption, then greater uniformity of application and predictability of results will be achieved.

Whether guidelines are established as rebuttable presumptions or advisory, it is evident that a judge still must exercise extensive discretion in utilizing these guidelines in such matters as determining imputed income from unemployed, underemployed, or self employed parents; and what income should be attributed to passive assets. This is in addition to the broad discretion that is customarily exercised in other aspects of a divorce judgment or child support award.

5. Economic Research and Data Base Used to Establish Guidelines:

There are several economists who have done studies on the cost of raising children and the percentage of the family income that is spent on children in different economic levels. William's 1985 Interim Report used figures and percentages from a study by Thomas J. Epenshade, Investing in Children: New Estimates of Parental Expenditures, (Urban Institute: Washington, D.C. 1984) and two Bureau of Labor Statistics publications--the 1972-73 Consumer Expenditure Survey and Revised Equivalence Scale. These figures have been revised with more current economic information and data in William's final report, dated March

1987. The Maine Department of Human Services used figures from William's income share model which was tailored to take into account Maine's tax structure.

There will be variations in guideline indicated support orders depending on the data base used in creating guidelines. (See William's Report, Appendix I, p. II-131 to II-165). There is no right or wrong set of figures. Any of the compilations produce figures representing national averages in a particular economic group. The Judiciary Child Support Guideline Committee does not have the expertise or the staff to evaluate which of the several data bases yield the "correct" figures, but it is submitted that those used by DHS while maybe not "exact" are for purposes of guidelines as reliable as any other schedule drawn up from other data bases. It is important, however, to periodically revise child support guideline schedules as additional and more current research becomes available.

The Judiciary Child Support Guideline Committee feels comfortable with DHS monitoring the economic data and being responsible for its updating. It should be emphasized, however, that policy decisions made with respect to any established child support guidelines should be reflected in and identified by a commentary in any proffered tables and percentages, i.e. how many age groups for children, division of time spent with the custodial parent, what are extraordinary medical expenses and what medical expenses are included in the basic formula, how are child care costs handled, etc.

6. **Income: Gross or Net? Imputed Income:**

DHS has based its schedule on actual gross income rather than net. DHS agents do not impute income but base support obligations on actual income. Judges must determine not only what is actual income but what income should be imputed. A check list with respect to determining income published in Family Advocate, Spring 1988, and the Vermont Child Support Affidavit Work Sheet are included in Appendix.

7. **Age Categories.**

All information available to the Committee and common sense acknowledge the fact that older children are more expensive than younger children if child care costs are excluded. Different jurisdictions have broken down support categories from a minimum of one to a maximum of four. Maine DHS uses two.

Much is to be said for using only one category, which would represent an average cost or income percentage for all age groups, for simplicity in calculations in establishing support awards. If awards are not periodically reviewed and updated (and as yet no mechanism is in place or on the drawing board to do so other than a return to court) a single category would usually equitably average out the total child support obligation.

8. Periodic Revision of Child Support Award

As indicated above, no mechanism is now in place for periodic update of support awards. It is relatively easy for DHS agents to accomplish this administratively for welfare recipients inasmuch as only actual income is considered. Proposals to require all States to do this for welfare recipients is also a matter of pending federal legislation. The need for the requirement is based on the fact that parents income usually increases as the children move into a higher cost to raise category.

No automatic revision is possible for the courts without consideration of other factors that might have changed since the imposition of the original order.

Some states have provisions that if an amount required by any newly established or updated child support guidelines vary more than 15% from a present support order, that such difference is considered as a matter of law a changed circumstance. It may be possible to design a statutory scheme that would allow automatic revision if other factors remained unchanged. It should be noted, however, that parties may not change a court order by agreement unless ratified by the court.

The Committee has not attempted to tackle the problem of automatic periodic review.

9. Child Care Costs

The Committee feels that child care costs are appropriately an obligation of both employed parents and should be allocated in proportion to the incomes of the parties.

It is recognized that this some times places a very heavy burden on persons employed at minimum wage when child care costs are high.

10. Medical Expenses

The committee feels that the incremental cost of any medical insurance paid for minor children by the obligor should be deducted from that parent's income in making child support obligation. In L.D. 1332 the total amount paid for any insurance is deducted. There is valid rationale for such a provision in that many low income parents cannot afford the basic policy, much less any incremental amount, if some coverage is not provided by an employer. Of course, if basic coverage provided by the employer covers not only the parent, but also family members without additional cost to the employee, no deductions from income should be allowed.

In the past, DHS has expressed a preference to the court for requiring an obligor for a welfare recipient to obtain medical insurance coverage even if it meant a lower support award.

Despite the factors mentioned above, the Committee recommends that only the incremental cost for the minor children be deducted from that parent's income and that all medical expenses not covered by medical and hospitalization insurance be shared by the parents according to their proportional income after a disallowance of \$150.00 a year which is assumed to be included in the basic support schedule in the guidelines.

11. Self Support Reserve:

The Committee feels that every parent should contribute to the support of his or her minor children. Parents with very low income can not contribute to the extent that his or her contribution will meet the statistically determined needs of a child in any state, but some contribution should be made.

The self support reserve is a matter that should be a matter for legislative determination. In material examined by the Committee support reserves have ranged from \$450 to \$577 per month. The Committee is in accord with present DHS practice, which is to assess no more than 10% of the gross income for a parent whose annual income does not exceed \$6,000 per year.

12. Factors to be Considered in Deviation from Child Support Guidelines

A judge must determine many factors in setting a child support award either with or without the use of guidelines. An enumeration of some of these factors has been set forth in the accompanying list contained in Family Advocate Vol. 10 No. 4, Spring 1988, p.26. which may be found in the Appendix.

The role of some of these factors should be obvious to the parties. Some decisions may involve the interrelation of several factors that do not lend themselves to precise mathematical delineation. There are other factors that may go into a judge's decision to depart from established guide lines that would be best left unarticulated in a decision out of respect for the dignity of the parties. Such factors might include a history of drug or alcohol addiction, limited mental capacity, irresponsibility in handling assets, etc.

The Committee has determined that shared custody cannot be adequately handled by a child support guideline schedule. See discussion of the problem and the Vermont solution in the Appendix. (Page 30)

13. Draft Legislation

The Committee's draft of proposed legislation which would incorporate the recommendations of the Committee is set forth *infra*.

IV PROPOSED CHILD SUPPORT GUIDELINE STATUTE

AN act to establish uniform guidelines for the determination of child support obligation.

BE it enacted by the people of the State of Maine as follows:

Section 1. 19 M.R.S.A. 753, is enacted to read:

753. Uniform guidelines for the determination of child support obligations

In determining under this Title either initial child support obligations or the modification of any child support orders entered prior to the effective date of this section, the court shall apply an income shares guideline. This guideline shall be considered in both contested and uncontested cases.

It shall be the obligation of the Commissioner of the Department of Human Services to prescribe by rule a child support guideline which reflects the percent of combined gross income which parents living in the same household in Maine ordinarily spend on their children. That guideline shall be based on the concept that children should receive the same proportion of parental income after separation or divorce of their parents as they would receive if their parents were living together in one household. The guideline shall further provide that the total child support obligation shall be divided between the parents in proportion to their respective gross incomes. The parent who does not have primary residence of the children allocated to him or her shall be ordered to pay, in money, his or her share of the total support obligation to the parent with whom the children primarily reside. The parent providing primary residential care shall be presumed to spend his or her share directly on the child.

The guideline shall provide that the parent who does not have primary residential responsibility for the child and who has an annual gross income of less than \$6,000.00 will make only a minimal payment toward the support of the children, not to exceed 10% of annual gross income. Further, the guideline shall contain one support table, applicable to children up to 18 years of age. Child care and extraordinary expenses shall be treated separately under the child support guideline.

The guideline amounts shall be reviewed and may be amended from time to time as the Commissioner deems necessary, but not less than once every three years. The guideline shall contain the most current reasonably available economic data which reflects the actual cost of raising children in the State of Maine. Prior to prescribing the rule the Commissioner shall consult with and obtain the approval of the Chief Justice of the Superior Court and the Chief Judge of the District Court.

The court shall prepare and make available forms suitable for calculating amounts payable under this section. It shall be the

responsibility of the parties in every court action brought pursuant to this section to file a completed form with the court prior to any hearing. Accompanying the form, each party will be required to file an affidavit of gross income and assets. Failure to comply with this requirement shall give the court power to make a child support order based on available information and reasonable inferences to be drawn from the failure to comply. It shall also be required that every complaint or answer filed in any divorce proceeding or other court action involving a request for child support payments shall be accompanied, at the time the complaint or answer is filed, by an affidavit of gross income and assets.

In any proceeding to establish or modify child support, the total child support obligation shall be presumed to be the amount of child support needed, from which each proportionate parental support obligation shall be calculated, and the parent who does not have primary residence shall be ordered to pay the calculated amount to the other parent, unless a support order is established under Section 755.

Section 2. 19 M.R.S.A. 754, is enacted to read:

754. Definitions

As used in this subchapter:

- (1) "Basic support obligation" means the sum calculated from the support guideline or an alternative sum established by a court to represent the needs of children.
- (2) "Child care costs" means the actual child care costs reasonably incurred by a parent on behalf of the children due to employment or employment related education.
- (3) "Court" means either the District or Superior Court having jurisdiction to issue a child support order.
- (4) "Extraordinary expenses" means any extraordinary medical or education expenses related to the special needs of a child. Extraordinary medical expenses shall include but not be limited to uninsured annual medical expenses in excess of \$150.00.
- (5) "Gross income" means actual gross income of a parent and it shall include the following:
 - (A) income from any source, including, but not limited to, income from salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, and spousal support actually received from a person not a party to the order. Income at the rate of 8% shall be imputed to non-income producing assets with an aggregate fair market value of \$10,000.00 or more, other than an ordinary residence;
 - (B) expense reimbursements or in-kind payments received by a parent in the course of employment or self-employment or operation of a business if they reduce personal living expenses;
 - (C) in its discretion, the court may consider as gross

income the difference between the amount a parent is earning and the amount a parent has earned in cases where the parent voluntarily becomes unemployed or underemployed, unless the parent is physically or mentally incapacitated;

(D) in its discretion, the court may impute income to a parent who has primary residential responsibility for minor children when those children have reached six (6) years of age, and the amount of income imputed shall be based either upon the prior employment history of that parent or the prevailing conditions in the job market of that parent's residence;

(E) gross receipts minus ordinary and necessary expenses where a party is self-employed or derives income from proprietorship of a business, joint ownership of a partnership or a closely held business operation; and rents, minus ordinary and necessary expenses. In the discretion of the court, amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses or investment tax credits may or may not be treated as ordinary and necessary expenses. The court may also determine that other business expenses, including business losses, are inappropriate for determining gross income for purposes of calculating child support;

(E) Gross income shall NOT include

(i) the amount of preexisting spousal maintenance or child support obligations actually paid pursuant to court order or administrative order;

(ii) the actual cost to a parent of the provision of adequate health insurance coverage for the involved children;

(iii) the amount of money received from means tested public assistance programs, including but not limited to, aid to families with dependent children, supplemental security income, food stamps, and general assistance.

(6) "Parental support obligation" means the proportion of total support obligation a parent is ordered to pay in money as child support.

(7) "Support guideline" means the guideline for child support established by the commissioner under Section 753 of this title.

(8) "Total support obligation" means the sum of money determined by adding (i) amounts derived from the support guideline appropriate to the parties' gross income, (ii) child care costs, and (iii) extraordinary expenses.

Section 3. 19 M.R.S.A. 755, is enacted to read;

755. CHILD SUPPORT ORDER

The parental support obligation shall be presumed to be the actual child support order. If the court finds that the parental support obligation based on the support guidelines would be inequitable, the child support order shall be established after consideration of all relevant factors, including but not limited to:

1.) the total support obligation established under the guidelines for child support and its interrelation with the division of property and spousal support;

2.) the financial resources of the child;

- 3.) the financial resources and needs of the primary residential care provider;
- 4.) the standard of living the child would have enjoyed had the marital relationship not been discontinued;
- 5.) the physical and emotional condition of the child;
- 6.) the educational needs of the child;
- 7.) the financial resources and needs of the parent not providing primary residential care;
- 8.) inflation with relation to the cost of living;
- 9.) available income and financial contributions of the domestic associate or current spouse of each parent;
- 10.) the existance of other persons who are actually financially dependent on each parent.

If the parties agree, the court may include in the child support order an additional amount designated for the purpose of providing for post-secondary education.

Section 4. 19 M.R.S.A. 756, is enacted to read:

756. Modification

On petition of any person to whom support has been previously granted or any person previously charged with a support obligation, and upon a showing of a substantial change of circumstances, the court may modify its prior order of support.

A child support order, including an order in effect prior to adoption of the support guideline, which varies more than 15 percent from the amount required to be paid under the support guideline, shall be considered a substantial change of circumstances, and would warrant a modification of the support order unless there were circumstances under Section 755 which would make such an award inequitable.

Section 5. 19 M.R.S.A. 757, is enacted to read:

757. Alimony Award

In any divorce proceeding in which a child support order is established pursuant to Section 753 or Section 755 of this title, the Court may consider the relative financial circumstances of the parties in the determination of an award of alimony under Section 722. If after consideration of all relevant factors, including gross income, assets, liability, including tax liabilities, and the parental support obligation, the Court finds that a disparity in the financial circumstances of the parties will result in a substantially lower standard of living for the child and the obligee spouse than the child would have if living with the other parent, the Court may order an award of alimony to alleviate the disparity.

Section 6. 19 M.R.S.A. 758, is enacted to read:

758. Shared or Split Primary Residential Care Responsibilities

(1) When each parent provides residential care for more than 30 percent of a calendar year, the court shall determine support using the factors in Section 755. For purposes of this section "residential care" means keeping the children overnight.

(2) When each parent provides primary residential care for at least one of the children, a theoretical parental support obligation shall be determined for each parent for the children residing with the other, based upon the support guideline. The obligation shall then be offset, with the parent having the larger parental support obligation being required to pay the difference between the two amounts to the other parent, unless such a result would be inequitable under Section 755.

v Appendix

Summary of Major Types of Guidelines

Equal Living Standard

Derived from Bureau of Labor Statistics, Revised Equivalence Scale for Determining Equivalent Incomes or Budget Costs by Family Type. U.S. Department of Labor, B.L.S. Bulletin No. 1570-2 (1968). See more complete discussion in the Marilyn Smith article, at 22.

Percentage of Combined Net Family Income Required to Maintain Equal Standard of Living

Number of Children	Custodian and Child(ren)	Noncustodian
1	61%	39%
2	67%	33%
3	74%	28%
4	76%	24%

Also see other versions of this approach in Cassetty and Douthitt, *The Economics of Setting Adequate and Equitable Child Support Payment Awards*, State Bar of Texas, Family Law Section Report: Special Child Support Issue at 8 (1984) and Eden, Cassetty and Terrell, *In the Best Interests of Children: A Simplified Model for Equalizing the Living Standards of Parental Households in Women's Legal Defense Fund, Essentials of Child Support Guideline Development: Economic Issues and Policy Considerations* (1987). States using this approach: When there are minor children, Vermont requires a "maintenance supplement" to equalize the standard of living post-divorce in addition to "child support" based on the Income Shares Model.

Massachusetts Guideline

A. Basic Order

The basic child support obligation, based upon the income of the noncustodial parent is as follows.

Gross Weekly Income	Number of Children		
	1	2	3
\$0-\$200	Discretion of the court, but no less than \$50 per month		
\$201-\$500	25% ($\pm 2\%$)	28% ($\pm 2\%$)	31% ($\pm 2\%$)
\$501-max.	27% ($\pm 2\%$)	30% ($\pm 2\%$)	33% ($\pm 2\%$)

Within the discretion of the court, and in consideration of the totality of the circumstances of the parties, the order may be either increased or decreased by 2 percent. Where the court must set a support order where there are more than three children, the minimum order is to be no less than that contained in this guideline for three children, to be increased within the discretion of the court depending upon the circumstances of each case.

B. Age Differential

The above orders are to be increased to reflect the costs of raising older children.

Age of Oldest Child	Percentage Increase
0-6	Basic Order Applies
7-12	Basic Order + 10% of Basic Order
13-18	Basic Order + 15% of Basic Order

C. Custodial Parent Income Adjustment

Where the custodial parent works and earns income in excess of \$15,000 after consideration of day-care expenses, the support order is to be reduced by the percentage that the excess represents in

relation to the combined incomes of both parents minus the custodial parent's disregard.

States using this approach: MA, Wash, D.C.

Comment: Drafters of the Massachusetts guideline went back to the original Wisconsin data to obtain the percentages used in the Massachusetts guideline. Ultimately they were lowered in Massachusetts also, but not as much. The Wisconsin concept also was followed in not treating child-care expenses as an add-on. See comments under Wisconsin guideline.

Wisconsin Guideline

The percentage of the payor's base or adjusted base (generally equal to gross income) that constitutes the child support obligation shall be:

- 17% for one child;
- 25% for 2 children;
- 29% for 3 children;
- 31% for 4 children; and
- 34% for 5 or more children.

Wis. Admin. Code § HHS 80.03 (January 1987). Child-care costs are assumed to be included in the basic child support award.

States using this approach: GA, MS, NV, NC, WI.

Comment: The original data analysis on which the Wisconsin guideline was based was done by Professor Jacques van der Gaag at the University of Wisconsin: "On Measuring the Cost of Children," University of Wisconsin Madison, Institute for Research on Poverty Discussion Paper 663-81 (undated). His analysis of a group of studies on the costs of children, using several different methodologies, suggested that families spent, on an average, 25 percent of family income on one child, 37.5 percent on two, 50 percent on three, 56.25 percent on four, and 62.5 percent on five. *Id.* at 21-15.

The subsequently adopted figures were lowered for several reasons, including that they were higher than average existing awards. Skyles and Zink, *Child Support in Wisconsin: Income Sharing as a Standard of Law*, in Women's Legal Defense Fund, Critical Issues, Critical Choices: Special Topics in Child Support Guidelines Development (1987).

The Wisconsin guideline, and those based on it, treat child-care costs and medical expenses as being included within the basic support obligation. Because the underlying economic data for this guideline was based on a number of different studies, it is impossible to pinpoint a specific percentage of expenditures on children, which was for child care and extraordinary medical expenses. But because many of the studies were based on data gathered between 1950 and 1980, these estimates were probably made before many mothers worked and before there were such large resulting child-care costs. It is likely that child care and medical expenses in those studies were comparable in amount to those found in the 1972-73 Consumer Expenditure Survey relied on in the Income Shares Model. These were found to equal 1.57 to 3.82 percent of gross income. See U.S. Department of Health and Human Services, Development of Guidelines for Child Support Orders II-135 (1987). In states following the Wisconsin model, counsel may want to argue in favor of lowering the basic support award by, for example, 3 percent and adding on actual child-care and medical expenses instead, in cases where high expenses of this type are involved.

States without Guidelines

AR, CA, LA, NY, SD, TX, and VA have guidelines that do not fit into any of the prior categories. As of Nov. 30, 1987, ID, MD, NH, NM, and PA had not adopted statewide guidelines.

Income Shares Model

Child Support as a Proportion of Net Income*

	0 - 5,600	5,601 - 10,650	10,651 - 16,725	16,726 - 28,200	28,201 39,975	39,976 51,875	Over 51,875
One Child	23.8	23.7	23.3	21.6	21.0	20.1	17.8
Two Children	37.0	36.7	36.1	33.5	32.7	31.2	27.7
Three Children	46.3	46.0	45.2	42.0	40.9	39.0	34.7
Four Children	52.2	51.8	51.0	47.3	46.1	44.0	39.1
Five Children	57.0	56.5	55.6	51.6	50.3	48.0	42.6
Six Children	60.9	60.4	59.5	55.2	53.8	51.3	45.6

(1) Excludes child-care costs and extraordinary medical expenses, which are divided between parents in proportion to income and added to child support determined above.

(2) Minimum support only would be provided on lowest income category, due to self-support reserve.

Reprinted from U.S. Department of Health and Human Services, Development of Guidelines for Child Support Orders, at II-70 (1987).

*This model often appears in a chart form. It is also used in a gross-income version.

States using this approach: AL, AZ, CO, FL, IN, KY, ME, MI, MO, MT, NE, NJ, OH, OK, OR, RI, SC, VT (see note under Equal Living Standard). KS, WA guidelines are based on similar economic theory, but not on this specific model.

Comment: Discussion and critique of the data used in developing the Income Shares Model may be found in Polikoff, *Looking for the Policy Choices Within an Economic Methodology: A Critique of the Income Shares Model* and Terrell, *Comments and Questions Relating to the Colorado Child Support Guidelines in Women's Legal Defense Fund, Essentials of Child Support Guidelines Development: Economic Issues and Policy Considerations* (1987). Also useful is the technical summary of the methodology used in developing the Income Shares Model, which may be found in U.S. Department of Health and Human Services, Office of Child Support Enforcement, Development of Guidelines for Child Support Orders II-129-140 (1987) and the data analysis by Thomas Espenshade on which the Income Shares Model is based, which may be found in T. Espenshade, *Investing in Children: New Estimates of Parental Expenditures* (1984).

It is especially important to note that the Income Shares Model does not count family savings (even for college), payments on the principal of a home, gifts, contributions, or personal insurance as expenditures on children. At a family income of \$52,000, it is estimated that 28 percent of *net* family income is spent for such purposes and assumed to be unrelated to the children. Because these expenses are an increasing proportion of family expenditures as family income rises, and because the portion of "current consumption expenditures," spent on children stays fairly constant across income levels, the Income Shares Model requires a lower percentage child support payment in high-income families than in low-income families.

The data on expenditures on children used in developing the Income Shares Model was gathered in the 1972-73 Consumer Expenditure Survey conducted by the U.S. Bureau of the Census. A similar analysis by Dr. William Terrell of Wichita State University, for the Kansas Commission on Child Support, using the more recent 1982-83 Consumer Expenditure Survey data, showed significantly higher average expenditures on children for those years.

Delaware Guideline

I. Primary Child Support

Determine each parent's available net income for child support.

Ref. *Family Advocate*, Vol. 10, No. 4, Spring, 1988 Pgs. 9-10

- Determine each parent's monthly net income.
- Subtract from each parent's net income the self-support amount of \$450.
- The remainder is each parent's "available net income."

Calculate primary support need.

- Compute the total primary support need for the children: Generally, \$180/month for first child in the household, \$135/month each for second and third children, and \$90/month for each additional child.

- Add the cost of extraordinary medical expenses and child care needed to permit the custodian to work. The result equals the total primary support obligation.

Determine the primary support obligation of each party.

- The primary support obligation of each parent equals that parent's pro-rata share of the total primary support obligation, based on that parent's pro-rata share of "available net income."

II. Standard of Living Adjustment

To each parent's primary support obligation is added an additional support amount which is:

- 15% of remaining available net income** for one child;
- 10% each for the second and third children; and
- 5% each for the fourth, fifth, and sixth children.

** Parties may deduct the primary support obligation owed to other dependents before making this calculation.

III. Optional Supplemental Quarterly Child Support

The court may consider a supplemental award to enable the children to live at the higher standard of living enjoyed by the more affluent parent.

States using this approach: DE, HI, WV.

Comment: This guideline was originally developed by Judge Edward F. Meison, Jr., and has been in use in Delaware since 1979. While originally based on his personal observations and assessments of family needs, Delaware has periodically assessed and updated the guidelines against what was believed to be current economic data on expenditures on children. Because data similar to that on which the Income Shares Model is based was used, similar arguments might be made for increases with this type of guideline.

If Guidelines Are a Flat Percentage of Net Income, or Increasing at Low-Income Levels, Then a Flat Percentage of Net Income Results.

States using this approach: AK, CT, IL, TN, (flat percentage of obligor net income); IA, MN, ND, UT, WY, (increasing percentage of obligor net income at low-income levels, then a constant percentage).

Comment: The group of guidelines that are a flat percent of the obligor's net income depending on the number of children either at all income levels or above a certain income level are *not* based on a single model or single set of data. For example, they range from Connecticut, whose guideline calls for a payment of 27 percent of obligor net income for one child, 44 percent for two, and 50 percent for three—percentages that are significantly higher than the Income Shares Model at all income levels—to Alaska, which calls for payment of 20 percent of obligor net income for one child, 27 percent for two, and 33 percent for three, plus an additional 3 percent for each additional child. The latter figures are significantly lower than the Income Shares Model at all but the highest income level. Lawyers in these states are well advised to become familiar with the economic data used to establish guidelines in their states. The comments on child-care expenses under the Wisconsin guideline will be relevant in those states in which child-care expenses are not an add-on.

D.D.

Defining Income

Following is a checklist of important categories to consider as you search for available sources of income:

Net Income

- Reported W-2 income;
- 1099 income (dividends, interest, etc.)
- Tax-free income (municipal bonds, etc.)
- Overwithholding, addbacks;
- Deferral of overwithheld income;
- Overestimation of FICA withholdings;
- Perks: insurance, car, gas, repairs, car insurance, credit cards, theater and sports tickets;
- Hidden cash;
- Personal expenses;
- Pension and profit sharing;

Imputed Income

- Tax-free holdings;
- Growth stocks with low dividends;
- Earning capacity;
- Tax shelters.

Cash-Flow Analysis

- Business perks;
- Checkbook analysis of unreported income;
- Self-employment perks;
- Rental income.

Alternative Income

- Pensions and profit sharing;
- TRAESOPS;
- PAYSOPS;
- Low-interest loans;
- Depreciation;
- Sweetheart leases of owned office space.

Debt

- Use of debt to reduce income;
- Phantom income on tax shelters.

L.Z.G.

Ref. *Family Advocate*, Vol 10, No. 4
Spring, 1988, Pages 15, 22, 23

States with guidelines as a . . .

REBUTTABLE PRESUMPTION

Alaska	Nevada
Arizona	New Jersey
California	Ohio
Colorado	Oklahoma
Delaware	Oregon
District of Columbia	Rhode Island
Hawaii	South Dakota
Illinois	Vermont
Iowa*	Virginia*
Maine*	West Virginia
Minnesota	Wisconsin
Montana	

*Guidelines in these states serve as a rebuttable presumption for the administrative agency; are only advisory to the courts. M.

States with guidelines that are . . .

ADVISORY

Alabama	Mississippi
Arkansas	Missouri
Connecticut	Nebraska
Florida	New York
Georgia	North Carolina
Indiana	North Dakota
Kansas	Tennessee
Kentucky	Utah
Louisiana	Washington
Massachusetts	Wyoming
Michigan	

States with . . .

NO GUIDELINES

Idaho
Maryland
New Hampshire
New Mexico
Pennsylvania**

**No statewide guidelines, but county guidelines exist. M.R.S.

Checklist for Cases Outside Support Guidelines

This checklist identifies a wide range of circumstances that may justify deviation from child support guidelines. In reviewing it, be aware of the factors and assumptions upon which guidelines are based. These factors will affect such important issues as definition of income, custody and visitation, allocation of day-care costs and medical expenses, age of the children and other dependents.

- _____ voluntary unemployment or underemployment of either parent;
- _____ other income or assets of a parent, which are not accounted for under the guidelines, such as overtime or second job, nonincome-producing assets;
- _____ expense reimbursements or in-kind payments, such as company car, free housing or meals, and other employment perquisites;
- _____ substantial in-kind contributions from the property division (in the nature of child support) such as marital residence with low mortgage payments, income-producing assets, education trust, etc.
- _____ spousal support is provided in addition to child support;
- _____ tax consequences of child support, spousal support, and division of marital property;
- _____ significant in-kind contributions, such as direct payment for lessons, clothing, sports equipment;
- _____ disproportionate payment by one parent for all the incidental expenses associated with children, such as clothing, books and school supplies, snacks, pocket money, entertainment;
- _____ value of nonmonetary services contributed by a parent, such as meals preparation, laundry, shopping, and chauffeuring children to activities;
- _____ significant income of a child, whether earned or unearned;
- _____ extraordinary educational expenses, such as private school tuition, special education needs, summer camp or summer school, special lessons for extracurricular sports or other activities;
- _____ unusually high or low living expenses for either parent;
- _____ extraordinary medical, dental, psychological, orthodontic, optometrical, or any similar physical or mental health expense for the child or for either parent, which is not covered by medical insurance;
- _____ catastrophic medical expense as a result of accident, birth defect, or serious illness of a child or either parent;
- _____ unusually high health insurance costs;
- _____ unusually high day-care costs in relation to the parents' income, whether or not allocated between the parents under the guidelines;
- _____ increased cost of older children—identify special expenses even if the guidelines take the age of the children into account;
- _____ extraordinary work-related expenses for either parent, such as travel, uniforms, equipment, or training;
- _____ child receives public assistance;
- _____ extraordinary debts and liabilities incurred by either parent for the benefit of the family;
- _____ responsibility of either parent for the support of other children, including stepchildren;
- _____ responsibility of either parent for the support of other family members, such as aging parents or other relatives;
- _____ benefits either parent receives from remarriage or sharing living expenses with another;
- _____ awareness of pre-existing support obligation when obligor assumed additional support obligations for subsequent family;
- _____ significant disparity in standard of living and lifestyle between custodial and noncustodial parent;
- _____ either parent lives at or below the poverty line;
- _____ special custody arrangements, such as split custody or shared custody;
- _____ noncustodial parent exercises extended visitation beyond what is contemplated by the guidelines;
- _____ noncustodial parent exercises little or no visitation, resulting in increased expenses for the custodial parent;
- _____ high transportation costs as a result of visitation.

M.R.S.

SHARED LIVING ARRANGEMENTS - WHY GUIDELINES DON'T WORK

In considering the appropriate guideline statute for the State of Maine, the Committee considered very carefully the usefulness of presumptive guidelines when there are shared living arrangements. The committee thought, in general, that the statutory guidelines should be as broad as possible, because once attempts are made to fine-tune for specific variations the calculations become more complex and less reliable.

As a Committee, our objections to presumptive guidelines when there are shared living arrangements are: (1) that they provide an incentive for the parties to bargain for time with their children because of financial motivations; (2) it is not in a child's best interest to be shuttled between a "rags to riches" situation involving the two households; and (3) even with the income shares guideline adjustments developed by Robert Williams which increase the total support obligation by one and one-half, the amounts awarded to the obligee are often not sufficient.

Turning to the first concern of the Committee, if there is a marked reduction in the amount of support ordered when the child spends more than 30% of his or her overnights with the obligor, then both obligor and obligee will be struggling with that 30% threshold. The point of support guidelines is that they are intended to be child-centered, focusing on the actual cost of raising the child, not on the parties' living expenses. If the parents have a financial motivation centered on the shared living arrangement then both will tend to fight about it. Those types of fights do not focus on what is in the child's best interest and can be counter-productive.

The second objection raised by the Committee is that if shared living adjustment guidelines are rigidly applied, the court is likely to greatly widen the standard of living difference between the two households. We fail to see how it is in a child's best interest to spend 50% of his or her time in a household where there is more than enough of everything and 50% of his or her time in a household where there is a struggle to make ends meet. This type of situation increases animosity between the parents and provokes resentment on the part of the child. The obligee should continue to receive a support award required to maintain an adequate home.

The third objection to the rigid application of shared living adjustment guidelines is that they simply do not work. The rationale for the adjustment is that the noncustodial parent's increased time with the child will increase his or her direct child-related expenses. Actually, shared custody or extended visitation increases the total expenditures on behalf of the child. Robert Williams' guidelines attempt to allow for that fact by increasing the total amount of the support obligation by one and one-half. However, the increased amount is still divided proportionately between obligor and obligee.

Karen Getman in an article in the "Family Advocate"* entitled "Changing Formulas for Changing Families" notes the following shared custody example:

INCOME SHARES MODEL

The noncustodial parent (obligor) has a monthly adjusted gross income of \$2,000.00. The primary custodial parent (obligee) has a monthly adjusted gross income of \$1,000.00. They have one minor child. The visitation threshold used in this formula is 30 percent.

		Monthly Net Income After Support Award		obligee & child	
	support award	% obligor's income	obligor		
20%	\$293 (no adjustment)	14.7	\$1,707		\$1,293
30%	\$161	8.1	\$1,839		\$1,161
50%	\$74	3.7	\$1,926		\$1,074

As this example shows, the obligee's award was substantially reduced, although the fixed costs for shelter, clothing, transportation, school supplies, medical costs, and so forth remained the same. Getman says that according to the studies of Thomas Espenshade on the cost of raising children, over 62.2% of the costs are thus fixed and those expenses must be paid no matter where the child sleeps overnight.

* - "The Family Advocate", Vol. 10, No. 4, Spring, 1988, Page 48

V. VERMONT SHARED CUSTODY CHILD SUPPORT GUIDELINES WORKSHEET
(A suggested approach, not a presumption of law)

Vermont's Child Support law, does not give the presumption of law to child support guidelines when physical responsibility for the children is shared in ratios above 30%/70%. The guidelines are one of the factors that the court can consider in determining child support obligations under shared physical responsibility. Many judges, lawyers, and people going through divorce have asked how the non-shared child support guidelines apply when physical responsibility is shared. A group of legislators, members of the Family Proceedings Advisory Committee, and staff from the Department of Social Welfare developed the "Shared Custody Support Obligation" worksheet as a way to use guidelines to determine child support obligations when physical responsibility for the children is shared by the parents.

The "Shared Custody Obligation" worksheet grew from the following reasoning:

When parents have equal incomes and agree to share physical responsibility for the children equally, there should be no child support obligation.

When parents have equal incomes and agree to share physical responsibility for the children at a ratio between 30%/70% and 50%/50%, then the child support obligation should be proportioned based on the ratio of shared physical responsibility. For example, if physical responsibility will be shared at the ratio of 40%/60%, then the child support obligation should be half of what it would be at the 30%/70% ratio.

When the parents have different incomes and agree to share physical responsibility for the children equally, the child support obligation should be calculated in three steps. The first step is to increase the child support guidelines amount from the Table of Intact Family Expenditures by 35%. This is our estimate of the additional housing, clothing, transportation, and recreational equipment costs that are likely to be incurred when two homes are maintained for the children. Second, is to calculate the obligor's share of the increased child support obligation from step one, based on the obligor's proportion of total income. The third step is to subtract half of the child support guideline amount (from step one) from the obligation (from step two). This gives the obligor credit for the costs the obligor will pay directly on the children when they are with the obligor.

When the parents have different incomes and agree to share physical responsibility at a ratio between 30%/70% and 50%/50%, the child support obligation should be proportioned based on the ratio of shared physical responsibility. For example, if physical responsibility will be shared at the ratio of 40%/60%, then the child support obligation should be set at half-way between what it would be at the 30%/70% ratio and what it would be at the 50%/50% ratio.

The guidelines we developed achieve three important objectives:

1. The child support obligation is reduced when physical responsibility is shared above the 30%/70% ratio. This gives the obligor credit for the costs the obligor will pay directly on the children.
2. The child support obligations under shared physical responsibility take into account the increased costs of maintaining two homes for the children.
3. Small changes in the ratio of shared physical responsibility for the children do not result in large changes in child support obligations. There is no 'notch' between the child support obligations at the 30%/70% and the 31%/69% ratios of shared physical responsibility.

Estimating expenditures on children under shared physical responsibility.

In order to arrive at an estimate of expenditures on children when physical responsibility for the children is shared, we looked at the item by item data on expenditures on children in intact families from Investing in Children by Thomas Espenshade and estimated how much these costs would have to increase when the children lived in two households. (Espenshade's study provided the economic basis for Vermont's child support guidelines). We estimated that housing costs would double because, when physical responsibility is shared, two bedrooms will be maintained for the children. We estimated that clothing costs would increase by 50%. The 50% increase is to cover the extra socks and shirts the children will have in each household. Clothing costs will not double because, in most families, the children will not have two complete sets of clothes. Transportation costs will increase somewhat because, at a minimum, the children will have to be transported between the two homes, and sometimes both parents will need larger cars. We estimated that transportation costs will increase by 20%; it could be higher if the parents lived in different parts of the state or country. We estimated that recreation costs will increase by 30% to cover the extra toys and recreational equipment that will be maintained in both households. These item by item increases result in an estimate that, overall, the expenditures on children are 35% higher when physical responsibility for the children is shared.

The table below summarizes our estimates. It is based on the expenditures that an intact family with a monthly gross income of \$3,000 would make on two children.

Item	Intact Family Expenses	Percent increase for two households	Two household Expenses
Food	\$146.00	0%	\$146.00
Housing	173.00	100%	346.00
Clothing	50.00	50%	75.00
Transportation	177.00	20%	212.00
Recreation	68.00	30%	88.00
Miscellaneous	83.00	0%	83.00
Total	\$697.00	35%	\$951.00

The Shared Custody Worksheet can be changed to handle situations where a percentage other than 35% represents a better estimate of the increase in expenditures on the children under shared physical responsibility. To do this, the factors in lines 6 and 7 should be changed as follows:

Line 6 becomes

' Multiply line 4 by $(1 + \frac{\text{estimate of increased expenditures}}{2})$ / 2'

Line 7 becomes

' Multiply line 5 by $\frac{\text{estimate of increased expenditures}}{2}$ '

For example, if 20% is the best estimate of the increase in expenditures under shared physical responsibility, then:

Line 6 becomes

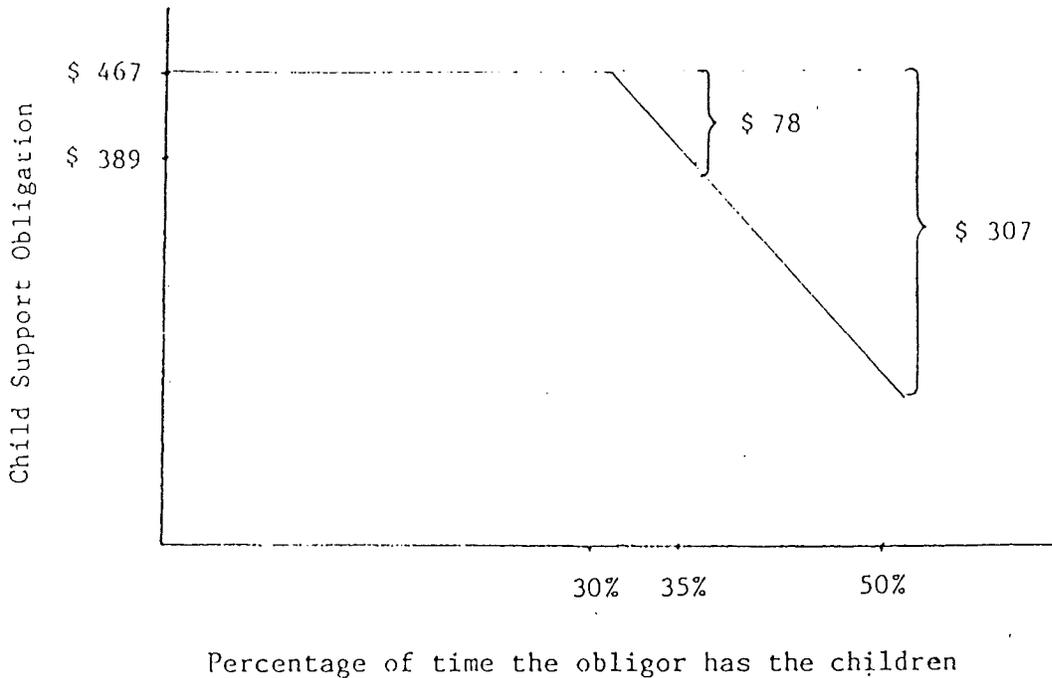
' Multiply line 4 by $(1.2)/2$ ' or ' Multiply line 4 by .6'

Line 7 becomes

' Multiply line 5 by .2'

An example of how the Shared Custody Child Support Worksheet Works

In this example the parents have monthly incomes of \$1,000 and \$2,000. There are two children. The parent with \$2,000 in income will have the children 35% of the time.



Under traditional custody arrangements, the obligor should pay \$467 in child support each month. This is the amount on Line 5 on the Shared Custody Support Worksheet.

Lines 6 through 8 of the Shared Custody Worksheet calculate the credit that the obligor should get for the expenses he would pay for directly if had the children 50% of the time. This is \$307 in this example.

The Shared Custody Support Credit Table prorates the credit for the percentage of time that the obligor actually has the children. This amount, \$78, is entered on Line 9.

Line 10 subtracts the credit for shared custody from the traditional custody obligation to get the obligation under shared custody. $\$389 = \$467 - 78$.

A completed Shared Custody Worksheet for this example is on the next page.

Superior Court

vs. County
Docket

Shared Custody Support Obligation
008 Children 008 Children

Children
Jack 3/1/75
Jennifer 4/15/80

Percentage of time Parent B has the children 40%

	Parent A	Parent B	Combined
1. MONTHLY PRETAX INCOME	1,000	2,000	3,000
A. Minus preexisting support paid			
B. Minus health ins prem for child			
2. MONTHLY GROSS INCOME	1,000	2,000	3,000
3. PROPORTIONAL SHARE OF INCOME (Line 2 for each parent divided by line 2 "Combined")	33%	67%	
4. CHILD SUPPORT GUIDELINE AMOUNT (Apply line 2 "Combined" to the Intact Family Expenditure Table)			697
5. CHILD SUPPORT OBLIGATION AT 0-30% SHARED (Multiply line 4 by line 3 for Parent B)		467	

Shared Custody Calculation

6. Multiply line 4 by .675	470
7. Multiply line 5 by .35	163
8. Subtract line 7 from line 6	307
9. SHARED CUSTODY SUPPORT CREDIT (Enter the amount from the Shared Custody Table for the line 8 amount and the per- centage of time Parent B has children)	155
10. SHARED CUSTODY SUPPORT OBLIGATION (Subtract line 9 from line 5)	312

Additional Expenses

11. QUALIFIED CHILD CARE		60
12. EXTRAORDINARY MEDICAL EXPENSES		
13. EXTRAORDINARY EDUCATIONAL EXPENSES		
14. TOTAL ADDITIONAL EXPENSES (Add lines 11, 12 and 13)		60
15. PARENT B'S SHARE OF ADDITIONAL EXPENSES (Multiply line 14 by line 3 for Parent B)	40	
16. CHILD SUPPORT OBLIGATION (Add Line 10 and Line 15)	352	

Ability to Pay Calculation

17. SELF-SUPPORT RESERVE		\$577.00
18. INCOME AVAILABLE FOR SUPPORT (Subtract line 17 from line 2)		1,423
19. MONTHLY SUPPORT PAYABLE (Enter the smaller of line 16 or line 18)		352
20. MONTHLY HOUSEHOLD INCOMES (Incomes in each household after support payment)	1,352	1,648
21. MAINTENANCE SUPPLEMENT		

AFFIDAVIT of [] PLAINTIFF [] DEFENDANT
Schedule 1 - Child Support Worksheet Calculation Information

Plaintiff _____
vs.
Defendant _____

County _____
Date _____

Street Address _____

Social Security no. _____

Mailing Address _____

Telephone _____

City, State, Zip _____

1. INCOME

Monthly Income

- 1.1 Wages, salaries, tips _____
- 1.2 Business Income (attach a currently completed copy of the IRS Schedule C) _____
- 1.3 Income from Assets (Interest, dividends, etc. from line 2.6 below) _____
- 1.4 Imputed Income (from line 3.10 on page 2) _____
- 1.5 Capital gains _____
- 1.6 Spousal support actually received from a person not party to the present action _____
- 1.7 Social Security benefits _____
- 1.8 Unemployment Insurance _____
- 1.9 Workman's Compensation _____
- 1.10 Disability Insurance benefits _____
- 1.11 Reimbursements or in-kind payments received in the course of employment, self-employment or operation of a business which reduce personal living expenses _____
- 1.12 Other (e.g., commissions, royalties, bonuses, severance pay, gifts, prizes, inheritances) - specify each separately _____

1.13 Monthly Pretax Income (add lines 1.1 - 1.12 and enter on line 1 of Child Support Worksheet Form DSW 131A) _____

2. INCOME PRODUCING ASSETS

Market Value

Annual Income

- 2.1 Savings/CDs - list each separately giving name of bank and account number.
Enter the current balance under Market Value.

- 2.2 Stocks, bonds, notes, trusts - list each separately identifying item and current market value

- 2.3 Annuities, Pensions, Deferred Compensation Plans
- list each separately giving type and name of company/plan

- 2.4 Other income producing assets - list each separately identifying the item

- 2.5 Total Annual Income from assets (add lines 2.1 - 2.4) _____
- 2.6 Total Monthly Income from Assets (divide line 2.4 by 12 and enter on line 1.3 above) _____

(OVER)

3. NON-INCOME PRODUCING ASSETS

Market Value

Liens

Equity

3.1 Checking Accounts — list each separately giving name of bank and account number. Enter the current balance under Equity.

3.2 Real Property — list separately (do not include primary residence)

3.3 Vehicles (autos, trucks, motorcycles, snowmobiles, recreation vehicles, etc.) — list each separately

3.4 Personal Property (e.g., boats, jewelry, works of art, electronic equipment, etc.) — list each separately

3.5 Other — list separately identifying the asset

3.6 Total equity value

3.7 Subtract \$10,000 from line 3.6

3.8 Current rate for long-term US Treasury Bills

3.9 Multiply line 3.7 by line 3.8

3.10 Imputed monthly income — divide line 3.9 by 12 and enter on line 1.4 of page 1

4. EXPENSES RELATED TO CHILD SUPPORT WORKSHEET CALCULATION

Monthly Expenses

4.1 Preexisting spousal maintenance obligations actually paid

4.2 Preexisting child support obligations actually paid

4.3 Total preexisting spousal maintenance and child support obligations actually paid. (add lines 4.1 to 4.2 and enter on line 1.A of the Child Support Worksheet)

4.4 Health insurance premiums paid for children involved in the present action (enter on line 1.B of the Child Support Worksheet)

4.5 Child care costs incurred for employment or employment related education (enter on line 4.A of the Child Support Worksheet)

4.6 Extraordinary medical expenses incurred for children involved in the present order — list separately

4.7 Expenses incurred relating to the special needs of children involved in the present order — list separately

4.8 Total extraordinary medical and special needs expenses (add lines 4.6 and 4.7)

4.9 Subtract \$16.67 from line 4.8 (enter on line 4.B of the Child Support Worksheet)

4.10 Extraordinary education expenses incurred for children involved in the present order (enter on line 4.C of the Child Support Worksheet)

Signed _____

Dated at _____, Vermont, this _____ day of _____, 19 _____.

Subscribed and sworn before me this _____ day of _____, 19 _____.

My Commission expires _____ Notary _____

APPENDIX C: SAMPLE WORDING OF A SUPPORT ORDER AND COMMENTS

The language below is suggested as a guide for drafting child support orders. A few extra minutes spent covering all of the bases at the outset will save the parties, courts and attorneys considerable time, money and aggravation in the long run.

Sample Language:

Beginning _____, 19____, Plaintiff/Defendant shall pay the sum of \$_____ per month for _____ children, or \$_____ per month for _____ children, or \$_____ per month for _____ children pursuant to the guidelines now in effect for the support of the following minor children; _____, _____, and _____. The Defendant/Plaintiff shall provide medical and dental insurance for the minor child(ren) and shall provide proof of coverage. This order shall constitute authorization for payment of medical claims for the child(ren) directly to the health care provider.

(a) The support provisions of this order shall be subject to Wage Assignment in the event a support delinquency accrues in excess of one-twelfth of the annual support order or;

(b) This order constitutes an assignment of the Plaintiff/Defendant's wages in the amount of support specified above. The Plaintiff/Defendant's present employer _____ or any future employer shall withhold \$_____ per month and forward the same to _____ within ten (10) days of payment of wages. Withholding is subject to the exemptions of §303(b) of the Consumer Credit Protection Act.