



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**

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June 30, 2004

Mr. John R. Tarpley, President
Tennessee Bar Association
Lewis, King, Krieg & Waldrop
201 4th Avenue North, Suite 1500
Nashville, TN 37219

Re: Proposes Changes to Tennessee Child Support Guidelines

Dear Mr. Tarpley:

Thank you for your considered and thoughtful comments on the proposed new child support guidelines. Your efforts to improve the income shares rules are appreciated.

With due respect, the department does not agree this proposal is in conflict with the statement of purpose. Many things in Tennessee have changed since the first child support guidelines went into effect in 1987 for welfare cases and in 1988 for all child support cases. The economic basis for those guidelines is now seventeen years old. More current economic information is available to reflect the cost of rearing children. The IV-D program has more tools available to enforce and collect support from parents who do not shoulder their share of the financial burden of rearing children. The Tennessee Legislature has enacted requirements that other children of parents be considered in the calculation of support. All of these things, and more, call for a change in the way Tennessee determines child support.

The primary consideration continues to be to decrease the number of impoverished children living in single families. That consideration, by legislative decree, now includes all children of all single parents, and is no longer limited to the children living with parents who are recipients of child support. The department believes modifying the current guidelines to an income shares

model, based on current economic information, will help reach this goal. Parents will be informed regarding:

- 1- the amount necessary for rearing children;
 - 2- the amount of the basic financial obligation for the number of children;
 - 3- the actual cost for their children to be covered under medical insurance, to receive medical care, and for basic education; and,
- for the first time in Tennessee,
- 4- how much parenting time is enough to change child support, and
 - 5- what child support covers and what it does not.

The income shares guidelines are more complex than the flat percentage of income guidelines. The income shares system is used in thirty-three states, and three states use the Melson formula, which is a form of income shares. All thirty-nine systems are modeled for the needs of the individual states. No state has had its income shares system set aside for a flat percentage of income system. When examining the two systems, there are some factors which must be added in order to consider the income of both parents, others which must be added in order to make the added financial expenses fit the actual expenses. The basic child support obligation is the same in every case where the number of children and the amount of income is the same. The remainder of the child support obligation is specifically designed to meet the financial expenses of the child being supported with the income of the parents supporting that child. The result is an amount of support that is appropriate in every case.

The statement that the Betson-Rothbarth economic model understates child rearing expenses is a loose recitation of the findings of economist Burt S. Barnow, who studied the issue of estimating expenditures on children. According to Barnow: "the Rothbarth estimator is likely to provide a lower bound estimate of actual expenditures on children, while the Engel estimator is likely to provide an upper bound." Burt S. Barnow, "Economic Studies of Expenditures on Children and their Relationship to Child Support Guidelines," in Child Support Guidelines: The Next Generation at 22-3 (Margaret Campbell Haynes, ed., USDHHS 1994). The precise magnitude of the over/under estimation is unknown. Economist Barnow's study has not been adopted by any state as an economic basis for its child support guidelines. There are at least twenty-two (22) states that use a Betson model. The two states referred to in the comment are the only two states, besides Tennessee, who have had a quadrennial review since Dr. Betson updated the 1996 study to 2003 figures based on the cost of living changes, and both states adopted this data. No state guidelines committee has rejected the Betson-Rothbarth measurements in favor of other measurements that were eventually promulgated.

In developing Tennessee's income shares child support schedules, the Department utilized the best economic studies and methodologies available for calculating the costs of raising children. Tennessee's proposed guideline model relies upon the work done by Dr. David Betson, Professor of Economics at Notre Dame. Dr. Betson's estimates were initially developed using 1980-1986 data from the Bureau of Labor Statistics' Consumer Expenditure Survey (CEX). These figures are the most detailed available source on household expenditures. These estimates were updated

in 2000 using CEX data for 1996-1999. The CEX income data specified in constant 1997 dollars, were updated to September 2003 dollars for the proposed Tennessee guidelines using statistics on changes in the consumer price index (CPI) since the time the data were collected.

The benchmark for modifying support orders is contained in the proposed guidelines. As to the change in the guidelines being cause for modification, the significant variance must be applied before any change, just as in the current system. The significant variance for most cases remains at 15%. The 2004 state legislature added a lower variance of 7.5% for low income cases. (See P.C. 549) The significant variance will continue to help to prevent litigation every time the child has a new activity. By requiring the significant variance, parents will be discouraged from bringing low dollar one-time expenses into court for inclusion. Language is also being considered to require the parents to divide, in the same proportion as the percentage of income on the Worksheet, the larger unexpected expenses which may come along.

Non-recurring expenses are not intended to be included in the section for additional expenses. These categories are set up to provide for mandated child rearing costs – basic medical, insurance, education needs. If a child is of an age to participate and routinely does participate in other activities, then the parents know this and can average the expense, even if the activity changes periodically. These expenses were deducted from the original study so they could be addressed on a case by case basis with the actual costs to the parents.

The burden of proof continues to lie with the person seeking a particular finding. The parent who wishes to have credit for his/her other children must bring the evidence necessary to show legal responsibility and actual support. The parent who wishes child care to be included in additional expenses must bring evidence necessary to show the child care is work-related, the cost, and the identity of the provider. The other parent can, of course, present evidence to the contrary.

With regard to the additional expenses, the department is reviewing the language of the proposal to make the intent clear. Many of the expenses listed are already ordered by the courts – there just are not any specific amounts on the orders. Health insurance is mandatory; parents are required to pay medical expenses for the children which are not covered by insurance. Educational expenses and child care have generally been delegated to the custodial parent, as have any activities during the primary parent's care, with a broad statement to the effect – that is covered by your child support. For some custodial parents, these expenses are covered by the flat fee model, for others, they are not. Obligor parents complain they want to know what their child support covers, and what the custodial parent is responsible to provide. The move to Incomes Shares under the proposal clarifies how much is paid and who pays. ~~It also solves the~~ question/complaint of he/she has more income than I, why do I have to pay so much? With the proposal, both parents know what and how much is covered by child support.

By requiring the parents to list actual expenses, each parent knows what is being paid, how much it costs, and how much each parent is contributing to the cost. The basic child support schedule provides the general amount needed for necessities, and the additional expenses tailor the case to

the specific needs and financial abilities of the family. Because the cost of these expenses vary widely across the state and from family to family, it is impractical to try and assign a "one size fits all" amount. The cost of child care is not the same in Hamilton County as in Cocke County or Davidson County. The cost of health insurance varies from employer to employer, as well as from county to county. It is fair and reasonable to provide for the expenses expressly, intentionally, and in the amounts that are actually necessary.

With regard to litigation expense, and parents being intimidated by other parents, unfortunately, there have always been domestic cases involving persons who resort to threats and intimidation to get their way, and there have always been cases where persons lack litigation funds. In child support cases, there is an option. 42 USCA §654 (4) requires the state to provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations, as appropriate, under the plan with respect to each child for whom assistance is provided under Title IV-A, benefits or services for foster care maintenance under Title IV-E, medical assistance under subchapter XIX of this chapter, or where cooperation is required under the Food Stamp Act of 1977 (7 U.S.C. 2015(l)(1)), and for any other child, if an individual applies for such services with respect to the child. This has been interpreted to require the IV-D program to provide services to custodial and non-custodial parents of children who are eligible to receive child support. IV-D services are provided at no charge to the applicant.

The department plans to have training and information available before the effective date of the proposal. Litigants will be able to obtain the forms and instructions in advance to see if their individual situations merit modification. The private sector is already marketing websites where a litigant can discover what the probable outcome of a modification will be. There will be information available to explain the rules, and training for the child support offices. The department does not intend that the child support process be mysterious.

The current guidelines assume a "standard" visitation time of eighty days annually. No amount of time above or below the eighty days is specified for when a deviation will be allowed. Ninety-two days is 15% greater than eighty days, which is consistent with the guidelines. By defining the break point of how much parenting time is sufficient to result in a change in child support lessens the uncertainty of how much parenting time each parent can expect before changes may be due, and will lessen litigation. The current system has no definite period of time to consider changes in support, which leads to uncertainty and unpredictability in decisions of support and in decisions of parenting time.

The proposed guidelines take into account custody situations in which the child spends extensive time with the alternate residential parent. The most common approach used by most states is to establish a threshold amount of parenting time in excess of the ordinary eighty days (typically equates to every other weekend plus 2-4 weeks for summer vacation and holidays) at which level adjustments are made to the support obligation. The assumption is that, as parenting time increases to a certain level, the cost to the alternate residential parent of caring for the child increases and there is a decrease in costs to the custodial parent.

The current guidelines do not include child care costs; such costs are presumed to be the responsibility of the parent needing the child care. That was a reasonable position two decades ago. Now, at a time when more parents must work, when appropriate child care is more expensive, that is no longer a reasonable position to leave the cost to one parent. Both parents income are included in determining support, part of the cost of obtaining that income is work related child care. The income shares model is designed to combine the expenses of child rearing and the income of both parents to provide for the child.

As a deviation factor, a tribunal may also consider child care costs associated with a parent's job search or the training or education of either parent necessary to obtain a job or enhance earning potential, not to exceed a reasonable time as determined by the tribunal. This is consistent with the purposes of including work related child care as an expense of child rearing: if it is related to increasing the income available to support the child, such a deviation may be reasonable for a short period of time.

With regard to the low income self-support reserve, this consideration came to the attention of the Department during the 2003 National Conference of State Legislatures. A study was presented that found nationwide, in every state, including Tennessee, not less than 50% of the arrearages owed were owed by persons having annual income of less than ten thousand dollars (\$10,000.00). One of the conclusions made was that child support was being set at a level in excess of what a low income obligor could reasonably pay, and that if support was made more appropriate to the obligors actual ability to pay and still provide for his/her own necessities, that the arrears would decrease as more current child support would be paid. As of 1999, thirty-one states have a minimum child support order, ranging from a low of five dollars (\$5.00) per month. Some states assign a percentage of income under the poverty level. Eighteen (18) states list low income as a deviation factor. Tennessee is one of two states which does not directly address the issue.

Some states use the federal poverty level as the measuring point for a low income. Other set a specific amount of support where the low income adjustment begins. [Alaska – below poverty level; Arizona – less than \$650 per month; California – less than \$1,000 disposable per month; Colorado – below subsistence level; D.C. – less than \$625 per month; Hawaii – obligation greater than 70% of obligor's income; Indiana – less than \$100 week; Iowa – less than \$500 per month; Kansas – combined income below poverty level; Maryland – less than \$500 per month; Massachusetts – less than \$125 per week; Michigan – less than \$149 per week; Minnesota – less than \$500 per month; Mississippi – less than \$417 per month; New Jersey – guidelines do not apply to income less than \$160 per week; New Mexico – less than \$600 per month; New York – below poverty level; North Carolina – less than \$700 per month; North Dakota – less than \$100 net monthly; Ohio – less than \$550 per month; Oklahoma – less than \$650 per month; Pennsylvania – less than \$750 per month; Rhode Island – less than \$500 per month; South Carolina – less than \$500 per month; Utah – less than \$649 per month; Vermont – self support

reserve; Washington – less than \$600 per month; West Virginia – less than \$550 per month; Wyoming – less than \$732 per month]

When the department was considering the low income adjustment, statistics from the Families First program were reviewed, to determine what, if any, impact the adjustment would have on that program. It was concluded some recipients would not be affected at all, and some might have sufficient additional income through child support to move off the program. Those receiving no support or minimal support will not be affected.

The proposal filed on March 31, 2004 sets the low income factor at one hundred percent (100%) of the federal poverty level for one adult (\$748 per month), with a minimum order of one hundred dollars (\$100.00) per month. Since the rules were filed, the department is also considering seventy-five percent (75%) of poverty level (\$561 per month), fifty percent (50%) of poverty level (\$374 per month), or allowing the tribunal to deviate on low income cases, all with a one hundred dollar (\$100) minimum order. The possibility that low income obligors may have a lesser obligation under the proposal is recognized, as is the possibility of low income obligors who want to comply being in a better position to comply and therefore get support to the children on a more regular basis. The secondary possibility will be that low income obligors may feel were able to participate in their children's lives because they are more able to meet the financial obligation. The department believes these are good goals, worth pursuing.

The department is considering a change to the median income provision to include the median for females in Tennessee (\$26,450) and the median for males in Tennessee (\$35,851). The amounts represent the full time, year round workers median annual income for the Tennessee population only according to the American Community Survey Profile 2002 from the U.S. Census Bureau.

The Tennessee legislature has passed into law a requirement that the department make the support for all of an obligor's children be equitable. See P.C. 549, which amends TCA § 36-5-101(e). The department has determined the 75% credit to be the most equitable amount which can be determined without including the other parents of the additional children, and the other spouses of the litigants. To include the income of the other parents of the other children could complicate the original case to such an extent that the original cases could not be concluded within appropriate timeframes. The other parents and their income records would have to be brought into the original case by subpoena so they could be cross examined, causing trial length to be extended. While there is at least one state who allows such evidence, the vast majority of states allowing credits for other children not under order have a formula for a set an amount.

The proposed rules are based upon economic studies which show that the proportion of income used to support children varies with the amount of income the family unit has available. For example, the Consumer Expenditure Survey shows the percent of net annual income spent on one child in the U.S.A. (in 2003 dollars) is 26.8% where family income is less than \$15,607

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and 13.68% where family income exceeds \$130,056. The schedule of basic child support contained in the proposed rules reflects that variation.

As with every new law, there is a learning curve. In the beginning, proof will take longer, but then the times should revert to close to normal. In circuit/chancery level domestic cases, the parents have already been in the process of determining these expenses in parenting plans and mediation. Once the rules have been implemented and people become familiar with them, the additional time to complete a Worksheet under those cases should be minimal. The Juvenile Court cases which are not required to have parenting plans will probably take some additional time, but as litigants are educated as to what they are required to bring if they want to use the credits and expenses under the proposal, and as judges and attorneys learn the new principles, the time to set support will grow shorter. Litigants who want to use the credits and expenses will quickly learn what proof is required.

The department plans to have Excel-backed worksheets available for use on personal computers and laptops, for use in homes, in the courtroom and in attorneys and mediators offices, which will make the process easier. There has also been some discussion of adding basic form orders which can be loaded from the Excel program.

Any new guidelines proposed to change an existing system will be met with some resistance. People tend to resist change. The proposed rules are a "hybrid" in the best sense of the word – a mixture of old and new rules, specifically created for the needs of this state. The very purpose of public hearings and comments for proposed rules is to allow the public and interested groups to review them, make suggestions just as you have done, and assist the department in producing a final product that is the best it can be for Tennessee.

As you know, the department has already made changes in the proposal as a result of the comments received, including those of your organization. Your views are welcome and appreciated. We appreciate your experience and participation in this undertaking.

Sincerely,



Michael L. Adams
Assistant Commissioner
Child Support

MLA:bb

cc: Gail Vaughn Ashworth
Allan F. Ramsaur
Barry Gold