

**Child Support Guidelines and Complicated Families:
An Analysis of Cross-State Variation in Legal Treatment of Multiple-Partner Fertility**

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I. INTRODUCTION

Child support guidelines have been implemented in every state for the purpose of determining child support obligations. Congress required states to develop guidelines (rather than rely on judicial discretion in determining child support) to assure greater uniformity in the calculation of child support orders and to increase predictability for families who seek orders. Child support guidelines are most effective in meeting these purposes when they are applied in the least complex cases, situations in which neither parent has additional children who require their financial support. However, a significant number of families have more complicated structures, and child support guidelines are not designed to fully address their complexities.

Demographic data reveal that serial families are commonplace in the United States. Today, almost half of all marriages end in divorce. Following divorce, about 75 percent of men and 66 percent of women will remarry, and many others will cohabit with a new partner. Thus, a second family often develops through remarriage or cohabitation. Many of these couples go on to have additional children. Unfortunately, the rate of divorce in remarriages is 10 percent higher than in first marriages. As reported by Cancian, Cook, and Meyer (2003), the degree of complexity in TANF families is even more profound.

Overall, considering complexity of both the mother's and the father's family, we see that three years after initial entry to W-2, more than half of the mothers were involved in a complex structure in that the mother had children with multiple fathers each of whom had legal children only with her (8 percent), or the mother had children with only one father but he had children with multiple mothers (21 percent), or both the mother and at least one associated father had children with multiple partners (26 percent).

Consequently, child support guidelines are frequently applied to parents who have multiple children with multiple partners. An additional factor further complicating application of the guidelines is the social reality that a large portion of the children result from nonmarital births where paternities have not been established and/or court-ordered child support is not in place. The existence of multiple families raises many difficult questions in the child support arena. When the parent has a second family and additional dependents, should the obligation to the children of the first family be reduced? Or should the

first children take priority? Or is it preferable to treat all the children equally? Put another way, who should bear the post-dissolution costs of maintaining separate households—the first family, the subsequent family, or both families equally?

II. OVERVIEW OF CHILD SUPPORT GUIDELINES

Child support is governed by state law. Although state laws impose a duty of support on noncustodial parents, traditionally state courts have been responsible for setting child support orders. Early child support statutes contained vague language (such as the prescription that orders should be “just and reasonable”) which left courts with little guidance. Consequently, orders were established largely on a case-by-case basis. The ad hoc nature of these determinations led to a lack of uniformity and predictability in support orders.

The Child Support Enforcement Amendments of 1984 (P.L. 98-378) and their implementing regulations (45 CFR 302.56) attempted to address the problems of judicial discretion in setting support orders. The act required states to adopt statewide guidelines for establishing child support. The Family Support Act of 1988 (P.L. 100-485) required that the guidelines presumptively apply to all child support orders and that the guidelines be reviewed every four years. The purpose of implementing guidelines is to promote consistent child support orders among families with similar circumstances and to reduce judicial discretion leading to disparate orders. The guidelines are intended to simplify the process of determining child support and to make the order more predictable. Guidelines are established as a rebuttable presumption, and should circumstances warrant, judges may deviate from the prescribed formula.

States have developed three models of child support guidelines—the income shares model, the percentage-of-income approach, and the Melson formula.

Income Shares Model. This approach is based on economic analyses which show that the proportion of income parents devote to their children in intact families may decline as income increases. Application of the rule should result in a noncustodial parent paying approximately what the parent would have spent on the children if the family had remained intact. Calculating an order using this model

requires reference to a chart that lists amounts depending on total parent income and total number of children. Once the support amount is determined, the figure is prorated between the parents based on each parent's proportion of the total parental income. The rule operates on the principle that as the income available to both parents increases, the amount available to support the children will also increase.

Percentage-of-Income Model. This model is based on the child support guidelines enacted in Wisconsin. Under this framework, only the noncustodial obligor's income is considered when calculating the support order (except in limited circumstances). A flat percentage of the obligor's income is calculated, but the percentage increases as the obligor's income and the number of children increase. This model presumes that only the noncustodial parent's income need be considered because the custodial parent is contributing an appropriate amount of support to the child(ren) through the ordinary course of parenting. This model is also based on economic analyses.¹

Melson Formula. This more complex formula has been implemented in Delaware and adopted in two other states. The Melson formula first subtracts a minimal self-support allowance from each parent's income, to insure that each parent can maintain a subsistence standard of living. Second, it determines a similar subsistence standard for the child, and adds to it other necessary expenditures such as health or child care costs. Each parent is assigned a prorated share of the child's subsistence standard, based on his or her share of total income. Third, if the parents have income remaining, an additional percentage of income is assigned to raise the child's standard of living. The nonresident parent's child support obligation consists of the amounts that are determined from the second and third steps together.

¹ The income shares and percentage-of-income models will, in fact, yield identical order amounts, assuming that the same percentages are applied to both parents' incomes. (See Rothe, 2001.)

III. TREATMENT IN THE GUIDELINES OF ADDITIONAL DEPENDENTS

This paper will identify and analyze the cross-state variation in how guidelines treat additional dependents resulting from multiple-partner fertility. All states have considered the question of whether and how to take into account in child support guideline calculations the parties' support obligations to additional minor dependents. The states do not follow a uniform approach in their treatment of additional dependents. Instead, guidelines draw distinctions between and prescribe alternate rules for additional dependents across a number of dimensions. The criteria include the following: (1) whether or not there is a court-ordered child support order in place for the additional child; (2) whether or not the additional child resides with the obligor; (3) whether or not the obligor has actually been paying support for the additional child; and (4) whether the additional child was born prior to or subsequent to the child who is the subject of the proceeding.

Federal regulations require that child support guidelines apply to all noncustodial parent income, and usually the first step in a determination of child support is calculating a parent's total income from all sources. The calculation of income is important because the amount of child support ordered is affected by the income base used in the computation. When items are excluded from the definition and/or calculation of income, the amount of potential child support generated is reduced. Income is interpreted broadly to include benefits which would have been available for support if the family had remained intact. State definitions of income are generally expansive and include resources such as salary and wages, commissions, tips, severance pay, royalties, bonuses and profit sharing, rental income, interest and dividends, social security, annuities, self-employment earnings, veterans' benefits, workers compensation, unemployment compensation, pensions, spousal support, and in-kind compensation. State guidelines generally do not include child support received by a parent as income. Several states have provisions that specifically exclude child support from income calculations.

Another important factor in the calculation of child support orders is deviation from the presumptive guideline order. Pursuant to federal requirements, state child support guidelines provide that

there is a “rebuttable presumption” that the guideline calculation is the correct amount of the child support order (42 U.S.C. § 667[b][2]). One of the main purposes of using guidelines is to reduce judicial discretion and arbitrariness in guideline calculations. Application of the guidelines is designed to treat similar cases in a similar manner and thereby decrease variability across similar cases. The law, however, recognizes the need for flexibility in appropriate situations. Courts are allowed to exercise discretion to depart from the guidelines in limited situations. Specifically, parties can seek to rebut the presumption that the guideline support calculation is appropriate in cases where they can demonstrate that it is unjust or inappropriate. (45 CFR § 302.56(g)).

Departures from the presumptive guideline calculation are known as deviations. Under federal regulations, states are required to establish criteria for determining when a deviation is warranted because the guideline amount is inappropriate or unjust. The majority of state guidelines include both a list of specific criteria to consider when determining whether a deviation is appropriate and a catchall provision permitting the court to exercise discretion to depart from the guidelines in situations “where justice so requires.” If a court finds that a deviation from the guideline amount is warranted, the court must explain why the support amount varies from the guideline calculation and must rely on state criteria to justify its determination.

A. Deduction from Income for Existing Child Support Order

All states have considered the question of whether to consider children from prior relationships in the support calculation and they uniformly allow the obligor a credit for child support paid for such children pursuant to a court order. The guidelines provide that an existing child support obligation arising out of a court order and actually paid is to be deducted from that parent’s gross income when making a child support calculation. The Colorado guidelines provision is typical of such provisions. It states that “[t]he amount of child support actually paid by a parent with an order for support of other children shall be deducted from that parent’s gross income” (C.R.S. 14-10-115(7)(d)). Consequently, when a court is determining a potential child support order for child A, if it is made aware that the parent is currently

paying a child support order to an “additional dependent child,” child B, the prior support amount ordered for child B is deducted from the payor’s income before calculating child A’s order. The payor’s income that is available for calculating an order for Child A is thus reduced. These are mandatory deductions, not discretionary; however, there is some minimal variation among the states’ guidelines in whether the deduction for court-ordered child support payments is taken from gross income or factored into the child support calculation at a later stage (Morgan, 1996).

The credit for court-ordered support paid reflects a policy choice of favoring children with a pre-existing child support order over children who lack an order. This approach also has the potential to privilege prior-born children over later-born children in situations where prior-born children obtain a support order before an order is secured for the subsequently born children. On the other hand, these guidelines are applicable to any prior child support order, regardless of when the child was born, and it is certainly possible for a subsequent-born child to obtain a support order before a first-born child, particularly in situations where the prior-born child is born to a married couple and the subsequent child is nonmarital. Although the timing of court-ordered orders is not always correlated with birth order, one can expect that this will become more likely in the future given emphasis placed on obtaining paternities for nonmarital children shortly after birth.

Much of the commentary presumes that guidelines that permit a deduction for court-ordered support are designed to protect the interests of prior-born children. As such, the approach is often defended on the ground that the family “first in time” should also have priority in receiving support. The state of Montana has referred to this model as the “first mortgage approach,” meaning that one is less likely to take on a second mortgage when they are aware that they will be fully held to the obligation owed on a first mortgage. Put another way, the argument is that a parent who is responsible for meeting the financial needs of his or her children should not have more children and incur additional financial obligations until the existing obligations to the prior children are being satisfied. This view suggests that, in situations where a parent cannot support both prior and subsequent children adequately, the financial

needs of the prior children should have priority because the parent had the choice of whether to have additional children. Further, many have argued that parties with an existing child support order rely on that financial support and it is unfair to modify such orders to take account of subsequent children.

Although additional dependents that lack a court order of support are disadvantaged by this approach, it is consistent with the practice of courts giving judicial deference to prior court orders. Arguably, because the obligee of the first order is not a party to the subsequent support action, that order is not then before the court. And, if it is not before the court, presumably the court would lack authority to modify the pre-existing support order at that time (Morgan, 1996).

B. Child Support Paid for Additional Children Who Are Not the Subject of a Support Order

Many states, but not all, also have provisions in their guidelines that address the treatment of child support paid for children where the support is not being made pursuant to a court order. Although these child support payments are treated in a variety of ways in the states' guidelines, they uniformly require that the support be actually paid. In the case of noncustodial children for whom child support is paid in the absence of a court order, a number of states, including Arizona, Arkansas, the District of Columbia, and Connecticut, expressly give the courts discretion to consider these payments as grounds for a deviation or adjustment from the presumptive child support order under the guidelines. A smaller group of states allow for a deduction from income for these payments as long as the support is actually paid. These states include California and Idaho, among others. Thus, unlike the near uniform mandatory deduction from income for a pre-existing support order, state guidelines alternately treat these payments as a discretionary deduction from income or a deviation from the guideline calculation.

C. Deductions for Imputed Support Obligations for Children Who Reside with the Parent

Several states have guideline provisions that allow an adjustment when a child of another relationship resides with the parent. The support obligation is imputed in this situation and it is based on the presumption that the custodial parent is using a portion of own income to support the child. Typically,

the imputed support obligation is calculated according to the guidelines. “The most common formula to adjust for additional dependents [in the home] subtracts a ‘dummy order’ from the eligible parent’s income prior to the calculation of the support order amount. The dummy order is what the eligible parent would theoretically owe in child support for the additional dependents if the guideline was applied” (Center for Families, Children and the Courts, 2001).

Calculation of the imputed support obligation varies from state to state. A number of states, such as South Carolina and Montana, employ a multiplier which has the effect of reducing the guideline calculation in recognition of the fact that the parent shares a legal duty to support the child who resides in his or her home with the child’s other parent. South Carolina weights the imputed support obligation by 75 percent, and Montana uses 50 percent. New Jersey and North Dakota, on the other hand, require that the court consider the actual income of the custodial child’s other parent when calculating the imputed support obligation. North Carolina’s provision addresses both scenarios; it provides that the imputed amount will be equal to the basic child support obligation when the child’s other parent does not live in the household, and will be equal to one-half of that amount when the child’s other parent lives in the household. Idaho, Maine, Missouri, and Florida, by contrast, require that the court rely solely on the custodial parent’s income when determining the theoretical support amount. “Clearly, the advantage of including the income of the other parent is that it more precisely reflects the costs of the additional dependent to the parent subject to the support order, but the disadvantage is that it requires additional information and makes the calculation of the dummy order more cumbersome” (Center for Families, Children and the Courts, 2001).

There is considerable variation among the states with respect to the circumstances when parties can avail themselves of this adjustment and precisely how the adjustment is factored into the support calculation. Many states treat the deduction as mandatory, while some leave the matter to the court’s discretion. Some states, such as Kentucky, limit application of the imputed child support obligation to prior-born children who reside with the parent, but most states do not restrict its application based on

birth order of the dependent child in question. Finally, some states permit either parent to receive a credit for dependent children who reside in the home, while others do not.

A number of states use alternate methods (in lieu of a theoretical support obligation) to determine an adjustment. Ohio prescribes a formula based on the federal tax exemption less any child support received for the year. Further, although the adjustment is most often made in the form of a deduction from income, in many instances it is treated as a deviation from the presumptive guideline calculation. The states that treat additional children in the home as grounds for a deviation generally give the court discretion to set the departure amount.

D. Guideline Treatment of Birth Order

Another issue pertaining to guideline treatment of additional dependents is whether children should be treated differently based on their birth order.² (This is a separate, but related, issue from the priority given to pre-existing court-ordered child support orders.) State guidelines refer to children in this situation as either “prior born” or “subsequent born” children, the reference point being the child who is the subject of the child support order. Prior and subsequent children are terms used to describe children resulting from serial families; namely, following the termination of a relationship, one or both parents enters a new relationship or marriage and has additional children. Under these circumstances, the central issue is whether the duty of a support-paying, noncustodial parent to support subsequent-born children should have any impact on the financial obligation the parent owes to the prior-born children.

States do not follow a uniform approach in their treatment of birth order in cases of multiple support obligations. One group of states does not draw distinctions between additional dependents based on birth order. These guidelines speak generally about additional children without reference to whether the additional child was born prior to or subsequent to the child that is the subject of the proceeding. At

²State child support guidelines do not treat children differently based on the marital status of their parents.

the other extreme, a small group of states have guideline provisions that preclude the needs of subsequent-born children from being considered in a child support calculation. Another group of states fall somewhere in the middle and permit courts to exercise their discretion to consider subsequent children in limited situations.

One group of states allows for an additional dependent adjustment without regard to birth order of the children involved. States that fall into this category include Arizona, Connecticut, the District of Columbia, Indiana,³ and Oregon. This approach, which has been referred to as the “Credit for Subsequent Children” method, allows noncustodial parents a credit for the support of subsequent children (Takas, 1993). An imputed support amount is deducted from the parent’s income base before calculating the child support amount for the children in the case at bar.

Commentators have criticized the practice of deducting an imputed support amount for subsequent children from a paying parent’s income base. One of the primary objections is that the approach may have the effect of providing more child support to the subsequent child than to the child who is the subject of the proceeding. When the guidelines permit a deduction from gross income for an imputed support amount for subsequent children, the support order in the case at bar is calculated using an income base that is smaller than the income base used for the imputed amount (Takas, 1993).

Another problem with this approach is that it is based on an assumption that a reduction of child support is warranted whenever a support-paying parent forms a new family and has additional dependents. In states where the deduction is automatically taken, the guidelines reflect the view that the economic needs of subsequent children always create an economic hardship for the support-paying parent. This is not the case for some families, particularly where the noncustodial parent’s household has

³The Indiana guideline specifically provides that that “there shall be an adjustment to Weekly Gross Income of parents who have natural or legally adopted children living in their households, and who were born or adopted subsequent to the prior support order” Ind. C.S.G., Guideline 3(A)(4).

a higher standard of living (due to high wages or the presence of an employed partner in the household) than the custodial household (Takas, 1993).

A better approach is followed in those jurisdictions that provide courts with the discretion to make an adjustment for subsequent children in those limited circumstances when the relief is actually economically justified. In states where the adjustment is discretionary, rather than automatic, the court will make individualized determinations on a case-by-case basis. South Dakota and Washington, for example, permit courts to consider the needs of subsequent children when determining whether a deviation from the guideline calculation is appropriate. Additionally, some states (such as Florida, Minnesota, Rhode Island, and Washington) require that the court take into account the resources of the other parent of the subsequent-born child when determining whether application of the guideline calculation in the case at bar creates an economic hardship for the support-paying parent. If the other parent's income were ignored, deviation determinations would overstate the degree to which the financial demands of subsequent children justify relief from the guidelines.

Additionally, several state guidelines restrict consideration of subsequent dependents to situations where the obligor raises the issue "defensively" rather than "offensively." The Massachusetts guideline, which incorporates this type of limitation, prohibits the support-paying parent from seeking a downward modification of an existing support obligation on the grounds that the parent has additional dependents from a subsequent relationship. The needs of subsequent children may be raised as a defense, however, to a request by the custodial parent for an upward modification of an existing order. Other states with a similar limitation include Minnesota, Nebraska, and New Mexico.

Finally, a few states preclude any consideration of additional dependents unless they are prior-born children. The Colorado guideline is a case in point. It states that at the time of initially establishing or modifying a child support order, a deduction will be made for prior-born children.

The rationale behind this limitation is much the same as the rationale underlying the privileging of prior court-ordered support orders—namely, that first-born children have priority (Center for Families,

Children and the Courts, 2001). Despite the common justification, these provisions have drastically different impacts. The preference given by most guidelines to pre-existing child support orders only reduces the pot of money on which to calculate a child support order for the additional children who later seek an order. Such a preference is much less objectionable than a prohibition on consideration of subsequent children because it does not result in the additional dependent being precluded from obtaining any order at all.

As the foregoing demonstrates, there is no uniform approach among the states for treating the needs of prior and subsequent children. Morgan (1996) states:

The reason there is no uniformity of approach to the consideration of subsequent children, unlike the near uniformity of approach to children with a pre-existing support order, is that states differ in the fundamental public policy question of whether a parent should be prevented from taking on additional child support responsibilities to the possible detriment of children already in need of support, or whether all children should be treated equally regardless of the parent's behavior.

Perhaps the strongest argument against prioritizing prior-born children is that it poses an equal protection problem as a result of the classification of children as either prior or subsequent and the differential treatment the groups receive. When a state applies its child support guidelines in a way that privileges first-born children over subsequent children, an argument can be made that the guidelines unconstitutionally create a disadvantaged class of subsequent children.

The Equal Protection Clause of the U.S. Constitution provides that “[N]or [shall any State] deny to any person within its jurisdiction the equal protection of the laws.” When a statute or regulation is challenged on equal protection grounds, the court will evaluate the statute under one of three legal standards to determine its constitutionality. The court will apply different levels of scrutiny depending on the type of classification at issue in the case. The three levels of scrutiny are strict scrutiny, intermediate scrutiny, and rational basis review. Consequently, the initial question in an equal protection analysis is to determine the appropriate level of scrutiny.

Strict scrutiny is the most exacting standard of review. It applies to statutes that either discriminate against a suspect class or interfere with a fundamental right. When a state law is examined under this standard, the state must show that the law serves a compelling state interest and that the law is narrowly tailored to achieve that purpose. The state is required to use the least restrictive means possible to achieve its objective.

Guidelines establishing differential treatment for subsequent-born children would not likely be evaluated under strict scrutiny because such children do not constitute a suspect class under equal protection analysis. The elements of a suspect class include “a history of discrimination against members of the class; exhibition of obvious, immutable, or distinguishing characteristics, such as skin color, which define a discrete group; and the political powerlessness of the class, due to their minority status, to be heard in a representative system” (Garland, 1991). Although one’s birth order is an immutable characteristic, the other elements of a suspect class are not met here and it is unlikely that strict scrutiny would apply in this instance.

Heightened scrutiny is an intermediate level of review. It has been applied to statutes that discriminate on the basis of gender and illegitimacy. Under this standard, a statutory classification must be substantially related to an important governmental objective. The Supreme Court has held statutes that denied benefits to illegitimate children to be unconstitutional and determined that the state interest in protecting public morality was not a sufficiently important governmental objective.

The similarities between the illegitimacy classification and the birth order classification suggest that guidelines that treat dependent children differently merely because they are subsequent-born children may be vulnerable to challenge under the heightened scrutiny standard. As in the case of illegitimacy, guidelines that differentiate on the basis of birth order attempt to treat similarly situated persons differently. In each case, the similarly situated persons are the minor children of the noncustodial parent who is legally obligated to provide support. The policy justification for the differential treatment is that the parent who owes a duty of support to his or her first family should not incur additional obligations to a

second family if they cannot afford to support their existing children. In essence, the guideline seeks to discourage the support-paying parent from having additional children in this situation. The problem with this governmental objective is that it seeks to impermissibly influence the actions of parents by imposing a financial penalty on the children, who are not in a position to affect their parents' childbearing conduct. As the Supreme Court has held that illegitimate children are entitled to rights granted to other dependent children, so too are subsequent children entitled to those same rights.

Mere rationality, the lowest level of constitutional scrutiny, simply requires that the law being challenged bear a rational relationship to a legitimate governmental purpose. Again, guidelines that favor prior-born children over subsequent-born children as a means to discourage the support-paying parent from having additional children may be vulnerable to challenge under this standard of review. Even if the court were to conclude that the guideline serves a legitimate governmental purpose because it seeks to promote parental responsibility and reduce the welfare rolls, the restriction is not likely to achieve its stated purpose. There is no evidence to show that the guideline actually discourages parents who owe child support to a prior-born child from having additional children.

III. ALTERNATIVE APPROACHES TO LEGAL TREATMENT OF MULTIPLE FAMILIES

The vast majority of state child support guidelines do not include provisions that specifically address the full complexity of multiple partner fertility. The hypothetical family configurations set forth in Cancian, Cook, and Meyer (2003) provide a useful backdrop for considering the reach and limits of state child support guidelines.

For example, if a noncustodial parent is responsible for two children with the same partner, he/she would have an order of 25 percent, but if the children were with different partners, he/she would owe 17 plus 14, or 31 percent. Similarly, from a custodial parent's perspective, a second child with the same nonresident parent raises his/her order from 17 percent to 25 percent of income, an increase of eight percentage points. In contrast, if the custodial parent has a second child with a different nonresident parent, the two orders will total 17 percent of the first nonresident parent's income, and 17 percent of the next nonresident parent's income.

Variations in family complexity have implications for the total amount of child support paid by fathers (to all of their children) and for the total child support received by custodial parents. Moreover, the application of uniform guidelines to complex families is made even more challenging in light of the likelihood that “both the resident and nonresident parent will have children with other partners; many children will live in households with half-siblings, often relying on a resident mother who must manage relationships with multiple fathers, some of whom are also managing relationships and obligations to multiple mothers.” (Cancian, Cook and Meyer 2003). Although it is not obvious how to adjust the guidelines to take account of these circumstances, it is useful to consider both the constraints that exist in current guideline formulations and the unique approaches that some states have designed to address family complexity in a more comprehensive manner.

Provisions in a number of state child support guidelines provide alternate methods of addressing support obligations in complex families. In particular, the District of Columbia, Louisiana, Minnesota, Montana, New Jersey, North Dakota, Tennessee, Texas, Washington, and Wisconsin each have unique guideline approaches to handling the problem of multiple-partner fertility. As set forth below, these provisions address the potential inequities that may result when parents have multiple children with multiple partners (and/or one or more of the parents shares a household with a new partner who may be contributing to the family’s finances) and the payment and receipt of child support across these households is uneven. For the most part, these provisions address the economic hardship that noncustodial parents experience when they are obligated to provide child support to multiple children in multiple households. As shown above, a larger percentage of income is consumed by child support when the obligor’s children reside in separate households.

There is almost a complete lack of uniformity among the various state guideline provisions governing multiple families. The range of approaches implemented by the states reflects the competing tensions inherent in setting child support in cases of multiple partner fertility. The New Jersey, District of Columbia, and Washington models, for example, directly address the inequities across households. The

New Jersey guidelines attempt to reduce inequities between minor dependents receiving support from a single obligor, and the District of Columbia and Washington guidelines attempt to reduce inequities between the obligor and obligee households. The Tennessee and Wisconsin guidelines identify and prioritize the categories of support obligations in multiple family situations. Finally, the Louisiana model grants the court discretion (and very little guidance) to set the amount of support orders in cases of multiple families.

The New Jersey approach to multiple families is the most far-reaching in its effort to equalize the support orders an obligor must pay to all of his or her children—regardless of birth order, family association, or the existence or absence of an order of support. Its guidelines provide a mechanism to apportion the parent’s income to all of his or her legal dependents. Rather than compute each order separately, the guideline authorizes the court to review all orders of support and adjust them in a consolidated proceeding. The guideline states: “When the court adjudicates a case involving an obligor with multiple family obligations, it may be necessary to review all past orders for that individual. If the court has jurisdiction over all matters, it may either average the orders or fashion some other equitable resolution to treat all supported children fairly under the guidelines” (Appendix IX-10.2). New Jersey’s guideline is a departure from the near uniform practice of considering support obligations to multiple children (born to multiple mothers) in separate proceedings. Except in cases of extreme financial hardship or where the obligor’s income falls below a reserve amount, most guidelines do not allow for consideration of the total number of children that a parent is legally obligated to support. The New Jersey model promotes the principle of treating all children equally. In so doing, it rejects both the first-family preference and the related policy of enforcing parental responsibility for existing support obligations. Application of the “averaging” mechanism would likely result in a downward modification of a prior-born child’s pre-existing, court-ordered support. Consequently, it runs counter to the prevailing standard in many states’ guidelines that allow for “defensive” and not “offensive” consideration of financial duties to subsequent dependents. Put another way, currently many guidelines prohibit a parent’s financial

obligations to a subsequent family from being used as a justification to decrease a pre-existing order. They do, however, permit consideration of subsequent children in situations where a parent is defending a motion for an upward modification on the grounds that the parent has additional children from a subsequent relationship.

Like the New Jersey guideline approach, the District of Columbia and Washington guidelines consider a broader range of interconnected family relationships when fashioning support orders in multiple families. The District of Columbia provision seeks to level the financial disparities that may result when the custodial parent receives support payments from more than one noncustodial parent. Under the District of Columbia guidelines, a custodial parent's receipt of multiple child support payments can provide grounds for a departure from the guideline calculation. Specifically, D.C. Code Section 16-916.01(l)(7) provides that a departure may be warranted when:

Children of more than 1 noncustodial parent live in the custodial parent's household, receive a child support payment from the noncustodial parent, and the resulting gross income for the custodial parent and the children in the household causes the standard of living of the children to be greater than that of the noncustodial parent[.]

The D.C. provision is highly unusual in that it takes account of the total child support resources available to the custodial parent. Generally, states do not treat child support payments as income of the parent that receives such payments. Indeed, many state guidelines specifically exclude child support payments received from the definition and/or computation of "income." These states include Alabama, Arizona, California, Colorado, Connecticut, Idaho, Kansas, Louisiana, Missouri, New Mexico, North Dakota, Ohio, and Oklahoma, among others. The Idaho guidelines justify the exclusion on the grounds that "[c]hild support received is assumed to be spent on the child and is not income to the parent" (Section 6(a)(1)(i)).

The District of Columbia provision—albeit an exception to the general rule of excluding child support payments received from calculations of gross income—aims to reduce financial disparity between the custodial and noncustodial homes. The guideline calls for a comparison of the standard of living of the

custodial and noncustodial households: “Standard of living is measured by dividing the gross income available to the household from all sources by the poverty level income . . . for the number of adults contributing income to the household, plus the number of children” (D.C. Code § 16.916.01(p)(1)). In cases where the custodial parent’s household has a greater standard of living, the judicial officer has discretion in deciding whether a departure from the guideline calculation is warranted and in determining the precise amount of child support to be ordered.⁴ Yet the guidelines do not reveal whether the goal of a departure from the guideline calculation under these circumstances is to alleviate financial hardship to the noncustodial parent, to promote financial equality between the parents, or some other goal. Further, the guidelines are one-sided in the sense that the provision does not permit an adjustment to the guideline calculation when the living standard of the noncustodial household exceeds that of the custodial household.

The Washington guidelines similarly permit consideration of the totality of the financial circumstances of both parties’ households in multiple-family cases. A deviation from the presumptive guideline calculation is within the court’s discretion when either or both of the parents in the action have children from other relationships. “When the court has determined that either or both parents have children from other relationships, deviations under this section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received, and owed for all children shall be disclosed and considered” (R.C.W. 26.19.075(1)(e)(iv)). In addition to requiring consideration of all child support obligations, the guideline requires consideration of the income and resources of the parties’ new spouses and other adults in the household (R.C.W. 26.19.075(2)). The District of Columbia and Washington multiple-family models are atypical in that they require the court to consider family

⁴Although the focus of this report is on noncustodial parents paying child support to multiple custodial parents, it is important to take note of and understand that the child support obligation of such noncustodial parents may be affected by (and possibly reduced) in situations where guidelines require an examination of the custodial parent’s receipt of multiple child support payments and permit a downward departure from the guideline calculation when the standard of living of the custodial home exceeds that of the noncustodial home.

resources—namely, receipt of child support and income of a new spouse—that does not fall within the definition of “income” available to the parent to meet his or her legal duty to support a child. Nonetheless, this approach recognizes that the parent’s household benefits financially from the influx of a spouse’s earnings and the receipt of child support for another child.

Unlike the District of Columbia approach, which examines the obligee’s receipt of multiple support orders, most state guidelines that pertain to multiple-partner fertility focus primarily on the obligor’s payment of multiple support obligations. Further, even though the obligor may have multiple children with multiple partners, generally each child support order is arrived at individually in separate proceedings rather than collectively in a comprehensive proceeding. As discussed above, guidelines routinely allow for a deduction from gross income for court-ordered support paid. To a lesser extent, guidelines also permit deductions both for an imputed support obligation for a dependent child living with the parent and for child support paid without court order for a child not living in the parent’s home. These provisions allow for a deduction from gross income of support paid or imputed such that the income available for calculating an order in a subsequent case is reduced.

Like the District of Columbia, the Minnesota and Montana child support guidelines permit a broader consideration of the obligor’s household resources and support obligations when there are additional dependents. The Minnesota guidelines provide that the needs of the obligor’s subsequent children shall not be factored into a support guidelines calculation except when raised in response to a request by an obligee for a modification to increase child support. When considering such a request, the court must determine both the obligor’s total ability to contribute to dependent children and the total needs of all the obligor’s children. The guidelines state that when the “needs [of the obligor’s children] are less than the obligor’s ability to pay, the needs may become the obligor’s child support obligation.”

Here, as in the case of the D.C. guidelines, the rules permit consideration of resources that are typically excluded from a guideline calculation. The D.C. guideline permits consideration of receipt of child support by the custodial parent whereas the Minnesota provision permits consideration of the

financial contributions of other adults who share the obligor's household and/or contribute to the costs of rearing subsequent children. Most state guidelines exclude from the definition of income any income earned by a spouse/partner of the parent on the ground that the stepparent or cohabiting partner is not legally obligated to support the child that is the subject of the proceeding. The Minnesota guidelines depart from this practice by requiring that the obligor's expenses must be "reduced as appropriate to take into account contributions to those costs by other adults who share the obligor's current household."

In addition to considering the resources of spouses and/or partners when determining the obligor's total expenses, the Minnesota guidelines require the court to take account of the other parent(s)'s resources when considering the total needs of the obligor's children. Specifically, the guidelines state that "[w]hen considering the needs of subsequent children, the trial court must reduce these amounts as appropriate to take into account the ability to contribute to those needs by another parent of the children." Most state guidelines do not call for such a broad-ranging examination of the actual resources available to support subsequent children. Instead, the guidelines simply allow either a deduction for support actually paid for a child that does not reside with a parent or a deduction for an imputed support obligation for a dependent child living with the parent. In each case, the resources of the child's other parent are not taken into account. Similar to the District of Columbia and Minnesota guidelines, the Montana guidelines permit a broader consideration of parents' support obligations when there are additional dependents. Under the Montana guidelines, when the court is considering a request to modify an existing child support order, it must make two separate child support calculations: one calculation takes account of the parties' support obligations for prior and subsequent children, and the other does not consider these support obligations. The court then compares the two calculations and, under the guidelines, selects the calculation that results in the smallest modification possible. For example, the Montana guidelines provide that "if both calculations result in a decrease in the transfer payment due and payable from the obligated parent, the lesser of the decreases in the transfer payment is granted."

IV. CONCLUSION

Examination of these alternative approaches does not yield any clear answers regarding what alternative method for calculating child support in complicated families is preferred. The analysis does suggest, however, a number of directions that states are following in this context. First, states are considering a broader range of relevant data when determining child support orders in complicated families. Specifically, states have demonstrated a new willingness to take account of both receipt of child support and the financial resources of a parent's new partner. Second, and perhaps more important, some states have implemented provisions that seek to consider a parent's support obligation to all their children in one unified proceeding. These innovations are likely to involve trade-offs. Certainly, these methods will lead to more costly, cumbersome, and lengthy child support proceedings. Application of formulaic guidelines will be difficult when more dependent children and sources of income are subject to the court's consideration. Further, due to the complexity of family and financial relationships in cases of multiple-partner fertility, the guideline goals of uniformity and predictability may be unachievable. In the end, these families' situations may best be evaluated on a case-by-case basis. To promote equity and reduce unfettered judicial discretion, states will need to develop principles to guide judges in these determinations.

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