

**REPORT OF THE TENNESSEE DEPARTMENT OF HUMAN SERVICES  
CHILD SUPPORT INCOME SHARES ADVISORY COMMITTEE  
PURSUANT TO 2005 TENN. PUB. ACTS 403  
SUMMARY OF RECOMMENDATIONS**

The Department of Human Services' Child Support Income Shares Advisory Committee commenced meeting on April 28, 2005, meeting four times thereafter as a full committee: June 1, July 13, August 18, and September 15, 2005.

The Committee was composed of the following persons:

Mike Adams, Assistant Commissioner  
Tennessee Department of Human Services

Virginia T. Lodge, Commissioner (Ex Officio)  
Tennessee Department of Human Services

Circuit Judge Don Ash  
16<sup>th</sup> Judicial District, Part 3

James "Jim" Martin, Esq.  
Stites and Harbison

Kim Beals, Assistant General Counsel  
Tennessee Department of Human Services

Mitchell Morgan, Administrator  
Title IV-D Child Support Program  
Juvenile Court of Memphis and Shelby County

Barbara Broersma, Assistant General Counsel  
Tennessee Department of Human Services

State Senator Curtis Person

Steve Cobb, Esq. (Ex Officio)  
Lobbyist for TBA

Allan F. Ramsaur, Executive Director (Ex Officio)  
Tennessee Bar Association

Jean Crowe, Esq.  
Legal Aid Society of Middle Tennessee  
and the Cumberland

Scott Rosenberg, Child Support Referee  
Juvenile Court of Davidson County

State Representative John DeBerry

Scott Roy, Board Chairman  
Alternate: Tony Gottlieb, President  
DAD of Tennessee, Inc.

Dot Dobbins, Esq.  
Dobbins and Venick

Sarah Sheppard, Esq.  
Sheppard, Swanson, Mynatt & McMillan

Beth Fortune, President  
Nashville Women's Political Caucus

Circuit Judge Marietta Shipley  
20<sup>th</sup> Judicial Circuit, Division 4, Division 2

Barry Gold, Esq.  
McKoon Williams & Gold

Appellate Judge Charles Susano  
Tennessee Court of Appeals, Eastern Section

W. David Kelley, Asst. District Attorney  
12<sup>th</sup> Judicial District

Circuit Judge W. Neil Thomas, III  
11<sup>th</sup> Judicial District, Division 4

Suzanne Landers, Esq.  
Landers and Associates

Circuit Judge Karen Williams  
30<sup>th</sup> Judicial District, Division 3

Gena Lewis, Supervising Attorney  
Child Support Services of Davidson County

At its initial meeting, the Committee created three sub-committees to address the following:

- (1) The calculation of income;
- (2) The parenting-time adjustment that is used to adjust the amount of the child support obligation if a parent spends more or less time caring for the children; and
- (3) Procedural efficiencies in the determination of the child support obligation.

Each Sub-Committee met once each in May, June, and July, and the Procedural Sub-Committee met a fourth time in August. As a result of these sub-committee meetings, recommendations were made for consideration by the full Committee. In total, the Committee considered twenty-eight Issues and made twenty-one Recommendations, nineteen of which have been adopted by the Department, two with some modification.

The Income Sub-Committee considered fifteen issues, ten of which were related to the calculation of income, four were related to the calculation of additional expenses, and one related to non-parent caretaker situations. As a result of Sub-Committee discussions, the full Committee, ultimately, made a recommendation with respect to thirteen of these issues, twelve of these recommendations have been adopted by the Department. After careful consideration of the one outstanding issue (calculation of “Other Child Credits” on page three of full Report), it was deemed contrary to state law.

The Parenting Time Sub-Committee considered four issues related to the calculation of the parenting time adjustment. As a result of Sub-Committee discussions, the full Committee made three recommendations. All three of these recommendations were adopted by the Department, two with some modification – definition of “Days” (page eight of the full Report) and the initial threshold for application of the adjustment (page ten of the full Report).

The discussions of the Procedures Sub-Committee focused on the standardization of child support orders available for use statewide in any case establishing or modifying a child support obligation. The use of these orders was recommended by the Committee. The Department has adopted this recommendation.

The Committee as a whole also considered five issues related to the economics underlying the Income Shares Guidelines, making two recommendations, one of which has been adopted by the Department (inclusion of net vehicle outlay as a child-rearing expense has been held in reserve – see page fifteen of full Report). The full Committee also considered three issues pertaining to modification of orders initially established under the Flat Percentage Model, making two recommendations, both of which were adopted by the Department. The Committee also discussed, and made a recommendation on, one issue pertaining to the parenting plan statute. The Department has adopted this recommendation.

The Department believes that the review of the Child Support Guidelines by the Income Shares Advisory Committee was a very useful and productive process. The Department appreciates the time and energy of all those who participated and believes that the resulting recommendations that are being adopted will lead to a better process for the determination of child support for Tennessee’s children.

The Department of Human Services has filed a Notice of Rulemaking to begin the process of implementing these recommended changes and has begun receiving public comments from the courts, attorneys, parents, and other stakeholders regarding these proposed changes.

## **Issues, Discussions, and Recommendations of the Tennessee Department of Human Services' Child Support Income Shares Advisory Committee**

### **Income –**

#### **(1) Low Income Parents – Minimum Basic Child Support Obligation (BCSO)<sup>1</sup>**

**Issue -** Monthly combined adjusted gross income of both parents on the Child Support Schedule begins at \$150. Accordingly, there is no corresponding BCSO when the combined parental income is less than \$150. A suggestion has been made that at such levels of combined parental income, all available financial resources should be allocated towards child support.

#### **Comments - Pros**

- Could pertain to parents who are working only part-time because they are on SSI or TANF or are minor parents still in high school
- An effort to send a message that some level of support is required – Getting parents on the right track of paying support
- Addressed case-by-case, based upon capacity to work and judicial discretion

#### **Comments – Cons**

- Creating obligations that, if don't get paid, will just increase arrears

**Recommendation** – Committee recommended a minimum BCSO of \$100, allowing for deviation when the combined gross income of both parents is less than \$150 / month.

**Department Response** – Adopting recommendation.

#### **(2) Imputed Income**

**(A) Issue – Minimum Wage** – When there is no reliable evidence of a parent's income (generally, because the parent has failed to cooperate), the Guidelines require income to be imputed based upon the median gross income figures from the U.S. Census Bureau for the Tennessee population, *i.e.*, \$26,450 for women and \$35,851 for men. Median figures are, by nature, higher than some of the income levels of the Tennessee population. For this reason, some judges are, apparently, imputing income at minimum wage levels. While, in some cases, this level of income may be more accurate, it does not provide the same incentive to cooperate as do the median gross income figures. In other words, the median gross income figures penalize a parent's failure to cooperate – minimum wage does not.

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<sup>1</sup> The Basic Child Support Obligation (BCSO) is obtained from the Child Support Schedule and is the amount of support corresponding to the combined adjusted gross income of both parents and the number of children for whom support is being calculated. The BCSO accounts for the share of parental income allocated for payment of a child's basic expenses, *i.e.*, housing, transportation, food, clothing, and average amounts of extracurricular activities.

**Comments**

- Use of minimum wage is essentially a judicial finding of reasonable earnings, knowledge of earning capacity in the community – Minimum wage becomes other reliable evidence of income – Stress in rule that median gross income figures are to be used only when there is no other reliable evidence of income
- Minimum wage may be a factor that should be expressly included in the rule on imputing income along with the information on median gross income

**Recommendation** – A suggestion was made that the purpose of this provision would be more clear if “income ability” or “income capacity” were used rather than imputed income. No majority opinion was reached on this issue. No other specific recommendation on this issue was made.

**Department Response** – Recommendation Adopted. This rule has been reorganized and clarified pursuant to the comments and recommendation below.

**(B) Issue – Stay of Imputation** – A suggestion was made that the Guidelines prohibit income to be imputed to a parent for 120 days after completion of a course of study to allow the parent to obtain appropriate employment, essentially, postponing the modification for 4 months to facilitate a job search.

**Comments – Pros**

- Rule should be worded in such a way so that it could not be used as license to sit home for 4 months and do nothing
- Provision should apply to both parents

**Comments – Cons**

- Some objection based upon the child support obligation of both parents that begins on day one

**Recommendation** – Suggestion was withdrawn on premise that issue would be addressed with the modification to the Imputed Income rule.

**(C) Issue – Willful and Voluntary Underemployment or Unemployment** – Whether the Guidelines should provide more criteria to address this determination, which must be made if a parent is not working, is working part-time, or is working below the parent’s educational level or job skill experience.

**Comments**

- Rules are not clear about when to impute income – Income is being imputed to non-wage earners before determining, according to criteria of the Guidelines, whether parent is willfully and voluntarily under or unemployed
- Median gross income figures are being used to impute income even when other reliable evidence of income is available

- Rules should include a statement addressing the value of stay-at-home parenting and clarify that parents staying at home with young children are not automatically willfully and voluntarily under or unemployed, especially parents with limited work history due to performing the caretaker role – Specify that the determination should be fact specific, according to the criteria of the Guidelines, not automatic either way

**Recommendation** – Committee suggested some reorganization and clarification of the rule. Also suggested an additional provision allowing imputation of a reasonable income to non-income producing property.

**Department Response** – Adopting recommendation.

### (3) Other Child Credits

**(A) Issue - 50/50 Parenting Situations** - The Guidelines provide credit against gross income for support a parent is providing to other children for whom the parent is legally responsible. Credit is available for pre-existing child support orders, “in-home” children, and “not-in-home” children. “In-home” children are defined as children residing more than 50% of the time with the parent claiming the credit. “Not-in-home” children are defined as children residing less than 50% of the time with the parent claiming the credit. These definitions do not provide guidance for calculating credits for children residing with a parent exactly 50% of the time.

#### **Comments**

- A suggestion was made that the amount of the credit be more incremental based upon parenting time, something more gradual than proof required at 49.9% but no proof required at 50.1% – Considered the possibility that this option might create an even more complicated approach to calculation of the credit
- If credits are overstated, then the child in the case under consideration is disadvantaged because the amount of support for that child will be reduced

**Recommendation** – That “other” children who are in a parent’s home 50% of the time be classified and treated as “In-Home” Children for the purposes of calculating credit.

**Department Response** – Adopting recommendation.

**(B) Issue – Simplification of the Calculation** – Several alternative methods were discussed –

- (a) Not requiring proof of payment, as is currently required, for pre-existing or subsequent orders for “not-in-home” children, instead giving the parent full credit for these obligations unless the court determined that full credit is not equitable in a particular case, making the court with jurisdiction over the other support order responsible for compliance;

### **Comments – Pros**

- Current approach gives credit for payment of support but not as much to orders that came after the order under consideration – Recognition that, under T.C.A. § 36-5-101(e)(4)(A), pre-existing orders no longer have the same priority since equitable consideration for all a parent's children is now required<sup>2</sup>
- Suggestion was made that not requiring proof would separate establishment efforts from enforcement efforts – Would not overstate an obligation when a parent is required to pay on other child support orders, otherwise, just creating a debt that the obligor may never be able to pay
- Statute requires actual payment of support in order to receive a credit against gross income but doesn't specify a certain level of support – It was suggested that, since a child support order creates a legal obligation, it should be presumed that a parent is actually paying any court-ordered support unless proven otherwise

### **Comments – Cons**

- A parent should not be given credit for child support obligations that are not paid
- (b) Including in the calculation of the theoretical order<sup>3</sup> for not-in-home children all of a parent's not-in-home children, even those children receiving support pursuant to a pre-existing order, instead of calculating separately the credit allowed for support provided pursuant to a pre-existing order.

### **Comments – Pros**

- Much discussion about the inconsistent treatment of child support payments, *i.e.*, different treatment for subsequent orders and pre-existing orders – 100% credit allowed for pre-existing and only 75% of a theoretical order allowed for subsequent orders – Suggestion that calculation of credit for all support orders be more unified
- Concern that amount of credit allowed would be less if the credit for all of a parent's not-in-home children were determined through calculation of one theoretical order

### **Comments – Cons**

- Giving priority to pre-existing orders may promote the public policy of the State (first children first)

**Recommendation** – That proof of payment not be required, subject to determination of compliance with governing statute, T.C.A. § 36-5-101(e)(4)(A).

**Department Response** – The Department determined, upon the advice of legal counsel, that the Committee's recommendation is not permitted by the governing statute. Instead, the Department has chosen to adopt alternative (b) above as a method for simplifying the calculation.

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<sup>2</sup> As a result of this statute, support provided voluntarily or pursuant to a subsequent child support order can now be used as a credit against gross income to reduce the amount of a pre-existing obligation.

<sup>3</sup> The theoretical order is used to calculate the amount of credit against gross income allowed to a parent for support provided to children not included in the case under consideration.

**(C) Issue – Use of the 75% Credit** – Questions were raised about the adoption of the 75% credit, *i.e.*, whether a different percentage would be more appropriate.

**Comments – Pros**

- The Sub-Committee discussed the justification for the 75% credit, *i.e.*, an economic study which indicates that 75% strikes a balance between a parent's other child support obligations and his/her obligation to support the children who are the subject of the child support order under consideration

**Comments – Cons**

- A 50% credit might be more fair

**Recommendation** – No majority opinion was reached on the use of different percentage.

**(D) Issue – Inclusion of In-Kind Remuneration** – Whether in-kind remuneration (*i.e.*, purchase of food, clothing, etc. for the child), reduced to a dollar amount, should be permitted for purposes of calculating the amount of the credit for “not-in-home” children. Currently, only monetary support is permitted.

**Comments – Pro**

- Belief that a parent should get credit for any support that is provided, in whatever form
- If parents, only one of whom is currently before the court, have an established routine that works for them, we should not attempt to change it

**Comments – Cons**

- Concern that allowing in-kind remuneration limits the flexibility of the Primary Residential Parent (PRP) to spend child support funds where they are most needed

**Recommendation** – That in-kind remuneration be included in the calculation.

**Department Response** – Adopting recommendation.

**(4) Spousal Support – Accounting For Payment of Spousal Support in Income Determination**

**Issue -** Under the current Guidelines, spousal support from the case under consideration is neither subtracted from the gross income of the payor parent nor added to the gross income of the payee parent. This approach is not consistent with the tax treatment of spousal support, and many people believe that this approach misstates the gross income of both parents. However, because the current approach does not change the amount of combined parental income, only its allocation, there is no impact on the amount of the BCSO, only on how the amount is pro-rated between the parents.

**Comments – Pros**

- Difficult to adjust gross income for payment of spousal support since most judges calculate child support before considering the issue of spousal support

**Comments – Cons**

- Alimony decreases bank account of paying parent and increases the bank account of the payee parent – This reality should be considered when establishing a child support obligation

**Recommendation** – That no change be made to the current rule.

**Department Response** – Adopting recommendation.

**(5) State Income Taxes – Adjustment to Gross Income**

**Issue -** The Guidelines do not provide an adjustment against gross income for parents working / residing in states with state income taxes. Some judges are, apparently, still allowing a credit. Should a provision be added to the Guidelines allowing for adjustment of gross income for state income taxes?

**Comments – Pro**

- State income taxes reduce a parent's gross income and should be considered when establishing a child support obligation

**Comments – Cons**

- Other parents, not paying a state income tax, would not have similar consideration of payment of state sales taxes – No consideration of differing impact on federal taxes
- *Williams v. Williams*, 2005 Tenn. App. LEXIS 567 (Tenn. Ct. App. 2005) – Recently decided by the Eastern Section of the Court of Appeals – Prohibits consideration of state income taxes since there is no similar consideration of sales taxes paid in Tennessee and no indication of the impact on the federal tax obligation.

**Recommendation** – That state income taxes not be considered for credit against gross income.

**Department Response** – Adopting recommendation.

**Expenses**

**(6) Mandatory Additional Expenses**

**(A) Issue – Credit for Payments by Step-Parents** – The Guidelines presently permit consideration of expenses paid only by a parent, therefore, expenses paid by a step-parent are not considered in the calculation of a child support obligation.

**Comments – Pro**

- Some believe that expenses paid by a step-parent should be credited to the parent since the expense is paid on behalf of the parent
- Concern that not allowing credit could create a ruse where parent just reimburses the step-parent and then gets credit for the expense when calculating support

**Comments – Cons**

- No credit should be given since the step-parent is not legally obligated to pay any expense and because the amount of the expense may be minimal and/or difficult to ascertain
- Considering step-parents makes the process of calculating support unnecessarily complicated
- Often the step-parent incurs little or no expense when adding additional children so allowing this credit is likely to have minimal impact on the child support order

**Recommendation** – That expenses paid by a step-parent not be included in the child support calculation.

**Department Response** – Adopting recommendation.

**(B) Issue – Appropriate Childcare Expenses** – The Guidelines specify that the childcare expense should be appropriate to the financial abilities of the parents and the lifestyle of the child. A suggestion was made that the Guidelines provide more definitive guidance on the amount of childcare expense that may be considered, especially when the expenses are being incurred by a non-parent caretaker.

**Comments – Pro**

- Additional guidance would provide some reasonable benchmark, *i.e.*, a certain percentage of income

**Comments – Cons**

- Judicial discretion works in most situations
- Child care costs are not consistent across the State – Setting a benchmark may make it difficult to justify a higher amount in appropriate situations

**Recommendation** – That no change to the rule be made.

**Department Response** – Adopting recommendation.

**(C) Issue – Calculation of Additional Expenses in Split Parenting Situations<sup>4</sup>** – The Guidelines specify that additional expenses (childcare and health insurance) will be divided between the parents according to each parent's percentage of income. Adding each parent's pro-rata share of the additional expenses onto the BCSO results in the adjusted support obligation. This amount must be further adjusted to account for any amounts each parent owes to a third party, rather than to the other parent, for childcare and/or the health insurance premium. The amount of this adjustment depends upon which parent is responsible for writing the check for payment of any non-payroll deducted childcare expense. The parent responsible for making this payment will be the parent with the smaller support obligation, who will ultimately receive support from the other parent.

In split parenting situations, this process may result in a parent writing a check for a childcare expense for a child living primarily with the other parent. This result is not consistent with the approach in standard parenting and 50/50 parenting situations, wherein the childcare expense is paid by the parent designated as the child's PRP.

**Recommendation** – That each parent in a split parenting situation be permitted to make the payment for the childcare expenses of the child in his/her primary custody.

**Department Response** – Adopting recommendation.

#### **(7) Uninsured Medical Expenses – Relocating to Section V of Worksheet**

**Issue** – State and federal law require consideration of a child's uninsured medical expenses (*i.e.*, co-pays, deductibles, and the like) as part of providing support for children. The new Guidelines provide for this consideration, allowing a specific amount to be added to the order if there are recurring uninsured medical expenses. The Guidelines suggest, but do not require, that these expenses be shared by the parents according to each parent's percentage of income (PI). Because there may not be recurring amounts of uninsured medical expenses in many cases, and the court may not choose to use the PIs for dividing the expenses between the parents, uninsured medicals do not receive the same treatment as the other mandatory additional expenses (healthcare and childcare) and have been located in a different section of the Child Support Worksheet. A suggestion has been made that the treatment of uninsured medical expenses be changed to be more consistent with the treatment of the other mandatory additional expenses, *i.e.*, moving these expenses to Part V of the Worksheet and dividing them automatically between the parents according to each parent's PI. This approach will reduce the number of errors as the whole amount of the expense has often been entered on the worksheet rather than just the portion allocated to the payor parent.

**Recommendation** – That these expenses be moved to Part V of the worksheet and receive the same treatment as other mandatory additional expenses.

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<sup>4</sup> Split parenting is a situation in which each parent is primary residential parent to one or more of the couple's children.

**Department Response – Adopting recommendation.**

**Parenting Time**

**(8) Definition of “Days”**

**Issue –** The definition of a “day” under the Guidelines requires the majority of a 24-hour *calendar day* and the expenditure of a reasonable amount of resources. The question has been raised whether the current definition is sufficient or whether a different definition would be preferable, for instance a return to measuring parenting time in terms of overnights with the Alternate Residential Parent (ARP), allowing for deviations for unusual cases where the ARP spends time and money on the children, but the ARP has no overnights.

**Comments – Pros**

- Current definition is mostly clear and is generally not a problem if applied as written, just requires more precision to address time when the child is not in the direct care of either parent (*i.e.*, school or daycare) – Must determine which parent is responsible for the child during that time, *i.e.*, which parent would be called if the child gets sick – Make sure that the parent is not given credit for time when there is no expenditure of resources
- Even under previous Guidelines, parents had to decide which parent got credit for time at school
- Use of 24-hour period vs. 24-hour calendar day would allow more flexibility but might create a moving target and more uncertainty – Defining day as midnight to midnight may force overnights on Sunday which are thought not to be in the best interest of children

**Comments – Cons**

- Current definition creates a lot of issues of proof and level of detail to be spelled out in the parenting plan – Definition is tedious, mostly with respect to who has control when child is at school, etc.
- Definition may create more acrimony by giving the parents more things to argue about like whether or not the ARP fed the children dinner during visitation
- What to do if ARP is exercising visitation but not for more than 12 hours through no fault of either party (*i.e.*, a nursing infant that cannot be away from its mother)
- “Overnights” is very clear, little room for disagreement between parties – Can possibly address the issue of expenditure of resources through deviation / judicial discretion – Giving credit to a parent spending several hours every day after school with the child but receiving no credit under the current definition

**Recommendation –** A return to the use of “overnights” with discretion in appropriate situations.

**Department Response** – Adopting recommendation to the extent that “overnights” is included in the proposed definition of “Days” and judicial discretion will be permitted in appropriate situations. However, the proposed definition will require more than 12 hours within a 24-hour period and will now presume expenditure of resources during this time period.

## (9) Averaging Days

**Issue** – The Guidelines specify that, in families with multiple children, if a parent spends different amounts of time with each child, that the number of days with each child should be averaged to determine the amount of the parenting time that should be used to determine the parenting time adjustment. The rules also specify that only parenting time that qualifies for an adjustment should be included in the average. While this approach may make some logical sense, there is concern that it may overstate the amount of an adjustment. For instance, an ARP has 4 children with visitation as follows: 122 days with one child, 160 days with another child, and 89 days with each of the 2 other children. Under the current rules, the parenting time adjustment would be determined based upon an average of the 121 days and the 160 days, or 141 days. The entire support obligation would then be adjusted by 20% even though the parenting time of only 2 children qualified for the adjustment. To address this result, which many believe to be unfair, it was suggested that the parenting time for all children be averaged to determine the amount of the adjustment. In this example,  $122 + 160 + 89 + 89 = 460 / 4 = 115$ . Using this approach, which takes into account parenting time with all of the children, the obligation would then not qualify for a parenting time adjustment.

**Recommendation** – That parenting time for all children in the order be averaged to determine the ARP’s parenting time for purposes of calculating the adjustment.

**Department Response** – Adopting recommendation.

## (10) Changing the Parenting Time Adjustment Calculation

**Issue** – The issues initially raised pertained solely to modification of the current parenting time adjustment. Ultimately, there was little to no discussion of these issues. Instead, the discussion centered around possible replacements for the current approach.

### Comments

- Concerned about the linking of financial incentives with parenting time, *i.e.*, parents “gaming” the system by pushing for more days in order to decrease the support obligation
- Changing how we look at families, the question of money bleeding into visitation
- Some have a preference for defaulting to standard visitation, not even really counting days unless there is significantly more visitation than standard – Others have seen a steady increase in ARPs exercising more than standard visitation

- Indication that the methodology of *Casteel v. Casteel*, 1997 Tenn. App. Lexis 518, worked better than the current approach, but even with *Casteel* there was evidence that parties were pitting visitation against the obligation<sup>5</sup> – Some suggest the use of *Casteel*, allowing the court to deviate in appropriate situations
- Concern that the mechanical formula for adjusting support eliminates the ability to negotiate parenting time and the resulting obligation
- Belief that the per diem approach would reduce the “cliff effect” of the current PTA<sup>6</sup>
- Using the multiplier approach recognizes the existence of two households – Using the PTA to reallocate resources between the parents in order to meet the needs of the children – Some concern about creating an adjustment that would be easy to explain

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- The BCSO amounts in the Child Support Schedule make no assumptions about visitation, the amounts are intended to cover all of the child-rearing expenses that are incurred when a child is living full-time in a single household
- As a result of a national guideline study done in the 1980's, it was recommended that the initial threshold for implementation of the PTA should be set at 25% of days for the ARP, thus avoiding the “cliff effect”
- The multiplier approach takes account of duplicated expenses for housing and transportation that occur when raising a child in more than one household – For these items, a multiplier of 1.5 has been found to be economically rational and was recommended by the National Guidelines Project in 1987 – The multiplier approach cannot be used for an adjustment beginning at one day of parenting time but only for levels of parenting time greater than standard
- Other approaches provide compensation to the ARP at lower levels of parenting time for transferred items, such as food, that the PRP does not have to provide when the children are with the ARP
- There is some economic justification for the negative ARP obligation when the PRP contributes a greater share of the combined gross income<sup>7</sup>
- The economics do not support increasing the support obligation for less than standard visitation by the ARP
- Otherwise, economics has little to offer on this issue as the decision is mostly a matter of policy – Some economists suggest that a day-per-day allocation of child-rearing costs is not possible with any degree of accuracy – There is also no economic evidence pinpointing at what level of parenting time a PRP's expenses decrease, an ARP's expenses increase, and whether these events occur at the same level of

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<sup>5</sup> The court in *Casteel* devised a formula that created a day-for-day reduction in the child support obligation based solely upon the parenting time of the ARP. This formula always reduces the support obligation to zero when the child is with each parent exactly 50% of the time, notwithstanding differences in parental income.

<sup>6</sup> A day-for-day (or per diem) adjustment results in small, equal daily changes to the support obligation. The current adjustment creates a “cliff effect” because the support obligation is adjusted by 10% when the ARP's parenting time moves from one range of 14 days to the next range of 14 days.

<sup>7</sup> If the parenting time adjustment recognizes child-rearing expenses in the home of both the ARP and the PRP and the ARP is exercising a lot of parenting time, the PRP will be allocated a larger share of both the ARP's child-rearing expenses and the PRP's child-rearing expenses when the PRP makes more money than the ARP. As a result, the PRP may ultimately owe the ARP more money than the ARP owes to the PRP.



parenting time – There is also very little anecdotal evidence that parents are gaming visitation against child support – The States encountering the most difficulties are those with high initial thresholds

**Recommendation** – While expressing nearly universal dislike for one or more aspects of the current parenting time adjustment, the Committee reached no majority consensus on a specific replacement. However, the Committee did address the additional PTA issues indicated below and recommended a low initial threshold for application of the adjustment (specifically 80 days), small changes in the obligation for small changes in parenting time, the use of a multiplier to account for duplicated expenses, and a zero obligation when income and parenting time are the same for both parents.

**Department Response** – Adopting all committee recommendations except that the initial threshold for application of the adjustment will be set at 92 days rather than 80 days in order to accommodate a parenting time adjustment that is most in keeping with the Committee's other recommendations.

**Where to begin the adjustment** – Whether the PTA should begin at one day of parenting time vs. some level above the standard 80 days. Similarly, whether there should be a block of time for “standard” parenting arrangements, that is, no adjustment for a period of time less than or greater than 80 days, and if so, what period of time should the block include. Also, whether an adjustment for parenting time less than 80 days should be a credit for exercising parenting time or a penalty for failure to exercise at least standard parenting time.

#### **Comments**

- Some committee members support a level of parenting time during which there is no adjustment to the support obligation – Such a plateau creates a normative judgment about the appropriate level of parenting time but also reduces the level of disagreement for parenting time falling within that range
- Support for beginning adjustment at 80 days, or some level just above 80 days, so long as the incremental adjustments are small
- The Guidelines should encourage parenting time by the ARP even if it causes a reduction in the BCSO – Opposing suggestions for encouraging parenting time by the ARP, *i.e.*, providing a credit to the ARP starting at one day of parenting time vs. imposing a penalty against the ARP for exercising significantly less than standard parenting time

**Manner of Adjustment** – Whether an adjustment should be available for each day of parenting time (per diem approach) or a certain adjustment should be available for a specified range of parenting time (similar to the current approach)

#### **Comments**

- Generally advocate against a significant adjustment for just one day of parenting day – Prefer small daily adjustments to a specified percentage applied to a large block of time (current approach) – Per Diem approach with small or no plateau puts focus back on appropriate visitation rather than the amount of the obligation

- Some prefer ranges of time so that there is some flexibility between the parents with respect to parenting time

**Equal Parenting Time** – Whether the ARP's share of the BCSO should be zero when the ARP and PRP have equal income and equal parenting time (excluding consideration of add-on expenses)

**Negative Obligations** – All methods which consider child-rearing expenses of the ARP have the potential to create negative obligations, *i.e.*, the PRP would pay support to the ARP when the PRP contributes a larger share of the combined gross income and the ARP has a large share of the parenting time.

**Comments**

- Committee generally believed this to be an appropriate result – Recognizing that the ARP's parenting time involves cost shifting as well as duplicative expenses
- Requires determination of appropriate level of duplicated expenses for dual households

**(11) Modification of Order**

**Issue** – A request was made that the significant variance requirement, generally necessary for modification of the support order, not apply to requests for modification of a child support obligation that are based upon the ARP's failure to exercise the amount of parenting time specified in the existing order.

**Comments**

- Application of significant variance reduces contention about small amounts of parenting time and prevents an increase in requests for modification

**Recommendation** – Committee engaged in some discussion of this issue but made no recommendation for change.

**Economics**

**(12) Basic Child Support Obligations**

**Issue** – Whether the Basic Child Support Obligations reflected on the Child Support Schedule have a rational basis with respect to the underlying economics, rather than in comparison to the support amounts created under the former Flat Percentage Guidelines, *i.e.*, declining percentages allocated to child-rearing expenses as income increases – Ultimately, seeking support amounts that are economically justifiable, notwithstanding the “sticker shock”

**Dr. Jane Venohr**

- Flat percentages do not accurately reflect actual child-rearing expenditures at all levels of parental income
- Child-rearing costs are estimated based upon amounts spent in intact, 2-parent households in order to hold children harmless, providing the same level of support that the child would have received in an intact family – Amounts allocated to child-rearing expenses in single-parent families are typically less than in 2-parent households (30 percent of single parent families live in poverty) – Using child-rearing costs for single-parent families (if such figures existed) would reduce the amounts allocated to child-rearing expenses
- Economists typically use a marginal cost approach rather than a per capita approach when estimating costs<sup>8</sup>
- The USDA report used per capita and, for that reason, many economists believe that child-rearing costs in the USDA report are overstated – Expenditures on the USDA report are higher at higher income levels and a lot higher at lower income levels – No State that has adopted the Income Shares methodology has based its schedule on the USDA – Any State that has updated its Schedule since 2001 (which Tennessee has just done with implementation of the new Guidelines) has adopted the Betson-Rothbart figures – But the amounts in the USDA report are still less than the resulting obligations under the previous flat percentage model
- Could attempt to make Tennessee-specific adjustments to the various categories of child-rearing expenses covered in the Consumer Expenditure Survey, however, any such adjustments would just be best-guesses because there is no Tennessee-specific economic information to rely on
- The percentage of parental income allocated to child-rearing expenses decreases with income, regardless of the method used for estimating expenditures
- In the Income Shares model, the BCSO provides an amount to cover all child-rearing expenses in the household of the PRP – Child-rearing expenses of the ARP should be addressed as a shared-parenting issue in the parenting time adjustment, not in the amount of the BCSO – Compensation to the ARP for child-rearing expenses should be related to the amount of time spent with the child, *i.e.*, if there is no time spent, there are no child-rearing expenses – Consideration of child-rearing expenses incurred in the household of both the ARP and PRP will not increase the amount of the child support provided to the PRP, the second household increases the child-rearing expenses of the ARP, not the PRP

**Dr. Don Bruce, PhD., Center for Business & Economic Research, Univ. of Tenn.**

- Child-rearing expenses can only be approximated
- Data for 2-parent households is used to hold the child harmless and because this is the best data available
- The Rothbart approach makes the most sense from an economic standpoint

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<sup>8</sup> Marginal cost is the additional cost associated with adding an additional person to an established household, *i.e.*, how much more does it cost Mom and Dad to support a three-person household as opposed to a two-person household. The per capita approach averages the total household costs across all members of the household, *i.e.*, every member of the household is deemed to contribute the same level of expense to the household budget.

**Comments – Pros**

- BCSO amounts should reflect the actual costs of raising children
- USDA report makes matters worse rather than better

**Comments – Cons**

- Lifestyle equalization, *i.e.*, using the BCSO to correct disparities in parental income
- Want orders to be based upon child-rearing expenses incurred in two households – The BCSO amounts do not provide consideration of the additional expenses incurred in the household of the ARP – Whether or not there is parenting time with the ARP, there is an additional expense to the “family unit” to live separately rather than together

**Recommendation** – Committee engaged in much discussion of this issue and, thereafter, generally conceded to the expertise of the guest speakers. No recommendations were made.

**(13) Savings – Options for Increasing BCSO Amounts**

**(A) Issue** – The Consumer Expenditure Survey, the data on which all child-rearing expenditures are based, does not include either mortgage principal or net vehicle outlay as child-rearing expenses because these items are considered to be components of savings rather than current consumption. Because, to many, mortgage principal is an expense similar to rent and mortgage interest, which are included as child-rearing expenses, a question was raised as to whether some mortgage principal should be reflected in the BCSO.

**Dr. Jane Venohr / Dr. Don Bruce**

- In economic terms, mortgage principal is savings, not current consumption
- Very little of most mortgage payments is allocated to mortgage principal, which would result in only a small, possibly insignificant, adjustment to the amount of the BCSO – Including net vehicle outlays could impact BCSO amounts by 1 - 2% – The additional BCSO amounts would not represent actual child rearing expenses

**Recommendation** – There was a commonly expressed sentiment, since vehicles depreciate in value, that net vehicle outlay should be classified as current consumption rather than savings. Based on this conclusion, the Committee recommended that a determination be made as to how much of net vehicle outlay should be allocated to child-rearing expenditures, thereafter adjusting BCSO amounts by an appropriate percentage.

**Department Response** – Because the economic validity of this recommendation has been challenged by the experts consulted, this recommendation will be held in reserve until such time as its adoption can be justified by the underlying economics.

**(B) Issue** – During the August 2005 meeting, the Committee learned that the amount of savings increases with income and that BCSO amounts for families with 2 or more children might be understated by 6 to 7% percent due to an overestimation of the amount of savings that occurs in intact families with more than one child and yearly income of at least \$60,000 – This conclusion is based upon a California study that is due to be completed and released in early 2006 – An adjustment, based on this report, can be incorporated directly into the BCSO amounts on the Child Support Schedule

**Recommendation** – That the California study be reviewed and, if deemed appropriate, corresponding changes be made to the BCSO amounts on the Child Support Schedule – Proposed changes to the Child Support Schedule based upon new data.

**Department Response** – Adopting recommendation.

**(C) Issue** – The District of Columbia has included in current expenditures all amounts allocated to savings by the Consumer Expenditure Survey.

**Dr. Jane Venohr**

- The additional BCSO amounts would not represent actual child rearing expenses – This approach would add an alimony component to the child support obligation
- Makes a policy statement that children in one-parent households deserve more money than children in two-parent households
- Impacting only cases with combined parental income in excess of \$65,000

**Recommendation** – No majority consensus was reached on this option.

**(14) Tax Impacts**

**Issue** – Information was presented indicating that the tax credits available to the PRP may provide a benefit which, in some cases, can equal or exceed the amount of the child support award, possibly skewing the awards since the tax credits are not reflected in the Child Support Schedule

**Comments – Pros**

- Many entitlement programs are made available to the PRP but not to the ARP

**Comments - Cons**

- A memorandum of law was presented on the Earned Income Tax Credit<sup>9</sup> - The memo concluded that the EITC credit was intended to benefit the household in which the child resides – Taking this credit into consideration when establishing a child support obligation would frustrate the legislative purpose – EITC is not a windfall to people of means but benefits low-income families with minimal financial resources

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<sup>9</sup> Memorandum prepared by Martha Presley, law clerk, on behalf of Jean Crowe.

**Robert Nadler, Esq., Adjunct Professor of Tax Law, Vanderbilt University**

- EITC is means-tested income which is generally excluded as income in child support obligation calculations
- EITC is not automatic, could be challenged by the IRS (300,000 such audits each year) – Burden of proof is placed solely on the PRP – Receipt of the credit could be delayed for as long as a year
- Not possible to factor a constant amount into the BCSO
- Dependency exemption, child tax credit, and child care credit are not subject to same uncertainties as the EITC but still there is no constant amount that can be factored into the Schedule

**Recommendation** – Committee made no recommendation on this issue.

**(15) Deviations**

**(A) Issue** – The Guidelines provide a hardship deviation for modification under Income Shares of obligations initially established under the Flat Percentage Model. This deviation provision is meant to prevent hardship on either the obligor or obligee parent that might result from a significant increase or decrease in the amount of the child support obligation that results from application of the new Guidelines and is currently available for only the first modification under Income Shares. A suggestion was made that language be included in the Guidelines to help determine the existence of an applicable hardship and that the provision limiting the availability of this hardship deviation to the first modification be removed – That the deviation provision should be available any time an order that was initially established under the Flat Percentage Guidelines is modified under Income Shares.

**Comments**

- This deviation provision should be made more available in order to prevent hardship that might arise solely due to application of a different guideline model

**Recommendation** – Adoption of changes suggested.

**Department Response** – Adopting recommendation.

**(B) Issue** – A suggestion was made that a deviation factor be added that would allow the parties to agree on a reasonable amount of support, even if not consistent with the amount required under the Guidelines, in order to prevent manipulation of the information to reach the desired result.

**Comments**

- Some concern was expressed that this deviation factor would not be appropriate in cases with a history of domestic violence

**Recommendation** – Committee made no recommendation on this issue.

## Miscellaneous

### (16) Elimination of PRP / ARP Designation

**Issue** – Designating the payor / payee parent in some way other than ARP and PRP

**Comments**

- *Hopkins v. Hopkins*, 152 S.W.3d 447, 450 (Tenn. 2004), concludes that the Guidelines cannot eliminate the PRP designation since its use is required by T.C.A. § 36-6-402(5)

**Recommendation** – Recommended that the Administrative Office of the Courts (AOC) review the parenting plan statute for modification of the ARP / PRP designation.

**Department Response** – The Department agrees that the AOC and the Tennessee State Bar should undertake a discussion of this matter.

### (17) Non-Parent Caretaker Situations – Use of 2 Separate Worksheets

**Issue** – Presently, if a child is in the physical custody of a non-parent caretaker and both parents are present for purposes of calculating a child support obligation, each parent's obligation must be calculated on a separate worksheet. This approach produces a different child support obligation than would result from the use of one worksheet. For instance, if each parent has a monthly gross income of \$2,000, the Child Support Schedule would produce a separate basic obligation for each parent of \$421 as opposed to splitting a basic support obligation of \$742 established at a combined monthly gross income of \$4000. Two worksheets also require a manual calculation to pro-rate the additional expenses between the parents according to each parent's percentage of income. Using one worksheet, we could use similar instructions as for split parenting, *i.e.*, Mother's information in Column A and Father's information in Column B. Each parent would then pay to the non-parent caretaker the amount appearing on Line 15 of the Worksheet. Space on the worksheet for the non-parent caretaker is only required to account for additional expenses paid by the non-parent caretaker since the parenting time of the non-parent caretaker is irrelevant as is the income of the non-parent caretaker.

**Recommendation** – That one worksheet be used in non-parent caretaker situations, even when both parents are available for the calculation of the child support obligation.

**Department Response** – Department concurs with the recommendation of the Committee. Adoption of the recommendation will require resolution of a few technical difficulties with respect to the current worksheet which does not have the ability to determine support with consideration of three adults.

### **(18) Retention of Current Definition of Significant Variance**

**Issue** – A suggestion was made that the proposed change to the definition of significant variance that is to be implemented on 1/1/06 be eliminated in order to close the floodgates on requests for modification and to reduce hardship on parents that might result from a modification of the child support obligation.

#### **Comments**

- For orders established under the Flat Percentage Model, modifications should not be permitted if the only basis for the modification is a change in the applicable Guidelines
- Could limit ability of some people to take advantage of the features of Income Shares

**Recommendation** – A change to the current rules so that the definition of significant variance will not change on January 1, 2006, instead significant variance will remain as currently defined.

**Department Response** – Adopting recommendation. Emergency Rules eliminating the change to the significant variance definition were filed with the Secretary of State's Office on October 14, 2005.

### **(19) Standardization of Child Support Orders**

**Issue** – The Sub-Committee has created uniform child support orders that can be used across the State. Ultimately, these orders will be interactive with each other as well as the Child Support Worksheet in order to reduce data entry and the amount of court time needed to address each child support case. These orders will be made available for use in all child support cases.

**Recommendation** – Implementation of these orders.

**Department Response** – Adopting recommendation. Work on these orders is still in process.

**APPENDIX**  
**MINORITY COMMENTS**

- |   |                |
|---|----------------|
| 1) Judge Don Ash                              | Pages A2 – A3  |
| 2) Jean Crowe, Esq.                           | Pages A4 – A5  |
| 3) Tony Gottlieb, DAD of Tennessee            | Pages A6 – A8  |
| 4) Mitch Morgan, Shelby County Juvenile Court | Pages A9 – A12 |

December 22, 2005

Ms. Barbara Broersma  
Assistant General Counsel  
400 Deaderick Street, 15<sup>th</sup> Floor  
Nashville, TN 37248-0006  
VIA MAIL AND FACSIMILE

Re: Tennessee New Child Support Guidelines

Dear Ms. Broersma:

Thank you for the opportunity to share with you my comments regarding the work we have done on the Child Support Guidelines. It was an honor for me to serve on this committee. It was refreshing to work on improving the guidelines with such a willing Department, especially Commissioner Lodge and other members of her staff. While we did not always agree, I do believe there was a desire to develop a system which would not only be fair to parents but also ensure the children of Tennessee are protected. I hope we have accomplished that goal. Here are my comments:

1. From all the reading I have done, I believe the Betson-Rothbart economic formula is the most well established basis for developing guidelines. It is important to remember it is generally believed to be in the lower range of estimates for child-rearing expenses. Because of this I believe it is essential to maintain many of the improvements recommended by the Child Support Income Shares Advisory Committee.
2. I am fully aware of the Federal Regulation application to IV D cases. That in itself may cause the length of the guidelines, but I think something could be deleted to make the overall document shorter and hopefully more clear.
3. 1240.2-4.01 Section (2) (c) (1) mentions the term "administrative tribunal." I believe courts in Tennessee set child support, and the term might imply some authority in another body that does not exist.
4. Section 1240-4-4-.02 (10)— The definition of "days" is probably the best we can do under the guidelines. Sadly, we cannot force parents to refrain from arguing over this issue, especially when it is tied to the amount of child support owed.
5. 1240-2-4.01 (19)— I respectfully submit the legislature should reverse the court ruling in *Hopkins v. Hopkins* (152 S.W.3 447) and not require the designation of a Primary Residential Parent in every case. The term "tribunal" is also used in the

definition. I have some concerns about the term “administrative body or agency” used in the definition of “tribunal” in section (24).

6. 1240-2-4-.03 (6) (ii)— I believe the deviation established for Special Expenses is very important. Because of this, in my opinion, the seven percent (7%) of the basic child support obligation is set too high and should be set at two percent (2%) to make sure these important expenditures are adequately divided between the parents.
7. 1240-2-4.04 (a) (2) (iii) (III)— This is an important change because it recognizes the importance of stay-at-home parents and gives courts some flexibility on imputed income.
8. 1240-2-4.07 (2) (h) (1-3)— This hardship provision is critical to prevent unjust results in child support cases. I appreciate the Department’s willingness to let judges have some discretion in this area.

In closing, I believe Tennessee will lead the way in seeking the best interests of children. This will be an ongoing project and I hope I am permitted to continue with the process.

With Kindest Regards,

Don R. Ash

DRA/cg

COMMENTS FOR THE MINORITY REPORT TO  
THE REPORT OF THE TENNESSEE DEPARTMENT OF HUMAN SERVICES CHILD-  
SUPPORT INCOME SHARES ADVISORY COMMITTEE

**(3) Other Child Credits**

**Issue – Inclusion of In-Kind Remuneration**

**COMMENT:** Economic abuse is a common and effective means of exercising authority an abusive parent will use to maintain power and control over the victim parent. When victims do not have economic autonomy, it is extremely difficult to become self-sufficient. Failure to require that the ARP provide monetary support simply gives the sanction of the state to keep the PRP subjected to the power, control, authority and economic domination of the ARP; it also fails to support the victim parent and provide him/her the dignity, respect and support to make his/her decisions regarding support for the children based on the best interests and needs of the children in his/her care. **The State of Tennessee should not endorse the use of economic abuse by abusive PRP's in its child-support guidelines.**

**EXAMPLE:** A young mother works full-time at a low hourly wage to support her toddler, paying the day care expense by herself and relying on TennCare for medical insurance; meanwhile, the father (who has abused her and is subject to an Order of Protection) has provided numerous articles of clothing for the child but no money. His goal is to continue to control the PRP's actions and decisions.

**(11) Modification of Order**

**Issue –** Whether the significant variance requirement, generally necessary for modification of the support order, should apply to requests for modification of a child-support obligation that are based on the ARP's failure to exercise the amount of parenting time specified in the existing order.

**COMMENT:** Failure by the ARP to visit as specified in the parenting plan often causes the PRP considerable financial and emotional difficulty and she should have a speedy, effective means to rectify the situation.

**EXAMPLE:** At the final hearing for divorce, the parenting plan entered as a court order provides that the ARP take responsibility for the children every other weekend from 5 p.m. on Friday until 5 p.m. on Sunday. The PRP has a job that requires that he/she work every other weekend during that time. Unfortunately, the ARP immediately fails to take responsibility for the children during those times or at any other time. The PRP should be able to immediately return to court to establish a new amount of child-support so that he/she can afford the child care required for the children so she/he can continue to support herself and the children.

**(13) Savings – Options for Increasing BCSO Amounts**

**Issue:** Whether mortgage principal should be included in the BCSO.

**COMMENT:** Middle and lower income people purchase a house because they need a place to live and the mortgage payment is often less than rent. They do not think of their home as a savings account. PRP's in this income group need every penny they can get to keep a roof over their children's heads; any savings that they may accumulate in their house is not available for the children's needs on a day-to-day basis. The cost of housing children should be included in the BCSO since it is one of the most primary needs the children have.

Respectfully submitted by Jean Crowe

# DAD of Tennessee

## Children need their Dads

DAD of Tennessee comments to the Income Shares Child Support Guidelines review Majority Report and items for the Minority Report.

DAD of Tennessee appreciates very much being part of the process to reform the Tennessee Child Support Guidelines and has participated fully and faithfully in the discussions. DAD of Tennessee works most often with the Alternate Residential Parent, so we possess a unique point of view about what life is like on the other side of the child support, a perspective that is often ignored or given any real due consideration. We applaud the Bredesen Administration, Commissioner Lodge and the support staff of the Department of Human Services for the effort it has taken to sponsor both committees over the past three years and staff them with such high quality professionals.

Child Support reform is a very delicate subject that quickly elicits impassioned opinions from advocates, obligees and obligors alike. One group thinks they pay too much while another group thinks they receive too little. Everyone thinks their point of view is "right". While everyone is entitled to their own opinion, Child Support is a highly complex topic that requires detailed study, broadmindedness and a holistic approach to the topic.

### ***Holistic Solutions***

We believe strongly that Tennessee's public policy should be that all three parties in non-intact families – child(ren), mother and father – be given due consideration so that we ensure fairness for all and that each party's financial well-being is considered. We firmly believe there needs to be a rational basis for the formulas used and that they be underpinned by the most accurate economic information available. Child support should model real-life situations for all levels of income in our society and reflective of the rapidly expanding population of dual household parenting situations.

### ***Income Shares vs. Flat Percentage***

The state's move last year to Income Shares solved a major crisis in the face of the highly inaccurate economics of the Flat Percentage model. Expert testimony heard during each of the two panels validated the fact that we could do a much better job by using more complex formulas that more accurately model what really happens financially for families. Although it is no longer as simple as the Flat Percentage, the computer and web age has enabled us to take this complexity and make it simpler to apply.

### ***Comments for the Minority Report***

- **Consideration of Spousal Support** – We believe that spousal support should be considered as income to the obligee with a resulting decrease in income to the obligor and that child support should then be calculated on the revised income of both parents. At a minimum, judges should be given the discretion to deviate from the Basic Child Support Order to reflect this transference of money from one spouse to the other. If inaccurate data is used to determine a child support order then a faulty number is produced.
- **Stay at home parenting** – While we applaud the nobility of this aim, it is not usually realistic for the Primary Residential Parent (PRP) to stay at home unless he or she is supported by a new partner. An unfortunate aspect of non-intact households is that they require more money to be spent because of duplicated expenses spread over two households. It is hard enough for intact families to have stay-at-home parenting and it is nearly ridiculous to presume that most non-intact families could do this. While seeking every means to foster stay-at-home parenting for infants, we find it highly unrealistic and inherently unfair to have this increased financial burden permanently placed on the shoulders of the obligor parent. We believe each parent has an equal duty to financially support their children to the best of their ability.
- **Tax treatment** – We believe the committee did a very inadequate job in discussing the Federal Tax preference issues and that the majority report inaccurately portrays the efficacy of including these issues in the Income Shares calculations. While we agree that Earned Income Tax Credits (EITC) are intended for low income recipients, we implore the inclusion of Child Tax Credits, Child Care Tax Credits and Dependency Exemptions in the economic calculation as they are awarded by the Federal Government to parents because of financial outlays that are made on behalf of children and they have increased those amounts roughly Forty (40%) percent over the past several years. We believe this substantial financial factor should be divided pro rata between parents based upon income or as offsets to their child expense. Failure to include a Certified Public Accountant and tax specialist as part of the panel discussion undermined the credibility of the economic model used to prepare the rate tables.
- **Parenting time adjustments** – The committee and the Department attempt to bifurcate child support and parenting time so as to avoid having money influence parenting time determinations has fallen short. Declaring 92 days as the breakpoint for the shared parenting calculation has indeed created the very thing they were trying to avoid. We advocate one of the alternative solutions discussed which could include a per diem calculation (each day is worth “x” as a credit to the Alternative Residential Parent (ARP)). There are other approaches that could serve to greatly reduce the incentive for parents to base parenting time on the amount of child support they would either pay or receive. The end result we seek is that children are to be supported in each household equitably and that parenting time solutions be truly developed for the best interest of the child and not simply pushed through the artificial cookie-cutter approach of “typical” parenting time.

- Moratorium extension on modifications – We disagree with the department's decision to reverse its position on modifications. We think this ignores the reality of many ARP's who are shouldering an unfair financial burden because of the inflated amounts of child support that frequently exist under the Flat Percentage model. We understand that potential reductions in support, especially in the higher income brackets could place an economic hardship on obligee parents. However, we believe that the "judicial discretion" provision more than adequately covers this concern. Yes, it would increase the number of filings, but it would avoid intense criticism that is already emerging and the potential lawsuits that will undoubtedly arise out of the maintenance of two systems.

We look forward to continuing to engage faithfully in the public policy and rule-making process for Child Support in Tennessee. We acknowledge this is a dynamic process both for the state as better data and process emerge, as well as for each family whose lives and situations are constantly changing.

Respectfully submitted:

Anthony Gottlieb, President  
DAD of Tennessee, Inc.

# Juvenile Court of Memphis and Shelby County



December 22, 2005

Virginia T. Lodge, Commissioner  
Tennessee Department of Human Services  
400 Deaderick St  
Citizens Plaza Building, 15<sup>th</sup> Floor  
Nashville, TN 37248

Re: Child Support Income Shares Advisory Committee Summary of Recommendations

Dear Commissioner Lodge:

On behalf of Judge Kenneth A. Turner, the Juvenile Court of Memphis and Shelby County, and myself, I would like to sincerely thank you for allowing me the opportunity to participate as a member of the Department's Child Support Income Shares Advisory Committee. While I concur with the Department in the majority of its recommendations, there are two specific issues that I respectfully disagree: (1) Calculation of credit for "other children", and (2) Parenting time adjustment formula. With the exception of the issues cited herein, I strongly support the Department's position in its responses to the Child Support Income Shares Advisory Committee's recommendations.

With respect to the Department's recommendation to amend the method of calculating credit for "other children", I strongly disagree with the Department and would respectfully request that it reconsider its position. Under the existing rules, the parent is entitled to a "dollar for dollar" credit against his/her gross income for pre-existing orders as defined by the Guidelines provided support is actually paid. The current calculation for "not in-home children" for whom a parent is legally responsible and supporting includes children that are subject to a subsequent support order as well as those that are not. A theoretical support obligation is then calculated based on the parent's gross income and the total number of children that qualify as a "not in-home child" for that parent with an assumption that the child(ren) in this category are in a single household. The parent is then entitled to a credit for the support actually paid toward the support of the "not in-home children" not to exceed 75% of the theoretical order. During our committee meetings, I strongly supported simplifying the calculation of credits such that children subject to a



subsequent support order would be given the same “dollar for dollar” credit as pre-existing support orders. Credits for the remaining child(ren) that are not subject to an order of support but for whom a parent is legally responsible would be credited using the existing theoretical support formula. As part of that discussion, I had raised questions as to whether the governing statute required proof of payment on pre-existing support orders before credit could be allowed. Immediately following the enactment of the governing statute, the Department amended its rules to include a formula for determining the credit for “other children” for whom the obligor was legally responsible and supporting including those children that were subject to a subsequent support order. Credits for pre-existing support obligations were deducted “dollar for dollar” from the obligor’s income without a showing of proof of payment. While there was considerable debate among the committee members as to whether or not there should be a requirement for proof of payment prior to allowing credit for a pre-existing or subsequent order, I certainly felt that the general consensus of the committee was to amend the method for calculating credits for “other children” to give a “dollar for dollar” credit for subsequent orders, essentially removing the distinction between pre-existing and subsequent orders. Reducing a parent’s gross income by the specific amounts that they are court-ordered to pay allows the Court to set new support obligations based on a true adjusted gross income of the parent. Failure to accurately adjust a parent’s gross income can lead to grossly overstating or understating their ability to provide for the child(ren) for whom support is being set. The current method for calculating credits for “other not in-home children” as well as the Department’s proposed method may result in grossly understating the amount of credit a parent should receive against their gross income for all of their “other children”.

For example, let us presume that a court is setting support for an alternate residential parent whose gross income is \$3,000.00 and has three “other not in-home children” that are not subject to this court order. The current and proposed method of determining the appropriate credit is to treat all three children as if they lived with the same primary residential parent. Thus, the ARP would be entitled to a credit of \$708 which represents 75% of \$945 for three children under this income. Now, presume that each of the alternate residential parent’s “other children” live in separate households with three different primary residential parents. The combined support obligations for three separate orders (one child per order) is significantly higher than the amount of support that would be ordered for one case with three children. The proposed method of calculating credits makes matters far worse than better by removing the “dollar for dollar” credit for pre-existing support orders and instead treating those children as if they were in the same household as the “other not in-home children”. By not allowing “dollar for dollar” credit for both pre-existing and subsequent orders, the new computation fails to recognize the true amount of gross income available in which to set both a fair and equitable support obligation. This method also fails to recognize that a parent’s current support obligation under Income Shares may be drastically higher than a theoretical support obligation depending on the dynamics of each individual case. While the theoretical support order may account for orders that have not been modified of recent, it fails to consider the additional expenses that may significantly increase the support obligation. The current as well as the proposed method for determining credit may result in unrealistic support obligations in specific cases while the combined support

obligations in multi-case situations may result in percentages of assigned income that far exceed the obligor's ability to provide. I do not agree with the "first child first" philosophy as I feel that all children should be held harmless not just those whose parents made it to the courthouse first nor should it penalize child(ren) for the decisions that their parents made. I also strongly oppose setting unrealistic support obligations as it creates animosity between the parties when the obligation is not met, it reduces the parent's involvement with the child(ren), and it increases the likelihood of noncompliance and judicial intervention. In addition, the formula for calculating credit will likely result in even greater resentment and leave obligor's feeling angry and confused as to why they are not entitled to credit for amounts that the court currently enforces.

I would implore you to reconsider the changes to the method of calculating credits. Although it seems apparent that proof of payment would be required by the governing statute, I feel strongly that the current method of calculating credit should be modified to allow credit for both pre-existing and subsequent orders based on the total support obligation as opposed to calculating a theoretical support obligation. While I feel strongly that credit should be given for the amounts with a presumption of support being paid, I do recognize that the governing statute may require proof of payment before allowing credit.

The second issue that I must respectfully dissent is the Department's proposed parenting time adjustment calculation. Like many of other committee members, I do feel strongly that the current method of calculating the appropriate parenting time adjustment needs to be modified. I also strongly favor a gradual adjustment, or per diem approach, as the percentage of parenting time increases or is equal. My disagreement with the proposed Variable Per Diem and Cross Credit approach is that formula for adjusting the basic child support obligation (BCSO) to account for duplicated fixed expenses may grossly overstate those expenses as the parenting time of the alternate residential parent increases or is equal to 50%. My primary concern is that at equal parenting, the adjusted basic child support obligation doubles while many, if not most, states cap the duplicated expenses at 50% of the BCSO? While the proposed model does provide for the gradual slope, I feel that overestimating the duplicated fixed expenses may result in an adjusted BCSO that is not economically sound. While I tended to favor the Fixed Multiplier and Cross Credit approach throughout our discussions, I am concerned that the cliff effect at the threshold for instituting the fixed multiplier reduces the support obligation much too rapidly at levels of parenting just above the threshold. In reviewing the parenting time model from Indiana, I would strongly support a variable multiplier approach whereby the percentage of the duplicate fixed expenses relative to parenting time based on our current schedule. This approach would remove the cliff effect and allow for gradual adjustment of the support obligation on a per diem basis as parenting time increases beyond a specific threshold. I recognize that this method would require that the economists construct a table similar to that of Indiana's support guidelines; however, the amount of duplicated expenses would be more accurate, and thus allowing for a more accurate support obligation. This model would also achieve a zero obligation for parents having equal income and equal parenting, assuming no additional expenses. I feel strongly that this method is as easy to administer and explain as the fixed multiplier with a cross credit approach yet it does not inflate the adjustment BCSO by overstating the duplicated fixed expenses as in the proposed approach.

In closing, I would like to thank you for allowing me an opportunity to voice my concerns as to the Department's proposed changes to the rules. I do feel that the work of the Child Support Income Shares Advisory Committee was very useful and productive, and I consider it a privilege to have been asked to participate as member. I sincerely hope that the Department will reconsider its position on these two issues and I look forward to working with the Department as always.

Sincerely,

Mitchell Morgan, Director  
Child Support Services Division  
(901)405-8803

cc: Judge Kenneth A. Turner, Juvenile Court of Memphis and Shelby County  
Assistant Commissioner Mike Adams, Department of Human Services