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Pragmatism and Efficiency in Family Court: The Genesee County ADAPT Program

By: Tony McDowell, Staff Attorney Genesee County FOC

The traditional view that a family consists of a married couple and their children is no longer accurate. This is especially true in Flint, where nearly 80 percent of the births are to unmarried parents. As the nature of families change, our courts are working to adapt to their needs. For over 20 years, Judge Duncan Beagle lived through the impact that changes in families had on the family court's ability to reach a timely and just result. He saw the number of divorces fall and the number of paternity and support cases rise. But the paternity and family support cases were now different – no longer involving an absent parent who left the family or sought to avoid responsibility for his role in a child's conception.

Now many of these cases involved the dissolution of a family relationship similar to a divorce while others involved parents who were on the threshold of deciding whether to establish or end a budding relationship. All the while, Judge Beagle grew increasingly frustrated by the limitations of traditional court processes to serve nontraditional families. Knowing change was necessary, in 2012, Judge Beagle reached out to colleagues in the area of family law to discuss possible solutions.

Developing a Specialty Court

John Battles, Director of the Genesee County Friend of the Court, shared Judge Beagle's vision of an updated process for addressing family law cases with unmarried parents. Fortunately, a few years earlier, Mr. Battles and the Genesee County FOC had played a vital role in the Parents and Children Together (PACT) specialty court. An independent evaluation indicated that of all of the services that the PACT court offered, early order entry was by far the most important – and the FOC had found a nontraditional way to work with the parents to secure expedited orders.

Building on what they learned from the PACT court, Judge Beagle and Mr. Battles worked together to build a team of partners to improve paternity establishment in Genesee County. This partnership included reaching out to the State Court Administrative Office (SCAO), the Office of Child Support (OCS), the Prosecuting Attorney's Office (PA), the local Michigan Department of Health and Human Services Office (MiDHHS), and Hurley Medical Center. Once a team of partners was assembled, the group immediately began determining how to accelerate order entry.

Establishing a way to resolve children's issues in nontraditional families within the procedural constraints of traditional court processes was the first issue. Learning from the PACT Court, the SCAO and FOC developed a stipulation and waiver form for mothers and alleged fathers to complete if they wished to bypass the traditional adversary court process. The form allows the parties to stipulate to entry of a court order and allow the document to serve as a summons, complaint, answer, and proof of service. Upon signing the document, a settlement conference and hearing date can be scheduled within four weeks.

The next question was how best to make the court more available when and where the parties needed it. Many options were identified, including establishing paternity and support from child protective proceedings, using forms to waive certain legal processes, and establishing paternity at the birthing center or hospital. Ultimately, with the assistance of Hurley Medical Center, it was decided there was a way to meet with families earlier – at their prenatal appointments. Education was already a major component of prenatal care, so adding education about paternity establishment was an easy addition.

(Continued on page 2)

INSIDE THIS ISSUE

ADAPT.....	1
Incentive Factors	4
Conditional Support	5
MAP Purpose.....	6
MCSF Reprint.....	7
Legislative Update.....	13
Legal Corner.....	14

Pragmatism and Efficiency in Family Court: The Genesee County ADAPT Program

(Continued from page 1)

The final and largest hurdle was determining how the work would be divided. The FOC, the PA's office, and the OCS all wanted to be involved in the project and all of the offices wanted to maintain their independence. The final resolution was a hybrid establishment process. Under the hybrid process, the FOC would meet with families at the hospital and help them understand how their case will be addressed in court and what court processes they can bypass through their voluntary agreement. If they want genetic testing, an FOC caseworker would even collect genetic samples for testing at the hospital.

Once the case is ready to be filed, the FOC would send the documentation to the PA's Office, which would obtain a Court Action Referral number from the OCS to start a court case. The PA's office would verify income information and prepare the judgment of support or order of filiation. The FOC office would work with the parties to provide parenting time and custody information for the orders. Together the FOC and the PA's office would be present in court to provide background information to Judge Beagle as necessary. By working together, orders would enter less than two months after the birth of the child, would nearly always be consent orders, and would include specific parenting time provisions.

Ultimately, the ADAPT (Acquiring DNA and Paternity Timely) Project was born.

The ADAPT Process

The first step of the ADAPT project begins with community outreach and education for unmarried parents. FOC staff members conduct weekly informational sessions during the prenatal clinic at Hurley Medical Center and have become a resource for Hurley Medical Center staff looking for information regarding paternity establishment. At these sessions, families learn the basics of paternity establishment and support order entry, including information about affidavits of parentage, orders of filiation, the traditional court process, and the expedited ADAPT process.

If families are interested in participating in the ADAPT process, they can apply in the prenatal clinic before the baby is even born. Some families prefer to wait until after the baby is born, and in that situation, Hurley staff or the family will contact the FOC at the time of birth. Once the baby is born, FOC staff members often go to the hospital to work with the family to assist them in either completing DNA testing or signing an Affidavit of Parentage. FOC staff will also help the family understand the stipulated form waiving the traditional process of a summons and complaint to start a paternity or support case with Judge Beagle. The parties will receive a date to appear before the judge to address all of the issues regarding their family, which is four to six weeks after the birth of the child. At the hearing before Judge Beagle, the PA's office and the FOC will be present to address custody, parenting time, support, and refer the family for other holistic services.

Evaluating ADAPT

When evaluating a program like ADAPT, it is important to review both qualitative and quantitative data. The ADAPT program is relatively new, however, certain trends beginning to emerge.

(Continued on page 3)

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Pragmatism and Efficiency in Family Court: The Genesee County ADAPT Program

(Continued from page 2)

The FOC has been conducting the educational sessions at the Hurley Medical Center Prenatal Clinics since June 2014, and have met with nearly 500 families at these sessions. While the volume of feedback has not been great, all of the responses over the past year have been positive. The families who receive the information that tend to be the most receptive are those who have prior experiences with the child support system. Their favorite components of the ADAPT program are the expedited process and the genetic testing at the hospital.

An unexpected development from these sessions is the overwhelmingly positive reaction from the hospital staff. Hospital staff members appear to have needed someone to explain paternity establishment and child support information to their patients for quite a while.

Families have been appearing before Judge Beagle for the ADAPT program since September 2014. From September 2014 to June 2015, 50 ADAPT cases have been filed with Judge Beagle.

All 50 cases had an order within six weeks of the creation of the case. The result of removing unnecessary delays is of particular importance to Judge Beagle. He states, "There are some cases that have taken as long as two to three years before an order is finalized." Of the 36 cases that have requested and completed genetic testing, 16 have been dismissed because the alleged father was not the biological father. The remaining cases resulted in orders with specific parenting time and custody.



The limited data from these first few cases indicates the public's desire for an expedited process that engages parents to build a court order for the care and support of their children. The limited data also suggests the importance of genetic testing, as 44 percent of the time when genetic testing is requested, the alleged father is excluded as the biological father.

The Future of ADAPT

Working off the success of the ADAPT Program at Hurley Medical Center, there are plans to begin offering the same ADAPT services to families who apply for Medicaid during the mother's pregnancy. Under this second phase of ADAPT, FOC staff will work with MiDHHS to identify pregnant mothers who could benefit from education about paternity establishment and the ADAPT services. This phase promises to increase the number of families in the ADAPT program. This will allow for further evaluation in partnership with the OCS which has arranged for Applied Predictive Technologies, in cooperation with the Brookings Institute, to complete a comprehensive quantitative evaluation.

Ultimately, the ADAPT project is about providing an opportunity for unmarried parents to start their families on a strong foundation. For some families, ADAPT provides education to make sound decisions about becoming legal parents. For others, ADAPT is an opportunity to have an order defining their rights and roles as parents. For others still, ADAPT is an opportunity to allow both parents to care and support their children from birth.

Moving forward, the Genesee County FOC hopes to continue to improve the services offered by finding the best ways to evolve and serve the new dynamics of families.



Three Michigan Counties Maximize Incentive Factors

Last year, three Michigan counties – Huron (Joanne Brooks, FOC Director; Timothy Rutkowski, Prosecuting Attorney), Marquette (Andrea Monnett, FOC Director; Matthew Wiese, Prosecuting Attorney), and Tuscola (Sandra Erskine, FOC Director; Mark Reene, Prosecuting Attorney) – maximized their performance on all five performance-based incentive factors. This is the first time any county in Michigan has maximized all performance factors since the performance-based incentive program’s inception in 2000. Pennsylvania is the only state that has maximized its performance on all factors.

The federal government established the performance-based incentives program to reward states and counties for meeting or exceeding goals set in each of five factors in Title IV-D cases: percentage of cases with paternity established; percentage of cases that have a child support order; percentage of current child support collected; percentage of cases with an arrearage payment; and support collected per dollar spent.

When the federal child support program was first implemented in 1975, incentives were based on collections (on public assistance cases) and cost-effectiveness, which ignored a county’s success in other aspects of its child support efforts. With the current program, performance is rewarded at each of the five stages. A county’s performance results in a multiplier that is applied to the county’s collections (dollars collected on cases that were never assistance plus two times the dollars collected on current and former assistance cases). All counties’ totals are then added together and the county receives an incentive based on its percentage of all counties’ performance. An office that reaches maximum performance has an incentive multiplier of 4.5 which increases its share of the incentives compared to counties with a smaller incentive multiplier.

When a county maximizes all five factors (at least 80 percent performance, and a cost-effectiveness ratio of five dollars collected for every one dollar spent), it not only receives a higher percentage of the state’s incentives, but it also helps increase the amount of incentives the federal government pays the state.

In Michigan, the Office of Child Support (OCS) pays the county incentives the same way that the federal government pays Michigan incentives.

How did the FOC offices in Huron, Marquette, and Tuscola counties succeed?

“We have truly made it a priority to implement a holistic approach to connect with the people we service,” stated Andrea Monnett. “By doing so, we are able to work with people, understand their current circumstances and keep lines of communication open. The amazing people who work in this office diligently manage alerts, run reports and queries, and are constantly looking for ways to educate themselves to make sure every aspect of a case is being worked. Through these efforts, the end results have allowed us to maximize our incentives. We take great pride in this accomplishment.”

Sandy Erskine added this goal was met through a lot of outreach and hands-on work. “Our staff is good at keeping track of and following up on their cases,” she stated. “They are not afraid to call or send emails or letters to make sure everyone is up-to-date. It feels really good knowing we’re helping our clients by getting them what they need and deserve.”

Former State Court Administrator John Hohman called each court’s chief judge to personally congratulate the court for the FOC’s accomplishments.

For more information on how your office can maximize incentives, contact the Friend of the Court Bureau at 517-373-5975 or FOCB-Info@courts.mi.gov.



The Pundit provides information on current issues to Michigan child support staff. The Pundit is not intended to provide legal advice and does not represent the opinions of the Michigan Supreme Court or the State Court Administrative Office.

MANAGING THE MODIFICATION MACHINE:

Using FOC 10 to Ease Income Transitions with Conditional Support Orders

Every year, the fall colors remind Pat that a new child support struggle is coming. Pat works for a lawn care and snow plowing business and goes on unemployment every fall during the slow season when the grass does not grow and when it is too warm to snow. By now, Pat knows the drill: file for unemployment and wait – then receive the enforcement letter from the FOC. Pat performs the annual ritual knowing that by the time the FOC schedules a show cause hearing, the FOC will be collecting support plus a little something extra to repay the arrears.

Short-term changes in payers' income present a unique challenge for parents and FOC staff. Ideally, when the support order is established for a person with seasonal unemployment, it will take into account actual yearly income over a period of time that compensates for periods of unemployment. But, while support may be set in an appropriate amount based on income, some people find it hard to budget in a way that makes it possible to pay their support during unemployment. Still others have difficulty when they have irregular short term unemployment (such as an illness). While modification procedures provide a means to adjust their child support, the time required makes modification ineffective.

For the incarcerated, moving for modification may provide relief but the parents will need to file, the FOC will need to investigate, and the court will need to hear a second motion for modification as soon as the incarcerated person is released. When a person's employment is interrupted, the court may have trouble determining the proper earnings upon which to base the support. The end result can be an inappropriate support order that requires more FOC intervention and an increased burden on a family that is already stressed to ultimately right-size the order.

Fortunately, the FOC or PA can use the Uniform Support Order (FOC10) to address in advance foreseeable changes in income.

Form FOC10's "Effective Clause" states that "Effective _____, the payer shall pay a monthly child support obligation for the children named above." Usually this portion of the support order is completed by entering a date into the Effective Clause and entering the appropriate information into the corresponding grid. However, the Effective Clause does not have to be stated as a date certain in all cases. The Effective Clause may also be entered as a conditional statement. For instance, a valid Effective Clause may read: "Effective *on the date payer notifies the Friend of the Court of [an event such as short term disability, incarceration, seasonal unemployment, etc.]*, the payer shall pay a monthly child support obligation for the children named above." Furthermore, MiCSES allows the user to add a second Effective Clause and grid to FOC10 to reinstate support at another amount.

Using a conditional Effective Clause would allow the court to accommodate situations such as Pat's by setting support higher during the work season and lower during the off season. The amount of support would be the same, it would just be variable so that it can always be paid through withholding when the payer is not able to budget on his or her own to pay during lean periods. Alternatively, the conditional order may be included as part of Paragraph 13 FOC 10 ("Other") to the same effect.

Courts can employ this strategy any time an order is entered. The conditional order would reduce the likelihood of arrearages attaching to the case during future periods of lower income, but the likelihood of arrearages accruing during the pendency of the modification petition remains high. To remedy this situation, courts may apply *Fisher*¹ to retroactively modify a support order to the date the modification petition was served on the nonmoving party.

Child support workers should be aware, though, that once a conditional order is entered, a court's ability to retroactively modify support will be contingent on the specific wording of the effective clause. If the conditional order becomes effective upon the change in circumstances, child support may be retroactively modified to the date of the change. If the conditional order becomes effective upon the payer informing the FOC of a triggering event, the order can only be implemented on the date the payer informs the FOC of the change notwithstanding that the event may have occurred much earlier.

(Continued on page 6)

¹*Fisher v. Fisher*, 276 Mich. App. 424, 430, 741 N.W.2d 68, 72 (2007) (holding that trial court has power to retroactively modify support obligations from date of petition); *Clarke v. Clarke*, 297 Mich. App. 172, 187, 823 N.W.2d 318, 32 (2012) (holding that the court can retroactively modify a support order only to the date the nonmoving party received the petition, not the date the petition was filed).

**MANAGING THE MODIFICATION MACHINE:
Using FOC 10 to Ease Income Transitions with Conditional Support**

(Continued from page 5)

Courts may adopt a uniform policy for entering conditional clauses or may determine on an individual basis whether an order is effective upon notice or when the event occurs. Notice clauses may be an effective way to encourage parties to promptly notify the FOC when a change in circumstances occurs. Notice clauses allow more flexibility to implement support orders when the parties have demonstrated an inability to reliably act in their own interests by reporting information to the FOC.

Conditional orders present courts with an efficient tool to help Pat and other seasonal workers avoid yearly modifications. This tool may be beneficial for short-term inmates, retail store owners, farmers, and other persons with seasonal income or short term interruptions in income. Child support workers should consider a conditional order strategy to reduce arrearages, improve the parties' satisfaction with their orders, and ease the administrative burden of support modifications and enforcement that might otherwise occur.

If you have any questions regarding conditional orders or retroactive modification of a support order, please contact Bill Bartels or Paul Gehm at (517) 373-4835.

**SCAO MAP's Can Help Courts**

[Ed. Note: This article is reprinted from the October 2012 *Pundit* with some edits.]

Judicial skills, which are honed, tested, and used daily are essential to the idea of advancing justice. But where can a court turn for help in dealing with administrative problems related to performance, specifically in a Friend of the Court (FOC) office? One of the fundamental responsibilities of the State Court Administrative Office (SCAO) is to provide management assistance to judges and FOC offices. One of the best ways that SCAO delivers is through a management assistance project (MAP).

A MAP is a report for the court that contains recommendations on how the court may administer its work more effectively. MAPs are available for all administrative aspects of court operations, including FOC office operations. All MAPs are initiated by a request from the chief judge of the circuit court to the SCAO Regional Administrator. The request should specify the type of assistance that the court needs. SCAO then establishes a team of analysts and begins work on the first of three phases.

In an FOC office MAP, phase one includes gathering data to develop a statistical profile of the FOC office. This statistical profile compares the FOC office to other, similarly-sized offices. The study team assigned to the project also reviews the FOC's policy manuals to develop an understanding of the office's practices.

During phase two, the study team visits the FOC office. At that time, the team interviews family division judges, FOC staff, other court staff, prosecuting attorney staff, and local attorneys. Phase two may also include additional reviews of policy manuals, case files, and other documents that are related to the FOC's operations.

In the final phase, the analysts prepare a report that summarizes results found by the study team and the report makes recommendations to the chief judge. The report may also suggest that the court try to implement innovative processes that have been found to be successful in other FOC offices.

Overall, a MAP report assists judges and FOC offices in improving their performance and provides support to the FOC office in meeting its mandated and nonmandated duties. The MAP process is designed to fulfill SCAO's goal of being available to provide support to courts in improving their performance – particularly to courts that cannot spare staff to conduct analysis on their own because they are busy with their daily work.

If judges or FOC directors or administrators have questions about SCAO's MAP process, they should contact the court's regional administrator.



Michigan's Child Support Formula Approaching 30 Years: Lessons Learned, Trails Blazed

By: Paul Gehm, Management Analyst, SCAO Friend of the Court Bureau

[ED. NOTE: This article is reprinted with edits with permission of the author and originally appeared in the State Bar of Michigan Family Law Journal, April 2015.]

Michigan has a longstanding reputation as a leader in addressing issues concerning the care and support of children. Ninety-six years ago, the friend of the court (FOC) office was created in part to determine if children regularly received support. Today, the FOC is responsible for recommending the proper amount of support as more families than ever are affected in some way by a child support order.¹ In Michigan as of 2013, the child support program caseload included 952,805 children, and roughly one in four Michigan residents.²

"The Michigan Child Support Formula is likely the most comprehensive guideline of any in the nation," according to William Bartels, a State Court Administrative Office's Management Analyst who has been assigned to review the formula manual since 1997. "Because use of the formula has become so routine in daily domestic relations practice, many have forgotten or do not realize the substantial changes caused by having a single statewide method by which support obligations are figured." As family dynamics continue to change, understanding the policy decisions and history of the child support guideline will help inform future changes in how child support is calculated. This article will provide some of that history — highlighting significant events, discussing guideline models, and describing the development and review process of Michigan's guideline. Finally, the article will provide an overview and comparison of the nation's guideline models.

Michigan's Child Support History

Historically, child support had been considered as part of an alimony award.³ Eventually, courts began to address child support separately with most courts addressing the child support amount on a case-by-case basis. However, this led to a large disparity in support amounts.⁴ As a result, children were not being treated equally. Grassroots efforts sprang up in response to this inconsistency, and local courts began to develop their own means to ensure that similar cases had similar support orders, many of which were flat percentages of a payer's income.

Federal Legislation and Regulations

By 1980, circuit courts were using a wide variety of locally established standards for setting child support. In Public Act 294 of 1982, the legislature assigned the responsibility for developing a statewide child support guideline to the newly formed Friend of the Court Bureau (FOCB), a department within the State Court Administrative Office (SCAO). SCAO formed a Child Support Guideline Committee and it began its substantial effort in 1983. In 1984, the federal government required the development of statewide guidelines.⁵ To meet the federal mandate, state guidelines were required to meet minimum standards.⁶ Several years later, federal legislation added the requirement that the amount calculated by the state guideline would be the presumptive child support amount; however, this legislation and resulting regulations allowed child support orders to deviate from the guideline's presumptive child support amount.

Michigan's First Guideline

The Child Support Guideline Committee extensively reviewed child support methodologies used in Michigan and nationally, held public hearings, conducted original research, and received input from professional economists and other researchers. Michigan published its first guideline in 1986, taking effect in 1987. In developing its guideline, Michigan looked at seven models for determining a child's support needs before choosing what have now become the three most commonly used state models: income shares, percentage of income, and the Melson model. Ultimately, the income shares model was chosen.

(Continued on page 8)

¹ Anne C. Case, I-Fen Lin, and Sara S. McInanahan, *Explaining Trends in Child Support: Economic Demographic, and Policy Effects*, Demography, Vol. 40, No. 1, Feb. 2013, p.171.

² OCSE 2013 Annual Report to Congress, Table P-93, available at: <http://www.acf.hhs.gov/programs/css/resource/fy2013-preliminary-report-table-p-93>. To estimate the 25 percent, start with the 952,805 children, assume two parents for each child (understanding this will double count some, while excluding others such as third party custodians), then divide by the total population from the US census data. This is meant to serve as a rough estimate to show the large impact the program has in this state.

³ See *Welles v. Brown*, 226 Mich. Reports 657 (1924).

⁴ A Denver study found support orders for a child ranged from 6 to 33 percent of a noncustodial parent's income. Child Support Manual and Schedules, Friend of the Court Bureau, 1986, pg 2.

⁵ Child Support Enforcement Amendments of 1984 (Pub. L. 98-378).

⁶ There are now three minimum requirements: consider all earnings and income from noncustodial parent; use descriptive and numeric criteria; and address how a child's health care needs will be met. 45 C.F.R. 302.56 (2014).

Michigan’s Child Support Formula Approaching 30 Years

(Continued from page 7)

Table 1: Guideline Model Comparison⁷

National Child Support Guideline Models		
Income Shares	Percentage of Payer Income	Melson
A child whose parents are not in the same household should receive the same proportional share of each parent’s income as a child in an intact household. Therefore, both parents’ income is considered. The economic costs of a child (or the same number of children) in an intact family are prorated based on each parent’s share of the total family income.	A parent’s support is determined by applying a predetermined percentage to the obligor’s income (whether gross or net varies by state). States vary in the predetermined percentage to apply. The obligee’s income is not considered.	Based on the “recognition that parents need to be able to meet their basic needs first establishes a self-support reserve for both parents” and then the parents’ own economic status should not be enhanced until the parents jointly and in proportion to their shares of family income, meet the basic poverty level needs of their children.

A primary reason why Michigan originally chose the income shares model was that it “not only considers both parents’ incomes but the parents’ relative incomes in the calculation of support. The committee perceived this as being an equitable approach.”⁸ Although Michigan chose the income shares model as the basis for its guideline, the state never applied a “pure” income shares model. Bartels believes, “Those that developed our original guideline started with a standard income shares engine and modified it to perform well under greatly varying conditions.” He continued, “Nearly every time that I evaluate what other states are presently doing with their guidelines, the more I appreciate the fantastic foresight our committee had when they built several features into their original design.”

From the beginning, Michigan’s guideline took into account additional factors that many states added later, or that some still do not include. Originally, most states’ guidelines did not address how parenting time financially affects a child’s support needs; Michigan’s guideline specifically reduced support based on the fact that a parent provides direct support during parenting time.⁹ Additionally, rather than setting amounts based solely on economic estimates and parents’ incomes, Michigan’s guideline included a means to allow low income parents to retain a higher percentage of income for self-support, as well as incorporating each family’s specific child care costs and medical expenses.

(Continued on page 9)

⁷ For a more detailed discussion of the three main models, see Dr. Jane C. Venohr, *Child Support Guidelines and Guidelines Reviews: State Differences and Common Issues*, Family Law Quarterly Vol. 47, No. 3 (Fall 2013) p. 329-332; see also Laura Wish Morgan, *Child Support Guidelines: Interpretation and Application* §1.03 (1996), available at <http://www.supportguidelines.com/book/chap1b.html#1.03>.

⁸ Jane C. Venohr and Tracy E. Griffith, *Report on the Michigan Child Support Formula*, Public Studies Inc., April 12, 2002, p. 107.

⁹ Kentucky and Washington still struggle to address parenting time issues in their guidelines.

Michigan's Child Support Formula Approaching 30 Years

(Continued from page 8)

Underlying Principles for the Guideline

There are several concepts and principles underlying Michigan's guideline that are worth noting.¹⁰ The primary focus is on the needs of the children. To maintain the child's needs, children should be financially supported by both parents.¹¹ Thus, the Michigan guideline determines the support obligation for the mother and father. The paying parent's responsibility is what is seen as the child support order, whereas the recipient parent is presumed to contribute his or her share directly to the child's support. To address this issue, the general cost of care calculation is used.¹² Support is based on estimated expenditures of a similarly situated intact family (similar income levels and number of children).¹³ As income rises, so too does the cost of care.¹⁴ In recognition of shared parenting time, the guideline also includes the principle that as parents spend more time with their child, the parent will directly contribute a greater share of the child's expenses. It is also expected that the child's standard of living should not be worsened due to the parent's divorce or separation.¹⁵

Deviations

While the guideline sets the presumed amount of child support, an important aspect for courts is the ability to deviate. However, the court may only deviate from specific provisions that the court deems are unfair or unjust; the rest of the outcomes from the guideline must be followed.¹⁶ The Michigan Child Support Formula Manual provides guidance on some circumstances that are deemed to cause valid reasons for deviations. A few examples include when: the child has special needs; a parent is a minor; a parent has a reduction in income due to extraordinary levels of jointly accumulated debt; and a parent receives bonuses that vary or are irregular.¹⁷ Additionally, the parties may agree to deviate.

Guideline Reviews and Revisions

Every four years, the federal government requires a state to review its guideline to ensure appropriate child support award amounts. One of the main focuses of the review is to look at the reasons for deviations and to decrease its number. To do this analysis, SCAO convenes a committee to assist with the evaluation and propose substantive changes. Additionally, when new manuals are released, SCAO incorporates changes required by statute, case law, or regulation and makes economic updates due to changes in the cost of living or federal poverty guidelines.¹⁸

(Continued on page 10)

¹⁰ For a full discussion of the policies and assumptions behind the income shares model, see Original Guideline, pp. 12-14.

¹¹ David A. Price, *Michigan Child Support Formula: Findings from a Survey of Formula Users*, (PSI, June 17, 2002, p. 12). As a general rule, support "should be apportioned between the parents based on each parent's percentage share of their combined net incomes" (2013 MCSF 3.01(B)).

¹² The guideline uses the 1972-73 Consumer Expenditure Survey (CES) Child Support Manual and Schedules, Friend of the Court Bureau, 1986, pg 15. The guideline also relied on the Epenshade study. Child Support Manual and Schedules, Friend of the Court Bureau, 1986, pg 15.

¹³ Child Support Manual and Schedules, Friend of the Court Bureau, 1986, pg 12.

¹⁴ Child Support Manual and Schedules, Friend of the Court Bureau, 1986, pg 12.

¹⁵ Children should not suffer due to their parents' divorce or separation. David A. Price, *Michigan Child Support Formula: Findings from a Survey of Formula Users*, PSI, June 17, 2002, p. 12.

¹⁶ 2013 MCSF 1.04(B). See also, *Burba v Burba*, 461 Mich 637 (2000) (ruling that the courts were limited to deviations based on facts which were specific to the case and which were not taken into account by the formula).

¹⁷ 2013 MCSF 1.04(E).

¹⁸ To independently verify that its ongoing updates continued to produce acceptable results, the State Court Administrative Office contracted with Policy Studies Inc., for an independent analysis of Michigan's guideline. *Report on the Michigan Child Support Formula* (issue April 12, 2002) by Dr. Jane C. Venohr and Tracy E. Griffith., focused on several key topics, including: a comparison to recent economic studies, a comparison to other states' models, and perceived fairness.

Michigan’s Child Support Formula Approaching 30 Years	(Continued from page 9)
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Since the creation of the guideline, there have been several changes. The following table provides an overview of five important revisions made to the manual since its inception.

Issue	Earlier Provision	Updated Provision
Parenting Time Costs and Savings	<p>For cases where parents exercised less than 128 overnights, the friend of the court gave parenting time abatements and had to manually credit cases after six or more overnights occurred.</p> <p>For cases where parents exercised 128 or more overnights, a Shared Economic Responsibility Formula was applied that gave a substantial reduction in the amount of support paid or received.</p> <p>Having two provisions led to many disagreements to keep parenting time over or under the 128 day threshold.</p>	<p>Now, one equation applies to all cases, the Parental Time Offset. This allows for a more gradual reduction of support as parenting time increases to refocus parenting time to its true purpose of access to both parents instead of the economic benefits increased that parenting time might provide.¹⁹</p>
Clarity and Citation	<p>Language tended to be technical and provisions were hard to locate. The manual was organized in a traditional outline format, which made it difficult to locate and cite provisions.</p>	<p>Language was simplified and updated. The manual was also restructured and renumbered to allow easier location and citation of specific provisions.</p>
Insurance and Medical Expenses	<p>Regarding insurance, the parent’s cost of providing insurance was a deduction from income. The manual was silent on picking which parent should provide coverage.</p> <p>Out of pocket medical costs were ordered split based on percentage of family income, and paid after the actual expense was occurred.</p>	<p>The nonproviding parent’s share of the other parent’s cost of covering the children is incorporated into the monthly support payment. The manual and supplement provide directions on choosing which parent should be ordered to provide coverage.</p> <p>Out of pocket medical expenses are normally paid as part of the monthly support obligation; extraordinary amounts of medical expenses are still reimbursed based on actual expenses occurred.</p>

(Continued on page 11)

¹⁹ Bartels explains, “When I evaluated the original proposal from Kent Weichmann and Craig Ross, it seemed to solve the biggest issue people had with our guideline. Since it was adopted, that single change annually eliminated tens of thousands of account adjustments that friend of the court offices had to make and cut the number of complaints that SCAO had to handle about the formula by at least 70 percent.”

Michigan’s Child Support Formula Approaching 30 Years

(Continued from page 10)

Issue	Earlier Provision	Updated Provision
<p>Low Income Payer</p>	<p>Michigan’s guideline included a means to allow low income parents to retain a higher percentage of income for self-support reserve.</p> <p>The guideline required a mandatory minimum support obligation (e.g. \$25 per month).</p> <p>Once the parent started earning more than the low income threshold, dollar for dollar increases in income were added to the support obligation until the amounts met standard economic levels.</p> <p>Child care costs were allocated based on the parents’ share of family income.</p>	<p>The manual still allows low income payers a reduced obligation for self-support.</p> <p>The minimum support obligation was eliminated, so support could be based on a parent’s actual ability to pay.</p> <p>Although they pay an accelerated amount for increases in income, the dollar for dollar increase is no longer used.</p> <p>Child care costs are still allocated based on share of family income; however, a deviation is permitted if a parent’s share is greater than 50 per cent of the base support.</p>
<p>Parents’ Other Children</p>	<p>If there was a support order for a parent’s other children that order amount was subtracted from the parent’s income in the case under consideration. This caused large differences in amounts ordered for the same number of children in different cases.</p> <p>For children in the parent’s household, the parent received a percentage reduction to their income.</p>	<p>All children-in-common with the same other parent are included in the calculation for support. The support paid between those parents is the same whether in one case or multiple cases.</p> <p>For children with someone other than the other parent in the case, the parent receives a percentage reduction to their income regardless of whether the children are in their household or in a separate support order.</p>

Comparison with Other States

Administrative Structure

While requiring states to develop a guideline, the federal government gave the states flexibility in doing so. There is great diversity across the nation in how states implement and manage their guideline. According to data from 2011, eighteen states (including Michigan) develop their guideline through the judiciary; five states use a legislative process; another eighteen states’ laws delegate authority to a state agency or special commission with legislative oversight; and nine states authorize a state agency or special commission to maintain the guideline with no legislative oversight.²⁰

(Continued on page 12)

²⁰ For further discussion, see <http://www.ncsl.org/research/human-services/child-support-process-administrative-vs-judicial.aspx>.

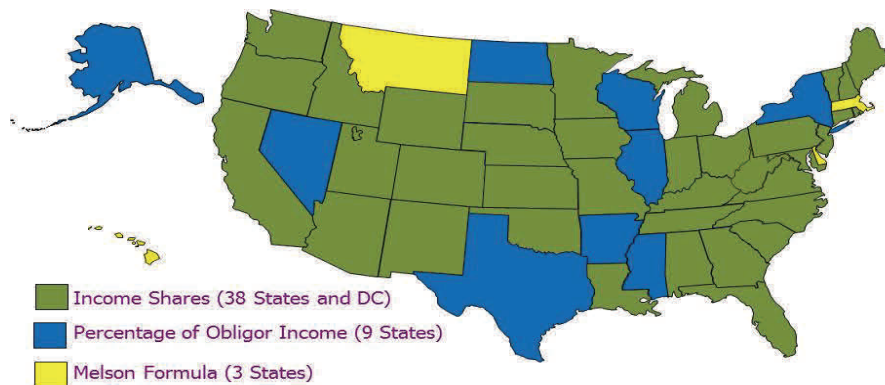
Michigan’s Child Support Formula Approaching 30 Years

(Continued from page11)

State Models

There continues to be variety in the implementation of the various models used nationwide.²¹ Although the income shares model is the most commonly used, not all states strictly apply the model. The percentage of income model is the second most widely used; however, there is a trend to move away from this model (and to the income shares model). Finally, only three states use the Melson model. Since 1990, nine states have switched models – all but one to the income shares model.²² One reason for this shift is the perceived fairness of the income shares model. It is believed that this perception results in increased child support collected.²³

States by Model Type (as of 2013)



24

Michigan’s Comparison

National experts look to Michigan as a leader in child support issues, especially the guideline. “Michigan has one of the most comprehensive guidelines in the nation.”²⁵ One of the reasons for this is the continuous updates and modifications that are routinely made to respond to economics. “Michigan has been more than diligent at fulfilling [the guideline review] Federal requirement.”²⁶ In contrast, there are eight states that have not updated their guideline in any capacity.²⁷ According to a recent study, Michigan’s efforts have paid off by placing its support obligations within a range that results neither in excessive support obligations nor in support that is inadequate.²⁸

Conclusion

For the most up-to-date information, visit the SCAO Child Support website at: <http://courts.mi.gov/administration/scao/officesprograms/foc/pages/child-support-formula.aspx>. There, you can find information on the current guideline and updates to the supplement. The old manuals are also archived on this site. Finally, there are webcast trainings available on basic and intermediate child support concepts.

(Continued on page 12)

²¹ For a detailed discussion of general national trends and approaches to key issues such as: shared parenting time, low income, deviations, additional dependents, and nontraditional families, see *Child Support Guidelines*, pp. 340–46.
²² Venohr, p. 332.
²³ Noyes, p. 17.
²⁴ For a look at each state’s model, the income base (net or gross) and the last update to the core formula, see Venohr Table 1, pp. 330-31.
²⁵ Price, p. 4.
²⁶ Price, p. 1.
²⁷ Venohr, p. 336.
²⁸ This study includes a summary chart with the three example cases. Venohr, pp. 346-350.

Michigan's Child Support Formula Approaching 30 Years

(Continued from page12)

Michigan's guideline continues to lead by addressing difficult issues. The guideline has adapted to address former criticism and now is seen as innovative and more successful. Unlike some states that have not updated their guideline at all, Michigan's guideline has seen significant changes and routine modifications. The next round of reviews will begin soon for the revisions to be released in 2017. As the next and additional reviews approach, Michigan will continue to update the guideline to meet current economic trends and address substantial issues as our state continues to set the example for guidelines nationwide.



LEGISLATIVE UPDATE

2015 PA 52 — Child Custody Act (effective 9-7-15)

The Child Custody Act has incorporated the Service Members Civil Relief Act. If a motion for change of custody is filed while a parent is deployed, the court cannot consider the parent's absence due to the deployment or the duration of the deployment in a best interest determination. If a motion for change of custody is filed during a parent's deployment, the parent may file a stay and the court must consider the application.

The court cannot modify or establish an order that changes the child's placement that existed on the date the parent was deployed, but a court may enter a temporary order if there is clear and convincing evidence it is in the child's best interest. A court may include a limit on the period of time the temporary custody order remains in effect.

At any stage prior to final judgment, the parent may request a stay or an extension of a stay. The application is sufficient if it is a signed and certified written statement and the court may consider the request without having the parties present.

The parent must inform the court of the end of deployment no later than 30 days after the deployment end date. Upon notification, the court must reinstate the immediately preceding custody order of the period of deployment. If a motion for change of custody is filed after a parent returns from deployment, the court cannot consider the parent's absence due to that deployment or future deployment in making a best interest determination.

If the parents share custody, the deploying parent must notify the other parent of an upcoming deployment within a reasonable period of time.

2015 PA 50 – Child Custody Act (effective 9-7-15)

Unless both parents provide written consent, a parenting time order must prohibit parenting time in a country that is not a party to the Hague Convention on Civil Aspects of International Child Abduction.

2015 PA 51 – Child Custody Act (effective 9-7-15)

Redefined "active duty" and "deployment."





MICHIGAN COURT OF APPEALS DECISIONS

PUBLISHED AND UNPUBLISHED SEE: <http://courts.mi.gov/courts/coa/opinions/pages/zipfiles.aspx>

Lee v. Smith, published per curiam, released May 19, 2015. (Docket No. 320123). Even absent agreement of the parties, courts may award post-majority support for a child who is residing with the payee and attending high school on a full-time basis with a reasonable expectation of completing sufficient credits to graduate.

Howard and Blackburn v. Howard, published per curiam, released May 19, 2015. (Docket No. 323124). Notwithstanding the parental presumption, when a parent with joint legal custody, but without physical custody, petitions for custody, a nonparent with whom the children live has standing to rebut the parental presumption by proving that the best interests factors favor the nonparent by clear and convincing evidence.

Graham v. Foster, published per curiam, released June 16, 2015. (Docket No. 318487). Where the alleged biological father of a child born to an intact marriage sues under the Revocation of Paternity Act to revoke husband's paternity, the husband is a necessary party to the action.

Maier v. Maier, published per curiam, released June 25, 2015. (Docket No. 322109). In a child custody dispute it is not necessary for the court to interview the child to determine the child's reasonable preference if the court can use other evidence to do so or if other factors such as the child's emotional state would make the child's statement of a reasonable preference suspect.

Patterson v. Patterson, unpublished per curiam, released May 14, 2015. (Docket No. 325368). Parents exercised joint custody and mother proposed a change in custody where the child would have less frequent contact with his father, disrupting the child's established custodial environment, requiring clear and convincing evidence that the change was in the child's best interests.

Bray v. Bray, unpublished per curiam, released May 19, 2015. (Docket No. 324402). Neither allegations of father's smoking, drinking, and abuse that existed at the time of the prior custody action nor the addition of a step-parent without allegations that she effected the children's well-being were sufficient to constitute a material change in circumstances sufficient to modify custody.

Suliman v. Fisher, unpublished per curiam, released May 26, 2015. (Docket No. 320585). Where defendant moved out-of-state two weeks prior to the filing of divorce, changed her driver's license and mailing address, moved into a new home, and actively sought employment in the new state, the trial court did not err in determining that defendant was not a resident of Michigan for 180 days prior to the filing.

Mallison v. Mallison, unpublished per curiam, released May 26, 2015. (Docket No. 321227). Trial court's decision to impute income at a prior employment amount was reasonable when payer voluntarily reduces income, refuses to appear, and refuses to submit new income paperwork.

Anderson v. Anderson, unpublished per curiam, released June 2, 2015. (Docket No. 321880). Where trial court properly analyzes MCSF factors for imputing income and plaintiff refuses to provide accurate information about income, trial court does not abuse discretion in relying on expert testimony and previous tax returns to impute income.

Atkinson v. Knapp, unpublished per curiam, released June 9, 2015. (Docket No. 324487). When an established custodial environment exists, the remarriage and relocation of one parent away from that environment and the establishment of ties in a new area are not a significant change of circumstances effecting the child's well-being sufficient to support a change in custody.

Rowe v. Walker, unpublished per curiam, released June 16, 2015. (Docket No. 324874). In a dispute, between parents with joint legal and physical custody over which elementary school a child would attend, the trial court erred by failing to interview and consider the reasonable preferences of the child even though the child has never attended the proposed school.

Pacitto-Kelmendi v. Kelmendi, unpublished per curiam, released June 23, 2015. (Docket No. 321530). Even though defendant defaulted, where trial court does not make specific findings under the best interest factors, the case should be remanded to the trial court to state its findings and conclusions under the best interest factors.

Belongia v. Belongia, unpublished per curiam, released June 25, 2015. (Docket No. 325208). In initial custody proceeding, trial court erred in finding a possibility that defendant would abuse his prescription medication based solely on the number of pills defendant was prescribed, when there was no other evidence of actual abuse of medications.



MICHIGAN COURT OF APPEALS DECISIONS

PUBLISHED AND UNPUBLISHED SEE: <http://courts.mi.gov/courts/coa/opinions/pages/zipfiles.aspx>

(Continued from page 14)

Medlej v. Medlej, unpublished per curiam, released July 14, 2015. (Docket No. 321565). Trial court did not err in imputing income to a trained automotive repairman with limited language skills, training, and education at a rate consistent with the Bureau of Labor Statistics national average for the line of work.

Bachman v. Snowgold, unpublished per curiam, released July 14, 2015. (Docket No. 325963). When parents share joint legal and physical custody of the child, both parents regularly exercise parenting time, and the child has an established custodial environment with both parents, absent a demonstration that a change in parenting time would cause the child to no longer to look to one of the parents for guidance, discipline, the necessities of life or parental comfort, the proper threshold for determining whether to change parenting time is the lower proper cause or change in circumstances rather than a substantial change in circumstances.

Miller v. Plummer, unpublished per curiam, released July 28, 2015. (Docket No. 325411). A joint legal custody relationship in which one party has final decision-making authority only when the parties disagree is inappropriate as the legislature did not intend to provide joint-custody arrangements that assign important decisions to only one parent.

Wehbe v. Wehbe, unpublished per curiam, released July 30, 2015. (Docket No. 325847). Although a finding of contempt of court is not sufficient to establish a change in circumstances to justify changing custody, the parties' inability to co-parent constituted a sufficient change in circumstances and the court could consider the mother's contempt under the best interest factors.

Baughman v. Hartman, unpublished per curiam, released August 4, 2015. (Docket No. 323348). While facts existing before the last effective order do not establish a change in circumstances, once a change in circumstances is established, facts existing before the last effective order may be relevant to the best interest factors.

Ellis v. Ellis, unpublished per curiam, released August 6, 2015. (Docket No. 321972). The arbitrator correctly applied the child support formula when the arbitrator used zero overnights despite the judgment's provision for reasonable parenting time when the arbitrator determined the father was unlikely to exercise parenting time.

Michigan IV-D Memorandum (Office of Child Support)**2015-016 (July 1, 2015) 2015 Interstate Case Reconciliation (ICR 2015) Project Results**

This IV-D Memorandum explains how to use the ICR 2015 project results and correct any inaccurate information found in the Michigan Child Support Enforcement System (MiCSES).

2015-017 (July 24, 2015) Revised Federal Income Withholding for Support Form, Updates to Income Withholding and Lump-Sum Withholding Policy, and Federal Electronic Income Withholding Mandate

This IV-D Memorandum introduces the revised federal *Income Withholding for Support* form and announces policy updates in *Michigan IV-D Child Support Manual* Sections 6.03, "Income Withholding," and 6.09, "Lump-Sum/Bonus."

2015-018 (July 27, 2015) Remote Access Pilot Program for Designated County IV-D Offices

This IV-D Memorandum announces a new remote access pilot program for designated county IV-D offices. It provides an overview of the pilot, including goals, participants, and evaluation criteria. It also announces future plans to make remote access available for all county IV-D offices.

2015-019 (August 3, 2015) New Text Notification Option for MiCase Users and Updates to Section 1.35, "MiChildSupport Portal," of the Michigan IV-D Child Support Manual

This IV-D Memorandum discusses an update to the MiCase website. MiCase will allow users to receive text notifications to help them manage their MiCase information. This text-message option will be available to MiCase users on August 8, 2015.

2015-020 (July 30, 2015) Revisions to the Federal Tax Refund Offset (FTRO) Fraud Process and to Michigan IV-D Child Support Manual Section 6.21, "Tax Refund Offset"

This IV-D Memorandum introduces revisions to OCS's FTRO fraud process that will improve customer service to affected noncustodial parents (NCPs). These revisions will also assist IV-D workers in responding to NCPs who inquire about potentially fraudulent FTRO receipts.