



FINAL REPORT

COMMISSION TO STUDY CHILD SUPPORT AND RELATED CHILD CUSTODY ISSUES

(HB 310 Commission, from Chapter 277, Laws of 2003)

December 1, 2004

The Commission

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I. Introduction: Background of HB 310 Commission

A. Duties and Purpose of HB 310 Commission

House Bill 310 (Chapter 277, Laws of 2003; Approved/Effective Date: July 18, 2003) provided for the formation of a Commission to study child support and related child custody issues in the State of New Hampshire. The legislative mandate of HB 310 was broad and comprehensive and included the following charges:

277:2 Duties of the Commission. The Commission shall:

I. Review RSA 458:17 and RSA 458-C, including RSA 458-C:5, addressing special circumstances warranting adjustments to the application of the child support guidelines, to determine their effectiveness and fairness and to minimize incentives for unnecessary adversarial proceedings between parents, and to promote better outcomes for children and families.

II. Review RSA 639:3, I and RSA 639:4, regarding criminal sanctions for non-support, to determine their effectiveness and fairness.

III. Study the impact of the costs of providing medical insurance and dental care for the non-custodial parent and as part of a child support order.

IV. Study federal and other states' child support guidelines, statutes, and legislation with a view toward improving New Hampshire's child support formula. Specifically, the Commission shall determine the amount of financial support necessary to adequately support a child in New Hampshire.

V. Study joint and shared custody arrangements with a view toward making recommendations for changes to the child support guidelines formula.

VI. Hold four public hearings at separate geographical locations around the state for the purpose of obtaining testimony from the public on child support issues.

VII. Study the relationship between visitation, custody, and child support and consider the merits of more specific standards for the sharing of child support costs such as pro ration of costs based on the number of days in each month when a parent has physical custody rights, whether during visitation or otherwise.

VIII. Review the self-support level necessary and determine appropriate minimum and maximum levels for both self-support and support.

IX. Make recommendations for any proposed legislation that the Commission deems necessary.

The Commission held the first organizational meeting on September 25, 2003. HB 310, Chapter 277:2, VI charged the Commission with the responsibility of holding four public

hearings at separate geographical locations around the state for the purpose of obtaining testimony from the public on child support issues.

The Commission conducted the first public hearing on October 22, 2003, in Merrimack, New Hampshire. At this public hearing, nine individuals came forward to offer testimony. The second public hearing was held on November 6, 2003, in Rochester, New Hampshire. At this public hearing, seventeen individuals came forward to offer testimony. The third public hearing was held on April 22, 2004, in Newbury, New Hampshire. At this public hearing, three individuals came forward to offer testimony. The fourth public Hearing was held on May 13, 2004, in Plymouth, New Hampshire. At this public hearing, eighteen individuals came forward to offer testimony. (*See* Section II.B, p. 16, Section II.C.i, p. 19, and Appendix D.)

In addition to the information received at the four public hearings, the Commission received more input and recommendations as to the Commission's charges from concerned individuals outside of the public hearing forums. The Commission held a total of twenty-nine meetings between September 25, 2003, and November 30, 2004.

After the conclusion of the public hearings, the Commission reviewed the information obtained to determine specific issues to be addressed within the Commission's charges. These issues include, but are not limited to, the following:

1. Whether it is fair for one parent to be required to pay more than one half of the cost of raising a child.
2. Whether Courts have exercised appropriate discretion when addressing changes in circumstances of the non-custodial parent and the custodial parent.
3. The need to take into consideration monies spent by the non-custodial parent when the children are in his or her care.
4. Accountability by the custodial parent for monies received through child support.
5. The impact of exceptionally high or low income upon the amount of support required to be paid under the existing formula.
6. The need for costs associated with the non-custodial parent maintaining dual infrastructures to be taken into account when determining the amount of child support to be ordered.
7. Whether maintaining a child support formula which produces child support awards in excess of the actual cost of raising a child encourages litigation.
8. The need for the child support award to reflect the actual costs of raising a child and not a standard of living.
9. Whether it should be the public policy of the State of New Hampshire to establish joint physical custody as a legal presumption in contested custody matters.

10. Enforcement of child support and custodial arrangements.
11. The impact of joint or shared physical custody arrangements on the amount of child support ordered.
12. Deviation from the Child Support Guidelines.
13. Whether there should be a cap on the amount of child support ordered for high-wage earners.
14. Whether there should be a credit against the amount of support ordered to reflect periods of physical custody exercised by the non-primary-care parent.
15. Whether the self-support reserve should be increased.
16. Whether the definition of income, including the treatment of income from overtime, second jobs and personal injury annuities, should be modified and the circumstances, if any, where income should be imputed.

Some of the issues identified are interrelated and require a great deal of analysis and consideration and therefore are more fully addressed later herein. The Commission has utilized the information received and the research obtained to formalize specific recommendations where appropriate and has provided guidance and proposals for future legislation that is reflective of the Commission's findings. These specific recommendations and proposals are more fully addressed within this Report.

B. Satisfying the Federal Requirements for Review of the New Hampshire Child Support Guidelines for Appropriateness and Fairness

It is the Commission's belief that this review of New Hampshire's child support guidelines has been conducted in satisfaction and in compliance with the statutory review requirements specified under federal law, 42 U.S.C. §667 and 45 CFR 302.56, and state law, RSA 458-C:6.¹ (See Appendix A.) However, **the Commission finds** the current New Hampshire child support guidelines to be unfair and inappropriate in many circumstances and in dire need of reform and revision. **The Commission finds** that the guidelines result in the determination of inappropriate child support award amounts in at least some cases for a variety of reasons that include, but are not limited to, the following problems:²

1. New Hampshire bases its child support guidelines on the Espenshade Study. However, the guideline percentages utilized in NH RSA 458-C do not conform to the study.
 - a. The presumptive percentage for one child (25%) is greater than any of the percentages from the study. Significantly, the existing statute incorporates tables from

1 Please see Section II.C.ii, pp. 22-27, hereinbelow, for proposed changes to New Hampshire RSA 458-C:6.

2 Primary source: R. Mark Rogers, *New Hampshire's Child Support Guidelines: Legal and Economic Background and Rebuttal Strategies*, June 14, 2004, available at www.guidelineeconomics.com/files/NH_CShistoryRebuttal.pdf.

the study which included day care and extraordinary medical expenses that are not incurred by every family on a regular basis.

- b. The guidelines use fixed percentages across all income levels yet the underlying study specifically shows that child costs decline as a share of household net income as net income rises.
 - c. Changes in the income of an obligee (the parent receiving child support) have a negligible effect on the presumptive award. This result is contrary to professional studies on child costs that find that such costs vary in relation to combined income and that child costs decline as a percentage of income as overall income rises. This outcome is also specifically contrary to the Income Shares model in which the child support obligation of the obligor (the parent paying child support) is supposed to vary in relation to the income of the parent receiving support (obligee).
2. The guidelines formula makes no provision for parenting time adjustments.
 3. The current child support guidelines do not reflect child-related tax benefits that could be shared by both parents more fairly and that could be recognized as cost offsets.
 4. New Hampshire's "Income Shares" guidelines are, in effect, simply flat rate "Percent of Obligor Net Income" guidelines which result in what are arguably excessive obligations in some, if not many, circumstances.

Although the federally-mandated review requirements may be met, **the Commission finds** that additional economic analysis is necessary to facilitate and implement the important recommendations contained in this Report and to revise the guidelines as required by 45 CFR 302.56(e) to ensure that they are reasonable, appropriate, and just in their application.

Subject to the authority conferred to the Commission under Chapter 277, Laws of 2003 (HB 310) or any future legislation, the Commission stands prepared to reconvene to review the implementation of its recommendations and to act as a continuing resource to the General Court to assist in following through on the findings and recommendations of this Final Report.

The Commission finds that an appropriation to conduct an economic analysis by qualified economists is critical in carrying out its ultimate charge regarding the review of the current child New Hampshire child support guidelines and the development of any new model to be implemented as recommended in this Report. The Commission also recognizes that a subsequent review may be conducted at any time within the four-year review period specified under federal law and pursuant to Chapter 406:8, Laws of 1989 (which is part of the annotation to RSA 458-C:6) to help accomplish the recommendations set forth in this Report.

Federal law sets forth the specific requirements for establishment of child support guidelines and subsequent periodic reviews to ensure that their application results in the determination of appropriate child support award amounts. Specifically, 42 U.S.C. § 667 requires the following:

- All jurisdictions must establish child support guidelines as part of their State Plan;
- States must conduct a review of the child support guidelines at least once every four

years;

- The guidelines shall be made available to all judges and other officials who have the power to determine child support awards within the State;
- There shall be a rebuttable presumption that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded; and,
- A written finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined under criteria established by the State shall be sufficient to rebut the presumption in that case.

45 CFR 302.56 provides the following additional requirements:

- Child support guidelines must be based on a specific descriptive and numeric criteria;
- Child support guidelines must take into consideration all earnings and income of the non-custodial parent;
- Child support guidelines must provide for the child's health care needs through health insurance coverage or other means;
- A four year review of guidelines, and their revision, if appropriate, to ensure that their application results in the determination of appropriate child support award amounts, and;
- A State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.

In compliance with the federal requirements stated above, the Commission reviewed the appropriateness and fairness of New Hampshire's current child support guidelines found in Chapter 458-C. Conducted over the period of fifteen months, the Commission's review of New Hampshire's child support guidelines included information gathered at four public hearings held at various geographic locations throughout the state of New Hampshire.

Additionally, the Commission received testimony and information at its regular meetings from many experts and professionals including representatives from the National Conference of State Legislatures (NCSL); the New Hampshire Department of Health and Human Services (DHHS): Division of Children, Youth and Families (DCYF), Division of Family Assistance (DFA), and Division of Child Support Services (DCSS); persons formerly associated with the Josiah Bartlett Policy Studies Center; clergy; and the general public. The Commission's analysis, findings and recommendations are contained in the remainder of this Report.

Finally, particular attention was given by the Commission to the review of available economic data on the "cost of raising a child" and to a study of a sample of IV-D cases as to the application and deviation from guidelines that DHHS DCSS conducted for the Commission. Title IV-D (of the Social Security Act) is the program of child support enforcement administered by the DHHS DCSS. (*See Appendix B.*)

C. Commission's Relationship with HB 447 Task Force on Family Law

The HB 447 Task Force on Family Law (Chapter 250:1, Laws of 2002; "Task Force") was primarily charged with making recommendations to reduce the adversarial nature of divorce and other family law matters. Subsequently, HB 310 was introduced and later enacted to create this Commission to perform the important task of reviewing New Hampshire's child support guidelines and related issues.

On May 21, 2004, some Commission members met with the Task Force with the goal of identifying common ground or a unified direction given the interrelationship between divorce, custody and support issues. Two members of this Commission also served on the Task Force and shared impressions between the two reporting bodies. This Commission takes particular note of the following Task Force findings and recommendations in its November 1, 2004, *Final Report* as complementary to our own:

- Terminology such as "custody" and "visitation" should be changed to recognize that both parents have "rights and responsibilities" in order to reflect the continuing role of both parents in the life of their children. (See Task Force on Family Law, *Final Report* of November 1, 2004, page 9 and page 57.)
- The "culture in New Hampshire and our legal system" should be refocused to supporting "parties making their own decisions and both parents being substantially involved in raising children" under normal circumstances, reducing adversarialness and litigation. (See Task Force on Family Law, *Final Report* of November 1, 2004, page 9.)
- "The message that children do best when both parents have a stable and meaningful involvement in their lives must be integrated into the practice of judicial, legal, and mental health professionals . . ." (See Task Force on Family Law, *Final Report* of November 1, 2004, page 10.)
- Parenting plans describing "how parents will share the care of their child" including a detailed schedule of parenting time should be central to child support cases and used to focus "each parent's attention on the child's needs." (See Task Force on Family Law, *Final Report* of November 1, 2004, pages 10-11.)
- "When parents have shared or split custody, the statute provides no guidance as to what child support would be fair. . . . Because of the lack of a formula, or at least a checklist of factors to be considered, parents have difficulty agreeing on support in these situations. The result is often a feeling that the other parent is being 'unfair,' so anger develops, and then litigation results. The Task Force makes no specific recommendation as to how support issues should be resolved in split or shared arrangements but clarifying legislation would reduce conflict over this subject." (See Task Force on Family Law, *Final Report* of November 1, 2004, page 12)

The Task Force also proposed a new RSA chapter dealing with all child-related issues in the appendix to its final report of November 1, 2004. While this Commission has not recommended specific language for a rewrite of child support statutes (RSA 458-C in particular), such work

should build on the framework provided by and mesh with the policy and language contained in the *Final Report* recommendations of the Task Force on Family Law.

D. Historical Perspective of Prior NH Child Support Guidelines Reviews

Prior to the establishment of standardized child support guidelines, child support was a discretionary function of the court system. As a result, it was reported that many child support awards were inconsistent, unpredictable and often inadequate. In an effort to combat these problems, the federal government enacted the Child Support Amendments of 1984, Public Law 98-378 and, as a result, the federal Office of Child Support Enforcement (OCSE) was required to establish a national advisory panel on child support guidelines. Additionally, states were required to establish numeric guidelines to determine appropriate amounts of child support.

To comply with the federal requirements, the Governor's Commission on Child Support was established for the purpose of studying all aspects of New Hampshire's child support system to determine if it is successful in securing support and parental involvement in domestic relations matters. Its charge was to examine such specific problems as visitation, establishment of objective standards for support, enforcement on interstate obligations, and the need for additional state and/or federal legislation to obtain parental involvement and support for children. That commission's final report was issued on October 1, 1986.

In 1987, OCSE's advisory panel issued a report recommending child support guidelines be used nationally. In response, Congress enacted the Family Support Act of 1988, which mandated that states implement presumptive, rather than advisory, guidelines by 1994. As a result, New Hampshire established model guidelines that were developed based upon the framework set forth in the October 1, 1986, final report of the Governor's Commission on Child Support. This model was enacted into law in 1988 (by House Bill 1128), and was based on the "Income Shares" model, one of three federally-approved guideline models.

House Bill 1128 also established a committee to study other child support issues. One of these issues was that of "reviewing child support guidelines in this state and other states, with a view toward improving New Hampshire's child support formula." At the completion of its investigation, the committee issued a report that recommended revisions to the child support guidelines. Based upon the committee's specific recommendations, the child support guidelines were revised in 1989, by House Bill 677. Specifically, House Bill 677 revised RSA 458-C to:

1. Consider the income of both parents when determining the support award amount;
2. Allow a deduction for work-related childcare costs;
3. Standardize deductions for federal income taxes, Medicare and F.I.C.A.;
4. Allow the non-custodial parent to keep a self-support reserve amount equal to 100% of the poverty standard of need for a single person living alone (as determined by the United States Department of Health and Human Services);

5. Establish a minimum child support order of \$50.00 per month in cases where the non-custodial parent's adjusted monthly gross income is less than the self-support reserve amount;
6. Disregard the income of the non-custodial parent's current spouse unless the non-custodial parent is deemed to be voluntarily unemployed or underemployed, in which case the spouse's income will be imputed to the non-custodial parent to the extent that the non-custodial parent would earn if employed in his or her usual employment; and,
7. Require the Department of Health and Human Services, Division of Child Support Services to periodically review the child support guidelines.

Additionally, revisions were made to the child support guidelines in 1990, by House Bill 1315-FN, which revised and clarified the definitions of "gross income" and "net income" for purposes of calculation child support awards.

Thereafter, in 1992, the New Hampshire Department of Health and Human Services, Division of Child Support Services (DCSS) conducted its first review of the child support guidelines for this state. At the conclusion of its investigation, DCSS issued a final report. The final report concluded that New Hampshire's child support guidelines provided a considerable improvement as compared to prior calculation and determination methodology.

In 1993, Senate Bill 62 (Chapter 256, Laws of 1993) was created to study the payment of child support in the State of New Hampshire. The legislative mandate required a review of the child support guidelines, criminal sanctions and the relationships between visitation, custody and child support. Specifically, the mandate was to:

1. Review the child support guidelines, including RSA 458-C addressing special circumstances warranting adjustments to the application of the child support guidelines, to determine their effectiveness and fairness;
2. Review RSA 639:3, I and RSA 639:4 regarding criminal sanctions for non-support to determine their effectiveness and fairness;
3. Study the impact of costs to the obligor of providing medical insurance coverage on behalf of his or her children as part of a child support order;
4. Study federal and other states' child support guidelines, statutes, and legislation with a view towards improving New Hampshire's child support formula;
5. Study the impact of split and shared custody arrangements with a view toward making recommendations for changes to the child support formula;
6. Hold four public hearings to obtain testimony from the public on child support issues; and,
7. Study the relationship between visitation, custody and child support.

On August 30, 1995, the report of the New Hampshire Child Support Study Committee was issued. The committee's final report made a number of recommendations aimed at improving the current child support system.

Thereafter, in 1998, amendments were made to the child support guidelines (Chapter 242:1-3). However, the Legislature declined to adopt the recommendations made by the August 30, 1995 report of the New Hampshire Child Support Study Committee as they related to factoring in child support obligations in split and shared physical custody situations.

Most recently, in order to comply with the federal review requirements, HB 310 (Chapter 277:1, Laws of 2003; Approved/Effective Date: July 18, 2003) provided for the formation of this Commission to Study Child Support and Related Child Custody Issues in the State of New Hampshire.

II. Review of Current NH Child Support Guidelines Under Chapter 458-C

A. Historical Perspective on New Hampshire's Adoption of its Present Model

The New Hampshire Child Support Guidelines statute, RSA 458-C, was adopted by the Legislature in 1988. The enacting bill was HB 1128 (an act establishing child support guidelines, and establishing a committee to study child support issues)(Chapter 253, Laws of 1988); it was passed along with a companion measure, HB 940 (an act relative to child support enforcement and paternity)(Chapter 234, Laws of 1988) which amended RSA 458:17, "Support and Custody of Children." Both measures became effective April 30, 1988.

The House Committee on Children, Youth and Elderly Affairs held its hearing on HB 1128 on January 19, 1988. At this hearing, according to the minutes, Laura Loyauno, representing the National Conference of State Legislatures (NCSL), indicated the bill as introduced reflected the Wisconsin model at that time.³ The minutes indicate NCSL used the term "Income Shares model."

In the transcript⁴ of the March 28, 1988, hearing of HB 1128 before the Senate Judiciary Committee, Ms. Nancy Baybutt, representing the Governor's office, testified (in part):

The issue here is, that we on the Governors' Commission of Child Support, which was also mandated by the Federal legislation, came up with the guidelines as you see them in 1128. This was a committee made up of 3 attorneys, one member of the Senate, one from

³ It is worth bearing in mind that, effective January 1, 2004, Wisconsin adopted new child support guidelines through its Department of Workforce Development ("DWD") administrative rule DWD 40. According to the DWD fact sheet outlining the guidelines, the "guidelines are based on the belief that both parents are responsible for supporting their children, whether they live together or not." The fact sheet states that the guidelines are based on parent's income, how much time a child spends with each parent and whether a parent is supporting other children. It is the accommodation for parenting time that is the key change in the Wisconsin guidelines. The current Wisconsin model is called the "Child Support Percent of Income Standard."

⁴ In reproducing the testimony for this memorandum, no attempt has been made to correct spelling or grammar as found in the transcript of the hearing in the bill file. Footnotes have been inserted.

the House, administrator of the office of child support, the director of human services, a member of the committee who was a representative of non-custodial parent; he was a father from a group called Fathers United for Equal Justice, we had a custodial parent, in fact a couple. We worked with different models around the country and this was the model that we came up. It is a model after Wisconsin. In the house they did change it by lowering the percentages in the formula.⁵ The Commission verified with the federal Region I office of child support that the percentages that we now have in the formula are pretty representative of those used around the country; the other perhaps that the Commission came up with were a little higher than the national ones, but that is another issue. It is the wording here now is in compliance with the Federal Law.

According to the Senate Journal of April 22, 1988, in selections from pages 982-987:

Senator Roberge: The purpose of this bill [HB 1128] is to establish a uniform system to be used in the determination of the amount of child support and to minimize the economic consequences to children and to comply with federal law by using specific guidelines based on a set of specific principals [sic]. [1988 SJ 982]

and

Senator Podles: . . . This bill [HB940] is necessary as a necessary complement to HB 1128. Both bills are designed to work together to fulfill the requirements of the federal government. Without the enactment of these measures, a significant portion of the state's federal child support enforcement funding, as well as direct payments for the support of children, would be threatened. They are both viewed as a package by Mr. Gallagan of the reviewing federal agency and he feels they are an excellent first step and more than satisfy the federal requirements at this time. . . . [1988 SJ 986]

Child Support Guidelines Models Considered in 1988

Attached to the House minutes in the HB 1128 bill file is a copy of the March 1987 recommendations of the Advisory Panel on Child Support Guidelines (a panel formed in early

5 As introduced, HB 1288 proposed the following child support formula percentages:

- one child, 20 percent;
- two children, 30 percent;
- three children, 36 percent;
- four children, 40 percent.

In the bill as amended by the House (on the House Consent Calendar February 18, 1988) and being heard before the Senate committee, the percentages proposed were:

- one child, 20 percent;
- two children, 25 percent;
- three children, 28 percent;
- four children, 32 percent.

The percentages currently found in RSA 458-C are the ones adopted by the legislature in 1988 and have remained unchanged ever since:

- one child, 25 percent;
- two children, 33 percent;
- three children, 40 percent;
- four children, 45 percent.

1984 by the federal Office of Child Support Enforcement at the request of the House Ways and Means Committee).⁶ Among other recommendations, the panel made six recommendations specifically to the states.⁷ For HB 1128, Recommendation #5 provides a possible rationale for selecting the Income Shares Model:

Recommendation #5: Selection of guidelines: The Advisory Panel recommends that states use either the Income Shares model or the Delaware Melson Formula as the basis for their child support guidelines.

6 The Advisory Panel set out eight principles that it recommended the states follow in developing their guidelines:

- 1) Both parents share legal responsibility for supporting their children. The economic responsibility should be divided in proportion to their available income.
- 2) The subsistence needs of each parent should be taken into account in setting child support, but in virtually no event should the child support obligation be set at zero.
- 3) Child support must cover a child's basic needs as first priority, but, to the extent either parent enjoys a higher than subsistence level standard of living, the child is entitled to share the benefit of the improved standard.
- 4) Each child of a given parent has an equal right to share in that parent's income, subject to factors such as age of the child, income of each parent, income of current spouses, and the presence of other dependents.
- 5) Each child is entitled to determination of support without respect to the marital status of the parents at the time of the child's birth. Consequently, any guideline should be equally applicable to determining child support related to paternity determinations, separations, and divorces.
- 6) Application of a guideline should be sexually non-discriminatory. Specifically, it should be applied without regard to the gender of the custodial parent.
- 7) A guideline should not create extraneous negative effects on the major life decisions of either parent. In particular, the guideline should avoid creating economic disincentives for remarriage or labor force participation.
- 8) A guideline should encourage the involvement of both parents in the child's upbringing. It should take into account the financial support provided directly by parents in shared physical custody or extended visitation arrangements, recognizing that even fifty percent sharing of physical custody does not necessarily obviate the child support obligation.

7 Recommendations 4, 6, 7, 8, and 9 are:

Recommendation #4: Establishment and use of guidelines: The Advisory Panel recommends that each state adopt a child support guideline for use as a rebuttable presumption by the courts and child support enforcement agencies.

Recommendation #6: Health Insurance Coverage: The Advisory Panel recommends that guidelines include a provision specifying parental responsibility for the child's health insurance coverage. In applying a guideline to determine the level of child support, financial credit should be given to the parent that is carrying the insurance policy.

Recommendation #7: Treatment of Second or Multiple Families: The Advisory Panel recommends that guidelines address the treatment of multiple child support responsibilities.

Recommendation #8: Updating Child Support Orders: States should address the need for periodically updating child support orders. Updating should take into account changes in the income of both parents as well as changes in the needs of the child. The most appropriate updating mechanism is reapplication of a child support guideline.

Recommendation #9: Development Process and Implementing Authority: The Advisory Panel recommends that guidelines be implemented by means of a court rule of statewide applicability, where feasible. A state's development of guidelines should include active participation by a broadly comprised group, preferably including representatives of the courts, executive branch, the legislature, and relevant professional and advocate groups.

The recommendation goes on to set out six factors leading the Panel to prefer these two models to others.⁸ In the topic sentences for each paragraph in the recommendation, the Panel set out the six factors as follows:

- First, both approaches ultimately base child support obligations on the parents' ability to pay, which ensures that the child shares in both the parents' standard of living.
- Second, unlike some approaches, both the Income Shares model and the Melson Formula count income of both parents in determining the amount of child support awards.
- Third, both the Income Shares model and the Melson Formula allow for the subsistence needs of each parent.
- Fourth, both the Income Shares model and the Melson Formula encourage continued involvement of both parents in the child's upbringing by means of adjustments for joint or extensively shared physical custody.
- Fifth, neither the Income Shares model nor the Melson Formula create substantial negative effects on major life decisions of the parents, such as re-marriage or labor force participation.
- Sixth, the Income Shares and Melson Formulas provide for separate treatment of work-related childcare and extraordinary medical expenses.

Melson Formula:

According to the Delaware case of *Dalton v. Clanton*, the "Melson Formula is named after its judicial craftsman, Judge Elwood F. Melson, Jr. of the Family Court of the State of Delaware. The formula was developed by Judge Melson in response to the directive of 13 *Del.C.* §514. It was used by Judge Melson for the first time in the context of a child support case in 1977."⁹ It was adopted for statewide use in the Delaware Family Court in January of 1979.¹⁰

As set out in *Dalton v. Clanton*:

The *basic principles* of the Melson Formula have been summarized as follows:

- Parents are entitled to keep sufficient income to meet their most basic needs in

⁸ For example, various models are described in a report entitled "Child Support Guidelines: Economic Basis and Analysis of Alternative Approaches," prepared in June 1987 by Robert Williams of Policy Studies, Inc. (Denver) (hereafter the "Williams report"), submitted to the House Committee on Children, Youth and Elderly Affairs at its hearing on HB 1128 held January 19, 1988. Those five models are the Wisconsin Percentage of Income Model, the Income Shares Model, the Washington Uniform Child Support Guidelines, the Delaware Melson Formula, and the Cassetty Model (a Texas model least favored by Mr. Williams as, among other points, it apparently did not perform well when there is more than one child).

⁹ *Dalton v. Clanton*, 559 A.2d 1197, 1203 (1989); in addition, information relative to the Melson Formula is found in the Williams report.

¹⁰ *Dalton v. Clanton*, 559 A.2d 1197, 1204, and Williams report, p. 13.

order to encourage continued employment.

- Until the basic needs of children are met, parents should not be permitted to retain any more income than that required to provide the bare necessities for their own self-support.
- Where income is sufficient to cover the basic needs of parents and all dependents, children are entitled to share in any additional income so that they can benefit from the absent parent's higher standard of living.¹¹

The *basic procedures* which are performed in an application of the Melson Formula are:

Step 1: *Determine Available Income of Each Parent.* The Melson Formula starts with net income. After determining net income for each parent, a self-support reserve ("primary support allowance") is subtracted from each parent's income. This reserve represents the minimum amount required for an adult to meet his or her own subsistence requirements.

Step 2: *Determine Children's Primary Support Needs.* The next step in applying the formula is to compute the primary support amount for each dependent. Like the self-support reserve, the primary support amount represents the minimum amount required to maintain a child at a subsistence level. . . . Work-related childcare expenses are added to primary support as are extraordinary medical expenses. The child's primary support needs are pro-rated between the parents based upon available net income as determined in Step 1.

Step 3: *Determine Standard of Living Allowance (SOLA).* After primary support obligations of each parent are calculated in Step 2, including obligations for childcare expenses and extraordinary medical expenses, a percentage of remaining income is also allocated to support of the child. The standard of living allowance enables the child to benefit from the higher living standard of a parent. . . . If a parent has dependents other than the child for whom support is being sought, and such other dependents are not covered by a court order, primary support amounts for such dependents are deducted from obligor income available for the Standard of Living Allowance.¹²

Attached to the Williams report referenced herein at footnote 6 was a sample Delaware form for computing the Melson Formula. (*See Appendix C for a copy of the original sample and a current form with instructions.*) Furthermore, in the Williams report, the 1987 percentages used for what is now called the standard of living adjustment ("SOLA") are set out as follows:

One child	15 percent
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11 Originally court footnote 11 in *Dalton v. Clanton*, 559 A.2d 1197, 1204: *The Delaware Child Support Formula: Study and Evaluation, Report to the 132nd General Assembly*, Family Court of the State of Delaware, at 1-2 (April 15, 1984). *See also*, S. Paikin, *Child Support*, reprinted in 2 A. Rutkin, *Family Law and Practice* §33.06[3][c], at 33-49 (1st ed.1985) [hereinafter Paikin, *Child Support*].

12 Originally court footnote 12 in *Dalton v. Clanton*, 559 A.2d 1197, 1204: R. Williams, *Development of Guidelines for Child Support Orders: Final Report to U.S. Office of Child Support Enforcement*, II-81 to -84 (National Center for State Courts, Williamsburg, Va., March 1987) [hereinafter Williams, *Guidelines*]. *See also*, Paikin, *Child Support*, *supra* note 11, at 33A-28 to -40.

Two children	25 percent
Three children	35 percent
Four children	40 percent
Five children	45 percent
Six children	50 percent.

It is worth noting that, in the Williams report, a review of studies from both the Bureau of Labor Statistics and Thomas Espenshade leads Mr. Williams to suggest that “estimates of expenditures on children as a proportion of current family consumption are as follows:

One child	26.2 percent
Two children	40.7 percent
Three children	51.0 percent
Four children	57.5 percent.”

Williams goes on to state (at page 6 of his report) that “[t]here is a common misperception that the declining increments primarily reflect economies of scale in raising children. Instead, these figures seem to indicate a decreasing level of expenditures for each child as family size increases. Espenshade estimates, for example, that virtually equal amounts are spent on each child in a two child family, but that the spending levels for each represents only about three-fourths the amount that would have been spent on one child alone.”

B. Input from Public Hearings and Information Provided at Regular Meetings

Four video-taped public hearings were held in which 47 individuals addressed their concerns to the Commission. The majority were non-custodial family members (35 individuals or 74%). The following list summarizes the comments made during testimony given at the public hearings held in Merrimack, Rochester, Plymouth and Newbury, New Hampshire (*See also* Appendix D):

1. Many testified that, in a no-fault divorce state, it was unfair for a parent to pay more than one half the true cost of raising a child, especially when the respondent to the divorce petition may not have wanted the divorce. It was suggested that both parties to the divorce recognize an equal obligation with respect to raising the child(ren), special circumstances notwithstanding.
2. The Commission heard testimony from individuals who were concerned that the current system of child support gives no credit for the time spent with the child(ren) by the non-custodial parent. When the amount of time a non-custodial parent spends with the child(ren) increases, the overall cost of raising the child(ren) increases for that non-custodial parent. Often, a substantial sharing of parenting time means a duplication of child-related costs such as the expenses of providing and maintaining a second household, and this is especially so when the non-custodial parent has the functional responsibility of half-custody. The result is increased frustration and acrimony between the custodial and non-custodial parents.
3. The Commission heard testimony from individuals regarding the unaccountability of child support money. The money assessed for child support is unaccountable and cannot be documented to have been spent on the child(ren). The non-custodial parent’s obligation to

pay child support is well defined under the current guidelines, but the custodial parent's obligation to spend the money on the children is not. Many who testified doubted the money was well spent much less spent on the child(ren). They wished a periodic audit be provided by the custodial parent to remedy this concern.

4. The Commission heard testimony from individuals regarding the disparity in how the New Hampshire statute weights (values) children of first and subsequent marriages. The first child is apportioned 25% weight, the second child is apportioned 8% (for a total of 33%), and the third child is apportioned 7%, (for a total of 40%) and the fourth and subsequent children are apportioned only 5% in aggregate (for a total of 45%). This fixed sliding scale is unfair when one minor child lives with each parent and it penalizes non-custodial parents who have a second family.

5. The Commission heard testimony from individuals claiming that the New Hampshire guidelines should be based upon the cost to raise a child rather than to guarantee a standard of living. The wants of the child(ren) are not the needs of the child(ren). Moreover this Commission heard testimony to the effect that child support in excess of the cost of raising a child encourages divorce and the separation of families and makes the children financial assets. There was testimony expressing concern that child support at higher income levels can be far in excess of what can reasonably be spent on the child(ren) and becomes a tax-free redistribution of the obligor's estate that is, in effect, tax free alimony and asset transfer disguised as child support, contrary to the intent of tax laws and IRS regulations. Other testimony stressed additional inequities that abound within the current system. For example, it fails to:

- a. Factor into child support student loans and other debt obligations which cannot be discharged in bankruptcy;
- b. Factor into the calculation of child support the division of marital assets;
- c. Establish an adequate self-support reserve for the non-custodial parent;
- d. Account for tax effects, e.g.: child support is non-taxable income to the custodial parent but that fact is not taken into account by the child support guidelines;
- e. Give credit for court-ordered payments covering insurance premiums, both life and medical; and,
- f. Take into account the progressive nature of child support payments with respect to higher income levels and to establish income caps.

6. The Commission heard testimony from individuals who were concerned that the current child support guidelines prevent non-custodial parents from establishing new lives and extricating themselves from debt as extra work (second jobs, overtime pay) or good fortune is included as income to the non-custodial parent.

7. The Commission heard testimony from individuals who indicated that the economic hardship incumbent after a divorce (the need to support two household infrastructures) rests disproportionately on the non-custodial parent. With the current child support model, the

custodial parent is rewarded for not working, in turn increasing the financial burden on the non-custodial parent.

8. The Commission heard testimony from individuals who suggested that the courts need to be more responsive to modifications and in particular to the time it takes to process a modification through the court system. It was suggested that certain modifications should be triggered automatically, as in the case of job loss wherein application for unemployment benefits would trigger an automatic reduction in child support payments. Hardship cases are real to the non-custodial parent but often treated with contempt by the courts. Another modification-related complaint was heard relative to the custodial parent's increases in income. This latter instance remains unreported to the court and hence fails to trigger a reallocation of child support payments between the involved parties.

9. The Commission heard testimony from individuals with respect to marital masters and judges abusing their discretion. A frequent complaint heard was that there was too much discretion within the system, even to the extent that the law protecting the non-custodial parent was all too often sidestepped or minimized. These individuals expressed concerns that, in many instances, due process is circumvented because of the discretion given to Guardians Ad Litem (GALs), marital masters and judges under the current guidelines. Additionally, individuals testified that there is also a perceived anti-father bias within the legal and social service system to ensure the mother receives custody of the child(ren). Moreover, many individuals testified to their belief that there is a gender bias in the system that tends to view every father as a "deadbeat" dad.

10. The Commission heard testimony from individuals who stated that no-fault divorce should not be allowed in marriages with children.

11. The Commission heard testimony from individuals encouraging shared parenting guidelines with the objective of reducing the acrimony created when money changes hands between the non-custodial and custodial parents. Joint physical custody was recommended as being beneficial to the child(ren), whereas the current child support guidelines create a disincentive for joint or shared parenting.

12. The Commission heard testimony from individuals relative to paternity/DNA testing not being allowed into evidence by the Court. In a few instances, child support was ordered prior to any paternity testing.

13. The Commission heard testimony from individuals who testified that they were unaware that they had fathered children until they were named in a paternity suit months, even years, after the child was born. They testified regarding the unfairness of being thrown into debt by the Court's awarding child support retro-actively to the child's date of birth rather than to the date of the filing of the legal action.

14. The Commission heard testimony from individuals regarding stepparents who were required to contribute toward child-support for non-biological/non-adopted children.

15. The Commission heard testimony from individuals regarding the collection fees charged by the New Hampshire Department of Health and Human Services (HHS).

Testimony claimed that such fees significantly reduced the actual amount of child support passed through to the custodial parent.

16. The Commission received information suggesting that individuals involved in a legal action involving child support are too easily, and sometimes with objection, entered into the Title IV-D (child support enforcement) program. The legality of operating the child support enforcement program without a means test was questioned.¹³

The Commission notes that the majority of these inequities and problems have been described in previous reports but have generally remained unaddressed (*See Report on the Impact of Child Support Guidelines in New Hampshire* (1990), pages 10-14; *Report of the New Hampshire Child Support Study Committee* (1995), page 4, and; the *DHHS Report on New Hampshire Child Support Guidelines*, (2002), pages 7-9).

C. Proposed Changes to Existing New Hampshire Child Support Guidelines

i. Public Input: Suggested Remedies

The following is a list of suggested remedies offered by individuals who testified at the four public hearings, in Merrimack, Rochester, Plymouth and Newbury, New Hampshire, held to hear testimony regarding the fairness of New Hampshire's child support guidelines and related child custody issues. The suggested remedies listed below correspond to the numbered list of grievances contained hereinabove in Section II. B.

1. No parent should pay more than half of the true cost of raising a child and child support laws should encourage harmony not acrimony between the parties.
2. Child support guidelines should encourage estranged parents to spend significant time with their children and should take the resulting costs into consideration and allocate child support payments proportionately.
3. Several suggestions were made to remedy the lack of accountability for tracking expenditures against child support payments:
 - a. Periodic audits should be provided by the custodial parent to the non-custodial

¹³ The Commission received an email on 5/4/04 that argued that it may be unconstitutional to institute Child Support Services without means testing because Sec. 1301d (Title 42 Chapter 7, Subchapter XI, Part A, Section 1301 (d), which is 1101 (d) in the Social Security Act) states that: "Nothing in this act shall be construed as authorizing any Federal official, agent, or representative, in carrying out any of the provisions of this act, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child." Citing a paper, "Welfare for the Affluent," as prepared by Molly K. Olson of the Center for Parental Responsibility, the author wrote: "The purpose and intent of the IV-d program was clear. It was designed to be a welfare off-set program. The IV-d programs was set up as a collection agency for the purpose of cost recovery or cost avoidance to lower costs to the taxpayer and reduce the financial burden on the government for those mothers and children who were dependent on the government for their basic needs. The U.S. House Ways and Means Committee Green Book, 2000, clearly indicates the IV-d program was meant for two classes of single parent families: 1) those on welfare, and 2) those formerly on welfare and at risk of being back on welfare if they don't receive their child support payment."

parent who has a right to know how and for what child support money is spent;

b. Establish a child support fund for the purpose of covering the basic needs such as food, shelter, clothing, etc. Both parents would pay into the fund and both parents could withdraw the funds for allowable child support expenses;

c. Use of a special debit card to record expended child support funds. The debit card system would allow child support expenditures to be audited to verify how and where child support money is utilized; and,

d. Implementing a cost-shares model would remedy the situation where multiple children are split up between their divorced/separated parents and ensure fair treatment for children resulting from a subsequent marriage.

4. New Hampshire's Income Shares or percentage of income guidelines should be revised to be more realistic and take into account subsequent and prior children or be replaced with a cost-based formula.

5. The true cost of raising a child should be shared equally between the two parents or guardians irrespective of income. Adoption of a cost shares or other cost-based model would remedy most of the existing inequities. The following suggestions apply to the list of grievances in Section II.B.5 (p. 17):

a. Payments on student loans and other types of debt that cannot be discharged by bankruptcy laws should be factored into the amount of the child support payments, as should the division of marital assets;

b. Factor into the child support obligation of a parent any home equity contributed by him or her to the children's home held by the other parent. Encourage financial planning and support and consider arrangements where divorcing spouses might create a pooled fund for child support or a trust to benefit their children;

c. The self-support reserve should be raised to 185% of the poverty level for non-custodial parents;

d. Since child support is tax-free income to the custodial parent, tax credits (i.e., earned income credit, childcare credit, exemptions, etc.) should be assigned to the non-custodial parent;

e. Insurance premium payments for court-ordered life and medical insurance should be factored into the child support payment; and,

f. Child support caps should be established on high incomes; here again, the focus should be on the true cost of raising a child and not on income.

6. Child support should be assessed on regular income only earned at the primary job. Income earned from working over-time or from working a second or part-time job should be excluded from the calculation as this income is generally needed to pay for duplicated housing expenses of the non-custodial parent.

7. True cost of raising a child should be borne by both parties equally. Adoption of a cost based model would remedy most of the existing inequities.
8. Several suggestions were heard to remedy slow court responsiveness to changing circumstances, as well as to reduce the legal costs and lessen court involvement in the private lives of the parties involved:
 - a. Certain modifications should be automatic as in the case of job loss noted above. Another example is that of a dependent turning of age whereby, thirty days after a dependent's eighteenth birthday, an automatic re-calculation of the child support payment would result;
 - b. Establish a panel of peers to:
 - i. Monitor and review the fairness of court decisions;
 - ii. Monitor and review the fairness of the recommendations of Marital Masters;
 - iii. Reduce overall involvement of the court and others in the lives of otherwise private citizens; and,
 - iv. Reduce the legal costs imposed on estranged couples by the current system.
9. Adhere more closely to the child-support guidelines. Judicial discretion should be made minimal at most.
10. Recommend changing the law to disallow "no-fault" divorce, especially when there are children involved.
11. The adoption of shared parenting, shared custody and a cost based model for calculating child support obligations are urged.
12. For paternity determinations, DNA testing should be made mandatory and allowed as evidence. No one should be made to bear the responsibility of paying child support unnecessarily.
13. Child support payments should begin from the date of legal filing and not from the child's date of birth.
14. Stepparent income should not be included in the calculation of child support payments for non-biological/non-adopted children.
15. The Department of Health and Human Services (DHHS) should not be in the business of running a collection agency for child support. DHHS should limit its involvement in this area to only those cases where the non-custodial parent regularly fails to make the child support payments.
16. Means test applicants for child support services under Title IV-D, thereby saving the state millions of dollars in collection efforts, while respecting the rights of parents involuntarily pulled into the system, or at very least, conduct a more in-depth study of this issue and constitutional concerns.

ii. Commission Discussion Regarding Proposed Changes to the Existing New Hampshire Child Support Guidelines Under Chapter 458-C

The Commission reviewed the existing New Hampshire child support guidelines statute for its appropriateness and fairness. **The Commission made the following findings and recommendations:**

- **RSA 458-C:1 Purpose.** The Commission discussed whether there should be legislative changes to the purpose section. The general-purpose section or preface provides that Chapter 458-C was enacted “to establish a uniform system to be used in the determination of the amount of child support, to minimize the economic consequences to children, and to comply with applicable federal law. . .” **The Commission recommends** amending this section of the statute to add “acrimony and adverse consequences” to the consequences to be minimized to children along with the section's existing reference to “economic consequences.” **The Commission recognizes** that the purpose section dealing with the “standard of living” of the custodial household needs to be re-examined. The economic realities of maintaining multiple households are usually inconsistent with maintaining the “standard of living” of the children in the initial family. **A majority of the Commission finds** that using the term “standard of living” incentivizes divorce and is unfair in its application to high-income obligors. **There was a consensus within the Commission** that using “standard of living” as a benchmark when dealing with low-income families fails to recognize the economic reality that a family which is unable to provide for itself when it is intact certainly cannot provide an equal standard of living for a child when the family is divorced or separated.

The Commission recommends repeal of **RSA 458-C:1, II**: “[t]he children in an obligor's initial family are entitled to a standard of living equal to that of the obligor's subsequent families.” All families are important. This statute offers greater protection to initial families, often leaving a disparity and/or inequity between families. The present system leaves many subsequent families with a lesser priority for support than the prior families. A Basic Cost model for calculating child support obligations would eliminate this problem.

A majority of the Commission concluded that “standard of living” is extremely difficult to measure and that it is even more difficult to determine if children are actually receiving and enjoying the “standard of living” paid for by an obligor on their behalf.¹⁴ Also, it would

14 The commission heard a great deal at the public hearings about how child support more than covered the costs of raising the paying parent’s children yet the children were living below the standard for which he or she was paying. Those testifying demanded an accounting to prove the money taken from them was paying for the “lifestyle” of their child(ren) and not being used for other purposes. The Commission was told about child support funds exceeding the cost of raising child(ren) and how the recipients of these excess funds were using them for unrelated purchases such as breast implants, time shares, trips, retirement funds, etc. Therefore, the Commission was told, an obligation for one parent to send money but no obligation for the parent receiving the money to use it for the benefit of the child(ren)’s improved standard of living was an injustice. Those testifying pointed out the state expends a lot of effort to take the funds on behalf of children but never follows up to ascertain that the child received the benefit of the money. Many people want an accounting of the money spent. Some wanted to use Debit Cards to track what was bought for the children but that suggestion would not solve the problem of whether children were being provided the appropriate “lifestyle” being paid for.

Child support guidelines should be based on measurable costs of raising a child. If something such as “lifestyle” cannot be measured, it should not become a presumption of law. This position is consistent with

be very costly for the State of NH to expand its enforcement to include ensuring a “standard of living.”¹⁵ Therefore, the majority of the Commission agrees “standard of living” should not be a concern of government and government should not be collecting money on behalf of a “lifestyle” that government has no interest in actually measuring or enforcing.¹⁶ Government should however be concerned with parents sharing core or basic needs expenses that ensure a decent lifestyle.¹⁷ The highest priority of the state is to keep children from needing public assistance.

A minority of the Commission finds that lifestyle or standard of living should continue to be a factor in determining the cost of raising a child and child support obligations, along the lines discussed in the last paragraph of this section. (*See* p. 27 and footnote 18.)

- **RSA 458-C:2 Definitions.** The Commission reviewed and evaluated the definitions under Chapter 458-C:2. The Roman numeral references hereinbelow are the subsection numbers of this RSA.

I. Off-sets used for determining “**adjusted gross income**” (AGI, which is not the same as AGI for federal income tax purposes) were reviewed by the Commission. Specifically, the off-set for “[a]mounts actually paid by the obligor for allowable childcare expenses or medical insurance coverage” for the dependent child(ren) needs to be addressed on a more comprehensive basis than merely providing for an adjustment to the available income for child support calculation purposes. With the rising cost of family health care premiums and affordable childcare out-pacing inflation indicators, **consideration should be given** to treating both in a more meaningful manner than merely as off-sets to the AGI. Also, as overtime is often needed to help an obligor make financial ends meet, **consideration should be given** to excluding all overtime from gross income in excess of the self-support reserve (SSR).

I.a. The Commission discussed the definition of “**allowable child care expenses**” and the limitation or cap to the off-set of “no more than an annual total of \$5,000 for one child, \$9,000 for 2 children, and \$12,000 for 3 or more children.” As stated above regarding the AGI, **the Commission recommends** that the Legislature examine these caps to determine whether they are fair and appropriate for both parents based upon the

principles of due process and equal protection in that a presumption cannot be arbitrary. This position is also consistent with case law that states that an economic regulation (child support guidelines are mandated by federal regulation) must be based on valid empirical studies and cannot be arbitrary.

15 Standard of living or lifestyle is also a two-way street. In *Colonna v Colonna*, 855 A.2d 648, 2004 WL 958108 (Pa.) (2004), the custodial parent was ordered to pay the non-custodial parent in order to maintain similar lifestyles. If “standard of living” is important to children, then it becomes important for the state to assure both parents are able to provide a comparatively equal “standard of living.”

16 The concept that the children’s lifestyle should be maintained is specious. The simple fact is that divorce not only destroys the family structure but also imposes a greater, less efficient economic burden on families. The lifestyle structurally and financially dissolved with divorce. Both divorcing parties should be responsible for themselves and their children. A presumption of joint 50/50 physical custody would give each parent equal time with his or her children. All child support assessed above the basic cost inherent in raising a child involves luxuries which depend on values. Neither parent should have to subsidize the values or lifestyle of the other parent.

17 “The government’s interest in family expenditures on children is limited to insuring that the children’s basic needs are met. Not extravagances, not luxuries, but needs. Once that occurs, government intrusion must cease.” *Moylan v. Moylan*, 384 NW 2d 859 at 866 (Minn.,1986).

average cost of childcare in New Hampshire.

IV. The Commission discussed the definition of “**gross income**” in response to comments made at the various public hearings. **The Commission recommends** a Legislative review be conducted to determine whether certain annuities purchased with settlement proceeds received as a result of a personal injury claim (and not apportioned or valued as lost wages in the settlement itself) intended to compensate an obligor for personal injuries should be excluded from gross income. Also, **the Commission recommends** providing for a deduction for student loan payments actually made by a parent under the rationale that continuing or advanced education increases the earning capacity of the parent and therefore increases the amount of money which may be available for child support.

The Commission discussed the veracity of the Financial Affidavits submitted by obligors and obligees to the court or DHHS, Division of Child Support Services for the purpose of determining child support obligations, particularly among the self-employed and underemployed. More vigilant court oversight of the Financial Affidavits was suggested. Additionally, it was suggested that the Legislature re-examine whether regular overtime pay should be included in obligors' incomes, as overtime is often worked to make up the shortfall created when the family is no longer intact and child support must be paid.

Finally, consistent with the New Hampshire Supreme Court's recent ruling in *In the Matter of Denise Angley-Cook and John Cook*, ___NH___, 855 A 2d 431 (NH 2004), **the Commission recommends** that Social Security retirement or disability dependent benefits that are generated on an obligor's account, and paid to an obligee for the child, be first included in the obligor's "gross income," against which the obligor then receives a dollar-for-dollar credit when computing the amount of child support owed.

If a revised and significantly higher self-support reserve (SSR) is implemented as discussed hereinbelow (Section V.E, pp. 43-45), then **the Commission recommends** the elimination of the exception of “public assistance programs, including aid to families with dependent children, aid to the permanently and totally disabled, supplemental security income, food stamps and general assistance received from a county or town” from gross income.

V. The Commission discussed the definition of “**minimum support order**” or “**an order of support equal to \$50 per month.**” **The Commission concluded** that unfair child support orders may result from the application of the “minimum support order” in all cases with no discretion left to the Court to make adjustments based upon the facts and circumstances of a particular case. **The Commission recommends** amending the statute to give the Court discretion to exclude application of the minimum support order in certain situations. **The Commission also recommends** that the amount of the presumptive minimum support order be further reviewed and changed, perhaps into two tiers, in conjunction with a more careful analysis and reworking of the self-support reserve as discussed hereinbelow (Section V. E).

VII. & VIII. The Commission discussed the definitions of “**obligor**” (VII) and “**obligee**” (VIII). **The Commission finds** that the use of these and other terms, such as “non-custodial parent” and “custodial parent”, do not promote the goal of reducing

adversarialness and acrimony in custody and child support matters. **The Commission recommends** replacing such terms or labels with “responsible parents” recognizing the importance of both parents in children’s lives and recognizing that federal law requires the Court to make a determination of financial responsibility for support in its child support orders.

IX. & XI. The Commission notes that the definition and application of “**percentage**” (IX) and “**total support obligation**” (XI) would need to be reworked or deleted in conjunction with a reworking of the child support formula based on a “Basic Cost” model, or similar method (such as the “Cost Shares” model or possibly an adaptation of the Melson Formula).

X. **The Commission recommends** that changes in the definition of “**self-support reserve**” be considered in conjunction with a more careful analysis and reworking of the self-support reserve (SSR) as discussed hereinbelow (Section V.E, pp. 43-45).

- **RSA 458-C:3 Child Support Formula and RSA 458-C:4 Application of Guidelines.** The Commission reviewed and evaluated New Hampshire’s child support formula that is based upon the Income Shares model adopted in 1988. The total support obligation is determined by multiplying the parents’ combined AGI less standard deductions (“net income”) by the appropriate percentage:

<u>Number of Children</u>	<u>Percentage of Net</u>
1	25%
2	33%
3	40%
4 or more	45%

The Commission focused significant efforts on determining whether these percentages correlated with the “actual cost of raising a child.” **This Commission finds** that the percentages do not directly correlate to the cost of raising a child as estimated by the annual United States Department of Agriculture (USDA) report on *Expenditures on Children by Families* nor to the Josiah Bartlett Center for Public Policy Report on *New Hampshire Basic Needs and Livable Wage* dated June 2000. New Hampshire’s adoption of the Income Shares model developed by Policy Studies, Inc., around the mid-1980’s, as with the majority of the states that adopted this model as one of the approved models by the federal Office of Child Support Enforcement (OCSE), was done in part due to its simplicity in its application based upon a percentage of the parents’ income. There was much discussion among Commission members about whether child support should be allocated between an obligor and obligee based upon time spent with a child, or proportional to the parties’ respective incomes, or a combination of both factors.

With nearly sixteen years of hindsight and several intervening comprehensive studies to rely on, it is indeed ironic that the New Hampshire Legislature, with its own history of frugality and cautious spending, would have followed, and then maintained, the Income Shares concept utilized by most other states in virtually all respects. The basic philosophy of the existing guidelines essentially asks the question: how much money do we have available to spend (i.e., combined gross income of the obligor and obligee) and then presumes that need (support) equals that amount in varying percentages based only on the number of children to

be supported, without regard for the actual costs associated with their upbringing and, of equal significance, without considering the expenditure patterns and priorities of the previously intact family unit.

Therefore, **the Commission recommends** that the Legislature replace New Hampshire's Income Shares model with a Basic Cost model or similar method based on the cost of raising a child in New Hampshire. At the very least, New Hampshire should adopt a new model such as the Arizona or Wisconsin child support models, both of which incorporate shared-parenting, or perhaps a cost based hybrid along the lines of the Melson Formula or the Cost Shares model. **The Commission also recommends** that the Legislature allocate state general funds with matching federal financial participation (\$2 federal to each \$1 state) for a qualified economic review to be conducted of the current child support guidelines model and implementation of any proposed new model as a part of the continuing review of New Hampshire child support guidelines.

- **RSA 458-C:5 Adjustment to the Application of Guidelines Under Special Circumstances.** The Commission discussed the appellate standard of review of a lower court's decision regarding adjustments or deviations from the child support guidelines, i.e., "abuse of discretion." Although there is an appellate process already in place through a review of such decisions by the New Hampshire Supreme Court, suggestions were made to study the creation of an intermediate appeals process designed to make it more accessible to pro se litigants, a process similar to that of the Board of Tax and Land Appeals or Board of Claims, where the reasonableness of the use of discretion might be reviewed. There is a split of opinion on the Commission regarding limiting or expanding judicial discretion in making adjustments to the child support guidelines. The "Report on Deviation or Adjustment to Child Support Guidelines" shows an approximate 30% deviation rate as to the 186 cases reviewed by DCSS. (*See Appendix B.*)

One suggestion is to educate the courts and the public about the adjustments to the application of guidelines. Several Commission members expressed the opinion that, to more accurately reflect the true amount of money available to the obligee in maintaining a household, the Court should take into account the "special circumstance" of obligees who cohabit with a partner. Finally, **the Commission identified the need** for providing guidance to the Court regarding application of the child support guidelines in cases involving multiple child support orders. Under the current scheme, generally the first family to receive a child support order receives a higher amount over any subsequent families. **The Commission recommends** that Legislature further examine this issue to develop a set of guidelines that will provide a more equitable sharing of the support among all of the children of the obligor and his or her current family regardless of the date a particular support order is established.

- **RSA 458-C:6 Review of Guidelines.** **The Commission recommends** an amendment to this statute and/or to Chapter 406:8, Laws of 1989, to have the anniversaries of the New Hampshire Department of Health and Human Services' mandated guidelines review coincide with those of the required federal review and any other legislatively-commissioned reviews so as not to duplicate efforts by such bodies. The Commission believes that the child support guidelines review documented by this report satisfies the mandated review under both federal and state law but that further clarification is needed to resolve any ambiguity created by RSA 458-C:6 and Chapter 406:8, Laws of 1989.

In summary, **a majority of the Commission concludes** that a “Basic Cost” model of assessing child support in which each parent is obligated to provide half of the basic cost of raising a child would be a more simple and fair system than the current one. The cost to care for each child is afforded a fixed and known value, which allows parents to save and plan for life’s inevitable contingencies such as job loss or illness. Each child is of equal, not disproportionate, value. As child support would be based on basic costs, there is no need to audit the spending of a custodial parent to verify that an obligor’s child support monies are indeed spent on the children. As income is not apportioned by percentage, neither party to the divorce is penalized for working harder or more efficiently.

A minority of the Commission¹⁸ concludes that while covering the costs of a basic standard of need should be the primary goal of child support guidelines, there should also be a component that adjusts for standard of living to some extent. Once both households have adequate resources to cover the cost of basic needs for all dependents, plus any child support orders, plus some margin for savings and some expenses above basic needs, then it seems reasonable that parents, especially those who do not share approximately equally in parenting time and responsibilities, might contribute some additional child support in allowance of higher standard of living than basic needs. Such an additional contribution may be necessary where the income earning potential of the primary care-giver may be constrained due to lack of work experience or training and education that they may have gone without in order to be the primary care-giving parent when the family was intact. Such a standard of living allowance should be within some reasonable empirically-based bounds that decline and cap at some point with rising income levels.

III. Review of Other Child Support Guidelines Models

A. Overview of Child Support Models Used in the United States

Pursuant to the Federal requirements of 42 USC § 667, each state must develop Child Support Guidelines as part of its State Plan in order to be eligible for federal IV-D funds. IV-D funds play an integral part in supporting New Hampshire’s Health and Human Services Department, including the Division of Child Support Services, as well as the state’s public welfare and assistance programs.

After complying with certain Federal requirements enumerated at 45 CFR 302.56, states have flexibility in determining their individual Child Support Guidelines formulas. All states in the United States must develop Guidelines that:

- Are based upon specific descriptive and numeric criteria.
- Take into consideration all earnings and income of the non-custodial parent.
- Provide for the children’s health care needs.
- Are reviewed by the state at least every four years.

¹⁸ This minority includes (but is not necessarily limited to) Sen. Clifton Below, Tom Cooper, Esq., Catherine Feeney, Esq., and Jeffrey Runge, Esq..

Child Support Guidelines Models used by states fall loosely into three categories, with each model reflecting a state's normative judgments as to how the burden of supporting a child in two households should be shared. Hybrids of the models below are utilized by various states in efforts to better address policy concerns and realities in terms of finances and parenting. The three predominant Child Support Guidelines Models are as follows:

- Income Shares Model: The Income Shares Model is the model used by 33 states in the United States at the present time, including, nominally or in theory, by New Hampshire. The Income Shares Model seeks to allocate to the child the proportion of parental income estimated that would have been spent on the child if the household were intact.
- Percentage of Income Model: The Percentage of Income Model is the model in 13 states. This model sets child support as a percentage of the non-custodial parent's or the parties' income. There are two variations to the Percentage of Income Model, namely the Flat Percentage Model and the Varying Percentage Model. In practice, the New Hampshire child support guidelines yield about the same result as a flat percentage rate on the obligor's (or payer's) net income.
- Melson Formula: The Melson Formula is the model used by three states: Delaware, Hawaii and Montana. The Melson Formula is a more complex version of the Income Shares Model, which incorporates several public policy judgments designed to ensure that each parent's needs are met, as well as the children's basic needs with a standard of living adjustment.

B. Review of Arizona and Wisconsin Models and Shared Parenting

The Commission found that two states' Child Support Guidelines Models, each a variation of one of the three above models, were especially instructive with respect to how each addressed a few of the personal realities and public policy concerns voiced by Commission members and those testifying at the HB 310 Public Hearings. The two models studied by the Commission were as follows:

Wisconsin Model: The Wisconsin Model determines an obligor's child support obligation by adding together both parents' annual incomes, then applying a proportionally shared, percentage-based formula. The formula applies the following statutory presumptions: it takes 17% of the family's total income to provide for the reasonable needs of one child, 25% for two children, 29% for three children, 31% for four children, and 34% for five or more children. Wisconsin established this standard based on an analysis of national studies including a study done by Jacques Van der Gaag, as part of the Child Support Project of the Institute for Research on Poverty, University of Wisconsin, Madison, entitled "On Measuring the Cost of Children." The study disclosed the amount of income and disposable assets that parents use to raise their children. The standard is based on the principle that a child's standard of living should, to the degree possible, not be adversely affected because the child's parents are not living together. It determines the percentage of a parent's income and potential income from assets that parents should contribute toward the support of children if the family does not remain together. The standard determines the minimum amount each parent is expected to contribute to the support of his or her children, with the assumption that each parent shares his or her income directly with

the children, and the rebuttable presumption that the basic needs of the children are being met. (From the Wisconsin Department of Work Force Development, Rules DWD 40, December 2003.) The Wisconsin Model further reflects in its calculation of child support how much time a child spends with each parent, and whether the obligor parent is supporting other children.

Arizona Model: The Arizona Model is based upon the Income Shares Model, but with several variations, including a time factor credit applied to the initial calculation of child support to reflect the reality that, as parenting time shifts, a portion of the children's costs shift from one household to another. As parenting time for the parent exercising visitation increases, the costs to that parent also increase. The Court looks at each period of visitation within a 24-hour period to calculate the number of days of visitation for which an obligor should receive an offset of child support. For purposes of calculating visitation days, only continuous and consecutive hours with the non-custodial parent are counted. Time the child spends in child care or school is not considered. One day = more than 12 hours, a half-day = greater than 4 hours up to and including 12 hours, a quarter-day = up to and including 4 hours. Arizona has found that misinterpretation of existing statutory language for purposes of parenting time adjustments has caused confusion, ambiguity, increased litigation and antagonism. In an effort to address this concern, and others, comprehensive revisions to the Arizona Child Support Guidelines have been adopted by the Arizona Supreme Court effective January 1, 2005. The parenting time language in the child support guidelines was revised to clarify that parenting time adjustment should be made only for regular, recurring parenting time. The proposal also more clearly defines one-day, half-day, and quarter-day, and there are added examples. Other variations of note to the Income Shares Model: Arizona discourages using overtime or extra jobs worked by an obligor to pay for child support as gross income, unless there is an established history of such work that precedes the child support obligation. Arizona courts are permitted to add 10% to child support awards for children who are 12 or older, based upon the Model's premise that it takes 10% more in average annual expenditures to raise a child who is 12 or older.

C. Overview of Cost Shares Model

The Cost Shares model guideline was first developed in the mid 1990s in conjunction with the Children's Rights Center, a national non-profit organization with state chapters that advocates for shared parenting.¹⁹ It has not been adopted by any state although some legislation has been introduced based on it. Economist R. Mark Rogers has developed a specific Cost Shares methodology that is presented on his website and elsewhere.²⁰ He argues that it is based on traditional law of child support determination—allocating actual child costs of both parents according to their ability to pay—and that it excludes hidden alimony that arises in Percent of Income, Income Shares, Melson, and Wisconsin-style guidelines. The Cost Shares methodology

19 See www.childrens-rights.org. Also, Donald J. Bieniewicz, "Child Support Guideline Developed by Children's Rights Council," in *Child Support Guidelines: The Next Generation*, pp. 104-125, (Margaret Campbell Haynes, ed., 1994), for the Office of Child Support Enforcement, U.S. Department of Health and Human Services.

20 See www.GuidelineEconomics.com. Rogers was an economist with the Federal Reserve Bank of Atlanta for 19 years. More detail on comparisons of the alternative guidelines can be found in Rogers and Bieniewicz, "Child Support Guidelines: Underlying Methodologies, Assumptions, and the Impact on Standards of Living," in *The Law and Economics of Child Support Payments*, (William S. Comanor, ed. 2004), Edward Elgar Publishing, Inc., Northampton, Massachusetts.

is similar to how many states allocate day care, medical insurance, or other add-ons as part of their current income based guidelines. It also bears similarities to the Melson Formula, especially at low income levels.

The following elements are part of the Cost Shares model as developed by Rogers:

- The family is not intact; two households are supported. The average income of the two parents is used to determine the target level of expenditures on the children. This reflects the highest standard of living that can be sustained in both households. Cost Shares accounts for which costs occur in each household, recognizing that generally the child is in the care of both parents.
- Child-related tax benefits of either parent are treated as cost off-sets against total spending on the children. Child-related tax benefits are quite substantial. Cost Shares differs from other guidelines by placing all child costs on a net basis. Some states already require this approach for day care costs.
- Day care and education are excluded from the cost tables and treated as add-ons. Medical insurance is included as part of health care expenses in the cost tables.
- The best method of estimating child costs to date is to use the USDA child cost tables, but with marginal housing costs for children substituted for the per-capita estimates of housing costs for children used by the USDA.
- The presumptive award shall not push the obligor's income available for self-support below income needed for basic needs.

Some commentators have argued that the Cost Shares model as developed to date is flawed compared with the Melson Formula and more refined versions of the Income Shares model but recognize the real need to address “the policy problems” which it raises.²¹

IV. Discussion on Adoption of a Cost-Based Model

There is general agreement within the Commission that New Hampshire should move to a cost-based model in determining child support obligations. It is also clear “that Congress intended for states to base their child support guidelines on the cost of raising children.”²² While **a majority of the Commission believes** that child support obligations should be limited to basic costs, that is, expenses to cover basic needs (a “Basic Cost” model), **others on the Commission believe** that such basic costs should be a starting point, with an add-on standard of living adjustment (SOLA) such as in the Melson Formula or Cost Shares model. (This minority approach of adding a SOLA to the basic cost is referred to as a “similar method” elsewhere in this report, in particular, pp. 45-47.) For either approach, the “basic cost of raising a child” is an important and common starting point.

21 Jo Michelle Beld and Len Biernat, *Federal Intent for State Child Support Guidelines: Income Shares, Cost Shares, and the Realities of Shared Parenting*, Family Law Quarterly, Vol. 37, No. 2, Summer, 2003, pp. 165-202. See also papers at www.childsupportguidelines.com such as ~/articles/article.html.

22 *Id.* (Beld & Biernat) at p. 171.

A. Determination of “Basic Cost of Raising a Child”

i. Foster Care Reimbursement

The Commission looked at how the state determines how it reimburses foster parents. The current rates paid to foster parents are not based on any particular formula, but the Commission learned that DCYF has drafted rules for rate setting based on the USDA *Expenditures on Children by Families* annual publication. The program referenced the Northeast, middle income range to set the appropriate amount to reimburse the foster parents and subtracted child care and medical costs as foster children receive Medicaid. The proposed rules are not in effect due to fiscal constraints and budgeted appropriations. Since 2000, the average amount provided to foster parents to meet the needs of a nine-year-old child is \$4,848 per year. The state pays foster parents an average of about \$404 per month. The USDA reference estimate based on a two-parent family with pre-tax income in the range of \$39,100 to \$65,800 is \$658 per month. These figures do not include medical costs. The New Hampshire DHHS, DCYF foster care rate for children ages 0-5 is \$13.01/day or \$396/month, for ages 6-11: \$14.20/day or \$429/month, and for ages 12-17: \$16.51/day or \$502/month. DCYF also has specialized rates for children with special needs which are for ages 0-5: \$18.77/day or \$559/month, for ages 6-11: \$20.03/day or \$609/month, and for ages 12-17: \$23.63/day or \$718/month. These rates can be further supplemented for other special needs of the child or limited resources of the foster family.

In contrast, one private nonprofit agency doing foster placements in New Hampshire has reported to a Commission member that it pays a room and board fee for children 0-12 years of age of \$681/month, and for ages 13 and up: \$771/month. These rates do not include medical and clothing expenses or additional treatment rates for specialized care. A goal of this agency is to make the provision of good quality foster care cost-neutral for foster families.

ii. Family Assistance

The Division of Family Assistance (DFA) updates its TANF (Temporary Aid to Needy Families) Standard of Need for families annually, using a Basic Maintenance Needs Allowance (BMNA) calculation. Components of the BMNA are the costs of food, shelter, utilities, telephone, clothing, medical expenses, transportation and other miscellaneous expenses. These components are updated annually, drawing on information from the Department of Labor's Consumer Price Index (CPI), the New Hampshire Housing Finance Authority (NHHFA) Residential Rental Cost Survey and the Public Utilities Commission. Periodically, a statewide market basket study is done to update some of the components. As an example, as of July 2004, the current BMNA is:

Household size of 1:	\$1,298	per month	
Household size of 2:	\$1,807	per month	(increase of \$509 for the second individual)
Household size of 3:	\$2,331	per month	(increase of \$524 for the third individual)
Household size of 4:	\$2,809	per month	(increase of \$478 for the fourth individual)
Household size of 5:	\$3,265	per month	(increase of \$456 for the fifth individual)

The housing component of the BMNA is developed from median rental rates from the New Hampshire Housing Authority (NHHFA) annual survey of rental costs, with some discounting

from the median cost. The “Standard of Need” actually incorporates an additional allowance of up to \$310/month for actual shelter costs in excess of the assumed amount. The Standard of Need and BMNA are discussed in more detail hereinbelow (Section V.E, p. 43). The per capita difference in additional household size is approximately \$6,000 per person per year which equates to about \$500 per month. The DFA, BMNA and Standard of Need might be adapted to be used to estimate the basic cost of raising a child.

iii. USDA Annual Report on Expenditures on Children by Families

The annual USDA report on *Expenditures on Children by Families* is an important source of data that is often used in developing child support guidelines. It should certainly be considered in further analysis of the cost of raising a child by professional economists as recommended by the Commission. Recent reports have been based on the 1990-92 Consumer Expenditure Survey, updated using the Consumer Price Index, so such reports are based on data that is at least 12 years old. The reports do break out cost estimates by size of household, age of children, income of family (in 3 ranges) and by region. Food costs, which are allocated based on a national food consumption survey, came in at about \$1,500 per child under the 2002 USDA report for the lowest income family group (under \$39,700 per year income, averaging \$24,800), or about \$125 per month, which is consistent with other reports.²³ However, housing and most other costs are based on per capita calculations, that is, divisions of the total family expenditure within a particular category by the number of persons in household. As a result, one parent with one child in a household would assign fifty percent (50%) of most costs to the child. For example, all transportation costs after travel to and from work are figured per capita. Therefore, going to church, to a political rally, or grocery shopping would be allocated in part as a cost attributable to children.

The overall U.S. estimate for average expenditure on a child by a husband-wife family in the 2003 USDA report (latest available), Table ES1, for the lowest-third income group (under \$40,700 before tax income, \$25,400 average) is about \$7,000/year (\$580/month) for ages 0-11 and about \$7,800/year (\$650/month) for ages 12-17. For the middle income group (\$40,700 to \$68,400, \$54,100 average) the estimated expenditure on a child is about \$9,700/year (\$805/month) for ages 0-11 and nearly \$10,500/year (\$875/month) for ages 12-17. However, because of concerns about the accuracy of this method, the Commission looked further.

iv. NH Basic Needs and a Livable Wage Study Commissioned by the Josiah Bartlett Center for Public Policy in June 2000

This study gave us our best insight to calculate the cost of raising a child in New Hampshire. It sought to realistically assess the cost to meet basic needs of different household types, by county, in New Hampshire. Basic needs included food (but no eating out), rent and utilities (but not cable service), basic phone service (but no long distance calls), clothing, household expenses, transportation, child care (assuming 1 or 2 children, 4 and 6 years of age), health care, 3% of household budget for personal expenses and 5% for savings. Costs were originally calculated for

²³ Representative David A. Bickford, reports his food costs for 2003 for a family of four was \$1,450 per person per year or \$120 per month.

1999. In the table below these costs were extrapolated for 2004 using the Northeast CPI (from mid-1999 to mid-2004).

<u>Estimated Cost of Basic Needs for One Child and An Additional Child</u>						
<u>Net of Child Care, Health Care, Savings and Personal Taxes</u>						
Calculated from incremental cost difference between single adult and single parent with 1 or 2 children using Northeast CPI updated costs (from mid-1999 to mid-2004) from the <i>NH Basic Needs and a Livable Wage</i> study. Costs for children are net of (exclude) Child Care, Health Care, Savings and Personal Taxes.						
<u>Description of Cost Components</u>	Single Parent 1 child	Single Adult	One Child Net Costs	Single Parent 2 children	Single Parent 1 child	2nd Child Net Costs
Child Care	525.41	0		895.46	525.41	
Food	295.33	162.55	132.78	418.95	295.33	123.62
Health Care	246.11	103.02		297.62	246.11	
Household & Clothing	259.84	168.27	91.57	274.72	259.84	14.88
Personal Expenses	80.13	44.64	35.49	98.44	80.13	18.31
Rent & Utilities	835.61	644.45	191.16	835.61	835.61	0
Savings	133.93	74.41		164.83	133.93	
Telephone	21.75	21.75	0	21.75	21.75	0
Transportation	278.16	264.42	13.74	291.89	278.16	13.73
Total Monthly Costs	2,676.24	1,483.49		3,300.08	2,676.24	
Net Monthly Costs			\$ 465			\$ 171
Net Annual Costs	32,115.97	17,797.31	\$ 5,577	39,595.23	32,115.97	\$ 2,046
Personal Taxes	5,323.86	3,646.92		5,453.20	5,323.86	
Annual Income Needed	37,438.68	21,444.22		45,048.43	37,438.68	
Two Parents, Both Parents Working:				Two Parents 2 children	Two Parents 1 child	2nd Child Net Costs
Child Care				895.13	525.41	
Food				597.52	459.01	138.51
Health Care				455.58	405.22	
Household & Clothing				369.73	354.85	14.88
Personal Expenses				119.05	99.59	19.46
Rent & Utilities				835.61	835.61	0
Savings				198.03	165.98	
Telephone				21.75	21.75	0
Transportation				461.3	447.57	13.73
Total Monthly Costs				3,952.54	3,314.96	
Net Monthly Costs						\$ 187
Net Annual Costs				47,433.92	39,774.95	\$ 2,239
Personal Taxes				6,949.29	6,767.28	
Annual Income Needed				54,383.21	46,542.23	

Observations on the Table Above: Excluding child care and health care, the annual cost of basic needs for one child is estimated at about \$5,577 for one child, or about \$465 per month. This is close to the BMNA allowance for one additional household member of about \$6,000 per year (although the BMNA allowance includes health care). Note that this study assumed one

child to be 4 years of age and a second child to be 6 years of age. The USDA expenditures report suggests that food and clothing costs increase significantly with age. The second child is only estimated to increase marginal nets by about \$2,046 to \$2,239 per year. This cost of basic needs study apparently assumes that a second child shares a bedroom with the first child as there is no increase in rent and utilities cost for the second child. This assumption would not always be the case depending on the ages and genders of the children. An adolescent boy and girl, for instance, should have separate bedrooms, increasing the basic housing costs for the second child. Another curiosity of the above estimate is the low incremental cost for household and clothing expense for the second child of only about \$15 per month compared with \$92 for the first child. This particular low or out of line incremental cost would seem to merit further review if it were to recur in the development of a basic cost figure for new child support guidelines.

The principal researcher on the original study, Dr. Daphne Kenyon, in a meeting with the Commission, suggested that such a basic needs study could be adapted to develop New Hampshire-specific estimates of the basic costs of raising a child. She recommended that such a study could be updated annually using a consumer price index, but that the basic numbers and related surveys should be revisited more thoroughly about once every four years.

In summary, the basic per-child cost of New Hampshire state foster care is \$404/month (excluding health care), the 2003 USDA basic expenditures amount is about \$582 to \$650/month, depending on age (including health care), the BMNA calculation is about \$500/month (including health care) and the estimated basic needs cost extrapolating from the 2000 Josiah Bartlett Center study of basic needs and a livable wage is about \$465/month (excluding health care). These figures provide an estimate that the basic cost of raising a child (that is, meeting the child's essential needs) is somewhere on the order of \$400 to \$600 per month, probably excluding health care costs.

B. Discussion of Implementation of a “Basic Cost” Model in New Hampshire

Both parents should be given an equal opportunity to share in the cost of raising their children. Equitable sharing of the cost of raising children should be the goal of the state in implementing child support guidelines. **The Commission recommends** that over the next biennium the State develop and implement a new child support guidelines formula which is based on the actual costs of raising a child in New Hampshire. The state should determine the cost of raising a child or children based on data and methodology similar to that used in the 2000 *NH Basic Needs and a Livable Wage* study or perhaps by adapting the DFA, BMNA and Standard of Need for this purpose.²⁴ A dollar figure would be established representing the cost

24 The New Hampshire Housing Finance Authority conducts a residential rental cost survey annually that tracks market rents, with utilities, statewide and by regions, providing a key piece of New Hampshire-specific information. Their July 2003 survey reported that the median cost for a one-bedroom unit, with utilities, was \$754/month; for a two-bedroom unit, \$978/mo.; and for three bedrooms, \$1,094/mo. Costs varied greatly by county, with the median rent for a two-bedroom unit ranging from \$500/mo. in Coos County to \$1,046/mo. in Rockingham County. For the purposes of a basic needs cost, it might make sense to use the lower quartile point (where 1/4 of units cost less and 3/4 of units cost more) as the starting point, rather than the median. Although NHHFA does not publish the lower quartile, they should be able to readily compute it if requested. Using the spreadsheet “RentalCostTrendsVer06_04-1.xls” available on the NHHFA website (www.nhhfa.org), it is possible to extrapolate the lower quartile from provided ranges. (Extrapolated medians were within a dollar or two of the actual reported medians.) The lower

to raise a child and would be applied to all cases as a baseline for determining an equitable share of child support.²⁵ The state should apply the Northeast Consumer Price Index annually to the basic cost estimate and then update the formula during the four year review with economist(s) collecting new economic data.

Formula

In a parenting plan where both parents have substantially similar involvement with the children, the basic cost (as determined by the guideline study) would be shared between the parents either equally or in proportion to their income.

If costs are shared equally between parents (when they have approximately equal parenting time and responsibilities), then there would be no child support payment transfers between the parents.

By contrast, if costs are shared proportionately to income, the result is different when income levels are different. For example, in a formula with income-proportionate sharing, assume the basic cost for one child (exclusive of day care and medical costs) in a fully-shared parenting situation is determined to be \$700.00 per month, with each parent expending half of those costs, and parent X has income of \$50,000 per year and parent Y has income of \$30,000 per year (enough to cover the SSR in both cases). Parent X with 62.5% of the income would contribute \$437.50 and Parent Y's contribution would be \$262.50. The amount of money which would be transferred from Parent X to Parent Y is \$87.50 per month (\$437.50 - \$350 or \$350 - \$262.50).

Adjustments

Adjustments in child support would be made to accommodate additional children within a household at a declining rate that would reflect "economies of scale." Parenting plans that call for more parenting time with one parent than the other would require an adjustment on a per diem basis. Support would be determined by the number of days a parent cares for a child over the course of a year using a variation of the computation formula used in the Arizona Parenting Plan. Commission members were not able to come up with a unanimous recommendation regarding the application of the formula in situations where substantial parental participation was not present.

However, some members of the Commission suggested that support should be determined by the number of days each parent has the child(ren) over the course of a year. Using the cost of

quartile seems to be about \$104, \$141, and \$160 less than the median for one-, two-, and three-bedroom units respectively. Consideration might be given to an assumed basic housing cost that might be adjusted based on actual circumstances such as DFA does with their BMNA and Standard of Need. (*See* discussion on Self-Support Reserve hereinbelow at Section V.E, pp. 43-45.)

²⁵ Some Commission members believe that a schedule of basic costs should be developed taking into consideration age, number and possibly gender mix of children (for different basic housing needs). The area of the state may also be a factor as housing costs vary considerably by locale and region. If the income of the parents will support more than one household housing the children and there is substantial shared parenting, the basic costs may be greater to support duplicated housing costs (extra bedrooms and furnishings in two homes).

actually raising a child per year divided by 365 days equals the cost of raising a child per day. A parent that had 100% of the parenting time would receive fully half of the cost of raising a child and a parent that has 25% of the parenting time would pay one half of one half of the cost of raising a child or 25% of the cost to raise a child. The number of days would be derived from the Parenting Plan. One parent with disabilities who is unable to pay his or her share could warrant an adjustment to have the other parent pay as much as the entire cost of raising their child(ren) if that ability existed. Lack of work might cause one parent to need assistance and it would be reasonable for the Court to look to the other parent to pay as much as the entire cost of raising the child(ren) if that ability existed. It would also be reasonable to put a two-year cap on that arrangement.

Other adjustments which could be made to the basic formula as add on expenses include child care²⁶ and medical expenses, including insurance payments. Some members of the Commission felt that the costs of work-related day care should be divided between the parties in proportion to their respective incomes and others felt that the costs should be split equally. There was a similar division of opinion regarding the allocation of medical costs and insurance payments. Child-related tax benefits, such as dependent exemptions and child tax credits should also be taken into consideration and whenever possible be distributed equitably between the parents in a manner that will maximize the available income to each family and minimize the overall federal income tax obligation of the parents.

Finally, **a minority of the Commission members concluded** that consideration should be given to a “standard of living” adjustment or exception to the cost based formula.²⁷ The amount of the adjustment might be calculated on the basis of those items of cost associated with non-need based activities of the minor children over the two-year period preceding the date the court action was filed. An annual average of these expenditures would be computed and responsibility would be apportioned to the parents on the basis of their respective incomes. The basis for a standard of living adjustment is to minimize the impact on the minor children. In those households where parents were devoting substantial resources above and beyond basic needs to their children's standard of living, that same commitment should be continued to the extent possible. However, in those households where there has not been such a commitment prior to the time of filing of the legal action, it would not be appropriate to interpose that expenditure and so the standard of living might be subject to some form of rebuttable presumption in those cases.

26 Child care expense should be treated as a separate cost that is added on to the basic needs cost. The cap on allowable child care expenses (usually related to work) should be examined. Some Commission members felt that immediate family such as grandparents should have first option to care for children at reasonable market-based rates. That would support familiar family ties and keep money in the extended family, fostering better economic well-being.

27 See also footnote 18 *supra*, p. 27 and p. 23. Also, in the opinion of some Commission members careful consideration should also be given to how a formula varies, including provisions for shared parenting time, when there is not sufficient income between two parents to fully cover the self-support reserve and basic needs of two households, versus when there is plenty, versus when there is enough overall but there is a substantial imbalance in the income of the two households.

V. Discussion of Other Areas Reviewed by the Commission

A. Criminal Non-Support under RSA 639:4 and Other Related Criminal Statutes

The Commission was charged with reviewing RSA 639:3, I, Endangering Welfare of Child or Incompetent, and RSA 639:4, Non-support (both regarding criminal sanctions for non-support) to determine their effectiveness and fairness.

Traditionally, RSA 639:4 is the statute used most frequently in charging a non-complying obligor or legally responsible parent under the New Hampshire Criminal Code for failing to provide child support. RSA 639:4 provides in relevant part that “[a] person is guilty of non-support if such person knowingly fails to provide support which such person is legally obligated to provide and which such person can provide to a spouse, child or other dependent.” Effective January 1, 2000, RSA 639:4 was amended making it a Class B felony if after all of the other elements of the offense are met the support arrears exceeds \$10,000 or there are no cumulative support payments for over one (1) year, or if there is a prior conviction for non-support in this jurisdiction or a similar conviction in another jurisdiction and no cumulative payments for over a year. RSA 651:2 establishes the maximum penalty for a Class B felony as up to 7 years at the New Hampshire State Prison and a \$4,000 fine.

The goal in sentencing is to make an appropriate recommendation to encourage compliance with the non-complying parent’s support obligation. Thus, many first-time offenders receive a suspended or deferred sentence with a reduction from a felony to a misdemeanor charge. More recalcitrant offenders or those with prior criminal records may receive a felony conviction or a sentence with some incarceration.

The use of non-support as an enforcement remedy has specific advantages in cases involving interstate flight. It allows law enforcement agencies (LEAs) greater ability to successfully apprehend and seek interstate rendition or extradition of individuals charged with non-support. The New Hampshire Department of Health and Human Services (Department) works with a partnership of federal and state LEAs and prosecuting agencies including the United States Attorneys Office, United States Marshal Service, United States Department of Health and Human Services/Office of Inspector General, Project Save Our Children (PSOC), New Hampshire County Attorney’s Offices and New Hampshire Sheriff’s Departments. The Department has approximately ninety (90) open non-support investigations.

As to the effectiveness of the criminal sanctions, millions of dollars of support have been collected as a result of non-support prosecutions. Non-support prosecution has been a catalyst to assist these non-complying parents to become successful with their support obligations.

As to the appropriateness of the criminal sanctions, a recent attempt to amend RSA 639:4 to lower the current felony jurisdictional amount of in excess of \$10,000 to a lesser amount resulted in the bill being found inexpedient to legislate. Concerns were raised that by lowering the felony bar would expose too many individuals to felony prosecution.

Although the use of RSA 639:4 is necessary for those cases that qualify for non-support prosecution, it is felt that there needs to be a continued sensitivity to gender-bias issues to ensure media stories regarding non-support cases and publication of New Hampshire's Ten Most Wanted Non-Supporting Parents Poster are not used as a platform to diminish the efforts made by the majority of responsible parents who comply with their support obligation and are a meaningful part of their children's lives.

Non-payment of child support is often associated with denial of child visitation and interference with the non-custodial parent's ongoing relationship with his or her children. By not addressing visitation rights, the criminal sanctions tacitly value economic over visitation obligations and are inherently biased and possibly self-defeating. Several Commission members concurring with public testimony felt that criminal sanctions for non-support but not for the denial of visitation rights increased acrimony and parental estrangement and perpetuated resistance to paying child support. (*See also: Report of the New Hampshire Child Support Study Committee*, August 30, 1995.)

B. Medical and Dental Insurance Costs

RSA 458-C:2, 1 (e) states that "amounts actually paid . . . for . . . medical insurance coverage for the minor children" should be an adjustment to gross income. Often the medical insurance is not given a dollar value as it is an employment benefit and is not credited to either parent. In concurrence with the August 30, 1995 *Report of the New Hampshire Child Support Study Committee*, **this Commission recommends** that under the current model health and dental insurance premiums should be credited at 100% rather than the current 50% adjustment to gross income or that under a cost-based model they should be included directly in the calculation of child support costs to be shared, with the payer receiving full credit for the expenditure as part of his or her child support obligation.

Medical and dental costs have risen drastically in recent years. A significant portion of health care spending can be considered discretionary, such as orthodontics, elective surgery and psychological counseling. Hence, employers and health care insurance companies offer a variety of coverage and deductible benefits that reflect the consumer's tolerance and assumption of medical risk. This Commission is concerned that medical and dental coverage and their utilization will be yet another source of parental acrimony and conflict.

In order to minimize acrimony, **the Commission recommends** that with the current system health insurance premiums for the children should be credited 100% as an adjustment to the child support obligation. The decision to use out-of-network health care providers at higher cost should be the responsibility of the parent making that decision. Medical co-payments for in-network care should be apportioned between parents on an equal basis or in a proportion that is otherwise agreed upon or stipulated.

C. Joint and Shared Custody as it Relates to the Child Support Guidelines

A primary focus of the Commission's investigation was to determine the fairness and effectiveness of New Hampshire's current legal and guidelines custodial presumptions. In reviewing these factors, the Commission examined how to reduce acrimony and litigation between parents, while allowing the children to have significant relationships with both parents.

During its investigation, the Commission heard testimony, and received statements and documentation, from a number of individuals who had serious concerns about: their relationship with their children, their ability to effectively parent due to their limited custodial time, their concerns about perceived unfairness with regard to custodial time, the necessary changes that should be implemented after the break-up of a family unit, and, the lack of an appropriate formula for child support in joint and shared physical custodial situations.

Currently, the Court looks at what appears to be in the best interests of the child(ren). Unfortunately, there is no definition for the "best interests" of the child(ren), therefore leaving the Court to make these paramount decisions using his or her own personal beliefs, understandings and value systems. In the majority of custody orders, one parent is given primary physical custody leaving the other parent in a subordinate situation. Such a custodial situation can create inequality between parents and may have a very negative impact on the subordinate parent's relationship with his or her child(ren). This feeling of inequality appears to grow as the subordinate parent's relationship with his or her child(ren) fails to flourish at the same rate as the relationship of the parent enjoying primary physical custody. The result is a growing animosity, and often litigation, between the parents, which can have a serious negative impact upon the child(ren).

Additionally, during its investigation, the Commission heard from many non-custodial parents who were distraught over the limited parenting time they are allowed by the Court. Many expressed feeling as though they could be an equally valuable parent as the primary custodial parent. These individuals stated that they feel as though they are only considered a monthly child support check and that they have been purposefully cut out of the responsibility of raising their child(ren).

The Commission became aware that parents of intact families often structure their work schedules differently than they would if they were not in an intact family. Often when there is a child at home, one parent takes on the responsibility of working longer hours to bring necessary revenue into the home, while the other parent takes on the role of primary care-taker for the child(ren). However, when the parents are not living together, the work patterns of the parents may change drastically. Often, during a divorce or custody situation, the parent who has been the primary financial provider is willing to modify his or her work schedule to allow for more parenting time with the child(ren).

Currently, the courts appear to focus on the roles of the parents when the family was intact to determine the post-divorce and post-custody roles. Additionally, current child support guidelines utilize a percentage of income formula to determine child support responsibilities. Such a formula makes it virtually impossible for the parent who had been the primary financial provider to be considered an equal parent for determining custodial arrangements. Instead, the parent who had been the primary financial provider is forced to work sometimes even longer hours to be able to financially provide for two households.

The Commission heard considerable testimony to the overwhelming frustration that the current child support guideline formula creates and how it drives a wedge between the two parents when obligors are not be able to spend a relatively equal amount of time with their child(ren), due to the need to work long hours to be able to meet their excessive and unfair child support obligations. The Commission's investigation found that male/female roles have changed dramatically in recent years in both the work-place and at home and that the legal custodial presumptions and the application of the New Hampshire child support guidelines have not kept pace with these changes. As a result, there is increased animosity and frustration between parents and the children's best interests are not always served.

In reviewing these factors and considerations, **a majority of the Commission determined** that there should be a rebuttable presumption for the courts to initially consider both parents equal in their parenting abilities and start the custody determination with a 50/50 parenting arrangement. The Commission recognized that this approach will not work in all circumstances, partially because of a parent's being unwilling to take on such a parenting role, substance abuse, psychological issues, or the presence of domestic violence towards the child(ren). However, it is important for the courts to understand that such a rebuttable presumption can work in the children's best interest by reducing animosity and litigiousness between parents, providing equality in parenting roles and responsibilities and allowing children to have the benefit of a significant relationship with both parents.

A minority of the Commission concluded that while there normally should be a rebuttable presumption that both parents have equal parenting rights and responsibilities and that they should be encouraged to voluntarily negotiate and agree to a parenting plan with shared parenting time, it is premature to recommend a presumption of equal parenting time in all cases, as child development considerations (especially with very young children) and other factors may suggest that something other than equal parenting time is in the best interest of the child(ren). For example, recently developed model parenting time plans in Arizona suggest that when both parents want and are capable of maximum access to and responsibility for their child(ren) approximately equal parenting time is possible and appropriate for ages 3-18, but not normally for ages 0-3.²⁸ One Commission member argues that there should be no presumptions with regard to custody or shared parenting.²⁹

28 The State of Arizona has developed a publication entitled *Model Parenting Time Plans for Parent/Child Access*. It is available in different forms at www.supreme.state.az.us/dr/booklets.htm. The need for shared parenting is described on pages 1 and 2:

“Children describe the loss of contact with a parent as the worst consequence of divorce or parental separation. Unless special circumstances exist, preserving a healthy and ongoing relationship between children and both their parents after divorce or separation is of utmost importance. Positive involvement with both parents furthers the child's emotional and social development, academic achievement and overall adjustment.

WHY PLANS ARE NECESSARY

“Written access plans provide children and parents with some assurances of maintaining meaningful contact and can prevent future conflict. This Model is intended to encourage open dialog and cooperation between parents. The Court prefers that parents reach agreements about schedules voluntarily. When parents reach agreements about schedules on their own, they are more likely to remain cooperative as their children grow up. Children do best when their parents cooperate. The reverse is also true. Children who experience ongoing conflict between parents are at high risk for suffering serious long-term emotional problems.”

The Arizona model was developed by a “statewide committee of judicial officers, mental health providers and attorneys created this Model after consulting with nationally known experts on child development and after reviewing current research and guidelines from other communities. Decisions about access depend on many circumstances, but the age of the child is very important. This Model offers information about what children learn, feel, and need at different ages. It also provides suggested plans appropriate for each age group and language that may be included in court orders.”

When parenting is effectively shared, costs of child support are also shared and child support guidelines must take this into account and work in support of the best interest of child, which includes shared parenting in most circumstances. Special circumstances where the model Arizona access plans would not be appropriate are when “there are significant issues of:

- child abuse or neglect
- serious mental or emotional disorders
- drug or alcohol abuse or criminal activity
- domestic violence
- continuous levels of very intense conflict”

The Arizona model takes into account a gradation of potential involvement by age of the child and parental situation. There are four model plans for each age group, recognizing that each plan can be customized. Plans A1 and A2 are for situations where there is one primary care-giver and the other parent “has an extremely busy work schedule” or “wants regular access without extensive care-giving responsibility.” Model Plan B is also for situations where there is one primary care giver but the other parent has been involved in the day-to-day care of the child, and has the time and desire for significant ongoing access. Plan C is for parents who both have care-giving experience and who both desire maximum access. For ages three and older, all Plan C schedules are for shared access. Under the age of 3, based apparently on the advice of child development experts, only one parent is recommended to be the primary care-giver even where both parents are capable and desiring of fully sharing care in separate households.

To illustrate and correlate these model plan types by age group the following table shows the approximate number of days per week (cumulative) and percentage of parenting time (by average week, month or year) that would be attributed to the parent with the least access (care or parenting time) under the Arizona Child Support Guidelines that will be effective 1/1/05:

<u>Model Plan Type</u>	<u>Ages 0-1</u>	<u>Ages 1-2</u>	<u>Ages 2-3</u>	<u>Ages 3-18</u>
A1	¾ day or 11%	¾ day or 11%	1 day or 14%	1½ days or 21%
A2	1 day or 14%	1 day or 14%	1½ days or 21%	2 days or 29%
B	1 day or 14%	1 day or 14%	2¼ days or 32%	2½ days or 36%
C	1½ days or 21%	2 days or 29%	2¼ days or 32%	3½ days or 50%

These models suggest that it might be appropriate to start providing some child support cost credit to a parent who contributes 15% to 20% or more of the parenting time (for more than minimal or basic involvement), with full credit (for half the child support costs) given at 50% of parenting time. According to the NCSL presentation to the Commission, other states that make parenting time adjustments to child support orders usually do so when parenting time is more than a standard reasonable visitation time, which is usually estimated at 20% (e.g. every other weekend plus 2 weeks summer vacation plus some holidays). Delaware starts making a parenting time adjustment when parenting time exceeds 30%.

29 One Commission member notes: “Presumptions are neither necessary nor helpful in the marital arena. Each ‘family,’ whether divorcing, unwed, or remarried with children, comes to the court with its own unique set of circumstances and dynamics. A presumption assumes the existence of and imposes an expectation and standard on each family irrespective of how that family has functioned and operated as a unit prior to the initiation of litigation. It suggests that all families are created and function in the same manner and that is, by all accounts, an incorrect assumption. The only presumption that should be utilized by the court is a presumption that each parent, absent certain specific circumstances, should have an equal opportunity to participate in the development and shaping of the new ‘family’ unit which will be created by court order as a result of the breakdown of the relationship between the parents. Presumptions produce acrimony. Fair play and equal opportunity for both parents to bring their respective parenting resources to the child-rearing table produce the best results.”

D. Shared Parenting

The majority of the Commission recommends that if both parents are sharing the responsibility of raising the child(ren) on a relatively equal basis, no child support should be exchanged regardless of the income of the parents. The Commission has seriously discussed the benefits of using a “percentage of time” spent with the child(ren) as an offset to any child support obligation. Such a formula would require parents to be responsible for child support payments only for time when the parent does not have the custody of his or her child(ren).

When there is not an equal sharing of parenting time between the parents, it is difficult to determine an exact “percentage of time” number that, once reached, would obligate one parent to contribute financially to the other for the raising of the child(ren). The Commission discussed how one parent might enjoy buying clothing for the child(ren) more than the other parent does. Costs making up the majority of the parenting expenses, however, are typically shared on a roughly equal basis if the child(ren) spend substantial amounts of time with each parent. **The Commission finds** that the majority of expenses for raising children are for food and shelter (including utilities). These expenses should be a wash in situations where parenting time is relatively equal.

Specifically, adjustments should be made to accommodate additional children within a household at a declining rate that would reflect economies of scale. Parenting plans that call for more parenting time with one parent should be adjusted on a per diem basis. Equal time in joint physical custody situations should normally warrant no child support payments to the other parent for either parent in a Basic Cost model, while there might be some transfer of child support funds in a situation where there is a significant difference in the income of the parents in a Cost Shares or Melson-type model.

In a situation with unequal parenting time, child support should be determined by the number of days each parent has the child(ren) over the course of a year. Using the cost of actually raising a child per year divided by 365 days equals the cost of raising a child per day. A parent that had 100% of the parenting time would receive fully half of the cost of raising a child and the parent that has 25% of the parenting time would pay one half of one half of the cost of raising a child or 25% of the cost to raise a child. The number of days would be derived from the Parenting Plan. In specific and limited instances where one parent is unable to pay his or her share of the cost to raise the child(ren), an adjustment may be warranted to have the other parent pay as much as the entire cost of raising the child(ren) if that ability existed. Lack of work, illness or disability might cause one parent to need assistance and it would be reasonable for the Court to look to the other parent to pay as much as the entire cost of raising the child(ren) if that ability existed. Depending upon the particular circumstances, it would also be reasonable for the Court to put a two-year cap on such an arrangement.

The HB 310 Commission further recommends that, in RSA 458:17, the terms legal and physical custody should be replaced by “rebuttable presumption of joint rights and responsibilities.” **The Commission recommends** that a court of equity involved in the matters of divorcing or separating parents and their child(ren) should enter into the process with the presumption of equal opportunity for parenting time by both parents. Therefore, **the Commission recommends** that child support begin when parents deviate from equally shared parenting times.

E. Self-Support Reserve (SSR)

The Commission is of two minds on whether to significantly increase the self-support reserve (SSR) or maintain the SSR as defined by RSA 458-C.2, X: "the poverty level standard of need as established by the division of human services for a single individual living alone." To implement this statute, the Division of Family Assistance (DFA) has used the federal poverty guideline amount, which is adjusted annually based on change in the Consumer Price Index (CPI). It should be noted that the 1995 predecessor to this Commission justified this policy on the grounds that the federal poverty guideline amount exceeded the amount the State provided in AFDC and food stamps to a single person living alone. This disparity has persisted to the present day, in part due to budgetary constraints of the State. The current SSR is \$776 per month whereas the State assistance (Temporary Aid to Needy Families or TANF) for a household composition of one individual, as supplemented by food stamps, is \$630. Neither of these sums then or now bear any particular relationship to what the state DFA has determined to be the monthly standard of need for one person living alone which is up to \$1,608 per month (consisting of Basic Maintenance Needs Allowance or BMNA of \$1,298 plus additional shelter costs of up to \$310).

Some members of the Commission tend to agree with its predecessor committee that it would be unfair to set the SSR level above that set by the federal poverty guideline, especially in light of the availability of other public assistance that is equally available to obligors and obligees. Elevating the SSR could also generate unforeseen consequences, including a potential increase in taxpayer costs such as from increased public assistance costs. Despite these concerns, the Commission has determined that in joint physical custodial arrangements or shared parenting arrangements (of 50-50 or close thereto), the SSR should be about 185% of the federal poverty guidelines, ideally based on a New Hampshire-specific calculation of the basic needs of the obligor household. Individuals under these arrangements would involve a small, but potentially growing percentage of all families. More importantly, this result is consistent with the Commission's findings regarding the level of support needed to maintain separate households in a shared custodial arrangement.

The majority of the Commission recommends raising the SSR above the federal poverty level and notes that the federal standard is a national poverty guideline that does not take into account New Hampshire-specific costs, which are significantly higher than the national average in key respects such as housing and utilities, including heat and electricity. The BMNA is probably a more realistic New Hampshire-specific calculation of the cost of maintaining basic needs including food, shelter, utilities, telephone, clothing, medical care, transportation and other miscellaneous expenses than the federal poverty level. Data sources for the BMNA include the New Hampshire Housing Finance Authority residential rental cost survey, the New Hampshire Public Utilities Commission and a periodic statewide market basket study. All components are updated annually, some by reference to the above sources and others with the use of the CPI. The BMNA includes shelter costs approximately equal to two thirds of the median rental cost with an additional allowance of up to \$310 of actual shelter costs in excess of the assumed amount, so the DFA standard of need for a single adult can range from \$1,298 to \$1,608 depending on actual housing costs. This standard of need is about 167% to 207% (or 187% on average) of the current SSR based on the federal poverty guideline.

Part of the purpose of the child support guidelines is “to ensure that parents assume financial responsibility for support of their children to the best of their ability.” While an SSR that is set too high may risk shifting costs that should be borne by a parent onto the other parent, taxpayers or the child, an SSR that is set too low pushes some parents beyond their financial ability creating another set of problems. Parents who cannot make ends meet at even a basic level are at risk of losing their shelter and becoming homeless or of not being able to maintain their transportation to work or their health. A consequence of any of these problems may be a loss of employment and income, increasing taxpayer costs. The inability of parents to make financial ends meet and make required child support payments may contribute to mental and physical health problems, as well as increased propensities for substance abuse, problem gambling, violence and criminal activity. There are potential increased costs to taxpayers from all these problems as well as potentially costly and unproductive child support enforcement activities.

Another analysis that supports a higher SSR is the Livable Wage Study discussed in hereinabove (Section IV.A.iv, pp. 32-34). That study estimated the statewide average cost of meeting basic living needs for a single adult in New Hampshire in 1999 at \$1,296 per month (excluding personal taxes such as payroll and income taxes). (The study also had county-specific estimates.) Adjusted from 1999 to 2004 (using the mid-year Northeast Region CPI which grew by 14.5% over those 5 years) that figure would be \$1,483 for mid-2004 or 191% of the current SSR. One possible flaw in that analysis is that it uses the median gross rent for a one-bedroom apartment for housing costs. The median is the point where half of the units cost less and half cost more.

For basic needs, a figure closer to the lower quartile (the price point where $\frac{1}{4}$ of the units cost less and $\frac{3}{4}$ of the units cost more) might make more sense, although a single parent moving into the rental housing market from a divorce might be hard-pressed to find a unit at or below the lower quartile point as rents tend to increase upon occupancy turnover and the average of all rents is usually lower than the average for new units and vacant units on the market. The gross rental cost of a one-bedroom unit at the lower quartile in 2004 is about \$105 less than the median. That adjustment would reduce the basic living needs cost for 2004 to about \$1,378 or 178% of the current SSR. On the other hand, extrapolating the 1999 basic living needs costs understates the rate of inflation in the housing market. While over the past 5 years (mid-1999 to mid-2004) the northeast CPI increased by 14.5%, the median rental cost of an apartment in New Hampshire increased by 41%. Using that factor for housing and adjusting down to the lower quartile would result in a basic living needs cost of about \$1,528 or 197% of the current SSR. All of these different estimates are within the range of the basic standard of need for a single adult that DFA set in July 2004, which is between 167% and 207% of the current SSR.

Thus, the two positions are to either retain the current SSR at the federal poverty guideline or increase it to something like the DFA standard of need for a single adult which is roughly 170% to 200% of the federal poverty guideline or about 185% on average. A compromise might take into consideration the minimum payment order, when child support is ordered from one parent to another. At or below the federal poverty guideline (the current SSR) the minimum support order might be reduced to a token \$30 per month (which could be waived under some circumstances by the Court, such as total disability and inability to produce income). Above that poverty income level, the minimum support might be \$60 per month (or scale up to a higher number, for example, up to \$120 per month), up to an income level at a revised SSR that is based on a New Hampshire calculation of basic needs such as the DFA standard of need and BMNA, which is

about 185% of the current SSR and then increase to the full obligation with income in excess of the revised SSR plus the minimum child support payment at that income level. The revised SSR income level should take into account all sources of income including any public assistance. The revised SSR might have a variable ceiling based on actual reasonable housing costs in excess of an assumed minimum at, for example, the 170% level, up to a maximum of, for example, 200% of the federal poverty level.

In order to implement a revised SSR, **the Commission finds** that a New Hampshire-specific analysis of the cost of covering the basic needs for the household of each parent (along with any other dependents and possibly taking into account the basic needs and income of another cohabitating adult) should be undertaken with the assistance of one or more qualified economists. The DFA standard of need and BMNA calculations might be reviewed and adapted for this purpose as well as to establish a basic standard of need for child support. In addition, the public costs and savings implications of possible changes need to be examined and considered. For example, if parents are unable (and/or are not required) to cover the cost of a child's basic needs, are public or private welfare programs going to cover the gap? What might such a gap cost, either under the current SSR and support guidelines or under recommended or possible changes? Are there savings and better family and child outcomes that might accrue from a more reasonable SSR and support guidelines that might offset any increased costs, in whole or in part?

VI. Summary of Legislative Findings and Recommendations

The Commission makes the following findings and recommendations about the New Hampshire child support guidelines:³⁰

1. The economic reality of maintaining multiple households may be inconsistent with maintaining the “standard of living” of the children in the initial family (pp. 22-23).

Recommendation: Utilize a Basic Cost model or similar method³¹ to facilitate an equitable and affordable sharing of child support obligations.

2. Including a “standard of living” component in the calculation of child support may create an incentive to divorce and is unfair in its application to middle and high-income earners (pp. 22-23).

Recommendation: Public policy should not set child support at a rate so low as to encourage some parents to walk away, leaving children behind, nor so high as to entice some parents to want to take their children from the other parent. Utilizing a Basic Cost model or similar method would better achieve equitable child support orders than the current system.

30 This is not an exhaustive list of the findings and recommendations made by the Commission in this report. *See also*, in particular, Section I.B, pp. 5-6; Section II.C.ii, pp. 22-26; and Section IV.B.iii, pp. 34-36. Page references (not exhaustive) in this section refer to places elsewhere in this report where the particular findings and recommendations are discussed.

31 The majority of the Commission recommends that NH develop and adopt a new “Basic Cost” model for Child Support Guidelines. A minority of the Commission recommends development of a “similar method” that incorporates a standard of living adjustment on top of a basic cost model, such as a NH-specific hybrid or adaptation of the Melson Formula, a Cost Shares model, or similar method. (*See also* pp. 22 and 27 including footnote 18.)

3. There is a need for a limit on child support obligations for high-income earners (pp. 5-6, 17).
Recommendation: Often the application of current New Hampshire guidelines produces artificially high child support obligations for middle- and high-income earners. Provide a cap under the current guidelines or change to a cost-based formula.
4. Child support is often in excess of the cost of raising children, which encourages litigation (pp. 5-6, 17, & 25).
Recommendation: Utilize a Basic Cost model or similar method.
5. The self-support reserve (SSR) needs to be updated and revised (pp. 17, 25, & 43-45).
Recommendation: Create a New Hampshire level of self-support reserve. The Commission finds that to be about 185% of the current federal poverty guideline for a single adult.
6. “Annuities” intended to compensate an obligor for personal injuries should not be included as “gross income” (p. 24).
Recommendation: The Commission recommends that a Legislative review be conducted to determine whether certain annuities purchased with settlement proceeds received as a result of a personal injury claim (and not apportioned or valued as lost wages in the settlement itself) and intended to compensate an obligor for personal injuries should be excluded from gross income.
7. Non-dischargeable student loan payments are not allowed to be deducted from “gross income” (p. 24).
Recommendation: Allow such as a credit against current guidelines. Enact legislation to allow student loan payments to be offset against AGI
8. Financial affidavits have little value in calculating the present formula (p. 24).
Recommendation: Adopt a Basic Cost model or similar method greatly reducing the need for financial affidavits, except for the low-income obligor, to prove inability to pay.
9. There is negligible change in the obligor’s order when the obligee’s income rises or falls (pp. 5-6).
Recommendation: Adopt the Basic Cost model or similar method of guidelines where financial responsibility is equitable.
10. The extent that overtime is included in gross income is often contentious and problematic (p. 17).
Recommendation: Adopt the Basic Cost model or similar method or exclude overtime from gross income if gross income is in excess of the SSR (p. 23).
11. Minimum support orders that apply a \$50 support order in all cases with no discretion by the Court to make an adjustment where the obligor’s monthly AGI is below the self-support reserve may result in unfair child support orders (pp. 24 & 43-44).

Recommendation: Reduce the minimum support order to \$30/month for income levels under the federal poverty guideline and provide reasonable judicial discretion to waive a minimum support order. However, treat anyone having income between the current federal poverty guideline and the revised SSR as having an order of \$60 per month with discretion for the Court to lower it (p. 44).

12. The use of the definitions “obligor” and “obligee” and other terms such as “non-custodial parent” and “custodial parent” do not promote the goal of reducing adversarialness and acrimony in custody and child support matters (pp. 24-25 & 42).

Recommendation: Replace such terms or labels with “responsible parents” recognizing the importance of both parents in children’s lives and in recognition that federal law requires the Court to make a determination of financial responsibility for support in its child support orders.

13. The percentages in the child support guidelines do not correlate to the cost of raising a child as determined by the USDA Expenditures Report nor by the Josiah Bartlett Center for Public Policy Report on *New Hampshire Basic Needs and Livable Wage* dated June, 2000 (pp. 5-6 & 25).

Recommendation: The Legislature should replace New Hampshire’s shared-income model with a Basic Cost model or similar method based upon the cost of raising children in New Hampshire (pp. 27, 30, & 34).

14. The standard formula in the child support guidelines makes no provision for time spent with a child (pp. 5, 16, 18, & 39).

Recommendation: As part of the child support guidelines formula, child support should be allocated between two parents based upon time derived from a parenting plan, stipulation or order (pp. 40 & 42).

15. The “Report on Deviation or Adjustment to Child Support Guidelines” prepared for this Commission shows an approximate 30% deviation rate in the 186 cases reviewed by DCSS (Appendix B, pp. 7 & 26).

Recommendation: Adopt a Basic Cost model or similar method that is fair and reduces the need for special adjustment.

16. Application of the child support guidelines in cases involving multiple child support orders is problematic. Under the current scheme, the first family to receive a child support order generally receives a higher amount than any subsequent families (p. 26).

Recommendation: Adopt a Basic Cost model or similar method and repeal RSA 458-C:1, II.

17. The New Hampshire Child Support Guidelines require reform and revision (pp. 5, 6, & 7).

Recommendation: The Legislature should appropriate sufficient funds, taking advantage of the federal match of two dollars for each state dollar, to hire economists to help determine appropriate and fair child support guidelines (pp. 6, 26, 30, 34, & 45).

APPENDIX A

Text of 42 USC § 667 (p.1), 45 CFR 302.56 (p. 2), and NH RSA 458-C (p.3)

Commission to Study Child Support & Related Child Custody Issues, *Final Report*, 12/01/04

1. 42 USC § 667, UNITED STATES CODE ANNOTATED

42 USC § 667

Title 42. The Public Health And Welfare

Chapter 7--Social Security

Subchapter IV--Grants To States For Aid And Services To Needy Families With Children And For Child-Welfare Services

Part D--Child Support And Establishment Of Paternity

§ 667. State guidelines for child support awards

(a) Establishment of guidelines; method

Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support award amounts within the State. The guidelines may be established by law or by judicial or administrative action, and shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts.

(b) Availability of guidelines; rebuttable presumption

(1) The guidelines established pursuant to subsection (a) of this section shall be made available to all judges and other officials who have the power to determine child support awards within such State.

(2) There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case.

(c) Technical assistance to States; State to furnish Secretary with copies

The Secretary shall furnish technical assistance to the States for establishing the guidelines, and each State shall furnish the Secretary with copies of its guidelines.

(Aug. 14, 1935, c. 531, Title IV, § 467, as added Aug. 16, 1984, Pub.L. 98- 378, § 18(a), 98 Stat. 1321, and amended Oct. 13, 1988, Pub.L. 100-485, Title I, § 103(a), (b), 102 Stat. 2346.)

Revision Notes and Legislative Reports

1984 Acts. Senate Report No. 98-387 and House Conference Report No. 98- 925, see 1984 U.S.Code Cong. and Adm.News, p. 2397.

1988 Acts. Senate Report No. 100-377, House Conference Report No. 100- 998, see 1988 U.S.Code Cong. and Adm.News, p. 2776.

Amendments

1988 Amendments. Subsec. (a). Pub.L. 100-485, § 103(b), added provisions relating to review.

Subsec. (b). Pub.L. 100-485, § 103(a), designated existing provisions as par. (1), in par. (1), as so designated, struck out ", but need not be binding upon such judges or other officials" before the period at the end thereof, and added par. (2).

Effective and Applicability Provisions

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1988 Acts. Amendment by Pub.L. 100-485 effective one year after Oct. 13, 1988, see section 103(f) of Pub.L. 100-485, set out as a note under section 666 of this title.

1984 Acts. Section 18(b) of Pub.L. 98-378 provided that: "The amendment made by subsection (a) [enacting this section] shall become effective on October 1, 1987."

Study of Child-Rearing Costs

Section 128 of Pub.L. 100-485 directed Secretary of Health and Human Services, by grant or contract, to conduct a study of patterns of expenditures on children in 2-parent families, in single-parent families following divorce or separation, and in single-parent families in which parents were never married, giving particular attention to the relative standards of living in households in which both parents and all of the children do not live together, and submit to the Congress no later than 2 years after Oct. 13, 1988, a full and complete report of results of such study, including recommendations for legislative, administrative, and other actions.

Current through P.L. 108-404 (excluding P.L. 108-357, 108-374, and 108-375) approved 10-30-04.

[Internet source: WestLaw.]

2. 45 CFR 302.56, U. S. CODE OF FEDERAL REGULATIONS:

45 CFR 302.56 Guidelines for setting child support awards.

- (a) Effective October 13, 1989, as a condition of approval of its State plan, the State shall establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State.
- (b) The State shall have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts.
- (c) The guidelines established under paragraph (a) of this section must at a minimum:
 - (1) Take into consideration all earnings and income of the noncustodial parent;
 - (2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation; and
 - (3) Provide for the child(ren)'s health care needs, through health insurance coverage or other means.
- (d) The State must include a copy of the guidelines in its State plan.
- (e) The State must review, and revise, if appropriate, the guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support award amounts.
- (f) Effective October 13, 1989, the State must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.
- (g) A written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.
- (h) As part of the review of a State's guidelines required under paragraph (e) of this section, a

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State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.

(Approved by the Office of Management and Budget under control number 0960-0385) [50 FR 19649, May 9, 1985; 50 FR 23958, June 7, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 56 FR 22354, May 15, 1991]

[Internet source: http://a257.g.akamaitech.net/7/257/2422/01dec20031500/edocket.access.gpo.gov/cfr_2003/octqtr/pdf/45cfr302.56.pdf]

3. NH RSA 458-C, NEW HAMPSHIRE REVISED STATUTES ANNOTATED

TITLE XLIII DOMESTIC RELATIONS

CHAPTER 458-C CHILD SUPPORT GUIDELINES

458-C:1. Purpose.

458-C:2. Definitions.

458-C:3. Child Support Formula.

458-C:4. Application of Guidelines.

458-C:5. Adjustments to the Application of Guidelines Under Special Circumstances.

458-C:6. Review of Guidelines.

458-C:7. Modification of Order.

458-C:1 Purpose. – The purpose of this chapter is to establish a uniform system to be used in the determination of the amount of child support, to minimize the economic consequences to children, and to comply with applicable federal law by using specific guidelines based on the following principles:

I. The custodial parent shall share responsibility for economic support of the children, irrespective of any non-custodial parent's child support order.

II. The children in an obligor's initial family are entitled to a standard of living equal to that of the obligor's subsequent families.

III. The percentage of net income paid for child support should vary according to the number of children and, with limited exemptions, not according to income level.

Source. 1988, 253:1, eff. April 30, 1988.

458-C:2 Definitions. – In this chapter:

I. "Adjusted gross income" means gross income, less:

(a) Court-ordered or administratively ordered support actually paid to others, for adults or children.

(b) Fifty percent of actual self-employment tax paid.

(c) Mandatory, not discretionary, retirement contributions.

(d) Actual state income taxes paid.

(e) Amounts actually paid by the obligor for allowable child care expenses or medical

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insurance coverage for the minor children to whom the child support order applies.

I-a. "Allowable child care expenses" means actual work-related child care expenses for the children to whom the order applies, up to no more than an annual total of \$5,000 for one child, \$9,000 for 2 children, and \$12,000 for 3 or more children.

II. "Child support obligation" means the proportion of total support obligation which the obligor parent is ordered to pay in money to the obligee parent as child support.

III. "Court" means issuing authority, including the office of fair hearings, department of health and human services, having jurisdiction to issue a child support order.

IV. "Gross income" means all income from any source, whether earned or unearned, including, but not limited to, wages, salary, commissions, tips, annuities, social security benefits, trust income, lottery or gambling winnings, interest, dividends, investment income, net rental income, self-employment income, alimony, business profits, pensions, bonuses, and payments from other government programs (except public assistance programs, including aid to families with dependent children, aid to the permanently and totally disabled, supplemental security income, food stamps, and general assistance received from a county or town), including, but not limited to, workers' compensation, veterans' benefits, unemployment benefits, and disability benefits; provided, however, that no income earned at an hourly rate for hours worked, on an occasional or seasonal basis, in excess of 40 hours in any week shall be considered as income for the purpose of determining gross income; and provided further that such hourly rate income is earned for actual overtime labor performed by an employee who earns wages at an hourly rate in a trade or industry which traditionally or commonly pays overtime wages, thus excluding professionals, business owners, business partners, self-employed individuals and others who may exercise sufficient control over their income so as to recharacterize payment to themselves to include overtime wages in addition to a salary. In addition, the following shall apply:

(a) The court, in its discretion, may consider as gross income the difference between the amount a parent is earning and the amount a parent has earned in cases where the parent voluntarily becomes unemployed or underemployed, unless the parent is physically or mentally incapacitated.

(b) The income of either parent's current spouse shall not be considered as gross income to the parent unless the parent resigns from or refuses employment or is voluntarily unemployed or underemployed, in which case the income of the spouse shall be imputed to the parent to the extent that the parent had earned income in his or her usual employment.

(c) The court, in its discretion, may order that child support based on one-time or irregular income be paid when the income is received, rather than be included in the weekly, bi-weekly, or monthly child support calculation. Such support shall be based on the applicable percentage of net income.

V. "Minimum support order" means an order of support equal to \$50 per month.

VI. "Net income" means the parents' combined adjusted gross income less standard deductions published on an annual basis by the department of health and human services and based on federal Internal Revenue Service withholding table amounts for federal income tax, F.I.C.A., and Medicare, which an employer withholds from the monthly income of a single person who has claimed a withholding allowance for 2 people.

(a) Federal income tax;

(b) F.I.C.A.

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VII. "Obligor" means the parent responsible for the payment of child support under the terms of a child support order.

VIII. "Obligee" means the parent or person who receives the payment of child support under the terms of the child support order.

IX. "Percentage" means the numerical figure that is applied to net income to determine the amount of child support.

X. "Self-support reserve" means the poverty level standard of need as established by the department of health and human services for a single individual living alone.

XI. "Total support obligation" means net income multiplied by the appropriate percentage derived from RSA 458-C:3.

Source. 1988, 253:1. 1989, 406:1. 1990, 224:1, 2, 5. 1995, 310:181. 1998, 242:1 to 3, eff. Oct. 23, 1998. 2004, 77:1, eff. May 7, 2004.

458-C:3 Child Support Formula. –

I. Number of Children	Percentage of Net
1	25 percent
2	33 percent
3	40 percent
4 or more	45 percent

II. (a) The total support obligation shall be determined by multiplying the parents' total net income, as defined in RSA 458-C:2, VI, by the appropriate percentage derived from this section.

(b) The total child support obligation shall be divided between the parents in proportion to their respective incomes as adjusted by this section, except when there are incurred by the obligee child care expenses or for the actual amount paid for medical insurance coverage for the minor children to whom the child support order applies.

(c) For those cases involving allowable child care expenses or medical insurance expenses incurred by the obligee, the same methodology described in subparagraphs (a) and (b) shall be used, except that as part of the determination of each parent's share of the child support obligation, the obligee's allowable child care expenses or medical insurance expenses shall be deducted from the adjusted gross income of the obligee.

(d) All child support obligations calculated pursuant to this chapter shall be rounded to the nearest whole dollar.

III. The number of children in the same household for which child support is paid is the determining factor in the percentage applied against net income.

IV. Self-support reserve and minimum child support obligation.

(a) If the obligor parent's gross income is less than the self-support reserve and the court has determined that the obligor is not voluntarily unemployed or underemployed, the court shall order the child support obligation in the amount of a minimum support order.

(b) If the obligor parent's gross income is greater than the self-support reserve but payment of the order as calculated under this chapter would reduce the obligor parent's income below the self-support reserve, the obligor parent's share of the total support obligation shall be presumed to be the difference between the self-support reserve and that parent's adjusted gross income, but in any event shall be no less than the amount of a minimum support order.

(c) [Repealed].

Source. 1988, 253:1. 1989, 406:2, 3. 1990, 224:3, 4. 1998, 242:4. 2002, 227:3, eff. July 16, 2002. 2004, 169:3, eff.

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458-C:4 Application of Guidelines. –

I. Subject to the provisions of RSA 458-C:5, guidelines provided under this chapter shall be applied in all child support cases, including temporary orders, and in any order modifying a support order.

II. There shall be a rebuttable presumption in any proceeding for the award of child support that the amount of the award which would result from the application of guidelines provided under this chapter is the correct amount of child support. A written finding or a specific finding by the presiding officer on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined by using the criteria set forth in RSA 458-C:5, shall be sufficient to rebut the presumption in such case.

III. When considering a request for an original support order or modification of a support order under this chapter, the court shall take into account any stepchildren for which either party may be responsible.

IV. When arrangements for child support are delineated in an agreement between the parties, and not made according to guidelines provided under this chapter, the presiding officer shall determine whether the application of the guidelines would be inappropriate or unjust in such particular case, using the criteria set forth in RSA 458-C:5, and in certifying the agreement shall enter a written finding or a specific finding on the record that the application of the guidelines would be inappropriate or unjust and state the facts supporting such finding.

Source. 1988, 253:1. 1989, 406:4, 5, eff. Aug. 4, 1989.

458-C:5 Adjustments to the Application of Guidelines Under Special Circumstances.

I. Special circumstances, including, but not limited to, the following, if raised by any party to the action or by the court, shall be considered and may result in adjustments in the application of support guidelines provided under this chapter. The court shall make written findings relative to the applicability of the following:

(a) Ongoing extraordinary medical, dental or education expenses, including expenses related to the special needs of a child, incurred on behalf of the involved children;

(b) Significantly high or low income of the obligee or obligor;

(c) The economic consequences of the presence of stepparents, step-children or natural or adopted children;

(d) Reasonable expenses incurred by the obligor parent in exercising visitation or physical custodial rights, or expenses incurred by such parent in extended visitation or physical custodial rights, provided that the reasonable expenses incurred by the obligee parent for the minor children can be met regardless of such adjustment;

(e) The economic consequences to either party of the disposition of a marital home made for the benefit of the child;

(f) The opportunity to optimize both parties' after-tax income by taking into account federal tax consequences of an order of support;

(g) State tax obligations;

(h) Split or shared custody arrangements;

(i) The economic consequences to either party of providing for the voluntary or court-ordered postsecondary educational expenses of a natural or adopted child;

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(j) Other special circumstances found by the court to avoid an unreasonably low or confiscatory support order, taking all relevant circumstances into consideration.

II. The party relying on the provisions of this section shall demonstrate special circumstances by a preponderance of the evidence.

Source. 1988, 253:1. 1989, 406:6. 1998, 242:5-7, eff. Oct. 23, 1998.

458-C:6 Review of Guidelines. – The department of health and human services shall review the guidelines provided under this chapter in order to determine whether application of such guidelines results in the determination of appropriate child support award amounts.

Source. 1989, 406:7. 1995, 310:181, eff. Nov. 1, 1995.

Initial and periodic review of guidelines. 1989, 406:8 provided: "Review of guidelines pursuant to section 7 of this act [which enacted this section] shall commence 6 months after its effective date [August 4, 1989] and shall continue for 2 years. The study shall include a review of child support orders to determine the application by the judiciary and administrative hearings officers of the percentages as provided in RSA 458-C and to determine exceptional circumstances and trends in the amounts of child support orders as a result of the implementation of the guidelines. The judiciary shall cooperate with the review by providing any necessary information to the division of human services. Upon completion of the review, the division of human services shall make a report to the president of the senate, the speaker of the house and the governor. Upon completion of this initial review, the guidelines shall thereafter be reviewed every 4 years."

458-C:7 Modification of Order. –

I. The obligor or obligee may apply to the court or, when the department of health and human services has issued a legal order of support pursuant to RSA 161-C, to the department, whichever issued the existing order, for modification of such order 3 years after the entry of the last order for support, without the need to show a substantial change of circumstances. This section shall not prohibit the obligor or obligee from applying at any time for a modification based on substantial change of circumstances.

II. Any child support modification shall not be effective prior to the date that notice of the petition for modification has been given to the respondent. "Notice" means:

(a) Service as specified in civil actions; or

(b) Acceptance of a copy of the petition, as long as the petition is filed no later than 30 days following said acceptance, and as long as the petitioner provides proof of acceptance by a certified mail receipt. Nothing in this subparagraph shall be construed to affect service as required by law.

Source. 1991, 233:1. 1995, 310:175, 181, eff. Nov. 1, 1995. 2004, 169:1, eff. July 23, 2004.

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	Court	Date of Order	Y/N	Order \$	GL \$	Deviation\$	ncp mth GI	cp mth GI	Reason	Tanf	Marital Master/Judge
1	BELK	6/30/2004	N	71.00			1517.23			Y	Perkins
2	BELK	5/21/2004	N	11.55						Y	Copithorne/Perkins
3	BELK	8/29/2003	N	106.00			1589.98			N	Copithorne/McHugh
4	BELK	5/8/2003	N	84.00						N	Copithorne/Smukler
5	BELK	9/10/2004	N	74.00						Y	Copithorne/Smukler
6	BELK	7/5/2002	Y	50.00					D	Y	Perkins
7	BELK	3/19/2004	N	60.00						Y	Copithorne/Smukler
8	BELK	2/12/2002	N	99.00			1819.00			Y	Smukler
9	BELK	7/23/2002	N	50.00						Y	Mohl
10	BELK	5/31/2002	N	79.00			1605.56			Y	Perkins
11	BELK	6/17/1998	N	0.00						N	Manis
12	BELK	6/17/1998	Y	44.00	88.00	44.00	1896.54	408.00	K	N	Geiger/Barry
13	BRFD	6/1/2004	N	91.00			1945.50			Y	Fishman/Taube
14	BRFD	4/28/2004	N	60.00						Y	Fishman/Taube
15	BRFD	4/29/2003	N	105.00			2121.70	1558.80		N	Fishman/Taube
16	BRFD	9/4/2002	N	106.00						N	Fishman/Taube
17	BRFD	6/6/2002	N	91.00						Y	Kelly/Taube
18	BRFD	11/4/2002	N	133.00						N	Kelly/Taube
19	BRFD	3/8/2002	Y	55.00	84.00	31.00	1732.00		J	N	Mohl
20	BRFD	7/24/2002	N	11.55						N	Kelly/Taube
21	BRFD	10/8/2002	Y	65.00	85.00	20.00	1558.80	1100.00	K	N	Fishman/Taube
22	CARR	6/24/2004	N	28.00			898.48			Y	O'Neill
23	CARR	5/30/2003	Y	46.19	147.34	101.15	3459.00	1239.00	H	N	Garner/O'Neill
24	CARR	4/14/2003	Y	95.85					J	?	Fauver
25	CARR	3/21/2003	N	75.00			1507.66			Y	Fauver
26	CARR	5/27/2003	N	120.00			1671.38			Y	Garner/Fauver
27	CARR	2/3/2004	N	70.00			1385.60			Y	O'Neill
28	CARR	4/17/2002	N	0.00						?	Copithorne/O'Neill
29	CARR	2/19/2002	N	11.55						N	Copithorne/O'Neill
30	CARR	3/5/2002	N	84.00						N	Copithorne/O'Neill
31	CARR	10/2/2002	N	85.00						Y	Copithorne/O'Neill
32	CARR	11/17/2004	Y	11.55	68.00	56.45	2127.16		K	Y	Garner/O'Neill
33	CARR	7/27/1998	N	8.00						?	Copthorne/Fauver
34	CHES	7/19/2004	N	68.00			1602.10	1212.40		N	Arnold
35	CHES	7/1/2004	N	53.00						Y	Sullivan
36	CHES	5/22/2003	N	47.00						Y	Sullivan
37	CHES	3/19/2002	Y	100.00					H	Y	Mangones
38	CHES	6/18/2002	N	135.00						N	Fletcher/Mangones
39	CHES	2/12/2004	N	59.00						Y	Arnold
40	CHES	8/28/2002	N	60.00						?	Reardon
41	CHES	9/10/2002	N	11.55			0.00			N	Arnold
42	CHES	1/23/2003	N	74.00			1472.20			Y	Arnold
43	CHES	10/21/2002	N	0.00						N	Arnold
44	COOS	4/22/2004	N	60.00			1111.38			N	Vaughan
45	COOS	4/19/2004	N	71.00			1307.77	1147.31		N	Vaughan
46	COOS	2/14/2003	N	49.00			951.55	1612.49		N	Smith
47	COOS	5/16/2002	N	50.00				811.88		N	Hicks
48	COOS	2/25/2002	N	88.00			2057.62			Y	Smith
49	COOS	6/9/1998	Y	30.00	34.00	4.00	818.67	1489.16	B2	N	Perkins
50	COSS	8/25/2002	N	70.00						Y	Smith
51	COSS	11/7/2002	N	11.55						Y	Smith
52	DEFD	9/9/2003	Y	11.55			1645.40		B2	?	DalPra/Dileau

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53	DEFD	1/15/2003	N	125.00			2632.64			Y	DalPra/Reardon
54	DEFD	1/29/2003	N	60.83						N	DalPra/Reardon
55	DEFD	5/10/2002	Y	80.00	143.00	63.00	4055.47	1784.00	K	N	DalPra/Reardon
56	DEFD	4/5/2002	Y	99.00	110.00	11.00	1732.00		K	N	DalPra/Reardon
57	DEFD	7/9/2002	Y	100.00					K	N	DalPra/Reardon
58	GRAF	5/25/2004	Y	74.50	62.00		1238.38		K	Y	Burling
59	GRAF	6/30/2003	Y	35.00					B2	?	Burling
60	GRAF	9/26/2002	N	115.00			2526.79	701.46		N	Houran
61	GRAF	4/29/1998	N	57.00			1299.00	1039.20		N	Flynn
62	HILLS	5/14/2004	N	97.00			1991.18			Y	Geiger/Conboy
63	HILLS	5/12/2004	Y	11.55			866.00	295.23	B2	N	Geiger/Barry
64	HILLS	8/22/2003	N	78.00			1660.00			N	Geiger/Conboy
65	HILLS	10/16/2003	N	101.00				549.00		N	Geiger/Conboy
66	HILLS	4/12/2004	N	116.00			2689.80			?	Green
67	HILLS	6/13/2003	N	0.00						N	Green/Lynn
68	HILLS	6/5/2003	Y	11.55					K	Y	Geiger/Mangones
69	HILLS	5/14/2004	N	113.00						Y	Geiger/Abramson
70	HILLS	6/13/2003	N	66.00						N	Green/Brennan
71	HILLS	6/17/2003	N	130.00			1432.53			Y	Geiger/Mangones
72	HILLS	3/12/2004	Y	85.00					K	N	Geiger/Barry
73	HILLS	11/20/2003	N	115.00			1558.80	1062.52		N	DalPra/Sadler
74	HILLS	7/1/2002	N	76.00						Y	Green/Barry
75	HILLS	9/8/2002	N	167.00						Y	Green/Barry
76	HILLS	4/28/2000	N	50.00						Y	Green/Conboy
77	HILLS	8/7/1998	N	0.00						N	Geiger/Barry
78	HILLS	8/5/2004	N	80.00						?	Geiger/Sullivan
79	LEFD	7/27/2004	N	107.00			2214.31			Y	Cyr
80	LEFD	7/31/2003	N	60.00						N	Cyr
81	LEFD	10/15/2002	Y	35.00	65.00	30.00	1407.00		H	Y	Yazinski
82	LEFD	9/4/2002	N	0.00						N	Cyr
83	LEFD	8/22/2002	Y	11.55					B2	Y	Cyr
84	LIFD	4/27/2004	N	55.00			1060.00			Y	MacLeod, Jr
85	LIFD	3/3/2003	N	0.00						N	Cyr
86	LIFD	4/2/2004	Y	85.00					D	N	Cyr
87	LIFD	3/12/2002	N	11.55						N	Cyr
88	LIFD	4/29/2002	Y	55.00	90.00	40.00			K	Y	Cyr
89	LIFD	1/10/2003	N	0.00						N	Cyr
90	LIFD	10/28/2004	N	114.00			1444.00			Y	Cyr
91	MERR	8/9/2004	N	11.55			700.00			Y	Rein/Fitzgerald
92	MERR	1/26/2004	N	75.00						N	Rein/Houran
93	MERR	1/6/2004	Y	12.00	51.00	39.00	996.46		C	Y	Rein/McGuire
94	MERR	4/1/2003	N	0.00						N	Rein/Vaughan
95	MERR	3/19/2004	Y	80.00	87.00	7.00	1299.00		B2	N	Rein/McGuire
96	MERR	5/23/2003	Y	60.00					K	N	Rein/McGuire
97	MERR	8/18/2003	N	115.00			2400.00			Y	Rein/O'Neill
98	MERR	5/1/2002	N	60.00						N	Rein/Fitzgerald
99	MERR	6/28/2002	N	75.00			1602.10	1385.60		N	Rein/Fitzgerald
100	MERR	7/26/2002	Y	69.00					K	Y	Rein/Smukler
101	MERR	10/4/2002	N	50.00			541.25			Y	Rein/Houran
102	MERR	5/15/2002	Y	100.00	111.00	11.00	2598.00		I	Y	Rein/Fitzgerald
103	MERR	8/3/2002	N	0.00						N	Rein/McGuire
104	MERR	4/26/2002	N	11.55						Y	Rein/Fitzgerald

APPENDIX B
REPORT ON DEVIATION OR ADJUSTMENT TO CHILD SUPPORT GUIDELINES

Commission to Study Child Support and Related Child Custody Issues, *Final Report, 12/01/04*

	Court	Date of Order	Y/N	Order \$	GL \$	Deviation\$	ncp mth GI	cp mth GI	Reason	Tanf	Marital Master/Judge
105	MERR	4/9/2002	N	72.00			1515.00	1212.00		N	Fitzgerald
106	MERR	2/28/2002	N	63.00						?	Rein/Mangones
107	MERR	5/10/2002	N	91.00				1911.00		N	Garner/McGuire
108	MERR	5/10/2002	N	80.00						N	Garner/McGuire
109	MERR	9/23/2002	Y	67.00					C	Y	Rein/Fitzgerald
110	MERR	7/10/2002	N	0.00						N	Copithorne/Houran
111	MERR	6/6/2002	N	119.00			3117.00	1212.00		N	Rein/McGuire
112	MERR	1/10/2003	Y	25.00					H	N	Rein/McGuire
113	MERR	10/22/2002	N	109.00			2078.40			Y	Rein/McGuire
114	MERR	10/5/1999	N	130.00						N	Rein/McGuire
115	MERR	6/12/1998	Y	57.00					K	Y	Geiger/Smukler
116	NASC	4/29/2004	*	11.55	151.00				K	N	Love/Groff
117	NASC	1/29/1998	N	0.00			0.00			N	Love/Hampsey
118	NASC	4/7/2004	N	60.00						N	Love/Hampsey
119	NASC	5/27/2003	N	112.00			2371.75	1732.80		N	Love/Groff
120	NASC	7/30/2003	N	75.00						Y	Love/Groff
121	NASC	4/23/2003	N	99.00			2165.00			N	Love/Groff
122	NASC	3/24/2003	Y	110.00			3334.00		J	?	Hampsey
123	NASC	7/8/2002	Y	40.00					J	Y	Love/Galway
124	NASC	5/21/2002	N	101.00			2334.74			Y	Love/Houran
125	NASC	7/25/2002	N	50.00						?	Love/Gallway
126	NASC	5/30/2002	N	89.00						?	Love/Hampsey
127	NASC	4/18/2002	N	85.00						Y	Garner/Hicks
128	NASC	4/30/2004	N	85.00						N	Love/Groff
129	NASC	9/12/2003	Y	106.00			3464.00	733.00	K	N	Love/Hampsey
130	NASC	8/27/2002	N	52.00			1057.25			Y	Love/Galway
131	NASC	4/10/2002	N	61.00						Y	Love/Hampsey
132	NASC	5/14/2000	N	73.00			1951.66	1854.15		N	Love/Dalianis
133	NASC	5/1/1998	N	66.00			1292.00			Y	Bourque/Nadeau
134	NHFD	6/4/2003	N	11.55						N	Cyr
135	NHFD	1/15/2003	N	51.00						Y	Cyr
136	PLFD	7/28/2004	N	11.55			519.00			Y	Carbon
137	PLFD	6/24/2004	Y	77.00	117.00	40.00	2426.18		J	Y	MacLeod, Jr
138	PLFD	6/15/2004	N	50.00						N	Carbon
139	PLFD	10/24/2003	N	75.00						?	Carbon
140	PLFD	6/1/2004	Y	88.00	119.00	31.00	2424.80	1039.20	K	N	Carbon
141	PLFD	12/26/2002	Y	168.00			4013.83		H	Y	Carbon
142	PLFD	8/20/2002	N	102.00			1732.00			Y	Yazinski
143	PLFD	11/2/2002	N	78.00						Y	Carbon
144	POFD	10/17/2003	N	11.55						Y	Fishman/Salder
145	POFD	3/4/2003	Y	92.37					B2	N	Fishman/Reardon
146	POFD	4/10/2003	N	100.00						N	Fishman/DeVries
147	POFD	3/4/2003	Y	80.00					K	Y	Fishman/Reardon
148	POFD	10/10/2002	N	100.00						Y	Fishman/Taube
149	POFD	10/3/2002	Y	175.00	215.00	40.00	5319.69	520.00	J	N	Fishman/DeVries
150	POFD	10/1/2002	N	135.00						Y	Fishman/DeVries
151	POFD	6/2/1998	Y	185.00			1300.00	1300.00	B2	N	Fishmen/DeVries
152	SAFD	6/28/2004	N	96.00			2190.98			Y	Kelly/Korbey
153	SAFD	7/26/2004	N	86.00						N	Kelly/Korbey
154	SAFD	9/9/2003	N	87.00						N	Kelly/Korbey
155	SAFD	9/15/2003	N	100.00						Y	Kelly/Korbey
156	SAFD	6/6/2003	N	108.00						N	Taube

APPENDIX B

REPORT ON DEVIATION OR ADJUSTMENT TO CHILD SUPPORT GUIDELINES

Commission to Study Child Support and Related Child Custody Issues, *Final Report, 12/01/04*

	Court	Date of Order	Y/N	Order \$	GL \$	Deviation\$	n cp mth GI	cp mth GI	Reason	Tanf	Marital Master/Judge
157	SAFD	7/2/2002	Y	100.00			2424.80		D	Y	Kelly/Korbey
158	SAFD	6/17/1999	N	80.00						Y	Korbey
159	SAFD	10/28/1999	N	66.00						N	Korbey
160	STRA	8/4/2004	Y	75.00	109.00	-34.00	2251.60	995.90	J	N	Nute/Mohi
161	STRA	5/19/2004	N	42.00			957.58	3268.28		N	Nute/Fauver
162	STRA	4/23/2003	Y	40.00					J	N	Mohi
163	STRA	4/4/2003	Y	110.00					J	N	Nute/Mohi
164	STRA	5/9/2003	N	52.00						N	Nute/Lewis
165	STRA	8/3/2002	N	0.00						Y	Fitzgerald
166	STRA	7/8/2002	N	0.00						N	Nadeau
167	STRA	8/11/2002	N	82.00			1732.00	1800.00		N	Nute/Nadeau
168	STRA	11/22/2002	N	103.00			2275.85			Y	Nute/Mohl
169	STRA	7/31/2002	Y	25.00					K	Y	Smith
170	STRA	11/5/1998	N	0.00						N	Nute/Nadeau
171	STRA	6/3/1998	N	0.00						N	Nute/Mohl
172	STRA	9/7/1998	Y	30.00			1732.00		A	Y	Nute/Carbon
173	SULL	6/7/2004	N	11.55			800.00			Y	Brennan
174	SULL	7/12/2004	Y	57.00	162.00		3507.16		D	Y	Brennan
175	SULL	7/23/2004	Y	11.55	30.00	18.45	905.00		K	Y	Brennan
176	CHES	5/11/2004	N	81.00						Y	Sullivan
177	SULL	4/28/2004	Y	75.00	90.00	15.00	2251.60		J	N	Brennan
178	SULL	5/8/2003	Y	69.12					K	N	Garner/Burling
179	SULL	2/10/2003	Y	80.00	110.00	30.00	2338.20	1482.81	J	N	Morrill
180	SULL	2/18/2003	N	108.00			1818.60	1430.00		N	Morrill
181	SULL	1/9/2003	N	11.55						Y	Morrill
182	SULL	7/28/2003	N	125.00						N	Morrill
183	SULL	5/29/2002	N	95.00			2056.75	1320.25		N	Fletcher/Morrill
184	SULL	3/11/2002	Y	75.00					K	Y	Fletcher/Morrill
185	SULL	10/17/2002	Y	75.00	74.00		1472.20		K	Y	Morrill
186	SULL	5/13/1998	Y	75.00					K	N	Peltcher/Morrill

COURT ABBREVIATION KEY:

BELK= Bellknap County Superior Court
 BRFD= Brentwood Family Division Court
 CARR= Carroll County Superior Court
 CHES= Cheshire County Superior Court
 COOS= Coos County Superior Court
 DEFD= Derry Family Division Court
 GRAF= Grafton County Superior Court
 HILLS= Hillsborough County Superior Ct – Northern Dist.
 LEFD= Lebanon Family Division Court
 LIFD= Littleton Family Division Court
 MERR= Merrimack County Superior Court
 NASC= Hillsborough County Superior Ct – Southern Dist.
 NHFD= North Haverhill Family Division Court
 PLFD= Plymouth Family Division Court
 POFD= Portsmouth Family Division Court
 SAFD= Littleton Family Division Court
 STRA= Strafford County Superior Court
 SULL= Sullivan County Superior Court

COLUMN CODES: Y/N = Deviation from Guidelines?

Order \$ = Amount of Child Support Order.
 Deviation \$ = Amount of deviation from Guidelines amount.
 Ncp mth GI = Non-custodial parent monthly gross income.
 Cp mth GI = Custodial parent monthly gross income.
 Tanf = Custodial parent receiving TANF?
 (Temporary Aid to Needy Families)

REASON CODES for Deviation from Guidelines:

A= Extraordinary Medical, Dental Costs
 B1= "High Income" B2= "Low Income"
 C= Stepchildren
 D= Costs Associated With Visitation
 E= Consequences of Disposition of Home
 F= Tax Consequences
 G= State Tax Obligations
 H= Spilt or Shared Custody
 I= Post-secondary educational expenses
 J= Other to Avoid Confiscatory Order
 K= Unable to Determine

Y= yes
N= no
?= UIFSA

*Please note that original order provided for a deviation for 3 months, then, guideline amount.

APPENDIX C

Melson Formula: Original Sample (pp.1-2) and Current Form (p.3) with Instructions (pp.4-7)

Commission to Study Child Support & Related Child Custody Issues, *Final Report*, 12/01/04

DULE J

FIGURE 1

The Family Court of the State of Delaware
 FOR NEWCASTLE KENT SUSSEX COUNTY
 CHILD SUPPORT CALCULATION
 () PETITIONER () RESPONDENT



CASE NAME:
FILE NUMBER:

DATE:

PART I. PRIMARY CHILD SUPPORT

<u>STEP A</u>	<u>FATHER</u>	<u>MOTHER</u>	<u>TOTAL</u>
Monthly Net Income	\$ 1200.00	\$ 800.00	
Less Self Support	- 450.00	- 450.00	
Sub-totals	\$ 750.00	\$ 350.00	
= AVAILABLE NET FOR PRIMARY SUPPORT			\$1100.00

STEP B

<u>Kelly</u> , as <u>2nd</u> person in <u>Mother</u> 's household	\$ 180.00	
+ <u>David</u> , as <u>3rd</u> person in <u>Mother</u> 's household	+ 135.00	
+ _____, as _____ person in _____'s household	+ _____	
	Sub-total	\$ 315.00
+ MONTHLY CHILD CARE EXPENSES OF WORKING CUSTODIAL PARENT		+ 100.00
+ EXTRAORDINARY MEDICAL EXPENSES		+ _____
Less EARNINGS OF A DEPENDENT CHILD		- _____
= TOTAL PRIMARY CHILD SUPPORT NEED		\$ 415.00
		TOTAL

STEP C

	<u>FATHER</u>	<u>MOTHER</u>
Individual Available net	\$ 750.00	\$ 350.00
+ Total Available Net	+ 1100.00	+ 1100.00
= Share of Primary Support	68 %	32 %
x Primary Child Support Need	x 415.00	x 415.00
= PRIMARY SUPPORT OBLIGATION	\$ 282.20	\$ 132.80

PART II. STANDARD OF LIVING ADJUSTMENT (SOLA) CHILD SUPPORT

STEP A

	<u>FATHER</u>	<u>MOTHER</u>
Available Net for Primary Support	\$ 750.00	\$ 350.00
Less Primary Support Obligations	- 282.20	- 132.80
Sub-totals	\$ 467.80	\$ 217.20

STEP B

	<u>FATHER</u>	<u>MOTHER</u>
Available Net for SOLA Support	\$ 467.80	\$ 217.20
x Total SOLA Support Percentage	x 25 %	x 25 %
Sub-totals (Products)	\$ 116.95	\$ 54.30

= SOLA SUPPORT OBLIGATION \$ 171.25

STEP C

PER-CHILD SHARE OF SOLA SUPPORT	\$ 85.63
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APPENDIX C

Melson Formula: Original Sample (pp.1-2) and Current Form (p.3) with Instructions (pp.4-7)

Commission to Study Child Support & Related Child Custody Issues, *Final Report*, 12/01/04

(CHILD SUPPORT CALCULATION, Continued)

Page 2

PART III. TOTAL MONTHLY SUPPORT OBLIGATIONS

	<u>FATHER</u>	<u>MOTHER</u>
Primary Support	\$ 282.20	\$ 132.80
+ SOLA Support	+ 116.95	+ 54.30
= Total Monthly Child Support Obligation	\$ 399.15	\$ 187.10
Sub-totals		
Less Amount Retained by Custodial Parent	- 0	- 187.10
= TOTAL MONTHLY ORDERED CHILD SUPPORT	\$ 399.15	\$ 0

PART IV. OPTIONAL SUPPLEMENTAL QUARTERLY CHILD SUPPORT

The Family Court has the authority to order a parent to pay quarterly child support directly to a child and custodial parent jointly. These payments are designed to relieve the custodial parent of periodic child-related expenses and to make the child aware of support received for his/her benefit from the other parent. Such payments may be awarded by the Court where the amount of monthly child support derived in accordance with the Child Support Calculation is inequitable in light of the relative financial standings of the parties at bar.

September 1 \$ _____ December 1 \$ _____ March 1 \$ _____ June 1 \$ _____

= TOTAL ANNUAL SUPPLEMENTAL CHILD SUPPORT \$ _____
TOTAL

RULE 271. PROPOSED FINDINGS, CONCLUSIONS, AND REASONS

PETITIONER

RESPONDENT

The Child Support Calculation completed above shall be the party's proposed Order.

If a party is requesting the Court either to modify the normal formula or to find the formula inequitable in light of 13 Del.C. § 505 (b) and/or 13 Del.C. § 514, detail below:

(a) Proposed Findings;

(b) Proposed Conclusions;

(c) Proposed Reasons;

(d) Proposed Order;

APPENDIX C

Melson Formula: Original Sample (pp.1-2) and Current Form (p.3) with Instructions (pp.4-7)

Commission to Study Child Support & Related Child Custody Issues, *Final Report*, 12/01/04

Form 509
(Rev. 10/02)

**The Family Court of the State of Delaware
Child Support Calculation**

Case Name: _____
Petition #: _____

Calculation Date: _____
Period Covered: _____

NET INCOME AVAILABLE	1	Gross Income	wages + self emp. + unearned + nontax		Father	Mother	
		Father					
		Mother					
	2	Taxes	Federal + FICA + State + other				
		Father					
		Mother					
	3	Deductions	Medical + Pension + Union + other				
		Mother					
	4	Self Support Allowance		4	\$ 850	\$ 850	
	5	Net Income after Self-Support (Line 1 – Lines 2, 3 & 4)		5			
	6	Number of Children <u>not</u> of this union supported by each party		6			
	7	Adjustment for Support of Dependent children (Table A)		7	%	%	Total
	8	Net Available for Primary Support (Line 5 x Line 7)		8			
PRIMARY	9	Share of Total Net Available (Line 8 ÷ Line 8 Total)		9	%	%	100%
	10	Number of Children of this union in each household		10			
	11	Primary Support Allowance (Table B)		11			
	12A	A – Child Care expenses necessary for parent to work		12A			
	12B	B – Private School Tuition other primary expenses		12B			
	13	Primary Need (Line 11 Total + Lines 12A & B Totals)		13			
	14	Primary Support Obligation (Line 9 x Line 13)		14			
SOLA	15	Net Available for SOLA (Line 8 minus Line 14)		15			
	16	Standard of Living Adjustment Percentage (Table B)		16	%	%	
	17A	A – SOLA Obligation (Line 15 x Line 16)		17A			
	17B	B – SOLA per child (Line 17A Total ÷ Line 10 Total)		17B			
CREDITS	18	Gross Monthly Obligation (Line 14 + Line 17A)		18			
	19	Parenting Time Adjustment (see instructions)		19			
	20	Amount Retained (Line 18 for obligee, zero for obligor; see instructions for split, shared or parenting time cases)		20			
	21	Net Monthly Obligation (Line 18 minus Lines 19 & 20)		21			

Table A

# Children	Percentage
0	100%
1	84
2	74
3	67
4	61
each add'l	minus 4

Table B

# Children	Primary	SOLA	Minimum
1	\$350	16%	\$78
2	650	26	130
3	920	33	182
4	1170	39	234
each add'l	+220	+4	+52

APPENDIX C

Melson Formula: Original Sample (pp.1-2) and Current Form (p.3) with Instructions (pp.4-7)

Commission to Study Child Support & Related Child Custody Issues, *Final Report*, 12/01/04

THE FAMILY COURT OF THE STATE OF DELAWARE

Form 509 I

(rev. 10/02)

INSTRUCTIONS FOR CHILD SUPPORT CALCULATION

The Family Court of the State of Delaware has established the Delaware Child Support Formula under Family Court Civil Rule 52(c). This formula outlines the procedure for determining a child support obligation in the State of Delaware. The formula is based on the following principles pursuant to 13 Delaware Code §514:

- Each parent is entitled to keep a minimum amount of income for their basic needs.
- The child(ren)'s basic needs are taken care of before the parents may retain any additional income.
- If income is available after the primary needs of the parents and child(ren) are taken care of, the child(ren) is (are) entitled to share in any additional income of the parents.

In determining each parent's child support obligation the Court considers each parent's ability to pay. Ability to pay includes the health, income and financial circumstances, and earning capacity of the parties, the manner of living to which the parties have been accustomed if they resided as a family unit and the general equities inherent in the situation.

The Delaware Child Support Formula serves as a rebuttable presumption for establishing child support obligations in the State of Delaware. The Court will use the Formula unless it finds that the results would not be in the best interest of the child(ren) or would be inequitable to the parties involved. Dalton v. Clanton, Del. Supr., 55 A.2d 1197 (1989).

An automated version of the Child Support calculation is available online at <http://courts.state.de.us/family>.

INCOME ATTRIBUTION

The Court will use a parent's actual income for calculating child support if the parent is fully employed in a manner commensurate with their training and experience. A **Rule 16A Financial Report Form** is required to be submitted with supporting documentation at the mediation and before trial. Adequate supporting documentation usually is the parent's most recent tax returns, W-2 Forms, and three most recent pay stubs. Parents who are unemployed or underemployed either voluntarily or due to their own misconduct, and parents who fails to provide adequate documentation or to appear for the hearing or mediation may be "attributed" income. The Court will examine earnings history, employment qualifications and the current job market. Wage surveys for individual occupations compiled by government agencies can be used to estimate earning capacity (and are available in the Resource Centers of each Family Court). Absent adequate information, a parent may be attributed at least as much income as the other party. Additionally, every parent is presumed to have an earning capacity of no less than \$1,300 per month. Parents who suffers a loss of income due to their own misconduct may have their support obligation calculated based upon actual current earnings where over a reasonable period of time they have earnestly sought to achieve maximum income capacity.

NET AVAILABLE INCOME

Net available income for both parents is used for calculating an obligation under the Delaware Child Support Formula. Net income is determined by taking gross income and subtracting taxes, other important payroll deductions and a self support allowance. All amounts must be monthly. To convert from weekly, multiply by 52 and then divide by 12. For biweekly, multiply by 26 and then divide by 12. All amounts should be rounded to the nearest whole number.

Line 1--Monthly Gross Income--Generally, all income must be included in the child support calculation. The Court can exclude second job income upon consideration of its history, purpose, amount and effect on visitation. Expense reimbursements or in-kind payments received in the course of employment, self-employment, or operation of a business should be counted as income if they are significant and reduce personal living expenses. However, a cost of living stipend given to an employee as compensation due to transfer to a high cost location will not be included as income as long as it is clearly identified on pay documents. **Monthly Gross Income** is the combination of the following:

Wages: This includes salaries, wages, commissions, bonuses and any other income (other than self-employment income) that is subject to Federal Retirement and/or medicare taxes. For child support purposes, it also includes all income and benefits identified by an employer as "pre-tax".

Self: All income earned as an independent contractor and subject to federal self-employment tax.

Unearned: All other taxable income including but not limited to dividends, severance pay, pensions, interest, trust income, annuities, capital gains, workers' compensation, unemployment compensation, disability insurance benefits, prizes, and alimony or maintenance received.

APPENDIX C

Melson Formula: Original Sample (pp.1-2) and Current Form (p.3) with Instructions (pp.4-7)

Commission to Study Child Support & Related Child Custody Issues, *Final Report*, 12/01/04

Nontax: All other income not subject to income taxation. This includes most Social Security Disability (SSD) or retirement benefits and some pension/disability benefits issued by private corporations. Such benefits paid to a child on account of a parent's disability are included in that parent's income but offset the Net Monthly Order (Line 21) dollar for dollar. Benefits paid to a child due to the child's own disability are included as income to the household in which it is received.

Line 2--Taxes: Utilizing the income tax withholding tables distributed by the IRS and Delaware Department of Revenue, record each parent's income tax liability based upon a single tax status with one (1) exemption. Enter the amount for each parent for each of the separate taxes identified. A tax estimation worksheet is also available in the Family Court Resource Center. Add these taxes across the line and enter the result in the appropriate column.

Line 3--Allowable Deductions (add the following across the line and enter the result in the appropriate column):

Medical Insurance--Monthly medical insurance premiums (including COBRA payments) paid by either parent regardless of persons covered by the policy.

Pension--Enter any mandatory retirement contributions. If that amount is less than 3% of gross income, voluntary contributions to a 401(k) or similar IRS approved retirement plan of up to 3% (including mandatory) of gross income may also be deducted.

Union Dues--Enter the average monthly union dues.

Other--If not already deducted from gross income, enter the monthly amount of any court ordered alimony payments to the other parent, or other allowable business expenses (such as supplies required by the employer to be purchased). Alimony paid must also be subtracted from taxable income when calculating Federal and State income tax liability (but not "FICA").

Line 4--Self Support Allowance: The self-support allowance is the minimum amount of income necessary for a parent to remain productive in a workplace. Each parent is given a self support allowance of \$850.

Line 5--Net Income after Self Support: Subtract taxes (Line 2), Deductions (Line 3) and Self Support (Line 4) from Gross income (Line 1).

Line 6--Number of Children Not of this Union Supported by each Parent: Enter the number of children of other relationships to whom a duty of support is owed either in or out of each parent's household. Children outside a parent's household should only be counted if there is a court order for support or proof of a pattern of support.

Line 7--Adjustment for Support of Other Children: Enter the appropriate percentage as determined by the number of children on Line 6 and the table below (but not more than 50%):

Number of Children	Percentage
0	100%
1	84%
2	74%
3	67%
4	61%
Each Additional	minus 4%

Line 8--Net Available for Primary Support: Multiply each parent's Net Income after Self Support (Line 5) by the percentage on Line 7. Enter the result for each parent. Add the figures for Father and Mother to get the total available income. Enter the result in the total column.

Line 9--Share of Total Net Available: Divide the Net Available for Primary Support for each parent (Line 8) by the Total Net Available for Primary Support (Line 8 Total). Enter the result for each parent.

Extraordinary Medical Expenses--The Formula also provides that the person with whom the child(ren) resides is responsible for the first \$350 of unreimbursed medical costs actually expended each calendar year. Any additional amount is divided by the parents according to the **Share of Total Net Available** (Line 9). The \$350 threshold does not apply to shared or split placement arrangements.

CHILD(REN)'S PRIMARY SUPPORT NEED

The Court has established minimum levels of income needed to support one or more children. This primary support allowance is added to any work related child care expenses, private school expenses (under some circumstances), and any other expenses for any ongoing special needs of a child.

APPENDIX C

Melson Formula: Original Sample (pp.1-2) and Current Form (p.3) with Instructions (pp.4-7)

Commission to Study Child Support & Related Child Custody Issues, *Final Report*, 12/01/04

Line 10--Number of Children of this Union in each Household: Enter the number of children of this union who reside in each parent's household. Add the number in the Father's and Mother's column and enter the result in the Total column. Do not include children from other relationships.

Line 11--Primary Support Allowance: Enter the Primary Support Allowance that matches the number of children in Line 10 for each household (see table below for Primary Support Allowance). Add the number in each column and enter the result in the Total column.

<u>Number of Children</u>	<u>Primary Support Allowance</u>
1	\$350
2	650
3	920
4	1170
each additional	+220

Line 12A--Child Care Expenses necessary for parent to work: Enter the actual Monthly Child Care Expenses for the children of this support action required for the parent to work. No hypothetical or attributed child care costs are permitted. Documentation should be attached to the Form 16(a) financial report.

Line 12B--Other Primary Expenses: Enter any other necessary monthly expenses incurred because of any special needs of the child(ren). Do not include any private or parochial school expenses unless there has been:

- a. prior agreement of the parties to send the child(ren) to private or parochial school or;
- b. the child has special needs that require private school or;
- c. family history indicates that the child likely would have attended private or parochial school and the parents have the financial resources to pay for private or parochial school.

Line 13--Total Primary Need: Add the totals from Lines 11, 12A and 12B. Enter the result in the total column.

Line 14--Primary Support Obligation: Multiply the Share of Total Net Available to each parent (Line 9) by the Total Primary Need (Line 13 Total). Enter the result for each parent.

STANDARD OF LIVING ADJUSTMENT (SOLA)

When there is income available after the parents have met their own and their child(ren)'s primary support needs, the SOLA adjustment is made. SOLA is designed to give the child(ren) a share in each parent's economic well being similar to what the child(ren) would have received if the parents lived as a single family unit.

Line 15--Net Available for SOLA: Subtract the Primary Support Obligation (Line 14) from the Net Income Available for Primary Support (Line 8) for each parent. Enter the result for each parent.

Line 16--SOLA Percentage: Enter the SOLA percentage, from the table above, which corresponds to the Number of Children Due Support in this Support Action (Line 10 Total) but not more than 50 percent unless there is a prior finding of a specific need.

<u>Number of Children</u>	<u>SOLA Percentage</u>
1	16%
2	26%
3	33%
4	39%
each additional	+4%

Line 17A--SOLA Obligation: Multiply the Net Available for SOLA (Line 15) by the SOLA Percentage (Line 16). Enter the result for each parent. Combine the parents' individual SOLA obligations and enter the result in the Total column.

Line 17B--SOLA Per Child: Divide the parents' combined SOLA Obligation (Line 17A Total) by the Total Number of Children of this Union in each Household (Line 10 Total). Enter the result.

CREDITS AND THE NET MONTHLY OBLIGATION

The Net Monthly Obligation is based on the Primary Support Obligation of each parent plus the SOLA Obligation minus applicable credits. The credits are determined by the placement of the child(ren), primary expenses paid by the parent from whom support is sought and any shift in SOLA expenditures deemed to have occurred as a result from an extraordinary contact schedule.

Line 18--Gross Monthly Obligation: Add the Primary Support Obligation (Line 14) for each parent to the SOLA Obligation (Line 17A). Enter the result for each parent.

APPENDIX C

Melson Formula: Original Sample (pp.1-2) and Current Form (p.3) with Instructions (pp.4-7)

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Line 19--Parenting Time Adjustment: Where there exists a custody order or written agreement establishing a specific visitation or contact schedule which provides in excess of 109 average overnights per calendar year, the "visiting" parent will be credited a portion of the parents' combined SOLA. To determine the credit, multiply the number of children to whom the extraordinary contact schedule applies by the Per Child SOLA (Line 17B) and then by the applicable percentage from following Table. Enter the result for each parent.

Annual Overnights	Percentage of SOLA
110 to 134	10
135 to 154	20
155 to 169	30
170 to 179	40

Note: The Family Court Standard Visitation Guidelines constitute 90 average annual overnights.

Line 20--Amounts Retained: In most cases, one parent has primary placement of all of the children, incurs all primary allowances and expenses (Lines 11, 12A and 12B) and there is no Parenting Time Adjustment (Line 19). In those cases, enter that parent's Gross Monthly Obligation (Line 18) in that parent's column. Enter zero ("0") in the other parent's column. In all other cases, enter for each parent the lesser of the amount on Line 18 or:

- Primary Support Allowance for all children residing in their household (Line 11); plus
- Child Care Expenses (Line 12A), other primary care expenses such as private school tuition (Line 12B) paid directly by them to the provider(s); plus
- SOLA per child (Line 17B) multiplied by the number of children in their household (Line 10); minus
- Any Parenting Time Adjustment (Line 19) given to the other parent.

Line 21--Net Monthly Obligation: For each parent, subtract any Parenting Time Adjustment (Line 19) and any Amounts Retained (Line 20) from the Gross Monthly Obligation (Line 18). Enter the result. The minimum order allowed is \$78 for one child plus \$52 for each additional child.

SHARED EQUAL PLACEMENT

Where parents enjoy **shared equal placement** (at least 180 overnights annually in each household), each child is counted on **Line 10** as one-half or five-tenths ("0.5") in each household. If this is applied to an odd number of children, the number of children in each household will be fractional (for example: 3 children in shared placement are counted as "1.5" children in each parent's household). In these cases, additional **Primary Support Allowance** categories are needed. Those are \$175 for "0.5 children", \$500 for "1.5", \$785 for "2.5", \$1045 for "3.5" and \$110 for each additional "0.5". In all other respects, the calculation is unchanged.

MODIFICATION AND TERMINATION

Within two and one-half years of the establishment of a current support obligation, either party can petition for recalculation of the obligation if they allege "with particularity" a substantial change of circumstances not caused by their own voluntary or wrongful conduct. No modification will be ordered unless the new calculation produces a change of more than 10%. Beyond two and one-half years, neither the "particularity" nor the "10%" requirement applies.

A child support obligation originally established under Delaware law terminates upon a transfer of custody or the emancipation of all of the children who are the subject of the obligation. A transfer of custody (to the obligated parent) must be evidenced by a Court Order or written agreement. Emancipation occurs when a child is 18 and is no longer attending high school but never later than the child's 19th birthday.

APPENDIX D

Summary of Public Input

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	Merrimack	Rochester	Newbury	Plymouth	Other Sources
Male	4	9	2	15	12
Female	5	8	1	3	0
Custodial	2	1	1	0	0
Non-Custodial	6	13	2	14	12 ³
Joint Custody	1	1	0	1	
Other		2 ¹		3 ²	

1. One lawyer, custodial status of one undetermined
2. Two not yet divorced, one grandmother
3. Assumed from the tenor of the complaint

NOTE: 3 people testified twice: one from Newbury; two from Rochester (only tallied at 1st hearing).

Summation of comments:

- Unfair to pay more than 1/2 the cost of raising a child. (15)
- The courts are inflexible & not responsive to changes in obligor circumstances (layoffs, illness) (5)
- No credit for the cost of medical/dental care (4)
- No credit for monies spent on child (ren) when they are with the non-custodial parent. (9)
- No credit for monies spent on court ordered non-custodial life insurance premiums. (1)
- Tax effects of child support are not considered in the formula. (3) The % should be of net not gross income.
- The percentage of childcare costs decrease with increased income. (2)
- There should be a maximum income cap on child support. (5) max should = NH median income, max should = \$75K
- Want cost sharing (50%) of the true cost of raising a child (meeting child needs) (10)
- No accountability for how child support monies are spent (13)
- Want an audit of how child support is spent (11)
- Non custodial pays for dual infrastructures, homes, phones, heat, cable, etc.

APPENDIX D
Summary of Public Input

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- Increase the self-support reserve to 185% of the poverty level. (1)
- Child support in excess of the cost of raising a child encourages divorce and makes the children financial assets. (4)
- Termination of parental rights should not remove the child support obligation. (1)
- The CHILD SUPPORT formula does not account for debt (e.g. student loans). (2)
- Subsequent children are given less value (esp. those of an obligor's 2nd family). (3)
- As a step-parent can be obligated to pay child support at full rate, one child can be assessed for support from multiple fathers. (1)
- The child support guidelines reward spending not saving. (1) suggest mandated trust funds for children
- Overtime pay should be excluded from the child support formula. (1) to allow a non-custodial to resurrect a life style
- There is excessive judicial discretion w/ child support determination & variances
- The 1st child is given disproportionate value
- Current child support guidelines impoverish the noncustodial parent
- A stay at home parent who petitions for divorce should be made to work and take some of the child support burden. (2)
- Child support is awarded in a gender-biased manner.
- Child support should automatically cease on the date a non custodial loses employment
- Why is there just one obligor? What does the noncustodial parent get for their child support?
- Assets divided at divorce are not factored into the child support equation, (only income is factored)
- Suggestion of peer mediation to expedite modifications of child support due to changes in circumstance (e.g. illness, layoffs, decreased commissions, crop failure etc.)
- A second job, hard work, good fortune should not benefit the other parent via the children.
- Non-custodial parents pay a disproportionate share of child support and are held to a more rigid standard for failure to comply, than the custodial parent.
- Child support should be placed in an account accessed by a debit card so that spending is monitored and is accountable.