



Department of  
Job and Family Services

# 2017 Child Support Guidelines Review Report to the General Assembly

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Respectfully Submitted to:

The Honorable Larry Obhof

President

The Honorable Clifford Rosenberger

Speaker

The Honorable Joe Schiavoni

Senate Minority Leader

The Honorable Fred Strahorn

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# Table of Contents

2017 Child Support Guidelines Advisory Council..... 3

Executive Summary..... 4

    Summary of Recommendations..... 4

2017 Child Support Guidelines Review..... 7

    Updating the Child Support Schedule..... 7

    Updating the Self Sufficiency Reserve ..... 9

    Issuing the Worksheets and Manual via Rule..... 13

    Child Support Calculation Policy ..... 14

    Public Feedback ..... 21

Appendix A: Economic Study

Appendix B: Draft Schedule

Appendix C: Draft Sole/Shared Parenting Worksheet

Appendix D: Draft Ohio Child Support Guidelines Manual

Appendix E: Deviation Study

## **2017 Child Support Guidelines Advisory Council**

Members, Alternates, and Contributors Roster

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## Executive Summary

Title IV-D of the Social Security Act requires Ohio to establish child support guidelines that are mandatory statewide for all courts and administrative agencies that issue child support awards. The Act requires that these guideline awards be the presumptively correct child support obligation amounts under state law, subject to reasonable deviations based on the best interest of the child. The Act also requires each state to review their guidelines every four years to ensure they result in appropriate award amounts.

In December 2016, the Ohio Department of Job and Family Services (ODJFS or the Department) convened the 2017 Child Support Guidelines Advisory Council (2017 Council) to assist in the review of the Ohio child support guidelines, pursuant to the quadrennial review requirement found in Ohio Revised Code §3119.024. The Council assists the Department in its review by providing input from a range of interested stakeholders including members of the Ohio General Assembly, state and county child support professionals, attorneys, judges, child support obligors and obligees, other interested persons, and the public.

After the 2013 Child Support Guidelines Review, and prior to convening the 2017 Council, the Department was engaged in a multi-year effort to develop, and to seek legislation for, a comprehensive update to the Ohio child support guidelines. Many of the stakeholders who are identified as members of the 2017 Council were involved in this legislative process. Most of the effort revolved around a bill, introduced by Senator Shannon Jones in January 2016 during the 131<sup>st</sup> Ohio General Assembly, numbered Senate Bill 262<sup>1</sup> (SB 262).

The guideline recommendations proposed by the Department below do not necessarily reflect a consensus of the various stakeholders. They do include the features of SB 262, including features adjusted during interested party discussions that were drafted by the Legislative Service Commission as substitute language to the introduced bill. With some exceptions, the broad consensus among stakeholders is that SB 262 proposed many appropriate and overdue changes to the Ohio child support guidelines, which was last updated in 1993.

## Summary of Recommendations

The Department makes the following recommendations:

- **Update the Basic Child Support Schedule**

The basic child support schedule should be updated with current economic data using the fourth version of the Betson-Rothbarth estimator of child-rearing expenditures (BR4). A detailed review of the available alternative methodologies for development of the basic schedule can be found in Appendix A: Economic Study.

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<sup>1</sup> Unless otherwise noted, any reference to Senate Bill 262 is to the Introduced version, or the first drafted substitute version. The substitute bill was not formally introduced and accepted by the committee but was a working document for the Department and interested parties.

- **Self-Sufficiency Reserve**

The schedule should incorporate a low-income self-sufficiency reserve to ensure the noncustodial parent's ability to pay the support obligation as well as establish an incentive to work. The reserve should incorporate a standard methodology described in the law.

- **Mandate Issuance and Periodic Update of the Basic Child Support Schedule, Guidelines Worksheets, and a Guidelines Manual, via Rule**

- The updated basic child support schedule should be adopted into the Ohio Revised Code (ORC). ODJFS should be required in a rule-making statute to promulgate the schedule as a table that is required to be used statewide for calculation of child support obligations by all courts and administrative agencies, and to update the schedule at least every four years using a mandated update methodology. A draft schedule based on the Senate Bill 262 language is attached as Appendix B.
- The child support guidelines worksheets that are used to calculate child support obligations on a case by case basis should be removed from the ORC. ODJFS should be required in a rule-making statute to promulgate a worksheet or worksheets that are mandatory for use statewide for calculation of support obligations, and to update the worksheets at least every four years pursuant to a rule-making statute. A draft proposed worksheet is included in Appendix C.
- Additionally, the rule-making statute should require ODJFS to issue a Guidelines Manual for child support enforcement agencies, courts, attorneys, and lay users. A draft proposed manual is included in Appendix D.

- **Child Support Calculation Policy**

Policies for calculating obligations using the child support guidelines are based on laws contained in the ORC. These policies include income and expense credits and deductions that are implemented through the guideline calculation worksheets and by reference to ORC provisions. ODJFS proposes several new or revised policies, as follows:

- **Parenting Time Adjustment**

The worksheets should incorporate an adjustment to reflect the time spent in each parent's home where there is a parenting time order in effect. There should be a standard adjustment for those cases with parenting time orders based on a local model order, and an enhanced deviation adjustment for those cases that involve an extended parenting time order.

- **Cash Medical Support**

Cash medical support obligations should be revised to allow for the establishment of a single child support obligation and for a single cash medical support obligation. The cash medical support obligation should be based on available data estimating ordinary medical support expenditures for children.

- **Calculation of Multiple Family Obligations**  
Each parent should be given a deduction from gross income that reflects a standardized methodology for estimating expenditures based on their duty of support to children other than those who are the subject of the calculation at hand.
- **Child Care Cost-sharing Cap**  
Given the choice and variable cost of available child care, an upper limit for cost-sharing should be established based on available bi-annual child care market research, conducted by the Office of Family Assistance within ODJFS, to avoid establishment of support obligations that are unreasonably high in relation to available income.
- **Deviation Factors**  
Existing factors used to deviate from presumptive support obligations should be clarified and simplified.
- **Administrative Review of Court Ordered Deviations**  
During an administrative review and adjustment of a child support order, the support enforcement agency should assume that the grounds for any previously granted deviations are ongoing and do not require an adjustment. Parties wishing to object to the findings may appeal directly to the court.
- **2% Processing Charge**  
Clarify that the processing charge is to be imposed upon the child support order and should not be part of the child support calculation worksheet.
- **Removal of Deductions for Local Taxes Paid and for Work-Related Deductions**  
These deductions should be removed as either having a de minimus effect on the calculation of the support obligation, or be more appropriately treated as a deviation from the support obligation.
- **Minimum Child Support Orders**  
The statutory minimum child support order should be increased to \$80 per month for annual incomes below \$8,400 with a sliding scale minimum order calculated as part of the self-sufficiency reserve. Child support enforcement agencies should be authorized to issue minimum child support orders.
- **Post-termination Arrears Payoff Orders**  
Current laws requiring an obligor to pay at least the amount of support ordered prior to termination of the order to liquidate arrears after termination should be revised to establish this requirement as a rebuttable presumption and allow the court or child support enforcement agency to reduce the arrears payment in appropriate circumstances.

## 2017 Child Support Guidelines Review

The 2017 Child Support Guidelines Review (2017 Review) is the seventh guideline review by the Department since the establishment of the requirement in 1993. As in previous reviews, the Department conducted a deviation study (Appendix E) to determine the degree to which child support awards follow the mandatory guidelines, and that deviations are limited to appropriate circumstances. The Department also conducted an economic study (Appendix A).

The 2017 Council was abbreviated to only two meetings, given the extensive legislative activity associated with Senate Bill 262 introduced by Senator Shannon Jones in the 131<sup>st</sup> General Assembly, and the involvement of child support stakeholders in those deliberations. The following discussion describes the policies included in SB 262.

### Updating the Child Support Schedule

Ohio's current schedule of child support obligations is found in ORC §3119.021. The schedule is a grid containing annual parent income in the first column, the number of children from one to six who will be subject to the order in the next six columns, with the parents' obligation amount stated at each intersection of income and number of children.

A schedule of obligations was first established by the Ohio Supreme Court during the 1980s. This schedule was replaced with the simultaneous repeal of Supreme Court Rule 75 and adoption of a similar schedule in the Revised Code in House Bill 591 in April 1990. The current schedule was enacted through Senate Bill 115 in July 1993. It has not been updated since that time.

The current schedule is based on the first version of an economic methodology referred to as the Betson-Rothbarth estimator for child rearing costs, which is described in detail in the reports<sup>2</sup> of the 1993, 1997, and 2001 Guideline Reviews. A critical examination of the Betson-Rothbarth methodology was undertaken in the 2005 Guideline Review. The results of that examination can be found in the 2005 Child Support Guidelines Report at pages 14-15, and in the revised USDA methodology used to establish a proposed new schedule found in the 2005 Economic Study conducted for that review. The 2009 Guideline Review also recommended adoption of the USDA methodology with discussion along the same lines as the 2005 report.

However, due to the continuing annual accrual of substantial child support arrears over more than two decades, the Department asked the 2013 Child Support Guidelines Advisory Council to focus its discussion on the relationship between these arrears, child support obligation amounts, and low-income obligors. Research used in the 2013 Review included two primary components: research sponsored by state and

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<sup>2</sup> All previous Guideline Review reports can be found at:  
<http://jfs.ohio.gov/Ocs/employers/OCSGuidelinesCouncilOverview.stm>

federal agencies, and private social policy organizations<sup>3</sup>; and of data and analysis compiled from the Ohio child support system.

In the 2013 Review, it was shown that:

[in] federal fiscal year 2011 Ohio collected 66.55% of all current child support obligations, or, \$1.26 billion paid of \$1.9 billion owed, a difference of about \$647 million. A similar gap has occurred each year since the beginning of the child support program, resulting in total cumulative arrears by 2012 of approximately \$4.5 billion.

The current figure is \$4,876,911,476<sup>4</sup>. The source of these arrears, per the research conducted in 2005-2007 by the Urban Institute<sup>5</sup> into the facts underlying this phenomenon in Ohio and eight other states, is described as follows:

The study used quarterly wage information to compare the accrual of arrears to obligor income. An extract of the data and conclusions from the study that were specific to Ohio found that 69% of arrears accrued here were owed by individuals with no reported income or reported income less than \$10,000.

Additionally, the Department presented evidence from state data that reinforces this conclusion, including a breakdown of data showing that compliance with child support obligations appears to correlate with obligor income.<sup>6</sup>

The 2013 Review carried forward the recommendations from the 2005 and 2009 Reviews to adopt the USDA methodology. However, there was no detailed discussion of guideline schedule methodology or alternatives. Instead, because of the research mentioned above, the 2013 Review contained a Council recommendation that the Department engage an economist to review the USDA data. In its report, the Department agreed “. . . that an adjustment to the USDA table would be appropriate to ensure the low-income child support orders accurately reflect available income.” The Department committed to engaging an economist “. . . to conduct the necessary research and develop the appropriate adjustment for the basic child support schedule.”<sup>7</sup>

After the 2013 Review, the Department contracted with Jane Venohr, Ph.D., of the Denver-based Center for Policy Research, to review the various methodologies that estimate child-rearing expenditures. Her research is found in the Economic Study in Appendix A. In her comparison of USDA and BR4 methodologies, it is shown that updating the current basic schedule using the USDA figures would result in large increases to obligations at every income level, including significant increases in the low-income

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<sup>3</sup> Turetsky 2000; Formoso 2003; Sorensen, Sousa, & Schaner 2006 (Ohio) and 2007 (Nine State Study); Formoso & Liu 2010; Takeyesu 2011

<sup>4</sup> OCSE-157 Child Support Enforcement Annual Data Report, September 2016

<sup>5</sup> Sorensen, Sousa, Schaner (2007). “Assessing Child Support Arrears in Nine Large States and the Nation”. To navigate to this document either type, or cut and paste, this link into your web browser:

<http://aspe.hhs.gov/hsp/07/assessing-CS-debt/index.htm>

<sup>6</sup> See 2013 Guideline Review, p. 10-11, and related graphs in Appendix A

<sup>7</sup> See 2013 Guideline Review, p. 13



range<sup>8</sup>. The Department concludes that adoption of the USDA methodology will lead to further annual arrears accrual, and potentially to accrual at a higher rate.

Based on this information, together with the research conducted during the 2013 Review, the Department has determined that the fourth version of the Betson-Rothbarth estimator of child-rearing expenditures (BR4) should be proposed as the basis for an updated basic child support schedule, rather than the USDA table. As explained more fully in the Economic Study, BR4 updates will result in moderate increases to obligation amounts throughout the income range of the entire schedule, and that these increases would be related not to a methodological change if USDA figures were used, but to changes in tax policy and price levels, among other factors, since 1992.

The BR4 estimator was incorporated into SB 262 using a method similar to that used for the Ohio state tax tables. This method will allow the Department to issue, by Ohio Administrative Code (OAC) rule, a quadrennial update of the schedule by reference to the Consumer Price Index.

## **Updating the Self Sufficiency Reserve**

By adopting the BR4 estimator, the Ohio child support guidelines can maintain continuity of outcomes across the income range represented on the schedule<sup>9</sup>. However, this will not address arrears accumulation for low-income obligors. The Department proposes an updated self-sufficiency reserve (referred to by some as a “self-support” reserve, and referred to hereafter as the “SSR”) be incorporated into the basic schedule.

An SSR is an adjustment of the guideline support obligation amount to ensure that an obligor can maintain at least a subsistence income. The SSR is the primary means of addressing the phenomenon of arrears accrual among low-income obligors who are willing to pay their support obligation, but are unable to do so based on their income. During the legislative effort concerning SB 262, the SSR was a main topic during interested party discussions.

The current basic schedule incorporates an SSR. Most people are unaware of this for two reasons. First, the schedule itself gives no indication that an SSR has been included. Second, the SSR in the current schedule uses 1992 federal poverty level figures, and therefore has limited or no application to present-day income and price levels, or obligation amounts.

As discussed above, the Department asked Dr. Venohr to review the methodology and propose alternatives for an update. Dr. Venohr provided the tools to update the existing SSR, but was careful to point out that the SSR is not a function of strictly economic science, but is finally a state policy decision. She is supported in this view by the former federal child support guideline regulations, which allowed for an SSR, and by newly revised federal regulations, which require an SSR. The requirement is described this way in the new regulation:

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<sup>8</sup> See Appendix A: Economic Study, Section III

<sup>9</sup> Incidentally, the range of incomes is proposed to be extended from the current maximum annual income of \$150,000 per year, to \$300,000 per year.

[State guidelines must take] into consideration the basic subsistence needs of the noncustodial parent (and at the State’s discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method determined by the State<sup>10</sup>.

This federal policy recognizes that states are in the best position to determine for their citizens how an SSR is to be calculated, a necessity given the wide variety of guideline methodologies, and economic circumstances, across the nation.

## **SSR Settings**

The SSR found in SB 262 has three components or settings (described in detail in Appendix A) that work together to adjust the BR4 schedule amounts<sup>11</sup>. The components are:

- Federal poverty level for one person: This figure (hereafter “FPL”) is a readily available, widely accepted, and annually updated statement of the amount below which an individual is considered in poverty.
- Sliding Scale Minimum Order: A minimum order is typically a single figure that an obligor with income below FPL would pay for support. However, a single figure may be too low to account for the range of incomes below a chosen FPL. Therefore, a sliding scale minimum order was developed in which the minimum order is increased according to a sliding scale that would apply above a base annual income (\$8,400 in SB 262), and below the chosen FPL figure.
- Phase-Out: To avoid a cliff effect, an adjustment is applied to the FPL figure that gradually phases out the SSR adjustment to the BR4 schedule amount by adding a given percentage of the difference between the income amount and the FPL to the obligation amount. Without this gradual adjustment, there would be a line on the schedule where the SSR abruptly ends, and the BR4 schedule amount appears<sup>12</sup>. The phase-out provides a way to gradually transition from the SSR to the BR4 schedule amount.

Another important feature of the SB 262 SSR is transparency. The guidelines schedule published by the Department will show that the BR4 obligation amounts have been adjusted by the SSR calculation. This is done by shading the SSR range on the guidelines schedule.

There are several reasons why making the SSR visible is important. First, it will help the obligor and the obligee to understand that the table has been adjusted. Second, the worksheet calculation for incomes within the SSR range uses only the income of the obligor, and the obligation amounts in the SSR range accordingly reflect only the obligation amount for the obligor. Outside of the SSR range, on the other hand, income and obligation amounts reflect combined amounts for the parents, and the obligation amount is split between the parents by income share. This information needs to be readily available to the guideline user to correctly calculate the obligation. Finally, the shaded SSR range can be used in the

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<sup>10</sup> 81 FR 244 at 93562, publishing revised 45 CFR 302.56

<sup>11</sup> The same components are used in the current ORC schedule.

<sup>12</sup> In Appendix A Dr. Venohr provides an example where Obligor A making \$15,000 per year would pay \$1,010 per year; in the absence of a phase out, Obligor B making 16,000 per year would pay \$2,010 per year in support.

worksheet calculation to designate additional policy adjustments to credits or deductions for the parents, and therefore also requires that the range be visible.

## SSR Policy Choices

During the public discussion of SB 262, the Department advocated using the following SSR settings to adjust the BR4 table, and they were incorporated into the bill.

- The federal poverty level for an individual should be set at 116% of FPL to ensure obligors have sufficient income to pay their support obligation and maintain a basic household by adjusting for the effective tax rate at low incomes.
- A minimum order of \$80 per month should be established for obligors with income less than \$8,400 per year. A sliding scale minimum order<sup>13</sup> should adjust the obligation above \$8,400 but below the chosen FPL figure, in keeping with interested party discussions where it was argued that the \$80 figure was too low for individuals whose earnings are in the high end of the SSR range.
- The Department recommends a phase-out of 30% to ensure a gradual transition from the SSR adjusted amounts to the BR4 figures. The 30% figure was chosen because it provides the maximum incentive for an obligor to maintain employment in the official economy while providing support for his or her children.

The Department approached these settings from a perspective that values the actual and consistent monthly collection of support for the custodial household over establishment of substantial, but often uncollectable, obligation amounts. This policy choice is informed by the evidence concerning arrears accrual described above, indicating that high obligation amounts relative to available income for low-income obligors often result in, at best, irregular collections for families.

To give the reader a sense of the impact of these choices on obligation amounts in various circumstances, Table 1 below uses scenarios provided by poverty law community witnesses who argued during Senate Civil Justice Committee testimony on SB 262 that the SSR adjusted figures are too low and will harm low-income custodial parents. The calculations shown in the table were developed by the Department to show the impact of support calculations on available income in the scenarios<sup>14</sup>, and thus suggest why low-income obligors accumulate the largest proportion of arrears of any income group.

Table 1 has been sorted by the BR4-SSR Monthly Order column to facilitate comparison of the scenarios as Obligor Annual Gross Income increases. The Taxes and Housing section provides annual figures for estimated federal, state, and local taxes<sup>15</sup> plus housing<sup>16</sup> to simulate a limited expenditure set for the

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<sup>13</sup> The sliding scale minimum order described here is contained in the fourth drafted substitute version of SB 262, but not introduced in the Senate Civil Justice Committee.

<sup>14</sup> Please note that the calculations in Table 1 do not include credits and deductions that may be applicable to the obligor and/or the obligee. Adjustments up and down for each party (e.g., health insurance premiums) are likely to occur when such adjustments are incorporated using the child support calculation worksheet. Instead, the obligation figures are drawn directly from the basic schedule without the SSR, and with the SSR.

<sup>15</sup> Using rates for Ohio income tax, Federal income tax, FICA, and Medicare.

<sup>16</sup> \$790 per month for a two bedroom apartment, according to the FY 2012 Fair Market Rent market study for the Columbus, OH HUD Metro FMR Area.

obligor household. It is important to recall that these figures do not estimate other household expenditures, such as food, utilities, transportation, clothing, or medical costs. The goal was to use two expenditure categories that are likeliest to represent consistent monthly expenditures and that are relatively easy to calculate from available sources.

Table 1

Scenarios				Taxes and Housing		Guideline Schedule Comparison								
						Betson Rothbarth 4				Betson Rothbarth 4 - SSR				
# of Kids	Obligor Annual Gross Income	Obligee Annual Gross Income	Obligor Annual Tax and Housing Cost	Obligor Annual Income Remaining After Taxes and Housing	BR4 Monthly Order	BR4 Annual Order	Annual Remaining Income	Order as a % of Remaining Income	Obligor Annual Income After Taxes, and Child Support	BR4-SSR Monthly Order	BR4-SSR Annual Order	Annual Remaining Income	Order as a % of Remaining Income	Obligor Annual Income After Taxes, and Child Support
Ex. 1	1	\$16,848	\$16,848	\$12,961	\$3,887	\$240	\$2,877	74.01%	\$1,010	\$115	\$1,380	35.50%	\$2,507	
Ex. 2	2	\$16,848	\$16,848	\$12,961	\$3,887	\$364	\$4,368	112.36%	-\$481	\$150	\$1,800	46.30%	\$2,087	
Ex. 12	4	\$16,848	\$13,478	\$12,961	\$3,887	\$489	\$5,871	151.01%	-\$1,983	\$171	\$2,052	52.78%	\$1,835	
Ex. 10	4	\$16,870	\$14,000	\$12,967	\$3,903	\$493	\$5,920	151.67%	-\$2,017	\$171	\$2,052	52.57%	\$1,851	
Ex. 5	3	\$18,000	\$0	\$13,288	\$4,712	\$497	\$5,966	126.60%	-\$1,254	\$176	\$2,112	44.82%	\$2,600	
Ex. 13	4	\$18,000	\$0	\$13,288	\$4,712	\$555	\$6,664	141.42%	-\$1,952	\$184	\$2,208	46.86%	\$2,504	
Ex. 11	3	\$24,000	\$29,640	\$14,992	\$9,008	\$579	\$6,951	77.16%	\$2,057	\$259	\$3,104	34.46%	\$5,904	
Ex. 7	3	\$24,192	\$9,374	\$15,046	\$9,146	\$620	\$7,441	81.36%	\$1,704	\$259	\$3,108	33.98%	\$6,038	
Ex. 8	6	\$24,192	\$9,374	\$15,046	\$9,146	\$828	\$9,939	108.68%	-\$793	\$275	\$3,300	36.08%	\$5,846	
Ex. 4	2	\$28,000	\$10,500	\$16,128	\$11,872	\$594	\$7,131	60.07%	\$4,741	\$364	\$4,364	36.76%	\$7,508	
Ex. 9	4	\$30,000	\$16,536	\$16,696	\$13,304	\$830	\$9,965	74.91%	\$3,338	\$408	\$4,896	36.80%	\$8,408	
Ex. 3	4	\$30,000	\$0	\$16,696	\$13,304	\$881	\$10,568	79.44%	\$2,736	\$409	\$4,904	36.86%	\$8,400	
Ex. 6	3	\$36,000	\$0	\$18,400	\$17,600	\$934	\$11,209	63.69%	\$6,391	\$559	\$6,704	38.09%	\$10,896	

Support obligations in Ohio have historically been calculated using the gross income of the parties and should continue to do so. However, as Table 1 shows, support obligation amounts developed using the Betson-Rothbarth methodology need to be adjusted to reflect the actual available resources of a low-income obligor. Obligor households that have higher gross incomes have sufficient net income remaining each month to pay their support obligations and maintain self-sufficiency; lower income obligors typically do not.

It is recognized by the Department that there are obligors who are able to pay their support obligations but are unwilling to do so; likewise, many obligors are willing to pay their support obligation, but are unable to do so.

For the former group, the child support program has an impressive array of highly effective enforcement tools, including not only the ability to garnish wages through income withholding, but also the ability to seize payment from sources as diverse as bank accounts, insurance proceeds, lottery and casino winnings, federal tax refunds, and others. As a last resort, jail terms based on civil contempt findings, and even prison terms based on Ohio's criminal non-support statute, can be pursued.

On the other hand, for the latter group of obligors who are willing but unable to pay, the Department has determined that it is the size of the support obligation in relation to the obligor paycheck that is at issue.

For instance, in Table 1 the obligor in example 9 who is ordered to pay the BR4 figure (no SSR) is going to find that the greater part of every paycheck will be consumed to pay for three expenditures (taxes, housing, and child support) – in this example, just under 75% of the total figure. Whether the remaining amount will be sufficient to pay for food, utilities, transportation, clothing, or medical costs, is left to the reader.

It is important to note here that the position of the Department is not that it is preferable that the obligee should get \$408 per month rather than \$830 per month in example 9. The position of the Department is that, in this example, it is more likely that the obligor owing \$408 per month will stay employed in a business where our most effective child support collection technique – income withholding from the obligor’s paycheck – can work. As a result, the obligor is more likely to be able to pay his or her child support consistently every month, and the obligee is more likely to receive a consistent monthly income stream.

If the same obligor owes \$830 per month, consuming 75% of his or her paycheck (with taxes and housing), the obligor may conclude that employment in a business where employees are paid directly in cash makes more sense. In this scenario, the most effective collection technique cannot be employed; further, the county Child Support Enforcement Agency will likely lose contact with the obligor and will be limited to collections on an ad hoc basis: intercepting support from tax refunds, financial institutions, insurance proceeds, gaming or, perhaps, direct payment of support by the obligor.

A complete SSR adjustment to the BR4 schedule, as described in this section, was incorporated into the fourth drafted substitute version<sup>17</sup> of SB 262 and operates in the proposed law as a part of the Department’s responsibility to issue the basic schedule of child support obligations by OAC rule.

The Department recommends that the BR4 basic child support schedule adjusted by the SSR, as described above, should be adopted into the Ohio Revised Code (ORC). ODJFS should promulgate the schedule as a table that is required to be used statewide for calculation of child support obligations and should update the schedule at least every four years using a mandated update methodology, pursuant to a rule-making statute.

## **Issuing the Worksheets and Manual via Rule**

There are currently two child support guidelines worksheets found in the ORC, one for cases involving a sole obligor and involving a shared parenting order (§3119.022), and one for cases where the parents have at least two children and custody is split between them (§3119.023). The use of these worksheets is mandatory statewide in all courts and administrative agencies that establish child support orders.

The worksheets aggregate income information from both parents and apply a series of adjustments to an annual support amount derived from the basic schedule of obligations. Factors within the current worksheets that lead to an adjustment of the schedule amount include, for example, local taxes, child care expenditures, the cost of health insurance, and means-tested benefits, among others.

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<sup>17</sup> This proposed version of SB 262 was drafted but not introduced for consideration by the Senate Civil Justice Committee.

The child support guidelines worksheets that are used to calculate child support obligations should be removed from the ORC. ODJFS should promulgate a worksheet or worksheets that are mandatory for use statewide for calculation of support obligations; and update the worksheets at least every four years pursuant to a rule-making statute. This will facilitate updates to the worksheet, which is currently not possible without legislative action. Draft proposed worksheets are included in Appendix C.

Additionally, the rule-making statute should require ODJFS to issue and periodically update a guidelines manual that explains the Ohio child support guidelines to courts, attorneys, and lay users. A draft manual is included in Appendix D.

## **Child Support Calculation Policy**

Child support guideline calculations include a variety of public policies found in the provisions of the ORC. These policies include income and expense credits and deductions that are implemented through the guideline calculation worksheets and by reference to ORC provisions. ODJFS proposes new or revised policies that are described below.

### **Parenting Time Adjustment**

Discussion of parenting time has centered around two parenting time ranges: standard and extended. This section addresses a standard parenting time adjustment to appear on the worksheet and an extended parenting time adjustment in the form of a revised deviation requirement for parenting time.

The 2009 Guidelines Report contained the following concise statement of the rationale supporting a parenting time adjustment:

An underlying assumption built into the basic child support schedule is that the child is constantly in the custodial parent's household and that all costs for raising the child are assumed by the custodial parent. Variable costs (such as food and shelter) which follow the child from household to household and increase proportional to the amount of time the child is in the household of the noncustodial parent, are not considered, thus the noncustodial parent does not retain any of the annual child support obligation to cover the costs. The guidelines do not adjust the annual obligation based on the time the child spends in the noncustodial parent's household. (p. 62)

The Deviation Study in Appendix E supports including a parenting time adjustment as a part of the child support guidelines worksheet. The current study, and the previous studies conducted for past guideline reviews, uniformly identify “extended parenting time or costs associated with parenting time” as the deviation reason used most often by courts to adjust the obligation from the presumptively correct amount.

The Department recommends that the child support guidelines worksheets be amended to include a fixed adjustment for standard parenting time orders. The worksheets should incorporate an adjustment to reflect the time spent in each parent’s home where there is a parenting time order in effect. There should be a standard adjustment for those cases with parenting time orders based on a local model order and an enhanced deviation adjustment for those cases that involve an extended parenting time order.

“Standard parenting time” is so-called due to the existence of locally developed and approved model parenting time orders in nearly every county Domestic or Juvenile Court. Standard orders usually establish possession of the child by the custodial parent for approximately 70% of the time, and by the noncustodial parent for approximately 30% of the time.

After completing research and having discussions within the council, the parenting time adjustment has gained the support of many stakeholders. The 2013 Guidelines review recommended that the worksheet include an adjustment of 10% of the combined annual support obligation when a standard parenting time order has been issued by a court. This 10% credit was included in SB 262 and the Department retains the recommendation here.

The Department also recommends an additional deviation standard to be applied by Ohio courts when a deviation for extended parenting time is requested. The purpose of this deviation standard is to allow courts to consider the facts presented by the parties regarding parenting time that extends beyond what it typically offered in the local court for standard parenting time, and that approaches nearly equal parenting time. While a deviation factor for extended parenting time has long been in place, the proposed language below will require a court that does not grant a deviation for extended parenting time to specify the basis for the court’s decision. The following language is proposed:

Sec. 3119.231. In determining whether to grant a deviation pursuant to section 3119.22 of the Revised Code for the reason set forth in division (C) of section 3119.23 of the Revised Code, the court shall recognize that expenses for the children are incurred in both households and shall apply the following deviation:

If court-ordered parenting time is equal to or exceeds one hundred forty-seven overnights per year, the court shall consider a substantial deviation. If the court does not grant a substantial deviation from that amount, it shall specify in the order the facts that are the basis for the court's decision.

## **Cash Medical Support**

Ohio has implemented all components of the federal Title IV-D program requirements for medical support order establishment and enforcement, including orders to establish the parent responsible for health insurance, for cash medical support, for issuance of the National Medical Support Notice (NMSN), and associated medical support requirements. There are several recommendations in this report that call for changes to the worksheet and to associated statutes that implement these requirements.

Cash medical support obligations should be revised to allow for the establishment of a single cash medical support obligation. The cash medical support obligation should be based on available data estimating ordinary medical support expenditures for children by using the U.S. Department of Health and Human Services medical expenses survey.

The 2009 Guidelines Report contained the Department’s recommendation to revise the methodology for calculating the cash medical support obligation set forth in ORC 3119.30 and related statutes, and the

guidelines worksheet. The Department continues to support its 2009 recommendation and since that time has done additional research to support this recommendation.

Since the 2013 Guidelines Report, the Department worked with county staff to research options for improving the medical support process that directly impacts Ohio families. The Department makes the following recommendations based on this research. Each parent should be responsible for a cash medical obligation that will cover ordinary medical expenses for the child(ren) of the order. This obligation should be based on the publication from the U.S. Department of Health and Human Services medical expenses survey regarding ordinary medical support expenditures, and would be a separate obligation from the child support obligation. The cash medical obligation would be split by income shares and be paid by all obligors. The cash medical support obligation would be in addition to the child support order and would always be a charging support order as long as there is a duty of support. These changes will reduce the confusion associated with cash medical obligations being turned on and off with the availability of medical coverage, and the consequent over- and under-payment of the obligation when parties do not inform the child support agency of coverage availability.

### **Calculation of Multiple Family Obligations**

Each parent should be given a deduction from gross income that reflects a standardized methodology for estimating expenditures based on their duty of support to children other than those who are the subject of the calculation at hand.

There are currently two deductions from gross income on the worksheet that derive from a parent's obligation to support other children. Guidance for each deduction is contained in ORC §3119.05.

The appropriate method for establishment of support obligations for parents with children by multiple partners has been a long-standing concern. For example, the first established support obligation is not revised when a subsequent support obligation concerning another child by a different partner is established. The second support obligation is reduced by the amount of the obligation from the first order. A third subsequent calculation is adjusted by the amount of the first two obligations, etc.

Two consequences usually result. If the noncustodial parent/obligor is the same individual on all three orders, it is very likely that the total support obligation this individual is ordered to pay will be in excess of a support order that would have resulted from a single calculation involving all children of the obligor. Likewise, the award for each subsequent custodial parent/obligee will be smaller than an order derived from the first calculation.

During 2013 Council deliberations, a motion was made to recommend to the Department that it undertake a study of methods used in other states to address the issue, with the assistance of the stakeholder community represented by the Guidelines Advisory Council. The Council members voted in favor of this motion unanimously.

The Department agreed with this Council recommendation and worked with county child support staff to study and research models being used in other states. A resolution to the issue was proposed in SB 262, where the amount of the credit for other children (children not subject to the order under consideration)



would be derived by using the parent's individual income and determining a standard income deduction for any parent who has a duty to support other children not subject to the current order. The parent's income would be used with the basic schedule to determine the amount of support for the total number of children the parent has the duty to support, and then the amount on the basic schedule would be divided by the total from the schedule to determine the amount that should be credited for each applicable child. This calculation would be used for parents that have support orders for other children and for parents that have other children in their household with a duty to support. By using this standard calculation as a deduction from income, over time it will even out the obligations for parents over multiple child support orders.

### **Child Care Cost Sharing Cap**

Given the choice and variable price of available child care, an upper limit for cost sharing should be established to avoid establishment of support obligations that are unreasonably high in relation to an individual's available income.

After the 2013 Guidelines Council, the Department worked with county child support staff to research and study the credit for child care costs in the guidelines. In the current statute, 3119.022, a parent receives credit for "[a]nnual child care expenses for children who are the subject of this order that are work-, employment training-, or education-related, as approved by the court or agency (deduct tax credit from annual cost, whether or not claimed)." These costs are then allocated between the parties based upon their income share.

After further research and deliberations, it was proposed in SB 262 that the language referencing "education-related" child care costs be removed from the current statute. It was also proposed that since the child care costs are paid by each parent according to their income share, there should also be a way to limit the amount of the responsibility of a low-income obligor when the costs for the chosen care are unreasonably high in relation to the available income of the obligor. Therefore, a cap is proposed for allowable child care expenses based on the Child Care Market Rate Survey that is completed by the Ohio Department of Job and Family Services, Office of Family Assistance, every two years. The rates in this study are calculated on weighted averages that include private slots available, publicly funded children enrolled, and types of services provided. Based on the study, it was determined that the highest statewide average for each age category would be an appropriate ceiling amount for the child care credit calculation.

### **Deviation Factors**

Existing factors used to deviate from presumptive support obligations should be clarified and simplified.

As indicated below in the discussion of the deviation study conducted for the 2017 Council, the Department recommends the adoption of the deviation adjustments proposed by the 2005, 2009, and 2013 Guidelines reviews. As discussed above, the Department also recommends the establishment of a new deviation requirement related to extended parenting time.

### ***Proposed Amendments***

§3119.23 The court may consider any of the following factors in determining whether to grant a deviation pursuant to section 3119.22 of the ORC:

(A) Special and unusual needs of the child or children, including needs arising from the physical or psychological condition of the child or children;

~~(B) Extraordinary obligations for minor children or obligations for handicapped children who are not stepchildren and who are not offspring from the marriage or relationship that is the basis of the immediate child support determination;~~

~~(C) Other court-ordered payments;~~

~~(D) Extended (C) Subject to the requirements of section 3119.231 of the ORC, extended parenting time or extraordinary costs associated with parenting time, provided that this division does not authorize and shall not be construed as authorizing any deviation from the schedule and the applicable worksheet, through the line establishing the actual annual obligation, or any escrowing, impoundment, or withholding of child support because of a denial of or interference with a right of parenting time granted by court order including extraordinary travel expenses when exchanging the child or children for parenting time;~~

~~(E) The obligor obtaining additional employment after a child support order is issued in order to support a second family;~~

~~(F) (D) The financial resources and the earning ability of the child or children;~~

~~(G) Disparity (E) The relative financial resources, including the disparity in income between parties or households; other assets; and the needs of each parent;~~

~~(H) (F) The obligee's income, if the obligee's gross income is equal to or less than one hundred per cent of the federal poverty level;~~

~~(G) Benefits that either parent receives from remarriage or sharing living expenses with another person;~~

~~(H) (H) The amount of federal, state, and local taxes actually paid or estimated to be paid by a parent or both of the parents;~~

~~(I) (I) Significant in-kind contributions from a parent, including, but not limited to, direct payment for lessons, sports equipment, schooling, or clothing;~~

~~(K) The relative financial resources, other assets and resources, and needs of each parent;~~

~~(L) (J) Extraordinary work-related expenses incurred by either parent;~~

~~(K)~~ The standard of living and circumstances of each parent and the standard of living the child would have enjoyed had the marriage continued or had the parents been married;

~~(M)~~ The physical and emotional condition and needs of the child;

~~(N)~~ ~~(L)~~ The need and capacity of the child for an education and the educational opportunities that would have been available to the child had the circumstances requiring a court child support order for support not arisen;

~~(O)~~ ~~(M)~~ The responsibility of each parent for the support of others, including support of a child or children with disabilities who are not subject to the support order;

~~(N)~~ Post-secondary educational expenses paid for by a parent for the parent's own child or children, regardless of whether the child or children are emancipated;

~~(O)~~ Costs incurred or reasonably anticipated to be incurred by the parents in compliance with court-ordered reunification efforts in child abuse, neglect, or dependency cases;

(P) Any other relevant factor.

~~The court may accept an agreement of the parents that assigns a monetary value to any of the factors and criteria listed in this section that are applicable to their situation.~~

If the court grants a deviation based on division (P) of this section, it shall specifically state in the order the facts that are the basis for the deviation.

### **Administrative Review of Court Ordered Deviations**

During an administrative review and adjustment of a child support order, the child support enforcement agency should assume that the grounds for any previously granted deviations are ongoing and do not require an adjustment. Parties wishing to object to the findings may appeal directly to the court.

### **2% Processing Charge**

Again in accordance with the 2013 Guidelines Report, the Department recommends that references to a processing charge on the child support worksheets should be removed to avoid confusion.

### **Removal of Deductions for Local Taxes Paid and for Work-Related Deductions**

These deductions should be removed as the deduction has a de minimus effect on the calculation of the support obligation and is more appropriately treated as a deviation from the support obligation.

The adjustments for local taxes paid and mandatory work-related deductions are usually nominal and rarely affect the guideline amount of support. The Department recommends that Lines 11 and 12 be removed from the child support worksheets and that section 3119.23 of the ORC be amended to list "extraordinary work-related expenditures" as a deviation factor, as noted in the proposed deviation amendments above.

## Post-Termination Arrears Payoff Orders

Current laws requiring an obligor to pay at least the amount of support ordered prior to termination of the order to liquidate arrears after termination should be revised to establish this requirement as a rebuttable presumption and allow the court or child support enforcement agency to reduce the arrears payment in appropriate circumstances.

Upon termination of a support order, current Ohio law (ORC §§ 3121.36 and 3123.14) requires that any arrearage liquidation obligation should be equal to the amount of the support obligation prior to termination. There are circumstances in which this requirement is unjust or inappropriate, but several Ohio appellate courts have determined that the language in the statutes does not allow for deviation from, or modification of, the ordered payment on arrears.

Draft language addressing this issue was developed and discussed by the 2013 Guidelines Council. Following the discussion of the proposed language, a vote was taken of the voting members present, and support for the draft language was unanimous.

The Department continues to support this recommendation from the 2013 Guidelines Council and recommends that ORC §§ 3121.36 and 3123.14 be amended in accordance with the draft language below.

§3121.36 The termination of a court support order or administrative child support order does not abate the power of any court or child support enforcement agency to collect any overdue and unpaid support or arrearage owed under the terminated support order or the power of the court to punish any person for a failure to comply with, or to pay any support as ordered in, the terminated support order. The termination does not abate the authority of the court or agency to issue any notice described in section [3121.03](#) of the Revised Code or to issue any applicable order as described in division (C) or (D) of section [3121.03](#) of the Revised Code to collect any overdue and unpaid support or arrearage owed under the terminated support order. If a notice is issued pursuant to section [3121.03](#) of the Revised Code to collect the overdue and unpaid support or arrearage, the amount withheld or deducted from the obligor's personal earnings, income, or accounts shall be rebuttably presumed to be at least equal to the amount that was withheld or deducted under the terminated child support order. A court or child support administrative agency administering the child support order may consider evidence of household expenditures, income variables, extraordinary health care issues, and other reasons for deviation from the presumed amount.

§3123.14 If a child support order is terminated for any reason, the obligor under the child support order is or was at any time in default under the support order and, after the termination of the order, the obligor owes an arrearage under the order, the obligee may make application to the child support enforcement agency that administered the child support order prior to its termination or had authority to administer the child support order to maintain any action or proceeding on behalf of the obligee to obtain a judgment, execution of a judgment through any available procedure, an order, or other relief. If a withholding or deduction notice is issued pursuant to section [3121.03](#) of the Revised Code to collect an arrearage, the amount withheld or

deducted from the obligor's personal earnings, income, or accounts shall be rebuttably presumed to be at least equal to the amount that was withheld or deducted under the terminated child support order. A court or child support enforcement agency administering the child support order may consider evidence of household expenditures, income variables, extraordinary health care issues, and any other reasons for deviation from the presumed amount.

## **Public Feedback**

The Department sought feedback from the public at Guidelines Council meetings, by publishing the time and location of the meetings and by providing an email account for public comment on the Department's website during the 2017 Child Support Guidelines Advisory Council. Although comments were provided via email, each concerned individual case circumstances and was handled accordingly.

One set of public comments was submitted by the Executive Committee of the National Parents Organization and was duly provided to the members of the 2017 Council<sup>18</sup> during the January 2017 meeting. Additionally, a member of that organization appeared at the meeting and was offered the opportunity to address the Council.

As mentioned previously, many of the 2017 Council stakeholders were significantly involved in the legislative activity associated with SB 262. This included proponent and opponent testimony given during Senate Subcommittee hearings, as well as two well-attended interested party meetings conducted by Senator Shannon Jones.

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<sup>18</sup> These documents are available by request using the process described here (type or cut and paste into your web browser):  
[jfs.ohio.gov/ocomm\\_root/publicRecordsRequests.stm](http://jfs.ohio.gov/ocomm_root/publicRecordsRequests.stm)

# Appendix A: Economic Study

# Appendix B: Draft Schedule

# Appendix C: Draft Sole/Shared Parenting Worksheet



# Appendix D: Draft Ohio Child Support Guidelines Manual

# Appendix E: Deviation Study