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October 24, 2017

Members of the Ohio Senate Judiciary Committee,

My name is Stuart Itani, and I am the Managing Attorney of the Domestic and Family Law Team at The Legal Aid Society of Columbus (“LASC”). LASC is a non-profit organization that provides free civil legal assistance to low-income individuals throughout Central Ohio. The following are ten proposed amendments to SB 125 amending the child support guidelines submitted on behalf of Legal Aid attorneys from the Ohio Legal Aid Family Law Task Force who have extensive experience providing legal services to both low-income obligors and obligees. These amendments are intended to lessen the impact of reduced child support orders on low-income children in Ohio:

LEGAL AID PROPOSED AMENDMENTS TO SB 125

AMENDMENT 1 – EVALUATION OF NEW SCHEDULE AND SELF-SUFFICIENCY RESERVE

Revise Section 3119.023-Page 41

Sec. 3119.023. (A) Two years after the effective date of this section, and at least once every four years thereafter, the department of job and family services shall review the basic child-support schedule, including the self-sufficiency reserve incorporated into the schedule, issued by the department pursuant to section 3119.021 of the Revised Code to determine whether child support orders issued in accordance with that schedule and the worksheets created under rules adopted under section 3119.022 of the Revised Code adequately provide for the needs of children who are subject to the child support orders; the impact on child poverty and family stability; the rate of compliance and default on child-support orders; and the amount of payments made and reasons for nonpayment. The department may consider the adequacy and appropriateness of the current schedule, whether there is substantial and permanent changes to household consumption and savings patterns, particularly those resulting in substantial and permanent changes in the per cent of total household expenditures on children, and whether there are been substantial and permanent changes to the federal and state income tax code other than inflationary adjustments to such things as the exemption amount and income tax brackets, and other factors when conducting its review. The review is in addition to, and independent of, any schedule update completed is set forth in section 3119.021 of the Revised Code. The department shall prepare a report of its review and include recommendations for statutory changes, and submit a copy of the report to both houses of the general assembly.

(B) For each review, the department shall establish a child support guideline advisory council to assist the department in the completion of its reviews and reports. Each council shall be composed of:

...





(4) Attorneys whose practice includes a significant numbers of domestic relations or juvenile court cases that involve the determination of child support, including at least one representative of Ohio legal aid programs representing low-income obligors and obliges

Explanation and request for clarification of R.C. 3119.023: Our focus is on the need for specific evidence based variables to discern whether the legislative changes achieve the goals sought and resolve the issues that were identified in the study and relied upon in drafting the proposed legislation. In that the Ohio Legal Aid programs' contention is that the hypothesis upon which this legislation is based has not been adequately vetted, waiting four years to evaluate the effectiveness of these changes is too long and would be harmful to children. An earlier assessment would enable the legislature to move quickly to correct or reverse a negative trend hurting families and impoverishing children. Two years is a sufficient amount of time to determine the impact on children, whether positive or negative. However, four years is a tantamount to a lifetime for children in poverty who experience the residual effects of such decisions.

Ohio Legal Aid programs represent parents who both receive and pay child support. We have seen the benefit to families who were lifted out of poverty because of the amount and consistency of the child support payment, as well as, the harm to disabled obligors where 65% of a social security check has been attached for a support obligation, leaving little to live on. The specific inclusion of a legal aid representative to the table offers a voice for low income obligors and obligees and provides a platform for these concerns to be addressed.

AMENDMENT 2 – INCREASE MINIMUM SUPPORT ORDER

Revise Section 3119.06- Pages 52-53

Except as otherwise provided in this section, in any action in which a court or a child support enforcement agency issues or modifies a child support order or in any other proceeding in which a court or agency determines the amount of child support to be paid pursuant to a child support order, the court or agency shall issue a minimum child support order requiring the obligor to pay a minimum of ~~fifty one hundred and fifty~~ fifty one hundred and fifty dollars a month for all the children subject to that order. The court or agency, in its discretion and in appropriate circumstances, may issue a minimum child support order requiring the obligor to pay of less than fifty one hundred and fifty dollars a month or issue an order not requiring the obligor to pay an any child support amount for support. . . .

AMENDMENT 3 – ADJUST PHASE-OUT PRECENTAGE

Revise Section 3119.021(B)(2)(c)- Pages 10-40

- (i) The higher resulting product of the following formulas:
- For one child: (guideline income – 116% of federal poverty level) x **.60** or sliding scale multiplier x (guideline income - \$8,400) + annual minimum support amount under section 3119.06 of the Revised Code;
 - For two children: (guideline income – 116% of federal poverty level) x **.62** or sliding scale multiplier x (guideline income - \$8,400) + annual minimum support amount under section 3119.06 of the Revised Code;
 - For three children: (guideline income – 116% of federal poverty level) x **.64** or sliding scale multiplier x (guideline income - \$8,400) + annual minimum support amount under section 3119.06 of the Revised Code;
 - For four children: (guideline income – 116% of federal poverty level) x **.66** or sliding scale multiplier x (guideline income - \$8,400) + annual minimum support amount under section 3119.06 of the Revised Code;



- e. For five children: (guideline income – 116% of federal poverty level) x **.68** or sliding scale multiplier x (guideline income - \$8,400) + annual minimum support amount under section 3119.06 of the Revised Code;
- f. For six children: (guideline income – 116% of federal poverty level) x **.70** or sliding scale multiplier x (guideline income - \$8,400) + annual minimum support amount under section 3119.06 of the Revised Code.

or sliding scale multiplier x (guideline income - \$8,400) + annual minimum support amount under section 2119.06 of the Revised Code . . .

(d) the sliding scale multipliers required for the formulas in divisions (B)(2)(b) and (c) of this section are as follows:

- (i) For one child: fifteen percent;
- (ii) For two children: sixteen percent;
- (iii) For three children: seventeen percent;
- (iv) For four children: eighteen percent;
- (v) For five children: nineteen percent;
- (vi) For six children: twenty percent.

Explanation: The Ohio Legal Aid community understands that the proposed guidelines were developed by a professional economist and do not dispute the underlying process used to develop the proposed table. However, despite the soundness of the overall methodology, reduced orders will create real hardship for many low-income parents, including the working poor, who are the primary caretakers of their family’s children; and this hardship would occur in situations where both the obligor and obligee are employed and child support is in fact being paid. We believe that a slight increase to the phase-out percentage in Sec. 3119.021(B)(2)(c) from .3 to .6 for one child, .62 for two children, .64 for three children, .66 for four children, .68 for five children, and .7 for six children would significantly benefit low-income children without undermining the overall structure of the new guidelines, and also more adequately reflect the additional costs to raising more than one child. This is because “[a self-sufficiency reserve] is not a function of strictly economic science, but is finally a state policy decision.” 2017 Child Support Guidelines Review Report to the General Assembly citing “Economic Data on the Cost of Raising Children and Updating the Ohio Child Support Schedule by Jane Venohr, PhD, Center for Policy Research, February 13, 2017 (revised)”. The phase out is to provide a gradual transition from the self-sufficiency reserve to the actual cost of raising a child in Rothbarth Betson numbers. Although the 30% figure was chosen because it “reflects the maximum incentive for an obligor to maintain employment in the official economy while providing support for his or her children,” we believe that there are other reasons that obligors are not maintaining employment in the official economy and that lowering child support orders to this degree will not further incentivize obligors to pay. The phase-out should be no higher than 70% because of taxes. Venohr, *supra*. This is why our suggested phase-out caps at 70% for six children.

Similarly, the Legal Aid community believes, based on the study done in May 2010 by Carl Formoso, PhD, and Liu Qinghua, PhD, through Management Accountability & Performance Statistics Office, Economic Services Administration, and the Washington State Department of Social and Health Services, entitled *Arrears Stratification In Washington State – Developing Operational Protocols in a Data Mining Environment*, funded by the U.S. Department of Health and Human Services, Office of Children, even the low income obligors can afford more than what is being ordered in the red section of the table. This study, along with a prior study conducted by Formoso, showed that obligors can, on average, afford child support obligations that are 20 percent of their annual income. Even the calculated child support orders proposed in the amendment above for Section 3109.06(B)(2)(d) are lower than 20 percent. Just as the self-sufficiency reserve is a policy decision, so too are the minimum orders and the sliding scale. Venohr, *supra*.



AMENDMENT 4 – ALIGN DEPENDENCY EXEMPTION WITH PROVISIONS OF ACA

Revise Paragraph one of Section 3119.82 [designating parent entitled to claim federal income tax deduction] as follows:

Whenever a court issues, or whenever it modifies, reviews, or otherwise reconsiders a court child support order, it shall designate which parent may claim the children who are the subject of the court child support order as dependents for federal income tax purposes as set forth in section 151 of the “Internal Revenue Code of 1986,” 100 Stat. 2085, 26 U.S.C 1 as amended. If the parties agree on which parent should claim the children as dependents, the court shall designate that parent as the parent who may claim the children. If the parties do not agree, it is rebuttably presumed that it is in the best interest of the children for the residential parent and legal custodian to be the parent to claim the children as dependents for federal income tax purposes. The court, in its order, may permit the parent who is not the residential parent and legal custodian to claim the children as dependents for federal income tax purposes only if the court determines that that this furthers the best interest of the children and, with respect to orders the court modifies, reviews, or reconsiders, the payments for child support are substantially current as ordered by the court for the year in which the children will be claimed as dependents. In cases in which the parents do not agree which parent may claim the children as dependents, the court shall consider, in making its determination, any net tax savings, the relative financial circumstances and needs of the parents and children, the amount of time the children spend with each parent, the eligibility of either or both parents for the federal earned income tax credit or other state or federal tax credit, and any other relevant factor concerning the best interest of the children.

Explanation: Currently, the *Patient Protection and Affordable Protection and Affordable Care Act of 2010 (ACA)*, 42 U.S.C. 18001 et. seq., provides that the dependency exemption is awarded to the parent providing health insurance coverage for the child. The reason for inclusion of this recommended language is analogous to the reason for the changes made to 3119.30 relative to the presumptive determination that the child support obligee is the appropriate parent to provide health insurance coverage. It is the contention of the Ohio Legal Aid programs that this amendment is necessary in order to align the statute with the ACA and eliminate a potentially unconstitutional provision and avoid confusion for courts and parents.

AMENDMENT 5 – HEALTH INSURANCE

Revise Section 3119.30(B)(2)-Pages 61-62

Subject to 3119.302(A)(2), if private health insurance coverage for the children is not available at a reasonable cost to the obligor or the obligee at the time the court or agency issues the order, the order shall include a requirement that the obligee obtain private health insurance coverage for the children not later than thirty days after it becomes available to the obligee at a reasonable cost, and to inform the child support enforcement agency when private health insurance coverage for the children has been obtained.

Request for clarification of Section 3119.30(E)-Page 64

This provision suggests that the entire amount of the premiums are deducted from gross annual income (minus subsidy, tax credit, cost sharing), and not just the amount representing the difference between single versus family coverage. Although this may be a potential benefit to obligee, there might also be problems, such as repetitive credit or reduction to obligor

AMENDMENT 6 – ADDITION OF DOMESTIC VIOLENCE DEVIATION FACTOR



Revise Section 3119.23 to include-Page 56

() The obligor's history of domestic violence against the obligee or children.

AMENDMENT 7 – AGENCY DETERMINATION OF DISABILITY

Revise Section 3119.05(I)(2) -Page 48

The parent is approved for social security disability insurance benefits because of a mental or physical disability, or the court or agency determines that the parent is unable to work based on medical documentation that includes a physician's diagnosis and a physician's opinion regarding the parent's mental or physical disability and inability to work.

AMENDMENT 8 - DELETE THE FOLLOWING NEW PROVISIONS:

1. **3119.051 [AUTOMATIC 10% PARENTING TIME REDUCTION FOR 90 DAYS OR MORE]- PAGES 51-52**
2. **3119.231 [ENHANCED PARENTING TIME DEVIATION FACTOR FOR 147 DAYS OR MORE]-PAGE 56**

Explanation: We concur with the Ohio Judicial Conference that any provision that creates an incentive to barter dollars for days will lead to increased litigation.

3. **Section 3119.05(O)(1)(d) [LIMITATIONS ON CHILD CARE EXPENSES]
Page 51**

Explanation: The majority of the low and middle-income families that we serve have substantial child care costs. Low-income parents who are employed or attending school face enormous financial strains from the high, and growing, cost of child care. Pursuant to O.A.C. 5101:2-16-30, child care assistance and subsidies (commonly known as "Title XX" benefits) are only initially available to individuals who are at, or below, 130% of Federal Poverty Levels. Therefore, numerous low-income and moderate income families bear the full expense of child care costs. These costs rise further when a parent has more than one child.

Senate Bill 125, however, would limit the amount of child care expenses for which an obligee would receive credit under the child support guidelines. Such a "cap" will reduce an obligor's child support order, even though the custodial parent is *actually* bearing those significant, child-related costs. Such expenses are analogous to health insurance premiums associated with private health insurance coverage for children, for which the paying parent receives full credit in the child support worksheet for the difference between individual and family coverage. Child care expenses should be given the same consideration.

While proponents of the legislation argue that the "cap" on child support costs is sufficiently high, the introduction of *any* limit creates a dangerous precedent. The proposed legislation would open the door for limiting consideration of *actual* expenses that are necessary for a parent to seek education and employment opportunities. The proposed legislation would artificially consider estimates from Job and Family Services. Such legislation does not comport with the goals of creating better economic opportunities for parents and children.

AMENDMENT 9 – EXTENSION OF OBLIGEE OWF TIME LIMITS

Revise Section 5107.18 by amending division (B) and adding a new division (I)

(B) An assistance group that has ceased to participate in Ohio works first pursuant to division (A) of this section for at least twenty-four months, whether consecutive or not, may reapply to participate in the program if good cause exists as determined by the county department of job and family services. Good cause shall include situations in



which the amount of child support ordered to be paid to the assistance group is lower than the amount would otherwise have been ordered because of the self-sufficiency reserve required by section 3119.021 (B) of the revised code, and may include losing employment, inability to find employment, divorce, domestic violence considerations, and unique personal circumstances. The assistance group must provide a county department of job and family services verification acceptable to the county department of whether any members of the assistance group had employment during the period the assistance group was not participating in Ohio works first and the amount and sources of the assistance group's income during that period. If a county department is satisfied that good cause exists for the assistance group to reapply to participate in Ohio works first, the assistance group may reapply. Except as provided in divisions (C), (D), and (F) of this section, the assistance group may not participate in Ohio Works first for more than twenty-four additional months. The time limit applies regardless of whether the twenty-four months are consecutive.

(I) For purposes of division (F) of this section, "hardship" shall include, without limitation, situations in which the amount of child support ordered to be paid to the assistance group is lower than would otherwise have been ordered because of the self-sufficiency reserve required by section of 3119.021 (B) of the Revised Code.

AMENDMENT 10 – PRIORITY FOR WIOA CAREER AND TRAINING SERVICES FOR LOW-INCOME OBLIGEEES AND OBLIGORS

Add Section 6301.20

(A) Priority for career and training services funded by and through the Workforce Innovation and Opportunity Act (WIOA) shall be given to a child support obligee whose child-support payments have been reduced because of the self-sufficiency reserve set forth in section 3119.021 of the Revised Code and the reduction results in the obligee meeting WIOA income eligibility standards set forth in Rule 5101:9-30-03 of the Administrative Code.

(B) Priority for career and training services funded by and through the Workforce Innovation and Opportunity Act (WIOA) shall be given to a child-support obligor who meets WIOA income eligibility standards set forth in Rule 5101:9-30-03 of the Administrative Code.

For additional information or answers to questions, please contact Graham Bowman at the Ohio Poverty Law Center at gbowman@ohiopoveritylaw.org, or 614-634-2356 (mobile).

Respectfully Submitted,

/s/ Stuart Y. Itani

Stuart Y. Itani
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On Behalf of Members of the Ohio Legal Aid Family Law Task Force:

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