



---

**Future of Florida's Families Committee  
Interim Project**

**Child Support Guidelines**

**The Honorable Bill Galvano, Chair  
February 2006**

# **Future of Florida's Families Committee Interim Project**

## **Child Support Guidelines**

**Staff Contact: Carol Preston, Legislative Analyst**  
**Staff Director: Lucretia Shaw Collins**

**THE FLORIDA HOUSE OF REPRESENTATIVES**  
**Interim Project Report**  
**February 2006**  
**Future of Florida's Families Committee**



**REVIEW OF FLORIDA'S CHILD SUPPORT GUIDELINES**

**SUMMARY**

During the 1970s and 1980s, federal law and regulations became increasingly focused on collecting unpaid child support, while remaining relatively silent on determining the amount of a child support obligation. Historically, the amount of a child support award was determined solely at the discretion of a trier of fact. Anecdotal reports indicated that allowing judges or other decisionmakers to subjectively determine the amount of child support obligations routinely resulted in judgments that were not adequate to provide for the needs of children and judgments that were considerably different in cases with similar circumstances.

In 1984, Congress recognized potential value in requiring states to implement guidelines to be used in the determination of the amount of the child support obligation. The federal Child Support Amendments of 1984 required states to establish non-binding child support guidelines either by law, or judicial or administrative action no later than October 1, 1987.<sup>1</sup> The Family Support Act of 1988 made state child support guidelines presumptive and required states to review their child support guidelines at least once every four years in order to ensure that their application results in child support award amounts that are appropriate. As a part of the review process, states must analyze case data related to the application of, and deviations from, the guidelines, and they must also consider economic data related to the cost of raising children.<sup>2</sup> With the exception of these two requirements, states have broad discretion and latitude in conducting guideline reviews.

The Florida House of Representatives has traditionally taken the lead in completing the reviews to meet the federal mandate. In spite of timely guideline reviews and some statutory changes, the Florida Legislature has not adjusted the guidelines schedule since 1993. Since the underlying data for the current schedule enacted in 1993 is the 1972-1973 Consumer Expenditure Survey, the schedule is considerably out of date. In addition, other provisions of the guidelines may no longer adequately reflect the needs and circumstances of Florida families.

---

<sup>1</sup> Child Support Enforcement Amendments of 1984, 42 U.S.C. 657-662 (1984).

<sup>2</sup> Family Support Act of 1988, 42 U.S.C. 654, 666-667 (1988).

## **BACKGROUND**

### **Federal Law Related to Child Support Guidelines Review**

Almost 10 years after the creation of the Child Support Enforcement Program in 1975, a report issued by the Senate Finance Committee noted that while federal law required states to have effective programs for establishing paternity, securing court orders for child support, and enforcing those orders, the adequacy or reasonableness of the amount of support ordered was left entirely to the discretion of the state and its courts. The child support enforcement program had unquestionably increased the number of support orders established and money collected. However, in many cases the amount of support ordered was lower than what was necessary to meet the needs of the child, while taking into consideration the ability of the absent parent to pay. In other cases awards were unrealistically high. Available data showed that in the limited number of states where guidelines were being voluntarily used, award levels tended to be higher than in those states where the amount of the award remained entirely discretionary with each judge.

As a result of information gathered by the Finance Committee, the Child Support Amendments of 1984 required states to adopt non-binding child support guidelines. The exact nature of the guidelines was to be determined by each state and were to be established by law or by a judicial conference or other mechanism considered appropriate in that state.<sup>3</sup> The Family Support Act of 1988 subsequently required those guidelines to be presumptive rather than advisory.<sup>4</sup> Almost all states, including Florida, complied with this mandate by the congressional deadline of October 13, 1989. In requiring the adoption and use of presumptive guidelines, the federal government had four primary objectives:

- to enhance the adequacy of child support orders;
- to improve the equity of orders by assuring more comparable treatment for cases with similar circumstances;
- to increase compliance as a result of the perceived fairness of child support awards; and
- to improve the efficiency of adjudicating child support orders.

In order to help ensure that state child support guidelines led to the determination of adequate awards, the Family Support Act also required states to review, and revise, if appropriate, their guidelines at least once every four years. The final implementing regulations related to the review process contained the following requirements:

As part of the review of a State's guidelines ... 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.<sup>5</sup>

---

<sup>3</sup> See Senate Report No. 98-387, 1984, p. 2436.

<sup>4</sup> The Family Support Act was enacted to restructure the basic program of public assistance for families through measures that emphasized the importance of parental responsibility, including the enforcement of child support, as well as expanded opportunities for education and training.

<sup>5</sup> See 45 CFR 302.56, Guidelines for setting child support awards.

## Florida Child Support Guidelines Reviews

In keeping with the requirements of the federal Child Support Enforcement Amendments of 1984, Florida adopted child support guidelines for the first time during the 1987 legislative session and the guidelines were given advisory status as permitted at that time by federal law.<sup>6</sup> The child support guidelines adopted by the 1987 Legislature were patterned after those already in use in New Jersey which were based on the Income Shares Model developed by Dr. Robert Williams.<sup>7</sup> The fundamental principle of the model is the premise that both parents have a shared duty to support their children based on their respective contribution to the combined family income. The model also assumes that a child should receive the same proportion of parental income that he or she would have received if the parents lived together in an intact household.<sup>8</sup>

In response to the requirements of the Family Support Act of 1988, Florida's guidelines became presumptive in 1989,<sup>9</sup> and the state reviews can be summarized as follows:

● **The 1992-1993 Review** – The House Committee on Judiciary conducted the first guidelines review as an interim project in 1992 and issued a report in December 1992. To satisfy the economic data requirement of the guidelines review, the Legislature contracted with Policy Studies, Inc. of Denver, Colorado, to update the Florida child support guidelines schedule. Policy Studies, Inc., provided the Florida Legislature with proposed support schedules and a table of support proportions upon which the schedules were built.<sup>10</sup> The new schedules were based on the Espenshade estimates<sup>11</sup> and adjusted for changes in the Consumer Price Index and the built-in self support reserve. In addition, the committee surveyed Florida case law and requested input from interested parties on the committee's child support mailing list.

As a result of this review process, the Florida Legislature enacted legislation that incorporated numerous changes to the child support guidelines. The child support guidelines schedule, while still using the Espenshade estimates based on the 1972-73 Consumer Expenditure Survey, was updated to reflect changes in the Consumer Price Index through 1992. The legislation also contained provisions to remedy problems

---

<sup>6</sup> See CS/SB 631 (Chapter 87-95, Laws of Florida).

<sup>7</sup> See Williams, R. G. (1987). Development of guidelines for child support orders, Advisory Panel recommendations and final report. Washington, D.C.: U.S. Department of Health and Human Services, Office of Child Support Enforcement.

<sup>8</sup> The schedule contained in the guidelines was based on economic estimates of child rearing expenditures derived by Thomas Espenshade by using national data on household expenditures from the 1972-1973 Consumer Expenditure Survey. A formula was established which provided that the adjusted net or gross income of both parents was to be combined and the support amount determined by reference to a table or schedule of support amounts. Each parent was then to be assessed his or her pro rata share of the support obligation. See Espenshade, T. J. (1984). Investing in Children: New Estimates of Parental Expenditures. Washington, D.C.: The Urban Institute Press.

<sup>9</sup> See CS/HB 258 (Chapter 89-183, Laws of Florida)

<sup>10</sup> See Letter with attachments to Edward Montanaro, Director, Joint Legislative Management Committee, January 20, 1993, on file with the House Future of Florida's Families Committee.

<sup>11</sup> See Espenshade, T. J. (1984). Investing in Children: New Estimates of Parental Expenditures. Washington, D.C.: The Urban Institute Press.

perceived as a result of reviewing applicable case law between 1989 and 1992, and addressed concerns raised by a variety of stakeholders in the child support process.<sup>12</sup>

● **The 1996-1997 Review** – The House Committee on Judiciary undertook the second child support guidelines review as an interim project in 1996. The Legislature again contracted with Policy Studies, Inc., to develop a new economic table for the Florida child support guidelines. The schedule that was proposed was developed using the economic findings of David Betson and using a methodology similar to the one used in the development of the guidelines that were in use at the time.<sup>13</sup> In addition, committee staff requested the assistance of the Department of Revenue in compiling case data on the application of guidelines and the amount, direction, and extent of deviations from guidelines. Circuit court judges, hearing officers and special masters hearing child support cases were also surveyed. The Committee on Family Law and Children issued a final report in March 1997, which stated:

Since the last review in 1993, Florida courts have rendered numerous decisions discussing the application of the guidelines. Many issues have been raised by these decisions. These issues include, among others, application of the guidelines when there are multiple families; application of the guidelines when there is substantial secondary parenting; and application of the guidelines when primary residence is split ... Many issues which have emerged from this review should be addressed by the Legislature. These concerns affect the well being of Florida's children and are a significant concern to the affected parties.<sup>14</sup>

During the 1997 legislative session a number of substantive changes were made to the support guidelines, but they did not include recommendations resulting from the 1996-1997 guidelines review. The legislation did, however, in preparation for the next review, contain a provision requiring the Office of Program Policy Analysis and Government Accountability (OPPAGA) to study and analyze case data, gathered through a statistically valid random sample of established child support enforcement orders on the application of, and deviations from, the existing child support guidelines.<sup>15</sup>

The case data analysis that was provided for in 1997 legislation was completed by OPPAGA. The final report was released in March 1998 and contained a number of findings and recommendations.<sup>16</sup> The House Committee on Family Law and Children introduced a Proposed Committee Bill (PCB) during the 1998 session that would have implemented the updated child support guidelines schedule prepared for Florida by Policy Studies, Inc., during the 1996-1997 review process. The bill died in committee.<sup>17</sup>

---

<sup>12</sup> See CS/HB 707, Chapter 93-208, Laws of Florida.

<sup>13</sup> Williams, R.G., Price, D.A., & Venohr, J.C. (1997). Economic Basis for Updated Child Support Schedule, State of Florida, Policy Studies, Inc.

<sup>14</sup> See Florida House of Representatives, Committee on Family Law and Children. (1997). Child Support Guidelines, Interim Project Report. (When the child support guidelines review was planned and initiated, the House Committee on Judiciary had jurisdiction over child support issues. At the time the review was completed, the House of Representatives had reorganized and jurisdiction of child support issues was placed with the House Committee on Family Law and Children).

<sup>15</sup> See HB 2031 (Chapter 97-170, Laws of Florida).

<sup>16</sup> See Florida Office of Program Policy Analysis and Government Accountability. (1998). Review of Adherence to Child Support Guidelines (Report No. 97-63).

<sup>17</sup> See PCB FLC 98-02.

● **The 2000-2001 Review** – As required by state law, OPPAGA issued a follow up to their 1998 report in December 2000. The report provided information related to actions taken relevant to the findings and recommendations of the 1998 report. It also outlined information regarding the need to update the child support guidelines schedule and compared options available for revising the economic data on which the schedule is based.

The House Committee on Family Law and Children introduced legislation during the 2000 legislative session that contained a number of proposed changes to the child support guidelines that were based on findings from the case data analyses done by OPPAGA, the updated schedules proposed by Policy Studies, Inc., in 1997, input from stakeholders, and the results of surveys sent to circuit court judges, hearing officers, and special masters. The bill died in committee and the guidelines schedule remained unchanged.<sup>18</sup>

● **The 2004-2006 Review** – In preparation for the current review, the Legislature allocated funds for an economic review of the state's child support guidelines.<sup>19</sup> In February 2003, the Legislature contracted with the Department of Economics at Florida State University. The analysis undertaken by the researchers consisted of three tasks:

- To update the existing Florida schedule of child support obligations based on the most recent data available on expenditures on children;
- To review three special issues relating to child support guidelines and to make recommendations for changes in Florida's treatment of these issues. The three issues are the treatment of low-income parents, provisions for visitation and alternative custody arrangements, and the treatment of prior and subsequent children; and
- To review alternative models for the development of child support guidelines and possibly recommend a different model for use in Florida.<sup>20</sup>

In addition, two issues that were not a part of the original scope of work but that came up during the course of the project were addressed: the treatment in the guidelines of the tax benefits associated with children, and the treatment of child care related expenses.

The final report was delivered to the Legislature in March 2004 and presentations were made on findings and recommendations to the Future of Florida's Families Committee during the 2004 and 2005 legislative sessions. Work continued during the interims in preparation for the development of proposed legislation for possible introduction during the 2006 legislative session.

---

<sup>18</sup> See HB 2421 (2000).

<sup>19</sup> See SB 2000 (2001) and HB 27E (2002).

<sup>20</sup> See Updating Florida's Schedule of Child Support Obligations, Final Report to the Florida Legislature, Department of Economics, Florida State University, March 5, 2004.

## FINDINGS

Florida continues to have one of the highest divorce rates in the country, with over half of the state's marriages ending in divorce. In addition, it has been estimated that at least half of the state's children will witness the breakup of a parent's marriage and live at least part of their childhood in a single-parent family. Of these, close to half will also see the breakup of a parent's second marriage.<sup>21</sup> Given the number of children whose parents are divorced, along with those children whose parents never married, it follows that the child support guidelines affect many of the state's children and families.<sup>22</sup>

The development of child support guidelines that were fair was not perceived as an easy task in the 1980s. At that time, there were several competing theories on the most appropriate way to determine the amount of child support obligations. All states were dealing with the reality that any set of guidelines must adequately contend with public policy issues such as how to calculate parental income; how to treat obligations to subsequent families; how to treat income from second spouses; whether to consider actual earnings or earning capacity; how to treat child care costs incurred by a working custodial parent; how to handle visitation time and expenses; how to handle cost of living differences within a state; and how to best apply guidelines at the upper and lower ends of the income scale.

Almost 20 years have elapsed since Florida first implemented child support guidelines. Economic conditions are different, newer guideline models have emerged, the structure and needs of families have changed, and yet it appears current provisions in the Florida guidelines still have not adequately addressed a number of these issues.

### Updating Florida's Child Support Guidelines Schedule

Florida's current schedule of child support guidelines is based on the income shares model. The income shares model determines the amount of child support obligations from estimated average expenditures on children in an intact family as a function of the combined income of the parents. The model was developed by Robert Williams from an analysis of expenditures on children by Thomas Espenshade.<sup>23</sup> Espenshade based his analysis on Ernst Engel's approach<sup>24</sup> to comparing living standards among families.

If the Legislature decides to retain the income shares model, the update of the Florida schedule proposed by Florida State University adheres closely to the methodology of the current schedule, except that it incorporates data from the 1999-2001 Consumer

---

<sup>21</sup> U.S. Census Bureau, National Center for Health Statistics, and Americans for Divorce Reform.

<sup>22</sup> The child support guidelines are required to be used for the determination of all child support obligations, whether initial awards or subsequent modifications, and whether the parents of a child are separating, divorcing, or have never married.

<sup>23</sup> See Espenshade, T. J. (1973). *The Cost of Children in Urban United States*. Westport, Connecticut: Greenwood Press and Espenshade, T. J. (1984). *Investing in Children: New Estimates of Parental Expenditures*. Washington, D.C.: The Urban Institute Press.

<sup>24</sup> The underlying assumption of the Engel approach is that families of a different size that spend equal proportions of their incomes on food are equally well-off. The Engel approach assumes that as total spending increases, the budget share or percent devoted to food should decrease, freeing up expenditures for other goods, and that as family size increases, the food share of the budget should also increase.



Expenditure Survey and applies the 2002 federal poverty guideline for a single-person household. In the proposed schedule, the basic support obligations are lower at most income levels than those in the current schedule, with differences being relatively small except at the higher income levels. However, the amounts in the proposed guidelines are greater than those in the existing guidelines for families at moderately low income levels with multiple children.

Using a representative sample of Florida child support cases, it was determined that for approximately 60% of the IV-D cases<sup>25</sup> in the sample the average child support payment changes very little from the current schedule. Only for the 20% of cases in the IV-D sample with the highest incomes would the average payment change substantially. Similarly, in 40% of the private cases there is almost no change in the average child support payment. For the top 20% the average payment decreases substantially, and the average payment for the middle 40% decreases slightly. Applying the proposed schedule of basic child support obligations to the actual distribution of the child support cases in Florida indicates that the effect of the proposed schedule would be minimal for most cases. Only the top 20% of cases ranked by income would see a significant change in the amount of child support payments. In those cases, payments would decrease substantially.<sup>26</sup>

### **Low-Income Parents**

Child support obligations that are derived from the income shares methodology typically include an adjustment for low-income parents to ensure that parents owing child support are not living in poverty due to the obligation to provide support. The low-income adjustment in Florida's current guidelines applies to only about one percent of cases and is, therefore, ineffective at preventing or mitigating poverty among low-income parents. This ineffectiveness is primarily a result of four features of the current guidelines:

- The use of combined income of both parents with the single person poverty threshold;
- The application of the low-income provisions to the basic obligation rather than to the total obligation;
- The failure to update the child support schedule on a regular basis to reflect increases in the poverty guideline; and
- The imputation of income.<sup>27</sup>

In addition, Florida's current schedule of child support obligations is regressive,<sup>28</sup> which penalizes noncustodial parents who earn additional income and, therefore, serves as a disincentive to work. Imposing a very high marginal rate on additional earnings also

---

<sup>25</sup> Families who either receive public assistance payments or request state assistance from the Department of Revenue with collecting and enforcing child support orders are classified as Title IV-D cases. Families who use private attorneys in child support cases and do not receive public assistance or request state assistance are referred to as private cases.

<sup>26</sup> See Updating Florida's Schedule of Child Support Obligations, Deliverable 1, Department of Economics, Florida State University, August 29, 2003.

<sup>27</sup> See Updating Florida's Schedule of Child Support Obligations, Deliverable 2, Department of Economics, Florida State University, October 31, 2003.

<sup>28</sup> The child support payment as a percentage of income is higher for parents with low incomes than it is for parents with higher incomes. As a percent of income, the child support payment gets smaller as income gets larger.

discourages compliance. In fact, the compliance rate among low-income noncustodial parents is very low, which in turn presents a barrier to the involvement of the noncustodial parent with the children.<sup>29</sup>

### **Visitation and Custody**

Florida law currently provides that in shared parenting arrangements where a child spends less than 40 percent of overnights per year with the noncustodial parent, the court may use that arrangement as grounds for an adjustment in the amount of the child support obligation. A shared parenting arrangement where the number of overnights spent with the noncustodial parent exceeds 40 percent requires the court to adjust the noncustodial parent's support obligation to reflect the additional costs of maintaining two households for the child.<sup>30</sup>

Failure to provide any adjustment where time spent with the noncustodial parent does not equal or exceed 40 percent may act as a disincentive for regular visitation with the noncustodial parent. Further, setting a threshold results in very large changes in the noncustodial parent's child support obligation in response to very small changes in the amount of visitation. For this reason, the existence of a threshold can be a source of excessive dispute and litigation between parents.

Currently, Florida's child support guidelines are silent regarding split custody arrangements.<sup>31</sup> As a result, determination of the amount of the basic support obligation in such cases is left to the discretion of the courts without any statutory guidance on dealing with this type of living arrangement. This gives rise to disparate treatment of these cases in different judicial districts, and can also be a source of dispute and litigation over living arrangements. Failure to provide explicitly for split custody may discourage parents from adopting this arrangement even when it is in the best interest of the child.<sup>32</sup>

### **Prior and Subsequent Children**

Florida's current child support guidelines permit a deduction from the noncustodial parent's net income for pre-existing child support orders if the support is actually paid. If such a deduction were not allowed, prior children would be unaffected and existing children would be only marginally impacted, but the child support obligation of the noncustodial parent would increase significantly. An alternative approach would be to prorate the child support obligation among all children, prior and existing. Prorating the obligation would have a significant adverse affect on prior children without greatly improving the status of existing children. Neither of the alternatives appears to be clearly superior to the current policy.<sup>33</sup>

---

<sup>29</sup> See Updating Florida's Schedule of Child Support Obligations, Deliverable 2, Department of Economics, Florida State University, October 31, 2003.

<sup>30</sup> See §61.30(1), Florida Statutes.

<sup>31</sup> Split custody occurs when parents have two or more children and each parent has residential custody of one or more of the children.

<sup>32</sup> See Updating Florida's Schedule of Child Support Obligations, Deliverable 2, Department of Economics, Florida State University, October 31, 2003.

<sup>33</sup> See Updating Florida's Schedule of Child Support Obligations, Deliverable 2, Department of Economics, Florida State University, October 31, 2003.

## **Alternative Child Support Guidelines Models**

The literature related to child support guidelines typically discusses six different models that can be used to determine the amount of child support obligations. Four of those models are currently being used by states, and the remaining two have not been adopted by any state.

When child support payments calculated using Florida's current schedule are compared with those determined by using four of the alternative models—the Melson formula, the hybrid model, the American Law Institute (ALI) formula, and the cost shares model – it appears that any of the models can produce child support awards that are both relatively high or low and that the choice of a model is less important than the specific provisions of the child support guidelines and the specific numbers or percentages used in the schedule. Similar results can be obtained from any model depending on the specific provisions of the guidelines as a whole.

While theoretically the income shares model produces an award that is reflective of the income of both parents, the actual child support payment is not very responsive to variations in the custodial parent's income. The alternative models often generate payment amounts that are more responsive to the custodial parent's income than are the payments generated by the income shares model. This limited degree of responsiveness inherent in the income shares model is accompanied by significant additional complexity and lack of transparency in the determination of child support payments. Including the custodial parent's income in the calculation of the child support payment complicates the determination of child support and creates odd anomalies and problems especially in the treatment of low-income parents. If it is important to make the noncustodial parent's payment dependent on the custodial parent's income, then the alternative models all provide greater responsiveness than the income shares model.<sup>34</sup>

## **Issues Warranting Further Consideration**

Finally, input from numerous stakeholders in the child support process, including, but not limited to, custodial and non-custodial parents, members of the judiciary, representatives from the Family Law Section of the Florida Bar, the American Academy of Matrimonial Lawyers, the former Commission on Responsible Fatherhood, the Commission on Marriage and Family Support Initiatives, the Office of the State Courts Administrator, Florida Legal Services, the Supreme Court Steering Committee on Families and Children in the Court, the Family Section of the Florida Conference of Circuit Judges, Visions of Manhood, and the Department of Revenue, have yielded the following issues that may or not need to be included in a review of the child support guidelines:

- The current statutes contain no basic information on the federal requirements, purposes, and the economic principles and assumptions that are either built in to or otherwise used in the determination of a child support award;

---

<sup>34</sup> Updating Florida's Schedule of Child Support Obligations, Final Report to the Florida Legislature, Department of Economics, Florida State University, March 5, 2004.

- There is no clear explanation of the meaning of, or definition of, the term “rebuttable presumption” used in s. 61.30, Florida Statutes;
- There is no explanation of child care costs that includes clarifying information about the use of federal child care tax credit and the limitations on its usage;
- The current statutes contain no explanation of the treatment of health insurance premiums, unreimbursed health care costs, and extraordinary medical costs. There is no indication that the guideline schedule includes \$250 per year per child of unreimbursed expenses related to health care;
- Florida law currently results in child support being terminated in some cases while a child is still in high school;
- The statutes contain no resolution of the “race to the courthouse” issue;
- There has been no recent discussion as to whether the statutes are the best placement for child support guidelines; and
- There is no statutory guidance related to the support guidelines review mandated by the federal government.

