

2001

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Jo Michelle Beld

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Beld, Jo Michelle (2001) "Improving Child Support Guidelines in Minnesota: The "Shared Responsibility" Model for the Determination of Child Support," *William Mitchell Law Review*: Vol. 28: Iss. 2, Article 9.

Available at: <http://open.mitchellhamline.edu/wmlr/vol28/iss2/9>

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IMPROVING CHILD SUPPORT GUIDELINES IN MINNESOTA: THE "SHARED RESPONSIBILITY" MODEL FOR THE DETERMINATION OF CHILD SUPPORT

Jo Michelle Beld[†]

I.	INTRODUCTION	792
II.	LEARNING FROM OTHER STATES: ALTERNATIVE MODELS FOR THE DETERMINATION OF CHILD SUPPORT	795
A.	<i>Seeking Simplicity: Wisconsin's Flat Percentage-of-Obligor-Income Model.....</i>	796
B.	<i>Attempting Accuracy: North Dakota's Varying Percentage-of-Obligor-Income Model.....</i>	800
C.	<i>Cultivating Consistency: Maryland's Simple Income-Shares Model</i>	803
D.	<i>Enhancing Equity: Delaware's Melson Formula Income-Shares Model</i>	807
III.	MINNESOTA'S CURRENT CHILD SUPPORT GUIDELINES: PROVISIONS AND PROBLEMS.....	812
A.	<i>Internal Inconsistencies and Convolut ed Calculations.....</i>	812
B.	<i>Additional Problems With Minnesota's Child Support Guidelines</i>	819
IV.	THE SHARED RESPONSIBILITY INCOME-SHARES GUIDELINES PROPOSAL: MEETING CHILDREN'S NEEDS IN BOTH HOUSEHOLDS	834
A.	<i>The Provisions of Shared Responsibility.....</i>	834
B.	<i>Comparing Outcomes under Shared Responsibility and Current</i>	

[†] Jo Michelle Beld, Ph.D., is Associate Professor of Political Science at St. Olaf College and the Child Support Guidelines Review Project Consultant for the Minnesota Department of Human Services Child Support Enforcement Division. This paper was prepared under contract with the Minnesota Department of Human Services. The author gratefully acknowledges the invaluable assistance of Robert Baker, William Mitchell Law Review editor, and Mary Golike, legal analyst in the Minnesota Department of Human Services Child Support Enforcement Division, in the preparation of the manuscript. The views expressed in this paper are those of the author and do not necessarily represent the official position of the Minnesota Department of Human Services or the Child Support Guidelines Review Advisory Task Force.

	<i>Guidelines</i>	845
V.	HOW SHARED RESPONSIBILITY RESOLVES MAJOR PROBLEMS WITH MINNESOTA'S CURRENT CHILD SUPPORT GUIDELINES.....	848
	A. <i>Reflecting the Cost of Raising Children</i>	848
	B. <i>Including Oblige Income in the Determination of Support</i>	853
	C. <i>Providing for Multiple Families</i>	854
	D. <i>Recognizing Parenting Time Expenses</i>	855
	E. <i>Establishing Affordable Orders</i>	857
VI.	CONCLUSION.....	860

I. INTRODUCTION

In 1983, Minnesota passed the first statewide child support guidelines statute in the United States.¹ The statute has accomplished many of its intended purposes, particularly with respect to the adequacy, consistency, and predictability of child support orders for Minnesota children living in separated families.² It is one of numerous examples of Minnesota's leadership in state child support policy.³

1. Act of June 9, 1983, ch. 308, § 17, 1983 Minn. Laws 1748, 1757-59, codified as amended at MINN. STAT. § 518.551 (1982) (current version at MINN. STAT. §§ 518.551, subd. 5 & 518.171 (1990 & Supp. 2001)); *see also* Moylan v. Moylan, 384 N.W.2d 859 (Minn. 1986) (applying MINN. STAT. § 518.551, subd. 5 (1984)); Susan A. Roehrich, *Making Ends Meet: Toward Fair Calculation of Child Support When Obligor Must Support Both Prior And Subsequent Children*, 20 WM. MITCHELL L. REV. 967, 976 (1994).

2. Ronald B. Sieloff, *Child Support Guidelines: The Statute and Its Problems*, 2 MINN. FAM. L.J. 17, 18 (1984). Sieloff identifies the following as the intended purposes of the 1983 guidelines statute:

(1) to generally increase the level of child support; (2) to bring some degree of uniformity of obligation and support to persons similarly situated; (3) to provide some predictability of financial obligation or support to persons contemplating dissolution or legal separation and to enable attorneys to more accurately advise clients as to the likely outcome of a dissolution or separation action as far as child support is concerned; (4) to eliminate the mystery to the public of how child support levels are determined by the courts; (5) to decrease public costs of aid to families with dependent children by collecting greater amounts from noncustodial parents.

Id.; *see also* Deverence v. Deverence, 363 N.W.2d 86, 89 (Minn. Ct. App. 1985) (citing the first two of Sieloff's five factors); Roehrich, *supra* note 1, at 977 (quoting Sieloff's five factors).

3. Minnesota passed its guidelines statute several years before all states were required by federal statute to adopt numeric formula guidelines for the

However, changes in the demographic, economic, and policy context of the guidelines statute have outstripped needed changes in the statute itself. While several provisions have been added or revised⁴ since the guidelines were first implemented,⁵ the key provisions and core assumptions of the guidelines have not been substantially altered.⁶ Minnesota sorely needs new child support guidelines, with provisions grounded in the economic literature on the costs of raising children, informed by over a decade of policy development in other states, and adjusted to the realities of parenting in two households.

The Shared Responsibility income-shares proposal for the determination of child support meets this need. The model was developed over a two-year period by a project team in the Minnesota Department of Human Services (MDHS), in the course of the state's quadrennial review of its child support guidelines.⁷ The MDHS project team conducted its research and policy

determination of child support orders. The federal Child Support Enforcement Amendments of 1984 required all states to adopt advisory guidelines based on numeric formulas by October 13, 1989, or risk losing federal funding. Pub. L. No. 98-378, 98 Stat. 1305 (1984) (codified at 42 U.S.C. § 667 (1984)).

4. The 1983 guidelines statute was amended in 1993 as follows: the income "floor" for the application of the guidelines was raised from \$400 net per month to \$550 net per month; the income "limit" was raised to \$5000 net per month, with periodic adjustment in accordance with changes in the Consumer Price Index; and the current statutory provisions for child care support in section 518.551, subd. 5(b) were added. See OFFICE OF CHILD SUPPORT ENFORCEMENT, MINN. DEP'T. OF HUMAN SERVICES, REPORT TO THE MINNESOTA LEGISLATURE ON THE MINNESOTA CHILD SUPPORT GUIDELINES 7 (January 1994) [hereinafter CHILD SUPPORT GUIDELINES].

5. The 1983 statute had an effective date of August 1983. Act of June 9, 1983, ch. 308, § 17, 1983 Minn. Laws 1748, 1757-591; Roehrich, *supra* note 1, at 976 n.67 (citing Act of June 9, 1983, ch. 308, § 17, 1983 Minn. Laws 1748, 1757-591, 1983).

6. As noted in a 1994 report to the Minnesota legislature by the Minnesota Department of Human Services:

Minnesota's guideline has changed little in its basic premise in the past decade. It remains based upon the same percentages of the income of the noncustodial parent. [Statutory] changes over time have primarily served to limit or define the net income available for use in the calculation of child support by excluding spousal income, most voluntary overtime income, and reasonable pension deductions.

CHILD SUPPORT GUIDELINES, *supra* note 4, at 7.

7. By federal statute, every state must review and, if appropriate, revise its child support guidelines at least once every four years. 45 C.F.R. § 302.56 (e) (2001). State statute assigns responsibility for the review to the Minnesota Department of Human Services. MINN. STAT. § 518.551, subd. 5 (c) (1990 & Supp. 2001).

development in close consultation with a broadly-representative advisory Task Force,⁸ supplemented by additional consultation with child support stakeholders around the state⁹ and extensive analysis of other states' guidelines. Unlike Minnesota's current guidelines, the proposed Shared Responsibility model is based explicitly on economic research estimating what Minnesota parents spend on children; incorporates lessons learned in other states; and accommodates the complexities of family life in the twenty-first century. Shared Responsibility is an informed and innovative effort to reconcile *what it costs to raise children* with *what separated parents can afford to spend*. If enacted into statute, it would improve the degree to which Minnesota's guidelines achieve the federally-

8. The Task Force was established by the Commissioner's Advisory Committee on Child Support Enforcement. Its active membership included approximately twenty individuals representing the private bar, counties, legal services, alternative dispute resolution, district court, child support magistrates, advocacy groups for both parents and children, county-level child support agencies, the state legislature, professional economists, and custodial and non-custodial parents. Members were drawn from rural as well as urban areas. The Task Force met approximately once every six weeks from December 1998 through April 2000. In its first year of work, it helped to set the project team's research agenda; reviewed the economic and case data gathered by the project team; analyzed guidelines in other states; and evaluated several alternative models for Minnesota. Once Shared Responsibility began to take shape, the Task Force provided feedback on every provision of the model. The Task Force also reviewed projected outcomes and assisted with data collection in selected counties. See JO MICHELLE BELD, CHILD SUPPORT GUIDELINES REVIEW ADVISORY TASK FORCE FINAL REPORT 1-2 (Minn. Dep't. of Human Services Child Support Enforcement Division, April 2001).

9. Members of the project team met periodically with child support and family law professionals from around the state, providing updates on the development of the model and seeking feedback on its strengths and weaknesses. They also consulted with other state staff in related programs affecting Minnesota families, such as the Minnesota Family Investment Program and the Child Care Assistance Program. In addition, selected project team and Task Force members served on a separate Medical Support Workgroup established in response to a directive from the 2000 legislative session, charged with making recommendations to improve the state medical support statutes, including but not limited to the numeric guidelines. A number of parents regularly observed Task Force meetings and provided written comments to members and state staff on both the current guidelines and the provisions of Shared Responsibility. Finally, the project team developed a partnership with the Center for Nutrition Policy and Promotion in the U.S. Department of Agriculture; CNPP staff economists adapted the USDA's annual estimates of parental spending on children to the specific provisions of Shared Responsibility. See MARK LINO, EXPENDITURES ON CHILDREN BY FAMILIES, 1999 ANNUAL REPORT, MISCELLANEOUS PUBLICATION NO. 1528-1999 (U.S. Dep't. of Agric., Center for Nutrition Policy and Promotion, 2000) available at <http://www.cnpp.usda.gov/Crc/Crc2000.pdf>.

specified goal of “determin[ing] appropriate child support award amounts.”¹⁰

This article will describe and defend the merits of the Shared Responsibility child support guidelines proposal. Part II summarizes the major guidelines models MDHS examined during the quadrennial review, using selected states to illustrate each approach. Part III describes the provisions of Minnesota’s current guidelines and identifies the major problems practitioners confront in attempting to apply them. Part IV describes the Shared Responsibility model in detail, providing the rationale and research support underlying each provision and comparing outcomes with outcomes under current guidelines for two hypothetical Minnesota families. Part V shows how Shared Responsibility resolves each of the problems identified in Part III.

II. LEARNING FROM OTHER STATES: ALTERNATIVE MODELS FOR THE DETERMINATION OF CHILD SUPPORT

The examination of guidelines models in other states serves two important functions in reviewing state child support guidelines. It can suggest criteria against which to evaluate a state’s current guidelines, and it can provide a wide array of specific statutory alternatives to consider in revising them. Minnesota’s guidelines review process benefited in both respects.

Below is a description of child support guidelines in four states. Two (Wisconsin and North Dakota) are percentage-of-obligor-income states which, as the name suggests, base support on the income of the obligor alone.¹¹ The remaining two (Maryland

10. 45 C.F.R § 302.56 (e). Interestingly, the parallel state statute includes no purpose statement; it simply requires the state to undertake the review and assigns the responsibility for the review to the Minnesota Department of Human Services. MINN. STAT. § 518.551, subd. 5(c).

11. LAURA W. MORGAN, CHILD SUPPORT GUIDELINES: INTERPRETATION AND APPLICATION 1-15 (1999); Robert G. Williams, *An Overview of Child Support Guidelines in the United States*, in CHILD SUPPORT GUIDELINES: THE NEXT GENERATION 5 (Margaret Campbell Haynes, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement eds., 1994). Williams uses the term “percentage-of-obligor-income,” whereas Morgan uses simply “percentage of income.” *Id.* However, many income-shares guidelines (*infra* note 12) are also based on income percentages; the percentages are simply applied to the parents’ *combined* incomes rather than to the income of the obligor alone. See ROBERT G. WILLIAMS, DEVELOPMENT OF GUIDELINES FOR CHILD SUPPORT ORDERS: ADVISORY PANEL RECOMMENDATIONS AND FINAL REPORT II-67 – II-70 (U.S. Dep’t. of Health and Human Services, Office of Child Support

and Delaware) represent different types of income-shares states, in which support is based on the combined incomes of both parents.¹² Each state includes several features actively considered¹³ by the MDHS project team and its advisory Task Force in reviewing Minnesota's current guidelines and in developing the Shared Responsibility proposal. Together, they also illustrate several criteria for the evaluation of state guidelines: simplicity; accuracy; consistency; and equity.¹⁴

A. *Seeking Simplicity: Wisconsin's Flat Percentage-of-obligor-income Model*

Wisconsin's guidelines exemplify both the attraction and the liabilities of simplicity in the determination of support. Wisconsin bases child support on a percentage of the obligor's gross income;¹⁵

Enforcement, September 1987). Therefore, to avoid potential confusion and to differentiate more clearly between the two models, this article uses Williams's terminology.

12. Williams, *supra* note 11, at II-67.

13. "Active consideration" did not always mean "positive assessment." As the remainder of this section will show, the examination of other states' guidelines often led the project team and Task Force to recommend *against* specific solutions to common guidelines issues.

14. These criteria were reflected in the guidelines values statement developed by the MDHS project team in consultation with its advisory Task Force. These values included the following: (1) *Child-centeredness* (the guidelines should give first priority to children's economic well-being); (2) *Conformity* (the guidelines must comply with relevant federal statutes and regulations); (3) *Equity* (the guidelines should distribute the economic obligation to support their children fairly to both parents, while allowing both parents to meet their own basic needs); (4) *Responsibility* (the guidelines should require parents to provide the best standard of living they can for their children); (5) *Consistency* (the guidelines should ensure that families in similar situations are treated similarly); (6) *Flexibility* (the guidelines should allow families in different situations to be treated differently and in a manner appropriate to their circumstances); and (7) *Efficiency* (the guidelines should sustain wise investment of public resources). BELD, *supra* note 8, at 4-5. The criteria of consistency and equity were explicitly included in the values statement. Accuracy is implied in the values of child-centeredness (accuracy is essential to the determination of children's economic well-being) and responsibility (accuracy assists in the evaluation of the standard of living a parent is able to provide for his or her children). Simplicity was not promoted by the project team or the Task Force for its own sake, but rather in support of the guidelines value of efficiency; simple guidelines are less expensive to administer.

15. Wisconsin shares with all other percentage-of-obligor-income states the assumption that the obligee spends a commensurate proportion of his or her income directly on the children. See MORGAN, *supra* note 11, at 1-21: "A Percentage of Income Model guideline does not consider the custodial parent's income; the standard assumes that each parent will expend the designated

the percentage varies with the number of children (ranging from 17% for one child to 34% for five or more children)¹⁶ but not with the income of the obligor. The process of determining child support in Wisconsin thus involves only two basic steps: (1) determining the obligor's gross monthly income base,¹⁷ and (2) multiplying the base by the relevant percentage.¹⁸ The cost of child care is not explicitly mentioned in the guidelines administrative rule. Instead, child care is listed as a statutorily-permissible deviation factor.¹⁹ An obligor may also be ordered to assume some or all of the cost of the children's health insurance and medical expenses not covered by insurance, in addition to the basic support amount determined by the percent-of-income standard.²⁰

But Wisconsin's relative simplicity comes at a price. First, the use of a flat percentage of income runs counter to the prevailing interpretation of the economic research literature concerning parental expenditures on children.²¹ Wisconsin's percentages are

proportion of income on the child, with the custodial parent's proportion spent directly." *Id.* The Wisconsin guideline does not directly specify the amount or proportion of income the obligee is assumed to spend on the child; it simply "expects that the custodial parent shares his or her income directly with the child". WIS. ADMIN. CODE ch. DWD 40, Preface (2001).

16. The exact percentages are: one child, 17%; two children, 23%; three children, 29%; four children, 31%; five or more children, 34%. WIS. ADMIN. CODE ch. DWD 40.03 (1)(a)-(e) (2001), available at www.Legis.state.wi.us/rsb/code/dwd/dwd040.pdf.

17. The monthly income base to which the relevant support percentage is applied is defined in WIS. ADMIN. CODE ch. DWD 40.02 (4) (2001). The base consists of the obligor's gross income as defined in WIS. ADMIN. CODE ch. DWD 40.02 (13) plus any imputed income as defined in WIS. ADMIN. CODE ch. DWD 40.02 (15). When the obligor has other legal obligations for child support, the relevant percentages are applied to an adjusted base, calculated by subtracting the amount of the obligation from the obligor's base. WIS. ADMIN. CODE ch. DWD 40.02 (2).

18. The resulting order may be expressed as either a dollar amount, a percentage of the income base, or a combination of the two. WIS. ADMIN. CODE ch. DWD 40.03 (5).

19. Judges may recognize child care costs through an upward deviation from the guidelines, by either increasing the dollar amount of the order or increasing the relevant percentage. WIS. STAT. § 767.25(1m) (1993 & Supp. 2001); WIS. DEP'T OF WORKFORCE DEVELOPMENT, CHILD SUPPORT GUIDELINES REVIEW 12 (February 12, 1999); see also WIS. ADMIN. CODE ch. DWD 40.03 (7).

20. WIS. STAT. § 767.25(1m).

21. There is some debate among economists about the degree to which expenditures on children as a percentage of family income vary with income levels. ANDREA H. BELLER & JOHN W. GRAHAM, SMALL CHANGE: THE ECONOMICS OF CHILD SUPPORT (Yale Univ. Press 1993). Beller and Graham review a number of studies estimating family expenditures on children using different models and

based on “national studies . . . which disclose the amount of income and disposable assets that parents use to raise their children.”²² The use of flat percentages reflects an empirical premise that the proportion of income parents spend on their children is roughly constant across income levels.²³ However, the majority of state guidelines reflect an alternative premise: that the proportion of income spent on children income is *inversely* related to the family’s income level; that is, that wealthier families spend a smaller share of their income on their children than poorer families do.²⁴ After a careful review of the economic literature,²⁵ both the project team

methodologies, and conclude that while “expenditures on children probably tend to decline as a proportion of income,” nevertheless “[t]he data are inconclusive as to whether [the] percentages [of family income spent on children] should be expected to remain constant or decline with increases in income, especially if a share of the savings is attributed to the children.” *Id.* at 208. However, Williams notes that the inverse relationship between level of income and percent of income spent on children is more apparent when those expenditures are defined in terms of current consumption:

As income increases, *total* family current consumption declines as a proportion of net (after-tax) income because non-current consumption spending increases with the level of household income. Non-current consumption spending includes savings (broadly defined), gifts, contributions, and personal insurance. Moreover, family current consumption declines even more as a proportion of gross (before tax) income because of the progressive federal and state income tax structure.

WILLIAMS, *supra* note 11, at II-26. Moreover, Williams argues convincingly that, for purposes of determining child support, it is more appropriate to include only current expenditure data in estimating family expenditures on children. If expenditures on children were defined to include non-current consumption (such as savings for higher education), child support orders would be based on in part on spending after children have reached the age of majority. *Id.* at II-27. He also notes that most economic estimates of family spending on children focus on household current consumption rather than including non-current consumption as well. *Id.* at II-27.

22. WIS. ADMIN. CODE ch. DWD 40, Preface.

23. MORGAN, *supra* note 11, at 1-21; *see infra* note 62 and accompanying text.

24. MORGAN, *supra* note 11, at 1-19. “The main distinguishing feature of the Income Shares Model is that it embodies the underlying economic assumption that as income increases, the proportion of income spent on child support decreases.” *Id.* at Table 1-3 at 1-14 – 1-15 (showing that a large majority of states use income-shares guidelines).

25. Federal regulations require guidelines reviews to include a review of the economic literature on the costs of raising children. 45 C.F.R. § 302.56 (h) (2001). For a detailed analysis of the economic literature reviewed during Minnesota’s 1998 guidelines review, see Jo Michelle Beld, *The Economic Basis of State Child Support Guidelines: The Merits of Using USDA Estimates of the Costs of Raising Children* (August 2001) (unpublished manuscript, on file with the author).

and the Task Force found the alternative premise more persuasive, and thus rejected the use of flat percentages to determine child support obligations.²⁶

Second, Wisconsin's guidelines do not insure a sufficient contribution by the obligor to child care and medical expenses. The established percentages of income ordered as child support do not adequately accommodate child care costs. Although such costs may serve as grounds for deviation, the court is not required to consider them in setting support.²⁷ Wisconsin's most recent guidelines review listed child care expenses as an issue warranting further research, because "for many, if not most custodial parents, child care costs alone would exceed the monthly child support payment that is received if the noncustodial parent's financial obligation is based solely upon use of the Percent of Income standard."²⁸ The percentages also presume that the obligor is paying for the children's medical insurance; there is no provision for increasing the percentages when the obligor is not ordered to provide coverage.²⁹ However, Wisconsin courts do not always assign responsibility for insurance coverage to the obligor.³⁰

The advantages of simplicity in Wisconsin's guidelines are thus offset by their questionable economic foundation and potential inaccuracies at the individual case level. Minnesota needs guidelines with more credible economic assumptions and more case-level accuracy.

26. Minn. Dep't of Human Services Guidelines Review Task Force minutes (October 18, 2000) (minutes).

27. WIS. STAT. § 767.25(1m) (1993 & Supp. 2001)

28. WIS. DEP'T OF WORKFORCE DEVELOPMENT, *supra* note 19, at 12.

29. WIS. ADMIN. CODE ch. DWD 40.02 (27). "Note: The [percentage] standard is based on national studies of the percentage of income used to support a child or children, with adjustment downward of those percentages to reflect costs incurred by the payer . . . to maintain health insurance for the child or children." *Id.*

30. A 1996 report prepared by the University of Wisconsin's Institute for Research on Poverty examining medical support in a sample of 1990-93 court cases showed that obligors are not always ordered to provide or pay for medical insurance. In some cases neither parent was ordered to provide insurance; in other cases the obligee was ordered to do so. Responsibility for insurance was more likely to be assigned to the parent who was employed and/or who had the higher income. See WIS. DEP'T OF WORKFORCE DEVELOPMENT, *supra* note 19, at 10 (citing Daniel Meyer & Judi Bartfeld, *Health Insurance Orders among Recent Child Support Cases in Wisconsin*, INSTITUTE FOR RESEARCH ON POVERTY 10 (1996)).

B. Attempting Accuracy: North Dakota's Varying Percentage-of-Obligor-Income Model

North Dakota's guidelines are based on more accurate economic assumptions than those in Wisconsin. However, other features of North Dakota's guidelines compromise this attempted accuracy and introduce additional inconsistencies.

North Dakota's child support guidelines, like Wisconsin's, are based solely on the income of the obligor. The percentages applied to the obligor's income for the determination of support vary, however, not simply with the number of children for whom support is being determined, but also with the income of the obligor. The *higher* the obligor's net income, the *lower* the applicable percentage for a given number of children.³¹ Larger dollar amounts are ordered at higher income levels, but these amounts represent smaller percentages of the obligor's income after controlling for the number of children.³² In this respect, North Dakota resembles the majority of other states despite being in the minority of states that base support on the income of the obligor alone.³³ North Dakota also differs from Wisconsin in that its

31. This is not immediately apparent in the process of calculating a North Dakota order for support because support is determined through the use of a dollar schedule that resembles a tax table rather than through the application of a percentage. N.D. ADMIN. CODE § 75-02-04.1-10 (2001). The schedule sets forth support amounts appropriate to different numbers of children for each level of obligor income at increments of \$100 per month. *Id.*

32. The following table shows the percentage of obligor income that is ordered as child support at selected income levels in North Dakota:

<i>Percentage of Obligor's Monthly Net Income Ordered as Child Support</i>			
<i>Obligor's Monthly Net Income</i>	<u>One Child</u>	<u>Two Children</u>	<u>Three Children</u>
\$1000	25.0	30.0	35.0
2000	20.6	29.1	34.5
3000	19.1	28.8	34.3
4000	18.3	28.7	34.2
5000	17.9	28.6	34.1

These figures are derived from the dollar amounts listed in N.D. ADMIN. CODE § 75-02-04.01 (2001).

33. Of the fifty states and the District of Columbia, ten are percentage-of-obligor-income states, thirty-eight are income shares states, and the remaining three include elements of both approaches. States which use the percentage-of-obligor-income model to calculate child support include Alaska, Arkansas, Georgia, Illinois, Mississippi, Nevada, North Dakota, Tennessee, Texas, and Wisconsin. See Alaska Civ. Rule 90.3, available at <http://www.ajc.state.ak.us/>

childsupport/indexnet.htm; In re: Administrative Order Number 10: Arkansas Child Support Guidelines, Supreme Court of Arkansas (1998), *available at* <http://courts.state.ar.us/courts/opinions/admin10.html>, *rev'd*, ARK. CODE ANN. § 9-12-312; GA. CODE ANN. § 19-6-15 (2000); 750 ILL. COMP. STAT. 5/505-505.3; MISS. CODE ANN. § 43-19-101; NEV. REV. STAT. §§ 125B.070-080; N.D. ADMIN. CODE §§75-02-04.1 -16; TENN. COMP. R. & REGS. DEP'T HUMAN SERVICES §§ 1240-2.4.01-04; TEX. FAM. CODE ANN. §§ 154.001-066; WIS. ADMIN. CODE ch. DWD 40, *available at* www.Legis.state.wi.us/rsb/code/dwd/dwd040.pdf, *rev'd*, WIS. STAT. § 46.247. States using the income-shares model (including states which use the Melson formula described in Section II.D.) include Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming. See ALA. ADMIN. CODE r. 32 (1993), *available at* <http://www.alacourt.org/case/child/rule32.htm>; Arizona Child Support Guidelines Adopted by the Arizona Supreme Court For Actions Filed After April 30, 2001, *available at* <http://www.supreme.state.az.us/dr/childsup/drguide.htm>, *rev'd*, AZIZ. REV. STAT. § 25-320; CAL. FAM. CODE §§ 4050-4076; COLO. REV. STAT. § 14-10-115; Connecticut Child Support and Arrearage Guidelines: Effective August 1, 1999, *available at* <http://www.jud.state.ct.us/external/news/childsupport.htm>, *rev'd*, CONN. GEN. STAT. § 46b-25b; Delaware Child Support Formula: The Melson Formula, Family Court of Delaware, *available at* <http://www2.lib.udel.edu/subj/stdc/resguide/melson.htm>; FLA. STAT. ch. 61.30; Hawaii Family Court Child Support Guidelines, November 1, 1998, *available at* <http://www.hawaii.gov/jud/childpp.htm>, *rev'd*, HAW. REV. STAT. § 576D-7; Idaho R. Civ. Pro. 6(c)(6), *available at* <http://www.webpak.net/~tca3sec/dguidelines.htm>; Indiana Child Support Rule and Guidelines, Adopted by the Indiana Supreme Court and in effect on July 1, 1998, *available at* <http://members.tripod.com/~indlf/98-CSR.G.htm>; Iowa Child Support Guideline, *available at* <http://www.judicial.state.ia.us/families/childsug.asp>; Administrative Order Number 128 Regarding 1998 Kansas Child Support Guidelines, *available at* <http://www.kscourts.org/ctruls/csintr.htm>, *rev'd* KAN. STAT. ANN. § 20-165; KY. REV. STAT. ANN. §§ 403.210-213; LA. REV. STAT. ANN. §§ 9:315-315.14; ME. REV. STAT. ANN. tit. 19-A, §§ 2001 -2010; MD. CODE ANN., FAM. LAW §§ 12-201-204; Michigan Child Support Formula Manual 2001, *available at* <http://www.Supremecourt.state.mi.us/courtdata/friend>, *rev'd* MICH. COMP. LAWS § 552.15; In re: Civil Procedure Form Number 14, Supreme Court of Missouri, March 31, 1998, *available at* <http://www.osca.state.mo.us/sup/index.nsf/d45a7635d4bfd8f8625662000632638/623e7272c71651cf862565ed00483442?OpenDocument>; MONT. ADMIN. R. 37.62.101-148; Nebraska Child Support Guideline, *available at* <http://court.nol.org/rules/childsupp.htm>, *rev'd* NEB. REV. STAT. § 42-364.16; N.H. REV. STAT. ANN. §§ 458-C:1-7; N.J. Rule 5.6A Child Support Guidelines, *available at* <http://www.judiciary.state.nj.us/csguide/index.htm>, *rev'd* N.J. STAT. ANN. § 2A:17-56.9A; N.M. STAT. ANN. §§ 40-4-11.1-6; N.Y. DOM. REL. LAW § 240(1-b); North Carolina Child Support Guidelines, October 1, 1998, *available at* http://www.supportguidelines.com/glines/nc_cs.html; OHIO REV. CODE ANN. §§ 3113.215; OKLA. STAT. tit. 43, §§ 118-120; OR. ADMIN. R. 137-50-320 -490; PA. R. CIV. PRO. 1910.16-1 -5; Rhode Island Family Court Administrative Order 97-8 Re: Rhode Island Family Court Child Support Formula and Guidelines, *available at* http://www.supportguidelines.com/glines/rics_order.html; S.C. SOC. SERV. REG. 114-4710-4750; S.D. Codified Laws §§ 25-7-6.1-19; UTAH CODE ANN. §§ 78-45-7-

guideline percentages are applied to the obligor's *net* income,³⁴ rather than gross.³⁵

Like Wisconsin, North Dakota lists employment- or education-related child care costs as a deviation factor.³⁶ Health care expenses, however, are treated differently in the two states. In North Dakota, an obligor's payments for the children's portion of a health insurance premium and for other medical expenses incurred for the children are deducted from the obligor's income before the application of the dollar schedule.³⁷ If the obligor is making no such payments, no income deduction is taken.

North Dakota's guidelines achieve more accuracy than Wisconsin's in two respects: the economic premise that spending on children as a percentage of income decreases as income increases, and the proviso that the income deduction for medical insurance is only permitted when the obligor is actually paying for the insurance. At the same time, however, the accuracy of North Dakota's guidelines is compromised in several other respects. First, the economic estimates upon which North Dakota's guidelines are based reflect spending on children by two-parent families, not by single parents.³⁸ To ensure that orders for support comport more

7.19; VT. STATE ANN. tit. 15, §§ 653-657; VA. CODE ANN. §§ 20-108.1-2; WASH. REV. CODE §§ 26.19.001-110; W. VA. CODE §§ 48A-1A-1 & 48A-1B-1; WYO. STAT. ANN. §§ 20-2-301-315. The remaining three states, District of Columbia, Massachusetts, and Minnesota, combine elements of both approaches in their guidelines. See D.C. CODE ANN. § 16-916.1 (1998); Massachusetts Child Support Guidelines, available at http://www.cse.state.ma.us/publications/csg_guide.htm, *rev'd* MASS. GEN. LAWS ch. 119, § 28; MINN. STAT. § 518.551.

34. For purposes of child support, net income in North Dakota is defined as the obligor's gross income minus federal, state, and local taxes; FICA; the cost to the obligor of medical insurance for the children of the action; payments made by the obligor for other actual medical expenses for the children of the action; mandatory union dues; mandatory retirement contributions; and unreimbursed mandatory employee expenses. N.D. ADMIN. CODE § 75-02-04.1-01.7 (2001).

35. Twenty-four other states base child support on net income, although the deductions used to arrive at net vary considerably. MORGAN, *supra* note 11, at Appendix B. While approximately half the states overall rely on net income, net income is used seven of the ten strictly percentage-of-obligor-income states. *Id.*

36. N.D. ADMIN. CODE § 75-02-04.1-09.2.f (2001).

37. N.D. ADMIN. CODE § 75-02-04.1-01.7.d. & e (2001). The child's share of a health insurance premium is determined by dividing the total premium by the number of persons covered by the premium and multiplying the result by the number of children for whom support is being determined. N.D. ADMIN. CODE § 75-02-04.1-01.7.d (2001).

38. North Dakota's support guidelines are based on economic estimates prepared in the mid-1980s by Thomas J. Espenshade. North Dakota Department of Human Services, Summary of Comments Received in Regard to Proposed

closely with these economic estimates, the combined incomes of both parents should be used to determine support amounts. Second, the treatment of child care costs as a discretionary factor for deviation from the orders means that orders for families which incur child care expenses may not fully reflect these families' actual expenditures on their children.

North Dakota's guidelines may also result in inconsistent orders for similarly situated families. First, the use of net income may introduce inconsistencies in the determination of support.³⁹ Second, the relegation of child care costs to a deviation factor means that support orders may vary greatly for families with similar child care expenses. Minnesota needs guidelines without these liabilities.

C. *Cultivating Consistency: Maryland's Simple Income-Shares Model*

Unlike the percentage-of-obligor-income guidelines in effect in Wisconsin and North Dakota, Maryland's child support guidelines include the income of the obligee in the determination of support.⁴⁰ Moreover, they account for the actual expenditures of each parent for medical insurance and child care. Consequently, Maryland's guidelines are more likely to promote

Amendments to N.D. Admin. Code § 75-02-04.1, 10 (June 14, 1999). The sample of families on which Espenshade's estimates were based included only husband-wife households. See THOMAS J. ESPENSHADE, *INVESTING IN CHILDREN: NEW ESTIMATES OF PARENTAL EXPENDITURES* 19 (Urban Institute Press 1984).

39. Proponents of net income guidelines argue that basing child support on net income is more accurate because:

it more accurately reflects the actual amount of income available to the obligor for payment of obligations. Two people with the same gross income could have completely different net incomes, depending upon their tax deductions and mandatory payroll deductions. Also, different levels of local income taxes can affect the amount of money available to a party.

L. Gold-Bikin & L.A. Hammond, *Determination of Income*, in CHILD SUPPORT GUIDELINES: THE NEXT GENERATION 33 (M. C. Haynes ed., 1994). However, Williams argues persuasively that the process of determining net income can introduce numerous inconsistencies. He specifically identifies mandatory payroll deductions, which are included in the list of deductions used to arrive at net income in North Dakota, as likely to introduce the potential for error and inequity. Parents making voluntary payments for employment-related expenses like union dues and retirement contributions cannot deduct them from income. See Williams, *supra* note 11, at II-41 and II-43; MORGAN, *supra* note 11, at 2-13.

40. MORGAN, *supra* note 11, at C-6. Morgan uses Maryland's guidelines to illustrate common principles and provisions of simple income-shares guidelines in her Appendix C: Sample Child Support Guidelines. *Id.*

consistent orders for families with similar resources and expenses. Additionally, this consistency does not require complexity in the calculations; Maryland's support worksheet is only a single page.⁴¹

Maryland's guidelines, like those of just over half of all simple income-shares states, are based on gross income after a minimal number of deductions.^{42, 43} The process of calculating support involves the following steps, common to most simple income-shares states:⁴⁴

1. *Each parent's percentage of their combined adjusted gross income is determined.*⁴⁵
2. *The parents' combined basic support obligation is determined from a Schedule of Basic Child Support Obligations.*⁴⁶
3. *Each parent's share of the basic support obligation is determined by multiplying the parent's percentage of their combined income (Step 1) by their combined basic support obligation (Step 2).*⁴⁷

The Schedule of Basic Child Support Obligations incorporated in Maryland's guidelines is based upon economic research conducted in the mid-1980s estimating the proportion of family income spent on children in two-parent households, periodically

41. The Maryland child support worksheet is available online at <http://www.dhr.state.md.us/csea/worksheet.htm>.

42. Deductions from gross income are permitted only for ordinary and necessary business expenses if the parent is self-employed. MD. CODE ANN., FAM. LAW § 12-201(c)(2) (2000). These deductions include preexisting child support obligations, alimony or maintenance obligations actually being paid by the parent and health insurance premiums being paid by the parent for the children of the action. MD. CODE ANN., FAM. LAW §§ 12-201(d)(1-3) (2000).

43. All states, even those characterized as "gross income" states, permit some adjustments to income before the application of the state's guidelines schedule or formula. MORGAN, *supra* note 11, Appendix B. The most frequent deduction from income, even in "gross income" states, is for other child support and/or spousal maintenance orders. MORGAN, *supra* note 11, at 2-53. In this article, states that permit deductions for federal and state taxes are considered "net income" states; those that do not permit such deductions are considered "gross income" states.

44. MORGAN, *supra* note 11, at 1-18.

45. Each parent's individual adjusted gross monthly income is divided by the parents' combined adjusted gross monthly income. MD. CODE ANN., FAM. LAW § 12-204(a)(1) (2000). See also MARYLAND DEPARTMENT OF HUMAN RESOURCES, MARYLAND ONLINE CHILD SUPPORT WORKSHEET, Line 3, at <http://www.dhr.state.md.us/csea/worksheet.htm>.

46. MD. CODE ANN., FAM. LAW § 12-204(e) (2000). The Schedule reports a specific dollar amount based on \$100 increments of combined adjusted gross monthly income and the number of children for whom support is being determined. *Id.*

47. MD. CODE ANN., FAM. LAW § 12-204(a) (2000).

updated to reflect changes in the cost of living.⁴⁸ As is the case in North Dakota, the percentages underlying Maryland's Schedule of Basic Child Support Obligations decline as the parents' combined income increases. This puts Maryland squarely in the camp of states presuming that the relationship between family income and proportion of income spent on children is inverse rather than constant.

But a child support order in Maryland includes more than the obligor's proportionate share of basic support. It also includes a child care component. Work-related child care expenses for the children of the action are shared between the parents, using the same percentage of combined parental income used to apportion each parent's share of the basic support obligation.⁴⁹ The resulting amount is added to the parents' combined basic support, obligation calculated as described above. In this regard, Maryland is among the majority of states (31) which add the obligor's share of child care expenses to the obligor's basic support obligation.⁵⁰

Children's medical expenses are accounted for in a Maryland child support order in several ways, depending on the type of expense. The cost of the children's health insurance premium is deducted from the income of the parent who pays for it.⁵¹ Ordinary medical expenses (i.e., uninsured expenses of less than \$100 for a single illness or condition) may be incurred by either parent with no impact on the order for support.⁵² Extraordinary medical expenses⁵³ are pro-rated between the parents in proportion

48. Email from Jane Venohr, Policy Studies Inc. to Jo Beld (August 22, 2000) (on file with author) (explaining that Maryland's Schedule of Basic Support was developed by PSI using estimates of child-rearing costs developed by Espenshade); *see also* Espenshade, *supra* note 38.

49. MD. CODE ANN., FAM. LAW § 12-201 (g)(1) (2000).

50. MORGAN, *supra* note 11, at Appendix B.

51. MD. CODE ANN., FAM. LAW § 12-201(d)(3) (2000). The statute states that the "actual cost of providing health insurance coverage for a child for whom the parents are jointly and severally responsible" may be deducted. *Id.* The worksheet operationalizes this provision to permit deduction of the entire health insurance premium if the child is included in the premium. *See* MARYLAND DEPARTMENT OF HUMAN RESOURCES, MARYLAND ONLINE CHILD SUPPORT WORKSHEET, at <http://www.dhr.state.md.us/csea/worksheet.htm>.

52. Ordinary medical expenses are not explicitly defined or apportioned in Maryland's guidelines but can be inferred from the statutory definition of extraordinary medical expenses. *See infra* note 53.

53. Extraordinary medical expenses are defined as uninsured, reasonable, and necessary medical expenses over \$100 for a single illness or condition. MD. CODE ANN., FAM. LAW §§ 12-201(h)(1)-(2) (2000).

to each parent's share of combined income, and are added to the parents' combined obligation for basic support and work-related child care expenses.⁵⁴

The core of an income-shares order in Maryland thus consists of the obligor's share of basic support, child care expenses, and selected health care expenses, with that share determined by the obligor's percentage of the parents' combined adjusted gross income.⁵⁵ Maryland's guidelines achieve greater accuracy than North Dakota's because they use two-parent incomes as well as two-parent expenditure estimates to determine basic support. They also achieve more consistency in that they base support on gross income; include actual expenditures for child care and medical care; and apportion different kinds of child costs in the same way.

Unfortunately, Maryland's guidelines have some significant shortcomings with respect to low-income parents. First, they may not make sufficient provision for obligors with limited ability to pay. Obligor with near-poverty level incomes, paired with obligees with little or no income, may pay support amounts which put them below the federal poverty guideline for a one-person household.⁵⁶ Moreover, there are no provisions establishing consistent limits on the amount of child care costs which could be added to the parents' combined basic support obligation; consequently, a low-income obligor could be required to pay child care costs in addition to his or her share of basic support.⁵⁷

Second, child care and medical support in Maryland are not determined separately from basic support. Instead, child care expenses and extraordinary medical expenses are added to the

54. MD. CODE ANN., FAM. LAW § 12-201(h) (2000).

55. MD. CODE ANN., FAM. LAW § 12-204(i) (2000). In addition to basic support, child care expenses, and extraordinary medical expenses, Maryland's child support guidelines include a provision permitting (but not requiring) the pro-rating of school and transportation expenses between the parents, using the same percentage of combined income used to apportion the other components of child support. *Id.*

56. For example, an obligor with an "adjusted actual income" (gross income after allowable deductions) of \$800 per month (112% of the federal poverty guideline for a one-person household), paired with an obligee with no income, would pay \$170 for one child in basic support alone. MD. CODE ANN., FAM. LAW § 12-204(e) (2000). The obligor's remaining income after payment of support would be only \$630, or 88% of the federal poverty guideline.

57. MD. CODE ANN., FAM. LAW § 12-204 (g)(2)(i) (2000). The court may apportion an amount other than the family's actual expenses for child care if the court determines that apportioning the actual expenses would not be in the best interests of the child. *Id.*

parents' combined basic child support obligation, and the total amount is then apportioned between the parents.⁵⁸ The single dollar amount ordered is intended to cover the obligor's share of all types of expenditures on children.⁵⁹ This method would complicate assignment of support in public assistance cases in states like Minnesota, where different types of support (basic support, child care support, and medical support) are assigned to different state funds, depending on the type of public assistance the obligee is receiving.⁶⁰ Minnesota needs guidelines with the accuracy, consistency, and relative simplicity of Maryland's guidelines, but with more equity for low-income parents and more adaptability for purposes of assignment.

D. Enhancing Equity: Delaware's Melson Formula Income-Shares Model

A second type of income-shares model is known as the "Melson formula" model, so-called because it was developed by Judge Elwood F. Melson of the Delaware Family Court.⁶¹ The Melson approach, like the simple income-shares approach, takes the incomes of both parents into account in setting support. The difference between the two approaches is that the Melson model distinguishes between "primary" (essential) needs, and secondary expenses (those appropriate to a higher standard of living), not only for the children but for the parents as well. Each parent's share of responsibility for supporting the children is determined only after a "primary support allowance" has been subtracted from his or her income, to ensure that each parent has enough income to meet his or her own basic needs in addition to paying child support. Consequently, there are more steps involved in determining a Melson-model support order.

In Delaware, a child support order is calculated as follows:

1. *Each parent's percentage of their combined net income available for child support is calculated.* This determination involves three

58. MD. CODE ANN., FAM. LAW §12-204(h) (2000).

59. See MARYLAND DEPARTMENT OF HUMAN RESOURCES, MARYLAND ONLINE CHILD SUPPORT WORKSHEET, at <http://www.dhr.state.md.us/csea/worksheet.htm>.

60. MINN. STAT. § 256.741, subd. 1-2 (2000). Collections for child care support are specifically assigned to the state's fund for child care assistance. MINN. STAT. § 256.741, subd. 4 (2000).

61. MORGAN, *supra* note 11, at 1-23. Judge Melson's formula was "fully explained and adopted in *Dalton v. Clanton*, 559 A.2d 1197 (Del. 1989)." *Id.* at 1-23 – 1-24; see *infra* note 71 and accompanying text.

steps:

- a. *Each parent's net monthly income is determined.*⁶²
 - b. *A "self-support allowance" of \$750 per month⁶³ is subtracted from each parent's net income.*⁶⁴
 - c. *Each parent's share of the resulting "total available net income"⁶⁵ is then calculated. This percentage is used to determine each parent's share of the various components of the child support obligation.*
2. *A "primary support obligation" for the children is determined and pro-rated between the parents in proportion to each parent's percentage of their total available net income. The primary support obligation includes three components: a fixed "primary support allowance" appropriate to the number of children for whom support is being determined;⁶⁶ the*

62. The determination of net income is similar to the way net income is determined under Minnesota's current guidelines. Subtracted from the parent's monthly gross earned income are federal, state, and local taxes; FICA; payments for medical insurance; mandatory retirement and union dues; retirement pension of up to 3% of income; and payments for court-ordered child support or spousal maintenance. DE. FAM. CT. CIV. R. 52(c); Form 509 App. I (2001), *available at* <http://courts.state.de.us/family/509r98.PDF>.

63. The self-support allowance was increased from \$620 to \$750 per month as a result of Delaware's 1998 guidelines review. The increase was based on findings from the National Research Council's Panel on Poverty and Family Assistance. NATIONAL RESEARCH COUNCIL'S PANEL ON POVERTY AND FAMILY ASSISTANCE, MEASURING POVERTY: A NEW APPROACH (1996) [hereinafter MEASURING POVERTY: A NEW APPROACH]; DELAWARE FAMILY COURT JUDICIARY, DELAWARE CHILD SUPPORT FORMULA: EVALUATION AND UPDATE 2 (1998) [hereinafter EVALUATION AND UPDATE]. The 1998 review also notes that the increased allowance of \$750 per month:

is comparable to \$740, the net monthly income of a person earning the prevailing minimum wage of \$5.15 per hour for a 40-hour week, and recognizes that the minimum wage will increase during the next four years, before the guidelines undergo the next review. A self-support allowance of \$750 is also supported by a comparison of the increase in the minimum wage between 1994 and the present of 21%. A 21% increase to the present self-support allowance of \$620 also manifests \$750.

EVALUATION AND UPDATE, *supra*, at 7.

64. DE. FAM. CT. CIV. R. 52(c), Form 509 I (2001). This is the unique feature of the determination of parental income in the Melson model. The underlying principle of this step is that a parent cannot be expected to support a child unless the parent is able to meet his or her own basic needs first. DE. FAM. CT. CIV. R. Form 509 Rev. 9/98, *Instructions for Child Support Calculation, Preface* ("Each parent is entitled to keep a minimum amount of income for their basic needs.").

65. Delaware child support worksheet, Line 7. DE. FAM. CT. CIV. R. Form 509 Rev. 9/98 *available at* <http://courts.state.de.us/family/509r98.PDF>, *reprinted in* MORGAN, *supra* note 11, at B-61.

monthly cost of work-related child care;⁶⁷ and the monthly cost of any special needs of the children.⁶⁸

3. An additional "standard of living adjustment" amount is determined for each parent and added to each parent's share of the primary support obligation.⁶⁹

Provisions for child care and medical expenses in Delaware are very similar to those in Maryland. Work-related child care costs in Delaware are part of the primary support obligation, and as such are pro-rated between the parents in proportion to each parent's percentage of their combined income.⁷⁰ Health insurance premiums are deducted from income,⁷¹ while ordinary medical

66. DE. FAM. CT. CIV. R. Form 509 Rev. 9/98. The dollar amounts of the primary support allowance are as follows: \$310 for one child, \$575 for two, \$815 for three, and an additional \$200 for each additional child. *Id.* These amounts represent an increase from the previous primary support allowances for the children of the action, based on Delaware's review of the National Research Council's *Measuring Poverty: A New Approach*, *supra* note 63, and data on household expenditures from the Bureau of Labor Statistics *Consumer Expenditure Survey*. EVALUATION AND UPDATE, *supra* note 63, at 7.

67. DE. FAM. CT. CIV. R. Form 509 Rev. 9/98.

68. *Id.*

69. *Id.* The "standard of living adjustment" is premised on the belief that "if income is available after the primary needs of the parents and child(ren) are taken care of, the child(ren) is (are) entitled to share in any additional income of the parents." DE. FAM. CT. CIV. R. Form 509 I, *Instructions for Child Support Calculation – Preface*. A standard of living adjustment amount is determined for each parent after his or her share of the combined primary support obligation has been subtracted from his or her available net income. The parent's remaining income is multiplied by a specified percentage (16% for one child, 26% for two, 33% for three, and an additional 5% for each additional child). The resulting dollar amount for each parent is added to that parent's share of the primary support obligation. *Id.* The standard of living adjustment percentages, like the parents' self-support allowances and the children's primary support allowances, are based upon calculations using data on household expenditures in the *Consumer Expenditure Survey* and findings in *Measuring Poverty: A New Approach*, *supra* note 63.

70. DE. FAM. CT. CIV. R. Form 509 Rev. 9/98.

71. Interestingly, Delaware permits the deduction of all health insurance premiums paid by a parent, regardless of the persons covered, rather than restricting the deduction to premiums that provide coverage for the children of the action. Its 1994 guidelines review explains why:

The judiciary follows the prevailing national view that it is in no one's best interest to be uninsured; not the child, either parent, or either parent's subsequent children. Any major medical expenditure, due to lack of insurance coverage, by either parent on behalf of that parent, or his/her child(ren) could interfere with the routine payment of child support.

DELAWARE FAMILY COURT JUDICIARY, THE DELAWARE CHILD SUPPORT FORMULA:

expenses (i.e., expenses up to \$350 per child or per family)⁷² are included in the expenses covered by the primary support allowance. Extraordinary medical expenses are apportioned between the parents in accordance with each parent's percentage of their total available net income, and are in addition to the primary support obligation and the standard of living adjustment amount.⁷³

The Melson income-shares model thus sequences a parent's obligations. The formula holds parents responsible for meeting their own essential needs first, the essential needs of their children second, and the affluence-related needs of their children last. This approach has the effect of simultaneously maintaining accuracy and enhancing equity in the determination of support. The accuracy of Delaware's guidelines results from the provisions that parallel Maryland's: basing support on a careful analysis of expenditures on children in two-parent families, incorporating a number of family-specific expenses into the final order, and using the same apportionment method for different kinds of child costs.⁷⁴ At the same time, Delaware's guidelines improve upon Maryland's through the self-support allowance, which is intended to make the guidelines more equitable for parents with limited ability to pay.⁷⁵

However, support in Delaware, like support in Maryland, is ordered as a single sum.⁷⁶ Consequently, Delaware shares with Maryland the difficulty of assigning support appropriately when collections in cases involving more than one type of public

EVALUATION AND UPDATE 6 (1994). In contrast, Maryland parents can only deduct the cost of a premium that includes coverage for the children of the action. See discussion *supra* note 51.

72. The definition of "ordinary medical expenses" may be inferred from the definition of extraordinary medical expenses as expenses in excess of \$350.00 per child or per family. See DELAWARE FAMILY COURT JUDICIARY, DELAWARE CHILD SUPPORT FORMULA: EVALUATION AND UPDATE 7 (1990); see also DELAWARE FAMILY COURT JUDICIARY, DELAWARE CHILD SUPPORT FORMULA: EVALUATION AND UPDATE 8 (1998).

73. DELAWARE FAMILY COURT JUDICIARY, DELAWARE CHILD SUPPORT FORMULA: EVALUATION AND UPDATE 7-8 (1990); see also EVALUATION AND UPDATE, *supra* note 63, at 8.

74. The accuracy of orders is somewhat compromised by Delaware's use of net income, rather than gross, to determine support. See discussion *supra* note 39. This limitation is outweighed by the other provisions intended to assure accuracy.

75. DE. FAM. CT. CIV. R. Form 509 Rev. 9/98, *Instructions for Child Support Calculation, Preface* ("In determining each parent's child support obligation the court considers each parent's ability to pay.").

76. DE. FAM. CT. CIV. R. Form 509 Rev. 9/98 at Line 18.

assistance are to be directed to different state funds. Moreover, accuracy and equity appear to be achieved at the cost of simplicity. Although proponents of the Melson formula argue that the calculations are actually quite simple once the user has become familiar with the worksheet, critics contend that the model appears daunting and difficult.⁷⁷ It is perhaps unsurprising that only two other states use Melson formula guidelines.⁷⁸ Minnesota needs guidelines with the accuracy, consistency, and equity of Delaware's model, but without its apparent complexity.

These four states illustrate the wide variety of potential strengths and weaknesses in alternative models for child support guidelines, and the tradeoffs implicit in specific guidelines provisions. The examination of other states' guidelines helped the participants in Minnesota's review process to identify a number of provisions that, taken together, could sustain simplicity, accuracy, consistency, and equity in the determination of support:

- An economic premise that the percentage of income spent on children declines with increasing income (North Dakota and Maryland);
- The use of both parents' incomes to set support (Maryland and Delaware);
- Explicit apportionment of actual child care and medical costs in a manner consistent with the apportionment of basic support (Maryland and Delaware);
- Attention to the self-support needs of each parent (Delaware); and
- A limited number of calculations (Wisconsin and Maryland).

The next section will describe the provisions of Minnesota's current guidelines in light of these lessons from other states.

77. MORGAN, *supra* note 11, at 1-25; see also Marianne Takas, *Improving Child Support Guidelines: Can Simple Formulas Address Complex Families?* 26 FAM. L. Q. 171, 171-72 (1992).

78. The other two Melson formula states are Hawaii and Montana. See Hawaii Family Court Child Support Guidelines, November 1, 1998, available at <http://www.hawaii.gov/jud/childpp.htm>, *rev'd*, HAW. REV. STAT. § 576D-7; MONT. ADMIN. R. 37.62.101-148.

III. MINNESOTA'S CURRENT CHILD SUPPORT GUIDELINES: PROVISIONS AND PROBLEMS

A. *Internal Inconsistencies and Convoluting Calculations*

Minnesota's current child support guidelines are typically described as a "percentage-of-obligor-income" approach to the determination of support.⁷⁹ However, they are more accurately characterized as a hybrid approach. Some provisions reflect a percentage-of-obligor-income method, while others reflect different kinds of income-shares methods. Taken together, the existing statute is not only internally inconsistent in its premises, but also often complicated in practice. If faithfully applied to a family that incurs expenses both for child care and health insurance, the current statutory guidelines require the court not only to determine the net incomes of *both* parents (even though the statute is characterized as a "simple" percentage-of-obligor-income approach) but also to calculate each parent's share of their combined income in two different ways. The internal inconsistencies and convoluted calculations embodied in Minnesota's current guidelines compromise simplicity, accuracy, consistency, and equity in the determination of support.

A child support order in Minnesota has three components:

1. *Basic support*, reflecting a varying percentage-of-obligor-income model based on net income;⁸⁰

79. OFFICE OF CHILD SUPPORT ENFORCEMENT, MINNESOTA DEPARTMENT OF HUMAN SERVICES, REPORT TO THE MINNESOTA LEGISLATURE ON THE MINNESOTA CHILD SUPPORT GUIDELINES 4 (1994); *see also* MORGAN, *supra* note 11, at B-137; Williams, *supra* note 11, at 5.

80. Basic support is termed "child support" in the guidelines statute, but is colloquially referred to by most practitioners as "basic support" to distinguish it from the other two components of a support order. *See* MINN. STAT. § 518.54, subd. 4 (1990 & Supp. 2001). "Support money" or "child support" means an award in a dissolution, legal separation, annulment, or parentage proceeding for the care, support and education of any child of the marriage or of the parties to the proceeding." *Id.* *But see* MINN. STAT. § 518.551, subd. 5(b) (1990 & Supp. 2001). "The court shall derive a specific dollar amount for child support by multiplying the obligor's net income by the percentage indicated in the following guidelines . . ." *Id.* Stated further in the same paragraph (b): "The amount allocated [to the obligor] for child care expenses is considered child support. . . ." *Id.* In addition, Minnesota Statutes § 518.171, subd. 10 provides: "[f]or the purpose of enforcement, the costs of individual or group health or hospitalization coverage, dental coverage, all medical costs ordered by the court to be paid by the obligor

2. *Child care support*, reflecting a distinctive and somewhat complicated income-shares approach;⁸¹ and
3. *Medical support*, reflecting a simple income-shares approach.⁸²

Computation of basic support involves the following steps:

1. *The obligor's net income is determined.*⁸³
2. *The resulting net income is multiplied by a percentage appropriate to that income and the number of children for whom support is being determined.* The guidelines statute includes a percentage grid with a net income "floor" of \$550 per month and a "cap" currently set at \$6280.⁸⁴ The

... are additional child support." MINN. STAT. § 518.171, subd. 10 (1990 & Supp. 2001). The term "child support" thus refers simultaneously to the amount ordered through application of the percentage grid to the obligor's income, and to the sum total of that amount, the amount ordered as child care support, and the amount ordered as medical support. For purposes of clarity, the term "basic support," rather than "child support," will be used in this article to refer to the dollar amount ascertained through the application of the percentage grid to the obligor's net income.

81. MINN. STAT. § 518.551, subd. 5 (b)(2)(ii)(E) (1990 & Supp. 2001); *see also* Klingenschmitt v. Klingenschmitt, 580 N.W.2d 512, 514 (Minn. Ct. App. 1998) (applying MINN. STAT. § 518.551, subd. 5(b)(2)(ii)(E) by upholding an education related child care support order).

82. MINN. STAT. § 518.171, subd. 1(b) & (c) (1990 & Supp. 2001); *see also* Korf v. Korf, 553 N.W.2d 706,708 (Minn. Ct. App 1996) (holding that "[m]edical needs of minor children, including insurance coverage, are in the nature of child support").

83. Net income for purposes of child support is defined as gross income minus federal and state income taxes, FICA, reasonable pension deductions, union dues, payments for healthcare coverage for the children of the action, and payments for individual or group health/hospitalization coverage or an amount for actual medical expenses. *See* MINN. STAT. § 518.54, subd. 6 (1990 & Supp. 2001); *see also* Desrosier v. Desrosier, 551 N.W.2d 507, 507-08 (Minn. Ct. App 1996) (holding that income includes any dependable source of income, including regular but unguaranteed annual bonus payments); MINN. STAT. § 518.551, subd. 5 (b) (1990 & Supp. 2001). When an obligor is self-employed, ordinary and necessary business expenses are also deducted. MINN. STAT. § 518.551, subd. 5b(f) (1990 & Supp. 2001).

84. Cost of Living Adjustment to Child Support Guidelines, Order C9-85-1134 (Minn. April 19, 2000). Obligor's with incomes greater than the income limit will be ordered to pay the same dollar amount as obligors with incomes equal to the income limit. MINN. STAT. § 518.551, subd. 5(b) (1990 & Supp. 2001). The income limit specified in the percentage grid is \$5000. *Id.* However, the statute also includes a provision under which the income limit increases every two years to reflect changes in the cost of living. MINN. STAT. § 518.551, subd. 5(k) (1990 & Supp. 2001). The dollar amount is adjusted by Supreme Court order and then published by the state court administrator on or before April 30 of the year in which the amount is to change. *Id.* The order stays on the state court website for approximately one week after it has been signed. Information on the current

percentages vary with the income of the obligor (obligors with smaller incomes are assigned a lower percentage) and with the number of children for whom support is being determined.⁸⁵

The determination of basic support is thus a relatively simple process, once the obligor's net income has been determined.

The determination of child care support is much less straightforward. Child care support is calculated on a modified income-shares basis as follows:

1. *The monthly⁸⁶ cost⁸⁷ of work- and education-related child care for the children of the action is determined.*
2. *Twenty five percent of the cost of the care is subtracted from the*

income limit may be obtained from State Court Administration by calling 651-297-7587. Contact information is also available on the Minnesota judicial branch website at http://www.courts.state.mn.us/rules/cs_rules.html.

85. Below are the percentages for one to three children:

<i>Net Income Per Month of Obligor</i>	<u>One Child</u>	<u>Two Children</u>	<u>Three Children</u>
\$550 and below	Order based on the ability of the obligor to provide support at these income levels, or at higher levels, if the obligor has the earning ability.		
\$551 – 600	16%	19%	22%
\$601 – 650	17%	21%	24%
\$651 – 700	18%	22%	25%
\$701 – 750	19%	23%	27%
\$751 – 800	20%	24%	28%
\$801 – 850	21%	25%	29%
\$851 – 900	22%	27%	31%
\$901 – 950	23%	28%	32%
\$951 – 1000	24%	29%	34%
\$1001 – 5000	25%	30%	35%

MINN. STAT. § 518.551, subd. 5 (b) (1990 & Supp. 2001). These percentages cover the vast majority of child support cases in Minnesota. The 1998-2000 guideline review included a federally mandated review of case data. JO MICHELLE BELD, 1998-2000 CHILD SUPPORT GUIDELINES REVIEW: CASE DATA ANALYSIS FINAL REPORT 6 (Minnesota Department of Human Services Child Support Enforcement Division ed., March 2001). Of the representative sample of more than 200 orders statewide, including both IV-D and non-IV-D cases, 92% were orders for one or two children. *Id.* at 13.

86. If expenses fluctuate over the course of a given year, the average monthly cost must be calculated. MINN. STAT. § 518.551, subd. 5(b) (1990 & Supp. 2001).

87. The cost of care is defined as "the total amount received by the child care provider," not necessarily the amount paid by a parent, since parent payments may be subsidized by child care assistance. *Id.*

*actual costs incurred.*⁸⁸

3. *Each parent's share of their combined net income is determined after the amount ordered for basic support and any spousal maintenance has been subtracted from the obligor's net income and added to the obligee's net income*
4. *The order for child care support is determined by multiplying the reduced cost of care (as determined in Step 2) by the obligor's reduced share of combined net income (as determined in Step 3).*
5. *The obligor's remaining income is compared to federal poverty guidelines to determine whether a reduction in the order for child care support is warranted.*⁸⁹

88. This reduction is statutorily intended "to reflect the approximate value of state and federal tax credits available to the custodial parent." *Id.* Minnesota is one of sixteen states which either require or permit an adjustment in the cost of care prior to apportionment between the parents to account for child care tax credits. The other fifteen states include Arizona, Colorado, Florida, Idaho, Kansas, Louisiana, Michigan, Missouri, New Jersey, North Carolina, Oregon, Rhode Island, South Carolina, South Dakota, and West Virginia. Of these states, only four others, Arizona, Florida, North Carolina, and South Dakota, use the "25% reduction" approach. See ARIZ. REV. STAT. § 25-320 (8)(b)(1A) (2000); COLO. REV. STAT. § 14-10-115 (11)(b)(2000); FLA. STAT. ANN. § 61.30(7) (WEST 2000); IDAHO R. CIV. P. 6(c)(6) sec. 8(a) (2000); KAN. STAT. ANN. § 20-165 (2000); KAN. STAT. ANN. § 38-1121 (2000); LA. REV. STAT. ANN. § 9:315(7) (West 2000); MO. R. CIV. P. Form 14 (2000); N.J. R. PRAC. 9, Appendix 1x-A (2000); OR. REV. STAT. ANN. §25.275 (West 2000); R.I. GEN. LAWS § 15-5-16.2 (2000); S.C. CODE ANN. §43-5-220; S.D. CODIFIED LAWS § 25-7-6.2 (Michie 2000); W. VA. CODE § 48A-1B-1 (2000); *but see* *Abbot v. Dunlap*, 597 S.2d 1212 (La. Ct. App. 1992) (holding that a non-custodial parent's right to claim income tax deduction did not require departure from child support guidelines).

89. The ordered amounts for basic support, spousal maintenance, and child care support are subtracted from the obligor's net income, and the result is compared to the federal poverty guideline for a one-person household. This provision is colloquially known as the "substantial unfairness test" because it is based on the following statutory language: "The court shall review the work-related and education-related child care costs paid and shall allocate the costs to each parent . . . unless the allocation would be substantially unfair to either parent. There is a presumption of substantial unfairness if after the sum total of child support, spousal maintenance, and child care costs is subtracted from the noncustodial parent's income, the income is at or below 100 percent of the federal poverty guidelines." MINN. STAT. § 518.551, subd. 5(b). Although the statute does not specify a course of action in the event that the obligor is left with less than a poverty-level income after the above subtractions are made, it is common practice to reduce the order for child care support by a dollar amount equal to the difference between the obligor's remaining income and the poverty guideline for a one-person household. See CHILD SUPPORT ENFORCEMENT DIVISION, MINNESOTA DEPARTMENT OF HUMAN SERVICES, CHILD SUPPORT (IV-D) POLICY MANUAL § 7.1.4.1.3.14 (2001). "If the presumption of substantial unfairness is met, you may adjust the child care obligation accordingly so the noncustodial parent's remaining available income is at or above the poverty level." *Id.*

Minnesota is the only state that uses a percentage-of-obligor-income approach for basic support and an income-shares approach for child care support.⁹⁰ It is also the only state that determines each parent's share of income for purposes of child care support after transferring basic support from obligor to obligee.⁹¹

Medical support is determined through yet another approach. The method used to determine medical support⁹² is governed by

90. The other states which use a percentage-of-obligor-income approach to calculate basic support address child care costs in various ways. The majority (Arkansas, Georgia, Mississippi, Nevada, North Dakota, Texas, and Wisconsin) list child care costs as a factor for deviation. See *In re*: Administrative Order Number 10: Arkansas Child Support Guidelines (Ark. 1998), available at <http://courts.state.ar.us/courts/opinions/admin10.html>, *rev'd*, ARK. CODE ANN. § 9-12-312 (Michie 2000); GA. CODE ANN. § 19-6-15(2000); MISS. CODE ANN. § 43-19-101 (2000); NEV. REV. STAT. §§ 125B.070-.080 (2000); N.D. ADMIN. CODE §§75-02-04.1-16 (2000); TEX. FAM. CODE ANN. §§ 154.001-.066 (Vernon 2000); WIS. ADMIN. CODE ch. DWD 40, available at www.Legis.state.wi.us/rsb/code/dwd/dwd040.pdf, *rev'd*, WIS. STAT. § 46.247. One state (Alaska) treats child care costs as a deduction from income. ALASKA CIV. RULE 90.3, available at <http://www.ajc.state.ak.us/childsupport/indexnet.htm>. Child care costs are not addressed in the two remaining percentage-of-obligor-income states, Illinois (750 ILL. COMP. STAT. 5/505-505.3 (2000)) and Tennessee (TENN. COMP. R. & REGS. DEP'T HUMAN SERVICES §§ 1240-2-4.01-.04 (2000)).

91. Of the thirty-one states which use an income-shares approach to the apportionment of child care costs, Minnesota is the *only* state which calculates each parent's share of income after the transfer of basic support and spousal maintenance. Twenty-eight other states follow Maryland and Delaware, using the same percentages of income to apportion child care costs and basic support alike: Alabama, Arizona, Colorado, Delaware, Florida, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Vermont, Virginia, Washington, West Virginia. Two additional states, California and Pennsylvania, divide child care costs equally between obligor and obligee. ALA. RULES OF JUDICIAL ADMIN. 32(c) (2000); ARIZ. REV. STAT. § 25-320 (8)(b)(1A) (2000); COLO. REV. STAT. § 14-10-115 (2000); CAL. FAM. CODE § 4721 (2000); DE. FAM. CT. CIV. R. Form 509 Rev. 9/98, FLA. REV. STAT. § 61.30 (2000); HAW. REV. STAT. § 576 A-7 (2000); IDAHO R. CIV. P. 6(c)(6) (2000); KY. REV. STAT. § 403.211 (2000); LA. REV. STAT. § 9:315 (3) (2000); ME. REV. STAT. tit. 19-A § 2006 (2000); MD. CODE ANN., FAM. LAW § 12-201 (h); MO. R. CIV. P. Form 14 (2000); N.J. R. PRAC. 9 Appendix IX-A (2000); N.M. STAT. § 40-4-11.1 (2000); OKLA. STAT. tit. 43, § 118 (2000); OR. REV. STAT. § 25.275 (2000); R.I. GEN. LAWS § 15-5-16.2 (2000); S.D. CODIFIED LAWS § 25-7-6.2 (2000); VT. STAT. ANN. tit. 15 § 653 (2000); VA. CODE ANN. § 20-108.2 (2000); W. VA. CODE § 48A-1B-6 (2000).

92. Medical support includes "the cost of individual or group health or hospitalization coverage, dental coverage, and all medical costs ordered to be paid by the obligor, including health and dental insurance premiums paid by the obligee because of the obligor's failure to obtain coverage as ordered." MINN. STAT. § 518.171, subd. 10 (1990 & Supp. 2001). Further, "remedies available for the collection and enforcement of child [i.e., basic] support apply to medical

the availability of private health insurance for the children. When private insurance is available to at least one of the parents, the dollar amount ordered as medical support generally reflects a simple income-shares approach, calculated differently from the income-shares approach embodied in the provisions for child care support. When private insurance is *not* available to either parent, the court may order any one of several alternatives. Medical support is calculated as follows:⁹³

1. *If at least one parent has medical insurance available:*⁹⁴
 - a. *Responsibility for maintaining medical insurance for the children is assigned to the parent with the "better" coverage.*⁹⁵
 - b. *The cost of the children's medical insurance is apportioned between the parents in proportion to each parent's share of their net income.*⁹⁶ However, each parent's share of net income is determined differently for purposes of medical support than it is for purposes of child care support. Shares of income for child care support are determined *after* the transfer of basic support from obligor to obligee, but shares of income for medical support are determined *before* basic support is transferred.⁹⁷
 - c. *The cost of the children's uninsured and unreimbursed medical expenses is apportioned between the parents. Reasonable and*

support." *Id.*

93. MINN. STAT. § 518.171, subd. 1 (1990 & Supp. 2001).

94. Medical insurance for purposes of medical support includes "any health and dental insurance plan that is available to the party on a group basis; through an employer or union; or through a group health plan governed under the ERISA." MINN. STAT. § 518.171, subd. 1 (a)(2)(i) - (iii) (1990 & Supp. 2001). Such insurance must provide "coverage that is comparable to or better than a number two qualified plan as defined in section 62E.06, subdivision 2." *Id.* Further, "'Health insurance' or 'health insurance coverage' as used in this section does not include medical assistance provided under chapter 256, 256B, 256J, 256K, or 256D." *Id.*

95. MINN. STAT. § 518.171, subd. 1(a)(2) (1990 & Supp. 2001). There are no statutory guidelines for determining which parent's insurance is "better."

96. If the court finds that the obligee has the financial ability to contribute to the children's medical and dental expenses, then the cost of the insurance (irrespective of who is actually paying the premium) is pro-rated between the parents in proportion to each parent's share of their total net income. MINN. STAT. § 518.171, subd. 1 (d) (1990 & Supp. 2001).

97. *Id.* (directing the court to apportion expenses between the parents "based on their proportionate share of their total net income as defined in section 518.54, subdivision 6"). Minnesota Statutes § 518.54, subd. 6 simply provides a general definition of "income" for purposes of child support; it does not list any of the deductions used to arrive at net income for either basic support or child care support. *Id.*

necessary medical and dental expenses⁹⁸ not covered by insurance are to be apportioned between the parents in proportion to each parent's share of net income as determined in the preceding step.⁹⁹

2. *If neither parent has medical insurance available:*¹⁰⁰ The court may do any of the following:
 - a. *Order the obligor to obtain other dependent health or dental insurance;*
 - b. *Order the obligor to be liable for the reasonable and necessary medical or dental expenses of the child;*
 - c. *Order the obligor to pay at least \$50 per month toward the cost of the children's medical and dental expenses or the cost of dependent health insurance coverage, whether public or private.*¹⁰¹

In both statute¹⁰² and practice,¹⁰³ the alternative of first choice is

98. Reasonable and necessary medical expenses include, but are not limited to, necessary orthodontia and eye care, and may also include any existing or unanticipated extraordinary medical expenses. MINN. STAT. § 518.171, subd. 1(c) (1990 & Supp. 2001). Extraordinary medical expenses are not defined in the statute.

99. MINN. STAT. § 518.171, subd. 1(d) (1990 & Supp. 2001). Of the various approaches to medical support described in Part II, Minnesota's current provisions most closely parallel Maryland's simple income-shares model. In both states, the cost of providing dependent health insurance is deducted from the income of the parent who pays the premium, and the amount of the premium is pro-rated between the parents in proportion to each parent's share of income after the deduction is taken. And in both states, the cost of medical expenses not covered by insurance is also generally pro-rated between the parents in proportion to their respective incomes. The main difference is that Maryland defines the expenses to be pro-rated as those exceeding \$100 for a single illness or condition, whereas Minnesota includes all uninsured and unreimbursed expenses in the pro-rating process.

100. The medical support statute uses both "available" and "accessible" without defining either term. MINN. STAT. § 518.171, subd. 1(b) (1990 & Supp. 2001). "If the court finds that dependent health or dental insurance is not available to the obligor or obligee on a group basis or through an employer or union, or that group insurance is not accessible to the obligee . . ." *Id.*

101. MINN. STAT. § 518.171, subd. 1(b) (1990 & Supp. 2001).

102. The private-insurance option is listed first in the medical support statute, with the alternatives clearly relegated to a "fall-back" position. *Id.*

103. In the case data analysis accompanying the guidelines review, it was not unusual to see orders which paralleled the language of the statute, first ordering either or both parents to name the children as beneficiaries on a medical insurance plan, but also listing one or more contingency plans in the event that neither parent has access to insurance. See BELD, *supra* note 85, at 21-22. This approach allows the court to issue an order even in the absence of timely information about the availability of insurance to the parents. Of the 196 orders analyzed with respect to medical support, 92% (181 cases) included an order for

coverage through private insurance, with both the premium and uninsured and unreimbursed medical expenses apportioned through a simple income shares calculation.

Minnesota's child support guidelines thus reflect three different models: a percentage-of-obligor-income model for basic support; a complex income-shares model for child care support; and a simpler income-shares model for medical support. But this internal inconsistency is not the only deficiency in the present statute. The next section discusses several additional limitations.

B. Additional Problems With Minnesota's Child Support Guidelines

There is great diversity of opinion about various features of Minnesota's guidelines, not simply among various professional groups (such as state agency staff, county-level child support officers and supervisors, and attorneys) but even among individuals who share the same profession. A provision identified as a strength by one practitioner may be identified as a major weakness by another, even if they have similar backgrounds and experiences. Consequently, the MDHS project team relied not only on the research findings that emerged over the course of its quadrennial review, but also on the judgment of its advisory Task Force, in identifying the most pressing problems with the state's current guidelines. Most Task Force members concurred with the following list:¹⁰⁴

1. *The current guidelines are not sufficiently tied to economic research on the cost of raising children.* Federal intent is that state child support guidelines reflect economic research on the cost of raising children.¹⁰⁵ But in many respects, Minnesota's current guidelines

one or both of the parents to provide medical insurance for the minor children, but in 25% of these cases (46 cases) the parent responsible for providing the insurance was not specified, suggesting that the availability of insurance to the parents was unknown at the time of the order. *Id.*

104. As might be expected, the level of agreement reached by the Task Force on each of these issues varied. In some cases all members agreed that a particular provision was inadequate (e.g., the economic basis for the current percentages applied to obligor income) but there were sharp differences of opinion on appropriate alternatives. In other cases there were differences of opinion about whether or not a current provision (e.g., the use of net income) was even problematic. The issues identified above as problematic were identified as such by a clear majority of Task Force members, but the membership of that majority shifted somewhat from issue to issue.

105. The stated purpose of the federal mandate for state guidelines reviews is to "ensure that their application results in the determination of appropriate child

are not consistent with this body of research. The percentages in Minnesota's guidelines for basic support were originally developed without the benefit of federally-mandated research on child-rearing costs,¹⁰⁶ simply because Minnesota's guidelines were enacted several years prior to the conduct of the research.¹⁰⁷ Moreover, the percentages have remained unchanged since the time they were first enacted, despite the state's consideration of subsequently-available research on child costs in its first two quadrennial reviews,¹⁰⁸ and the experience of other states in constructing

support award amounts." 45 C.F.R. § 302.56(e). Reviews must include consideration of "economic data on the cost of raising children," presumably as one means of determining whether guidelines orders are "appropriate." 45 C.F.R. § 302.56(h). States are to revise their guidelines if warranted by the results of the review. 45 C.F.R. § 302.56(e).

106. The 1988 Family Support Act, which required states to establish presumptive numerical guidelines and to review them every four years, also required the federal Department of Health and Human Services to conduct a study of child-rearing costs for states to use in complying with the review requirements. Pub.L. No 100-485, § 128. DHHS contracted with the University of Wisconsin at Madison's Institute for Research on Poverty to produce the required study. See David M. Betson, *Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey*, INSTITUTE FOR RESEARCH ON POVERTY SPECIAL REPORT No. 51 (December 1990).

107. As noted above, Minnesota's guidelines, including the percentage grid for basic support, were enacted in 1983 (see note 1). The Betson study of child-rearing costs was not published until 1990 (see note 106), seven years after Minnesota had enacted its original guidelines statute.

108. States were required by the 1988 Family Support Act to review their child support guidelines (including an analysis of economic data on child-rearing costs) at least once every four years, with the first such review to be completed no later than October 13, 1993. 42 U.S.C. § 667(a) (1991); 45 C.F.R. § 302.56(e). Minnesota conducted its first review in 1990, with a final report issued in January 1991. In that same year (1991 Minn. Laws, ch. 292, art. 5, §§ 75 to 78) the state amended its child support statutes to direct the state department of human services to conduct another review no later than 1994 and at least every four years after that. MINN. STAT. § 518.551, subd. 5c (1990 & Supp. 2001). Both previous reviews of Minnesota's guidelines, as well as the review commenced in 1998, included an analysis of economic literature on the cost of raising children. See ROBERT G. WILLIAMS, MINNESOTA CHILD SUPPORT GUIDELINES STUDY: FINAL REPORT, at 19-30 (January 3, 1991) (prepared for Office of Child Support Enforcement, Minnesota Department of Human Services by Policy Studies Inc.); see also ROBERT G. WILLIAMS ET AL., ALTERNATIVE CHILD SUPPORT SCHEDULES: STATE OF MINNESOTA, at Chapters I-III (December 15, 1994) (prepared for Minnesota Department of Human Services Child Support Enforcement Division by Policy Studies Inc.) (report prepared under contract with Minnesota DHS as part of the 1994 guidelines review process); JO MICHELLE BELD, THE SHARED RESPONSIBILITY CHILD SUPPORT GUIDELINES: RATIONALE AND RESEARCH SUPPORT, 23-27 (March 2001) (report prepared under contract with the Minnesota Department of Human Services Child Support Enforcement Division as part of the 1998

and/or revising their guidelines to reflect such research.¹⁰⁹

The most significant economic deficiency in Minnesota's current guidelines is that they run counter to the prevailing interpretation of the economic literature on the costs of raising children—namely, that the percentage of income expended on children is inversely related to income.¹¹⁰ There is persuasive evidence that as family income increases, the percentage of income spent on children decreases.¹¹¹ But Minnesota's basic support percentages are structured in exactly the opposite way: as the obligor's income increases, the percentage applied to that income to determine the order for basic support also increases. Both of

guidelines review process). The 1991 report included a number of recommendations that would have maintained the percentage-of-obligor-income premises of the model but aligned the basic support percentages more closely with economic research on child-rearing expenditures. Specifically, the reviewers recommended reducing the percentages for one child; increasing the percentages for two or more children; increasing both the income "floor" and the income limit to reflect changes in the cost of living; and reducing the guidelines percentages for incomes above \$3000 per month. ROBERT G. WILLIAMS, MINNESOTA CHILD SUPPORT GUIDELINES STUDY: FINAL REPORT, 20 - 21 (January 3, 1991) (prepared for Office of Child Support Enforcement, Minnesota Department of Human Services). Two years later, the income "floor" and limit were raised (although not to the extent recommended by the review), but the percentages themselves were not altered. 1993 Minn. Laws, ch. 340, §§ 32 - 38. The review had recommended increasing the income "floor" from \$400 to \$600 net monthly income, but the 1993 revisions to the statute only increased it to \$550. Similarly, PSI had recommended increasing the income limit from \$4000 per month to \$8000, but the 1993 revisions only increased it to \$5000, and added the current provision for upward adjustments by the Minnesota Supreme Court every two years to reflect changes in the cost of living. MINN. STAT. § 518.551, subd. 5(k) (1990 & Supp. 2001).

109. According to Jane Venohr and Robert Williams of Policy Studies Inc. (PSI), "Twenty-nine states have updated or extended the numbers underlying their child support schedules at least once since they first adopted them," relying on one or more of the sets of estimates reported in the DHHS study of child-rearing costs. Jane C. Venohr and Robert G. Williams, *The Implementation and Periodic Review of State Child Support Guidelines*, 33 FAM. L. Q. 27, 27 (1999). PSI is the leading national policy consulting firm with a specialization in child support guidelines. Its president, Dr. Robert Williams, directed research and technical assistance for the federal Child Support Guidelines Project during most of the 1980s, and is widely regarded as the originator of the income-shares guidelines model. Since PSI was first established in 1984, it has provided guidelines-related consulting services to more than 40 states, including Minnesota. *Id.*

110. As noted above, economists do not unanimously support the view that income and percent of income spent on children are inversely related. *See supra* note 21. However, this author shares the majority view affirming an inverse relationship. *See Beld, supra* note 25.

111. *See* ROBERT G. WILLIAMS, DEVELOPMENT OF GUIDELINES FOR CHILD SUPPORT ORDERS: ADVISORY PANEL RECOMMENDATIONS AND FINAL REPORT, II-26 (1987).

Minnesota's previous quadrennial reviews recommended a revision to the basic support percentages to bring them in line with the "inverse relationship" school of thought (even though the reviews have recommended three different guidelines models), but the recommendations have not been enacted into statute.¹¹²

Minnesota's guidelines would thus be improved if, like the guidelines in North Dakota, Maryland, and Delaware, they were clearly linked to credible estimates of what parents spend on children.

2. *The current guidelines do not take obligee income into account in calculating basic support.* The largest component of a Minnesota support order is determined without reference to the income of the obligee. This makes it difficult to assess the degree to which any guidelines order achieves the federal standard of "appropriateness,"¹¹³ because guidelines based principally on the income of the obligor do not comport with the way most Minnesota families actually provide for their children. In most two-parent families, whether married or cohabiting, both parents work. Estimates of the percentage of Minnesota mothers who work outside the home range from seventy to seventy-seven.¹¹⁴ It is ironic that the state with the highest female workforce participation rate

112. PSI's 1990 review accepted the premise that the basic percentage-of-obligor-income model already incorporated in Minnesota's guidelines would continue but suggested revising the guidelines percentages "so that they decline somewhat as income increases above \$3000 per month" in order to "be consistent with economic evidence that the percentage of net income spent on children declines as income goes up, even though the dollar amount increases". WILLIAMS, *supra* note 108, at 21. The 1994 review resulted in a legislative proposal for a Melson income-shares guidelines model, accompanied by a schedule of basic support reflecting an inverse relationship between income and proportion of income spent on children. WILLIAMS et al, *supra* note 108, at 19. The most recent review resulted in a legislative proposal for a simple income-shares guidelines model, accompanied by a schedule of basic support that also reflected an inverse relationship between income and proportion of income spent on children (although the model estimating child costs was quite different than the model underlying the 1994 review). Beld, *supra* note 108, at Appendix F.

113. See 45 CFR § 302.56(e).

114. Research and Statistics Office, Minnesota Department of Economic Security, *Supporting the Workforce: The Child Day Care Services Industry in Minnesota*, MINNESOTA ECONOMIC TRENDS, 4 (March 2000), available at www.mnworkforcecenter.org/lmi/trends/mar00/child.htm [hereinafter *Child Day Care*]. These estimates are consistent with a recent Children's Defense Fund report on child care in Minnesota, which reports that 69% of mothers with children under age six, and 82% of mothers with children ages six to seventeen, are in the labor force. See GINA ADAMS AND KAREN SCHULMAN, MINNESOTA: CHILD CARE CHALLENGES 8 (Children's Defense Fund, 1998).

in the nation¹¹⁵ still determines basic support by considering only the income of the obligor, who is more likely to be male than female.¹¹⁶

In the case of separated families, not only do most obligees work, some earn more than the obligors with whom they are paired. Although a gender-based wage gap persists—female earnings in Minnesota are 80.3% of male earnings¹¹⁷—a growing number of working mothers earn as much as, if not more than, fathers. Nationwide, in almost one-third of two-earner married-parent households, the wife earns more than her husband—a significant change from 1980, when this pattern prevailed in fewer than one in five two-earner households.¹¹⁸ Since the gender wage gap in Minnesota is somewhat lower than the gender gap nationwide,¹¹⁹ it is likely that there is an even higher proportion of Minnesota married-couple families where wives' earnings exceed those of their husbands. In a two-parent family, a child's economic well-being is determined by the economic contributions of both parents, in proportion to each parent's contribution to household income overall. It is only sensible for a similar arrangement to prevail in separated families. A percentage-of-obligor-income guideline cannot accommodate variations in the distribution of income within separated families.

Nor do Minnesota's current guidelines make the economic contributions of obligees to their children sufficiently explicit. The statute assumes that obligees provide financial support for their children through direct spending and in-kind contributions.¹²⁰

115. *Child Day Care*, *supra* note 114, at 4.

116. While many observers have noted an increase in the number of cases in which the obligor is female, a very large percentage of cases still involve a male obligor. In 88% of the representative sample of cases in the 1998-2000 case data analysis, the obligor was male. See Beld, *supra* note 85, at 14.

117. Legislative Commission on the Economic Status of Women, *Newsletter #244*, Minn. Econ. Trends (Research and Statistics Office, Minn. Sept. of Econ. Security) Apr. 2000, at 4, available at http://www.commissions.leg.state.mn.us/lcesw/newsletters_/apr00.pdf.

118. Amy Goldstein, *Nearly 1 in 3 Wives Now Earning More Than Husband*, MPLS. STAR TRIB., February 29, 2000, at A6.

119. Nationwide, the median income of full-time, year-round female workers was 72% of median income for full-time, year-round male workers in 2000. See U.S. CENSUS BUREAU, FREQUENTLY ASKED QUESTIONS ABOUT INCOME STATISTICS, available at <http://www.census.gov/hhes/income/incfaq.html>.

120. According to Margaret Campbell Haynes, former Director of the American Bar Association Child Support Project at the Center on Children and the Law, states which base child support only on the income of the obligor assume

However, the calculation of basic support does not show a specific amount that a given obligee is assumed to be contributing. It shows only what the obligor is expected to pay.

Minnesota's guidelines would thus be improved if, like the guidelines in Maryland and Delaware, they were based on internally-consistent income-shares calculations.

3. *The current guidelines do not make sufficient provision for parents with other legally-dependent children residing in the home.*¹²¹ Multiple families are an increasingly common feature of child support cases. In 1991, Marianne Takas, at that time assistant staff director for the ABA Center on Children and the Law, reported that half of all divorces involve at least one partner who has been married before, often with children from that prior relationship, and that many of the approximately 75% of divorced persons who remarry have additional children in their second relationship.¹²² More recent research funded by the National Institute of Child Health and Human Development suggests that more than 40% of "nonresident" fathers (i.e., fathers with children whose primary residence is with their other parent) have family ties to children

that "the custodial parent is contributing an equivalent amount of support through cash and in-kind contributions." Margaret Campbell Haynes, *Child Support and the Courts in the Year 2000*, 17 AM. J. TRIAL ADVOC. 693, 701 (1994). DHS's January 1994 report to the Minnesota Legislature stated that Minnesota's guidelines assume "that the custodial parent spends the same percentage of income toward the support of the child as the noncustodial parent." OFFICE OF CHILD SUPPORT ENFORCEMENT, MINNESOTA DEPARTMENT OF HUMAN SERVICES, REPORT TO THE MINNESOTA LEGISLATURE ON THE MINNESOTA CHILD SUPPORT GUIDELINES 4 (January 1994).

121. For purposes of this article, "other legally-dependent children residing in the home" or "other residential children" means children other than the children for whom support is being determined, whose primary residence is with the parent and to whom the parent owes a legal duty of support. MINN. STAT. §§ 518C.101 (a) & (c) (1990 & Supp. 2001). These children are often referred to—indeed, are designated in current state statute—as "subsequent children." MINN. STAT. § 518.551, subd. 5f (1990 & Supp. 2001); see also Roehrich, *supra* note 1, at 967-1007; Misti Nelc, *Inequitable Distribution: The Effect of Minnesota's Child Support Guidelines on Prior and Subsequent Children*, 17 LAW & INEQ. 97 (1999). However, this characterization is somewhat of a misnomer, since a parent may have an older child from a prior relationship residing with him or her at the time a support obligation is being determined. See, e.g. Mancuso v. Mancuso, 417 N.W.2d 668, 670-71 (Minn. Ct. App. 1988). In *Mancuso*, the obligor was living with four biological children from a previous marriage at the time support was being determined for a child from a subsequent marriage. *Id.*

122. Marianne Takas, *Improving Child Support Guidelines: Can Simple Formulas Address Complex Families?*, 26 FAM. L.Q. 171, nn.1, 2 (1992).

other than those to whom they owe child support.¹²³

Although many descriptions of multiple families emphasize fathers and/or obligors, multiple families are also a fact of life for obligees. Some obligees are simultaneously obligors, owing support to children residing principally with their other biological parent. Other obligees have children from other relationships living with them at the time an order for support is being established or modified. Multiple families for both obligees and obligors also develop through cohabiting partnerships, which have been increasing in number but which do not last as long as marriages.¹²⁴ Data from the 1987-88 National Survey of Families and Households and the 1995 National Survey of Family Growth show that “[b]y 1995, half of all women in their 30s had cohabited outside of marriage” and that 40% of births to unmarried women in 1990-94 were to women in a cohabiting relationship.¹²⁵

Neither case law nor recent additions to the guidelines statute provide adequate guidance to the courts for the determination of support when parents have other legally-dependent children residing with them.¹²⁶ Prior to 1998, courts relied on a

123. The study analyzed 649 families in which one member is a “nonresident father” (i.e., a father with at least one biological child who lives principally with his or her biological mother in a different household) from the nationally-representative 1987-88 National Survey of Families and Households. Approximately 8% of the fathers in the sample owed support to more than one set of nonresident children; another 36% had other biological children living with them. See Wendy D. Manning et al., *The Complexity of Fathers’ Parenting Responsibilities and Involvement with Nonresident Children*, BOWLING GREEN STATE UNIVERSITY CENTER FOR FAMILY AND DEMOGRAPHIC RESEARCH WORKING PAPER SERIES 00-12 (2000) at 7-8, 13, available at <http://www.bgsu.edu/organizations/cfdr/framesets/researchframe/research/PD> (forthcoming in JOURNAL OF FAMILY ISSUES (2003)).

124. L. Bumpass & H. Lu, *Cohabitation: How the Families of U.S. Children are Changing*, 21 FOCUS 5, 6-7 (Spring 2000).

125. *Id.* at 5-6.

126. This represents only one type of multiple-family situation which may affect the determination of support. The other major type involves the determination of support when a parent is already obligated to pay support to other children not of the action. There was much less debate among the participants in the 1998 quadrennial review about present statutory provisions for this latter family type. The amount of support and spousal maintenance being paid by the parent is deducted from his or her income before the application of the percentage grid. MINN. STAT. § 518.551, subd. 5 (b) (viii) (1990 & Supp. 2001). In this regard, Minnesota resembles every other state in subtracting from a parent’s income the amount of any prior child support obligations. See MORGAN, *supra* note 11, at 3-40 - 3-41 (“All states have considered the question of whether to consider children from prior relationships in the support calculation and

considerable, and often contradictory, body of case law. Arguably, case law has instructed the courts both not to consider, and to consider, the needs of other children in a parent's home when determining support for a child not in the home.¹²⁷ When courts *have* considered the needs of other residential children, case law has provided ambiguous guidance about how, exactly, those needs should be measured and factored into the determination of the order for support. Citing *D'Heilly v. Gunderson*,¹²⁸ *Hayes v. Hayes*,¹²⁹ and most significantly, *Bock v. Bock*,¹³⁰ Roehrich argues persuasively

answered with a unanimous response: Proper judicial deference must be given to prior court orders.”). This is generally known as the “reduced ability” approach to the determination of support when support is also owed to other children. Roehrich, *supra* note 1, at 991. Roehrich notes that the “reduced ability” approach was authorized in *Hayes v. Hayes*, 473 N.W.2d 364, 366 (Minn. Ct. App. 1991). *Id.* at 991. During Minnesota’s guidelines review process, there was debate on only one aspect of the reduced ability approach reflected in current statute with respect to prior orders and that is the conditional nature of the deduction. The amount to be subtracted from income is any amount “being paid,” not simply the amount ordered. MINN. STAT. § 518.551, subd. 5(b)(viii) (1990 & Supp. 2001). Some stakeholders argued strongly that the amount of the obligation should be deducted irrespective of whether or not it was actually being paid. *See Beld, supra* note 8, at 12.

127. For example, in *Erickson v. Erickson*, the court ruled that “although subsequent children are relevant to the trial court’s determination of support for prior children, subsequent children should not be factored into the guidelines formula.” 385 N.W.2d 301, 304 (Minn. 1986). *See also* Roehrich, *supra* note 1, at 993 (summarizing *Erickson*). *But see* Moylan v. Moylan, 384 N.W.2d 859 (Minn. 1986) (warning against mechanical application of the guidelines); Packer v. Holm, 364 N.W.2d 506, 507 (Minn. Ct. App. 1985); Searcy v. Mercado, 410 N.W.2d 43 (Minn. Ct. App. 1987) (stating in both cases that the mechanical application of the guidelines was inadvisable where the obligor is supporting children in two different households). The Minnesota Court of Appeals in *Finch v. Marusich*, held that the trial court erred by not considering “reasonable costs of the obligor and the subsequent family with whom he lived” in modifying the order for support. 457 N.W.2d 767, 769 (Minn. Ct. App. 1990). *See also* Nelc, *supra* note 121, at 121 (summarizing *Finch*). And in *Bock v. Bock*, the court held that “trial courts should consider an obligor’s duty to support subsequent children,” even though the subsequent children’s needs “cannot be factored into guidelines child support calculations.” 506 N.W.2d 321, 324 (Minn. Ct. App. 1993). *See also* Roehrich, *supra* note 1, at 1000 (summarizing *Bock*).

128. 428 N.W.2d 133, 133 (Minn. Ct. App. 1988) (holding that the courts should not give excessive deference to subsequent child support obligations).

129. 473 N.W.2d 364, 364 (Minn. Ct. App. 1991) (holding that excessive deference to the needs of a subsequent child is an abuse of discretion).

130. 506 N.W.2d 321, 321 (Minn. Ct. App. 1993) (holding that excessive deference to the needs of a subsequent child by incorrectly applying the “reduced ability” approach to the determination of support constitutes an abuse of discretion, and establishing the principle that the amount of child support awarded for subsequent children should not exceed the amount awarded for

that “the court has failed to declare a practical formula that trial courts can use when calculating support where the obligor must support both prior and subsequent children. . . .”¹³¹ Similarly, Nelc observes, “The *Bock* formula’s ambiguous, impractical and numerous factors fail to provide courts clear direction in multiple family cases.”¹³²

The shortcomings of Minnesota case law on the treatment of other residential children have now been enacted into statute. In 1998, the Minnesota legislature essentially codified the formula set forth in *Bock* for considering the needs of an obligor’s subsequent children in modifying a prior order for support.¹³³ The provisions reflect a “defensive-use-only” approach¹³⁴ to adjusting child support to accommodate a parent’s duty to support other residential children: “The needs of subsequent children shall not be factored into a support guidelines calculation under subdivision 5,” on the grounds that “the fact that an obligor had additional children after the entry of a child support order is not grounds for a modification to decrease the amount of support owed.”¹³⁵ However, “the fact that an obligor has subsequent children shall be considered in response to a request by an obligee for a modification to increase support.”¹³⁶ Consistent with the holding in *Bock*, the statute goes on to list the factors and findings the court must consider in order to deviate from the guidelines in modifying the order,¹³⁷ but

children supported under a prior order).

131. Roehrich, *supra* note 1, at 996, 1002.

132. Nelc, *supra* note 121, at 123. Nelc notes the following specific shortcomings of the *Bock* approach: “The court uses vague concepts such as the obligor’s ‘reasonable expenses,’ ‘shared’ benefits, ‘total needs’ of all children, and ‘specific findings on the needs’ of the children before the court, none of which the court explicitly defines.” *Id.*

133. 1998 Minn. Laws 382, art. 1, §§ 7 - 11.

134. Under this approach, “an obligor may not affirmatively seek a modification of the support obligation on the grounds that he or she has new children from a subsequent marriage. The obligor may, however, defend a motion for an upward modification of the support obligation on the grounds that he or she has new children from a subsequent marriage.” MORGAN, *supra* note 11, at 3-47 n. 136.

135. MINN. STAT. § 518.551, subd. 5f (1990 & Supp. 2001).

136. *Id.*

137. The court is required to “find the obligor’s total ability to contribute to dependent children, taking into account the obligor’s income and reasonable expenses exclusive of child care,” reducing those expenses “as appropriate to take into account contributions to those costs by other adults who share the obligor’s current household,” and apportioning those expenses “between the parent and any subsequent child with regard to shared benefits, including but not limited to,

ultimately leaves the determination of the final amount to judicial discretion.¹³⁸ This leaves the door open to inconsistent orders for similarly-situated families,¹³⁹ just as the treatment of child care costs as a factor for deviation in Wisconsin and North Dakota may also promote inconsistencies.

Minnesota's guidelines would thus be improved if they included simple, consistent, and equitable provisions for multiple families.

4. *The current guidelines do not explicitly account for the parenting time¹⁴⁰ expenses of obligors.* According to the guidelines statute, one of the factors courts are to consider in establishing or modifying child support is the standard of living the children would enjoy if the parents were living together, but "recognizing that the parents now have separate households."¹⁴¹ However, there is no guidance in statute as to the impact this recognition ought to have on the amount of support ordered. There are good reasons for this lack of guidance. First, it is entirely unclear what assumptions concerning the distribution of child costs between the parents' households underlie Minnesota's current guidelines percentages. Do the guidelines assume that obligors spend money on their children in addition to child support, and that such expenditures by obligors reduce obligee costs? Or do they assume either minimal parenting time expenditure by the obligor, or minimal impact of such expenditures on the obligee's expenses? There is little direct evidence on this point.¹⁴² None of Minnesota's three

housing and transportation." MINN. STAT. § 518.551, subd. 5f (1) (1990 & Supp. 2001). The court is also required to "find the total needs of all the obligor's children, and if these needs are less than the obligor's ability to pay, the needs may become the obligor's child support obligation." The court must also "take into account the ability to contribute to the needs [of the subsequent children] by another parent of the children." MINN. STAT. § 518.551, subd. 5f (2) (1990 & Supp. 2001). Finally, the court is to make "specific findings on the needs of the child or children who are the subject of the support order under consideration." MINN. STAT. § 518.551, subd. 5f (3) (1990 & Supp. 2001).

138. MINN. STAT. § 518.551, subd. 5f (4) (1990 & Supp. 2001).

139. Both Roerich and Nelc note the inconsistencies, not simply within the body of case law on "subsequent children," but also in the manner in which case law is applied. Roerich, *supra* note 1, at 999 n.212; Nelc, *supra* note 126, at 124 n.170-172. The inconsistencies in the application of that case law are likely to continue under the new statutory provisions.

140. What was once called "visitation" is now referred to as "parenting time" under Minnesota Statutes. 2000 Minn. Laws 444, art. 2, §§9-10.

141. Minn. Stat. § 518.551, subd. 5 (c) (3) (1990 & Supp. 2001).

142. Some sources argue that all state guidelines assume some reduction in obligee costs due to obligor parenting-time expenditures, and that guideline

guidelines reviews addresses the question of whether the current percentages are discounted to reflect reductions in obligee costs due to obligor parenting-time expenditures. Nor does the Minnesota Family Law Practice Manual shed light on this question.¹⁴³ Case law on this point is, at best, contradictory.¹⁴⁴ This is perhaps unsurprising, given that the guidelines are not clearly tied to what parents in *intact* households spend on their children, much less to what parents in *separated* households spend.

Second, there is very little reliable information on obligor parenting-time expenditures. The case data analysis accompanying the 1998 review revealed that many court orders are surprisingly non-specific with respect to the amount of parenting time children have with each parent. In many cases, an order stated simply that a non-custodial parent was entitled to "reasonable and liberal visitation" but did not specify what kind of schedule or percentage of time would constitute "reasonable and liberal." Anecdotal evidence from the members of the Guidelines Review Task Force suggested that even when families have a very specific parenting time schedule spelled out in their orders, obligors vary greatly in their actual use of that parenting time in ways that are not captured

amounts are already discounted to reflect that cost-sharing. See, e.g., Karen Czapanskiy, *Child Support, Visitation, Shared Custody, and Split Custody*, in CHILD SUPPORT GUIDELINES: THE NEXT GENERATION 43 (Margaret Campbell Haynes, U. S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement eds., April 1994); see also Laura W. Morgan, *Child Support Guidelines and the Shared Custody Dilemma*, 11 DIVORCE LITIGATION 213 (1998), available at www.supportguidelines.com/articles/art199906.html. Others argue that most state guidelines make no such assumption. See Venohr and Williams, *supra* note 109, at 29.

143. MINNESOTA FAMILY LAW PRACTICE MANUAL, 2nd ed., Issue 59 § 7.01 & § 7.06 (Cathy E. Gorlin, ed., 2000).

144. See, e.g., *McNulty v. McNulty*, 495 N.W.2d 471 (Minn. Ct. App. 1993) (holding that "most obligors make direct casual expenditures for children during visitation and such random expenditures do not create a basis for establishing or modifying support" by citing *Issue 51*, MINNESOTA FAMILY LAW PRACTICE MANUAL, § 7.01(C), p. 97-a (1998)); see also *Washington County v. Johnston*, 568 N.W.2d 459 (Minn. Ct. App. 1997) (refusing to deviate downward from guidelines for an obligor who incurred parenting time expenses by caring for his children in his home two nights per week and every other weekend was not considered an abuse of discretion). These holdings suggest that obligor expenditures are already factored into the guidelines. But see *Merrick v. Merrick*, 440 N.W. 2d 142 (Minn. Ct. App. 1989) (holding that an obligor's visitation travel expenses should have been considered in determining the support obligation); *Graser v. Graser*, 392 N.W.2d 743 (Minn. Ct. App. 1986) (holding that visitation expenses may justify a downward deviation). These holdings suggest that parenting time expenses are *not* factored into the guidelines.

in any data base. They may see a good deal less, or a good deal more, of their children than specified in the order.

Third, there no predictable relationship between the amount of time obligors spend with their children and the amount of money they spend. Some may spend a great deal on transportation and food but very little on housing. Others may spend a great deal on housing but little on entertainment or transportation. These information limitations are not confined to Minnesota; there is no national research estimating what obligors spend on their children during parenting time.¹⁴⁵ Thus, even if the assumptions of the current guidelines with respect to obligor parenting-time expenditures were clear, there is little systematic guidance available to help courts “recogniz[e] that the parents have separate households” in setting support.

There is, of course, a substantial body of case law that applies when an obligor’s parenting time approaches 50%, irrespective of the custody label applied to such cases.¹⁴⁶ While the case law is not unambiguous,¹⁴⁷ the predominant approach to determining support when parents share substantially equal parenting time is the Hortis/Valento formula.^{148, 149}

145. Letter from Mark Lino, U.S. Department of Agriculture, Center for Nutrition Policy and Promotion (February 28, 2001) (on file with author).

146. *Tweeton v. Tweeton*, 560 N.W.2d 746 (Minn. Ct. App. 1997) (using the Hortis/Valento cross-credit to set support where the father was granted sole physical custody but the mother cared for the children in her home every other week, i.e. half the time).

147. *See, e.g., Pavlasek v. Pavlasek*, 415 N.W.2d 42 (Minn. Ct. App. 1987) (holding that a trial court may use a “fair contribution formula” rather than the Hortis/Valento cross-credit approach to determine support, “so long as the award fairly reflects needs and financial circumstances.”).

148. *See Valento v. Valento*, 385 N.W.2d 860 (Minn. Ct. App. 1986); *Hortis v. Hortis*, 367 N.W.2d 633 (Minn. Ct. App. 1985). Under this approach, a hypothetical guidelines obligation is first calculated for each parent; each parent’s obligation is then multiplied by the percentage of time the children spend with that parent; and the parent who owes the larger amount then is ordered to pay to the other parent the difference between the two amounts.

149. Eighteen states use a cross-credit approach to adjust support orders for any parenting time arrangement in which the obligor has more than a “standard” amount of parenting time (generally more than 20% of overnights), but in most of these states the basic support amount is first increased by 50% to account for duplicated expenditures in the two households before the obligor’s percentage is determined. National Conference of State Legislatures, *Child Support and Parenting Time Adjustments* (April 2000), at 2. *See State Treatment of Shared Parenting*, NATIONAL CONFERENCE OF STATE LEGISLATURES, (April 2000), available at <http://www.ncsl.org/programs/cyf/shared.htm>. The eighteen states include Alaska, Colorado, Delaware, District of Columbia, Idaho, Kansas, Maryland,

The cross-credit method incorporated in Hortis/Valento, however, rests on an unsubstantiated assumption that time equals money. The formula presumes that a parent who spends a specific percentage of time with a child incurs that same percentage of the child's overall expenses. There is simply no research to substantiate this presumption, and there is plenty of anecdotal evidence challenging it.¹⁵⁰ There is also anecdotal evidence that the cross-credit approach may encourage disingenuous litigation over parenting time.¹⁵¹ In short, although case law has provided a method to determine support in equal parenting time cases, the merits of that method are questionable for those cases. Its merits are even more questionable for cases in which the obligor is responsible for the children less than fifty percent of the time.

Minnesota's guidelines would thus be improved if they factored in the economic realities of parenting in "separate households" without providing incentives to litigate.

5. *The current guidelines result in orders which are inconsistent and/or too high for many low-income obligors.* Minnesota's current guidelines include three provisions for reducing support when the obligor has limited ability to pay.¹⁵² The first is the income "floor" for the basic support percentages, currently at \$550 net per month.¹⁵³ Obligor's with incomes at or below this level are to have support set "based on the ability of the obligor to provide support at these income levels, or at higher levels, if the obligor has the earning ability."¹⁵⁴ This provision does not assure consistency in

Nebraska, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, Utah, Vermont, Virginia, West Virginia, and Wyoming. *Id.*; see also *Child Support and Parenting Time Adjustments* NATIONAL CONFERENCE OF STATE LEGISLATURES (June 2000) (providing an excellent summary of various state provisions for parenting time and various arguments in favor of and opposed to such provisions) available at <http://www.ncsl.org/programs/cyf/issue6-00.htm>; Morgan, *supra* note 142 (providing a helpful treatment of the rationale for the application of a 1.5 multiplier to child costs prior to determining the obligor's share).

150. Minnesota's Child Support Guidelines Review Task Force considered at length a modified cross-credit approach to equal parenting time cases and ultimately rejected this approach precisely because it questioned the assumption that a parent who cares for a child half the time necessarily bears half the child's expenses. See Guidelines Review Task Force Minutes, November 15, 2000, at 3-4.

151. See Morgan, *supra* note 142, at 6. "The major drawback of this [cross-credit] methodology has been the anecdotal reports that some noncustodial parents will negotiate for custody that reaches the threshold in order to obtain the benefit of the discount, but will then not exercise this visitation." *Id.*

152. MINN. STAT. § 518.551, subd. 5(b) (1990 & Supp. 2001).

153. *Id.*

154. *Id.*

orders for low-income obligors. The court may reserve support, order a nominal amount,¹⁵⁵ or extrapolate the percentages in the guidelines grid downward (for example, order an amount equal to 15% of the obligor's monthly net income for an obligor with an income of \$550 per month).¹⁵⁶ Moreover, the income floor provision does not assure affordability. The income "floor" is less than a poverty-level income; its gross income equivalent is approximately \$642 per month, or only 90% of the 2001 federal poverty guideline for a one-person household.¹⁵⁷ Obligor at that income level are unable to meet their own basic needs, much less the needs of their children.

A second provision which may reduce orders for low-income obligors is the "substantial unfairness test" applied to the order for child care support. Under this provision, child care support may be reduced to ensure that the obligor has at least a poverty-level income left after paying basic support, spousal maintenance, and child care support.¹⁵⁸ But this provision is problematic as well. For one thing, only the order for child care support may be adjusted. If the order for basic support alone, or the sum of basic support and medical support, puts an obligor below the poverty level, there is no formula for adjusting the order. For another, this provision assumes that a poverty-level income is sufficient for an obligor to meet his or her own basic needs. This is a highly questionable assumption. Not only is there extensive social science literature criticizing the unrealistically low levels of the federal poverty guidelines,¹⁵⁹ there is implicit criticism of the guidelines in state policy. The income guidelines for the Minnesota Family Investment Program (Minnesota's welfare-to-work program) treat

155. See, e.g., *In Re Custody of A.S.R.*, 539 N.W.2d 607, 613 (Minn. Ct. App. 1995) (reversing the trial court in favor of a referee ruling that ordered a nominal amount based on the obligor's ability to pay).

156. The 1998-2000 case data analysis included examples of all three types of orders for obligors with incomes below the guidelines "floor." See Beld, *supra* note 85.

157. The 2001 poverty guideline for the forty-eight contiguous states and the District of Columbia is \$8590 in gross income per year, or \$716 per month. Annual Update of the HHS Poverty Guidelines, 66 Fed. Reg. 10,695 (February 16, 2001), available at <http://aspe.hhs.gov/poverty/01fedreg.htm>.

158. MINN. STAT. § 518.551, subd. 5 (b) (1990 & Supp. 2001).

159. For a brief but excellent review of the major criticisms, see the executive summary and the introduction in NATIONAL RESEARCH COUNCIL PANEL ON POVERTY AND FAMILY ASSISTANCE, *MEASURING POVERTY: A NEW APPROACH* (National Academy Press 1996).

120% of the federal poverty guideline (rather than 100%) as an operational definition of self-sufficiency.¹⁶⁰

A third provision intended to result in more affordable orders is the structure of the current basic support percentage grid, in which smaller percentages are applied to lower-income obligors. Unfortunately, these declining percentages do not ensure that obligors will have even a poverty-level income remaining after paying support. Under the current child support guidelines, an obligor earning a full-time minimum wage of \$5.15 per hour would be ordered to pay basic support for one child of \$131 per month. The obligor would have only \$761 per month remaining after paying basic support, barely above the federal poverty guideline of \$716 per month.¹⁶¹

These outcomes run counter to national research and recommendations concerning child support guidelines for low-income obligors. A growing number of research organizations, such as the Center for Law and Social Policy,¹⁶² the Center on Budget and Policy Priorities,¹⁶³ and the Urban Institute,¹⁶⁴ are urging states to recognize the distinction between obligors who are *unwilling* to pay guidelines support and obligors who are simply *unable* to pay. As noted by the National Conference of State Legislatures (NCSL),

Low-income women tend to partner with men who share many of their characteristics – minimal job skills, limited work history and low educational levels – all of which lead to low-wage employment. . . . [L]ow earnings make it

160. MINN. STAT. § 256J.24, subd. 10(a) (1998 & Supp. 2001). *See also* <http://www.dhs.state.mn.us/ecs/reguproc/cm/master01.htm>.

161. Some obligors could be ordered to pay child care support and medical support in addition to this amount, depending on whether child care costs are being incurred. MINN. STAT. § 518.551, subd. 5(b) (1990 & Supp. 2001). Also considered is the availability and cost of medical insurance. MINN. STAT. § 518.171, subd. 1(b) (1990 & Supp. 2001).

162. *See* VICKI TURETSKY, KELLOGG DEVOLUTION INITIATIVE PAPER: REALISTIC CHILD SUPPORT POLICIES FOR LOW-INCOME FATHERS, at 7 (Center for Law and Social Policy March 2000), *available at* <http://www.clasp.org/pubs/childenforce/kellogg.htm>.

163. *See* WENDELL PRIMUS & C.L. CASTRO, A STATE STRATEGY FOR INCREASING CHILD SUPPORT PAYMENTS FROM LOW-INCOME FATHERS AND IMPROVING THE WELL-BEING OF THEIR CHILDREN THROUGH ECONOMIC INCENTIVES (Center on Budget and Policy Priorities ed. 1999), *available at* <http://www.cbpp.org/4-14-99wel.htm>.

164. Elaine Sorenson & Chava Zibman, *Poor Dads Who Don't Pay Child Support: Deadbeats or Disadvantaged?* NEW FEDERALISM: NATIONAL SURVEY OF AMERICA'S FAMILIES: URBAN INSTITUTE SERIES PAPER B-30 (2001), *available at* http://newfederalism.urban.org/pdf/anf_b30.pdf.

difficult for fathers to comply with court-ordered support.¹⁶⁵

Many of these organizations recommend that guidelines be structured to result in consistent orders that low-income obligors can actually pay.¹⁶⁶ They argue that such guidelines are ultimately better for children because obligors are more likely to comply with affordable orders.¹⁶⁷

Minnesota's guidelines would thus be improved if they produced consistent and affordable orders for low-income obligors.

IV. THE SHARED RESPONSIBILITY INCOME-SHARES GUIDELINES PROPOSAL: MEETING CHILDREN'S NEEDS IN BOTH HOUSEHOLDS

A. *The Provisions of Shared Responsibility*

Shared Responsibility is a simple income-shares model for determining child support. It maintains the distinction between basic, child care, and medical support found in current law, but it determines all three types of support in the same way. Amounts are apportioned between the parents in accordance with each parent's share of their combined income, unless an obligor has limited ability to pay. In such cases, support is adjusted downward, using guidelines for relevant state public assistance programs to determine the amount of the reductions. Shared Responsibility achieves the accuracy and consistency of Maryland's guidelines while improving on the equity found in Delaware's guidelines.

165. ADVISORY COMMITTEE ON RESPONSIBLE FATHERHOOD, NATIONAL CONFERENCE OF STATE LEGISLATURES, CONNECTING LOW-INCOME FATHERS AND FAMILIES: A GUIDE TO PRACTICAL POLICIES 1-2 (2000), available at <http://www.calib.com/peerta/policies/connect.htm>.

166. See TURETSKY, *supra* note 162, at [http://www.clasp.org/pubs/childenforce/kellogg.htm#Setting Support Orders](http://www.clasp.org/pubs/childenforce/kellogg.htm#Setting%20Support%20Orders); see also PRIMUS AND CASTRO, *supra* note 163, at <http://www.clasp.org/pubs/childenforce/kellogg.htm> ("Because child support orders are established in accordance with guidelines established by the state, every state can and should review the level of payments expected of *low-income* noncustodial parents to ensure that they are reasonable. Excessive child support orders are counterproductive, often leading noncustodial fathers to move into the underground economy and avoid all payments on behalf of their children."); see also ADVISORY COMMITTEE ON RESPONSIBLE FATHERHOOD, NATIONAL CONFERENCE OF STATE LEGISLATURES, *supra* note 165, at 5-6.

167. Much of the research support for this position is derived from interviews with low-income non-custodial fathers. See Maureen R. Waller & Robert Plotnick, *Effective Child Support Policy for Low-Income Families: Evidence from Street-Level Research*, 20 J. OF POL'Y AND MGMT., 100, 102-103 (2001).

However, it is simpler than Delaware's Melson-formula income-shares model.

To illustrate the key features of Shared Responsibility, below is an annotated worksheet for a hypothetical Minnesota family.¹⁶⁸ The family is typical of many Minnesota families with respect to income and expenses for child care and medical care. However, in order to demonstrate how Shared Responsibility adjusts support for low-income obligors, the obligor in this hypothetical family was assigned a lower income than the obligee.

***SHARED RESPONSIBILITY CHILD SUPPORT GUIDELINES
ANNOTATED SAMPLE WORKSHEET***

Number of children for whom support is being determined: 1¹⁶⁹

Determining Parental Responsibility

	<i>Obligor</i>	<i>Obligee</i>
Income:		
1. Gross monthly income: ¹⁷⁰	<u>2000</u>	<u>3000</u> ¹⁷¹
Deductions:		
2. Self-employment business expenses: ¹⁷²	—	

168. Additional information on the Shared Responsibility model, including proposed schedules, details on selected provisions, and answers to "frequently asked questions," available at <http://www.dhs.state.mn.us/ecs/reports/csgdline.pdf>.

169. According to the 1998-2000 case data analysis, the majority of child support orders in Minnesota (60% of the sample) involve only one child. Another 32% involve two children; the remaining 8% involve three or more. See Beld, *supra* note 85, at 13.

170. The definition of "income" under current statute would be retained under Shared Responsibility. Income would include wages (including wages earned by a party receiving public assistance), salaries, payments to an independent contractor, workers' compensation, unemployment benefits, annuity, military and naval retirement, pension and disability payments. Income would not include public assistance benefits or maintenance. See MINN. STAT. § 518.54, subd. 6 (1990 & Supp. 2001).

171. The combined income of these two hypothetical parents is close to the median gross income of a four-person household in Minnesota, currently approximately \$5,556 per month. See U.S. CENSUS BUREAU, MEDIAN INCOME FOR 4-PERSON FAMILIES BY STATE, available at <http://www.census.gov/hhes/income/4person.html>.

172. Shared Responsibility would retain the current statutory provision subtracting ordinary and necessary business expenses from the gross income of a self-employed party. MINN. STAT. § 518.554, subd. 5b(f) (1990 & Supp. 2001). Neither parent in this hypothetical example is self-employed, consistent with data from the Minnesota Department of Economic Security suggesting that less than

- | | |
|--|---------------------------|
| 3. Other orders being paid: ¹⁷³ | <u>424</u> ¹⁷⁴ |
| 4. Total deductions (Line 2 + Line 3) | <u>424</u> |

Gross Income Adjusted for Child Support:

- | | | |
|---|-------------|-------------|
| 5. Monthly gross income adjusted for child support
(Line 1 – Line 4): ¹⁷⁵ | <u>1576</u> | <u>3000</u> |
|---|-------------|-------------|

Parents' Share of Responsibility: Complete Line 6, 7, or 8-10 as appropriate.

If Obligor's gross income adjusted for child support (Line 5) is below 150% of the federal poverty level for a one-person household (\$1043/mo as of April 2000),¹⁷⁶ reserve child care support and medical support,¹⁷⁷ and

10% of non-agricultural earners in Minnesota are self-employed. See MINNESOTA DEPARTMENT OF ECONOMIC SECURITY, FACTSHEET: SELF EMPLOYMENT IN THE WORKFORCE, available at <http://www.des.state.mn.us/lmi/trends/dec98/facts.htm>.

173. Shared Responsibility would retain the current statutory provision subtracting other child support or maintenance orders currently being paid from a parent's gross income, extending this provision to obligees as well as obligors. MINN. STAT. § 518.554, subd. 5(b)(viii) (1990 & Supp. 2001).

174. It is difficult to estimate the percentage of obligors paying prior orders, and virtually impossible to estimate the percentage of obligees paying prior orders under present data collection practices. However, for the sake of illustration, a prior order being paid by the obligor is included in this example. The dollar amount of \$424 was selected because it was the median amount actually being deducted for prior orders among cases with prior orders in the four-county live data analysis conducted by MDHS in the spring of 2000.

175. Unlike Minnesota's current guidelines, Shared Responsibility bases child support on gross income with a limited number of deductions. After extensive research and comparisons with guidelines in other income-shares states, the project team and a substantial majority of the Task Force concluded that gross income guidelines would be more accurate, more equitable, simpler, and less likely to promote litigation than Minnesota's current net income basis. See Beld, *supra* note 108, at 12-16 (providing a detailed explanation of the rationale and research supporting this recommendation).

176. The presumptive minimum provision was developed by the advisory Task Force at its meeting of September 27, 1999 and subsequently adopted by the agency project team. The provision reflects a "basic needs" standard for the obligor of 120% of the federal poverty guideline for a one-person household; that is, the payment of child support is not intended to put an obligor below 120% of the federal poverty guideline. This standard was selected because it is consistent with the income needed to exit the MFIP program. It is higher than the remaining income permitted by the "substantial unfairness test" (only 100% of the federal poverty guideline—Minnesota Statutes § 518.551, subd. 5 (b) (1990 & Supp. 2001)). It is also close to what an individual would earn in a full-time minimum-wage job. In order to preserve an income of at least 120% of the federal poverty guideline after the payment of support, Shared Responsibility establishes

establish basic support as follows:

6. For 1-2 children: Obligor's Line 5 X .10 or \$50/mo, whichever is greater: _____

7. For 3+ children: Obligor's Line 5 X .12 or \$75/mo, whichever is greater:¹⁷⁸ _____

IMPORTANT: Do not complete the rest of the worksheet when the obligor's income is below 150% of the federal poverty level for a one-person household.

If Obligor's gross income adjusted for child support (Line 5) is at least 150% of the federal poverty guideline, apportion responsibility for meeting children's needs as follows:

8. Deduction for other legally dependent children residing with the parent:¹⁷⁹

the gross income threshold for the application of the presumptive minimum as an income of less than 150% of the federal poverty guideline (\$1043 per month, using the 2000 poverty guidelines). This threshold ensures that most obligors whose earned incomes exceed 120% of the poverty guideline will retain at least 120% of the poverty guideline (currently \$835 per month) after paying support in accordance with the presumptive minimum amounts. The threshold is expressed in terms of a percentage of poverty rather than as a dollar amount so that the threshold can be annually updated as the federal poverty guidelines change.

177. Like all other features of Shared Responsibility, the presumptive minimum is rebuttable. For example, a finding that the obligor had access to no-cost or low-cost private health insurance for the children of the action would rebut the presumption that medical support would be reserved. A finding that the obligor had no income and no ability to earn income would rebut the presumptive minimum for basic support.

178. The dollar amounts and percentages were recommended by the Task Force upon its review of the presumptive minimum provisions in effect in other states. The final provision in Shared Responsibility combines the presumptive minimum provisions used in Iowa (which differentiates between minimum orders for one or two children and three or more children, but uses flat dollar amounts of \$50 and \$75 respectively) and those used in Maine and Michigan (which order 10% of the obligor's income when the obligor is at or below the poverty level). Iowa Child Support Guideline, *available at* <http://www.judicial.state.ia.us/families/childsug.asp>; Me. Rev. Stat. Ann. tit. 19-A, §§ 2001–2010; Michigan Child Support Formula Manual 2001, *available at* <http://www.Supremecourt.state.mi.us/courtdata/friend>.

179. The term "other legally-dependent children" is preferable to "subsequent children" because a parent may have an older child from a prior relationship living with him or her at the time an order for support is being established. "Other legally-dependent child" would be defined as a child whom the parent has

<i>1 child = \$236</i>	Obligor	Obligee	Combined
<i>2 children = \$426</i>			
<i>3 children = \$598</i>			
<i>4 or more children = \$761¹⁸⁰</i>	<u>236</u>	<u>236¹⁸¹</u>	

9. Monthly income available for child support¹⁸² (*Line 5 minus Line 8*):

Obligor	Obligee	Combined
<u>1340</u>	+ <u>2764</u>	= <u>4104</u>

10. Each parent's proportionate responsibility:

Obligor's Line 9 ÷ Combined Line 9: .33

Obligee's Line 9 ÷ Combined Line 9: .67

Meeting the Needs of the Children

Obligor	Obligee	Combined
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Order for Basic Support:

11. Shared responsibility for children's living expenses:¹⁸³ 682

the legal duty to support (i.e., biological or adopted children); who is not a subject of the action for child support; for whom the parent is not ordered to pay child support; and for whom no other person has court-ordered sole physical custody.

180. The dollar amounts to be deducted under this provision represent one-half of what it costs to support children at 120% of the poverty level. The amounts were determined by calculating the children's per capita share of income in families of different sizes with incomes of 120% of the federal poverty guidelines (the same operational definition of "basic needs" used to establish the presumptive minimum provision and the exit levels for MFIP). One half of the resulting amount is then deducted from the parent's income, because the other legally-dependent children also have another parent who is responsible for supporting them. It is important to emphasize that this process does not limit what parents can spend on the other children living with them. The intention of this provision is to shelter a minimum amount of income to enable parents to meet at least their basic needs, not to restrict parents to meeting only their basic needs.

181. Under Shared Responsibility, the income deduction for other legally-dependent children can be applied to either parent, not simply the obligor. For the sake of illustration, both parents in this hypothetical family have another legally-dependent child residing with them.

182. The term "monthly income available for child support" is used instead of "adjusted gross income" to avoid confusion with "adjusted gross income" for tax purposes. It is this income amount that is used to determine basic, child care, and medical support for all obligors whose gross incomes minus self-employment expenses and other orders being paid exceed 150% of the federal poverty guideline.

183. For purposes of basic support, children's living expenses include all

Enter the dollar amount on the Schedule of Basic Support¹⁸⁴ appropriate to the parents' combined monthly income available for child support (Combined Line 9) and the number of children for whom support is being determined. If the parents' Combined Line 9 exceeds \$15,000, enter the dollar amount for parents whose Combined Line 9 is equal to \$15,000.¹⁸⁵

12. Proportionate responsibility of each parent:

Obligor: Obligor's Line 10 X Line 11: 225
Obligee: Obligee's Line 10 X Line 11: 457

Order for Child Care Support:

parental expenditures on children except child care and health care, since support amounts for these expenses are determined separately under Shared Responsibility.

184. The Schedule of Basic Support was constructed by the MDHS guidelines project team in consultation with staff economists at the U.S. Department of Agriculture. The dollar amounts in the schedule are based on USDA estimates of what Midwestern two-parent households at different income levels spend on their children (exclusive of child care and medical care), but systematically adjusted downward to reserve income to the obligor for parenting time expenses. The schedule resembles a tax table, with different dollar amounts for one to six or more children indicated at \$100 increments of combined parental income. The amount entered on Line 11 represents what the two parents *together* are expected to spend on the children of the action; the obligor's share is calculated on Line 12. Further explanation of the Schedule of Basic Support is provided below in Part V.C.

185. Like Minnesota's current guidelines, Shared Responsibility incorporates an income limit which effectively caps the basic support amount that the two parents together are expected to contribute toward the needs of their children. This limit would apply to the parents' *combined* income available for child support, rather than to the income of the obligor alone. The specific provision was developed at the Task Force meetings of August 10 and September 22, 2000. The members recommended continuity with the present income limit, with adjustments to reflect the gross income and income-shares basis of Shared Responsibility. The gross income equivalent of the current net income limit of \$6,280 is approximately \$10,000. Since the limit would have to apply to the combined income of both parents under Shared Responsibility, the Task Force multiplied \$10,000 by 1.5 to arrive at its recommended limit of \$15,000. This recommendation was also informed by income limits in the other fifteen gross income/income-shares states, which ranged from approximately \$10,000 to \$15,000. The state whose median income most closely approximated Minnesota's was Rhode Island, where the income limit is also \$15,000. Parents whose combined income available for child support exceeds \$15,000 per month would have at least the support amount appropriate to \$15,000 per month apportioned between them.

13. Shared responsibility for child care costs:¹⁸⁶ 350¹⁸⁷
 14. Proportionate responsibility of each parent:

Obligor: Obligor's Line 10 X Line 13: 39

Enter the lesser of (1) the monthly co-payment the obligor would make if he or she were receiving child care assistance appropriate to his or her monthly income available for child support (Line 9) for a family size equal to the obligor plus the children of the action,¹⁸⁸ or (2) the obligor's

186. Like the current guidelines, Shared Responsibility apportions the *cost* of child care between the parents, that is, "the total amount received by the child care provider for the child . . . from the obligee or any public agency." MINN. STAT. § 518.551, subd. 5(b) (1990 & Supp. 2001). This does not simply mean the amount of the payments made by the paying parent, which may be lower than the actual cost. However, unlike the current guidelines, Shared Responsibility does not reduce the cost of care by twenty-five percent prior to apportionment between the parents. The project team recommended this change, and the majority of Task Force members supported it, because (1) many parents are not eligible for child care tax credits; (2) the amount of savings realized through tax credits is in most cases considerably less than twenty-five percent; (3) the credit is necessary to offset the downward adjustment of other child costs in the Schedule of Basic Support; and (4) some obligors will pay less than their proportionate share of child care costs, so tax credits to the obligee will be needed to help make up the difference. Additional details on this provision are available in Beld, *supra* note 85, at 34-37.

187. The cost of child care in this hypothetical family is close to a recent estimate (\$336/mo) of the mean cost of care (averaging together full-time and part-time care) for the youngest child or only child in a family as reported by the Wilder Center in a statewide study of child care use funded by the Minnesota Department of Children, Families and Learning. See RICHARD CHASE AND ELLEN SHELTON, CHILD CARE USE IN MINNESOTA: REPORT OF THE 1999 STATEWIDE HOUSEHOLD CHILD CARE SURVEY 56 (Wilder Research Center 2001), *available at* <http://www.wilder.org/research/reports/pdf/childcareuse1-01.pdf>.

188. This provision is among the most innovative features of Shared Responsibility. Obligor's whose income available for child support (Line 9) would make them eligible for child care assistance would be asked to pay child care support equal to the co-payment they would make if they were to apply for child care assistance with the child/ren for whom support is being determined. In most cases this amount would be lower than their proportionate share of child care costs, unless the child care were being provided on a part time basis or at reduced rates (e.g., for family care). In this particular case, the co-payment amount of \$39 is considerably lower than the obligor's proportionate share of \$116 (\$350 X .33). This provision was developed to enhance equity in the evaluation of each parent's ability to pay for child care. It uses similar public policy standards, the income guidelines for the state Basic Sliding Fee program, to evaluate both parents' ability to pay for child care. The Shared Responsibility worksheet includes a child care support schedule for low-income obligors showing the Basic Sliding Fee income guidelines and the co-payment amounts expected for families of different sizes. Additional details on this provision are available in Beld, *supra* note 108, at 38-42.

*proportionate contribution to child care costs as calculated on line 14.*¹⁸⁹

Obligee: Obligee's Line 10 X Line 13: 234

Order for Medical Support:

Complete Lines 15-16 or Line 17 as appropriate.

*If at least one parent has appropriate insurance*¹⁹⁰ *available:*

The use of the sliding fee co-payment schedule to determine child care support may result in some redistribution of responsibility for child care costs. When the obligee is not income-eligible for child care assistance, it means the obligee may be responsible for somewhat more than his or her proportionate share of child care costs. However, under Shared Responsibility, the cost of the care apportioned between the parents is not reduced by twenty-five percent, as is the case under current law. Consequently, tax credits available to these obligees will help to offset their increased responsibility for the cost of the care. When the obligee is receiving assistance, the amount of child care support collected is assigned to the state, so the lower order will not affect the obligee's actual resources. This may shift some additional responsibility for the cost of care to taxpayers at the case level, but the aggregate effect is expected to be limited, for two reasons. First, collections are already lower among public assistance cases than among IV-D cases overall so the actual moneys collected and assigned may remain stable or even increase, since obligors may be more likely to pay orders which they perceive as affordable. See Turetsky, *supra* note 162. Second, assigned child care support from higher-income obligors may increase, due to the elimination of the transfer of basic support from obligor to obligee and of the twenty-five percent reduction in child care costs prior to determining each parent's share of responsibility. See *infra* note 189. In cases where both the obligor and the obligee are eligible for child care assistance, but the obligee is not receiving such assistance, the project team recommended that these circumstances be considered a factor for deviation. See Beld, *supra* note 108, at 52-53.

189. Unlike the current guidelines, Shared Responsibility apportions the cost of care between the parents without transferring the basic support amount from obligor to obligee in determining each parent's share of income. This step is unnecessary because the Schedule of Basic Support already excludes child care costs from the cost estimates on which the Schedule is based. Using the same percentage of parental income to apportion all three parts of a child support order between the parents establishes internal consistency in the order.

190. Shared Responsibility embraces the definition of "appropriate insurance" recommended by the Minnesota Medical Support Workgroup. The criteria for "appropriate" coverage include *accessibility* (the children can obtain primary care services within thirty minutes or thirty miles of their residence; coverage is provided through an employer; the employee ordered to carry the children is expected to remain employed for a reasonable amount of time; and no pre-existing conditions exist to unduly delay coverage), *comprehensiveness* (coverage includes, at a minimum, medical and hospital coverage and provides for preventive, emergency, acute, and chronic care), and *affordability* (the cost of the coverage does not require parents with incomes greater than 150% of the federal poverty guideline to pay more than 5% of their income available for child support). See CHILD SUPPORT ENFORCEMENT DIVISION, MINNESOTA DEPARTMENT OF HUMAN SERVICES, MINNESOTA MEDICAL SUPPORT WORKGROUP FINAL REPORT

Obligor	Obligee	Combined
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15. Cost of children's health care coverage:

93¹⁹¹

16. Proportionate responsibility of each parent:

Obligor: Obligor's Line 10 X Line 15: 31

Obligee: Obligee's Line 10 X Line 15: 62

*The order for medical support shall also apportion responsibility for uninsured and unreimbursed medical and dental expenses. Such expenses shall be allocated to each parent in proportion to each parent's share of combined resources available for child support (Line 10).*¹⁹²

If neither parent has appropriate insurance available:

17. Obligor's adjusted share of children's medical needs: _____

*Enter the lesser of (1) the children's portion of the monthly premium the obligor would pay if he/she were receiving MinnesotaCare assistance appropriate to his/her monthly income available for child support (Line 9) for a family size equal to the obligor plus the children of the action,¹⁹³ or (2) 5% of obligor's monthly income available for child support (Line 9).*¹⁹⁴

(December 2000), available at <http://136.234.169.67/ECS/Reports/msfr.pdf>.

191. The cost of health care coverage for this hypothetical family is the average cost for adding dependent coverage to employer-based health insurance in Minnesota. See *Employer-Based Health Insurance in Minnesota*, Minnesota Department of Health—Health Economics Program, Health Policy and Systems Compliance Division (Feb. 2000) at 47. The indicated amount is less than 5% of the parents' combined income available for child support and is therefore considered "affordable" by the above criteria.

192. This provision resembles the present statutory provision for uninsured and unreimbursed medical expenses. MINN. STAT. § 518.171, subd. 1.(d) (1990 & Supp. 2001). The only difference is that under current guidelines, the apportionment is based on each parent's share of their combined net income, whereas under Shared Responsibility, the apportionment is based on each parent's share of their combined income available for child support (i.e. gross income minus relevant deductions).

193. This provision resembles the provision for adjusting child care support downward for low-income obligors. If neither parent has appropriate insurance available (see *infra* note 202), obligors whose income available for child support (Line 9) would make them eligible for MinnesotaCare would be asked to pay medical support equal to the child/ren's portion of the premium they would pay if they were to apply for MinnesotaCare with the child/ren for whom support is being determined. A schedule of the appropriate premium payments for obligors

Adjustment for Low-Income Obligor:¹⁹⁵

18. Ability of obligee to meet children's basic needs:

*If the obligee is receiving public assistance, or the obligee's adjusted gross monthly income (Line 5) is equal to or greater than the basic needs threshold amounts in the table below, the obligor's order for support may be reduced as indicated on Lines 19 and 20.*¹⁹⁶

at different income levels and for different numbers of children would be attached to the worksheet. This provision would replace the current statutory medical support provision permitting the court to order the obligor to pay no less than \$50 per month toward the medical and dental expenses of the children or to the cost of health insurance dependent coverage when neither the obligor nor the obligee has access to dependent health insurance. MINN. STAT. § 518.171 (1)(b)(3) (1990 & Supp. 2001).

194. This provision would apply if the obligor's income exceeds the income eligibility standards of MinnesotaCare. It is consistent with the recommendations of the Minnesota Medical Support Workgroup and the National Medical Child Support Working Group. Minnesota Medical Support Workgroup Final Report, *supra* note 190, at 20-21; THE NATIONAL MEDICAL CHILD SUPPORT WORKING GROUP, U.S. DEPARTMENTS OF LABOR AND HEALTH AND HUMAN SERVICES, Recommendation 9, 3-14 (July 2000).

195. This "adjustment for low-income obligors" (Lines 18-20) maintains the intent of the current "substantial unfairness test" but adjusts the application to fit the income-shares premises of Shared Responsibility. Currently, the guidelines incorporate a "substantial unfairness" criterion. See MINN. STAT. § 518.551, subd. 5 (b) (1990 & Supp. 2001). This is supposed to apply to either parent (the court is to allocate the costs of work- and education-related child care to each parent in proportion to their respective incomes "unless the allocation would be substantially unfair to either parent"), but the criterion is operationally defined only with respect to the obligor: "There is a presumption of substantial unfairness if after the sum total of child support, spousal maintenance, and child care costs is subtracted from the noncustodial parent's income, the income is at or below 100% of the federal poverty guidelines." Although the statute does not explicitly state what the court should do in the event that the obligor's remaining income is less than the federal poverty guideline, it is common practice to reduce the order for child care support by the difference between the obligor's remaining income and the federal poverty guideline for a one-person household. Shared Responsibility adjusts the current substantial unfairness test by increasing the amount retained by the obligor to 120% of the federal poverty guidelines (consistent with the definition of "basic needs" used throughout the model for all family members). However, the reduction in support can only be applied after ascertaining whether the obligee has enough resources to compensate for any reductions (see Line 18 and accompanying note).

196. The purpose of this step is to determine whether the obligee has sufficient resources to meet the children's basic needs if child support were to be reduced, consistent with the guidelines value of child-centeredness adopted by the MDHS project team and its advisory Task Force. The obligee is presumed to have sufficient resources to be able to "make up the difference" in the event of a reduction in child support if the obligee is either receiving public assistance or has an income equal to 120% of the federal poverty guideline for a household size equal to the obligee plus the number of children of the action. The Basic Needs

Basic Needs Threshold Amounts

<u>Number of Children</u>	<u>Obligee's Adjusted Gross Monthly</u>
<u>Income (Line 5)</u>	
1	\$1125
2	\$1415
3	\$1705
4	\$1995
5	\$2285
6	\$2575

19. Need for reduction in obligor's support obligation:

A. Obligor's adjusted gross monthly income (Line 5):	<u>1340</u>
B. Sum of basic support, child care support, and medical support (Obligor's Lines 12 + Line 14 + Line 15 or 17):	<u>295</u>
C. Remaining income (Lines 19A - 19B):	<u>1045</u>
D. Obligor's basic needs threshold:	<u>835</u> ¹⁹⁷
E. Recommended reduction (Lines 19D- 19C):	<u>none</u>

20. Recommended distribution of reduction in support:

*The recommended reduction in Line 19E should first be subtracted from the order for medical support. If the order for medical support is smaller than the recommended reduction, the difference should then be subtracted from the order for child care support. If the order for child care support is smaller than the remaining recommended reduction, the difference should then be subtracted from the order for basic support.*¹⁹⁸

The amount of basic support to be ordered after any reductions must be equal to or greater than the applicable presumptive minimum amounts indicated on Lines 6 and 7.

Threshold Amounts are the dollar amounts equivalent to 120% of the federal poverty guidelines for households with one adult and up to six children. The table provides a clear definition of "income sufficient to meet children's basic needs" that is consistent with the definition of "basic needs" for the obligor and for other legally-dependent children residing with a parent (120% of the federal poverty guidelines).

197. This is the dollar amount representing the gross monthly income of a one-person household at 120% of the federal poverty guideline as of 2000.

198. The purpose of this recommended distribution of any reductions in support is to minimize the impact on support actually received by the child. Of the three types of support paid by an obligor, medical support dollars are most likely to be assigned to the state, because the income guidelines for MinnesotaCare exceed the income guidelines for child care assistance and for MFIP. Child care support dollars are next in likelihood of assignment, and basic support dollars are last.

The Shared Responsibility model integrates many of the best features of other states' guidelines. It affirms the economic premise that the percentage of income spent on children declines with increasing income; it uses both parents' incomes to set support; it apportions child care and medical costs consistently with the apportionment of basic support; it attends to the self-support needs of both parents; and it involves a limited number of calculations.

B. Comparing Outcomes under Shared Responsibility and Current Guidelines

The Shared Responsibility child support guidelines involve a number of changes in the calculation of an order for child support. In order to examine the impact of these changes on child support outcomes, the MDHS project team examined several data sets involving both actual and hypothetical child support cases. The results suggest that outcomes will be very family-specific, precisely because Shared Responsibility accounts for more family circumstances (obligee income, child costs, and other residential dependents, to name just three) than the current guidelines do. Outcomes for any given family will depend on the following combination of factors:

- *The number of children for whom support is being determined* (basic support is more likely to increase for two- and three-child families because Minnesota's current guidelines for two or more children are significantly lower than the USDA's estimates of parental expenditures on children);
- *The income of the obligor relative to the obligee* (support may decrease, especially in one-child cases, if the obligee's income is significantly higher than the obligor's);
- *The income of the obligor relative to income guidelines for state public assistance programs* (child care support and medical support may decrease for lower-income obligors);
- *The presence of other legally dependent children in either parent's home* (Shared Responsibility support orders for obligors *with* other legally dependent children are almost always lower than Shared Responsibility orders for obligors *without* other children, but they are not

necessarily lower than orders under current guidelines – it depends on the parents’ incomes and the number of children of the action);

- *Other child support and spousal maintenance orders being paid by either parent; and*
- *The cost of child care and medical insurance for the child/ren of the action.*

Whether child support increases or decreases under Shared Responsibility for a given family will depend on the family’s specific circumstances with respect to *all* the above factors.

Two hypothetical cases will help to make this point. Below are child support outcomes under Minnesota’s current guidelines and Shared Responsibility for the family described above in Part IV.A.

**“Typical” One-Child Family
Obligee Has Higher Income**

	Current Guidelines	Shared Responsibility
Basic Support	\$235	\$225
Child Care Support	\$68	\$39
Medical Support	\$31	\$31
Total Support Obligation	\$334	\$295

For this family, basic support and child care support would both decrease, reflecting the obligor’s limited ability to pay. Medical support would remain the same, because the obligor’s share of income available for child support (i.e., gross income after relevant deductions) is the same as the obligor’s share of combined net income under current guidelines.

If child support were to be calculated for a second family with the same characteristics in every respect, except that the *obligor* had the larger gross income (\$3000, or 60% of the parents’ combined income of \$5000), the following outcomes would result:

**“Typical” One-Child Family
Obligor Has Higher Income**

	Current Guidelines	Shared Responsibility
Basic Support	\$423	\$389
Child Care Support	\$104	\$200
Medical Support	\$50	\$53
Total Support Obligation	\$577	\$642

In this second family, basic support under Shared Responsibility is still lower than under current guidelines, due in part to the discounting of the basic support schedule to reserve parenting time income to the obligor. However, child care support increases substantially. Because the obligor’s income exceeds the income guidelines for the Basic Sliding Fee program, the full cost of child care is apportioned between the parents, using the same percentage of income used to apportion basic support. Medical support remains virtually the same, because the parents’ share of their income available for child support is virtually the same as their share of net income. This example shows that Shared Responsibility may change the *distribution* of support amounts among basic, child care, and medical support, in addition to changing the overall amount of the order.

With child care and medical support reflecting the actual expenditures of a given family, and basic support reflecting reliable estimates of what other families with similar incomes spend on their children, the Shared Responsibility guidelines are more likely than current guidelines to result in accurate, consistent, and equitable orders. Yet they do not require extensive information or complicated calculations. Most of the information needed to calculate a Shared Responsibility order is provided directly on the worksheet or in one of the attached schedules (a Schedule of Basic Support, a Schedule of Child Care Support for Low-Income Obligor, and a Schedule of Medical Support for use when neither

parent has appropriate insurance). The information that would need to be collected from the parents would include only:

1. Each parent's gross monthly income
2. Each parent's reasonable and necessary business expenses, if applicable
3. Other child support and spousal maintenance orders being paid by each parent, if applicable
4. The number of other legally-dependent children, if any, residing with each parent
5. The monthly cost of work- and education-related child care for the child/ren of the action
6. The monthly cost of health insurance for the child/ren of the action

With this information, the worksheet, and the relevant schedules, an order for support can be determined with a hand-held calculator in less than five minutes.

V. HOW SHARED RESPONSIBILITY RESOLVES MAJOR PROBLEMS WITH MINNESOTA'S CURRENT CHILD SUPPORT GUIDELINES

The Shared Responsibility model resolves each of the problems with Minnesota's current child support guidelines identified previously, by combining lessons from other states with grassroots innovation. Child support orders under Shared Responsibility are thus more likely to meet the federal intent of guidelines reviews: that the application of the guidelines result in "appropriate" orders for support.

A. *Reflecting the Cost of Raising Children*

A Shared Responsibility order for support is explicitly based on two kinds of child-rearing costs: (1) the actual cost of child care and medical care for the children of the action; and (2) reliable estimates of what other Minnesota parents with similar incomes spend on their children for everything else. Because there is more than one approach to estimating parental expenditures on children, MDHS conducted a careful review of several alternatives, in close consultation with the guidelines review advisory Task Force. The project team concluded that the USDA's estimates would provide the strongest economic foundation for Minnesota's

child support guidelines. This decision was made on the following grounds:

1. *The USDA's methodology estimates child costs by direct observation rather than by inference.* The principal alternative to the USDA's estimating method is a "marginal cost" approach to estimating child-rearing costs. A marginal cost approach seeks to determine how much more a couple has to spend to maintain their standard of living once they have a child. Marginal cost methods measure the expenditure difference between "equally-well-off" couples with and without children, and simply *attribute* that difference to the presence of children. In contrast, the USDA uses *research-based apportionment of actual household expenditures in families with children.* The agency's Center for Nutrition Policy and Promotion analyzes Consumer Expenditure Survey (CES) data¹⁹⁹ to estimate what families spend on their children, controlling for family income, family size, age of children, and geographic region. Expenditures are reported for seven budgetary components. Three of these components are child-specific (children's clothing, child care, and education). The remaining four components are reported for the entire household (housing, food, transportation, and miscellaneous expenditures²⁰⁰), and the USDA systematically estimates the children's share of these household-level expenses. Housing, miscellaneous expenditures, and non-work-related transportation are equally divided among all the family members,²⁰¹ while

199. The Consumer Expenditure Survey is conducted annually by the U.S. Department of Labor Bureau of Labor Statistics. The CES is "the most comprehensive source of information on household expenditures available at the national level." See LINO, *supra* note 9, at i. It includes family income, composition, and socio-demographic variables as well as detailed information on specific categories of household expenditures. Additional details on the CES are available through the Bureau of Labor Statistics website at <http://www.bls.gov/cex>.

200. Miscellaneous expenditures include entertainment, reading materials, and personal care items. This approach may *underestimate* children's actual shares, particularly with respect to entertainment. See LINO, *supra* note 9, at 2.

201. The strongest criticism of the USDA's methodology involves the per capita apportionment of housing expenditures; advocates of marginal cost methods argue that the per capita method overestimates children's share of housing expenses. Venohr & Williams, *supra* note 109, at 27. However, marginal cost methods may significantly *underestimate* children's share of housing costs.

food expenditures are apportioned by age of child and size of household using additional USDA studies of household food consumption.²⁰²

2. *The USDA's estimates are more current.* All estimates of the cost of raising children incorporated in state child support guidelines are based on CES data,²⁰³ but different estimates rely on data collected during different years. The USDA's current estimates are based on data collected during the 1990-92 surveys. In contrast, the two major marginal cost alternatives are based on CES results from 1980-86²⁰⁴ and 1972-73 respectively.²⁰⁵ While many states have updated their guidelines during their quadrennial reviews to reflect changes in the cost of living,²⁰⁶ the original expenditure data on which the guidelines are based are nevertheless much older than the data upon which the USDA bases its estimates. Not only are the USDA's estimates based on more recent CES data, they are updated annually (rather than at the discretion of state guidelines review panels) using the Consumer Price Index.²⁰⁷ Moreover, by 2002, the USDA anticipates

Because many childless couples purchase homes in anticipation of children, the "additional" housing expenses such couples would incur after the arrival of children look smaller. Furthermore, per capita estimates of housing costs in lower-income and middle-income families are roughly equivalent to the difference in rent between one- and two-bedroom apartments, plus the additional utilities, furnishings, and insurance required for a larger apartment. See Laura W. Morgan & Mark C. Lino, *A Comparison of Child Support Awards Calculated Under States' Child Support Guidelines with Expenditures on Children Calculated by the U.S. Department of Agriculture*, 33 FAM. L. Q. 191, 200 (1999).

202. Food expenditures are reported in the CES at the household level and include food purchased in stores and consumed at home; food purchased in restaurants; and the cost to the family for food purchased at school. The USDA estimates a child's share of a family's food budget based on the cost and composition of a nutritious diet, the nutritional needs of children of different ages, and the consumption behavior of families of different income levels. See U.S. Department of Agriculture, *Cost of Food at Home*, 7 FAM. ECON. REV. 45 (1994) as cited in LINO, *supra* note 9, at 4-5.

203. Venohr & Williams, *supra* note 109, at 24-25.

204. David M. Betson, *Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey*, in FINAL REPORT TO THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES 27 (1990); see also Venohr & Williams, *supra* note 109, at 27.

205. ESPENSHADE, THOMAS J., *INVESTING IN CHILDREN: NEW ESTIMATES OF PARENTAL EXPENDITURES* (The Urban Institute Press 1984).

206. Venohr & Williams, *supra* note 109, at 27-28.

207. LINO, *supra* note 9, at i, iii.

replacing its current database to reflect CES results from 1998-2000. After that, the Center plans to update the database for its child-rearing expense estimates every five years.²⁰⁸ Because the USDA's estimates are produced by an institution federally required to produce them each year, its estimates are much more likely to be current than estimates produced by individual economists.

3. *The USDA's estimates can be readily adapted to Minnesota's tripartite approach to the determination of support.* Because the USDA uses direct observation of family expenditures by category of expense, child care and medical care expenses can be excluded from the estimates. The remaining expenditures may be used to construct a schedule of basic support, consistent with the types of expenses that basic support is intended to cover.

4. *Other approaches to estimating child costs do not produce consistent results.* A major problem with marginal cost methods is that there is no consensus among economists about how to determine when two couples – one with children and one without – are “equally well-off.”²⁰⁹ Some marginal cost methods use spending on some combination of “adult-only goods,” mainly adult clothing, alcohol, and tobacco, as a measure of equivalent economic well-being.²¹⁰ However, these expenditures may be affected by considerations other than the presence of children in the household, such as values, tastes, and

208. Email from Mark Lino to Jo Beld (June 14, 2001) (on file with author).

209. Morgan & Lino, *supra* note 201, at 197.

210. This approach to defining “equivalent economic well-being” is generally known as the “Rothbarth” method, named after its originator, Erwin Rothbarth. Rothbarth originally proposed measuring a family's economic well-being by the level of “excess income” remaining after the family has met its basic needs. He defined “excess income” to include “luxury goods” (alcohol, tobacco, entertainment, sweets) and savings. Families of different sizes with the same level of “excess income” would be considered equivalent in their overall economic well-being. See Erwin S. Rothbarth, *Notes on a Method of Determining Equivalent Income for Families of Different Composition, in WAR-TIME PATTERN OF SPENDING AND SAVING* (C. Madge ed., 1943). Rothbarth's original method of operationalizing “equivalent family economic well-being” was modified to include only spending on adult clothing, alcohol, and tobacco in Betson's federally-sponsored study of child-rearing costs released in 1990. See Betson, *supra* note 204. Most revisions to the child support schedules of income-shares states have made use of Betson's version of Rothbarth-based estimates. See Venohr & Williams, *supra* note 109, at 27.

lifestyle. Other methods use the proportion of household income spent on food as the equivalency measure.²¹¹ These methods produce much higher estimates of child-rearing expenses than the adult goods methods. In short, marginal cost estimates vary a great deal and rely on questionable assumptions. The USDA's estimates are in the middle-range between the lowest and highest marginal cost estimates of child-rearing costs.²¹²

Because of the advantages to using the USDA's estimates of child costs, the MDHS project team asked the USDA to develop a set of customized estimates tailored to the provisions of Shared Responsibility. Staff economists in the USDA's Center for Nutrition Policy and Promotion provided estimates of the percentage of household gross monthly income expended on children in 1999²¹³ by urban Midwest married-couple families with one, two, or three children, excluding child care and health care.²¹⁴ Estimates were provided for incomes ranging from \$1000 to \$8500 per month at increments of \$500 (the largest income range and smallest income increments that could be reliably estimated on the basis of the data).²¹⁵ The USDA also provided recommendations for extending the estimates to cover families with incomes above \$8500 per month and families with four, five, or six children. The USDA's estimates were consistent with estimates produced by alternative methods, in that the percentages of income spent on

211. This is known as the Engel methodology, based on the work of economist Ernst Engel (1857), who argued that families of different sizes that devote the same percentage of their household expenditures to food have equivalent economic well-being. See Burt S. Barnow, *Economic Studies of Expenditures on Children and Their Relationship to Child Support Guidelines*, in CHILD SUPPORT GUIDELINES: THE NEXT GENERATION 21 (Margaret Campbell Haynes ed., U.S. Department of Health and Human Services, Administration for children and Families, Office of Child Support Enforcement 1994) (citing ERNST ENGEL, DIE PRODUKTIONS UND CONSUMPTIONSVERHÄLTNISSE DES KONIGSREICHS SACHSEN, ZEITSCHRIFT DES STATISTISCHEN BUREAUS DES KONIGLICH SACHSISCHEN MINISTERIUMS DES INNERN 3 (1857)).

212. Morgan & Lino, *supra* note 201, at 199.

213. The customized estimates were based on the same CES data used to produce the USDA's 2000 annual report, the most recent report at the time MDHS made its request.

214. MDHS also requested similar estimates for nationwide rural families and discovered that the percentages by income level were virtually the same as the percentages for urban Midwest families. The project team concluded that the urban Midwest estimates would be reasonably accurate even for families in greater Minnesota. See BELD, *supra* note 108, at 26.

215. Letter from Mark Lino (December 19, 2000) (on file with author).

children in higher-income households were lower than the percentages spent by lower-income households. The Shared Responsibility Schedule of Basic Support,²¹⁶ described in greater detail in Section V.D, was subsequently constructed on the basis of these customized estimates of family expenditures on children.

Shared Responsibility thus resolves the first major problem with Minnesota's child support guidelines. Because its Schedule of Basic Support is based on credible estimates of what Minnesota parents spend on children, with percentages of income spent on children inversely related to total family income, it is much more responsive than Minnesota's current guidelines to the federal mandate to consider child costs.

B. Including Obligee Income in the Determination of Support

Shared Responsibility resolves the second major problem with Minnesota's child support guidelines by including obligee income consistently in the determination of all three parts of a child support order. This fact has two important consequences. First, orders for support will be more accurate. As demonstrated above, in the majority of Minnesota's two-parent families, both parents contribute economically to their children, so it is more accurate to base child support on the resources of both parents even when they do not live together. Furthermore, the economic estimates derived from married-couple families are more precise for purposes of child support than the estimates derived from single-parent families. Although the USDA also estimates expenditures on children by single-parent families, the sample size for single-parent families is much smaller than the sample size for married-couple families nationwide.²¹⁷ Consequently, expenditures by single-parent families cannot be estimated by region.²¹⁸ Furthermore, the incomes of single-parent households are lower than the incomes of married-couple households, so it is more difficult to produce reliable child cost estimates in single-parent households for as large a range of incomes or as many income

216. Additional details on the merits of the USDA's estimates and their use in the construction of the Schedule of Basic Support are available in BELD, *supra* note 108, at 24-27, Appendix F.

217. The single-parent sample of 3,395 households was less than one-third the size of the married-couple sample of 12,850 households. LINO, *supra* note 9, at i.

218. *Id.* at 8

increments.²¹⁹ Thus, including obligee income in the determination of support is a second way in which Shared Responsibility is more faithful than Minnesota's current guidelines to the federal intent that child support orders reflect the cost of raising children.

A second consequence of including obligee income is that orders for support will be more internally consistent. Obligee income currently affects the three parts of a child support order in different ways; it has no impact on the order for basic support and differential impact on the orders for child care and medical support. Shared Responsibility factors in obligee income in the same way for all three support components. In doing so, it resolves a contradiction between the numerical guidelines and the additional statutory factors the court is to consider in setting or modifying support, one of which is "all earnings, income, and resources of the *parents*" (not simply the obligor - emphasis added).²²⁰ A Shared Responsibility order is thus preferable to Minnesota's current guidelines from the perspective of state statute as well as federal regulations.

C. *Providing for Multiple Families*

Shared Responsibility includes a simple and consistent solution to the conundrum of other legally-dependent children in the home, described above in Section III.B.3. The straightforward deduction from income in Line 8 of the draft worksheet provides the "clear direction"²²¹ and "practical formula"²²² lacking in both case law and recent statutory changes. This provision will promote consistency in the treatment of similarly-situated families. At the same time, because the deduction from income reflects only the basic needs of a parent's other legally-dependent children, Shared Responsibility maintains case law prohibiting "excessive deference" to the needs of these other children in setting support for the

219. *Id.* at 10.

220. MINN. STAT. § 518.551, subd. 5.(c)(1) (1990 & Supp. 2001) (emphasis added). It is clear from the remainder of the sentence in this statutory paragraph that "parents" refers to the obligee as well as the obligor, because excluded from the definition of "all earnings, income, and resources" is "income from excess employment of the obligor or obligee that meets the criteria of paragraph (b), clause (2)(ii)". *Id.*

221. Nelc, *supra* note 121, at 123.

222. Roehrich, *supra* note 1, at 1002.

children of the action.²²³ The Shared Responsibility provision for multiple families is a simpler and more reasonable compromise between the "first obligations first"²²⁴ position and the "equal protection"²²⁵ position than is the "defensive-use-only" provision in current state statute.

D. *Recognizing Parenting Time Expenses*

Shared Responsibility improves upon Minnesota's current guidelines by systematically accounting for the increased costs of raising a child when the parents do not live together. The Schedule of Basic Support is structured to reflect these additional costs, requiring no additional findings or formulas in the determination of support. Shared Responsibility thus inherently accomplishes the intent of state statute that courts consider both the standard of living the child would enjoy if the parents lived together, and the economic realities of parenting in "separate households."²²⁶

Shared Responsibility achieves this goal by asking separated parents who do not live together to spend a smaller percentage of their combined income on their children than parents who live together would spend. This is accomplished in four ways:

1. *Basing the Schedule of Basic Support on estimates of spending by married-couple rather than single-parent families.* Two-parent households spend a smaller percentage of their incomes on their children than do single-parent households with similar incomes.²²⁷ This is due partly to the reduced economies of scale in smaller families, and partly to the fact that separated parents try to maintain the same standard of living for their children on a single paycheck that they would maintain if there were two adult providers in the home.²²⁸ Basing child support on expenditures by two-parent families thus underestimates the actual percentage of income spent by each parent on the children of the action.

223. *Bock v. Bock*, 506 N.W.2d 321 (Minn. Ct. App. 1993); *Hayes v. Hayes*, 473 N.W.2d 364 (Minn. Ct. App. 1991); *D'Heilly v. Gunderson*, 428 N.W.2d 133 (Minn. Ct. App. 1988).

224. *See Nelc*, *supra* note 121, at 111.

225. *Id.* at 112-13.

226. MINN. STAT. § 518.551, subd. 5(c)(3) (1990 & Supp. 2001).

227. This finding persists irrespective of the methodology used to estimate child costs. *See Betson*, *supra* note 204; LINO, *supra* note 9, at 25, Table 7.

228. This latter point was made by several members of the advisory Task Force (minutes of February 16, 2001).

2. *Using conservative estimates of household expenditures.* Both the original CES data and the USDA's methods of analysis result in conservative estimates. For example, the Consumer Expenditure surveys treat mortgage principal payments as savings and therefore exclude them from their expenditure data.²²⁹ The USDA excludes work-related transportation costs from their estimates of children's share of household expenditures,²³⁰ even though children share in the benefits of their parents' work-related transportation.

3. *Discounting the USDA's estimates of children's share of income in lower-income families to approximate children's share in median-income families.* Because of the inverse relationship between income and percentage of income spent on children, median-income families spend a smaller share of their income on their children than do families with incomes below the median.²³¹ The Schedule of Basic Support uses the percentages appropriate to urban Midwestern median-income families to set the dollar amounts of basic support shared between parents with combined incomes of \$4500 or less.²³²

4. *Discounting the USDA's estimates of children's share of income in higher-income families by percentage points equal to the number of children for whom support is being determined.* For Minnesota families at or above median income, the USDA's estimates of spending on children are reduced by one percentage point for one-child families; two percentage points for two-child families; and three percentage points for three or more children.²³³

229. LINO, *supra* note 9, at 2.

230. *Id.* at 6.

231. According to the USDA's customized estimates, a two-parent median-income family in Minnesota, with a gross monthly income of approximately \$5500, spends 16.4% of its income on one child and 26.5% of its income on two children for everything except child care and medical care. A family with only \$1500 would spend nearly twice that percentage—30.4% for one child and 49% for two. See Letter from Mark Lino with accompanying tables (December 8, 2000) (on file with author).

232. The percentages increase only very slightly with each \$500 decrease in income, to maintain consistency with the inverse relationship between income and percentage of income spent on children. Separated parents with a combined income of \$1500 would be asked to spend only 18.2% of that income—only slightly above the percentage spent by a median-income family—on one child in basic support, rather than the 30.4% they would spend if they lived together. A complete description of the USDA's percentage estimates and the discounted percentages informing the Shared Responsibility Schedule of Basic Support is available in BELD, *supra* note 108, at Appendix F.

233. *Id.*

These four steps reduce the dollar amount that would otherwise be apportioned between the parents as basic support, thus reserving some income to the obligor to spend directly on the children during parenting time. Larger percentages of income are reserved for obligors with lower incomes, more children, and/or higher shares of combined parental income, all factors which would affect an obligor's parenting time resources. The discount method assumes that when children spend time in separate households, some of their expenses (such as housing) may be duplicated; other expenses (such as food) may be transferred from obligee to obligor; and still others (such as clothing or transportation) may be increased.²³⁴ At the same time, it permits variation in the parenting time expenditures of obligors. Most importantly, it does not tie child support to the amount of time a child spends in either household, thus reducing economic incentives to litigate over parenting time arrangements.

The discounting of the USDA's estimates of child costs for housing, food, transportation, clothing, education, and miscellaneous spending raises an obvious question: How does Shared Responsibility "close the gap" between what parents are estimated to spend on their children in "real life" and what the Schedule of Basic Support asks them to spend? Put somewhat differently, how can obligees compensate for the reduced amount of basic support paid by the obligor and attributed to the obligee? The Schedule of Basic Support may discount child costs for separated parents, but landlords, utility companies, gas stations, and grocery stores certainly will not. Shared Responsibility resolves this dilemma by presuming that obligees will take advantage of tax credits and/or public assistance available to them as heads of household. This is yet another advantage of the gross income basis of the model; it helps to compensate for the underestimation of child costs built into the Schedule of Basic Support, without the necessity of any additional adjustments or calculations.

E. Establishing Affordable Orders

Shared Responsibility improves Minnesota's guidelines with several simple provisions making support orders more affordable for low-income obligors. These provisions include:

- The presumptive minimum order for obligors with

234. See Morgan, *supra* note 142.

incomes below 150% of the federal poverty guideline;

- The income deduction for the basic needs of other legally-dependent children;
- The discounting method applied to the USDA's estimates of child costs, which reserves larger percentages of income for parenting-time expenses to lower-income obligors;
- The use of the Basic Sliding Fee co-payment schedule to determine orders for child care support for obligors with qualifying incomes;
- The use of the MinnesotaCare premium schedule to determine orders for medical support when neither parent has access to affordable private insurance;
- The revised "substantial unfairness test" applied to the total order.

Taken together, these provisions are intended to have the following effects:

1. *Increasing the amount of money an obligor may retain to meet his or her own basic needs after paying support.* As noted in III.B.5., the income "floor" under Minnesota's current guidelines is less than a poverty-level income. The current "substantial unfairness test" ensures no more than a poverty-level income for low-income obligors, and only after the payment of basic support and child care support; medical support may be ordered in addition, thereby pushing an obligor below poverty. In contrast, Shared Responsibility attempts to preserve a remaining income for obligors of at least 120% of the poverty level, applying income tests and order adjustments at both the beginning and the end of the worksheet. Under the provisions of Shared Responsibility, an obligor earning full-time minimum wage would be ordered to pay \$89 per month, in comparison to orders of \$131 or more per month under current guidelines.
2. *Using similar standards to evaluate the ability of both parents to provide for their children.* The presumptive minimum provision for obligors was designed to parallel the provisions of MFIP, typically more available to obligees; both policies implicitly treat 120% of the poverty guideline as the definition of a basic needs income.

The use of the Basic Sliding Fee income guidelines and co-payment schedule for the determination of child care support establishes comparable standards for assessing the ability of both parents to pay for child care. A similar logic prevails in the use of the MinnesotaCare income guidelines and premium schedule with respect to medical support.

3. *Increasing the amount of support actually collected from low-income obligors.* Some stakeholders in Minnesota's guidelines review process expressed the understandable concern that reducing support orders for low-income obligors would deprive their children of much-needed support, especially because poor obligors are so commonly paired with even poorer obligees who are now facing time limits for public assistance. But it is important to distinguish between the amount of support *ordered* and the amount of support *actually collected*. Collection rates for low-income cases in Minnesota are already lower than collections for the total population of IV-D cases, both in terms of the percentage of cases for which there is at least some support received and the percentage of ordered support which is actually collected.²³⁵ Reducing the amount of support ordered may increase both types of collection rates for lower-income families. A recent national study estimated that between 16.2 and 33.2% of young obligors do not pay child support because paying the support would further impoverish them or their current families.²³⁶ Interviews with poor obligors

235. Among all open cases with orders served by the Minnesota Department of Human Services in Fiscal Year 2000 (including both public assistance and non-public assistance cases), full or partial collections were made in 85% of the cases, and 68% of the amount owed was collected. Among public assistance cases during the same fiscal year, full or partial collections were made in only 63% of the cases, and only 40% of the amount owed was collected. See OFFICE OF CHILD SUPPORT ENFORCEMENT, DEPARTMENT OF HEALTH AND HUMAN SERVICES, CHILD SUPPORT ENFORCEMENT ANNUAL DATA REPORT: MINNESOTA lines 2, 18, 24, 25 (1998).

236. Ronald B. Mincy & Elaine J. Sorenson, *Deadbeats and Turnips in Child Support Reform*, 17 J. POL'Y ANALYSIS & MGMT (1998). Mincy and Sorenson's findings are based on an analysis of 1990 data drawn from the nationwide Survey of Income and Program Participation (SIPP), "the only recent nationally representative survey that has sufficient information to identify noncustodial fathers." *Id.* at 45.

also suggest that a major reason for non-payment or partial payment of support is that their orders comprise too high a percentage of their incomes, especially once arrears are factored in.²³⁷ While high orders are not the only deterrent to compliance, they are an important one. Shared Responsibility removes this barrier to the payment of support.

VI. CONCLUSION

The Shared Responsibility proposal resolves the internal inconsistencies, ambiguities, and limitations of current statute and case law. It capitalizes on fifteen years of policy research and development nationwide, yet coheres with current Minnesota programs affecting children and families. If enacted, it would promote accuracy, consistency, and equity in the determination of child support. Shared Responsibility is sound public policy for separated families in Minnesota.

237. Maureen R Waller & Robert Plotnick, *Effective Child Support Policy for Low-Income Families: Evidence from Street-Level Research*, 20 J. POL'Y ANALYSIS & MGMT 102-103 (2001).