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Making Ends Meet: Toward Fair Calculation of Child Support When Obligors Must Support Both Prior and Subsequent Children

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MAKING ENDS MEET: TOWARD FAIR CALCULATION OF CHILD SUPPORT WHEN OBLIGORS MUST SUPPORT BOTH PRIOR AND SUBSEQUENT CHILDREN

I. INTRODUCTION

In recent years, the calculation and enforcement of child support obligations have become increasingly critical issues throughout the nation and in Minnesota. Obligors,[1] those who have a responsibility to pay child support, and obligees,[2] those owed a duty of support, often struggle to "make ends meet" each month. Many obligors become delinquent in their support payments because, like most people, they have limited financial resources.[3] Furthermore, because child support calculations are based on an obligor's income and financial resources,[4]

1. *See* MINN. STAT. § 518.54, subd. 8 (1992) (defining "obligor" as "a person obligated to pay maintenance or support"). Typically, the obligor is the noncustodial parent.

2. *See id.*, subd. 7 (1992) (defining "obligee" as "a person to whom payments for maintenance or support are owed"). Typically, the obligee is the custodial parent.

3. *See infra* note 19 and accompanying text (discussing the widespread nonpayment of child support).

4. *See infra* notes 38-59 and accompanying text (discussing child support calculations under different guidelines models).

the amount of child support ordered by trial courts often does not adequately meet even the basic needs of most children.[5]

Many circumstances can complicate the calculation of child support. One such complication is the obligor's duty to support children in multiple households. Because the amount of child support depends on the obligor's income, multiple support obligations present a unique problem in calculating the amount of support owed under each support order. After the first support order takes effect, the obligor's financial resources diminish, and the resources available for the support of subsequent children[6] diminish as well.[7] Consequently, a problem of fairness arises because the children owed support under the subsequent order and those owed support under the prior order must all be supported with the obligor's limited resources.

Currently, Minnesota lacks a clear formula or guideline to follow when obligors must support both prior and subsequent children. As the number of multiple family situations continues to increase,[8] specific guidance for calculating child support for both prior and subsequent children becomes more and more imperative.

This Comment examines the problems faced by courts when calculating child support for prior and subsequent children on both national and state levels, focusing on Minnesota law in particular. Part II surveys the status of child support guidelines nationwide and in Minnesota. Part III explores the problems associated with subsequent support obligations in two sections. The discussion first addresses the

5. Jean Hopfensperger, *Report Says Child Support Is Too Low*, STAR TRIB. (Minneapolis), Nov. 13, 1993, at 1B; *see also Child Support Full Of Empty Promises*, ST. PAUL PIONEER PRESS, Apr. 10, 1994, at 1A (stating that the low collection rate of child support has contributed to the fact that one out of every four Minnesota children under the age of six lives in poverty); *Children Often Draw A Sentence To Poverty*, ST. PAUL PIONEER PRESS, Apr. 11, 1994, at 1A (noting that child support payments often are inadequate to meet the most basic needs of children).

6. In Minnesota, subsequent children are often labelled "[c]hildren by a subsequent marriage." Erickson v. Erickson, 385 N.W.2d 301, 304 (Minn. 1986). For a more comprehensive definition of "subsequent children," see *supra* note 114 and accompanying text.

7. Many state child support guidelines provide that prior support obligations which are currently being paid by an obligor must be subtracted from the obligor's income before child support can be calculated for subsequent children. *See, e.g.*, ALASKA R. CIV. P. 90.3 (1994) (providing that court ordered child support payments that arose from prior relationships and that are actually being paid should be deducted from the obligor's income); KY. REV. STAT. ANN. § 403.212(2)(f) (Michie/Bobbs-Merrill 1993) (providing that pre-existing child support orders which are currently being paid should be subtracted from income); MINN. STAT. § 518.551, subd. 5(b) (Supp. 1993) (providing that prior child support orders which are currently being paid should be subtracted from the obligor's gross income). *See also infra* note 140 and accompanying text.

8. *See infra* notes 114-28 and accompanying text (highlighting the situations in which the problems associated with subsequent children arise).

nationwide status of the law and contains a analysis of applicable Minnesota law. Part IV explains and evaluates different proposals for calculating child support awards where the obligor must support both prior and subsequent children. Finally, Part V summarizes the current status of the law and presents possible solutions to the problems associated with the subsequent children dilemma.

II. History of the Law

A. *Nationwide Child Support Guidelines*

In recent years, the calculation and enforcement of child support awards have been facilitated by state formula-based child support guidelines. These guidelines aid both child support enforcement agencies and individual obligees by enumerating the factors that trial judges consider when calculating and ordering child support.[9] Guidelines also help trial judges weigh each of these enumerated factors.[10] Still, many cases are not amenable to straightforward guidelines application.[11]

Child support guidelines are essentially legislative recommendations for calculating child support.[12] A child support award can be established as the result of a paternity adjudication,[13] a marriage dissolution,[14] a legal separation,[15] or an action by the public authority for reimbursement of public assistance expended for the support of the obligor's child.[16]

Child support guidelines usually contain tables which trial courts use to calculate child support awards.[17] Most states formulated their respective child support guidelines in response to the wide-ranging and

9. Marianne Takas, U.S. Dep't of Health and Human Servs., The Treatment of Multiple Family Cases Under State Child Support Guidelines 2 (July 1991) [hereinafter Treatment of Multiple Family Cases].

10. *See, e.g.*, Minn. Stat. § 518.551, subd. 5 (Supp. 1993).

11. *See infra* notes 114-28 and accompanying text (detailing the problems encountered by courts when awarding child support in situations where subsequent support obligations complicate the calculation of child support).

12. *See* 42 U.S.C. § 667 (1988).

13. For example, in Minnesota, a child support award can be established in a paternity adjudication brought under Chapter 257. Minn. Stat. § 257.57 (1992 & Supp. 1993).

14. In Minnesota, child support awards may be established pursuant to a judgment of marriage dissolution or legal separation. Minn. Stat. § 518.55 (1992).

15. *Id.* § 518.06 (1992).

16. The public authority can initiate an action for reimbursement of public assistance and establish a child support award. *Id.* § 256.87, subd. 1 (Supp. 1993). A person or entity having legal and physical custody of a child who is not receiving public assistance may also bring an action for support against an absent parent. *Id.*, subd. 5 (Supp. 1993).

17. *See, e.g.*, Ill. Ann. Stat. ch. 750, § 5/505 (Smith-Hurd Supp. 1994); Iowa Code Ann. § 598.21 (West Supp. 1994); Minn. Stat. § 518.551, subd. 5(b) (Supp. 1993);

unpredictable child support awards that previously were ordered at the discretion of individual trial court judges.[18] Guidelines were also enacted to help control and diminish widespread child support enforcement problems.[19] Child support guidelines accomplish these purposes by providing obligees and enforcement authorities with predictable

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OKLA. STAT. ANN. tit. 43, § 119 (West Supp. 1994); S.D. CODIFIED LAWS ANN. § 25-7-6.2 (1992).

18. *See, e.g.*, HAW. REV. STAT. § 576D-7(b) (1992) (stating that the Hawaii guidelines shall "simplify the calculations as much as practicable" and shall be "[a]pplied to ensure, at a minimum, that the child for whom support is sought benefits from the income and resources of the obligor parent on an equitable basis in comparison with any other minor child of the obligor parent"); NATIONAL CTR. FOR STATE COURTS, CHILD SUPPORT GUIDELINES: A COMPENDIUM 20-21 (March 1990) (noting that Alaska enacted guidelines to ensure adequacy, simplification, predictability, and consistency in child support awards). *See generally* MARGARET CAMPBELL HAYNES ET AL., U.S. DEP'T OF HEALTH AND HUMAN SERVICES CHILD SUPPORT REFERENCE MANUAL VI-11 (December 1989) [hereinafter CHILD SUPPORT REFERENCE MANUAL] (explaining that child support guidelines were intended to ameliorate deficiencies inherent in the traditional case-by-case method of calculation); 1 ROBERT E. OLIPHANT, MINNESOTA FAMILY LAW PRIMER §§ 27.21, 27.22 (4th ed. 1992) (discussing the historical outgrowth of the Minnesota child support guidelines).

19. *See* Voishan v. Palma, 609 A.2d 319, 321 (Md. Ct. App. 1992) (stating that the Maryland child support guidelines were intended to accomplish three goals: "(1) to remedy a short fall in the level of awards that do not reflect the actual costs of raising children, (2) to improve the consistency, and therefore the equity, of child support awards, and (3) to improve the efficiency of court processes for adjudicating child support. . . .") (internal quotations omitted); 1 OLIPHANT, *supra* note 18, at §§ 27.21, 27.22 (discussing the policies behind the Minnesota child support guidelines); Ronald B. Sieloff, *Child Support Guidelines: The Statute and Its Problems*, 2 MINN. FAM. L.J. 17, 18-22 (1984) (enumerating the policies underlying the Minnesota child support guidelines); *see also* Donna Schule, *Origins and Development of the Law of Parental Child Support*, 27 J. FAM. L. 807, 809-15 (1988) (noting that child support laws were developed as a method of ensuring that the obligors would reimburse public authorities for public assistance expended on behalf of children).

Recently the media has recognized the extent of child support enforcement problems. Newspaper articles have labelled nonsupporting obligors as "deadbeat parents." One article in particular has publicized the new Child Support Recovery Act which allows FBI agents to investigate and arrest obligors that are delinquent in supporting children that live in other states. *Deadbeat Dads Focus Of New Support Law*, STAR TRIB. (Minneapolis), Oct. 24, 1993, at 25A.

Another recent article has publicized a Minnesota Department of Human Services report that was released in November 1993. According to the article, the report reveals that the average child support payment in Minnesota is $107.00 per month, the presumptive guidelines amount for an obligor who earns minimum wage, working 40 hours per week. The article further stated that the monthly expenses for a child residing in Minnesota are approximately $500.00 to $800.00, an amount substantially larger than the average monthly child support payment. Hopfensperger, *supra* note 5, at 1B. *See also Children Often Draw A Sentence To Poverty*, ST. PAUL PIONEER PRESS, Apr. 11, 1994, at 1A (noting the inadequacy of child support awards in Minnesota); *Two Traverse Path From Dad To Debtor*, ST. PAUL PIONEER PRESS, Apr. 10, 1994, at 2-3 (highlighting the financial problems that obligors have encountered when trying to "make ends meet"). *See generally Cheating The Children*, ST. PAUL PIONEER PRESS, Apr. 10-17, 1994 (presenting

support awards which can be enforced through automatic income withholding[20] and withholding of federal tax refunds.[21] Thus, in addition to establishing uniformity among support awards, the guidelines created a practical method of child support collection.[22]

The federal Child Support Enforcement Amendments of 1984 required every state to develop advisory, numerical, formula-based guidelines for determining the proper amount of child support.[23] By 1989, every state had enacted child support guidelines.[24] The 1984 Amendments only required that the guidelines be advisory and did not mandate that they be applied in every case.[25] However, the Family Support Act of 1988 required that the guidelines be presumptively applicable to all child support calculations.[26] Therefore, the amount of child support resulting from an application of the guidelines is presumably the correct amount of child support to be awarded.[27] However, the presumptive guidelines calculations are rebuttable.[28] This means that trial courts may deviate from the guidelines support amounts in certain circumstances. The circumstances that justify deviations vary from state to state.[29]

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a series of articles about the difficulties of child support enforcement and the financial hardships of obligees, children, and obligors).

20. 42 U.S.C. § 666 (1988 & Supp. III 1991).

21. *Id.* § 664 (1988 & Supp. III 1991).

22. TREATMENT OF MULTIPLE FAMILY CASES, *supra* note 9, at 2; *see also* 1 OLIPHANT, *supra* note 18, at § 27.21 (noting that no effective method of delinquent support collection existed in Minnesota prior to the enactment of the guidelines); Sally F. Goldfarb, *What Every Lawyer Should Know About Child Support Guidelines*, 13 FAM. L. REP. 3031, 3032 (1987) (emphasizing the importance of child support guidelines in reaching faster and more efficient support settlements).

23. Pub. L. No. 98-378, 98 Stat. 1305 (1984) (codified at 42 U.S.C. § 667 (1984)). *See generally* U.S. COMM'N ON INTERSTATE CHILD SUPPORT, SUPPORTING OUR CHILDREN: A BLUEPRINT FOR REFORM, 101 (1990) [hereinafter SUPPORTING OUR CHILDREN] (outlining the history of federal legislation involving nationwide child support guidelines).

24. The federal Child Support Enforcement Amendments of 1984 required every state to establish child support guidelines by October 13, 1989, as a condition for federal funding. Pub. L. No. 98-378, 98 Stat. 1305 (1984) (codified at 42 U.S.C. § 667 (1984)).

25. *Id. See generally* TREATMENT OF MULTIPLE FAMILY CASES, *supra* note 9, at 1 (tracing the federal legislative history of child support guidelines).

26. Pub. L. No. 100-485, 102 Stat. 2343 (1988) (codified at 42 U.S.C. § 667 (1988)). *See generally* TREATMENT OF MULTIPLE FAMILY CASES, *supra* note 9, at 1 (tracing the federal legislative history of child support guidelines).

27. Pub. L. No. 100-485, 102 Stat. 2343 (1988) (codified at 42 U.S.C. § 667 (1988)).

28. SUPPORTING OUR CHILDREN, *supra* note 23, at 102.

29. *See, e.g.*, ARIZ. REV. STAT. ANN. § 25-320 (Supp. 1993) (stating that "[t]he amount resulting from application of these guidelines shall be the amount of child support ordered unless a written finding is made, based on criteria approved by the Supreme Court, that application of the guidelines would be inappropriate or unjust in a particular case"); COLO. REV. STAT. § 14-10-115 (Supp. 1993) (stating that the "[c]ourts may deviate from the guideline where its application would be inequitable, unjust, or inappropriate"); ILL. ANN. STAT. ch. 750, § 5/505 (Smith-Hurd Supp. 1994) (stating that the

Although federal legislation required that certain criteria be included in the guidelines of every state,[30] each state was given the freedom to establish its own guidelines theory.[31] Additionally, each state may independently determine the specific dollar amounts to be used in that state's guidelines calculations.[32] The guidelines theories that have been implemented by the states include the "income-shares" model,[33] the "income equalization" or "equal living standards"

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guidelines must be applied in each case "unless the court makes a finding that application of the guidelines would be inappropriate . . ."); KY. REV. STAT. ANN. § 403.211 (Michie/Bobbs-Merrill Supp. 1992) (allowing deviations from the presumptive guidelines amount where application of the guidelines would be "unjust or inappropriate"); ME. REV. STAT. ANN. tit. 19, § 317(1) (West Supp. 1993) (stating that a deviation is appropriate where "a child support order based on the support guidelines would be inequitable or unjust . . ."); ME. REV. STAT. ANN. tit. 19, § 317(3) (West Supp. 1993) (listing the criteria which may justify a deviation from the presumptive guidelines amount); OKLA. STAT. ANN. tit. 43, § 118 (West Supp. 1994) (allowing deviations from the guidelines "where the amount of support so indicated is unjust, inequitable, unreasonable or inappropriate under the circumstances, or not in the best interest of the child or children involved"); TEX. FAM. CODE ANN. § 14.055 (West 1994) (stating that the court "may determine that the application of the guidelines would be unjust or inappropriate under the circumstances"); VT. STAT. ANN. tit. 15, § 659(a) (Supp. 1993) (stating that a deviation is appropriate where the guidelines amount of support is "unfair to the child or to any of the parties"); *see also* Bergman v. Bergman, 486 N.W.2d 243, 245 (N.D. 1992) (stating that the presumptive guidelines amount may be rebutted if the obligor presents evidence which establishes that the amount would result in undue hardship for the obligor and the situation involves factors not addressed in the guidelines). *See generally* Marilyn R. Smith, *Grounds for Deviation*, 10 FAM. ADV. 22 (Spring 1988).

30. States were required to base the guidelines on specific descriptive and numeric criteria which, following the proper calculations, would result in a specified amount of support. Pub. L. No. 100-485, 102 Stat. 2343 (1988) (codified at 42 U.S.C. § 667 (1988)).

31. The requirements articulated by Congress in the 1984 and 1988 amendments did not specify any single formula to be utilized by the states. *See* Pub. L. No. 98-378, 98 Stat. 1305 (1988) (codified at 45 C.F.R. § 302.56 (1984)); Pub. L. No. 100-485, 102 Stat. 2343 (1988) (codified at 42 U.S.C. § 667 (1988)). According to the legislative history of the 1984 amendments "[t]he exact nature of the guidelines will be determined by each State." S. REP. NO. 387, 98th Cong., 2d Sess. 40 (1984). *See generally* CHILD SUPPORT REFERENCE MANUAL, *supra* note 18, at VI-1 to VI-2 (discussing the history of federal legislation which mandated guidelines in each state); 1 OLIPHANT, *supra* note 18, at § 27.5 (discussing the history of child support guidelines); Robert G. Williams, *Guidelines for Child Support and Orders*, 21 FAM. L.Q. 281 (1987) (describing the different guidelines models utilized throughout the United States).

32. The 1984 and 1988 amendments did not specify any dollar amounts to be utilized by the states, although the amendments did specify the criteria to be considered. *See* Pub. L. No. 98-378, 98 Stat. 1305 (1984) (codified at 45 C.F.R. § 302.56 (1984)); Pub. L. No. 100-485, 102 Stat. 2343 (1988) (codified at 42 U.S.C. § 667 (1988)); *see also* CHILD SUPPORT REFERENCE MANUAL, *supra* note 18, at VI-1 to VI-2 (discussing the history of federal legislation which mandated guidelines in each state); SUPPORTING OUR CHILDREN, *supra* note 23, at 102 (discussing the Family Support Act of 1988).

33. *See* TREATMENT OF MULTIPLE FAMILY CASES, *supra* note 9, at 6-7 (providing that, "[a]s of February 1, 1990, 32 states and Puerto Rico used the income-shares model"); *see*

model,[34] the "percentage of income" model,[35] the "cost-sharing" model,[36] and the "Melson formula."[37]

1. *Income-Shares Model*

The income-shares model determines child support as a percentage of the obligor's gross income.[38] Under this method of calculation, the total amount of child support owed is derived from the combined income of the obligee and the obligor.[39] This amount is then proportionately divided between the parents, based on their respective incomes, to arrive at a percentage.[40] This percentage ensures that a child receives the same proportion of income that the obligor would have contributed if the household had remained intact.[41]

Factors affecting the percentage applied in the income-shares model generally include the number of children owed support, the ages of the children, and the income, assets, and earning abilities of both parents.[42] The policy underlying this model is that a child should enjoy the same standard of living that he or she would have enjoyed if the

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also CHILD SUPPORT REFERENCE MANUAL, *supra* note 18, at VI-12 to VI-13 (detailing each of the child support guidelines models implemented throughout the states); 1 OLIPHANT, *supra* note 18, at § 27.5 (explaining the different guidelines models); SUPPORTING OUR CHILDREN, *supra* note 23, at 102 (surveying the various guidelines models).

34. TREATMENT OF MULTIPLE FAMILY CASES, *supra* note 9, at 8 (stating that as of February 1, 1990, although no state used a strict equal living standards model, Tennessee, Vermont, and the District of Columbia had guidelines similar to this model). *See* D.C. CODE ANN. § 16-916.1 (Supp. 1993); TENN. CODE ANN. § 36-5-101 (1993); VT. STAT. ANN. tit. 15, §§ 653-656 (1989 & Supp. 1993).

35. SUPPORTING OUR CHILDREN, *supra* note 23, at 102.

36. 1 OLIPHANT, *supra* note 18, at § 27.5; *see also* CHILD SUPPORT REFERENCE MANUAL, *supra* note 18, at VI-11.

37. SUPPORTING OUR CHILDREN, *supra* note 23, at 102. Three states currently use the Melson formula. *See* DEL. CT. R. FAM. CT. 52 (Supp. 1992); HAW. REV. STAT. § 576D-7 (1993); W. VA. CODE § 48A-2-8 (1993).

38. *See, e.g.*, ALA. ST. J. ADMIN. R. 32 (Supp. 1993); CAL. FAM. CODE § 4055 (West Supp. 1994); IOWA CODE ANN. § 598.21 (West Supp. 1994); MD. FAM. LAW CODE. ANN. §§ 12-201 to 12-204 (1992 & Supp. 1993); S.D. CODIFIED LAWS ANN. § 25-7-6.1 (1992).

39. See statutes cited *supra* note 38.

40. TREATMENT OF MULTIPLE FAMILY CASES, *supra* note 9, at 6. First, the income of each parent is determined and these amounts are combined. Next, the resulting amount is used to calculate the amount of the child support obligation. This amount is then divided between the parents in proportion to their incomes. The obligee's portion of the obligation is presumably spent directly for the children's needs. The obligor's portion is paid monthly as child support. Ball v. Minnick, 606 A.2d 1181, 1196 (Pa. Super. Ct. 1992).

41. Seanor v. Nimmo, No. 92CA1785, 1993 WL 477564 at *4 (Colo. Ct. App. 1994).

42. *See* TREATMENT OF MULTIPLE FAMILY CASES, *supra* note 9, at 6-7; *see also* CHILD SUPPORT REFERENCE MANUAL, *supra* note 18, at VI-12 to VI-13; 1 OLIPHANT, *supra* note 18, at § 27.5; SUPPORTING OUR CHILDREN, *supra* note 23, at 102.

parents were living together.[43] The income-shares model has been adopted in the majority of states.[44]

2. *Equal Living Standards Model*

The equal living standards model focuses on equalizing the standards of living in the households of both the obligee and the obligor.[45] Equalization is accomplished by totalling the income and resources of both households and allocating a percentage to each household according to its size and composition of children and adults.[46] The policy underlying this model is that neither one of the parents, nor any of the children, should suffer disproportionately from a family breakup.[47] This model has not yet been implemented by any state.[48]

3. *Percentage of Income Model*

The percentage of income model, based on Wisconsin's child support guidelines,[49] has been adopted by many states.[50] Under this

43. Mims v. Mims, 635 A.2d 320, 321 (D.C. 1993).

44. ALA. ST. J. ADMIN. R. 32 (Supp. 1993); ARIZ. REV. STAT. ANN. § 25-320 (Supp. 1993); CAL. FAM. CODE § 4055 (West Supp. 1994); COLO. REV. STAT. § 14-10-115 (Supp. 1993); CONN. GEN. STAT. ANN. § 46b-215a (West Supp. 1994); FLA. STAT. ANN. § 61.30 (West Supp. 1994); IND. CODE ANN. § 31-1-11.5-12 (West Supp. 1993); IOWA CODE ANN. § 598.21 (West Supp. 1994); KAN. STAT. ANN. § 38-1595 (1988); KY. REV. STAT. ANN. § 403.212 (Michie/Bobbs-Merrill Supp. 1992); LA. REV. STAT. ANN. §§ 315-315.1 (West 1993); ME. REV. STAT. ANN. tit. 19, §§ 316-317 (West Supp. 1993); MD. FAM. LAW CODE. ANN. §§ 12-201(e), 12-204(a) (1992 & Supp. 1993); MASS. GEN. LAWS ANN. ch. 209, § 32 (West Supp. 1994); MICH. COMP. LAWS ANN. § 551 (West 1994); MO. R. CIV. P. 88.01 (1993); MONT. CODE ANN. § 40-5-204(2)(i) (1993); NEB. REV. STAT. § 42-364 (Supp. 1993); N.H. REV. STAT. ANN. §§ 458-C:1 to 458-C:3 (1993); N.J. R. CH. DIV. FAM. PT. § 5:6A (1993); N.M. STAT. ANN. § 40-4-11.1 (Michie 1993); N.Y. FAM. CT. LAWS § 413 (McKinney Supp. 1994); OHIO REV. CODE ANN. § 3111.21 (Anderson Supp. 1993); OKLA. STAT. ANN. tit. 43, § 118 (West Supp. 1994); OR. REV. STAT. §§ 25.275, 25.280 (Supp. 1994); PA. R. CIV. P. 1910.16-4 to -5 (Supp. 1994); R.I. GEN. LAWS § 15-5-16.2 (1988); S.C. CODE ANN. § 20-7-852 (Law Co-op Supp. 1993); S.D. CODIFIED LAWS ANN. § 25-7-6.2 (1992); UTAH CODE ANN. § 78-45-7.7 (1992); VT. STAT. ANN. tit. 15, §§ 653-661 (1989 & Supp. 1993); VA. CODE ANN. § 20-108.2 (Michie Supp. 1993); WASH. REV. CODE § 26.19.075(e)(1) (Supp. 1994); WYO. STAT. § 20-6-304(a) (1993). *See also* SUPPORTING OUR CHILDREN, *supra* note 23, at 102.

45. TREATMENT OF MULTIPLE FAMILY CASES, *supra* note 9, at 8; *see also* CHILD SUPPORT REFERENCE MANUAL, *supra* note 18, at VI-12; 1 OLIPHANT, *supra* note 18, at § 27.5; SUPPORTING OUR CHILDREN, *supra* note 23, at 102.

46. CHILD SUPPORT REFERENCE MANUAL, *supra* note 18, at VI-12; 1 OLIPHANT, *supra* note 18, at § 27.53.

47. TREATMENT OF MULTIPLE FAMILY CASES, *supra* note 9, at 8.

48. *Id.*

49. WIS. ADMIN. CODE § HSS 80.01-80.05 (1987). *See* TREATMENT OF MULTIPLE FAMILY CASES, *supra* note 9, at 5; SUPPORTING OUR CHILDREN, *supra* note 23, at 102.

50. *See, e.g.*, ALASKA R. CIV. P. 90.3(a) (1994); ARK. R. CIV. P. app. (1994); GA. CODE. ANN. § 19-6-15 (Michie Supp. 1994); IDAHO CODE § 32-706 (Supp. 1993); ILL. ANN. STAT. ch. 750, § 5/505 (Smith-Hurd Supp. 1994); MINN. STAT. § 518.551, subd. 5(b)

method of calculation, only the obligor's income is considered and a percentage of the obligor's adjusted base income is awarded as child support.[51] Although a percentage of the child rearing expenses is imputed to the custodial parent in this model because the custodial parent spends all of his or her income on the combined parent-child household expenses, this imputed amount is not included in the formula.[52] Minnesota's current guideline statute is based on this model.[53]

4. Cost-Sharing Model

The cost-sharing model is based on the actual expenses incurred for raising the children who are owed support.[54] The custodial and noncustodial parents share actual costs, generally in proportion to the income and resources of each parent.[55] Although no states strictly follow this model, some state guidelines apportion child rearing costs between the obligee and the obligor.[56]

5. Melson Formula

Three states have adopted the Melson formula, which originated in Delaware.[57] The Melson formula incorporates the principles of the income-shares model with the policy that parents should share additional income with their children, thus enhancing the children's standard of living as well as that of the parents.[58] According to this method of calculation, any amount of the obligor's income that ex-

(Supp. 1993); MISS. CODE ANN. § 43-19-101 (1993); N.D. CENT. CODE § 14-09-09.7 (Supp. 1993); TENN. CODE ANN. § 36-5-101 (1993); TEX. FAM. CODE ANN. § 14.055(b) (West 1994); WIS. ADMIN. CODE §§ HSS 80.01-80.05 (1987). The model is sometimes referred to as the "income tax" model. SUPPORTING OUR CHILDREN, *supra* note 23, at 102.

51. TREATMENT OF MULTIPLE FAMILY CASES, *supra* note 9, at 5-6; SUPPORTING OUR CHILDREN, *supra* note 23, at 102.

52. TREATMENT OF MULTIPLE FAMILY CASES, *supra* note 9, at 5-6; SUPPORTING OUR CHILDREN, *supra* note 23, at 102.

53. MINN. STAT. § 518.551, subd. 5 (Supp. 1993).

54. *See* 1 OLIPHANT, *supra* note 18, at § 27.5.

55. *See id.*

56. *See, e.g.*, D.C. CODE ANN. § 16-916.1(h)(1) (Supp. 1993); ME. REV. STAT. ANN. tit. 19, § 316 (West Supp. 1993).

57. Delaware's guidelines were among the first statewide child support guidelines in the United States. SUPPORTING OUR CHILDREN, *supra* note 23, at 102. Judge Elwood F. Melson, Jr. developed this formula. TREATMENT OF MULTIPLE FAMILY CASES, *supra* note 9, at 7-8; SUPPORTING OUR CHILDREN, *supra* note 23, at 102; Diane Dodson, *A Guide to the Guidelines*, 10 FAM. ADV. 4, 10 (Spring 1988). The Melson formula has been adopted in Delaware, Hawaii, and West Virginia. *See* DEL. CT. R. FAM. CT. 52 (Supp. 1992); HAW. REV. STAT. § 576D-7 (1993); W. VA. CODE § 48A-2-8 (1993).

58. SUPPORTING OUR CHILDREN, *supra* note 23, at 102.

ceeds the presumptive guidelines amount may be allocated to the children.[59]

In addition to these models, a national guideline has been proposed.[60] Proponents of the national guideline argue that administrative uniformity is needed to thwart forum shopping and to ensure greater fairness to all parties.[61] However, regional cost of living disparities would have to be included in a nationwide guideline to account for variable cost of living expenses throughout the country.[62]

Opponents of a national guideline contend that each model has its own advantages and that each state should determine its own approach.[63] Furthermore, because each guidelines model offers certain advantages, it would be difficult for all of the states to agree on the "best" model.[64]

Courts have broad discretion to determine the amount of child support awarded pursuant to the guidelines as long as the rationale is permissible under applicable state law.[65] Most states require trial courts to make specific findings indicating the reasons for any deviations from the presumptive guidelines amounts regardless of the guidelines model utilized.[66]

B. Minnesota Child Support Guidelines

In 1983, Minnesota became the first state to enact statutory child support guidelines.[67] Commentators have noted that the Minnesota guidelines were established to facilitate the calculation of child support

59. TREATMENT OF MULTIPLE FAMILY CASES, *supra* note 9, at 7-8; SUPPORTING OUR CHILDREN, *supra* note 23, at 102.

60. SUPPORTING OUR CHILDREN, *supra* note 23, at 102-03.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. SUPPORTING OUR CHILDREN, *supra* note 23, at 102-03; *see also* Thomas P. Davis, *Judicial Discretion Under Alaska's Child Support Guidelines*, 8 ALASKA L. REV. 251, 251 (1991) (noting that Alaska trial court judges have broad discretion to deviate from the presumptive guidelines amount of child support if that amount would result in substantial unfairness).

66. SUPPORTING OUR CHILDREN, *supra* note 23, at 102-03; *see, e.g.*, ILL. ANN. STAT. ch. 750, § 5/505 (Smith-Hurd Supp. 1994) (requiring that deviations from the guidelines be "supported by express findings"); IOWA CODE ANN. § 598.21 (West Supp. 1994) (stating that a deviation from the guidelines must be supported by the court's "record or written finding, based on stated reasons, that the guidelines would be unjust or inappropriate."); S.D. CODIFIED LAWS ANN. § 25-7-6.10 (1992) (requiring that all deviations from the guidelines be supported by specific findings based on the enumerated statutory factors).

67. During the 1983 legislative session, the guidelines were introduced and adopted as an amendment to MINN. STAT. § 518.551 (1982). Act of June 9, 1983, ch. 308, § 17, 1983 MINN. LAWS 1748, 1757-59. The Minnesota child support guidelines became effective August 1, 1983. *Id.*

and to enhance uniformity and predictability in child support awards.[68] Specifically, the Minnesota child support guidelines were intended to serve five purposes:

> (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.[69]

As noted by the Minnesota Supreme Court, the title of the 1983 act which introduced the guidelines,[70] the legislative history,[71] and the wording of the guidelines[72] "inarguably lead to the conclusion that the

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The Minnesota Department of Public Welfare, Office of Child Support Enforcement prepared the Minnesota child support guidelines in 1978. The guidelines statute was enacted as a result of federal legislation that made a lesser amount of federal assistance available to those states that failed to implement child support guidelines. *See supra* notes 23-32 and accompanying text (reviewing the federal legislation that mandated nationwide guidelines). *See generally* 1 OLIPHANT, *supra* note 18, at § 27.22 (tracing the history of the Minnesota guidelines); TREATMENT OF MULTIPLE FAMILY CASES, *supra* note 9, at 1-2 (discussing the federal legislation that required states to implement guidelines statutes).

The Minnesota Supreme Court has also recounted the legislative history of the child support guidelines. Moylan v. Moylan, 384 N.W.2d 859, 862 (Minn. 1986).

68. 1 OLIPHANT, *supra* note 18, at §§ 27-21 to 27-22 (tracing the history and purposes of the Minnesota child support guidelines); Sieloff, *supra* note 19, at 18; *see also* TREATMENT OF MULTIPLE FAMILY CASES, *supra* note 9, at 1-2 (addressing the policies underlying child support guidelines).

69. Sieloff, *supra* note 19, at 18; *see also* Derence v. Derence, 363 N.W.2d 86 (Minn. Ct. App. 1985) (citing the first two of the five factors).

70. *Moylan*, 384 N.W.2d at 862-63 n.3 (referring to "[a]n act relating to welfare; changing laws relating to child support enforcement; providing for determination and modification of support. . . .").

71. *Id.* (tracing the legislative development of the guidelines). Senator Berglin played an early role in promulgating the guidelines. *Id.* at 862 n.4. During a Senate floor debate on April 26, 1983, Senator Berglin stated, "the guidelines will apply only to AFDC cases." *Id.* The Senator proposed that the guidelines should be mandatory for all counties, thus eliminating costs and promoting uniformity among support orders.

The Senate and the House passed the bill by votes of 49-0 and 122-1, respectively. *Id.*

72. *See* MINN. STAT. § 518.551, subd. 1 (1992). The provision provides as follows:

> SCOPE; PAYMENT TO PUBLIC AGENCY.
> (a) This section applies to all proceedings involving an award of child support.
> (b) The court shall direct that all payments ordered for maintenance and support be made to the public agency responsible for child support enforcement

support guidelines were originally drafted only to provide for support in cases involving public assistance to children."[73] In the same opinion, however, the Minnesota Supreme Court recognized that, today, the child support guidelines unquestionably apply to all child support cases, not just to those cases where children receive public assistance.[74]

Prior to August 1, 1991, the Minnesota Supreme Court mandated that the presumptive guidelines amounts were "starting points" in the determination of child support awards in non-public assistance cases.[75] In cases where public assistance had been expended on behalf of the child or children in need of support, the statutory guidelines were binding.[76] However, on August 1, 1991, an amendment to the statute took effect which indisputably established that the statutory child support guidelines constitute a "rebuttable presumption" and that the guidelines must be used by trial courts[77] in all cases establishing[78] or modifying[79] child support obligations.[80]

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so long as the obligee is receiving or has applied for public assistance, or has applied for child support and maintenance collection services.

Id.

73. *Moylan*, 384 N.W.2d at 862-63.

74. *Id.* at 860, 863. In *Moylan*, the Minnesota Supreme Court cited MINN. STAT. § 518.551, subd. 5 (1984), the 1984 amendment to this statute, and prior case law to support the conclusion that the child support guidelines apply to non-public assistance cases as well as public assistance cases. *Id.* at 863.

The court also explained that it considered only the 1984 version of the guidelines because the 1986 revisions of the statute were not yet in effect and because only the interpretation of the 1984 version was before the court. Thus, the court noted that its holding would be binding "*at least* until the effective date" of the 1986 statutory amendment. *Id.* at 861 (emphasis added).

75. *Id.* at 863. The court based this conclusion on the intent of the Legislature and the court's own observation that "[t]o blindly apply the guidelines in non-public assistance cases would be improper because different factors are necessarily involved." *Id.*

76. *Id.* In cases where child support payments have been assigned to the public authority under MINN. STAT. § 256.74, the trial court cannot order an amount of child support which deviates downward from the guidelines unless "the court specifically finds that the failure to deviate downward would impose an extreme hardship on the obligor." MINN. STAT. 518.551, subd. 5(j) (Supp. 1993).

77. Throughout the text, the term "trial courts" is meant to include administrative processes. *See* MINN. STAT. § 518.551, subd. 10 (Supp. 1993).

78. Because the guidelines create a "rebuttable presumption," they must be applied to all support awards established under MINN. STAT. § 518.551. *Moylan*, 384 N.W.2d at 864. Thus, the guidelines should be applied in private actions as well as actions initiated by the public authority where public assistance has been expended. *Id.* at 863. *See supra* note 26 and accompanying text (noting that the Family Support Act of 1988 required each state's guidelines to be presumptively applicable).

79. In *Moylan*, the court held that the child support guidelines also apply to child support modification proceedings under MINN. STAT. § 518.64, subd. 2. *Moylan*, 384 N.W.2d at 864.

80. The statute now states that "[t]he guidelines in this subdivision are a rebuttable presumption and shall be used in all cases when establishing or modifying child support." MINN. STAT. § 518.551, subd. 5(i) (Supp. 1993).

According to the guidelines, the amount of child support is essentially determined by the obligor's net monthly income[81] and the number of children to be supported.[82] However, other factors also affect the presumptive guidelines amount of support.[83] To arrive at the guidelines amount of child support, the obligor's net monthly income must first be calculated according to the statute. When calculating net income under the guidelines, it is important to recognize that the definition of "net income" for child support purposes[84] differs from the definitions of "adjusted gross income" and "taxable income" for income tax purposes.[85]

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81. *See id.*, subd. 5(b) (Supp. 1993) (defining "net income" as a basis for child support). *See also infra* note 84 and accompanying text.

82. *See* MINN. STAT. § 518.551, subd. 5(b) (Supp. 1993) (setting forth the guidelines table to be used in determining child support awards).

83. *See id.*, subd. 5(c) (Supp. 1993) (enumerating the factors to be considered by the court when setting support, modifying support, or deviating from the presumptive guidelines amount of support). The factors listed in this statute are as follows:

> 1. all earnings, income, and resources of the parents, including real and personal property, but excluding income from excess employment of the obligor or obligee that meets the criteria of paragraph (b), clause (2)(ii);
> 2. the financial needs and resources, physical and emotional condition, and educational needs of the child or children to be supported;
> 3. the standards of living the child would have enjoyed had the marriage not been dissolved, but recognizing that the parents now have separate households;
> 4. which parent receives the income taxation dependency exemption and what financial benefit the parent receives from it;
> 5. the parents' debts as provided in paragraph (d); and
> 6. the obligor's receipt of assistance under sections 256.72 to 256.87 or 256B.01 to 256B.40.

Id.

84. Net income is defined by the child support statute as:

> Total monthly income less:
> (i) Federal Income Tax
> (ii) State Income Tax
> (iii) Social Security Deductions
> (iv) Reasonable Pension Deductions
> (v) Union Dues
> (vi) Cost of Dependent Health Insurance Coverage
> (vii) Cost of Individual or Group Health/Hospitalization Coverage or an Amount for Actual Medical Expenses
> (viii) A Child Support or Maintenance Order that is Currently Being Paid.

Id., subd. 5(b) (Supp. 1993).

The statute also excludes the income of the obligor's spouse and certain compensation received for employment in excess of a 40-hour work week from the determination of net income for child support purposes. *Id.*

85. The Internal Revenue Code defines "gross income" as "all income from whatever source derived." 26 U.S.C. § 61 (1988). "Taxable income" is defined as "gross income minus the deductions allowed by [Chapter 63] (other than the standard deduction)." *Id.* § 63. *See* Lenz v. Wergin, 408 N.W.2d 873 (Minn. Ct. App. 1987). In *Lenz* the appellate court held that the trial court had erred in determining the obligor's net income by using tax law deductions. *Id.* at 876-77. The trial court erroneously determined net income according to the amount stated on line 34 of the obligor's 1040

After determining the obligor's net monthly income, the court applies the guidelines table to that amount. This application results in a designated percentage which the court multiplies by the obligor's net monthly income to arrive at a specific dollar amount.[86] Therefore, the guideline table indicates the recommended percentage of the obligor's net monthly income which should be paid as child support.[87]

The legislature has limited the maximum amount of child support that can be awarded under the guidelines.[88] The current guideline table does not include a category for obligors with net monthly incomes exceeding $5000.00.[89] Thus, the guidelines essentially limit the percentage of the obligor's net monthly income to be included in child support calculations.[90] This limitation is presumably due to the fact that a child's needs generally do not exceed the stated guidelines maximum.[91] If the needs of a child do exceed the recommended maximum support amount, the trial court can make the appropriate findings after weighing the evidence presented in the case[92] and the

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form. *Id.* Furthermore, the court noted that this net income "differs considerably from net income as defined under the child support laws. . . ." *Id.* at 877.

The Minnesota Court of Appeals has also held that for purposes of calculating child support, the trial court erred in computing net income under the tax laws instead of computing net income under the guidelines formula (which does not allow business deductions). State *ex rel.* Hennepin v. Erlandson, 380 N.W.2d 578, 581 n.2 (Minn. Ct. App. 1986).

86. MINN. STAT. § 518.551, subd. 5(b) (Supp. 1993).

87. *Id.*

88. *Id.*

89. *Id.* Furthermore, the statute provides, "[g]uidelines for support for an obligor with a monthly income in excess of the income limit currently in effect under paragraph (k) shall be the same dollar amounts as provided for in the guidelines for an obligor with a monthly income equal to the limit in effect." *Id.*

90. MINN. STAT. § 518.551, subd. 5(b) (Supp. 1993). The guidelines can only be applied to $5,000.00 of the obligor's net monthly income unless a deviation would be appropriate. *See infra* notes 102-08 and accompanying text (explaining guidelines calculations and deviations).

91. *See* State v. Hall, 418 N.W.2d 187, 190 (Minn. Ct. App. 1988) (noting that the Legislature has effectively declared that a child's needs generally do not exceed the maximum amount specified in the guidelines). The court also stated that "[t]he maximum appropriate award under the guidelines effectively suggests a normal 'cap' on the use of support to upgrade a child's standard of living." *Id.* at 190.

Based on the guidelines limit, the court in *Hall* held that even though the obligor received an income of approximately $116,000.00 per month, the obligee failed to establish a need for an amount of child support greater than the presumptive guidelines amount. *Id.* at 189-90. The obligor's ability to pay, by itself, was insufficient to justify an upward deviation from the guidelines. *Id.*

See also Pitkin v. Gross, 385 N.W.2d 367, 369-70 (Minn. Ct. App. 1986) (holding that although the obligor had a net monthly income of $12,000.00, resulting in a $1,500.00 child support obligation per month, a downward deviation was appropriate because this amount would have exceeded the child's needs).

92. MINN. STAT. § 518.551, subd. 5(c) (Supp. 1993). The statute provides that the court shall consider the relevant statutory factors, including those in subparagraph (2),

relevant statutory factors.[93] The court can then order an upward deviation from the guidelines if it finds that a departure from the guidelines would be appropriate.[94]

Although commentators have noted that the statutory child support guidelines appear to present a mechanical approach to calculating support awards,[95] the Minnesota Court of Appeals has held that the child support guidelines should not be mechanically applied.[96] Accordingly, the guidelines provide that parents who owe a duty of support may be ordered to pay an amount that is "reasonable or necessary" for the support of their children.[97] The guidelines also include relevant statutory factors to be considered by the trial court when awarding support, modifying support, and determining whether a deviation from the guidelines is appropriate in any given case.[98] It is

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concerning "the financial needs and resources, physical and emotional condition, and educational needs of the child or children to be supported." *Id.*

93. *Id.*

94. *See infra* notes 102-08 and accompanying text (explaining the determination of deviations from the guidelines).

95. Sieloff, *supra* note 19, at 17-18. The apparently mechanical procedure mandated by the guidelines was arguably established by the Legislature in response to "a perceived lack of structure or procedure by which child support levels are set." *Id.* at 19.

96. Mancuso v. Mancuso, 417 N.W.2d 668, 672 (Minn. Ct. App. 1988) (citing Linderman v. Linderman, 364 N.W.2d 872, 875 (Minn. Ct. App. 1985)). The *Mancuso* court also stated that the guidelines should not be applied mechanically in a situation where the obligor supports both prior children and subsequent children. *Id.* (citing Packer v. Holm, 364 N.W.2d 506, 507 (Minn. Ct. App. 1985)). *See generally* 1 OLIPHANT, *supra* note 18, at § 27.26.

Although the amount of the obligor's income and the number of children to be supported under the order may be the most significant factors to be considered in awarding child support under the guidelines, the Legislature also intended that other factors be considered. Sieloff, *supra* note 19, at 19. The Legislature provided that trial judges may deviate from the guidelines, indicating that other factors should be weighed when determining whether a deviation would be appropriate. *Id.* Furthermore, the statute now provides that the trial court must consider the relevant statutory factors when setting or modifying child support orders. MINN. STAT. § 518.551, subd. 5(c) (Supp. 1993). *See supra* note 83 (restating the statutory factors).

97. Thus, it can be argued that in situations where subsequent children are involved, a "reasonable and necessary" amount of support should be ordered for the subsequent children as well as for prior children. MINN. STAT. § 518.551, subd. 5(a) (Supp. 1993).

98. *Id.*, subd. 5(c) (Supp. 1993). The statute further provides that "[n]othing shall preclude the court from receiving evidence on the above factors to determine if the guidelines should be exceeded or modified in a particular case." *Id.*, subd. 5(h) (1992). Accordingly, the Minnesota Supreme Court has held that findings regarding the statutory factors are required in non-public assistance modification proceedings, even in those cases where the guidelines were followed. Moylan v. Moylan, 384 N.W.2d 859, 863 (Minn. 1986).

After *Moylan* was decided, MINN. STAT. § 518.17, subd. 4, which contained the relevant statutory factors, was repealed. Act of Mar. 24, 1986, ch. 406, § 9, 1986 MINN. LAWS 580, 586. The same factors were subsequently included in the amendment to MINN.

the trial court's responsibility to balance all of the relevant factors when determining the child support award in each case.[99]

When the trial court awards an amount of child support that comports with the presumptive guidelines amount, the court must include written findings specifying the obligor's income and the amount upon which the support award was based.[100] In addition, the trial court must specifically address "any other significant evidentiary factors affecting the determination of child support."[101]

However, when the trial court awards an amount of child support that deviates[102] from the presumptive guidelines amount, the court must include findings which specify the child support award as it would have been calculated according to the guidelines.[103] In cases where the court has found that such a deviation would be appropriate, the court must also state the reasons for the deviation, specifically addressing certain statutory factors[104] and indicating why the deviation would serve the best interests of the child or children to be supported.[105] Therefore, if the court awards support in an amount above or below the presumptive guidelines amount, the court must make specific findings stating the reasons for the deviation.[106] If the trial court does not deviate from the presumptive guidelines amount, however, the relevant statutory factors need not be addressed in the order.[107] Furthermore, in public assistance cases, the trial court may not deviate

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STAT. § 518.551, subd. 5(b), which went into effect on August 1, 1986. Act of Mar. 24, 1986, ch. 406, § 4, 1986 MINN. LAWS 580, 581. The amended statute also included the provision, mandated by the Minnesota Supreme Court in *Moylan*, which required consideration of the statutory factors in all child support cases. *Moylan*, 384 N.W.2d at 864.

99. *Moylan*, 384 N.W.2d at 863-64.

100. MINN. STAT. § 518.551, subd. 5(i) (Supp. 1993).

101. *Id.*

102. Under the guidelines, a downward deviation occurs when the trial court awards an amount of child support that is below the presumptive guidelines amount, and an upward deviation occurs when the court awards an amount of child support that is above the presumptive guidelines amount. *See infra* notes 103-08 and accompanying text (explaining guidelines deviations under Minnesota law). *See also* 1 OLIPHANT, *supra* note 18, at §§ 27.28 to 27.29 (discussing the parameters for ordering downward and upward deviations).

Furthermore, the definition of "deviation" also includes situations where the trial court reserves determination of child support. *See, e.g.*, O'Donnell v. O'Donnell, 412 N.W.2d 394, 397 (Minn. Ct. App. 1987).

103. MINN. STAT. § 518.551, subd. 5(i) (Supp. 1993).

104. The trial court must address and balance the statutory factors enumerated in the child support statute. *Id.*, subd. 5(c). *See also supra* note 83 (restating the factors enumerated in the statute).

105. MINN. STAT. § 518.551, subd. 5(i) (Supp. 1993).

106. *Id.*

107. *Id.*

downward from the presumptive guidelines amount unless it finds that failure to do so would cause an extreme hardship for the obligor.[108]

When the trial court awards an amount of child support, the court of appeals will reverse the order only when the trial court has abused its discretion.[109] Thus, reversal will only occur where the trial court's decision contradicts logic and facts on the record,[110] or when the trial court has failed to make sufficient findings showing that it considered all of the appropriate factors[111] in reaching a decision.[112] Furthermore, the appellate court must affirm the trial court's child support order if it has a reasonable factual basis.[113]

III. THE SUBSEQUENT CHILDREN DILEMMA

A. *Problems Nationwide*

Subsequent children are generally defined as "later born children" or "children from a subsequent marriage."[114] Although subsequent children are referred to as those from a "subsequent marriage," many subsequent children do not fall within this definition. For example,

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108. *Id.*, subd. 5(j) (Supp. 1993).

109. *See* Pitkin v. Gross, 385 N.W.2d 367, 368 (Minn. Ct. App. 1986) (stating that a trial court's child support determination will not be reversed absent a clear showing of abuse of discretion) (citing Reck v. Reck, 346 N.W.2d 675, 677 (Minn. Ct. App. 1984), *review denied*, (Minn. Apr. 25, 1984)); *see also* Rutten v. Rutten, 347 N.W.2d 47, 50 (Minn. 1984) (holding that a trial court's determination regarding child support will be upheld unless it is clearly erroneous).

110. *Rutten*, 347 N.W.2d at 50 (citing Holmes v. Holmes, 255 Minn. 270, 274, 96 N.W.2d 547, 551 (1959)).

111. *See supra* note 83 and accompanying text (restating the factors listed in MINN. STAT. § 518.551, subd. 5(c)).

112. Moylan v. Moylan, 384 N.W.2d 859, 865 (Minn. 1986) (remanding the case to the trial court for reconsideration and requiring the trial court to make express findings).

113. DuBois v. DuBois, 335 N.W.2d 503, 507 (Minn. 1983) (citing Bollenbach v. Bollenbach, 285 Minn. 418, 175 N.W.2d 148, 154 (1970)).

114. *See* Erickson v. Erickson, 385 N.W.2d 301, 304 (Minn. 1986) (referring to subsequent children as "[c]hildren by a subsequent marriage"). *Erickson* was one of the first Minnesota cases dealing with the issue of subsequent children in child support calculations. *See also* Loggins v. Houk, 595 So. 2d 488, 489 (Ala. Civ. App. 1991) (referring to "children born or adopted after the initial award of support"); Canning v. Juskalian, 597 N.E.2d 1074, 1078 (Mass. App. Ct. 1992) (referring to "subsequent children" as children of a "subsequent marriage"); Moxham v. Moxham, No. A-92-224, 1994 WL 50764 at *3 (Neb. Ct. App. 1994) (referring to situations involving subsequent children as "situation[s] where the noncustodial parent acquires additional children"); Adams v. Reed, No. 03A01-9301-JV-0037, 1993 WL 476325 at *4 (Tenn. Ct. App. 1993) (referring to subsequent children as "children of a subsequent marriage"); Wood v. Wood, 438 S.E.2d 788, 795 (W. Va. 1993) (referring to subsequent children as children from a subsequent marriage).

many are owed a duty of support pursuant to a paternity adjudication or a state action for reimbursement of public assistance.[115]

Recently, the effect of subsequent children on child support awards has become profound as the number of multiple family situations continues to increase. Many second and third marriages result in child support awards that involve subsequent children because an increasing number of parents remarry after divorce.[116] The obligor's new spouse might also have children, thus creating additional financial responsibilities for the obligor. These additional responsibilities generally alter the financial resources available for the support of the obligor's children from a prior marriage.[117]

Other multiple family situations arise where unmarried obligors have children living in different households with different obligees. To complicate matters, child support awards for prior children are sometimes modified after the court has already ordered the obligor to support children in another household.[118]

When calculating child support, there are three contexts in which courts have confronted the problems associated with subsequent children. The first instance occurs where a trial court awards support for an obligor's prior child.[119] In such cases, the court must determine the effect of the obligor's subsequent child on the amount of child support awarded to the prior child. The second instance arises where the trial court considers the financial needs of a subsequent child who is currently residing with the obligor.[120] In such cases, the court must

115. *See, e.g.*, County of Morrison v. Schwanke, No. C5-93-57, 1993 WL 367552 (Minn. Ct. App. 1993). *Schwanke* involved an obligor who was adjudicated the father of a prior child in a paternity action. *Id.* at *1. Child support was not ordered at the time of the paternity adjudication, and by the time support was sought for the prior child, the obligor had remarried. *Id.* at *3. The obligor then resided with his new wife, their two subsequent children, and his new wife's child from another relationship. *Id.*

116. According to one source, "[a]bout half of all marriages—and an even greater proportion of divorces—involve at least one partner who has been married before. A substantial portion, as well, involve at least one partner with a child or children from a former marriage or another former union." TREATMENT OF MULTIPLE FAMILY CASES, *supra* note 9 (citing V. FUCHS, HOW WE LIVE: AN ECONOMIC PERSPECTIVE ON AMERICANS FROM BIRTH TO DEATH (1983)). Specifically, 75% of divorced individuals remarry, and 88% of remarried men had or expected new biological children, new stepchildren, or both. *Id.* (citing Thornton & Freedman, *The Changing American Family*, 38 POPULATION BULL. (1983); NATIONAL CTR. FOR HEALTH STATISTICS, NATIONAL SURVEY OF FAMILY GROWTH, CYCLE III (1982)).

117. *Id.*

118. In Minnesota, child support orders can be modified pursuant to MINN. STAT. § 518.64 (Supp. 1993).

119. *See, e.g.*, Isanti County Family Servs. v. Swanson, 394 N.W.2d 180, 184 (Minn. Ct. App. 1986) (holding that the trial court did not err in failing to consider the needs of the obligor's subsequent child where the obligor's prior child was receiving AFDC).

120. *See, e.g.*, Mancuso v. Mancuso, 417 N.W.2d 668, 670-71 (Minn. Ct. App. 1988) (involving an obligor who, though currently residing with his four children from a prior

determine what impact, if any, the needs of any subsequent children who reside with the obligor will have on prior child support awards. The third instance arises where the obligor owes a duty of support under separate orders for prior and subsequent children, none of whom live with the obligor.[121] In such cases, the court must determine how to adequately and fairly award support to all of the children involved.[122]

In each of these contexts, multiple family obligations present an issue of fairness. Because the obligor has a limited amount of income, the resources available for child support are limited as well.[123] Most importantly, when child support is awarded, the impact is ultimately felt by the children. Often the obligor's child or children who are owed a duty of support under a prior child support award will be receiving merely guidelines support.[124] This amount of support often fails to meet the needs of the prior children, and little of the obligor's financial resources remain for the support of the obligor's subsequent children.[125] Therefore, none of the obligor's children will receive child support that is adequate to meet his or her needs.

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marriage, owed support to a child from a subsequent marriage); Davis v. Davis, 394 N.W.2d 519, 520-21 (Minn. Ct. App. 1986) (involving an obligor who owed support to a prior child and, at the time of the hearing, was remarried and living with his current wife, his wife's child, and three of his children from the subsequent marriage); Moxham v. Moxham, No. A-92-224, 1994 WL 50764, at *3 (Neb. Ct. App. 1994) (involving an obligor who owed support to children from a prior marriage and resided with children from his subsequent marriage); Adams v. Reed, No. 03A01-9301-JV-0037, 1993 WL 639259, at *5 (Tenn. Ct. App. 1993) (involving on obligor who resided with a child from a subsequent marriage and owed support to children from a prior marriage); Dillow v. Dillow, 575 S.W.2d 289, 291 (Tenn. Ct. App. 1978) (involving an obligor who remarried and sought a reduction of his prior child support obligation based on his new obligation to his subsequent family); Wood v. Wood, 438 S.E.2d 788, 793 (W. Va. 1993) (involving an obligor who resided with his children from a subsequent marriage and owed support to his children from a prior marriage).

121. This situation occurs when an obligor owes child support under multiple orders and the children owed support reside with different obligees. *See, e.g.*, Hayes v. Hayes, 473 N.W.2d 364, 365 (Minn. Ct. App. 1991) (involving an obligor who owed support under two support orders, one arising from a marriage dissolution and another arising from a subsequent parentage proceeding); Bergman v. Bergman, 486 N.W.2d 243, 244 (N.D. 1992) (involving an obligor who owed support under two separate orders for children from two different marriages who resided in different households).

122. *See Bergman*, 486 N.W.2d at 246-47 (noting that where an obligor owes support under multiple orders for children who reside in different households, the court must attempt to strike a balance between the needs of all children involved and the obligor's ability to pay support).

123. *See supra* note 19 and accompanying text (discussing the financial hardships of obligees, obligors, and the children who are owed support).

124. Because the guidelines amount of support represents a rebuttable presumption, a child support order for prior children is generally the result of straightforward guidelines application. *See* Pub. L. No. 100-485, 102 Stat. 2343 (1988) (codified at 42 U.S.C. § 667 (1988)).

125. *See supra* note 19.

Problems arise where a support award for a prior child is modified or established *after* support has been awarded for a subsequent child.[126] Situations are further complicated when an obligor resides with children who are not his or her own and who are currently owed support by another obligor.[127] Such situations present a unique problem because children who are not the obligor's biological children should be receiving support from their biological noncustodial parents.[128]

In response to the problems associated with subsequent children, states have implemented various solutions. The United States Commission on Interstate Child Support has recommended that a multiple-family policy statement be included in the child support guidelines of each state.[129] Specifically, the Commission suggests that "the policy be declared explicitly in the state's guidelines, or in a separate, adjacent section in the state code or rules."[130] The Commission defines "multi-

126. *See, e.g.*, 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) (involving a post-dissolution custody transfer where the mother and her new husband were in the process of adopting a child).

127. When calculating support for an obligor's biological child, trial courts generally will not consider children who reside with the obligor if they are not the obligor's biological children. *See, e.g.*, State v. Curtis, No. C1-87-2153, 1988 WL 53108 (Minn. Ct. App. May 30, 1988). In this unpublished opinion, the Minnesota Court of Appeals distinguished cases where an obligor has a duty to support his or her later-born children from cases in which an obligor, as in this case, had no obligation to support his stepchild. *Id.* at *1. Although the court did not explain further, one can presume that this holding is based on the rationale that the stepchild should receive child support from his biological father, not from his stepfather.

128. However, because nonpayment of child support is so widespread, many of these children do not receive the child support owed them. In these situations, the obligor residing with the children often incurs the financial responsibility for them, even though another obligor is legally responsible for their support. *See supra* note 19 (discussing the problem of widespread nonpayment of child support).

129. SUPPORTING OUR CHILDREN, *supra* note 23, at 103. The U.S. Commission on Child Support was created under the Family Support Act of 1988. Congress directed the Commission to recommend improvements for interstate establishment and enforcement of support. Congress also required the Commission to submit a final report. *Id.* at 104. The recommendation reads as follows:

> MULTIPLE-FAMILY POLICY STATEMENTS IN GUIDELINES
>
> a. States should formulate a policy regarding: 1) whether a remarried parent's spouse's income affects a support obligation; and 2) the costs of multiple family child raising obligations, other than those children for whom the action was brought.
> b. The Commission recommends that the policy be declared explicitly in the state's guidelines, or in a separate, adjacent section in the state code or rules.
> c. If the state's policy is that the support order amount should be altered because of consideration of these factors, then the formula for calculating the alteration under the guidelines should be explicitly stated.

Id. at 104.

130. *Id.*

ple family situations" as situations "where one parent or both parents remarry."[131] Furthermore, the Commission has specified the factors that states should consider when addressing multiple family situations.[132]

Many states address child support awards involving subsequent children in their respective guidelines.[133] The child support guidelines of some states include provisions for an obligor's children from a current marriage.[134] According to this approach, children living with the obligor are taken into account when support is awarded for the obligor's children who reside elsewhere.[135] In effect, the needs of the children

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131. SUPPORTING OUR CHILDREN, *supra* note 23, at 103.

132. *Id.* at 103-04. The factors include:

> (1) whether the income of a remarried parent should be considered as wholly or partially available income;
> (2) whether extraordinary expenses of the new spouse should be considered;
> (3) whether the cost of raising children in a parent's current intact household should be considered;
> (4) whether the income and expenses of a nonmarital, long-term partner should affect the child support calculation;
> (5) whether preexisting support obligations should be considered.

Id.

133. ALA. ST. J. ADMIN. R. 32 (Supp. 1993); ALASKA R. CIV P. 90.3 (1994); ARIZ. REV. STAT. ANN. § 25-320 (Supp. 1993); ARK. R. CIV. P. app. (1994); CAL. FAM. CODE § 4055 (West Supp. 1994); COLO. REV. STAT. § 14-10-115(7)(d) (Supp. 1993); CONN. GEN. STAT. ANN. § 46b-215a (West Supp. 1994); DEL. CT. R. FAM. CT. 52(c)(3) (Supp. 1992); D.C. CODE ANN. § 16-916.1(b)(5) (Supp. 1993); FLA. STAT. ANN. § 61.30(12) (West Supp. 1994); GA. CODE ANN. § 19-6-15 (Michie Supp. 1994); HAW. REV. STAT. § 576D-7 (1993); IDAHO CODE § 32-706 (Supp. 1993); IND. CODE ANN. § 31-1-11.5-12 (West Supp. 1993); IOWA CODE ANN. § 598.21(4) (West Supp. 1994); KAN. STAT. ANN. § 38-1595 (1988); LA. REV. STAT. ANN. § 315.1(C)(2) (West 1993); ME. REV. STAT. ANN. tit. 19, §§ 316(4)(A), 317(3)(K) (West Supp. 1993); MASS. GEN. LAWS ANN. ch. 209, § 32 (West Supp. 1994); MICH. COMP. LAWS ANN. § 551 (West 1994); MISS. CODE ANN. § 43-19-101(3)(d) (1993); MO. R. CIV. P. 88.01 (1993); MONT. CODE ANN. § 40-5-204, subd. 2(i) (1993); NEV. REV. STAT. § 125B.080 (1991); N.H. REV. STAT. ANN. §§ 458C:1, 458-C (1993); N.J. R. CIV. P. § 5:6A (1993); N.M. STAT. ANN. § 40-11.1(C)(2)(e) (Michie 1993); N.Y. FAM. CT. LAW § 413(1)(b)(5)(vii)(D) (McKinney Supp. 1994); N.C. GEN. STAT. § 50-13.4 (1993); OHIO REV. CODE ANN. § 3111.21(B)(3)(b) (Anderson Supp. 1993); OKLA. STAT. ANN. tit. 43, § 118 (West Supp. 1994); OR. REV. STAT. § 25.280(5) (Supp. 1994); PA. R. CIV. P. 1910.16-4 (Supp. 1994); S.D. CODIFIED LAWS ANN. §§ 25-7-6.7, 25-7-6.10 (1992); TEX. FAM. CODE ANN. §§ 14.055(f),(j) (West 1994); UTAH CODE ANN. §§ 78-45-7.2(4), (5) (1992); VT. STAT. ANN. tit. 15, § 656(a) (1989 & Supp. 1993); VA. CODE ANN. § 20-108.1(B)(1) (Michie Supp. 1993); WASH. REV. CODE § 26.19.075(e)(1) (Supp. 1994); W. VA. CODE § 48A-2-8(g)(3) (1993); WIS. ADMIN. CODE § HSS 80.01-80.05 (1987).

134. *See, e.g.*, D.C. CODE ANN. § 16-916.1(b)(5) (Supp. 1993) (referring to children who reside with the obligor); HAW. REV. STAT. § 576D-7(a) (Supp. 1993) (stating that "[t]he guidelines may include consideration of . . . [t]he existence of other dependents of the obligor parent"); LA. REV. STAT. ANN. § 315(C)(2) (West 1993) (addressing dependents other than those supported under the order at issue); MASS. GEN. LAWS ANN. ch. 209, § 32 (West Supp. 1994) (referring to other obligations of the obligor even if not paid pursuant to court order).

135. *See supra* note 134.

living with the obligor reduce the amount of child support awarded to those children who live elsewhere. A few state guidelines currently reflect subsequent children as a factor to be considered by the court when determining the appropriateness of a deviation from the guidelines.[136]

Additionally, the guidelines of nearly every state take into account the obligor's duty to support prior children.[137] Thus, an obligor's duty to support children under previous child support awards may be considered when calculating subsequent awards. Still, the guidelines in only a handful of states contain a specific formula to calculate child

136. TREATMENT OF MULTIPLE FAMILY CASES, *supra* note 9, at 14-15. Approximately seven states include subsequent children as a factor to be considered in guidelines deviations. CONN. GEN. STAT. ANN. § 46b-215a (West Supp. 1994); OHIO REV. CODE ANN. § 3111.21(B)(3)(b) (Anderson Supp. 1993); OKLA. STAT. ANN. tit. 43, § 118 (West Supp. 1994); OR. REV. STAT. § 25.280(5) (Supp. 1994); PA. R. CIV. P. § 1910.16-4 (Supp. 1994); UTAH CODE ANN. § 78-45-7.2(4)-(5) (1992); WASH. REV. CODE § 26.19.075(e)(1) (Supp. 1994).

137. *See, e.g.*, NEB. REV. STAT. § 42-364(4) (Cum. Supp. 1992). The Nebraska guidelines were recently amended to include a deduction for "child support previously ordered" for children not covered under the child support order at issue. *Id.*

Most states provide for the needs of an obligor's prior children by deducting preexisting child support orders from the obligor's income or by providing that such orders require a deviation from the presumptive guidelines amount. ALA. ST. J. ADMIN. R. 32(B)(6) (Supp. 1993); ALASKA R. CIV P. 90.3(a) (1994); ARIZ. REV. STAT. ANN. § 25-320 (Supp. 1993); ARK. R. CIV. P. app. (1994); CAL. FAM. CODE § 4055 (West Supp. 1994); COLO. REV. STAT. § 14-10-115(7)(d) (Supp. 1993); CONN. GEN. STAT. ANN. § 46b-215a (West Supp. 1994); DEL. CT. R. FAM. CT. 52 (Supp. 1992); D.C. CODE ANN. § 16-916.1(b)(5) (Supp. 1993); FLA. STAT. ANN. § 61.30(3)(f) (West Supp. 1994); GA. CODE ANN. § 19-6-15(c)(6) (Michie Supp. 1994); HAW. REV. STAT. § 576D-7(a)(5) (1993); IDAHO CODE § 32-706 (Supp. 1993); ILL. ANN. STAT. ch. 750, § 5/505(a)(3)(g) (Smith-Hurd Supp. 1994); IND. CODE ANN. § 31-1-11.5-12 (West Supp. 1993); IOWA CODE ANN. § 598.21 (West Supp. 1994); KAN. STAT. ANN. § 38-1595(e)(8) (1988); KY. REV. STAT. ANN. § 403.212 (Michie/Bobbs-Merrill Supp. 1992); LA. REV. STAT. ANN. § 315.1(1) (West 1993); ME. REV. STAT. ANN. tit. 19, §§ 316-17 (West Supp. 1993); MD. FAM. LAW CODE ANN. 12-201(d)(1) (1992 & Supp. 1993); MASS. GEN. LAWS ANN. ch. 29, § 32 (West Supp. 1994); MICH. COMP. LAWS ANN. § 551 (West 1994); MINN. STAT. § 518.551, subd. 5(b) (Supp. 1993); MISS. CODE ANN. § 43-19-101(3)(c) (1993); MO. R. CIV. P. 88.01 (1993); MONT. CODE ANN. § 40-5-204, subd. 2(i) (1993); NEB. REV. STAT. § 42-364 (Supp. 1993); NEV. REV. STAT. § 125B.080 (1991); N.H. REV. STAT. ANN. §§ 458-C:1, 458-C:2 (1993); N.J. CH. DIV. FAM. PT. § 5:6A (1993); N.M. STAT. ANN. § 40-4-11.1(C)(2)(d) (Michie 1993); N.Y. FAM. CT. LAW § 413 (McKinney Supp. 1994); N.C. GEN. STAT. § 50-13.4(C)(1)(5) (1993); OHIO REV. CODE ANN. § 3111.21(B)(3)(b) (Anderson Supp. 1993); OKLA. STAT. ANN. tit. 43, § 118(4) (West Supp. 1994); OR. REV. STAT. § 25.275(1)(g) (Supp. 1994); PA. R. CIV. P. 1910.16-4 (Supp. 1994); R.I. GEN. LAWS § 15-5-16.2 (1988); S.C. CODE ANN. § 20-7-852 (Law Co-op Supp. 1993) S.D. CODIFIED LAWS ANN. § 25-7-6.1 (1992); TENN. CODE ANN. § 36-5-101 (1993); TEX. FAM. CODE ANN. § 14.055(f), (j) (West 1994); UTAH CODE ANN. § 78-45-7.2(4)-(5) (1992); VT. STAT. ANN. tit. 15, §§ 653-61 (1989 & Supp. 1993); VA. CODE ANN. § 20-108.1(B)(1) (Michie Supp. 1993); WASH. REV. CODE § 26.19.075(e)(1) (Supp. 1994); W. VA. CODE § 48A-2-8(d) (1993); WIS. ADMIN. CODE §§ HSS 80.01-80.05 (1987).

support in situations where the obligor must support both prior and subsequent children.[138]

Because most state guidelines do not contain a formula to calculate child support for obligors who must support both prior and subsequent children, case law regarding this issue has developed in most jurisdictions. Many states have limited the consideration that trial courts may give to an obligor's duty to support subsequent children.[139] However, other states have attempted to equalize the support awards between the obligor's prior and subsequent children.[140]

Substantial case law regarding subsequent children has developed, even in jurisdictions where child support guidelines contain a formula for determining support in situations where the obligor supports both prior and subsequent children.[141] For example, in *Brown v. Brown*,[142] the Wisconsin Court of Appeals clarified the appropriate guideline

138. *See, e.g.*, WIS. ADMIN. CODE § HSS 80.04(1) (1987). The Wisconsin guidelines provide percentage standards for a "serial family payer." A "serial family payer" is defined as "a payer with an existing child support obligation who incurs an additional child support obligation in a subsequent family or as a result of a paternity judgment." *Id.* § HSS 80.02(21). For Delaware's standard, see DEL. CT. R. FAM. CT. 52 (Supp. 1992) (stating the formula for allocating child support to all of the children supported by the obligor). *See also* COLO. REV. STAT. § 14-10-115 (Supp. 1993); FLA. STAT. ANN. § 61.30 (West Supp. 1994); IND. CODE ANN. § 31-1-11.5-12 (West Supp. 1993); NEB. REV. STAT. § 42-364 (Supp. 1993); N.J. CH. DIV. FAM. PT. § 5:6A (1993).

139. *See, e.g.*, Lodden v. Lodden, 497 N.W.2d 59 (Neb. 1993). In *Lodden*, the court held that although a trial court may consider the obligor's individual circumstances when awarding child support, the court need not take into account the obligor's duty to support subsequent children. *Id.* at 62-63. Furthermore, the court stated that the obligor should not pay more support for the child of his present wife than for the child of his former wife. *Id.* at 63. *See* notes 206-11 and accompanying text (citing Minnesota cases holding that the amount of child support ordered for subsequent children should not exceed the amount ordered for prior children). *See also* Loggins v. Houk, 595 So. 2d 488, 489 (Ala. Civ. App. 1991) (holding that obligations assumed from an earlier marriage are the obligor's primary responsibility); Brown v. Brown, 503 N.W.2d 280, 283 (Wis. Ct. App. 1993) (noting that the Wisconsin child support guidelines give priority to support obligations for earlier born children). *Compare* Bergman v. Bergman, 486 N.W.2d 243, 245 (N.D. 1992) (stating that North Dakota's guidelines "do not prohibit a reduction of child support because of subsequent or second family children").

140. Haverstock v. Haverstock, 599 N.E.2d 617 (Ind. Ct. App. 1992). The *Haverstock* court stated that obligors have the same duty to support both prior and subsequent children. *Id.* at 619. Furthermore, the court emphasized that "[t]his equality of support does not deprive a first child of enjoying the same standard of living he would have enjoyed had his parents' marriage not been dissolved." *Id.* at 620. *See also Bergman*, 486 N.W.2d at 246-47 (noting that where an obligor owes support under multiple orders, the court must attempt to strike a balance between the needs of the children and the obligor's ability to pay support).

141. *See supra* note 138 (listing state guidelines that provide specific formulae for cases involving subsequent children); *see also*, Hannum v. Hannum, 796 P.2d 57, 58 (Colo. Ct. App. 1990) (noting the trial court's interpretation of the statute that referred to "other children" and "preexisting child support obligations"); Sommerfield v. Sommerfield, 454 N.W.2d 55, 58 (Wis. Ct. App. 1990) (providing the court's interpretation

formula to be used in situations where the obligor must support both prior and subsequent children.[143] The court also clarified the interpretation of the statutory definition of "subsequent family."[144]

Thus, whether jurisdictions have addressed the issue of subsequent children in case law or in their respective child support guidelines, the effect of such children on child support calculations still poses a challenge for trial courts. The courts must determine how to fairly allocate the obligor's limited financial resources between the prior and subsequent children.

B. Problems in Minnesota

Before the establishment of the Minnesota child support guidelines, no precise formula existed for determining the amount of support to be awarded in situations where the obligor must support both prior and subsequent children. When such situations arose, Minnesota courts generally held that an obligor could not avoid a prior child support obligation by voluntarily acquiring subsequent financial liabilities.[145] Included in the definition of "subsequent financial liabilities" were obligations for a second family.[146] Thus, before the guidelines were enacted, Minnesota courts generally gave insignificant deference to the needs of an obligor's subsequent children.[147]

Since the enactment of the guidelines, there is still no precise method for calculating support in situations where the obligor must support both prior and subsequent children. Although the Minnesota child support guidelines do factor prior child support obligations into the guidelines calculations,[148] the Legislature has not yet incorporated subsequent children into the guidelines. Because the guidelines do

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that "[w]e can only give effect to the rules and the statutes by concluding that 'payer' includes those incurring court ordered child support obligations for the first time").

142. 503 N.W.2d 280 (Wis. Ct. App. 1993).

143. *Id.* at 282-84.

144. *Id.* at 283. First, the court clarified the definition of "subsequent family" and "subsequent paternity judgment" as stated in the statute. The court concluded that, in order to be defined as a "subsequent obligation," an obligation must be owed under court order. *Id.* at 283 n.4. The court continued its analysis by presenting examples of the correct application of the child support guidelines to situations that involve obligations to support subsequent children. *Id.* at 283.

145. *See, e.g.*, Weinand v. Weinand, 286 Minn. 303, 306, 175 N.W.2d 506, 509 (1970).

146. *Id.* at 306, 175 N.W.2d at 509 (holding that remarriage is not a factor to be considered in determining child support); Quist v. Quist, 207 Minn. 257, 259, 290 N.W. 561, 562 (1940) (holding that the obligor cannot avoid a child support obligation by voluntarily incurring new liabilities, including obligations for a second family).

147. *See, e.g., Quist*, 207 Minn. at 257, 290 N.W. at 562.

148. MINN. STAT. § 518.551, subd. 5(b) (Supp. 1993). *See also supra* note 84 (reproducing the statutory definition of net income for child support purposes, which includes a deduction for prior support obligations that are currently being paid by the obligor).

not address this issue, Minnesota courts have addressed the subject on a case-by-case basis. Consequently, a substantial body of case law has developed regarding child support determinations where an obligor must support both prior and subsequent children. Still, the formula developed by the courts for calculating support in these situations remains ambiguous.

1. Inadequate Guidance from the Legislature

The Minnesota child support guidelines do not directly address the issue of calculating support where the obligor must support both prior and subsequent children. For example, the guidelines do not address situations where an obligee brings a motion to increase support for prior children after an obligor's subsequent obligation has been established. Likewise, the guidelines do not address situations where an obligor resides with subsequent children and, on the basis of this increased financial responsibility, the obligor brings a motion to reduce a prior support award.[149] In such cases, obligors argue that their current family obligations should be considered in determining their available resources for the support of prior children.[150]

The child support guidelines provide that any amount currently being paid under a prior child support or maintenance order is subtracted from the obligor's gross income.[151] Thus, under this "reduced ability"[152] approach, which has been adopted by the Legislature,[153] the amount of the prior award reduces the obligor's net monthly income,

149. *See supra* notes 114-22 (explaining the situations in which the problems associated with subsequent children arise).

150. *See infra* notes 161, 170-71 and accompanying text (presenting examples of cases in which obligors have presented this argument).

151. MINN. STAT. § 518.551, subd. 5(b) (Supp. 1993). This provision of the statute has been in effect since August 1, 1983.

152. One commentator has noted that this approach is labelled "reduced ability" because it reduces the obligor's net income and thus the ability to make child support payments for subsequent awards. 1 OLIPHANT, *supra* note 18, at § 27.27. According to the guidelines, if the obligor is currently paying child support under a prior order, his or her net income is reduced by the amount of that order. MINN. STAT. § 518.551, subd. 5(b) (Supp. 1993). The guidelines are then applied to the reduced amount of income, resulting in a lower award for a subsequently established order. *Id. See also supra* note 84 and accompanying text (restating a portion of MINN. STAT. § 518.551, subd. 5(b)).

153. This approach was also authorized by the *Hayes* court. Hayes v. Hayes, 473 N.W.2d 364, 366 (Minn. Ct. App. 1991). Since adoption of the reduced ability method, previous case law recommending different approaches in situations involving subsequent children is no longer authoritative. Sceary v. Mercado, 410 N.W.2d 43, 46 n.4 (Minn. Ct. App. 1987) (citing Wollschlager v. Wollschlager, 395 N.W.2d 134, 135-36 (Minn. Ct. App. 1986)).

which in turn reduces the percentage of net income ultimately awarded as child support.[154]

However, the guidelines statute does not address the issue of subsequent children. Because the statute does not contain a specific formula for cases involving subsequent children, child support awards in those cases have been largely at the discretion of trial court judges and administrative law judges. As a result, child support awards involving subsequent children have been inconsistent and unpredictable.[155] Ironically, consistency and predictability in child support awards are two of the main objectives which the Minnesota guidelines were enacted to achieve.[156] Because the guidelines do not provide for situations where the obligor must support both prior and subsequent children, the guidelines statute has failed to accomplish both of these rudimentary goals.

2. *Shortcomings in Minnesota Case Law*

Even early Minnesota decisions in child support cases acknowledged the problem of adequately providing for the obligor's prior children as well as the obligor's subsequent children.[157] Minnesota courts have acknowledged that many cases are complicated by the obligor's responsibilities from a subsequent paternity proceeding or a subsequently established family relationship.[158] These complications are illustrated in the following cases which trace the development of Min-

154. Under the guidelines, a prior child support or maintenance order that is currently being paid can be deducted from the obligor's gross income in arriving at the obligor's net income. MINN. STAT. § 518.551, subd. 5(b) (Supp. 1993). However, a maintenance award ordered contemporaneously with the child support order cannot be deducted from the obligor's gross income. *See* Driscoll v. Driscoll, 414 N.W.2d 441, 445-46 (Minn. Ct. App. 1987) (holding that the subtraction of a maintenance award which was ordered contemporaneously with a child support award resulted in an erroneous downward deviation from the guidelines).

155. *Compare* Erickson v. Erickson, 385 N.W.2d 301, 304 (Minn. 1986) (stating that subsequent children need not be considered when ordering or modifying child support for prior children) *with* Finch v. Marusich, 457 N.W.2d 767, 769 (Minn. Ct. App. 1990) (holding that the trial court should have considered the needs of the obligor's subsequent children).

156. *See supra* notes 68-69 and accompanying text (emphasizing the policies underlying the enactment of the Minnesota guidelines statute).

157. The Minnesota Supreme Court has stated:

> Despite many sweeping statements to the contrary, a trial court obviously does not, and cannot, wholly ignore the needs of innocent children who are born of a divorced husband's remarriage. Their needs . . . [are] a circumstance which may indirectly bear upon the propriety of a revision in alimony despite the fact that the father himself, by his voluntary act in begetting another family, is usually entitled to little judicial consideration when he seeks relief from the burdens of his former marriage.

Mark v. Mark, 248 Minn. 446, 450-51, 80 N.W.2d 621, 624-25 (1957).

158. *See* Bock v. Bock, 506 N.W.2d 321, 324 (Minn. Ct. App. 1993) (addressing the "vexing child support topic of allowances for later born children").

nesota child support law where the obligor must support both prior and subsequent children. As the following decisions indicate, even after the enactment of the guidelines and the development of substantial case law on the subject, the courts continue to strive for a precise formula to determine support when the obligor must support both prior and subsequent children.

In one prominent case, *Erickson v. Erickson*,[159] the Minnesota Supreme 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.[160] Furthermore, the court need not consider subsequent children when ordering or modifying child support for prior children.[161] Based on the facts of *Erickson*,[162] the supreme court held that the appellate court had not erred in failing to consider the obligor's financial duty for his two subsequent children from a later marriage.[163]

In *Moylan v. Moylan*,[164] the companion case to *Erickson*, the supreme court noted that trial courts should not mechanically apply the guidelines.[165] This notion is especially true in situations where an obligor must support children in two households.[166]

Consistent with *Erickson*, Minnesota courts have generally given preferential treatment to prior children. For example, in *Wildtraut v. Wildtraut*,[167] the Minnesota Court of Appeals held that financial burdens assumed by an obligor as a result of a second marriage do not relieve the obligor of the duty to support children from a prior marriage.[168]

159. 385 N.W.2d 301 (Minn. 1986).

160. *Id.* at 304.

161. *Id.*

162. In *Erickson*, the obligee, who was the obligor's ex-wife, brought a motion to increase child support and to find the obligor in contempt for failure to maintain insurance for their three children. *Id.* at 302. The support order at issue covered all three of the children from this prior marriage. *Id.* At the time of the hearing, both the obligee and the obligor had remarried. *Id.* In addition, the obligor was supporting two subsequent children from his second marriage. *Id.*

163. *Id.* at 304.

164. 384 N.W.2d 859 (Minn. 1986).

165. *Id.* at 863 (stating that "[t]o blindly apply the guidelines in non[-]public assistance cases would be improper").

166. *See* Mancuso v. Mancuso, 417 N.W.2d 668, 670 (Minn. Ct. App. 1988) (holding that where an obligor owes support to children who live in separate households and where the best interests of some of the children are jeopardized, the guidelines should not be rigidly followed); Packer v. Holm, 364 N.W.2d 506, 507 (Minn. Ct. App. 1985) (holding that the child support guidelines should not be mechanically applied, especially where the obligor is supporting children in two separate homes); Linderman v. Linderman, 364 N.W.2d 872, 875 (Minn. Ct. App. 1985) (noting that the guidelines should not be mechanically applied).

167. 391 N.W.2d 550 (Minn. Ct. App. 1986).

168. *Id.* at 551. In *Wildtraut*, the obligee brought a motion to increase child support based on a 64% increase in the obligor's income. *Id.* The obligor, who had two chil-

The "financial burden" to which that court referred included child support obligations for subsequent children.[169] In *Davis v. Davis*,[170] the court of appeals maintained the *Erickson* approach, stating that an obligor's children from a second marriage are "relevant to a trial court's decision" in a modification proceeding.[171]

In another case, *Mancuso v. Mancuso*,[172] the Minnesota Court of Appeals addressed the difficulty of equitably calculating child support for subsequent children where an obligor's prior children reside with the obligor. The court of appeals held that the trial court should have given greater consideration to the obligor's prior children when awarding support for a subsequent child.[173] However, the court emphasized that its holding was fact specific because the obligor was responsible for supporting not only the subsequent child who was the subject of the case, but also the obligor's four prior children who were currently residing with him and who were completely financially de-

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dren from his marriage to the obligee, subsequently remarried and had one child from the second marriage. *Id.*

The trial court increased the amount of child support to the presumptive guidelines amount, as calculated from the obligor's increased income. *Id.* The obligor argued that the trial court should have deviated downward from the presumptive guidelines amount because of the needs of the obligor's subsequent child and the expenses the obligor incurred following the birth of the second child. *Id.* The Minnesota Court of Appeals reversed and remanded the case, holding that, although extenuating circumstances may be considered when modifying child support, "[o]bligations assumed as a result of a second marriage do not relieve the obligor of his duty to his first wife or their children. . . ." *Id.* The court of appeals also noted that, in *Erickson*, the Minnesota Supreme Court had rejected the notion that prior and subsequent children should be included in the same guidelines formula. *Id.* at 551.

169. *Id.*

170. 394 N.W.2d 519 (Minn. Ct. App. 1986). In *Davis*, the obligee brought a motion to increase child support. The obligee and the obligor had two children from their marriage. *Id.* at 520. At the time of the hearing, the obligor was remarried and lived with his current wife, their three children, and the wife's child from a prior relationship. *Id.* at 521.

171. *Id.* at 523 (citing Erickson v. Erickson, 385 N.W.2d 301, 304 (Minn. 1986)). The court also noted that an obligor's children from a second marriage should not be factored into the guidelines. *Id.*

The Minnesota Court of Appeals has also held that subsequent children should not be factored into the guidelines calculation when support is ordered for prior children who are receiving public assistance. Isanti County Family Servs. v. Swanson, 394 N.W.2d 180, 183 (Minn. Ct. App. 1986).

172. 417 N.W.2d 668 (Minn. Ct. App. 1988). The facts in *Mancuso* illustrate the complications that arise when the obligor or the obligee remarry and when one or both of them have subsequent children. *Id.* at 670. The obligor in this case had been previously married. His four children from this prior marriage resided with him. When he married the obligee, his second wife, she did not adopt these children. The obligee had one child from a prior marriage as well. Additionally, the parties had one child from their subsequent marriage. The support order at issue in the case involved this child. *Id.*

173. *Id.* at 672.

pendent on him.[174] The court stated that blindly applying the guidelines in this situation would be "[t]antamount to a declaration that a parent's obligation to these prior children will be recognized only when these children reside elsewhere than with the obligor and the obligor is under a court order of child support."[175]

Another collection of decisions has taken a somewhat different approach. These cases suggest that the trial court should consider the obligor's current family obligations in determining the resources available for child support purposes.[176] In effect, the expenses of a subsequent child would be considered when determining the resources

174. *Id.*

175. *Id.* at 673.

176. *See* County of Ramsey v. Faulhaber, 399 N.W.2d 617 (Minn. Ct. App. 1987). In *Faulhaber*, the obligee filed a motion to increase child support. The trial court granted the motion and increased the child support obligation to the presumptive guidelines amount. At the time of the hearing, the obligor was married and had a subsequent child from that marriage. His current wife was also expecting a second child. The obligor argued that a deviation was appropriate because of his new family obligations. *Id.* at 618.

On appeal, the court of appeals cited *Erickson* and held that although children born of a subsequent marriage are "not to be factored into the child support guidelines tables," the trial court should take into consideration the obligor's current family obligations in determining the obligor's reasonable expenses and available resources for the support of his or her prior children. *Id.* at 619 (quoting Erickson v. Erickson, 385 N.W.2d 301, 304 (Minn. 1986)).

Another important case was *Scearcy v. Mercado*, 410 N.W.2d 43 (Minn. Ct. App. 1987). *Scearcy* involved a child support determination following a paternity adjudication. The obligor was remarried and the couple was expecting a child. *Id.* at 45. The trial court denied the obligor's request for a child support award that deviated downward from the guidelines. *Id.* Instead, the trial court ordered child support according to the guidelines. *Id.*

On appeal, the obligor in *Scearcy* argued that the *Faulhaber* decision needed clarification, and the obligor suggested a formula that would take into account any subsequent children. *Id.* at 46. The court of appeals stated that the obligor's suggested formula stemmed from a "misunderstanding of the law," which erroneously assumed a mechanical application of the guidelines based on the obligor's income. *Id.* The court emphasized that no case law suggested that the guidelines should be mechanically applied to the obligor's income. *Id.* Furthermore, the court stated that MINN. STAT. § 518.551 requires that the guidelines take into account the needs and resources of both parents and the child. *Id.*

In a later case, the court of appeals held that the trial court should have considered the reasonable living expenses of the obligor and his present family, which consisted of his second wife and two children. Finch v. Marusich, 457 N.W.2d 767, 769 (Minn. Ct. App. 1990). In *Finch*, the obligor filed a motion to modify the child support award for his prior child. *Id.* at 768. The trial court modified the amount of child support and ordered an upward deviation from the guidelines in an amount three times greater than the recommended guidelines amount. *Id.* at 769. The court of appeals reversed, finding that the trial court's order constituted an abuse of discretion. *Id.* The reviewing court focused on the trial court's failure to appropriately weigh the financial circumstances of the parties and the needs of the obligor's prior child when determining the amount of support. *Id.*

available for the support of the obligor's prior children.[177] Accordingly, the court of appeals has indicated that the financial needs of an obligor's subsequent family should "inevitably receive attention when child support is duly determined."[178]

In most decisions, the Minnesota Supreme Court and Court of Appeals have attempted to limit the deference which trial courts can afford to subsequent children.[179] Although these cases have not articulated any precise formula, a general rule has emerged in recent court of appeals cases. This general rule is based on the holdings of *D'Heilly v. Gunderson*[180] and *Hayes v. Hayes*.[181] These two cases have made it clear that courts should not give "excessive deference" to a subsequent child when calculating support for prior children.[182] Although these cases did not expressly define "excessive," later cases have established some boundaries for the term. Until the most recent court of appeals decision on the subject, *Bock v. Bock*,[183] the holdings in *D'Heilly* and *Hayes* governed the determination of child support for obligors who must support both prior and subsequent children.[184]

In an attempt to clarify *Erickson* and its progeny, the Minnesota Court of Appeals held in *D'Heilly*[185] that the needs of children born or adopted after a dissolution may be considered by the trial court in determining child support.[186] The *D'Heilly* court also held that the trial

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See also Williams v. Williams, 221 Minn. 441, 442, 22 N.W.2d 212, 213 (1946) (holding in part that the obligor's remarriage was not a change in circumstance that would warrant canceling child support arrearage and lowering ongoing child support payments).

177. *See, e.g., Finch*, 457 N.W.2d at 769 (holding that the trial court should have considered the reasonable living expenses of the obligor and his subsequent children who resided with him).

178. *Scearcy*, 410 N.W.2d at 46.

179. *See, e.g.*, Erickson v. Erickson, 385 N.W.2d 301, 304 (Minn. 1986) (holding that subsequent children, although relevant to the trial court's decision, cannot be factored into the child support guidelines); Hayes v. Hayes, 473 N.W.2d 364, 365 (Minn. Ct. App. 1991) (holding that the trial court abused its discretion by deferring excessively to the obligor's subsequent child, and noting further that there is a general limitation on excessive deference); D'Heilly v. Gunderson, 428 N.W.2d 133, 136 (Minn. Ct. App. 1988) (warning that excessive deference should not be given to subsequent child support obligations); Scearcy v. Mercado, 410 N.W.2d 43, 46 (Minn. Ct. App. 1987) (noting that children born of a subsequent marriage cannot be factored into the guidelines, even though some consideration is given to the obligor's current family obligations).

180. 428 N.W.2d 133 (Minn. Ct. App. 1988).

181. 473 N.W.2d 364 (Minn. Ct. App. 1991).

182. *See infra* notes 204-08 and accompanying text.

183. 506 N.W.2d 321 (Minn. Ct. App. 1993).

184. *See Hayes*, 473 N.W.2d at 366 (stating that a child support award for an obligor's subsequent children cannot exceed the per capita child support award for the obligor's prior children).

185. 428 N.W.2d 133 (Minn. Ct. App. 1988).

186. *Id.* at 135. In *D'Heilly*, the court of appeals held that the trial court abused its discretion by factoring the expenses of the obligor's subsequent child into the guide-

court erred in awarding a greater amount of support for the obligor's subsequent children than for the obligor's prior children.[187] The court noted that the child support guidelines afford deference to prior support obligations based on the "reduced ability approach."[188]

The court also stressed the fact that for an obligor who earns a low or moderate income, the "reduced ability" method[189] applied under the Minnesota guidelines generally results in a higher support award for prior children than for subsequent children.[190] As the court explained, the reason for the disproportionate per capita support which resulted in *D'Heilly* was that, after subtracting the prior award from the obligor's gross income, the obligor's resulting net income necessarily diminished.[191] This diminished amount falls within a lower category under the guidelines and is therefore multiplied by a lower percentage to arrive at the presumptive guidelines amount.[192]

Although the *D'Heilly* court addressed the issue of subsequent children, it did not propose any specific formula or factors to be used.[193] Thus, after the *D'Heilly* case, courts still lacked clear guidance for calculating child support in situations where the obligor must support both prior and subsequent children.

In *Hayes v. Hayes*,[194] the Minnesota Court of Appeals again attempted to explain the appropriate calculations to be used in situations where subsequent children are involved. The court held that the trial court abused its discretion by "excessively deferring" to the obligor's subsequent child when the court applied the "reduced ability" approach incorrectly.[195] The court maintained that although the "reduced ability" method may be used to factor prior child support obligations into the guidelines, this approach should not be used to include a subsequent child support award.[196] Specifically, the trial court erred by first deducting the obligor's subsequent support award

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lines. *Id.* at 136. The court also held that a child support order which awarded 58% of the total child support expenditure to a subsequent child constituted excessive deference. *Id.*

187. *Id.* at 135.

188. *Id.* at 136.

189. *See supra* notes 151-54 and accompanying text.

190. *D'Heilly*, 428 N.W.2d at 136.

191. *See* MINN. STAT. § 518.551, subd. 5(a) (Supp. 1993).

192. *See id.*, subd. 5 (Supp. 1993).

193. *D'Heilly*, 428 N.W.2d at 135-36.

194. 473 N.W.2d 364 (Minn. Ct. App. 1991).

195. *Id.* at 365-66. *See also supra* notes 151-54 and accompanying text (discussing the reduced ability approach utilized in the Minnesota guidelines).

196. *Hayes*, 473 N.W.2d at 365-66. The court of appeals noted that the trial court utilized the "reduced ability" approach to the disadvantage of the children who were owed support under the prior child support award. *Id.* at 366.

from his net income.[197] Next, the court applied the guidelines to this reduced income.[198] Consequently, the trial court arrived at a support award for the prior children based on the obligor's reduced income.[199] The court of appeals held that by utilizing the "reduced ability" method to factor a subsequent support obligation into the guideline formula, the trial court erroneously afforded "excessive deference" to the obligor's subsequent child.[200]

The *Hayes* court also addressed the issue of whether child support awards for prior and subsequent children could be organized *together* in a single guidelines calculation with the resulting total then divided by the number of children.[201] The court warned that this calculation is not allowed under *Erickson* nor under the "reduced ability" method which only factors prior support awards into the guidelines.[202] Furthermore, the court concluded that the statute "favors the earliest support obligation, not a later obligation that precedes modification of the first established duty."[203]

The holding in *Hayes* clearly established that the amount of child support awarded for subsequent children should not exceed the amount awarded for each of the children supported under a prior order.[204] In other words, the Minnesota Court of Appeals expressed a general reluctance to award support for a subsequent child in an amount greater than the per capita amount awarded to the prior children under a prior support order.[205] Nonetheless, when awarding an amount of support for a subsequent child, the trial court should con-

197. *Id.* This support award resulted from a paternity adjudication of the obligor's child who was born in June of 1990. *Id.*

198. *Id.*

199. *Id.* at 365.

200. *Id.* In *Hayes*, the obligee moved to increase the amount of support awarded to the obligor's two prior children, which was $193.21 per month. *Id.* At the modification hearing, the trial court calculated support for the two prior children in the following manner. First, the court found that the obligor had a net monthly income of $1,059.46. Next, the court reduced this figure by $190.58, the amount of support the obligor was paying for a subsequent child. Finally, the trial court applied the guidelines to the obligor's reduced net monthly income, arriving at a support amount of $234.60 per month for the two prior children. *Id.* In the paternity adjudication for the subsequent child, support was calculated after deducting $193.21, the amount of the obligor's support obligation for his two prior children. *Id.*

201. *Hayes*, 473 N.W.2d at 367.

202. *Id.* This reasoning is consistent with the policy that an obligor is not relieved of prior support obligations because of voluntarily incurred subsequent responsibilities. *See supra* note 145 and accompanying text.

203. *Hayes*, 473 N.W.2d at 366.

204. *Id.*

205. *Id.*; D'Heilly v. Gunderson, 428 N.W.2d 133, 135-36 (Minn. Ct. App. 1988).

sider the needs of the obligor's prior children from a previous marriage or parentage proceeding.[206]

Although the court distinguished *Hayes* from *D'Heilly*,[207] it held that, in both instances, the trial courts afforded excessive deference to subsequent children when awarding support.[208] However, the court of appeals has ruled that, under specific circumstances, a departure from this general "excessive deference" rule is appropriate.[209] Still, unless unusual circumstances exist, such as the special needs of a subsequent child or a support order for a large family,[210] the general rule still governs: A subsequent child should not receive a support award which exceeds the per capita award for prior children under an existing order.[211]

Minnesota courts, like the Legislature, have failed to clearly address the issue of subsequent children. In the past, the Minnesota Court of Appeals has applied the rule articulated in *Erickson* inconsistently.[212]

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206. MINN. STAT. § 518.551, subd. 5(b) (Supp. 1993) (allowing a deduction for prior child support awards which are currently being paid by the obligor); *see also* Mancuso v. Mancuso, 417 N.W.2d 668, 673 (Minn. Ct. App. 1988).

207. The *Hayes* court stated:

> This case, however, involves an issue not presented in *D'Heilly*. There, the subsequent child was given an assumed benefit greater than the total award for the two older children. Here, the trial court's determinations call for an award for the two older children of $234.60, in total somewhat greater than the $190.58 benefit for the third child. We conclude, however, that here too the deference to the later obligation is excessive.

Hayes, 473 N.W.2d at 366.

208. *Id.* The court emphasized that the issue in *D'Heilly* was the amount of child support to be awarded to subsequent versus prior children. *Id. Hayes*, however, involved a situation where the issue was the amount to be set aside as an allowance for a subsequent child. *Id.* The court also noted that, in *D'Heilly*, the subsequent child was awarded an amount of child support greater than the total award for the two prior children. *Id.* In *Hayes*, the trial court awarded a greater amount of child support for the two prior children than for the subsequent child. The court awarded $234.60 for the two older children and $190.58 for the subsequent child. *Id.*

209. Kotzenmacher v. McNeil, No. C5-92-999, 1992 WL 314984, at *2 (Minn. Ct. App. 1992) (finding that a departure from the general rule articulated in *D'Heilly* is appropriate where the guidelines amount of support for the prior children is generous).

210. *See, e.g., Hayes*, 473 N.W.2d at 366 (recognizing that support obligations for larger families constitute "unusual circumstances," possibly justifying a departure from the general rule articulated in *D'Heilly*).

211. *D'Heilly*, 428 N.W.2d at 136.

212. This inconsistency arguably exists because trial courts apply the rule on a case-by-case basis to the specific facts of each case and because the guidance given in *Erickson* is insufficient. *See* Bock v. Bock, 506 N.W.2d 321, 325 (Minn. Ct. App. 1993). The *Bock* court noted that the rule stated in *Erickson* merely prohibits the use of guidelines calculations where subsequent support obligations affect prior obligations, but *Erickson* does *not* instruct the courts how to use the guidelines where an obligor must support both prior and subsequent children. *Id.*

The cases discussed above, which preceded *Bock v. Bock*,[213] the most recent influential Minnesota Court of Appeals decision on the subject, have not set forth any precise formula for calculating child support in situations where the obligor must support both prior and subsequent children. The issue that remains unresolved is exactly how trial courts should calculate support to avoid "excessive deference" to subsequent children while still providing a fair amount for all children involved. Unfortunately, the *Bock* decision has only partially clarified this issue.

In addressing the "vexing child support topic of allowances for later born children," the *Bock* court attempted to explain "permissible approaches in considering the burden of an obligor for the support of later-born children."[214] The court stated that trial courts should consider an obligor's duty to support subsequent children.[215] Citing *D'Heilly* and *Hayes*, the court reaffirmed the notion that the child support guidelines give deference to the "earliest support need."[216]

The *Bock* court also stressed that, according to *Erickson*, trial courts cannot factor the needs of subsequent children into guidelines child support calculations.[217] Therefore, if the guidelines are applied, the formula cannot include consideration for the needs of subsequent children.[218] The court held that a child support award which takes into account the needs of subsequent children constitutes a deviation from the guidelines.[219] By so holding, the court created two distinct categories of child support awards: guidelines awards and awards that involve subsequent children. Awards in the latter category, which include consideration for subsequent children, are deviations from the guidelines and therefore require appropriate findings.[220]

The formula used to arrive at the deviation must include a comparison of contributions to all of the obligor's children.[221] The court stated the appropriate process as follows:

> (1) the trial court has 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; (2) the court should then find the total needs of all of the obligor's children, and if these needs are less than the obligor's ability to pay, the needs may become

213. 506 N.W.2d 321 (Minn. Ct. App. 1993).

214. *Id.* at 324.

215. *Id.* (citing Erickson v. Erickson, 385 N.W.2d 301, 304 (Minn. 1986); Mark v. Mark, 248 Minn. 446, 450-51, 80 N.W.2d 621, 624-25 (1957)).

216. *Id.*

217. *Id.* (citing *Erickson*, 385 N.W.2d at 304, and *Hayes*, 473 N.W.2d at 365-67). The court further explained that, as enacted, the guidelines scheme is distorted if subsequent children are factored into the guidelines as prohibited under *Erickson*. *Id.* at 325.

218. *Bock*, 506 N.W.2d at 325.

219. *Id.*

220. *Id.*

221. *Id.*

> the obligor's maximum child care contribution; (3) the court should make specific findings on the needs of the child or children benefiting from the current support determination; and (4) the court must exercise discretion to fairly determine the current support obligation and the contribution left available for other children, keeping in mind the general standard that the obligation now determined normally should be in an amount at least equal to the contribution for a subsequent child.[222]

According to *Bock*, three additional calculations must be completed. First, the obligor's reasonable expenses must be reduced by contributions from others who currently reside with the obligor.[223] Second, the needs of subsequent children must be reduced by the contributions from another parent of the children.[224] Third, the court stated that "to assess an obligor's expenses exclusive of child care, separate from the needs of subsequent children now in the obligor's household, the trial court must reasonably apportion between the parent and children the expense for shared benefits, such as housing, transportation, etc."[225]

Although the *Bock* court attempted to partially equalize support payments among all children owed support, the court did not provide a clear formula to guide trial courts. The court did clearly state that a deviation from the guidelines is appropriate where subsequent children are involved.[226] Beyond this, however, the formula articulated in *Bock* does little to clarify the "vexing child support topic of allowances for subsequent children."[227] This formula, which the court called the "deviation process,"[228] is convoluted and unpredictable. The numerous computations it requires make the formula impractical.

Furthermore, the court's language is ambiguous. Although the needs of subsequent children must be reduced by "contributions to those needs by another parent of the children,"[229] nowhere does the court define "contributions." Consequently, it is unclear whether this term includes only child support paid by "another parent" or whether

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222. *Id.*

223. *Bock*, 506 N.W.2d at 325. The court stated, "[i]n these deviation determinations, the obligor's reasonable expenses must be reduced as appropriate to take into account contributions to those costs by others who share the obligor's current household." *Id.* However, in a footnote, the court warned that "[t]his concept should not be confused with the statutory rule that a spouse's income is not a resource for paying child support." *Id.* n.4 (citing MINN. STAT. §§ 518.551, subd. 5(a); 518.64, subd. 2(b)(1)). The court explained that the obligor's current "spouse's resources are inherently involved in assessing which expenses are the burden of the obligor." *Id.*

224. *Id.* at 325.

225. *Id.*

226. *Id.*

227. *Id.* at 323.

228. *See supra* notes 221-25 and accompanying text.

229. *Bock*, 506 N.W.2d at 325.

it includes other contributions as well. The language that explains assessment of "an obligor's expenses exclusive of child care"[230] is similarly vague. In addition, the court fails to define "shared benefits,"[231] except to the extent that they include "housing, transportation, etc."[232]

Because 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, the dilemma remains unresolved.

IV. The Solution

Minnesota's guidelines statute should be amended to respond to the increasing number of child support awards that involve subsequent children.[233] To reflect this trend, to provide sorely needed guidance to the trial courts, and to accomplish the guidelines' original objectives, the Legislature must address the issue of subsequent children in a straightforward manner.

One solution to the problems associated with subsequent children would be a separate guidelines table applicable only to situations where subsequent children are involved. For example, the guideline chart could include lower percentages for subsequent children corresponding to higher percentages for prior children. In other words, the guidelines for each income level would include two percentages which would be applied to the obligor's net income. One percentage would be used for prior children and one for subsequent children.

Although *Hayes* prohibits the organization of support awards for prior and subsequent children in a single guidelines formula,[234] a statutory amendment establishing a separate guidelines table for subsequent children cases should be acceptable. If the percentages applied under the guidelines were higher for prior children than for subsequent children, the policy supporting the *Hayes* prohibition would not be violated. Accordingly, prior children would still receive a higher support award in comparison with subsequent children. This result is consistent with the notion that an obligor's duty to support prior children cannot be avoided because of voluntarily assumed subsequent obligations. Moreover, the result is consistent with the policies behind

230. *Id.*

231. *Id.*

232. *Id.*

233. *See supra* note 116 and accompanying text.

234. Hayes v. Hayes, 473 N.W.2d 364, 367 (Minn. Ct. App. 1991). *See supra* notes 201-03 and accompanying text (discussing the *Hayes* rationale prohibiting a single formula).

the Minnesota child support guidelines,[235] namely, predictability and consistency among child support awards.

A specific and simple formula would also effectuate more efficient use of scarce judicial resources. Although Minnesota employs an administrative process in which administrative law judges hear child support cases,[236] judicial resources are still far from abundant.[237] If the Legislature were to enact an additional guidelines table applicable to situations where the obligor must support both prior and subsequent children, judges would be able to dispose of child support cases more efficiently. For example, a hearing would not be necessary for every case involving subsequent children because pre-hearing stipulations would be more likely to occur.[238] Without a specific formula, child support enforcement agencies are prevented from reaching pre-hearing stipulations with obligors because of the uncertain effect of subsequent children on support awards.

The Commissioner of Human Resources Advisory Committee for Child Support Enforcement has established a Child Support Guidelines Committee "to study and make recommendations on certain guidelines issues."[239] In its recent report, the Committee recommended that the Minnesota Department of Human Services consider the income-shares model as an approach to comprehensively address the needs of children in today's society.[240] Because this model considers the income of both the obligor and the obligee in calculating child support,[241] calculations of an obligor's subsequent child support obligations may become even more complex in situations involving multiple obligees. The calculation of each subsequent order will affect the calculation of prior orders, and modification of prior orders will require adjustments to subsequent orders. In other words, the incomes

235. *See supra* notes 68-69 and accompanying text (highlighting the purposes of the Minnesota guidelines).

236. MINN. STAT. § 518.551, subd. 10 (Supp. 1993). This subdivision provides that by July 1, 1994, all counties in Minnesota shall participate in an administrative process to obtain, modify, and enforce child and medical support orders and maintenance. *Id.*

237. *See generally* Office of Research & Planning, Minnesota Supreme Court, Weighted Caseload Results (Apr. 21, 1994) (on file with the William Mitchell Law Review).

238. If a precise formula were created to determine child support in cases involving subsequent children, less judicial discretion would presumably be required. Therefore, obligors would be less likely to contest the amount of child support proposed by the obligee or the public authority responsible for support collection.

239. OFFICE OF CHILD SUPPORT ENFORCEMENT, MINNESOTA DEP'T OF HUMAN SERVS., REPORT TO THE MINNESOTA LEGISLATURE ON THE MINNESOTA CHILD SUPPORT GUIDELINES 12 (Jan. 1994) [hereinafter REPORT TO THE LEGISLATURE].

240. *Id.* at 13.

241. *See supra* notes 38-44 and accompanying text (explaining the income-shares model).

of all obligees, as well as the income of the obligor, would have to be addressed whenever any of the obligor's orders are modified.

Thus, under the income-shares approach, the problem of calculating support fairly and consistently will still exist. In fact, the calculation of child support in situations involving subsequent children and multiple obligees may even become more complicated. If the income-shares model is adopted in Minnesota, trial court judges will still need a clear and relatively simple formula to apply in situations where the obligor must support both prior and subsequent children. The following formulae represent positive steps toward the development of a uniform formula to be used in situations where the obligor must support both prior and subsequent children.

A. The Child Support Guidelines Committee Formula

The Child Support Guidelines Committee has reviewed and approved a draft of proposed legislation that would include a formula for situations where the obligor must support both prior and subsequent children.[242] According to this formula, the obligor's net income is de-

242. This formula was contained in the Commissioner's Advisory Committee Report to the Minnesota Legislature on Minnesota Child Support Guidelines. The proposed bill reads as follows:

> 518.551 MAINTENANCE AND SUPPORT PAYMENTS MADE TO WELFARE AGENCIES Subd. 13 [ADJUSTMENT FOR ADDITIONAL DEPENDENTS]
> (a) An obligor may not bring an action to modify an existing child support order on the grounds that the obligor has incurred subsequent legal responsibility for one or more children.
> (b) If an obligee petitions to modify an existing child support order, all other children for whom the obligor is legally responsible may be considered in determining whether to increase the support. The court shall determine any modification in accordance with this subdivision.
> (c) In any proceeding to establish or modify an order for child support, if the obligor is also legally responsible for the support of other children either by virtue of having a previously determined child support order or because he or she is the legal father or mother of a child currently residing in his or her household, the child support obligation for the child who is the subject of the instant support action shall be determined as follows:
> (1) determine the obligor's net monthly income in accordance with Subd. 5(b);
> (2) subtract any child support orders that are currently being paid by the obligor or subtract the guideline amount for the children currently residing in the obligor's household for whom the obligor is legally responsible;
> (3) apply the guideline percentage formula for the child or children of the instant action to the adjusted net monthly income of (2);
> (4) add the amount of the child support obligation from (2) and (3) together and divide by the total number of children;
> (5) the amount reached in (4) is the amount of the child support that is to be ordered to be paid for each child who is the subject of the instant action.
> (d) in any action for modification, if the calculation under (c) results in a reduction of an existing order for the child who is the subject of the instant support action, the court shall not order a reduction and shall order that the preexisting child support order amount be continued.

termined according to the child support guidelines.[243] Any child support award currently being paid by the obligor is deducted from the obligor's net income.[244] Alternatively, the guidelines amount of support is deducted for the children who reside with the obligor and for whom the obligor is legally responsible.[245] The amount of child support is then calculated for the children supported under the order currently at issue.[246] The guidelines percentage formula for the children involved in the current action is applied to the obligor's net monthly income.[247] Finally, any prior child support awards are added to the guidelines percentage calculated for the child who is the subject of the current action.[248] This total is then divided by the total number of children owed support by the obligor.[249] The resulting amount is the child support award ordered for each child.[250]

This formula appears to represent a consistent, predictable, and fair method for determining support where the obligor must support both prior and subsequent children. Because the final amount of support is divided equally among children owed support by the obligor, each child receives a fair portion of the obligor's available resources. Additionally, this proposal only allows an obligor to request consideration of subsequent child support awards if the obligee brings a motion to increase a preexisting support order.[251] Therefore, an obligor would be prohibited from bringing a motion to reduce prior child support awards based on voluntarily incurred subsequent obligations.[252] This

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Draft of Proposed Bill, MINN. STAT. § 518.551, subd. 13 (Jan. 1994) (on file with the William Mitchell Law Review) [hereinafter Proposed Bill]. In the Committee's recent report to the Legislature, the proposal was described as follows:

> It is a defensive use only, modified reduced ability approach. A "defensive use only" approach means that the obligor may use the fact that he or she has subsequent children as a defense to a motion brought to increase the amount of child support for an earlier born child. The obligor would not be allowed to bring a motion to reduce his or her child support solely on the basis that he or she had subsequent children. The "reduced ability" approach describes a model in which the separate obligations are separately deducted and that each time there is a reduction the percentage applies to that reduced amount, not to the entire net income. The "modification" refers to the distribution of the total child support that is due for all of the children under consideration—the proposed distribution modifies the current reduced ability practices.

REPORT TO THE LEGISLATURE, *supra* note 239, at 11.

243. Proposed bill, MINN. STAT. § 518.551, subd. 13(d)(1); *see* MINN. STAT. § 518.551, subd. 5(b) (Supp. 1993).

244. Proposed bill, MINN. STAT. § 518.551, subd. 13(d)(2).

245. *Id.*

246. *Id.*, subd. 13(d)(3).

247. *Id.*

248. *Id.*, subd. 13(d)(4).

249. Proposed bill, MINN. STAT. § 518.551, subd. 13(d)(4).

250. *Id.*, subd. 13(d)(5).

251. REPORT TO THE LEGISLATURE, *supra* note 239, at 12.

252. *Id.*

approach is consistent with the policy that obligors should not be allowed to avoid prior obligations based on voluntarily incurred subsequent obligations.[253] The Child Support Guidelines Committee formula represents a carefully drafted proposal that generally results in a fair and predicable support award in situations where the obligor must support both prior and subsequent children.

B. The Mower County Formula

Because the Child Support Guidelines Committee formula does not apply to situations where an obligor brings a motion to reduce a prior child support award, trial courts would still be left without a simple formula to apply in these situations. In these cases, a formula developed by the Mower County Office of Child Support[254] could be applied. This formula attempts to partially equalize the support awarded for all of the obligor's children. More importantly, the formula does not violate the prohibition expressed in *D'Heilly*, *Hayes*, and *Bock* against preferential treatment for subsequent children.

Because this formula was developed before *Bock* was decided, trial courts using the formula would now have to incorporate the considerations addressed in that case. The "deviation process" set forth in *Bock*,[255] which requires a comparison of the contributions to all of the obligor's children, could be included in the formula. This could be accomplished by first applying the contribution comparison stated in *Bock* and then applying the proposed formula to the resulting figures. The outcome would be a support award which partially equalizes the amounts of support for prior and subsequent children.

By enacting these two formulae, the Legislature would provide trial courts with a clear and relatively simple method of calculating child support in situations where the obligor must support both prior and

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253. *See supra* notes 221-25 and accompanying text.

254. This formula was generally accepted before *Bock* was decided. An example of the application of the Mower County formula for subsequent children is as follows:

Obligor's total net monthly income		1481.28
X % for __ child(ren)		25%
Child support obligation		370.32
Obligor's total net monthly income		1481.28
Minus __% for first obligation		370.32
Equals obligor's new net income		1110.96
X % for subsequent child(ren)	25% =	277.74
Obligor's total net monthly income		1481.28
Minus allowance for the subsequent child		277.74
Equals obligor's adjusted net income		1203.54
X % for prior child(ren)	20% =	300.89

Thus, the amount of support for the subsequent child is $277.74, and the amount for the prior child is $300.89.

255. *See supra* notes 221-25 and accompanying text.

subsequent children. As a result, child support awards would be more consistent, predictable, and fair.

Both of the above formulae suggest alternatives for calculating child support in situations where the obligor must support both prior and subsequent children. Both formulae correctly account for an amount of support for prior children that is equal to or higher than that for subsequent children. This is consistent with *D'Heilly*, *Hayes*, *Bock*, and with the guidelines statute, all of which favor an obligor's earliest support obligation over a subsequent obligation. Furthermore, these calculations award increasingly lower percentages of child support as the obligor acquires subsequent support obligations. If combined, these two formulae would provide greater uniformity and predictability among support orders where subsequent children are involved because each formula provides a specific calculation for determining support in such circumstances.

V. Conclusion

The calculation of child support is becoming increasingly complicated, especially for obligors who must support both prior and subsequent children. In Minnesota, the Legislature and the courts have provided inadequate guidance regarding the calculation of child support where subsequent children are involved. One significant reason for this lack of clarity is the Legislature's failure to address subsequent children in the guidelines.[256]

Although some commentators propose that the current guidelines model be converted to an income-shares model, the problem of calculating support where subsequent children are involved will still exist if this conversion occurs. In fact, because the incomes of obligees are also considered in an income-shares calculation, the problem may become even more complex.

Until the Legislature or the courts mandate a specific formula for determining child support where subsequent children are involved, the parameters for calculating such support awards remain ambiguous. Currently, child support calculations in these situations result in unpredictable and often unfair support awards, results which the guidelines were originally enacted to diminish. To resolve these problems, the Minnesota Legislature should enact legislation adopting both the Child Support Guidelines Committee formula and the Mower County formula.

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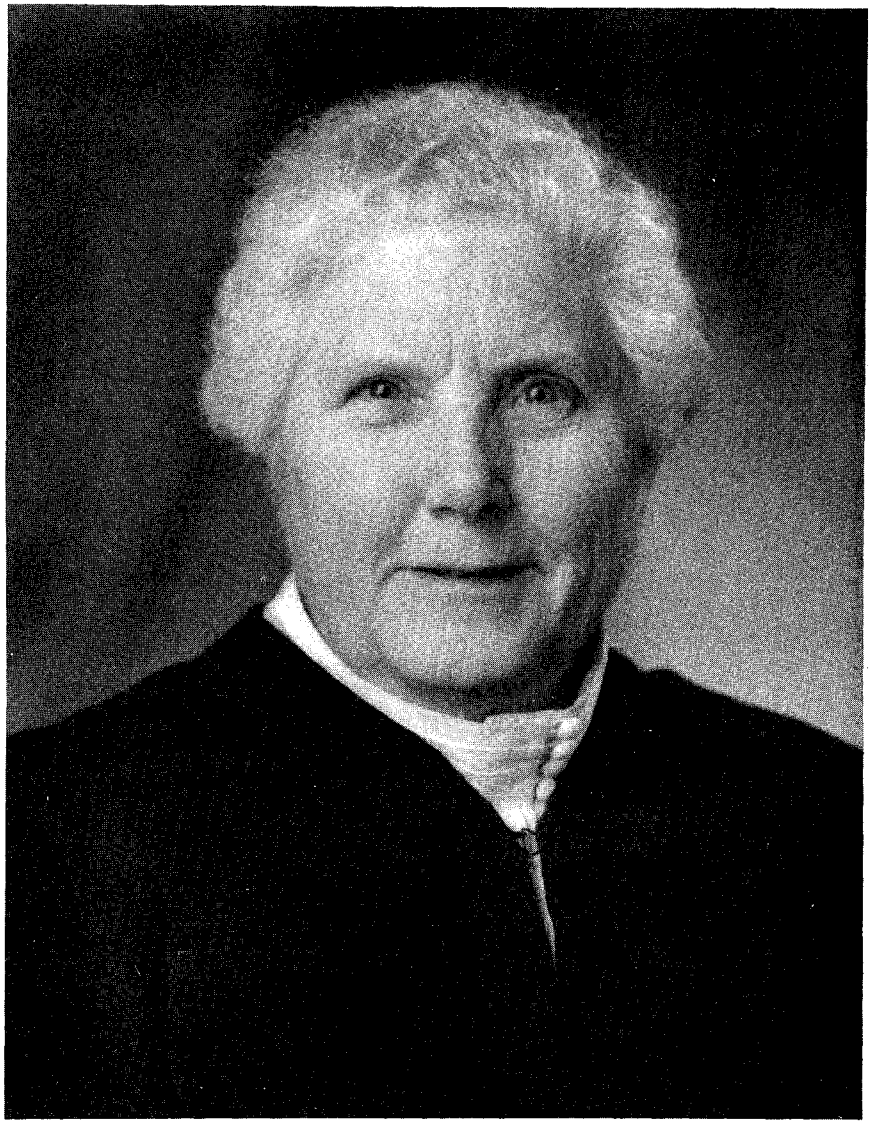
256. Although the guidelines address prior support or maintenance orders which are currently being paid, the guidelines fail to address subsequent children. *See* Minn. Stat. § 518.551, subd. 5(b) (Supp. 1993).



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