

Bill as
Introduced

HB 161 - AS AMENDED BY THE HOUSE

7Apr2021... 0549h

2021 SESSION

21-0233
05/04

HOUSE BILL **161**

AN ACT relative to the calculation of child support.

SPONSORS: Rep. Yokela, Rock. 33; Rep. Petrigno, Hills. 23; Rep. Malloy, Rock. 23; Rep. Abrami, Rock. 19

COMMITTEE: Children and Family Law

AMENDED ANALYSIS

This bill revises the child support guideline percentages, increases the self-support reserve amount, defines a shared parenting plan, establishes a new formula for the calculation of child support in cases involving shared parenting plans; and permits the court to modify the presumptive child support amount as justice and the best interest of the child may require.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to the calculation of child support.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Child Support Guidelines; Definition of Self-Support Reserve. Amend RSA 458-C:2, X to read
2 as follows:

3 X. "Self-support reserve" means ~~[115]~~ 120 percent of the federal poverty guideline for a
4 single person living alone, as determined annually by the United States Department of Health and
5 Human Services.

6 2 New Paragraph; Child Support Guidelines; Definition of Shared Parenting Plan. Amend RSA
7 458-C:2 by inserting after paragraph XI the following new paragraph:

8 XII. "Shared parenting plan" means a parenting plan where the child overnights with each
9 parent 30 percent or more of the time.

10 3 Child Support Guidelines; Child Support Formula. RSA 458-C:3, I(a) is repealed and
11 reenacted to read as follows:

12 (a) The child support guidelines shall be based on the following:

13 Percent of Combined Net Income Devoted to Child Support

14 \$44,000 or less	22 percent	34 percent	42 percent	45 percent
15 \$55,000	21	33	40	43
16 \$66,000	20	30	36	39
17 \$77,000	18	28	33	36
18 \$88,000	17	25	30	33
19 \$110,000	16	25	30	32
20 \$121,000	16	24	28	30
21 \$132,000	15	22	27	29
22 \$176,000	13	20	24	26
23 \$176,001 or more	12	18	21	23

24 4 Child Support Guidelines; Child Support Formula. Amend RSA 458-C:3, II(a) to read as
25 follows:

26 II.(a) *When there is a shared parenting plan, the total support obligation shall be*
27 *determined by multiplying the parents' total net income, as defined in RSA 458-C:2, VI, by*
28 *the appropriate percentage derived from this section and multiplying the resulting number*
29 *by 1.5. Otherwise, the total support obligation shall be determined by multiplying the parents'*
30 *total net income, as defined in RSA 458-C:2, VI, by the appropriate percentage derived from this*
31 *section.*

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1 5 Child Support Guidelines; Child Support Formula. Amend RSA 458-C:3, II(d) to read as
2 follows:

3 (d) *For those cases involving a shared parenting plan, a credit for the parenting*
4 *time is calculated by multiplying the parenting time percentage with the total support*
5 *obligation to determine the parenting time credit. The parenting time credit is then*
6 *subtracted from the support obligation reached in subparagraphs (b) or (c) to generate the*
7 *child support obligation.*

8 (e) All child support obligations calculated pursuant to this chapter shall be rounded to
9 the nearest whole dollar.

10 6 New Paragraph; Adjustments to the Application of the Guidelines Under Special
11 Circumstances; Modification of Child Support As Justice and The Best Interest of the Child May
12 Require. Amend RSA 458-C:5 by inserting after paragraph II the following new paragraph:

13 III. Nothing in this section shall preclude a court from modification of the presumptive child
14 support order such as justice and the best interest of the child may require.

15 7 Repeal. The following are repealed:

16 I. RSA 458-C:5, I(h)(1), relative to adjustments to the child support guidelines due to equal
17 or approximately equal residential responsibility.

18 II. RSA 458-C:5, I(h)(2)(B), relative to adjustments to the child support guidelines due to
19 lower fixed costs resulting from equal or approximately equal residential responsibility.

20 8 Effective Date. This act shall take effect January 1, 2022.

Committee Minutes

SENATE CALENDAR NOTICE

Judiciary

Sen Sharon Carson, Chair
Sen Bill Gannon, Vice Chair
Sen Harold French, Member
Sen Rebecca Whitley, Member
Sen Jay Kahn, Member

Date: April 28, 2021

HEARINGS

Monday	05/03/2021	
(Day)	(Date)	
Judiciary	REMOTE	1:00 p.m.
(Name of Committee)	(Place)	(Time)
1:00 p.m.	HB 139	relative to the submission of evidence in divorce proceedings.
1:15 p.m.	HB 161	relative to the calculation of child support.
1:30 p.m.	HB 142	relative to causes for divorce.
1:45 p.m.	HB 495	relative to restraining orders issued in a parenting case.
2:00 p.m.	HB 494	relative to temporary relief and permanent restraining orders issued in a divorce proceeding.

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: <https://www.zoom.us/j/97554976568>
2. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
3. Or iPhone one-tap: US: +13126266799,,97554976568# or +16465588656,,97554976568#
4. Webinar ID: 975 5497 6568
5. To view/listen to this hearing on YouTube, use this link:
<https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA>
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link:
<http://gencourt.state.nh.us/remotecommittee/senate.aspx>

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 139

Rep. Yokela

Rep. Wallace

Rep. Gould

HB 161

Rep. Yokela

Rep. Petrigno

Rep. Malloy

Rep. Abrami

HB 142

Rep. DeSimone

HB 495

Rep. DeSimone

Rep. Baldasaro

Sen. Birdsell

HB 494

Rep. DeSimone

Rep. Harb

Rep. Baldasaro

Sen. Birdsell

Jennifer Horgan 271-7875

Sharon M Carson
Chairman

Senate Judiciary Committee
Jennifer Horgan 271-7875

HB 161, relative to the calculation of child support.

Hearing Date: May 3, 2021

Time Opened: 1:28 p.m.

Time Closed: 2:39 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill revises the child support guideline percentages, increases the self-support reserve amount, defines a shared parenting plan, establishes a new formula for the calculation of child support in cases involving shared parenting plans; and permits the court to modify the presumptive child support amount as justice and the best interest of the child may require.

Sponsors:

Rep. Yokela

Rep. Petrigno

Rep. Malloy

Rep. Abrami

Who supports the bill: Representative Yokela; Honorable Skip Berrien; Shawn Desjardins

Who opposes the bill: Jay Markell; Pamela Keilig, New Hampshire Coalition Against Domestic and Sexual Violence; Honey Hastings; Bill Woodbury; Mary Krueger, New Hampshire Legal Assistance; Anthony Matrumalo; Erin Plante; John DeJoie, Waypoint; Dawn Needham; Pamela Dodge; Anna Cronin; Amanda Vachon; Ashley Rochelle; Darlene Gildersleeve; Andrew Caskey; Nicole Caskey; Ashley Stowers; Wendy Jensen; Paula Lesmerises; Linda Hallock; Veronica Dane; Leonard Campbell; Talia Walley; Alyssa O'Brien; Shaun O'Brien; Michelle Chapman; Elizabeth Stillman; Kim Destefano; Laurie McCray; Meghan Jenks; Cayleigh Dalrymple; Tina Smith; Tristan Wentworth; Adrian Coss; Marissa Chase, NH Association for Justice; Pamela Ierg

Who is neutral on the bill: Richard Head, Judicial Branch; Matthew Hayes, Bureau of Child Support Services

Summary of testimony presented in support:

Representative Yokela (provided written testimony)

- This bill will update the child support guidelines.

- Every four years, a study is done of the child support guidelines, as required by RSA, to make sure they are working as intended and not out of range of reasonableness.
- The last study was done in 2018, and this bill implements some of the recommendations.
- These recommendations include:
 - Raising the self-support reserve from 115% to 120% of the federal poverty line, so people are put less into poverty.
 - Updating the percentages based on the combined net income of the parents.
 - And, to include 'shared parenting' as a part of that calculation.
- Currently, deviations from the guidelines can happen when there is shared parenting.
- This bogs down the courts and is confusing because parents do not know what the decision is going to be because it deviates from the statute.
- The study recommended using a threshold of where a child overnights with each parent 30% or more of the time.
- The shared parenting guideline multiples by 1.5% the amount of supporting of the child as calculated normally.
- This credits for the amount of time a child is spending with a parent.
- Senator Whitley asked if this new formula adequately takes into account what is in the best interest of the child.
 - Yes. The House added some language that said nothing in this paragraph shall preclude the court from modification of the order based on the best interest of the child. This is going to help people to not go in poverty and will help a child to get the benefits of both parents when they are capable.
- Senator Kahn asked if he has looked at SB16, as it covered much of the same area.
 - Serves on House Children and Family Law, which just heard SB16. SB16 is relative to alimony and this bill addresses child support. Child support is way more complicated. A flat percentage of 23% would not be appropriate here. This bill has a sliding scale based on the number of kids, how much money the parents make, and percentage of money that would be spent towards raising the child. If there are four kids the percentage would be different than for one kid. If a parent had more income that would also be impacted. The formulas in this bill were recommended by the study. The study cost \$500,000. The study will be done again in 2022 and we have not done anything with the 2018 recommendations. The formula has not been dramatically changed since 2013 and it is long overdue for an adjustment.

Shawn Desjardins

- Shared his personal experience with going through a divorce and his experience with child support and the challenges he faces.

- Women should have the responsibility of making money, as they are equal to men.
- Pays \$1100 a month in child support and does not see how it is doing his children any better by giving it to their mother.
- Works 42 hours a week and it is extremely hard to supplement his income.
- When supplementing his income, his ex-wife ends up gets more money anyway.
- Senator French asked if he has plugged in his numbers into the proposed formula.
 - Believes it would relieve his payments by about \$300 a month. Was able to figure it out because he does a lot of medical math.
- There should be a way for a parent to supplement their lost income without having to give it in child support.
- Is going to be forced out of his apartment and lose his vehicle under the current system.
- There needs to be a way for people to be able to move forward in life.

Representative Berrien

- There is a real need for this bill.
- Supports the suggestions from Ms. Hastings to develop a commission to work on this.
- Has heard from a number of people that are facing financial difficulty based upon their child support requirements.
- There have been a lot of changes in the way divorce cases are being handled.
- There are two cases out of the Supreme Court that question the concept of equal parenting. Will provide those cases to the Committee.
- Modifications are challenging when using the concept of shared parenting.
- This is a concept that needs to be put into statute.

Summary of testimony presented in opposition:

Honey Hastings (provided written testimony)

- This will makes substantial changes in how child support would be applied in at least 37% of divorce/parenting cases.
- The UNH study said, even then, there were deviations from the guidelines in 37% of cases.
- This bill has major substantive and technical problems.
- This adds a new definition to our parenting law for 'shared parenting', and adding that is problematic.
- Reached out to lawyers in the field and 90% of them opposed this, particularly the 30% overnights provision.
- This is going to incentivize people to look for more time with the child, even if they have not had the care of the child.
- Concerned that the definition doesn't consider the child's best interest as a result of parents fighting for and getting additional time.

- Under current law, cases with equal or approximately equal schedules may seek a guidelines adjustment through a three-part test.
- That test includes two provisions that are repealed by this bill.
- An overnight could be considered picking up the child after supper and dropping them at school in the morning, which does not involve a lot of the expense.
- The state has worked since 2004 to not connect parenting with time.
- All the parenting plans say now is the schedule.
- To add these time connected titles for people to fight over is a backwards step.
- Very concerned that when there is abuse or coercion there will be a push for a shared schedule to get reduced support.
- There is an addendum for the report stating that they made mistakes in the arithmetic.
- Does not see how self-represented parties will be able to use the formula.
- There is a lack of comprehensible supporting examples in the report.
- Is not sure if the formula will produce fair results, or if it is even correct.
- This bill doesn't make it clear who is paying for what such as, childcare, uninsured expenses, health insurance, etc.
- This bill needs a fiscal note, as the reduction in child support may result in an increase of parents seeking of aid.
- The informal group opposing this would be willing to work on this over the summer.

Mary Krueger (NH Legal Assistance)

- Echoes the testimony of Ms. Hastings and agrees with the concerns raised by Mr. Head and Mr. Hayes.
- There may need to be a change, but this change as written would not accomplish the broad policy goals of meeting a child's best interest.
- The report recommended that any legislation allows for exceptions 'when parenting time is addressed to ensure that appropriate safeguards are included in cases with intimate partner violence to guarantee safety for children and the abused parent.'
- Sometimes the children can be swept into the situation when there is coercive control and domestic abuse.
- The shared parenting could be utilized by an abuser to disadvantage the victim and the children.
- Reforms to the parental rights and responsibilities laws worked to get rid of terminology to embody that the children are at the center of these cases.
- It is huge jump to go down to 22% of the net income from the current formula that has a more of a stepped percentage starting at 25.6% for \$15,000 net income or less for one child. 22% for \$60,000 for one child.
- Is not sure how these new guidelines would be implemented.
- Vermont handles uncontested cases in parental rights and responsibilities in a separate hearing first, and then has another hearing to determine support.

- It is in the children's best interest to tease apart what the children's needs and meaningful contact are versus what the support will be.
- Tried running through the calculations and it is not totally clear as to what to do when there is equal parenting time.
- The parties can currently agree to make any variation to the guideline amount with the allowance of the court. Believes this bill removes a couple of the factors considered by the court in that allowance.

Pamela Keilig (NHCADSV)

- This bill shifts the focus from the best interests of the child to a financial incentive.
- Current guidelines do not consider how much time a child spends with each parent, instead it is purely income based calculated from the financial factors at play for each party.
- There should be no incentive for someone to ask for or try to get more time with the child for financial gain.
- This change would be particularly harmful to individuals in abusive relationships.
- One way that abusers are able to leverage power and control is to use economic abuse.
- Nearly all victims of domestic violence experience financial abuse in their relationships.
- This bill would grant abusers another tool to limit victim's abilities to be financially independent.
- Abusers typically use their children as a way to maintain power and control in their relationship.

Jay Markell

- The bill is overly complicated and doesn't deal with some key issues.
- There is an alternate way to deal with the disparities in income within the current statute.
- This bill does not reference the parenting rights statute that requires a court to use the available resources for the best interest of the children.
- 60-70% of people in these cases are pro se and they may not be able to understand this, resulting in the courts being inundated with modifications for refunds.
- Suggests the Committee refer to *Child Support Guidelines and Applications, Vol II* by Laura Morgan for guidance on structuring child support legislation.

Bill Woodbury (NH Association for Justice)

- Echoes the opposition of previous testifiers.
- In his experience it is much easier to talk about parenting and parenting time solely in the context of the best interest of the child and not inject the issue of monetary gain.

Anthony Matrumalo

- Understands why some people believe there needs to be a change in the law because there is a grey area.
- This grey area does not clearly define what deviations are appropriate and how much those deviations can be.
- Agrees with the testimony in opposition.
- Challenges that premise that the grey area that currently exists needs to be remedied, as it creates a need for discussion and thoughtfulness when trying to develop a parenting schedule that is in the best interest of children.
- Does not believe there is a more difficult decision a person can make than to voluntarily give up time with their children because they believe it is in the best interest of the children.
- Currently the law says that even equal parenting time shall not in itself justify deviation from the guidelines, which creates this very open dialogue that needs to take place between the parents.
- There is currently an ability to deviate from the guidelines.
- This bill will take away the incentive for parents to stay at the table and work together to determine what is appropriate in terms of time and what amount of support is appropriate.
- If there are problems in the system with the grey areas, believes that can be addressed through training in how to use the grey areas rather than to eliminate it.

John Annapolis

- In looking at the \$176,000 combined income the percentages are 13%, 20%, 24%, and 26%, but for \$176,001 or more it is 12%, 18%, 21%, and 23%.
- This creates situations where someone is making more in income than another individual but is paying less in child support.
- If parties are earning combined income \$20,370 per month, the shared child support obligation under this would be \$1,907.
- If the parties are earning \$20,380 a month, the child support for one child is now \$1,750.
- There is a bias in the bill for families with one child.
- If parties make a combined income of \$15,000 annually, the current portion would be 25.6% of the net income. This legislation puts it at 22%.
- With \$25,000 annual income currently the percentage is 25%, while this bill puts it at 22%.
- There are scenarios that the study provided where the obligation was less than 0 and that is not addressed in the legislation. Currently, parties still have a \$50 obligation in those situations.

Neutral Information Presented:

Richard Head (Judicial Branch)

- Concerned because the bill has no applicability provision.

- Chapter 248 (2012), which last changed this formula, had a specific applicability provision, which said that it shall apply to child support orders issued on or after the effective date of the legislation.
- This bill creates significant changes to the schedule, and therefore under this bill, every currently active child support order could be the subject of a petition for an amendment.
- This gives rise to huge potential problems in terms of the court's management of its docket.
- Requests, at minimum, an applicability provision similar to the one in Chapter 248 (2012).
- This would allow for older orders to remain in effect until the next scheduled review hearing.
- The bill also has a provision to repeal RSA458-C:5, I(h)(2)(B), which is a consideration in adjustments as to whether the obligor parent has established equal or relatively equal residential responsibility that will result in a deduction of the fixed costs of child rearing incurred by the obligee parent.
- It is not clear what it means to strike this section.
- Under this bill co-parenting is at 30% or more level, and the fixed costs could be a consideration in that.
- By striking RSA458-C:5, I(h)(2)(B), that something that could no longer be considered by the court in evaluating adjustments.
- This bill will result in significantly different orders than those under the current schedule.
- Takes no position on the policy of the bill.
- Senator French asked if there is anywhere in statute where it reads 'or any other amount agreeable to both parties.'
 - Would defer that to a child support expert.
- Senator French asked how the judges will figure out this math.
 - They will figure that out.
- Senator Kahn asked if this would result in a rush to have orders modified.
 - Yes. Asking for a controlled review and modification of the statute as opposed to everyone filing a petition on the effective date.

Matthew Hayes (Bureau of Child Support Services-DHHS)

- Echoes the testimony of the Judicial Branch.
- Title 4-D requires all states follow rules and regulations when establishing and enforcing child support orders.
- Under Title 4-D the Bureau provides services to periodically review and possibly bring forward to the court, parties' child support orders when either party requests a review pursuant to RSA45-C:7.
- Orders are subject to review and modification either three years from its effective date or upon a petitioning of the court based on an alleged substantial change in circumstances.

- This bill as drafted does not address whether the proposed changes could constitute as a substantial change to circumstances for orders currently in effect.
- If this language applies as a substantial change in circumstances to parties, then the modification requests could significantly tax the Department's resources and increase caseloads.
- Senator Kahn asked when the Department will move forward with the next review.
 - Will get back to the Committee on that.

Representative DeSimone

- When parties go to court to talk about parenting plans and child support, RSA461-A (the parenting plan) is what comes first with the court taking into consideration what is in the best interest of the child first.
- Then RSA458-C (child support) comes after.
- Hopes that if this bill passes, the court continues to take into consideration RSA461-A.

jch

Date Hearing Report completed: May 7, 2021

Speakers

Senate Remote Testify

Judiciary Committee Testify List for Bill HB161 on 2021-05-03

Support: 3 Oppose: 36 Neutral: 2 Total to Testify: 11

<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Signed Up</u>
Markell, Jay	jdmarkell@aol.com	603.362.8144	A Member of the Public	Myself	Oppose	Yes	4/30/2021 3:18 PM
Keilig, Pamela	pkeilig@nhcadsv.org	603-219-8474	A Lobbyist	New Hampshire Coalition Against Domestic and Sexual Violence	Oppose	Yes	4/29/2021 10:05 PM
Hastings, Honey	hhastings@FamilyMediationNH.com	603.654.5000	A Member of the Public	Myself	Oppose	Yes	4/30/2021 2:23 PM
Berrien, Skip	fberrien@gmail.com	603.580.1240	A Member of the Public	Myself	Support	Yes	5/2/2021 4:36 PM
Head, Richard	rhead@courts.state.nh.us	603-716-8235	State Agency Staff	Myself	Neutral	Yes	5/3/2021 7:58 AM
Hayes, Matthew	Not Given	603-271-4808	State Agency Staff	Bureau of Child Support Services	Neutral	Yes	5/3/2021 9:52 AM
Woodbury, Bill	wwoodbury@nco-law.com	603.524.4380	A Member of the Public	Myself	Oppose	Yes	5/2/2021 4:17 PM
Krueger, Mary	mkrueger@nhla.org	603-206-2239	A Member of the Public	New Hampshire Legal Assistance	Oppose	Yes	5/3/2021 10:56 AM
Yokela, Josh	josh.yokela@leg.state.nh.us	603-722-0501	An Elected Official	Rockingham 33	Support	Yes	5/3/2021 11:11 AM
Desjardins, Shawn	Not Given	Not Given	A Member of the Public	Myself	Support	Yes	5/3/2021 11:30 AM
Matrumalo, Anthony	nutfieldmediation@gmail.com	Not Given	A Member of the Public	Myself	Oppose	Yes	5/3/2021 11:37 AM
Plante, Erin	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/3/2021 8:39 PM
DeJoie, John	Not Given	Not Given	A Lobbyist	Waypoint	Oppose	No	5/3/2021 11:14 AM
Needham, Dawn	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/2/2021 4:28 PM
Dodge, Pamela	pdodge8611@gmail.com	603.608.6320	A Member of the Public	Myself	Oppose	No	5/3/2021 8:38 AM
Cronin, Anna	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/3/2021 8:47 AM
Vachon, Amanda	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/3/2021 9:33 AM
Rochelle, Ashley	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/3/2021 10:33 AM
Gildersleeve, Darlene	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/2/2021 11:21 PM
Caskey, Andrew	andrew.caskey.1@outlook.com	330.749.3641	A Member of the Public	Myself	Oppose	No	5/2/2021 8:23 PM
caskey, nicole	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/2/2021 8:33 PM
Stowers, Ashley	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/30/2021 11:40 PM
Jensen, Wendy	jensenhvp@gmail.com	603.225.2601	A Member of the Public	Myself	Oppose	No	4/30/2021 2:13 PM
Lesmerises, Paula	pcl1943@gmail.com	603.848.4080	A Member of the Public	Myself	Oppose	No	4/30/2021 3:23 PM
Hallock, Linda	Not Given	Not Given	An Elected Official	Myself	Oppose	No	5/1/2021 9:13 AM
Dane, Veronica	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/1/2021 9:23 AM
Campbell, Leonard	lsoup03@gmail.com	603-455-1105	A Member of the Public	Myself	Oppose	No	5/1/2021 10:17 AM

Walley, Talia	Not Given	603-770-3119	A Member of the Public	Myself	Oppose	No	5/1/2021 2:31 PM
O'Brien, Alyssa	alyssajabraham@gmail.com	603.502.6711	A Member of the Public	Myself	Oppose	No	5/1/2021 6:51 PM
O'Brien, Shaun	Pennst1179@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	5/1/2021 6:53 PM
Chapman, Michelle	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/2/2021 7:12 AM
Stillman, Elizabeth	estillman@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	5/1/2021 9:00 AM
Destefano, Kim	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/1/2021 9:06 AM
McCray, Laurie A	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/1/2021 9:29 AM
Jenks, Meghan	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/1/2021 9:35 AM
Dalrymple, Cayleigh	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/1/2021 11:11 AM
Smith, Tina	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/1/2021 11:57 AM
Wentworth, Tristan	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/1/2021 9:44 PM
Coss, Adrian	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/2/2021 11:29 AM
Chase, Marissa	mchase@nhaj.org	603.854.9330	A Lobbyist	NH Association for Justice	Oppose	No	5/2/2021 4:13 PM
I erg, Pamela	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/2/2021 4:15 PM

Testimony

Jennifer Horgan

From: Hayes, Matthew <Matthew.J.Hayes@dhhs.nh.gov>
Sent: Monday, May 3, 2021 2:15 PM
To: Jay Kahn
Cc: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jennifer Horgan
Subject: Review of Guidelines - Question

Good afternoon Senator Kahn:

I appreciate your time today as well as the time of the rest of the Judiciary Committee. I also thank you for allowing me to follow up with you on your question. I was able to confirm that the next report for the guidelines review is due at the end of 2022.

Should you have any further questions please feel free to contact me.

Sincerely,

Matthew J. Hayes, Esq.
Department of Health and Human Services
Bureau of Child Support Services
129 Pleasant Street
Concord, NH 03301
(603) 271-4808

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Jennifer Horgan

From: Beverly Yuskaitis <b.yuskaitis@comcast.net>
Sent: Monday, May 3, 2021 12:45 PM
To: Sharon Carson
Cc: Jennifer Horgan
Subject: RE: Child Support

Child Support: Subject Possible New Child Support Formula-

I would like to register my position-

I am a Certified Family Mediator and have been for many years and I definitely oppose the new bill for the following reasons-

1. The UNH Formula is very complex and the calculation thereof would be just about impossible to compute, analyze and declare. This formula would increase hostility and emotional duress between the already sensitive divorcing parents leading to an escalation of hostility, anger and positioning for an intensification toward litigation and animosity between the parents and certainly not in favor of the best interests of the child or children.
2. Child Support has to be easy to understand and to calculate in order for the mother and the father to understand. There has to be the opportunity for flexibility and give when developing the parenting plan. This new idea brings with it rigidly and inflexibility. There are many other things to think about and to agree upon; for example, after school activities, day-care planning for working parents, tuition savings and planning, etc.
3. My question is, why are we trying to complicate the life of divorcing families with the UNH Child Support model especially with the pandemic and even if the pandemic was non-existent, we should ask ourselves, how can we make life easier for such a highly emotional and sensitive procedure like divorce with children involved. We want to increase the opportunity for mediation and not for litigation to resolve issues involving parenting children when families are breaking-up.
4. I am NOT in favor of the UNH Formula.
5. I vote for the "Net The Difference Formula".

Cordially,
Beverly A. Yuskaitis, CFM
b.yuskaitis@comcast.net

Jennifer Horgan

From: Brenda Towne <btowne@protonmail.com>
Sent: Tuesday, May 18, 2021 3:14 PM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: HB161 - NH parents need your help.
Attachments: Silva V Silva.pdf; Anderson V Anderson.pdf

Dear Members of the Executive Committee-

I was not aware of the hearing on May 3rd for HB161 so I implore you to read my letter to understand the grave situation of parents here in NH with shared parenting responsibility since 2018 and the importance of passing this bill.

I led a group of 3000 parents who were struggling with family court issues over the past several years. Currently I am the director of the NH Parents organization. I have spoken to hundreds of parents about the challenges they face in NH family courts. One critical issue was child support in the case of shared parenting time. Through a NH supreme court ruling on *Silva V Silva in 2019*, a family court judge can no longer adjust child support payments of a parent even if they are parenting their children 50% of the time. Practically speaking, a parent could earn \$100 more a month than the other and still be ordered to pay 33% of their income to the other parent even though they feed, cloth and care for their kids 50% of the time. I have known many parents that can not afford to care for their children because of this and are living in hardship with their own kids during their parenting time. In 2020, our NH supreme Court in *Anderson V Anderson* pushed the responsibility back to the legislature to determine how to fix this child support issue.

In the background, UNH did a comprehensive study funded by the State Of NH and our legislature. This study recommended making changes to our RSAs to address shared parenting child support to be in line with what Vermont has had in practice for more than a decade. This brings economic balance to both of the households. Interviews with Judge Ashley and the family court judges support a standardized calculation. HB161 captures the recommendations which was the outcome of thousands of hours of interviews and best practice assessment.

I ask that you support HB161 and give the much needed relief to hundreds of parents who are waiting for our legislature to act.

Thank you for your support. I would be glad to discuss and for reference, I am attaching both the Silva & Anderson cases.

Thank you,
Brenda Towne
603-327-7336
Stratham NH

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2019-0039, In the Matter of Glen Anderson and Laura Anderson, the court on November 26, 2019, issued the following order:

The petitioner, Glen Anderson, appeals the order of the Circuit Court (Luneau, J.) modifying child support after a three-year review hearing. See RSA 458-C:7 (2018). He argues that the trial court erred by not deviating from the child support guidelines to account for the parties' shared parenting schedule. He also argues that there should be a separate set of guidelines for parents with equal or approximately equal parenting time. We affirm.

We will not disturb the trial court's rulings regarding child support absent an unsustainable exercise of discretion or an error of law. In the Matter of Laura & Scott, 161 N.H. 333, 335 (2010). "When we determine whether a ruling made by a judge is a proper exercise of judicial discretion, we are really deciding whether the record establishes an objective basis sufficient to sustain the discretionary judgment made." State v. Lambert, 147 N.H. 295, 296 (2001).

The record shows that the parties were divorced in 2011. In 2017, the respondent, Laura Anderson, petitioned for a three-year review, requesting a guideline-compliant support order. The petitioner argued that he should not be required to pay the guideline level of support because of his equal parenting time and his significantly high income resulting from pension and wage earnings. Following a hearing, the court issued a guideline-compliant support order.

New Hampshire's child support guidelines, codified in RSA chapter 458-C (2018), establish a uniform system to determine the amount of child support awards. Laura, 161 N.H. at 335. The purpose of RSA chapter 458-C is not only to ensure uniformity in determining the amount of child support, but also to ensure that both the custodial and non-custodial parents share in the support responsibility for their children, according to the relative percentage of each parent's income. Id. There is a rebuttable presumption that a child support award calculated under the guidelines is the correct amount of child support. Id.; RSA 458-C:4, II (2018). This presumption may be overcome, and the trial court may deviate from the guidelines, when a party shows by a preponderance of the evidence that the application of the guidelines would be "unjust or inappropriate," RSA 458-C:4, II, because of "[s]pecial circumstances," RSA 458-C:5, I; Laura, 161 N.H. at 335-36. The parties'

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not include Page 2

shared parenting schedule. Given the presumption in favor of the guideline level of support, see RSA 458-C:4, II, and the statutory directive that “[e]qual or approximately equal parenting residential responsibilities . . . shall not by itself constitute ground for an adjustment,” RSA 458-C:5, I(h)(1), we cannot conclude that the trial court’s support order constitutes an unsustainable exercise of discretion. See Laura, 161 N.H. at 335.

The petitioner argues that “[t]he law should be that the amount of the child support payment in a shared parenting arrangement be calculated according to the guidelines as if the higher income party were to pay the lower income party, and then calculated as if the lower income party were to pay the higher income party.” Under this “cross-calculation” method, he argues, “[t]he difference between the amounts should be the presumptive child support obligation and paid to the party with the lower income.” The petitioner asserts that some trial courts apply the “cross-calculation” method, while others do not, and that “[t]he current system of one judge doing one thing and another judge doing another thing is neither fair nor just.” He asks us “to correct this problem.” We conclude that the petitioner’s arguments are presented to the wrong branch of government. State v. Balch, 167 N.H. 329, 333-34 (2015). It is not our role to create legislation. State v. Kidder, 150 N.H. 600, 604 (2004). Matters of public policy are reserved for the legislature, see In the Matter of Plaisted & Plaisted, 149 N.H. 522, 526 (2003), which has, to date, allotted discretion to the trial court on a case by case basis rather than imposing a fixed formula in determining child support. Accordingly, we leave this issue to the legislature.

Affirmed.

BASSETT, HANTZ MARCONI, and DONOVAN, JJ., concurred.

**Eileen Fox,
Clerk**

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IN RE: Vivian SILVA and Robert Silva

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Supreme Court of New Hampshire.

IN RE: Vivian SILVA and Robert Silva

Nos. 2016–0478, 2017–0063

Decided: June 08, 2018

Law Offices of Lydon & Richards, P.C., of Nashua (Edward W. Richards on the brief and orally), for the petitioner. Welts, White & Fontaine, P.C., of Nashua (Israel F. Piedra on the brief and orally), for the respondent.

In these consolidated appeals, the petitioner, Vivian Silva, appeals two orders of the Circuit Court (Introcaso, J.) in her divorce from the respondent, Robert Silva. She argues that the trial court erred when it: (1) deviated from the child support guidelines; see RSA 458–C:5 (Supp. 2017); (2) inequitably divided the marital estate, see RSA 458:16–a, II (2004); and (3) did not find the respondent in contempt for withdrawing funds from an education savings account, or “529 account,” established for their daughter’s benefit, during the pendency of the divorce, and did not consider the 529 account in its division of the marital estate, see 26 U.S.C. § 529 (Supp. 2017); RSA 458:16 –a, III (2004). We vacate and remand.

The record supports the following facts. In July 2016, following a final divorce hearing, the trial court granted the parties a divorce based upon irreconcilable differences. In the final divorce decree, the trial court ordered an equal division of the marital assets based upon a consideration of the factors outlined in RSA 458:16–a. By agreement of the parties, the petitioner was awarded the parties’ real estate, where the parties had resided and operated a bed and breakfast. The trial court awarded other assets to the respondent to equalize the award.

The parties’ final divorce decree also included an agreed-upon parenting plan regarding the parties’ two children, which provided that the parties “shall have equal or approximately equal residential responsibility.” At the time the trial court entered the final divorce decree, it also entered a temporary Uniform Support Order regarding child support. In that temporary order, it denied the respondent’s request to deviate from the child support guidelines, and ordered him to pay full child support to the petitioner.

Subsequently, the trial court held a final child support hearing and issued a final order. The court ordered a downward deviation from the child support guidelines, thereby reducing the respondent’s child support obligation from \$1,590.00 per month to \$533.80 per month. See RSA 458–C:5, I. The trial court justified the adjusted support obligation on three grounds related to the parties’ shared parenting schedule. See RSA 458–C:5, I(h)(2). The petitioner filed motions to reconsider the property distribution order and the final child support order, both of which were denied. These appeals followed.

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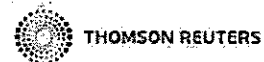
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TITLE XLIII

DOMESTIC RELATIONS

CHAPTER 458

ANNULMENT, DIVORCE AND SEPARATION

Alimony, Allowances, Custody, Etc.

Section 458:16

458:16 Temporary Relief and Permanent Restraining Orders. –

I. After the filing of a petition for divorce, annulment, separation or a decree of nullity, the superior court may issue orders with such conditions and limitations as the court deems just which may, at the discretion of the court, be made on a temporary or permanent basis. Temporary orders may be issued ex parte. Said orders may be to the following effect:

- (a) Directing any party to refrain from abusing or interfering in any way with the person or liberty of the other party.
- (b) Enjoining any party from entering the premises wherein the other party resides upon a showing that physical or emotional harm would otherwise result.
- (c) Enjoining any party from contacting the other party at, or entering, the other party's place of employment or school.
- (d) Enjoining any party from harassing, intimidating or threatening the other party, other party's relatives regardless of their place of residences, or the other party's household members in any way.
- (e) Determining the temporary custody and maintenance of any minor children as shall be deemed expedient for the benefit of the children; provided, however, that no preference shall be given to either parent in awarding such custody because of the parent's sex.
- (f) Ordering a temporary allowance to be paid for the support of the other.
- (g) Enjoining any party from transferring, encumbering, hypothecating, concealing or in any way disposing of any property, real or personal, except in the usual course of business or for the necessities of life, and if such order is directed against a party, it may require such party to notify the other party of any proposed extraordinary expenditures and to account to the court for all such extraordinary expenditures.
- (h) Ordering the sale of the marital residence provided that both parties have previously filed a written stipulation with the clerk of the court explicitly agreeing to the sale of the property prior to the final hearing on the merits. If the parties have not so stipulated, the sale of the marital residence shall not be ordered prior to the final hearing as long as the court deems the party residing within the marital residence to have sufficient financial resources to pay the debts or obligations generated by the property, including mortgage payments, taxes, insurance, and ordinary maintenance, as those debts and obligations come due.

II. (a) Ex parte orders may be granted without written or oral notice to the adverse party only if the court finds from specific facts shown by affidavit or by the verified petition, that immediate and irreparable injury, loss, or damage will result to the applicant, the children, or property before the adverse party or attorney can be heard in opposition.

(b) No ex parte order shall be granted without:

- (1) An affidavit from the moving party verifying the notice given to the other party or verifying the attempt to notify the other party.
- (2) A determination by the court that such notice or attempt at notice was timely so as to afford the other party an opportunity to be present.

(c) If temporary orders are made ex parte, the party against whom the orders are issued may file a written request with the clerk of the superior court and request a hearing thereon. Such a hearing shall be held no later than 5 days after the request is received by the clerk for the county in which the petition for divorce, annulment,

separation or decree of nullity is filed.

III. When a party violates a restraining order issued under this section by committing assault, criminal trespass, criminal mischief, stalking, or another criminal act, that party shall be guilty of a misdemeanor, and peace officers shall arrest the party, detain the party pursuant to RSA 594:19-a and refer the party for prosecution. Such arrests may be made within 12 hours after a violation without a warrant upon probable cause whether or not the violation is committed in the presence of a peace officer.

Source. RS 148:10. CS 157:10. GS 163:9. GL 182:9. 1887, 100:1; 103:1. PS 175:12. 1919, 39:1. PL 287:14. RL 339:14. 1949, 240:1. RSA 458:16. 1955, 262:3. 1967, 132:18; 259:1. 1971, 445:3. 1975, 426:1. 1992, 208:1. 1994, 259:12. 1996, 32:3. 2000, 258:1. 2002, 46:1; 79:2. 2004, 114:2, eff. May 17, 2004.

TITLE XLIII
DOMESTIC RELATIONS
CHAPTER 461-A
PARENTAL RIGHTS AND RESPONSIBILITIES

Section 461-A:10

461-A:10 Restraining Orders. –

I. After the filing of a petition concerning a minor child under this chapter, the court may issue restraining orders with such conditions and limitations as the court deems just. At the discretion of the court, such orders may be made on a temporary or permanent basis. Temporary orders may be issued ex parte as provided in RSA 461-A:9. The orders may include the following:

(a) Directing any party to refrain from abusing or interfering in any way with the person or liberty of the other party.

(b) Enjoining any party from entering the premises wherein the other party resides upon a showing that physical or emotional harm would otherwise result.

(c) Enjoining any party from contacting the other party at, or entering, the other party's place of employment or school.

(d) Enjoining any party from harassing, intimidating or threatening the other party, other party's relatives regardless of their place of residence, or the other party's household members in any way.

II. When a party violates a restraining order issued under this section by committing assault, criminal trespass, criminal mischief, stalking, or another criminal act, that party shall be guilty of a misdemeanor, and peace officers shall arrest the party, detain the party pursuant to RSA 594:19-a and refer the party for prosecution. Such arrests may be made within 12 hours after a violation without a warrant upon probable cause whether or not the violation is committed in the presence of a peace officer.

Source. 2005, 273:1, eff. Oct. 1, 2005.

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2018-0173, In the Matter of Gina Bundza and Brian Bundza, the court on April 24, 2019, issued the following order:

Having considered the parties' briefs and the record submitted on appeal, we conclude that a formal written opinion is unnecessary in this case. The respondent, Brian Bundza, appeals an order of the Circuit Court (Alfano, J.) awarding the petitioner, Gina Williams, formerly Gina Bundza, sole decision-making and residential responsibilities for the parties' minor child, ordering, among other things, that the father have no contact with the child, requiring that the father pay all attorney's fees and other litigation expenses, and forbidding the father from posting anything about the mother or the child on social media. The father argues that the order must be vacated for several reasons including that the court did not provide constitutionally adequate notice. We vacate and remand.

The following facts were found by the trial court or are supported by the record. The parties have one child born in January 2009. The parties divorced in August 2011. Their initial parenting plan awarded them joint decision-making responsibility and equal residential responsibility.

Before the parties divorced, the child's pediatrician reported to the New Hampshire Division for Children, Youth and Families (DCYF) that the mother suspected that the child had been sexually abused at a daycare facility, and DCYF reported the same to the Rochester Police Department. The police investigated and concluded that no "foul play or any type of crimes" had been committed against the child.

In January 2013, the court granted the mother's ex parte motion seeking "full parental rights and responsibilities" after the father was arrested for aggravated assault. In March 2014, the mother filed a petition to change the parenting plan, requesting "sole rights and responsibilities" because she was concerned that the child "could witness or experience domestic violence" while with the father. In August 2014, before the court had ruled on the mother's motion to modify, the father was incarcerated due to imposition of a suspended sentence. At that time, he also faced new misdemeanor charges of simple assault and stalking. As a result of his incarceration and pending charges, the Trial Court (Patten, J.) temporarily suspended the father's parenting time, stating, however, that it "anticipates restoring his parenting time in some capacity . . . as soon as his circumstances are stabilized."

In October 2014, after the child disclosed in therapy that the father had perpetrated sexual abuse, a medical doctor examined the child and found physical evidence of abuse. The doctor could not determine whether the father, or someone else, committed the abuse.

From January 2015 until March 2016, the father had weekly, supervised parenting time at a Parenting Support Center. In March 2016, the court temporarily suspended his parenting time, stating that “[w]hile it is far from clear that father committed the abuse, something clearly happened to [the child] that is causing [the child] distress.” It reasoned that if the “father sexually abused [the child], their continued ‘visits’ could indeed be causing [the child] terrible psychological and emotional harm. If father did not abuse [the child], a temporary suspension of their ‘visits,’ while unfortunate, should cause no lasting harm to their relationship.” The court ordered a “final hearing on the parenting issues in approximately 90 days.”

In June 2016, after DCYF closed its assessment in the case as “Unfounded,” the court held a “final hearing on mother’s Motion to Modify.” The mother argued that the parenting plan should be modified pursuant to RSA 461-A:11, I(c), which allows a court to modify a permanent order concerning parental rights and responsibilities if “the court finds by clear and convincing evidence that the child’s present environment is detrimental to the child’s physical, mental, or emotional health, and the advantage to the child of modifying the order outweighs the harm likely to be caused by a change in environment.” RSA 461-A:11, I(c) (2018); see also Black’s Law Dictionary 674 (10th ed. 2014) (defining “clear and convincing evidence” as “[e]vidence indicating that the thing to be proved is highly probable or reasonably certain”). Following the hearing, in July 2016, the Trial Court (Foley, J.) approved a detailed order recommended by a Marital Master (Cross, M.) that set forth the evidence in the case, some of which suggested that the father had sexually abused the child, and some of which suggested that the mother may have influenced the child to “remember” the father’s abuse. The court concluded that, although it found credible and convincing evidence that the child had been sexually abused by someone, the evidence fell “short of proving it highly probable or reasonably certain” that the father was the perpetrator. The court observed that if it prevented the child from seeing the father without sufficient evidence that the father had perpetrated the abuse, the father would have “lost his parental rights without the due process that attaches to a child protection case or criminal prosecution. In effect, his parental rights would be suspended even though he has not been charged with or convicted of . . . abuse.” The court then awarded the father weekly, supervised visitation time of gradually increasing length, and ordered a future review hearing with the “hope . . . that a longer-term parenting schedule can be developed that will help end this active litigation.”

In December 2016, the Trial Court (Maloney, J.) stated after a review hearing that it was “not convinced” that visitation presented a “continuing danger” to the child and ordered continued weekly, supervised parenting time between the father and the child.

In December 2017, the Trial Court, (Alfano, J.) approved an order recommended by a Marital Master (Cross, M.) concluding that the child’s “best interests require the ‘normalization’ of [a] relationship with father.” At that time, the court had a report from Dr. Mart, a forensic psychologist, that opined that the child’s statements suggesting abuse by the father “are the product of suggestive questioning and techniques by [the] mother and by [the child’s therapist].” The report stated that the child “has no independent recollection of being abused by [the] father, and the investigations of possible abuse were not triggered by a disclosure by [the child] but were the product of a combination of confirmatory bias on the part of [the child’s mother] and [the therapist] combined with suggestive questions, statements and techniques.” Mart recommended that “any limitations on [the father’s] contact with [the child] which [are] predicated on his having sexually abused [the child] should be removed, and decisions regarding custodial time should be made on the basis of parenting ability and parent-child fit.” The guardian ad litem (GAL) supported Mart’s recommendation that the father’s parenting time no longer be supervised and that the parenting schedule be based on the parties’ and the child’s schedules and the parties’ respective parenting abilities. The court concluded that Mart’s “evaluation was comprehensive, well-reasoned, and consistent with the evidence the court has heard in the past several hearings.” The court then restored the father’s joint decision-making authority, temporarily awarded him increased parenting time, and ordered that a final hearing be scheduled. Days later, the court sent the parties a written notice stating that a final hearing on “BF PETITION #123” would take place on February 14, 2018. Prior to the hearing, both parents and the GAL developed proposed parenting plans requesting joint decision-making and approximately equal residential responsibility.

On February 14, 2018, Judge Alfano started the hearing, at which both parties were self-represented, by asking the mother to explain “what you want me to order and why?” The mother answered that she had a proposed parenting plan and that she was “asking for equal time.” The court responded:

[L]et me back up for a minute. And I want to be clear about one thing. We’re starting from scratch here. . . . [S]o if I believe your allegations, I’m not bound by anything else. . . . I can award you what you ask for, sole. Okay? So if you want sole, you should ask for sole. . . . [I]f you think that’s in [the child’s] best interest, we’re not in the middle of a case. We’re really at the beginning because this is a final hearing; does that make[] sense?

The mother replied, "I do think that sole decision making would [be] in [the child's] best interests. . . . However, I'm understanding of the fact that everybody wants to move forward and for [the child's] sake, it might be best that we have shared." The court asked if the mother believed that the child was sexually molested by the father, and the mother answered: "All of the information points to that." The court responded: "Yep. So if that's your conclusion, do you want sole residential and sole decision making?" The mother replied: "I think it would be best for [the child] for me to make the decisions."

During the hearing, the GAL objected to the mother's characterization of a portion of the GAL's report as "pure conjecture"; however, the court overruled the objection on the basis that the GAL was not a party to the case because the legislature had changed the governing statute. See RSA 461-A:16 (2018) (amended 2018). The GAL later testified as a witness. During the father's testimony, the court questioned him about his history of domestic violence against third parties.

Following the hearing, the court issued the order that is now on appeal. The court found "by a preponderance of the evidence, that Father has likely sexually abused [the child] on more than one occasion" and that "Father had done significant harm . . . by sexually abusing [the child] and then denying that he did so." The court concluded that the GAL's recommendation that the parents share decision making and residential responsibilities was not in the child's best interest. The court also rejected Mart's report for failing to meet the standards required for an expert report under RSA 516:29-a. See RSA 516:29-a (2007). The court found it troubling that the report did not mention a February 2015 letter from the child's therapist detailing the child's accusation that the father had perpetrated sexual abuse.

Based upon its findings, the court awarded the mother sole decision-making and residential responsibilities and ordered that the father "have no contact with Mother or . . . child directly or indirectly." It ruled that "when and if" the child decides to have contact with the father, the mother should file a motion with the court, but "[o]therwise, there shall be no contact between Father and [the child]." The court also ordered that the father have no contact with the child's school, teachers, doctors, or counselors and ordered him not to "post anything about [the child] or [the] Mother on social media." The court reallocated all past, present, and future GAL expenses to the father. It also awarded the mother attorney's fees on the grounds that "this litigation was the result of Father's bad faith and unreasonable conduct." The court denied both the father's and the GAL's motions to reconsider. This appeal followed.

On appeal, the father argues that the trial court made several errors that require us to vacate the February 14, 2018 order. He argues that "[t]he issues on appeal primarily stem from the Court's improper interference with the

parties' agreement to share decision making and equal or approximately equal parenting time." He asserts that "despite a standing Order and agreement, the Court from the bench improperly influenced [the mother] into seeking sole decision making and sole residential responsibility." He contends that "[t]his abuse of process turned the agreement of the parties on its axis without notice to anyone, including the Guardian ad Litem" and that the "result effectively terminated [his] parental rights."

First, the father argues that the trial court violated his right to a properly noticed hearing when it awarded sole decision-making and residential responsibility to the mother on the basis that he had sexually abused his child. He asserts that, based on previous orders from the court and the parties' proposed parenting plans, he "had no notice, never mind adequate notice, that the Court would consider sole decision making at the February 14, 2018 hearing." He further contends that the trial court was precluded from considering allegations that the father had sexually abused the child because that issue had been previously — and finally — litigated more than 18 months earlier at the June 2016 hearing, after which "the only issue for the Court's consideration, was the detailed and anticipated expansion of the [father's] parenting time."

Next, he argues that the court unsustainably exercised its discretion, and exceeded its statutory authority, when it modified the parenting plan in the absence of sufficient evidence that any of the circumstances set forth in RSA 461-A:11, I exists. See RSA 461-A:11, I. He asserts that the "only 'evidence' that the court had to support" its order "was the evidence that the court created," and that "[a]side from the Court's manufactured and erroneous adjudication of abuse, there are no facts or testimony in evidence to support the award of sole residential and decision making to [the mother]."

Third, the father asserts that the trial court erred as a matter of law when, on the basis that the legislature had "changed the statute," it prevented the GAL from fully participating in the hearing, and denied the GAL's motion for reconsideration. He asserts that, because the legislature did not pass the new statute until June 2018, and the revised law did not go into effect until January 2019, see Laws 2018, 230:1, the trial court committed "judicial error, which, at the very least demonstrates a substantive misunderstanding of the pendency of legislation and may even amount to a blatant disregard for due process."

Fourth, the father argues that the trial court unsustainably exercised its discretion in ordering the father to pay attorney's fees, GAL fees, and other litigation expenses. He asserts that, because the mother had not requested that the father pay her attorney's fees and litigation expenses, and because the hearing notice did not suggest that the issue would be litigated, the court's allocation of fees must be vacated. He further contends that there are no facts

in evidence to support the trial court's conclusion that the father acted in "bad faith."

Fifth, the father asserts that the trial court violated his "most basic rights to due process" because it effectively terminated his parental rights without applying the "procedural and burden-of-proof protections" required by the State and Federal Constitutions and New Hampshire statute. See N.H. CONST. pt. I, art 2; U.S. CONST. amend XIV; RSA ch. 170-C (2014). He contends that "[t]he risk of erroneous deprivation of [his] constitutionally protected interest was exacerbated by the fact that the Court overlooked the parties' agreement and forced [him] to carry on with a hearing on issues that were not appropriately before the Court."

Sixth, the father argues that the trial court erred when it considered his domestic violence history, which did not involve the mother or the child, because New Hampshire law does not permit consideration of "abuse or behavior that has no impact on the relationship between the child and parent." See RSA 461-A:6, I(j) (2018) (stating that the court should be guided by the best interests of the child, which include "[a]ny evidence of abuse, as defined in RSA 173-B:1, I or RSA 169-C:3, II, and the impact of the abuse on the child and on the relationship between the child and the abusing parent").

Finally, the father argues that the trial court lacked authority to restrict his ability to make statements on social media. He asserts that there was no "evidence or testimony that social media had been used in a way that was harmful to the child." He contends that the prohibition constitutes an unconstitutional "prior restraint on free speech" because it prohibits him "from speaking in the modern public square" and "forecloses his ability to engage in the legitimate exercise of First Amendment Rights." See N.H. CONST. pt. I, art. 22; U.S. CONST. amend. I.

When determining matters of parental rights and responsibilities, a trial court's overriding concern is the best interest of the child. In the Matter of Miller & Todd, 161 N.H. 630, 640 (2011). The trial court has wide discretion in matters involving the allocation of parental rights and responsibilities. Id. We will not overturn a trial court's modification of an order regarding parental rights and responsibilities unless it clearly appears that the court unsustainably exercised its discretion. In the Matter of Muchmore & Jaycox, 159 N.H. 470, 472 (2009). We consider only whether the record establishes an objective basis sufficient to sustain the discretionary judgment made, and we will not disturb the trial court's determination if it could reasonably have been made. In the Matter of Kurowski & Kurowski, 161 N.H. 578, 585 (2011). The trial court's discretion necessarily extends to matters such as assigning weight to evidence and assessing the credibility and demeanor of witnesses. Id. Conflicts in the testimony, questions about the credibility of witnesses, and the weight assigned to testimony are matters for the trial court to resolve because

resolution of the best interests of a child depends to a large extent upon the firsthand assessment of the credibility of witnesses. Id. Findings of the trial court are binding upon this court if supported by the evidence. Id. To the extent an appealing party argues that the trial court committed error involving questions of law, we review such issues de novo. Id.

We first consider the father's notice arguments. He asserts that based on "the hearing notice, the prior orders and the parties' agreement, a reasonable person would not have been fairly informed" that the February 14, 2018 hearing would include adjudication of whether the mother should receive sole decision-making or sole residential responsibility, adjudication of whether the father had sexually abused the child, and allocation of attorney's fees and other litigation expenses. He contends that after the July 2016 order, "the only issue for the Court's consideration, was the detailed and anticipated expansion of the [father's] parenting time." He argues that had he known that

the Court would ignore prior orders and that the hearing might result in a virtual abrogation of his parental rights due to erroneous findings of abuse, he would have prepared witnesses and evidence regarding issues such as his character. He would have subpoenaed expert witnesses regarding his non-involvement in the alleged sexual abuse, brought copies of the Orders relative to the prior adjudication that the Court clearly overlooked, and brought documentation of the satisfactory development of the child during the times he was engaged as a parent. Whatever the nature of the evidence he might have produced, he would have been prepared to contest the issue.

He asserts that the trial court's "abuse of process" violated his due process rights because it "turned the agreement of the parties on its axis without notice to anyone, including the Guardian ad Litem."

The mother counters with two arguments: 1) that the trial court actually premised its order on its determination that the father was not credible, not on its conclusion that the father sexually abused the child; and, 2) that the notice the father received was adequate because he received "actual notice of the Final Hearing in December 2017" and had sixty days to prepare. She further appears to assert that since 2013, when the court first ordered that the parenting plan be changed, the father was on notice that the parenting plan may be altered.

We disagree with the mother's interpretation of the trial court order. See In the Matter of Salesky & Salesky, 157 N.H. 698, 702 (2008) (explaining that the interpretation of a trial court order presents a question of law for this court, which we review de novo). We agree that the court concluded that the father's testimony was not credible and that the trial court has discretion to assess the

credibility and demeanor of witnesses. See Kurowski, 161 N.H. at 585. However, the trial court premised its order, at least in large part, on its conclusion “that by a preponderance of the evidence, that Father has likely sexually abused [the child] on more than one occasion. For purposes of this matter, it is clear that [the child] was sexually abused by [the] Father.” Accordingly, we must analyze whether the father received constitutionally adequate notice that the issue of whether he had sexually abused the child years earlier would be relitigated at the February 14, 2018 hearing.

We address the father’s due process claim under the State Constitution and rely upon federal law only to aid our analysis. State v. Ball, 124 N.H. 226, 231-33 (1983). Under both Part I, Article 15 of the New Hampshire Constitution and the Fourteenth Amendment of the Federal Constitution, “an elementary and fundamental requirement of due process is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Douglas v. Douglas, 143 N.H. 419, 423 (1999) (quotation omitted). Reasonable notice means notice that is “reasonably calculated to give the [litigant] actual notice of the issue and the hearing.” Duclos v. Duclos, 134 N.H. 42, 44-45 (1991) (quotation omitted).

The actual notice that the Circuit Court sent the parties in December 2017 stated that a final hearing on “BF PETITION #123” would take place on February 14, 2018. It is our understanding, which it appears the parties share, that “BF PETITION #123” is the mother’s March 2014 petition to change the parenting plan due to her concerns that the child would be exposed to domestic violence. That petition did not allege that the father had sexually abused his child; however, it is uncontested that after that petition was filed, new facts and legal issues, including allegations that the father had abused his child, entered the case. However, it is also uncontested that many of those issues, including whether the father had sexually abused the child, had been litigated during the pendency of the case. Indeed, in July 2016, after a “final hearing,” the court approved a detailed order recommended by the marital master which concluded that “[t]he evidence, on balance, . . . falls short of proving it highly probable or reasonably certain that father sexually abused [the child].” The court then awarded the father parenting time and observed that it “hope[d] . . . that a longer-term parenting schedule can be developed that would help end this active litigation.”

In December 2017, just two months before the final hearing, the trial court found that the child’s “best interests require the ‘normalization’ of [the child’s] relationship with father.” At that time, the court found that the forensic psychologist’s evaluation was “comprehensive, well-reasoned, and consistent with the evidence the court has heard in the past several hearings.” The court then restored the father’s joint decision-making, and temporarily awarded him overnight parenting time, including a week-long period when the

mother was out of the country. Both parents and the GAL entered the hearing on February 14, 2018 with proposed parenting plans that provided for joint decision-making, and approximately equal residential responsibility.

We agree with the father that — based on the hearing notice, the prior orders, and the parties' agreement — a reasonable person in the father's position would not have expected that the issue of whether he had sexually abused his child would be litigated at the February 14, 2018 hearing. We hold, therefore, that the notice the father received was inadequate to fairly inform him of the issues to be adjudicated at the hearing in violation of Part I, Article 15 of the New Hampshire Constitution. The Federal Constitution offers the father at least as much protection as does the State Constitution under these circumstances. See Douglas, 143 N.H. at 423-24. Accordingly, we reach the same result under the Federal Constitution as we do under the State Constitution.

Therefore, because the parties lacked adequate notice that the issue of whether the father had sexually abused the child would be relitigated at the hearing, we conclude that the trial court order must be vacated. Having so concluded, we need not address the father's additional appellate arguments, many of which raise significant questions of law that warrant careful consideration.

On remand, the court should consider whether the July 2016 order, which concluded after a "final hearing" that "[t]he evidence on balance . . . falls short of proving it highly probable or reasonably certain that father sexually abused [the child]," precludes relitigation of this issue. In addition, on remand the court should assess the relevance of the father's domestic violence history given the "best interests" factors set forth in RSA 461-A:6, and address whether any of the circumstances set forth in RSA 461-A:11 are present to justify modification of parental rights and responsibilities. See RSA 461-A:11. The court may also want to analyze the ramifications in this case, if any, of the amendment to RSA 461-A:16, the Guardian ad Litem statute, which became effective on January 1, 2019. See Laws 2018, 230:1.

In 2016, the court observed that this "litigation has been contentious and nearly continuous for 6 of the 7 years [the child] has been alive." We note that the case has become even more complicated in the subsequent three years. There have been three GALs appointed to date, and the case includes allegations of abuse, alienation, and domestic violence. This is a high conflict case. Additionally, the father has been prevented from having any contact with his child for over a year while this appeal has been pending. Because this case presents issues of the type appropriate for reassignment to the Family Division Complex Case Docket, see <https://www.courts.state.nh.us/fdpp/complexcasedocket/ComplexFamilyDocketFAQ.pdf>, the Administrative Judge of the Circuit Court should carefully

assess whether this case should be reassigned to that docket. See RSA 490-F:2 (Supp. 2018).

Vacated and remanded.

LYNN, C.J., and HICKS, BASSETT, HANTZ MARCONI, and DONOVAN, JJ., concurred.

**Eileen Fox,
Clerk**

MASHA M. SHAK

v.

RONNIE SHAK.

No. SJC-12748

Supreme Judicial Court of Massachusetts, Norfolk

May 7, 2020

Heard: November 4, 2019.

Complaint for divorce filed in the Norfolk Division of the Probate and Family Court Department on February 5, 2018. A complaint for contempt, filed on June 8, 2018, was heard by George F. Phelan, J., and questions of law were reported by him.

The Supreme Judicial Court granted an application for direct appellate review.

Richard M. Novitch (Gary Owen Todd & Julianna Zane also present) for the mother.

Jennifer M. Lamanna for the father.

Ruth A. Bourquin & Matthew R. Segal, for American Civil Liberties Union of Massachusetts, amicus curiae, submitted a brief.

Present: Gants, C.J., Lenk, Guziano, Lowy, Budd, Cypher, & Kafker, JJ.

BUDD, J.

Nondisparagement orders often are issued as a means to protect minor children during contentious divorce or child custody proceedings in order to protect the child's best interest. At issue here are orders issued to the parties in this case in an attempt to protect the psychological well-being of the parties' minor child, given the demonstrated breakdown in the relationship between the mother and the father. We conclude that the nondisparagement orders at issue here operate as an impermissible prior restraint on speech.[1]

Background.

Ronnie Shak (father) and Masha M. Shak (mother) were married for approximately fifteen months and had one child together. The mother filed for divorce on February 5, 2018, when the child was one year old. The mother then filed an

emergency motion to remove the father from the marital home, citing his aggressive physical behavior (including roughly grabbing their child and throwing items at their neighbors), temper, threats, and substance abuse. A Probate and Family Court judge ordered the father to vacate the marital home and issued temporary orders granting the mother sole custody of the child, and a date for a hearing was set. Before the hearing, the mother filed a motion for temporary orders, which included a request that the judge prohibit the father from posting disparaging remarks about her and the ongoing litigation on social media. After a hearing, the judge issued temporary orders that included, in paragraphs six and seven, nondisparagement provisions against both parties (first order):

"6. Neither party shall disparage the other -- nor permit any third party to do so -- especially when within hearing range of the child.

"7. Neither party shall post any comments, solicitations, references or other information regarding this litigation on social media."

The mother thereafter filed a complaint for civil contempt alleging that the father violated the first order by "publish[ing] numerous [social media] posts and commentary disparaging [her] and detailing the specifics of th[e] litigation on social media." The mother further alleged that the father had shared these posts with members of her religious community, including her rabbi and assistant rabbi, as well as with her business clients. In the father's answer, he denied having been timely notified of the judge's first order and raised the judge's lack of authority "to issue [a] prior restraint on speech."

After a hearing, a different judge declined to find contempt on the ground that the first order, as issued, constituted an unlawful prior restraint of speech in violation of the father's Federal and State constitutional rights. However, the judge concluded that orders restraining speech are permissible if narrowly tailored and supported by a compelling State interest. The judge sought to cure the perceived deficiencies of the first order by issuing further orders of future disparagement (orders) which stated in relevant part:

"1) Until the parties have no common children under the age of [fourteen] years old, neither party shall post on any social media or other Internet medium any disparagement of the other party when such disparagement consists of comments about the party's morality, parenting of or ability to parent any minor children. Such disparagement specifically includes but is not limited to the following expressions: 'cunt', 'bitch', 'whore', 'motherfucker', and other pejoratives involving any gender. The Court acknowledges

the impossibility of listing herein all of the opprobrious vitriol and their permutations within the human lexicon.

"2) While the parties have any children in common between the ages of three and fourteen years old, neither party shall communicate, by verbal speech, written speech, or gestures any disparagement to the other party if said children are within [one hundred] feet of the communicating party or within any other farther distance where the children may be in a position to hear, read or see the disparagement." [2]

The judge stayed those orders and purported to report two questions to the Appeals Court. [3] We allowed the mother's application for direct appellate review. Rather than answering the reported questions, we focus strictly on the correctness of the orders issued by the second judge in this case. See *McStowe v. Bornstein*, 377 Mass. 804, 805 n.2 (1979) ("Although a judge may report specific questions of law in connection with an interlocutory finding or order, the basic issue to be reported is the correctness of his finding or order. Reported questions need not be answered in this circumstance except to the extent that it is necessary to do so in resolving the basic issue"). See also Mass. R. Dom. Rel. P. 64(a).

Discussion.

The First Amendment to the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech." "[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Ashcroft v. American Civ. Liberties Union*, 535 U.S. 564, 573 (2002), quoting *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 65 (1983). Article 16 of the Declaration of Rights, as amended by art. 77 of the Amendments, is at least as protective of the freedom of speech as the First Amendment. [4] *Care & Protection of Edith*, 421 Mass. 703, 705 (1996).

"The term 'prior restraint' is used 'to describe administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur.'" *Alexander v. United States*, 509 U.S. 544, 550 (1993), quoting M. Nimmer, Nimmer on Freedom of Speech § 4.03, at 4-14 (1984). Nondisparagement orders are, by definition, a prior restraint on speech. See *Care & Protection of Edith*, 421 Mass. at 705 ("An injunction that forbids speech activities is a classic example of a prior restraint"). Because the prior restraint of speech or publication carries with it an "immediate and irreversible sanction" without the benefit of the "protections afforded by deferring the impact of the judgment until all avenues of appellate review have been exhausted," it is the "most serious and the least tolerable infringement on First

Amendment rights." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). See *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 559 (1975) ("a free society prefers to punish the few who abuse rights of speech *after* they break the law than to throttle them and all others beforehand").

As "one of the most extraordinary remedies known to our jurisprudence," *Nebraska Press Ass'n*, 427 U.S. at 562, in order for prior restraint to be potentially permissible, the harm from the unrestrained speech must be truly exceptional. See *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 716 (1931), [5][6] A prior restraint is permissible only where the harm expected from the unrestrained speech is grave, the likelihood of the harm occurring without the prior restraint in place is all but certain, and there are no alternative, less restrictive means to mitigate the harm. See *Nebraska Press Ass'n, supra*.

It is true that "[p]rior restraints are not unconstitutional per se." *Southeastern Promotions, Ltd.*, 420 U.S. at 558, citing *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 n.10 (1963). See *Nebraska Press Ass'n*, 427 U.S. at 570, and cases cited ("This Court has frequently denied that First Amendment rights are absolute and has consistently rejected the proposition that a prior restraint can never be employed"). However, the Supreme Court has made clear that prior restraints are heavily disfavored. See *Near*, 283 U.S. at 716 (prior restraint is appropriate "only in exceptional cases"). The Court has stated specifically that "[a]ny system of prior restraint . . . comes . . . bearing a heavy presumption against its constitutional validity" (quotations and citation omitted). *Southeastern Promotions, Ltd., supra* at 558, and cases cited.

A prior restraint "avoids constitutional infirmity only if it takes place under procedural safeguards designed to obviate the dangers of a censorship system." *Southeastern Promotions, Ltd.*, 420 U.S. at 559, quoting *Freedman v. Maryland*, 380 U.S. 51, 58 (1965). To determine whether a prior restraint is warranted, the Supreme Court has looked to (a) "the nature and extent" of the speech in question, (b) "whether other measures would be likely to mitigate the effects of unrestrained" speech, and (c) "how effectively a restraining order would operate to prevent the threatened danger." *Nebraska Press Ass'n*, 427 U.S. at 562 "[T]he barriers to prior restraint remain high and the presumption against its use continues intact" *Id* at 570.

We have acknowledged that prior restraints "require an unusually heavy justification under the First Amendment" *Commonwealth v. Barnes*, 461 Mass. 644, 652 (2012), quoting *New York Times Co v United States*, 403 U.S. 713, 733 (1971) (White, J. concurring). Given the "serious threat to rights of free speech" presented by prior restraints, we have concluded that such restraints cannot be upheld unless "justified by a compelling State interest to protect against a

serious threat of harm." *Care & Protection of Edith*, 421 Mass. at 705. Additionally, "[a]ny limitation on protected expression must be no greater than is necessary to protect the compelling interest that is asserted as a justification for the restraint." [7] *Id.*

On the occasions that we have considered claims of prior restraint, we have concluded that the restraint in question was impermissible. See, e.g., *Barnes*, 461 Mass. at 656-657 (prior restraint on Internet streaming of court proceedings deemed unlawful in circumstances); *George W. Prescott Publ. Co. v. Stoughton Div. of the Dist. Court Pep'r of the Trial Court*, 428 Mass. 309, 311-312 (1998) (prior restraint on newspaper publisher's ability to report on juvenile records and proceedings unlawful); *Care & Protection of Edith*, 421 Mass. at 705-706 (prior restraint forbidding father from discussing care and protection proceeding with press unlawful).

Turning to the order in question, the judge properly noted that "the State has a compelling interest in protecting children from being exposed to disparagement between their parents." See *Barnes*, 461 Mass. at 656, quoting *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607-608 (1982) (safeguarding physical and psychological well-being of minor is compelling interest). However, as important as it is to protect a child from the emotional and psychological harm that might follow from one parent's use of vulgar or disparaging words about the other, merely reciting that interest is not enough to satisfy the heavy burden of justifying a prior restraint.

Assuming for the sake of discussion that the Commonwealth's interest in protecting a child from such harm is sufficiently weighty to justify a prior restraint in some extreme circumstances, those circumstances do not exist here. No showing was made linking communications by either parent to any grave, imminent harm to the child. The mother presented no evidence that the child has been exposed to, or would even understand, the speech that gave rise to the underlying motion for contempt. As a toddler, the child is too young to be able to either read or to access social media. The concern about potential harm that could occur if the child were to discover the speech in the future is speculative and cannot justify a prior restraint. See *Nebraska Press Ass'n*, 427 U.S. at 563. Significantly, there has been no showing of anything in this particular child's physical, mental, or emotional state that would make him especially vulnerable to experiencing the type of direct and substantial harm that might require a prior restraint if at any point he were exposed to one parent's disparaging words toward the other. Cf. *Felton v. Felton*, 383 Mass. 232, 233-234 (1981), and cases cited (reversing and remanding for further consideration probate judge's order restricting father's visitation unless he refrained from instructing children in his religion -- "harm to the child . . . should not

be simply assumed or surmised; it must be demonstrated in detail").

Because there has been no showing that any harm from the disparaging speech is either grave or certain, our analysis regarding the permissibility of the nondisparagement order issued in this case ends here. We note, however, that there are measures short of prior restraint available to litigants and judges in circumstances in which disparaging speech is a concern. For example, our ruling does not impact nondisparagement agreements that parties enter into voluntarily. Depending upon the nature and severity of the speech, parents who are the target of disparaging speech may have the option of seeking a harassment prevention order pursuant to G. L. c. 258E, or filing an action seeking damages for intentional infliction of emotional distress or defamation. See *Roman v. Trustees of Tufts College*, 461 Mass. 707, 717-718 (2012), quoting *Sena v. Commonwealth*, 417 Mass. 250, 263-264 (1994) (setting forth elements of intentional infliction of emotional distress); *White v. Blue Cross & Blue Shield of Mass., Inc.*, 442 Mass. 64, 66 (2004) (setting forth elements of defamation). And certainly judges, who are guided by determining the best interests of the child, can make clear to the parties that their behavior, including any disparaging language, will be factored into any subsequent custody determinations. See *Ardizoni v. Raymond*, 40 Mass.App.Ct. 734, 738 (1996). Of course, the best solution would be for parties in divorce and child custody matters to rise above any acrimonious feelings they may have, and, with the well-being of their children paramount in their minds, simply refrain from making disparaging remarks about one another.

We recognize that the motion judge put careful thought into his orders in an effort to protect a child caught in the middle of a legal dispute who was unable to advocate for himself. However, because there was no showing of an exceptional circumstance that would justify the imposition of a prior restraint, the nondisparagement orders issued here are unconstitutional.

Conclusion.

Paragraphs 1 and 2 of the judge's further orders on future disparagement, dated October 24, 2018, are hereby vacated.

So ordered.

Notes:

[1] We acknowledge the amicus brief submitted by the American Civil Liberties Union of Massachusetts.

[2] The judge's orders included two additional sections that

were neither challenged by the parties nor addressed in the judge's reported questions. We therefore do not express an opinion about them.

[3] The questions reported by the judge are:

(1) "Are 'Non-Disparagement' orders [issued in the context of divorce litigation] an impermissible restraint on constitutionally protected free speech?"

(2) "Are 'Non-Disparagement' orders [issued in the context of divorce litigation] enforceable and not an impermissible restraint on free speech when there is a compelling public interest in protecting the best interests of minor children?"

[4] Article 16 of the Massachusetts Declaration of Rights, as amended by art. 77 of the Amendments, states in pertinent part: "The right of free speech shall not be abridged."

[5] Leading cases from the Supreme Court that have held prior restraints to be unconstitutional illustrate what constitutes truly exceptional circumstances. See, e.g., *New York Times Co. v. United States*, 403 U.S. 713, 714, 718 (1971) (Black, J., concurring) (prior restraint against publication of classified information allegedly involving national security concerns unconstitutional); *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 561-562, 569 (1976) (in circumstances, prior restraint against publication of information about defendant's criminal trial unconstitutional despite risk of "adverse impact on the attitudes of those who might be called as jurors"); *Kingsley Int'l Pictures Corp. v. Regents of the Univ. of the State of N.Y.*, 360 U.S. 684, 688 (1959) (prior restraint on display of films promoting "sexual immorality" unconstitutional censorship of ideas).

[6] In *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 716 (1931), the Supreme Court established three categories of speech that potentially could justify a prior restraint: obscene speech, incitements to violence, and publishing national secrets. With respect to these exceptions, two of the three -- obscenity and incitement to violence -- are no longer considered protected speech under the First Amendment. See *Nebraska Press Ass'n*, 427 U.S. at 590, and cases cited (Brennan, J., concurring); *Times Film Corp. v. Chicago*, 365 U.S. 43, 48 (1961). Even so, in cases involving obscenity and incitement to violence, "adequate and timely procedures are mandated to protect against any restraint of speech that does come within the ambit of the First Amendment." *Nebraska Press Ass'n*, *supra* at 591, and cases cited (Brennan, J., concurring).

[7] We note that other State courts also have ruled on prior restraint claims in the context of divorce, child custody, and child welfare cases and, in doing so, have used various language to describe the applicable standard. The common

theme is that the bar for a prior restraint is extremely high. See, e.g., *In re Marriage of Newell*, 192 P.3d 529, 535-537 (Colo. Ct. App. 2008); *In re Summerville*, 190111, App.3d 1072, 1077-1079 (1989); *Johanson v. Eighth Judicial Dist. Court*, 124 Nev. 245, 250-253 (2008); *Matter of Adams v. Tersillo*, 245 A.D.2d 446, 447 (N.Y. 1997); *Grigsby v. Coker*, 904 S.W.2d 619, 621 (Tex. 1995).

From Jay Markell, Esquire

Concise Position Paper on Pending Bills

HB 494 and HB 495

Protects important constitutional rights the parties have.

Applies to court orders both in and out of the restraining order context.

Does not apply to domestic violence cases, and does not interfere with civil restraining orders.

- 1) Improves the administration of justice, provides clear guidelines for courts to follow.
- 2) Fills a void in the first part of the statutes: RAA 458:16 1 and RSA 461-A: 10 I "with such conditions and limitations as the court deems just" are vague.
- 3) Courts need guidance as to enumerated and fundamental rights that exist under the federal and state constitutions.
- 4) Correct constitutional standard is strict scrutiny. This requires a compelling government interest; the proposed order must be narrowly tailored to achieve that compelling government interest, and there must be no less restrictive way to achieve that compelling government interest.
- 5) Burden is always on the government or court to justify the order or statute.
- 6) Statutes are public and put all parties on notice.
- 7) Strict Scrutiny Standard is easy to look up online and easier for self- represented parties to find than case law.
- 8) Specifically exempts Domestic Violence orders because they represent compelling government interests (protecting victims from abuse and the wide variety of other interests that are served) and while the orders infringe on constitutional rights, they are narrowly tailored to protect victims from abuse and there is no less restrictive way to accomplish the purpose.
- 9) Does not interfere with civil restraining orders, as parties are NOT free to engage in harassment, staking, or any other prohibited activity.

NEED FOR THE AMENDMENTS ARE REAL.

- 10) See the Bundza case.
- 11) See the Shak Case, from the Massachusetts Supreme Judicial Court discussing First Amendment, prior restraint, and strict scrutiny in the family law context.
- 12) Most violations are expected to be First Amendment violations.
- 13) First amendment free speech violations take place and outside the restraining order context.
- 14) Prior restraint, content-based restrictions appear to be common. From my practice alone, in 2019, and 2020 I had two such obvious examples. In a 2020 Content based restrictions with orders such as "The parties shall speak civilly to each other and not use sarcasm or talk about the past." This was outside of the restraining order context.

- 15) In another matter one party was prohibited from discussing a significant lawsuit he had against the other party. They were not married to each other. In that matter the court was aware of that one party had a potential lawsuit against the other. The only way for him to resolve it would be to file the lawsuit, not pursue the claim, seek to modify an unconstitutional order or appeal it to the New Hampshire Supreme Court or try to settle it and risk a contempt citation and jail. There was no Domestic Violence Order of protection in place.
- 16) Consider excessive fines: 8th Amendment and NH constitution part 33, both prohibit excessive fines, man convicted of assault on wife, jailed, then released. In DVP order, man earns \$2,000 per month, court at first finds he has no ability to pay alimony, then reverses itself considers crime., orders him to pay alimony and child support, total, \$2,000 leaving him with nothing. Pointed this issue out to the court, and the order changes
- 17) Contempt citations for violating court orders can include a stain on a parties' court record an award of attorney fees, as well as incarceration. Appealing an unconstitutional order is beyond the means of most people and not realistic, but implementing this standard greatly facilitates appeals if needed.
- 18) The contempt power is discretionary on the court and is largely unreviewable.
- 19) Not hard or confusing to understand.
- 20) Easy to understand, far less complicated than other family law statutes such as RSA 458-C, (child support guidelines) and RSA 458-19- and RSA 458-19-a (alimony statute) for a self-represented party to find, plenty of online references and articles explain it.

HB 142 Causes for Divorce

HB 142 updates the causes for divorce. New Hampshire's present statute is 20+ years old and does not reflect the changes in society, including the problems with drug abuse. As of now, one cannot plead drug abuse as a cause of marital breakdown despite the widely known abuse problems with opioids and other intoxicating substances.

HB 142 provides other choices as to how to proceed with other marital sexual misconduct. Parties can proceed with adultery or with other acts that adultery does not reach. A gratification element is not an element of adultery.

HB 161 Problem for Equal or Approximately Equal Parenting Time.

1. Applies a new formula for courts to use, but equal or approximately equal parenting time is a growing trend and comport with public policy of parents having greater participation in their children's lives, and HB 161 is not the way to address the issue as it creates more problems than it solves. HB 228 retained in the Child and Family Law Committee better addresses equal or approximately equal parenting time using an offset method with court oversight to assure adequacy of support.

DISADVANTAGES

- 1) Estimated 60-70% of parties in court are self-represented and may not understand the formula, or how to calculate it. Credits and formula are not transparent.

- 2) Parenting costs are presently addressed in the present statute. The cost of maintaining two households is an adequacy of support issues and is already considered in the guidelines. See RSA 458-C:5 2 (h) and which adds at (h)1 and (h)(2) (A), (B) and (C) that shared parental responsibilities require that a court consider the payment of various expenses in addition to the shared residential responsibilities.
- 3) Domestic violence, abuse, and safety protocols already present in existing statutes.
- 4) Percentages paint the statute and Courts into a corner when other common factors come into play. Conflict with best interests of the child, support do not seem to be factored into either the 2018 UNH Survey and its Addendum, on which HB 161 is based, as there is no accounting for third parties getting visitation or parenting time.
- 5) KEY STATUTE RSA 461-A IS NOT ADDRESSED IN HB 161.**
- 6) RSA 461- A (The Parenting Rights and Responsibility Act).
- 7) RSA 461-A is comprehensive. It lays out the framework for developing parenting plans, decision-making, residential responsibility, and provides for those who may have rights and privileges for visitation. It provides guidance for courts as to policy on child support, among other things.
- 8) Only for determining, an out of state court order does RSA 461-A look at percentages. It uses a threshold of 50% percent to determine residential responsibility to determine which parent was a custodial parent at the time the out of state order was issued. This does not relate to child support. (RSA 461-A: 3).
- 9) New Hampshire takes a far more expansive view of visitation than other states do. Using the best interest of the child standard, a court may award visitation to a stepparent, but the statute also provides that visitation may be afforded to any other person who may significantly affect the child and includes grandparents. See RSA 461-A: 6 V and RSA 461-A: 13.
- 10) Note there are no statutory limits as to much or how long a time period third party visitation may last. It can be a few hours, overnights, weekends, overnights or whatever a court decides is in the best interest of the child.
- 11) Good statutes if reflective of changing societal trends should be forward looking and not paint courts or litigants into corners.
- 12) Note that persons from other states may have been adjudicated rights as de-facto parents. Vermont, for example, recognizes de facto parents. See Vermont Statute 15C V.S.A. § 501(a). These parties may petition for custody. They may also be liable to pay child support.
- 13) This means a person who has been deemed a de-facto parent in Vermont (as if other states that recognized de-facto parents could file his or her petition to register a foreign decree in New Hampshire. Under both the full faith and credit clause of the federal constitution, the matter is going to be heard. The Vermont threshold to achieve this status is high. So once granted a court in New Hampshire must seriously consider this issue.
- 14) Note RSA 461-A: 6 1(h) controls for the best interest of the child. Thus, any other person may qualify. This totally undermines the concept of a parenting time percentage driven formula controlling a child support calculation.

- 15) The same hold true for Grandparent visitation, as the standards are laid out in RSA 461: A-13. The New Hampshire Judicial Branch even provides a pre-printed petition for grandparent visitation for parties to use, as it is that common. See included form.
- 16) Child Support in New Hampshire is driven by the best interest of the children, not percentages of parenting time, or who has the majority of parenting time.
- 17) RSA 461-A: 14 (Support, effective July 19, 2019) states that after the filing of a petition for divorce, paternity, support, or an allocation of parental rights and responsibilities **“the court shall make such further decree in relation to the support and education of the children as shall be most conducive to their benefit and may order a reasonable provision, for medical supports, liens for support”** It goes on to provide extensive detail as to how child support is to be governed. This has nothing to do with percentages.
- 18) Multiple marriages and blended families of all types, when coupled with RSA 461-A’s liberal visitation policies (grandparent, step parent, anyone with a significant connection to a child) can render a 30% shared parenting metric problematic, at best. Grandparent visitation time is usually taken from the parenting time of the filial parent. Thus, a maternal grandparent’s time is taken from the mother’s time and the paternal grandparent’s time is taken from the father’s time. Even without the intervention of a step parent, or other third party a parenting time schedule could be easily cannibalized to the point courts would be conflicted as to the best interest of the child. Imagine what happens when there are two closely connected sets of grandparents, let alone any other persons with a significant connection to a child, and courts are tasked with promoting the best interest of the child over everything else.
- 19) Foments future child support driven litigation as parties will fight over percentages: Expect to see filings for percentage based contempt issues: A party did not get 30% this week, month, etc., he did it, she did it, and look for a deluge of modifications and demands for more/ less support. “I had to take care of the kids for more time/ less time” as well as demands for modifications seeking more or child support, and demands for repayments for those who feel they over paid.
- 20) Courts and parties can easily figure out on what shared or approximately equal parenting time is. There are 7 days in a week and 12 months in a year. No need for statute to replace common sense.
- 21) No need to micro-manage an already overtaxed court system

Respectfully submitted,

Jay Markell, Esquire

Jennifer Horgan

From: johnjava@comcast.net
Sent: Monday, May 3, 2021 3:45 PM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: HB 161

Thank you for the opportunity to testify today I just have one suggestion to offer regarding the effective date I recommend that the effective date be moved from 1/1/2021 to 4/1/2021 to coincide with the annual date on which the Bureau of Child Support Services (BCSS) issues new guidelines based on annual changes to the IRS tax brackets. This would eliminate the need for BCSS to issue new child support guidelines twice in a matter of several months. Please let me know if you have any questions.

John

Jennifer Horgan

From: Leonard Campbell <lsoup03@gmail.com>
Sent: Saturday, May 1, 2021 10:26 AM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: I oppose HB161

Senators:

I oppose HB 161.

Parenting time should not be manipulated to avoid paying child support. Have you considered this legislation could give abusers in domestic violence cases leverage to further control their victims because a parent will threaten reduced support?

How does prioritizing financial incentive over the wellbeing of the child help support the vision "all government of right originates from the people, is founded in consent, and instituted for the general good."?

Len

Leonard Campbell
Meredith, NH
603-455-1105

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**

http://www.courts.state.nh.us

Court Name: 10th Circuit Family Division Portsmouth

Case Name: [REDACTED]

Case Number: 670-2018-DM-366

**CHILD SUPPORT GUIDELINES WORKSHEET
Effective April 1 2019**

Child's Name	DOB	Child's Name	DOB
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1. Total Number Of Children <input type="radio"/> 1 <input checked="" type="radio"/> 2 <input type="radio"/> 3 <input type="radio"/> 4 +			
2. Obligor's Reasonable Medical Support Obligation (4% Monthly Gross Income, rounded to the nearest dollar) \$666.64		3. Obligee's Reasonable Medical Support Obligation (4% Monthly Gross Income, rounded to the nearest dollar) \$266.67	

PAYMENT CALCULATIONS	OBLIGOR (Column 1)	OBLIGEE (Column 2)	Combined (Column 3)
<small>NOTE: All income and expenses must be converted to monthly amounts (multiply weekly amounts by 4.33; bi-weekly amounts by 2.17).</small>			
4. Monthly gross income	\$ 16666.00	\$ 06666.67	
5A. Court/Admin. ordered support for other children	\$ _____	\$ _____	
5B. 50% of actual self-employment taxes paid	\$ _____	\$ _____	
5C. Mandatory retirement	\$ _____	\$ _____	
5D. Actual state income taxes paid	\$ _____	\$ _____	
5E. Allowable child care expenses (obligor) (See LINE 5E instructions)	\$ 522.08		
5F. Medical support for children (obligor)	\$ 170.00		
5G. Total deductions (Add lines 5A through 5F)	\$ 692.08	\$ 0.00	
6. Adjusted monthly gross income (Subtract line 5G from line 4)	\$ 15,973.92	\$ 6,666.67	\$ 22,640.59
7A. Child Support guideline amount (From Guideline Calculation Table)			\$ 4,179.01
7B. Guideline Percentage (From Guideline Calculation Table)			26.00 %
8A. Allowable child care expenses (obligee) (See LINE 8A instructions)		\$ _____	
8B. Medical support for children (obligee)		\$ _____	
8C. Total allowable obligee expenses (Add line 8A and 8B)		\$ 0.00	
9. Total adjusted monthly gross income	\$ 15,973.92	\$ 6,666.67	\$ 22,640.59
10. Proportional share of income	70.55 %	29.45 %	
11. Parental support obligation (Line 10 times line 7A)	\$ 2,948.47	\$ 1,230.54	
ABILITY TO PAY CALCULATION			
12. Self-support reserve (From Guideline Calculation Table)	\$ 1,197.00		
13. Income available for support (Subtract line 12 from line 9, column 1)	\$ 14,776.92		
14. Monthly support payable (Enter the smaller line 11, column 1, or line 13, column 1. If line 13, column 1, is less than \$50.00, then a minimum order of \$50.00 is entered.)	\$ 2,948.47		
15. Presumptive child support obligation (If weekly, divide line 14 by 4.33; if bi-weekly, divide line 14 by 2.17; if monthly, enter same amount as in line 14.)			
** ROUND THE RESULT TO THE NEAREST WHOLE DOLLAR **			
Calculate	Weekly \$681.00	Bi-Weekly \$1,359.00	Monthly \$2,948.00

Prepared By: Court Title: _____ Date: _____

Jennifer Horgan

From: Michael Dinan <michaelddinan@yahoo.com>
Sent: Sunday, May 16, 2021 8:47 PM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan; Josh Yokela; Tom Sherman
Subject: Critical Considerations for passing HB161
Attachments: Judge Pedleton CSGW.pdf

Dear Senate Judiciary Committee,

Unfortunately I was not aware of the remote hearing on HB 161 held on May 3rd. I'm a North Hampton, NH father of two lovely ladies, six and eleven, who have been living in a split home since 2019. I would have been pleased to have provided insights into the truly detrimental nature of current child support guidelines.

From the hearing on May 3rd, which I watched on YouTube, there was no mention or consideration of the severe impact of current guidelines combined with the Silva v. Silva decision of June 8, 2018. The UNH study, which was pre-Silva, and the testimony during the hearing, may not have taken into consideration how severely any family, who received child support orders after 2018 when Silva became precedent, has been affected. Though it did not come up in the hearing I imagine the Judiciary Committee is aware of the current plight of most obligors, the payor, and their children due to current guidelines and Silva v. Silva.

Silva v. Silva:

<https://law.justia.com/cases/new-hampshire/supreme-court/2018/2016-0478.html>

Silva removed the Court's ability to allow shared parenting time as a factor in the calculation so the obligor gets no credit for the time or money they spend raising their own children. Before Silva the obligor, usually the Father, would have deducted his portion of the Parental Support Obligation to pay for living expenses while the children were in his care. The precedent of Silva basically denied this fundamental concept of shared parenting via an inverse interpretation of RSA 458-C:5, I(h)(2)(A)(B) and (C):

<https://www.gencourt.state.nh.us/rsa/html/XLIII/458-C/458-C-5.htm>

Since Silva, the entire monthly support obligation is given to the obligee, who has full and complete discretion over how the funds are spent, which of course is not always based on the well-being of the children. Current guidelines completely undermine the obligors ability to effectively parent.

A clear example of this is my actual Uniform Support Order, attached, from April 1, 2019, where my full monthly support obligation of \$2,948.47 is given to the obligee, the children's mother, even though I have 50%, usually much more, of the parenting time. Pre-Silva the monthly support obligation would have been spread across both households as both households need the funds to adequately support the children.

The math is complex, as in any child support worksheet, including current guidelines, which are no less complex than what is proposed in HB 161. The following tables show current, pre-Silva and potential guidelines per HB 161:

Current at 26% (Current Child Support Guidelines Worksheet attached)

Obligor Monthly income (adjusted for Childcare and Healthcare)	\$15,973.47	
Obligee Monthly income	\$6,666.67	
Combined (adjusted)	<u>\$22,641.00</u>	
Obligor obligation	\$2,948.00	Currently paid by Obligor
Obligee obligation	<u>\$1,230.54</u>	
Combined obligation	\$4,178.54	

Pre-Silva 2018

Obligor obligation	\$2,948.00	
1/2 Combined obligation (\$4,178.54/2)	<u>\$2,089.27</u>	
Pre-Silva 2018 Obligor obligation would amount less 1/2 the total obligation	\$858.73	Should be paid by Obligor

HB 161 at 18%

Obligor Monthly income (adjusted)	\$15,973.47	
Obligee Monthly income	<u>\$6,666.67</u>	
Combined	\$22,640.14	
Combined \$22,640.14(.18 per table)	\$4,075.23	
"multiplying the resulting number (4,075.23) by 1.5"	\$6,112.84	Total combined obligation

Obligor responsibility 71% (% of \$6,112.84)	\$4,340.11
Obligee responsibility 29% (% of \$6,112.84)	\$1,772.72

Parent's have children 1/2 the time (\$6,112.84/2) Amount required for children when with each parent

<p>\$3,056.42</p> <hr/> <p>\$1,283.70</p>
--

\$4,340.11(Obligor's 71% of \$6,112.84) less \$3,056.42 (amount required when with each parent)

Would be paid by Obligor per HB 161

In 2020 the obligee was able to take over 4 weeks of vacations skiing in Colorado and Utah, and to "Turks and Caicos" always while leaving the girls in my care. All while not having an actual job. This has continued into 2021, with even more perverse of abuse of the funds that are specifically intended for the well-being of our children. Though the Judge assigned \$80,000 worth of income to the obligee, it had no substantial impact in lowering the amount the obligor pays, due to how weighted the guidelines are against the obligor. Even with all the clear evidence that the obligee, and not the children, is benefiting from current guidelines, it was stated in Judge's Final Order that it was close to a deviation but not there. This is due to every judge strictly following Silva. I would hope NH's Family Court Judges have provided their input on the current broken condition of child support guidelines. As I have heard them state several times "as Judges we do not make laws, we enforce them".

Since current guidelines do not take into consideration any shared parenting time, the obligee then has full discretion over all funds designated for the benefit of the children and the obligor has no say in any extra-curricular activities, camps, clothing or any expenses. By receiving the full obligation intended for the well-being of the children, the obligee is often able to not have to work and is thus motivated to suppress their actual income to keep any payments from the obligor as high as possible.

It is unlikely there is an obligee who would take less funds, from someone they recently divorced, out of goodwill.

As the Father, who is a Fireman, stated on the May 3rd hearing, he could not take his children on vacation and is about to lose his apartment and vehicle. Most obligors are left with barely enough funds to get by and with no ability to invest in their children's future or secondary education. Current discussions all appear to not fully understand or appreciate how bad things really are. How many children have to hear they cannot attend a camp, do an activity, buy clothing or take a trip because the obligor has no funds. In my case I have had to use funds from a small amount of money left to me by from my father, who recently passed away, to pay for daily expenses. These monies should have been used towards my daughter's college savings.

When I choose to enroll my daughters in an activity or buy anything that their mother does not agree to, which is usually the case, I have to pay for it out of the minimal funds I have left. This gives all the parenting power to the obligee, which fully undermines the purpose of joint and equal parenting. As most who spoke at the hearing would agree equal parenting is the best means of ensuring the children's well-being. If all the funds, and decisions about their use, go to the obligee, it allows the obligee to put moral pressure on the obligor to pay for everything the children need. There is nothing the obligor can do to influence the obligee into paying for anything. In my case I'm paying for almost everything after already paying full guidelines. This means I'm essentially paying twice for everything. As someone said "current guidelines make it very hard to be a good father", but I have not let that stop me from doing the best I can.

I can understand the need for HB 161 to include an Applicability Provision to avoid inundating Family Courts. As well I understand the concern with the shared parenting plan, such as having minimum "Child overnights" 30% threshold tied to support guidelines. This could be addressed by simply removing that language from the Bill. As well as Rep. DeSimone stated, any financial component of a uniform support order is only established after the shared parenting plan is first established.

My case is not unique and has been scrutinized with no changes by several judges and lawyers. Any family who has been receiving uniform support orders since *Silva v. Silva* became precedent, is facing the same struggles. Paying over double what the guidelines should be, with no means of deciding how those funds are spent on their own children.

I would be very pleased to provide further input and testimony on the critical need for HB 161 to pass.. Thank you for all of your efforts to continue helping NH families.

Sincerely,

Michael Dinan

207-233-8571



Senate Judiciary Committee, 05/03/2021

HB161, relative to the calculation of child support.

Testimony of Pamela Keilig

Public Policy Specialist, NH Coalition Against Domestic and Sexual Violence

Good afternoon Madam Chair and Members of the Committee. My name is Pamela Keilig, and I am the Public Policy Specialist at the New Hampshire Coalition Against Domestic and Sexual Violence. The Coalition is an umbrella organization for 12 community-based crisis centers who each year provide free and confidential services to nearly 15,000 survivors of sexual and domestic violence. I am here in opposition of HB161, which would drastically alter the Child Support Guidelines in our state. Thank you for the opportunity to share this testimony.

When it comes to calculating child support, **the first and foremost consideration should be whether or not the outcome is in the best interest of the child.** However, HB161 shifts the entire outcome to a financial incentive. Currently, New Hampshire's Child Support Guidelines do not consider how much time a child spends with each parent. Instead, it is purely income-based calculated through a child support worksheet, taking into account the financial factors at play for each party. **There should be no incentive for someone to ask for or try to get more time with the child for financial gain.** Child support is a necessary means to ensure that children have relatively equal economic experiences across households. Child support ensures that children are fed, that they have a roof over their heads and that their basic needs are met. **The goal of establishing child support should be entirely focused on ensuring the wellbeing of the child.**

HB161 would place an undue burden on families who may already be experiencing conflict while navigating a divorce. **Moreover, this change would be particularly harmful for individuals in abusive relationships who are already vulnerable to being pressured by an abuser into less favorable child support agreements.** Domestic violence is a pattern of coercive behavior used by one person to gain and maintain power and control over another in the context of an intimate or familial relationship.

One way that abusers are able to leverage power and control is through using economic abuse, which can take on many forms such as preventing the victim from getting or keeping a job, not letting the victim have access to family income, and even goes as far as intentionally ruining a victim's credit or creating massive debt. **Nearly all victims of domestic violence experience financial abuse in their relationships.** The passage of this bill would grant abusers

one additional tool to further limit a victim's ability to be financially independent and free from abuse.

Additionally, abusers typically use their children as way to maintain power and control in their relationship, whether to make the victim feel guilty about how they care for their children, or even threatening to take the children away. The use of parenting time and "parenting time credits" is extremely problematic and will contribute to an abuser's ability to hold power over a victim in domestic violence cases. **As written, this legislation adds a new method to calculate child support and will no doubt have detrimental impacts on both the victim and their children.**

Advocates from our 12 crisis centers regularly share the extreme measures that abusers go to in order to obtain either full or primary custody of their children to intentionally hoard time away from the victim parent. The efforts to prevent victims from having the same level or appropriate levels of custody with their children is reflective of continued attempts to maintain power and control. Rather than seeking custody with the best interest of their child in mind, abusers instead use their children as pawns to extend the abuse even after the relationship with the victim has ended. If this legislation were to pass, abusers will not only use this as a means to take more time with their children and limit access to the victim, but also grants them the power to claim parenting credits, furthering the cycle of abuse.

In conclusion, HB 161 would give abusers more power to manipulate their victims, both financially and by leveraging time with their children. Children deserve care and support from parents unconditionally, and parenting time should not be a monetary incentive. The bottom line is, the first and foremost priority in any divorce should be whether an action is for the benefit of the child. We strongly encourage you to vote ITL on this bill.

New Hampshire Coalition Against Domestic & Sexual Violence • PO Box 353 • Concord, NH 03302 • 603.224.8893

NHCADSV.ORG

Jennifer Horgan

From: Cameron Lapine
Sent: Monday, May 3, 2021 3:03 PM
To: Jennifer Horgan
Subject: FW: HB 161

Hi, Jenny,

I think this was intended for the fine Senators of the Judiciary Committee, not the good Senators of the Executive Departments and Administration Committee.

Best,
Cameron M. Lapine
Senate Legislative Aide

Senator David Watters (District 4)
Senator Rebecca Perkins Kwoka (District 21) Senate Executive Departments and Administration Committee

Cameron.lapine@leg.state.nh.us
603-271-2104

-----Original Message-----

From: Frederick Berrien <fberrien@gmail.com>
Sent: Monday, May 3, 2021 2:48 PM
To: Sharon Carson <Sharon.Carson@leg.state.nh.us>; John Reagan <john.reagan111@gmail.com>; Kevin Cavanaugh <Kevin.Cavanaugh@leg.state.nh.us>; Denise Ricciardi <denise.ricciardi@leg.state.nh.us>; Suzanne Prentiss <Suzanne.Prentiss@leg.state.nh.us>; Cameron Lapine <Cameron.Lapine@leg.state.nh.us>
Subject: HB 161

Senators,

Thank you for your interest in the issue of child support, an issue which needs your attention for several reasons you heard today. As I mentioned there are two Supreme Court cases which have made it difficult for judges to deal with the concept of shared parenting (Silva and Silva Nos 2016 -0478, 2017-0063 and Anderson and Anderson 2019-0039). I hope this may be helpful to you.

It appears that this bill is not the answer, but it will be important to sort through all of the issues and bring forth effective legislation in the next year.

Best regards,
Skip Berrien
Exeter NH

2018 NEW HAMPSHIRE CHILD SUPPORT GUIDELINES REVIEW REPORT

Submitted to:

**The New Hampshire Department of Health and Human Services
New Hampshire Bureau of Child Support Services**

November 1, 2018

Submitted by

The Carsey School of Public Policy at the University of New Hampshire

Kristin Smith, Ph.D., Project Director and Principal Investigator

Michael Kalinowski, Ed.D., Co-Principal Investigator

Reagan Baughman, Ph.D., Economist

Emily Whitmore, Graduate Assistant



University of New Hampshire
Carsey School of Public Policy

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We acknowledge Fatemeh Hajnaghizadeh, graduate student at the University of New Hampshire for assistance collecting the court case file data. We thank Honorable Judge Kelly and his office and Attorney Petar M. Leonard, Section Officer of the Family Law Section of the NH Bar Association in New Hampshire for assistance with survey implementation. We thank Brigitte Holmes and Terry McCafferty for assistance with court file collection.

SECTION I: Introduction

In 2016, the State of New Hampshire, acting through the Department of Health and Human Services/Division of Child Support Services¹ (hereinafter “Department”), solicited proposals from responsible and qualified bidders to perform the quadrennial review of New Hampshire’s Child Support Guidelines (hereinafter “Guidelines”).

The Department is mandated under RSA 458-C:6 to review the Guidelines not less than once every 4 years in order to determine whether application of such guidelines results in the determination of appropriate child support award amounts.² The statute provides that the review shall meet the requirements of 42 U.S.C. section 667, which mandates that guidelines “shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts.” Additionally, Title 45 CFR 302.56(h) provides that, as part of the review of a State’s guidelines, “a State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State’s review of the guidelines to ensure that deviations from the guidelines are limited.”³

In 1977, the Department was designated as New Hampshire’s IV-D Agency and the Department is authorized under RSA 161:2, XIV to establish, direct and maintain a program of child support based upon Title IV-D of the Social Security Act as amended.

The use of guidelines for the calculation of child support obligations is a IV-D mandate and the Guidelines are codified at RSA Chapter 458-C:1-7. The Guidelines were enacted into law in 1988 (HB 1128) and were modeled on the “Income Shares” model, one of three federally approved basic child support calculation models used by child support agencies in order to be in compliance with the federal mandate to establish presumptive child support guidelines. The central tenet of the Income Shares model is that a child should receive the same proportion of parental income that he or she would have received if the parents were an intact family.

In December 2004, the New Hampshire Commission to Study Child Support Issues and Related Custody Issues (known as the HB 310 Commission) issued a Final Report which included an assessment of New Hampshire’s then-existing Guidelines. This Report served as the required four-year guidelines review. The Report included a finding that the application of NH’s then-existing Guidelines could result in “unfair and inappropriate” child support amounts. The Commission suggested several remedies to address this perceived deficiency, including the need for an economic analysis as part of a review of the Guidelines.

¹ Effective April 27, 2018, the Division is now the Bureau of Child Support Services.

² 42 U.S.C. sec. 667; accord 45 CFR 302.56(e).

³ 45 CFR 302.56(h)

For the 2008 review, The Department sought a vendor “with advanced technical expertise in the field of economics to review and provide an unbiased, reliable economic analysis of the Guidelines for the purpose of ensuring that the application of those guidelines results in the determination of appropriate child support award amounts.” The Department contracted with the University of New Hampshire (UNH) Cooperative Extension, (hereinafter “UNH”) to perform the 2008 Review.

UNH released their 2009 New Hampshire Child Support Guidelines Review and Recommendations on March 20, 2009. The report contained six recommendations for legislative changes to New Hampshire’s Guidelines. Of the six, three of the recommendations were subsequently legislatively enacted in modified form:

1. In 2010, HB 1193 eliminated the cost cap on child care expense deductions allowed under the Guidelines and amended the definition of allowable child care expenses by adding the phrase “and includes necessary work-related education and training costs” to the term “actual work-related expenses for the children to whom the order applies.”
2. Also in 2010, HB 1216, amended the definition of “self-support reserve” by increasing the amount from 100% to 115% of the federal poverty guidelines.
3. Finally, in 2012 HB 597, amended the Guidelines by replacing the flat percentage formula (25% of net income for one child, 33% for two children, etc.) with an income share formula that has a declining percentage of income to be applied to child support as net income increases. (The UNH Cooperative Extension Report recognized that although New Hampshire identified its model to be Income Shares, it reflected a Percentage of Income model.) The new child support formula became effective on July 1, 2013.

The legislative implementation of some of the 2009 Review recommendations, especially the July 1, 2013 effective date for the change to a true Income Shares formula, precluded any meaningful review of the Guidelines in 2013. Any review in 2013 would have been mostly redundant of the 2009 Review and of little value where the new formula needed to be applied over a sufficient period of time in order for the Guidelines data to be meaningfully reviewed. It was determined that a 2017 review would allow an appropriate time period for a proper evaluation of the Income Shares formula.

For the 2017-2018 Guidelines Review, the New Hampshire Department of Health and Human Services, Bureau of Child Support Services commissioned the Carsey School of Public Policy at the University of New Hampshire to conduct the 2017-2018 Guidelines Review. For this review, the research team reviewed the current child support guidelines in New Hampshire, analyzed current economic data on the costs of raising children, collected and analyzed court case files, implemented and analyzed surveys of judges, mediators, and family lawyers, collected input from key informants, Obligor and Obligee parents, and completed state visits to Massachusetts and Vermont. The results are presented in this New Hampshire Child Support Guidelines Review Report.

Note: Certain terms used in this Report are defined as follows:

“IV-D Cases”- Department initiated court cases in which a petition to establish paternity and/or establish and enforce an obligation for child and/or medical support is filed. These IV-D services are provided automatically to recipients of cash public assistance (TANF) and/or medical public assistance (Medicaid). The Department is mandated by IV-D federal authority to provide the same services to non-public assistance applicants.

“Divorce and Parenting Cases”- Court cases not initiated by Department petition. These cases are filed by either parent or their legal representative. The Department may provide IV-D services in such cases but the court proceeding was not Department initiated.

“Medical-Only Cases”- Cases in which the family has applied for and is receiving Medicaid services. A petition to enforce the obligation of medical support is filed by The Department. The Obligee is not receiving TANF and has not requested services from The Department to establish and enforce an obligation for child support.

We find that the transition to the Income Shares Model was successful and has resulted in more appropriate awards. Key informants state that parents understand the model premise and do not question the formula used in the guidelines worksheet. Likewise, Child Support staff voiced that the confusion by parents, and especially pressure from fathers, has lessened significantly.

However, we find that cases deviate 63 percent of the time, and deviate more so among divorce and parenting cases than among IV-D cases (83 percent compared with 37 percent, respectively). Given this high deviation rate, we question whether the current guidelines neglect to address common situations that are at the root of these deviations. We find that the main reasons for deviations include shared parenting (37 percent), the Obligor has low or no income (15 percent), and parties agree (10 percent). The most common rationale for deviation differs by whether the case is a divorce or parenting case or IV-D case. Shared parenting is given as the rationale for deviation in 42 percent of the divorce and parenting cases, while Obligor’s low or no income is given in 67 percent of the IV-D cases. Further, if these situations are common occurrences rather than exceptions, not addressing them may systematically disadvantage certain parents, specifically those who may not advocate or understand the court process. The high deviation rate results in a reduction of -\$187 per month on average and -\$363 per month among cases with a downward deviation.

The report is organized into the following sections:

Section II provides a background on New Hampshire families and child support.

Section III presents an analysis of case file data on the application of and deviation from the guidelines.

Section IV summarizes the findings from key stakeholder surveys and community forums.

Section V summarizes the findings from the key informant interviews and community forums.

Section VI provides a summary of state Office of Child Support Visits.

Section VII summarizes economic data on the cost of raising children and provides an updated schedule based on the data.

Section VIII offers recommendations and concludes.

SECTION II: Background

Child support guidelines play an important role in the financial wellbeing of many children. According to Grall (2016), twenty-two million children under 21 years of age lived with one parent in the United States in 2014, and thus were potentially eligible for child support. These 22 million children living with a custodial parent represented over one-quarter (27%) of all 83 million children under 21 years old living in families. About three-quarters (74%) of the custodial parents who were due child support in 2013 received either full or partial payments, while less than half (46%) received full payments.

It is important to note that child support was an important source of income for low-income custodial parents, accounting for over two-thirds (70%) of the mean annual personal income for recipient custodial parents with incomes below the poverty line.

The poverty rate of all custodial parent families in 2013 was 29 percent, a rate that is about twice as high as that in the total population. About one of every six custodial parents (17.5%) were fathers, essentially unchanged from 2004. The proportion of custodial fathers with income below poverty (17%) was lower than that of custodial mothers (31%).

A Snapshot of New Hampshire Families and Child Support

We first situate New Hampshire within the New England context. The divorce rate in 2016 for New England states ranged from 2.3 per thousand married people in Massachusetts to 3.4 in Maine and New Hampshire. This represents a slight increase in Connecticut, and slight reductions in the remaining New England states, including New Hampshire, compared to the previous year (NCHS, 2017).

Table 1. DIVORCE RATES IN NEW ENGLAND STATES, 2016

CT	MA	ME	NH	RI	VT
3.2	2.3	3.4	3.4	2.8	3.1

Source: NCHS, 2017

Within New Hampshire, Table 2 shows the number of divorces of New Hampshire couples with children over the past five years listed by county is below (NH Division of Vital Records). Hillsborough has the highest number and Coos the lowest number of divorces involving children.

Table 2: NEW HAMPSHIRE DIVORCES BY YEAR AND COUNTY, COUPLES WITH CHILDREN

	2011	2012	2013	2014	2015
Belknap	95	78	91	87	85
Carroll	84	75	89	59	67
Cheshire	121	114	126	140	114
Coos	43	55	61	61	47
Grafton	134	123	134	127	112
Hillsborough	674	676	715	599	539
Merrimack	281	289	281	242	274
Rockingham	558	549	531	495	417
Strafford	236	224	203	218	181
Sullivan	114	88	106	96	66

Source: New Hampshire Division of Vital Records Administration, 2016

In 2016 in New Hampshire, both the marriage rate (7.0) and the divorce rate (3.4) were slightly above national rates.

In New Hampshire, 19.5 percent of the population is under 18 years of age. In 2016, 29 percent of New Hampshire families with children under the age of 18 were single-parent families, the majority being headed by women (72 percent).

In New Hampshire, the poverty rate among families with children under 18 headed by women is nearly 10 points lower than the national rate at 30.6 percent. However, for those whose children are under the age of 5, the rate is closer to the national level at 43.7 percent. Coös County had the highest rate of single-parent families at 37.4 percent, followed by Sullivan County (33.1 percent), Belknap County (32.3 percent), and Grafton and Strafford Counties (31.2 percent and 31.1 percent, respectively). Rockingham County had the lowest rate by a fairly wide margin at 21.2 percent (New Hampshire Kid's Count Data Book, 2015).

In some New Hampshire cities, almost half of families with children under 18 are single-parent families. In Rochester, for example, 47.9 percent of families are single-parent, in Claremont 47.2 percent, in Berlin 43.1 percent, and in Manchester 41.8 percent. Grafton and Hillsborough Counties had the greatest differences between the number of female and male headed single-parent families, with female headed families accounting for approximately three-quarters of all single-parent families (74.2 and 74.0 percent, respectively). Carroll County had the least difference, with 60.9 percent female headed families and 39.1 percent male headed families (New Hampshire Kid's Count Data Book, 2015).

New Hampshire Child Support Guidelines

RSA 458-C. Child Support Guidelines stipulates that “the purpose is to establish a uniform system to be used in the determination of the amount of child support, to minimize the economic consequences to children, and to comply with applicable federal law by using specific guidelines based on the following principles:

- I. Both parents shall share responsibility for economic support of the children.
- II. The children in an Obligor’s initial family are entitled to a standard of living equal to that of the Obligor’s subsequent families.
- III. The percentage of net income paid for child support should vary according to the number of children and according to income level.”⁴

This report is based upon a 2017-2018 review of the New Hampshire guidelines, policies and procedures.

⁴ RSA 458-C:1.

SECTION III: Court Case File Review

Data were collected from court case files to comply with the federal mandate to analyze case data on the application of, and deviations from, the guidelines. The results are presented below.

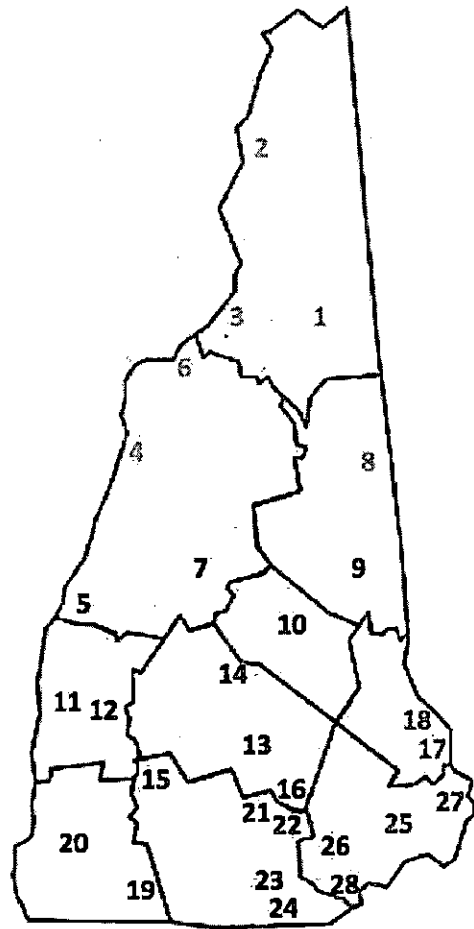
Methodology

The research team used a random, stratified cluster design and collected data from over 350 child support court case files disposed in 2016. The 28 New Hampshire family courts were stratified into five regions, and one court was randomly chosen from each region. Within each chosen court, court files were randomly selected, with the number selected proportional to the number of files disposed in the region in 2016.

Figure 1 displays the five geographic regions, with each family court numbered:

- Northern courts include 1st circuit courts in Berlin (1), Colebrook (2), and Lancaster (3); 2nd circuit courts in Haverhill (4), Littleton (6), and 3rd circuit court in Conway (8);
- Central courts include 2nd circuit court in Plymouth (7); 3rd circuit court in Ossipee (9); 4th circuit court in Laconia (10); and 6th circuit courts in Concord (13) and Franklin (14).
- Western courts include 2nd circuit court in Lebanon (5); 5th circuit courts in Claremont (11) and Newport (12); 6th circuit court in Hillsborough (15); 8th circuit courts in Jaffrey (19) and Keene (20);
- Southern courts include 6th circuit court in Hooksett (16); 9th circuit courts in Goffstown (21), Manchester (22), Merrimack (23) and Nashua (24); and 10th circuit courts in Derry (26) and Salem (28); and
- Eastern courts include 7th circuit courts in Dover (17) and Rochester (18); and 10th circuit courts in Brentwood (25) and Portsmouth (27).

FIGURE 1: NEW HAMPSHIRE FAMILY COURTS BY GEOGRAPHIC REGION



In 2016, according to New Hampshire state court data, there were a total of 2,670 initial disposed divorce and parenting court cases and 1,688 IV-D Cases (State petition court cases⁵), which formed the list of cases from which we drew our sample. A random sample of 171 files, or 6.4%, were selected from divorce and parenting cases. A random sample of 111 files, or 6.6%, were selected from the list of IV-D cases that had a Child Support Order. Combined with the divorce and parenting cases, our overall sample of cases with orders is 282.

Court case file data was collected from the guidelines worksheet, financial affidavits, uniform support orders, parenting plans, and other documents in the court files (see Appendix A to view our data collection template). Specific information collected for both Obligor and Obligees includes marital status, age, sex, town of residence, number of children in the support order, education, employment, earnings, income from other sources, public assistance, debt owed, child care and medical expenses, guidelines recommendations for support order amount and medical support amount, court ordered child support and medical support order amount, parenting plans, and reasons for deviation.

The data was input into Excel and then transferred into a STATA dataset. Variables were recoded and a weight was constructed based on geographic region. Results for court cases with a child support order are shown for divorce and parenting cases and IV-D cases. Table 4 presents the percent of cases by number of children and court by the case type.

Table 4. CASE FILE OVERVIEW

	All Cases with child support orders	Divorce & Parenting Cases	IV-D Cases with child support orders
Children			
One	61%	48%	78%
Two	31%	41%	18%
Three or more	8%	12%	4%
Court			
Dover	22%	20%	22%
Jaffrey	16%	17%	14%
Laconia	20%	20%	22%
Lancaster	8%	6%	10%
Manchester	33%	35%	31%
N	282	171	111

⁵ State petitions for child support are filed by the State when defined by the BCSS as having a state interest. Some reasons include assisting when child support is assigned if a parent applies for TANF or Medicaid, or enforcement of child support when the BCSS is bringing forth a case on behalf of a Non-TANF Obligees (i.e., EX-REL). Not all of the IV-D cases are recipients of TANF.

Child Support Order Amounts

Figure 2 compares average and median child support order amounts by case type. Recall that IV-D Medical support-only state petitions do not award child support orders and thus are excluded from this analysis, but will be discussed further below. Based on the 2016 New Hampshire sample, the average child support order is \$391 per month, and the median order is \$188. The lower median reflects the left skewed distribution of order awards due to the large proportion of awards being zero or less than \$50 per month (see Child Support Order distribution in Figure 3). Twenty percent of orders are set at zero and 18% are set at \$50 or less. In 2016, \$50 per month was the presumptive minimum order.⁶ On the other side of the spectrum, 12% of orders are set at \$850 or more per month, reflecting the wide range of support order amounts.

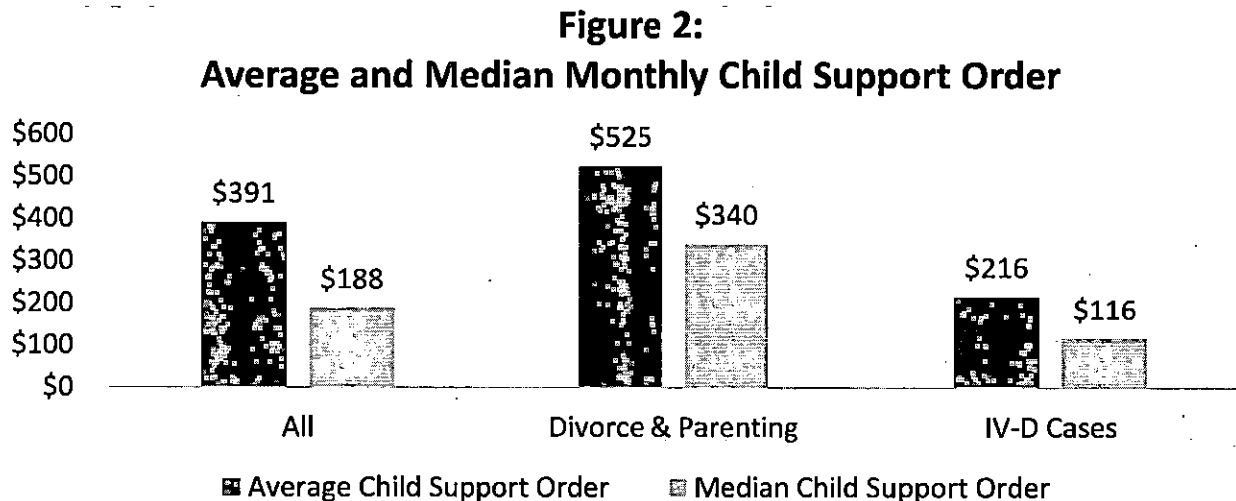
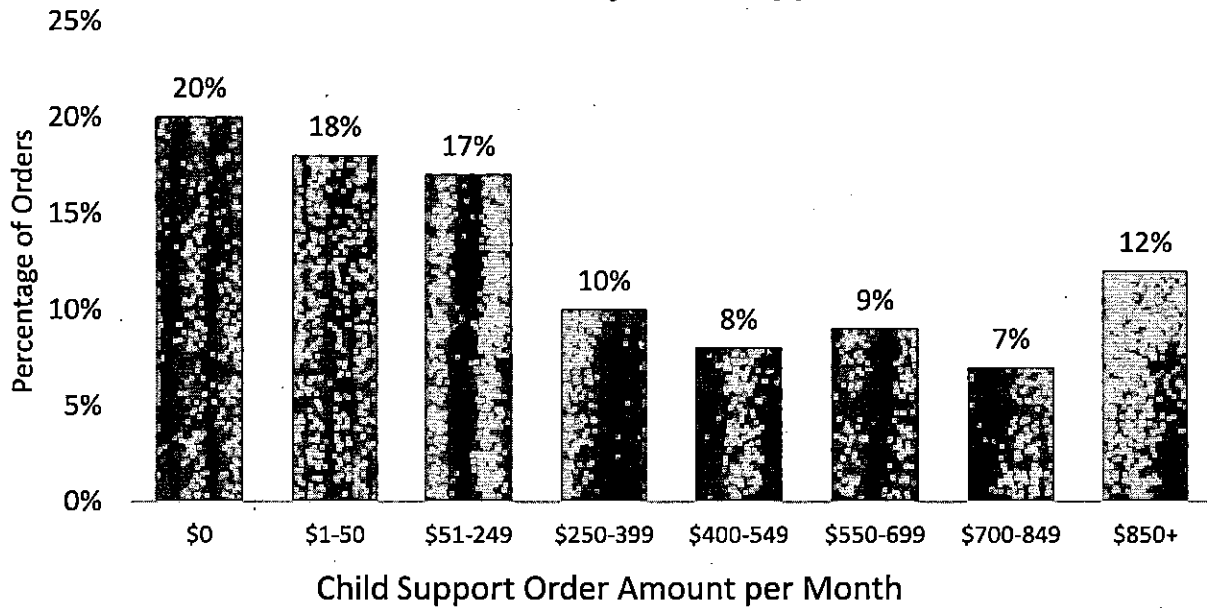


Figure 2 also shows that final awards are higher in divorce and parenting cases, with a mean of \$525 per month, compared with IV-D cases with child support awards, with a mean of \$216 per month. A higher percentage of divorce and parenting cases have awards set at zero than IV-D Cases (31% compared with 5%), while a higher percentage of IV-D Cases have awards set at \$1-\$50 per month than divorce and parenting cases (34% compared with 5%).

According to U.S. Census Bureau data from 2015 (the most recent data available), child support orders averaged \$480 per month nationally (Grall 2018, see Table 2). This is higher than the average New Hampshire amount of \$391 per month. There are differences in data collection techniques between the New Hampshire and the national estimate. The national estimate is based on a household survey of a representative sample of U.S. households, asked on the Current Population Survey and reports average amount due to Obligor parents annually, which may include arrears.

⁶ RSA 458-C2, V.

**Figure 3:
Distribution of Monthly Child Support Orders**

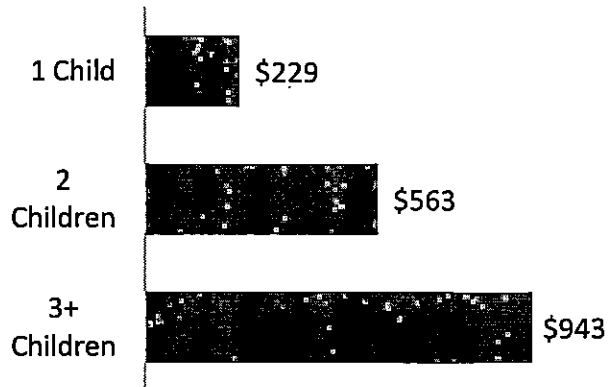


Factors Affecting Award Amounts

A number of factors affect award amounts, including the number of children for whom support is being determined, the level of deviation, the income of both parents, the self-support reserve amount, and the child support table. These will be discussed below.

Because the total cost of raising children increases as the number of children supported increases, support awards are higher when supporting more children. This is shown in Figure 4. The mean award is \$229 for one child, \$563 for two children, and \$943 for three or more children. These differences are all statistically significant.

**Figure 4:
Average Monthly Order Amount by Number of Children**



Child Support Guideline Deviations

Deviations from the presumptive order affect the child support award amount, by either reducing or increasing the order.

Federal regulations stipulate in 45 CFR 302.56, "Guidelines for Setting Child Support Orders," that states at least once every four years "review and revise, if appropriate" their child support guidelines "to ensure that their application results in the determination of appropriate child support award amounts." In addition, states are required to review case data "on the application of, and deviations from, the child support guidelines ... to ensure that deviations from the guidelines are limited and guidelines amounts are appropriate."

New Hampshire statute outline appropriate reasons for adjustments to the application of guidelines under "special circumstances" (see 458-C:5 Adjustments to the Application of Guidelines under Special Circumstances), "including, but not limited to, the following, if raised by any party to the action or by the courts, shall be considered in light of the best interests of the child and may results in adjustments in the application of support guidelines provided under this chapter. The court shall make written findings relative to the applicability of the following:

- (a) Ongoing extraordinary medical, dental or education expenses, including expenses related to the special needs of a children, incurred on behalf of the involved children.
- (b) Significantly high or low income of the Obligee or Obligor.
- (c) The economic consequences of the presence of stepparents, step-children or natural or adopted children.
- (d) Reasonable expenses incurred by the Obligor parent in exercising parental rights and responsibilities.
- (e) The economic consequences to either party of the disposition of a marital home made for the benefit of the child.
- (f) The opportunity to optimize both parties' after-tax income by taking in to account federal tax consequences of an order of support.
- (g) State tax obligations.
- (h) Parenting schedule.
- (i) The economic consequences to either party of providing for the voluntary or court-ordered postsecondary educational expenses of a natural or adopted child.

(j) Other special circumstances found by the court to avoid an unreasonably low or confiscatory support order, taking all relevant circumstances into considerations.”

Table 5 shows that **the guideline deviation rate is 63% in New Hampshire**. The majority of deviations, 87%, were downward, which is typical in most states. Among cases with any deviation, the average deviation amount is -\$187 per month. The average deviation amount among cases with downward deviations is -\$363 per month. The average presumptive order amount, calculated from the guidelines worksheets found in the court case files from our sample, is \$578 per month, much higher than the average monthly final order award of \$391.

Deviation rates are higher in divorce and parenting cases, 83%, than in IV-D Cases, 37%. Divorce and parenting cases have higher deviation amounts compared with IV-D Cases. These differences are statistically significant.

There is a negative relationship between level of downward deviation and child support order, meaning that as the downward deviation level increases the child support amount decreases.

New Hampshire’s deviation rate appears to be larger than other states. The deviation rate in Massachusetts is 10% (Sarro and Rogers 2017) and Vermont does not have a published deviation rate. However, 25% of Pennsylvania’s new orders deviated in 2013-2014, a rate similar to Delaware (23%), Maryland (23%), Ohio (23%), New York (23%), and Arizona (23%) (Venohr 2016).

Table 5. GUIDELINE DEVIATION OVERVIEW

	Average Presumptive Order Amount	Average Monthly Final Order Amount	Percent with Deviation	Average Deviation Amount
All Cases with orders	\$578	\$391	63%	-\$187
Divorce & Parenting	\$830	\$525	83%	-\$305
IV-D Cases	\$249	\$216	37%	-\$33

Reasons for deviations

Table 6 shows that deviations occur as a result of a variety of circumstances in New Hampshire. Among orders with a child support deviation, 37% give shared parenting as the rationale. Shared expenses and Obligor pays expenses represent 4% and 6% of reasons, respectively. Deviations occur in 15% of cases as a result of low income on the part of the Obligor due to unemployment, incarceration, or disability, for example. In 10% of cases with deviations, parties agree on a child support amount that differs from the guidelines amount. In this type of case, the Court may deviate from the guidelines in consideration of such a request.

The rationale given for deviations varies by case type, with shared parenting being a more prominent reason given in divorce and parenting cases (42%), while the low income of the Obligor is given in 67% of the IV-D Cases with a child support order.

In 17% of cases with deviations, the court file states the child support order complies with the guidelines, yet our calculations show that there is a deviation between the presumptive order specified in the guidelines worksheet and the final order. In 24% of these cases, the deviation is an upward deviation or the amount of the deviation is small.

Table 6. DEVIATION RATIONALE BY CASE TYPE (FIRST RATIONALE GIVEN)

	All Cases with support order	Divorce & Parenting	IV-D Cases with support order
Shared Parenting	37%	42%	9%
Shared Expenses	4%	5%	--
Obligor Pays Expenses	6%	6%	9%
Obligor Low or no Income	15%	7%	67%
Parties Agree	10%	10%	10%
Entered Upon Default	2%	2%	--
Other Circumstances	4%	4%	5%
Says 'Complies,' yet Deviates	17%	20%	--
N	152	130	22

Note: Deviation types are based on first reason given. The top three second reasons given were shared expenses (31%), similar income of parents (20%), and to avoid a confiscatory order (10%) for all cases with a child support order (n=49).

Frequent deviations from the presumptive orders under the guidelines may indicate a need to revise the guidelines so they yield an appropriate child support amount more broadly. Federal and New Hampshire law imply that courts should deviate from the guidelines in exceptional or special circumstances. If guidelines are well-constructed, deviations will be exceptions and the guidelines will be the rule. The majority of reasons given for deviations in New Hampshire fall within the "special circumstances" outlined in State law.

Excluding shared parenting as a rationale for deviation in child support, the deviation rate declines from 63% to 42%. For divorce and parenting cases alone, the rate declines from 83% to 48%. Among IV-D cases, the deviation rate decreases only slightly when shared parenting is excluded as a rationale, from 37% to 35%.

Obligor Parent Income

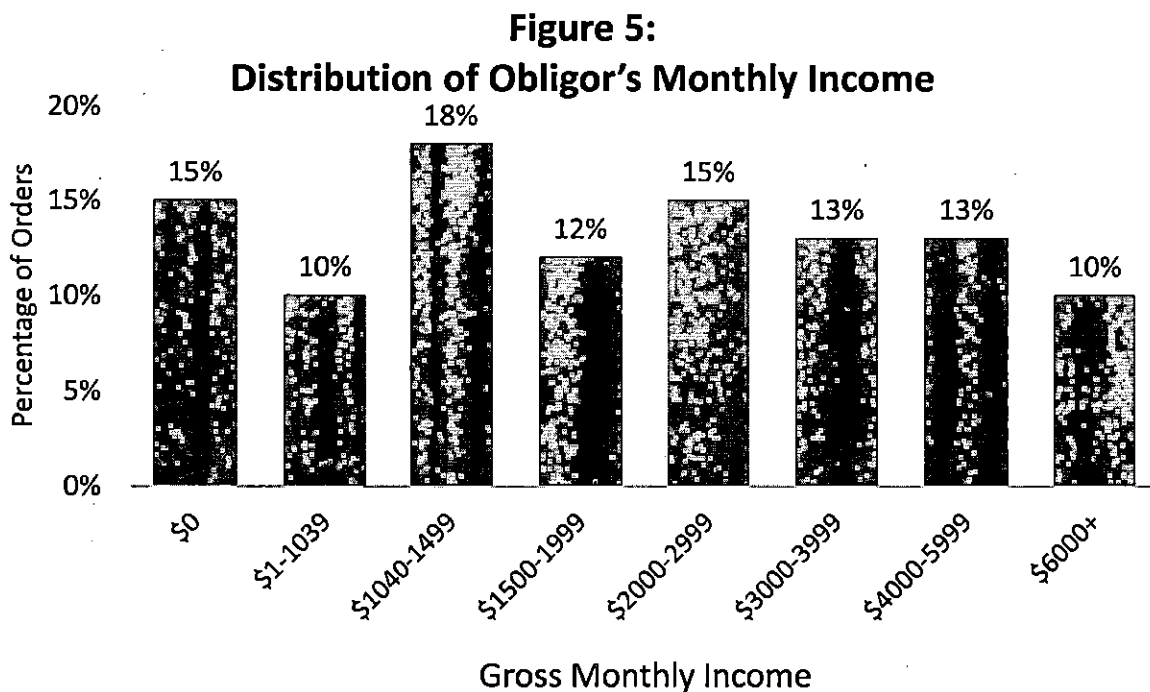
Another factor that influences the award amounts is the income of the parents. The mean gross monthly income of Obligor parents in 2016 is \$2,906, with a median of \$2,010. That median income is less than the mean income reflects the fact that Obligor parents' income

skews to the left, with more parents with lower incomes than higher incomes. This skewing can be seen in Figure 5, where the distribution of Obligor parents' income is displayed.

The sample data shows that 22% of Obligor parents are female and have a lower mean monthly income than male Obligor parents (\$1,766 compared with \$3,223, respectively). The difference is statistically significant.

Figure 5 shows a concentration of Obligor parents with gross incomes equivalent to roughly full-time employment at the minimum wage. In 2016, the New Hampshire state minimum wage was \$7.25 per hour, multiplied by 40 hours per week yields \$1,257 per month. Figure 5 shows 18% of Obligor parents earned a gross monthly income between \$1,040 and \$1,499.

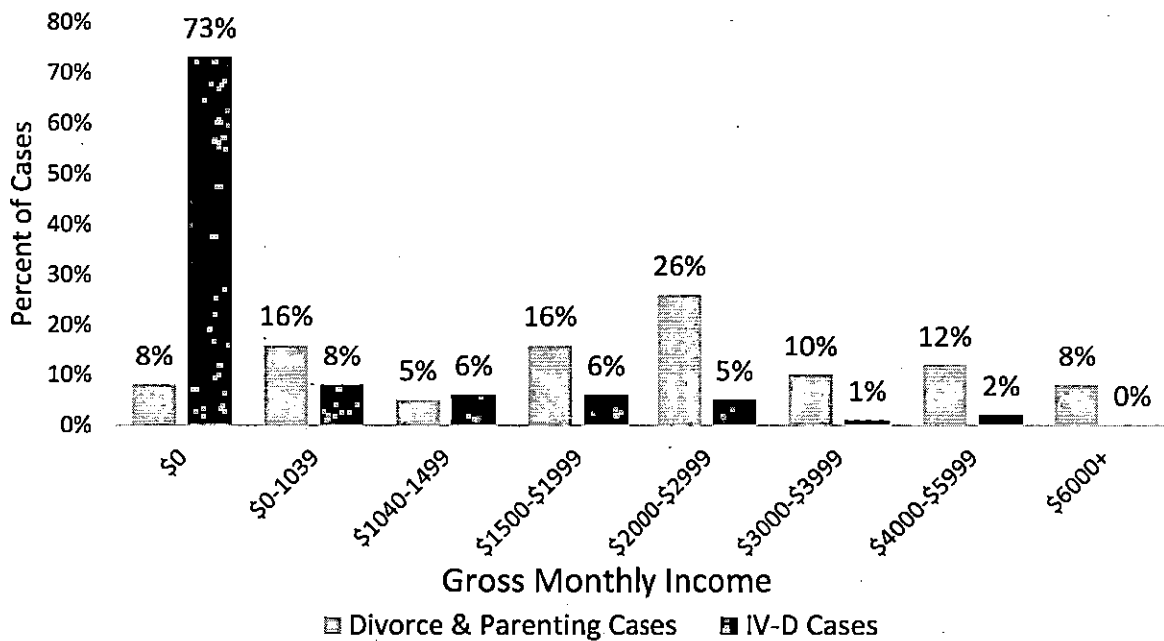
The self-support reserve in 2016 was \$1,039, or 115% of the poverty line. Figure 5 shows that 10% of Obligor parents earned income less than the self-support reserve and another 15% had no income. Award amounts are lower and are less likely to deviate when the self-support reserve is calculated into the child support obligation.



Obligee Parent Income

Obligee parents have lower earnings than Obligor parents. On average, Obligee parents earn \$1,839, roughly \$1,000 less per month than Obligor parents (who earn on average \$2,906 per month). Figure 6 shows the distribution of income for Obligee parents by case type. Among IV-D Cases, nearly three quarters of Obligee parents have zero income. This is driving their low average income, which is \$442 per month. Obligee parents with divorce and parenting cases earn more, \$2,910 on average per month.

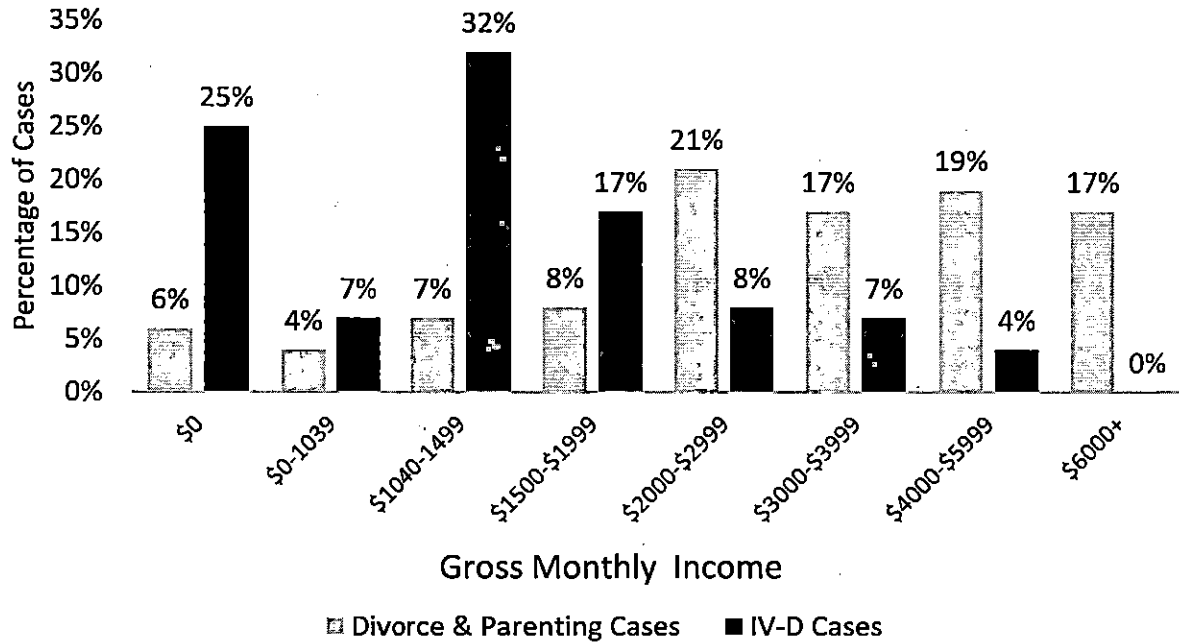
**Figure 6:
Distribution of Obligee’s Monthly Income by Case Type**



Obligor Income by Case Type

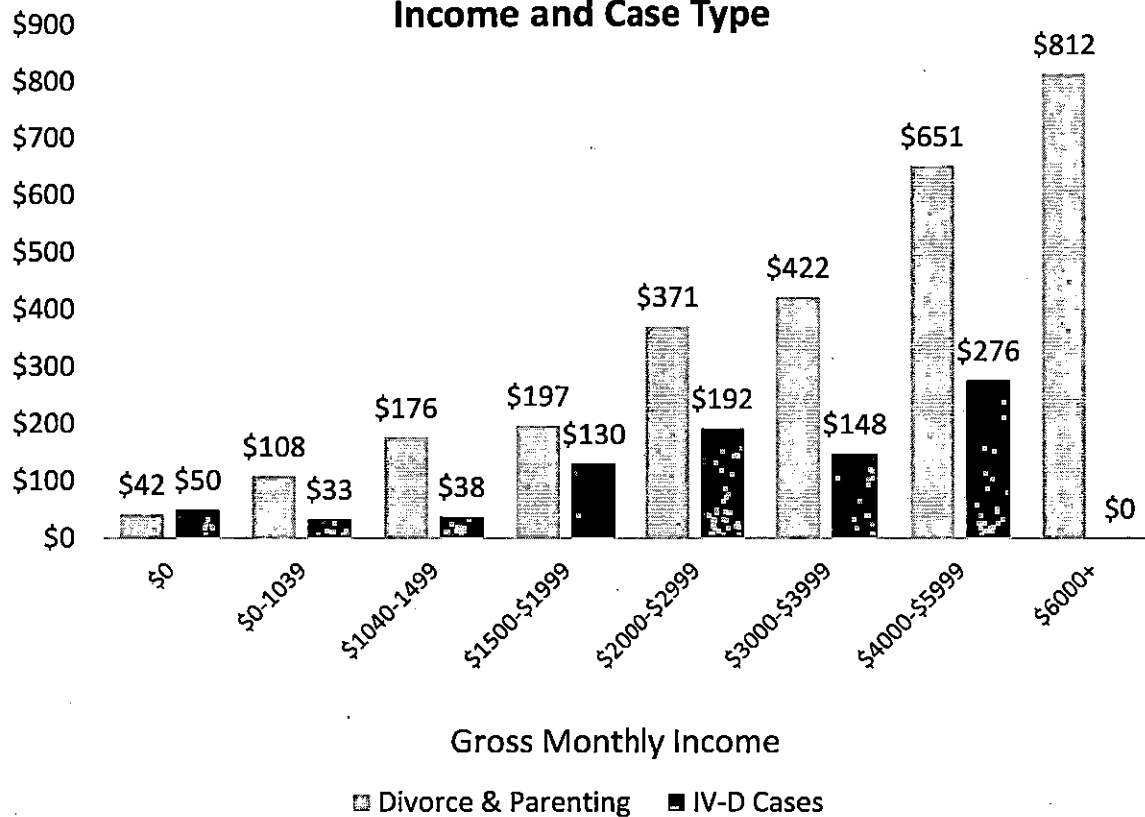
Figure 7 reveals a stark difference in Obligor parent incomes by case type. Obligor parents in the IV-D cases have lower income than those with divorce and parenting cases, with IV-D cases driving the skew to the left. Among IV-D cases, 15% of Obligor parents have no income and 32% have the equivalent of full-time minimum wage employment. Only 7% of Obligor parents have income within the range of \$1-\$1039, an equivalent to less than full-time at minimum wage. Obligor parents with divorce and parenting cases are concentrated in the higher income groups. On average, IV-D Obligor parents earn gross monthly income of \$1,357, while divorce and parenting Obligor parents earn more at \$4,094 per month. These differences are statistically significant.

**Figure 7:
Distribution of Obligor's Monthly Income by Case type**



Deviation levels increase as Obligor's income increases, particularly in divorce and parenting cases as presented in Figure 8. Deviation levels are larger in divorce and parenting cases than in IV-D cases, as average downward deviation amounts are \$454 per month and \$113 per month, respectively. These differences are statistically significant.

**Figure 8:
Monthly Downward Deviation Amount by Obligor's
Income and Case Type**



Parenting Plans

The parenting plan is yet another factor that influences the order amount. As seen above, shared parenting is a prominent reason for deviations from the guidelines order amount and may be a large contributor to the high deviation rate among high-income parents. For the analysis of parenting plans, we limit our sample to divorce and parenting cases because IV-D cases rarely include a parenting plan.⁷ We find that parenting plans, on average, specify 7 nights per month with the Obligor parent in New Hampshire.

⁷ In fact, in our sample, the only IV-D cases that did include parenting plans were those where obligors sought parenting plans AFTER the child support order was established through a TANF state petition without a parenting plan. These cases were selected as part of the divorce and parenting sample.

**Figure 9:
Distribution of Nights
per Month among
Divorce and Parenting
Cases**

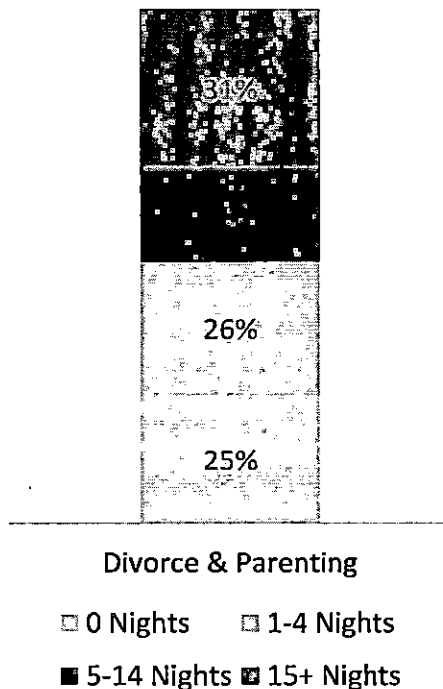


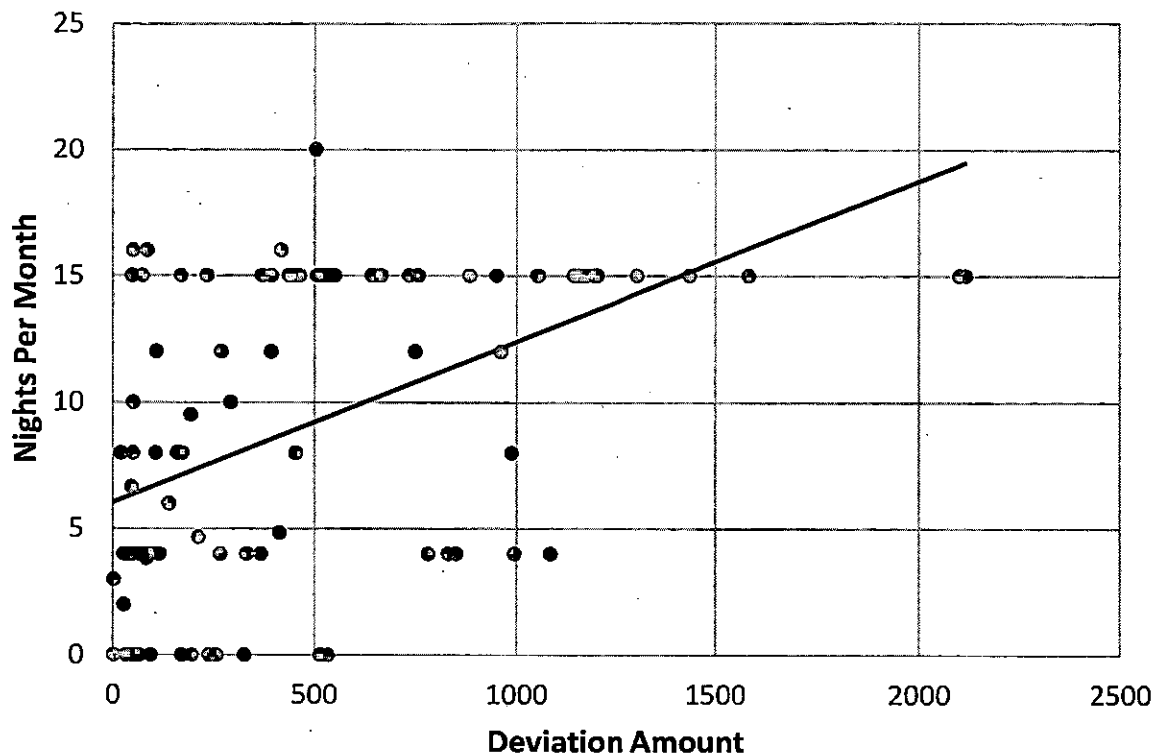
Figure 9 shows that:

- The largest group, at 31%, are the cases where the parenting plan is 50-50, with children spending 15 or more nights with the Obligor parent.
- Obligor parents have a parenting plan to care for their children for 5 to 14 nights per month in just under one fifth of the cases.
- About one quarter of the cases plan for Obligor parents to have their children overnight 1-4 nights, roughly equivalent to every other weekend at the maximum.
- 25% of the parenting plans either explicitly denote that Obligor parent cannot parent their children overnight or the cases have no overnights planned for the Obligor parent for other reasons.

States vary in their definition of what level of time spent with each parent overnight (i.e. number of nights) constitutes equal parenting or shared parenting. This is discussed below.

Figure 10 presents a scatterplot showing the positive relationship between nights spent per month with the Obligor parent and the amount of the downward deviation. The upward slope of the trend line indicates that as nights per month increase, so too does the amount of the downward deviation. Similarly, as the nights per month increase the final order amount decreases (data not shown).

Figure 10: SCATTERPLOT OF NIGHTS PER MONTH BY AMOUNT OF DOWNWARD DEVIATION



Child Care Costs

Most states consider the actual amount expended on child care on a case-by-case basis in the child support calculation because these expenses are highly variable among cases, for example there may be no childcare expenses for an older child (Venohr, 2017).

New Hampshire, like most states, does not include child care expenses in the child support table because not all parents incur child care expenses, and expenses vary greatly among those that do. Instead, child care expenses are considered on a case-by-case basis in the guidelines worksheet when calculating the child support award. Parents deduct their child care expenses from their income, thus adjusting their gross income.

The 2016 sample court case data find that only 10% of Obligors and 18% of Obligees pay for child care among cases with children under 12, and thus include an adjustment for child care expenses when calculating child support. This translates into 33% of child support cases with final orders adjusting for child care costs.

On average, Obligors spend \$424 per month on child care and Obligees spend \$361 per month on child care. In all cases with children under 12, the average cost adjustment for child care is \$497 per month, or \$124 per week.

Table 7. COST OF MONTHLY CHILDCARE, CASES WITH CHILDREN UNDER 12

	Percent of Cases with Child Care Costs	Average Cost of Child Care Reported
Obligors with costs	15%	\$424
Obligees with costs	27%	\$361
Cases with child care costs	22%	\$497

These numbers are somewhat lower than other New Hampshire data on child care costs. First, the 2015 New Hampshire Child Care Market Rate Survey (Kalinowski and Kalinowski, 2016) found the following mean weekly per child rates shown in Table 8. Rates in Eastern and Southern regions of New Hampshire are highest for all age ranges. The lower costs found in the court case data may be due to our sample representing a larger proportion of low earning parents compared with the overall population in New Hampshire.

Table 8: WEEKLY AVERAGE COST OF FULL-TIME CHILD CARE IN NEW HAMPSHIRE, 2016

Full-Time Weekly Average	6wks-12 months	13-24 months	25-35 months	36-59 months	60-71 months
New Hampshire	\$226.08	\$213.32	\$202.75	\$188.12	\$179.03
Eastern	\$245.20	\$228.79	\$220.42	\$201.38	\$185.86
Western	\$213.47	\$199.44	\$182.63	\$165.74	\$144.04
Northern	\$190.57	\$182.67	\$171.91	\$166.54	\$162.14
Concord	\$204.91	\$194.22	\$186.84	\$176.14	\$167.97
Southern	\$239.02	\$228.89	\$215.18	\$199.47	\$191.47

Source: New Hampshire Child Care Market Rate Survey, 2016

In addition, a Carsey brief published child care costs for families with children under 6 by state using the Current Population Survey data. The authors found that in New Hampshire, 39% of families with children under 6 paid for child care, and among those who paid the average cost was \$7,798 annually, or \$649 per month or \$162 per week (Mattingly, Schaefer, and Carson 2016). These numbers are somewhat higher than the court case data, but it is reasonable that New Hampshire families with children under 6 would have higher child care costs, given the higher cost of infant and toddler care compared with school-age children, who do not need child care during regular school hours though many parents rely on child care for school age children before and after school.

Medical Expenses for Health Insurance Coverage

Similar to child care costs, New Hampshire does not include medical expenses in the child support table because not all parents incur medical expenses, and expenses vary greatly among those that do. Thus, medical expenses are considered on a case-by-case basis in the guidelines worksheet when calculating the child support award. In the guidelines worksheet Obligor and Obligees are allowed to enter the actual amount paid by the Obligor (LINE 5F) or Obligee (LINE 8B) for adding the child(ren) to the whom the child support order applies to existing health insurance coverage, or the difference between individual and family coverage.

The 2016 sample court case data find that only 17% of Obligor and 12% of Obligees have medical expenses for health insurance for their child(ren), and thus include an adjustment for medical expenses when calculating child support. This translates into 15% of child support cases adjusting for medical expenses for health insurance.

On average, Obligor spend \$227 per month on medical expenses for health insurance coverage and Obligees spend \$175 per month. In all cases with a final order, the average cost adjustment for medical expenses for health insurance is \$250.

Table 9. COST OF MONTHLY MEDICAL EXPENSES FOR HEALTH CARE COVERAGE

	Percent of Cases with Medical Costs	Average Cost of Medical Costs Reported
Obligor with costs	17%	\$227
Obligees with costs	12%	\$175
Cases with support order and medical costs	15%	\$250

SECTION IV: KEY STAKEHOLDER SURVEYS

As part of our Guidelines Review we conducted surveys of judges, marital masters, and judge officers; public and private mediators; and public and private attorneys.

Methodology

Questions developed to solicit input on impacts of recent legislation, frequency of and reasons for deviations, top issues and concerns regarding child support, suggested changes to improve child support, and how the issue of parenting time has impacted child support cases. The survey questions can be viewed in Appendix B.

All surveys were administered online via Qualtrics. Each survey was developed and then externally reviewed to ensure clarity, appropriate language, and suitable content.

Implementation: We surveyed three groups of people knowledgeable about the family court: Judges, Marital Masters, and Judicial Officers; public and private mediators; and public and private family law attorneys.

Judges, Marital Masters, and Judicial Officers: Our team worked with the Honorable Judge Kelly and his office. An email with a link to our survey to ALL judges, marital masters, and judicial officers in New Hampshire was sent from Judge Kelly's office with a statement encouraging participation. The judges' survey was fielded for four weeks, with two email reminders sent to encourage participation from Judge Kelly's office. We received 36 responses, for a response rate of 78%.

Mediators: Public sector mediators were sent the online survey from Judge Kelly's office via email, following a similar process as detailed above for the judges' survey. A list of private mediators was compiled by accessing a list of private mediators in New Hampshire through the NH Office of Professional Licensure and Certification: Family Mediator Certification website. The mediator surveys were in the field for four weeks with two email reminders sent to encourage participation. We received 14 responses from state mediators with a response rate of 40%, and 4 responses from public mediators with a response rate of 31%.

Attorneys: Public sector attorneys were sent an email with a link to the online survey from the Chief Staff Attorney at NH BCSS, with a statement encouraging participation. Private sector family lawyers were sent an email with a link to the online survey from Attorney Petar M. Leonard, Section Officer of the Family Law Section of the NH Bar Association in New Hampshire. The attorney surveys were in the field for eight weeks with two email reminders sent to encourage participation. We received 9 responses from public attorneys with a response rate of 90%, and 70 initial but 47 completed responses from private attorneys with a response rate of 19% initially and 13% completed surveys.

Analysis

Data were compiled in Excel and analyzed for patterns and concentration of issues. The results are presented below.

Impact of Legislation

Since the last Child Support Guidelines review in 2009, several pieces of legislation concerning child support have been passed in New Hampshire. Three represent recommendations from the 2009 Guidelines Review.

Table 10. IMPACT OF LEGISLATION

"Did any of the following legislation significantly impact your mediations, recommendations, or decisions during 2015-2017 in which child support was an issue?"				
	Mediators	Public Attorneys	Private Attorneys	Judges
HB1193 (2010) Cost of Childcare	67%	44%	49%	36%
HB597 (2012) Income Shares	39%	67%	55%	36%
HB1216 (2012) Self Support Reserve	22%	100%	43%	28%
SB25 (2013) Medical Support	33%	56%	36%	21%
HB1632 (2014) Disabilities	11%	11%	19%	19%
N	18	9	47	36

Percent of respondents answering "yes" within groups

Since the 2009 Guidelines Review, the first child support related bill was passed in 2010 (HB 1193) which removed the limitations on the cost of child care. Across all survey groups, respondents reported that their decisions were impacted by this guidelines change, ranging from 36% of judges to 67% of mediators.

In 2012, HB 597 changed the child support guidelines model from a Percent Income Model to an Income Shares Model. More than half of both public and private attorneys reported that changing to an Income Shares Model impacted their recommendations. Less than half of mediators and judges reported that HB597 impacted their decisions.

HB 1216, increasing the self-support reserve from 100% to 115% of the federal poverty line, was enacted in 2012. This legislation was noted by all public attorneys to impact their recommendations, and 43% of the private attorneys. About one quarter of mediators and judges reported that establishing a self-support reserve at 115% of poverty impacted their mediations or decisions.

In 2013, SB 25 clarified the calculation of medical support obligations and the self-support reserve in child support cases. Slightly more than half of public attorneys reported that SB25 impacted their decisions, less than half of all other survey groups reported that this impacted their decisions.

HB1612, enacted in 2014, clarified that no child support order for a child with disabilities that takes effect after July 9, 2013 may continue after the child reaches 21 years of age. Respondents across survey groups report minimal impact on their mediations, recommendations, or decisions.

Deviations

Under New Hampshire state law, Chapter 458-C:5 allows for adjustments to the application of the Guidelines.

Respondents across all groups were asked if their decisions, recommendations, or proposed orders deviated from the child support guidelines. Nearly all respondents in each survey group reported deviations from the guidelines, with 100% of public and private mediators saying that deviations were present.

Respondents across all groups were asked if the adjustments resulted in higher or lower adjustments (or no adjustments, for the few respondents that did not report deviations). Those who reported no adjustments were not included in this table. Overwhelmingly, those surveyed reported adjustments resulted in lower orders.

Table 11. DEVIATIONS

"Did any amount ordered during 2015-2017 deviate from the support guidelines?"				
	Mediators	Public Attorneys	Private Attorneys	Judges
Yes	100%	88%	92%	91%
Higher	6%	--	--	6%
Lower	94%	100%	100%	94%
No	--	13%	8%	9%
N	16	8	36	35

Percent within survey groups

Reasons for Deviations

Reasons cited for deviations varied among groups, with one exception: the most frequently cited reason for deviations across all groups was shared parenting. Half of mediators, 38% of private attorneys, 31% of judges and 30% of public attorneys stated shared parenting as a reason for deviations. Shared expenses were also cited as a reason for deviations.

Other frequently cited reasons for deviations concerned costs related to raising children, such as travel costs to exercise parenting rights, costs for extra-curricular activities, health care or housing. Similarly, income related reasons, such as Obligor or Obligee hardship or equal incomes, were also cited. Other reasons given for deviations included other children or child support obligations, to avoid a confiscatory order, or general agreement of parties.

Table 12. TOP REASONS FOR DEVIATIONS

"Please rank those top three reasons for your 2015-2017 adjustments"				
	Mediators	Public Attorneys	Private Attorneys	Judges
Shared Parenting or Expenses	59%	30%	58%	44%
Shared Parenting	50%	30%	38%	31%
Shared Expenses	27%	--	20%	13%
Costs Related	13%	15%	16%	17%
Travel Costs	3%	15%	9%	12%
Extra-curricular Activities	7%	--	4%	3%
Healthcare	3%	--	2%	1%
Housing	3%	--	1%	1%
Income Related	13%	25%	11%	20%
High Income	--	--	2%	3%
Approx. Equal Incomes	10%	--	2%	--
Income Disparity	3%	--	1%	5%
Low Income	--	--	1%	4%
Hardship	3%	25%	5%	5%
Change in Income	--	--	--	3%
Other	15%	30%	8%	23%
General Agreement of Parties	7%	--	1%	8%
Other Child Support Obligations	7%	20%	5%	9%
Child Changing Residence	3%	--	1%	--
To Avoid Confiscatory Order	3%	10%	1%	3%
Other Household Members	--	--	--	3%
Total Reasons Cited	39	20	82	78

Percent within survey groups

Top Issues and Concerns

Respondents were asked to state their biggest concerns regarding child support. The responses varied, reflecting the diverse roles and clientele each group serves. For mediators, the top issue reported was the guidelines do not provide a systematic way to account for shared parenting and the second most popular issue reported was that the guidelines are too complicated. One mediator notes that they should, "make the parties better prepared [so] that they will have to bring financial documentation to mediation---paystubs, financial affidavits, etc."

Among public attorneys, the top issues are that the guidelines do not account for other children or family, determining the self-employment or cash income of the Obligor, and the increase in

guardianship cases. A public attorney states there has been a, “huge increase in children living with relatives/guardians due to drug crisis and related issues.”

Private attorneys reported the lack of a systematic way to account for shared parenting as their top issue (58% reported this issue), followed by enforcement, the need for child support for children after they turn age 18, and that presumptive orders are too high. “When there is a shared parenting plan, what is an appropriate deviation? It should be more uniform,” states a private attorney.

Judges noted enforcement as their top issue, and second was when both parties have low or no income. Judges also noted unemployment as another reason. There is a “high percentage of people receiving disability benefits,” one Judge notes.

One mediator comments on the hardship for low income Obligor, “If the Obligor is a low-income earner, trying to reestablish oneself after divorce, getting a job, the loss of housing, job or transportation. They cannot live on the self-support reserve. Who can?”

Table 13. TOP ISSUES

“ISSUES: What are your three biggest child support concerns today?”				
	Mediators	Public Attorneys	Private Attorneys	Judges
No systematic way to account for:				
Shared parenting	14%	7%	58%	4%
Shared expenses	7%	7%	8%	1%
Extra-curricular activities	7%	--	3%	1%
Other children/family	--	14%	--	--
Determining self-employment Income	--	14%	6%	4%
Too complicated	10%	--	3%	1%
Increase in guardianship cases	--	14%	--	3%
Enforcement	--	7%	26%	30%
Support needed for children 18+	--	--	16%	--
Presumptive orders are too high	--	7%	13%	--
Low income/income disparity/equal incomes	7%	13%	3%	10%
Total Issues Cited	29	15	75	72

Percent of most frequently cited issues within survey groups

Respondents were also asked to describe their biggest concern regarding the child support determination process. Lack of parameters for shared parenting, enforcement, court delays, the accessibility of the guidelines, and the lack of calculation uniformity across courts were the top concerns cited by respondents.

Both public and private attorneys note court delay as their biggest concern. One states, “it takes too long to get a hearing.” While another notes, “it is too slow and expensive.” A third attorney sums it up, “Delay, delay, delay. And when not being paid the cost of a contempt or modification, it is too much for the payee.”

Table 14. TOP CONCERN

“In one sentence, please describe your biggest concern today regarding the original child support determination process in NH.”				
	Mediators	Public Attorneys	Private Attorneys	Judges
Parameters for shared parenting	30%	--	10%	11%
Enforcement	--	14%	10%	39%
Court Delay	10%	71%	47%	22%
Accessibility/Complicated	--	14%	--	--
Uniformity Across Courts	20%	--	--	--
Total Concerns Cited	10	7	30	78

Percent of top three concerns within survey groups

Changes to the Support Guidelines

Respondents were asked to note what they would change or improve related to the child support guidelines.

Noteworthy among the suggested changes is the consistent recommendation to include a formula for shared parenting among all survey groups. One private attorney states, “There is no guidance on shared parenting—which leads to more fighting.” And a mediator suggests as a recommended change “to make a specific calculation for shared parenting like the one that is used in Vermont.”

Mediators, private attorneys, and judges would like to see the calculations based on net income rather than gross income. One private attorney states, “Support is unrealistic as it uses gross income as a base. Fed tax is paid first. Period. Stop acting like it is an option.”

Judges and private attorneys suggested that guidelines include the costs of health insurance, child care, and extra-curricular activities. One judge states, there are “high health insurance

costs for children.” While a private attorney notes that there is a “heavy burden of maintaining health coverage.” On private attorney calls for “greater recognition in the calculation for the high cost of the premiums paid by the parent who provides health insurance for the children. The current calculation is not, but perhaps should be, a more significant reduction in the cost of those often very high premiums.”

Both private and public attorneys recommend improving the fairness of the income shares model, as they state that higher income Obligor are paying a lower percent.

Another suggestion included uniformity across courts, as one private attorney states that *“different judges are handling 50:50 residential responsibility differently.”*

Respondents also state the need for educating parents and improving accessibility, “The calculations, and access to BCSS and the Family Court, should be more user friendly for parties than it is today.”

In addition, lowering orders, providing uniformity when the Obligee or the Obligor has multiple child support orders (public attorneys) and considering the cost of other dependents (judges) are suggested improvements.

Table 15. CHANGES

“If you could change or improve one thing related to the current child support guidelines, what would that be?”				
	Mediators	Public Attorneys	Private Attorneys	Judges
Formula for Shared Parenting Include in Calculation	47%	20%	32%	10%
Healthcare Costs	--	--	8%	20%
Extra-curricular Activities	--	--	4%	10%
Alimony	--	--	4%	--
Other Dependents/Members	--	--	--	20%
Increase Education/Accessibility	--	--	4%	10%
Uniformity Across Courts	7%	20%	8%	--
Improve Enforcement	--	--	4%	10%
Base on Net Income	7%	--	4%	10%
Fairness of Income Shares Model	--	20%	8%	10%
Lower Orders	--	--	4%	10%
Total Changes Cited	15	5	25	10

Percent within survey groups

Parenting Time

Private and public family lawyers were asked a set of questions about parenting time. In response to how parenting time and shared parenting has impacted their child support cases over the past two years, attorneys primarily reported that there are misconceptions about shared parenting and misuse of parenting time to reduce support orders. Attorneys stated that their clients expect that shared parenting will result in no child support order, or will reduce their order. Private lawyers recognized that if a parent has approximately equal parenting time, he or she should not pay the full guideline amount of support, but noted that if the Obligor has higher earnings than the Obligee, child support orders will be reduced but not eliminated. However, attorneys also voice concerns about using parenting time as a way of reducing support, as one attorney voiced:

“I find that often one parent who clearly should not have equal parenting time will insist on “fighting” for “joint custody” primarily to avoid or deviate downward from the guidelines even if their proposal is not feasible and clearly not in the best interest of the child.”

Many private lawyers stressed that parenting time and child support should be two separate issues, however some expressed frustration as to how to operationalize this:

“I urge clients (and parties when I’m a mediator) to first address the parenting schedule and focus only on what is in the best interests of their kids. Then child support will come after. Too many parents want to use the parenting schedule as a means to either increase or decrease child support, which isn’t good for their kids. I don’t know how to disconnect the two, however.”

Table 16. PARENTING TIME: PUBLIC AND PRIVATE FAMILY ATTORNEYS

“How has the issue of parenting time and/or shared parenting impacted your child support cases the past two years?”		
	Public Attorneys	Private Attorneys
Misconceptions/misuse of shared parenting to lower support amount	53%	57%
Need formula which would decrease litigation	35%	29%
Application is not uniform across courts	6%	--
Shared parenting lowers support	3%	14%
Complicates accounting for expenses/extra-curricular activities	3%	--
Total Impacts Cited	34	7

Percent within survey groups

Public and private attorneys discussed the need for a formula addressing shared parenting. They expressed that a formula would likely reduce litigation and increase uniformity of decisions across courts. They discussed that leaving deviation decisions up to the courts is

problematic as outcomes vary. Many attorneys also noted a formula for shared parenting would likely reduce the award amounts.

Many attorneys discussed their methods of determining child support after determining the parenting schedule. One attorney stated in the case of equal parenting time,

"Sometimes we calculate what parent A would pay parent B then subtract what parent B would pay parent A. So the parent who is making more pays the difference in the full guideline calculation."

Another attorney mentioned,

"I generally suggest proposing a netting (what each parent would pay the other) then specify who will pay for what expenses -- since, in theory, if the support is being netted so each parent is getting the equivalent of guideline support, then each parent would be responsible for expenses."

Yet another attorney explained how they determine what "shared" is:

"I've been trying to attach an actual calendar on the number of overnights each parent would have during the month [which would] instantiate an argument [that] the parenting schedule is essentially equal."

SECTION V: KEY INFORMANTS AND COMMUNITY FORUMS

To gain an understanding of the concerns of Obligee and Obligor parents and those who work with them, we held 3 community forums and interviewed key informants individually and posed questions in group meetings. Community forums were held in Claremont, Conway, and Manchester. A small set of concerned parents emailed the research team to raise their issues with the child support system. Key informants represented legal services organizations, community resource organizations, state child support staff, and other groups. The research team also viewed publicly available video recordings of hearings held in New Hampshire and canvassed media reports.

The following issues emerged from the key informants and community forums.

Shared Parenting

Several people mentioned shared parenting is an issue that needs to be addressed in the New Hampshire Child Support Guidelines. Obligor parents voiced that the lack of guidelines makes the process more contentious because both parents perceive that they are contributing to parenting, yet Obligor parents believe their financial contribution should reflect their increased parenting time and result in a deviation. For example, one Obligor father stated, *"I have to fight to have this considered."*

Another Obligor questioned the notion of Obligor and Obligee in shared parenting cases where the split is 50-50 or close to it:

"In looking at [the federal guidelines], they only talk about custodial and noncustodial parenting-no mention of shared custody. The guidelines don't take shared custody into account. It assumes the Obligee is the custodial parent and the Obligor is the noncustodial. That is where the issue lies. With shared custody, there shouldn't be an Obligor or Obligee. [Instead] parent one and parent two."

Yet, key informants representing low-income Obligor parents felt strongly that shared parenting should not be used as a means to reduce the order amount. Instead, they believe the parenting plan and the order amount should be considered separately, without one influencing the other. *"There is a need to separate the parenting time from the award amount in the child support order. If they are connected, it is more difficult and the child's schedule is influenced, more complicated,"* stated on key informant.

Another key informant was concerned about the use of number of nights as the measure as some Obligor parents have tried to set the parenting plan for children to arrive at the Obligor parent's house at 8pm and then to be picked up at 6am the next day, reducing the cost of the overnight and complicating the child's schedule. This informant said, *"using the number of nights leave open the potential for manipulation."*

Another informant was concerned that a calculation or formula would lead to an inflexible format, and states, *"Each case is different and deserves consideration."*

Further, if domestic violence is present, one key informant cautioned that having shared parenting as part of the formula could be problematic and provide a mechanism for abusers to threaten, coerce, and lower the child support award. The key informant explains, *"If this were the case, you would have those who have never been involved, and now they go in pushing for 4 to 5 days and threatening to call DCYF with complaints."*

Enforcement

Enforcement of child support payment was mentioned as a problem by Obligee parents. Obligee parents stated that the high cost of "going back to court" deterred them from modifying their court order when the parenting plan was altered from the original plan and reduced the Obligor parents time with children (i.e. reduced the number of overnights).

One Obligee parent noted that child support payments were not sent regularly and that the arrears were accruing. This parent wondered whether they would ever receive that large sum of money.

Low Income and Ability to Pay

Several key informants mentioned that it is hard for low-income Obligor to make their payments. Some key informants believed the self-support reserve is too low and stated the state should increase the amount of the self-support reserve. But one informant noted that increasing the self-support reserve won't help their clients, because it would result in a lower award. One key informant stated, *"the minimum award of \$50 per month, my clients laugh at that. It is so low."* Child support is an important source of income for low-income Obligees as they rely on the support for basic necessities.

Amicability or Hostility

Another prevalent theme was the quality of the relationship between the parents as being either amicable or hostile. Amicable relationships often were accompanied with deviations that were agreed upon, parenting plans that were not complicated, and the parent often stated that things were agreed upon in the best interests of the child(ren).

On the other hand, several parents and key informants gave examples of open hostility between parents, clear contention over the parenting plan or the overall award amount, and complicated parenting plans that may be difficult for children to follow.

One Obligor mentioned that his ex-wife's income *"doesn't include her new partner's income,"* and he felt that it was unfair.

Further, one key informant explains:

"I'm not convinced that either party is being honest during the legal process—discovery. Neither side is disclosing properly. One side isn't reporting work under the table. The other side isn't reporting living with a boyfriend. This leads to contention. One thinks, 'why should I pay support when I'm not getting regular access [to my children]?' The other, 'why should I let my kids see the other parent when I don't get support?'"

SECTION VI: CHILD SUPPORT STATE VISITS IN MASSACHUSETTS & VERMONT

In the 2008 Child Support Guidelines Review, a broad perspective on state approaches was acquired since the team visited Arizona, Maine, Massachusetts, Minnesota, Vermont and Wisconsin. For the current review we reviewed considerable material in advance of our visits to meet with child support staff in two adjacent states: Massachusetts on December 14, 2017 and Vermont on November 30, 2017.

While all New England states utilize the Income Shares Model, they differ in regard to the legal authority, income base for calculations, how child care and medical expenses are calculated, taxes assumptions, high and low parental income calculations, self-support reserve, shared parenting, additional dependents, variation between married and never-married parents, and deviation factors (Venohr, 2013).

Our method was to initiate discussions by sending 14 questions in advance of our visit (see Appendix C) to gather specific information and ensure that we could compare responses. Meetings were held for approximately 3 hours.

Overview

Table 17 presents demographic and child support related information for Massachusetts, Vermont, and New Hampshire. Massachusetts significantly revised their Child Support guidelines which took effect on September 15, 2017 and were amended on June 15, 2018. Vermont revised their Child Support guidelines in 2016.

Table 17. DEMOGRAPHIC AND CHILD SUPPORT RELATED INFORMATION

	Massachusetts	Vermont	New Hampshire
2017 Population	6.86 million	623,657	1.343 million
2016 Marriages	84,952	5,190	9,317
2016 Divorces	21,128	1,937	4,580
2016 Divorce Rate	2.3 per thousand	3.1 per thousand	3.4 per thousand
Model	Income Shares	Income Shares	Income Shares
Authority	Trial Court	Legislature	Legislature
Contribution Basis	Gross Income	Net Income	Gross Income

The following themes emerged from our discussions.

Child Support Tables

Massachusetts

Calculations are based on *gross* income, up to a maximum combined annual income of \$250,000. Child support based on combined income exceeding that amount is at the Court's discretion. Both *presumptive* income and *attributed* income can be considered. The worksheet will calculate the presumptive child support order based on the information entered into the worksheet. The guidelines formula applies to families with one to five children. For additional extra-curricular activities, the Court may allocate costs on a case-by-case basis.

The Massachusetts child support tables are available at:

<https://www.mass.gov/files/documents/2016/08/nv/child-support-guidelines-chart.pdf>

The Massachusetts guidelines worksheet is available via:

<https://www.mass.gov/info-details/child-support-guidelines#2018-guidelines,-forms,-and-information->

Vermont

Vermont uses "a complicated formula to calculate child support" (Vermont Law Help, 2018).

Orders are based on *net* not *gross* income and can include *imputed* income. VT has three tables, sole, split and shared custody and shared or partial custody to convert adjusted gross income to after tax income. The guidelines calculator uses these numbers to calculate the presumptive child support order. *Presumptive* income can be created if a parent does not appear.

Reconsideration can be requested if either's income changes at least 10%. Social Security dependency benefits are added to income. Vermont has no adjustment for age. The Court may order a "child support maintenance supplement in addition to a CS order "if an additional amount of money is necessary to correct any disparity in the financial circumstances of the parties...." (Vermont Judiciary, 2017). The VT child support tables were updated in January 2017 and these tables and the latest child support review report, are available at:

<http://dcf.vermont.gov/sites/dcf/files/OCS/Docs/UpdatedCS-Tables.pdf>

The Vermont online calculator is available at:

<http://dcf.vermont.gov/ocs/parents/calculator>

Parenting Time and Its Effect on Costs

Massachusetts

Massachusetts recently modified its parenting time guidelines as the feedback received was that it was too complicated and was causing litigation. Now information regarding whether the parents share financial responsibility and parenting time for the children approximately equally (shared), whether the children reside primarily with one parent for approximately 2/3 of the time, and whether, in a family with more than one child covered by the order, each parent provides a primary residence for at least one child (split) is entered directly into the worksheet.

Vermont

The state has considered shared custody since 1985-87 and uses number of overnights to calculate sharing percentages. The percentage of time is significant (e.g. 50/50 vs. 20/80) because shared custody typically costs more than it would for a child in an intact family or sole custody. This may pose a problem if the child(ren) are with one parent all day, but then the other parent during the night. Vermont's guidelines worksheet cannot calculate this type of arrangement. If the parties can't agree on number of overnights, the magistrate will make the decision. They often will run both, will change depending on the percentage of custody (sole vs. shared). With shared parenting Vermont uses a shared cost table between 30%-50%, and then adds a 1.5 multiplier, (as do at least 15 additional states).

To account for the increased cost of raising children under a shared custody situation, several states use a multiplier. Alaska's guidelines may offer the best explanation of why one should use a multiplier. "This calculation assumes that the parents are sharing expenses in roughly the same proportion as they are sharing custody. If this assumption is not true, the court should make an appropriate adjustment in the calculation. The second premise is that the total funds necessary to support children will be substantially greater when custody is shared. For example, each parent will have to provide housing for the children. Thus, the amount calculated in the first step is increased by 50% to reflect these increased shared custody costs. However, the Obligor's support obligation never will exceed the amount which would be calculated for primary custody under 90.3(a). The amount which would be calculated under 90.3(a) should include any appropriate visitation credit as provided by (a)(3). DR-310 (4/10) 36" (Burke, n.d.)

Self-Support ReserveMassachusetts

115% of the Federal Poverty Line (FPL). The presumptive minimum order is \$25 week, but can deviate below, so the range is 0 to 115%.

Vermont

120% of FPL. VT changed their self-support reserve to be based on federal poverty guidelines, 120% of poverty (previously it was based on livable wage, but housing costs are quite high in many areas).

Adult Children and College SupportMassachusetts

If the Court exercises its discretion to order child support for children age 18 up to 23, the guidelines formula reduces the amount of child support by 25%. This excludes an 18-year-old in high school until after graduation. Ordering a parent to contribute to college costs is not presumptive, but at a judge's discretion. If ordered, a parent's contribution cannot exceed 50%

of the in-state undergraduate costs of the University of Massachusetts-Amherst, unless a parent has the ability to pay a higher amount.

Vermont

There is nothing mandated in the guidelines, and this is typically is a deviation factor. A parent is not obligated to pay for college. Child support continues up to age 18 or graduation from high school, whichever is later. If an older child were still taking a high school class then CS would continue, but there is some ambiguity because some kids don't graduate. Such issues are handled individually, on a case by case basis by the Court.

Child Care

Massachusetts

Massachusetts covers reasonable child care costs for the children covered by the support order. "The guidelines worksheet makes an adjustment so that the parents share the burden of the cost proportionately. The adjustment involves a two-step calculation. First, a parent who is paying the child care deducts the out-of-pocket cost from his or her gross income. Second, the parties share the total child care costs for both parents in proportion to their income available for support. The combined adjustment for child care and health care costs is capped at fifteen percent of the child support order" (Child Support Guidelines, 2017, p.10). Appropriate training or education may allow child care costs.

Vermont

Considers actual child care costs, allowable for work, training and education. Costs are added to intact family expenditures. Child care subsidies and tax credits are deducted. There is now a cap based on the cost and number of children. The formula in the electronic calculator is complicated, and depends upon the use of an online worksheet online. Costs incurred while parent is at work, or in school (minus any subsidies) are eligible. Costs are allocated across both parents.

Medical Support

Massachusetts

Child support orders must include health care coverage. Parents can: provide health care coverage through their employer, buy health care coverage on their own, get coverage for their children through MassHealth, or provide the Court a written agreement that their child will get health care coverage some other way. Each parent may deduct from gross income the reasonable cost of health care coverage actually paid by that parent. If there are additional costs not covered by the order, and the Court determines such actual cost would unreasonably impact the amount of child support, then some or all of such additional cost could not be deducted. The guidelines worksheet makes an adjustment, so each parent shares the cost proportionately. A parent may also deduct the cost of dental/vision insurance. "Recipients" are

responsible for the first \$250.00 each year of routine health costs, with additional expenses allocated proportionately. The 2017 revision caps medical insurance and child care deductions at 15% of the total order.

Vermont

Medical support is a component of an order, and is in the guidelines calculator. A parent gets credit for paying only the child's portion of a health insurance premium. Insurance can be ordered for state or federally provided health insurance, private health insurance, or a cash contribution towards the cost of health coverage. Unreimbursed health expenses (eye, dental, mental health, health plan deductible) are shared.

Deviations

Massachusetts

While there have been few Massachusetts deviations in the recent past, the 2017 Massachusetts Child Support Guidelines expressly encourage judges to deviate from the guidelines when the facts of a case suggest a deviation is appropriate. Some believed that child support cases with facts that require a customized solution were being decided using a cookie cutter approach. With a deviation, the Court must enter specific written findings stating: the amount of the order that would result from the guidelines, that such amount would be unjust or inappropriate, the specific facts of the case which justify departure from the guidelines, and that such departure is in the best interests of the child.

Vermont

The Court can deviate from the guidelines "if a parent proves that the guideline amount is unfair or unreasonable to either the parents or the child" (Vermont Judiciary, 2017). The court can use discretion for high income families. Travel costs associated with visitation are allowable as a deviation factor, separately from the guidelines calculation. Staff were unsure of the deviation rate. Deviations usually result in a lower contribution, often when a parent indicates it is not possible to pay the contribution that the table identifies. Housing costs in areas of Vermont are quite high.

Collections

Massachusetts

The Department of Revenue oversees CS collection and can withhold order payments, or a parent can pay directly. It is not mandatory to go through Department unless it is an assignment issue.

Vermont

The federal government has driven policy on this issue. A parent can sign a voluntary agreement of parenting. VT passed a new Uniform Parentage Act in May of 2018 which stresses "right sized" orders, and also emphasizes closing out orders. As a result, the number of cases

have declined, case amounts have increased, and there is more information available on these cases. The contempt statute has been overhauled.

Incarceration

Massachusetts

Going to jail does not automatically change a CS order; only a judge can modify an existing CS order. A contempt action can be filed that would require the incarcerated parent to show inability to pay support. The Court can order a parent to pay child support if incarcerated, but if that parent is in jail and does not have enough income or assets to pay support the judge does not have to order the amount on the CS guidelines worksheet.

Vermont

A parent needs to have the Court determine if they can pay, if incarcerated. There is no assumption of a consistent amount. If there are no other assets, the amount could be \$0.00, but if a parent does not object a minimal order (\$20) may be established. OCS now has the right to modify even if no public assistance involved. This bill helped to increase compliance because it lowered the CS amount. Usually the court uses presumptive income, but often that amount is too high and then it can't be enforced. This allows them to request to reconsider if 10% is too high. They have been instructed not to use this presumptive wage and, instead, use the minimum wage. They were using 150% of median wage for higher wage individuals, thinking it would induce people to come and provide income information, but VT ended up with default orders. There was a federal rule change last year; incarcerated parents can't be considered underemployed.

Support Modifications

Massachusetts

A child support order may be modified if there is an inconsistency between the amount of an existing order and the amount that would result from the application of the guidelines, previously ordered health coverage is no longer available, access to health care is still available but no longer at a reasonable cost, access to health coverage has now become available, or any other material and substantial change in circumstances (Child Support Guidelines, 2017, p.18).

Vermont

A statute allows a petitioner to modify obligations, if there has been a "real, substantial, and unanticipated change of circumstances" since the Court's last child support order, or after three years. Acceptable changes include a) the change would make the child support amount at least 10 percent higher or lower, b) a parent receives Workers' Compensation, disability benefits, or means-tested public assistance benefits, c) a parent receives new unemployment benefits, d) a parent is incarcerated for more than 90 days, unless the incarceration is for failure to pay child support, or e) the child has turned 18 and completed secondary education. Changes in the

parenting plan can also be a reason to seek a modification. Either parent can file a motion to modify; both parents do not need to sign it.

SECTION VII: Economic Analyses of the Cost of Raising Children

Overview of Methods

The goal of child support guidelines is to ensure that parents are providing enough money to adequately support a child. Although the goal is always the same, there are a number of ways to estimate what that “adequate” amount of money is. U.S. states use one of three types of guidelines that are supported by one of two types of data analysis in order to set their guidelines, and we summarize each below.

Types of Guideline Models

Percent of Obligor Income Models

Seven states use a version of a Percent of Income model to calculate their guidelines: Alaska, Arkansas, Mississippi, Nevada, North Dakota, Texas and Wisconsin (NCSL 2017). This is in many ways the most basic of the three models. It sets support at a certain fraction of the Obligor’s income without considering the Obligee’s income, and that fraction can either be flat or vary with Obligor income.

Income Shares Model

Income Shares is the most commonly used model and more states have adopted it over time. Forty states use this model to calculate their guidelines: Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming. In an Income Shares model the core assumption is that parents should spend the same fraction of total income on children that they would have if they had lived in an intact family. Therefore, although the Obligee does not actually make a child support payment, the model assumes he or she is contributing the same proportion of his/her income to the child.

The Melson Formula

Three states use the Melson Formula to calculate child support guidelines: Delaware, Hawaii and Montana (NCSL 2017). This formula was originally developed by a Delaware family court judge. It is a more complex version of Income Shares includes adjustment to maintain some minimal standard of living for the parents. The key difference is that in the Melson model a self-sufficiency income amount is subtracted from parental income available for support before shares are calculated, whereas in an Income Shares model a self-support reserve is subtracted from the final payment amount.

Estimating the Cost of Children

Regardless of the formula, all of these models depend upon estimates of the cost of raising children in order to set the share(s) or percent of income. Conceptually, there are two ways to do this. The first is to look at aggregate expenditure data by category and compute the fraction of total income that families spend on child-related items. The second is to indirectly estimate the fraction of income that an intact family with the same total income would have spent on children. We describe each approach below.

The simplest way to measure child-rearing costs is by looking at aggregate expenditure data. Traditionally, most states that take this approach use data from the U.S. Department of Agriculture. The most recently available estimates are from Lino et al. (2017) and are based upon 2015 data from the Consumer Expenditure Survey (CE). They start by calculating the fraction of income on child-specific expenditures reported in the survey, including clothing, child care and education. They then allocate some portion of family expenses, including food, health care, transportation and housing, to children. In previous reports, the U.S.D.A. averaged expenditure over family size and attributed the per capita expenditure to each child in the household. In the most recent report they use several different strategies to deal with household-level expenditures. For food they calculate the expense of the U.S.D.A.'s food plans at three different cost levels (corresponding to three income levels). For health care they use data from the Medical Expenditure Panel Survey to estimate the percent of a family's health spending that is for children, and they apply that percent to family health spending in the CE. For food they use per capita expenditures. When they estimate the cost of housing they make the assumption that each additional person in the family does not increase the size of the house proportionally, but that a more appropriate measure of the cost of one child is the cost of an additional bedroom, which they estimate statistically using data on the features and costs of housing units reported in the CE.

The traditional U.S.D.A. estimates using per capita estimates for food, housing and transportation were generally larger than estimates from the indirect methods described below. Economists considered them to be upper bounds of the actual cost of raising children because the per capita method most likely overstates the marginal cost of adding a child to the family (Vehnor 2017). With the new approach, these estimates are likely to be closer to other types of estimates. This approach is primarily used by states that have Percent of Income models, but a handful of states with Income Shares models also use the U.S.D.A. estimates.

The second way to measure the costs of children is more complicated, but is also likely to be more realistic, and it is used by the majority of the states that have Income Shares models. This type of estimate is built on the assumption that a child should receive the same level of support (as a fraction of total parental income) as he or she would have in an intact family. Because we do not observe children of divorced or never-married parents in intact families, this amount must be imputed using data on intact families from the CE using what is observable -- the expenditure patterns of couples with and without children who are equally well off. There are two specific ways to calculate this estimate and both produce what economists call "marginal"

costs of children – that is, the incremental cost of an additional child in the family rather than the average cost per household member.

Engel estimates were first produced by Epenshade (1984). They are based upon the assumption that two households that spend the same percentage of total expenditures on food are equally well off. Later, Betson (1990) developed the Rothbarth estimator. In this estimator the measure of households being equally well off is “adult” expenditures, including alcohol, tobacco and adult clothing. More recent Rothbarth estimates use just adult clothing as the proxy for standard of living. Engel estimates tend to be larger and may overstate the costs of raising children, while Rothbarth estimates are smaller and may understate the cost (Vehnor 2017).

The guidelines that New Hampshire is currently using (a modified version of the ones recommended in the 2009 report) are for an Income Shares model based upon Rothbarth estimates from Betson (2006). Although Betson has produced four sets of estimates over 20 years (1990; 2000; 2006; 2010), his methodology is the same in each study.

The data for the most recent analysis come from the Consumer Expenditure Survey Data from the first quarter of 2004 through the first quarter of 2009. The Consumer Expenditure Survey is a national survey conducted each year by the U.S. Bureau of Labor Statistics to measure U.S. households’ expenditures and incomes. The survey provides detailed expenditure data for a consumer unit (moving forward called “families”) for up to 4 calendar quarters. The dataset used by Betson (2010) includes married couples between the ages of 18 to 64 who have six or fewer children and excludes families with other adults in the household, families that changed composition during the interview period, and families with fewer than three completed interviews. This results in a total of 4,909 consumer units that consist of married couples with children. Note that because the sample is too small to break down by state, all of the estimates are at the national level. He shows that childless couples spent \$2,251 per year on adult clothing, while parents spend between \$1,352 and \$1,787 depending upon how many children they have. The intuition behind this method is that if parental incomes are held constant, then the decrease in adult clothing consumption measures the transfer of resources to children that leave the couple equally well off. The actual estimates come from a statistical model that is described in detail in Betson (2010).

Table 18 contains estimates made by Dr. David Betson and published in his 2010 report to the State of California. They represent the base of an income shares guideline schedule and are the percent of total consumption devoted to children by income level and family size.

Table 18. BETSON (2010) ESTIMATES OF PERCENT OF TOTAL CONSUMPTION DEVOTED TO CHILDREN

(1) Annual Net Income (\$2012)	(2) Annual Net Income (\$2018)	(3) 1 Child Share	(4) 2 Children Share	(5) 3 Children Share
\$0-\$15,000	\$0-\$16,500	21.61	33.68	41.57
\$15,001-\$20,000	\$16,501-\$22,000	22.44	34.92	43.04
\$20,000-\$25,000	\$22,001-\$27,500	22.66	35.25	43.44
\$25,001-\$30,000	\$27,501-\$33,000	22.83	35.51	43.74
\$30,001-\$35,000	\$33,001-\$38,500	22.97	35.72	43.98
\$35,001-\$40,000	\$38,501-\$44,000	23.09	35.89	44.18
\$40,001-\$45,000	\$44,001-\$49,500	23.19	36.03	44.36
\$45,001-\$50,000	\$49,501-\$55,000	23.25	36.12	44.46
\$50,001-\$55,000	\$55,001-\$60,500	23.28	36.17	44.52
\$55,001-\$60,000	\$60,501-\$66,000	23.34	36.26	44.62
\$60,001-\$65,000	\$66,001-\$71,500	23.40	36.34	44.71
\$65,001-\$70,000	\$71,501-\$77,000	23.41	36.35	44.73
\$70,001-\$75,000	\$77,001-\$82,500	23.45	36.42	44.81
\$75,001-\$80,000	\$82,501-\$88,000	23.44	36.41	44.79
\$80,001-\$90,000	\$88,001-\$99,000	23.52	36.51	44.92
\$90,001-\$100,000	\$99,001-\$110,000	23.57	36.59	45.01
\$100,001-\$110,000	\$110,001-\$121,000	23.63	36.68	45.12
\$110,001-\$120,000	\$121,001-\$132,000	23.65	36.70	45.14
\$120,001-\$135,000	\$132,001-\$148,500	23.72	36.80	45.26
\$135,001-\$160,000	\$148,501-\$176,000	23.76	36.86	45.33
\$160,001 +	\$176,001 +	23.85	37.00	45.49

Notes: Columns 1, 3, 4 and 5 as published in *Econometrica* (2012). Column (2) updates Column (1) values to \$2018.

As the table shows, the percent of net income spent on children, or shares, increase with additional children in the family, but not proportionally. For example, for individuals with incomes between \$55,001 and \$60,000, the consumption share for two children is 55% higher than the one for one child. This reflects the fact that there are a number of fixed costs of raising children that do not necessarily increase with one additional child in the family, such as transportation (cars), housing and furnishings, other equipment and apparel than can be used by multiple children.

The other notable finding is that the consumption shares change very little by income. The relationship that Betson estimates in 2010 is flatter than it had been in the past. In previous estimates the fraction of spending attributable to children fell noticeably as income increased,

but in the more recent estimates it is either flat (in 2006) or grows very slightly (in 2010). Betson (2010) discusses several reasons why the pattern may have changed.⁸

Before these estimates can be used as the basis for a guidelines tables, three adjustments must be made. To do this we follow the methodology used by Vehnor (2008) and reviewed by Econometrica (2012).

The first adjustment is that the income ranges in Column (1) of Table 18 are for net incomes in 2012 dollars and must be adjusted to 2018 dollars using the Consumer Price Index, which shows that prices increased by 10 percent between January 2012 and March 2018. The new ranges are presented in Column (2) of Table 18.

Next, the Betson (2010) Rothbarth estimate is a fraction of consumption devoted to all of the costs of raising children, including health care and child care costs, but the New Hampshire guidelines treat those as supplements to the award rather than as part of the base payment. (We discuss child and health care cost issues separately below.) Therefore, we subtract from each percentage in Table 19 the average per-child percent of consumption that is on child care multiplied by the number of children in the family. It is less straightforward to adjust for health care costs as they are not usually a linear function of income. Therefore, we take the percent of consumption that is on health care for each income group and multiply it by the consumption shares (the percent of total consumption on children) to get an estimate of the percent of consumption that is on child health care. As with child care, we subtract this fraction from the percentages in Table 18. The statistics used for these adjustments come from Econometrica (2012), which published health and child care estimates from the same Betson (2010) analysis that was used to construct the shares in Table 18. The results of this adjustment (new shares) are provided in Columns 6 to 8 of Table 19.

Finally, we must account for the fact that Rothbarth estimates are percentages of total consumption that are on children, not percentages of income. And the guidelines are a function of income. For individuals who spend all of their incomes there is no difference between an income and a consumption share. But for higher income individuals who save some of their income, consumption shares overstate necessary spending on children. Therefore, we multiply the percentages from Table 19 by the consumption/income ratio (by income) to get the final table. Note that some individuals in the CE report spending more than their income. For purposes of this calculation we cap the consumption/income ratio at 1.0. The result of this adjustment – and the final shares – are provided in Columns 6-8 of Table 20.

⁸ He notes that several things may contribute to this change. The first is that the BLS defines outlays (used in 2006 and 2010) as including principle payments on debt, where expenditures do not include debt payments. Also, there is evidence that high-income families consume a smaller fraction of their disposable incomes. He states that he is not sure whether the change in the income pattern is a true change or not.

Table 19. SHARES ADJUSTED FOR HEALTH CARE AND CHILD CARE EXPENSES

Annual Net Income	(1) 1 Child	(2) 2 Child	(3) 3 Child	(4) Child Care Expenses	(5) Medical Care Expenses	(6) 1 Child Share Adjusted	(7) 2 Child Share Adjusted	(8) 3 Child Share Adjusted
\$0-\$16,500	21.61	33.68	41.57	0.3446	0.1242	21.22	32.93	40.46
\$16,501-\$22,000	22.44	34.92	43.04	0.3639	0.2693	21.99	34.06	41.79
\$22,001-\$27,500	22.66	35.25	43.44	0.4871	0.643	21.96	33.95	41.59
\$27,501-\$33,000	22.83	35.51	43.74	0.5066	0.564	22.14	34.21	41.88
\$33,001-\$38,500	22.97	35.72	43.98	0.6658	0.4876	22.14	34.14	41.69
\$38,501-\$44,000	23.09	35.89	44.18	0.6426	0.6309	22.24	34.29	41.87
\$44,001-\$49,500	23.19	36.03	44.36	0.8937	0.6599	22.08	33.91	41.28
\$49,501-\$55,000	23.25	36.12	44.46	0.9943	0.9044	21.95	33.68	40.93
\$55,001-\$60,500	23.28	36.17	44.52	1.1487	0.8072	21.86	33.47	40.59
\$60,501-\$66,000	23.34	36.26	44.62	1.3082	0.6023	21.83	33.34	40.33
\$66,001-\$71,500	23.40	36.34	44.71	1.2134	0.9437	21.87	33.44	40.50
\$71,501-\$77,000	23.41	36.35	44.73	1.3289	0.7969	21.82	33.29	40.27
\$77,001-\$82,500	23.45	36.42	44.81	1.4856	0.8175	21.69	33.04	39.86
\$82,501-\$88,000	23.44	36.41	44.79	1.4308	0.9152	21.70	33.09	39.95
\$88,001-\$99,000	23.52	36.51	44.92	1.4754	0.8076	21.78	33.16	40.01
\$99,001-\$110,000	23.57	36.59	45.01	1.3564	0.9983	21.88	33.38	40.34
\$110,001-\$121,000	23.63	36.68	45.12	1.8433	0.8424	21.51	32.57	39.08
\$121,001-\$132,000	23.65	36.70	45.14	1.7049	0.8489	21.66	32.87	39.52
\$132,001-\$148,500	23.72	36.80	45.26	1.7482	0.8514	21.69	32.88	39.50
\$148,501-\$176,000	23.76	36.86	45.33	1.8513	0.6834	21.68	32.82	39.37
\$176,001 +	23.85	37.00	45.49	2.0101	0.706	21.60	32.63	39.04

Notes: Column (4) is percent of total consumption that is on child care (per child). Column (5) is the percent of total consumption that is on health care costs (total family).

Table 20. SHARES ADJUSTED FOR HEALTH CARE AND CHILD CARE EXPENSES

Annual Net Income	(1) 1 Child	(2) 2 Child	(3) 3 Child	(4) % of Net Income Consumed	(5) Adjusted % of Net Income Consumed	(6) 1 Child Share Adjusted	(7) 2 Child Share Adjusted	(8) 3 Child Share Adjusted
\$0-\$16,500	21.22	32.93	40.46	46.847	1	21.224	32.93	40.46
\$16,501-\$22,000	21.99	34.06	41.79	1.679	1	21.99	34.06	41.79
\$22,001-\$27,500	21.96	33.95	41.59	1.406	1	21.96	33.95	41.59
\$27,501-\$33,000	22.14	34.21	41.88	1.215	1	22.14	34.21	41.88
\$33,001-\$38,500	22.14	34.14	41.69	1.147	1	22.14	34.14	41.69
\$38,501-\$44,000	22.24	34.29	41.87	1.061	1	22.24	34.29	41.87
\$44,001-\$49,500	22.08	33.91	41.28	1.039	1	22.08	33.91	41.28
\$49,501-\$55,000	21.95	33.68	40.93	0.965	0.965	21.19	32.50	39.50
\$55,001-\$60,500	21.86	33.47	40.59	0.910	0.910	19.89	30.46	36.94
\$60,501-\$66,000	21.83	33.34	40.33	0.898	0.898	19.60	29.94	36.22
\$66,001-\$71,500	21.87	33.44	40.50	0.887	0.887	19.40	29.66	35.92
\$71,501-\$77,000	21.82	33.29	40.27	0.831	0.831	18.13	27.67	33.46
\$77,001-\$82,500	21.69	33.04	39.86	0.825	0.825	17.90	27.26	32.89
\$82,501-\$88,000	21.70	33.09	39.95	0.762	0.762	16.54	25.22	30.44
\$88,001-\$99,000	21.78	33.16	40.01	0.764	0.764	16.64	25.33	30.57
\$99,001-\$110,000	21.88	33.38	40.34	0.736	0.736	16.10	24.57	29.69
\$110,001-\$121,000	21.51	32.57	39.08	0.725	0.725	15.59	23.61	28.34
\$121,001-\$132,000	21.66	32.87	39.52	0.676	0.676	14.64	22.22	26.71
\$132,001-\$148,500	21.69	32.88	39.50	0.67	0.670	14.53	22.03	26.47
\$148,501-\$176,000	21.68	32.82	39.37	0.616	0.616	13.36	20.21	24.25
\$176,001 +	21.60	32.63	39.04	0.538	0.538	11.62	17.55	21.00

Notes: Column (4) is percent of total consumption that is on child care (per child). Column (5) is the percent of total consumption that is on health care costs (total family).

The final income shares that can be used to calculate guideline amounts are presented in Table 21. We present estimates for 1, 2 and 3 or more children because those are the only groups that have large enough sample sizes in the CEX data to create estimates. However, a report by Econometrica (2012) suggests that income shares can be produced for 4 or more children by using the National Research Council’s equivalence schedule:

$$(\# \text{ of adults} + (0.7 * \# \text{ of children}))$$

The shares for 1 child range from 13 percent of income at the highest income level to 22 percent of income at lower levels. These numbers go up to 18 (21) percent for highest-incomes to 34 (42) percent for lowest-income for 2 (3) children). These numbers have two properties that one would expect to see in income shares. First, at all income levels the shares increase with more children in a family, but not proportionally. This is because some of the costs of children are for items that can be used multiple times (e.g., cribs, carseats) or used jointly by multiple children (e.g., housing or a car). Second, the fraction of income devoted to children falls with income. This is driven by the fact that certain types of expenditures on children do not vary much by income (e.g., food), as well as by the fact that higher-income families do not spend all of their income.

Note that in Table 20, Betson estimates incomes shares to be 21, 33, and 41 percent for the lowest income group of income under \$16,500 for 1 child, 2 children, and 3 children, respectively. It is not clear that this is a real effect or a data artifact, so we recommend the shares in the lowest income group to be set at 22, 34 and 42 percent, respectively, so that shares will not increase as income increases.

Table 21. NEW PROPOSED INCOME SHARES

Annual Net Income	1 Child	2 Child	3 Child
\$0-\$16,500	22	34	42
\$16,501-\$22,000	22	34	42
\$22,001-\$27,500	22	34	42
\$27,501-\$33,000	22	34	42
\$33,001-\$38,500	22	34	42
\$38,501-\$44,000	22	34	42
\$44,001-\$49,500	22	34	41
\$49,501-\$55,000	21	33	40
\$55,001-\$60,500	20	30	37
\$60,501-\$66,000	20	30	36
\$66,001-\$71,500	19	30	36
\$71,501-\$77,000	18	28	33
\$77,001-\$82,500	18	27	33
\$82,501-\$88,000	17	25	30
\$88,001-\$99,000	17	25	31
\$99,001-\$110,000	16	25	30

\$110,001-\$121,000	16	24	28
\$121,001-\$132,000	15	22	27
\$132,001-\$148,500	15	22	26
\$148,501-\$176,000	13	20	24
\$176,001 +	12	18	21

For purposes of comparison, Tables 22 and 23 present the income shares that were recommended in the 2009 report and the ones currently used in state guidelines, respectively. Comparing our recommendation in Table 22 to the 2009 recommendation in Table 23, the new shares are slightly smaller, and the difference is primarily driven by decreases at the lowest income levels. For example, the share for parents with a joint annual net income of \$20,000 and 1 child was 26 percent in the previous recommendation but 22 percent in the new one. These changes reflect the fact that the Betson (2010) shares estimates are noticeably flatter by income than any previous estimates, an issue that was noted above.

Table 22. INCOME SHARES RECOMMENDED IN 2009 REPORT

Annual Net Income	1 Child	2 Children	3 Children
<\$14,999	26	38	46
\$15,000-\$24,999	26	38	45
\$25,000-\$34,999	25	37	44
\$35,000-\$49,999	23	34	41
\$50,000-\$59,999	21	30	36
\$60,000-\$69,999	19	28	33
\$70,000-\$79,999	18	27	32
\$80,000-\$89,999	17	25	30
\$90,000-\$99,999	17	24	29
\$100,000-\$124,999	15	22	26
\$125,000+	13	19	22

Table 23. INCOME SHARES CURRENTLY USED IN NEW HAMPSHIRE STATE GUIDELINES

Annual Net Income	1 Child	2 Children	3 Children	4 or more
\$15,000 or less	25.6	35.5	42.5	45
\$25,000	25	35	42	44.5
\$35,000	24	33.5	40.5	43
\$50,000	23	31.5	38	40.5
\$60,000	22	30	36.5	39
\$70,000	21.5	30	36	38.5
\$80,000	21	29	35	37.5
\$90,000	21	28.5	34.5	37
\$100,000	20	27.5	33	35.5
\$125,000 or more	19	26	31	33.5

Finally, we note that when the State implemented new guideline amounts in 2014, partially based upon our recommendations, they used shares (shown in Table 23) that were larger for higher-income families than those in our recommendation (shown in Table 22). While we believe, based upon all available data and analysis, that shares should be decreasing with income, and that the numbers in Table 21 are the best estimates available, the appropriate shares for high-income families may be a point that the State wishes to consider further. It is worth noting that the sample of high-income families in the Consumer Expenditure Survey dataset underlying the estimates is very small, and so these shares are estimating less precisely.

There is also some research evidence that not only do high-income families invest more overall on their children, but that the investment gap between lower and higher-income families is widening over time as income inequality increases (Schneider et al. 2018). Bassok et al. (2016) show that children in the households with the highest incomes in 2010 had 50 percent more books upon entering kindergarten and had computer usage scores that were 13 percent higher than children in median income families. Further, this gap had been increasing since 1998. Kalil et al. (2016) find that high-income parents were increasingly likely to take their children to cultural activities like museums, concerts and plays between the late 1980s and late 2000s.

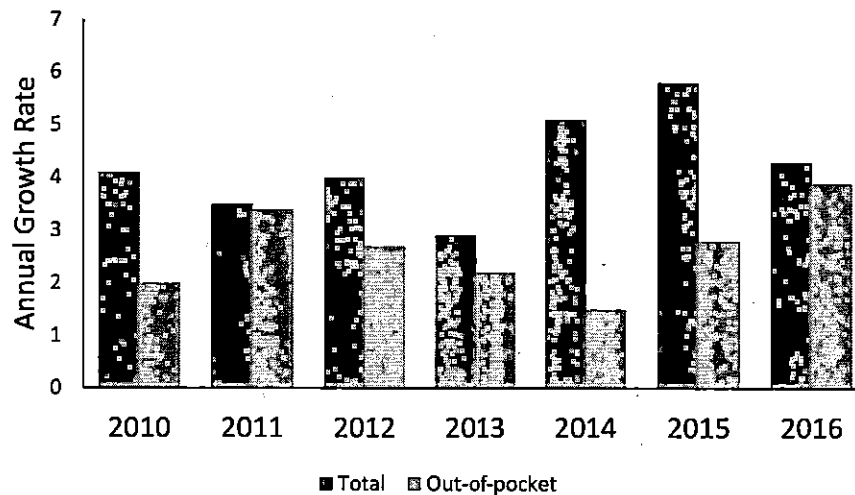
Child Care and Health Care Expenses

The current guidelines address health care and child care expenses outside of the base guidelines, on a case-by-case basis as needed. The team believes that this strategy is working and contributes to the determination of appropriate child support award amounts. There are several arguments for setting payments for these two types of expenses separately. One is that, in any given time period, there is a great deal of variation across families in these expenses.⁹

The second argument for addressing these expenses outside of the base guideline table is that health care spending, in particular, grows more rapidly than other expenditures. Total U.S. nominal health spending increased by 4.3 percent between 2015 and 2016, while GDP grew by only 2.8 percent (Hartman et al. 2018). Annual growth in health spending was even higher between 2013 and 2015, as shown in Figure 11 below.

⁹ We have conducted some independent analysis of 2013 to 2016 Consumer Expenditure Survey data. We do not present it in this report because the patterns we observe are generally consistent with those described here. Health expenses varied significantly from family to family and increased dramatically over time. Child care expenses varied significantly across families and, for some families, represented a significant fraction of income. We also found that, with one exception, budget shares for other items had not changed considerably. The exception was a decrease in transportation expenses that was partially offset by an increase in housing costs. This is consistent with the results in Lino (2017).

**Figure 11:
ANNUAL HEALTH SPENDING GROWTH RATES, 2010-2016**



Source: National Health Expenditure Accounts. As published in Hartman (2018).

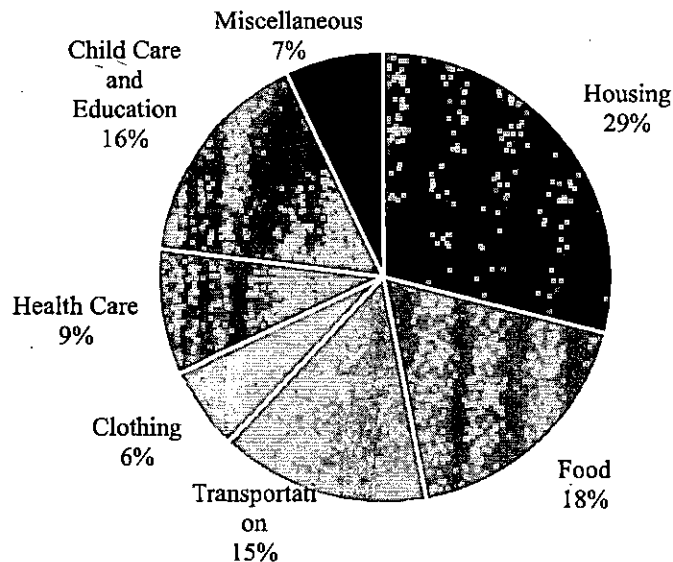
Total spending is made up of all consumption and investment in health care and represents payments made by both public and private insurers to health care providers as well as out-of-pocket payments made by consumers. Out-of-pocket payments are for items that are not covered by health insurance, such as over-the-counter drugs or first aid supplies, as well as the portions of the costs of medical treatment that are not paid by the insurer (i.e. co-pays, co-insurance payments and deductibles). For those without health insurance, all payments for health care are out of pocket. As Figure 11 shows, although growth in out-of-pocket spending growth rates decreased over the period in which the Affordable Care Act was being implemented they have begun to increase again. In fact, annual growth of 3.9 percent between 2015 and 2016 is the highest since 2007. Hartman et al. (2018) attribute high growth rates in out-of-pocket spending to higher deductibles in many health insurance plans.

The other important component of health care costs is the cost of private health insurance. In 2017, the average premium for an employer-sponsored family insurance plan was \$18,764 nationally and \$20,092 in the Northeast region. This total cost is paid by some mix of contributions from the employer and the employee. On average, employees paid 31% of the total premium. While this fraction of total premium paid by employees has stayed relatively stable since 2010, the average total premium has increased. Using data from its national employer health insurance survey, the Kaiser Family Foundation estimates that the average annual worker contribution for family health insurance rose from \$3,997 in 2010 to \$5,714 in 2017 – a growth rate of 43 percent.

Child care expenses should be addressed as they currently are under the guidelines for the same reason that health care costs are – they vary significantly across families and time. One source of variance is the employment status of parents. Families with a stay-at-home parent have very small expenses while expenses for families in which both parents work are much larger.

Another dimension by which child care costs vary, and one by which the base guidelines do not vary, is age of child. In New Hampshire, the average annual cost of care for an infant is \$11,810, while the cost for a 4-year old is \$9,457 (EPI 2018). Further, regardless of the age of the child, these costs represent large shares of income for many families; a year of infant care at the average cost represents 14.4 percent of income for a median income family and for a minimum wage worker the cost would represent 78.3 percent of income (EPI 2018).

**Figure 12:
Lifetime Expenditures on Children, 2015**



Source: Lino et al. (2017). U.S. average for the younger child in middle-income, married-couple families with two children.

Lino et al. (2017) finds that for middle-income married couples, child care and education represent the third largest source of total lifetime expenditure on a child. As shown in Figure 12, above, 16 percent of the total spending on a child for families that have child care and education expenses is in this category, compared to 29 percent in housing, 18 percent in food and 15 percent in transportation.

Over time, child care and education expenses have increased. Lino et al. (2017) find that the average expenditure per child increased by \$380 between the 2010-2014 and 2011-2015 periods. Child care and education expenses represented \$100 of this increase.

Section VIII: Recommendations

The following recommendations are based on our review of the current child support guidelines in New Hampshire, our review of current economic data and court case files, the surveys of judges, mediators, and family lawyers, input from key informants, Obligee and Obligor parents, and state visits to Massachusetts and Vermont.

The following recommendations are intended to be considered as a package. Any separation of individual issues may impact the overall balance of effects of these recommendations on Obligors and Obligees. In addition, the authors stipulate that some of the recommended changes may require legislative and /or judicial involvement. The research team suggests that the State create a stakeholder advisory board with membership including Obligors, Obligees, court and legal personnel including the New Hampshire Bar Association, and advocates groups. We also suggest that the State explore a data alliance with the Administrative Office of the Court to establish a means of collecting regular data with regards to child support awards.

Recommendation #1: Economic Data on Cost of Raising Children

We recommend that New Hampshire update its child support guidelines tables to reflect the most recent estimates on expenditures for child rearing based upon the most recently available Rothbarth estimates. These estimates show a slightly lower fraction of total income spent on children than the tables currently in use. This recommendation is based upon Benson's (2010) most recent analysis of economic data, the 2005-2009 Consumer Expenditures Survey data.

There is some evidence of higher-income families' increased expenditures on children over the past few decades relative to lower-income families' expenditures (Schneider et al. 2018). Therefore, it may be appropriate for the State to consider a slightly higher fraction for higher-income families. Our estimates presented do not include these upward adjustments for higher-income families.

NEW PROPOSED INCOME SHARES

Annual Net Income	1 Child	2 Child	3 Child
\$0-\$16,500	22	34	42
\$16,501-\$22,000	22	34	42
\$22,001-\$27,500	22	34	42
\$27,501-\$33,000	22	34	42
\$33,001-\$38,500	22	34	42
\$38,501-\$44,000	22	34	42
\$44,001-\$49,500	22	34	41
\$49,501-\$55,000	21	33	40
\$55,001-\$60,500	20	30	37
\$60,501-\$66,000	20	30	36
\$66,001-\$71,500	19	30	36
\$71,501-\$77,000	18	28	33
\$77,001-\$82,500	18	27	33
\$82,501-\$88,000	17	25	30
\$88,001-\$99,000	17	25	31
\$99,001-\$110,000	16	25	30
\$110,001-\$121,000	16	24	28
\$121,001-\$132,000	15	22	27
\$132,001-\$148,500	15	22	26
\$148,501-\$176,000	13	20	24
\$176,001 +	12	18	21

Recommendation #2: Self-support Reserve

We recommend a modest increase in the self-support reserve in the New Hampshire guidelines, from 115 percent to 120 percent of the federal poverty line.

The current New Hampshire child support guidelines dictate that after a basic order amount has been determined, the order amount and Obligor's gross income should be compared to a self-support reserve income amount. Specifically:

(a) If the Obligor's income is less than the self-support reserve and the court has determined that the Obligor is not voluntarily unemployed or underemployed, the court shall order the child support obligation in the amount of a minimum support order.

(b) If the Obligor's gross income is greater than the self-support reserve but payment of the order as calculated under this chapter would reduce the Obligor's income below the self-support reserve, the Obligor's share of the total support obligation shall be

presumed to be the difference between the self-support reserve and that parent's total adjusted gross income, but in any event shall be no less than the amount of the minimum support order. (RSA 458-C:3, IV)

The goal of including a self-support reserve in the guideline is to ensure that Obligor's are left with enough income to meet their own basic needs after paying child support. In 2012, the New Hampshire legislature raised the self-support reserve from 100 percent to 115 percent of the federal poverty threshold. There is some evidence that the current self-support reserve is not set high enough to accomplish the goal of allowing Obligor's enough income to meet their basic needs.

In 2018, the official federal poverty income threshold for a single person was \$12,140 per year or \$1,012 per month. Using the current guideline for New Hampshire at 115 percent of poverty yields \$13,960 or \$1,163 per month. Our recommendation to raise the self-support reserve to 120 percent of poverty translates into an increase in the self-support reserve of \$51 per month, as 120 percent of 2018 poverty is \$14,568 or \$1,214 per month.

The federal poverty threshold is calculated each year using a methodology developed by the Social Security Administration in 1965 for measuring poverty among Social Security recipients. The amount is determined by adjusting the current-year price of the U.S. Department of Agriculture's Economy Food Plan (EFP) for family size based upon the assumption of economies of scale in consumption. The base adjustment factor of three times the cost of the EFP is based upon the 1955 estimate that a U.S. family spent approximately one-third of gross income on food. A report by the National Academy of Sciences (Citro and Michaels, 1995) presented a long list of critiques of the federal poverty line measure, most of which caused it to under-measure poverty. Their baseline set of recommendations for updating the threshold values, which have never been implemented, would have increased the federal poverty rate by almost 25 percent in 1992.

An alternative measure of an income that meets self-sufficiency needs is developed by the Economic Policy Institute to calculate a family budget to meet basic needs for different family sizes and structures for each county in New Hampshire in 2017 (see <https://www.epi.org/resources/budget/> to view the on-line calculator). The budget is set to cover the following basic needs: food cooked at home; heat, lights and water; basic telephone service; clothing; household expenses; automobile transportation; child care; health insurance/care; and a personal allowance budget of 3 percent of total needs. The updated family budget for 2017 for a single person range from \$16.96 per hour (\$35,274 per year¹⁰) in Coos County to \$21.01 per hour (\$43,698 per year) in Rockingham County. Previous studies have used a similar methodology to produce livable wages in New Hampshire (Kenyon 2006, Kenyon and Churilla 2008).

Pirog et al. (2003) summarizes a similar set of findings in the research literature, noting that there are national studies that document the poor economic position of a sizeable fraction of

¹⁰ This calculation assumes full-time work, 40 hours per week and 52 weeks per year.

Obligors (see Garfinkel et al., 1998) and the *even worse* position of Obligee mothers (see Sorenson, 1997). Mincy and Sorenson (1998) observed both phenomena in a study of young Obligor fathers and Obligee mothers in the 1990 Survey of Income and Program Participation. While 38 percent of the young Obligee mothers in the sample were poor, 18 percent of Obligor fathers were classified as unable to pay due to very low earnings.

From this analysis, we conclude that in most cases involving two low-income parents, a level of support beyond a minimum order may be necessary from both of the parents, despite the economic hardship this might entail. At the same time, we recognize that there is evidence that higher child support obligations reduce payment rates for low-income Obligors. Huang, Mincy and Garfinkel (2005) analyze national data from the Current Population Survey from 1994 to 1998 and find that lower child support orders (as a fraction of Obligor income) increase payment by low-income Obligors, but that the compliance effect is not large enough to fully offset the associated reduction in funds paid to Obligees. Our recommendation represents a compromise solution in the face of these conflicting pieces of evidence.

An increase in the self-support reserve was recommended in the 2009 NH Child Support Review, and the legislature increased the reserve in 2012. We believe a further increase is warranted, likely to result in more consistent payments by low-income Obligors.

Recommendation #3: Formula for Shared Parenting

We recommend the New Hampshire legislature enact changes to the guidelines to address shared parenting. New Hampshire's statute does not provide uniform guidelines for addressing shared parenting arrangements. As substantially equal parenting increases in a number of cases, a larger proportion of child support cases must deviate from the guidelines to account for the sharing of expenses. This results in a range of possible outcomes, little predictability for parents entering the system, and in some cases, judgments that are inconsistent and not fair alternately to the Obligee or Obligor. In New Hampshire, 37% of the cases that deviate from the guidelines have shared parenting as the first rationale given for the deviation (see Table 6, page 16 in Section III: Court Case File Review in this report).

Over the last decade, several states have developed guidelines to address shared parenting. Of those states with methods of dealing with this issue, they differ in their formulas, in what constitutes shared parenting, and in how shared parenting is counted.

There are two primary modes of counting parenting time: overnight visits or hours. Counting overnight visits is the most simple; however, its simplicity may result in solely sleeping time counting towards parenting time. What counting hours gains in precision is paid for in onerous timekeeping.

The primary argument for using overnights is that it is simple and reduces conflict between the parents over visitation time. It has also been argued that overnights reflect higher costs than

equivalent daytime visits because overnights usually involve dinner and breakfast (Melli, 1999). Overnights should also result in higher fixed parenting costs compared to daytime visits because they require bedroom space. Using overnights instead of hours does create large, discrete jumps in parenting time (i.e., 14.2 percent for an Obligor with 1 night per week of visitation versus 28.7 percent for an Obligor with 2 nights per week of visitation). For this reason, and because most state models have a minimum time threshold for shared parenting adjustments, scholars (see, for example, Brown and Brito, 2007) and policymakers have worried about the potential for “cliff effects,” or sharp changes in support payments that might result from relatively small changes in parenting time. These cliff effects could create incentives to change custody arrangements and intensify conflict between parents.

After determining how to count time, the threshold for determining when shared parenting will result in a change to the support order varies tremendously from virtually any amount of time (10%) to almost completely equal time (45%). The most commonly used thresholds are 30% and 35% (used by six states each). The median threshold is 30%.

The third variable in shared parenting guidelines across states is how the support order is modified. Because the cost of maintaining two households is more expensive than the cost of one household, many states employ a multiplier (1.4 or, more commonly, 1.5) to the total support order and then divide the costs between the parties. This adjustment reflects the fact that raising a child in two homes, particularly with overnights in both locations, raises fixed costs for both parents because the child needs a bedroom, bed or crib, safety devices like child gates, high chairs, toys and other items in both homes. The most frequently cited estimate upon which the 1.5 factor is based is Lazear and Gibbs’ 1988 book, in which they claim that a household with a child in it half the time will spend 75 percent of what it would if the child lived in it full time (Melli, 1999).

The Preventing Sex Trafficking and Strengthening Families Act of 2014 expressed that establishing parenting time arrangements within child support orders is an important goal when accompanied by strong family violence safeguards, yet no additional funds were appropriated for this effort. There is evidence that Intimate Partner Violence (IPV) is particularly high for low-income populations, many of whom are likely to be among the unmarried parents served by the child support agency and couples who have experienced IPV require individualistic approaches to developing safe parenting plans (Pearson and Kaunelis 2015).

Thirty-six states consider the amount of time a child spends with each parent in the child support guidelines when considering child support order amounts (Pearson and Kaunelis 2013). The majority of these states use a cross-credit method, which essentially means that the fraction of time a child spends with each parent in a given year is used to adjust for shared parenting. Slightly more than half of these states use a multiplier, the majority using 1.5. Most states count overnights as the measure of shared parenting time, and nearly all states have a threshold for shared parenting. New Hampshire is currently in the minority of states that still deal with shared parenting only through deviations to the basic formula (Brown and Brito 2007).

We recommend that New Hampshire adopt a shared parenting adjustment that includes the following factors:

1. Use a multiplier to account for the increased costs of parenting in two households. We recommend 1.5 based on the research.
2. Subtract an amount directly proportional to the fraction of time an Obligor spends with the child(ren), measured in overnights, from the original obligation.
3. Use a threshold to determine when shared parenting will result in a change to the support order. We recommend 30%.
4. Allow for exceptions when parenting time is addressed to ensure that appropriate safeguards are included in cases with Intimate Partner Violence to guarantee safety for children and the abused parent.

EXAMPLE COMPARISONS FOR SHARED PARENTING ADJUSTMENTS

The calculation starts in the same way as a basic Income Shares calculation, by computing adjusted gross income for both parents, adding them together and determining a total guideline amount and then computing the proportional share of income for each parent. The first step in the shared parenting adjustment is to multiply the total guideline amount (which presumes sole custody) by a factor of 1.5. After the guideline amount has been increased to account for higher fixed costs, child care costs and extraordinary medical and educational expenses are added to this amount, the total family expenditure is pro-rated between the parents according to their shares of total income. After subtracting any child care, medical or education expenditures made by the Obligor from his or her fraction of the award, a credit for the fraction of time spent with the child (percent of time multiplied by the Obligor's original obligation) is also deducted. This produces the Obligor's final order amount.

We believe that this is the most intuitive and transparent way of adjusting for shared parenting, while producing support amounts that adequately address costs in dual-household situations. We also note that while overnights seems to be the easiest and most practical way to measure time in shared parenting situations, many states give judges flexibility in cases with exceptional circumstances, particularly those in which the Obligor works night shifts. Some states adjust for a "cliff effect" between having an adjustment for parenting time and not having an adjustment, having a small adjustment for parenting time just under the threshold.

To illustrate the implications of implementing our three shared parenting adjustments in New Hampshire's current guidelines, we provide calculations of awards for a fictional family under: (1) the current New Hampshire guidelines, and (2) the current New Hampshire guidelines with our proposed shared parenting adjustments. For simplicity, these calculations assume one child, no child care or medical costs, no state taxes, and no other child support payments or mandatory retirement contributions.

Example 1: Both parents earn \$1,500 per month (Parent A and Parent B)

Current NH Guidelines obligation for Parent B (Obligor)	With Proposed Shared Parenting Adjustments		
	20% Parent B parenting time	40% Parent B parenting time	50% Parent B parenting time
\$312	\$312	\$343	\$312

Example 2: Parent A earns \$1,000 per month; Parent B earns \$2,000 per month

Current NH Guidelines obligation for Parent B (Obligor)	With Proposed Shared Parenting Adjustments		
	20% Parent B parenting time	40% Parent B parenting time	50% Parent B parenting time
\$416	\$416	\$458	\$416

Example 3: Parent A earns \$2,000 per month; Parent B earns \$1,000 per month

Current NH Guidelines obligation for Parent B (Obligor)	With Proposed Shared Parenting Adjustments		
	20% Parent B parenting time	40% Parent B parenting time	50% Parent B parenting time
\$208	\$208	\$229	\$208

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Appendices

Appendix A. Court Case File Data Collection Template

Court File Information							
Court Name: Judge <input type="checkbox"/> JO: <input type="checkbox"/>			Case ID:				
Final order: Yes <input type="checkbox"/> No <input type="checkbox"/>			Date of final order:		Effective date:		
Married: Yes <input type="checkbox"/> No <input type="checkbox"/> date:			Mediator Yes <input type="checkbox"/> No <input type="checkbox"/>				
Order version: Initial <input type="checkbox"/> Modification <input type="checkbox"/>			Modifies in accordance with A three year review <input type="checkbox"/> Change in circumstances <input type="checkbox"/>				
First entered: After hearing <input type="checkbox"/> Upon agreement approval <input type="checkbox"/> Upon default <input type="checkbox"/>			Appeared at hearing: Obligor <input type="checkbox"/> Obligee <input type="checkbox"/> DCSS <input type="checkbox"/> Other <input type="checkbox"/> None Selected <input type="checkbox"/>				
Parents Information							
	Obligor		Obligee		Obligor		Obligee
Sex			Employed		Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>
DOB			TANF		Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>
Town of residence			Medicaid		Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>
State			Employer (Occupation)				
No. of children			Highest degree				
DOB for each			No. of children related to CSO				
Payment Information							
From CS guideline worksheet				From USO			
	Obligor	Obligee	Combined		Amount	Payable	Frequency
Gross monthly income				CS order			Weekly <input type="checkbox"/> Monthly <input type="checkbox"/>
Total adjusted monthly inc. (line6)				CS arrearage			Weekly <input type="checkbox"/> Monthly <input type="checkbox"/>
Tot adj. gross monthly inc. (line9)				Medical arrearage			Weekly <input type="checkbox"/> Monthly <input type="checkbox"/>
Proportional share of income				Alimony			Weekly <input type="checkbox"/> Monthly <input type="checkbox"/>
CS guideline amount				Alimony arrearage			Weekly <input type="checkbox"/> Monthly <input type="checkbox"/>
Guideline percentage					Obligor	Obligee	
Allowable child care				Medical support order			Weekly <input type="checkbox"/> Monthly <input type="checkbox"/>
Medical support				Pct. of uninsured medical exp.			Weekly <input type="checkbox"/> Monthly <input type="checkbox"/>
Reasonable medical support				Private health insurance	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Self-support reserve				Available for child	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Income available for support				Ordered to provide HI	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Presumptive CS obligation				Post-secondary school	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Income tax exemption (for child)			Alt years <input type="checkbox"/>	Legal residence for school	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	
				Life insurance	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Order frequency	Weekly <input type="checkbox"/>	Bi-weekly <input type="checkbox"/>	Monthly <input type="checkbox"/>	Imm. Inc. assignment suspend	Yes <input type="checkbox"/> No <input type="checkbox"/>	Suspended agreement <input type="checkbox"/>	Payment history:
Imputed income				Public assistance for children	TANF <input type="checkbox"/>	Medicaid <input type="checkbox"/>	
Income tax exemption				Payment to	Obligee <input type="checkbox"/>	CSS <input type="checkbox"/>	Other <input type="checkbox"/>
Other				Payment beginning date			

Adjustment From Guideline

CS MS* Rationale:

Other Considerations

Unemployment	Yes <input type="checkbox"/> No <input type="checkbox"/>	Joint custody	Yes <input type="checkbox"/> No <input type="checkbox"/>	Joint dec. making	<input type="checkbox"/>	Sole	<input type="checkbox"/>	Adjudicated father	Yes <input type="checkbox"/> No <input type="checkbox"/>
Incarceration	Yes <input type="checkbox"/> No <input type="checkbox"/>	Visitation schedule	Yes <input type="checkbox"/> No <input type="checkbox"/>						
Domestic violence	Yes <input type="checkbox"/> No <input type="checkbox"/>								
Public assistance	TANF <input type="checkbox"/> WIC <input type="checkbox"/>	Medicaid	<input type="checkbox"/>	Foodstamps	<input type="checkbox"/>	Other <input type="checkbox"/>			
Date of public assistance									
Obligor's indebted Amt.									
Other obligations (obligor)	Other CS obligations	<input type="checkbox"/>	Car payment	<input type="checkbox"/>	Student loan	<input type="checkbox"/>	Other <input type="checkbox"/>		
Other obligations (obligee)	Other CS obligations	<input type="checkbox"/>	Car payment	<input type="checkbox"/>	Student loan	<input type="checkbox"/>	Other <input type="checkbox"/>		
Previous divorces (obligor)	Yes <input type="checkbox"/> No <input type="checkbox"/>	#	Children in home	Yes <input type="checkbox"/> No <input type="checkbox"/>	#				
Previous divorces (obligee)	Yes <input type="checkbox"/> No <input type="checkbox"/>	#	Children in home	Yes <input type="checkbox"/> No <input type="checkbox"/>	#				

Review Information

Data collector	Date	Time finalized Time started	File Code
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Thoughts:

Appendix B. Survey for Judges, Marital Masters, and Judge Officers

IMPACT OF LEGISLATIVE ACTIONS: Did any of the following legislation significantly impact your 2015-2017 child support findings?

HB1632 (2014) Orders for children with disabilities	Yes <input type="checkbox"/>	No <input type="checkbox"/>
SB25 (2013) Treatment of medical support	Yes <input type="checkbox"/>	No <input type="checkbox"/>
HB1216 (2012) Establishes self-support reserve at 115% of federal poverty line	Yes <input type="checkbox"/>	No <input type="checkbox"/>
HB597 (2012) Change from percentage of income to income shares model	Yes <input type="checkbox"/>	No <input type="checkbox"/>
HB1193 (2010) Removes limitations on cost of child care	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Could you briefly describe the greatest impact?

DEVIATIONS: Did your decisions in any 2015-2017 cases deviate from the support guidelines? Yes No

Did more of those adjustments result in Higher awards Lower awards

Please rank those top three reasons for your 2015-2017 adjustments:

1. _____ 2. _____ 3. _____

MODIFICATIONS: What were the three greatest reasons for modifications in the past two years?

<input type="checkbox"/> Three-year review	<input type="checkbox"/> Unemployment	<input type="checkbox"/> Incarceration
<input type="checkbox"/> Individual parent request	<input type="checkbox"/> Decreased income	<input type="checkbox"/> Medical, dental and/or health
<input type="checkbox"/> Joint parental request	<input type="checkbox"/> Imputed income	<input type="checkbox"/> Child care
<input type="checkbox"/> Shared parenting time	<input type="checkbox"/> Increased wealth <input type="checkbox"/> Above the cap	<input type="checkbox"/> Residence change by <input type="checkbox"/> Obligee <input type="checkbox"/> Obligor
<input type="checkbox"/> Other (please specify) _____		

ISSUES: What are your three most important child support concerns today?

1. _____ 2. _____ 3. _____

In one sentence, please describe your biggest concern today regarding the child support process in NH.

If you could change one thing related to NH child support policies and procedures, what would that be?

Thank you so much for completing this survey and assisting us in reviewing child support in New Hampshire

Appendix C. Vermont And Massachusetts Child Support Visit Questions

While we will review considerable material available online prior to our visit later this week, we promised to share some general questions in advance of our visit. Some of these may be easily answered by our review of those materials.

1. Our last CS visit to VT(MA) was in 2008. What have the major CS changes been since then?
2. How have the guidelines changed?
3. What is the current model regarding self-support reserve?
4. How have the CS tables changed?
5. How has the issue of parenting time impacted CS decisions during the past three years? How has split and shared parenting changed and how is this currently calculated?
6. How has CS collection changed?
7. What is the model regarding child care costs and expectations?
8. What is the model regarding medical support?
9. What is the current model regarding incarcerated parents?
10. What is the current model regarding CS and college?
11. What are the three greatest current concerns regarding CS in your opinion(s)?
12. What percentage of original decisions deviate from the guidelines, what are the primary reasons for such adjustments, and what is the approximate percentage resulting in higher and lower amounts?
13. What percent of your child support cases in 2016 were state petitions?
What have been the three greatest reasons for support modifications in the last three years?

Jennifer Horgan

From: Richard MacInnis <richmacinnis@yahoo.com>
Sent: Friday, May 21, 2021 11:43 AM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: HB 161

I listened to the zoom call, because I had missed the day of the hearing.

I heard from many people that testified; that "best interest of the child", should be the end goal for any changes.

Let me ask- If both parents make approximately the same amount of money, and share parenting why would one parent pay the other? It was a question brought up within the UNH study of 2018. Found here (<https://www.dhhs.nh.gov/dcss/documents/cs-guidelines-review-2018.pdf>)

With about 50/50 shared custody, both households need to have a bed, clothing, recreation, rent etc. So with that using the current online child support calculator with 1 child, with both parents making approximately the same at \$5,000 per month before taxes. (<https://www.dhhs.nh.gov/dcss/calculator.htm>)

One parent would need to pay the other \$793 after tax.

Using tax of 15%; \$5,000 = \$4,250 after tax

So the paying parent = \$4,250- the child support of \$793= \$3,457 after tax to take care of the household

The receiving parent = \$4,250 + \$793 (child support) = \$5,043 after tax to take care of the household.

How can this be in the "best interest of the child"? When one parent is now further ahead by \$1,586.

I would be happy if there would be another hearing on this, or I am open to questions regarding this.

Thank you,

Richard MacInnis
23 Stevens rd
North Hampton NH
03862

603-498-1839

Jennifer Horgan

From: Richard MacInnis <richmacinnis@yahoo.com>
Sent: Tuesday, April 27, 2021 11:13 AM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: HB 161

Good morning,

I see HB 161 was sent to the NH Senate Judiciary Committee.

As you may be aware this bill was created in part as a response to the every 4 year requirement of the Federal government. UNH had completed their assessment in the fall of 2018.

As you go through the bill, you may want to read through this report as located on the NH DHHS website. There are two documents as there was an addendum to first submitted document.

Both of which can be found here:

<https://www.dhhs.nh.gov/dcss/guidelines.htm>

The originally submitted document fall 2018

<https://www.dhhs.nh.gov/dcss/documents/cs-guidelines-review-2018.pdf>

The addendum in 2019.

<https://www.dhhs.nh.gov/dcss/documents/child-support-addendum-dec2019.pdf>

Thank you,

Richard MacInnis.

2 May 2021

TO: Senate Judiciary Committee
FROM: Honey Hastings
RE: Problems of HB 161—Child Support Guidelines

I am a Certified Family Mediator working in the courts and privately and a retired family lawyer. I oppose HB 161 and have worked with others who see significant problems with this bill. You will hear from others today.

If adopted, this legislation would make substantial changes in how the Child Support Guidelines would be applied in at least 37% (see 2018 UNH report on Child Support Guidelines) of divorce and parenting cases. However, HB 161 should not be passed as it has major substantive and technical problems, including the following:

- a. **Definition for “shared parenting”** – The bill’s new-to-NH definition reflects rigid numerical thinking, defined by economists with no input from other professionals who work in divorce.
 1. Offering lowered support for a parent with 30% of the overnights would incentivize some parents to push for additional time.
 2. This definition does not consider the either child’s “best interest” or the psychological impact on children and parents of more time sought to lower the support order and resulting litigation.
 3. Under current law, cases with “equal or approximately equal” may seek a Guidelines adjustment, if it meets a 3-part test. UNH reports that 37% of support orders showed such an adjustment.
 4. The phrase “shared parenting” is nowhere in current NH law, and has no implication of the allocation of parenting time. Some divorce professionals would say that, for example, a parent with shared decision-making and six overnights a month is “sharing parenting.”
- b. **Risk in DV cases** – Victims of DV are uniquely vulnerable to the pressure that the abusive partner would apply to get a “shared” schedule and thus pay substantially reduced support.
- c. **Complicated formula** – The multi-step formula would be difficult for self-represented parties to use and is not transparent as to results.
- d. **Lack of comprehensible supporting examples** – The 2018 UNH Report included a “miscalculation [that] used the wrong denominator” resulting in inaccurate examples. Later, a 2019 UNH Addendum purported to give corrected examples, but they do not make clear who pays how much support. It is impossible to know if the formula in the Addendum (and thus, in the bill) produces fair results. *Question: Is the formula correct now?*
- e. **Finances** -The formula fails to account for which parent is paying for what. The examples in the UNH Addendum are all without such adjustments as child care, health insurance, etc.
- f. **Factors other than good public policy** – In debating whether to recommend passage, members of the House C & FL Committee cited the need to approve the UNH recommendations, due to the cost of their report.
- g. **Lack of an applicability provision** – The bill is missing an applicability provision that would prevent old cases being re-opened to reduce support. Without it, many obligors likely would seek the substantial reduction in existing support orders that this bill would justify. The CCS and the Courts

would have a flood of cases. The legislation that last updated the Guidelines, Chapter 248 of the **Laws of 2012** said at section 5:

Applicability. RSA 458-C:3, I as amended by this act shall apply to any child support order issued on or after July 1, 2013. RSA 458-C:3, I as amended by this act shall not apply to a valid child support order in effect on the effective date of this act until the next scheduled review hearing under RSA 458-C:7 or as otherwise agreed by the parties. This act shall not constitute a substantial change in circumstances for purposes of RSA 458-C:7.

- h. **Lack of a Fiscal Note** – This bill needs a Fiscal Note. The reduction in child support ordered in these cases would mean more parents seeking state (or local) aid. As the Fiscal Note to another bill that would have decreased support in some cases said, “The Department of Health and Human Services notes that in certain cases, any decrease in child support could result in additional families seeking aid through various state assistance programs.” (HB 317).

The informal group that is working to oppose HB 161 is willing to meet over the summer and come back with an alternate proposal for child support in cases where parents have equal or approximately equal parenting schedules. I as that you kill this bill and give us a chance to come up with a solution that will work in NH.

Revised Recommendation #3: Formula for Shared Parenting

We recommend the New Hampshire legislature enact changes to the guidelines to address shared parenting. New Hampshire's statute does not provide uniform guidelines for addressing shared parenting arrangements. As substantially equal parenting increases in a number of cases, a larger proportion of child support cases must deviate from the guidelines to account for the sharing of expenses. This results in a range of possible outcomes, little predictability for parents entering the system, and in some cases, judgments that are inconsistent and not fair alternately to the Obligee or Obligor. In New Hampshire, 37% of the cases that deviate from the guidelines have shared parenting as the first rationale given for the deviation (see Table 6, page 16 in Section III: Court Case File Review in this report).

Over the last decade, several states have developed guidelines to address shared parenting. Of those states with methods of dealing with this issue, they differ in their formulas, in what constitutes shared parenting, and in how shared parenting is counted.

There are two primary modes of counting parenting time: overnight visits or hours. Counting overnight visits is the most simple; however, its simplicity may result in solely sleeping time counting towards parenting time. What counting hours gains in precision is paid for in onerous timekeeping.

The primary argument for using overnights is that it is simple and reduces conflict between the parents over visitation time. It has also been argued that overnights reflect higher costs than equivalent daytime visits because overnights usually involve dinner and breakfast (Melli, 1999). Overnights should also result in higher fixed parenting costs compared to daytime visits because they require bedroom space. Using overnights instead of hours does create large, discrete jumps in parenting time (i.e., 14.2 percent for an Obligor with 1 night per week of visitation versus 28.7 percent for an Obligor with 2 nights per week of visitation). For this reason, and because most state models have a minimum time threshold for shared parenting adjustments, scholars (see, for example, Brown and Brito, 2007) and policymakers have worried about the potential for "cliff effects," or sharp changes in support payments that might result from relatively small changes in parenting time. These cliff effects could create incentives to change custody arrangements and intensify conflict between parents.

After determining how to count time, the threshold for determining when shared parenting will result in a change to the support order varies tremendously from virtually any amount of time (10%) to almost completely equal time (45%). The most commonly used thresholds are 30% and 35% (used by six states each). The median threshold is 30%.

The third variable in shared parenting guidelines across states is how the support order is modified. Because the cost of maintaining two households is more expensive than the cost of one household, many states employ a multiplier (1.4 or, more commonly, 1.5) to the total support order and then divide the costs between the parties. This adjustment reflects the fact that raising a child in two homes, particularly with overnights in both locations, raises fixed

costs for both parents because the child needs a bedroom, bed or crib, safety devices like child gates, high chairs, toys and other items in both homes. The most frequently cited estimate upon which the 1.5 factor is based is Lazear and Gibbs' 1988 book, in which they claim that a household with a child in it half the time will spend 75 percent of what it would if the child lived in it full time (Melli, 1999).

The Preventing Sex Trafficking and Strengthening Families Act of 2014 expressed that establishing parenting time arrangements within child support orders is an important goal when accompanied by strong family violence safeguards, yet no additional funds were appropriated for this effort. There is evidence that Intimate Partner Violence (IPV) is particularly high for low-income populations, many of whom are likely to be among the unmarried parents served by the child support agency and couples who have experienced IPV require individualistic approaches to developing safe parenting plans (Pearson and Kaunelis 2015).

Thirty-six states consider the amount of time a child spends with each parent in the child support guidelines when considering child support order amounts (Pearson and Kaunelis 2013). The majority of these states use a cross-credit method, which essentially means that the fraction of time a child spends with each parent in a given year is used to adjust for shared parenting. Slightly more than half of these states use a multiplier, the majority using 1.5. Most states count overnights as the measure of shared parenting time, and nearly all states have a threshold for shared parenting. New Hampshire is currently in the minority of states that still deal with shared parenting only through deviations to the basic formula (Brown and Brito 2007).

We recommend that New Hampshire adopt a shared parenting adjustment that includes the following factors:

1. Use a multiplier to account for the increased costs of parenting in two households. We recommend 1.5 based on the research. This value represents the combined family expenditures.
2. Subtract a credit for the fraction of time the Obligor spends with the child(ren), measured in overnights, (percent of time multiplied by the combined family expenditures), from the parental support obligation to arrive at the adjusted shared custody obligation.
3. Use a threshold to determine when shared parenting will result in a change to the support order. We recommend 30%.
4. Allow for exceptions when parenting time is addressed to ensure that appropriate safeguards are included in cases with Intimate Partner Violence to guarantee safety for children and the abused parent.

EXAMPLE COMPARISONS FOR SHARED PARENTING ADJUSTMENTS

The calculation starts in the same way as a basic Income Shares calculation, by computing adjusted gross income for both parents, adding them together and determining a total guideline amount and then computing the proportional share of income for each parent. The first step in the shared parenting adjustment is to multiply the total guideline amount (which presumes sole custody) by a factor of 1.5. After the guideline amount has been increased to account for higher fixed costs, child care costs and extraordinary medical and educational expenses are added to this amount, the total family expenditure is pro-rated between the parents according to their shares of total income. After subtracting any child care, medical or education expenditures made by the Obligor from his or her fraction of the award, a credit for the fraction of time spent with the child (percent of time multiplied by the combined family expenditures) is also deducted. This produces the Obligor's final adjusted order amount.

We believe that this is the most intuitive and transparent way of adjusting for shared parenting, while producing support amounts that adequately address costs in dual-household situations. We also note that while overnights seem to be the easiest and most practical way to measure time in shared parenting situations, many states give judges flexibility in cases with exceptional circumstances, particularly those in which the Obligor works night shifts. Some states adjust for a "cliff effect" between having an adjustment for parenting time and not having an adjustment, having a small adjustment for parenting time just under the threshold (i.e. in cases where the child spends 25%-30% of time with one parent).

To illustrate the implications of implementing our three shared parenting adjustments in New Hampshire's current guidelines, we provide calculations of awards for a fictional family under: (1) the current New Hampshire guidelines, and (2) the current New Hampshire guidelines with our proposed shared parenting adjustments. For simplicity, these calculations assume one child, no child care or medical costs, no state taxes, and no other child support payments or mandatory retirement contributions. We use the terminology Parent A and Parent B in our examples.

Example 1. Both Parents Earn \$1,500 per Month

Current NH Guidelines Child Support Amount Parent A: \$312

Current NH Guidelines Child Support Amount Parent B: \$312

1A. Shared Parenting: 50%-50%	Parent A	Parent B	Combined
Part I: Available Income			
Monthly Income	1500	1500	3000
Part II: Calculate Support Obligation			
Proportional Share of Income	50%	50%	
Child Support Guideline Amount			624
Multiply by 1.5 (Shared Parenting)			936
Combined Family Expenditures			936
Parental Support Obligation	468	468	
Part III: Shared Custody Calculation			
Percentage of Time with Children	50%	50%	
Credit for Time Spent with Parent B		468	
Adjusted Shared Custody Child Support Obligation		0	

1B. Shared Parenting: 40%-60%	Parent A	Parent B	Combined
Part I: Available Income			
Monthly Income	1500	1500	3000
Part II: Calculate Support Obligation			
Proportional Share of Income	50%	50%	
Child Support Guideline Amount			624
Multiply by 1.5 (Shared Parenting)			936
Combined Family Expenditures			936
Parental Support Obligation	468	468	
Part III: Shared Custody Calculation			
Percentage of Time with Children	40%	60%	
Credit for Time Spent with Parent B		561.60	
Adjusted Shared Custody Child Support Obligation		-93.60	

1C. Shared Parenting: 60%-40%	Parent A	Parent B	Combined
Part I: Available Income			
Monthly Income	1500	1500	3000
Part II: Calculate Support Obligation			
Proportional Share of Income	50%	50%	
Child Support Guideline Amount			624
Multiply by 1.5 (Shared Parenting)			936
Combined Family Expenditures			936
Parental Support Obligation	468	468	
Part III: Shared Custody Calculation			
Percentage of Time with Children	60%	40%	
Credit for Time Spent with Parent B		374.40	
Adjusted Shared Custody Child Support Obligation		93.60	

Example 2. Parent A Earns \$1,000, Parent B Earns \$2,000

Current NH Guidelines Child Support Amount Parent A: \$208

Current NH Guidelines Child Support Amount Parent B: \$416

2A. Shared Parenting: 50%-50%	Parent A	Parent B	Combined
Part I: Available Income			
Monthly Income	1000	2000	3000
Part II: Calculate Support Obligation			
Proportional Share of Income	33%	67%	
Child Support Guideline Amount			624
Multiply by 1.5 (Shared Parenting)			936
Combined Family Expenditures			936
Parental Support Obligation	312	624	
Part III: Shared Custody Calculation			
Percentage of Time with Children	50%	50%	
Credit for Time Spent with Parent B		468	
Adjusted Shared Custody Child Support Obligation		156	

2B. Shared Parenting: 40%-60%	Parent A	Parent B	Combined
Part I: Available Income			
Monthly Income	1000	2000	3000
Part II: Calculate Support Obligation			
Proportional Share of Income	33%	67%	
Child Support Guideline Amount			624
Multiply by 1.5 (Shared Parenting)			936
Combined Family Expenditures			936
Parental Support Obligation	312	624	
Part III: Shared Custody Calculation			
Percentage of Time with Children	40%	60%	
Credit for Time Spent with Parent B		561.60	
Adjusted Shared Custody Child Support Obligation		62.40	

2C. Shared Parenting: 60%-40%	Parent A	Parent B	Combined
Part I: Available Income			
Monthly Income	1000	2000	3000
Part II: Calculate Support Obligation			
Proportional Share of Income	33%	67%	
Child Support Guideline Amount			624
Multiply by 1.5 (Shared Parenting)			936
Combined Family Expenditures			936
Parental Support Obligation	312	624	
Part III: Shared Custody Calculation			
Percentage of Time with Children	60%	40%	
Credit for Time Spent with Parent B		374.4	
Adjusted Shared Custody Child Support Obligation		249.6	

Example 3. Parent A Earns \$2,000, Parent B Earns \$1,000

Current NH Guidelines Child Support Amount Parent A: \$416

Current NH Guidelines Child Support Amount Parent B: \$208

3A. Shared Parenting: 50%-50%	Parent A	Parent B	Combined
Part I: Available Income			
Monthly Income	2000	1000	3000
Part II: Calculate Support Obligation			
Proportional Share of Income	67%	33%	
Child Support Guideline Amount			624
Multiply by 1.5 (Shared Parenting)			936
Combined Family Expenditures			936
Parental Support Obligation	624	312	
Part III: Shared Custody Calculation			
Percentage of Time with Children	50%	50%	
Credit for Time Spent with Parent B		468	
Adjusted Shared Custody Child Support Obligation		-156	

3B. Shared Parenting: 40%-60%	Parent A	Parent B	Combined
Part I: Available Income			
Monthly Income	2000	1000	3000
Part II: Calculate Support Obligation			
Proportional Share of Income	67%	33%	
Child Support Guideline Amount			624
Multiply by 1.5 (Shared Parenting)			936
Combined Family Expenditures			936
Parental Support Obligation	624	312	
Part III: Shared Custody Calculation			
Percentage of Time with Children	40%	60%	
Credit for Time Spent with Parent B		561.6	
Adjusted Shared Custody Child Support Obligation		-249.6	

3C. Shared Parenting: 60%-40%	Parent A	Parent B	Combined
Part I: Available Income			
Monthly Income	2000	1000	3000
Part II: Calculate Support Obligation			
Proportional Share of Income	67%	33%	
Child Support Guideline Amount			624
Multiply by 1.5 (Shared Parenting)			936
Combined Family Expenditures			936
Parental Support Obligation	624	312	
Part III: Shared Custody Calculation			
Percentage of Time with Children	60%	40%	
Credit for Time Spent with Parent B		374.4	
Adjusted Shared Custody Child Support Obligation		-62.4	

Example 4. Not Shared Parenting: 80%-20%

4A. Both Parents Earn \$1,500	Parent A	Parent B	Combined
Part I: Available Income			
Monthly Income	1500	1500	3000
Part II: Calculate Support Obligation			
Proportional Share of Income	50%	50%	
Child Support Guideline Amount			624
Multiply by 1.5 (Shared Parenting)			
Combined Family Expenditures			
Parental Support Obligation	312	312	
Part III: Shared Custody Calculation			
Percentage of Time with Children	80%	20%	
Credit for Time Spent with Parent B		0	
Adjusted Shared Custody Child Support Obligation		312	

4B. Parent A Earns \$1,000, Parent B \$2,000	Parent A	Parent B	Combined
Part I: Available Income			
Monthly Income	1000	2000	3000
Part II: Calculate Support Obligation			
Proportional Share of Income	33%	67%	
Child Support Guideline Amount			624
Multiply by 1.5 (Shared Parenting)			
Combined Family Expenditures			
Parental Support Obligation	208	416	
Part III: Shared Custody Calculation			
Percentage of Time with Children	80%	20%	
Credit for Time Spent with Parent B		0	
Adjusted Shared Custody Child Support Obligation		416	

4C. Parent A Earns \$2,000, Parent B \$1,000	Parent A	Parent B	Combined
Part I: Available Income			
Monthly Income	2000	1000	3000
Part II: Calculate Support Obligation			
Proportional Share of Income	67%	33%	
Child Support Guideline Amount			624
Multiply by 1.5 (Shared Parenting)			
Combined Family Expenditures			
Parental Support Obligation	416	208	
Part III: Shared Custody Calculation			
Percentage of Time with Children	80%	20%	
Credit for Time Spent with Parent B		0	
Adjusted Shared Custody Child Support Obligation		208	

Voting Sheets

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # HB161

Hearing date: _____

Executive Session date: _____

Motion of: ITL Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: Consent Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Whitley
 Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Tuesday, May 25, 2021

THE COMMITTEE ON Judiciary

to which was referred **HB 161**

AN ACT relative to the calculation of child support.

Having considered the same, the committee recommends that the Bill

IS INEXPEDIENT TO LEGISLATE

BY A VOTE OF: 5-0

Senator Rebecca Whitley
For the Committee

This bill would revise the child support guideline percentages, increase the self-support reserve amount, define a shared parenting plan, establish a new formula for the calculation of child support in cases involving shared parenting plans; and permit the court to modify the presumptive child support amount as justice and the best interest of the child may require. The Committee strongly believes that the child's best interest should be of the utmost importance in these proceedings and that time parenting should not be tied to a financial incentive and therefore recommends this bill to be Inexpedient to Legislate.

Jennifer Horgan 271-7875

FOR THE CONSENT CALENDAR

JUDICIARY

HB 161, relative to the calculation of child support.

Inexpedient to Legislate, Vote 5-0.

Senator Rebecca Whitley for the committee.

This bill would revise the child support guideline percentages, increase the self-support reserve amount, define a shared parenting plan, establish a new formula for the calculation of child support in cases involving shared parenting plans; and permit the court to modify the presumptive child support amount as justice and the best interest of the child may require. The Committee strongly believes that the child's best interest should be of the utmost importance in these proceedings and that time parenting should not be tied to a financial incentive and therefore recommends this bill to be Inexpedient to Legislate.

General Court of New Hampshire - Bill Status System

Docket of HB161

Docket Abbreviations

Bill Title: relative to the calculation of child support.*Official Docket of HB161.:*

Date	Body	Description
1/4/2021	H	Introduced (in recess of) 01/06/2021 and referred to Children and Family Law HJ 2 P. 37
1/27/2021	H	Public Hearing: 02/03/2021 10:30 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/96640856922 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
3/11/2021	H	Executive Session: 03/11/2021 09:30 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/91927749754
3/15/2021	H	Majority Committee Report: Ought to Pass with Amendment #2021-0549h (Vote 8-7; RC) HC 18 P. 32
3/15/2021	H	Minority Committee Report: Inexpedient to Legislate
4/7/2021	H	Amendment #2021-0549h : AA VV 04/07/2021 HJ 5 P. 132
4/7/2021	H	Ought to Pass with Amendment 2021-0549h: MA DV 199-175 04/07/2021 HJ 5 P. 132
4/13/2021	S	Introduced 04/08/2021 and Referred to Judiciary; SJ 12
4/28/2021	S	Remote Hearing : 05/03/2021, 01:15 pm; Links to join the hearing can be found in the Senate Calendar; SC 22
5/25/2021	S	Committee Report: Inexpedient to Legislate; Vote 5-0; CC; 05/27/2021; SC 25A
5/27/2021	S	Inexpedient to Legislate, MA, VV === BILL KILLED ===; 05/27/2021; SJ 17

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB161

Senate Committee: Jud

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Post Floor Action: (if applicable) {Clerk's Office}

___ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

___ Enrolled Bill Amendment(s)

___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

___ as amended by the senate ___ as amended by the house

___ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Jennifer Horgan
Committee Aide

8/12/21
Date

Senate Clerk's Office _____