

# CSAC WORKGROUP RECOMMENDATIONS FOR MULTIPLE FAMILY OBLIGATIONS

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On June 10, 2013, the Illinois Child Support Advisory Committee (CSAC) convened a workgroup to study child support calculations where parents provide financial support for children in more than one family, and to make recommendations to the full CSAC on September 9, 2013. The members of the workgroup are Diane Potts (Chair), Irene Curran, Nicole McKinnon, Judge Andrea Schleifer, Ada Skyles, Margaret Stapleton, Zeophus Williams, and Richard Zuckerman. The workgroup had 5 meetings (June 19, July 8, July 29, August 15, and August 29), and considered various materials on multiple family obligations, including CHILD SUPPORT GUIDELINES AND COMPLICATED FAMILIES by Tonya Brito; REVIEW OF CHILD SUPPORT POLICIES FOR MULTIPLE FAMILY OBLIGATION by Emma Caspar; and the guideline approach in Delaware and in other States.

As detailed herein, the workgroup recommends to the CSAC that:

- The law recognize all children, including those residing with the parent and those being supported outside the household by the parent, and treat all children fairly
- Parents making court-ordered support payments receive a deduction from their net income for that support amount
- Parents supporting their children<sup>1</sup> in their home receive a deduction from their net income equal to 75% of the support set forth in the income shares guidelines for that parent's specific net income level
- Parents who prove that they are paying support for their children, but not pursuant to any court order, receive a deduction from their net income equal to 75% of the support amount provided in the income shares guidelines for that parent's specific net income level *or* the amount of actual support paid, whichever is less

Finally, the workgroup developed several case examples that detail the child support calculations for different types of families that include children residing both inside and outside of the household. These case examples accompany this recommendation.

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<sup>1</sup> The term "children" is intended throughout to include one child, as well as multiple children.

## I. INTRODUCTION

Many parents in the United States have children with more than one partner, resulting in multiple financial support obligations. State laws vary significantly on how to best apportion a parent's income among children living in different households. For example, in Illinois, the current law does not specifically address children living in a parent's household for purposes of setting or modifying a support order for another child, while many States require courts to consider those children.

The impact of different State laws is substantial, resulting in vastly different support obligations for similarly situated parents. *See Cancian & Meyer, WHO OWES WHAT TO WHOM? CHILD SUPPORT POLICY GIVEN MULTIPLE-PARTNER FERTILITY*, University of Chicago Social Service Review, Vol. 85, No. 4 (Dec. 2011), p. 587 (after studying multiple partner fertility and its effect on child support, the authors found that "different regimes can result in vastly different amounts due" and that "no system is ideal"). The workgroup examined different factors and calculation methods in formulating the following recommendation.

## II. PUBLIC POLICY

The workgroup first considered the public policy goal for child support legislation dealing with multiple family obligations. Among the policy goals discussed were whether all children should be treated equally, whether certain children should have priority, whether some children should be excluded, and whether all children should be treated fairly.

A significant amount of time was spent considering whether all children of a parent should receive equal financial support. The workgroup recognized that the CSAC voted in 2011 to adopt this approach for parents with very low income levels (at or below 75% of the federal poverty level). For these parents, the total amount of child support would be capped at \$120 per month, with all children sharing equal portions of that support.

While equality for all children is an admirable public policy goal, the workgroup decided not to recommend expansion of this approach to parents with higher income levels for two reasons. First, there are significant procedural hurdles to a court having jurisdiction over all parties and children, making it difficult to recalculate all child support payments whenever an additional child is born or an older child emancipates. Second, there are substantive concerns that this approach would not take into account the custodial parent's income—contrary to the fundamental purpose of income shares.

The workgroup also considered Illinois' current law, which does not contain a provision for considering a parent's children in the household or children whom the

parent is actually supporting but not pursuant to court order. The policy justification for ignoring these children, assumedly, is to discourage parents from having additional children. But, as one scholar aptly commented, “[t]he problem with this governmental objective is that it seeks to impermissibly influence the actions of parents by imposing a financial penalty on the children, who are not in a position to affect their parents’ childbearing conduct.” Brito, *supra*, at p. 14. Further, laws which discriminate against certain classes of children may run afoul of the Equal Protection Clause of the United States Constitution. *Id.* at 12.

In the workgroup’s view, the best public policy goal for Illinois advocates fairness for all children. Therefore, the recommendation is that all children of a parent be entitled to consideration under the law when a parent’s support obligation is decided. Although this may result in a child support order that is lower than if the parent had no other dependents, the law would treat children fairly and the order would more accurately reflect the totality of the parent’s responsibilities.

### **III. PARENTS WHO ARE PAYING CHILD SUPPORT PURSUANT TO COURT ORDER**

Illinois law currently allows a deduction from net income for “[p]rior obligations of support” actually paid pursuant to court order. 750 ILCS 5/505. The workgroup recommends that Illinois law continue to allow these deductions, with one clarification. Illinois law does not provide for prioritizing deductions based on the age of the children (*i.e.*, the oldest child has priority even if a younger child has the first order for support), although one court has interpreted the law as doing so (*In re Marriage of Potts*, 297 Ill. App. 3d 110). The workgroup recommends that the legislative notes reflect the intent to supersede the *Potts* opinion so that all child support orders actually paid are given consideration regardless of the age of the children.

### **IV. PARENTS PROVIDING SUPPORT IN THEIR HOUSEHOLD FOR CHILDREN TO WHOM THEY ARE LEGALLY OBLIGATED TO SUPPORT**

Illinois law does not currently allow a deduction from net income for parents who support their children in their household. The result is that many parents are forced with the untenable choice of paying their court-ordered support or purchasing essentials such as food and clothing for their children in their home.

As explained, the public policy goal is for all children to be considered when setting support and for the law to treat all children fairly. Further, parents who

assume the responsibility for raising children in their home should be commended, not financially punished under the law.

The workgroup examined how to quantify a support amount for these household children, and the consensus was to deduct some amount from the parent's net income in proportion to his or her specific income level. Tying the "imputed support" amount to the income share tables made the most sense. Because an imputed support deduction for children in the household is a dramatic change for Illinois, however, the workgroup recommends a deduction at 75% of the support amount set forth in the table for the parent's net income level as opposed to a full 100% deduction. Some of the case examples accompanying this recommendation contain child support calculations at the 75% deduction level, as well as a 100% deduction level for illustrative purposes.

The workgroup recommends that the statutory provision allow this deduction only where the parent has a legal obligation to provide financial support to the children in his or her household, such as for biological children, adopted children, or when the parent has legal guardianship of the children. The deduction should not be allowed where there is no legal obligation, such as with stepchildren, because those children assumedly have another parent with the obligation to provide support.

The workgroup also spent considerable time examining whether or not the income of the other parent in the household should be considered in setting the support level for the household children. This calculation method would entail (1) gathering a non-party's financial information; and (2) a two-step process where an income shares calculation for the household children is done first and the resultant child support amount (at either the 100% or 75% level) is then deducted from the parent's net income, and then another income shares calculation is performed for the child before the court. In the end, the workgroup decided against recommending that the other parent's income be used in all cases to calculate the deduction. Instead, the workgroup recommends that the trial court's discretion be used for situations where the other parent's income is found to be relevant to the support calculation.

## **V. PARENTS WHO CAN PROVE THAT THEY PAY SUPPORT FOR THEIR CHILDREN BUT ARE NOT DOING SO PURSUANT TO COURT ORDER**

Finally, the workgroup considered parents who pay support for their children but not pursuant to any court order. The workgroup had considerable concerns

about proof of payments and the potential for misuse by some parents. But, to the extent parents are able to substantiate a history of regular child support payments for children, the workgroup agreed that the parents should be rewarded, not punished, for voluntarily accepting their financial responsibility to their children. Proof of payments could include financial records or the sworn testimony of the parent receiving the support, either in court or by affidavit.

The workgroup also was concerned with a parent paying too much in voluntary child support to the other family. The workgroup's recommendation, therefore, is for a deduction at 75% of the support amount set forth in the table for the parent's income level *or* the actual amount of regular child support payments made to the custodial parent, whichever is *less*.

## **VI. CONCLUSION**

The issue of how State law should address child support when a parent has children with multiple partners is difficult. Too often, the parent lacks sufficient financial resources to provide enough support for all his or her children. Nevertheless, the workgroup believes that this recommendation balances these competing concerns and treats all children fairly. The workgroup has not drafted actual statutory language for this recommendation, and leaves that task to the CSAC legislative drafting committee.