

SB

134

<TARGET><BILL>SB 134</BILL><SUBJECT>SB
134</SUBJECT><COMM>SJUD27</COMM></TARGET>

CS FOR SENATE BILL NO. 134(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): SENATOR KOOKESH

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to child support awards; and repealing Rule 90.3, Alaska Rules of Civil**
2 **Procedure."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 25 is amended by adding a new chapter to read:

5 **Chapter 28. Child Support Awards.**

6 **Sec. 25.28.010. Guidelines; primary physical custody.** (a) A tribunal shall
7 calculate a child support award in a case in which one parent is awarded primary
8 physical custody as an amount equal to the adjusted annual income of the noncustodial
9 parent multiplied by a percentage specified in (b) of this section.

10 (b) To calculate the child support award, the tribunal shall multiply the
11 noncustodial parent's adjusted annual income by the following percentages:

- 12 (1) 20 percent for one child;
- 13 (2) 27 percent for two children;
- 14 (3) 33 percent for three children; and

1 (4) an additional three percent for each additional child.

2 (c) The tribunal may allow the obligor parent to reduce child support
3 payments by up to 75 percent for a period in which the obligor parent has extended
4 visitation of more than 27 consecutive days. The order must specify the amount of the
5 reduction that is allowable if the extended visitation is exercised.

6 (d) The tribunal may calculate child support based on a determination of the
7 potential income of a parent who voluntarily and unreasonably is unemployed or
8 underemployed. A determination of potential income may not be made for a parent
9 who is physically or mentally incapacitated, or who is caring for a child under two
10 years of age to whom the parents owe a joint legal responsibility. Potential income
11 shall be based on the parent's work history, qualifications, and job opportunities. The
12 tribunal also may impute potential income for nonincome producing or low income
13 producing assets.

14 (e) In this section, "adjusted annual income" means the parent's total income
15 from all sources less

16 (1) mandatory deductions, including

17 (A) federal, state, and local income tax;

18 (B) social security tax or the equivalent contribution to an
19 alternate plan established by a public employer, and self-employment tax;

20 (C) Medicare tax;

21 (D) mandatory union dues;

22 (E) mandatory contributions to a retirement or pension plan;

23 (2) voluntary contributions to a retirement or pension plan or account
24 in which the earnings are tax-free or tax-deferred, except that the total amount of these
25 voluntary contributions plus any mandatory contributions under (1)(E) of this
26 subsection may not exceed 7.5 percent of the parent's gross wages and self-
27 employment income;

28 (3) child support and alimony payments arising from previous
29 relationships that are required by another tribunal and actually paid;

30 (4) child support for children from prior relationships living with the
31 parent, calculated by using the formula under this chapter; and

1 (5) work-related child care expenses for the child who is the subject of
2 the child support order.

3 **Sec. 25.28.020. Guidelines; shared, divided, and hybrid custody awards.**

4 (a) The tribunal shall calculate shared, divided, and hybrid physical custody awards as
5 provided in this section.

6 (b) The tribunal shall calculate a child support award in a case in which the
7 parents are awarded shared physical custody by

8 (1) calculating the annual amount each parent would pay to the other
9 parent under AS 25.28.010 assuming the other parent had primary custody; in this
10 calculation, the income limit in AS 25.28.030(c) and the minimum support amount in
11 AS 25.28.030(d) apply;

12 (2) multiplying the amount determined under (1) of this subsection for
13 each parent by the percentage of time the other parent has physical custody of the
14 child; however, if the tribunal finds that the percentage of time each parent will have
15 physical custody does not accurately reflect the ratio of funds each parent will directly
16 spend on supporting the child, the tribunal shall vary this percentage to reflect its
17 findings;

18 (3) determining which parent has the greater amount under (2) of this
19 subsection; the parent with the greater amount under (2) of this subsection is the
20 obligor parent, and the annual award is equal to the difference between the two
21 amounts under (2) of this subsection multiplied by 1.5; however, if this amount is
22 greater than the amount of support calculated under AS 25.28.010 assuming the
23 obligor parent has primary custody, the annual support is the amount calculated under
24 AS 25.28.010.

25 (c) The child support award for shared custody under (b) of this section must
26 be paid in 12 equal monthly installments, except that if

27 (1) shared custody is based on the obligor parent's having physical
28 custody for periods of 30 consecutive days or more, the total annual award may be
29 paid in equal installments over those months in which the obligor parent does not have
30 physical custody; or

31 (2) the obligor parent's income is seasonal, the tribunal may order

1 unequal monthly support payments as provided in AS 25.28.030(g) and (h).

2 (d) The child support order must state that failure to exercise sufficient
3 physical custody to qualify for shared physical custody under (b) or (c) of this section
4 is grounds for modification of the child support order. Denial of visitation by the
5 custodial parent is not cause to increase a child support award.

6 (e) The tribunal shall

7 (1) calculate a child support award in a case in which the parents are
8 awarded divided custody by determining the amount each parent would pay to the
9 other parent for support of a child for whom that parent has primary physical custody
10 under AS 25.28.010, taking into account the income limit in AS 25.28.030(c) and the
11 minimum support amount in AS 25.28.030(d), and offsetting those amounts; and

12 (2) consider whether the amount determined under (1) of this
13 subsection should be varied under AS 25.28.030(b).

14 (f) The tribunal shall

15 (1) calculate a child support award in a case in which the parents are
16 awarded hybrid custody by

17 (A) applying AS 25.28.010, taking into account the income
18 limit in AS 25.28.030(c) and the minimum support amount in
19 AS 25.28.030(d), to determine support for a child in the primary physical
20 custody of each parent;

21 (B) applying (b) of this section to determine support for a child
22 in the shared physical custody of the parents;

23 (C) adjusting pro rata the percentages provided in
24 AS 25.28.010(b) based on the number of children to which each type of
25 custody applies; and

26 (D) combining the amounts to determine the net obligation; and

27 (2) consider whether the amount determined under (1) of this
28 subsection should be varied under AS 25.28.030(b).

29 **Sec. 25.28.030. Exceptions to support awards.** (a) Notwithstanding the
30 requirements in AS 25.28.010 and 25.28.020, the tribunal may vary the award for the
31 reasons stated in this section.

1 (b) The tribunal may vary the child support award as calculated under the
2 other provisions of this chapter for good cause on proof by clear and convincing
3 evidence that manifest injustice would result if the support award were not varied. The
4 tribunal shall specify in writing the reason for the variation, the amount of support that
5 would have been required but for the variation, and the estimated value of any
6 property conveyed instead of support calculated under the other provisions of this
7 chapter. Good cause may include a finding that unusual circumstances exist that
8 require variation of the award in order to award an amount of support that is just and
9 proper for the parties to contribute toward the nurture and education of their children.
10 The tribunal shall consider the custodial parent's income in this determination.

11 (c) The calculation for primary physical custody under AS 25.28.010 does not
12 apply to the extent that the parent has an adjusted annual income of more than
13 \$105,000. The tribunal may make an additional award only if it is just and proper,
14 taking into account the needs of the child, the standard of living of the child, and the
15 extent to which that standard should reflect the supporting parent's ability to pay.

16 (d) Except as provided in AS 25.28.010(c) and 25.28.020, the minimum child
17 support amount that may be ordered is \$50 a month or \$600 a year.

18 (e) In addition to ordering a parent to pay child support as calculated under
19 this chapter, the tribunal may, in appropriate circumstances and when the parents are
20 minors as described in (f) of this section, order one or more grandparents of a child to
21 pay child support to an appropriate person in an amount determined by the tribunal to
22 serve the best interests of the child; however, the amount may not exceed the lesser of

23 (1) a proportionate share of the amount required to provide care in a
24 supervised setting to the grandchild, as determined by the tribunal; or

25 (2) the amount that would have been awarded if the child's parents had
26 the incomes of the child's grandparents and AS 25.28.010 and 25.28.020 were applied.

27 (f) An order under (e) of this section may be issued only with respect to a
28 child whose parents are both minors, and the order terminates when either parent
29 becomes 18 years of age. The tribunal shall specify in writing the reasons it considers
30 it to be appropriate to order a grandparent to pay child support under this subsection
31 and the factors considered in setting the amount of the child support award. In this

1 subsection, "grandparent" means the natural or adoptive parent of the minor parent.

2 (g) If the noncustodial parent's income is seasonal, the tribunal may order that
3 the annual support amount be paid in unequal monthly payments, with higher
4 payments during the months the parent expects to receive higher income and lower
5 payments in other months; the tribunal may not make an unequal payment order unless

6 (1) the tribunal finds that the burden of budgeting for periods of
7 unequal income should be placed on the obligee rather than the obligor; and

8 (2) the obligee agrees.

9 (h) An order of the tribunal for unequal payments under (g) of this section
10 must specify the annual support amount, the average monthly support amount, and the
11 amount due for each month. The order must provide that variations from the average
12 monthly amount begin with monthly payments in excess of the average monthly
13 amount so that a deficit situation cannot occur. Until the excess payments begin, the
14 tribunal shall order payment of the average monthly amount.

15 **Sec. 25.28.040. Health care expenses.** (a) The tribunal shall include in the
16 order coverage of the child's health care needs and require health insurance for the
17 child if insurance is available to either parent or both parents at a reasonable cost. The
18 tribunal shall consider whether the child is eligible for services through the Indian
19 Health Service, any other entity, or other insurance coverage before ordering either
20 parent or both parents to provide health care coverage through insurance, cash medical
21 support, or other means. The tribunal shall find that health insurance is available only
22 if the dependent child has reasonable geographic access to the covered services or the
23 insurance includes the coverage of transportation needed for the services.

24 (b) The tribunal shall allocate equally the cost of insurance between the
25 parents unless the tribunal orders otherwise for good cause. An obligor's child support
26 obligation shall be decreased by the amount of the obligee's portion of health
27 insurance payments ordered by the tribunal and actually paid by the obligor. The
28 tribunal shall increase a child support award by the obligor's portion of health
29 insurance if the obligee is ordered to, and actually does, obtain and pay for insurance.

30 (c) The cost of insurance is the cost attributable to the child for whom support
31 is paid. If the cost to the employee of covering the employee alone is the same as the

1 cost to the employee of covering the employee and dependents, then there is no
2 additional cost to the employee for adding the child and no portion of the cost of
3 coverage may be allocated to the child. If dependent coverage can be added for a
4 single cost, rather than for each dependent, and the dependent coverage covers
5 dependents in addition to the child subject to the order, the cost of the dependent
6 coverage shall be allocated equally among the dependents covered. If there is reason
7 to believe that there is an incremental cost to the employee for insuring dependents but
8 evidence of that incremental cost is unavailable, the cost of insurance is determined by
9 dividing the total cost of coverage by the number of family members covered and
10 multiplying that amount by the number of children subject to the order.

11 (d) The tribunal shall allocate equally between the parties the cost of
12 reasonable health care expenses not covered by insurance unless the tribunal orders
13 otherwise for good cause. A party shall reimburse the other party for the party's share
14 of the uncovered health care expenses within 30 days after receipt of the bill for the
15 health care, payment verification, and, if applicable, a health insurance statement
16 indicating what portion of the cost is uncovered. The tribunal shall allocate the
17 reasonable, uncovered health care expenses exceeding \$5,000 in a calendar year based
18 on the parties' relative financial circumstances when the expenses occur.

19 (e) For the purpose of establishing a monthly support obligation for health
20 care expenses, a court shall find that the cost of cash medical support or private health
21 insurance is reasonable under this section if the cost to the responsible parent does not
22 exceed five percent of the responsible parent's gross income. In calculating the
23 percentage for purposes of health insurance coverage, the cost is the cost of adding the
24 dependent child to the existing insurance coverage or the difference between self-only
25 and family coverage.

26 (f) In this section,

27 (1) "cash medical support" means an amount ordered to be paid toward
28 the cost of health insurance provided by a public entity or by another parent through
29 employment or otherwise, or for other health care expenses not covered by insurance;

30 (2) "health care expenses" includes medical, dental, vision, and mental
31 health counseling expenses.

1 **Sec. 25.28.050. Child support affidavit and documentation.** (a) Subject to
2 the confidentiality requirements of Rule 90.1(f), Alaska Rules of Civil Procedure, each
3 parent in a proceeding of a tribunal at which child support is involved shall file a
4 statement under oath, accompanied by documentation verifying the statement, that
5 states the parent's adjusted annual income and the components of adjusted annual
6 income as described in AS 25.28.010(e). This statement and documentation must be
7 filed with a party's initial pleading in superior court, including the dissolution petition,
8 divorce complaint or answer, motion to modify, and any response to a motion to
9 modify. The documents must be redacted to delete social security numbers and to
10 provide only partial financial account information as provided in Rule 90.1(f), Alaska
11 Rules of Civil Procedure. The statement must state whether the parent has access to
12 health insurance for the children and, if so, the additional cost to the parent of the
13 children's health insurance.

14 (b) While there is an ongoing monthly support obligation, each party shall
15 provide to the other party, within 30 days after a written request, documents such as
16 tax returns and pay stubs showing the party's income for the prior calendar year. The
17 party making the request shall provide documentation of the party's annual income for
18 the same period at the time the request is made. A request under this section may not
19 be made more than once a year. This section does not preclude discovery under the
20 Alaska Rules of Civil Procedure.

21 (c) Unless the information has already been provided to the tribunal under
22 Rule 90.1(f), Alaska Rules of Civil Procedure, a statement under (a) of this section
23 must be accompanied by a confidential information sheet as described in Rule 90.1,
24 Alaska Rules of Civil Procedure. Once a complete confidential information sheet has
25 been submitted to the tribunal listing names, dates of birth, and social security
26 numbers as required, the parties shall omit or redact social security numbers from
27 documents subsequently filed in the action unless otherwise ordered by the tribunal.

28 (d) The tribunal may withhold or assess costs or attorney fees for a violation
29 of this section as the circumstances and discouragement of like conduct in the future
30 may require. Costs and attorney fees may be imposed on offending attorneys or
31 parties.

1 **Sec. 25.28.060. Travel expenses.** After determining an award of child support
2 under this chapter, the court shall allocate between the parties reasonable travel
3 expenses that are necessary to exercise visitation as may be just and proper for the
4 parties to contribute.

5 **Sec. 25.28.070. Modification; defense against arrearages.** (a) A tribunal may
6 modify a final child support award on a showing of a material change of
7 circumstances as provided by state law. A material change of circumstances shall be
8 presumed if support as calculated under this chapter is more than 15 percent greater or
9 less than the outstanding support order. An award may be modified to require cash
10 medical support regardless of whether insurance is available to either parent if neither
11 parent has purchased health insurance. In this subsection, support includes health
12 insurance payments or monthly cash medical support made under AS 25.28.040.

13 (b) A tribunal may not modify a child support arrearage retroactively, except
14 as authorized by AS 25.27.166(d). A modification that is effective on or after the date
15 that a motion for modification, or a notice of petition for modification by the child
16 support services agency, is served on the opposing party is not considered a retroactive
17 modification.

18 (c) The tribunal may find that a parent and a parent's assignee are precluded
19 from collecting arrearages for support of a child that accumulated during a time period
20 exceeding nine months for which the parent agreed or acquiesced to the obligor
21 exercising primary custody of the child. A finding that preclusion is a defense must be
22 based on clear and convincing evidence.

23 **Sec. 25.28.080. Third-party custody.** (a) When the state, or another third
24 party entitled to child support, has custody of all children of a parent, the parent's
25 support obligation to the third party is an amount equal to the adjusted annual income
26 of the parent multiplied by the percentage specified in AS 25.28.010(b). If the third
27 party has custody of some but not all children, the parent's support obligation to the
28 third party is an amount equal to the adjusted annual income of the parent, multiplied
29 by the percentage specified in AS 25.28.010(b) for the total number of the parent's
30 children, multiplied by the number of the parent's children in third-party custody,
31 divided by the total number of the parent's children. In this subsection, the number of

1 the parent's children includes only children of the parent who live with the parent, are
2 substantially supported by the parent, or are in custody of the third party entitled to
3 support.

4 (b) If, in addition to a support obligation to a third party, one or both parents
5 retain primary or shared physical custody of at least one of their children, the support
6 obligation between the parents is calculated under the other provisions of this chapter,
7 without consideration of the third-party custodian or any children in the custody of the
8 third-party custodian, except that the percentage in AS 25.28.010(b) must be adjusted
9 pro rata for the number of children in the primary custody of a parent, or shared
10 custody of the parents, compared to the total number of children. After that calculation
11 is completed, any support owed may be offset with support owed to a third-party
12 custodian under (a) of this section in order to minimize transactions.

13 **Sec. 25.28.090. Support order forms.** All court orders for payment or
14 modification of child support shall be entered on a form developed by the
15 administrative director of the court. A party may lodge a duplicate of the tribunal form
16 produced by a laser printer or similar device. A device may also print, in a contrasting
17 typestyle equivalent to that produced by a typewriter, text that otherwise would have
18 been entered by a typewriter or word processor. A party or attorney who lodges a
19 duplicate certifies by lodging the duplicate that it is identical to the current version of
20 the court form.

21 **Sec. 25.28.100. Dependent tax deduction.** The court may allocate the
22 dependent tax deduction for each child between the parties as is just and proper and in
23 the child's best interests. The allocation must be consistent with AS 25.24.152 and
24 federal law.

25 **Sec. 25.28.300. Definitions.** In this chapter,

26 (1) "child support" and "child support obligation" have the meaning
27 given "duty of support" in AS 25.27.900;

28 (2) "divided custody" means that one parent has primary physical
29 custody of one or more children of the relationship and the other parent has primary
30 custody of one or more other children of the relationship, and the parents do not share
31 physical custody of any of their children;

1 (3) "hybrid custody" means that at least one parent has primary
2 physical custody of one or more children of the relationship, and the parents have
3 shared physical custody of at least one child of the relationship;

4 (4) "primary physical custody" or "primary custody" means that a child
5 resides with the other parent for a period, specified in the custody order, of less than
6 30 percent of the year;

7 (5) "shared physical custody" or "shared custody" means that a child
8 resides with one parent for a period, specified in writing in the custody order, of at
9 least 30 percent but not more than 70 percent of the year, regardless of the status of
10 legal custody;

11 (6) "tribunal" means the superior court or the child support services
12 agency created in AS 25.27.010.

13 * **Sec. 2.** AS 47.10.120(a) is amended to read:

14 (a) When a child in need of aid is committed under this chapter, the court or
15 the child support services agency created in AS 25.27.010 shall, after giving the parent
16 a reasonable opportunity to be heard, require that the parent pay to the department in a
17 manner that the court or the child support services agency directs a sum to cover in
18 full or in part the maintenance and care of the child. The support obligation shall be
19 calculated under AS 25.28 [RULE 90.3(i) OF THE ALASKA RULES OF CIVIL
20 PROCEDURE].

21 * **Sec. 3.** AS 47.12.230(a) is amended to read:

22 (a) When a delinquent minor is committed under this chapter, the court or the
23 child support services agency created in AS 25.27.010 shall, after giving the parent a
24 reasonable opportunity to be heard, require that the parent pay to the department in a
25 manner that the court or the child support services agency directs a sum to cover in
26 full or in part the maintenance and care of the minor. The support obligation shall be
27 calculated under AS 25.28 [RULE 90.3(i) OF THE ALASKA RULES OF CIVIL
28 PROCEDURE].

29 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 REPEAL OF COURT RULE. Rule 90.3, Alaska Rules of Civil Procedure, is repealed.

1 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 NONAPPLICABILITY OF TWO-THIRDS VOTE REQUIREMENT. Because the
4 rule repealed in sec. 4 of this Act is a substantive rule rather than a rule of practice or
5 procedure, the repeal of the rule takes effect even if sec. 4 of this Act does not receive the
6 two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
7 Alaska.

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7 calculate a child support award in a case in which one parent is awarded primary
8 physical custody as an amount equal to the adjusted annual income of the noncustodial
9 parent multiplied by a percentage specified in (b) of this section.

10 (b) To calculate the child support award, the tribunal shall multiply the
11 noncustodial parent's adjusted annual income by the following percentages:

- 12 (1) 20 percent for one child;
- 13 (2) 27 percent for two children;
- 14 (3) 33 percent for three children; and

1 (4) an additional three percent for each additional child.

2 (c) The tribunal may allow the obligor parent to reduce child support
3 payments by up to 75 percent for a period in which the obligor parent has extended
4 visitation of more than 27 consecutive days. The order must specify the amount of the
5 reduction that is allowable if the extended visitation is exercised.

6 (d) The tribunal may calculate child support based on a determination of the
7 potential income of a parent who voluntarily and unreasonably is unemployed or
8 underemployed. A determination of potential income may not be made for a parent
9 who is physically or mentally incapacitated, or who is caring for a child under two
10 years of age to whom the parents owe a joint legal responsibility. Potential income
11 shall be based on the parent's work history, qualifications, and job opportunities. The
12 tribunal also may impute potential income for nonincome producing or low income
13 producing assets.

14 (e) In this section, "adjusted annual income" means the parent's total income
15 from all sources less

16 (1) mandatory deductions, including

17 (A) federal, state, and local income tax;

18 (B) social security tax or the equivalent contribution to an
19 alternate plan established by a public employer, and self-employment tax;

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21 (D) mandatory union dues;

22 (E) mandatory contributions to a retirement or pension plan;

23 (2) voluntary contributions to a retirement or pension plan or account
24 in which the earnings are tax-free or tax-deferred, except that the total amount of these
25 voluntary contributions plus any mandatory contributions under (1)(E) of this
26 subsection may not exceed 7.5 percent of the parent's gross wages and self-
27 employment income;

28 (3) child support and alimony payments arising from previous
29 relationships that are required by another tribunal and actually paid;

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31 parent, calculated by using the formula under this chapter; and

1 (5) work-related child care expenses for the child who is the subject of
2 the child support order.

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5 provided in this section.

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7 parents are awarded shared physical custody by

8 (1) calculating the annual amount each parent would pay to the other
9 parent under AS 25.28.010 assuming the other parent had primary custody; in this
10 calculation, the income limit in AS 25.28.030(c) and the minimum support amount in
11 AS 25.28.030(d) apply;

12 (2) multiplying the amount determined under (1) of this subsection for
13 each parent by the percentage of time the other parent has physical custody of the
14 child; however, if the tribunal finds that the percentage of time each parent will have
15 physical custody does not accurately reflect the ratio of funds each parent will directly
16 spend on supporting the child, the tribunal shall vary this percentage to reflect its
17 findings;

18 (3) determining which parent has the greater amount under (2) of this
19 subsection; the parent with the greater amount under (2) of this subsection is the
20 obligor parent, and the annual award is equal to the difference between the two
21 amounts under (2) of this subsection multiplied by 1.5; however, if this amount is
22 greater than the amount of support calculated under AS 25.28.010 assuming the
23 obligor parent has primary custody, the annual support is the amount calculated under
24 AS 25.28.010.

25 (c) The child support award for shared custody under (b) of this section must
26 be paid in 12 equal monthly installments, except that if

27 (1) shared custody is based on the obligor parent's having physical
28 custody for periods of 30 consecutive days or more, the total annual award may be
29 paid in equal installments over those months in which the obligor parent does not have
30 physical custody; or

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1 unequal monthly support payments as provided in AS 25.28.030(g) and (h).

2 (d) The child support order must state that failure to exercise sufficient
3 physical custody to qualify for shared physical custody under (b) or (c) of this section
4 is grounds for modification of the child support order. Denial of visitation by the
5 custodial parent is not cause to increase a child support award.

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8 awarded divided custody by determining the amount each parent would pay to the
9 other parent for support of a child for whom that parent has primary physical custody
10 under AS 25.28.010, taking into account the income limit in AS 25.28.030(c) and the
11 minimum support amount in AS 25.28.030(d), and offsetting those amounts; and

12 (2) consider whether the amount determined under (1) of this
13 subsection should be varied under AS 25.28.030(b).

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18 limit in AS 25.28.030(c) and the minimum support amount in
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20 custody of each parent;

21 (B) applying (b) of this section to determine support for a child
22 in the shared physical custody of the parents;

23 (C) adjusting pro rata the percentages provided in
24 AS 25.28.010(b) based on the number of children to which each type of
25 custody applies; and

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31 reasons stated in this section.

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 2 other provisions of this chapter for good cause on proof by clear and convincing
 3 evidence that manifest injustice would result if the support award were not varied. The
 4 tribunal shall specify in writing the reason for the variation, the amount of support that
 5 would have been required but for the variation, and the estimated value of any
 6 property conveyed instead of support calculated under the other provisions of this
 7 chapter. Good cause may include a finding that unusual circumstances exist that
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 9 proper for the parties to contribute toward the nurture and education of their children.
 10 The tribunal shall consider the custodial parent's income in this determination.

11 (c) The calculation for primary physical custody under AS 25.28.010 does not
 12 apply to the extent that the parent has an adjusted annual income of more than
 13 \$105,000. The tribunal may make an additional award only if it is just and proper,
 14 taking into account the needs of the child, the standard of living of the child, and the
 15 extent to which that standard should reflect the supporting parent's ability to pay.

16 (d) Except as provided in AS 25.28.010(c) and 25.28.020, the minimum child
 17 support amount that may be ordered is \$50 a month or \$600 a year.

18 (e) In addition to ordering a parent to pay child support as calculated under
 19 this chapter, the tribunal may, in appropriate circumstances and when the parents are
 20 minors as described in (f) of this section, order one or more grandparents of a child to
 21 pay child support to an appropriate person in an amount determined by the tribunal to
 22 serve the best interests of the child; however, the amount may not exceed the lesser of

23 (1) a proportionate share of the amount required to provide care in a
 24 supervised setting to the grandchild, as determined by the tribunal; or

25 (2) the amount that would have been awarded if the child's parents had
 26 the incomes of the child's grandparents and AS 25.28.010 and 25.28.020 were applied.

27 (f) An order under (e) of this section may be issued only with respect to a
 28 child whose parents are both minors, and the order terminates when either parent
 29 becomes 18 years of age. The tribunal shall specify in writing the reasons it considers
 30 it to be appropriate to order a grandparent to pay child support under this subsection
 31 and the factors considered in setting the amount of the child support award. In this

1 subsection, "grandparent" means the natural or adoptive parent of the minor parent.

2 (g) If the noncustodial parent's income is seasonal, the tribunal may order that
3 the annual support amount be paid in unequal monthly payments, with higher
4 payments during the months the parent expects to receive higher income and lower
5 payments in other months; the tribunal may not make an unequal payment order unless

6 (1) the tribunal finds that the burden of budgeting for periods of
7 unequal income should be placed on the obligee rather than the obligor; and

8 (2) the obligee agrees.

9 (h) An order of the tribunal for unequal payments under (g) of this section
10 must specify the annual support amount, the average monthly support amount, and the
11 amount due for each month. The order must provide that variations from the average
12 monthly amount begin with monthly payments in excess of the average monthly
13 amount so that a deficit situation cannot occur. Until the excess payments begin, the
14 tribunal shall order payment of the average monthly amount.

15 **Sec. 25.28.040. Health care expenses.** (a) The tribunal shall include in the
16 order coverage of the child's health care needs and require health insurance for the
17 child if insurance is available to either parent or both parents at a reasonable cost. The
18 tribunal shall consider whether the child is eligible for services through the Indian
19 Health Service, any other entity, or other insurance coverage before ordering either
20 parent or both parents to provide health care coverage through insurance, cash medical
21 support, or other means. A court shall find that health insurance is available only if the
22 dependent child has reasonable geographic access to the covered services or the
23 insurance includes the coverage of transportation needed for the services.

24 (b) The tribunal shall allocate equally the cost of insurance between the
25 parents unless the tribunal orders otherwise for good cause. An obligor's child support
26 obligation shall be decreased by the amount of the obligee's portion of health
27 insurance payments ordered by the tribunal and actually paid by the obligor. The
28 tribunal shall increase a child support award by the obligor's portion of health
29 insurance if the obligee is ordered to, and actually does, obtain and pay for insurance.

30 (c) The cost of insurance is the cost attributable to the child for whom support
31 is paid. If the cost to the employee of covering the employee alone is the same as the

1 cost to the employee of covering the employee and dependents, then there is no
2 additional cost to the employee for adding the child and no portion of the cost of
3 coverage may be allocated to the child. If dependent coverage can be added for a
4 single cost, rather than for each dependent, and the dependent coverage covers
5 dependents in addition to the child subject to the order, the cost of the dependent
6 coverage shall be allocated equally among the dependents covered. If there is reason
7 to believe that there is an incremental cost to the employee for insuring dependents but
8 evidence of that incremental cost is unavailable, the cost of insurance is determined by
9 dividing the total cost of coverage by the number of family members covered and
10 multiplying that amount by the number of children subject to the order.

11 (d) The tribunal shall allocate equally between the parties the cost of
12 reasonable health care expenses not covered by insurance unless the tribunal orders
13 otherwise for good cause. A party shall reimburse the other party for the party's share
14 of the uncovered health care expenses within 30 days after receipt of the bill for the
15 health care, payment verification, and, if applicable, a health insurance statement
16 indicating what portion of the cost is uncovered. The tribunal shall allocate the
17 reasonable, uncovered health care expenses exceeding \$5,000 in a calendar year based
18 on the parties' relative financial circumstances when the expenses occur.

19 (e) For the purpose of establishing a monthly support obligation for health
20 care expenses, a court shall find that the cost of cash medical support or private health
21 insurance is reasonable under this section if the cost to the responsible parent does not
22 exceed five percent of the responsible parent's gross income. In calculating the
23 percentage for purposes of health insurance coverage, the cost is the cost of adding the
24 dependent child to the existing insurance coverage or the difference between self-only
25 and family coverage.

26 (f) In this section,

27 (1) "cash medical support" means an amount ordered to be paid toward
28 the cost of health insurance provided by a public entity or by another parent through
29 employment or otherwise, or for other health care expenses not covered by insurance;

30 (2) "health care expenses" includes medical, dental, vision, and mental
31 health counseling expenses.

1 **Sec. 25.28.050. Child support affidavit and documentation.** (a) Subject to
2 the confidentiality requirements of Rule 90.1(f), Alaska Rules of Civil Procedure, each
3 parent in a proceeding of a tribunal at which child support is involved shall file a
4 statement under oath, accompanied by documentation verifying the statement, that
5 states the parent's adjusted annual income and the components of adjusted annual
6 income as described in AS 25.28.010(e). This statement and documentation must be
7 filed with a party's initial pleading in superior court, including the dissolution petition,
8 divorce complaint or answer, motion to modify, and any response to a motion to
9 modify. The documents must be redacted to delete social security numbers and to
10 provide only partial financial account information as provided in Rule 90.1(f), Alaska
11 Rules of Civil Procedure. The statement must state whether the parent has access to
12 health insurance for the children and, if so, the additional cost to the parent of the
13 children's health insurance.

14 (b) While there is an ongoing monthly support obligation, each party shall
15 provide to the other party, within 30 days after a written request, documents such as
16 tax returns and pay stubs showing the party's income for the prior calendar year. The
17 party making the request shall provide documentation of the party's annual income for
18 the same period at the time the request is made. A request under this section may not
19 be made more than once a year. This section does not preclude discovery under the
20 Alaska Rules of Civil Procedure.

21 (c) Unless the information has already been provided to the tribunal under
22 Rule 90.1(f), Alaska Rules of Civil Procedure, a statement under (a) of this section
23 must be accompanied by a confidential information sheet as described in Rule 90.1,
24 Alaska Rules of Civil Procedure. Once a complete confidential information sheet has
25 been submitted to the tribunal listing names, dates of birth, and social security
26 numbers as required, the parties shall omit or redact social security numbers from
27 documents subsequently filed in the action unless otherwise ordered by the tribunal.

28 (d) The tribunal may withhold or assess costs or attorney fees for a violation
29 of this section as the circumstances and discouragement of like conduct in the future
30 may require. Costs and attorney fees may be imposed on offending attorneys or
31 parties.

1 **Sec. 25.28.060. Travel expenses.** After determining an award of child support
2 under this chapter, the court shall allocate between the parties reasonable travel
3 expenses that are necessary to exercise visitation as may be just and proper for the
4 parties to contribute.

5 **Sec. 25.28.070. Modification; defense against arrearages.** (a) A tribunal may
6 modify a final child support award on a showing of a material change of
7 circumstances as provided by state law. A material change of circumstances shall be
8 presumed if support as calculated under this chapter is more than 15 percent greater or
9 less than the outstanding support order. An award may be modified to require cash
10 medical support regardless of whether insurance is available to either parent if neither
11 parent has purchased health insurance. In this subsection, support includes health
12 insurance payments or cash medical support made under AS 25.28.040.

13 (b) A tribunal may not modify a child support arrearage retroactively, except
14 as authorized by AS 25.27.166(d). A modification that is effective on or after the date
15 that a motion for modification, or a notice of petition for modification by the child
16 support services agency, is served on the opposing party is not considered a retroactive
17 modification.

18 (c) The tribunal may find that a parent and a parent's assignee are precluded
19 from collecting arrearages for support of a child that accumulated during a time period
20 exceeding nine months for which the parent agreed or acquiesced to the obligor
21 exercising primary custody of the child. A finding that preclusion is a defense must be
22 based on clear and convincing evidence.

23 **Sec. 25.28.080. Third-party custody.** (a) When the state, or another third
24 party entitled to child support, has custody of all children of a parent, the parent's
25 support obligation to the third party is an amount equal to the adjusted annual income
26 of the parent multiplied by the percentage specified in AS 25.28.010(b). If the third
27 party has custody of some but not all children, the parent's support obligation to the
28 third party is an amount equal to the adjusted annual income of the parent, multiplied
29 by the percentage specified in AS 25.28.010(b) for the total number of the parent's
30 children, multiplied by the number of the parent's children in third-party custody,
31 divided by the total number of the parent's children. In this subsection, the number of

1 the parent's children includes only children of the parent who live with the parent, are
2 substantially supported by the parent, or are in custody of the third party entitled to
3 support.

4 (b) If, in addition to a support obligation to a third party, one or both parents
5 retain primary or shared physical custody of at least one of their children, the support
6 obligation between the parents is calculated under the other provisions of this chapter,
7 without consideration of the third-party custodian or any children in the custody of the
8 third-party custodian, except that the percentage in AS 25.28.010(b) must be adjusted
9 pro rata for the number of children in the primary custody of a parent, or shared
10 custody of the parents, compared to the total number of children. After that calculation
11 is completed, any support owed may be offset with support owed to a third-party
12 custodian under (a) of this section in order to minimize transactions.

13 **Sec. 25.28.090. Support order forms.** All court orders for payment or
14 modification of child support shall be entered on a form developed by the
15 administrative director of the court. A party may lodge a duplicate of the tribunal form
16 produced by a laser printer or similar device. A device may also print, in a contrasting
17 typestyle equivalent to that produced by a typewriter, text that otherwise would have
18 been entered by a typewriter or word processor. A party or attorney who lodges a
19 duplicate certifies by lodging the duplicate that it is identical to the current version of
20 the court form.

21 **Sec. 25.28.100. Dependent tax deduction.** The court may allocate the
22 dependent tax deduction for each child between the parties as is just and proper and in
23 the child's best interests. The allocation must be consistent with AS 25.24.152 and
24 federal law.

25 **Sec. 25.28.300. Definitions.** In this chapter,

26 (1) "child support" and "child support obligation" have the meaning
27 given "duty of support" in AS 25.27.900;

28 (2) "divided custody" means that one parent has primary physical
29 custody of one or more children of the relationship and the other parent has primary
30 custody of one or more other children of the relationship, and the parents do not share
31 physical custody of any of their children;

1 (3) "hybrid custody" means that at least one parent has primary
2 physical custody of one or more children of the relationship, and the parents have
3 shared physical custody of at least one child of the relationship;

4 (4) "primary physical custody" or "primary custody" means that a child
5 resides with the other parent for a period, specified in the custody order, of less than
6 30 percent of the year;

7 (5) "shared physical custody" or "shared custody" means that a child
8 resides with one parent for a period, specified in writing in the custody order, of at
9 least 30 percent but not more than 70 percent of the year, regardless of the status of
10 legal custody;

11 (6) "tribunal" means the superior court or the child support services
12 agency created in AS 25.27.010.

13 * **Sec. 2.** AS 47.10.120(a) is amended to read:

14 (a) When a child in need of aid is committed under this chapter, the court or
15 the child support services agency created in AS 25.27.010 shall, after giving the parent
16 a reasonable opportunity to be heard, require that the parent pay to the department in a
17 manner that the court or the child support services agency directs a sum to cover in
18 full or in part the maintenance and care of the child. The support obligation shall be
19 calculated under AS 25.28 [RULE 90.3(i) OF THE ALASKA RULES OF CIVIL
20 PROCEDURE].

21 * **Sec. 3.** AS 47.12.230(a) is amended to read:

22 (a) When a delinquent minor is committed under this chapter, the court or the
23 child support services agency created in AS 25.27.010 shall, after giving the parent a
24 reasonable opportunity to be heard, require that the parent pay to the department in a
25 manner that the court or the child support services agency directs a sum to cover in
26 full or in part the maintenance and care of the minor. The support obligation shall be
27 calculated under AS 25.28 [RULE 90.3(i) OF THE ALASKA RULES OF CIVIL
28 PROCEDURE].

29 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 REPEAL OF COURT RULE. Rule 90.3, Alaska Rules of Civil Procedure, is repealed.

1 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 NONAPPLICABILITY OF TWO-THIRDS VOTE REQUIREMENT. Because the
4 rule repealed in sec. 4 of this Act is a substantive rule rather than a rule of practice or
5 procedure, the repeal of the rule takes effect even if sec. 4 of this Act does not receive the
6 two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
7 Alaska.

ALASKA STATE LEGISLATURE
Senator Albert M. Kookesh



State Capitol, Room 7
Juneau, Alaska 99801-1182

(907) 465-3473
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Standing Committees:
Transportation
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DISTRICT C

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Healy Lake
Hogatza
Hobart Bay
Holy Cross
Hoonah
Hughes
Huslia
Hydaburg

February 15, 2012

Senator Hollis French, Chair
Senate Judiciary
State Capitol Building, Rm 417
Juneau, AK 99801

Dear Senate French,

I respectfully request a hearing for Senate Bill 134 "An act relating to child support awards; repealing Rule 90.3, Alaska Rules of Civil Procedure; and providing for an effective date." The bill will put the child support rule into statute and change the calculation formula from the current percentage approach which only takes in account the non-custodial parents income to an income shares model that considers the net income of both parents. In 1987, the Alaska Supreme Court enacted Civil Rule 90.3. The court frankly admitted this was a substantive law and recognized that courts are not supposed to pass substantive laws as it is the legislator's responsibility. In the 25 years since then, the legislature has not replaced the Civil Rule 90.3 with an actual law. This bill proposes to correct this long standing deficiency.

CS SB 134 was moved out of Senate HESS Committee today to the Senate Judiciary Committee. Enclosed is CS SB 134, sponsor statement, fiscal notes, legislative research report and letter.

Thank you for your consideration, if you have any questions please don't hesitate in contacting me or my staff Dorothy Shockley at 465-3018.

Respectfully,

Handwritten signature of Albert M. Kookesh.

Senator Albert Kookesh

Enclosures

Hyder
Kake
Kaltag
Kasaan
Katalla
Kennicott
Kenny Lake
Klawock
Klukwan
Koyukuk
Labouchere Bay
Lake Minchumina
Lime Village
Livengood
Long Island
Mankomen Lake
Manley Hot Springs
Marshall
McCarthy
McGrath
Medfra
Metlakatla
Mentasta
Minto
Nabesna
Naukati Bay
Nenana
Nikolai
Northway
Nulato
Ophir
Point Baker
Polk Inlet
Port Alice
Port Protection
Rampart
Red Devil
Ruby
Russian Mission
Shageluk
Skagway
Slana
Sleetmute
Stevens Village
Stony River
Strelna
Takotna
Tanacross
Tanana
Tatitlek
Tazlina
Telida
Tenakee Springs
Tetlin Junction
Tok
Tonsina
Tyonek
Utopia Creek
Venetie
View Cove
Waterfall
Whale Pass
Wiseman
Yakutat



SENATOR ALBERT M. KOOKESH
ALASKA STATE LEGISLATURE SENATE DISTRICT C
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Sponsor Statement

SB 134

SB 134 puts the Child Support Civil Rule 90.3 guidelines into statute. In 1987, the Alaska Supreme Court enacted Civil Rule 90.3. The Supreme Court admitted this was a substantive law that the Legislature could replace at any time. In the 25 years since then, the Legislature has not replaced civil rule 90.3 with an actual law. This bill proposes to correct that long-standing deficiency.

One of the major problems with having the child support guidelines set by a court rule is the people affected by current guidelines have not had the opportunity to speak to the individuals with the power to make changes. Instead every four years they are encouraged to write letters or testify before a review committee made up of lawyers and judges who then submit their recommendations to the Supreme Court Justices who make the final decisions. With the rule in statute, individuals will have the opportunity to speak to lawmakers who have the power to make changes. Proposals to amend can be made in the future through the legislative process.

The bill proposes enactment of the current rule into statute with the exception of how the child support obligation is calculated. Currently the non-custodial parent's support obligation is based solely on his or her income, without regard to what the other parent makes. With this bill it will be changed to an income shares model which calculates support as the share of each parent's income estimated allocation to the child, if the original household were intact.

According to 2005 statistics (Legislative Research Report, November 2010)

- Twenty four (24) states establish their child support guidelines statutorily through their legislature while 16 states use court rule only, and 11 states use a combination of rule, commission and or agency.
- Thirty five (35) states consider the income of both parents in determining child support payments.

SB 134 changes the word court to tribunal in some cases back to court and adds number (6) to definition in Sec. 25.28.300 (page 18) to read "tribunal" means the superior court or the child support services agency created in AS 25.27.010. It also includes changes made by SB 96 addressing medical support.

The Child Support Services Division has no objections to the bill. I would appreciate your prompt and favorable action on this bill.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

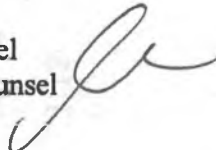
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 20, 2011

SUBJECT: Child support obligation when children of obligor are living separately (Work Order No. 27-LS0671\A)

TO: Senator Albert Kookesh
Attn: Dorothy Shockely

FROM: Jean M. Mischel
Legislative Counsel 

You have asked whether the above-referenced draft bill takes into account all children of an obligor, whether or not all are subject to a support order. The income share approach does account for a child or children of an obligor who may be living with the obligor and not subject to a separate order of support by inferring a portion of income for that child or children.

The calculation of child support is made by multiplying the presumptive support obligation by the noncustodial parent's proportionate income share of combined monthly net income with the other parent of the child under sec. 25.28.010(a). Monthly net income, as defined under sec. 25.28.010(g) at page 10 of the bill draft, excludes the following in relation to other children:

- (3) child support and alimony payments arising from previous relationships that are required by another tribunal and actually paid; [and]
- (4) child support for children from prior relationships living with the parent, calculated by using the formula under this chapter;

Therefore, a child not subject to an order and living with a noncustodial parent of another child, is treated as if the child were the subject of a support order under the bill draft in terms of calculating net income from which a share for the noncustodial parent's support obligation is derived. However, children from a subsequent relationship are not considered in the calculation of the parent's net income. In "unusual circumstances" a court may vary an award if the award would result in "manifest injustice" under sec. 25.28.030 at pages 12 and 13 of the bill draft.

If I may be of further assistance, please advise.

JMM:ljw
11-274.ljw

LEGISLATIVE RESEARCH REPORT

NOVEMBER 22, 2010



REPORT NUMBER 11.076

CHILD SUPPORT GUIDELINES IN OTHER STATES

PREPARED FOR SENATOR ALBERT KOOKESH

BY TIM SPENGLER, LEGISLATIVE ANALYST

You were interested in child support guidelines in other states. Specifically, you wanted to know if other states codify their child support guidelines in statute. Additionally, you wanted to know how many states consider the income of *both* parents when deciding child support payment amounts. Briefly, about half of the states have established guidelines in statute, and most (35) states take into consideration both parents' incomes when deciding child support award amounts.¹

Background on Federal Guidance and Mandates

Historically, the rationale and methodology behind calculating child support payments developed differently across the country's legal jurisdictions.² As a result, divorcing couples and their children were subject to child support award processes that were often amorphous and inconsistent, which often times led to inadequate financial support from the obligor parent (the payer of the support). In the 1930s, recognizing that federal entitlement programs for the impoverished were being burdened by the victims of insufficient support awards, the federal government began providing guidance to the states. Federal involvement through legislation increased over subsequent years, culminating in the Child Support Enforcement Amendments of 1984 (P.L. 98-378), the Family Support Act of 1988 (P.L. 100-485), and subsequent amendments to those laws, which collectively provide the child support mandates under which modern state child support guidelines have been developed.

States comply with federal mandates through the adoption of child support guidelines in statute, regulation, court rule, or some combination of the three. The federal mandates seek to address the problems of earlier child support regimes by accomplishing the following four main goals:

¹ Much of the background information in this report was taken from a previous report from our agency.

² Information in this section is summarized from Laura W. Morgan, "Child Support Guidelines," National Legal Research Group, 1999; accessed through the FindLaw online library at <http://library.findlaw.com/1999/Jan/1/241469.html#consistent>. Ms. Morgan served as the Chair of the Child Support Committee of the Family Law Section of the American Bar Association from 1997 to 2003. She maintains the website "Support Guidelines.com" (<http://www.supportguidelines.com/>), which provides extensive information on child support matters.

- (1) increase the adequacy of child support awards;
- (2) increase the consistency and predictability of child support awards;
- (3) increase compliance through perceived fairness of child support awards; and
- (4) increase the ease of administration of child support cases.

Pursuant to federal regulations, at a minimum, state guidelines must accomplish the following:

- Consider all earnings and income of the absent parent;
- Be based on specific descriptive and numeric criteria and result in the computation of the support obligation;
- Provide for the health care needs of the children, through health insurance coverage or other means; and
- Provide that in any judicial or administrative proceeding for the award of child support, there shall be a rebuttable presumption that the amount of the award, which would result from the application of the state's guideline, is the correct amount of child support to be awarded.³

Under federal law, the child support awards resulting from state guidelines enjoy a “rebuttable presumption” of correctness. That is, in order to deviate from the guideline amounts, the party challenging the award must establish that the application of the guideline is somehow unreasonable or unjust to their particular circumstances. Courts also must extensively record and justify deviation from the guidelines.

States with Child Support Guidelines in Statute

According to the National Conference of State Legislatures, the following 24 states establish their child support guidelines statutorily through their legislatures: California, Colorado, Florida, Georgia, Illinois, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Nevada, New Hampshire, New Mexico, New York, Ohio, Oklahoma, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming.⁴ Some of these states also concurrently establish guidelines in regulation (often through a child support commission).

The remaining 26 states (including Alaska) establish their child support guidelines by court rule or agency regulation. These states are Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Jersey, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, and Wisconsin. In Alaska, child support guidelines are provided in the Alaska Court Rules, Rules of Civil Procedure 90.3. We provide, as Attachment A, a table from the National Conference of State Legislatures that details which branch of government establishes child support guidelines in each state. The table includes relevant statutory and court rule citations from all states.

³ 45 C.F.R. § 302.56 and 45 C.F.R. § 302.56(f-g).

⁴ We corresponded with Rochelle Finzel, children and families program manager, National Conference of State Legislators, at (303) 364-7700. The information NCSL provided on this matter was compiled in 2005, so some changes may have occurred since then.

Thirty-five (35) States Consider the Income of Both Parents in Determining Child Support Payments

In order to meet both federal requirements and the goal of providing adequate support, states have largely implemented two basic child support calculation models, respectively known as the *income shares* and the *percentage of income*. These models are used for calculating the amount of a child support award to be paid by the obligor parent.

The *income shares* model is used in 35 states and is based on the income of both parents. Alaska, along with 11 other states, employs the *percentage of income* model, which (usually) bases the award only on the non-custodial parent's income.⁵ Three states (Delaware, Hawaii, and Montana) use the *Melson Formula* to calculate child support awards. This formula is generally thought to be more complex than the other models.⁶

The *income shares* model is based on the concept that a child should receive the same proportion of parental income that he or she would have received if the parents lived together. In an intact household, the income of both parents is generally pooled and spent for the benefit of all household members, including any children. Thus, the *income shares* model **calculates support as the share of each parent's income** estimated to have been allocated to the child if the original household were intact.

Using the *income shares* model, computation of child support is basically a four-step process:

- (1) The income of the parents (gross or net) is determined and added together.⁷
- (2) A "basic child support obligation" is computed based on the combined income of the parents, using a table or grid in the guidelines. The amounts in the table are derived from economic data on household expenditures on children.
- (3) A "presumptive child support obligation" is then computed by adding expenditures for work-related child care expenses and extraordinary medical expenses to the basic child support obligation. Other add-ons and deductions may also be calculated.
- (4) The presumptive child support obligation is prorated between each parent based on his or her proportionate share of total income. The obligor's share is payable as child support, while the obligee's share is retained and presumed to be spent directly on the child.

Distinguishing features of the *income shares* model include the following:

- It embodies the underlying economic assumption that as income increases, the proportion of income spent on child support decreases.
- It illustrates that both parents are sharing in the support of the child, thereby potentially increasing the perception of fairness to both parents.
- Compared to the *percentage of income* model, the *income shares* model can more easily take into consideration adjustments for shared and split custody, health care

⁵ The states that employ the *percentage of income* model are Alaska, Arkansas, Georgia, Illinois, Massachusetts, Minnesota, Mississippi, Nevada, North Dakota, Tennessee, Texas, and Wisconsin.

⁶ The Melson Formula was developed by a Delaware Family Court judge; additional information on the formula can be found online at <http://courts.delaware.gov/Help/Support/SupportChapter8.pdf>.

⁷ Whether the calculation is based on gross or net income varies among states.

needs, child care expenses, other children (previous or subsequent) needing support, and children's ages by the manipulation of income, add-ons and deductions and then allocating these costs between the parents. Because these factors can be built into the *income shares* formula, there is less reason for deviation from the guidelines' presumptive award. Limiting deviation meets the ideal of perceived fairness, as well as the federal requirement that the number of cases in which deviation is granted be limited. Limited deviation also meets the goals of consistency and predictability.

The ***percentage of income*** model (used in Alaska and 11 other states), stipulates that in *primary custody* arrangements—those in which the custodial parent has physical custody for over 70 percent of the year—**support amounts are based solely on the income of the non-custodial spouse** (obligor) and the number of children involved. In Alaska, and a number of other states, in *shared custody* situations—those in which each parent has custody for at least 30 percent of the year—the calculation includes the income of both parents, with the *percentage of income* model applied separately to each, then adjusted for the time each has physical custody. The parent with the higher calculation in this scenario becomes the obligor.

Proponents of the *percentage of income* model argue that both parents are assumed to contribute to the child's upbringing in the same proportion as the obligor. The custodial parent is making the contribution in the manner he or she would have made had the parties not divorced. Thus, there is no need to adopt a more complex formula. Many have argued, however, that it is inherently unfair for the custodial parent's income not to affect the presumptive amount. Typically, under this model, only a large disparity between the custodial parent's income and the non-custodial parent's income will be viewed as a justifiable factor upon which to base a deviation. Some states, including Alaska, address this concern in part by considering the income of both parents in shared custody situations. Those incomes are multiplied by the percentage of time each parent has physical custody, and, as we noted earlier, the role of obligor is assigned to the parent with the larger calculated amount.

Opponents of the *percentage of income* model also argue that it generally does not directly adjust for child care, extraordinary medical expenses, or whether other children are being supported in the obligor's household. Most states using this model have attempted to address a number of the above concerns by explicitly identifying these issues as factors for courts to consider as exceptions or deviations, or as expenses to be shared equally or reimbursed by one of the parties.

Despite their differences, child support guideline models have certain aspects in common. First, most of the guidelines incorporate a "self-support" reserve for the obligor.⁸ Second, all the guidelines have a provision relating to imputed income.⁹ Third, by federal regulation, all the guidelines take into consideration the health care expenses for the children, by insurance or other means. Lastly, most guidelines have incorporated into the presumptive child support formula special additions for child care expenses, special formulas for shared custody, split custody, and extraordinary visitation, and special deductions for the support of previous and subsequent children.

We hope you find this information to be useful. Please let us know if you have questions or need additional information.

⁸ A self-support reserve means that the obligor is allowed to retain a certain amount of income below which level, support is minimal. For example, under the Washington state *income shares* model, the formula is not applied for obligors with net earnings of less than \$500 per month.

⁹ Imputed income is benefits that accrue even though no money is received. For example, an employee receives imputed income when an employer offers free health insurance and life insurance coverage or the use of a company car.

Attachment A

“Which Branch of Government Establishes Each States’ Child Support Guidelines,” a table including statutory and court rule citations, National Conference of State Legislatures, compiled in 2005



Issues & Research » Human Services » [Child Support] Establishment Responsibility

Go 17623

Which Branch of Government Establishes Each States' Child Support Guidelines

State and Statute Section	Legislature	Court	Agency	Commission	Comment
Alabama Ala. R.J.A. R. 32		X			The Administrative Director of Courts reviews the guidelines and makes recommendations to the Alabama Supreme Court.
Alaska Ak. Rules of Civ. Pro. Rule 90.3(I)		X			
Arizona Ar. Rev. Stat. §25-320		X			The Chief Justice of the Arizona Supreme Court appoints a committee to review guidelines. The committee makes recommendations to the S.Ct. for approval.
Arkansas Ar. Code Ann. § 9-12-312		X			The Chief Justice of the Arkansas Supreme Court appoints a committee to review guidelines. The committee makes recommendations to the S.Ct. for approval.
California Cal. Fam. Code §4050 et seq.	X				The Legislature statutorily amends the guidelines based on the recommendations of the Judicial Council (§68500).
Colorado Colo. Rev. Stat. Ann. §14-10-115	X			X	The Legislature statutorily amends the guidelines based on the recommendations of a 17 member child support commission.
Connecticut Conn. Gen. Stat §46b-215a-c			X	X	The Legislature created the Commission for Child Support Guidelines; an 11 member commission established to promulgate child support guidelines. Such guidelines are reviewed by the legislative regulation review committee, which is responsible for approving all "agencies" rules and regulations.
Delaware Fam. Ct. Civ. R. 52		X			

Washington, D.C. D.C. Code Ann. § 16-916.2	X			X	The Council of the District of Columbia provides for the guidelines in code amending such based on the recommendations of a 15 member child support guidelines commission.
Florida Fla. Stat. Ann. §61.3	X				
Georgia Ga. Code Ann. §19-6-15	X			X	The General Assembly provides for the guidelines in code amending such based on the recommendations of a commission appointed by the Governor.
Hawaii Hawaii Rev. Stat. 576D-7			X		The Family Court establishes the guidelines in consultation with child support enforcement agency (Attorney General's Office).
Idaho Idaho Code 32- 706A			X		
Illinois 305 ILCS 5/12- 4.20c	X			X	The General Assembly statutorily amends the guidelines based on the recommendations of the Child Support Advisory Committee.
Indiana Ind. Stat. Ann. §33-2.1-10-1 to 9			X	X	The Indiana Supreme Court adopts amendments to the guidelines based on the recommendation of a 12 member child support advisory committee.
Iowa Iowa Code Ann. §598.21			X		
Kansas K.S.A. §20-165			X		
Kentucky Ky. Rev. Stat. Ann. §403.213	X			X	The General Assembly statutorily amends the guidelines based on the recommendation of a 10 member commission.
Louisiana La. Rev. Stat. Ann. §9:315.12	X				
Maine Me. Rev. Stat. Ann. tit. 9 §311 After October 1, 1997 tit. 19-A §2001	X				
Maryland Md. Code Ann., Fam. Law §12- 202(c)	X				The General Assembly provides for the guidelines in code amending such based on the recommendations of the Child Support Enforcement Administration of the Department of Human Resources.

Massachusetts Mass. Gen. Laws Ann. ch. 208 §28		X			
Michigan Mich. Comp. Laws §552.519. Sec. 19(1) & (3)(a)(vi)			X		Michigan law creates a friend of the court bureau within the state court administrative office, under the supervision and direction of the supreme court. Such bureau is responsible for establishing and reviewing the child support guidelines.
Minnesota Minn. Stat. Ann. §518.551	X				The Legislature statutorily amend the guidelines based on the recommendation of the department of human services.
Mississippi Miss. Code Ann. §43-19-101 (5)	X				The Legislature statutorily amend the guidelines based on the recommendation of the department of human services.
Missouri Mo. Stat. Ann. §452.340(7)		X			
Montana Mont. Code Ann. §40-5-209				X	
Nebraska Neb. Rev. Stat. §42-364.16		X			
Nevada Nev. Rev. Stat. §125B.070	X				The Legislature statutorily amends the guidelines based on the recommendations of the State Bar of Nevada.
New Hampshire N.H. Rev. Stat. Ann. § 458-C:6	X				The Legislature statutorily amends the guidelines based on the recommendations of the division of human services, department of health and human services.
New Jersey N.J. Stat. Ann. §2A.:17-56.25 Admin. R. 5:6A				X	
New Mexico	X				X The Legislature statutorily amends the guidelines based on the recommendations of "an appropriate executive or legislative commission or executive department."
New York N.Y. Soc. Serv. Law §111b(10)	X				The Legislature statutorily amends the guidelines based on the recommendations of the Department of Social Services.
North Carolina N.C. Gen. Stat. §15-13.4(c1)		X			The Conference of Chief District Judges is required to establish the guidelines. In addition, the conference must get specific input prior to amending and must report its findings to the General Assembly.
North Dakota				X	

N.D. Code Ann. §14-09-09.7					
Ohio Ohio Rev. Code Ann. §3113.21.5(G)	X			X	The General Assembly provides for the guidelines in code amending such based on the recommendations of the department of human services. The department, in turn, is required to establish a child support guideline advisory commission to assist the department in completing the review.
Oklahoma Okl. Stat. Ann. §119.1	X				The Legislature statutorily amends the guidelines based on the recommendations of the Judiciary Committees of the Senate and the House of Representatives.
Oregon Or. Rev. Stat. §25.270			X		
Pennsylvania Pa. Con. Stat. Ann. §1910.16-1 (Rules of Civic Procedure)		X			
Rhode Island R.I. Gen. Laws §15-5-16.2		X			The family court is responsible for establishing guidelines by an administrative order.
South Carolina S.C. Code of Laws §20-7-852(D)			X		
South Dakota S.D. Codified Laws Ann. §25-7-6.12	X				The Legislature statutorily amends the guidelines based on the recommendations of the department of social services. (In the year 2000, the Governor is responsible for establishing a commission to review the guidelines and report its recommended changes to the Legislature.
Tennessee Tenn. Code Ann. §36-5-101 (2) & (3)		X	X		Guidelines were originally established by the department of children's services. However, the Tenn. Supreme Court is permitted to modify the guidelines. If the court fails to review the guidelines, then the agency is required to review and make recommendations to the court.
Texas Tex. Fam. Code Ann. §111.001	X			X	The Legislature statutorily amends the guidelines based on the recommendations of a 25 member or more advisory committee appointed by the Texas Supreme Court.
Utah Utah Code Ann. §78-45-7.13	X			X	The Legislature statutorily amends the guidelines based on the recommendations of an 11 member advisory committee appointed by the Governor. [Committee reports to the Legislative Judiciary Interim Committee.]

Vermont Vt. Stat. Ann. tit.15 §654			X		
Virginia Va. Code Ann. §20-108.2 (H)	X			X	The General Assembly provides for the guidelines in code amending such based on the recommendations of a panel of representatives organized by the Secretary of Health and Human Services.
Washington Wash. Rev. Code Ann. §26.19.025	X				
West Virginia W. Va. Code §48A-1B-1	X				
Wisconsin Wis. Stat. Ann. §49.22(9)			X		
Wyoming Wyo. Stat. Ann. §20-6-305	X				The Legislature statutorily amends the guidelines based on the recommendations of the department of family services.

Denver Office

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Washington Office

Tel: 202-624-5400 | Fax: 202-737-1069 | 444 North Capitol Street, N.W., Suite 515 | Washington, D.C. 20001

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October 5, 2005

Ms. Beth Adams
Alaska court System
820 W. 4th Avenue
Anchorage, AK 99501

Dear Ms. Adams,

I am writing to make comments on the current Alaska child support guidelines (Civil Rules 90.3) I have worked for Senator Albert Kookesh for the past three years as his Legislative Aide. In the scope of my job I take calls from constituents, usually when our office is contacted people are out of options in resolving their situation(s).

First of all I would like to say I do appreciate what this department does. On the other hand we have taken many calls from frustrated obligors in the Child Support Services Division (CSSD). I have read the complex civil rule so I am somewhat aware of how it is suppose to work, unfortunately that is not the case with the people we hear from.

We have heard of peoples saving accounts zeroed out!

75% of wages deducted!

Drivers Licenses taken so the person can not drive to work!

No consideration given to present family; when 2/3 of wages deducted!

No communication, no explanation for changes and or reviews, and no call backs.

Under AS 25.24.160 (a)(1) **it requires that child support be set in an amount which is just and proper.** When someone can't go to work because he/she doesn't have a drivers license and his/her savings is wiped out and he/she can't support him or her self, little alone the family he/she has right now, that is not just and proper. Most people find they are helpless with no place to go.

I would like to suggest;

- No more than 33% percent of wages be taken, period. People are finding they cannot live on anything less, especially in rural Alaska, where the cost of living is 3 times higher than urban Alaska.
- Only two thirds of savings and other income be garnished.
- Consideration is given to ALL of the children in calculating the support payments. The 'subsequent' children have the same rights and needs as those under court order.

Page 2

Ms. Beth Adams

October 5, 2007

- The automated system is scary, the employer should have some control, like deducting only one third of ones pay.
- **Involve the parent(s) in any changes and reviews. If you involve the parent(s) in decisions, that's gives them ownership and a since of control and therefore are more cooperative.**
- A handbook in layman's terms.

Your consideration to making this Department more user friendly would benefit everyone, especially the children you are serving.

Thank you for your time.

Sincerely,

Dorothy J. Shockley

Legislative Aide to Senator Albert Kookesh



ALASKA WOMEN'S LOBBY

AWL Mission: To defend and advance the rights and needs of Women, Children and Families in Alaska

P.O. Box 20891
Juneau, Alaska 99802-0891
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Kari Robinson

Joanne Schmidt

Libby Silberling

Shannon Vargas

March 29, 2012

Senator French
Members of Senate Judiciary

Dear Chair French:

While we appreciate Senator Kookesh's desire to provide citizens a more accessible forum to promote revision to the child support process by moving the process from a court rule into statute, we are not convinced that such would be the case and are also concerned with the other significant change encompassed in SB134, Child Support Awards.

As of 2005, about half of the states establish child support guidelines statutorily and about half through court rule or agency regulation. The four-year review mentioned in the sponsor statement is a federal regulation to which states must comply no matter where the guidelines are placed. While amending court rules can be a laborious process, they can be revised through court procedures or through the legislative process at anytime; not just every four years. And while it may be easier to amend a statute through the legislative process, we are not convinced that it should be easy to change child support guidelines. Stability of the procedures in what can be volatile determinations should be the preference.

Currently Alaska uses a percentage of income model for determining support amounts and SB 134 proposes changing that process to an income shares model. It seems that the income shares model focuses on the standards of living of the custodial and non-custodial households after divorce. It doesn't consider whether or not children should be supported at the same level after the divorce as before; which violates a basic tenet of child support that being the child should remain at the same standard of living before and after the divorce. While more states employ the income shares model (37), no state has shown that use of the model results in appropriate child support awards. ("Introduction to the Income-Share Child Support Guidelines", Roger F. Gay). In fact, at every level of income where income between the parties is not equal, the Income Shares model produces child support awards that are lower than any other state's currently existing child support guideline. (The "Cost Shares" Model of Child Support Guidelines", Laura W. Morgan, Family Law Consulting)

We respectfully suggest this issue deserves more research time to ensure that the best interests of children including their standard of living can be protected.

Cindy Smith

From: gayle@alaska.com
Sent: Wednesday, April 04, 2012 11:02 AM
To: Cindy Smith
Subject: SB 134

Good morning. My name is Gayle Brown and I practice family law in Anchorage. I was present for the family law meeting yesterday wherein Senator Kookesh and Ms. Shockley were available by phone to tell us about the new bill regarding Civil Rule 90.3 being made into a statute and completely modified. When asked why a rule that has been in place for 25 years must be completely overhauled the answer we were given was because it is fair. That was the only reason given, nothing else. I am not opposed to making the child support rule into a statute, what I am opposed to is fixing something that is not broken. It does not make any sense to me and it did not matter how much Senator Kookesh or Ms.

Shockley raised their voices at my colleagues and I, what they were saying did not make sense.

Before the child support system is overhauled please conduct more research and come up with a better reason than it is "fair." As someone who has practiced family law for approximately 18 years I think this will do more harm than good for the obligors, obligees and children.

Thank you.

Gayle J. Brown, Attorney at Law
750 W. 2nd Ave., Ste. 207
Anchorage, Alaska 99501
(907) 274-1074 Telephone
(907) 274-3311 Facsimile

SNYDER & HOAG LLC

David A. Snyder, Licensed in Oregon & Washington
John Hoag, Licensed in Alaska
Lane Toensmeier, Of Counsel, Licensed in Oregon
Kathleen Pearson, Paralegal

April 3 2012

Honorable Senator French and other
Member of the Senate Judiciary Committee
Juneau, Alaska

Re: SB 134

Dear Committee Members,

I have previously responded to Senator French's request to hear from members of the bar who belong to the Family Law Section regarding SB 134. Today I attended by phone a Family Law Section meeting on the bill and listed both to Senator Kookesh and his legislative aid, Dorothy Shockley, discuss the bill.

I urge the Legislature not to pass this bill this legislative session. It provides for fundamental changes in how child support will be calculated and will have far reaching effects in this state. Years of court made decisions on how to calculate child support will become useless, and the result will be a long lasting surge of litigation as a result of its passage.

I am mostly retired and do a lot of volunteer work with victims of domestic violence, many of whom are low income. I do not see them benefiting from this bill. Ms Shockley told the Section meeting that the bill was a result of mostly non custodial men complaining that they were paying too much child support because their ex wives' income was not being considered. Yet my examination of the spreadsheet calculations led me to conclude that noncustodial parents with lower incomes will be paying more and not less as a result of this Bill. Senator Kookesh disagreed with my conclusion. One of us is wrong.

I suggest that if the Committee decides that this bill has merit, that it table it for this session and hold hearings between now and the next legislative session on the impact that this bill would have on child support calculations. Give those of us who practice in this area the time to go through a large number of existing cases and see what changes would result in the child support payments. Then the legislature can consider real examples and not hypothetical's as to the impact of this legislation.

Senator Kookesh told us today that he strongly believes that how child support is calculated should be as the result of a statute and not a court made rule. I strongly believe that changes in how child support is calculated should be carefully made with assurances that the changes will be for the betterment of the citizens of this State, and that's more important than which governmental body writes the rule.

Sincerely,



John Hoag

Mail correspondence to:

P.O. Box 1796

Petersburg, AK 99833

Office: 907.772.5079 • Fax: 907.772.5089 • Cell: 907.650.7440

E-mail — jhoag@snyderandhoagllc.com

Web Site — www.snyderandhoagllc.com

Cindy Smith

From: Atticus Beau <atticusbeau@gmail.com>
Sent: Tuesday, April 03, 2012 4:05 PM
To: Sen. Hollis French
Subject: SB134 changing Child Support Calculations

Senator French,
In regards to SB134 changing the Child Support Calculations I disagree with it.

As I understand the motivation behind the Bill it is to be more Fair.
Fair to Whom? Child support is never a place of consensus. So In truth the only ones being happy with this is the Higher paid Non Custodial Parents - Maybe.

I do not see the fairness to the children. Statistically to raise a child is far more expensive then child support is paid in Majority of CS cases.

Is being Fair the only Issue? Or is there issues for Child Support vs Temporary Assistance?
Does this decrease Child Support Cases or allow better organization?

If there is a need for fairness maybe look at caping the Interest Charged especially for those with Higher Child Support amounts

I do know some Non Custodial Parents Low Income or Not when they get behind. They can never catch up.

Thanks for your time
Atticu Beau

Cindy Smith

From: Jessie Archibald <jarchibald@ccthita.org>
Sent: Tuesday, April 03, 2012 2:23 PM
To: Sen. Hollis French
Subject: Comment HB 344

Dear Senator French,

I attended a family law CLE teleconference this afternoon (Alaska Bar) concerning HB 344. There were many concerns expressed by attorneys in the audience, but the one thing that caught my eye was when I reviewed the actual calculations.

The main "pitch" for this bill was that the shared income model took both parents income into consideration, so it was more fair.

Fortunately, the presenters also attached some calculations to compare the new proposed amount vs. the amount a parent would pay if rule 90.3 was used.

Interestingly enough, the pattern outlined in the examples showed under the new legislation, the lower income parent pays more (than 90.3 would require) while the higher the income, the less the payor would pay than he/she would pay under Rule 90.3.

The end result:

The low income payors pay more and higher income payors pay less under the proposed legislation.

Is that fair?

I would respectfully request that this bill **not** be passed through committee.

Thanks for requesting input,

Jessie M. Archibald
TCSU Attorney
Central Council Tlingit & Haida
320 West Willoughby Ave., Suite 300
Juneau, AK 99801
(907) 463-7114
FAX: (907) 463-7730
jarchibald@ccthita.org

Cindy Smith

From: Whitney Bostick <Whitney@alaskaresolutions.com>
Sent: Wednesday, April 04, 2012 11:09 AM
To: Cindy Smith; Dorothy Shockley
Cc: JoAnne Baker; karajd2000@aol.com; A Porter
Subject: Information from a family law section member

Ms. Smith and Ms. Shockley,

We received the research below from a section member and they requested we pass this information along to your offices.

Here is the Home Page for Child Services Policies and the types of things it does. The commentary link and a few of the other links are good reads: <http://www.childservicepolicies.com/child-support-models>

This additional article has an excellent, and brief, explanation of the 4 main American methods/formulas for calculating child support, and their history and theory.

<http://www.courts.mi.gov/scao/services/focb/formula/psi-ch3.pdf> The bottom line is that there may be lots more research to do before just jumping ship to a new formula. However, the question of legislative versus court rule creation and amendment to any formula remains.

And here's another link to a typical list of current national child support issues/projects sponsored by a large American university

<http://www.irp.wisc.edu/research/childsup/cspolicy/cspolicy05-07.htm>

The last comment for the moment is that the ten or so articles I've just read (links picked up from Family Law Quarterly and places like that) seem to conclude unanimously that the income shares model (to which the current proposed bill would switch Alaska) by comparison to other formulas does have low income parents paying MORE than they pay under our current approach; that the Melson or hybrid formula mentioned has middle income parents paying MORE compared to the simple income shares approach; and that the income of obligor formula (which Alaska currently uses) has high income parents paying MORE than they are likely to be assessed under the income shares approach to which the bill proposes us to change. So basically, it could be said that the bill benefits higher income obligors and hurts low income obligors.... probably the opposite of what is intended or what the public would like to see?

Thank you for your assistance in sharing the information provided and coordinating with those interested in testifying today.

-Whitney

Cindy Smith

From: Steinberg, Stacy K (LAW) <stacy.steinberg@alaska.gov>
Sent: Friday, April 06, 2012 8:34 AM
To: Cindy Smith; Dorothy Shockley
Cc: Behr, Deborah E (LAW); Badgley, Cori M (LAW); Mallonee, John R (DOR)
Subject: RE: CS for SB 134

Thank you, Cindy.

Cindy and Dorothy, I reviewed this draft and suggest two small, but important changes:

Page 6, line 21 replace "A court" with "The tribunal"

Page 9, line 12 after "or" insert "monthly"

I will be at the hearing this afternoon to answer questions.

Stacy Steinberg

Attorney General's Office

From: Cindy Smith [mailto:Cindy_Smith@legis.state.ak.us]
Sent: Thursday, April 05, 2012 4:11 PM
To: Steinberg, Stacy K (LAW)
Subject: CS for SB 134

Just sent this to you but got a bounce-back, so I'm trying again. This is a CS for SB 134 which will be heard tomorrow in Senate Judiciary Committee. It is based on the current Court rule.

Cindy Smith
Office of Senator Hollis French
(907) 465-3892
www.senate.org

Cindy Smith

From: Ingrid Varenbrink <varenbrinki@alaskabar.org>
Sent: Sunday, March 04, 2012 3:46 PM
Cc: Cindy Smith; 'Whitney Bostick'
Subject: IMPORTANT: Senate Bill 134: Let the Senate know what you think about this bill!

Importance: High

On Wednesday, March 7, at 1:30 p.m. the Senate Judiciary Committee will be hearing Senate Bill 134, which would repeal Civil Rule 90.3, place child support guidelines in state statute, and change the model used in determining child support obligations to an income shares model.

You can read the bill here:

<http://www.legis.state.ak.us/PDF/27/Bills/SB0134B.PDF>

and the sponsor's statement here:

http://www.aksenate.org/sponsor/SB134_ss_sen_kookesh.pdf

If members of the family law section would like to provide comments to the committee, they can testify by phone or in writing.

Cindy Smith
Office of Senator Hollis French
(907) 465-3892
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Ingrid Varenbrink
Fee Arb Coordinator
Alaska Bar Association
550 W. 7th Ave, Suite 1900
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Phone: 907/272-7469
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Job Share with JoAnne Baker
bakerj@alaskabar.org
varenbrink@alaskabar.org

Please respond to both Ingrid & JoAnne

This email is CONFIDENTIAL if it concerns a fee arbitration or grievance matter.

Cindy Smith

From: Ingrid Varenbrink <varenbrinki@alaskabar.org>
Sent: Monday, March 05, 2012 10:09 AM
To: Cindy Smith
Subject: FW: IMPORTANT: Senate Bill 134: Let the Senate know what you think about this bill!

I received this comment below from Mr. Eschbacher.

Ingrid Varenbrink

From: Gary Eschbacher [<mailto:gre@eschbacherlaw.com>]
Sent: Monday, March 05, 2012 9:48 AM
To: Ingrid Varenbrink
Subject: RE: IMPORTANT: Senate Bill 134: Let the Senate know what you think about this bill!

You need to put a limitations section for the collection of back child support. Also, you need a provision wherein the parties change custody but fail to go back to court to change child support-very important. You only cover from sole to shared.

From: Ingrid Varenbrink [<mailto:varenbrinki@alaskabar.org>]
Sent: Sunday, March 04, 2012 3:46 PM
Cc: 'Cindy_Smith@legis.state.ak.us'; 'Whitney Bostick'
Subject: IMPORTANT: Senate Bill 134: Let the Senate know what you think about this bill!
Importance: High

On Wednesday, March 7, at 1:30 p.m. the Senate Judiciary Committee will be hearing Senate Bill 134, which would repeal Civil Rule 90.3, place child support guidelines in state statute, and change the model used in determining child support obligations to an income shares model.

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If members of the family law section would like to provide comments to the committee, they can testify by phone or in writing.

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Job Share with JoAnne Baker

bakerj@alaskabar.org

varenbrink@alaskabar.org

Please respond to both Ingrid & JoAnne

This email is CONFIDENTIAL if it concerns a fee arbitration or grievance matter.

Cindy Smith

From: Dorothy Shockley
Sent: Monday, April 02, 2012 4:05 PM
To: Cindy Smith
Subject: RE: updated report from leg research

Ok, sounds good. What time?

I've been invited to participate (via teleconference) in a discussion on SB 134 with a law firm tomorrow at noon.

Senator Coghill asked about non-monetary payments, and a lawyer called and suggested having a statute of limitations.....

I talked to Senator Kookesh, at this late date he just want to get it into statute and work on amendments next year.

I talked to leg finance in regards to the WA table, he talked to dept. of labor and they agree it doesn't need adjusting.....and will explain the particulars in an email.

Dorothy J. Shockley

Legislative Staff
Office of Senator Albert Kookesh
State Capitol, Room 11
Juneau, AK 99801
1-888-288-3473/907-465-3018
Fax 907-465-2827

"Take care of the old person you are going to become." Late Walter Soboleff Tlingit Elder at 102 years young

From: Cindy Smith
Sent: Monday, April 02, 2012 3:50 PM
To: Dorothy Shockley
Subject: RE: updated report from leg research

Hi Dorothy,

I will send this out to the committee.

We are also getting some concerns expressed by attorneys who practice in this arena – Sen. French had sent out a link to the bill and asked for any comments – and I will scan and send those to you shortly. I am running in and out of the office today! Maybe we can talk tomorrow morning?

Cindy Smith
Office of Senator Hollis French
(907) 465-3892
www.senate.org

From: Dorothy Shockley
Sent: Monday, April 02, 2012 2:31 PM
To: Cindy Smith
Subject: updated report from leg research

Hi Cindy,

Attached is a short 5 page updated report from Leg research. The number of states who have established guidelines in statute went from 24 to 26; and states that use shared income went from 35 to 37. Will you pass this on to the other members?

Thank you. Does your Boss have any questions?

Dorothy J. Shockley

Legislative Staff

Office of Senator Albert Kookesh

State Capitol, Room 11

Juneau, AK 99801

1-888-288-3473/907-465-3018

Fax 907-465-2827

"Take care of the old person you are going to become." Late Walter Soboleff Tlingit Elder at 102 years young

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 12, 2012

SUBJECT: Two-thirds vote requirement (CSSB 134 (HSS)
(Work Order No. 27-LS0671\I))

TO: Senator Hollis French
Attn: Cindy Smith

FROM: Jean M. Mischel
Legislative Counsel 

You have asked for an opinion on whether the above-referenced bill draft requires a two thirds vote of the legislature. The answer is no. CSSB 134(HSS) both codifies portions of Rule 90.3, Alaska Rules of Civil procedure, and repeals, in sec. 4 of the bill, the rule in its entirety.

Art. IV sec. 15 of the Constitution of the Sate of Alaska confers rule-making power on the Alaska Supreme Court as follows:

The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

In adopting the rule, the Alaska Supreme Court expressly stated that Rule 90.3 was not adopted under the Court's rule-making powers and is not subject to the two-thirds vote requirement in a note published with the rule which provides:

This rule is adopted under the supreme court's interpretive authority pursuant to Article IV, Section 1 of the Alaska Constitution. Thus, it may be superseded by legislation even if the legislation does not meet the procedural requirements for changing rules promulgated under Article IV, Section 15.

If I may be of further assistance, please advise.

JMM:plm
12-155.plm

October 5, 2005

Ms. Beth Adams
Alaska court System
820 W. 4th Avenue
Anchorage, AK 99501

Dear Ms. Adams,

I am writing to make comments on the current Alaska child support guidelines (Civil Rules 90.3) I have worked for Senator Albert Kookesh for the past three years as his Legislative Aide. In the scope of my job I take calls from constituents, usually when our office is contacted people are out of options in resolving their situation(s).

First of all I would like to say I do appreciate what this department does. On the other hand we have taken many calls from frustrated obligors in the Child Support Services Division (CSSD). I have read the complex civil rule so I am somewhat aware of how it is suppose to work, unfortunately that is not the case with the people we hear from.

We have heard of peoples saving accounts zeroed out!

75% of wages deducted!

Drivers Licenses taken so the person can not drive to work!

No consideration given to present family; when 2/3 of wages deducted!

No communication, no explanation for changes and or reviews, and no call backs.

Under AS 25.24.160 (a)(1) **it requires that child support be set in an amount which is just and proper.** When someone can't go to work because he/she doesn't have a drivers license and his/her savings is wiped out and he/she can't support him or her self, little alone the family he/she has right now, that is not just and proper. Most people find they are helpless with no place to go.

I would like to suggest;

- No more than 33% percent of wages be taken, period. People are finding they cannot live on anything less, especially in rural Alaska, where the cost of living is 3 times higher than urban Alaska.
- Only two thirds of savings and other income be garnished.
- Consideration is given to ALL of the children in calculating the support payments. The 'subsequent' children have the same rights and needs as those under court order.

25b
1/2

Page 2

Ms. Beth Adams

October 5, 2007

- The automated system is scary, the employer should have some control, like deducting only one third of ones pay.
- **Involve the parent(s) in any changes and reviews. If you involve the parent(s) in decisions, that's gives them ownership and a since of control and therefore are more cooperative.**
- A handbook in layman's terms.

Your consideration to making this Department more user friendly would benefit everyone, especially the children you are serving.

Thank you for your time.

Sincerely,

Dorothy J. Shockley
Legislative Aide to Senator Albert Kookesh

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2/2

CHILD SUPPORT GUIDELINES (CIVIL RULE 90.3) REVIEW COMMITTEE
ISSUE LIST 2007

General Comments

Rule has proved extremely effective; many problems have been fixed. *Mendel (18)*

Rule fair and just; many revisions since last review are beneficial to children. But the way the rule is applied and enforced is problematic. *Hodson (169); St. Clair (213)*

System is fair in the way allocates child support. *Stockard (146)*

Substantive rule does not belong in Rules of Civil Procedure. *Wasche (4)*

Create non-partisan board to review all child support laws and rules. *Miller (223); R. Rude (230)*

Changes that affect a large portion of society should not be decided by a committee. *Walker (126A)*

Review Required by Federal Law (42 U.S.C. Sec. 667; 45 CFR 302.56)

1. Considering economic data on the cost of raising children and case data, gathered through sampling or other methods, does the application of Civil Rule 90.3 result in appropriate child support awards?
2. Based on the same considerations, are deviations from Civil Rule 90.3 appropriately limited?

Support Generally

3. Institute the Income Shares Model. *McIntosh (5); Goforth (28); Corcoran (33); V. Rude (42); Hasty (52); A Travelin Man (53); Ipsen (59) Scott (83); Bishop (90); Demšar-King (92); Mahurin (93); Berger (96); Steik (99); Yerkes (100); Schwartz (102); Knapp (104); Ethridge (115); Laughlin (117); Johnson (122); Van Eck (123); Anderson (127); Johnson (129); Jarvis (131); Barnard (137); Lemons (142); Ferguson (143); Gilbert (145, 145#2); Matlock (151); Cagle (176); Hatfield (172); Thompson (184); Weldon (187); Allen (192); Thompson (207); Pitts (214); R. Rude (230); Webster (238); Teesateskie (246)*
4. Do not consider income of custodial parent. *Kuffner (107); Stockard (146); Krzynowek (209)*
5. Take into account non-custodial parent's child-related living expenses. *Larche (14); Ahmasuk (85); Avis (86); Townsend (126); Christian (128); Mack (135); Hatfield (172); Thompson (184); Weldon (187); Mr. Anonymous (226)*
6. Reduce percentages on which support is based. *Ahmasuk (85); Bishop (90); Laughlin (117)*. Use sliding scale. *Gilbert (145, 145#2); Heilman (153); Thompson (184); A Travelin Man (53)*. Studies show that percentage required for child support decreases as income increases. *Cagle (176)*

7. Increase percentage of support
 - a. with age. *Bayless (171); Kakaruk (109)*
 - b. with increased cost of living. *Wright (170)*
8. Make percentages equal for multiple children. *Villaran (237)*
9. Base support on actual costs of raising children. *Brosdahl (23); Thompson (81); Berger (96); Steik (99); Ahmasuk (85 #2); Bayless (171); Hatfield (172); Wasche (4)*
10. Base support on cost of living where children reside. *Avis (86); Bracken (125)*
11. Base support on economic analysis of Alaskan intact family. *Scott (83)*
12. Update economic analyses. *Cagle (176)*
13. Base support on actual time with parents. *Defedericis (72); CristyandJason (#121)*
14. Base support on expenses of split family, not intact family. *Weldon (187)*
15. Institute cap on amount of support paid. *St. Clair (213)*
16. Don't award support, other than college fund investments, if custodial parent capable of supporting household. *Hyde (118)*
17. Allow obligor to pay portion of support directly into college savings plan. *Avis (86)*
18. Make custodial parent account for how support spent. *Moses (6); Thompson (81); Avis (86); Thompson (184); Weldon (187); Thompson (207); Mr. Anonymous (226); Aldeman (229); Whaley (234); Webster (238)*
19. Major wage earner should have the majority of expenses for child care. *McIntosh (5)*
20. Non-custodial parent should receive notice when custodial parent incurs large expenses, such as orthodontia. *Larche (14)*
21. Eliminate support payments if non-custodial parent not allowed visitation, or child refuses to visit. *Bassetti (29); Corcoran (33); Tinker (112)*
22. Don't allow support when custody switches from custodial parent to non-paying parent with large amount of arrearages. *Dennis (20)*
23. Unfair that ex-partner's payment of his ex-wife's child support takes precedence because they were married, even though that child was born later. *KS (62)*
24. Don't allow custodial mother to collect support from multiple fathers. *Upton (61)*
25. State in rule that support payments are mandatory even if case on appeal. *Clark (205)*
26. Limit the amount of time that can pass before initial request for support. *La Vigne (173)*

27. Leaving determination of child support to complete discretion of judges based on "needs of child" leads to inconsistent orders. *Rose (183)*

Income

28. Rule should specify treatment of:
- Children's insurance benefits, both as income and credit;
 - State/federal adoption subsidies, both as income and credit - Also see *Barnard (137)*;
 - Income/deduction for accelerated versus non-accelerated depreciation for businesses or the self employed;
 - Value of on-base housing for military. *Morse (3)*
29. Base support on actual current income. *Christian (128)*; *Zaragoza (163)*; *Weldon (187)*; *Hatter (67)*
30. Base support on average of income over 2 or 3 years. *Baran (194)*
31. Base support on tax returns, not "state average" for profession. *Olcott (82)*
32. Base support on 60-hour work week to capture cash income from off-the-books employment. *Boutin (79)*
33. Base support on gross income. *Hancock (255)*
34. Base support on parents' standard of living. Allow party to petition court for judgment of "equal living standard." *Miller (210)*
35. Base support on "household" income (include income of new spouse of custodial parent.) *Little (45)*; *Matta (60)*; *Anderson (127)*; *Christian (128)*; *Davis (138)*; *Ferguson (143)*; *Ahmasuk (85 #2)*; *Weldon (187)*; *Eisenhower (202)*
36. Count value of underlying assets that produce capital gains, usually stocks, and impute that value to income; delete Section A.16. of Commentary. *Kirk, p. 2, #7 (77)*; *8/27/07 committee minutes.*
37. Include all gifts and inheritances as income. *Butterfield, pp. 7-8, #9-10 (225)*
38. Clarify Commentary, Sec. III.A. #21, to specify that income from interest in an estate (direct or through a trust), including one-time inheritances, counts as income. *Butterfield, p. 8, #10 (225)*
39. Include comp. time as income where obligor can choose to convert overtime to comp. time. *Larche (14)*
40. Include free rent as income, like housing provided by an employer. *Sharrock (139)*
41. Include welfare, Denali Kid Care, food bank, church donations, and farm income as income. *Howe (21)*

42. Exclude income from overtime or second job. *Dodson (47); Gilbert (145, 145#2); Mr. Anonymous (226)*
43. Exclude income from veterans benefits, disability, and Social Security. *Howe (21)*
44. Exclude income from COLA, military housing allowance (BAH), and military "basic allowance for subsistence" (BAS). *Henry (158); Jansen (39); Hatfield (172); Moore (113)*
45. Define "ordinary and necessary" in a way that does not require an experienced attorney to figure out. Other states have specific definition. *Young (51)*
46. Incorporate Rule 26 into Rule 90.3. *DuFresne (217)*
47. Make all income decisions final and binding on the parties. *DuFresne (217)*

Deductions

48. Allow deduction of monthly expenses such as rent, gas, and food. *Weldon (185)*
49. Allow deduction of out-of-pocket costs associated with work. *Klein (251)*
50. Include salespeople, who sometimes have substantial non-reimbursed business expenses, in discussion of deductions (Commentary, Section III.B.). *Kirk, p.3, #8 (77); 8/27/07 committee minutes.*
51. Allow deduction of child care expenses when obligor paying half. *Tyrone (64)*
52. Increase the allowable percentage that can be deducted for retirement contributions. *Klein (251)*
53. Don't penalize voluntary contributions of 7.5% of gross wages by subtracting mandatory contributions to retirement plan that are paid in lieu of social security tax, such as State of Alaska employees. *Finn (193)*
54. Allow deduction for unusually high costs of visitation (Bush travel). *Ahmasuk (85 #2)*

Reduced Payments for Extended Visitation

55. Clarify that visitation is defined as a percentage of days during the year. *Howe (21)*
56. Eliminate this provision. If the obligor has household suitable for children, a 75% reduction for less than 1 month's increased time is not in direct relationship to increased costs. *Hodson (169)*
57. Make visitation credit automatic. Parent receiving the credit should get it even if custodial parent cuts short the visitation period. *Butterfield. p. 2, # 1 (225) Also see Issue #110 for suggested change to forms.*

Potential Income

58. Potential income should be imputed and used to reduce/offset child support paid by non-custodial parent. *Larche (14)*
59. Fathers should not be penalized if they choose to quit their jobs. *Ahmasuk (85 #2)*
60. Amend exception to determination of potential income for parent taking care of child from under 2 years of age to kindergarten age. *Hodson (169)*
61. Amend paragraph (a)(4) as follows:
 "When a parent is voluntarily underemployed, the court may impute income from the income of a new spouse. Half of the passive income of a new spouse will be presumed to be income available to an underemployed parent, if the income is reported as joint income on tax returns. A court may examine lifestyle and expenditures of an underemployed parent when imputing income if there is an obvious inconsistency between that individual's claimed income and the parent's lifestyle and expenditures." *Domke (179)*
62. Mandate that unemployed obligor demonstrate good faith effort to find employment commensurate with skills and education, unless physically or mentally incapable. *Messer (218)*

Shared, Divided, and Hybrid Physical Custody

63. Implement a comparative income approach for all situations. Consider allowing use of existing shared formula as the basic formula, adjusted appropriately for hybrid and divided. Use actual number of overnights proportional to both parents' incomes. *Alteneder/Marz, p. (181)*
64. Eliminate use of percentage of income approach in 60/40 shared custody situation. *Townsend (126)*
65. Penalize the parent who makes the greater amount of money when custody is 50/50. *Davis (40)*
66. Make child support zero in 50/50 custody, with each parent paying half the medical costs. *Bassetti (29)*; - also split daycare and activities. *Johnson (56)*
67. Apply a cap on shared support after it is calculated. Limitation in (b)(1)(A) that applies income cap before calculating shared support amount could result in the lower earner paying support to the higher earner. *Mendel (18)*
68. Use sliding scale instead of current 90.3(b)(1)(C). *Pradell (49)*
69. Use adjustment from 0.5 to 1.5 instead of current 90.3(b)(1)(C). The 1.5 multiplier can create gross inequities against the payor. Default multiplier should be 1.0. Some judges already use 1.0 as default; rule should be consistent. *Leslie (199)*
70. Explain where the 1.5% comes from (Commentary, Section V.B.) *Townsend (126)*

71. In shared custody both parties should be referred to as custodial parents. *Ward (7); Townsend (126); Altoneder/Marz, p. 1, #1 (181)* Use the terms payor and recipient or similar accurate terms. *Leslie (199)*
72. Remove incentives for fathers to fight for shared custody to reduce or eliminate child support. *Hodson (169)*
73. Calculate divided custody in the same way as for hybrid custody, by figuring the 90.3(a) percentage for the total number of children, then dividing that percentage by the number of children. *Butterfield, p. 4, #4 (225)*
74. 30% custody equals 109.5, not 110, overnights per year. (Commentary, Section V.) *Kirk, p. 3, #9 (77); 8/27/07 committee minutes.*

Income Cap

75. Apply cap at the end of the calculation rather than the beginning. *Kirk, p. 1, #3 (77); 8/27/07 committee minutes.*
76. Raise income cap. *Gilbert (145, 145#2); Hodson (169)*
77. Lower income cap. *Thompson (184 #2)*
78. Eliminate income cap entirely. *DuFresne (217)*
79. Change income cap to between \$50,000 and \$100,000. *Gilbert (145, 145#2)*

Minimum support amount

80. Increase minimum support amount. *Kirk, p. 2, #5 (77); 8/27/07 committee minutes; Wade (3); Chapman (36); Martin (80)*
81. Return to across-the-board \$50 minimum for individuals below poverty guidelines. *Altoneder/Marz (181)*
82. Add new section 90.3(c)(6) as follows:

"In the event a custodial parent's net income, after including child support calculated pursuant to this rule, exceeds the non-custodial parent's net income by 20% or more, the child support calculated pursuant to this rule shall be adjusted downward such that the custodial parent's net income exceeds the non-custodial parent's net income by no more than 20%." *Wasche (4)*

Subsequent Children

83. Divide support equally between all children of the common parent. *Jansen (39); Atkinson (211)*
84. Consider need to support subsequent spouses and children. *Ward (7); Andrews (34); Brownlee (24); Goforth (28); Jansen (39); Ipsen (59); Mahurin (93); Steik (99); Ethridge*

(115); *Van Eck* (123); *Eilertsen* (136); *Ferguson* (143); *Matlock* (151); *Cagle* (176); *Hatfield* (172); *Duncan* (182); *Booth* (200); *Pitts* (214); *Houser* (253)

85. First or primary family should have priority when determining support. *DuFresne* (217)

Health Care Coverage

86. Create exception for mandatory health care coverage if children are Alaska Native. *Ahmasuk* (85 #2)
87. Require parents to share costs of supplements, specialty foods prescribed by an M.D. for child with anemia, food allergies, or autoimmune disorder. *Nelson* (159)
88. Divide health insurance premiums equally among covered parties. Deduct allocation for each child when calculating support. *Hatfield* (172)
89. Ex is allowed to automatically deduct my 50% portion of the cost of insurance from his child support payment, while I have no means to collect his 50% of medical bills. *Nelson* (159)
90. Insurance companies won't communicate with parent who does not have the insurance, and parent with insurance won't reimburse other parent for paying co-pay or bill. *Butterfield*, p. 5, #7 (225)

Failure to File Documentation

91. Language proposed by Judge Bolger:
- 90.3(e)(2) "If a party fails to file the required income statement or any required documentation, then the court may impose any sanctions which may apply. The court may also calculate the parties' income based on other available evidence. The court may rely on government reports on occupational wages or earnings if supported by evidence of the parties' age, health, residence or work history." *Bolger* (76); 8/27/07 committee minutes.
92. Provide that retroactive modification can go back to the date of a request under (e)(2), either by eliminating (e)(2) altogether, or by adding a sanction to (e)(2) if a party fails to respond. *Kirk*, p. 2, #6 (77); 8/27/07 committee minutes.
93. Make it an annual requirement to produce income information and include penalties for failure to do so. *DuFresne* (217)

Definition of Shared Physical Custody

94. Lower definition of shared physical custody to 25% or less. *Kirk*, p. 2, #4 (77); 8/27/07 committee minutes.

Travel Expenses

95. Provide more guidance to judges, such as list of factors to consider. *Butterfield*, pp. 6-7, #8 (225)
96. Require custodial parent to notify non-custodial parent of pending move so that transportation issues and costs, and visitation schedules, can be discussed while both parties are living in the same community within Alaska. *Roque* (26)
97. Require parents to share costs of reasonable travel expenses required to exercise visitation. Stipulate that if non-custodial parent relocates, absent employment or other obligation, the custodial parent may get waiver. *Hatfield* (172)

Modification

98. When obligor learns of older child for whom support is owed, allow retroactive modification for younger child or adjustment for older child. *Kirk*, p.1, #2 (77); 8/27/07 committee minutes.
99. Amend 90.3(h)(2) to clarify whether modification can be made effective retroactively to date CSSD gave notice of request to opposing party if CSSD determined that no modification was merited and requesting party later files motion to modify in court. *Kirk*, p. 1, #1 (77), 8/27/07 committee minutes.
100. Allow custodial parent who does not have shared physical custody an annual review of award without having to submit their own financial information. *Hodson* (169)
101. Absent unusual circumstance, limit petition to modify support to once every two years. Require both parents to submit income and expense information. *Hatfield* (172) Limit modifications to every 3 years. *Brownlee* (24)
102. Give consideration to highly educated person with good potential income who is laid off and unable to find work. *Finn* (193)
103. Don't allow modification based on increases in non-custodial parent's income. Studies show that percentage required for child support actually decreases as income increases. *Cagle* (176)
104. Amend 90.3(h)(1) as follows:

"A final child support award may be modified upon a showing of a material change of circumstances as provided by state law. A material change of circumstances will be presumed if support income as calculated under this rule is more than 15 percent greater or less than the outstanding support order. For purposes of this paragraph, support income¹ includes health insurance payments made pursuant to (d)(1) of this rule."
Teseniar (216)
105. Ban retroactive payments if father was unaware of child's existence. *Mack* (135); *Kriska* (188)

¹ Changing "support" to "income" in this sentence was not part of the proposed change, but may make sense from the standpoint of internal consistency.

Dependent Tax Deduction

106. Grant dependent tax deduction to obligor. *Ahmasuk (85); Duncan (182); Booth (200); Mr. Anonymous (226)*

Forms

107. Eliminate Support Order Form. Parties, attorneys, and judges should be able to create their own form. Existing form makes order more complicated than necessary. Having form available only in PDF format is troublesome. *Wasche (4)*
108. Change DR-300 and DR-301, p. 2, to clarify that an amount of child support for each child must be specified. *Butterfield, p. 5, #6 (225)*
109. Add to court forms, under "Notice to Party Ordered to Pay Support (Obligor)" that obligor should write "child support" on the memo line of their check or money order, and keep copies of all records showing payment of child support. *Butterfield, p. 3, #2 (225)*
110. Change forms DR-300 and 301 so that judge has to check a box to undo the credit. Include line to allow judge to change percentage of credit. *Butterfield, p. 3, para. 5, #1, (225) Also see Issue # 57*
111. Clarify form to require, in shared custody, specific percentages of time each parent will have custody. *Butterfield, p. 4, #3 (225)*
112. Correct error in DR-308, lines 4.d. and 5.d. *Butterfield, p. 4, #5 (225)*
113. Require all court forms relating to child support to be written using plain language. *Alteneder/Marz, p. 4, #3 (181)*

Website

- *114. Partner with CSSD to develop a more sophisticated on-line calculator. *Alteneder/Marz, p. 5, #4 (181)*

Additional Public Comment "Issues" for 2007 Issue List:

New Letter:

84. Reference to letter from Dorothy Shockley should be added to category #84. *Shockley (256)*
- 113.1 (New category to be added for new issue) A handbook should be written in layman's terms. *Shockley (256)*

New Categories:

PFD

115. Make application for PFD mandatory or automatic for those who owe child support. *Robertson--Hebert (41); Hurst (48); Smith (55); Miss B (65); Polly (108); KS (62); Appreciative Client (206)*

Courts/Judges

116. Training of masters, judges, and attorneys (various issues - see letter). *Butterfield (225); Hodson (169)*
117. Overall, the court system has done a good job of interpreting and rationally applying the rule. *Butterfield (225)*
118. Require all court forms, instructions, and informational materials relating to child support to be written in plain language. Partner with CSSD to develop a more sophisticated on-line calculator. *Alteneder/Marz (181)*
119. CSSD should be the sole authority for income determination and be the first avenue of recourse in disputed support calculations. *DuFresne (217)*
120. Various proceedings take too long. *Willson (25); Jenó (46); Young (51); Hope (196); Kuffner (107); Hodson (169)*
121. Courts biased in favor of fathers. *Hodson (169)*

Statutory Changes

122. Amend statutes re: "friendly parent" provision in the best interests of the child standard. Friendly parenting provisions are being used to switch custody unjustly. The 2004 revision to eliminate "friendly parent" statute from being used against DV victims did not go far enough. Law gives implied preference for shared custody and should be revamped to remove any preference for joint legal or physical custody. *Hodson (169)*
123. Allow obligor to pay reasonable rate for Denali Kid's Care and drop crummy, expensive private coverage. Win/win for state, parents, and children. *Mr. Anonymous (226)*
124. State should pay cost of raising child and collect later. *Kertulla (147); Defedericis (72)*

CSSD

125. Johnson (56); Appreciative Client (206); Ward (7); Howe (21); Willson (25); McKinney (27); Jensen (39); V. Rude (42); Bertelson (44); Elmes (8); Valmont (12); Davis (13); Garrett (17); Dennis (20); Doyle (22); Garrett (17); Mack (31); Stewart (35); Chapman (36); Hale (38); Robertson-Hebert (41); V. Rude (42); Bertelson (44); CristyandJason (121); Bertelson (44); Little (45); Jeno (46); Larche (14); Taylor (54); Chiklak (91); Nordby (95); Ahmasuk (85 #2); Bishop (116); Townsend (126); Walker (126A); Andrews (111); Davis (138); Stockard (146); Wolf (149); Atkinson (211); Neece (168); Wright (170); Rice (175); Huffman (190); Benoit-Ruch (191); Baran (194); Hope (196); Leslie (199); Boynton (203); Blackbird (208); Gillis-Boyd (212); D.B. (215); Teseniar (216); DuFresne (217); Miller (223); Mr. Anonymous (226); LEM (229); Rude (230); Anderson (232); Benitz (233); Whaley (234); Armstrong (250); Armstrong (254); Shockley (256).

**CHILD SUPPORT GUIDELINES (CIVIL RULE 90.3) REVIEW COMMITTEE
ISSUE LIST 2008 – AFTER COMMITTEE DRAFT CIRCULATED FOR COMMENT**

Note: These are the issues that were used in the initial Issues List, which recorded comments received before the committee circulated a draft for public comment. Only those issues with a commenter's name and number in bold received comments in this circulation.

General Comments

I agree with the proposed changes to Rule 90.3. **Partyka (P45)**

All proposed changes look reasonable, and certainly will assist the court in some child support cases. **Judge White (P51)**

Outcome of process should be a more fair rule; right now it is inconsistent, and leads to people feeling that outcomes are arbitrary and unfair. **Yerkes (P64)**

No help for the children. **Jennings (P29)**

Your so called annual changes and recommendations should be written in clear and plain English; average parent only has a high school diploma. **Banner (P50)**

I don't fully understand the proposed changes. **Hyde (P4)**

I have no idea what this is. **Rourke (P3)**

All the guidelines and rules don't amount to much if they are not enforced. **Elmes (P43)**

What a waste of time, and what a crock of beans; the best thing that could happen to the Child Support System is to scrap it; this letter is falling on deaf ears and a waste of time on my part. **De Federicis (P48)**

System is biased towards fathers. **Walker Sr. (P18); Bassetti (P10); Tuttle (P80); De Federicis (P48)**

Rule 90.3, under (a)(1)(A) and (B), is unfair to anyone getting older. You are making it so a person has to pay support on their retirement. **No Name Given (P69)**

The statement that the primary purpose of 90.3 is to ensure that orders are adequate to meet children's needs, and subject to the ability of parents to pay is very untrue. You force dads to pay regardless of ability, if they don't you criminalize them. **No Name Given (P67)**

Purpose of child support awards are subject to the ability of "parents" to pay, all cases I know of only person whose income is considered is the paying party; I have never heard or seen anyone who had their taxes deducted as written in your commentary. As a matter of fact they have to pay the taxes even on the monies taken by child support. Taxation without representation!; Are income statements available for perusal by both parties? **Rude (P54)**

Review Required by Federal Law (42 U.S.C. Sec. 667; 45 CFR 302.56)

1. Considering economic data on the cost of raising children and case data, gathered through sampling or other methods, does the application of Civil Rule 90.3 result in appropriate child support awards?

On page 2 of the Report, on Economic Cost of Raising Children, It is a leap of logic to say "economic data supports the conclusion that Alaska's guidelines for awarding child support continue to be appropriate and adequate," because there is no discussion of how the data brings you to this conclusion, it assumes existing standard is appropriate. Same argument with these statements: 1) awards are comparable with other states 2) committee concludes that application of 90.3 results in appropriate child support awards. Your conclusions are highly subjective. Father's rights groups and others disagree, so you should prove that awards are appropriate, and not just expect us to take your word for it. **Thompson (P56)**

2. Based on the same considerations, are deviations from Civil Rule 90.3 appropriately limited?

Support Generally

3. Institute the Income Shares Model. **Hughes (P63); Yerkes (P64); Hughes (P84); Gleeson (P76); Greer (P57)**
4. Do not consider income of custodial parent.
5. Take into account non-custodial parent's child-related living expenses.
6. Reduce percentages on which support is based.
7. Increase percentage of support
 - a. with age.
 - b. with increased cost of living.
8. Make percentages equal for multiple children.
9. Base support on actual costs of raising children.
10. Base support on cost of living where children reside. **Hughes (P63); Hughes (P84); Tuttle (P80); Saunders (P71)**
11. Base support on economic analysis of Alaska intact family.
12. Update economic analyses.
13. Base support on actual time with parents. **Imel (P40); No Name Given (P31); No Name Given (P19); Kalmakoff (P38)**
14. Base support on expenses of split family, not intact family. **Sundsten (P81)**
15. Institute cap on amount of support paid.

16. Don't award support, other than college fund investments, if custodial parent capable of supporting household.
17. Allow obligor to pay portion of support directly into college savings plan.
18. Make custodial parent account for how support spent. *Sanders (P66); Tuttle (P80)*
19. Major wage earner should have the majority of expenses for child care.
20. Non-custodial parent should receive notice when custodial parent incurs large expenses, such as orthodontia.
21. Eliminate support payments if non-custodial parent not allowed visitation, or child refuses to visit. *White (P5); Hughes (P63); Yerkes (P64); Bassetti (P10); Hughes (P84)*
22. Don't allow support when custody switches from custodial parent to non-paying parent with large amount of arrearages.
23. Unfair that ex-partner's payment of his ex-wife's child support takes precedence because they were married, even though that child was born later.
24. Don't allow custodial mother to collect support from multiple fathers.
25. State in rule that support payments are mandatory even if case on appeal.
26. Limit the amount of time that can pass before initial request for support.
27. Leaving determination of child support to complete discretion of judges based on "needs of child" leads to inconsistent orders.

Income

28. Rule should specify treatment of:
 - a. Children's insurance benefits, both as income and credit;
 - b. State/federal adoption subsidies, both as income and credit
 - c. Income/deduction for accelerated versus non-accelerated depreciation for businesses or the self employed;
 - d. Value of on-base housing for military.
29. Base support on actual current income.
30. Base support on average of income over 2 or 3 years.
31. Base support on tax returns, not "state average" for profession.
32. Base support on 60-hour work week to capture cash income from off-the-books employment.
33. Base support on gross income.

34. Base support on parents' standard of living. Allow party to petition court for judgment of "equal living standard."
35. Base support on "household" income (include income of new spouse of custodial parent.) **Conklin (P27)**
36. Count value of underlying assets that produce capital gains, usually stocks, and impute that value to income; delete Section A.16. of Commentary.
37. Include all gifts and inheritances as income.
38. Clarify Commentary, Sec. III.A. #21, to specify that income from interest in an estate (direct or through a trust), including one-time inheritances, counts as income.
39. Include comp. time as income where obligor can choose to convert overtime to comp. time.
40. Include free rent as income, like housing provided by an employer.
41. Include welfare, Denali Kid Care, food bank, church donations, and farm income as income.
42. Exclude income from overtime or second job.
43. Exclude income from veterans benefits, disability, and Social Security. **Miller (P70)**
- 43.1 Law should not protect men from having to pay child support if they have filed for social security disability.
- 43.2 "Means based veteran's benefits in Committee. II A is vague and inaccurate. **Barron (P16); Coleman (P73)**
44. Exclude income from COLA, military housing allowance (BAH), and military "basic allowance for subsistence" (BAS). **Perkinson (P61); Hughes (P63); Tuttle (P80)**
45. Define "ordinary and necessary" in a way that does not require an experienced attorney to figure out. Other states have specific definition.
46. Incorporate Rule 26 into Rule 90.3.
47. Make all income decisions final and binding on the parties.

Deductions

48. Allow deduction of monthly expenses such as rent, gas, and food.
49. Allow deduction of out-of-pocket costs associated with work. It is unfair not to adjust income for living expenses and travel that is required by employer, even when person is still paying cost of primary residence. **Thompson (P56)**

50. Include salespeople, who sometimes have substantial non-reimbursed business expenses, in discussion of deductions (Commentary, Section III.B.).
51. Allow deduction of child care expenses when obligor paying half.
52. Increase the allowable percentage that can be deducted for retirement contributions.
53. Don't penalize voluntary contributions of 7.5% of gross wages by subtracting mandatory contributions to retirement plan that are paid in lieu of social security tax, such as State of Alaska employees.
54. Allow deduction for unusually high costs of visitation (Bush travel).
- 54.1. Would like the committee to consider clarifying how much of a deduction a parent receives when she has children from a prior relationship. *Partyka (P45)*

Reduced Payments for Extended Visitation

55. Clarify that visitation is defined as a percentage of days during the year.
56. Eliminate this provision. If the obligor has household suitable for children, a 75% reduction for less than 1 month's increased time is not in direct relationship to increased costs.
57. Make visitation credit automatic. Parent receiving the credit should get it even if custodial parent cuts short the visitation period

Potential Income

58. Potential income should be imputed and used to reduce/offset child support paid by non-custodial parent.
59. Fathers should not be penalized if they choose to quit their jobs. People are penalized for taking college classes to increase potential income; they are still charged as though working. *Rude (P54)*
60. Amend exception to determination of potential income for parent taking care of child from under 2 years of age to kindergarten age.
61. Amend paragraph (a)(4) as follows:
 "When a parent is voluntarily underemployed, the court may impute income from the income of a new spouse. Half of the passive income of a new spouse will be presumed to be income available to an underemployed parent, if the income is reported as joint income on tax returns. A court may examine lifestyle and expenditures of an underemployed parent when imputing income if there is an obvious inconsistency between that individual's claimed income and the parent's lifestyle and expenditures."
62. Mandate that unemployed obligor demonstrate good faith effort to find employment commensurate with skills and education, unless physically or mentally incapable. *Finch (P2); No Name Given (P1); Butler (P6); No Name Given (P67); Jessup (P9); Hope (P30)*

Shared, Divided, and Hybrid Physical Custody

63. Implement a comparative income approach for all situations. Consider allowing use of existing shared formula as the basic formula, adjusted appropriately for hybrid and divided. Use actual number of overnights proportional to both parents' incomes.
64. Eliminate use of percentage of income approach in 60/40 shared custody situation.
65. Penalize the parent who makes the greater amount of money when custody is 50/50.
66. Make child support zero in 50/50 custody, with each parent paying half the medical costs.
67. Apply a cap on shared support after it is calculated. Limitation in (b)(1)(A) that applies income cap before calculating shared support amount could result in the lower earner paying support to the higher earner.
68. Use sliding scale instead of current 90.3(b)(1)(C).
69. Use adjustment from 0.5 to 1.5 instead of current 90.3(b)(1)(C). The 1.5 multiplier can create gross inequities against the payor. Default multiplier should be 1.0. Some judges already use 1.0 as default; rule should be consistent.
70. Explain where the 1.5% comes from (Commentary, Section V.B.)
71. In shared custody both parties should be referred to as custodial parents.
72. Remove incentives for fathers to fight for shared custody to reduce or eliminate child support.
73. Calculate divided custody in the same way as for hybrid custody, by figuring the 90.3(a) percentage for the total number of children, then dividing that percentage by the number of children.
74. 30% custody equals 109.5, not 110, overnights per year. *Alteneder (P74); Master Rasley (P65)*

Income Cap

75. Apply cap at the end of the calculation rather than the beginning.
76. Raise income cap. Your recommendations make sense in that it takes more to live so you adjusted for inflation. *Scheff (P23)*
77. Lower income cap.
78. Eliminate income cap entirely.
79. Change income cap to between \$50,000 and \$100,000.

Minimum support amount

80. Increase minimum support amount. *Fyfe (P52); Wade (P22); Shields (P41); Jessup (P9); Butler (P6)*
81. Return to across-the-board \$50 minimum for individuals below poverty guidelines.
82. Add new section 90.3(c)(6) as follows:

"In the event a custodial parent's net income, after including child support calculated pursuant to this rule, exceeds the non-custodial parent's net income by 20% or more, the child support calculated pursuant to this rule shall be adjusted downward such that the custodial parent's net income exceeds the non-custodial parent's net income by no more than 20%."

Subsequent Children

83. Divide support equally between all children of the common parent.
84. Consider need to support subsequent spouses and children.
85. First or primary family should have priority when determining support.

Health Care Coverage

86. Create exception for mandatory health care coverage if children are Alaska Native.
87. Require parents to share costs of supplements, specialty foods prescribed by an M.D. for child with anemia, food allergies, or autoimmune disorder. *Nelson (P7)*
88. Divide health insurance premiums equally among covered parties. Deduct allocation for each child when calculating support.
89. Ex is allowed to automatically deduct my 50% portion of the cost of insurance from his child support payment, while I have no means to collect his 50% of medical bills.
90. Insurance companies won't communicate with parent who does not have the insurance, and parent with insurance won't reimburse other parent for paying co-pay or bill.
- 90.1. Noncustodial parent should not get credit on his support when all he can provide is medical insurance, if I can provide medical and dental insurance at no additional cost for the plan. *Fulks (P77)*
- 90.2. Trying to get reimbursed by noncustodial parent for medical needs not covered by insurance is not reasonable in domestic violence situations. *Fulks (P77)*

Failure to File Documentation

91. Sanctions for not providing requested financial information:

90.3(e)(2) "If a party fails to file the required income statement or any required documentation, then the court may impose any sanctions which may apply. The court may also calculate the parties' income based on other available evidence. The court may rely on government reports on occupational wages or earnings if supported by evidence of the parties' age, health, residence or work history." Bolger (76); 8/27/07 committee minutes. **NOT recommended in this form by the committee.**

No Name Given (P69); Judge Steinkruger (P37); Thompson (P56)

- 91.1. After proposed new language in Comm. VIII, add case citation for McDonald v. Trihub, 173 P.3d 416 (Alaska 2007) which explains referencing to DOL statistics. **Butterfield (P55)**
92. Provide that retroactive modification can go back to the date of a request under (e)(2), either by eliminating (e)(2) altogether, or by adding a sanction to (e)(2) if a party fails to respond.
93. Make it an annual requirement to produce income information and include penalties for failure to do so. **Bassetti (P10)**

Definition of Shared Physical Custody

94. Lower definition of shared physical custody to 25% or less. **Tuttle (P80); Moses (P36)**

Travel Expenses

95. Provide more guidance to judges, such as list of factors to consider.
96. Require custodial parent to notify non-custodial parent of pending move so that transportation issues and costs, and visitation schedules, can be discussed while both parties are living in the same community within Alaska.
97. Require parents to share costs of reasonable travel expenses required to exercise visitation. Stipulate that if non-custodial parent relocates, absent employment or other obligation, the custodial parent may get waiver.

Modification

98. When obligor learns of older child for whom support is owed, allow retroactive modification for younger child or adjustment for older child.
99. Amend 90.3(h)(2) to clarify whether modification can be made effective retroactively to date CSSD gave notice of request to opposing party if CSSD determined that no modification was merited and requesting party later files motion to modify in court.
100. Allow custodial parent who does not have shared physical custody an annual review of award without having to submit their own financial information.

- 101. Absent unusual circumstance, limit petition to modify support to once every two years. Require both parents to submit income and expense information.
- 102. Give consideration to highly educated person with good potential income who is laid off and unable to find work.
- 103. Don't allow modification based on increases in non-custodial parent's income. Studies show that percentage required for child support actually decreases as income increases.
- 104. Amend 90.3(h)(1) as follows:

"A final child support award may be modified upon a showing of a material change of circumstances as provided by state law. A material change of circumstances will be presumed if income as calculated under this rule is more than 15 percent greater. For purposes of this paragraph, income includes health insurance payments made pursuant to (d)(1) of this rule."

Deleted: support
 Deleted: or less than the outstanding support order
 Deleted: support

- 105. Ban retroactive payments if father was unaware of child's existence.
- 105.1. Would like to see a timeline when can then file for modification under shared custody; need this clarified for the child/children's continued support; do not think judge should prescribe time line of abandonment. Would like to see language to recognize parent with physical custody to be allowed a court order to be processed immediately. *Hope (P30)*

Dependent Tax Deduction

- 106. Grant dependent tax deduction to obligor. *Seppilu (P24); Hughes (P63); Hughes (P84)*

Forms

- 107. Eliminate Support Order Form. Parties, attorneys, and judges should be able to create their own form. Existing form makes order more complicated than necessary. Having form available only in PDF format is troublesome.
- 108. Change DR-300 and DR-301, p. 2, to clarify that an amount of child support for each child must be specified.
- 109. Add to court forms, under "Notice to Party Ordered to Pay Support (Obligor)" that obligor should write "child support" on the memo line of their check or money order, and keep copies of all records showing payment of child support.
- 110. Change forms DR-300 and 301 so that judge has to check a box to undo the credit. Include line to allow judge to change percentage of credit.
- 111. Clarify form to require, in shared custody, specific percentages of time each parent will have custody.
- 112. Correct error in DR-308, lines 4.d. and 5.d.

113. Require all court forms relating to child support to be written using plain language.
Fyfe (P53)

Website

114. Partner with CSSD to develop a more sophisticated on-line calculator.

PFD

115. Make application for PFD mandatory or automatic for those who owe child support.

Courts/Judges

116. Training of masters, judges, and attorneys
117. Overall, the court system has done a good job of interpreting and rationally applying the rule.
118. Require all court forms, instructions, and informational materials relating to child support to be written in plain language. Partner with CSSD to develop a more sophisticated on-line calculator.
119. CSSD should be the sole authority for income determination and be the first avenue of recourse in disputed support calculations.
120. Various proceedings take too long.
121. Courts biased in favor of fathers.

Statutory Changes

122. Amend statutes re: "friendly parent" provision in the best interests of the child standard. Friendly parenting provisions are being used to switch custody unjustly. The 2004 revision to eliminate "friendly parent" statute from being used against DV victims did not go far enough. Law gives implied preference for shared custody and should be revamped to remove any preference for joint legal or physical custody.
123. Allow obligor to pay reasonable rate for Denali Kid's Care and drop crummy, expensive private coverage. Win/win for state, parents, and children.
124. State should pay cost of raising child and collect later.

CSSD

125. CSSD. *Shockley(P86); Swafford (P28); Manery (P44); Walker (P26); Butler (P6); Locher (P47); Tuttle (P80); Cruz (P17); Thompson (P83); Cato (P34); Hope (P30) ; Scardina (P79); Close (P85); Goodrich (P33); Close (P49); Cato (P34); Tuttle (P80); Mielke (P60); Smith (P20); Elmes (P43); Cato (P34); Lowry (P35); Neece (P78); Imel (P40); Armstrong (P21) ; No last Name (P32); Greer (P57); Epipeke (P82); Swenson (P42); Kalmakoff (P38); No Name Given (P68); Brown (P75); Scheff (P23); Mullin (P39); Walker Sr. (P25)*

OTHER

126. State should pay support if they take custody of children.
127. Other. *Walker Sr. (P58); Walker Sr. (P59); Walker Sr. (P62); Walker Sr. (P15); Walker Sr. (P14); Walker Sr. (P13); Walker Sr. (P12); Walker Sr. (P11); Walker Sr. (P8); Walker Sr. (P46); Walker Sr. (P72)*

PUBLIC HEARING - Child Support Guidelines Review Committee
April 23, 2008

Summary of Testimony:

Welcome by Judge Joannides. She informed participants that they are limited to three minutes of testimony, but that if there was time afterward we could come back to those show had additional comments. She asked that participants address comments to the proposed rule changes, not to individual situations or cases or interactions with CSSD. This committee is not in a position to change CSSD procedures, but just to recommend changes to the rule.

1. **Sara Sundsten (Kodiak)**: She is involved with the guidelines even though she has no kids. Her husband got a letter from CSSD saying he owes back support for a child that resulted from a one-night stand. Why does the system put so much burden on fathers? The law is very general, yet each situation is different. The Commentary that defines income (III.A) and references what would be available if the family had been intact is not applicable when the father and child were not ever a part of an intact family.

2. **Jerome W. Epipeke (Gambell)**: Like the previous testifier, he was overwhelmed by a letter from CSSD saying he owes a great amount of back child support. Believes the mother should have come forward earlier rather than waiting many years until it became a large dollar amount. He cannot pay because he's deeply in debt and lives in an area with high unemployment. He is disappointed with the system.

3. **Linda Thompsen (Anchorage)**: She wants a required review of a child support order whenever a party seeks a review. Her ex-husband was \$50,000 in arrears and he never paid. She sought review from CSSD, but did not get her situation reviewed. The children lost their home because her ex did not pay. Suggests there ought to be some enforcement against those who do not pay. Moreover, her ex was working under the table as a trucker, and yet failed to pay child support as ordered by CSSD.

A separate issue is that her son got into trouble when the ex had custody, and ended up in state custody. So, she's paying child support for that boy, yet he is not living with the ex. Why does the her support money go to the ex when the child is in state custody and really they are both non-custodial parents?

4. **David C. Hughes (Fairbanks)**: he is in the military here, was divorced in AK, and the ex and children now live in Florida. Feels penalized because he earns a COLA for Alaska and that is considered income, so a portion goes to the ex. Commentary III. A.28: suggests deleting COLA from income when it is not needed by the children, and suggests that 28 should include BAH (base allowance for housing), BAS (base allowance for subsistence) and specialty pay, but include COLA only if the custodial parent and children remain in AK with servicemember.

He also believes there is a problem with determining the federal tax rate for a parent who is a servicemember. The CSSD calculator uses a formula with zero rate for single, but court uses pay stub. These can differ if someone has more deductions listed on their W-4 so that more tax is withheld in every paycheck. CSSD should calculate the

actual tax, but should put in an actual number for child exemptions, so it's easier to align their calculations with what the court uses.

He asked about the review every four years, and the committee explained the federal requirements.

He expressed a preference for using the income shares methodology.

He believes that Alaska uses a higher percentage rate (27%) than other states (which are 25%), generally. [He was incorrect in his assumption about Alaska's rates.]

He believes the rule should provide a penalty for a custodial parent who moves away and refuses to send the child back for court-ordered visitation. Should be \$500 fee for each offense of not sending the children, and the offender should pay airfare and legal fees if needed.

5. **Tina Close (Arkansas):** She lived here and three fathers of her children are in debt to her for tens of thousands of dollars. Obligor works under the table for a trucking company, and she cannot collect the amount owed to her children. She suggests that the rule could include a provision saying that after a certain amount of child support debt, the obligor is sanctioned for non-payment, perhaps with jail after he or she is a set dollar amount in arrears.

6. **Dorothy Shockley (Fairbanks):** She is a legislative aide in Senator Kookesh's office. She receives numerous calls from constituents having problems working with CSSD and how they calculate income and how zealous CSSD is about taking money from people's bank account. She suggests they perhaps need more staff to do their job more fairly. She explained that after the court decides a child support amount, people can have drastic change in circumstances, and there should be a faster way to get the support amount revised.

Ken Kirk suggested that the legislature may wish to pass child support guidelines, since these are substantive.

Testimony ended at 5:50 p.m.

Notes by Nancy Meade

Newspaper Notices of Public Hearing – to be published approx.
April 21, 22, and 23

1. Anchorage Daily News - Notice for Community Datebook:

Public Hearing to take testimony on proposed changes to Alaska's child support guidelines. Proposals are posted at <http://www.state.ak.us/courts/comment.htm>. Testify at the Legislative Information Office, 716 W. Fourth Ave., Suite 200, at 5:00 p.m. on Wednesday, April 23. (264-0573; Rule90.3@courts.state.ak.us)

2. Juneau Empire

Public Hearing to take testimony on proposed changes to Alaska's child support guidelines. Proposals are posted at <http://www.state.ak.us/courts/comment.htm>. Testify at the Legislative Information Office, State Capitol, Terry Miller Building, Suite 111, at 5:00 p.m. on Wednesday, April 23. (264-0573; Rule90.3@courts.state.ak.us)

3. Kodiak Mirror

Public Hearing to take testimony on proposed changes to Alaska's child support guidelines. Proposals are posted at <http://www.state.ak.us/courts/comment.htm>. Testify at the Legislative Information Office, Kodiak Plaza Building, 112 Mill Bay Road, at 5:00 p.m. on Wednesday, April 23. (264-0573; Rule90.3@courts.state.ak.us)

4. Fairbanks Daily News-Miner

Public Hearing to take testimony on proposed changes to Alaska's child support guidelines. Proposals are posted at <http://www.state.ak.us/courts/comment.htm>. Testify at the Legislative Information Office, 1292 Sadler Way, Suite 308, at 5:00 p.m. on Wednesday, April 23. (264-0573; Rule90.3@courts.state.ak.us)

**2010-2011 Civil Rule 90.3 Review
Summary of Comments ***

No.	Page No.	Surname	Issue Category	Notes
1	1	Hope	Education (custody)	Judge erred in ordering 50/50 shared custody; ignored parties' history while supported pre-divorce. Decision imposed significant personal and financial burden on mother.
2	4	Leonard	Form	Short form order similar to 1040A
3	6	Hope		(Addendum to No. 1) See #1 above
4	9	Smyth	Support generally	CS s/ be based on BI Child was "kidnapped" by mother at birth; OCS action resulted in father being reunited with him. CSSD efforts to collect back support in these circumstances in not in best interest of child since it places unreasonable burden on both parents
5	11	Wasche	Shared income approach	1) CSG are substantive law and don't belong in a court rule and 2) state should adopt shared income model
6	13	Esmonde	Support generally	CS amounts are too high and CSSD has too much authority
7	14	Lockuk	Collection	Start taking CS from first paycheck. Too many parents quit/switch jobs to avoid paying
8	15	Hanson	Enforcement	Obligors should be required to file for PFD
9	16	Burnett	Support generally; health ins	CS amounts are disproportionately high for non-custodial parents
10	17	Nelson	Support generally; penalties	CS amounts are too high and shouldn't have gone to child's mother when the children were living with another family member. Interest and penalties on arrearages make the debt overwhelming. System is unfair to non-custodial parents (men).
11	21	Terrell	Collection	7 kids, 3 dads, receives \$32/month in support. Fathers have combined \$150K+ in arrearages.
12	22	Davis	Shared income; subsequent children; modification	Custodial parent's income and obligor's subsequent children should be considered in the calculation. Support should be based on applicable rate in custodial parents' home state.
13	23	Vergara	FORWARD?	No comment. Looking for information on an existing case.
14	25	Perry	Accountability	Custodial parents should be required to account for how CS is spent.
15	26	McNair	Inaccurate calculation; health insurance	Judge erroneously calculated CS based on fraudulent information provided by the other party. Judge failed to account for a child from another relationship and costs of insurance.
16	28	Friday	Income	Can the court order support to be paid from military retirement if the parent does not have any other income?
17	29	Peasant	Support generally; penalties	CS too burdensome for non-custodial parents; jail should not be a sanction for non-payment

No.	Page No.	Surname	Issue Category	Notes
18	30	Kowchee	FORWARD?	Not a comment. Appears to be trying to modify or appeal a support order.
19	31	Passi	Support generally; enforcement	Why is she ordered to pay support to children's grandmother during an extended summer visit when the father is behind in his support payments to her?
20	32	Schroeder	Enforcement	CSSD is failing to enforce a wage garnishment order. Non-custodial parent is employed by a family-owned business.
21	33	Ishnook	Education (custody)	Wants visitation; custodial parent is not allowing it to happen without a court order.
22	34	Eaton	Enforcement	The system provides too many protections for non-paying obligors at the expense of children
23	35	Twitchell	Support generally	1) CSSD takes more money from him than it pays to custodial parent (about \$16/mo); 2) payments are late and 3) unfair that self-employed individuals can underreport income and pay less support.
24	37	Stout	Interstate collection	CSSD failed to provide timely information about modification and enforcement actions filed in another state.
25	38	Tichenor	Collections; penalties	System needs to be more aggressive in pursuing payments. Jail for anyone 90 days in arrears unless there's "a medical or life emergency."
26	40	Twitchell		(Second input) See #23 above
27	42	Bennis	Shared income approach; subsequent children	Custodial parent who opted not to take payments through CSSD because the amount ordered was too high. Suggests: 1) get rid of 20% of income rule; 2) use shared calculation and consider living expenses of obligor and 3) consider subsequent obligor's subsequent children in calculations
28	43	Lepping	Penalties	Why no interest or penalties imposed on late payments?
29	44	Valentine	Subsequent children	All children "biologically related" to the noncustodial parent should be considered in determine payments
30	45	Valentine	Education; automatic recalc	(Second input) Reduced income should trigger a recalculation and decrease in CS.
31	46	Stoll	Shared income approach	20% rule is too burdensome. "Melson Formula" (shared calculation) should be adopted.
32	49	Saling	Support generally	\$50 minimum is too low.
33	50	Creedon	Support minimum; penalties	Minimum CS should at least meet the cost of child care so the custodial parent can earn a living. Don't suspend DL for failure to make payments. Loss of license results in loss of job, which results in loss of payments
34	51	Stice	Subsequent children	20% base amount is too high; subsequent children should be considered in calculations; 2 nd family suffers as a result of too generous payments to husband's ex.
35	52	Madison	Enforcement	State should have more aggressively pursued CS. She had to wait 26 years before getting payments.
36	53	Carle	Enforcement	Older child receives support but younger child does not (?) [my copy is very hard to read]

No.	Page No.	Surname	Issue Category	Notes
37	54	Dayton	Forward? Education; enforcement	Attempting to file an appeal because \$50 ordered is too little and CSSD is not making adequate efforts to collect \$10K arrears.
38	60	Jordan	Forward?	Info request, no comment
39	61	Etheridge	Enforcement	CSSD is not aggressive enough in pursuing a parent who doesn't make payments. License revocation is not an adequate remedy.
40	62	Synder	Shared income approach	Custodial parent's income should be considered in calculations
41	63	Swan	Education, enforcement	Still paying 9 years after he relinquished parental rights and child was adopted by a relative.
42	66	Sibson	Support generally, education, enforcement	CS shouldn't be required to be paid if non-custodial parent is denied visitation; parent who can't provide safe, stable home should not be awarded custody.
43	69	delCarpio	Support generally	Voluntary retirement contributions should not be excluded from income in calculations
44	70	Mike	Support generally; subsequent children; shared income approach	Pays too much and still has a large arrearage; can't get CS modified; impoverished while ex and kids are living well.
45	74	Brown	Enforcement	Not receiving payments from the non-custodial parent, enforcement efforts not adequate.
46	75	Steel	Support generally, enforcement	Paying too much. Still being billed for a child after 2010 TPR.
47	76	Doe	Downward modification; support generally	1) CS should be recalculated when obligor's income drops; 2) regional cost of living should be considered.
48	78	Tyone	Enforcement	Check DNA before ordering support
49	79	Gonzalez	Enforcement	No receiving support from a parent who owns property and has had well paid jobs.
50	80	Grote	Education	Arrears owed on child claimed by another man; obligor relinquished parental rights, needs help to get rid of case
51	82	Megyesi	Support generally; shared income approach	1) CS should be dictated by cost of living in state where custodial parent lives; 2) custodial parent's income should be considered in calculation; 3) custodial parent's willingness to promote contact should be a factor; 4) the non-custodial parent's ability to pay support "without suffering hardship"
52	84	Anonymo us	Enforcement	Agency should make better efforts to make all obligors pay.
53	86	Hunter	Support generally, enforcement, education	Unable to work due to disabilities and can't afford a coat or shoes. Only potential income is PFD but the state takes all of it to cover CS obligation.
54	87	Petruska		Missing

No.	Page No.	Surname	Issue Category	Notes
55	88	Sommerville	Education; enforcement; shared income approach	Payments she made directly to father should be counted as support; custodial parent's income should be considered in the calculation. Non-custodial parent's basic needs should be considered
56	90	Miller	Support generally, enforcement	Agency should modify when income drops as it does when income increases, not require obligor to go to court. Time in jail should result in reduction as well as when parent is receiving disability or workers comp payments. 40% payments too high for obligor on SSDI
57	92	Lightner	Shared income approach	Consider custodial parent's higher income in calculations.
58	93	Suggs	Enforcement	Sending her a check for \$5.60 is a waste of time, ink, and postage
59	94	Lyons		System should better address situations where a non-custodial parent is voluntarily un/under-employed. Court should have considered his PFD and native dividends in setting support. More aggressive enforcement and consequences for late payment. Also unhappy that the child's PFD and dividends can't be used for her support.
60	98(.1)	Upton		CSSD holding \$4500 in funds that were "pre-paid." Won't refund any amount or increase payments to the child.
61	100	Knowlton		Nothing paid in almost 10 years; arrears over \$13K but no action by CSSD.
62	N/A	(Duplicate)		
63	103	Fleming		Reference to comment submitted earlier.
64	104	Mendel		Modify income cap to impose it after the calculation is made to limit the amount of support. Current system is unfair to parent with lower income.
65	105	Dubin		Request for modification of current support order. Forwarded to appropriate office?
66	106	O'Hara		Using last year's figures for income and child care expenses results in unfair calculation. Hard to get an adjustment when actual care expenses are lower than claimed by the custodial parent.
67	108	Daves		Allow credit at 25% visitation not 28% (110 days). Allow CSSD to modify with proof that non-custodial parents has child for more overnights than stated in the custody order.
68	109	Arts		Non-custodial parent payments for back support are too low based on current employment and assets. Gender basis in decision.
69	110	Marjason		Support calculation should consider lower cost of living in state where custodial parent resides. Custodial parent's household income should be a factor in setting amount. Ex-wife intentionally unemployed because she is supported by current husband.

No.	Page No.	Surname	Issue Category	Notes
70	111	Burger		Support ordered is too high for his current income.
71	114	Hayden		Ex owes \$273K but CSSD is making no effort to enforce support order. Claimed they couldn't find him; she tried Google and located him in minutes.
73	118	Barclay	Support generally; forms	VA disability payments cannot be included in income. Example in our instructions that includes these payments should be removed.
74	121	Tipton	Enforcement	CSSD is failing to enforce support orders for wife's ex-husband.
75	122	Khamphanh	FORWARD	Agrees to pay \$50 month, although it is a hardship
76	123	Landrum	FORWARD; Education	Support amount needs to be modified because he's in jail and order includes children that aren't his.
77	127	Laroux	Support generally, Education	Consider household income of re-married former spouse; should receive credit when custodial parent moves out of state with children making shared custody impossible.
78	128	Laughlin	Support generally	Non-custodial parent's monetary gifts of \$20K/year for 10 years should be considered income in calculating support
79	130	Morgan	Support generally, Education	Alaska calculation doesn't take into account his other children; he now lives in another state so feels support should be calculated at that level, not Alaska. CSSD staff is unhelpful and modification takes too long.
80	132	Stallings	Enforcement	CSSD is failing to enforce arrears against a self-employed non-custodial parent.
81	134	Burgener	FORWARD; support generally; medical, enforcement	Asking CSSD to recognize hardship and reduce her support and medical support obligation. Appears to be asking an AG to participate in a hearing. Submitted docs that appear to be evidence for her hearing. Claims no knowledge of arrears until property lien notice.
82	149	Locher	Enforcement	Why not pay a lump sum pay off arrears when obligor receives a Native dividend.
83	156	Brockman	Education, Support generally; subsequent children	Support bill is 75% of monthly income of a single parent with 4 other children. She's homeless and has to use the Food Bank to feed her family.
84	157	Withrow	Support after 18	Custodial parent should be required to request support after 18 within a short time after the child's birthday. Delay in request can result in a large arrearage for the obligor.
85	158	Franco		(see also p. 162)
86	159	Miller	Enforcement	Taking away the obligor's drivers license is not an effective enforcement tool since it makes it impossible for him/her to work.
87	160	Goulette	Enforcement	Reduce level for felony non-payment from \$5K to \$2500. More active and aggressive enforcement is needed. Visitation should be conditional on making regular payments. 100% wage garnishment when arrears reach \$5K, seize all property at \$10K

No.	Page No.	Surname	Issue Category	Notes
88	162	Franco	Enforcement; education	Enforcement when receiving welfare; support level too low if custodial parent has 100% custody;
89	163	Tuchscherer	forms	3d party custodian; indicate "credit" on form
90	164	Banner	General; enforcement	Driver's license should not be taken; obligee should account for funds; Enforcement more aggressive when receiving welfare
91	171	Stevens	n/a	Unintelligible
92	172	Saechao	Enforcement	Enforcement from self-employed obligor
93	174	Rose	Subsequent children	Calc excludes cost to care for subsequent children; imposes hardship on blended family
94	175	Hunter	(Follow-up?) Downward mods	No downward mods (military deployments temporary; CS goes up but not down)
95	177	Taylor	Shared income approach	Custodian parent's income should be considered in the income calc
96	178	Stubblefield	Support generally; enforcement	No notifying ER's/no income w/holding if payments current; limit CSSD power to sweep accounts; custodial parent lack of contribution to kids (if unwilling to work, no consequences)
97	180	Stephenson	Support generally; retroactive awards; welfare	Not wanting to share personal info; retroactive awards of support when parent unaware of paternity and another dad on the birth cert; making dad presumptive obligor because of mom on welfare; SOL for putting parent's name on birth cert;
98	183	Gum	Support generally	Dead beat dad voluntarily unemployed (tho disabled)
99	184	Mongeau		She lost 2 ½ years of support payments when her attorney failed to notify her that a support order was issued in father's favor in his action to modify custody. Father should have been ordered to pay the back support.
100	189	Shiedt	Enforcement	Father is self-employed and not paying adequate support
101	190	Walker		Appears to be complaining that the SS administration has not been forwarding full payments to custodial parent. ?
102	192	Collins	Support generally	Complaint that \$30/month is too high for an incarcerated father. Is appealing because of hardship.
103	193	Arabie	Education	Cannot lien on native stock; taking too much; custodial parent had no custody past 10 years;
104	196	Baldwin	Enforcement (arbitrary)	30-year saga of mis-management obligation.
105	200	Smith (R)	Support generally	Attach my PFD while I'm in jail and give it to my daughter.
106	201	Washington	Forward? Subsequent children; de jure v. de facto?	Wants DNA test and won't pay until it happens; drivers license issue; subsequent child suffering b/c of obligation re 1 st child. Bio mom doesn't see 1 st child but dad has obligation (welfare?)
107	203	Walker	Unintelligible	(Second input)
108	205	Marczesky-Lakin	Education from judge; mod	Modification; doesn't understand ruling

No.	Page No.	Surname	Issue Category	Notes
109	206	Smith (J)	Education, extended visitation credit	50/50 custody; M vol unemployed so F pays \$1100 which supports C1 and M; has child for 3 of 4 weeks when M takes vacation and still has to pay
110	207	Mack	Enforcement	Failure to collect on debt dating back to 1983
111	208	Perry	Support generally	Support too high or make obligee account for funds
112	209	Carter	Support generally	Require obligee account for funds
113	210	Holmes	Support generally; shared income approach	Eliminate 110 overnight threshold and base the calc on straight % of time; don't forget custodial expenses; shared income approach (modified)
114	212	Nolton	Education	Same obligation during periods of unemployment
115	213	Rude	Support generally	Case arrears upon reactivation; IRS refund attached.
116	223	Kish	Educational	Support payment too high
117	224	LaVigne		
118	225	Hockin	Subsequent children; support generally	Income should be based on guaranteed salary (not bonuses, etc.); subsequent children worth zero; obligee should provide accounting; no custody to unemployed parent; lower percentages
119	227	Brandner	Support generally	Disgruntled with obligee and system
120	232	Shaffer	Rule changes	Provide better definition of start date for support in rule; allow parties up to 2X/year to ask for updated income info; specify that support includes only payments made directly to obligee or CSSD and does not include payments made to third parties for children's expenses.
121	234	Franco	Enforcement; support generally	No help with enforcement except when she was collecting public benefits; support amounts too low
122	235	Sergie	Forward?	Questions about specific case
123	236	Sikorski	Forward?	Question about his case; support amount too high for obligor paid at minimum wage for part time job.
124	239	Maillelle	Forward?	Questions about his case.
125	240	Lopez	Support generally; forward?	\$50/month too much for incarcerated obligor.
126	243	Anonymous	Support generally; shared income approach; subsequent children	20% too high, especially in Bush communities; custodial parents income should be considered in calculation along with obligor's subsequent children.
127	244	Ellison	Support generally; military pay	Children's PFDs should be required to be saved; military deployment, TDY and COLA amounts should not be included in support calculations
	246	Johnson		No comment attached.
129	248	Riggs	Support generally	CSSD requires him to provide insurance for adopted children covered by stipend from state where adopted; support amount and retroactive application has been very burdensome; custodial parent's voluntary unemployment should be considered in calculation along with amounts he is paying for mortgage on home occupied by custodial parent.

No.	Page No.	Surname	Issue Category	Notes
130	249	Young	Support generally	Seasonal employee feels enforcement should recognize his varying income.
131	251	Steumke	Shared income approach; treatment of military pay	Ex-wife's voluntary underemployment and lengthy student status should be considered in calculation; why is his BHA counted as income but not her GI bill payments? Obligee should be required to provide accounting.
132	255	Jackson	Enforcement	CSSD didn't contact him for three years after ex-wife applied for support; other payments to support household should be considered support; support debt included periods when parties were reconciled and he was living in the home; CSSD still sending statements showing \$0 balance more than 5 years after last payment.
133	257	Bigelow	Education; support generally	How does he get support modified now that ex-wife in employed and earning more than he does?
134	258	Fimbres	Support generally	Interest shouldn't be charged on arrears; couldn't challenge support order because he didn't have \$ for filing fee state should establish fund to pay filing fees for those who can't afford them.
135	260	Fimbres		Duplicate.
136	262	Butterfield	Rule; enforcement	Rule should be modified to give credit for costs of prior children in shared custody arrangement in calculating support for a child with another parent; CSSD should allow downward modification when provided with proof of unemployment due to medical disability; CSSD has an institutional bias against fathers.
137	268	Jacobs	Education; enforcement	CSSD continues to garnish and then refund payments to parent who no longer has a support obligation.
138	269	Hart	Enforcement	CSSD continues to calculate support including BAS that he does not receive; agency refuses to correct error since difference is less than 15%
139	270	Uttke	Education; enforcement	Doesn't understand why she owes so much support or why state keeps taking her PFD and fails to pursue collection from children's fathers.
140	272	Moe	Enforcement; court	Mother angry about failure to enforcement support obligation and state's failure to pursue criminal charges for son's abuse by father.
141	286	Morrow	Support generally	Incarcerated; makes \$27/month can't get a reduction from \$50 minimum
142	287	Sapp	Support generally	Incarcerated; makes \$27/month can't get a reduction from \$50 minimum
143	288	Sundsten	Support generally	Support should be "a rate of cost for a child" rather than a percentage of non-custodial parents income; employee travel expenses should not be included in income calculation; arrears from birth of child creates an insurmountable debt for obligor.
144	291	Fimbres	Support generally, enforcement	Interest should not be charged on CS arrears; denied "due process" because he couldn't afford filing fee for appeal.
145	293	Howard		Can't read

No.	Page No.	Surname	Issue Category	Notes
146	297	Pitt	Support generally, subsequent children	Assessing 20% per child is too much for father with children by two mothers; calc should consider household income of the custodial parent; custodial parent's voluntary underemployment should be considered.
147	301	Baldwin		Link access and support; require accounting by custodial parent.
148	302	Fyffe	Subsequent children	Consider subsequent children in calculation
149	303	Littleton	Enforcement	As obligor: CSSD erred in requiring her to provide medical coverage when child covered by custodial parent's plan, in failing to account for her travel expenses, and not reducing support during extended summer visitation. As obligee: support hasn't increased in 14 years; higher costs of supporting a teen justify increase in payment from non custodial parent.
150	305	Stalzer	Enforcement; shared income, support generally	Enforce requests for documents from custodial parent; include subsequent children in calcs; adopt income share model; work travel expenses should be considered.
151	307	Crombie	Support generally, shared income	Tax deduction should go to parent with income; consider custodial parent's income in calculation
152	308	Boyce	Enforcement	CSSD wouldn't modify downward when he went back to school and income dropped.
153	309	Brandon	Enforcement, support generally	Modification when income drops is too difficult; got a well-paid job overseas but lost it because he can't get a passport while in arrears.
154	310	Mueller	Support generally	Military OHA and BAS should be excluded from income; child support obligations should not be enforced in a country that does not recognize visitation and custody rights.
155	314	Brown	Support generally, education	CSSD/courts refused to recognize transfer of house to custodial parent in lieu of child support. She got the house and a support order.
156	316	Lustig	Education	Question only
157	317	Smith	Forward? Education	Paying support but paternity has not been established and he is not allowed visitation
158	319	"Kobuk"	Support generally, enforcement	Why can support be reduced when unemployed and in treatment required by OCS?
159	320	Pendergrass	Enforcement, support generally	Arrears should start to accrue when a case is filed or reopened, not retroactive to an earlier event/date; support paid to the state when custodial parent is receiving public benefits should be assessed to both parents; make custodial parents account for how they spend support.
160	321	Edwards	Enforcement	Why no withholding with first paycheck? Self-employed obligor who owes \$80K

No.	Page No.	Surname	Issue Category	Notes
161	322	Benavides	Shared income; subsequent children; accountability	Include entire household income of custodial parent too. Blended family issues. Account for expenditures (debit cards).
162	324	Diamond	Support generally	(Huh?)
162.5	325	Chisholm	Enforcement	Taking DL prevents parent from working; impact on credit; no mod reduction despite requests by obligee and why paperwork required to mod anyway?
163	328	Mays	Education	Asks that AK BAH and other entitlements not be counted as income after moved to new duty stn (lack of understanding of mod process).
164	329	Brooks	Potential income	Need to define potential income as based on parent's work history, qualifications, and job opportunities. Here, obligor unwilling to be underemployed ("able-bodied, certified geologist")
165	332	Lee	SSI income and enforcement	SSI paid to children and obligee should offset support obligation of disabled obligor. CSSD does not count CIB or CIC as CS. Better data sharing between SSA and CSSD.
166	335	Mueller	n/a	n/a
167	336	Keller	Disability income	Support payments replaced by SSI or SSDI
168	337	Young	Enforcement	Goes up when income is up; does not go down when income is down.
169	338	Anonymous	Shared income; Accounting	Burden unfairly heavy on noncustodial parent. Should make obligee do accounting
170	340	Moore	Support generally	Eliminate no-fault divorce law; award no support if 50/50 custody arrangement. Keep alimony out of 90.3
171	341	Werner	Enforcement; correct calc?	Custodian moves frequently, no info sharing across state lines.
172	344	Marz	Support generally	Eliminated "primary" and "shared" labels (devisive); use actual percentage of time (not percent of overnights) child is with each parent.
173	345	Mead	Education	Taking too much; I'm disabled. No understanding of mod process

*** CATEGORIES OF COMMENTS FROM PAST REVIEW**

<i>ID</i>	<i>Comment Category</i>
A	General Comments
B	Review Requested by Federal Law
C	Support Generally
D	Income
E	Deductions
F	Reduced Payments for Extended Visitation
G	Potential Income
H	Shared, Divided, Hybrid Physical Custody
I	Income Cap
J	Minimum Support Amount
K	Subsequent Children
L	Health Care Coverage
M	Failure to File Documentation
N	Definition of Shared Physical Custody
O	Travel Expenses
P	Modification
Q	Dependent Tax Deduction
R	Forms

Review Required by Federal Law (42 U.S.C. Sec. 667; 45 CFR 302.56)

1. Considering economic data on the cost of raising children and case data, gathered through sampling or other methods, does the application of Civil Rule 90.3 result in appropriate child support awards?
2. Based on the same considerations, are deviations from Civil Rule 90.3 appropriately limited?

Rule 90.3 Generally

Child Support Generally

Custody Generally

90.3(a) - Guidelines - Primary Physical Custody

90.3(a)(1) - *Adjusted Annual Income*

Income Generally

90.3(a)(2) - *Percentage of Income Approach*

90.3(a)(3) - *Reduced Payments for Extended Visitation*

90.3(a)(4) - *Potential Income*

90.3(b) - Shared, Divided, and Hybrid Physical Custody

90.3(b) - *Shared, Divided, and Hybrid Physical Custody*

90.3(b)(2) - *Divided Custody*

90.3(b)(3) - *Hybrid Custody*

Thinks form DR-308, lines 4.d. and 5.d. are in error. Item 4 on the form is the calculation of support owed to mom for children in her primary custody. See letter p. 4 and example p. 10 - *Butterfield (225)*

90.3(c) - *Exceptions*

90.3(d) - *Health Care Coverage*

90.3(e) - *Child Support Affidavit and Documentation*

90.3(f)(1) - *Definition of Shared Physical Custody*

90.3(g) - *Travel Expenses*

90.3(h) - *Modification*

90.3(i) - *Third Party Custody*

90.3(j) - *Support Order Form*

90.3(k) - *Dependent Tax Deduction*

Commentary

Forms

Statutory Changes

Courts/Judges

PFD

Prior Children

Subsequent Children

Penalties/Enforcement Provisions

Interest/Arrearages

CSSD

Miscellaneous

Calculations were completed based only on the information provided:

I was asked for an example of how the income shared model calculates a child support award. Let's say the mother makes \$1,000 per month and has their one child for 10 months per year. The father makes \$1,500 and has their child for 2 months per year.

There are two important factors missing: the age of the child and whether or not this income includes the annual Permanent Fund Dividend. These calculations assume the income provided is NET income and PFD was not added.

This is a standard primary custody calculation as Dad's two months of physical custody do not meet the threshold of 25% custody. ($2/12 = 17\%$)

Total Income:

Mom	\$1,000 per month	($1000/2500 = 40\%$)
Dad	\$1,500 per month	($1500/2500 = 60\%$)
	<u>\$2,500 per month in combined monthly income</u>	

Based on the economic table for a child age 0-11, the base monthly support is \$526.00. Since Mom has primary physical custody, Dad's obligation is the presumptive support obligation multiplied by his proportionate income share:

$$\$526.00 \times 60\% = \text{\$315.60 per month}$$

For a child over the age of 12, the base monthly support is \$650.00. This results in a support obligation owed by Dad as follows:

$$\$650.00 \times 60\% = \text{\$390.00 per month}$$

For comparison purposes, a calculation was also completed using the Civil Rule 90.3 guidelines.

Dad's NET monthly income	\$1,500.00
Percentage of income for 1 child	.20
Dad's child support obligation	<u>\$ 300.00 per month</u>

Sample Child Support Calculations under SB 134

Monthly Combined Income	Non-Custodial Parent's Proportional Share	One Child Family (under age 12)		Three Child Family (under age 12)	
		Monthly Obligation	CR 90.3 Obligation	Monthly Obligation	CR 90.3 Obligation
\$1,000.00	90%	\$198.00	\$180.00	\$386.10	\$297.00
	70%	\$154.00	\$140.00	\$300.30	\$231.00
	50%	\$110.00	\$100.00	\$214.50	\$165.00
	30%	\$75.00	\$60.00	\$175.00	\$99.00
	10%	\$75.00	\$50.00	\$175.00	\$50.00
\$2,500.00	90%	\$473.40	\$450.00	\$920.70	\$742.50
	70%	\$368.20	\$350.00	\$716.10	\$577.50
	50%	\$263.00	\$250.00	\$511.50	\$412.50
	30%	\$157.80	\$150.00	\$306.90	\$247.50
	10%	\$75.00	\$50.00	\$175.00	\$82.50
\$4,000.00	90%	\$548.10	\$720.00	\$1,066.50	\$1,188.00
	70%	\$426.30	\$560.00	\$829.50	\$924.00
	50%	\$304.50	\$400.00	\$592.50	\$660.00
	30%	\$182.70	\$240.00	\$355.50	\$396.00
	10%	\$75.00	\$80.00	\$175.00	\$132.00
\$5,500.00	90%	\$720.00	\$990.00	\$1,398.60	\$1,633.50
	70%	\$560.00	\$770.00	\$1,087.80	\$1,270.50
	50%	\$400.00	\$550.00	\$777.00	\$907.50
	30%	\$240.00	\$330.00	\$466.20	\$544.50
	10%	\$80.00	\$110.00	\$175.00	\$181.50
\$7,000.00	90%	\$887.40	\$1,260.00	\$1,725.30	\$2,079.00
	70%	\$690.20	\$980.00	\$1,341.90	\$1,617.00
	50%	\$493.00	\$700.00	\$958.50	\$1,155.00
	30%	\$295.80	\$420.00	\$575.10	\$693.00
	10%	\$98.60	\$140.00	\$191.70	\$231.00

Minimum allowable support

SAMPLE CALCULATIONS UNDER SB 134

Child Support Calculations for a 1-child Family (under age 12)				
Income Shares Calculations				Calculation per CR 90.3
Combined Annual Income		\$12,000.00		
Combined Monthly Income		\$1,000.00		
Custodial Parent	\$100.00	10%		
Non-Custodial Parent	\$900.00	90%		
Base Support		Proportionate Support		
Obligation	\$220.00	Obligation	\$198.00	\$180.00
Custodial Parent	\$300.00	30%		
Non-Custodial Parent	\$700.00	70%		
Base Support		Proportionate Support		
Obligation	\$220.00	Obligation	\$154.00	\$140.00
Custodial Parent	\$500.00	50%		
Non-Custodial Parent	\$500.00	50%		
Base Support		Proportionate Support		
Obligation	\$220.00	Obligation	\$110.00	\$100.00
Custodial Parent	\$700.00	70%		
Non-Custodial Parent	\$300.00	30%		
Base Support		Proportionate Support		
Obligation	\$220.00	Obligation	\$66.00 *** \$75.00	\$60.00
Custodial Parent	\$900.00	90%		
Non-Custodial Parent	\$100.00	10%		
Base Support		Proportionate Support		
Obligation	\$220.00	Obligation	\$22.00 *** \$75.00	\$20.00 *** \$50.00

Child Support Calculations for a 3-child Family (under age 12)				
Income Shares Calculations				Calculation per CR 90.3
Combined Annual Income		\$12,000.00		
Combined Monthly Income		\$1,000.00		
Custodial Parent	\$100.00	10%		
Non-Custodial Parent	\$900.00	90%		
Base Support		Proportionate		
Obligation	\$429.00	Support Obligation	\$386.10	\$297.00
Custodial Parent	\$300.00	30%		
Non-Custodial Parent	\$700.00	70%		
Base Support		Proportionate		
Obligation	\$429.00	Support Obligation	\$300.30	\$231.00
Custodial Parent	\$500.00	50%		
Non-Custodial Parent	\$500.00	50%		
Base Support		Proportionate		
Obligation	\$429.00	Support Obligation	\$214.50	\$165.00
Custodial Parent	\$700.00	70%		
Non-Custodial Parent	\$300.00	30%		
Base Support		Proportionate		
Obligation	\$429.00	Support Obligation	\$128.70 *** \$175.00	\$99.00
Custodial Parent	\$900.00	90%		
Non-Custodial Parent	\$100.00	10%		
Base Support		Proportionate		
Obligation	\$429.00	Support Obligation	\$42.90 *** \$175.00	\$33.00 *** \$50.00

***minimum allowable monthly support obligation

SAMPLE CALCULATIONS UNDER SB 134

Child Support Calculations for a 1-child Family				
Income Shares Calculations				Calculation per CR 90.3
Combined Annual Income		\$30,000.00		
Combined Monthly Income		\$2,500.00		
Custodial Parent	\$250.00	10%		
Non-Custodial Parent	\$2,250.00	90%		
Base Support		Proportionate Support		
Obligation	\$526.00	Obligation	\$473.40	\$450.00
Custodial Parent	\$750.00	30%		
Non-Custodial Parent	\$1,750.00	70%		
Base Support		Proportionate Support		
Obligation	\$526.00	Obligation	\$368.20	\$350.00
Custodial Parent	\$1,250.00	50%		
Non-Custodial Parent	\$1,250.00	50%		
Base Support		Proportionate Support		
Obligation	\$526.00	Obligation	\$263.00	\$250.00
Custodial Parent	\$1,750.00	70%		
Non-Custodial Parent	\$750.00	30%		
Base Support		Proportionate Support		
Obligation	\$526.00	Obligation	\$157.80	\$150.00
Custodial Parent	\$2,250.00	90%		
Non-Custodial Parent	\$250.00	10%		
Base Support		Proportionate Support		
Obligation	\$526.00	Obligation	\$52.60 *** \$75.00	\$50.00

Child Support Calculations for a 3-child Family				
Income Shares Calculations				Calculation per CR 90.3
Combined Annual Income		\$30,000.00		
Combined Monthly Income		\$2,500.00		
Custodial Parent	\$250.00	10%		
Non-Custodial Parent	\$2,250.00	90%		
Base Support		Proportionate		
Obligation	\$1,023.00	Support Obligation	\$920.70	\$742.50
Custodial Parent	\$750.00	30%		
Non-Custodial Parent	\$1,750.00	70%		
Base Support		Proportionate		
Obligation	\$1,023.00	Support Obligation	\$716.10	\$577.50
Custodial Parent	\$1,250.00	50%		
Non-Custodial Parent	\$1,250.00	50%		
Base Support		Proportionate		
Obligation	\$1,023.00	Support Obligation	\$511.50	\$412.50
Custodial Parent	\$1,750.00	70%		
Non-Custodial Parent	\$750.00	30%		
Base Support		Proportionate		
Obligation	\$1,023.00	Support Obligation	\$306.90	\$247.50
Custodial Parent	\$2,250.00	90%		
Non-Custodial Parent	\$250.00	10%		
Base Support		Proportionate		
Obligation	\$1,023.00	Support Obligation	\$102.30 *** \$175.00	\$82.50

***minimum allowable monthly support obligation

SAMPLE CALCULATIONS UNDER SB 134

Child Support Calculations for a 1-child Family				
Income Shares Calculations				Calculation per CR 90.3
Combined Annual Income		\$48,000.00		
Combined Monthly Income		\$4,000.00		
Custodial Parent	\$400.00	10%		
Non-Custodial Parent	\$3,600.00	90%		
Base Support		Proportionate Support		
Obligation	\$609.00	Obligation	\$548.10	\$720.00
Custodial Parent	\$1,200.00	30%		
Non-Custodial Parent	\$2,800.00	70%		
Base Support		Proportionate Support		
Obligation	\$609.00	Obligation	\$426.30	\$560.00
Custodial Parent	\$2,000.00	50%		
Non-Custodial Parent	\$2,000.00	50%		
Base Support		Proportionate Support		
Obligation	\$609.00	Obligation	\$304.50	\$400.00
Custodial Parent	\$2,800.00	70%		
Non-Custodial Parent	\$1,200.00	30%		
Base Support		Proportionate Support		
Obligation	\$609.00	Obligation	\$182.70	\$240.00
Custodial Parent	\$3,600.00	90%		
Non-Custodial Parent	\$400.00	10%		
Base Support		Proportionate Support		
Obligation	\$609.00	Obligation	\$60.99 *** \$75.00	\$80.00

Child Support Calculations for a 3-child Family				
Income Shares Calculations				Calculation per CR 90.3
Combined Annual Income		\$48,000.00		
Combined Monthly Income		\$4,000.00		
Custodial Parent	\$400.00	10%		
Non-Custodial Parent	\$3,600.00	90%		
Base Support		Proportionate		
Obligation	\$1,185.00	Support Obligation	\$1,066.50	\$1,188.00
Custodial Parent	\$1,200.00	30%		
Non-Custodial Parent	\$2,800.00	70%		
Base Support		Proportionate		
Obligation	\$1,185.00	Support Obligation	\$829.50	\$924.00
Custodial Parent	\$2,000.00	50%		
Non-Custodial Parent	\$2,000.00	50%		
Base Support		Proportionate		
Obligation	\$1,185.00	Support Obligation	\$592.50	\$660.00
Custodial Parent	\$2,800.00	70%		
Non-Custodial Parent	\$1,200.00	30%		
Base Support		Proportionate		
Obligation	\$1,185.00	Support Obligation	\$355.50	\$396.00
Custodial Parent	\$3,600.00	90%		
Non-Custodial Parent	\$400.00	10%		
Base Support		Proportionate		
Obligation	\$1,185.00	Support Obligation	\$118.50 *** \$175.00	\$132.00

***minimum allowable monthly support obligation

SAMPLE CALCULATIONS UNDER SB 134

Child Support Calculations for a 1-child Family				
Income Shares Calculations				Calculation per CR 90.3
Combined Annual Income		\$66,000.00		
Combined Monthly Income		\$5,500.00		
Custodial Parent	\$550.00	10%		
Non-Custodial Parent	\$4,950.00	90%		
Base Support		Proportionate Support		
Obligation	\$800.00	Obligation	\$720.00	\$990.00
Custodial Parent	\$1,650.00	30%		
Non-Custodial Parent	\$3,850.00	70%		
Base Support		Proportionate Support		
Obligation	\$800.00	Obligation	\$560.00	\$770.00
Custodial Parent	\$2,750.00	50%		
Non-Custodial Parent	\$2,750.00	50%		
Base Support		Proportionate Support		
Obligation	\$800.00	Obligation	\$400.00	\$550.00
Custodial Parent	\$3,850.00	70%		
Non-Custodial Parent	\$1,650.00	30%		
Base Support		Proportionate Support		
Obligation	\$800.00	Obligation	\$240.00	\$330.00
Custodial Parent	\$4,950.00	90%		
Non-Custodial Parent	\$550.00	10%		
Base Support		Proportionate Support		
Obligation	\$800.00	Obligation	\$80.00	\$110.00

Child Support Calculations for a 3-child Family				
Income Shares Calculations				Calculation per CR 90.3
Combined Annual Income		\$66,000.00		
Combined Monthly Income		\$5,500.00		
Custodial Parent	\$550.00	10%		
Non-Custodial Parent	\$4,950.00	90%		
Base Support		Proportionate		
Obligation	\$1,554.00	Support Obligation	\$1,398.60	\$1,633.50
Custodial Parent	\$1,650.00	30%		
Non-Custodial Parent	\$3,850.00	70%		
Base Support		Proportionate		
Obligation	\$1,554.00	Support Obligation	\$1,087.80	\$1,270.50
Custodial Parent	\$2,750.00	50%		
Non-Custodial Parent	\$2,750.00	50%		
Base Support		Proportionate		
Obligation	\$1,554.00	Support Obligation	\$777.00	\$907.50
Custodial Parent	\$3,850.00	70%		
Non-Custodial Parent	\$1,650.00	30%		
Base Support		Proportionate		
Obligation	\$1,554.00	Support Obligation	\$466.20	\$544.50
Custodial Parent	\$4,950.00	90%		
Non-Custodial Parent	\$550.00	10%		
Base Support		Proportionate		
Obligation	\$1,185.00	Support Obligation	\$118.50 *** \$175.00	\$181.50

***minimum allowable monthly support obligation

SAMPLE CALCULATIONS UNDER SB 134

Child Support Calculations for a 1-child Family				
Income Shares Calculations				Calculation per CR 90.3
Combined Annual Income		\$84,000.00		
Combined Monthly Income		\$7,000.00		
Custodial Parent	\$700.00	10%		
Non-Custodial Parent	\$6,300.00	90%		
Base Support		Proportionate Support		
Obligation	\$986.00	Obligation	\$887.40	\$1,260.00
Custodial Parent	\$2,100.00	30%		
Non-Custodial Parent	\$4,900.00	70%		
Base Support		Proportionate Support		
Obligation	\$986.00	Obligation	\$690.20	\$980.00
Custodial Parent	\$3,500.00	50%		
Non-Custodial Parent	\$3,500.00	50%		
Base Support		Proportionate Support		
Obligation	\$986.00	Obligation	\$493.00	\$700.00
Custodial Parent	\$4,900.00	70%		
Non-Custodial Parent	\$2,100.00	30%		
Base Support		Proportionate Support		
Obligation	\$986.00	Obligation	\$295.80	\$420.00
Custodial Parent	\$6,300.00	90%		
Non-Custodial Parent	\$700.00	10%		
Base Support		Proportionate Support		
Obligation	\$986.00	Obligation	\$98.60	\$140.00

Child Support Calculations for a 3-child Family				
Income Shares Calculations				Calculation per CR 90.3
Combined Annual Income		\$84,000.00		
Combined Monthly Income		\$7,000.00		
Custodial Parent	\$700.00	10%		
Non-Custodial Parent	\$6,300.00	90%		
Base Support		Proportionate		
Obligation	\$1,917.00	Support Obligation	\$1,725.30	\$2,079.00
Custodial Parent	\$2,100.00	30%		
Non-Custodial Parent	\$4,900.00	70%		
Base Support		Proportionate		
Obligation	\$1,917.00	Support Obligation	\$1,341.90	\$1,617.00
Custodial Parent	\$3,500.00	50%		
Non-Custodial Parent	\$3,500.00	50%		
Base Support		Proportionate		
Obligation	\$1,917.00	Support Obligation	\$958.50	\$1,155.00
Custodial Parent	\$4,900.00	70%		
Non-Custodial Parent	\$2,100.00	30%		
Base Support		Proportionate		
Obligation	\$1,917.00	Support Obligation	\$575.10	\$693.00
Custodial Parent	\$6,300.00	90%		
Non-Custodial Parent	\$700.00	10%		
Base Support		Proportionate		
Obligation	\$1,917.00	Support Obligation	\$191.70	\$231.00

***minimum allowable monthly support obligation

Rule 90.3. Child Support Awards.

(a) **Guidelines--Primary Physical Custody.** A child support award in a case in which one parent is awarded primary physical custody as defined by paragraph (f) will be calculated as an amount equal to the adjusted annual income of the non-custodial parent multiplied by a percentage specified in subparagraph (a)(2).

(1) Adjusted annual income as used in this rule means the parent's total income from all sources minus:

(A) mandatory deductions such as:

(i) federal, state, and local income tax,

(ii) Social Security tax or the equivalent contribution to an alternate plan established by a public employer, and self-employment tax,

(iii) Medicare tax,

(iv) mandatory union dues,

(v) mandatory contributions to a retirement or pension plan;

(B) voluntary contributions to a retirement or pension plan or account in which the earnings are tax-free or tax-deferred, except that the total amount of these voluntary contributions plus any mandatory contributions under item (a)(1)(A)(v) above may not exceed 7.5% of the parent's gross wages and self-employment income;

(C) child support and alimony payments arising from prior relationships which are required by other court or administrative proceedings and actually paid;

(D) child support for children from prior relationships living with the parent, calculated by using the formula provided by this rule; and

(E) work-related child care expenses for the children who are the subject of the child support order.

(2) The percentage by which the non-custodial parent's adjusted income must be multiplied in order to calculate the child support award is:

(A) 20% (.20) for one child;

(B) 27% (.27) for two children;

(C) 33% (.33) for three children; and

(D) an extra 3% (.03) for each additional child.

(3) The court may allow the obligor parent to reduce child support payments by up to 75% for any period in which the obligor parent has extended visitation of over 27 consecutive days. The order must specify the amount of the reduction which is allowable if the extended visitation is exercised.

(4) *Potential Income.* The court may calculate child support based on a determination of the potential income of a parent who voluntarily and unreasonably is unemployed or underemployed. A determination of potential income may not be made for a parent who is physically or mentally incapacitated, or who is caring for a child under two years of age to whom the parents owe a joint legal responsibility. Potential income will be based upon the parent's work history, qualifications, and job opportunities. The court also may impute potential income for non-income or low income producing assets.

(b) Shared, Divided, and Hybrid Physical Custody.

(1) *Shared Physical Custody.* A child support award in a case in which the parents are awarded shared physical custody as defined by paragraph (f) will be calculated by:

(A) Calculating the annual amount each parent would pay to the other parent under paragraph (a) assuming the other parent had primary custody. In this calculation the income limit in subparagraph (c)(2) and the minimum support amount in subparagraph (c)(3) apply.

(B) Multiplying this amount for each parent by the percentage of time the other parent will have physical custody of the children. However, if the court finds that the percentage of time each parent will have physical custody will not accurately reflect the ratio of funds each parent will directly spend on supporting the children, the court shall vary this percentage to reflect its findings.

(C) The parent with the larger figure calculated in the preceding subparagraph is the obligor parent and the annual award is equal to the difference between the two figures multiplied by 1.5. However, if this figure is higher than the amount of support which would be calculated under paragraph (a) assuming primary custody, the annual support is the amount calculated under paragraph (a).

(D) The child support award is to be paid in 12 equal monthly installments except as follows:

(i) if shared custody is based on the obligor parent having physical custody for periods of 30 consecutive days or more, the total annual award may be paid in equal installments over those months in which the obligor parent does not have physical custody; or

(ii) if the obligor parent's income is seasonal, the court may order unequal monthly support payments as provided in subparagraph (c)(5).

(E) The child support order must state that failure to exercise sufficient physical custody to qualify for shared physical custody under this rule is grounds for modification of the child support order. Denial of visitation by the custodial parent is not cause to increase child support.

(2) *Divided Physical Custody.* A child support award in a case in which the parents have divided custody is calculated, first, by determining what each parent would owe the other for children in that parent's primary physical custody under paragraph (a), taking into account the income limit in subparagraph (c)(2) and the minimum support amount in subparagraph (c)(3), and offsetting those amounts. Second, because divided custody is an "unusual circumstance," the court must consider whether this support amount should be varied under subparagraph (c)(1).

(3) *Hybrid Physical Custody.* A child support award in a case in which the parents have hybrid custody is calculated by applying paragraph (a), taking into account the income limit in subparagraph (c)(2) and the minimum support amount in subparagraph (c)(3), to determine support for children in the primary physical custody of each parent and applying subparagraph (b)(1) to determine support for children in the shared physical custody of the parents. In these calculations, the subparagraph (a)(2) percentages must be adjusted pro rata based on the number of children in each type of custody. These results are then combined to determine the net obligation. Finally, because hybrid custody is an "unusual circumstance," the court must consider whether this support amount should be varied under subparagraph (c)(1).

(c) Exceptions.

(1) The court may vary the child support award as calculated under the other provisions of this rule for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied. The court must specify in writing the reason for the variation, the amount of support which would have been required but for the variation, and the estimated value of any property conveyed instead of support calculated under the other provisions of this rule. Good cause may include a finding that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children. The court shall consider the custodial parent's income in this determination.

(2) Paragraph (a) does not apply to the extent that the parent has an adjusted annual income of over \$105,000. In such a case, the court may make an additional award only if it is just and proper, taking into account the needs of the children, the standard of living of the children and the extent to which that standard should reflect the supporting parent's ability to pay.

(3) The minimum child support amount that may be ordered is \$50 per month (\$600 per year) except as provided in subparagraph (a)(3) and paragraph (b).

(4) In addition to ordering a parent to pay child support as calculated under this rule, the court may, in appropriate circumstances, order one or more grandparents of a child to pay child support to an appropriate person in an amount determined by the court to serve the best interests of the child. However, the amount may not exceed the smaller of (A) a proportionate share of the amount required to provide care in a supervised setting to the grandchild, as determined by the court, or (B) the amount that would have been awarded if the child's parents had the incomes of the child's grandparents and paragraphs (a) and (b) were applied. An order under this paragraph may be issued only with respect to a child whose parents are both minors, and the order terminates when either parent becomes 18 years of age. The court must specify in writing the reasons why it considers it to be appropriate to order a grandparent to pay child support under this paragraph and the factors considered in setting the amount of the child support award. In this paragraph, "grandparent" means the natural or adoptive parent of the minor parent.

(5) If the non-custodial parent's income is seasonal, the court may order that the annual support amount be paid in unequal monthly payments, with higher payments during the months the parent expects to receive higher income and lower payments in other months. The court should not make such an order unless (a) it finds that the burden of budgeting for periods of unequal income should be placed on the obligee rather than the obligor and (b) the obligee agrees. The court's order must specify the annual support amount, the average monthly support amount, and the amount due month by month. The order must provide that variations from the average monthly amount begin with monthly payments in excess of the average monthly amount such that a deficit situation cannot occur. Until the excess payments begin, the average monthly amount must be ordered.

(d) Health Care Coverage.

(1) *Health Insurance.* The court shall address coverage of the children's health care needs and require health insurance for the children if insurance is available to either parent at a reasonable cost. The court shall consider whether the children are eligible for services through the Indian Health Service (or any other entity) or other insurance coverage before ordering the obligor to provide health care coverage through insurance or other means. The court shall allocate equally the cost of this insurance between the parties unless the court orders otherwise for good cause. An obligor's child support obligation will be decreased by the amount of the obligee's portion of health insurance payments ordered by the court and actually paid by the obligor. A child support award will be increased by the obligor's portion of health insurance if the obligee is ordered to, and actually does obtain and pay for insurance. The cost of insurance is the cost attributable to the children for whom support is paid. If the cost to the employee of covering the employee alone is the same as the cost to the employee of covering the employee and dependents, then there is no additional cost to the employee for adding

the children and no portion of the cost of coverage may be allocated to the children. If dependent coverage can be added for a single cost, rather than per dependent, and the dependent coverage covers dependents in addition to the children subject to the order, the cost of the dependent coverage will be allocated equally among the dependents covered. If there is reason to believe that there is an incremental cost to the employee for insuring dependents but evidence of that incremental cost is unavailable, the cost of insurance is determined by dividing the total cost of coverage by the number of family members covered and multiplying that amount by the number of children subject to the order.

(2) *Uncovered Health Care Expenses.* The court shall allocate equally between the parties the cost of reasonable health care expenses not covered by insurance unless the court orders otherwise for good cause. A party shall reimburse the other party for his or her share of the uncovered expenses within 30 days of receipt of the bill for the health care, payment verification, and, if applicable, a health insurance statement indicating what portion of the cost is uncovered. Reasonable, uncovered expenses exceeding \$5,000 in a calendar year will be allocated based on the parties' relative financial circumstances when the expenses occur.

(e) Child Support Affidavit and Documentation.

(1) Subject to the confidentiality requirements of Civil Rule 90.1(f), each parent in a court proceeding at which child support is involved must file a statement under oath which states the parent's adjusted annual income and the components of this income as provided in subparagraph (a)(1). This statement must be filed with a party's initial pleading (such as the dissolution petition, divorce complaint or answer, etc.), motion to modify, and any response to a motion to modify. The statement must be accompanied by documentation verifying the income. The documents must be redacted to delete social security numbers and to provide only partial financial account information as provided in Civil Rule 90.1(f). The statement must state whether the parent has access to health insurance for the children and, if so, the additional cost to the parent of the children's health insurance. For any infraction of these rules, the court may withhold or assess costs or attorney's fees as the circumstances of the case and discouragement of like conduct in the future may require; and such costs and attorney's fees may be imposed upon offending attorneys or parties.

(2) While there is an ongoing monthly support obligation, either party must provide to the other party, within 30 days of a written request, documents such as tax returns and pay stubs showing the party's income for the prior calendar year. The party making the request must provide documentation of his or her annual income for the same period at the time the request is made. A request under this section may not be made more than once per year. This section does not preclude discovery under other civil rules.

(3) Unless the information has already been provided to the court under Civil Rule 90.1(f), a statement under subsection (e)(1) of this rule must be accompanied by a confidential information sheet as described in Civil Rule 90.1(f). Once a complete

confidential information sheet has been submitted to the court listing names, dates of birth, and social security numbers as required, the parties shall omit or redact social security numbers from documents subsequently filed in the action unless otherwise ordered by the court. This paragraph applies to documents filed with the court on or after October 15, 2006.

(f) Definitions.

(1) *Shared Physical Custody.* A parent has shared physical custody (or shared custody) of children for purposes of this rule if the children reside with that parent for a period specified in writing in the custody order of at least 30, but no more than 70, percent of the year, regardless of the status of legal custody.

(2) *Primary Physical Custody.* A parent has primary physical custody (or primary custody) of children for purposes of this rule if the children reside with the other parent for a period specified in the custody order of less than 30 percent of the year.

(3) *Divided Custody.* Parents have divided custody under this rule if one parent has primary physical custody of one or more children of the relationship and the other parent has primary custody of one or more other children of the relationship, and the parents do not share physical custody of any of their children.

(4) *Hybrid Custody.* Parents have hybrid custody under this rule if at least one parent has primary physical custody of one or more children of the relationship, and the parents have shared physical custody of at least one child of the relationship.

(5) *Health Care Expenses.* Health care expenses include medical, dental, vision, and mental health counseling expenses.

(g) Travel Expenses. After determining an award of child support under this rule, the court shall allocate reasonable travel expenses which are necessary to exercise visitation between the parties as may be just and proper for them to contribute.

(h) Modification.

(1) *Material Change of Circumstances.* A final child support award may be modified upon a showing of a material change of circumstances as provided by state law. A material change of circumstances will be presumed if support as calculated under this rule is more than 15 percent greater or less than the outstanding support order. For purposes of this paragraph, support includes health insurance payments made pursuant to (d)(1) of this rule.

(2) *No Retroactive Modification.* Child support arrearage may not be modified retroactively, except as allowed by AS 25.27.166(d). A modification which is effective on or after the date that a motion for modification, or a notice of petition for modification by

the Child Support Services Division, is served on the opposing party is not considered a retroactive modification.

(3) *Preclusion.* The court may find that a parent and a parent's assignee are precluded from collecting arrearages for support of a child that accumulated during a time period exceeding nine months for which the parent agreed or acquiesced to the obligor exercising primary custody of the child. A finding that preclusion is a defense must be based on clear and convincing evidence.

(i) Third Party Custody.

(1) When the state, or another third party entitled to child support, has custody of all children of a parent, the parent's support obligation to the third party is an amount equal to the adjusted annual income of the parent multiplied by the percentage specified in subparagraph (a)(2). If the third party has custody of some but not all children, the parent's support obligation to the third party is an amount equal to the adjusted annual income of the parent, multiplied by the percentage specified in subparagraph (a)(2) for the total number of the parent's children, multiplied by the number of the parent's children in third party custody, divided by the total number of the parent's children. For purposes of this paragraph, the number of the parent's children only includes children of the parent who live with the parent, are substantially supported by the parent or who are in custody of the third party entitled to support.

(2) If, in addition to a support obligation to a third party, one or both parents retain primary or shared physical custody of at least one of their children, the support obligation between the parents is calculated pursuant to the other paragraphs of this rule, without consideration of the third party custodian or any children in the custody of the third party custodian, except that the percentage in 90.3(a)(2) must be adjusted pro rata for the number of children in the primary custody of a parent, or shared custody of the parents, compared to the total number of children. After that calculation is completed, any support owed may be offset with support owed to a third party custodian under the preceding subparagraph in order to minimize transactions.

(j) Support Order Forms. All orders for payment or modification of child support shall be entered on a form developed by the administrative director. A party may lodge a duplicate of the court form produced by a laser printer or similar device. A device may also print, in a contrasting typestyle equivalent to that produced by a typewriter, text that otherwise would have been entered by a typewriter or word processor. A party or attorney who lodges a duplicate certifies by lodging the duplicate that it is identical to the current version of the court form.

(k) Dependent Tax Deduction. The court may allocate the dependent tax deduction for each child between the parties as is just and proper and in the child's best interests. The allocation must be consistent with AS 25.24.152 and federal law.

(Added by SCO 833 effective August 1, 1987; amended by SCO 935 effective January 15, 1989; by SCO 1008 effective January 15, 1990; by SCO 1192 effective July 15, 1995; by SCO 1246 effective July 15, 1996; by SCO 1269 effective July 15, 1997; by SCO 1295 effective January 15, 1998; by SCO 1362 effective October 15, 1999; by SCO 1399, effective October 15, 2000; by SCO 1417 effective April 15, 2001; by SCO 1526 effective April 15, 2005; by SCO 1595 effective October 15, 2006; by SCO 1686 effective April 15, 2009; and by SCO 1716 effective nunc pro tunc to July 1, 2009)

Note: This rule is adopted under the supreme court's interpretive authority pursuant to Article IV, Section 1 of the Alaska Constitution. Thus, it may be superseded by legislation even if the legislation does not meet the procedural requirements for changing rules promulgated under Article IV, Section 15.

Note to Civil Rule 90.3(c)(1)(B): The Federal Poverty Guidelines are usually revised each February. The new poverty income guideline for one person in Alaska in 1999 is \$10,320 (Federal Register, Vol. 64, No. 52, 13428-13430, March 18, 1999). The Alaska Supreme Court has indicated that the poverty guideline that should be used is the guideline for the state in which the obligor resides. **See Carstens v. Carstens**, 867 P.2d 805, 810 (Alaska 1994).

Note to Civil Rule 90.3(h)(1): Section 44 of ch. 87 SLA 1997 amended AS 25.24.170(b) to allow support to be modified without a showing of a material change in circumstances *as necessary to comply with federal law*. Federal law eliminates the need for a showing only in cases being enforced by CSSD that are being reviewed under CSSD's periodic review and modification program. According to § 152 of ch. 87 SLA 1997, the amendment to AS 25.24.170(b) has the effect of amending Civil Rule 90.3 by changing the standard for certain modifications of a support order.

Note to Civil Rule 90.3(h)(2): AS 25.27.166(d), enacted by § 14 of ch. 57 SLA 1995, has the effect of amending Civil Rule 90.3(h)(2) by allowing retroactive modification of child support arrearage under circumstances involving disestablishment of paternity, to the extent such modification is not prohibited by federal law.

Note to SCO 1269: Civil Rule 90.3(c)(3) was added by § 44 ch. 107 SLA 1996. Section 22 of ch. 107 SLA 1996 enacts 25.27.195(b), which allows CSSD to vacate an administrative support order that was based on a default amount rather than the obligor's actual ability to pay. If an order is vacated on this basis, AS 25.27.195(d) allows the agency to modify the obligor's arrearages under the original order. According to § 50 ch. 107 SLA 1996, AS 25.27.195(d) has the effect of amending Rule 90.3(h)(2), which prohibits retroactive modification of child support arrearages.

Note: Section 41 of ch. 87 SLA 1997 amends AS 25.20.050 relating to paternity actions. According to § 150 of the Act, § 41 has the effect of amending Civil Rule 90.3 by requiring the court in a paternity action to issue a temporary child support order upon a showing by clear and convincing evidence of paternity.

Note: Chapter 106 SLA 00 amends various laws relating to medical support orders. According to section 24 of the act, the act amends Civil Rule 90.3 "by specifying that a medical support order may be issued even when a support order for periodic monetary payments is not issued and by setting the requirements for medical support orders."

Note: Chapter 108 SLA 04 (HB 514) enacted several amendments to the child support statutes, including a provision that permits periodic modifications of a child support order without a showing of materially changed circumstances. According to Section 17 of the Act, statutory modifications to AS 25.27.190(e) have the effect of amending Civil Rule 90.3 by changing the grounds for modifying a support order.

Note: Chapter 45 SLA 2009 (SB 96), effective July 1, 2009, enacted changes relating to child support, including changes concerning orders for medical support of a child. According to section 13 of the Act, AS 25.27.060(c) as amended by section 4 of the Act, has the effect of changing Civil Rule 90.3 by changing standards for issuance of medical and other support orders by the court.

26-LS0279\T
Mischel
3/25/10

CS FOR SENATE BILL NO. 46()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR KOOKESH

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to child support awards; and repealing Rule 90.3, Alaska Rules of Civil**
2 **Procedure."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1. AS 25 is amended by adding a new chapter to read:**

5 **Chapter 28. Child Support Awards.**

6 **Sec. 25.28.010. Guidelines; primary physical custody.** (a) A tribunal shall
7 calculate a child support award in a case in which one parent is awarded primary
8 physical custody as an amount equal to the adjusted annual income of the noncustodial
9 parent multiplied by a percentage specified in (b) of this section.

10 (b) To calculate the child support award, the tribunal shall multiply the
11 noncustodial parent's adjusted annual income by the following percentages:

- 12 (1) 20 percent for one child;
- 13 (2) 27 percent for two children;
- 14 (3) 33 percent for three children; and

1 (4) an additional three percent for each additional child.

2 (c) The tribunal may allow the obligor parent to reduce child support
3 payments by up to 75 percent for a period in which the obligor parent has extended
4 visitation of more than 27 consecutive days. The order must specify the amount of the
5 reduction that is allowable if the extended visitation is exercised.

6 (d) The tribunal may calculate child support based on a determination of the
7 potential income of a parent who voluntarily and unreasonably is unemployed or
8 underemployed. A determination of potential income may not be made for a parent
9 who is physically or mentally incapacitated, or who is caring for a child under two
10 years of age to whom the parents owe a joint legal responsibility. Potential income
11 shall be based on the parent's work history, qualifications, and job opportunities. The
12 tribunal also may impute potential income for nonincome producing or low income
13 producing assets.

14 (e) In this section, "adjusted annual income" means the parent's total income
15 from all sources less

16 (1) mandatory deductions, including

17 (A) federal, state, and local income tax;

18 (B) social security tax or the equivalent contribution to an
19 alternate plan established by a public employer, and self-employment tax;

20 (C) Medicare tax;

21 (D) mandatory union dues;

22 (E) mandatory contributions to a retirement or pension plan;

23 (2) voluntary contributions to a retirement or pension plan or account
24 in which the earnings are tax-free or tax-deferred, except that the total amount of these
25 voluntary contributions plus any mandatory contributions under (1)(E) of this
26 subsection may not exceed 7.5 percent of the parent's gross wages and self-
27 employment income;

28 (3) child support and alimony payments arising from previous
29 relationships that are required by another tribunal and actually paid;

30 (4) child support for children from prior relationships living with the
31 parent, calculated by using the formula under this chapter; and

1 (5) work-related child care expenses for the child who is the subject of
2 the child support order.

3 **Sec. 25.28.020. Guidelines; shared, divided, and hybrid custody awards.**

4 (a) The tribunal shall calculate shared, divided, and hybrid physical custody awards as
5 provided in this section.

6 (b) The tribunal shall calculate a child support award in a case in which the
7 parents are awarded shared physical custody by

8 (1) calculating the annual amount each parent would pay to the other
9 parent under AS 25.28.010 assuming the other parent had primary custody; in this
10 calculation, the income limit in AS 25.28.030(c) and the minimum support amount in
11 AS 25.28.030(d) apply;

12 (2) multiplying the amount determined under (1) of this subsection for
13 each parent by the percentage of time the other parent has physical custody of the
14 child; however, if the tribunal finds that the percentage of time each parent will have
15 physical custody does not accurately reflect the ratio of funds each parent will directly
16 spend on supporting the child, the tribunal shall vary this percentage to reflect its
17 findings;

18 (3) determining which parent has the greater amount under (2) of this
19 subsection; the parent with the greater amount under (2) of this subsection is the
20 obligor parent, and the annual award is equal to the difference between the two
21 amounts under (2) of this subsection multiplied by 1.5; however, if this amount is
22 greater than the amount of support calculated under AS 25.28.010 assuming the
23 obligor parent has primary custody, the annual support is the amount calculated under
24 AS 25.28.010.

25 (c) The child support award for shared custody under (b) of this section must
26 be paid in 12 equal monthly installments, except that if

27 (1) shared custody is based on the obligor parent's having physical
28 custody for periods of 30 consecutive days or more, the total annual award may be
29 paid in equal installments over those months in which the obligor parent does not have
30 physical custody; or

31 (2) the obligor parent's income is seasonal, the tribunal may order

1 unequal monthly support payments as provided in AS 25.28.030(g) and (h).

2 (d) The child support order must state that failure to exercise sufficient
3 physical custody to qualify for shared physical custody under (b) or (c) of this section
4 is grounds for modification of the child support order. Denial of visitation by the
5 custodial parent is not cause to increase a child support award.

6 (e) The tribunal shall

7 (1) calculate a child support award in a case in which the parents are
8 awarded divided custody by determining the amount each parent would pay to the
9 other parent for support of a child for whom that parent has primary physical custody
10 under AS 25.28.010, taking into account the income limit in AS 25.28.030(c) and the
11 minimum support amount in AS 25.28.030(d), and offsetting those amounts; and

12 (2) consider whether the amount determined under (1) of this
13 subsection should be varied under AS 25.28.030(b).

14 (f) The tribunal shall

15 (1) calculate a child support award in a case in which the parents are
16 awarded hybrid custody by

17 (A) applying AS 25.28.010, taking into account the income
18 limit in AS 25.28.030(c) and the minimum support amount in
19 AS 25.28.030(d), to determine support for a child in the primary physical
20 custody of each parent;

21 (B) applying (b) of this section to determine support for a child
22 in the shared physical custody of the parents;

23 (C) adjusting pro rata the percentages provided in
24 AS 25.28.010(b) based on the number of children to which each type of
25 custody applies; and

26 (D) combining the amounts to determine the net obligation; and

27 (2) consider whether the amount determined under (1) of this
28 subsection should be varied under AS 25.28.030(b).

29 **Sec. 25.28.030. Exceptions to support awards.** (a) Notwithstanding the
30 requirements in AS 25.28.010 and 25.28.020, the tribunal may vary the award for the
31 reasons stated in this section.

1 (b) The tribunal may vary the child support award as calculated under the
2 other provisions of this chapter for good cause on proof by clear and convincing
3 evidence that manifest injustice would result if the support award were not varied. The
4 tribunal shall specify in writing the reason for the variation, the amount of support that
5 would have been required but for the variation, and the estimated value of any
6 property conveyed instead of support calculated under the other provisions of this
7 chapter. Good cause may include a finding that unusual circumstances exist that
8 require variation of the award in order to award an amount of support that is just and
9 proper for the parties to contribute toward the nurture and education of their children.
10 The tribunal shall consider the custodial parent's income in this determination.

11 (c) The calculation for primary physical custody under AS 25.28.010 does not
12 apply to the extent that the parent has an adjusted annual income of more than
13 \$105,000. The tribunal may make an additional award only if it is just and proper,
14 taking into account the needs of the child, the standard of living of the child, and the
15 extent to which that standard should reflect the supporting parent's ability to pay.

16 (d) Except as provided in AS 25.28.010(c) and 25.28.020, the minimum child
17 support amount that may be ordered is \$50 a month or \$600 a year.

18 (e) In addition to ordering a parent to pay child support as calculated under
19 this chapter, the tribunal may, in appropriate circumstances and when the parents are
20 minors as described in (f) of this section, order one or more grandparents of a child to
21 pay child support to an appropriate person in an amount determined by the tribunal to
22 serve the best interests of the child; however, the amount may not exceed the lesser of

23 (1) a proportionate share of the amount required to provide care in a
24 supervised setting to the grandchild, as determined by the tribunal; or

25 (2) the amount that would have been awarded if the child's parents had
26 the incomes of the child's grandparents and AS 25.28.010 and 25.28.020 were applied.

27 (f) An order under (e) of this section may be issued only with respect to a
28 child whose parents are both minors, and the order terminates when either parent
29 becomes 18 years of age. The tribunal shall specify in writing the reasons it considers
30 it to be appropriate to order a grandparent to pay child support under this subsection
31 and the factors considered in setting the amount of the child support award. In this

1 subsection, "grandparent" means the natural or adoptive parent of the minor parent.

2 (g) If the noncustodial parent's income is seasonal, the tribunal may order that
3 the annual support amount be paid in unequal monthly payments, with higher
4 payments during the months the parent expects to receive higher income and lower
5 payments in other months; the tribunal may not make an unequal payment order unless

6 (1) the tribunal finds that the burden of budgeting for periods of
7 unequal income should be placed on the obligee rather than the obligor; and

8 (2) the obligee agrees.

9 (h) An order of the tribunal for unequal payments under (g) of this section
10 must specify the annual support amount, the average monthly support amount, and the
11 amount due for each month. The order must provide that variations from the average
12 monthly amount begin with monthly payments in excess of the average monthly
13 amount so that a deficit situation cannot occur. Until the excess payments begin, the
14 tribunal shall order payment of the average monthly amount.

15 **Sec. 25.28.040. Health care expenses.** (a) The tribunal shall include in the
16 order coverage of the child's health care needs and require health insurance for the
17 child if insurance is available to either parent or both parents at a reasonable cost. The
18 tribunal shall consider whether the child is eligible for services through the Indian
19 Health Service, any other entity, or other insurance coverage before ordering either
20 parent or both parents to provide health care coverage through insurance, cash medical
21 support, or other means. A court shall find that health insurance is available only if the
22 dependent child has reasonable geographic access to the covered services or the
23 insurance includes the coverage of transportation needed for the services.

24 — (b) The tribunal shall allocate equally the cost of insurance between the
25 — parents unless the tribunal orders otherwise for good cause. An obligor's child support
26 obligation shall be decreased by the amount of the obligee's portion of health
27 — insurance payments ordered by the tribunal and actually paid by the obligor. The
28 tribunal shall increase a child support award by the obligor's portion of health
29 insurance if the obligee is ordered to, and actually does, obtain and pay for insurance.

30 (c) The cost of insurance is the cost attributable to the child for whom support
31 is paid. If the cost to the employee of covering the employee alone is the same as the

1 cost to the employee of covering the employee and dependents, then there is no
 2 additional cost to the employee for adding the child and no portion of the cost of
 3 coverage may be allocated to the child. If dependent coverage can be added for a
 4 single cost, rather than for each dependent, and the dependent coverage covers
 5 dependents in addition to the child subject to the order, the cost of the dependent
 6 coverage shall be allocated equally among the dependents covered. If there is reason
 7 to believe that there is an incremental cost to the employee for insuring dependents but
 8 evidence of that incremental cost is unavailable, the cost of insurance is determined by
 9 dividing the total cost of coverage by the number of family members covered and
 10 multiplying that amount by the number of children subject to the order.

11 (d) The tribunal shall allocate equally between the parties the cost of
 12 reasonable health care expenses not covered by insurance unless the tribunal orders
 13 otherwise for good cause. A party shall reimburse the other party for the party's share
 14 of the uncovered health care expenses within 30 days after receipt of the bill for the
 15 health care, payment verification, and, if applicable, a health insurance statement
 16 indicating what portion of the cost is uncovered. The tribunal shall allocate the
 17 reasonable, uncovered health care expenses exceeding \$5,000 in a calendar year based
 18 on the parties' relative financial circumstances when the expenses occur.

19 dd (e) For the purpose of establishing a monthly support obligation for health
 20 care expenses, a court shall find that the cost of cash medical support or private health
 21 insurance is reasonable under this section if the cost to the responsible parent does not
 22 exceed five percent of the responsible parent's gross income. In calculating the
 23 percentage for purposes of health insurance coverage, the cost is the cost of adding the
 24 dependent child to the existing insurance coverage or the difference between self-only
 25 and family coverage.

26 (f) In this section,
 27 (1) "cash medical support" means an amount ordered to be paid toward
 28 the cost of health insurance provided by a public entity or by another parent through
 29 employment or otherwise, or for other health care expenses not covered by insurance;
 30 (2) "health care expenses" includes medical, dental, vision, and mental
 31 health counseling expenses.

1 **Sec. 25.28.050. Child support affidavit and documentation.** (a) Subject to
2 the confidentiality requirements of Rule 90.1(f), Alaska Rules of Civil Procedure, each
3 parent in a proceeding of a tribunal at which child support is involved shall file a
4 statement under oath, accompanied by documentation verifying the statement, that
5 states the parent's adjusted annual income and the components of adjusted annual
6 income as described in AS 25.28.010(e). This statement and documentation must be
7 filed with a party's initial pleading in superior court, including the dissolution petition,
8 divorce complaint or answer, motion to modify, and any response to a motion to
9 modify. The documents must be redacted to delete social security numbers and to
10 provide only partial financial account information as provided in Rule 90.1(f), Alaska
11 Rules of Civil Procedure. The statement must state whether the parent has access to
12 health insurance for the children and, if so, the additional cost to the parent of the
13 children's health insurance.

14 (b) While there is an ongoing monthly support obligation, each party shall
15 provide to the other party, within 30 days after a written request, documents such as
16 tax returns and pay stubs showing the party's income for the prior calendar year. The
17 party making the request shall provide documentation of the party's annual income for
18 the same period at the time the request is made. A request under this section may not
19 be made more than once a year. This section does not preclude discovery under the
20 Alaska Rules of Civil Procedure.

21 (c) Unless the information has already been provided to the tribunal under
22 Rule 90.1(f), Alaska Rules of Civil Procedure, a statement under (a) of this section
23 must be accompanied by a confidential information sheet as described in Rule 90.1,
24 Alaska Rules of Civil Procedure. Once a complete confidential information sheet has
25 been submitted to the tribunal listing names, dates of birth, and social security
26 numbers as required, the parties shall omit or redact social security numbers from
27 documents subsequently filed in the action unless otherwise ordered by the tribunal.

28 (d) The tribunal may withhold or assess costs or attorney fees for a violation
29 of this section as the circumstances and discouragement of like conduct in the future
30 may require. Costs and attorney fees may be imposed on offending attorneys or
31 parties.

1 **Sec. 25.28.060. Travel expenses.** After determining an award of child support
2 under this chapter, the court shall allocate between the parties reasonable travel
3 expenses that are necessary to exercise visitation as may be just and proper for the
4 parties to contribute.

5 **Sec. 25.28.070. Modification; defense against arrearages.** (a) A tribunal may
6 modify a final child support award on a showing of a material change of
7 circumstances as provided by state law. A material change of circumstances shall be
8 presumed if support as calculated under this chapter is more than 15 percent greater or
9 less than the outstanding support order. An award may be modified to require cash
10 medical support regardless of whether insurance is available to either parent if neither
11 parent has purchased health insurance. In this subsection, support includes health
12 insurance payments or cash medical support made under AS 25.28.040.

13 — (b) A ^{court} tribunal may not modify a child support arrearage retroactively, except
14 as authorized by AS 25.27.166(d). A modification that is effective on or after the date
15 that a motion for modification, or a notice of petition for modification by the child
16 support services agency, is served on the opposing party is not considered a retroactive
17 modification.

18 (c) The tribunal may find that a parent and a parent's assignee are precluded
19 from collecting arrearages for support of a child that accumulated during a time period
20 exceeding nine months for which the parent agreed or acquiesced to the obligor
21 exercising primary custody of the child. A finding that preclusion is a defense must be
22 based on clear and convincing evidence.

23 **Sec. 25.28.080. Third-party custody.** (a) When the state, or another third
24 party entitled to child support, has custody of all children of a parent, the parent's
25 support obligation to the third party is an amount equal to the adjusted annual income
26 of the parent multiplied by the percentage specified in AS 25.28.010(b). If the third
27 party has custody of some but not all children, the parent's support obligation to the
28 third party is an amount equal to the adjusted annual income of the parent, multiplied
29 by the percentage specified in AS 25.28.010(b) for the total number of the parent's
30 children, multiplied by the number of the parent's children in third-party custody,
31 divided by the total number of the parent's children. In this subsection, the number of

1 the parent's children includes only children of the parent who live with the parent, are
2 substantially supported by the parent, or are in custody of the third party entitled to
3 support.

4 (b) If, in addition to a support obligation to a third party, one or both parents
5 retain primary or shared physical custody of at least one of their children, the support
6 obligation between the parents is calculated under the other provisions of this chapter,
7 without consideration of the third-party custodian or any children in the custody of the
8 third-party custodian, except that the percentage in AS 25.28.010(b) must be adjusted
9 pro rata for the number of children in the primary custody of a parent, or shared
10 custody of the parents, compared to the total number of children. After that calculation
11 is completed, any support owed may be offset with support owed to a third-party
12 custodian under (a) of this section in order to minimize transactions.

13 Sec. 25.28.090. Support order forms. All court orders for payment or
14 modification of child support shall be entered on a form developed by the
15 administrative director of the court. A party may lodge a duplicate of the tribunal form
16 produced by a laser printer or similar device. A device may also print, in a contrasting
17 typestyle equivalent to that produced by a typewriter, text that otherwise would have
18 been entered by a typewriter or word processor. A party or attorney who lodges a
19 duplicate certifies by lodging the duplicate that it is identical to the current version of
20 the court form.

21 Sec. 25.28.100. Dependent tax deduction. The court may allocate the
22 dependent tax deduction for each child between the parties as is just and proper and in
23 the child's best interests. The allocation must be consistent with AS 25.24.152 and
24 federal law.

25 Sec. 25.28.300. Definitions. In this chapter,

26 (1) "child support" and "child support obligation" have the meaning
27 given "duty of support" in AS 25.27.900;

28 (2) "divided custody" means that one parent has primary physical
29 custody of one or more children of the relationship and the other parent has primary
30 custody of one or more other children of the relationship, and the parents do not share
31 physical custody of any of their children;

1 (3) "hybrid custody" means that at least one parent has primary
2 physical custody of one or more children of the relationship, and the parents have
3 shared physical custody of at least one child of the relationship;

4 (4) "primary physical custody" or "primary custody" means that a child
5 resides with the other parent for a period, specified in the custody order, of less than
6 30 percent of the year;

7 (5) "shared physical custody" or "shared custody" means that a child
8 resides with one parent for a period, specified in writing in the custody order, of at
9 least 30 percent but not more than 70 percent of the year, regardless of the status of
10 legal custody;

11 (6) "tribunal" means the superior court or the child support services
12 agency created in AS 25.27.010.

13 * Sec. 2. AS 47.10.120(a) is amended to read:

14 (a) When a child in need of aid is committed under this chapter, the court or
15 the child support services agency created in AS 25.27.010 shall, after giving the parent
16 a reasonable opportunity to be heard, require that the parent pay to the department in a
17 manner that the court or the child support services agency directs a sum to cover in
18 full or in part the maintenance and care of the child. The support obligation shall be
19 calculated under AS 25.28 [RULE 90.3(i) OF THE ALASKA RULES OF CIVIL
20 PROCEDURE].

21 * Sec. 3. AS 47.12.230(a) is amended to read:

22 (a) When a delinquent minor is committed under this chapter, the court or the
23 child support services agency created in AS 25.27.010 shall, after giving the parent a
24 reasonable opportunity to be heard, require that the parent pay to the department in a
25 manner that the court or the child support services agency directs a sum to cover in
26 full or in part the maintenance and care of the minor. The support obligation shall be
27 calculated under AS 25.28 [RULE 90.3(i) OF THE ALASKA RULES OF CIVIL
28 PROCEDURE].

29 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 REPEAL OF COURT RULE. Rule 90.3, Alaska Rules of Civil Procedure, is repealed.

1 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 **NONAPPLICABILITY OF TWO-THIRDS VOTE REQUIREMENT.** Because the
4 rule repealed in sec. 4 of this Act is a substantive rule rather than a rule of practice or
5 procedure, the repeal of the rule takes effect even if sec. 4 of this Act does not receive the
6 two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
7 Alaska.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version SB 134
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) SB134CS(HSS)-LAW-CIV-03-02-12 Dept. Affected Law
 Title An Act relating to child support awards, and repealing Appropriation Civil
Rule 90.3, Alaska Rules of Civil Procedure. Allocation Collections and Support
 Sponsor Senator Kookesh
 Requester (S) Judiciary OMB Component Number 2210

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY13	FY14	FY15	FY16	FY17
OPERATING EXPENDITURES							
Personal Services			2,660.9				
Travel			13.4				
Services			429.0				
Commodities			61.7				
Capital Outlay			12.1				
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	3,177.1	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1007	I/A Rcpts (Other)		3,177.1					
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		0.0	0.0	3,177.1	0.0	0.0	0.0	0.0

POSITIONS								
Full-time								
Part-time			1					
Temporary			19					

CHANGE IN REVENUES							

Estimated **SUPPLEMENTAL (FY12) operating costs** _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Effective date starting FY 14.

Prepared by Eileen Donahue, Division Operations Manager
 Division Administrative Services
 Approved by Michael C. Geraghty, Attorney General
Department of Law

Phone 465-5427
 Date/Time 3/2/12 2:30 PM
 Date 3/2/2012

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. SB 134

Analysis

SB 134 will establish Alaska child support guidelines in statute and repeal the court Civil Rule 90.3 child support guidelines. The bill changes child support calculation formulas from the current percentage approach that only takes into account the non-custodial parent's income to an income shares model that considers the income of both parents. Additionally, the bill increases the minimum support amount required of the non-custodial parent and decreases the percentage of time required for a finding of shared custody.

AS 25.24.170(b) and AS 25.27.190(e) consider the adoption, enactment or significant modification to the guidelines a material change of circumstance for the purpose of a modification of the order. This would allow custodial and non-custodial parents to request a modification of their existing order(s). Federal law, 45 CFR 303.8(e), requires the Child Support Services Division (CSSD) to complete modification requests within 180 days from receipt of the request. CSSD could lose significant federal funds if it cannot meet this requirement. CSSD estimates it is enforcing approximately 20,000 child support orders that would be eligible for modification. CSSD conservatively anticipates 10,000 modification requests will be submitted in the first six months, with about ½ of the requests on court orders. The Attorney General's Office, Collections & Support Unit, represents CSSD in court when the agency requests modification of a court-issued child support order. The Collections & Support Section currently processes about 700 modification requests a year with 3.5 attorneys. The anticipated increase in modification requests from 700 to 5,000 in one year will require non-permanent positions of 12.5 attorneys, 2 paralegals, and 5 support positions to meet the anticipated initial demand.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version SB134B
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) SB134-DOR-CSSD-03-06-12 Dept. Affected _____ Revenue _____
 Title An Act Relating to Child Support Awards Appropriation Child Support Services
 Allocation Child Support Services
 Sponsor Senator Kookesh
 Requester (S) JUD OMB Component Number 111

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES								
Personal Services	502.8		1,508.5	353.5	353.5	353.5	353.5	
Travel								
Services	85.0		4,507.6	10.8	10.8	10.8	10.8	
Commodities	166.0							
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	753.8	0.0	6,016.1	364.3	364.3	364.3	364.3	

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts	497.5		3,970.6	240.4	240.4	240.4	240.4
1003	GF Match	256.3		2,045.5	123.9	123.9	123.9	123.9
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		753.8	0.0	6,016.1	364.3	364.3	364.3	364.3

POSITIONS							
Full-time		5		5	5	5	5
Part-time							
Temporary		24		24			

CHANGE IN REVENUES							
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Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Updated to show funding in FY13 budget for CSSD to hire and train staff prior to the bill's effective date.

Prepared by John Mallonee
 Division Child Support Services
 Approved by Alicia Egan, Legislative Liaison
Department of Revenue

Phone 269-6801
 Date/Time 3/6/12 2:30pm
 Date 3/6/2012

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. SB134B

Analysis

SB 134 will establish Alaska child support guidelines in statute and repeal the court Civil Rule 90.3 child support guidelines. The bill changes child support calculation formulas from the current percentage approach that only takes into account the non-custodial parent's income to an income shares model that considers the income of both parents. Additionally, the bill increases the minimum support amount required of the non-custodial parent and decreases the percentage of time required for a finding of shared custody.

AS 25.24.170(b) and AS 25.27.190(e) consider the adaption, enactment or significant modification to the guidelines a material change of circumstance for the purpose of a modification of the order. This would allow the custodial or non-custodial parents to request a modification of their existing order(s). 45 CFR 303.8(e) requires a modification to be completed 180 days from receipt of the request. Failure to meet this requirement could result in the loss of federal funds. There are approximately 20,000 child support orders that would be eligible for modification. The division conservatively anticipates 10,000 modification requests will be submitted in the first six months. The modification section currently completes an estimated 3,000 modifications/year with a staff of 14. The anticipated increase in modification requests and the increased time required to perform the calculations will require 24 non-permanent staff. The five permanent staff will be needed because of the additional work required to determine the awards under the income shares approach.

Every four years as required by 45 CFR 302.56(e) the state must review the guidelines and revise if appropriate. Currently this is done by the Supreme Court. If the guidelines are placed in statute then another process would be required to satisfy this requirement.

The funding requested for FY 2013 will allow the Division to hire and train the required staff prior to effective date. This ensures that the Division can begin processing modification as soon as the changes become effective.