

Child Support Workgroup
Children from Other Relationships Subcommittee
Teleconference Notes
April 5, 2011

Participating on the call: Ed Pesik, Kevin Callaghan, Janet Skreen, Kristie Dimak, Ken Levinson,
Angela Gerbracht
DCS Staff: Ellen Nolan
Member of the public: Greg Howe, Marilyn

Notes : Approved minutes from 3/29 meeting, minutes will be posted.

Identification of Tasks for This Call:

Ed is examining what other income share states do in regards to children not before the court.

Looking at continuing discussion re 2 issues from past meeting:

- Definition of children reflected in calculation in traditional deviation (below the line)
- Definition of children reflected in presumptive calculation for above the line
 - Decided to table for future meeting when we have proposed definitions in writing for next meeting.

Issue of how to deal with deviation formulaically?

- Looks like daycare issue.
- Considering obligors children not before the court for this discussion
- Assuming they meet the definition, those children would be part of the presumptive calculation. But what if obligor is not supporting those children?
- Discussion of whether or not we want to get away from the proviso that obligor is in fact paying support.
- Could obligee parent ask court to order obligor to show proof of payment?
- Shift the burden to obligor parent to provide proof.
 - Consensus: As part of presumptive calculation children not before the court of obligor parent would be part of presumptive calculation and upon request of obligee about payment in fact by obligor, court may examine.
- Noncustodial parent/obligor would always get rebuttable presumption that children in their homes are included.
- But what about non-residential children of obligors? Example she (obligor) says she has other children out of home that she supports. What showing has to be made for those children? Should there be a difference for children living in home vs. children outside of the home?
- Under current system, there is no further showing necessary upon assertion by parent unless challenged. But if state attorney involved, there is access to state databases to confirm the obligor's assertion.
 - Consensus: Nonresidential kids for which evidence is tenuous that obligor is providing support would go to below the line deviation.

Concern about unrepresented parties. Especially when both parents are noncustodial and may be in hospital or custody.

- Discussion about default decisions and opportunities for challenging/revoking/rehearing.

Concern that children of obligee parents should be considered.

- No consensus on this issue at present.
- This discussion focused on issue of other children not before the court belonging to obligor.
- Important and will be discussed further.

Public Comment:

- Children within residence should be automatic. Children outside the residence should be above line rebuttable situation. DCS and court collect so much information regarding the parties. Example of obligor from last workgroup: had four kids from four relationships and various jurisdictions setting orders did not give him credit.
- What do you do with obligor who has nonresidential child and they are not paying/have arrears would they get credit for that? Don't want to stack nonpayable amount on top of another nonpayable amount.

One subcommittee member view:

- Don't think we should be slicing and dicing whether or not partial payments are being paid. Should be question: is it being paid, or is it not. (Not partial). Partial counts as being paid. Would be nonproductive otherwise. Only asking "number of children" not actual amount paid.

Other subcommittee member view:

- Credit should only be given in proportion to how much obligor is paying.
- Ed's incomplete review of other states leads him to believe that preferred method by other states is to subtract actual amount of child support paid by court order for nonresidential other children but residential child is automatically included.
 - Two step method used
 - 1) Nonresidential children for which there is order and subtract that from gross income. Some states, actual amount paid some states, amount of order.
 - 2) Consider residential children automatically in calculation – i.e. move over to column for number of kids including the residential children.
- Other factor looked at is that they do not allow downward modification for subsequent born children.

Public Comment:

- Regarding proof of obligor's other children – The only thing we know is amount that is ordered but we don't know if that amount is being attributed to that child. Less money goes to each child when you have multiple children within residence. This fact should be kept in consideration from both sides.

Public comment:

- Purpose of calling in is to ensure that we were looking at firstborn vs subsequent born children. Wants to ensure that first born support is not being reduced by later born children. Feels that child support should not be reduced for her children when her husband goes off and has affair and thus additional children. Wants to encourage us to prevent reducing child support for firstborn children since those kids don't deserve to have standard of living reduced. It is the choice of the father to go on and have other children.

One Subcommittee member view:

- If obligor goes out and chooses to have another subsequent child that should absolutely not impact first born children. Duty of support should be solely on the subsequent parents. Obligees and firstborn children had no opportunity to take part in decision of obligor to have additional children and should not be impacted.
- Hypothetical: A married man has child with wife. He has affair outside of marriage and has another child. Paternity is established for second born child and support is set – should court take into account firstborn child or not? (No order ever set for firstborn child born during marriage).
- Discussion: depends on whether or not the mother of second child knows of existence of first child. Need to think about and discuss this more.
- **Issue: are subsequent born children grounds for modification?**

Still need to decide definition of children not before the court.

Public comment:

One public view:

- Common sense math dictates that married folks who have one child and then decide to have second child automatically have fewer resources for that first child. It is the same for separate households. These kids are siblings and understand how they are treated by parents.

Other public view:

- The situation of intake marriage/couple determining if they will have additional children is different than issue of separate households because first obligee has no say in the situation in separate household situation.