

# Child Support Guidelines Advisory Council

August 24, 2012 Meeting Minutes

50 W. Town Street, 5<sup>th</sup> Floor

10:00 a.m. – 3:00 p.m.

## Attending

Phyllis Carlson-Riehm, Micah Derry, Christine Dobrovich, Jenelle Donovan-Lyle, Serpil Ergun, Sarah Fields, David Fleischman, Michelle Master-Haines, Rod Hamilton, Tim Hennessy, Kim Henry, Brian Kessler, Steve Killpack, Erik Mikkelson, Kim Newsom-Bridges, Alan Ohman, Rep. Dorothy Pelanda, Amy Rice, Steve Schlatter, Mike Smalz.

## July 27, 2012 Meeting Minutes

Dave Fleischman of the Office of Child Support discussed the minutes from the July 27, 2012 Child Support Guidelines Advisory Council (CSGAC) meeting. No comments were received and meeting minutes were approved. Minutes will be posted on the CSGAC webpage.

## Next Meeting

The next meeting is on Friday, September 21, 2012 from 10:00 a.m. – 2:00 p.m. (with a working lunch). Council members agreed in today's meeting to forward the topics they would like to discuss to OCS to be forwarded to all members.

## Outreach

### Webpage Updates

In addition to the dates for the CSGAC meetings, the webpage will be regularly updated to include meeting times and locations, and minutes and attachments from each meeting. A Council roster, and previous council reports, will also be added to the website.

### October Public Feedback Meeting

The October 19, 2012 meeting will be open to the public for participation, statements and testimony. The Department of Job and Family Services (ODJFS) will put out a press release indicating the establishment of the CSGAC and announcing the public feedback meeting date.

### Webpage Comments

We have received thirteen e-mail comments. Most were case specific and those were forwarded to the OCS customer inquiry call center for action.

Any comments related to the child support guidelines will be forwarded to the council for discussion.

Rod Hamilton of the Warren County Child Support Enforcement Agency wanted to know if the council will have access to the e-mails so that council members can review. Action Item: Dave indicated OCS will provide incoming comments to the council prior to each meeting for discussion.

## Deviation Study

Steven Schlatter of OCS presented information about the past three deviation studies, and included a proposed questionnaire as well as the deviation statute, Revised Code §3119.23.

The 2001 study was completed by a private contractor and the studies from 2005 and 2009 were completed by the state. All three studies had similar results. The study looks at how often the deviation factors are used, what deviation factors were used, and if courts are using specific deviation factors as outlined by statute or other relevant factors that were involved.

Mike Smalz of the Ohio Poverty Law Center asked what the time period for study would be and the response was that the study would occur during early November.

It was discussed that the data would be gathered from CSEA reviews of incoming court orders received during the review period. Jenelle Donovan-Lyle asked if the counties' participation would be voluntary and it was confirmed county CSEA would be asked to participate on a voluntary bases to collect data for the study. Tim Hennessy suggested using Survey Monkey.

Mike Smalz mentioned that the collateral sanction bill that will go into effect on September 28, 2012 includes provisions concerning the effect of prior felony convictions and overtime on support awards and he suggested that we may want to add questions to the survey taking these provisions into consideration. Dave indicated that the office would review this. **Update:** The office reviewed the legislation and determined that the change in the legislation was not to the deviation factors being reviewed in the study but to the definition of potential income of a parent determined to be voluntarily unemployed or under-employed, and factors that lead to the imputation of income. Therefore no questions related to the collateral sanctions bill appear to be necessary for the deviation study.

### Post Termination Arrears Payoff Orders

At the initial Council meeting Mike Smalz asked whether the Council could review a topic of concern to his organization: the current Ohio statutes that require, upon termination of a support order, that any arrearage liquidation obligation should equal the amount of the support obligation prior to termination. Mike indicated that there are circumstances in which this requirement is unjust or inappropriate, but that several Ohio appellate courts have determined that the language in the statutes do not allow for deviation from, or modification of the ordered payment on arrears. Dave asked Mike to provide further information, including alternative recommendations, for this meeting.

Mike Smalz presented his research on the relevant statute and recommended three variations of revised language to address the issue (attached). His first recommendation was to remove the last sentences of RC sections 3121.36 and 3123.14 which require a liquidation order of any arrears remaining after termination of the support obligation be at least equal to the amount withheld or deducted prior to termination.

During the discussion it was noted that the provision is useful for establishing a baseline payment obligation at termination. Sarah Fields suggested that the provisions be modified to parallel the rebuttable presumption provisions found in RC 3123.21(B) related to default proceedings, to require the payment of the amount withheld or deducted prior to termination.

Michelle Masters-Haines noted that guidance would be needed for CSEAs to resolve a request to modify the liquidation order on administrative-only cases. There was also discussion whether to establish a process for modification requests received after the termination process is completed. Kim Newsom-Bridges noted there is language in pending House Bill 561 related to the discussion of modifying the arrears payment when there is a current obligation and that language should be reviewed in light of this discussion.

**Action Item:** Mike Smalz will draft proposed language adopting the rebuttable presumption suggestion and send it to OCS for distribution to the Council prior to the next meeting. **Update:** Mike provided the language to OCS and it will be distributed to the group with the meeting minutes.

### Open Discussion

#### Charts for 1, 2, & 3 Children

Dave reminded the CSGAC members had received charts during the first meeting that described the ratio of support obligations to income for "2 child" orders. He noted that, as requested, the members had today been provided with similar charts for all three scenarios.

#### No Income and Low Income Obligor

Dave discussed the 2005 Urban Institute report "Assessing Arrears In Ohio" and its correlation of arrears accrual with levels of reported income. Dave indicated that he wanted to draw the attention of the Council specifically to its findings that 69% of arrears accrued in Ohio were owed by individuals with no reported income or reported income less than \$10,000; that 31% of arrears accrued in Ohio were owed by individuals with reported income greater than \$10,000; and, further, that only 5% of the arrears accrued in Ohio were owed by individuals with reported income over \$40,000.

It was also identified that there has been a shift in the philosophy and culture of child support enforcement in recent years to emphasize the establishment of "right-size" support orders based upon

actual or realistic imputed income, as opposed to maximum possible orders based upon unrealistic projections of potential income for are unemployed or underemployed. This may be reflected in the fact that the median support order is down to \$240/month in 2012 as compared to \$299.00 per month in 2003.

There was discussion among the members regarding interpretation of the statistics relating arrears to reported income. A member noted that the statistics for cases with reported income would be more likely to be subject to federally mandated withholding and resulting payment of support due. It was also identified that there would be many other factors to consider in addition to reported/unreported income, such as the effect of multiple orders involving other children/other obligees on an obligors likelihood to pay. Another member wondered whether under these circumstances it is realistic to base each support order on the model of two separate households, what the effect is of crediting other children in the support calculation, and also whether the size of support obligations might contribute to obligors feeling overwhelmed and resorting to an "underground economy" of unreported income.

One member discussed his own familiarity with the construction industry in which he had firsthand experience with individuals seeking employment in less regulated payroll environment where they might avoid or mitigate the effect of child support income withholding, not because of an unwillingness to support their children, but because withholding would reduce their disposable income at another job where withholding would be assured.

The discussion continued on the topic of the obligation/income ratio and how it relates to the accumulation of arrears.

### **Income and Mandatory/Fixed Expenses**

Dave indicated that he believed the question before the council revolves around obligors with reported income of \$10,000.00 per year to \$40,000.00 per year – that is, the individuals who have accrued about 26% of the arrears outstanding in Ohio, according to the Urban Institute study. In order to facilitate discussion on this topic, Dave presented a spreadsheet with examples of child support obligations at various income levels up to the mid-\$30K range for each party, with estimated minimal household expenses for the individual obligor, with the intention of projecting ability to pay both the guideline support obligation as well as typical mandatory deductions and typical fixed living expenses. Dave indicated it was his intention to present a thought experiment concerning an individual's available financial resources for self-support, and whether meeting the guideline support obligation would be possible.

After reviewing some of these examples, several council members immediately pointed out that the cost to care for and support a child is an obligation of both parents and that the custodial parent/obligee must meet his/her share of this responsibility regardless of whether they are receiving the support due from the obligor. This burden on the obligee can result in accrual of debt by the obligee to meet the needs of the children in his/her custody, or even having to rely on assistance through social services (particularly in the income bracket of under \$20,000.00). Another noted that, conversely, such assistance would not likely be available to supplement the obligor's living expenses after paying their support obligation.

There was much agreement with the comment of one member who noted that, despite the best efforts of the child support program to ensure support is available to a custodial parent from an obligor, the fact remained that parties in a support case were by definition maintaining two households, which will inevitably lead to financial problems for individuals in the low and/or working poor income range (including the accrual of arrears by the obligor, but also in the more general financial difficulties faced by the obligee).

### **Obligor Engagement and Program Flexibility**

In addition to looking at the monthly obligation amounts and remaining self-support, there was also discussion regarding the need to maintain obligors engagement with the CSEA administering their case, especially in the event where there is a change in income or employment, or in other situations that might affect their ability to meet their full monthly obligation. For example, reporting income changes/job changes, reduction in work hours, injuries/disabilities, financial emergencies (illness, transportation repairs/costs, etc.). There was discussion of the benefits of collecting at least a portion of the total monthly obligation under these circumstances as opposed to no payment at all – but that the lack of flexibility of use of income withholding to collect the full monthly obligation, a function of both federal and state law.

This led to further discussion concerning the Social Service needs of this population of obligors for education, job training, assistance in obtaining and maintaining employment, transportation, etc. There was also further discussion of obligors and obligees with multiple children/multiple partners resulting in multiple (and independently calculated) support obligations.

Lastly, the discussion turned to the relevance of parental rights of obligors as being separate by statute from the establishment of paternity and support orders, particularly for non-married parents (with the legal presumption of full legal custody with the mother). It was recognized that services (IV-D) are funded and provided for establishment of parental responsibilities of paternity, support orders and support enforcement, but there are few resources available for obligors to pursue legal action to pursue parental rights of custody and parenting time. There was discussion about whether obligors without a parental relationship are at greater risk to disengage upon being unable to meet monetary support obligations, and the potential long-term effect on all parties involved.