

PREAMBLE TO CHILD SUPPORT AND ARREARAGE GUIDELINES

(a) Introduction

This preamble is intended to assist users of the child support and arrearage guidelines but is *not* part of the official regulations.

(1) Purposes of preamble

The purposes of this preamble to the child support and arrearage guidelines are the following:

(A) To identify for child support practitioners, judges, family support magistrates, and the public changes from the former child support guidelines to ease the transition to the new guidelines.

(B) To provide supplemental background information to assist the user in understanding the purposes and principles underlying the guidelines.

(C) To limit the need for explanations and commentary in the guidelines to keep them simple and readable.

(D) To provide for uniformity of interpretation by the Connecticut bar, judiciary, child support agencies, and the public.

(2) Organization of the regulations

The child support and arrearage guidelines regulations are organized into five sections, as follows:

(A) Section 46b-215a-1. Definitions

This section contains definitions of key words and phrases which have a special meaning as used in the guidelines.

(B) Section 46b-215a-2a. Child support guidelines

This section contains the guidelines, including the worksheet instructions and schedule, for determining the current support, health care coverage, and child care contribution components of the child support award.

(C) Section 46b-215a-3. Child support guidelines deviation criteria

This section describes the circumstances which may justify a support order different from the presumptive support amounts calculated under the child support and arrearage guidelines.

(D) Section 46b-215a-4a. Arrearage guidelines

This section contains the guidelines, including the worksheet instructions, for determining periodic payments on child support arrearages.

(E) Section 46b-215a-5a. Worksheet for the Connecticut child support and arrearage guidelines

This section contains the worksheet intended for use with the instructions in sections 46b-215a-2a and 46b-215a-4a.

(b) Purposes of guidelines

The primary purposes of the child support and arrearage guidelines are:

(1) To provide uniform procedures for establishing an adequate level of support for children, and for repayment of child support arrearages, subject to the ability of parents to pay.

(2) To make awards more equitable by ensuring the consistent treatment of persons in similar circumstances.

(3) To improve the efficiency of the court process by promoting settlements and by giving courts and the parties guidance in setting the levels of awards.

(4) To conform to applicable federal and state statutory and regulatory mandates.

(c) Basic principles

The Connecticut Child Support Guidelines are based on the Income Shares Model. The Income Shares Model is predicated on the concept that the child should receive the same proportion of parental income as he or she would have received if the parents lived together. The Income Shares Model has proven to be the most widely accepted, particularly due to its consideration of the income of both parents.

The Income Shares Model reflects presently available data on the average costs of raising children in households across a wide range of incomes and family sizes. Because household spending on behalf of children is intertwined with spending on behalf of adults for most expenditure categories, it is difficult to determine the exact proportion allocated to children in individual cases, even with exhaustive financial affidavits. However, a number of authoritative economic studies based on national data provide reliable estimates of the average amount of household expenditures on children in intact households. These studies have found that the proportion of household spending devoted to children is systematically and consistently related to the level of household income and to the number of children.

Based on this economic evidence, adjusted for Connecticut's relatively high income distribution (as explained more fully in subsection (d) of this preamble, following), the guidelines allow for the calculation of current support based on each parent's share of the amount estimated to have been spent on the child if the parents and child were living in an intact household. The amount calculated for the custodial parent is retained by the custodial parent and presumed to be spent on the child. The amount calculated for the noncustodial parent establishes the level of current support to be ordered by the court. These two amounts together constitute the total current support obligation.

(d) The Schedule of Basic Child Support Obligations

This subsection of the preamble explains how the commission derived the percentages in the *Schedule of Basic Child Support Obligations* (hereafter, the schedule) why it reduced them from 1994 levels, and how and why it extended the schedule to the lower income ranges (the darker shaded areas of the schedule) and to incomes between \$1,750 and \$2,500 per week. In developing the 1994 guidelines and schedule, the previous commission reviewed and evaluated the latest available economic data on childrearing costs and literature on child support guidelines, the practices of other states, and the recommendations of its retained consultant, Policy Studies, Inc. of Denver, Colorado.

(1) Updated economic data

The schedule percentages are based on updated economic data on childrearing costs which was gathered in a study mandated by the Family Support Act of 1988 (P.L. 100-485, section 128). The study was conducted by Dr. David Betson of Notre Dame University, through the University of Wisconsin Institute for Research on Poverty. Dr. Betson used data from the national 1980-86 Consumer Expenditure Survey for his research. An analysis of Dr. Betson's findings, on which the 1994 commission relied, is contained in *Estimates of Expenditures on Children and Child Support Guidelines*, Report to U.S. Department of Health and Human Services (Office of the Assistant Secretary for Planning and Evaluation), by Lewin/ICF (October 1990). The present commission has determined that the data relied on by the 1994 commission remains valid for the purpose of setting appropriate child support awards. New data of the same kind and quality relied on by the 1994 commission is not yet available, and any adjustment due to inflation would be too small at this time to justify an overhaul of the existing schedule.

(2) Rothbarth estimator

Economists determine the average household spending on children by comparing the expenditures of two households that are equally well off economically, one with children and one without. To make this comparison, they must first determine a standard of well-being which is independent of income. The Rothbarth estimator (named for Erwin Rothbarth, the economist who first proposed it) is such a standard. It is based on the percentage of household income spent on adult goods, and the commission continues to assess it as the best benchmark to use in developing guidelines.

(3) Adjustment for Connecticut

The data reported by Betson using the Rothbarth estimator (hereafter, Betson/Rothbarth) were developed using a nationally representative sample of households. Connecticut, however, has an income structure which is much higher than the national average. This fact, in the commission's judgment, continues to warrant an upward adjustment to the Betson/Rothbarth percentages, for the following reasons:

(A) A Connecticut household can be expected to spend about the same percentage of income on children as a nationally representative household with a lower level of income because of the Connecticut household's relative position in the state's income distribution.

(B) Households with lower levels of income generally spend a higher proportion of their income on children (see subdivision (4) in this subsection, immediately following).

(4) Percentage decline as income increases

(A) Reason for decline

Economic evidence establishes that the proportion of household income spent on children declines as household income increases. This spending pattern exists because families at higher income levels do not have to devote most or all of their incomes to perceived necessities. Rather, they can allocate some proportion of income to savings and other non-consumption expenditures, as well as discretionary adult goods.

(B) Decline at all income levels

Connecticut's pre-1994 child support guidelines built in a decline in the percentages beginning at the \$750 combined net weekly income level. The new guidelines follow the pattern of the 1994 guidelines and incorporate declining percentages at all levels of combined net weekly income. This approach is consistent with the income shares model, and the degree of decline is based on the most reliable economic indicators. (The decline does not apply for increasing obligor income at very low levels for the reasons discussed in subparagraph (6)(A) in this subsection of the preamble).

(5) Percentage reductions to compensate for new child care contribution

The 1994 guidelines schedule incorporated in the percentages an average amount for child care expenses over the child's minority. The present commission has determined, however, that a fairer approach to handling child care costs is to apportion them between the parents, and add the noncustodial parent's portion to the child support award. (A fuller discussion of this approach is at subdivision (e)(4) in this preamble.) This way, child care costs enter into the child support award determination only for those parents with small children who actually incur such costs. To account for this revised treatment of child care expenses, the Commission has reduced the percentages throughout the schedule, outside of the dark shaded area in which the special rules for low-income obligors apply. The reductions, based on information provided to the 1994 commission by its retained consultant, Policy Studies, Inc., are one and one-half percentage points for one child, and two percentage points for two or more children.

(6) Extension to lower income ranges

(A) Variable self-support reserve

The Commission has reconsidered the concept of the self-support reserve that was included in the 1994 guidelines and determined that the regulations should be amended to provide for at least a minimal support obligation in every case, subject to appropriate deviation criteria. The result of this determination is a variable self-support reserve equal to net income minus the amount of the minimal support order. Thus, for obligors earning less than \$150 per week, the self-support reserve is 90% of net if the obligor is supporting one child, but it ranges between 90% and just over 81% of net if the obligor is supporting two or more children. The exact percentage of retained income decreases as the level of net income and the number of children for whom the obligor is liable increases. At the \$150 net income level and above, the dollar amount of retained income for an obligor with a given number of children increases in approximately even intervals as net income increases, until the net income level is reached at which all obligors, regardless of the number of children, retain between \$174 and \$179 of their net. From that income level on, obligors cease to benefit from the deflated percentages used in the darker shaded area of the schedule, and the income shares model applies. The principle underlying this fundamental conceptual change is that a specific amount of child support should always be ordered, no matter how minimal. The establishment of an order conveys the important public policy that parents should and must support their children, or attempt to do so, even at poverty levels. The lack of a self-support reserve for custodial parents and the advent of time-limited public assistance benefits are further justification for the imposition of a support order in all cases.

(B) Use of noncustodial parent income only

At the lowest income levels, the income of the custodial parent normally has no effect on the amount of the support order. Accordingly, the new schedule is based on noncustodial parent income only at the levels indicated by the dark shading in the schedule. The remainder of the schedule is consistent with the income shares model which uses the combined net income of both parents to arrive at a joint basic current support obligation.

(C) Exception to use of noncustodial parent income only

There are some instances where the percentage indicated in the darker shaded area exceeds that which applies if the combined net income is used. These instances occur, in general, when the custodial parent's income is high relative to that of the noncustodial parent. The reason for this occurrence is that the percentages decline as combined income increases, so that if the combined income is sufficiently high, the applicable percentage can be lower than that which was intended to

benefit the low-income obligor. The obligor income levels where this may occur are indicated by percentage and support amounts in white italics. Where the figures in white italics in the darker shaded area are encountered, the user must consult the schedule to determine whether the percentage applicable to the combined income is lower, and, if so, use that percentage to calculate a basic current support obligation for both parents, in accordance with the usual procedure.

(7) Extension to higher incomes

The 1994 child support guidelines applied only up to \$1,750 combined net weekly income. The commission has extended the applicable range of the guidelines under these regulations to \$2,500 combined net weekly income. This extension is justified by the existence of sufficient family income and expenditure data at these income levels. The Commission is not extending the schedule further at this time, however, because it would have to rely on data from a relatively small sample of families at the higher income levels. As under the former guidelines, above the highest income level in the schedule, courts remain free to fashion appropriate child support awards on a case-by-case basis, provided the amount of support prescribed at the \$2,500 level is presumed to be the minimum that should be ordered in such cases.

(e) Applicability of child support guidelines

(1) Split custody situations

When there is more than one child in common and each parent provides the primary residence of at least one of the children, there is a split custody situation. Under the pre-1994 guidelines, these situations were handled by computing a single obligation for all subject children, and then apportioning the obligation between the parents based on the number of children in the other parent's custody. While this prorating approach was simple and reasonable, it was somewhat inconsistent with the income shares model. Because each additional child costs proportionately less to raise, the basic obligation for two children in a single household, for example, is less than that for two children living in separate households. The split custody adjustment under the pre-1994 guidelines, however, would use the basic obligation for two children in a single household to compute support for two children living separately. To correct this deficiency, the 1994 commission adopted an approach that uses the combined parental income to calculate separate obligations for the children of each household. These obligations are then offset to arrive at a single obligation which one parent pays to the other to correctly apportion their combined income based on a consistent application of the child support guidelines. The present commission continues to endorse this approach to the split custody situation, but has restructured the applicable provision in an effort to clarify and simplify the presentation.

(2) Cases where another child resides with a parent

In an effort to improve the consistency of orders in which the needs of multiple families are involved, the commission has eliminated the deviation criterion for needs of a parent's prior or subsequent children in favor of a deduction from gross income in the amount of an imputed support obligation for a dependent child living with the parent. More information on when this deduction can be used is found at subparagraph (f)(2)(E) in this preamble.

The amount of the allowable deduction is calculated as follows. First, a current support obligation is calculated for all of the parent's children, including those who are the subject of the support determination and those for whom the parent is seeking a gross income deduction. The other parent's income is not considered in this calculation. Second, the resulting obligation is divided by the total number of the parent's children, and the resulting amount is multiplied by the number of qualified children (those for whom the parent is claiming a deduction). This gives the amount of the allowable deduction.

(3) Health care coverage contribution

The commission has determined that clear and adequate health care provisions must be included in the guidelines if they are to serve the best interests of the child. Such provisions are mandated by Title IV-D of the Social Security Act, implementing federal regulations and corresponding state law provisions. All states now have in their child support guidelines some provision for addressing the child's health care needs. The majority of the states do as Connecticut and add the cost of health insurance onto the basic child support obligation. The commission deems this the best approach, and so continues it in these regulations. The "add-on" approach is justified because the cost of health insurance is not included in the average child rearing expenditures reflected in the Schedule of Basic Child Support Obligations. The reason for so excluding such costs is that health insurance premium levels vary widely from person to person and family to family.

While the commission is continuing the "add-on" approach to health insurance costs in these regulations, it is also expanding and clarifying the provisions by adding a new subsection (g) in section 46b-215a-2a. This subsection requires each child support award entered under the guidelines to include a provision for either parent to contribute to the health care coverage of the child. The requirement may be met by an order to name the child as a beneficiary of health insurance carried by or available at reasonable cost to a parent. If such insurance is not available, the order must require application for Husky B or an equivalent government-sponsored plan, as available. The subsection also clarifies that the noncustodial parent's monetary contribution toward health insurance premium costs incurred by the custodial parent is established as part of

the current support order in accordance with the guidelines.

One commenter suggested that the guidelines should have a better provision for addressing unreimbursed medical costs because they tend to overburden the custodial parent. The commission agreed and so included in the new health care provisions a method for apportioning unreimbursed medical expenses that exceed \$100 per year per child between the parents. The \$100 figure represents an average amount included in the schedule to cover ordinary medical expenses. The apportionment is based on the parents' respective disposable incomes after deduction of the current support order amount from the noncustodial parent's net income, and the addition of such amount to the custodial parent's net income. The commission deems this the fairest way to apportion such expenses because it bases the parents' contributions on the actual funds available to them after child support monies have changed hands. Low-income obligors are not exempt from this provision. The commission continues, however, to include unreimbursed medical expenses as a reason for deviating from presumptive support amounts where such expenses are found to be extraordinary and to exist on a substantial and continuing basis.

(4) Child care contribution

The commission has included a subsection (h) in section 46b-215a-2a of the regulations to require the noncustodial parent to reimburse the custodial parent for a portion of the child care costs incurred on behalf of the subject child. This approach is justified, in the commission's view, because the cost of child care varies widely depending on family circumstances. Provision for a separate contribution therefore permits the court to tailor the child support award to those circumstances. Since an average amount for child care expense over the child's minority was included in the Schedule of Basic Child Support Obligations adopted by the 1994 commission, however, the commission has reduced the percentages to compensate for this new treatment of the day care expense. See subdivision (d)(5) in this preamble for more information concerning the percentage reductions.

The costs subject to noncustodial parent reimbursement must be reasonable and necessary for the custodial parent to maintain employment. They also must not exceed the level required to provide quality care from a licensed source. The noncustodial parent's contribution is set the same way as unreimbursed medical expenses are apportioned – on the basis of the parents' respective disposable incomes after deduction of the current support order amount from the noncustodial parent's net income, and the addition of such amount to the custodial parent's net income. The commission deems this the fairest way to apportion the child care costs because it is based on the actual funds available to the parents after child support monies have changed hands. Low-income obligors are exempted from a child care contribution.

(f) Income determination

The regulations continue to use the parents' net income, defined as gross income minus allowable deductions, as a basis for calculating the child support obligation. This subsection describes and explains the principle changes to the gross income inclusions and exclusions, and the allowable deductions, included in the new guidelines.

(1) Gross income

(A) Inclusions

Users of the guidelines should note that gross income includes all kinds of earned and unearned income not specifically excluded. The list of inclusions is illustrative and not exhaustive.

(i) Overtime and additional employment

Several public commenters suggested a limitation on the number of hours of overtime pay or earnings from second jobs that should be considered in setting the child support award. They argued that including all employment income discouraged noncustodial parents from working more, or prevented them from reducing their hours to maintain frequent contact with their children.

Inclusion of at least some parental income earned for hours worked in excess of 40 per week is justified, in the commission's view, by the principle that the children should share equitably in the income of their parents. The commission agrees with the commenters, however, that some limitation on the number of hours considered is appropriate. It has accordingly established 52 total paid hours per week for regular, overtime, and additional employment as the maximum to enter into the calculation of gross income for child support purposes.

(ii) Social security dependency benefits

One public commenter noted that the guidelines definition of gross income should include the social security dependency allowance to be consistent with the ruling in a recent Connecticut Supreme Court case. The commission agreed and accordingly added to the gross income inclusions social security dependency benefits on the earnings record of an insured parent that are paid on behalf of a child whose support is being determined. The user should note that the adjustment whereby such benefits are effectively deducted from the noncustodial parent's current support obligation is continued in these regulations.

(iii) Gifts, prizes and winnings

The commission has determined that gifts, prizes, and lottery and gambling winnings that are received on a regularly recurring basis should be included in the parents' gross income for the purpose of determining the child support award. Regularly recurring contributions or gifts of a spouse or domestic partner, on the other hand, are specifically excluded from gross income, but may be grounds for a deviation from presumptive support amounts in the limited circumstances discussed in subdivision (h)(2) of this preamble.

(iv) Additional items and clarifications

The following items, in addition to those discussed in the preceding paragraphs (i)-(iii), were added as gross income inclusions to provide further specificity for users of the guidelines:

- profit sharing, deferred compensation and severance pay
- military personnel fringe benefit payments
- strike pay and disability insurance benefits
- education grants (including fellowships or subsidies that are available for personal living expenses).

The following items were clarified:

- In-kind compensation now includes amounts "in addition to" as well as "in lieu of", *both salary and wages*.
- Unemployment and workers' compensation benefits are grouped with the new strike pay and disability insurance benefits under the category of "benefits received in place of earned income", to include but not be limited to the enumerated items.
- Business expenses allowed to be deducted from self-employment earnings are now characterized as "reasonable and necessary" rather than "legitimate".

(B) Exclusions

(i) Earned income tax credit

Two public commenters proposed excluding the federal earned income tax credit from gross income, since including it would undermine its purpose to benefit low-income wage earners. The commission agreed and accordingly added the earned income tax credit to the list of gross income exclusions.

(ii) Income and gifts of a spouse or domestic partner

While one public commenter did suggest considering the income of a new partner in setting child support award amounts, the commission does not believe it is ever appropriate to factor the income of a new partner into the calculation of support for a child who is not the legal dependent of such partner. Doing so would not only lead to extremely complex calculations, it would impose an obligation on such person for which there is no legal basis under Connecticut law.

Likewise, the commission deems it appropriate to exclude from gross income the regularly recurring contributions or gifts of a spouse or domestic partner. It does so after fully considering the decision in a recent Connecticut Supreme Court case in which the court found it appropriate to include in a parent's gross income the contributions made by his domestic partner toward his living expenses. The commission believes that the principles enunciated in that decision are best embodied in the form of a deviation criterion. In this connection, see subdivision (h)(2) in this preamble.

(2) Allowable deductions

(A) Income taxes

One public commenter suggested that actual tax liability should be considered in determining income for child support purposes. The commission agreed and accordingly amended the definition of allowable deductions to include “federal, state, and local income taxes, based upon all allowable exemptions, deductions, and credits”. The 1994 guidelines differed in their treatment of the deduction for income taxes by basing it only on the amounts withheld pursuant to the appropriate exemptions. The expanded definition, in contrast, permits the deduction to be based not only on the allowable exemptions, but also on any deductions and credits that may be reflected on the parents’ income tax returns.

(B) Medicare tax

The commission added a deduction for Medicare taxes to reflect the separate consideration of Medicare and social security taxes in many payroll systems, and to clarify its intent to include this mandatory deduction as an allowable deduction from gross income in the context of child support award determinations.

(C) Day care costs

This deduction has been eliminated due to the inclusion of a child care contribution component in the child support award. See subdivision (e)(4) in this preamble for a discussion of the child care contribution.

(D) Other alimony and child support awards

Two public commenters suggested that the deduction from gross income for “court-ordered alimony and child support payments” should be clarified to indicate whether or not both current support and arrearage payments are included as deductions. The commission agreed and accordingly has limited the allowable deduction for court-ordered alimony and child support awards to payments on non-arrearage amounts only. The commission by this amendment attempts to ensure that a child who is the subject of a subsequent support order is not deprived of an appropriate level of support due to a parent’s non-payment of a prior support order.

The commission also has clarified its intent to allow a deduction for other alimony and child support awards only to the extent of payment on such awards by eliminating the option for the court to disallow the deduction if it finds that payments are not being made.

(E) Imputed obligation for qualified child

The 1994 guidelines permitted a deviation from presumptive support amounts in specified circumstances based on the needs of a parent’s prior or subsequent children. In an effort to improve the consistency of orders in which the needs of multiple families are involved, the commission has eliminated this deviation in favor of a deduction from gross income in the amount of an imputed support obligation for a qualified child. A

qualified child is defined as one other than the subject of the support determination who resides with the parent, is dependent on the parent for support, and for whom the parent has not claimed a deduction for court-ordered support payments. The procedure for determining the amount of the imputed support obligation is discussed in subdivision (e)(2) of this preamble. The deduction may be taken in the context of an initial support determination or when a parent is *defending against* a proposed modification. It can *not* be taken by a parent *seeking* a modification of an existing child support award.

(g) Arrearage guidelines

Section 46b-215a of the Connecticut General Statutes requires the development of guidelines for orders of payment on arrearages. Such guidelines are to be based on the obligor’s ability to pay. The commission interprets the statute to apply only to the determination of periodic payments, and so does not address in the regulations the determination of lump sum payments, which determination remains subject to the discretion of the judge or family support magistrate. This subsection of the preamble explains the commission’s rationale for several aspects of the arrearage guidelines.

(1) Simplicity

The commission believes that the arrearage guidelines should be fairly simple to understand and apply, and accordingly continues to base the arrearage payment on a percentage of the current support order.

(2) Percentage of current support

The commission determined that twenty percent (20%) of the current support order continues to be a reasonable percentage to apply toward the reduction of accumulated child support arrearages in most cases. It has accordingly retained this percentage as the general rule, subject to the limitation described in subdivision (4) in this subsection of the preamble.

(3) Arrearage payment when there is no current support order

When there is no current support order, a current support obligation is imputed for the child for whom the arrearage is owed, and the arrearage payment is established as a percentage of that imputed obligation. The applicable percentage is:

(A) twenty percent if the child for whom the arrearage is owed is an unemancipated minor, and

(B) fifty percent if the child for whom the arrearage is owed is deceased, emancipated, or over age eighteen.

The twenty percent amount was selected to be consistent with the general rule on the grounds that in the absence of a current support order, the obligor is either supporting the child or would be obligated to do so under state law. The fifty percent amount was selected because in the situations described, the obligor’s current support obligation will have ceased, so that the ability to repay an arrearage is enhanced.

(4) Limitation on amount of arrearage payment

Basing the arrearage payment on the current support order automatically introduces a test of the obligor's ability to pay. Nonetheless, the commission recognizes that further protection is required to assist obligors in meeting their own self support needs. It has accordingly retained in these regulations the provision whereby no more than 55% of an obligor's net income may be taken for the total of all current support and arrearage payments.

(5) Special rule for low-income obligors

The arrearage guidelines provide for a weekly arrearage payment for low-income obligors equal to the greater of ten percent (10%) of the weekly current support order, or one dollar (\$1) per week. The lower percentage than that of the general rule is intended to assist such obligors in meeting their own self support needs while at the same time conveying the important message of the primacy of child support obligations.

(6) Arrearages owed to the state and a custodial parent

The commission determined that a clarification was warranted with respect to the handling of Title IV-D child support cases in which arrearages are owed both to the state and to a custodial parent. The 1994 guidelines provided that a monthly amount of \$5 be allocated to the state's arrearage in such cases, and the balance of the payment allocated to the family. Changes in federal and state laws since adoption of the previous guidelines dictate now, however, that all payments in Title IV-D cases be made to a centralized state disbursement unit and distributed in accordance with federal mandates. The commission accordingly has reworked the provisions applicable to these cases and provided that a single arrearage payment order shall enter under which payments shall be distributed in accordance with the federal requirements. Under the new guidelines, the order shall be payable to the custodial parent until such parent's arrearage is satisfied, and only then payable to the state.

(7) Special treatment for obligor living with child

The authorizing statute calls for special consideration where the obligor lives with the child when the arrearage order is entered. Accordingly, the guidelines require only a minimal weekly payment of one dollar (\$1) where such obligor's gross income does not exceed 250% of the poverty guideline for the obligor's household size. Where the obligor's income exceeds this amount, the guidelines require a payment of 20% of the imputed support obligation.

(h) Deviation criteria

(1) In general

The 1994 guidelines contained separate sets of criteria for deviation from the child support guidelines and the arrearage guidelines, respectively. The commission,

in these regulations, has combined all deviation criteria in one section, and made them equally applicable to all components of the child support award.

The commission also has clarified and reduced the number of deviation criteria, where warranted, to better serve the stated purposes of ensuring consistency and promoting settlements. It has done so with due regard to the best interests of the child, and with reference to case data reported from the automated system maintained by the state's Title IV-D child support agency. In this regard, see especially subdivisions (3), (5), (6) and (7) in this subsection of the preamble.

(2) Contributions or gifts of a spouse or domestic partner

The commission was clear in excluding the income and regularly recurring contributions or gifts of a spouse or domestic partner from the count of gross income for child support award determinations. (See paragraph (f)(1)(B)(ii) in this preamble for a discussion of this provision.) The commission has determined, nonetheless, that the regularly recurring contributions or gifts of a spouse or domestic partner may, in limited circumstances, constitute a financial resource justifying deviation from presumptive support amounts. Such circumstances are limited to those in which a parent has either (A) reduced his or her income or (B) experienced an extraordinary reduction of his or her living expenses as a direct result of such contributions or gifts.

(3) Needs of a parent's other dependents

The commission received numerous comments on the guidelines treatment of situations in which a parent subject to a support determination has an obligation to support other individuals not a party to such determination. The commission agreed with several public commenters that the handling of multiple family situations needed further clarification. Accordingly, the commission amended the regulations by adding an imputed support obligation for a qualified child to the list of allowable deductions from gross income. (See subparagraph (f)(2)(E) in this preamble for a discussion of that deduction.) In addition, the commission amended the deviation criteria for needs of other dependents by:

(A) deleting the deviation for children of prior unions residing with the obligor, or for whom the obligor is making verified payments, and replacing it with a deviation for resources available to a qualified child for whom the allowable deduction was taken;

(B) deleting the deviation for children of subsequent unions for whom there is no support order, and replacing it with a deviation for verified support payments made by a parent for his or her dependent child not residing with such parent; and

(C) removing the "subsequent" limitation from the deviation for the significant and essential needs of a spouse.

(4) Shared physical custody

The commission has amended the guidelines regulations to improve the consistency of orders involving shared physical custody. It has clarified and expanded the definition of shared custody to emphasize the guidelines' focus on physical rather than legal custody, included visitation within the definition's parameters, and provided limited quantitative guidance for the trier of fact.

The quantitative guidance consists of a requirement that a finding of shared physical custody be made only where the noncustodial parent exercises visitation or physical care and control of the child for periods *substantially in excess of* a normal visitation schedule. The commission recognizes that a normal visitation schedule is typically two overnights on alternate weekends; alternate holidays; some vacation time; and other visits of short duration, which may occasion an overnight stay during the week. The intent of this definitional change, therefore, is to permit deviation from presumptive support amounts only when the noncustodial parent exercises visitation or physical care and control of the child for periods that substantially exceed this typical schedule. A further aspect of the definitional change which is intended to provide some minimal quantitative guidance is the clarifying statement that an *equal* time-sharing is *not* required for a finding of shared physical custody. Under this new definition of shared physical custody, courts and other officials will continue to determine what precise level of sharing is sufficient to warrant a deviation from presumptive support amounts. The commission has avoided a "bright-line" definitional test as well as a formula approach to shared custody situations to discourage disputes over time-sharing as a means of impacting support amounts. The commission believes that the approach adopted in these regulations leaves sufficient room for the exercise of judicial discretion while at the same time providing a measure of predictability for the parties.

The commission has also amended the shared custody deviation criterion to permit a deviation only when a shared physical custody arrangement either substantially reduces the custodial parent's expenses for the child or substantially increases such expenses for the noncustodial parent, and when sufficient funds would remain for the parent receiving support to meet the basic needs of the child after deviation. The commission believes that this approach will result in a fairer handling of visitation and custody issues by the courts, insofar as such issues are related to child support award determinations.

(5) Day care costs

The commission has eliminated the deviation criterion for reasonable work-related day care costs that was included in the 1994 guidelines in view of the commission's decision to include a child care contribution in the

child support award. See subdivision (e)(4) in this preamble for a discussion of the child care contribution.

(6) Low-income obligor and custodial parent

The commission has eliminated the criterion that permitted the court to deviate from the presumptive support amount prescribed for a low-income obligor if the custodial parent is working and earning less than or the same as the obligor. The reason for eliminating this criterion is the extension of the *Schedule of Basic Child Support Obligations* to the lower income ranges in which low-income obligors previously benefited from a minimum self-support reserve. See subparagraph (d)(6)(A) in this preamble for an explanation of this change.

(7) Substantially increased work hours

The commission has eliminated the deviation criterion for increased work hours due to the hourly wage limitation now built into the gross income inclusions. See paragraph (f)(1)(A)(i) in this preamble for a discussion of this limitation.

(8) Additional changes

The commission made the following additional changes to the deviation criteria for purposes of clarity and consistency with other guidelines provisions:

(A) It substituted the term "presumptive support amounts" for the term "guidelines amount" throughout to reflect the inclusion of the deviation criteria as an integral component of the child support and arrearage guidelines, and to maintain consistency with usage of the new term "presumptive support amounts" throughout the guidelines.

(B) It eliminated references to the court or the trier of fact as the sole agent to apply the deviation criteria with the intent to discourage any implication that administrative agencies may be precluded from applying such criteria in the child support award determinations for which they are responsible.

(C) It amended the deviation for parental support being provided to a minor obligor by deleting the language limiting its applicability to the establishment of a self-support reserve of less than \$145 per week.

(D) It expanded the extraordinary parental expense deviation for unreimbursable medical expenses to include disability-related expenses.

(i) Effective date

The commission selected an effective date of August 1, 1999 to provide sufficient time for those who are involved in the determination of child support amounts within the state to become familiar with the guidelines prior to their required implementation.