

## MEMORANDUM

To: Child Support Commission

From: Katie Guevara and Jill Radwin

Re: Theoretical Support Orders

Date: 11/28/05

Many parents are responsible for the care and support of children other than the ones at issue. Children who are not covered by a court order of support are usually referred to as “additional dependents.” To account for a parent’s expenses for supporting additional children in which there is no order of support, the Legislature in 2005 incorporated much of Tennessee’s “Credits for Qualified Other Children” provision into Georgia’s revised child support guidelines. However, there were some fundamental differences between the two states’ provisions. In Tennessee, the adjustment is a mandatory one to the gross income of whichever parent has the additional children. In Georgia, it was set forth as an adjustment to gross income at either the court’s discretion or as a deviation from the Presumptive Amount of Child Support. Further, utilizing some of Tennessee’s provisions and not others, left this provision found under “Adjustments to Gross Income” vague and confusing. Thus, the Statute Review Subcommittee decided to ask the Legislature to re-review this provision. To aid the Legislature, we have researched how this provision is set forth in the various other states and have provided a recommendation for the Commission, and in turn, the Legislature to consider.

### Survey of Other States Models to Adjust Additional Dependents

Dr. Jane Venohr of Policy Studies, Inc. writes in a 2004 article that “the most common formula used to adjust for additional dependents is to subtract a dummy (*Theoretical Support*)

order from the parent’s income; that is, a theoretical support order based on the guideline table is calculated for additional dependents. To calculate the dummy order, most state guidelines will only use the income of the parent, but some state guidelines will consider the income of the child’s other parent (*e.g.* the parent’s new spouse or partner).” Dr. Venohr also writes “[S]ome states multiply the dummy order by 50 or 75%. [Note, no state other than Georgia multiplies the order by 100%.] Without the multiplier, the children of the dummy order receive a greater share of the parent’s income than the children for whom support is being determined.” The following chart was provided by Policy Studies, Inc. (“PSI”), and updated by Katie Guevara, the Commission’s legal intern during the Fall of 2005. Interestingly, the term “dummy order” or Theoretical Support Order suggests that the calculation should be adjusted when adjusting one’s gross income rather than as a deviation. As a “dummy order,” the Qualified Other Children Credit appears to be equal to that of a Pre-Existing Order. Please note that the chart below reflects both Pre-Existing Orders and Qualified Other Children in the Home Credit.

**Treatment of Additional Dependents Not Covered by Court Orders**

State	Treatment	Permissive/ Presumptive	Limitations & Special Considerations
Alabama	Dummy Order	Permissive	
Alaska	Dummy Order	Permissive	Dummy order for prior born children. Subsequent children are generally not considered but may deviate.
Arizona	Dummy Order	Permissive	Deduction is presumptive if children live with the parents and permissive if children don’t live with parent.
Arkansas	Deviation		
California	Deviation, Dummy Order		Adjustment may not exceed support amounts for children in the instant case.
Colorado	Dummy Order	Presumptive	Applies for prior born children only.
Connecticut	Pro-Rated Basic Support	Presumptive	Presumptive adjustment applies to children in the home. Children outside the home may warrant a deviation.
Delaware	Dummy Order	Presumptive	For the children not living with the parent, a pattern of support must be established.
D.C.	Pro-Rated	Presumptive	Presumptive adjustment applies to children in the

	Basic Support		home of the NCP. Children outside the home or CP's other children may warrant a deviation.
Florida	Deviation		The existence of subsequent children affects whether secondary income is considered in an upward modification.
Hawaii	Deviation		
Idaho	Dummy Order	Presumptive	For children not living with the parent, a pattern of support must be established.
Illinois	Not addressed		
Indiana	Dummy Order	Presumptive	Applies to children in the home when order is established, does not apply to subsequent children in modifications.
Iowa	Set amount for # of children	Presumptive	OR a parent can deduct actual amount paid in support.
Kansas	Pro-Rated Basic Support	Presumptive	Only applicable to the NCP, can't be granted to the CP or shared custody cases. Discretionary if award amount is below poverty.
Kentucky	Dummy Order	Presumptive	Prior born children only. Subsequent children are not addressed in the guidelines.
Louisiana	Deviation		
Maine	Dummy Order	Presumptive	Applies to the NCP's children in the home only. Actual amounts for children outside the home may be subtracted.
Maryland	Deviation		
Massachusetts	Deviation		
Michigan	50% Dummy Order	Presumptive	Differs for biological/adopted children and step-children.
Minnesota	Deviation		Subsequent children are generally not to be considered.
Mississippi	Adjustment to Income	Permissive	Amount is discretionary.
Missouri	Dummy Order	Presumptive	Must be in the parent's primary physical custody/away at school.
Montana	Dummy Order	Presumptive	
Nebraska	Adjustment to Income	Permissive	Amount is discretionary.
Nevada	Deviation		
New Hampshire	Deviation		
New Jersey	Dummy Order	Presumptive	Adjustment must be requested by parent and income of the other parents to the secondary family must be provided.
New Mexico	Dummy Order	Presumptive	Generally not allowed for subsequent children. Adjustment applies to children in the parent's custody.
New York	Deviation		Applicable only if the resources available to support the additional dependents are less than the resources available to support the children for whom support is

			being determined.
North Carolina	50% Dummy Order	Presumptive	For children not living with the parent, a pattern of support must be established.
North Dakota	Adjustment to all orders— Dummy Order	Permissive	Two support awards are calculated: one without a deduction of the dummy order, and one deducting the dummy order from the obligor’s income. The support order is set at the average of the two calculations.
Ohio	Formula based on federal tax exemption	Presumptive	Any child support received for the additional dependents will be offset against the amount deducted from the parent’s income.
Oklahoma	Adjustment for subsequent children is not allowed		Child support orders for prior born children may not be modified for the purpose of providing support for later born children.
Oregon	Dummy Order	Presumptive	Does not apply if income is imputed to a TANF recipient. If there is an order for arrears only, the adjustment is not allowed.
Pennsylvania	Proportionate reduction to all orders	Permissive	The total of all obligations (excluding add-ons) must exceed 50% of the obligor’s net income for a reduction.
Rhode Island	50% Dummy Order	Presumptive	Dummy order considers the other parent’s income. If the other parent is unable to contribute, the court may deduct 100% of the dummy order.
South Carolina	75% Dummy Order	Presumptive	
South Dakota	Deviation		
Tennessee	75% of Dummy Order	Presumptive	Adjustment varies by whether children live with the parent and whether the other parent can support the additional children.
Texas	Pro-Rated Basic Support	Presumptive	Adjustment applies to all of the obligor’s children, regardless of court order or where the children live.
Utah	Deviation		
Vermont	Dummy Order	Presumptive	
Virginia	Dummy Order	Presumptive	May not be applied if it impairs the CP’s ability to provide basic necessities for the child.
Washington	Deviation		All income sources, child support paid, and child support received must be disclosed if the court deviates.
Wisconsin	Dummy Order	Presumptive	Obligations are prioritized by date or birth or court order.
Wyoming	Deviation		

## Formulas for Adjustment—

As evidenced by the chart, supra, there are several different methods by which to adjust the child support order in consideration of additional dependents. The following states provide a sample of how to accommodate the financial burden of supporting additional dependents in a calculation for child support.

- Deviation → Wyoming
  - Within Wyoming’s list of possible deviations in their child support guidelines statute, a deviation is allowed for “[t]he presence of children of the marriage in the parent’s home and its impact on the earnings of the parent.” The guidelines, though, do not provide a method or formula for accounting for other children not covered by a child support order. WYO. STAT. § 20-2-307 (2005).
- Formula → Indiana
  - One suggestion is to actually incorporate a formula similar to what is used by the State of Indiana. Indiana provides an actual mathematical formula in their Child Support Guidelines [Ind. Child Supp. Rule Guideline 3 (2005)], stated below:

In determining support orders, an adjustment should be made in arriving at Weekly Gross Income of the parents in instances where wither or both have natural or legally adopted children who were born or adopted subsequent to the prior support order. The adjustment should be computed as follows:

Step 1: Determine the number of natural or legally adopted children born or adopted by the custodial and/or non-custodial parents subsequent to entry of the present support order, and who are living in the respective parent’s household.

Step 2: Adjust the Weekly Gross Income of each parent according to the number of natural or legally adopted children in the household, by multiplying their Weekly Gross Incomes by one of the following percentages and entering the product on line 1 of the worksheet.

The applicable percentages are derived form the average percentages calculated by using the Guidelines Schedules for Weekly Support Payments.

When there is one natural or legally adopted child born or adopted subsequent to the present support order living in the custodial or non-custodial parent's household, multiply Weekly Gross Income by .935. The factor of .935 is derived by dividing the average base support percentage for one child (13.1%) by 2 and then subtracting that number (6.5) from 100. When there are two such children, multiply by .903; when there are three, multiply by .878; when there are four, multiply by .863; and when there are five, multiply by .854.

The appropriate factors are:

1 child	$.935 = 100 - (13.1\% \div 2)$
2 children	$.903 = 100 - (1.5 \times 6.5)$
3 children	$.878 = 100 - (1.25 \times 9.75)$
4 children	$.863 = 100 - (1.1.25 \times 12.19)$
5 children	$.854 = 100 - (1.0625 \times 13.71)$

EXAMPLE: A non-custodial parent has a Weekly Gross Income, before adjustments, of \$ 500.00. The custodial parent has a Weekly Gross Income, before adjustments, of \$ 300.00. In considering a modification request, an adjustment should be made to the parents' respective Weekly Gross Incomes for the two (2) natural children born to the non-custodial parent since entry of the present support order and the adopted child of the custodial parent, adopted since entry of the present order. The respective Weekly Gross Incomes of the parties of be entered on line 1 of the worksheet would be as follows:

Non-custodial	$\$ 500 \times .903 = \$451.50$ , and
Custodial	$\$ 300 \times .935 = \$280.50$ .

- Pro-rated Basic Support → District of Columbia
  - Either parent shall receive credit for additional dependent children living in the parent's home for whom the parent owes a legal duty of support. Using only the income of the parent with the additional children in the home, the basic child support obligation for the number of additional children living with that parent (from the schedule of Basic Child Support Obligations in subsection (e)(2)) is determined for that parent. This figure is multiplied by 75% and the resulting amount is subtracted from that parent's gross income before the child support obligation is computed in the instant case.

### Additional Considerations

Additional considerations applying the theoretical support order must also be reviewed.

Most states only use the income of the parent of the additional dependents to calculate the dummy order; yet, some states use the income of the other parent when calculating for additional dependents. Another consideration is whether 100, 75, or 50 percent of the dummy order should be subtracted. Subtracting 100 percent of the dummy order directs more of the parent's income to the additional dependents than the children for whom support is being determined.

Subtracting 75 percent of the dummy order tends to equalize support between the two sets of children. (The 75 percent is arrived at mathematically). Conversely, subtracting 50 percent of the dummy order appears more equitable and intuitive (i.e., the other parents of the additional children provides the other half), but actually directs more of the parent's income to the children for whom support is being determined than the additional dependents.

- Example: Tennessee's Dummy Order
  - TENN. COMP. R. & REGS. R. 1240-2-4-.04 (2005).

Adjustments to Gross Income by Credits for Other Qualified Children Not Subject to Pre-existing Tribunal-Ordered Support.

(a) In addition to the adjustments to gross income for self-employment tax and for pre-existing orders provided in 1240-2-4-.04(4) and (5) above, credits for either parent's other children, who are qualified under this subparagraph, shall be considered by the tribunal for the purpose of reducing the parent's net income (or adjusted gross income), or as a reason for deviation. Credits shall be considered for a qualified child:

1. For whom the parent is legally responsible; and
2. The parent is actually supporting; and
3. Who is not subject to a pre-existing order for child support; and
4. Who is not before the tribunal to set, modify, or enforce support in the case immediately under consideration.

(b) Children for whom support is being determined, step-children, and other minors in the home that the parent has no legal obligation to support shall not be considered in

the calculation of this credit.

(c) To consider a parent's qualified other children for credit, a parent must present documentary evidence of the parent-child relationship to the tribunal. By way of example, and not by limitation, documentary evidence could include a birth certificate showing the child's name and the parent's name, or a court order establishing the parent-child relationship.

(d) Use of Credits.

1. Credits against income are available for all of the parent's other children who meet the qualifications in subparagraph (a) above including, but not limited to: a child being supported under a subsequent order; or a child being supported in the parent's home; or a child being supported who does not live in the parent's home.

2. Credits against income for other qualified children are calculated and recorded on the Credit Worksheet and then entered on the Child Support Worksheet for the purpose of reducing the parent's gross income on the Child Support Worksheet. However, except for self-employment taxes paid, no other amounts are subtracted from the parent's gross income on the Credit Worksheet when calculating a theoretical child support under this paragraph (6).

(e) Priority of Support Obligations.

In multiple family situations, the adjustments to a parent's gross income under this paragraph (6) shall be calculated in the following order:

1. Pre-existing orders according to the date of the initial order under Rule 58, Tennessee Rules of Civil Procedure, in each case pursuant to paragraph (5).

2. After applying the deductions on the Child Support Worksheet for pre-existing orders, if any, in paragraph (5) above, the credit for a parent's qualified other children may be considered using the procedure set forth in subparagraph (f) below.

(f) Calculation of Credit for Qualified Other Children.

1. "In-Home" Children.

(i) To receive a credit for qualified other children whose primary residence is with the parent seeking credit, but who are not part of the case being determined, the parent must establish a legal duty of support and that the child resides with the parent more than fifty percent (50%) of the time.

(I) By way of example, and not by limitation, documents that may be used to establish that the parent and child share the same residence include the child's school or medical records showing the child's address and the parent's utility bills mailed to

the same address.

(II) Children may be deemed to be living in the parent's household though living away from the parent to attend school [Kindergarten through grade 12].

(ii) The available credit against gross income for either parent's qualified "in-home" children is up to seventy-five percent (75%) of a theoretical support order calculated according to these Guidelines, using the Credit Worksheet, the parent's gross income less any self-employment taxes paid, the total number of qualified children living in the parent's home, and the Schedule.

In comparison, note that currently Georgia subtracts 100% for a two parent household and 50% for a single parent household.

### Recommendation

In reviewing the other states, the Legislature should make an election as to whether this adjustment will be at the Court's discretion as an adjustment of gross income or as a deviation. Basically, the Legislature will need to determine if the adjustment should be made when adjusting one's gross income or made later as an adjustment to the Presumptive Amount of Child Support. Our recommendation is that it should be a permissive adjustment to gross income at the same time adjustments are made regarding Pre-Existing Child Support Orders. This fulfills the true intent of a "Theoretical Order" and ensures that Qualified Other Children are treated similarly to children under a Pre-Existing Order. Also, it is important to continue this at the Court's discretion rather than as a mandatory adjustment to ensure that Qualified Other Children are not treated better than one's other children. For example, the Qualified Other Children may have a two parent household and not be a financial burden or pose an economic hardship to the Parent in the case before the court. In a case such as this, the Parent would not be in need of a credit.

Additionally, Georgia should consider switching to the more equalizing 75% such as the theoretical support order method used by the State of Tennessee and many other states. As stated, either the 100% or 50% adjustment brings an unfair advantage to either the Qualified Other Children or the other children. Further, Georgia should also consider eliminating the provision that the stepparent or Parent's new partner's income be considered when calculating the Theoretical Order. Under Georgia law, the stepparent's income is not considered within the child support calculation. Further, this newly revised statute is very clear elsewhere that only the Parents' income should be considered. Thus, it would be inconsistent to calculate the stepparent's income into this equation.

Finally, to allow this section to read more clearly and less vague, we suggest that Georgia use statutory language similar to that found in District of Columbia:

(C) THEORETICAL SUPPORT ORDERS. In addition to the adjustments to Gross Income for self-employment taxes provided in subparagraph (A) of this paragraph and for Preexisting Orders provided in subparagraph (B) of this paragraph, credits for either Parent's other Qualified Child living in the Parent's home for whom the Parent owes a legal duty of support may be considered by the Court for the purpose of reducing the Parent's Gross Income. To consider a Parent's Other Qualified Children for determining the Theoretical Child Support Order, a Parent must present documentary evidence of the Parent-Child relationship to the Court. Adjustments to income pursuant to this paragraph may be considered in such circumstances in which the failure to consider a Qualified Child would cause substantial hardship to the Parent. If the Court in its discretion, decides to apply the Qualified Child adjustment, only the income of the Parent with the additional children in the home shall be used. In making the adjustment, the Basic Support Obligation of the Parent for the number of additional children living with that

parent is determined for that Parent. The figure is multiplied by 75% and the resulting amount is subtracted from that parent's gross income and recorded on Schedule B—Adjusted Income when making the other adjustments to Gross Income as provided in this paragraph.

[Please note that original language or strike throughs not used in this revised definition have not been incorporated into this revised definition.]