

DIRECTOR
Kathleen E. Maher



ADMINISTRATIVE DIRECTOR
Bernadette S.N. Chargualaf

PUBLIC DEFENDER SERVICE CORPORATION
(Kotperasion Setbision Defensot Pubbleku)

GOVERNMENT OF GUAM
200 Judicial Center Annex ♦ 110 West O'Brien Drive
Hagåtña, Guam 96910
Tel: (671) 475-3100 ♦ Fax: (671) 477-5844

STAFF ATTORNEYS

Richard S. Dirks
Jane L. Kennedy
Terrance A. Long
Loretta T. Gutierrez-Long
Pablo M. Aglubat
Raymond B. Ilagan
Stephen P. Hattori
Tricia R.S. Ada
Dominic S Terlaje

June 3, 2005

Senator Ray Tenorio
28th Guam Legislature

RE: REVISED CHILD SUPPORT GUIDELINES ELIMINATING SUPPORT IN JOINT CUSTODY SITUATIONS

Dear Senator Tenorio:

I will not be able to testify myself at the hearing before the legislature June 3, 2005 as I have a meeting at the Department of Mental Health and Substance Abuse concerning the community needs of our mentally ill clientele. I will try to make sure a representative of our affected clientele is present.

I have reviewed the revised guidelines for child support and find it very disturbing that they do not apply to joint and equal custody situations. This encourages litigation between parents who are already in an emotionally and psychologically fragile state due to the split up of a relationship. Clearly one parent is going to want sole custody if there is a presumed guideline child support amount to be received only if one parent has custody.

The preferred status when parents split in Guam is to share the children and have joint and equal custody whenever possible as outlined in 19 G.C.A. These new guidelines encourage litigation and discourage the kind of joint custody most beneficial to the children. The party (example-father) who can afford a lawyer can insist on a joint custody order to benefit himself and then dump the children on the mother most of the time who may be on Public Assistance or underemployed and not able to afford day care. In this scenario, the father would pay nothing under the guidelines.

Please review the draft introduction and basis for calculating child support under the guidelines and you will be amazed that these guidelines don't apply to joint custody and are designed to prevent redistribution of wealth. I thought the whole idea of child support was to keep the children supported at the level they would have been had the parties remained together. The poorer party would then be the less popular parent to the children, since the parent with more money would be able to buy the children more material things. This isn't right.

I suggest you review these administrative guidelines for violation of local family law statutes and federal law. I know this issue came up about four years ago when I was the Child Support Office -IV-D Director, and our federal oversight contact was very concerned. The child support office has a duty to see that children are fairly supported and collect reimbursement for Public Assistance expended in behalf of dependant children.

I would note that the current guidelines apply to shared custody situation and do not provide a financial incentive for sole custody orders. Thus the current guidelines discourage litigation.

Sincerely,
Kathleen E. Maher
Public Defender

June 3, 2005

Submitted to the Guam Legislature on June 3, 2005 by Kristi Dunning, 144 Lirio Ave., Barrigada GU.

I would like to address the issue of child support when it involves a joint and equal custody arrangement.

The Attorney Generals Office is proposing that in this situation, the courts will determine the child support award. My question is this: Who will pay for these court costs? I am assuming that the divorcing parents will be the ones paying for these legal services.

Is this fair to these parents to give them no guidelines for child support whatsoever – instead leaving them no option but to fight it out in court? This is an outrage. Legal fees run anywhere from \$150 - \$300 an hour, and this new bill is saying that the parents involved have no legal option but to hire attorneys, go to court and have a judge make the final determination? These parents will be left with enormous legal fees and emotionally exhausted, and in this situation it is the parent who has the most financial resources who will be the victor. Is this the way a democracy is supposed to run? The one with the most financial resources will win? Is that what's in the best interest of the children involved?

I have gone through this route and have spent tens of thousands of dollars in legal fees. I cannot afford this amount, I am a teacher for the public schools, but I was forced to get involved with the legal system because of a lack of proper guidelines. Once I became involved, my attorney kept sending letter after letter, scheduling meeting after meeting and before I knew it I was being billed for tens of thousands of dollars.

I ask you again – who will benefit from this proposal that child support for a joint and equal custody arrangement will only be determined in the courts? Attorneys will be winners with this arrangement, and all the other parties involved will be financial losers.

I have three very questions that need to be addressed:

1. Why cannot a guideline for child support be established for a joint and equal custody arrangement as well?
2. Why cannot a guideline be determined for ALL income levels, because there are people on Guam who make upwards of one million a year and more.
3. What if one parent makes \$30,000 a year and the other parent makes \$800,000 a year. How does the parent with a \$30,000 a year income have a chance in court?

I ask this legislature to look into this bill much more thoroughly, because lives can be ruined if you don't make some changes to it.

F. RANDALL CUNLIFFE
JEFFREY A. COOK

LAW OFFICES

Cunliffe & Cook

Suite 200
210 Archbishop F.C. Flores Street
Hagåtña, Guam 96910

TELEPHONE (671) 472-1824
TELEFAX (671) 472-2422
E-MAIL cclaw@netpci.com

June 1, 2005

Hand Deliver

Senator Ray Tenorio
Chairman, Committee on Criminal Justice,
Public Safety, Youth and Foreign Affairs
TWENTY-EIGHTH GUAM LEGISLATURE
167 South Marine Corps Drive, Suite 104
Dela Corte Building
Hagåtña, GU 96910

RE: **Bill 128 Pertaining to Child Support Guidelines**

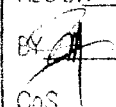
Dear Senator Tenorio:

This letter is submitted as testimony regarding Bill 128 pertaining to the revised and updated Guam Child Support Guidelines transmitted to your Committee by the Attorney General of Guam March 28, 2005.

I am a member of the law firm of Cunliffe & Cook and have been practicing law in Guam since 1981. My practice includes a significant amount of family law cases. Based on my practice, I am very familiar with the child support guidelines. Based on this background, I offer this testimony. Unfortunately I will be unable to attend the hearing on Bill 128 on June 3, 2005 as I will be off-island. I ask you, as the Chairman of the Committee, to accept this letter as my written testimony regarding the bill.

At the public hearing on the revised Guam Child Support Guidelines held March 8, 2005, I appeared and presented concerns to Attorney General Moylan and staff who were present at that hearing. I would note that attached to the March 28, 2005 transmittal letter are the minutes of the public hearing held March 8, 2005. In those minutes, I am identified as JC.

My concerns regarding the revised Guam Child Support Guidelines first pertain to the methodology used by the Attorney General to revise the guidelines. Based on conversations I have had with various individuals at the Superior Court of Guam and the Attorney General's Office, in my understanding neither Referee Ingles, who hears child support cases, nor the Assistant Attorneys General in the Family Division, who represent the Government's interest in child support cases, were involved in the drafting of the updated Guam Child Support Guidelines. Likewise, members of the Bar, and particularly those who practice a significant amount of family law and have to regularly use the Child Support Guidelines were not involved in the process to draft

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Senator Ray Tenorio
Chairman, Committee on Criminal Justice,
Public Safety, Youth and Foreign Affairs
TWENTY-EIGHTH GUAM LEGISLATURE
June 1, 2005
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the revised and updated Guam Child Support Guidelines. Based on all information available to me, the only opportunity that anyone had to review and comment on the Guidelines was after the draft was prepared and announced for the public hearing.

This lack of input from the court, the practitioners of the Attorney General's Office who handle child support cases, and the private bar who handle child support cases very much concerns me and I believe should concern the general population who would be affected by the Guidelines. The Guidelines as proposed have significant changes particularly as to the amount of child support to be paid by higher wage earners and the proposed change that would make the Guidelines not apply to shared physical custody arrangements. These are very significant changes that I believe should have involved significant input from all members of the community who the Child Support Guidelines affect.

I have attached a press release from the Public Information Office, Supreme Judicial Court for Massachusetts regarding how the Massachusetts courts went about reviewing and revising the child support guidelines in Massachusetts. I have included this document because it reflects the type of involvement that that particular state believed was necessary to do an effective revision of the guidelines. I would note that Massachusetts is one of the states that the Attorney General relies on for the allowance of the guidelines not being used for shared physical custody arrangements. From looking at this press release from the Massachusetts courts, it appears clear that there was extensive involvement of all individuals at all levels involved in child support before these significant changes were made. I believe this body should require similar broad involvement of the community before the child support guidelines are revised. I would recommend that the Legislature amend the current law and require that the Attorney General of Guam form a child support commission made up of individuals from all parts of the community who are involved in child support matters to revise the Child Support Guidelines.

Regarding the new schedules, I would agree that the schedules need revision to take into account economic changes since 1996. However, if you reviewed the 1996 schedules, the child support for two parents having a combined adjusted gross income of \$7,500.00 per month is \$772.50. Under the new proposed guidelines, the same two individuals would have a child support obligation of \$1,227.00. Likewise, the child support for combined adjusted gross income of \$4,000.00 per month under the 1996 schedule was \$540.00 for one child. Under the new revised schedule, this would be increased to \$746.00. These significant increases in child support obligation may need to be implemented in a gradual process. The Legislature should look at these increases and determine if there is a way to have them implemented in steps so that the parent obligated to pay child support is not hit with a major increase in support all at once.

Senator Ray Tenorio
Chairman, Committee on Criminal Justice,
Public Safety, Youth and Foreign Affairs
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My other major concern with the Guidelines is the proposal on how shared physical custody arrangements should be handled. Under the revised Guidelines, shared custody arrangements would not fall under the Child Support Guidelines. Instead, they direct the court to determine child support responsibilities of parents in a shared custody arrangement by considering "(1) the special needs of the child, (2) the income of parents, (3) the wishes of each parent to raise the child in the standard of living which is consistent with their desire to form their child's character and personality (i.e., not spoiling the child), (4) the number of children in each parent's household, (5) any public assistance that might be paid to a household, and (6) the best interests of the child." Section 1204(a) of the proposed Child Support Guidelines. I would first note that the Guidelines stating that the court may consider these criteria goes against Guam law. Guam law states that child support shall be determined based on the best interests of the child. These Guidelines now say the court may consider the best interests of the child. In addition, the criteria particularly pertaining to the standard of living wishes of the parents and the desire of a parent not to spoil a child will only lead to significant more litigation in shared custody cases while the child support referee or Superior Court judges try to determine how these criteria should be applied.

I would recommend that the legislature look at adopting some sort of multiplier combined with the Guidelines to determine a fair amount of child support which will not require major litigation. Numerous states have adopted the multiplier approach. The reasoning behind the multiplier approach is that in shared custody arrangements, the amount of money being spent or needed to be spent to provide for a child is actually greater than the Child Support Guidelines are calculated at because each parent is having to provide a more substantial home and other needs of the child than if the parent is just having the child for visitation. Based on this reasoning, other jurisdictions have included a multiplier of 1.5 times the Child Support Guidelines to determine the basic child support obligation for both parties. This is the type of process that a commission could look at to determine if it was a better way to determine child support in shared physical custody arrangements.

There are other factors regarding Child Support Guidelines that need to be reviewed and changes considered. Determination of gross income for self-employed individuals has been a problem that needs attention. A commission could review what other jurisdiction have done and come up with a determination of what would be in the best interests of the child in determining what "ordinary and necessary expenses" as that term is used in the child support guidelines means for child support purposes. For instance, should certain types of depreciation be allowed to be deducted from a self-employed individual's income for child support purposes? Other jurisdictions have gone both ways on this issue and it is something that the legislature should probably review and determine instead of leaving the issue to the courts. My position

Senator Ray Tenorio
Chairman, Committee on Criminal Justice,
Public Safety, Youth and Foreign Affairs
TWENTY-EIGHTH GUAM LEGISLATURE
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on this issue is that in most situations, depreciation should not be deducted as an ordinary and necessary business expense for determining child support. There may, however, be certain types of depreciation that should be considered. This is something that the legislative body or a commission directed by the legislative body could review and determine is best for child support purposes.

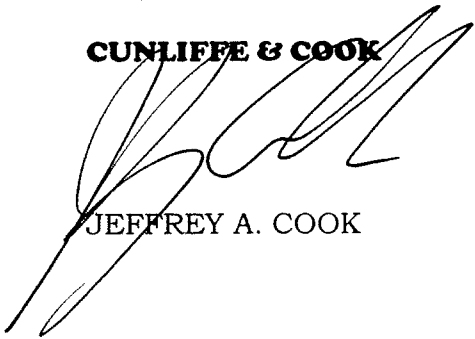
Finally, I would note that as I raised at the public hearing on the proposed Guidelines, I have a concern for whether or not these Guidelines would affect federal funding of the Child Support Enforcement Division of the Attorney General's Office. It is my understanding that any case handled by the Attorney General's Office must follow Guidelines. In the transmittal letter from Deputy Attorney General Cepeda, the response to this issue is that the Attorney General's Office is awaiting feedback from the Regional Office and Central Office on the proposed changes to the Guidelines. If the federal offices have not given their approval of the Guidelines not applying to shared custody arrangements, then that is a very good reason for these Guidelines to not be approved in their current form.

In closing, as a practitioner in the courts of Guam representing numerous clients who have to deal with the Child Support Guidelines, I believe it is important that the Guidelines undergo a proper review before they are revised and updated. I would note that the last time the Guidelines were updated was in 1996. From my review of the process at that time the individual heading up the Guideline revision was Ms. Margo Bean, Deputy Attorney General. Based on a review of my files, that revision process took over a year with various revised Guidelines being sent out for the court and practitioners to review and to comment on. That procedure seems to be a much better process to make sure that the Guidelines get the proper input from all parties. I would strongly urge the legislature to amend the law requiring the Attorney General to form a commission and to not adopt the revised and updated Guidelines in their current form.

I appreciate being given the opportunity to offer my opinions regarding this important issue to our community.

Respectfully submitted,

CUNLIFFE & COOK



JEFFREY A. COOK

JAC:rgb Letters 2005 June 2005 CS
Enclosure as stated above.
cc: Senators, 28th Guam Legislature

PUBLIC INFORMATION OFFICE
SUPREME JUDICIAL COURT
210 New Courthouse
Boston, Massachusetts 02108

CONTACT: Joan Kenney/Bruce Brock
617/557-1114
joan.kenney@sjc.state.ma.us

FOR IMMEDIATE RELEASE:
February 4, 2002

MASSACHUSETTS TRIAL COURT
CHILD SUPPORT GUIDELINES AMENDED

Boston—After conducting an extensive review and analysis of the Trial Court's Child Support Guidelines in 2001, Chief Justice for Administration and Management Barbara A. Dortch-Okara today announced that amendments have been made to the Child Support Guidelines. The new Guidelines will become effective on February 15, 2002. The Child Support Guidelines and an Executive Summary are available on the court's web site at www.state.ma.us/courts.

The Child Support Guidelines are used by Trial Court judges, primarily in the Probate and Family Court, to help them determine what level of child support payment should be provided to custodial parents in divorce and paternity cases before the courts. The Guidelines also help lawyers and litigants understand what payment might be expected given the relative income of the parties in a case. Every four years the Child Support Guidelines are reviewed by the Trial Court, as required by Federal Regulation (45 CFR 302.56).

Chief Justice Dortch-Okara said, "The guiding principle has been and continues to be the best interests of children. The changes that have been made reflect careful and thorough consideration of a variety of helpful commentary that I received from the public, experts in the field, judges who use the Guidelines, lawyers, legislators, other state officials, as well as many other factors. I thank the many people who took the time to participate in our five public forums held throughout the state and to all those who provided thoughtful written responses."

The review consisted of extensive public outreach with forums held in Boston, Brockton, Lawrence, Worcester, and Springfield last summer. Two Trial Court judges conducted the public hearings and 130 individuals testified at the five meetings. More than 160 individuals, including custodial and non custodial parents, attorneys, bar associations, legal service agencies, judges and other court officials, legislators, the Department of Revenue, and organizations with an interest in child support, provided written comments.

In addition, the study included a data survey and analysis of Probate and Family Court cases commenced since the Guidelines were last reviewed in 1997; analysis of recent local and national data; consultation with experts; review of the experience of judges who use the Guidelines daily; comparative analysis of Massachusetts orders with those of other states for similar scenarios; and a testing of many Guideline changes to respond to the extensive commentary received and to the results of a data survey.

The changes to the Guidelines include a formula adjustment to address concerns about the inadequacy of orders for children of low income obligors, and what was perceived to be excessive support at higher income levels, particularly for one child. Adjustments also were made to the maximum gross income to which the Guidelines apply, the custodial parent income disregard, and the age add-on for children age 13 or older.

The Executive Summary contains a full description of the amended Child Support Guidelines, which is available on the court's website at www.state.ma.us/courts.

Law Offices Of
Richard A. Pipes
BankPacific Building, Suite 201
825 South Marine Corps Drive
Tamuning, Guam 96911
Phone-(671)646-2001, Fax-(671)647-7671
E-mail: pipeslaw@gmail.com

June 3, 2005

VIA FACSIMILE

Honorable Ray Tenorio
Senator, Twenty-Eighth Guam Legislature
167 Marine Corps Drive, Suite 104
Hagatna, Guam 96910

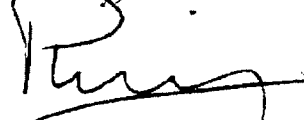
Re: Revised and Updated Child Support Guidelines

Dear Senator Tenorio:

Enclosed please find a copy of my letter dated May 10, 2005, to Senator Cruz relating to the Revised and Updated Child Support Guidelines ("Guidelines") that have been submitted to the Legislature. If you would like copies of the attachments to my letter, I will be happy to provide them. For the reasons stated in the enclosed letter, I am against the Guidelines as drafted. I understand from recent media reports that there have been some additional changes to add "visitation credits" but the problems discussed in the enclosed letter have not yet been addressed.

Should you have any questions or if I can provide any assistance, please feel free to contact me.

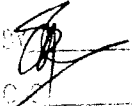
Sincerely,


Richard A. Pipes

Enclosure

cc: Senator Benjamin J. F. Cruz

RAP/nsh/cwr

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SENATOR		

Law Offices Of
Richard A. Pipes
BarkPacific Building, Suite 201
825 South Marine Drive
Tamuning, Guam 96911
Phone-(671)646-2001, Fax-(671)647-7671
E-mail: pipeslaw@gmail.com

May 10, 2005

VIA HAND-DELIVERY

Honorable Benjamin J. F. Cruz
Senator, Twenty-Eighth Guam Legislature
139 Murray Boulevard, Suite 100
Hagatna, Guam 96910

Re: Revised and Updated Child Support Guidelines

Dear Senator Cruz:

This letter is in furtherance of our recent telephone conversation regarding the proposed Child Support Guidelines ("Proposed Guidelines") that have been submitted to the Legislature by the Office of the Attorney General. I have reviewed the Proposed Guidelines and I believe that there are several areas that need to be addressed with corrective legislation, as specifically explained below.

JOINT, SHARED, AND HYERID CHILD CUSTODY SITUATIONS.

There are a number of statements in the Proposed Guidelines that specifically indicate that they do **not** apply to joint and shared custody situations. *See, Proposed Guidelines, 19 G.A.R. § 1201* (Guidelines shall apply only to sole custody cases, "not joint and equal physical custody situations or equal split physical custody situations.") And, unfortunately, the Proposed Guidelines do not address how the Court is to determine child support in such situations. It is apparently left to the complete discretion of the Court without any guidance, parameters or policy.

As I am sure you are aware, under Guam law, the father and mother of

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Letter to Hon. Benjamin J. F. Cruz
Senator, Twenty-Eighth Guam Legislature
May 10, 2005

unmarried minor children are "equally entitled" to their custody. *19 G.C.A. § 4106*. In determining visitation of minor children with non-custodial parents living on Guam, "the court **shall**, to the greatest degree possible, order visitation for minor children (*pendite lite* and permanently) with non-custodial parents such that the children spend more or less **equal amounts of time** with the custodial parent and the non-custodial parent during non-working, non-sleeping, non-school time." *19 G.C.A. § 8404(h)*.

Since Guam law states a clear preference for equal or shared custody of children by their parents in the event of divorce, the failure of the Guidelines to specifically address the determination of child support in such cases leaves a large portion of the child support cases coming before the Court with no instruction under the Proposed Guidelines. It is my recommendation that the Legislature consider adopting additional child support guidelines that address joint, shared and hybrid custody situations.

Attached for your review and consideration as Exhibit "A" is a copy of Rule 90.3 of the Alaska Rules of Civil Procedure, with commentary, that defines shared custody situations and provides for the calculation of child support under such circumstances. Also attached, as Exhibit "B", is a portion of Arizona's Child Support Guidelines that uses tables of "Parenting Time" to determine and calculate each parent's proportionate share of the total child support obligation. These and many other examples of guidelines that address shared and split custody can be found at www.supportguidelines.com.

It is important that shared, joint and split custody situations be specifically addressed in the Proposed Guidelines since, under Guam law, shared custody is mandated. If such situations are not covered, it is likely that there will be an inconsistent approach taken by the various Judges of the Superior Court if they have no instruction on these issues in the Proposed Guidelines.

DETERMINATION OF ADJUSTED INCOME OF SELF-EMPLOYED PERSONS.

For purposes of self-employment under the Proposed Guidelines, "gross

Letter to Hon. Benjamin J. F. Cruz
Senator, Twenty-Eighth Guam Legislature
May 10, 2005

income” means gross receipts, minus ordinary and necessary expenses required to produce income. 19 GAR § 1203(a)(3). The phrase “ordinary and necessary expenses” in the Proposed Guidelines is taken from the business deduction section of the Internal Revenue Code and relates to expenses that are normal and expected expenses incurred or paid in connection with a trade, business, or profession. 26 U.S.C. § 162(a); *Black’s Law Dictionary* (6th ed. 1990); *Ballentine’s Law Dictionary* (3rd ed. 1969).

Unfortunately, the Proposed Guidelines do not specifically address depreciation and apparently leave it to the discretion of the Judge or Referee to determine whether and in what amounts it should be allowed as an “ordinary expense”. As discussed above, the failure to give the Court any instruction on the issue of depreciation will likely lead to inconsistent rulings made by the various Judges and/or Referees to the detriment of those persons who are self-employed. The prejudice to parties is clear when you consider that a self-employed person would clearly be able to deduct business rent for office or store premises under the Proposed Guidelines but would have no deduction if the same person purchased the building where the business was located. There should not be a penalty under the Proposed Guidelines to those persons that purchase their business premises. The Proposed Guidelines would also penalize self-employed professionals and trades people who must purchase expensive books, computers, devices, and tools but would not be able to recover the cost of these necessary expenditures through a deduction for depreciation.

It is recommended that the Legislature specifically address this issue and provide that straight-line depreciation for non-passive assets used in the production of income be allowed as an “ordinary and necessary expense” in determining the adjusted gross income of a self-employed individual, as the clear majority of other States and jurisdictions have.

There are many courts and legislatures that have determined straight-line depreciation to be an ordinary and necessary expense required for the production of income. In the case of *Freking v. Freking*, 479 N. W. 2d 736 (Minn. App. 1992), the appeals court held that a total disregard of depreciation is “reversible error”. *Id.* at

Letter to Hon. Benjamin J. F. Cruz
Senator, Twenty-Eighth Guam Legislature
May 10, 2005

740. While affirming the trial court's rejection of accelerated depreciation, the court determined that it was proper to accept straight-line, or actual, depreciation as a deduction from income for child support purposes. *Id.* The court reasoned that actual depreciation was appropriate because it reflected the cost of producing income. *Id.*

Many other courts have reached the same conclusion. *See, Eagley v. Eagley*, 849 P. 2d 777 (Alaska 1993) (Alaska Supreme Court approves deduction of straight-line depreciation); *Ogard v. Ogard*, 808 P. 2d 815 (Alaska 1991) (same, "on remand, the court should allow a realistic deduction for depreciation"); *In re Davis (Bienvenue)*, 679 N. E. 2d 110 (Ill. App. 1997) (dentist entitled to deduct straight-line depreciation on dental clinic, dentist entitled to deduct student loan payments from income for child support purposes); *Posey v. Tate*, 656 N. E. 2d 222 (Ill. App. 1995) (court allowed straight-line depreciation as business expense); *In re Maher*, 510 N. W. 2d 888 (Iowa App. 1993) (husband entitled to depreciation deduction from income when computing child support); *In re Lewallen*, 895 P. 2d 1265 (Kan. App. 1995) (it was error for trial court to totally disregard all depreciation); *Kovarik v. Kovarik*, 954 P. 2d 1147 (Mont. 1998) (Montana Supreme Court allows depreciation deduction from gross income for child support purposes); *Lawrence v. Tise*, 419 S. E. 2d 176 (N. C. App. 1992) (trial court has discretion to allow straight-line depreciation deduction when Guidelines are silent); *Calabrese v. Calabrese*, 682 A. 2d 393 (Pa. App. 1996) (depreciation expense allowed); *Turner v. Turner*, 586 A.2d 1182, 1187 (Del. 1991) (Delaware Supreme Court allows straight-line depreciation); *In re Marriage of Gaer*, 476 N. W. 2d 324 (Iowa 1991) (straight-line depreciation allowed).

In opposition to allowing straight-line depreciation as an expense deduction some people have argued that depreciation "exists primarily on paper" and is a fiction which may require no actual expenditure by the self-employed person. However, this argument was squarely addressed, and rejected, by the Supreme Court of Mississippi, *en banc*, in the case of *Nix v. Nix*, 790 So. 2d 198 (Miss. 2001). The husband in that case was self-employed and the trial court awarded child support based upon the husband's income after deducting depreciation and other business expenses. *Id. at 199*. The wife appealed and the Supreme Court affirmed the deduction of depreciation and stated the following:

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*Letter to Hon. Benjamin J. F. Cruz
Senator, Twenty-Eighth Guam Legislature
May 10, 2005*

“(Wife) describes depreciation as a ‘fictional expense which does not require any cash outlay.’ This statement misapprehends the idea and purpose of depreciation, which is a method of spreading the recovery of capital expenditures over the life of the asset acquired. In applying the concept, a taxpayer is not allowed to deduct these expenditures in the year of purchase. Thus, although (Husband) may not in a single year deduct the full costs of the assets, he can be reasonably be expected over their life to lose their value, thereby being required to make cash outlays for replacement **in order to continue in business.**”

Id. at 200. (Emphasis supplied.)

A majority of the States have promulgated child support guidelines that allow for the deduction of straight-line depreciation on non-passive assets used for the production of income. *See, Exhibit “A”, Commentary B* (straight-line depreciation allowed in Alaska). Attached hereto as Exhibits “C” and “D” are copies of the Montana Child Support Guidelines and a portion of the Idaho Child Support Guidelines, respectively, that which specifically allow the deduction of straight-line depreciation from income for child support calculation purposes. *See also, Hawaii Child Support Guidelines* (allows deduction for ordinary wear and tear of capital assets and allows court to determine amount of depreciation to be deducted); *Alabama Child Support Guidelines* (allows deduction of straight-line depreciation); *Arkansas Child Support Guidelines* (depreciation allowed as a deduction to the extent that it reflects actual decrease in value of an asset); *Colorado Child Support Guidelines* (allows deduction of straight-line depreciation); *Indiana Child Support Guidelines* (allows yearly deduction for capital expenditures); *Kansas Child Support Guidelines* (depreciation allowed if reasonably necessary for production of income); *Kentucky Child Support Guidelines* (allows deduction of straight-line depreciation); *Maryland Child Support Guidelines* (allows deduction of straight-line depreciation); *Michigan Child Support Formula of 2004* (allows deduction of straight-line depreciation);

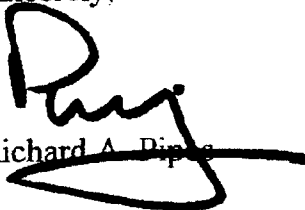
Letter to Hon. Benjamin J. F. Cruz
Senator, Twenty-Eighth Guam Legislature
May 10, 2005

Minnesota Child Support Guidelines (allows deduction of straight-line depreciation);
Nebraska Child Support Guidelines (allows deduction of straight-line depreciation);
New Jersey Child Support Guidelines (allows deduction of straight-line depreciation);
North Carolina Child Support Guidelines (allows deduction of straight-line depreciation);
North Dakota Child Support Guidelines (allows deduction of depreciation);
Ohio Child Support Guidelines (allows deduction of depreciation);
South Carolina Child Support Guidelines (allows deduction of straight-line depreciation);
South Dakota Child Support Guidelines (court has discretion to allow depreciation deduction as shown on tax return);
Tennessee Child Support Guidelines (allows deduction of straight-line depreciation);
and *Virginia Child Support Guidelines* (allows deduction for all reasonable business expenses, including depreciation).

The Proposed Guidelines should be amended to define "ordinary and necessary expenses required to produce income" as including straight-line depreciation on the income-producing assets of a self-employed person.

Should you have any questions or if I can provide any assistance, please feel free to contact me.

Sincerely,



Richard A. Dipa

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-----Original Message-----

From: Randall Todd Thompson [<mailto:Thompson@mmstlaw.com>]

Sent: Friday, June 03, 2005 9:26 AM

To: idrenne@raytenorio.com

Subject: Bill No. 128 (EC)

Dear Senator Tenorio:

I write in opposition to Bill No. 128 (EC) "AN ACT TO APPROVE/DISAPPROVE THE NEW CHILD SUPPORT GUIDELINES FILED BY THE ATTORNEY GENERAL OF GUAM".

The proposed changes are unnecessary and ill conceived. I do not think that the ramifications have been fully thought through. Moreover, the proposal falls within the realm of "special legislation," as the instigator of the proposed changes, the Attorney General, is hardly a disinterested person.

Thank you for your consideration of these comments.

R. Todd Thompson

Mair, Mair, Spade & Thompson
238 A.F.C. Flores Street
Suite 801 Pacific News Building
Hagåtña, Guam 96910
Tel: (671) 472-2089
Fax: (671) 477-5206
E-Mail: Thompson@mmstlaw.com

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IN THE SUPREME COURT OF GUAM

DORIS LEON GUERRERO,
Plaintiff-Appellee,

v.

DOUGLAS B. MOYLAN,
Defendant-Appellant.

Supreme Court Case No. CVA01-020
Superior Court Case No. DM0457-97

OPINION

Filed: September 26, 2002

Cite as: 2002 Guam 18

Appeal from the Superior Court of Guam
Argued and submitted on June 17, 2002
Hagåtña, Guam

Appearing for Defendant-Appellant:

Curtis C. Van de Veld, Esq.
The Vandeveld Law Offices, P.C.
Union Bank Bldg., Suite 215
194 Hernan Cortes Ave.
Hagåtña, Guam 96910

Appearing for Plaintiff-Appellee:

NO APPEARANCE

Appearing for the Government:¹

Monty May
Assistant Attorney General
Office of the Attorney General, Family Division
130 East Marine Drive
Suites 101B/103B
Hagåtña, Guam 96910

¹ Pursuant to Guam Rule of Appellate Procedure 36, the Attorney General participated as *amicus curiae* in these proceedings.

BEFORE: PETER C. SIGUENZA, JR., Chief Justice, JOHN A. MANGLONA, Designated Justice, and RICHIARD H. BENSON, Justice *Pro Tempore*.

SIGUENZA, C.J.:

[1] Defendant-Appellant Douglas B. Moylan ("Moylan") appeals from the lower court's order that Moylan pay child support to Plaintiff-Appellee Doris Leon Guerrero ("Leon Guerrero") in the amount of \$523.32 per month. Moylan argues that the lower court should not have applied the Guam Child Support Guidelines ("Guidelines") in determining his child support obligation. Moylan further argues that even if the Guidelines could be utilized, the lower court improperly calculated his child support under them. Last, Moylan challenges the effective date of the order and the participation of the Office of the Attorney General ("AG") in lower court proceedings.

[2] We find that the trial court acted within its discretion in utilizing the Guidelines. However, we agree with Moylan and find that the trial court erred in the calculation of his child support. We also find that the trial court erred by ordering, without justification that the child support order be effective from the date the motion was heard and not the date the motion was made. Last, regarding participation by the AG in these proceedings, we find no error.

I.

[3] Moylan and Leon Guerrero divorced on June 13, 1997. The final decree of divorce granted the parties joint and equal legal and physical custody of their two minor children but left the matter of child support unresolved. *See* Appellant's Excerpts of Record, pp. 1-7 (Final Decree of Divorce, Oct. 3, 1997; Interlocutory Judgment of Divorce, Oct. 3, 1997). In the interim, Moylan paid temporary child support in the amount of \$1,014.88 per month.

[4] On December 29, 2000, Moylan moved to set permanent child support. The lower court heard the matter on February 7, 2001, and on March 6, 2001, issued its Decision and Order. Pursuant to this decision, Moylan was ordered to pay Leon Guerrero temporary child support in the amount of \$523.32

per month. In setting child support, the court added the amount owed in *basic child support* (\$1,714.51) to the amount owed in *necessary expenses* (\$752.92) to arrive at a total child support obligation of \$2,467.43. Moylan was obligated to pay Leon Guerrero 71.25% of that amount or \$1,758.04, and Leon Guerrero was obligated to pay Moylan 28.75% of that amount or \$709.39. Both of these amounts were adjusted downward by 50% to account for the parties' joint custody arrangement. Moylan was then ordered to pay the difference between his and Leon Guerrero's obligations, which equaled \$523.32. Moylan moved to amend the order, and the trial court denied his motion. Moylan now appeals the March 6, 2001 child support order and the denial of his motion to amend.

II.

[5] "An order for child support is a final judgment as to any installment or payment of money which has accrued up to the time either party makes a motion to set aside, alter or modify the order." Title 5 GCA § 34121 (1996). This court has jurisdiction to review all final judgments of the Superior Court, Title 7 GCA § 3107(a) (1994), and therefore has jurisdiction over the instant appeal. *Leon Guerrero v. Moylan*, 2002 Guam 17, ¶ 4.

III.

[6] Moylan attacks the child support order on several different grounds. He argues that the trial court erred in using the Guidelines to calculate child support in a joint and equal custody arrangement. He also believes that the Guidelines are null and void because they are *ultra vires* and because they have not been updated as required by Title 5 GCA § 34118(a) (1996).

[7] Assuming the Guidelines are valid and applicable, Moylan disputes the trial court's calculation of his child support obligation under the Guidelines. First, Moylan argues that the court improperly exceeded the Guidelines' schedule when setting the parties' basic child support obligation amount. Second, Moylan argues that the trial court should not have calculated his child support payments based on his earning

capacity instead of his actual earnings. Last, Moylan asserts that the trial court erred in failing to impute income to Leon Guerrero for her free housing.

[8] Moylan raises two final grounds in his appeal. He believes that the court erred in retroactively applying the child support order to the date the lower court heard the motion instead of the date Moylan brought his motion to set permanent support. He also contends that the AG should have been disqualified from participating in the case due to a conflict of interest.

A. Guidelines applicability

[9] Pursuant to 5 GCA § 34118, the AG promulgated a schedule of child support payments, now set forth in Article 2 of Title 19 of the Guam Administrative Regulations ("GAR"). The authority vested in the AG was limited to formulating guidelines for payments "to be paid by a *non-custodial* parent to a *custodial* parent." 5 GCA § 34118(a) (emphasis added). The first issue before this court focuses on the above language, and whether by its terms, it precludes the application of the Guidelines to a joint and equal custody arrangement. Matters of statutory interpretation are questions of law and reviewed *de novo*. See *Ada v. Guam Tel. Auth.*, 1999 Guam 10, ¶ 10.

[10] A non-custodial parent is defined as "any person who is responsible for the support of a child, and who is absent from the household whether the person's location is known or unknown." Title 5 GCA § 34202(h) (as reenacted by P.L. 25-161:2 (August 31, 2000)). Moylan argues that in a joint and equal custody arrangement, there is no non-custodial parent because both parents are custodial parents. Thus, the Guidelines cannot be applied to him. The lower court disagreed, stating:

[I]n every shared custody situation, there is always at a given point in time one party who is the custodial parent and another party who is the non-custodial parent. When the time comes for these parties to exchange custody of their children, the custodial parent becomes the non-custodial parent and the non-custodial parent becomes the custodial parent.

Appellant's Excerpts of Record, p. 53 (Decision and Order, March 6, 2001). Thus, the trial court found and the AG agreed, that each parent's status changes when custody is exchanged. When the children are with Leon Guerrero, Moylan is the non-custodial parent; and when the children are with Moylan, Leon Guerrero becomes the non-custodial parent.

[11] The lower court relied on *Erickson v. Erickson*, 978 P.2d 347 (N.M. Ct. App. 1999), wherein one court faced with a shared custody arrangement declared “each parent is, in a sense, both a custodial parent and a non-custodial parent.” *Erickson*, 978 P.2d at 352. However, the court’s reliance on *Erickson* is misplaced. It is distinguishable from the instant case because *Erickson* involved a split custody arrangement. Each parent had custody of one child and no custody of the other at any given time, and was thus a custodial and non-custodial parent *simultaneously*. In other words, the parent was a custodial parent with respect to the child in his possession and a non-custodial parent with respect to the child not in his possession. No parallel situation exists here, wherein both children are in the custody of only one parent at a time.

[12] More applicable is *Baraby v. Baraby*, 681 N.Y.S.2d 826 (App. Div. 1998), the last in a developing line of New York cases which dealt with the use of child support guidelines in joint custody situations. Like Guam, the language of New York’s child support guidelines relies on the distinction between custodial and non-custodial parents. Thus, the position that New York courts have taken in applying its guidelines to shared custody arrangements provides our court with guidance in determining the applicability of Guam’s Guidelines in similar situations.

[13] *Baraby* involved a factual situation identical to the one now before us, with the parties sharing joint and equal custody. *Baraby* found that New York’s child support guidelines applied to joint and equal custody arrangements, citing to *Bast v. Rossoff*, 635 N.Y.S.2d 453 (Sup. Ct. 1995). In *Bast*, a New York court found that although the guidelines’ use of the terms “custodial parent” and “non-custodial parent” did not contemplate joint custody arrangements, the guidelines could be applied to joint custody. *Bast*, 635 N.Y.S.2d at 454. *Baraby* justified this application of the guidelines by stating that it is necessary “to assure that children will realize the maximum benefit of their parents’ resources and continue, as near as possible, their pre-separation standard of living in each household.” *Baraby*, 681 N.Y.S.2d at 827. In calculating child support under the guidelines, the court identified the non-custodial parent as “the parent having the greater pro rata share of the child support obligation” *Id.*

[14] New York is not the only jurisdiction which holds that guidelines promulgated for sole custody situations can be applied to shared custody cases. Florida addressed the matter in *Simpson v. Simpson*, 680 So. 2d 1085 (Fla. Dist. Ct. App. 1996). Although *Simpson* is distinguishable from the instant matter in that it involved a split custody situation, the reasoning it adopted can be extended to joint custody. The court found that its child support guidelines did not speak to a split custody arrangement. *Simpson*, 680 So. 2d at 1085. When faced with this scenario, the court stated:

If the guidelines do not cover this circumstance, as both parties and the dissent seem to agree, we think it impossible to contend that there has been an unwarranted deviation from them. A trial court judge cannot logically be accused of deviating from a standard that by its own terms does not purport to apply to the facts. We thus recur to the rule of discretion that governs dissolution of marriage cases.

Id. at 1086 (citations omitted). Under this approach, the court is free to exercise its discretion and utilize the framework set forth in the guidelines to calculate child support in a shared custody case as long as the resulting child support payments are not arbitrary or unfair. *Id.* However, this would not be the exclusive method available to a judge. The judge would be free to apply whichever method he finds appropriate absent an abuse of discretion, unless that discretion was otherwise limited by statute. *See id.*

[15] Pennsylvania adopted a similar approach. In *Fee v. Fee*, 496 A.2d 793 (Pa. Super. Ct. 1985), a father appealed a child support order on the ground that the court could not use the guidelines to calculate child support in a shared custody arrangement. *Fee*, 496 A.2d at 794. The court found the lower court's use of the guidelines inappropriate, but only because it failed to explain how the guidelines reflected the children's reasonable needs in a shared custody context. *Id.* at 795-96. Thus, if a court elects to apply the guidelines in a shared custody case, it must show that such a framework will provide for the reasonable needs of the children. If application of the guidelines would provide reasonable support, then it appears that Pennsylvania would have allowed for their use in a shared custody setting.

[16] We agree with the approach taken by the above-mentioned courts. The ultimate goal in any child support case is to protect the best interests of the children. Unless otherwise limited by statute, courts are vested with discretion to set child support in the amounts necessary to effectuate that purpose. Like New

York's guidelines, the enabling statute for Guam's Guidelines relied on the distinction between custodial and non-custodial parents, revealing that it did not contemplate shared custody. However, the court may exercise its discretion and use the Guidelines as a framework for setting child support in a shared custody case, as long as application of the Guidelines meets the reasonable needs of the children.

B. Guidelines validity

1. *Ultra vires*

[17] Moylan's second contention is that because provisions of the Guidelines speak to shared custody, the Guidelines exceed the enabling statute and are thereby void. A review of the Guidelines reveals two sections which address shared custody cases. First, 19 GAR § 1203(i) restricts a court's ability to lower child support in shared custody situations without certain findings. Second, 19 GAR § 1203(q) requires that *all* child support awards be made pursuant to the Guidelines. Moylan argues that these provisions exceed the authority conferred in 5 GCA § 34118 wherein the AG is directed to establish a schedule for payments to be paid by a non-custodial parent to a custodial parent; not for parents who share custody.

[18] "It is well established that in exercising its rule-making authority an administrative agency cannot extend the meaning of the statutory language to apply to situations not intended to be embraced within the statute." *Trump-Equitable Fifth Ave. Co. v. Gliedman*, 443 N.E.2d 940, 943 (Ct. App. 1982). In our earlier discussion, we found that the language of 5 GCA § 34118, which relies on the distinction between custodial and non-custodial parents, did not contemplate a shared custody arrangement. *See Bast*, 635 N.Y.S.2d at 454. "A statute which creates an administrative agency and invests it with powers restricts it to the powers granted. The agency has no powers except those mentioned in the statute." *Gouge v. Davis*, 202 P.2d 489, 498 (Or. 1949). While the court possesses the authority to use the Guidelines to calculate child support in joint custody cases, the AG cannot force the court to use the Guidelines in those instances. Thus, the provisions of the Guideline which seek to limit the court's discretion or bind the court to the Guidelines in shared custody cases are *ultra vires* in that they exceed the authority conferred to the AG in section 34118.

2. Failure to update

[19] Section 34118(a) requires the AG to update the Guidelines biannually. This has not been done since the regulations were enacted in 1996. Moylan argues that due to the failure of the AG to update the Guidelines, the Guidelines have expired and are thereby ineffective. We disagree.

[20] Section 34118(e) directly addresses this contention, stating that, “[u]ntil a new schedule is promulgated as required by this section, the schedule previously promulgated by the Director of Public Health and Social Services shall continue to be used in the manner specified by Public Law 18-17 as a guideline in cases where the court deems it relevant.” 5 GCA § 34118(c) (1996). Pursuant to this section, the Guidelines shall continue to be valid and effective despite the failure of the AG to provide a biannual update.

[21] We note that section (e) fails to reflect the transfer of authority over child support matters from the Department of Public Health and Social Services to the Office of the Attorney General. However, it would be unreasonable to read section (e) as requiring the re-institution of an older schedule promulgated by the Director of Public Health. Instead, we interpret this provision as seeking only to continue in effect the most recently enacted schedule. Therefore, the Guidelines have not expired, and continue in full force and effect.

C. Exceeding the Guidelines

[22] The payment schedule provided in Title 19 of the Guam Administrative Regulations sets the maximum basic child support obligation for two children at \$1,222.50. However, the table also vests in the court discretion to award an additional amount should the parents’ combined adjusted gross income exceed \$7,500 per month. Here, the parties’ combined adjusted gross income totaled \$10,518.48. Thus, the lower court applied the statutory percentage of 16.3% to arrive at a basic child support obligation of \$1,714.51. Moylan argues on several different grounds that the trial court abused its discretion by exceeding the Guidelines’ cap.

1. Contract limits

[23] Moylan argues that the court was prohibited from exceeding the Guidelines’ table based on contract principles. The parties signed a stipulated agreement of divorce, which the court incorporated into

both the Interlocutory Judgment of Divorce and the Final Decree of Divorce. See Appellant's Excerpts of Record, pp. 1-7 (Final Decree of Divorce, Oct. 3, 1997; Interlocutory Judgment of Divorce, Oct. 3, 1997). While the agreement did not settle the matter of child support, it stated:

[C]hild support will be resolved by the parties if possible or the parties may petition the court for determination of the amount of support to be paid by defendant to plaintiff, however, the amount of support shall in any event be based on a *strict application* of the Child Support Guidelines of the Government of Guam, except that the parties mutually agree that each party shall equally contribute to the cost of health insurance of the minor children.

Appellant's Excerpts of Record, p. 5 (Interlocutory Judgment of Divorce, Oct. 3, 1997) (emphasis added). Moylan argues that because the agreement dictated that the Guidelines be strictly applied, the court was stripped of its discretion to deviate from those Guidelines when calculating child support.

[24] While contract principles are applied to settlement agreements, courts are unanimous in concluding that parents cannot by agreement limit or divest a court of its discretion in setting child support. See, e.g., *Labass v. Munsee*, 66 Cal. Rptr. 2d 393, 399, 56 Cal. App. 4th 1331, 1341 (Ct. App. 1997); *Straub v. B.M.T.*, 645 N.E.2d 597, 599-600 (Ind. 1994); *Calton v. Calton*, 485 So. 2d 309, 310 (Miss. 1986); *Tammen v. Tammen*, 182 N.W.2d 840, 841-42 (Minn. 1970). A child's right to support from his or her parents is a right belonging to the child, and cannot be contracted away by his or her parents. *Calton*, 485 So. 2d at 310; *Straub*, 645 N.E.2d at 599. Moreover, the primary purpose of the court in setting child support is to protect the welfare of children. *Tammen*, 182 N.Y.2d at 842. An agreement purporting to limit the court's ability to achieve that goal is void as against public policy. *Lusby v. Lusby*, 75 Cal. Rptr. 2d 263, 269, 64 Cal. App. 4th 459, 471 (Ct. App. 1998) ("the court in child support proceedings, to the extent permitted by the child support statutes, must be permitted to exercise the broadest possible discretion in order to achieve equity and fairness in these most sensitive and emotional cases.") (quotation omitted).

[25] The position of courts across the country is clearly contrary to Moylan's contention. The lower court's discretion to exceed the Guidelines' table could not be limited by the parties' agreement to "strictly apply" the Guidelines. This argument is not further buttressed by the fact that the parties' agreement was

incorporated by the court into the final decree. See *LaBass*, 66 Cal. Rptr. 2d at 399, 56 Cal. App. 4th at 1340. Therefore, the lower court did not err by deviating from the Guidelines even if such a deviation was in contravention of the parties' agreement.

2. Contract clause

[26] Moylan also argues that, by deviating from the parties' agreement, the trial court substantially impaired obligations set forth in the contract, thereby committing a constitutional violation. The Contracts clauses of the Organic Act and the U.S. Constitution prohibit the government from enacting any law that impairs the obligation of a contract. 48 U.S.C. 1421b(j); U.S. CONST. art. I, § 10. The prohibition is aimed at the legislative power of the state and not judicial decisions of the court. In order for an act to unconstitutionally impair the obligation of a contract, there needs to be action by the legislature; no decision or action by the court can amount to such a violation. *Cleveland & P.R. Co. v. City of Cleveland*, 235 U.S. 50, 53-54, 35 S. Ct. 21, 22 (1914). Thus, this court disregards Moylan's contention that the lower court's support order amounted to a constitutional violation of the Contracts clause.

3. Failure to make findings

[27] Moylan's final challenge to the court's exceeding of the Guidelines' cap is that the trial court set the basic child support in excess of the schedule without making any finding that the increase was necessary to meet the children's needs. New York has held that "[t]he blind application of the statutory formula to the combined parental income over [the statutory cap] without any express findings of the children's actual needs constitutes an abdication of judicial responsibility and renders meaningless the statutory provisions setting a cap on strict application of the formula." *Chasin v. Chasin*, 582 N.Y.S.2d 512, 514 (App. Div. 1992) (citations omitted). Oregon followed suit, citing to *Chasin* and ruling, "[a]ny decision to set child support above the guidelines cap must, at a minimum, be based primarily on the child's needs." *Stringer v. Brandt*, 877 P.2d 100, 102 (Or. Ct. App. 1994). Alabama adopts a similar position, but adds a second factor for the court's consideration, the parent's ability to pay. *Dyas v. Dyas*, 683 So. 2d 971, 973-74 (Ala. Ct. Civ. App. 1995) ("When the combined adjusted gross income exceeds the uppermost limit of

the child support schedule, the amount of child support awarded must rationally relate to the reasonable and necessary needs of the child . . . and must reasonable relate to the obligor's ability to pay for those needs.). *But see Galbis v. Nadal*, 626 A.2d 26, 32 (D.C. Ct. App. 1993) (finding that because the parents' combined gross income exceeded the guidelines, "the court is not so obliged to adhere to the guideline percentages or justify deviations in writing . . .").

[28] In this instance, the trial court did not make any factual findings to support setting the basic child support obligation beyond the Guidelines' cap. The court simply referred to statutory policy without showing a corresponding need for an increase in child support to benefit the children. Specifically, the court stated:

[I]t would be consistent with the purposes of the Guidelines to increase the basic support obligation. . . . The court finds this to be in furtherance of the guidelines that support be provided consistent with the parties ability to pay and consistent with the purpose of the guidelines that maximum support amount established under the schedules is a base amount and it is not intended to be a cap or a ceiling.

Appellant's Excerpts of Record, p. 69 (Decision and Order, March 6, 2001).

[29] While we recognize that the court is not bound to apply the Guidelines, its election to use the Guidelines as a framework for setting child support demands that deviations from the Guidelines be supported by findings. These findings must be more than a simple recitation by the court of relevant statutory factors; the court must relate those factors to the specific facts in the case before it. *Gluckman v. Qua*, 687 N.Y.S.2d 460, 462-63 (App. Div. 1999). The court must show how the figure it is using reflects the reasonable needs of these particular children in these particular circumstances. The court in this instance failed to makes such findings. Therefore, we find that it abused its discretion in setting the parties' basic child support obligation at \$1,714.51.

D. Earning capacity

[30] The trial court calculated Moylan's child support obligation using his previous salary as counsel for the Twenty-Fifth Guam Legislature, which was approximately \$98,000.00, instead of the income he currently earns as a partner in a private law firm, which is around \$70,000.00. Moylan argues that it was

improper for the trial court to impute an income of almost \$30,000.00 to him for a good faith change of employment. The lower court has discretion to impute income to a parent based on his or her earning capacity. See 19 GAR § 1203(5). Thus, we review the trial court's use of Moylan's earning capacity for an abuse of discretion. *Padilla v. Padilla*, 45 Cal. Rptr. 2d 555, 557, 38 Cal. App. 4th 1212, 1216 (Ct. App. 1995).

1. Voluntariness

[31] Moylan first argues that use of his earning capacity is inappropriate because his change of employment was involuntary. Moylan's appointment as legislative counsel automatically expired by operation of law when the term for the 25th Guam Legislature ended. Standing Rules for the 25th Guam Legislature § 22.09.25 ("All appointments to positions in [the 25th Guam Legislature] shall automatically expire on January 2, 2001 . . ."). This technically may have rendered Moylan's change of employment involuntary, thereby making the use of Moylan's earning capacity to calculate child support inappropriate. However, "labels can be deceiving and are not always determinative as to whether one acted in good faith." *In re Marriage of Barnard*, 669 N.E.2d 726, 730 (Ill. Ct. App. 1996). "[A] change in employment which may outwardly appear to be involuntary may, in reality, be voluntary and treated accordingly." *Id.* at 731.

[32] In determining whether a parent has the opportunity to work, the court must determine whether there is a "substantial likelihood that a party could, with reasonable effort, apply his or her education, skills and training to produce income." *Cohen v. Cohen*, 76 Cal. Rptr. 866, 871, 65 Cal. App. 4th 923, 930 (Ct. App. 1998). Although Moylan's position was technically terminated at the end of the legislative term, he failed to take any steps to retain or seek reappointment with the incoming legislative body. Moylan argues that given the financial distress of the government and change in make-up of the legislature, his continued employment with the legislature was speculative at best. Thus, he seems to be asserting that any effort to acquire his previous position would have been futile and that he had no opportunity to earn such an income.

[33] However, Moylan also revealed an unwillingness to continue his legislative employment. Willingness to obtain employment generating a higher income is shown by good faith efforts, due diligence, and meaningful attempts to secure employment. *Padilla*, 45 Cal. Rptr. 2d at 558, 38 Cal. App. 4th at 1218. Here, Moylan made no effort to retain his employment with the Twenty-Sixth Guam Legislature, but instead justified his leaving the government position for work in the private sector. He argued that work in a private firm would allow him to spend significantly more time with his children, build equity and security in a law practice, and improve his overall quality of life. His unwillingness to continue his legislative employment supports the lower court's finding that Moylan's change of employment was voluntary.

2. Balancing test

[34] Moylan also argues that the court erred in using his earning capacity because his change of employment was done in good faith. Despite the voluntariness of Moylan's departure from the Guam legislature, the lower court expressly found that Moylan did not act in bad faith. Appellant's Excerpts of Record, p. 64 (Decision and Order, March 6, 2001). Many jurisdictions require a finding of bad faith on the part of a parent prior to using that parent's earning capacity instead of actual earnings in setting child support. *Williams v. Williams*, 202 Cal. Rptr. 10, 14, 155 Cal. App. 3d 57, 62 (Ct. App. 1984) (*superseded by statute on other grounds*, *Romero v. Romero*, 122 Cal. Rptr. 2d 220, 99 Cal. App. 4th 1436 (Ct. App. 2002)) ("[A]pplication of the ability to earn standard is limited. The standard is not imposed unless there is some conduct by the supporting spouse indicating deliberate behavior designed to avoid his financial responsibilities to his children."); *DuBois v. DuBois*, 956 S.W.2d 607, 610 (Tex. Ct. App. 1997) ("[T]here must be evidence that the parent reduced his income for the purpose of decreasing his child support payments."); *In re Marriage of Barnard*, 669 N.E.2d 726, 729 (Ill. Ct. App. 1996) ("A voluntary change in employment which results in diminished financial status may constitute a substantial change in circumstances if undertaken in good faith."). Requiring a showing of bad faith before imputing income benefits a supporting parent by recognizing that there are times when a parent changes employment to his immediate detriment in order to reap long term economic gain. *Fogel v. Fogel*, 168 N.W.2d 275,

277 (Neb. 1969); *Kowski v. Kowski*, 463 N.E.2d 840, 844 (Ill. Ct. App. 1984). Furthermore, “refus[ing] to recognize a change in occupation or employment as a basis for modification would force the defendant to be frozen in his present employment.” *Fogel*, 168 N.W.2d at 278; *Kowski*, 463 N.E.2d at 844.

[35] However, the lower court chose instead to apply a balancing test developing in several jurisdictions, and relied heavily on the Supreme Court of Arizona’s decision in *Little v. Little*, 975 P.2d 108 (Ariz. 1999). The *Little* court examined the flaws inherent in the good faith test, particularly “its focus on the parent’s motivation for leaving employment rather than upon the parent’s responsibility to his or her children and the effect of the parent’s decision on the best interest of the children.” *Little*, 975 P.2d at 112. Finding that the good faith test did not comport with public policy, wherein the paramount factor in setting or modifying child support should be the financial impact of the decision on the child, the court rejected the good faith test and opted instead to use a balancing test. *Id.* Under the balancing test, a court looks first at the impact a change of employment will have on the children. *Id.*; see also *Zorn v. Zorn*, 828 P.2d 481, 482 (Or. Ct. App. 1992). Then, the court considers the overall reasonableness of a parent’s decision, looking at both the nature and reasons for the change. *Little*, 975 P.2d at 112. We find the trial court employed a sound approach.

[36] Applying this test, the trial court found that in Moylan’s case, spending more time with his children was not a good reason to leave his employment with the legislature because they were no longer of preschool age and were only in Moylan’s custody half of the time. Appellant’s Excerpts of Record, p. 63 (Decision and Order, March 6, 2001). Moreover, the court found that Moylan failed to take into consideration the needs and lifestyles of his children before changing jobs. Appellant’s Excerpts of Record, p. 65 (Decision and Order, March 6, 2001). Based on these considerations, the court held that Moylan’s change of employment was unreasonable and thereby attributed to him his previous income.

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[37] The lower court made no specific findings as to the detriment the children would suffer as a result of their father's approximately \$30,000.00 decrease in pay, the paramount consideration under the balancing test. Furthermore, the court did not address all of Moylan's reasons for changing jobs, such as building future equity in a firm and securing a position that lasts longer than two years. These considerations may render Moylan's decision to leave the legislature more reasonable. A parent ought to be able to pursue employment opportunities for the purpose of increasing future earning capacity and occupational fulfillment as long as that pursuit does not unreasonably compromise that parent's ability to provide support for his children. The trial court in this instance failed to address a fundamental issue - how specifically did Moylan's change of employment impact the financial well being of his children. The court cannot determine the reasonableness of Moylan's change in employment without one side of the balance. Thus, the lower court abused its discretion by imputing income to Moylan without making any findings as to the detrimental impact that would be suffered by his children as a result of his change of employment.

E. Free housing

[38] Moylan contends that the trial court erred in failing to include as gross income the value of free housing to Leon Guerrero. He argues that living rent free constitutes a gift, and is therefore income under 19 GAR § 1203(a)(1). The trial court declined to attribute such income to Leon Guerrero because Moylan failed to provide authority in support of his position.

[39] This court has before it no record as to the manner in which Moylan raised this issue below or how Moylan argued his position before the trial court. Moylan cites in his brief to "page 4, footnote 7," an apparent reference to a record from the court below, but he fails to identify or provide the document to which he is citing. Appellant's Opening Brief, p. 41. In our review, we are left only with the lower court's statement that, "[t]he Defendant has provided no authority for this proposition and thus the Court will deny that request." Appellant's Excerpts of Record, p. 68 (Decision and Order, March 6, 2001).

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[40] Relying on the lower court's brief statement and its use of the term "authority," we can only infer that the lower court found Moylan failed to establish a sufficient legal basis to attribute free housing as income. Thus, the issue before the trial court, whether free housing may be classified as income, is a question of law and reviewed *de novo*.

[41] The Guidelines state that gross income *may include* gifts, but do not further specify what items constitute a gift. *See* 19 G.A.R. § 1203(a)(1). Guam is among those jurisdictions wherein gifts *may* be included in a parent's gross income, but it is left to the court to determine whether an item is a gift and whether to include that gift in a parent's gross income.²

[42] Maryland has a statute similar to Guam's wherein a parent's actual income is defined as "income from any source," and gifts are listed as an item that may be included. *Petrini v. Petrini*, 648 A.2d 1016, 1019-20 (Md. 1994). The *Petrini* court affirmed the lower court's finding that rent-free housing could constitute a gift and thus gross income for purposes of calculating child support. *Id.* 1021-22. According to this court's rationale:

[I]f a parent is relieved of some of these [basic living] expenses through outside contributions, it may be appropriate under certain circumstances to increase the parent's actual income to account for such contributions. Manifestly, these benefits may have the effect of freeing up other income that may not have otherwise been available to pay a child support award.

Id. at 1021. The court also noted that there are several considerations the trial judge may take into account in deciding whether to include a gift as income, such as a parent's actual ability to pay the child support award, any lack of liquidity or marketability of a party's assets, the fact that the parent's take-home income is not an accurate reflection of his or her actual standard of living, and whether either party is voluntarily impoverished. *Id.* at 1020; *see also Barnier v. Wells*, 476 N.W.2d 795, 797 (Minn. Ct. App. 1991)

² There are several jurisdictions which adhere to the position that the principal amount of gifts should not be considered as income. However, unlike Guam, the statutes in these jurisdictions do not appear to expressly list gifts as an item which the court may consider gross income. For example, in Alaska, the child support statute defines annual income as income from all sources minus certain deductions. The Alaskan Supreme Court, in *Nass v. Seaton*, 904 P.2d 412, 416 (Alaska 1995), found that pursuant to this statute, the principal amount of gifts cannot be considered income for purposes of calculating child support. *Nass*, 904 P.2d at 416. "[A]ny other approach blurs the easily administered and well-established historical distinction between gifts and earned income." *Id.*

(finding the regular receipt of a gift from a dependable source may render a gift income for purposes of determining a parent's child support obligation).

[43] Clearly, there is legal authority to support Moylan's position that the court may impute income to Leon Guerrero for her free housing. *Petrini* serves as an example of when free housing may constitute a gift, and pursuant to 19 GAR § 1203(a)(1), a gift may be included as income. Therefore, we remand this issue to the lower court so that it may apply its discretion and determine whether the facts of this case warrant such an attribution of income.

F. Order effective

[44] Next, Moylan challenges the effective date of the child support order. Moylan filed his motion for modification on December 29, 2000 and the matter was set for hearing on February 7, 2001. When the court issued its decision, it stated, "The motion was heard by the Court on February 7, thus the court will make the order of support retroactive to the monthly support due in February, 2001." Appellant's Excerpts of Record, pp. 74-75 (Decision and Order, March 6, 2001). Moylan argues that the court should have ordered his child support payments retroactive to the date he filed his motion for modification.

[45] Modification of a child support order may take effect any time after the filing of the motion to modify. See Title 5 GCA § 34121 (1996). Setting the effective date is left to the discretion of the trial court, and thus we review such a determination for an abuse of discretion. *Harris v. Harris*, 714 A.2d 626, 633 (Vt. 1998). It was within the lower court's discretion to order the modified child support amount be retroactive to the date of the hearing instead of the date Moylan filed his motion to modify. The issue is whether the court had to justify using the hearing date instead of the filing date.

[46] In *Boone v. Boone*, 960 P.2d 579 (Alaska 998), the Supreme Court of Alaska required its lower court to make such a justification. Its rules permitted retroactive application of a support order from the date the motion was served on the opposing party.³ Like Guam's statute, the text of Alaska's rule

³ Although Alaska's statute is distinguishable in that it relies on the date of service rather than the date of filing, for purpose of our analysis, this is a distinction without a difference. *Boone*, 960 P.2d at 585 n.8.

expressed no preference or presumption that modification become effective on the date of service, nor did it limit that lower court's discretion in selecting a later date. *Boone*, 960 P.2d at 585. However, the court in *Bonne* established a preference for the earlier date and imposed upon lower courts the requirement that they make findings before selecting any later effective date. *Id.* The reasoning was that "[d]elays in resolving such disputes should not disadvantage parties entitled to relief." *Id.* In addition, "[t]he needs of the children, upon which the court focuses in determining whether a substantial change of circumstance has occurred, are examined as of the date the petition is filed." *Id.* (citing *Kruse v. Kruse*, 464 N.E.2d 934, 939 (Ind. Ct. App. 1984)).

[47] The reasoning of *Boone* is persuasive. As recognized by the Indiana Court of Appeals, granting modification from later dates "detracts from the purposes of the changed circumstances rule and serves to encourage and benefit dilatory tactics." *Kruse*, 464 N.E.2d at 939. Moreover, a motion to modify child support indicates that a change in circumstances has occurred at the time the petition is filed. Thus, it is reasonable for a court to establish a preference that orders granting modification be made effective from that date. Therefore, we find that the trial court abused its discretion by failing to justify making the child support order retroactively apply to February 2001 instead of December 2000.

G. AG disqualified

[48] Moylan's final argument is that the trial court erred by allowing the AG to participate in the proceedings based on an apparent conflict of interest. Specifically, Assistant Attorney General Kathryn Montague ("Montague"), who had previously represented Leon Guerrero while in private practice, was permitted to appear in the lower court on behalf of the AG. Moylan asserts that such appearances by Montague violated Guam Rules of Professional Conduct ("GRPC") 1.7, 1.9, and 1.11. Moreover, Montague's failure to separate herself from the rest of the AG's office imputed that disqualification on the entire office. Therefore, the AG should have been disqualified from participating in any of the lower court proceedings.

[49] GRPC 1.7 and 1.9 both address an attorney's conflict of interest, and prohibit an attorney from representing a client whose interests are adverse to the interests of another former or current client. Initially, this court may question whether Moylan has standing to assert a conflict of interest and disqualify opposing counsel. Some jurisdictions find that without an attorney-client relationship or some other relationship imposing a duty of confidentiality, a party has no standing to bring a motion to disqualify based on a conflict of interest. *DCH Health Services Corp. v. Waite*, 115 Cal. Rptr. 2d 847, 850, 95 Cal. App. 4th 829, 833 (Ct. App. 2002); *Johnson v. Prime Bank*, 464 S.E.2d 24, 26 (Ga. Ct. App. 1995). However, irrespective of standing, GRPC 1.7 and 1.9 are not applicable in the matter before us. The interests of Leon Guerrero, Montague's former client, and the interests of the AG's office, are not directly adverse to one another, and so there is no conflict.

[50] GRPC 1.11 addresses Montague's transfer from the private sector to a public office. Section (c) prohibits successive government and private employment. The concern in these situations is the sacrifice of the public interest for private gain. Prosecutors cannot be permitted to utilize their public office to benefit their private clients.

[51] However, "a violation of professional ethics rules does not alone trigger disqualification, rather, a trial judge should primarily assess the possibility of prejudice at trial that might result from the attorney's unethical act." *Papanicolaou v. Chase Manhattan Bank*, 720 F. Supp. 1080, 1083 (S.D.N.Y. 1989) (internal citations omitted). We find no showing of prejudice to Moylan as a result of Montague's prior appearances; they appear to be few and preliminary in nature. We also find no showing that the AG's office in its entirety was compromised. Therefore, we find no abuse of discretion by the lower court in refusing to disqualify the AG from these proceedings.

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IV.

[52] The Guidelines as a whole are valid and can be applied to joint and equal custody arrangements. However, sections 1203(i) and 1203(q) of the Guidelines are *ultra vires* in that they attempt to bind the court's discretion with respect to shared custody.

[53] In calculating the parties' child support obligations, the lower court committed three different errors. First, the lower court set the basic child support obligation at \$1,714.51 without making a corresponding finding of need on the part of the children. Second, the lower court imputed income to Moylan without showing how Moylan's change of employment detrimentally affected his children. Last, the lower court found there was no legal authority for it to consider attributing income to Leon Guerrero for her free housing.

[54] However, the lower court did not abuse its discretion in refusing to disqualify the AG from participating in further proceedings.

[55] Therefore, the matter is **REVERSED** and **REMANDED** for further findings consistent with this opinion and for the recalculation of child support.



Office of the Attorney General

Douglas B. Moylan

The Justice Building

Attorney General of Guam

287 West O'Brien Drive

Hagåtña, Guam 96910 • USA

(671) 475-3324 • (671) 477-3370 (Fax)

www.guamattorneygeneral.com • guamattorneygeneral@hotmail.com

June 3, 2005

Honorable Ray Tenorio

Chairman

Committee on Criminal Justice, Public Safety,

Youth and Foreign Affairs

Mina'Bente Ocho Na Liheslaturan Guåhan

167 South Marine Drive, Suite 104

Hagåtña, Guam 96910

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SENATOR	<i>Tenorio</i>
ACTION	
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SUBJECT: REQUESTED DOCUMENTATION & INFORMATION

Dear Senator Tenorio:

Thank you for conducting a public hearing this morning on Bill 128. As you requested, please find the attached scenarios under the old and new Guidelines, labeled as **Exhibit A**. Our expert also anticipated various scenarios and provided examples.

Noteworthy is that the impact upon the non-custodial (paying) parent will increase substantially if the Committee and the Legislature chooses to exceed the existing \$7,500.00 tables on child support. This Office continues to oppose exceeding the tables due to the hardship upon our Community that the decision could have upon the approximately 20,000 non-custodial parents. It goes without saying that Guam continues to suffer from a poor economy. To do so will create an unnecessary hardship, which the 1996 Legislature determined was an appropriate table's amount.

Former government officials bear the responsibility for this situation (20 year COLA implemented suddenly after 10 years of government inaction) which is facing non-custodial parents that what we described as a "sticker shock" type effect.

Please be advised that for a joint and equal, or split custody, situation, we anticipate the following effects by a court, which under Guam case law leaves the ultimate decision to the trial judge in determining the proper amount of support for such equal custody arrangements:

Equal - Joint Custody *Projected Scenario* Under Proposed Guidelines
(Judge decides)

- Low Income / Middle to High Income Parents: Judge awards support amount to avoid child living in poverty in one home
- Middle Income / Middle Income Parents: Judge awards no child support
- Middle Income / High Income Parents: Judge decides what amount of support is in the child's best interests (judge balances each parties' interests in raising child in 2 households which must both equally provide for the child's financial needs)

In regards to a concern by Senator Cruz that Ms. Venohr did not visit Guam before she issued her report to us, this Office provided her actual purchasing information from local merchants of child support expenses. Further, Ms. Jane Venohr has provided this type information for over forty (40) States, 3 Countries and to the Navajo Nation with their child support guidelines. Attached as **Exhibit B** are her credentials and qualifications.

Please feel free to contact the undersigned if you have any further questions. Thank you.

Respectfully submitted,



BARBARA P. CEPEDA

Deputy Attorney General & IV-D Director
Child Support Enforcement Division

Attachments

EXHIBIT A

CHILD SUPPORT FORMULAS – ONE CHILD		
Obligee Income = 0	Obligor Income = \$996.67 (\$5.75/hr)	
Existing	Updated	
	With 15% visitation credit	Without visitation credit
\$65.93	\$56.04	\$68.80

CHILD SUPPORT FORMULAS – TWO CHILDREN		
Obligee Income = \$2,080 (\$12.00/hr)	Obligor Income = \$1,733.33 (\$10.00/hr)	
Existing	Updated	
	With 20% visitation credit	Without visitation credit
\$217.97	\$174.38	\$263.38

CHILD SUPPORT FORMULAS – THREE CHILDREN		
Obligee Income = \$4000 salary	Obligor Income = \$5000 monthly salary	
Existing	Updated	
	With 25% visitation credit	Without visitation credit
\$823.66	\$617.74	\$870.73



Revisions in Personal Income Tax Rates

A net-to-gross conversion table, which considers federal taxes and FICA, is shown in Appendix II. In general, the effective personal income tax rate is less now (2004) than the rate in effect in when the prototype Income Shares model was developed in the 1980s. Most of the decrease results in changes in the federal personal income tax rates, which have been reformed several times since 1986; most recently, in July 2003. There is also a change in FICA due to the elimination of the Medicare cap. Exhibit 10 provides an idea of how tax rates have changed for a range of gross incomes from the late 1980s (1988) to today.

Exhibit 10

Changes in Federal Taxes and FICA from 1988 to 2004						
Monthly Gross Income	1988			2004		
	Federal Tax ¹	FICA ²	Total	Federal Tax ¹	FICA ³	Total
\$ 1,000	\$88	\$75	\$163	\$26	\$77	\$103
\$ 2,000	\$251	\$150	\$401	\$160	\$153	\$313
\$ 3,000	\$531	\$225	\$756	\$310	\$229	\$539
\$ 4,000	\$811	\$282	\$1,093	\$552	\$306	\$858
\$ 6,000	\$1,470	\$282	\$1,752	\$1,052	\$459	\$1,511
\$ 8,000	\$2,131	\$282	\$2,413	\$1,605	\$570	\$2,175
\$10,000	\$2,680	\$282	\$2,962	\$2,165	\$599	\$2,764

¹The assumptions used to compute federal taxes were (1) two withholding allowances; and (2) all income earned by a single person.

²FICA rates in 1988: 7.5 percent up to gross monthly income of \$3,385.

³FICA rates in 2004: 7.65 percent up to gross annual income of \$7,325, plus 1.45 percent of gross annual incomes above \$7,325.

COMPARISON OF EXISTING AND UPDATED SCHEDULE

This section compares Guam's existing Schedule against the updated schedule. Additional comparisons are provided in Appendices IV and V. (Appendix IV provides a side-by-side comparison. Appendix V provides graphical examples for a range of noncustodial parent incomes using varying assumptions about the number of children and custodial parent income.)

The comparisons start with graphical comparisons of support obligations as a proportion of obligor gross income throughout a range of incomes and under different assumptions about the obligee's income. There are two sets of graphs, the first consider one, two and three children. The second set considers a range of obligee incomes. Finally, support obligations are computed from the two schedules for selected case scenarios: low income, middle income, and high income cases.



Graphical Comparison of 1, 2 and 3 Children

Exhibits 11, 12 and 13 display levels of support obligations as percentages of obligor monthly gross income across a range of incomes from \$800 to \$7,500. The self support reserve amount of \$710 is subtracted from the obligor's income prior to calculating the support obligation, and the minimum order of \$50 per child per month is applied. In these scenarios, obligee income is assumed to be zero. It is also useful to note that these comparisons assume there are no additional expenses, such as child care costs or children's extraordinary medical expenses.

In reading the figures, one important consideration is that the x-axis is not an interval level scale. That is, although support is shown as a proportion of gross income for each \$100 increase in income through \$2,000 per month, the scale changes to \$500 income increases through the remainder of the incomes depicted.

Exhibit 11: One Child, Obligee Income = \$0

The order amounts are the same due to the self support reserve up until the obligor's gross monthly income exceeds \$900 per month. For incomes above that, obligations under the updated schedule are higher than the existing schedule, with the gap between the two schedules widening at higher incomes. The increase occurs as a result of several of the factors discussed above, namely, the difference in child-rearing estimates, changes in personal income taxes and increases in the price level.

Exhibit 12: Two Children, Obligee Income = \$0

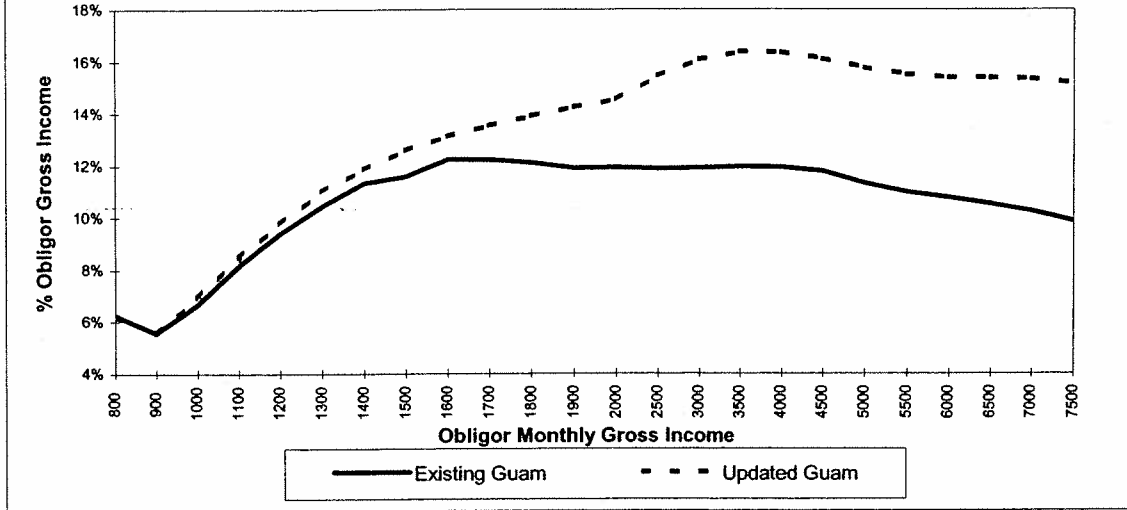
In this scenario, obligations are the same until the obligor's gross monthly income exceeds \$1,400 per month due to the self support reserve and then the two schedules track closely up to incomes of about \$1,600 per month. Above this amount, the updated schedule results in higher obligations, with the gap between the two widening as income increases.

Exhibit 13: Three Children, Obligee Income = \$0

For three children, application of the self support reserve results in identical order amounts for obligor incomes below \$1,000 per month. This is lower than the threshold for two children because the updated schedule amounts increased less for three children than for two children. obligations under the updated schedule are lower when the obligor's gross monthly income is below \$2,000.

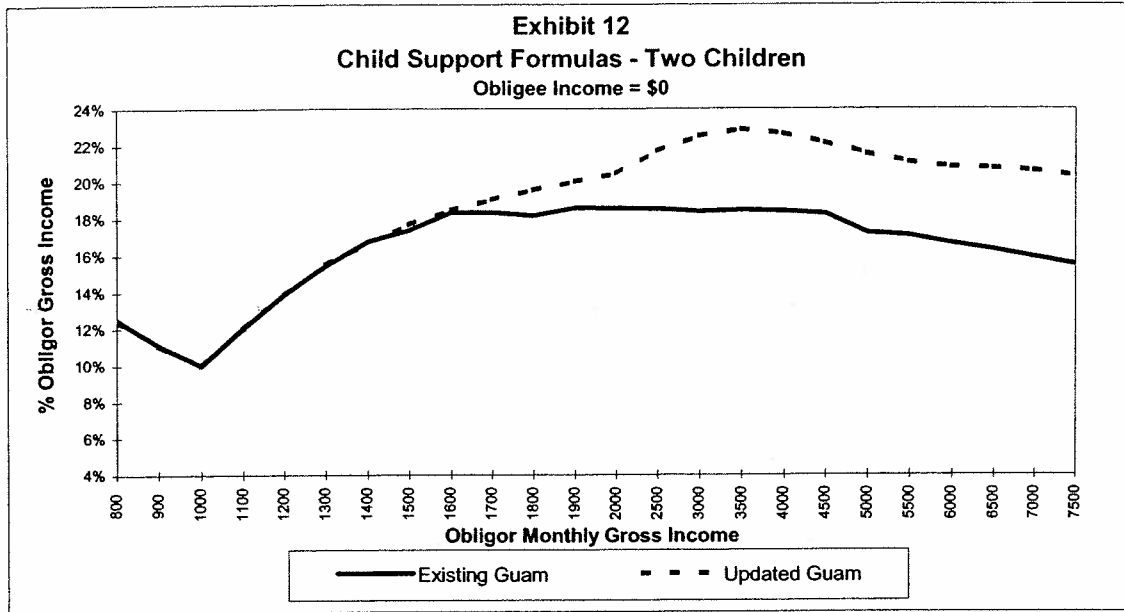


Exhibit 11
Child Support Formulas - One Child
 Obligee Income = \$0



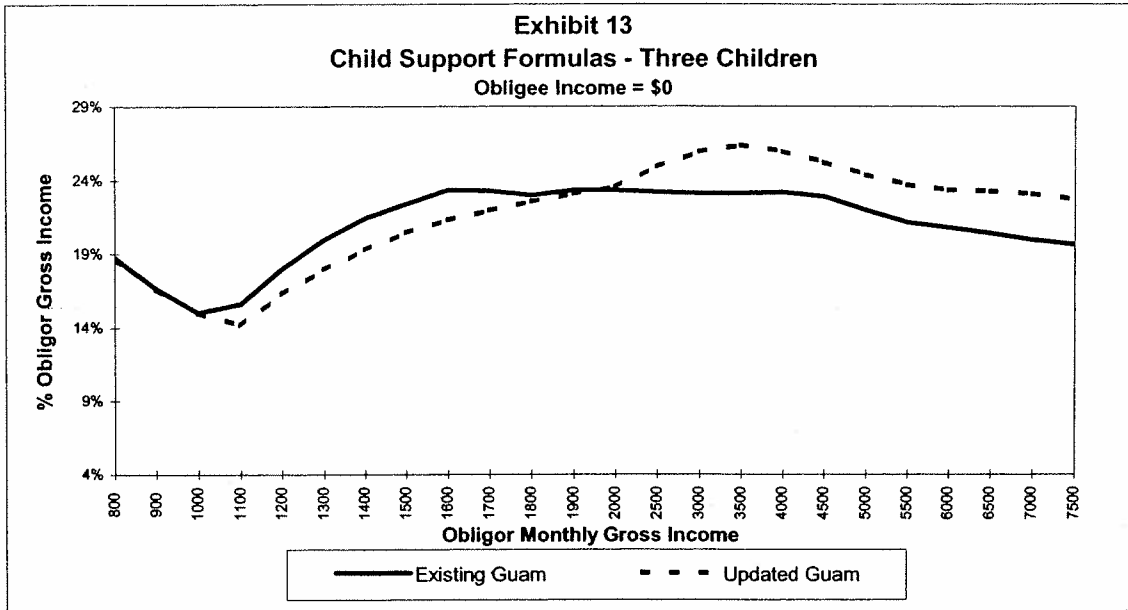
CHILD SUPPORT FORMULAS - ONE CHILD
 Obligee Income = \$0

Support Due (\$\$ per month)			% of Obligor's Gross Income		
Obligor's Gross Monthly Income	Existing Guam	Updated Guam	Obligor's Gross Monthly Income	Existing Guam	Updated Guam
800	50	50	800	6%	6%
900	50	50	900	6%	6%
1000	67	70	1000	7%	7%
1100	90	94	1100	8%	9%
1200	113	118	1200	9%	10%
1300	136	144	1300	10%	11%
1400	159	166	1400	11%	12%
1500	174	189	1500	12%	13%
1600	196	210	1600	12%	13%
1700	208	230	1700	12%	14%
1800	218	251	1800	12%	14%
1900	226	271	1900	12%	14%
2000	239	291	2000	12%	15%
2500	297	386	2500	12%	15%
3000	357	482	3000	12%	16%
3500	419	573	3500	12%	16%
4000	477	654	4000	12%	16%
4500	531	725	4500	12%	16%
5000	566	789	5000	11%	16%
5500	604	853	5500	11%	16%
6000	645	924	6000	11%	15%
6500	683	1000	6500	11%	15%
7000	717	1074	7000	10%	15%
7500	740	1137	7500	10%	15%



CHILD SUPPORT FORMULAS - TWO CHILDREN
Obligee Income = \$0

Support Due (\$\$ per month)			% of Obligor's Gross Income		
Obligor's Gross Monthly Income	Existing Guam	Updated Guam	Obligor's Gross Monthly Income	Existing Guam	Updated Guam
800	100	100	800	13%	13%
900	100	100	900	11%	11%
1000	100	100	1000	10%	10%
1100	133	133	1100	12%	12%
1200	167	167	1200	14%	14%
1300	201	201	1300	15%	15%
1400	235	234	1400	17%	17%
1500	261	266	1500	17%	18%
1600	294	296	1600	18%	18%
1700	312	324	1700	18%	19%
1800	327	353	1800	18%	20%
1900	353	381	1900	19%	20%
2000	372	410	2000	19%	20%
2500	464	543	2500	19%	22%
3000	552	676	3000	18%	23%
3500	646	801	3500	18%	23%
4000	737	907	4000	18%	23%
4500	822	998	4500	18%	22%
5000	862	1079	5000	17%	22%
5500	939	1161	5500	17%	21%
6000	1000	1251	6000	17%	21%
6500	1060	1349	6500	16%	21%
7000	1113	1445	7000	16%	21%
7500	1161	1526	7500	15%	20%



CHILD SUPPORT FORMULAS - THREE CHILDREN
Obligee Income = \$0

Support Due (\$\$ per month)			% of Obligor's Gross Income		
Obligor's Gross Monthly Income	Existing Guam	Updated Guam	Obligor's Gross Monthly Income	Existing Guam	Updated Guam
800	150	150	800	19%	19%
900	150	150	900	17%	17%
1000	150	150	1000	15%	15%
1100	172	156	1100	16%	14%
1200	216	196	1200	18%	16%
1300	260	234	1300	20%	18%
1400	300	270	1400	21%	19%
1500	336	307	1500	22%	20%
1600	374	341	1600	23%	21%
1700	396	374	1700	23%	22%
1800	414	406	1800	23%	23%
1900	444	439	1900	23%	23%
2000	467	472	2000	23%	24%
2500	580	624	2500	23%	25%
3000	694	779	3000	23%	26%
3500	809	924	3500	23%	26%
4000	928	1039	4000	23%	26%
4500	1031	1136	4500	23%	25%
5000	1098	1220	5000	22%	24%
5500	1163	1305	5500	21%	24%
6000	1248	1402	6000	21%	23%
6500	1326	1513	6500	20%	23%
7000	1396	1618	7000	20%	23%
7500	1473	1704	7500	20%	23%



Graphical Comparisons Assuming Obligee Has Income

Since the relationship between the schedules shifts across the income spectrum and with different ratios of obligor and obligee gross income, a comparison between the existing and updated schedules under different assumptions about obligee income is in order. In these scenarios, \$710 is deducted from each parent's gross income prior to the calculation of the support obligation.

Although we have no empirical data from Guam that defines the relative income ratios of obligors and obligees, we use three alternatives:

- obligee income equals half of obligor income (33%/67% split);
- obligee income equals obligor income (50%/50% split); and
- obligee income equals 150 percent of obligor income (60/40% split).

Based on case file reviews in other states, obligee income, on average, tends to range from 40 to 60 percent of obligor income. To illustrate the impact of obligee income, we discuss situations where there are two children. Comparisons for one and three children are presented in Appendix V.

Exhibit 14: Two Children, Obligee Income = 50% of Obligor Income

In Exhibit 14, we assume the obligee has income equivalent to half of obligor income. So, if obligor gross income is \$2,000 per month, obligee gross income is \$1,000 per month. The trends seen in Exhibit 12 are present here. That is, due to the self support reserve, the order amounts are the same when obligor's gross monthly income is less than \$1,400. Above this income, the gap between the existing and proposed order amounts widens. The proposed order amounts are more. Support obligations are no longer calculated under the existing Schedule once obligor income is over \$5,500 per month because the existing Schedule stops at combined gross monthly income of \$7,500. Obligations under the proposed schedule are calculated for higher incomes because use of the new data allow the proposed schedule to be extended to higher incomes.

In comparing obligations in Exhibit 14 to Exhibit 12; that is, the situation when the obligee has income to that of when the obligee does not have income, obligations are less when the obligee has income. For example, the support obligation is \$398 under the updated schedule if obligor income is \$2,000 per month when the obligee has income (\$1,000 per month, which is 50 percent of obligor's income) and \$410 when the obligee has no income (see Exhibit 12). This occurs because the obligee now has income and shares in the financial responsibility of the child.

Exhibit 15: Two Children, Obligee Income = Obligor Income

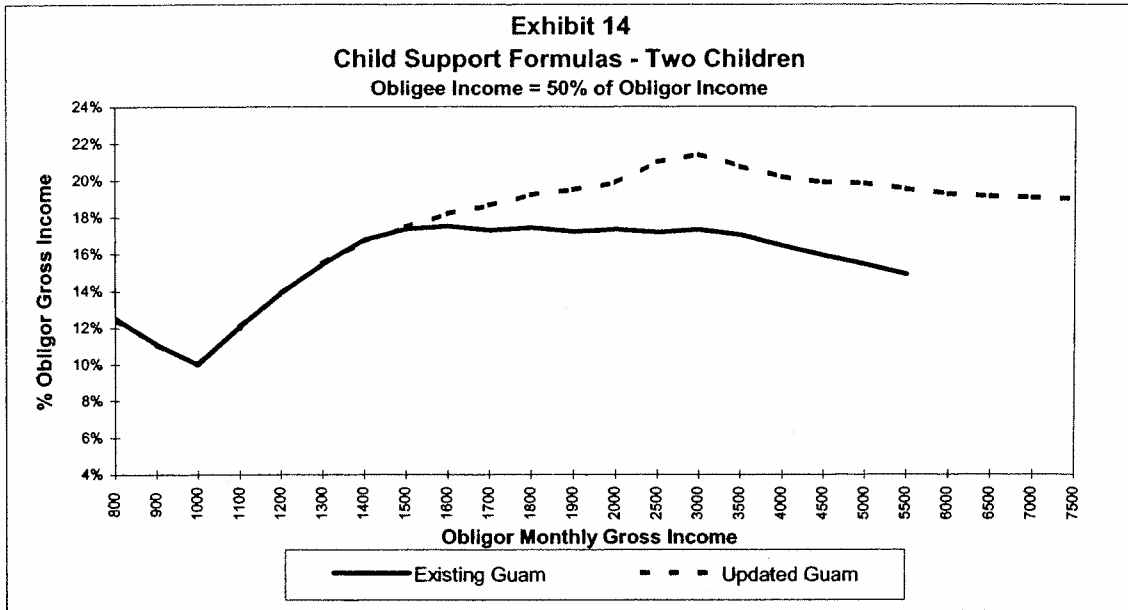
In this scenario, we assume that the obligee and obligor have the same level of gross income. So, if obligor income is \$3,000 per month, the obligee also has \$3,000 per month in gross income. As in Exhibit 14, the schedules track closely at low incomes and obligations are higher under the updated schedule for the remainder of the income range. Obligations are lower than in Exhibits 12 and 14 as the obligee now shares a larger percentage of the financial responsibility. For example, at obligor income of \$2,000, the support obligation is now \$374 per month.

Exhibit 16: Two Children, Obligee Income = 150% Obligor Income

In this final scenario, we assume that the obligee earns 50 percent *more* than the obligor. For example, if obligor gross income is \$2,000 per month, obligee income is \$3,000 per month. Above the minimum order,

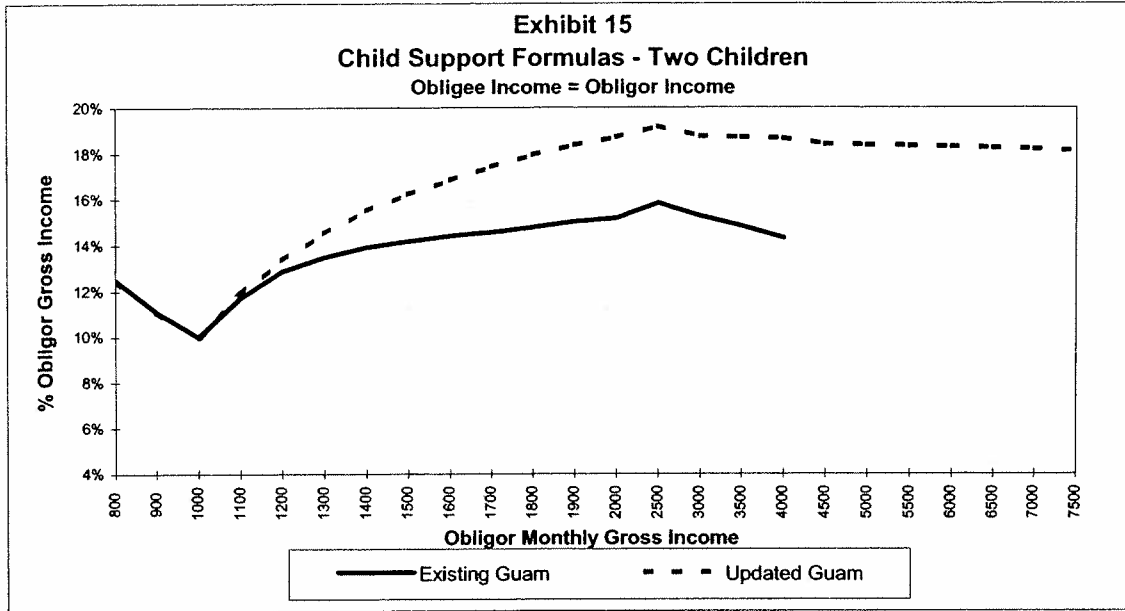


obligations are again lower than in previous Exhibits because the obligee has a greater share of combined income. In this scenario, when obligor income is \$2,000, the support obligation is \$346 per month.



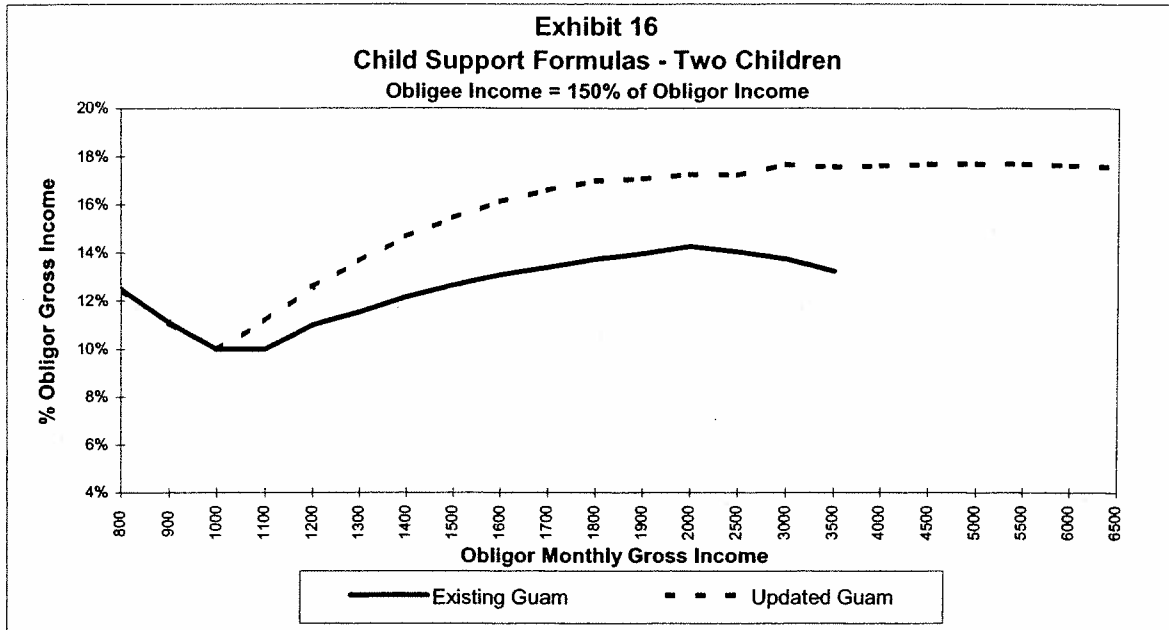
CHILD SUPPORT FORMULAS - TWO CHILDREN
Obligee Income = 50% of Obligor Income

Support Due (\$\$ per month)			% of Obligor's Gross Income		
Obligor's Gross Monthly Income	Existing Guam	Updated Guam	Obligor's Gross Monthly Income	Existing Guam	Updated Guam
800	100	100	800	13%	13%
900	100	100	900	11%	11%
1000	100	100	1000	10%	10%
1100	133	133	1100	12%	12%
1200	167	167	1200	14%	14%
1300	201	201	1300	15%	15%
1400	235	234	1400	17%	17%
1500	261	262	1500	17%	17%
1600	280	291	1600	18%	18%
1700	294	317	1700	17%	19%
1800	314	346	1800	17%	19%
1900	327	371	1900	17%	20%
2000	347	398	2000	17%	20%
2500	430	525	2500	17%	21%
3000	520	643	3000	17%	21%
3500	597	727	3500	17%	21%
4000	658	809	4000	16%	20%
4500	716	896	4500	16%	20%
5000	772	994	5000	15%	20%
5500	819	1076	5500	15%	20%
6000		1157	6000		19%
6500		1246	6500		19%
7000		1336	7000		19%
7500		1425	7500		19%



CHILD SUPPORT FORMULAS - TWO CHILDREN
Obligee Income = Obligor Income

Support Due (\$\$ per month)			% of Obligor's Gross Income		
Obligor's Gross Monthly Income	Existing Guam	Updated Guam	Obligor's Gross Monthly Income	Existing Guam	Updated Guam
800	100	100	800	13%	13%
900	100	100	900	11%	11%
1000	100	100	1000	10%	10%
1100	129	131	1100	12%	12%
1200	154	160	1200	13%	13%
1300	175	189	1300	13%	15%
1400	195	217	1400	14%	16%
1500	213	244	1500	14%	16%
1600	231	270	1600	14%	17%
1700	248	296	1700	15%	17%
1800	266	323	1800	15%	18%
1900	286	349	1900	15%	18%
2000	303	374	2000	15%	19%
2500	396	479	2500	16%	19%
3000	458	563	3000	15%	19%
3500	519	655	3500	15%	19%
4000	572	747	4000	14%	19%
4500		829	4500		18%
5000		919	5000		18%
5500		1009	5500		18%
6000		1098	6000		18%
6500		1186	6500		18%
7000		1274	7000		18%
7500		1358	7500		18%



CHILD SUPPORT FORMULAS - TWO CHILDREN					
Oblige Income = 150% of Obligor Income					
Support Due (\$\$ per month)			% of Obligor's Gross Income		
Obligor's Gross Monthly Income	Existing Guam	Updated Guam	Obligor's Gross Monthly Income	Existing Guam	Updated Guam
800	100	100	800	13%	13%
900	100	100	900	11%	11%
1000	100	100	1000	10%	10%
1100	110	123	1100	10%	11%
1200	132	151	1200	11%	13%
1300	150	178	1300	12%	14%
1400	170	206	1400	12%	15%
1500	190	232	1500	13%	15%
1600	209	258	1600	13%	16%
1700	228	283	1700	13%	17%
1800	247	306	1800	14%	17%
1900	265	325	1900	14%	17%
2000	285	346	2000	14%	17%
2500	351	431	2500	14%	17%
3000	412	530	3000	14%	18%
3500	463	615	3500	13%	18%
4000		705	4000		18%
4500		796	4500		18%
5000		885	5000		18%
5500		973	5500		18%
6000		1058	6000		18%
6500		1140	6500		18%



Case Examples Comparing Existing to Updated Schedule

Below are three case examples (a low, middle and high income case) to compare further the levels of support under the existing and updated Guam Schedules.

Case Example 1: Low Income Case

In this example, the mother has custody of the two children and receives TANF. The father earns \$1,000 gross per month. The father's adjusted gross income after deducting the self support reserve would be \$290 per month. Under the existing Schedule, the appropriate percentage applied to the obligor's income would be 23 percent (\$67 per month). The comparable percentage under the updated schedule is 24 percent, resulting in an obligation of \$70 per month. By applying the minimum order of \$50 per month per child, the obligations would be \$100 under both schedules.

Low Income Case		
Monthly Gross Income	Existing Schedule	Updated Schedule
\$1,000	\$100	\$100

Case Example 2: Middle Income Case

The father's monthly gross income is \$2,400 (\$1,690 after the self support reserve). The mother's gross monthly income is \$1,600 (\$890 after the self support reserve). She has custody of the couple's two children and has work-related child care expenses of \$200 per month. The parents' combined adjusted gross income is \$2,580 per month. The father's share of the combined adjusted gross income is 66 percent. The basic support obligation computed from the existing and updated schedules is shown in the table below. As the obligor, the father's share of the basic obligation would be 66 percent of the amounts in the table. To the basic support obligation would be added the father's share of child care costs: \$132 per month ($\$200 \times .66$).

Middle Income Case Combined Gross Monthly Income = \$4,000		
	Existing Schedule	Updated Schedule
(1) Basic Obligation	\$606	\$748
(2) Child Care	\$200	\$200
(3) Basic Obligation and Child Care	\$806	\$948
(4) Father's Monthly Obligation (0.66 x row 3)	\$532	\$626



Case Example 3: High Income Case

Before their divorce, the parents had one child, who now lives with the mother. The mother earns \$4,500 per month (\$3,790 after the self support reserve). Her child care expenses are \$300 per month. The father earns \$4,000 per month gross (\$3,290 after the self support reserve). The parents' combined adjusted gross income is \$7,080 per month. As the obligor, the father's share of the basic obligation would be 46 percent of the amounts in the table. To the basic support obligation would be added the father's share of child care costs: \$138 per month ($\$300 \times .46$). The father's total monthly support obligation under the two schedules would therefore be:

High Income Case		
Combined Gross Monthly Income = \$10,000		
	Existing Schedule	Updated Schedule
(1) Basic Obligation	\$760	\$1,204
(2) Child Care	\$300	\$300
(3) Basic Obligation and Child Care	\$1,060	\$1,504
(4) Father's Monthly Obligation (0.46 x row 3)	\$488	\$692

EXHIBIT B



PSI QUALIFICATIONS

Founded in 1984, PSI has been providing management analysis, program evaluation, technical assistance, policy research, and information technology services to public sector human service agencies and courts for almost 20 years. PSI has been consistently on the forefront of the development and review of child support guidelines for almost two decades. PSI President, Dr. Robert G. Williams, was the Principal Investigator of the Child Support Guidelines project from 1983-1990. Funded by the U.S. Office of Child Support Enforcement and administered by the National Center for State Courts, this project established the national research base for development of child support guidelines by the states and also served as a source of technical assistance. In fact, PSI provided assistance to Alabama through this project.

In all, PSI has assisted over 40 states, Australia, Canada, Great Britain, and the Navajo Nation with child support guidelines. Most of PSI's recent assistance has been aimed at helping states fulfill the Federal requirements of the quadrennial child support guidelines review. Specific assistance has been provided for a wide range of tasks, including:

- ✓ Developing graphical and tabular comparisons of State child support guidelines or adjustments for special factors;
- ✓ Providing expert testimony;
- ✓ Drafting legislation;
- ✓ Summarizing economic evidence on child-rearing costs;
- ✓ Transforming economic estimates of child-rearing costs into child support schedules;
- ✓ Comparing guidelines models and variations in factors underlying the guidelines formula, such as different economic estimates of child-rearing expenditures or adjustments for regional prices;
- ✓ Updating schedules for inflation and changes in other underlying factors;
- ✓ Developing adjustments for special factors (e.g., shared parenting-time formulas, work-related childcare expenses, the child's medical expenses, low-income adjustments, and high income adjustments);
- ✓ Conducting case file reviews to determine the frequency and reason for deviations; and,
- ✓ Conducting guidelines users' surveys to determine the frequency and reasons for deviations and the level of satisfaction with the guidelines.

References

In the last year, PSI has had guidelines projects in Arizona, the District of Columbia, Louisiana, Pennsylvania, Tennessee and Utah. Any of these states may be contacted as a reference.



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Arizona

PSI recently assisted Arizona with its quadrennial guidelines review. This included updating the schedule to consider current economic factors and a review of case file data to determine the application of and deviation from the guideline.

Megan Hunter
Court Specialist
Arizona Supreme Court
1501 W. Washington, Suite 410
Phoenix, Arizona 85007
Ph: 602-542-9253
Fx: 602-542-9659

District of Columbia

PSI is currently assisting the District of Columbia with its guidelines review. The District has not updated its guidelines for over ten years and had over 25 specific guidelines issues they wanted to review in addition to the schedule. This included everything from the verification of income to the shared-parenting time adjustment. PSI worked closely with the Guideline Commission by comparing the District's provisions to those of other states for each of the issues, reviewing case law, and identifying the merits and limitations of alternative approaches.

Lynne Maylone Fender (Interim Project Director)
Senior Study Director
Child Support Enforcement Division
441 4th Street, NW 5th Floor
Washington, DC 20001
202-724-2032
lynne.fender@dc.gov

or

Laurie Ensworth (Original Project Director: just returned back from sabbatical)
202-724-2114
Laurie.ensworth@dc.gov

Utah

PSI assisted Utah with developing an updated child support schedule. PSI also worked closely with the Guidelines Committee to present its recommendations to the Legislature.



Vanessa Thompson
Office of the Executive Director
Department of Human Services
120 North 200 West, Room 319
Salt Lake City, UT 84103
801-538-9877

Pennsylvania

PSI assisted Pennsylvania with developing an updated child support schedule and revising its shared-parenting adjustment. PSI also conducted a case file review of recently established and modified child support orders to determine the application of and deviations from the guidelines.

Dan Richard (IV-Director—contract was with IV-D agency)
Patricia Miles (staff to Guideline Commission, which is the Domestic Rules Committee in PA)
Supreme Court of Pennsylvania
Domestic Relations Procedural Rules Committee & Committee on Rules of Evidence
717-795-2037 (direct)
717-795-2175 (fax)

Guidelines Staff

Guidelines projects will be lead by Dr. Jane Venohr, a PSI economist with over 14 years experience working with child-rearing expenditure data and performing child support guideline review, development, and evaluation. She worked under Dr. Robert G. Williams for eight years, then assumed lead responsibility for all PSI guidelines projects in 1998. Tracy Griffith, a PSI research and legal analyst will assist Dr. Venohr.

Jane C. Venohr, Ph.D., Project Manager and Economist. Over the past 14 years at PSI, Dr. Venohr has provided technical assistance on the development and revision of child support guidelines for over 30 states. Since completing her doctorate in economics in 1997, Venohr has assumed primary responsibility for all PSI guidelines projects. This includes assisting states in the development of adjustments for shared parenting time, low income, childcare, medical expenses, and other factors. It also includes writing legislation, preparing briefing materials, several types of analyses; and, providing expert testimony to legislative committees and state child support commissions. Well-versed in statistics, she used various sampling approaches, statistical analyses, and cost analyses for these projects. Dr. Venohr holds a Ph.D. in economics from the University of Colorado, where she specialized in economic demography and econometrics.

Tracy Griffith, Research and Legal Analyst. Under Dr. Venohr's direction, Griffith has been conducting research and legal analysis on child support guidelines for the last five years. During this time, she has worked on guidelines projects for over a dozen of states. For these states, she has prepared gross to net income tax



conversion tables for guidelines based on gross income, updated child-rearing cost estimates for inflation, prepared graphical and tabular comparisons of guidelines and adjustment formulas (e.g., formulas for shared parenting), and conducted legal analysis of special factors (e.g., definitions of income, treatment of second spouse income). Tracy Griffith holds a Bachelor's in Business Administration and is a paralegal.

Partial List of States PSI Has Assisted with Their Guidelines

Below, we provide a partial list of PSI's recent child support guidelines projects.

TABLE 1			
PARTIAL LIST OF PSI'S CURRENT AND RECENT CHILD SUPPORT GUIDELINES PROJECTS			
<i>State</i>	<i>Type of Project</i>	<i>Address and Contact</i>	<i>Date</i>
California	Guidelines Review, Case File Review, and Users Survey	Amy C Nuñez (415)865-7564 Administrative Offices of the Courts Family Court Services Judicial Council of California 303 2nd Street San Francisco, CA 94107	May-December 2000
Michigan	Guidelines Review, Users Survey and Case File Review Methodology	William J. Bartels Michigan Supreme Court State Court Administrative Office PO Box 30048 Lansing, MI 48909	August 2002- current
Arizona	Guidelines Review and Case File Review	1999: Megan Hunter, (602) 542-9253 1996: Patrick Scott, (602) 542-9255 Arizona Supreme Court Administrative Office of the Courts 1501 W. Washington, Suite 345 Phoenix, Arizona	February - June 1995; May-July 1999
Colorado	Guidelines Review and testimony	Pauline Burton Colorado Division of Child Support Enforcement 303 E 17 th Street, Suite 200 Denver, CO 80203 Pauline.Burton@state.co.us	2000-2002



TABLE 1			
PARTIAL LIST OF PSI'S CURRENT AND RECENT CHILD SUPPORT GUIDELINES PROJECTS			
<i>State</i>	<i>Type of Project</i>	<i>Address and Contact</i>	<i>Date</i>
Utah	Guidelines Review and testimony	Vanessa Thompson Office of the Executive Director Department of Human Services 120 North 200 West, Room 319 Salt Lake City, UT 84103	2002-current
Oregon	Guidelines Review and testimony	Christine Angel Oregon Department of Justice Division of Child Support 1495 Edgewater St NW, Suite 170 Salem, OR 97304	2001-2002
Oklahoma	Guidelines Review and development of automated guidelines calculation	Ray Weaver Child Support Enforcement Division Oklahoma Department of Human Services P.O. Box 25352 Oklahoma City, OK 73125 Phone: (405) 522-4791 Fax: (405) 522-2753 E-mail: ray.weaver@okdhs.org	1998-2000
Louisiana	Guidelines Review and User Survey	1999: Lisa Woodruff-White, (225) 342-5760 1991: Gordon Hood, Director Support Enforcement Services Department of Social Services 618 Main Street P.O. Box 94065 Baton Rouge, Louisiana 70804-4065	July - October 1991; August-December 1999
South Dakota	Guidelines Review	Terry Walter, (605) 773-3641 South Dakota Department of Social Services Office of Child Support Enforcement 700 Governors Drive Pierre, South Dakota 57501	November 1995 – April 1996, September – December 2000
Arkansas	Guidelines Review	2000: Donna Gay 1997: James Barnhill, (501) 682-6039 Arkansas Office of Child Support Enforcement Division of Revenue P.O. Box 8133 Little Rock, Arkansas 72203	October – December 2000; April - July 1997



TABLE 1

PARTIAL LIST OF PSI'S CURRENT AND RECENT CHILD SUPPORT GUIDELINES PROJECTS

<i>State</i>	<i>Type of Project</i>	<i>Address and Contact</i>	<i>Date</i>
New Jersey	Guidelines Review	Dan Phillips (609) 984-2073 New Jersey Administrative Office of the Courts Child Support Enforcement Services R.J. Hughes Justice Complex 25 West Market Street, 3rd Floor North Trenton, New Jersey 08625	June 1994- July 1997
Ohio	Guidelines Review	2000: Sarah Cooper, (614) 752-9732 1997: Barb Saunders, (614) 644-5376 Assistant Deputy Director Office of Child Support Enforcement Ohio Department of Human Services 50 West Broad, 4th Floor Columbus, Ohio 43215	June 1992- January- 1993; December 1996- June 1997; 2000
South Carolina	Guidelines Review	Judy Jolly (803) 737-5875 Child Support Enforcement Division South Carolina Department of Social Services 3150 Harden Street Columbia, South Carolina 29202	July - September 1993; August 1997 - April 1998 1993 - 1997
Pennsylvania	Guidelines Review	Sophie Paul (412) 350-4541 Department of Public Welfare Office of Income Maintenance 1301 North 7th Street P.O. Box 2675 Harrisburg, Pennsylvania 17105-2675	April - July 1997
Florida	Guidelines Review	Ken Traeger (904) 487-1402 Joint Legislative Management Committee Claude Pepper Building, Room 576 111 West Madison Street Tallahassee, Florida 32399-1400	December 1996 - April 1997



TABLE 1			
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<i>State</i>	<i>Type of Project</i>	<i>Address and Contact</i>	<i>Date</i>
Missouri	Guidelines Review	Thomas J. Frawley (314) 622-4000 Missouri Supreme Court Ad Hoc Committee To Review Child Support Guidelines State of Missouri	July - October 1993, October 1997 - January 1998, October 2001- current
West Virginia	Guidelines Review	Ilene Schall (304) 558-0907 Child Support Enforcement Division State Capitol Complex Charleston, WV 25305	November 1995 - June 1997
Vermont	Guidelines Review	1999: Mary Brown 1993: Catherine Simpson (802) 241-2864 Office of Child Support Agency of Human Services 103 Main Street Waterbury, VT 05671-1901	August - December 1993; March 1999 - February 2000 1999
Minnesota	Guidelines Review	Krista Anders Minnesota Department of Human Services Child Support Enforcement Division Human Services Building 444 Lafayette Road North St. Paul, Minnesota 55155	May - August 1994
Maryland	Guidelines Review	Cathy Born (410) 706-5134 School of Social Work University of Maryland Louis L. Kaplan Hall 525 West Redwood Street Baltimore, Maryland 21201-1777	August -December 1996; 2000



TABLE 1			
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<i>State</i>	<i>Type of Project</i>	<i>Address and Contact</i>	<i>Date</i>
Iowa	Guidelines Review	David Boyd State Court Administrative Office Capitol Building Des Moines, Iowa 50319	September - December 1994; April - July 1999
Georgia	Guidelines Review	Gerard Gillette, (404) 657-3863 Senior Operations Analyst Georgia Department of Human Resources Child Support Enforcement 2 Peachtree Street NW, 15 th Floor, Suite 406 Atlanta, GA 30303	April - June 1993; January - April 1998 1993, 2000
Connecticut	Guidelines Review	Bureau of Child Support Enforcement Connecticut Department of Human Resources 1049 Asylum Avenue Hartford, Connecticut 06105-2431	May - August 1993
Oregon	Guidelines Review	1998: Brian Thompson 1994: John Ellis Justice Building Support Enforcement Division Salem, Oregon 97301	May - August 1994; October 1997 - March 1998
Child Support Guidelines Project	National Project	Ken Maniha (202) 252-5371 U.S. Office of Child Support Enforcement Administration for Children and Families Department of Health and Human Services 370 L'Enfant Promenade SW Washington, D.C. 20447	1983-1990



Committee on Criminal Justice, Public Safety, Youth and Foreign Affairs
 Senator Ray Tenorio, Chairman

Public Hearing
 Friday • June 3, 2005 • 9:00a.m.
 Public Hearing Room, / Liheslaturan Guahan

Bill No. 128(EC): An act to approve/disapprove the new Child Support Guidelines filed by the Attorney General of Guam.

NAME (Please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT NUMBER
Alec Raphael	G-L-S-C					477-9811
✓ Ron Moroni	Torples & Moroni	✓				472-1539
✓ Doug Moylan	AG's Office	✓		✓		476-0296
✓ Barbara Cepeda	"	✓	✓	✓		476-1501
✓ Kathy Makera	Public Defender	✓	✓		✓	475-3100
Tricia Ada	Public Defender	✓			✓	475-3100
Jane Kenney	Public Defender	✓			✓	475-3100
Barbara P. Cepeda	AG's Office	✓		✓		475-3360



Committee on Criminal Justice, Public Safety, Youth and Foreign Affairs
Senator Ray Tenorio, Chairman

Public Hearing
Friday • June 3, 2005 • 9:00a.m.
Public Hearing Room, / Liheslaturan Guåhan

Bill No. 128(EC): An act to approve/disapprove the new Child Support Guidelines filed by the Attorney General of Guam.

NAME (Please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT NUMBER
<i>W. Marti's Vandeveld</i>	<i>Private Attorney</i>	<i>✓</i>		<i>✓</i>	<i>✓</i>	<i>472-1131</i>



Committee on Criminal Justice, Public Safety, Youth and Foreign Affairs
Senator Ray Tenorio, Chairman

Public Hearing
Friday • June 3, 2005 • 9:00a.m.
Public Hearing Room, / Liheslaturan Guahan

Bill No. 128(EC): An act to approve/disapprove the new Child Support Guidelines filed by the Attorney General of Guam.

NAME (Please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT NUMBER
✓ Kristi Dunning	Private Citizen	✓	✓		✓	637-1170 483-5747


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LOCAL

GOVERNMENT MEETINGS

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May 27
Committee on Finance, Taxation and Commerce: 9 a.m. May 27, in the Legislature's public hearing room. Continuation on Bill 114, regarding appropriations for operations of the executive branch for fiscal 2006. Call 475-8801.

May 31
Civil Service Commission Board: 5:30 p.m. May 31, on the second floor of the Hakubotan Building, Tamuning. Hearing on A. Ramos vs. Guam Waterworks Authority; N. Prakash vs. Department of Education. Call 647-1855/7 or TDD 647-1872.

Professional Engineers, Architects and Land Surveyors Board: 4 p.m. May 31, board conference room, upper Tumon. Call 646-3115.

June 1
Chamorro Land Trust Commission: 4 p.m. June 1, Guam Ancestral Lands Commission conference room, Suite 101, Anigua Commercial Building. Call 475-4251.

Mayors Council of Guam: 10 a.m. June 1 (each first Wednesday), council's conference room, Ada's Commercial and Professional Center, Suite 111F, Hagåtña. Call 472-6940 or 477-8461.

June 2
Application Review Committee: 9:30 a.m. June 2, Department of Land Management conference room, first floor. Hearing on conditional use permit for John S. and Sun O. Euh; zone variance for Atkins Kroll. Call 475-5219/5255.
Civil Service Commission Board: 5:30 p.m. June 2, second floor, Hakubotan Building, Tamuning. Hearing on V. Winn vs. Department of Education. Call 647-1855/7 or TDD 647-1872.

Committee on Health and Human Services: 9 a.m., June 2, Legislature's public hearing room, Hagåtña. Public hearing on Bill 79, to re-establish the Commission on Licensure to prac-

tice the healing arts in Guam; Bill 107, relative to the eligibility and qualifications for esthetician license. Send written testimony by faxing 477-5984 or e-mail: senmike@ite.net.

GovGuam Retirement Fund Board Of Trustees: Meeting starts noon June 2, Retirement Fund conference room, Route 8, Maite. Call 475-8900/1.

Guam Interagency Coordinating Council: 6 p.m. June 2, Guam Memorial Hospital Authority classroom, fourth floor, Tamuning. For special accommodations, call Cathy Tydingco or Leilani Taitague, 735-2417.

Guam Memorial Hospital Authority Board of Trustees: Rescheduled meeting, 6 p.m. June 2, GMHA board room, first floor, administration wing, Tamuning. Call 647-2418/2218.

June 3
Committee On Criminal Justice, Public Safety, Youth And Foreign Affairs: 9 a.m. June 3, Legislature's public hearing room, Hagåtña. Public hearing on Bill 128, to approve/disapprove the new Child Support Guidelines filed by Attorney General of Guam. Call 479-4825/6.

Guam Board Of Allied Health Examiners: Noon, June 3, PacificCare Home Health Care conference room, Suite 102, E.T. Calvo Memorial Parkway, Tamuning. Call 735-7406/8.

June 6
Notary Exam: 9 a.m. June 6, Attorney General's Office, 247 West O'Brien Drive, Hagåtña. Call 475-3132, 8 a.m. to noon.

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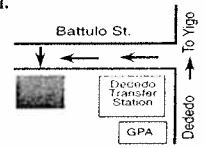
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Pacific Daily News, Friday, May 27, 2005 guampdn.com

LOCAL

GOVERNMENT MEETINGS

May 31

▲ **Civil Service Commission Board:** Hearing starts 5:30 p.m. May 31, on the second floor of the Hakubotan Building, Tamuning. A. Ramos vs. Guam Waterworks Authority; N. Prakash vs. Department of Education. Call 647-1855/7 or TDD 647-1872.

▲ **Professional Engineers, Architects and Land Surveyors Board:** 4 p.m. May 31, board conference room, upper Tumon. Call 646-3115.

June 1

▲ **Chamorro Land Trust Commission:** 4 p.m. June 1, Guam Ancestral Lands Commission conference room, Suite 101, Anigua Commercial Building. Call 475-4251.

▲ **Mayors Council of Guam:** 10 a.m. June 1 (each first Wednesday), council's conference room, Ada's Commercial and Professional Building. Retirement Fund conference room, Route 8, Maite. Call 475-8900/1.

▲ **Guam Interagency Coordinating Council:** 6 p.m. June 2, Guam Memorial Hospital Authority classroom, fourth floor, Tamuning. Call 735-2417.

▲ **Guam Memorial Hospital Authority Board of Trustees:** Rescheduled meeting, 6 p.m. June 2, GMHA board room, first floor, administration wing, Tamuning. Call 647-2418/2218.

June 3

▲ **Public Hearing for Committee On Criminal Justice, Public Safety, Youth And Foreign Affairs:** 9 a.m. June 3, Legislature's public hearing room, Hagåtña. Bill 128, to approve/disapprove the new Child Support Guidelines filed by Attorney General of Guam. Call 479-4825/6.

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FINAL DRAWING: June 4, 2005

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AG brings out changes to child support

By David V. Crisostomo

Pacific Daily News
dcrisostomo@guampdn.com

Those paying child support could see a slight increase in the amount they pay monthly because of revisions to the island's child support guidelines that account for increases in the cost of living on Guam, according to the attorney general's office.

But child support payers also will be keeping more of their paycheck under the proposed changes to Guam's child support guidelines, said Attorney General Douglas Moylan. More than 30,000 parents who pay child support and an even greater number of children who are part of the system will be affected by the changes.

Officials with the AG's office will appear before a legislative oversight committee tomorrow morning to discuss the proposed changes to the guidelines. Guam law mandates updates to the island's child support rules every two years, but the government has not revised child support guidelines since 1996, Moylan said.

The guidelines for child support awards apply only to single-custody situations, in which one parent has custody of a child, while the other is considered the noncustodial parent. For joint and equal physical custody or equal split physical custody situations, the courts determine the child support award, or amount.

Under the new guidelines, non-custodial parents will be able to keep up to \$775 from their monthly paychecks, up from the current figure of \$710 a month. The amount is considered self support for the non-custodial parent.

"This is what the individual needs to survive, to live on a month. That



Pacific Daily News files

New guidelines proposed: Lisa Anderson, a paralegal at the Child Support Enforcement Division office in Hagåtña, takes a look at a case file. A public hearing on the revised child support guidelines is scheduled for today.

amount will be taken out of the calculation of the child support obligation," said Barbara Cepeda, the deputy assistant attorney general in charge of the AG's Child Support Enforcement Division. The amount also was adjusted to account for increased cost of living, including food, housing, clothing and transportation expenses, Cepeda said.

The new guidelines also include a provision that gives credits to non-custodial parents who spend more than the standard 127 days a year with their children. The credits can offset up to 25 percent of yearly child support payments.

For example, noncustodial parents who spend between 128 and 147 days with their children during a year can offset child support payments by 15 percent, according to the guidelines.

However, such credit cannot re-

duce the child support obligation below the minimum amount required by the guidelines. Guam's minimum is \$50 a month per child.

"This is a trend that the states are moving toward," Cepeda said. "This encourages the noncustodial parent to spend more time with their children. It also assumes that the (non-custodial parent) is spending money on the child."

Cepeda said there have been concerns about potential abuse of visitation credits.

"Some people don't like the visitation credit because they question who will monitor it — if the (non-custodial) parent takes the child and dumps them somewhere and then takes credit for it," Cepeda said. "It's an honor system. But we will be depending on the custodial parent to report it."

IF YOU GO

▲ A legislative oversight hearing on the proposed changes to Guam's child support guidelines will be held 9 a.m. tomorrow at the Guam Legislature's public hearing room in Hagåtña.

ENFORCEMENT

▲ Enforcing child support on Guam is a challenge because only 46 percent of parents who are obligated to pay child support pay on time or at all. That is lower than the national average of 60 percent, said Barbara Cepeda, the deputy assistant attorney general who is in charge of the AG's Child Support Enforcement Division. About 87 percent of all noncustodial parents on Guam live below the poverty level.

CHILD SUPPORT

What you can expect to pay under the proposed guidelines*:

Example: 1 child, age 15

▲ Noncustodial parent: Adjusted gross income of \$600

▲ Custodial parent: Adjusted gross income of \$400

▲ Combined adjusted gross income: \$1,000

QUESTIONS: What would the non-custodial parent's share be? What would the custodial parent's share be?

ANSWER: Divide the gross income of \$600 by the combined adjusted gross income of \$1,000.

Q: What is the total child support obligation?

A: On the proposed child support schedule, the basic child support obligation for a combined adjusted gross income of \$1,000 for one child is \$230 a month. Because the child is over 12 years old, \$23 is added, which is about 10 percent in this example. The total child support obligation is \$253 a

month.

Q: How much is paid?

A: The noncustodial parent's share is 60 percent of \$253, or \$151.80. The custodial parent's share is 40 percent of \$253, or \$101.20. The noncustodial parent must pay \$151.80 a month. The custodial parent's share is presumed to be spent directly on the child.

*Note: * This example applies only to single-custodian situations, in which one parent has custody of a child, while the other is considered the noncustodial parent.*

VISITATION CREDITS

Under the proposed guidelines, non-custodial parents who spend more than the standard 127 days a year with their children can get credits to offset their monthly child support payments.

For purposes of the credit, "days" means overnights spent caring for the child. The noncustodial parent will not receive credit for time the child spends with someone else while in his or her custody.

The credit cannot reduce the child support obligation below the minimum requirement, which is \$50 a month per child.

Credits are as follows:

▲ 128 to 147 days: 15 percent

▲ 148 to 166 days: 20 percent

▲ 167 or more: 25 percent

Child Support Enforcement Division,
Attorney General's Office

GET A COPY

▲ For a copy of the proposed changes to Guam's child support guidelines, visit the Child Support Enforcement Division at Ada's Commercial Center in Hagåtña. For more information, call 475-3360 or e-mail: childsupport@guamce.net.

MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN
2005 (FIRST) Regular Session

Bill No. 128(EC)

Introduced by:

Ray Tenorio ~~_____~~

2005 MAY -4 PM 3:45 J.T.

AN ACT TO APPROVE/DISAPPROVE THE NEW
CHILD SUPPORT GUIDELINES FILED BY THE
ATTORNEY GENERAL OF GUAM.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. The proposed child support guidelines filed with *I*
3 *Liheslaturan Guåhan* on March 31, 2005 by the Attorney General of Guam
4 and attached as appendix I to this Act are hereby approved/disapproved.

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