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Child Support Myths and Truths: Exploring the Assumptions Underlying Florida's Statutory Guidelines

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"Myths which are believed in, tend to be come true."[1] In exploring the mythology which has developed since Florida's child support guidelines were adopted in 1987, it is apparent that George Orwell's observation rings true. In an effort to foster a better understanding and avoid misapplication of the guidelines, this article is intended to expose the myths that have arisen and to identify the economic and political assumptions upon which the guidelines were predicated.

Myth: The guideline table contained in F.S. §61.30(6) was generated based upon an economic analysis of expenditures in divorced families living in Florida.

Truth: The statutory table and amounts were initially developed by the Office of Child Support Enforcement (OCSE) within the U.S. Department of Health and Human Resources and were premised upon the work of Thomas J. Espenshade, who was a senior research assistant in the Women and Family Policy Program at the Urban Institute.[2] Espenshade analyzed the 1972–73 Consumer Expenditures Survey (CES), which was administered by the U.S. Bureau of Labor Statistics and the Bureau of the Census, in order to develop estimates of child rearing costs. The survey, which was the primary basis for Espenshade's estimates, was a nationwide sample of intact urban and rural families who were asked to report on their total expenditures for a period of 15 months.[3] No divorced families were surveyed.[4] Espenshade's estimates were also based upon two-parent households in which the wife was employed at least part time.

> Is it time for assumptions and economics to be revisited so that the amounts awarded on children's behalf reflect the realities of divorced and blended families?

The failure to consider the potentially increased costs of child rearing in the event of a divorce in formulating the guidelines was rationalized by the OCSE in two ways. First, there was "no credible or current data for single-parent households" and, second, the data concerning intact households was believed to generate higher support levels than in a "single parent household," because the parties to a divorce usually experience an overall reduction in their standard of living following their divorce.[5] These justifications seem unsubstantiated since the data in Espenshade's research was already approximately 15 years old at the time the guidelines tables were initially formulated and no attempt was made to determine the actual amount of money spent by divorced parents on their children. Thus, it remains unclear whether the OCSE's election to use figures for children of intact families was appropriate, especially given the common lament of divorced parents that two households cannot live as cheaply as one.

Myth: Florida's child support guidelines are federally mandated and a judge cannot deviate from the guidelines.

Truth: The federal government requires each state, as a condition for having its state welfare plan approved, to establish guidelines for child support award amounts. There must be a rebuttable presumption that the award, which results from application of the guidelines, is the correct amount of support to be awarded, unless application of the guidelines would be unjust or inappropriate in a particular case.[6] The rationale underlying this mandate is to ensure the adequacy of child support awards and consistent use of the guidelines. "Although guidelines need not be binding, properly developed guidelines can have a substantial benefit if parents, attorneys and agencies know they will be applied in each case, except when a court determines exceptional circumstances warrant deviation."[7]

In regard to the ability of courts to deviate from the guidelines, proponents recommended that any deviations must be supported by findings "to protect the integrity of the guidelines and facilitate equitable determination in subsequent modifications."[8] Despite the federal intent that deviations are made only in "exceptional circumstances," Florida law

has evolved to afford judges broad discretion to deviate from the presumptive amount. The Florida Supreme Court in *Finley v. Scott*, 707 So. 2d 1112 (Fla. 1998), acknowledged not only that the guideline amount was "clearly rebuttable," but also that the actual expenditure for the needs of the child is evidence the court should weigh in determining whether to vary from the guideline formula. "Decisions as to whether and how much to vary child support awards from the amounts dictated by the statutory guidelines formula are fact-intensive decisions that depend upon the record in each case."

F.S. §61.30(11) contains a list of factors which the court may consider in deviating from the guideline amount, ranging from the age of the child and extraordinary needs to the impact of the federal tax dependency exemption and seasonal variations in a parent's pay. Recently, judicial discretion to deviate from the support guidelines was further expanded by the legislature to require deviation in circumstances in which a child spends a "substantial amount of time" with each parent. Effective October 1, 1999, the court shall adjust the minimum support amount based on the following seven factors:

(1) the amount of time each child will spend with each parent under the shared parental arrangement,
(2) the needs of the child,
(3) the direct and indirect financial expenses for each child. For purposes of this subparagraph, "direct financial expenses" means any expenses which are incurred directly or on behalf of a child or in which a child directly participates including, but not limited to, expenses relating to what a child eats or wears or schooling and extracurricular activities, and "indirect financial expenses" means any household expenses from which a child indirectly benefits, including, but not limited to, expenses relating to a mortgage, rent, utilities, automobile, and automobile insurance,
(4) the comparative income of each parent, considering all relevant factors, as provided in §61.30(2)(a),
(5) the station in life of each parent and each child,
(6) the standard of living experienced by the entire family during the marriage; and
(7) the financial status and ability of each parent.

F.S. §61.30(11)(b) (1999).

The new language does not specify whether deviation may only be downward for the paying parent, nor does it prohibit courts from increasing the amounts paid by either parent due to the increased financial expenses in both residences. Eliminated, however, from the statute is discretionary language, which caused courts to consider the savings impact on the primary residential parent as a basis for downward deviation or the refusal of the secondary residential parent to spend time with the children as a basis for an upward award. Also eliminated is language calling for deviation not to exceed 50 percent of the amount awarded when the secondary residential parent spends more than 28 consecutive days with a child. Given the underlying assumptions which are explored herein, the statutory amendment requiring a deviation appears to be a dramatic departure from the federal intent which ensures children will receive consistent predictable amounts.

Myth: Unless a child spends more than one third of his or her time with the secondary residential parent, there is no basis for a deviation from the guidelines due to significant timesharing.

Truth: The legislature has opened the door to allocate child support according to the proportion of time spent by each child with each parent in passing the new requirement for deviation in cases involving "substantial" parenting time. Webster defines substantial as "being that specified to a large degree."[9] However, there is no clear definition of how many days, hours, or weeks constitutes "significant" or "substantial" time. The studies which served as the economic basis for the statutory guidelines were conducted among intact families and did not address the impact of additional costs which result from raising a child when a divorce has occurred.[10] Consequently, the data underlying the statutory tables does not consider the costs or savings of significant shared parenting arrangements.

When the OCSE prepared its report in support of the guidelines,[11] the additional costs associated with shared parenting were discussed, but no direct adjustment was made to the income shares method to compensate for such expenses. In fact, the OCSE report structured the proposed child support guidelines for "traditional custody arrangements" which were defined at that time as an arrangement in which "one parent (usually the mother) has sole legal and physical custody of the child" and the other parent has "limited visitation rights," which were generally two days, every other weekend. As defined in the