

Findings and Recommendations from the Review of the Kentucky Child Support Guidelines

Presentation to the Interim Joint Committee on
Judiciary

October 4, 2019

W. Bryan Hubbard, Commissioner, Department for Income Support, Cabinet for
Health and Family Services

Jane Venohr, PH. D., Center for Policy Research (Economist to the Commission)

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Federal and State Requirements

Quadrennial Child Support Guidelines Reviews

Required by

- State statute (KRS 403.213)
- Federal regulation (45 CFR §302.56)

State statute authorizes the guidelines commission to review the guidelines

Federal regulation has numerous requirements, which were expanded in December 2016:

- Timeline for meeting new requirements: year after completing the 4-year review commencing after December 2016
- Non-compliance affects IV-A/IV-D funding (i.e., funding for the KTAP and child support programs)
- Federal regulation specifies a . . . *“State must review, and revise, if appropriate, the child support guidelines. . .”*

Goal and Objectives of Review and Commission Recommendations

Goal

- Appropriate amounts that are in the best interest of children and families

Objectives

- Fulfill federal and state requirements
- Fulfill state open meeting requirements
- Congruent with rebuttable presumption of equal parenting time
- Provide a shared parenting-time formula that:
 - Yields consistent order amounts
 - Provides predictable amount among divorcing and separating parents
 - Is simple to use and minimizes litigation

Child Support Guidelines Review Commission

Members	Statutory Requirement	Members	Statutory Requirement
W. Bryan Hubbard, Commissioner	Secretary of CHFS or designee	Steve Gold	County attorney
Anita Britton	Member of the bar	Travis Mayo	Attorney general or designee
Melinda Gillum Dalton	Member of the bar	Stephanie Thomas	Custodial parent
Judge Masterton, Chair	Circuit judge	William Breckinridge	Noncustodial parent
Judge Brandi Rogers	Circuit judge	Vacant	Parent with split custody
Judge Michael Loy	District judge	Emily Cochran	Child advocate
Diane Fleming	County attorney		

Child Support Guidelines Review Commission

- Most members are appointed by the Governor, Chief Justice, or the President of the Kentucky Bar Association
- Members met six times from December, 2018 through September, 2019
- Meetings were publicized and open to the public

Federal Requirements (45 CFR §302.56)

1987: States required to have advisory guidelines

1989: States required to have rebuttable
presumptive guidelines

2016: Major expansion of federal requirements

Two Types of Federal Requirements

Type 1	Requirements of state guidelines
Type 2	Requirements of state guidelines <i>reviews</i>

Specific Federal Requirements of Guidelines

Continued Requirements (1989→)

- Provide one guideline, used statewide
- Consider all earnings and income
- Be specific and numeric
- Provide for the children's healthcare
- Provide deviation criteria
- Require record of the deviation

Additional Requirements (2016→)

- Consider other evidence of ability to pay
- Consider parent's basic subsistence needs
- Consider specific circumstances when imputing income
- Do not treat incarceration as voluntary unemployment

Kentucky's Compliance with Specific Federal Requirements of Guidelines

Continued Requirement	KY Complies	New Requirement	KY Complies
Provide one guideline, used statewide	<input checked="" type="checkbox"/>	Consider other evidence of ability to pay	<input checked="" type="checkbox"/>
Consider all earnings and income	<input checked="" type="checkbox"/>	Consider parent's basic subsistence need	No
Be specific and numeric	<input checked="" type="checkbox"/>	Consider specific circumstances when imputing income	<input checked="" type="checkbox"/>
Provide for child's healthcare needs	<input checked="" type="checkbox"/>	Do not treat incarceration as voluntary unemployment	<input checked="" type="checkbox"/>
Provide deviation criteria	<input checked="" type="checkbox"/>		
Require record of deviation	<input checked="" type="checkbox"/>		

Specific Federal Requirements of Guidelines *Reviews*

Continued Requirements (1989→)

- Review guidelines at least once every 4 years and revise if appropriate
- Consider economic data on the cost of raising children
- Analyze case data on the application of, and deviation from, the guidelines to keep deviations at a minimum

Additional Requirements (2016→)

- Analyze labor market data
- Consider the impact of guidelines, particularly those with low income
- Analyze payment data
- Analyze application of low-income adjustment, and rates of income imputation and defaults
- Provide opportunities for public comment, including input from low-income parties and the IV-D agency

Kentucky's Compliance with Child Support Guidelines Review

- Fulfilled public comment requirements
- Fulfilled federal requirements to consider economic, labor market, and case file data and other analyses
- Used findings to develop three recommendations:
 1. Update child support table
 2. Provide a self-support reserve
 3. Provide a shared parenting-time formula



Recommendation 1: Update Child Support Table

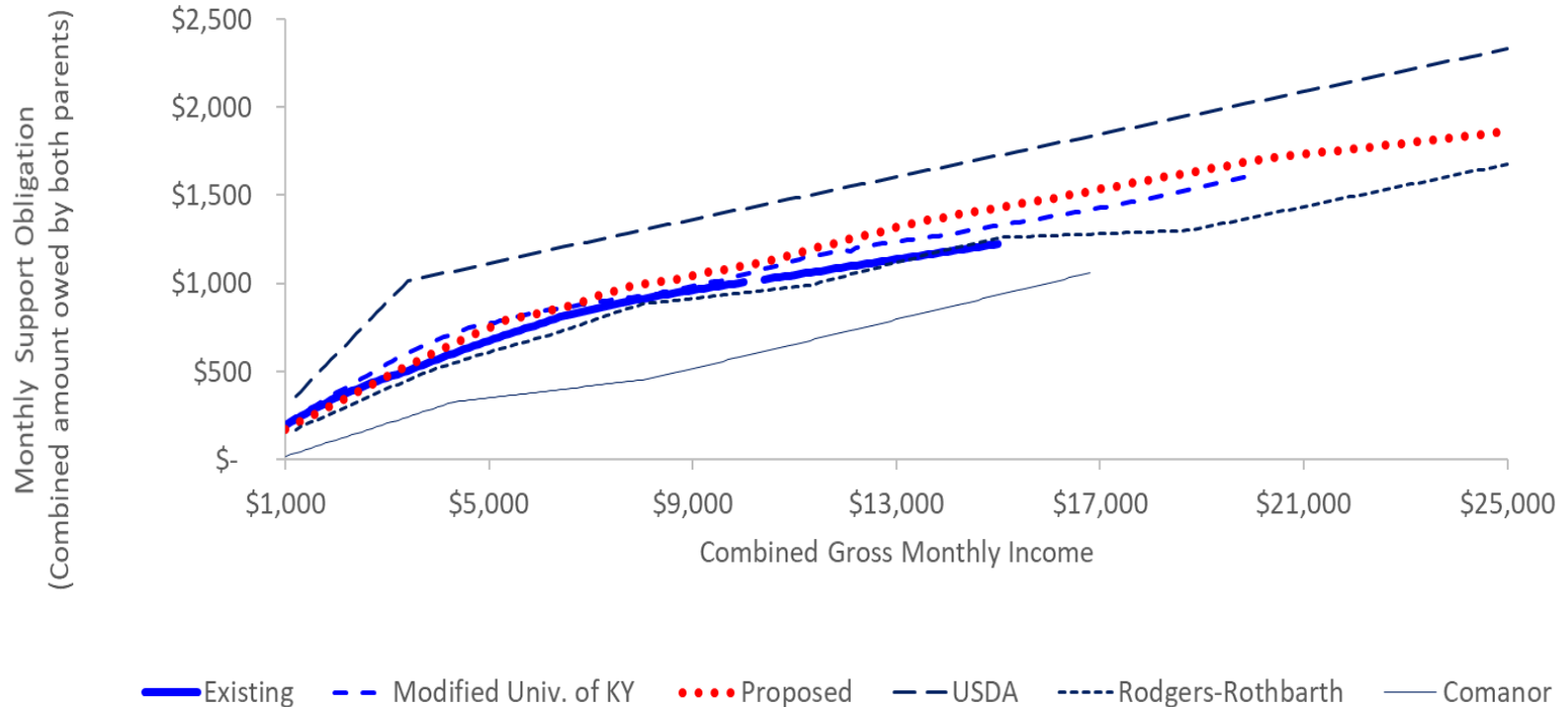
Child Support Tables are Part Economic and Part Policy

	Basis of Existing Table	Basis of Proposed Table	Basis of Other States' Guidelines
Guidelines Model	Income shares	Income shares	41 states use income shares
Economist Measuring Child-Rearing Costs (study year)	Thomas Espenshade (1984)	David Betson (2010)	29 states based on Betson study
Economic Methodology	Engel	Rothbarth	30 states based on Rothbarth
Years that Underlying Expenditures Data Were Collected	1972-1973	2004-2009	Varies
Price Levels	1986	2019	Year of last review
Adjustment for KY Cost of Living	None	2017 KY price parity	
Federal and State Tax Rates	1986 federal and South Carolina taxes	2019 federal and Kentucky	Year of last review
Gross income ranges	Up to \$15,000/month	Up to \$30,000/month	Varies
Other	Based on 1986 national prototype income shares model		

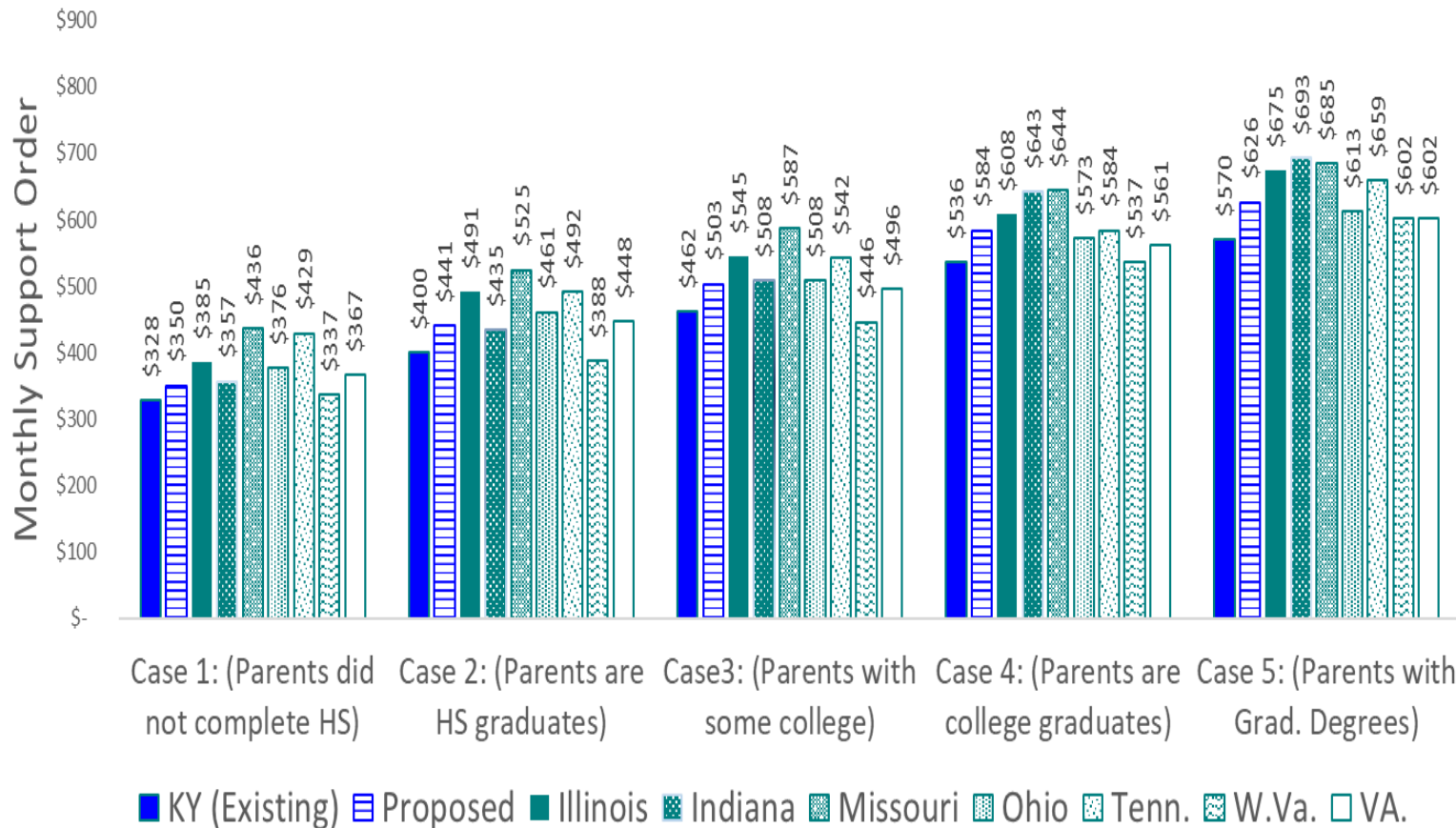
Economic Studies of Child-Rearing Expenditures

- There are 10 different studies underlying state child support guidelines:
 - 29 states and Guam based on Betson-Rothbarth (BR) measurements
 - BR measurements have been updated four times since 1990
 - Four studies used by only one state (GA, KS, MN, and NJ)
 - Approximately six states including KY based on 1984 study
 - Approximately five states based on 1971 study
 - Basis is not clear in seven states
- In addition, there are three new studies that are not used by any state
- 2008: the University of Kentucky developed updated table using 3rd BR study
- 2019: proposed updated table using 4th BR study

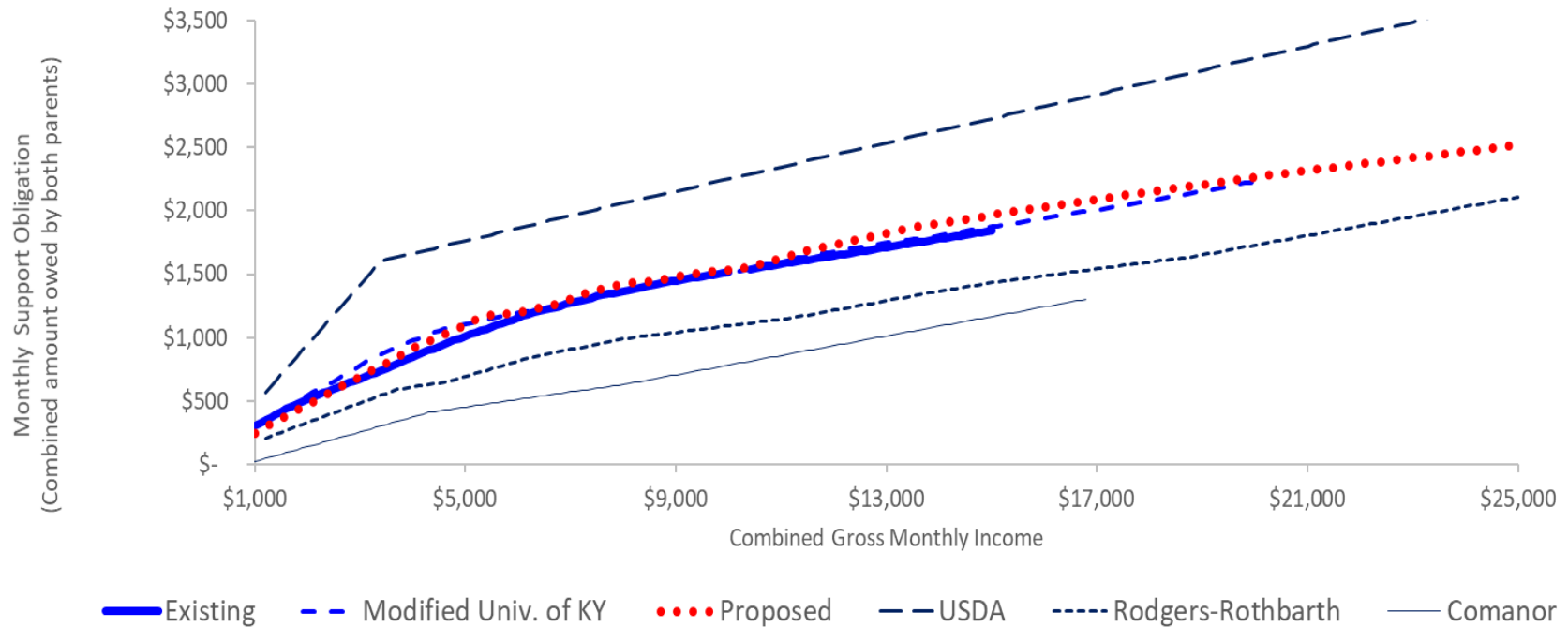
Comparisons for One Child



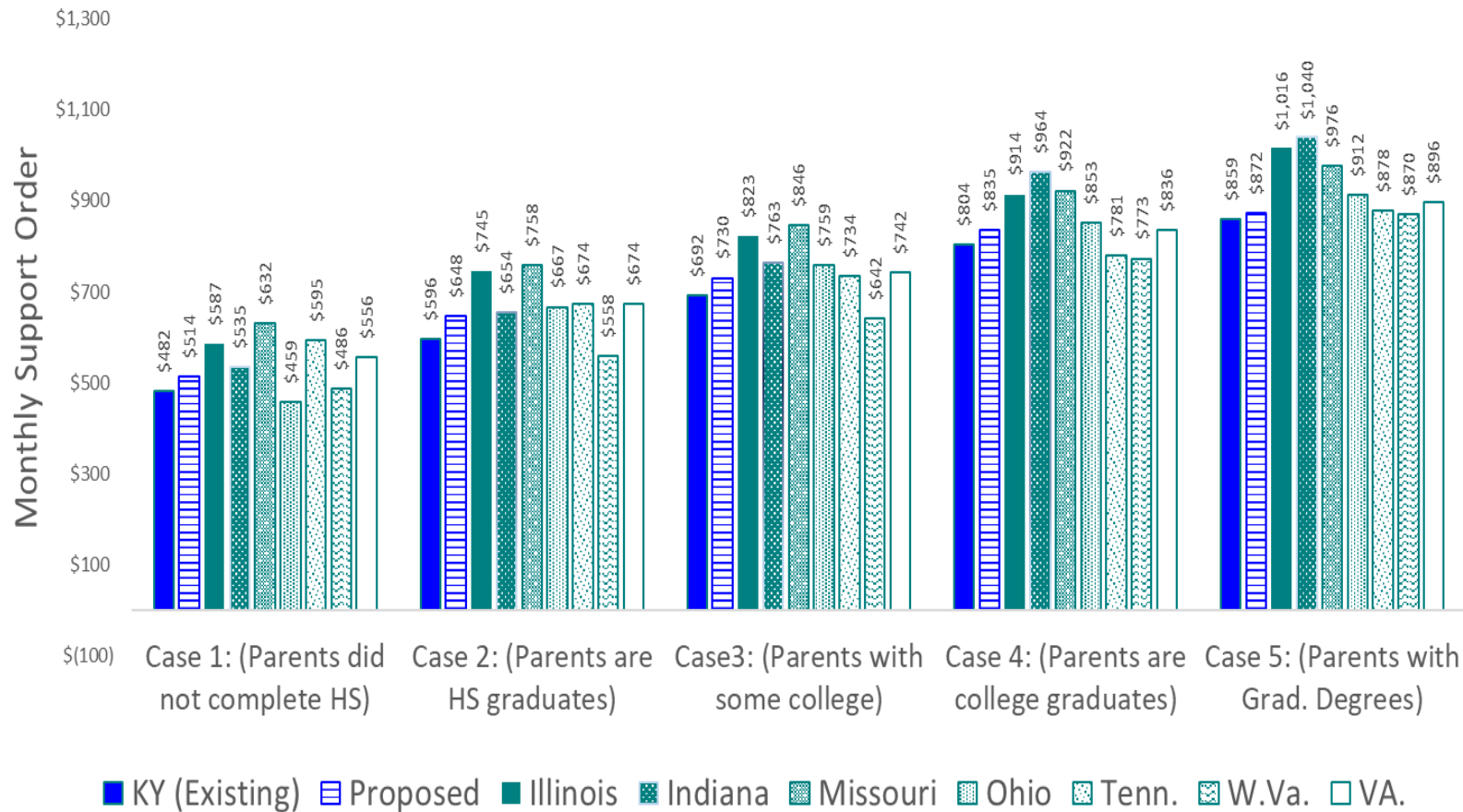
Comparisons to Other States: One Child



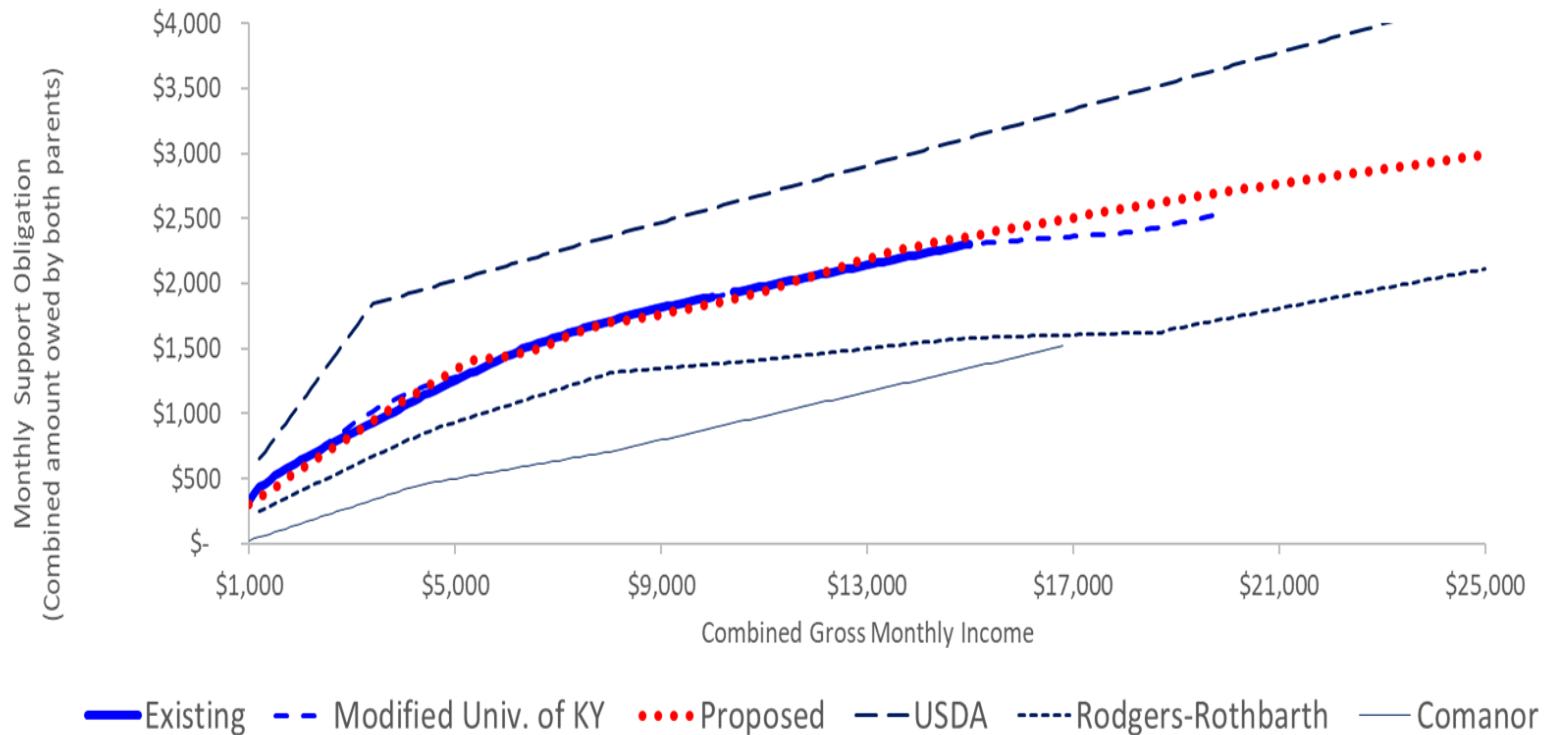
Comparisons for Two Children



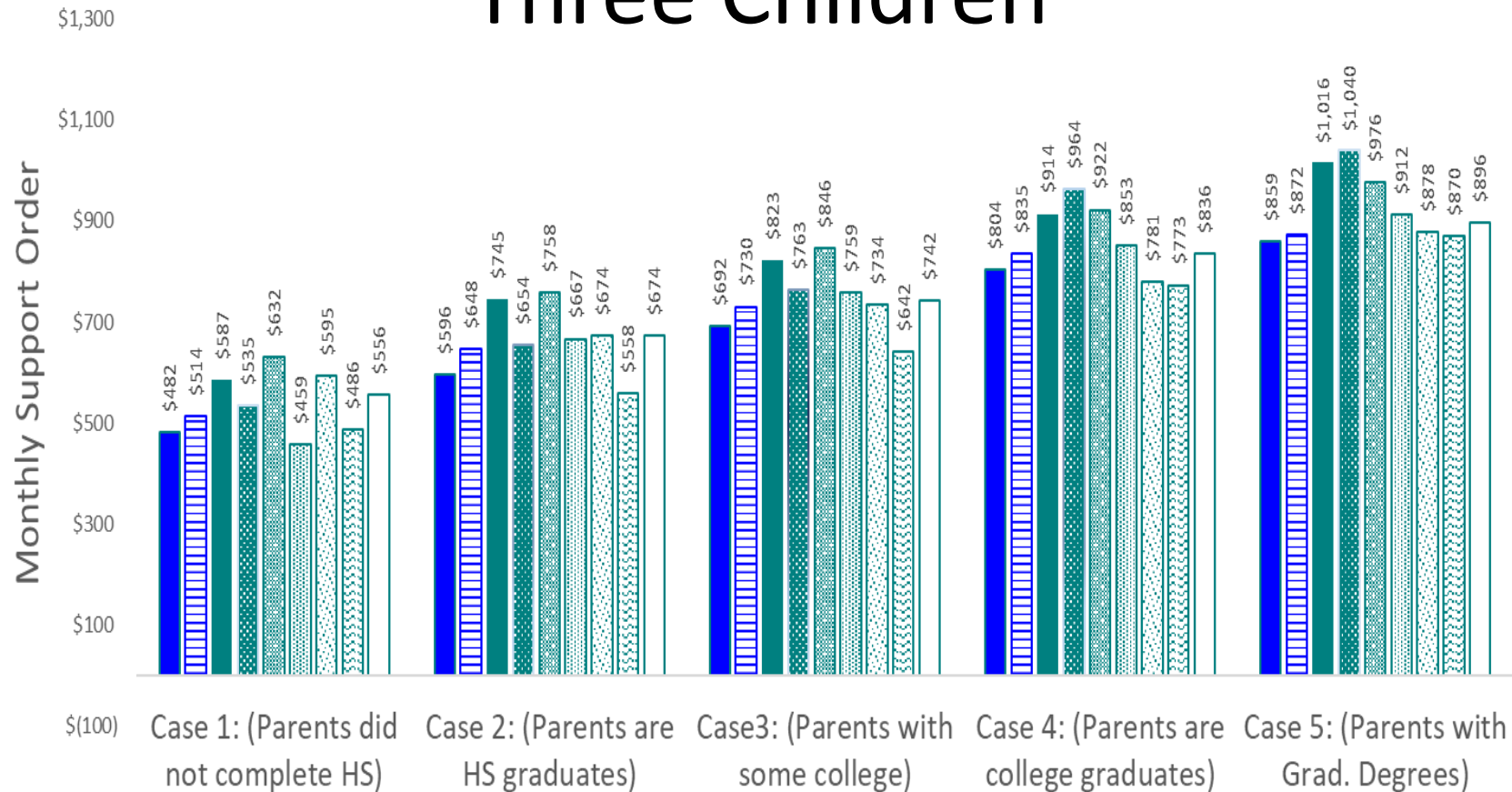
Comparisons to Other States: Two Children



Comparisons for Three Children



Comparisons to Other States: Three Children



■ KY (Existing) ■ Proposed ■ Illinois ■ Indiana ■ Missouri ■ Ohio ■ Tenn. ■ W.Va. ■ VA.

Conclusions about Updating Table

- Updating the table is just:
 - Uses most current and credible economic data
 - Considers Kentucky-specific data (prices and state tax rates)
- Impact
 - Small changes for typical cases
 - Most will not meet 15% variance criterion for a modification
 - May result in increase or decrease if shared parenting-time formula is also legislated
 - Combined impact is still small
 - Raising maximum gross income to \$30,000



Recommendation 2: Provide a Self-Support Reserve

Federal Requirement to Consider Basic Subsistence Needs

45 CFR §302.56 (c)(1)(ii)

The child support guidelines established under subparagraph (ii) of this section, at a minimum:

“Takes into consideration the basic subsistence needs of the noncustodial parent (and at the state’s discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method determined by the State;”

Most States Use a Self-Support Reserve (SSR)

- Most states relate the SSR to the federal poverty guidelines (FPG), for one person, in the year that guidelines were last reviewed
 - 2019 FPG = \$1,041/month
 - SSRs in neighboring states range from \$500/month (WV) to \$1,128/month (OH)
- Kentucky's proposed SSR = \$915/month
 - \$915 = 2019 FPG multiplied by Kentucky's price parity (87.9%)

Minimum Order Applies If Income Is Below the Self-Support Reserve

- Kentucky's existing minimum order = \$60/month
- Kentucky's proposed minimum order = \$60/month
- Minimum orders in neighboring states
 - Range from \$40/month (IL) to \$80/month (OH)
 - Some provide \$0 when equal incomes and equal physical custody, incarcerated or institutionalized, or another factor

Phase-Out of SSR Adjustment/Phase-In of Ordinary Guidelines Calculation Based on Table

- Gradual phase-out needed to provide economic incentive to increase earnings
- Proposed Line 17 provides for gradual phase-out
- Proposed Line 17 recognizes payroll taxes

		A. Obligee	B. Obligor	C. Both Parents
Preliminary Order				
13.	Amount obligor pays to the obligee		\$161	
Self-Support Reserve Test				
14.	Obligor's adjusted monthly income (Line 4)		\$1,015	
15.	Self-Support Reserve (\$915)		\$915	
16.	Income less SSR (Line 14 – Line 15, if amount is a negative number, enter \$0)		\$100	
17.	Income available for child support (Line 16 multiplied by 82 percent, if less than \$60 per month, enter \$60)		\$82	
18.	Presumptive child support amount (Lower of Line 13 and Line 17)		\$82	

Likely Impact of Self-Support Reserve

- Applied infrequently based on analysis of incomes from case file data and labor market data
 - 4% of obligors have income below \$1,000/month
- No reduction in support to families because compliance is not 100%
- Better compliance rate
 - Re-allocate resources used to enforce orders with less than 100% compliance



Recommendation 3: Provide a Shared Parenting-Time Formula

Rationale for Parenting-Time Adjustment

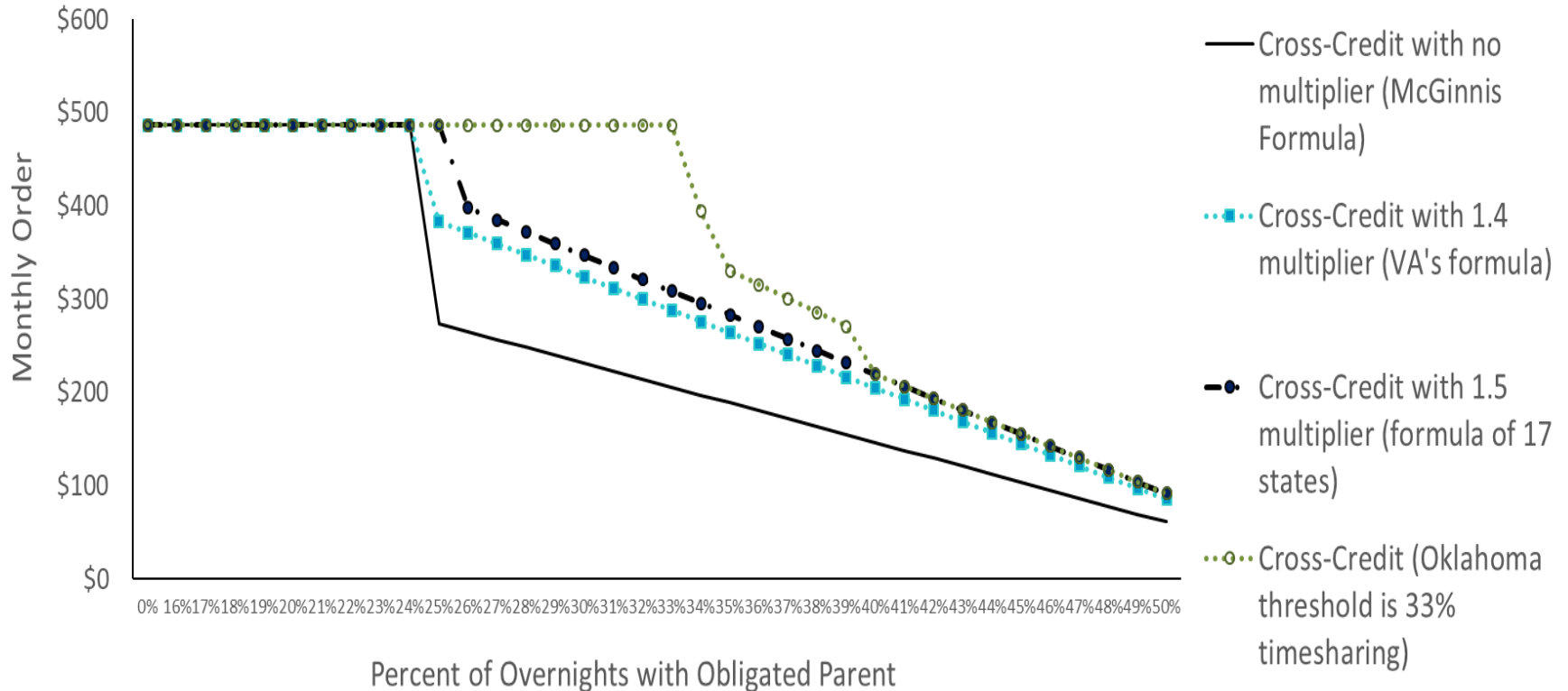
- Table assumes that child is being raised in one household
- About half of fathers living apart from their children have contact at least once a month or more
- 38 states provide a formula to adjust for shared parenting-time
- Adjustment formulas → consistent and predictable order amounts

Major Considerations of Establishing Criteria for Applying Parenting-Time Formula

	Other States	Major Advantages and Disadvantages of Alternatives	Proposed for Kentucky
Definitions of overnights or days	<ul style="list-style-type: none"> No detailed definition beyond “overnight” Some states provide court discretion for nontraditional, alternative schedules Most restrictive definition considers 3-hour blocks 	<ul style="list-style-type: none"> Trade-off between being precise and providing for consistent treatment and cumbersomeness 	Overnights with court discretion for alternative schedules
Criterion based on actual or court-ordered timesharing or both	<ul style="list-style-type: none"> States are mixed 	<ul style="list-style-type: none"> Court-ordered number of overnights avoids accounting issues “Exercised” is fair “Exercised” avoids court filing fees for change in court-ordered timesharing 	Court-ordered and exercised
Threshold for applying parenting time	<ul style="list-style-type: none"> Ranges from one overnight to nearly equal timesharing Some formulas require a threshold (cross-credit formula, called the “McGinnis formula” in KY) Some formulas do not require a threshold (CA, MI, MN and OR) 	<ul style="list-style-type: none"> Higher thresholds provide more precipitous drop in guidelines amount for parenting time adjustment No threshold coupled with small incremental adjustments provide gradual change with more overnights 	No threshold coupled with small incremental adjustments (Oregon approach)

Illustration of Precipitous Decrease at Timesharing Threshold

One Child, Obligor's Income = \$4,000, Obligee's Income = \$3,000



The Oregon Formula

- Designed by Oregon mathematics professor to produce a gradual change with more overnights
 - This requires starting with one overnight
 - Designed to track closely with cross-credit formula, but without cliff effect
 - Produces \$0 order when parents have equal incomes and equal timesharing
 - Underlying formula is a sigmoid function that converts to a lookup table
- Oregon has been using the formula since 2013 and reports reduced litigation over timesharing

Excerpt of Oregon Timesharing Table

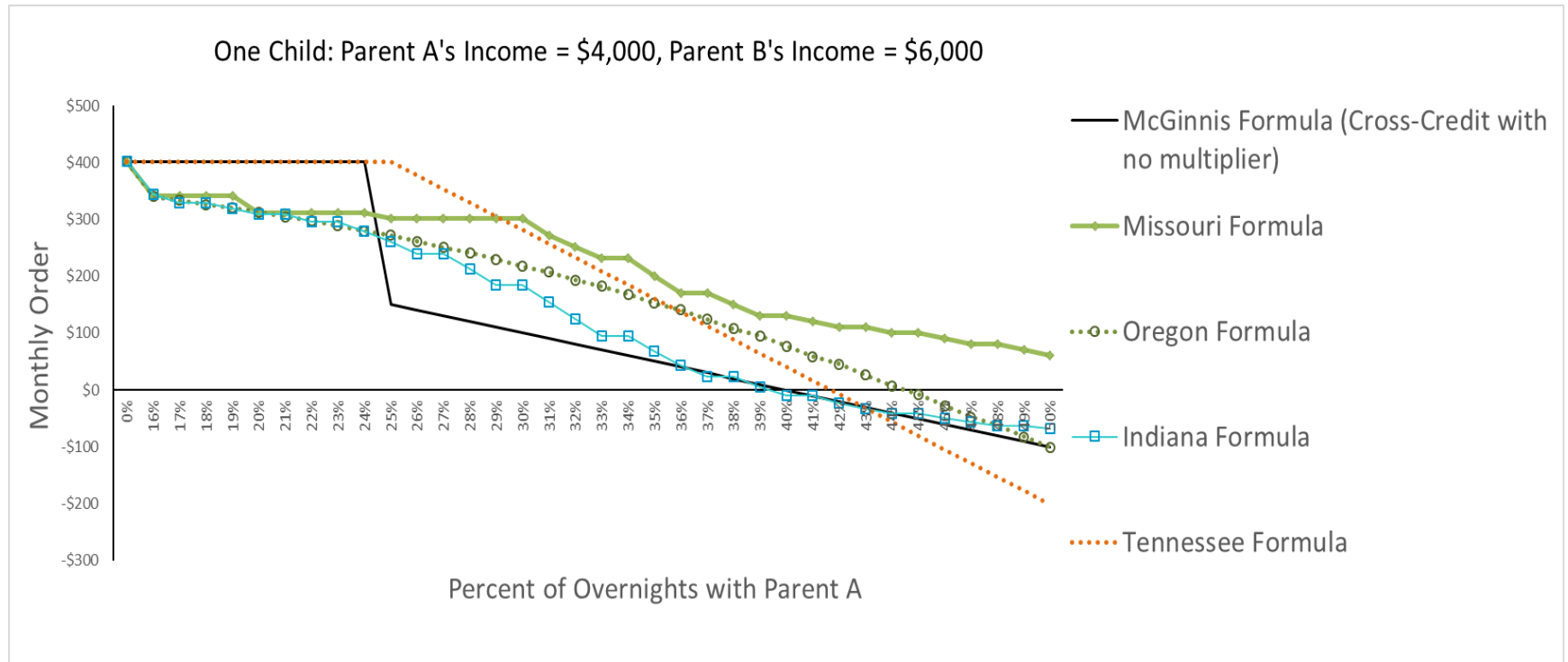
Example: Each parent's monthly income is \$4,950. Basic obligation for 1 child = \$1,000. Obligor's share is \$500. Obligor has 1 overnight. Adjustment is \$1,000 multiplied by .0007 \Rightarrow 70 cent adjustment

<i>Overnights</i>	<i>Credit %</i>	<i>Overnights</i>	<i>Credit %</i>	<i>Overnights</i>	<i>Credit %</i>	<i>Overnights</i>	<i>Credit %</i>
0	0	36	0.0319	72	0.0867	108	0.1777
1	0.0007	37	0.033	73	0.0887	109	0.1809
2	0.0014	38	0.0342	74	0.0907	110	0.1841
3	0.0021	39	0.0354	75	0.0927	111	0.1873
4	0.0028	40	0.0366	76	0.0948	112	0.1906
5	0.0035	41	0.0378	77	0.0968	113	0.1939
6	0.0042	42	0.0391	78	0.099	114	0.1972
7	0.0049	43	0.0404	79	0.1011	115	0.2006
8	0.0057	44	0.0416	80	0.1033	116	0.204
9	0.0065	45	0.043	81	0.1055	117	0.2075
10	0.0072	46	0.0443	82	0.1077	118	0.211
11	0.008	47	0.0456	83	0.11	119	0.2145
12	0.0088	48	0.047	84	0.1123	120	0.2181
13	0.0096	49	0.0484	85	0.1147	121	0.2217
14	0.0104	50	0.0498	86	0.117	122	0.2254
15	0.0113	51	0.0512	87	0.1194	123	0.229
16	0.0121	52	0.0527	88	0.1219	124	0.2327
17	0.0129	53	0.0541	89	0.1243	125	0.2365
18	0.0138	54	0.0556	90	0.1268	126	0.2403
19	0.0147	55	0.0571	91	0.1294	127	0.2441
....

Major Considerations for *Determining Which Formula to Use*

	Cross-Credit Formula	Non-linear Cross-Credit Formula	Fixed & Non-duplicated Expense Concept	Oregon	Other Formulas
Use by states	20 states use	MN & MI	IN, MO, & NJ	OR	13 states each have different formulas
Theoretical basis	Theoretical order calculated for each parent, parent owing more, pays difference			Designed to yield gradual change and track cross-credit formula with multiplier	Some are simple percentage and others are variants of per diem approach (e.g., TN)
Cliff effect?	Yes	No	Varies by state	No	Most do
\$0 order when incomes and timesharing are equal?	Yes	Yes	No, one parent always controls some expenses	Yes	Most don't
Can flip from Parent A to Parent B owing support?	Yes	Yes	Unusual	Yes	Most don't
Ease of use	Requires additional worksheet	Requires automated guidelines worksheet	Requires court determination of controlling parent	Lookup table is easy to use, but long	Varies

Illustration of Flipping of Parent Obligated to Pay Support from Parent A to Parent B





Summary and Conclusions

Summary and Conclusions

- **Recommendation 1: Update Child Support Table**
 - In order to provide the most current, credible economic evidence, and consider Kentucky data
- **Recommendation 2: Provide a Self-Support Reserve**
 - Meets new federal requirement
 - Impact likely to be negligible as deducted by labor market and case file data
- **Recommendation 3: Provide a Shared Parenting-Time Formula**
 - Produces consistent and predictable order amounts
 - Oregon formula is easy to use, sensible, and provides gradual adjustment with more overnights



References

References to Child-Rearing Studies

- Espenshade, Thomas J. (1984). *Investing in Children: New Estimates of Parental Expenditures*, Urban Institute Press: Washington, D.C.
- Betson, David M. (2010). "Appendix A: Parental Expenditures on Children." In Judicial Council of California, *Review of Statewide Uniform Child Support Guideline*. San Francisco, CA. Retrieved from <http://www.courts.ca.gov/partners/documents/2011SRL6aGuidelineReview.pdf>
- Goggins, Kylie, Jepsen, Christopher, and Troske, Kenneth. (October 2008). *Review of Kentucky's Child Support Schedule: Final Report*. Report to Kentucky Child Support Commission and Kentucky Cabinet for Health and Family Services, Center for Business and Economic Research, Department of Economics, University of Kentucky, Lexington, KY.
- Betson, David M. (2006). "Appendix I: New Estimates of Child-Rearing Costs" in PSI, *State of Oregon Child Support Guidelines Review: Updated Obligation Scales and Other Considerations*, Report to State of Oregon, Policy Studies Inc., Denver, CO. Available at https://justice.oregon.gov/child-support/pdf/psi_guidelines_review_2006.pdf
- Lewin/ICF. (1990). *Estimates of Expenditures on Children and Child Support Guidelines*. Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. Fairfax, Virginia.
- Lino, Mark. (2017). *Expenditures on Children by Families: 2015 Annual Report*. U.S. Department of Agriculture, Center for Nutrition and Policy Promotion. Miscellaneous Publication No. 1528-2015, Washington, D.C. Retrieved from <http://www.cnpp.usda.gov/publications/crc/crc2012.pdf>.
- Rodgers, William M. (2017). "Comparative Economic Analysis of Current Economic Research on Child-Rearing Expenditures." In Judicial Council of California, *Review of Statewide Uniform Child Support Guideline 2017*. San Francisco, CA. Retrieved from <http://www.courts.ca.gov/documents/lr-2018-JC-review-of-statewide-CS-guideline-2017-Fam-4054a.pdf>
- Comanor, William, Sarro, Mark, and Rogers, Mark. (2015). "The Monetary Cost of Raising Children." In (ed.) *Economic and Legal Issues in Competition, Intellectual Property, Bankruptcy, and the Cost of Raising Children* (Research in Law and Economics), Vol. 27). Emerald Group Publishing Limited, pp. 209–51. The Comanor study has been extensively reviewed by the Minnesota Child Support Task Force, which heard presentations from Comanor and critiques of Comanor by Dr. Jane Venohr. See Minnesota Department of Human Services, St. Paul, MN. For example, see https://mn.gov/dhs/assets/2017-03-31-Revised-Dr-Venohr-Report-to-MN-Child-Support-Task-Force_tcm1053-286690.pdf.

Prototype Income Shares Model

National Center for State Courts (1987). *Development of Guidelines for Child Support Orders, Final Report*. Report to U.S. Department of Health and Human Services, Office of Child Support Enforcement, Williamsburg, Virginia.