



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **Sub. S.B. 125**

132nd General Assembly

(As Reported by H. Community & Family Advancement)

**Sens.** Beagle, Eklund, Hite, Manning, Terhar, Wilson, Coley, Hackett, Hoagland, Huffman, Lehner

**Rep.** LaTourette

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## **BILL SUMMARY**

### **Basic child support schedule**

- Repeals the existing statutory basic child support schedule and requires the Ohio Department of Job and Family Services (ODJFS) to adopt rules to create the schedule.
- Requires the new schedule to incorporate a self-sufficiency reserve in order to create an adjusted schedule based on 116% of the federal poverty level for a single person.
- Requires ODJFS to update the basic child support schedule created in rules and the self-sufficiency reserve every four years to reflect changes in the Consumer Price Index for All Urban Consumers.

### **Child support worksheets**

- Repeals the existing statutory worksheet forms used to calculate child support and requires ODJFS to adopt rules governing the creation of child support worksheet forms and a standard instruction manual to provide guidance and assistance for calculating child support.
- Allows ODJFS to revise the worksheet and manual as needed, but requires revisions to both at least once every five years.

## **Child Support Guidelines Advisory Council review**

- Makes changes to the law requiring ODJFS, with the assistance of a Child Support Guidelines Advisory Council, to conduct a review every four years to determine whether child support orders issued under the basic child support schedule and worksheets adequately provide for the needs of children subject to child support orders.

## **Child support calculation**

- Allows a court or child support enforcement agency (CSEA) to determine obligation amounts on a case-by-case basis when the combined annual income of both parents is greater than the maximum annual income established in the basic child support schedule adopted by ODJFS.
- Provides that if the combined annual income of both parents falls below the minimum annual income established in the basic child support schedule adopted by ODJFS, the court or CSEA must apply the minimum support amount.
- Makes the following changes regarding calculation of the amount of child support to be paid:
  - Permits deduction from a parent's annual income of the annual amount of any court-ordered spousal support that is actually paid, excluding any ordered payments on arrears.
  - Requires a court or CSEA to adjust the amount of child support to be paid by a parent who has children not subject to the order, instead of deducting from gross income amounts:
    - Paid for children under pre-existing support order; or
    - That equal the federal income tax exemption for children with another parent not involved in the child support proceedings.
  - Establishes additional factors that, if applicable, prevent a court or CSEA from determining a parent to be unemployed or underemployed, for purposes of imputing income.
  - Provides that if a parent has an annual income subject to the self-sufficiency reserve, the parent's support obligation cannot be more than the obligation that would have resulted from an unadjusted schedule.



- Requires a deduction from the parent's annual child support obligations for any nonmeans tested benefits that a child subject to the order receives as a result of claims made by the parent.
- Requires both parents to share child care costs, and specifies factors that a court or CSEA must consider in determining child care costs.
- Requires a court or CSEA to reduce an annual child support obligation by 10% when a court issues a parenting time order that equals or exceeds 90 overnights per year.
- Amends the existing deviation factors that the court may consider when determining whether to deviate from the amount of child support that would otherwise result from the use of the basic child support schedule and worksheet.
- Permits a court to consider the following new deviation factors when determining whether to grant a deviation:
  - The child support obligee's income, if the obligee's annual income is equal to or less than 100% of the federal poverty level.
  - Extraordinary work-related expenses incurred by either parent.
  - Post-secondary educational expenses paid for by a parent for the parent's own child or children, regardless of whether the child or children are emancipated.
  - Costs incurred or reasonably anticipated to be incurred by the parents in compliance with court-ordered reunification efforts in child abuse, neglect, or dependency cases.
  - Extraordinary child care costs required for the child or children that exceed the maximum statewide average cost, including extraordinary costs associated with specialized physical, psychological, or education conditions.
- Specifies that, in determining whether to grant a deviation based on extended parenting time or extraordinary costs associated with parenting time, the court must recognize that expenses for children are incurred in both households and must consider a substantial deviation if parenting time equals or exceeds 147 overnights per year.
- Repeals "the amount of time the children spend with each parent" considered to be an extraordinary circumstance permitting deviation from the amount of child support calculated pursuant to a shared parenting order.

- Permits a court to issue separate orders for education expenses and for appropriate expenses and allows the court to consider the expenses in adjusting a child support order.
- Increases the minimum support obligation from \$50 to \$80 and permits CSEAs to impose minimum support obligations.

## **Health care**

- Requires each child support order to specify that both the child support obligor and obligee are liable for the health care expenses of any children not covered by health insurance as those expenses are calculated using a formula established by each court or CSEA.
- Makes changes regarding the determination of responsibility for obtaining health insurance coverage including establishing a rebuttable presumption that the child support obligee is the appropriate parent to provide health insurance coverage.
- Specifies circumstances that a court or CSEA may use to rebut the presumption, such as when a child support obligor wishes to be named the health insurance obligor, when the child support obligor can obtain reasonably priced coverage for the child through an employer or other source, or when the obligee is a nonparent individual or agency that has no duty to provide medical support.
- Establishes a credit for the cost of providing health insurance coverage against a parent's annual income when calculating child support.
- Makes changes to the requirement for cash medical support in child support orders, including a requirement that cash medical support orders be administered, revised, modified, and enforced in the same manner as the underlying child support order.
- Makes changes regarding the payment of extraordinary medical expenses.
- Requires that each order contain a statement setting forth the name and address of the individual to be reimbursed for medical expenses.
- Clarifies the law governing accessibility determinations made by a court or CSEA regarding primary care services under private health insurance coverage.
- Provides for modification of a child support order if a court determines that insurance coverage under the order is inadequate to meet the medical needs of the child.

## Other child support provisions

- Requires a CSEA reviewing a court child support order to apply deviations from the existing order to the revised amount of child support if the monetary or percentage value can be determined by the CSEA.
- Establishes a rebuttable presumption that the amounts withheld or deducted to recover the overdue and unpaid support or arrearage under a terminated child support order are at least equal to the amount that was withheld or deducted under the terminated order.
- Permits a court or CSEA to consider evidence of household expenditures, income variables, extraordinary health care issues, and other reasons for deviation from the presumed amount.

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## CONTENT AND OPERATION

### Background

Title IV-D of the federal Social Security Act requires every state to establish child support guidelines and review those guidelines at least once every four years to ensure that their application results in the determination of appropriate child support award amounts. Ohio law requires the ODJFS to conduct the review with the assistance of the Child Support Advisory Council. ODJFS and the Council must prepare a report of its review and submit a copy of the report to both houses of the General Assembly. The most recent report was issued in 2017.<sup>1</sup> S.B. 125 includes changes to Ohio law governing child support that were recommended by this latest report.

Specifically, the bill makes changes to (1) the basic child support schedule and worksheets, (2) the Child Support Guideline Advisory Council review, (3) how child support is calculated, (4) minimum child support order requirements, (5) how health care for the children covered by a child support order is handled, (6) the review and modification of child support orders, and (7) the collection of arrearages under terminated orders.

### Basic child support schedule

#### Replaced by rules

The bill repeals the statutory basic child support schedule used by courts and CSEAs to calculate child support amounts. In its stead, the bill requires the ODJFS Director to create a schedule by rule pursuant to the Administrative Procedure Act (R.C. Chapter 119.)<sup>2</sup> The schedule is required to be based on the parents' annual incomes and must include a self-sufficiency reserve (see "**Self-sufficiency reserve**")

<sup>1</sup> Ohio Department of Job and Family Services, *2017 Child Support Guidelines Review*, available at <http://jfs.ohio.gov/Ocs/pdf/2017CSGuidelinesRev.stm> (last visited April 6, 2018), 42 U.S.C. 667(a) and R.C. 3119.024 (R.C. 3119.023 under the bill).

<sup>2</sup> R.C. 3119.021.



below). It must consist of a table depicting the payments required, depending on the number of children subject to the order. The bill requires the table to begin at an annual guideline income of \$8,400 and increase at \$600 increments to a maximum annual guideline income of \$300,000 (existing law schedule is \$6,600 to \$150,000 in \$600 increments). The child support obligation amount is to be determined at the intersection of the income row with the column designating the number of children. To create the schedule, ODJFS must multiply the guideline income amounts, at \$600 increments, by the basic obligation percentages listed in the bill for each coordinate income range listed in the bill, for each child. The basic obligation percentages change with each income range and increase with the number of children. Just like current law, the resulting schedule is to be applicable up to six children.<sup>3</sup>

### **Self-sufficiency reserve**

The schedule must also incorporate a self-sufficiency reserve based on 116% of the federal poverty level (FPL) amount for a single person, as reported by the United States Department of Health and Human Services in calendar year 2016. ODJFS, in order to incorporate the self-sufficiency reserve, must first create an unadjusted schedule as described above and then adjust it in the following way:

- For a guideline income of \$8,400 or less, the schedule amount must be the minimum order amount specified in R.C. 3119.06 (see "**Minimum support obligations**" below);

For a guideline income greater than \$8,400 but not greater than 116% of the FPL for a single person, the schedule amount must be the product of the following formula: Sliding scale multiplier x (guideline income - \$8,400) + annual minimum support amount under R.C. 3119.06.

- For a guideline income greater than 116% of the FPL for a single person, the schedule amount must be the lesser of the following:
  - The higher resulting product of the following two formulas:
$$(\text{guideline income} - 116\% \text{ of FPL}) \times .3$$
$$\text{Sliding scale multiplier} \times (\text{guideline income} - \$8,400) + \text{annual minimum support amount under R.C. 3119.06.}$$
  - The unadjusted schedule amount.

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<sup>3</sup> R.C. 3119.021(A) and (B)(1).

The sliding scale multipliers to be used in the above formulas are as follows:<sup>4</sup>

<b>Number of children subject to the order</b>	<b>Multiplier</b>
One	5%
Two	10%
Three	12%
Four	13%
Five	14%
Six	15%

### **Update every four years**

The bill requires ODJFS to update the schedule and the self-sufficiency reserve every four years to reflect changes in the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics by the United States Department of Labor (CPI-U) and changes in the FPL amount for a single person as reported by the United States Department of Health and Human Services. When updating the schedule for the most recent CPI-U, ODJFS must update the figures in the guideline income column for the percentage difference between the most recent CPI-U and the March 2016 CPI-U. When updating the reserve, ODJFS must set it based on 116% of the FPL in the most recent calendar year.<sup>5</sup>

### **Child support worksheets**

The bill repeals the existing statutory worksheet forms required to be used by courts and CSEAs when calculating child support under sole custody, shared parenting, and split custody situations. In their place, the bill requires the ODJFS Director to adopt rules governing the creation of child support guidelines worksheets and instructions that incorporate the requirements of the child support law for the calculation of child support and cash medical support obligations. Additionally, the Director must adopt standard worksheet forms for use by all courts and CSEAs and a standard instruction manual to provide guidance and assistance to those calculating support obligations.

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<sup>4</sup> R.C. 3119.021(B)(2).

<sup>5</sup> R.C. 3119.01(C)(6) and 3119.021(C)(1) and (2).





The bill provides that the Director may revise the worksheets and the manual as needed, but must revise them at least once every five years.<sup>6</sup>

### **Child Support Guideline Advisory Council review**

The bill makes changes to the law requiring ODJFS, with the assistance of a Child Support Guidelines Advisory Council that ODJFS constitutes, to conduct a review every four years of the basic child support schedule and to issue a report on any recommendations to the General Assembly.

#### **Scope of the review**

Under current law, the review is conducted for the purpose of determining whether the child support orders issued in accordance with the schedule and worksheets adequately provide for the needs of children under the child support orders. The bill adds that, in conducting the review, ODJFS may consider:

- The adequacy and appropriateness of the current schedule;
- Whether there are substantial and permanent changes in household consumption and savings patterns, particularly those resulting in substantial and permanent changes in the percent of total household expenditures on children;
- Whether there have been substantial and permanent changes to the federal and state income tax code, other than inflationary adjustments to such things as the exemption amount and income tax brackets; and
- Other factors.

The bill also states that this review is in addition to, and independent of, the update of the basic child support schedule that is required every four years as described above under "**Update every four years.**"<sup>7</sup>

#### **Change to Council membership**

Although the bill retains nearly all the requirements of current law regarding a Council, it does make a change to the membership. The bill requires a Council to include:

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<sup>6</sup> R.C. 3119.022.

<sup>7</sup> R.C. 3119.023(A) (R.C. 3119.024 under current law).



- Common pleas court judges who have jurisdiction over domestic relations and juvenile cases that involve the determination of child support; and
- Attorneys whose practice includes a significant number of domestic relations or juvenile cases that involve the determination of child support.

Under current law there is no requirement that the cases "involve the determination of child support." And current law does not (1) require the common pleas judges to have jurisdiction over juvenile cases or (2) allow an attorney whose practice includes a significant number of juvenile cases to be a Council member.<sup>8</sup>

### **Report year**

The bill changes the cycle of the Council review. Under the bill, ODJFS must make a report of the review on or before March 1 of every fourth year after 2015. Under existing law, it is every fourth year after 1993, with the latest report made in 2017.<sup>9</sup>

## **Child support calculation**

### **Calculating obligations according to the schedule**

The bill specifies that when a court or CSEA calculates the amount of child support to be paid according to a court or administrative order, it must apply the basic child support schedule to the parent's combined annual incomes and to each parent's individual income. If the combined annual income or individual income is between two amounts in the income column of the schedule, the court or CSEA may use the support obligation (1) corresponding to the higher of the two amounts, (2) corresponding to the lower of the two amounts, or (3) calculate an obligation that is between those two amounts and corresponds proportionally to the parent's actual combined annual income or individual income. Current law provides that the court or CSEA use the combined gross income of both parents and the current schedule in the same manner as described above.

The bill also provides that if the individual income of either or both of the parents is within the self-sufficiency reserve of the schedule (see "**Self-sufficiency reserve**" above), the court or CSEA must do both of the following:

(1) Calculate the basic child support obligation for the parents using the schedule amount applicable to the combined annual income and the schedule amount applicable to the income in the self-sufficiency reserve;

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<sup>8</sup> R.C. 3119.023(B) (R.C. 3119.024 under current law).

<sup>9</sup> R.C. 3119.023(C) (R.C. 3119.024 under current law).

(2) Determine the lesser of the following obligation amounts to be the applicable basic child support obligation:

(a) The amount that results from using the combined annual income of the parents not in the self-sufficiency reserve of the schedule;

(b) The amount that results from using the individual parent's annual income within the self-sufficiency reserve of the schedule.<sup>10</sup> (See **COMMENT 1**.)

### **Combined annual income not covered by the schedule**

The bill provides that if the combined annual income of the parents is greater than \$300,000 (which is the top end of the new basic child support schedule to be created by ODJFS rules) a court or CSEA, regarding court and administrative child support orders, respectively, must determine the child support obligor's support obligation on a case-by-case basis. In doing so, the court or CSEA must consider the needs and standards of the children subject to the order and of the parents. The court or CSEA cannot compute a basic child support obligation that is less than what the schedule and applicable worksheet would have computed for a combined annual income of \$300,000, unless the amount is determined to be unjust and inappropriate and thus not in the best interest of the children. These requirements are identical to current law, except for the increase in the maximum income amount of \$300,000.

The bill also specifies that if the combined annual income of both parents falls below \$8,400 (which is the floor of the new basic child support schedule to be created by ODJFS rules), the court or CSEA, regarding court and administrative child support orders, respectively, must apply the minimum support amount (see "**Minimum support obligations**" below). The bill repeals current law, which provides that if the combined annual income of both parents is under \$6,600, the court or CSEA must determine on a case-by-case basis the maximum child support amount that does not deny the child support obligor the means for self-support at a minimum subsistence level, using the schedule as a guideline.<sup>11</sup>

### **Specific computation requirements**

The bill amends and adds certain requirements and adjustments that must be considered when a court or CSEA computes the amount of child support to be paid pursuant to an order.

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<sup>10</sup> R.C. 3119.05(G).

<sup>11</sup> R.C. 3119.04.

## Deducting spousal support

The bill provides that the annual amount of any court-order spousal support that is actually paid, excluding any ordered payment on arrears, must be deducted from that parent's annual income to the extent the payment is verified by supporting documentation. Under current law, payment on arrears is not excluded.<sup>12</sup>

## Children in more than one household

The bill eliminates current law requirements regarding deductions from a parent's gross income for amounts paid for children under pre-existing support orders and amounts for children with another parent not involved in the child support proceedings. In their stead, the bill requires a court or CSEA to adjust the amount of child support to be paid by a parent to give credit for children not included in the current calculation. In calculating the adjusted amount, the court or CSEA must use the basic child support schedule and do the following:

(1) Determine the amount of child support each parent would be ordered to pay for all children for whom the parent has the legal duty to support, according to each parent's annual income (see **COMMENT 2**). If the number of children subject to the order is greater than six, multiply the amount for three children by the following:

Number of children	Factor
Seven children	1.440
Eight children	1.540
Nine children	1.638
Ten children	1.734
Eleven children	1.827
Twelve children	1.919
Thirteen children	2.008
Fourteen children	2.096
More than fourteen children	2.182

(2) Next, compute a child support credit amount for each parent's children who are not subject to the child support order by dividing the amount calculated in (1) above by the total number of children whom the parent is obligated to support and multiplying that number by the number of that parent's children who are not subject to the child support order.

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<sup>12</sup> R.C. 3119.05(B).

(3) Finally, determine the adjusted income of the parents by subtracting the credit for minor children not subject to the child support order computed under (2) above from the annual income of each parent for the children each has a duty to support that are not subject to the child support order.<sup>13</sup>

#### **Determining when a parent is voluntarily unemployed or underemployed**

The bill adds the following factors to the factors under current law, that, if they exist, prevent a court or CSEA from determining a parent to be voluntarily unemployed or underemployed, and therefore imputing income to that parent:

- The parent is receiving recurring monetary income from general assistance received under former Chapter 5113 of the Revised Code;
- The parent is approved for Social Security Disability Insurance benefits because of a mental or physical disability, or the court or CSEA determines that the parent cannot work based on medical documentation that includes a physician's diagnosis and opinion that the parent cannot work due to a mental or physical disability;
- The parent has proven that he or she has made a continuous and diligent effort, without success, to find and accept employment, including temporary employment, part-time employment, or employment at less than his or her previous wage;
- The parent is complying with court-ordered family reunification efforts in a child abuse, neglect, or dependency proceeding, which limits the parent's ability to earn income.<sup>14</sup>

#### **Support obligation limitation under the self-sufficiency reserve**

The bill provides that if a parent who has an annual income subject to the self-sufficiency reserve of the basic child support schedule, the parent's support obligation cannot exceed the obligation that would result from the schedule that is not adjusted for the reserve.<sup>15</sup>

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<sup>13</sup> R.C. 3109.05(B) and (C).

<sup>14</sup> R.C. 3119.05(I)(1) to (4).

<sup>15</sup> R.C. 3119.05(M).



### **Adjustments for nonmeans tested benefits**

The bill adds that if a child subject to the order receives any nonmeans tested benefits as a result of claims made by either parent, the amount is to be deducted from that parent's annual child support obligation after all other adjustments have been made. If the amount deducted exceeds the child support obligation of the parent from whose claim the benefit is realized, the obligation becomes zero.<sup>16</sup>

### **Sharing child care costs**

The bill provides that as part of the child support calculation, both parents must also share the costs of child care. A child support obligor must pay an amount equal to the obligor's income share of the child care cost for all children subject to the order.<sup>17</sup> The bill defines "child care cost" to mean the annual out-of-pocket costs for the care and supervision of a child or children subject to the order that is related to work or employment training.<sup>18</sup>

The child care cost required to be used in the child support calculation must:

- Be for child care determined to be necessary to allow a parent to work or for activities related to employment training;
- Be verifiable by credible evidence;
- Exclude reimbursed or subsidized child care costs, including any state or federal income tax credit for child care available to the parent or caretaker, whether or not claimed; and
- Not exceed the maximum statewide average cost estimates provided by ODJFS.<sup>19</sup>

If the obligor's annual income is subject to the self-sufficiency reserve of the basic support schedule, the obligor's share of the child care cost must be equal to the lower of the obligor's income share of the child care cost or 50% of the child care cost.<sup>20</sup> The bill defines "income share" as the percentage derived from a comparison of a parent's

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<sup>16</sup> R.C. 3119.05(N).

<sup>17</sup> R.C. 3119.05(O).

<sup>18</sup> R.C. 3119.01(C)(2).

<sup>19</sup> R.C. 3119.05(O)(1)(a) to (d).

<sup>20</sup> R.C. 3119.05(O)(2).



individual annual income after allowable deductions and credits as indicated on the worksheet to the total annual income of both parents.<sup>21</sup>

### **Reduction for parenting time**

Under the bill, a court or CSEA calculating the amount to be paid under a child support order must reduce by 10% the amount of the parent or parents' annual individual support obligation when a court has issued or is issuing a parenting-time order that equals or exceeds 90 overnights per year. The 10% reduction may be in addition to other deviations and reductions provided in the bill and current law.<sup>22</sup> If requested by a child support obligee, however, a court may eliminate a previously granted adjustment if the child support obligor does not exercise the court-ordered parenting time, without just cause.<sup>23</sup>

### **Deviations – generally**

Generally, the bill amends the factors that the court may consider when determining whether to deviate from the amount of child support that would otherwise result from the use of the basic child support schedule and worksheets. After consideration of the factors *and* determining that the amount of child support would be unjust or inappropriate and therefore not in the best interest of the child, current law permits the court to order an amount of child support that deviates from the amount determined pursuant to the schedule and worksheet. The changes made by the bill are described below.<sup>24</sup>

<b>Factor #</b>	<b>Current law</b>	<b>The bill</b>
1	Special and unusual needs of the children.	Special and unusual needs of the child or children, including consideration of needs arising from the physical or psychological condition of the child or children.
2	Extraordinary obligations for minor children or obligations for handicapped children who are not stepchildren and who are not offspring from the marriage or relationship that is the basis of the immediate child support	Repeals this provision.

<sup>21</sup> R.C. 3119.01(C)(10).

<sup>22</sup> R.C. 3119.051(A).

<sup>23</sup> R.C. 3119.051(B) and 3119.76.

<sup>24</sup> R.C. 3119.22 and 3119.23.



Factor #	Current law	The bill
	determination.	
3	Other court-ordered payments.	No change.
4	Extended parenting time or extraordinary costs associated with parenting time, provided that this factor does not authorize and is not construed as authorizing any deviation from the schedule and the applicable worksheet, through the line establishing the actual annual obligation, or any escrowing, impoundment, or withholding of child support because of a denial of or interference with a right of parenting time granted by court order.	Extended parenting time or extraordinary costs associated with parenting time, including extraordinary travel expenses when exchanging the child or children for parenting time. See " <b>Deviation determinations based on parenting time</b> " below.
5	The child support obligor obtaining additional employment after a child support order is issued in order to support a second family.	Repeals this provision.
6	The financial resources and the earning ability of the child.	The financial resources and the earning ability of the child <i>or children</i> .
7	Disparity in income between parties or households.	The relative financial resources, <i>including</i> disparity in income between parties or households, other assets, and the needs of each parent.
8	No provision.	The child support obligee's income, if the obligee's annual income is equal to or less than 100% of the FPL.
9	Benefits that either parent receives from remarriage or sharing living expenses with another person.	No change.
10	The amount of federal, state, and local taxes actually paid or estimated to be paid by a parent or both of the parents.	No change.
11	Significant in-kind contributions from a parent, including, but not limited to, direct payment for lessons, sports equipment, schooling, or clothing.	No change.
12	The relative financial resources, other assets and resources, and needs of each parent.	Combined with 7.





<b>Factor #</b>	<b>Current law</b>	<b>The bill</b>
13	No provision.	Extraordinary work-related expenses incurred by either parent.
14	The standard of living and circumstances of each parent and the standard of living the child would have enjoyed had the marriage continued or had the parents been married.	No change.
15	The physical and emotional condition and needs of the child.	Repeals this provision; however 1 above specifies special or unusual needs arising from the physical or psychological condition of the child or children.
16	The need and capacity of the child for an education and the educational opportunities that would have been available to the child had the circumstances requiring a court order for support not arisen.	The educational opportunities that would have been available to the child had the circumstances requiring a child support order not arisen.
17	The responsibility of each parent for the support of others.	The responsibility of each parent for the support of others, including support of a child or children with disabilities who are not subject to the support order.
18	No provision.	Post-secondary educational expenses paid for by a parent for the parent's own child or children, regardless of whether the child or children are emancipated.
19	No provision.	Costs incurred or reasonably anticipated to be incurred by the parents in compliance with court-ordered reunification efforts in child abuse, neglect, or dependency cases.
20	No provision.	Extraordinary child care costs required for the child or children that exceed the maximum statewide average cost estimate issued by ODJFS as required by statute, including extraordinary costs associated with specialized physical, psychological, or education conditions.
21	Any other relevant factor.	No change.



### **Assignment of monetary value to deviations**

The bill repeals a provision that permits a court to accept an agreement of the parents that assigns a monetary value to any of the factors and criteria listed in the table above that are applicable to their situation.<sup>25</sup>

### **Deviation determinations based on parenting time**

The bill provides that, in determining whether to grant a deviation for extended parenting time or extraordinary costs associated with parenting time, including extraordinary travel expenses when exchanging the child or children for parenting time, the court must recognize that expenses for the children are incurred in both households.

In this circumstance, if the court-ordered parenting time is equal to or exceeds 147 overnights per year, the court must consider a substantial deviation. If the court does not grant a substantial deviation from that amount, it must specify in the order the facts that are the basis for the court's decision.<sup>26</sup>

### **Shared parenting deviation**

The bill makes changes to the law governing deviations from the child support obligations required under shared parenting orders. Current law requires a court that issues a shared parenting order to also order child support pursuant to the basic child support schedule and worksheet and grants the court the authority to deviate from this amount if that amount would be unjust or inappropriate to the children or either parent and not in the best interest of the child because of the extraordinary circumstances of the parents or because of any other factors or criteria listed in the deviation table above. "Extraordinary circumstances" include:

- The amount of time the children spend with each parent;
- The ability of each parent to maintain adequate housing for the children;
- Each parent's expenses, including child care expenses, school tuition, medical expenses, dental expenses, and any other expenses the court considers relevant;
- Any other circumstances the court considers relevant.

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<sup>25</sup> R.C. 3119.23.

<sup>26</sup> R.C. 3119.231.



The bill repeals "the amount of time the children spend with each parent" as an extraordinary circumstance for deviating from the amount of child support calculated pursuant to a shared parenting order.<sup>27</sup>

### **Separate orders for educational and appropriate expenses**

The bill permits a court to issue separate orders for private education and other appropriate expenses. Under current law, a court is required to issue a separate order for extraordinary medical or dental expenses that can include appropriate private education and other expenses. So, it appears the bill is requiring a private education and other appropriate expenses order to be separate from an extraordinary medical or dental expenses order. In any event, the bill maintains the current law provision that permits the court to consider the expenses from any of those orders in adjusting a child support order.<sup>28</sup>

### **Minimum support obligations**

The bill increases the minimum amount a child support order must be issued for from \$50 to \$80 and expands the requirement to not just apply to the courts but also to CSEAs whenever either issues or modifies a child support order or determines the amount of child support to be paid. The bill continues the ability of a court, and now a CSEA, to issue an order for less than the minimum amount, in appropriate circumstances, which circumstances may include a physical or mental disability.<sup>29</sup>

## **Health care**

The bill makes extensive and complicated changes to the law governing health care for children subject to child support orders. As a result, this analysis, with respect to these health care changes, seeks to focus primarily on the law as it would result from the bill. Under continuing law, each child support order shall determine the person or persons responsible for the health care of the children subject of the child support order and must include provisions for the health care of those children.

### **Health care expenses**

The bill requires that each child support order specify that both the child support obligor and obligee are liable for the health care expenses of any children not covered by health insurance. Those expenses are calculated in accordance with a formula

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<sup>27</sup> R.C. 3119.24(B).

<sup>28</sup> R.C. 3119.05(F).

<sup>29</sup> R.C. 3119.06.



established by each court, for a court-issued child support order, or each child support enforcement agency, for an administrative child support order.<sup>30</sup>

## **Health insurance coverage**

### **Determining responsibility**

The bill specifies that when a court or CSEA is determining who is responsible for health care of the children under a child support order, if the cost of private health insurance to either parent exceeds a reasonable cost (see definition of "**Reasonable cost**" below), that parent cannot be ordered to provide health insurance coverage. There are, however, two exceptions to this prohibition: (1) when that parent requests to obtain or maintain private health insurance that exceeds a reasonable cost, or (2) when a court determines it is in the best interest of the children for a parent to obtain and maintain private health insurance that exceeds a reasonable cost and the cost will not impose an undue financial burden on either parent.<sup>31</sup>

In addition, in any action or proceeding in which a court or CSEA is determining responsibility for health care of children under a child support order, each party must provide the court or CSEA the cost of self-only and family coverage under available policies, contracts, or plans. The bill defines "family coverage" to mean the health insurance plan that provides coverage for the children who are the subject of a child support order.<sup>32</sup>

### **Rebuttable presumption**

The bill also specifies that the child support obligee is rebuttably presumed to be the parent to provide the health insurance coverage for the children under the child support order. The court or CSEA may consider the following factors to rebut this presumption when determining whether the child support obligor is the appropriate parent to provide health insurance coverage:

- The child support obligor already has health insurance coverage for the child at a reasonable cost.
- The child support obligor already has health insurance coverage for the child that is not at a reasonable cost, but the obligor wishes to be named the health insurance obligor and provide the health insurance coverage.

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<sup>30</sup> R.C. 3119.30(A).

<sup>31</sup> R.C. 3119.302(A)(2).

<sup>32</sup> R.C. 3119.29(A) and R.C. 3119.31.

- The child support obligor can obtain coverage for the child that is reasonable in cost through an employer or other source. For employer-based coverage, the court or CSEA must consider the length of time that the obligor has worked with the employer and the stability of the insurance.
- The obligee is a nonparent individual or an agency that has no duty to provide medical support.

The support order must specify that the obligee must provide coverage unless rebutted by one of the reasons above.<sup>33</sup>

The bill also specifies that if private health insurance coverage is not available at a reasonable cost to either the child support obligor or obligee at the time the court or CSEA issues the child support order, the order must require the child support obligee to obtain insurance not later than 30 days after it becomes available to the obligee at a reasonable cost, and to inform the CSEA once it is obtained.<sup>34</sup> Alternatively, if private health insurance becomes available to the obligor at a reasonable cost, the obligor must inform the CSEA and may seek a modification of health insurance coverage from the court or CSEA.<sup>35</sup> Additionally, the bill provides that each child support order contain a requirement that whoever is required to provide private health insurance must provide documentation to the CSEA that verifies that coverage is being provided within 30 days of the order. Finally, the statement included in each child support order providing for notice to be issued to a new employer to enroll the children in health insurance, limits the notice to situations "when insurance is not being provided by any other source."<sup>36</sup>

### **Reasonable cost**

The bill defines "reasonable cost" to mean that the cost of health insurance to the person required to provide health insurance coverage for the children subject to the child support order does not exceed an amount equal to 5% of the annual income of that person. For purposes of the definition, the cost of health insurance is an amount equal to the difference in cost between self-only and family coverage. The bill further specifies that if the United States Secretary of Health and Human Services issues a regulation that redefines "reasonable cost" or a similar term or phrase, or clarifies the elements of cost used when determining reasonable cost relating to the provision of health care for

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<sup>33</sup> R.C. 3119.30(B)(1).

<sup>34</sup> R.C. 3119.30(B)(2).

<sup>35</sup> R.C. 3119.30(B)(3).

<sup>36</sup> R.C. 3119.32(A)(2) and (G).

children in a child support order, and if those changes are substantively different than the definitions and terms used in the bill, those terms must have the same meaning as defined by the Secretary.<sup>37</sup>

### **Credit for health insurance cost**

The bill provides that the cost of providing health insurance under a child support order is to be defrayed by a credit against that parent's annual income when calculating child support using the basic child support schedule and applicable worksheet. The credit is to be equal to the total actual out-of-pocket cost for health insurance premium coverage. Any credit given will be less any subsidy, including a premium tax or cost-sharing reduction received by the parent providing the coverage.<sup>38</sup>

### **Cash medical support**

The bill provides that when a child support order is issued or modified, the order must include a cash medical support amount for each child subject to the order. The bill defines cash medical support to mean the amount ordered to be paid in a child support order toward ordinary medical expenses incurred during a calendar year. "Ordinary medical expenses" are defined by the bill to include co-payments and deductibles, and uninsured medical-related costs for the children of the order.<sup>39</sup>

The bill provides that cash medical support orders must be administered, reviewed, modified, and enforced in the same manner as the underlying child support order.<sup>40</sup> The cash medical support amount must be ordered based on the number of children subject to the order and divided between the parties using the parents' income share. A court or CSEA must calculate the amount of a parent's child support and cash medical support obligations in accordance with the schedule, the applicable worksheet, and other provisions of Chapter 3119. when a child support order is issued or modified.<sup>41</sup>

Under the bill, the cash medical support must be paid through ODJFS by the child support obligor to the child support obligee (if the children subject to the order are

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<sup>37</sup> R.C. 3119.29(G).

<sup>38</sup> R.C. 3119.30(E).

<sup>39</sup> R.C. 3119.01(C)(1) and (14), 3119.02, and 3119.30(C).

<sup>40</sup> R.C. 3119.303.

<sup>41</sup> R.C. 3119.02, 3119.022, and 3119.30(C).



not Medicaid recipients), or to the Department of Medicaid when a Medicaid assignment is in effect for any child under the support order.<sup>42</sup>

The bill requires ODJFS to update the cash medical support obligations *periodically*. The updates must be made in consideration of the Medical Expenditure Panel Survey conducted by the U.S. Department of Health and Human Services for health care research and quality. The amount must be based on the most recent survey year data available, and must be calculated by multiplying the total amount expended for health services for children by the percentage that is out-of-pocket, divided by the number of individuals under 18 that have private insurance.<sup>43</sup>

### **Extraordinary medical expenses**

The bill defines extraordinary medical expenses to mean any uninsured medical expenses incurred for a child during a calendar year that exceed the cash medical support amount owed during that year.<sup>44</sup>

A court must issue separate orders for extraordinary medical expenses, which must include orthodontia, dental, optical, and psychological services. These expenses may be considered in adjusting a child support order (see "**Separate orders for educational and appropriate expenses**" above).<sup>45</sup>

The bill also requires that a child support order must contain a requirement that the child support obligor, obligee, or both, pay extraordinary medical expenses for children, under a formula established under the court (for a court child support order) or CSEA (for an administrative order).<sup>46</sup>

### **Reimbursement for medical expenses**

The bill provides that each order must contain a statement setting forth the name and address of the individual to be reimbursed for medical expenses. The bill does not require a statement in each order that the health plan administrator providing the health insurance coverage for the children may continue making medical payments

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<sup>42</sup> R.C. 3119.30(D).

<sup>43</sup> R.C. 3119.302(B).

<sup>44</sup> R.C. 3119.01(C)(7).

<sup>45</sup> R.C. 3119.05(F).

<sup>46</sup> R.C. 3119.32(D).



directly to any health care provider under the insurance policy, contract, or plan (current law requires such a statement about administrator payments to providers).<sup>47</sup>

### **Accessibility of care**

The bill clarifies that, notwithstanding the definition of "health insurance coverage" (which current law defines as private health insurance that provides primary care services within 30 miles from the residence of the child subject to the child support order), a court or CSEA may do either of the following:

- Permit primary care services to be farther than 30 miles if resident in part or all of the immediate geographic area customarily travel farther distances;
- Require primary care services be accessible by public transportation if public transportation is the child support obligee's only source of transportation.

If the court or CSEA makes either accessibility determination, it must include the determination in the child support order.<sup>48</sup>

### **Modification to meet child medical needs**

The bill provides that if a court determines that the medical needs of a child subject to a child support order are not being met because of inadequate health insurance coverage, the inadequate coverage must be considered a change of circumstance that is substantial enough to require a modification of the child support order (but not a modification of the *child support amount* required to be paid under the order). In adding this requirement, the bill eliminates the requirement to consider the cost of health insurance when recalculating the child support amount required under the current child support order. However, it still appears that the inadequate coverage determination is to be considered pursuant to a request to modify the amount of child support under the order.<sup>49</sup>

### **Administrative reviews of court child support orders**

The bill provides that if a court child support order contains a deviation, the CSEA reviewing the order for purposes of determining whether the child support

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<sup>47</sup> R.C. 3119.32(B).

<sup>48</sup> R.C. 3119.29(C) and 3119.302(A)(4).

<sup>49</sup> R.C. 3119.79(B).





amount should be updated must apply the deviation from the existing order to the revised amount of child support, provided that the CSEA can determine the monetary or percentage value of the deviation. If the agency cannot determine the value, the CSEA shall not apply the deviation to the revised amount of support.<sup>50</sup>

### **Collecting arrearages**

The bill provides that, in situations in which a child support order is terminated and withholding or deduction is initiated to collect the overdue and unpaid support or arrearage from the child support obligor, the amount that is withheld or deducted must be rebuttably presumed to be at least equal to the amount that was withheld or deducted under the terminated order. The bill permits the court or CSEA to consider evidence of household expenditures, income variables, extraordinary health care issues, and other reasons for deviation from the presumed amount.<sup>51</sup>

### **Delayed implementation**

The bill specifies that all of the bill's provisions take effect six months after the effective date of this bill. During this six-month period, ODJFS must perform any automated system changes that are needed and may organize and oversee the training across the state of local CSEAs, lawyers who practice in child support, and judges who preside over child support cases.<sup>52</sup>

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## **COMMENT**

1. The bill does not directly address what to do if the parents' combined annual income is completely within the self-sufficiency reserve. Presumably, because there is no amount that results from using the combined annual income of the parents not in the self-sufficiency reserve, the obligation that would result would be the lesser amount, at zero. It is unclear whether this is what is intended by the bill, or whether this amount would be subject to the minimum support obligation provisions in R.C. 3119.06.

2. The bill's use of "for whom the parent has the legal duty to support" is vague. This could refer to children subject to the order (which is likely what is intended) or to all children of the parent.

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<sup>50</sup> R.C. 3119.63(B).

<sup>51</sup> R.C. 3121.36 and R.C. 3123.14.

<sup>52</sup> Section 3.

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## HISTORY

ACTION	DATE
Introduced	04-05-17
Reported, S. Judiciary	11-29-17
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