

**SUPREME COURT OF PENNSYLVANIA  
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE  
PUBLICATION REPORT**

**RULE PROPOSAL 180**

The Domestic Relations Procedural Rules Committee (Committee) is proposing amendments to Pa.R.C.P. No. 1910.16-2, 1910.16-3, 1910.16-3.1, and 1910.16-6 as part of the Committee's quadrennial support guideline review, which is required by federal law, 42 U.S.C. § 667, state law, 23 Pa.C.S. § 4322, and the Pennsylvania Rules of Civil Procedure, Pa.R.C.P. No 1910.16-1(e). The published rule amendments represent the substantive changes to the support guidelines. In addition, the Committee will be proposing grammatical and stylistic changes, as well, but due to the rule proposal's length, the Committee has omitted the non-substantive changes from the published rule proposal.

As a result of the Committee's deliberations and economic data review, the Committee is proposing five significant changes to the support guidelines: (1) changing the underlying economic model to Betson-Rothbarth 5 (BR5); (2) eliminating the 30% child custody presumption, which has been factored into the child support schedule since 2010; (3) amendments resulting from federal regulation changes; (4) an amendment to the low-income support calculation; (5) an amendment for apportioning additional expenses in Pa.R.C.P. No. 1910.16-6(d).

As in past support guideline reviews, the Committee has had the assistance of Jane Venohr, Ph.D., *Center for Policy Research*, the economist contracted by the Department of Human Services to advise the Committee during the guideline review and to provide economic and data analysis. Dr. Venohr outlined for the Committee several issues relevant to the guideline review, including new federal regulations that became effective after the 2015 guideline review and a new child-rearing expenditures economic study. Dr. Venohr advised the Committee that the new study more accurately assesses the costs associated with raising a child. The current Pennsylvania Child Support Schedule is based on the third Betson-Rothbarth (BR3) study developed by David M. Betson, Ph.D., in 2006 and updated for 2016 price levels using the Consumer Price Index. BR5 uses more recent economic data from the Consumer Expenditure Surveys, which are compiled by the federal government's Bureau of Labor Statistics, and utilizes improved income measures than previous economic studies.

Foundationally, the current child support schedule has had a built-in 30% child custody presumption since 2010. In other words, the child support guideline presumes that the child-support obligor (*i.e.*, the non-custodial parent) has custody of the child 30% of the annual overnights, and as a result, a corresponding downward support obligation adjustment is factored into the basic child support schedule. The

presumption is one of two operations in the current support guidelines addressing shared parenting. The second operation is the guideline's current shared-parenting formula in Pa.R.C.P. No. 1910.16-4(c). The Committee is not contemplating an amendment to the rule-based formula. These two operations recognize that the obligor assumes additional direct expenditures for the child during the obligor's custodial time and, as a result, the obligee's expenditures are reduced.

The presumed 30% shared custody results in approximately 5% of the child-rearing expenditures, typically paid by the obligee, being transferred to and paid by the obligor in the underlying data assumptions, which correlates to a similar percentage reduction in the obligor's child support obligation. Although the presumption assumes 30% shared physical custody, the resulting child support decrease is approximately 5% across the child support schedule's spectrum. The smaller percentage decrease (5% vs. 30%) in support results from only a portion of the child's expenses being transferred to the obligor from the obligee. The only expenses transferred to the obligor are those associated with the child's food consumed away from home and entertainment expenses such as admissions and fees, which are categories in the Consumer Expenditure Survey and used in the child support schedule's underlying economic study.

The Committee's rationale for eliminating this presumption is that the presumption decreases the basic child support obligation paid to all obligees regardless of the parties' actual physical custodial schedule and the actual expenditures transferred from obligee to obligor. As a matter of policy, the Committee supports the premise of reducing an obligor's child support obligation when a significant portion of the child's expenses are actually transferred to and paid by the obligor during the shared custodial time. Unfortunately, the 30% custody presumption creates situations, specifically when the obligor has little to no custody, in which an obligor receives the reduced child support benefit without regard to the actual additional direct child expenditures incurred by the obligor. Conversely, other obligors with shared custody greater than 30% but less than 40% do not receive any additional reduction in the child support obligation despite paying more direct child expenditures than created by the presumption since the rule-based shared parenting adjustment does not reduce support until 40% shared parenting.

Moreover, after last guideline review, the Committee received several rulemaking requests related to the guideline's 30% child custody presumption, specifically when the obligor has significantly less than 30% custody. The rulemaking requests are directed at the perceived unfairness that the child custody presumption creates as it relates to when the obligor has little or no shared custody. As noted in the current Pa.R.C.P. No. 1910.16-4's Explanatory Comment – 2010, "[u]pward deviation should be considered in cases in which the obligor has little or no contact with the children." The support guideline does not otherwise direct how the trier-of-fact should calculate this upward

deviation or specifically under what custodial terms. Instead, the trier-of-fact has discretion on whether to upwardly deviate and by how much, which leads to inconsistency in application and amount across the Commonwealth and, perhaps, within the same judicial district.

On the overall, the Committee is concerned that the current rule's exceptions, *i.e.*, child custody adjustments upward *and* downward, could overtake the rule with more levels of child custody (less than 30% and greater than 40%) having possible deviations. Instead, the Committee believes eliminating the 30% child custody presumption would resolve the need for an upward adjustment when there is little or no shared custody. Conversely, substantial shared parenting is still addressed in Pa.R.C.P. No. 1910.16-4(c), and in those appropriate circumstances, the trier-of-fact can calculate the appropriate downward deviation based on the formula. Otherwise, the child support schedule would reflect the presumed correct support amount irrespective of the parties' shared custody arrangement.

As to the other substantive proposed amendments, after the last guideline review, several federal regulations amendments to 45 C.F.R. § 302.56 affecting child support became effective, which impact the current guideline review. First, an amendment to § 302.56(c)(1)(iii) expanded the factors the trier-of-fact must consider when imputing income to a party. Although the current guidelines have most of the amended federal regulation's factors, the rule proposal essentially copies the federal regulation factors to ensure compliance.

Also, 45 C.F.R. § 302.56(c)(3) now provides that a state's guidelines cannot treat incarceration as voluntary unemployment in establishing or modifying support orders. The proposed Pa.R.C.P. No. 1910.16-2(d) addresses this federal regulation by noting that incarceration with two limited exceptions is involuntary unemployment, and the trier-of-fact should adjust the incarcerated party's net income, accordingly. The two limited exceptions are that adjusting the incarcerated party's income is not appropriate if the incarceration is as a result of a criminal offense in which the party's dependent child or the obligee was the victim or is due to support enforcement. The two exceptions are also currently being proposed as exceptions to § 302.56(c)(3).

Next, the Committee is proposing an amendment to Pa.R.C.P. No. 1910.16-2(e) regarding the low-income calculation. This rule had been amended as part of the rule amendments related to the Tax Cut and Jobs Act, which were effective January 1, 2019. The rule as proposed addresses the low-income calculation in three ways: child support only, spousal support only, and combined child and spousal support cases.

Finally, the Committee proposes a significant amendment and rewriting of Pa.R.C.P. No. 1910.16-6(d) that addresses private school tuition, summer camp, and other child-related expenditures. The Committee received numerous inquiries regarding

this rule and what was factored into the child support schedules. To further define the expenditures that the trier-of-fact should consider, the rule is subdivided with a subdivision directed at the other expenditures. Under the proposed rule, additional reasonable expenses in the child's best interest, including those related to the child's educational, extra-curricular, and developmental activities, are subject to apportionment if the trier-of-fact determines that the annual expense exceeds 7% of the annual support obligation. The amount exceeding 7% is subject to apportionment.

For additional information on the support guideline review, the Committee is posting Dr. Venohr's preliminary report on the Committee's website at:  
<http://www.pacourts.us/courts/supreme-court/committees/rules-committees/domestic-relations-procedural-rules-committee>

All comments, concerns, and suggestions concerning this proposal are welcome.