

General Comments on Dr. Venhor’s presentation and background summary: Prepared at the Request of the Supreme Court of Arizona

Professor Dennis Hoffman, (dennis.hoffman@asu.edu), June 8, 2020

I found the report informative and the overall presentation reflective of a person who is highly experienced/qualified to update the financial child support recommendations for the State of Arizona especially if the intent is to maximize consistency with the past and with what is done in other States. She has experience in this area and a knowledge of relevant literature and practices in other states.

Methodology

My personal thoughts on methodology are that the various BR methods and other related “cost of child rearing” studies recommended by Dr. Venhor generally provide an inadequate measures of the actual economic costs that a single parent will incur while raising children following a divorce settlement. This is not a “data” issue per se, nor one significantly impacted using BR3, 4, 5 or whatever.

As I indicated in my line of inquiry at the last meeting, the monetary and time costs will surely increase substantially for a single parent who, post separation/divorce decree, shoulders the entire costs (or at least substantially more) of the duties of child rearing without adequate compensation. These could include additional transportation costs, day care costs, educational and medical expenses that might be avoidable (because they are often shared) in the traditional two parent household. These additional, hard to generalize, idiosyncratic factors are not reflected in any of the possible methods based on my reading

Indeed, most conventional methods seek to impute the appropriate child support formula from data on traditional two parent spending on children across an array of family incomes. What is missing is consideration for how disparate the income capacity for the two parents might be following the divorce settlement and whether decrees that recommend settlement amounts and parent sharing time judgements that adequately account for this income disparity.

Puzzled by this problem, I undertook a basic literature review to determine whether my concerns were shared by others. I found “The Theory of Child Support” by Ira Mark Ellman & Tara O'Toole Ellman, 45 Harv. J. on Legis. 107 (2008). The paper made interesting points that addressed some of my basic concerns. To my surprise I found that Professor Ellman is an Emeritus faculty member at ASU. I reached out to Professor Ellman and he provided substantial historical context about his tenure on this committee and the failed attempt to remedy some of these deficiencies in traditional child support formulas when the formula was reviewed 10 years ago.

My recommendations below are first motivated by my own concerns which were then informed, in part, by a reading of Professor Ellman’s work and the recommendations of this committee historically.

<http://www.azcourts.gov/portals/74/csgrc/finalguidelinesforajc102110.pdf>

I benefited from a reading of Professor Ellman's accounting of the recent record of events. [http://www.iraellman.com/\(05\)%20EllmanFailedLawReformV9%20%5bFINAL%5d.pdf](http://www.iraellman.com/(05)%20EllmanFailedLawReformV9%20%5bFINAL%5d.pdf) I was particularly interested in a passage in this paper that reads

"Limiting the obligor's payment to his share of the marginal costs of a child in an intact family means he pays nothing toward the additional expenditures that arise from the fact that it is not intact."

And the more detailed paragraph that follows it.

"A MEG guideline is thus devised with a single-minded focus on ensuring that the obligor's support burden is unaffected by the separation. It implicitly assumes that if the NCP pays the CP his share of the pre-separation support burden, then the CP will only need to add her share of the pre-separation support burden to provide adequately for the child. The assumption is flawed because the total support burden necessarily rises when parents separate. Because the MEG guideline does not allocate that extra burden it is largely all left on the custodial parent. By focusing exclusively on intact family marginal expenditures, the MEG method fails to ask questions it should ask. The COBS focus on outcomes is better because it asks about the outcomes for all the parties, at the time of their separation."

There is a striking resemblance between the deficiencies I noted in the traditional approach and the arguments put forth in the prior committee recommendation and described in Professor Ellman's papers. Indeed, I drafted the "personal thoughts" in the second paragraph above before I had any knowledge of the issues described in detail in these recommendations and papers. The "take away" here is that you asked an independent economist to examine the methodology applied across many States in formulating child support guidelines and it seemed to miss the mark. Then, upon further inquiry, I find that there was a body of literature that attempted to address some of the misgivings I had about the current methodology used to set settlement amounts. Moreover, I now know that a previous committee undertook a serious attempt to provide some remedies.

I recommend that Dr. Venhor review the recommendations of the prior committee, if she has not already done so, and incorporate, where possible, some of the basic concepts. Specifically, she should examine how the proposed formula treats situations when parents have disparate incomes. And examine whether low income noncustodial parents are asked to pay too much in the settlement while high income noncustodial parents are asked to pay too little. And from my reading of the literature, the problems caused by income disparity are exacerbated in situations where the settlement calls for near equal parenting times. In sum, standard formulas simply do not appear to adequately account for the adverse impacts divorce

has on the parent (custodial or noncustodial) with significantly lower income earning capability post settlement.

A good roadmap to follow in this exercise, in addition to Ellman's work, can be found in a paper by Grace Blumberg published in the *Family Law Quarterly*, Volume 33, Number 1, Spring 1999. This report outlines how traditional formulas can be modified to address shortcomings.

I am aware that recommendations like these were outlined in the prior committee's recommended Child Outcome Support model (COBS). I am also aware of (S.B. 1192) – Chapter 228 that Prohibits the Arizona Supreme Court from adopting the Child Outcome Based Support (COBS) model of child support unless the Supreme Court selects a nationally recognized independent research organization to review specific factors about COBS. The statute presumably expresses the Legislature's prior concerns regarding COBS.

Accordingly, I am not recommending reconsideration of the entire COBS model which would appear to be at odds with the statute. However, I see nothing in the statute that would prevent Dr. Venhor from considering some of the issues that the COBS sought to remedy, e.g. those illustrated throughout Ellman's work or those outlined in Blumberg's analysis, in the design of her recommended formula.

While it might be argued that adjusting the Arizona formula to remedy what appear to be some significant deficiencies might be "too much work, or too costly or even too controversial." Not doing so would result in the State with support guidelines that simply may not square with public perceptions. For evidence see the summary results of surveys posed on Dr. Ellman's website. www.iraellman.com My reading of these survey results suggests that the public may share some of the concerns I note above. For details on survey design I recommend you consult directly with Professor Ellman.

State and Regional Cost of Living Considerations.

Although Dr. Venhor may be planning on adjusting Arizona numbers for regional differences in the cost of living it is not apparent in her presentation. Should the Court wish to apply a regional COLA to the overall numbers Dr. Venhor recommends, there is a data source that could be used, and easily updated annually, for that purpose.

The Bureau of Economic Analysis publishes regional price parities for States and metro areas that can help adjust for regional cost of living disparity. For example, if Dr. Venhor produces a formula that would be appropriate for nationwide application. The regional price differences for Arizona or any of its metros could be adjusted by the data in the following table using the percentage deviations from the nation. If she produces recommendations exclusively for Arizona that already embody COLA differentials by State, then the column on the far right could be used to adjust by metro. Note that the RPPs include relative differences overall (assuming standard household consumption patterns) and for specific spending on goods, rent, and

services. These could inform those cases where, for example, housing costs (rent) are a disproportionate item in monthly expenditures.

2018 Regional Price Parity Analysis for Arizona

Region	BEA RPPS	Index	Pct. Deviation from the Nation	Pct. Deviation from State of Arizona
Lake Havasu City-Kingman, AZ	RPPs: All items	90	-10.00%	-6.74%
Lake Havasu City-Kingman, AZ	RPPs: Goods	93.5	-6.50%	-2.30%
Lake Havasu City-Kingman, AZ	RPPs: Services: Rents	73.4	-26.60%	-22.16%
Lake Havasu City-Kingman, AZ	RPPs: Services: Other	100.4	0.40%	1.31%
Flagstaff, AZ	RPPs: All items	98.5	-1.50%	2.07%
Flagstaff, AZ	RPPs: Goods	98.8	-1.20%	3.24%
Flagstaff, AZ	RPPs: Services: Rents	104.8	4.80%	11.13%
Flagstaff, AZ	RPPs: Services: Other	93.6	-6.40%	-5.55%
Phoenix-Mesa-Chandler, AZ	RPPs: All items	98.1	-1.90%	1.66%
Phoenix-Mesa-Chandler, AZ	RPPs: Goods	95.2	-4.80%	-0.52%
Phoenix-Mesa-Chandler, AZ	RPPs: Services: Rents	100.6	0.60%	6.68%
Phoenix-Mesa-Chandler, AZ	RPPs: Services: Other	99.6	-0.40%	0.50%
Prescott Valley-Prescott, AZ	RPPs: All items	95.1	-4.90%	-1.45%
Prescott Valley-Prescott, AZ	RPPs: Goods	98.8	-1.20%	3.24%
Prescott Valley-Prescott, AZ	RPPs: Services: Rents	91.2	-8.80%	-3.29%
Prescott Valley-Prescott, AZ	RPPs: Services: Other	93.6	-6.40%	-5.55%
Sierra Vista-Douglas, AZ	RPPs: All items	88.8	-11.20%	-7.98%
Sierra Vista-Douglas, AZ	RPPs: Goods	98.8	-1.20%	3.24%
Sierra Vista-Douglas, AZ	RPPs: Services: Rents	71.1	-28.90%	-24.60%
Sierra Vista-Douglas, AZ	RPPs: Services: Other	93.6	-6.40%	-5.55%
Tucson, AZ	RPPs: All items	93.9	-6.10%	-2.69%
Tucson, AZ	RPPs: Goods	93.5	-6.50%	-2.30%
Tucson, AZ	RPPs: Services: Rents	86.5	-13.50%	-8.27%
Tucson, AZ	RPPs: Services: Other	100.4	0.40%	1.31%
Yuma, AZ	RPPs: All items	88.9	-11.10%	-7.88%
Yuma, AZ	RPPs: Goods	93.5	-6.50%	-2.30%
Yuma, AZ	RPPs: Services: Rents	70.2	-29.80%	-25.56%
Yuma, AZ	RPPs: Services: Other	100.4	0.40%	1.31%
Arizona	RPPs: All items	96.5	-3.50%	0.00%
Arizona	RPPs: Goods	95.7	-4.30%	0.00%
Arizona	RPPs: Services: Rents	94.3	-5.70%	0.00%
Arizona	RPPs: Services: Other	99.1	-0.90%	0.00%

Source: <https://www.bea.gov/data/income-saving/real-personal-income-states-and-metropolitan-areas>