

CHILD SUPPORT GUIDELINES ADVISORY COMMITTEE

AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis Oda

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

Committee Note:

The Judiciary, Law Enforcement, and Criminal Justice Interim Committee recommended this bill.

General Description:

This bill changes the dates for the Child Support Guidelines Advisory Committee and makes clarifying corrections to the statute.

Highlighted Provisions:

This bill:

- ▶ changes the committee's creation and dissolution dates to give the committee 42 months to complete its statutory charge;
- ▶ clarifies language regarding obligations for minor children in the home; and
- ▶ makes technical corrections regarding duplicative and confusing language.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

78B-12-210, as renumbered and amended by Laws of Utah 2008, Chapter 3



28 **78B-12-401**, as renumbered and amended by Laws of Utah 2008, Chapter 3

29 **78B-12-402**, as enacted by Laws of Utah 2008, Chapter 3

30

31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section **78B-12-210** is amended to read:

33 **78B-12-210. Application of guidelines -- Use of ordered child support.**

34 (1) The guidelines in this chapter apply to any judicial or administrative order
35 establishing or modifying an award of child support entered on or after July 1, 1989.

36 (2) (a) The guidelines shall be applied as a rebuttable presumption in establishing or
37 modifying the amount of temporary or permanent child support.

38 (b) The rebuttable presumption means the provisions and considerations required by
39 the guidelines, the award amounts resulting from the application of the guidelines, and the use
40 of worksheets consistent with these guidelines are presumed to be correct, unless rebutted
41 under the provisions of this section.

42 (3) A written finding or specific finding on the record supporting the conclusion that
43 complying with a provision of the guidelines or ordering an award amount resulting from use
44 of the guidelines would be unjust, inappropriate, or not in the best interest of a child in a
45 particular case is sufficient to rebut the presumption in that case. If an order rebuts the
46 presumption through findings, it is considered a deviated order.

47 (4) The following shall be considered deviations from the guidelines, if:

48 (a) the order includes a written finding that it is a deviation from the guidelines;

49 (b) the guidelines worksheet has:

50 (i) the box checked for a deviation; and

51 (ii) an explanation as to the reason; or

52 (c) the deviation is made because there were more children than provided for in the
53 guidelines table.

54 (5) If the amount in the order and the amount on the guidelines worksheet differ by \$10
55 or more:

56 (a) the order is considered deviated; and

57 (b) the incomes listed on the worksheet may not be used in adjusting support for
58 emancipation.

59 (6) (a) Natural or adoptive children of either parent who live in the home of that parent
60 and are not children in common to both parties may at the option of either party be taken into
61 account under the guidelines in setting [~~or modifying~~] a child support award, as provided in
62 Subsection (7). [~~Credit may not be given if:~~]

63 [~~(i) by giving credit to the obligor, children for whom a prior support order exists
64 would have their child support reduced; or~~]

65 [~~(ii) by giving credit to the obligee for a present family, the obligation of the obligor
66 would increase.~~]

67 (b) Additional worksheets shall be prepared that compute the [~~obligations~~] base child
68 support award of the respective parents for the additional children. The [~~obligations~~] base
69 child support award shall then be subtracted from the appropriate parent's income before
70 determining the award in the instant case.

71 (7) In a proceeding to adjust or modify an existing award, consideration of natural or
72 adoptive children born after entry of the order and who are not in common to both parties may
73 be applied to mitigate an increase in the award but may not be applied:

74 (a) for the benefit of the obligee if the credit would increase the support obligation of
75 the obligor from the most recent order; or

76 (b) for the benefit of the obligor if the amount of support received by the obligee would
77 be decreased from the most recent order.

78 (8) (a) If a child support order has not been issued or modified within the previous
79 three years, a parent, legal guardian, or the office may move the court to adjust the amount of a
80 child support order.

81 (b) Upon receiving a motion under Subsection (8)(a), the court shall, taking into
82 account the best interests of the child:

83 (i) determine whether there is a difference between the payor's ordered support amount
84 and the payor's support amount that would be required under the guidelines; and

85 (ii) if there is a difference as described in Subsection (8)(b)(i), adjust the payor's
86 ordered support amount to the payor's support amount provided in the guidelines if:

87 (A) the difference is 10% or more;

88 (B) the difference is not of a temporary nature; and

89 (C) the order adjusting the payor's ordered support amount does not deviate from the

90 guidelines.

91 (c) A showing of a substantial change in circumstances is not necessary for an
92 adjustment under this Subsection (8).

93 (9) (a) A parent, legal guardian, or the office may at any time petition the court to
94 adjust the amount of a child support order if there has been a substantial change in
95 circumstances. A change in the base combined child support obligation table set forth in
96 Section 78B-12-301 is not a substantial change in circumstances for the purposes of this
97 Subsection (9).

98 (b) For purposes of this Subsection (9), a substantial change in circumstances may
99 include:

- 100 (i) material changes in custody;
- 101 (ii) material changes in the relative wealth or assets of the parties;
- 102 (iii) material changes of 30% or more in the income of a parent;
- 103 (iv) material changes in the employment potential and ability of a parent to earn;
- 104 (v) material changes in the medical needs of the child; or
- 105 (vi) material changes in the legal responsibilities of either parent for the support of
106 others.

107 (c) Upon receiving a petition under Subsection (9)(a), the court shall, taking into
108 account the best interests of the child:

- 109 (i) determine whether a substantial change has occurred;
- 110 (ii) if a substantial change has occurred, determine whether the change results in a
111 difference of 15% or more between the payor's ordered support amount and the payor's support
112 amount that would be required under the guidelines; and

113 (iii) adjust the payor's ordered support amount to that which is provided for in the
114 guidelines if:

- 115 (A) there is a difference of 15% or more; and
- 116 (B) the difference is not of a temporary nature.

117 (10) Notice of the opportunity to adjust a support order under Subsections (8) and (9)
118 shall be included in each child support order.

119 Section 2. Section **78B-12-401** is amended to read:

120 **78B-12-401. Advisory committee -- Membership -- Expiration.**

121 (1) On or before ~~[March 1]~~ May 1, 2012, and then on or before May 1 of every fourth
 122 year subsequently, the governor shall appoint a child support guidelines advisory committee
 123 consisting of:

- 124 (a) one representative recommended by the Office of Recovery Services;
- 125 (b) one representative recommended by the Judicial Council;
- 126 (c) two representatives recommended by the Utah State Bar Association;
- 127 (d) two representatives of noncustodial parents;
- 128 (e) two representatives of custodial parents;
- 129 (f) one representative with expertise in economics; and
- 130 (g) two representatives from diverse interests related to child support issues, as the
 131 governor may consider appropriate. However, none of the individuals appointed under this
 132 subsection may be members of the Utah State Bar Association.

133 (2) The term of the committee members expires one month after the report of the
 134 committee is submitted to the Legislature under Section 78B-12-402.

135 (3) When a vacancy occurs in the membership for any reason, the replacement shall be
 136 appointed for the unexpired term.

137 (4) The committee ceases to exist no later than November 1 ~~[of each year it is created]~~,
 138 2015, and then on or before November 1 of every fourth year subsequently.

139 Section 3. Section **78B-12-402** is amended to read:

140 **78B-12-402. Duties -- Report -- Staff.**

141 (1) The advisory committee shall review the child support guidelines to ensure their
 142 application results in the determination of appropriate child support award amounts.

143 (2) The committee shall report to the Legislative Judiciary Interim Committee on or
 144 before October 1 ~~[of every year in which it is created]~~, 2015, and then on or before October 1
 145 of every fourth year subsequently .

146 (3) The committee's report shall include recommendations of the majority of the
 147 committee, as well as specific recommendations of individual members of the committee.

148 (4) Staff for the committee shall be provided from the existing budget of the
 149 Department of Human Services.

150 Section 4. **Effective date.**

151 If approved by two-thirds of all the members elected to each house, this bill takes effect

152 upon approval by the governor, or the day following the constitutional time limit of Utah
153 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
154 the date of veto override.

Legislative Review Note
as of 11-17-11 11:45 AM

Office of Legislative Research and General Counsel