

IF THEY CAN DO PARENTING PLANS, THEY CAN DO CHILD SUPPORT PLANS

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I. INTRODUCTION

When parents divorce or separate, they encounter the difficult task of determining child support. Since the late 80's, mediators have been asking divorcing couples to create parenting plans instead of fighting for custody. Similar logic supports the same approach for child support. Such a shift in thinking is necessary today; the rigid application of child support guidelines can create unfair results when applied to individual divorce situations. Many states have implemented deviations from the

norm to address the inequities resulting from the use of these guidelines, and when these changes are evaluated as a whole they reveal that an alternate approach is necessary.¹ This article asserts that the implementation of these deviations is necessary because current child support guidelines are based on three flawed assumptions. These deviations attempt to acknowledge and correct these flawed assumptions, and in turn create a more fair and equitable child support system. Just as parenting plans have evolved to allow families to co-parent after divorce, states should begin to implement Child Support Plan legislation so that divorcing parents can eliminate the need to rely on statutory deviations created by the inherent unfairness in current child support guidelines.

This article examines the current approach to creating and enforcing child support guidelines and suggests a new way to achieve cooperation between divorcing and never-married parents through the use of a "Children's Checkbook" ² to manage the shared costs of raising the children. The three major flawed assumptions in existing child support guidelines are that the formulas assume that child support (1) must be exchanged between the parents, (2) must be tied to the amount of time a child spends with each of parent, without reference to how much each parent actually pays for the child's expenses, and (3) must be a single mathematical formula.³ Each state has attempted to address these flaws by setting forth situations under which courts may either deviate from a rigid application of the guidelines or by adding on categories of shared expenses.⁴

The fact that most states have created, rely on, and indeed are gradually expanding deviation procedures from statutory child support guidelines marks the beginning of a migration away from rigid formulas

1. See *infra* Part II.C.

2. The first use of the checkbook procedure was by Erickson Mediation Institute in 1981. Following the success of the procedure, Erickson reported his findings in 1988. Stephen K. Erickson, *The Legal Dimension of Divorce Mediation*, in *DIVORCE MEDIATION THEORY AND PRACTICE* 108, 105-24 (Jay Folberg & Ann Milne eds., 1988) [hereinafter *The Legal Dimension*]. See also STEPHEN K. ERICKSON & MARILYN S. MCKNIGHT, *MEDIATING DIVORCE, A STEP-BY-STEP MANUAL* (1998). Parents first create a budget of expenses incurred on behalf of the children (most often with the help of a mediator) and they determine which expenses are to be shared, such as clothing, uncovered medical and other expenses and which expenses are paid independently by each parent without sharing the costs, such as vacation, travel, recreation and food and eating out. *The Legal Dimension, supra*, at 112. Parents use a joint checking account or joint debit card to pay the shared expenses and each parent may contribute to this account equally or on a pro rata, proportional basis according to their gross or net incomes. *Id.* at 113.

3. See *infra* Part II.B.

4. See *infra* Part II.B.

towards a greater use of itemizing and sharing certain categories of expenses.⁵ For this expanding list of add-ons, the parents must learn how to cooperate when managing how they will pay these expenses jointly. Currently, child support guidelines seem to view shared categories of expenses as only deviations or additions to whatever existing formula is applied. Instead, these deviations should be viewed as the core of a solution, an evolutionary change in child support law moving toward a greater emphasis on cooperation, similar to changes in custody law over the past ten to fifteen years.⁶

More than twenty years of mediation experience demonstrates that parents can more easily and more cooperatively share the costs of raising children in two separate homes by abandoning mathematical child support formulas and re-framing the child support question from “how much money” the state requires them to pay or receive to “how they will share the costs” of raising their children in two homes in the future.⁷ The change is a logical extension of the movement in many states toward the adoption of parenting plan legislation, where the basic goal is focusing more on generating future cooperation between the parents.⁸ Asking a different question, together with using a joint Children’s Checkbook to manage the various expenditures made on behalf of the children, this new approach creates a process that will provide both cooperative and high-conflict couples with more tools to reach consensus.⁹ This approach could dramatically change the way parents resolve the question of child support, just as re-framing the child custody question dramatically changed the focus from good parent/bad parent to building parenting plans through the use of mediation – an approach which has

5. See *infra* Part II.C.

6. See *infra* Part II.C.

7. See *infra* Part III.

8. See MINN. STAT. § 518.1705 (2004). (detailing the statutory requirements for the proper implementation of a parenting plan). Parenting plans change the focus away from the adversarial “all or nothing” question of custody and who was the most fit or unfit in the past. The process refocuses on the more easily answered question of what future parenting arrangements can be established that will allow both divorcing parents to remain significant and involved with their children. The goal of the Minnesota Parenting Plan Act, as stated by its chief author Rep. Andy Dawkins is fivefold: “1) to reduce the number of costly legal battles in custody and visitation proceedings; 2) to eliminate the deep wounds that result from custody and visitation litigation; 3) to improve the future relations between the parties; 4) to maximize the involvement of both parents; and 5) to create healthier families.” Peter V. Rother, *Balancing Custody Issues: Minnesota’s New Parenting Plan Statute*, 57 BENCH & B. MINN. 27, 27 (2000) (citing *Parenting Plans: Hearing on H.F. 3311 Before the H. Civil Law Comm.*, 2000 Leg., 81st Reg. Sess. (Minn. 2000) (statement of Andy Dawkins, Member, House Civil Law Committee)).

9. See *infra* Part IV.

resulted in greater flexibility of results and increased perceptions of fairness.¹⁰

Finally, the article recommends that state legislatures recognizing the near impossibility of creating a universally fair child support formula might be well-advised to consider taking a significant step and adopt a child support law implementing Child Support Plans rather than taking another ten to fifteen years of small steps to come to the same conclusion.

II. EXISTING STATE CHILD SUPPORT GUIDELINES AND FLAWED ASSUMPTIONS

A. *Child Support Guidelines Today*

There are many complaints about the child support guidelines, most of which seem to be from the public. A Google search of “Child Support Guidelines Criticisms” reveals many web sites that are vehement in their attacks on the guidelines system.¹¹ Current child support laws are perceived as unfair,¹² lacking in practicality and ease of calculation¹³ and most importantly, failing in compliance rates.¹⁴ The inability of existing

10. “Flexibility is particularly attractive in custody disputes because mediation allows parents to design parenting plans that more accurately address their lifestyles, work schedules, and unique family dynamics, than would a rigid custody plan ordered by a judge. A process that promotes a solution well suited to the litigants’ interests is more likely to increase the participants’ perception of fairness of the process . . .” Alexandria Zylstra, *The Road From Voluntary Mediation to Mandatory Good Faith Requirements: A Road Best Left Untraveled*, 17 J. AM. ACAD. MATRIM. LAW. 69, 73 (2001).

11. See Chief Justice Robert A. Mulligan’s Announcement Regarding the Child Support Guidelines, <http://www.mass.gov/courts/cjamesg2006.html> (last visited January 16, 2006) (“Any Guidelines which may be promulgated will invariably spawn criticism, but I believe that it is essential that we conduct an in-depth analysis.”).

12. “The primary goal of moving from a ‘percent of obligor’ child support system to an ‘income shares’ model is to create more fair and equitable child support guidelines. Testimony before the legislature and hundreds of anecdotal submissions to the chief author suggested that the present system is perceived to be unfair to obligors.” Senator Tom Neuville, *The New Income Shares Model for Calculating Child Support in Minnesota*, 15 FAM. L. F. (MINN. ST. B. ASS’N) 4, 4 (Winter 2006).

13. *Id.* “A fourth goal of the new guideline is to simplify the calculation of child support . . . [by] [c]alculating support based upon gross income rather than net income [and] [c]reating a web-based child support calculator to help calculate support, parenting expense credits, and self support reserves.” *Id.*

14. “Yet, despite harsh penalties and a billion-dollar budget devoted to child support enforcement, compliance rates are still relatively low.” Solangel Maldonado, *Beyond Economic Fatherhood: Encouraging Divorced Fathers to Parent*, 153 U. PA. L. REV. 921, 961 (2005) (citing BUREAU OF THE CENSUS, U.S. DEP’T OF COMM., CHILD SUPPORT: 1999 tbl.4 (2000)).

child support statutes to properly serve divorcing and never-married couples is growing increasingly acute, as more parents follow equal or near-equal time sharing arrangements for exchanging their children. This trend has created more complex spending patterns on behalf of the children.¹⁵ Because guideline child support methods are seen as rigid and often unfair in their application, there have been many attempts to declare them unconstitutional; all have been unsuccessful.¹⁶

There are three basic child support guideline models being used in the United States today. The Income Shares Model used by thirty-three states.¹⁷ The second guideline model, used by fifteen states, is the Percentage of Obligor's Income (including two states which use a hybrid that is similar) model.¹⁸ Finally, the method used in just three states, Montana, Delaware and Hawaii, is the Melson formula.¹⁹

1. *Income Shares Model*

The Income Shares model is now the most commonly used.²⁰ It allocates an amount of support for the child using a percentage formula based on the parents' pooled or combined income.²¹ In Minnesota after January 1, 2007, the determined child support amount is apportioned between the parents based upon their respective Parental Income for

15. See Marygold S. Melli, *Guideline Review: Child Support and Time Sharing by Parents*, 33 FAM. L.Q. 219, 225 (1999); See also Laura W. Morgan, *Child Support Guidelines and the Shared Custody Dilemma*, Divorce Litigation (Nov. 1998), available at <http://www.childsupportguidelines.com/articles/art199906.html> (exploring alternate theories of child support calculation).

16. Laura W. Morgan, *The Constitutionality of Child Support Guidelines Redux* (June 2003), <http://www.supportguidelines.com/articles/art200306.html>.

17. Alabama, Arizona, California, Colorado, Connecticut, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming all use the Income Shares model. Jane C. Venohr & Robert G. Williams, *The Implementation and Periodic Review of State Child Support Guidelines*, 33 FAM. L.Q. 7, 10-11 (Spring 1999).

18. Alaska, Arkansas, Georgia, Illinois, Minnesota, Mississippi, Nevada, New Hampshire, New York, North Dakota, Tennessee, Texas, Wisconsin all use the Percentage of Obligor model, and the District of Columbia and Massachusetts use a Percentage of Obligor Hybrid model that is similar. *Id.*

19. *Id.* See also Paula Woodland Faerber, *Empirical Study: A Guide to the Guidelines: A Longitudinal Study of Child Support Guidelines in the United States*, 1 J.L. & FAM. STUD. 151, 157-60 (1999) (explaining various methods of determining child support obligations, including the Melson formula).

20. Faerber, *supra* note 19, at 158.

21. See *id.*

Calculating Support (PICS).²² The PICS calculates support by pooling the income of both parents and then determining a base amount of child support needed by the child. This amount is determined by applying a guideline table, which is an amount of basic child support that uses the United States Department of Agriculture's Costs of Raising Children Studies, with marginal housing costs applied.²³

2. *Percentage of Obligor Model*

The Percentage of Obligor Model is the most simple and easiest to calculate of all the guideline models. This formula is used in nine states at the time of this writing, including Minnesota from 1983 until January 1, 2007.²⁴ This model asks three questions: (1) how many children are there, (2) what is the obligor's income, and (3) who is the less-time parent? The less-time parent, or the absent parent, as defined by the Family Support Act of 1988,²⁵ is typically the parent who lost the custody battle, or who by the parent's agreement will physically have the children for less time than the other and must send money over to the greater-time parent.

3. *Melson Model*

Under the Melson Formula - the most complicated guideline model - the child support formula is applied to the income of the parents after first deducting the parents' basic living expenses from each of their respective incomes.²⁶ Although it is the most complex of the three models, it builds on the concept of the income shares model by also trying to factor in the number of children, child care, and extraordinary medical expenses instead of seeing child care and medical expenses as add-ons to the basic formula amount.²⁷

22. See MINN. STAT. § 518A.35 subdiv. 2 (2004). See also MARTIN L. SWADEN & LINDA A. OLUP, 14 MINNESOTA PRACTICE: FAMILY LAW § 7.7 (2nd ed. 2006) (explaining the calculation of child support in Minnesota as of January 1, 2007).

23. Neuville, *supra* note 12, at 5.

24. See Linda D. Elrod & Robert G. Spector, *A Review of the Year in Family Law: Parentage and Assisted Reproduction Problems Take Center Stage*, 39 FAM. L.Q. 919, chart 3 (Winter 2006), available at www.abanet.org/family/familylaw/FLQchildsupport06.pdf.

25. Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343, (1988).

26. See Faerber, *supra* note 19, at 159-60.

27. See DEL. FAM. CT. R. 52(c); HAW. REV. STAT. ANN. § 576D-7 (LexisNexis 2006); MONT. CODE. ANN. § 40-6-116 (2006). See also Faerber, *supra* note 19, at 158.

4. *All States Require that One Parent Pays the Other Parent*

Every states' formulas require one parent to be the obligor, who is defined as the absent parent in Congress' originating legislation, and the other parent is seen as the recipient of money from the absent or custodial parent.²⁸ Through an award of child support to the parent with greater time or lower income, there is a rebuttable presumption that such formulas are fair.²⁹ In order to deviate from the formula, the court must make clear and specific findings stating the reasons for such deviations.³⁰ Only in certain cases of equal time sharing and equal incomes have the formulas permitted no exchange of child support on the theory that each parent will simply pay for the cost items of the child or children when needed, and the statutes and case law are silent on the issue of who should pay for what.³¹

5. *Family Support Act of 1988*

A common conclusion is that child support implies an exchange of money. This conclusion is supported by a reading of the entire Family Support Act of 1988,³² the original impetus for all state guidelines, which required all states to adopt child support guidelines that at a minimum satisfy the following:

- (a) Take into consideration all earnings and income of the noncustodial parent;

28. 45 C.F.R. § 302.56 (2000).

29. See Faerber, *supra* note 19, at 152.

30. See *id.* As Faerber explains:

Child support guidelines create a rebuttable presumption that the amount of the award under the guidelines is the correct amount of child support. While each state has established separate guidelines, the guidelines provide only a starting point for determining child support. Each state has also created methods and reasons for deviating from the guidelines. The deviations are based on items such as financial needs and resources of the child, financial needs and resources of the custodial parent, standard of living if the marriage had remained intact, physical and emotion [sic] condition of the child, financial needs and resources of the non-custodial parent, excessive or abnormal expenditures, concealment or fraudulent disposition of property, length of visitation and associated expenses. The most flexible of the deviations allows a court to deviate on the basis of fairness to the parties and other equitable principles.

Id.

31. In Minnesota, the new income shares child support formula calls for no payment of child support to either parent if the parenting time is equal and the parental incomes for child support is also equal. See generally Michael McNabb & Diane Anderson, *How to Calculate the Child Support Obligation With the New Income Shares Model*, FAM. L.F., Winter 2006, at 13.

32. Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343, (1988).

- (b) Be based on specific descriptive and numeric criteria and result in the computation of the support obligation; and
- (c) Provide for the child(ren)'s health care needs, through health coverage or other means.³³

Notably, the beginning words speak of the “non-custodial” parent.³⁴ Section 101 of the Family Support Act authorizing support withholding speaks of the “absent” parent. For those states that have adopted some form of Parenting Plan legislation, the concept of an “absent” parent runs contrary to the intent and expectations of such legislation.³⁵ Parenting plan legislation moves away from the concept of absent parent, recognizing that both parents continue to parent in divorce. Indeed, if we have learned anything from our experience of moving from custody to parenting plans, we might want to recognize our new found enlightenment and move from the “absent parent concept” to the concept of “two involved parents” sharing the costs of raising their minor children.

The Family Support Act of 1988 also required that the guidelines formulas be based upon specific descriptive and numeric data.³⁶ This requirement has resulted in an attempt to base a formula on economic data, such as the costs of raising children studies by the Department of Agriculture.³⁷ Some formulas are tied to the Bureau of Labor Statistics Consumer Expenditure Studies (CES).³⁸ One formula, Minnesota's Percentage of Obligor's income model, was created before the adoption of the Family Support Act by a retrospective compilation analysis of one jurisdiction's averaging a group of judges' rulings on child support over a six month period examining low income cases.³⁹ The resulting

33. *Id.*; See 45 C.F.R. § 302.56 (2000).

34. Family Support Act of 1988, Pub. L. No. 100-485, § 101, 102 Stat. 2343, 2344-45 (1988).

35. See Rother, *supra* note 8, at 30 (explaining testimony of Andy Dawkins about intent and expectations of Minnesota Parenting Plan legislation).

36. See 45 C.F.R. § 302.56 (2000).

37. See Jo Michelle Beld, *Improving Child Support Guidelines in Minnesota: The “Shared Responsibility” Model for the Determination of Child Support*, 28 WM. MITCHELL L. REV. 791, 848-53 (2001) [hereinafter *Improving Child Support Guidelines in Minnesota*]. See also Jo Michelle Beld, *Revisiting “The Politics of Fatherhood”*: *Administrative Agencies, Family Life, and Public Policy*, 36 POL. SCI. & POL. 713, 716-17 (2003) [hereinafter *Revisiting “The Politics of Fatherhood”*].

38. *Improving Child Support Guidelines in Minnesota*, *supra* note 37, at 849. See also Ira Mark Ellman, *Fudging Failure: The Economic Analysis Used to Construct Child Support Guidelines* U. CHI. LEGAL F. 167, 168 (2004).

39. In 1983, Minnesota adopted a formula that originated in Wayne County, Michigan, and was brought to Minnesota by a group of Family Court Referees attending a conference there. In an interview with William Haugh a former Ramsey County

averages fell into a pattern of ordering the non-custodial parent to pay 25% of net income for one child, 30% of net income for two and so on up to 49% of net income for five or more children.⁴⁰

B. Flawed Assumptions

Regardless of which guidelines formula is used, as noted above, three flawed assumptions emerge. These three are that child support (1) must be exchanged between the parents, (2) must be tied to time with each parent and not tied to who pays which children's costs, and (3) must be a single mathematical formula.⁴¹ One could argue that a main contributing factor to all three flaws is continued reliance on the "absent parent" concept. Each flaw also results in negative consequences that make it difficult to establish fair methods of sharing the costs of raising children.

1. Child Support Must Be Exchanged Between Two Parents.

In all three existing statutory child support models, one parent always pays money to the other, and the guidelines formula used to establish how much money should be paid is tied directly to who wins the custody battle, or alternatively, who is the primary parent or residential parent. In the opinion of this author, this notion that children are provided for completely by one parent who receives money from an absent parent is flawed because it does not recognize both the monetary and non-monetary contributions of the non-custodial absent parent.

a. Trading Days for Dollars Sets up the Custody Battle

When only one person is allowed to send money to the other, and especially when the amount of money sent is tied to who is more in charge, conflict inevitably arises over who gets to be in charge. This results either in a custody battle or, in its milder form, this assumption becomes the underlying fuel for a phenomena that has been called

Family Court Referee who attended that conference, Mr Haugh stated it was his recollection that the guidelines formula Minnesota adopted in 1983 first in three metropolitan counties by court rule and then later statewide, was based upon a retrospective averaging of Wayne County Michigan judge's child support rulings over a six-month period of time in the late '60s or early 70's. Interview with the late William E. Haugh, Jr., Partner, Collins, Buckley, Sauntry, & Haugh, Attorneys at Law, in Minneapolis, Minn. (Dec. 2002) [hereinafter Interview with William E. Haugh].

40. *Id.*

41. *See supra* Part II.A.

“trading days for dollars,”⁴² whereby couples fight over the exchange schedule because increased or decreased time with a child affects the amount of money the obligor will send. Sending money from one parent to the other, with no participation in the decisions about how it will be spent also creates mistrust, resulting in some states enacting legislation requiring the receiver of child support payments to account for how money is spent.⁴³

This problem of “trading days for dollars” and the fight to “win” the custody battle will continue to remain difficult when child support amounts are always tied to custody or who is the primary parent. This obligor-obligee transfer payment system is reminiscent of the military approach where a “supply sergeant” is designated as the one person who manages all of the children’s material needs and must collect money from the “absent parent” as defined by the originating federal legislation.⁴⁴ Non-custodial parents rightly ask, “what about the money I spend on my children when they are with me, even though I send money to the other parent?” “And what if I start to spend more time with my children, don’t I get a break on my child support?” This question was asked by Mr. Valento and the Minnesota Court of Appeals answered yes.⁴⁵ Yet, the fight for time with the children still creates conflict, because most state child support guidelines, including Minnesota’s income shares model, call for a reduction in child support for the obligor when the obligor’s time with the children is increased past a certain point.⁴⁶ In Minnesota, under the newly adopted income shares formula, there is a “Parenting Expense Adjustment” whereby any parent who has between 10% and 45% of the time with the children is allowed a 12% reduction in child support.⁴⁷ This somewhat wide range was specifically designed to unhook the support from the schedule and encourage the obligee parent to be more willing to allow the obligor parent to have more time with the children.⁴⁸ What mediator or judge hasn’t spent time

42. See generally Scott Altman, *Lurking in the Shadows*, 68 S. CAL. L. REV. 493 (1995) (discussing the problem of trading days for dollars).

43. See Laura Wish Morgan, *The Custodial Parent’s Duty to Account to the Non-custodial Parent for how Child Support Money is Spent* (April 2000), at <http://www.childsupportguidelines.com/articles/art200004.html>.

44. See Family Support Act of 1988, Pub. L. No. 100-485, § 101, 102 Stat. 2343, 2344-45 (1988). See **Family Support Act of 1988 § 101, 42 U.S.C. § 666(b)(3)(A) (2000)**.

45. Valento v. Valento 385 N.W.2d 860, 862-63 (Minn. Ct. App. 1986) (noting that a party’s support obligation is determined by his or her guideline amount for the period of time the other parent has custody).

46. MINN. STAT. § 518.36 subdiv. 2 (2004).

47. *Id.*

48. Telephone interview with Michael McNabb, Partner, Michael McNabb Law

listening to conflicted parents fight to the bitter end over whether there will be equal time-sharing or primary custody to one, or for that matter, whether there are going to be 12 overnights a month to Dad or 10 overnights per month to Dad when the child support amount statutorily awarded under the formula hangs on this determination?⁴⁹

b. Supply Sergeant Concept (Absent Parent Model Assumes Inability to Cooperate)

One possible reason Family Law has relied exclusively on the obligor-obligee transfer of payment model is because it is mandated by the Family Support Act,⁵⁰ and underlying the adoption of the Family Support Act was the need to collect money from fathers who were content to have the state support their children.⁵¹ The concept of an “absent” parent certainly does not assume cooperation between mom and dad. Indeed, traditional historical definitions of child support have not typically included both parents cooperating and discussing shared contributions towards their children’s need. Family law has traditionally analyzed the child support problem by first seeking to determine the proper level of child support that one parent pays to the other parent rather than asking about how support is shared and who should pay what for what items. It is difficult to find any commentators who question this basic theme of requiring a payment of child support from the parent who “loses” custody (or has less time with the children) to the parent who “wins” custody (or has more time with the children). Even Black’s Law Dictionary defines child support as “the money legally owed by one parent to the other for expenses incurred for children of the marriage.”⁵²

Perhaps because the traditional custody approach assumed that only one

Office, in Burnsville, Minn. (Jan. 2 & 25, 2007).

49. See generally Altman, *supra* note 42 (discussing parties trading custody or visitation time for child support).

50. Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343, (1988).

51. Jane C. Murphy, *Legal Images of Fatherhood: Welfare Reform, Child Support Enforcement, and Fatherless Children*, 81 NOTRE DAME L. REV. 325, 350-51 (2005). “Over the last three decades, then, both the federal and state governments have constructed massive bureaucracies focused on making non-custodial parents - mostly low-income fathers - pay child support.” *Id.* at 350.

[U]nder the child support distribution scheme for families on welfare, the custodial parent assigns her right to support and the state retains support paid by non-custodial parents as reimbursement for welfare benefits. Thus, the ever-increasing resources devoted to collect child support from low-income fathers have no direct impact on the financial well being of children on welfare.

Id. at 352 (footnote omitted).

52. BLACK’S LAW DICTIONARY 257 (8th ed. 2004).

parent can be in charge of raising the children, the custodial-non-custodial hierarchy was created to eliminate the need to cooperate when one parent is vested with the most authority by being put in charge as the custodial parent receiving money for child support. It is easy to see how the absent parent paying money to the “supply sergeant model” occurred. There seems to be a common sense notion among most lawyers and other professionals trained in using the adversarial system, that if parents cannot cooperate enough to stay married, then they certainly cannot raise their children together after divorce. Therefore, it is best to put one parent in charge, including paying for the costs of the children. Reliance on the rigid notion that only one parent pays for the day-to-day expenditures of the children reinforces the idea that there is always a custodial parent who has more power and control over the children’s lives, and that there is always a visiting, non-custodial, secondary parent whose job is to send money over to help out. Such an approach fails to recognize that parents will continue to be parents after the divorce. They might be able to terminate their marriage relationship, but they will never be able to terminate their parenting relationship, and this is the principle that all parenting plan legislation is based upon.⁵³

This supply sergeant approach also fails to recognize and give credit to the contributions made by each parent, particularly the non-custodial visiting parent who might occasionally want to buy a pair of shoes or pay for a soccer camp registration.⁵⁴ Some states have even given a “visitor’s credit” to the non-custodial parent who exercises visitation in an effort to solve this flaw.⁵⁵ The notion that only one person may be trusted to pay for a child’s expenses is inflexible and can create competition for the child’s allegiance through the purchase of special items as a result of non-communication between parents about children’s expenses.

To be effective, parents must learn how to cooperate around parenting their children and the Minnesota Legislature recognized the need to involve both parents in decision-making when adopting parenting plan legislation that was designed to encourage both parents to cooperate around building the ground rules of a new parenting plan

53. See Rother, *supra* note 8.

54. See generally Carol Rogerson, *Child Support Under the Guidelines in Cases of Split and Shared Custody*, 15 CAN. J. FAM. L. 11, 20-33 (1998) (discussing the difficulties of accounting for money spent while with the children).

55. See, e.g., Mo. R. Civ. P. Form 14. One state, Missouri, has recognized the costs contributed by the non-custodial visiting parent by reducing the child support payments for the non-custodial parents who consistently exercises visitation privileges. *Id.*

rather than fighting over who was in charge.⁵⁶ Moreover, in what appears to be a precursor to creating a child support plan, in connection with the passage of parenting plan legislation, the Minnesota Legislature included a provision for allocating children's expenses between the parents. Subd. 8 of the Minnesota Parenting plan legislation states (a): "Parents creating a Parenting Plan are subject to the requirements of the child support guidelines under Chapter 518 A and (b): Parents may include in the parenting plan an allocation of expenses for the child. The allocation is an enforceable contract between the parents."⁵⁷

Just as other states have adopted some form of Parenting Plan legislation, isn't it now possible that we will begin to see other states adopt new child support statutes that encourage the use of mediation and individual custom-designed child support arrangements based on similar reasoning that sharing children's costs may include methods other than just exchanging money from the custodial parent to the non-custodial parent? Perhaps the exchange of money is just too ingrained in our system to challenge its premises. Indeed, most mediators, some judges, and some practicing attorneys will attest to the fact that frequently, the expectation that parents cannot cooperate is a self-fulfilling prophecy. Moreover, we should learn from the success of mediation coupled with Parenting Plan legislation that gives people a process of learning how to cooperate in the new relationship of parenting which replaces the relationship of marriage. The research results of one study that compared litigating custody with building a parenting plan are astounding because parents were randomly assigned to either a mediating group or a litigating group.⁵⁸ A follow-up with mediating parents up to

56. See generally Rother, *supra* note 8, at 27-28. (citing *Parenting Plans: Hearing on H.F. 3311 Before the H. Civil Law Comm.*, 2000 Leg., 81st Reg. Sess. (Minn. 2000) (statement of Andy Dawkins, Member, House Civil Law Committee)).

The legal adversarial system asks, "Who will be awarded custody of the minor children?" The result is that the parent who is not awarded custody is then labeled a non-custodial, visiting parent. The only other place we use the word "custody" is with prisoners. The only other place in our language that we use the word "visitation" is at the funeral parlors. Creating parenting plans teaches people cooperation. It is not necessary for them to be cooperative in the first place. After all, they are getting divorced.

Interview with Marilyn McKnight, President-Elect of Association for Conflict Resolution and Family Mediator, Erickson Mediation Institute, in Minneapolis, Minn. (Dec. 2006).

57. Minn. Stat 518.1705 Subd 8 (2007)

58. Robert Emery reports in his research about randomly assigning people to mediation or litigation in ROBERT E. EMERY, *THE TRUTH ABOUT CHILDREN AND DIVORCE* 136-37 (2004). After randomly assigning seventy-one families either to mediation or to court custody battles, twelve years after going through court or mediation, 28% of the mediation non-residential parents saw their children once a week as opposed to 9% for

twelve years later showed significantly more contact between the “absent” parent and the children when compared with the litigating parents.⁵⁹ Perhaps it is time to ask the question, are they really that uncooperative, or is it something we are doing in our adversarial system that actually creates conflict?

2. *Child Support Tied to Time With Each Parent*

“Time tells me little about who arranges for the children’s material needs.”⁶⁰

The second flawed assumption is that child support must be tied to time with each parent, and that specific expenditures made on behalf of the children by each parent are not important and will not be part of any formula. I submit that children’s expenses should be tied to who pays for the child’s costs because this is where the rubber hits the road. It is incorrect to assume that the parent who spends more time with the children will spend more money on them than the parent with less time. It is also incorrect to assume that parents will spend money equally for their children even if both parents have equal income and equal time with the children. The only categories of expenses that are tied to time are food and utilities. That is, the parent with less time will feed the children less and thus, will likely spend less money on the children than the more-time parent, and the parent with more time will likely spend more on the light bill and hot showers that increase heat and electricity bills. However, other than these two categories of food and housing, all other categories of costs related to the normal raising of children can be paid by either parent, regardless of the time that he or she spends with the children.

a. *Minnesota’s Approach*

Minnesota’s new Income Shares formula still ties child support to the amount of time the parent spends with the child insofar as a different calculator is used when the child is with each parent more than 45% of

the litigation group. *Id.* at 136. “In the litigation group, 36[%] of nonresidential parents had *not* seen their children in the last year compared with 16[%] of the non-residential parents who mediated.” *Id.* at 137. “Differences in telephone contact were even greater, [which is important since there were some moves]. . . . Among families who mediated, fully 59[%] of non-residential parents talked to their children weekly or more often compared with just 14[%] of non-residential parents who litigated.” *Id.*

59. *Id.* at 136-37.

60. Rogerson, *supra* note 54, at 28 (quoting *Rosati v. Dellapenta*, 3550 11868/96, [1997] O.J. 5047 QUICKLAW (Ont. Ct. J. Gen. Div. Nov. 12, 1997)).

time or with one parent less than 10% of time. Thus, the 45% threshold may produce resistance to requests for nearly equal time. After January 1, 2007 in Minnesota, the amount of time a parent spends with a child must reach a forty-five percent threshold before any downward adjustment is made.⁶¹ This means that when a parent has forty-five percent or more of the time with the children, that parent's child support role changes from that of visitor; the parent is recognized as a contributor to the children's costs and child support is further reduced.⁶² This same concept was recognized in a judicial modification of Minnesota's previous Percentage of Obligor formula, through the two cases of *Hortis v. Hortis*⁶³ and *Valento v. Valento*.⁶⁴ These two cases laid down the same principle of reducing child support for the obligor based upon the consideration of added time. However, it did not rigidly set 45% as the threshold. The concept of these two cases called for the obligor to pay less child support until a 50-50 equal timesharing and equal incomes situation was reached, and it was presumed at that point that each parent would incur the same costs and would have the same ability to pay for these costs when the children were with each parent.⁶⁵

b. Canada's Approach

Canada's child support model is similar to Minnesota's. Canada, however, uses a forty-percent threshold that reduces the child support when a parent exceeds forty percent of the time with children when they are in a secondary parenting role.⁶⁶ Carol Rogerson, writing in the *Canadian Journal of Family Law* succinctly outlines the fairness question when a formula attempts to take into account the element of time.

The question of whether to allow for an adjustment to guideline amounts in cases of increased access and shared custody, and if so, how to structure such an adjustment, raises complex and controversial policy choices. Pushing in favour of some adjustment is a concern for fair and consistent treatment of payors who incur increased expenses during the time they spend with the child. There are two dimensions to the fairness claim. The first is fairness between the payor and the support

61. See MINN. STAT. § 518A.36 subdiv. 2 (2004 & Supp. 2006).

62. See *id.*

63. 367 N.W.2d 633, 635-36 (Minn. Ct. App. 1985).

64. 385 N.W.2d at 862-63.

65. See *id.*; *Hortis*, 367 N.W.2d at 635-36.

66. Rogerson, *supra* note 54, at 26.

recipient, who is arguably being relieved of some costs assumed by the payor. The second is fair and consistent treatment of the payor as compared to payors at the same income level who may not be spending any money directly on their children apart from the payment of child support. On the other hand, allowing such an adjustment raises many concerns. Increased time spent with a child does not necessarily entail increased spending on the child.⁶⁷

One Canadian judge, struggling with the 40% line in the sand, ruefully observed that using a formula tied to time tells him nothing about who is buying what for the children:

This crass focus concerning the number of hours spent told me nothing whatsoever about who bears the expenses of parenting. The 40% delineation offers no clue as to how expenses of housing, feeding, clothing and other such expenses usually subsumed in the regular expenses of children that are addressed by the table amounts in the Guidelines, are paid. Many access parents who have the children somewhat less than 40% of their hours still bear the expense of providing child suitable accommodation and must nevertheless pay the table amount. Time tells me little about who arranges for the children's material needs.⁶⁸

Justice Eperhard, writing in the above case put his finger on another core piece of the puzzle that has always been ignored in the zeal to create the perfect formula. It is simply the notion that who pays for what is more important than time, than who has custody, than who is the primary parent, than who is the residential parent, or whether one has 38% of the overnights each month or whether one has 42% of the overnights each month.

c. Most States have Deviations or Reductions for Time

Most states allow an adjustment or deviation from the guidelines for greater time spent with the children.⁶⁹ The assumption is that by having the children more of the time, there will necessarily be higher costs. Minnesota does not require documentation of greater expenses, just that the time be more than 45% for the reduction to occur. To find any discussion of who pays what, we must look to the unusual cases for

67. *Id.* at 20.

68. *Rosati v. Dellapenta*, 3550 11868/96, [1997] O.J. 5047 QUICKLAW (Ont. Ct. J. Gen. Div. Nov. 12, 1997)).

69. *See* Faerber, *supra* note 19, at 160-224.

guidance. Some courts, when reviewing high income cases have found it necessary to look at actual expenditures rather than simply time.⁷⁰

One commentator, writing on cases of high income divorce couples, where the courts in several states have found it necessary to require deviations, observes a principle that is at the core of the Children's Checkbook Method:

A support award that is based upon the financial means of the parent rather than the demonstrated needs of the child may also deprive the payor parent of a role in deciding the child's lifestyle. As the court indicated in *Harmon v. Harmon* an award that was not based on express findings of the child's actual needs would trespass upon the right of parents to make lifestyle choices for their children. As that court noted "although entitled to support in accordance with the pre-separation standard, a child is not a partner in the marital relationship entitled to a 'piece of the action.'" *Indeed, it has been suggested that determinations as to the child's appropriate lifestyle are not purely mathematical determinations to be arrived at by application of child support guidelines but more properly issues of parental decision making, particularly where parents have joint legal custody and therefore should have equal input into decisions as to the manner in which the child is reared.* Such a consideration may carry significant weight in the event that the parties' spending habits during the marriage reflected expenditure patterns that were modest in comparison with the available income. However, a concern that the child not be "spoiled" by lavish spending on his or her behalf is less likely to be credible if the parent's frugality is newly acquired.⁷¹

As will be discussed later, determinations as to the child's appropriate lifestyle should be made by the parents, not by a mathematical formula that attempts to fit everyone into the same size shoe. Even in cases where the parents do not have equal timesharing, it seems appropriate for the parents to make decisions about how and how much to support their children. Indeed, in those instances where the parents make equal incomes and have equal time sharing, the state of Minnesota says they can support their children as they wish, without any

70. Kathleen A. Hogan, *The Big Case: Issues in High Income/High Asset Cases; Child Support in High Income Cases*, 17 J. AM. ACAD. MATRIM. LAW.. 349, 351, 355 (2001); Gregory M. Bartlett, *Setting Child Support for the Low Income and High Income Families in Kentucky*, 25 N. KY. L. REV. 281 (1998).

71. Hogan, *supra* note 70, at 355 (emphasis added).

exchange of child support monies between them.⁷²

3. *Child Support Must Be A Single Mathematical Formula*

The third and final flawed assumption underlying the child support guidelines is that they must employ a single mathematical formula that creates fairness. When this notion exists, there will be unfairness because it is not *possible to create a single child support formula that will work for every one of the 1.2 million couples who divorce in the United States every year.*⁷³ Indeed, when one observes that there are four variables existing in all situations that create a need to address child support, then logic requires asking “how can one formula possibly create fairness among the variables?” The four variables are: 1) mother and father have differing incomes; 2) mother and father spend differing amounts of money on behalf of the children; 3) mother and father spend differing amounts of time with the children; and 4) over time, the costs of the children will change with the ending of day care, the starting of extracurricular activities, the arrival of driver’s education requiring increased car insurance, etc.

In any child support formula, income is seen as the driving force.⁷⁴ Indeed, all guidelines formulas in the fifty states and Canada start with some income base as the coefficient to plug into the formula tables.⁷⁵ Income figures seem to be the philosophical underpinning of formulas based upon trying to ensure that the children have a lifestyle similar to what they had before the divorce.⁷⁶ Each state was permitted to devise its own formulas and many looked to other states that used the number of children and who has primary custody as the other two factors in establishing tables and formulas setting a proper level of child support. However, a quick analysis of the guidelines statutes shows a wide variation between the states in the formulas.⁷⁷ One commentator even argues that the guidelines have become the province of the economic consultants.⁷⁸ Notably absent in the guidelines of every state is the factor of expenses incurred on behalf of the children. These are not part of any state’s formula, but are dealt with in the deviations and add-ons to

72. McNabb & Anderson, *supra* note 31, at 12-14.

73. See Bartlett, *supra* note 70, at 301-303 (describing the complicated and multiple considerations made in creating child support statutes in the state of Kentucky).

74. See 45 C.F.R. § 302.56 (2000).

75. See Faerber, *supra* note 19, at 160-224.

76. Ellman, *supra* note 38, at 179 n.20 (citing the policy of New York state and Ohio as posted on their child support web pages).

77. See Faerber, *supra* note 19, at 160-224.

78. See Ellman, *supra* note 38, at 167.

the basic guidelines amount.⁷⁹

However, one must ask that if the guidelines do have a safety valve in their recognition of categories of deviations, add-ons and other variables that permit deviation, then why not simply acknowledge that everyone is an individual case and let the couple create their own compete set of deviations, together with a method of sharing the total costs of all expenditures made on behalf of the children, regardless of whether their result is higher or lower than the guidelines in their own particular jurisdiction? This question will certainly be met with raised eyebrows and urgent gasps in many quarters, (particularly those who believe that certain types of people are prone to forsake their obligations towards their children) but do we not ask couples to create their own laws of fairness when there is equal time sharing and equal incomes? Do we also have an answer for them when they ask, why are the child support guidelines formulas so different when moving across state borders? And, are we really being fair when we allow high income parents, and those who have chosen equal time sharing and have equal incomes, to come up with their own method of sharing the costs of raising the minor children? Why not extend such expectations of rational behavior to all parents who must determine a method to share the costs of raising their minor children in two homes instead of one?

C. National Child Support Deviations – Signs of an Evolutionary Change in Child Support Law

In fact, we could be at the point where couples are expected to build Child Support Plans, just as they are expected to build a parenting plan. Each state's procedures for deviating from the guidelines and continued reliance on and gradual expansion of these deviations can be seen as a beginning migration away from rigid formulas towards greater use of requiring couples to itemize and share certain categories of expenses that are either paid jointly by the parents or paid by one of the parents as a factor to consider in adjusting the amount of support that may be exchanged.⁸⁰ Although child support statutes seem to see shared

79. See Faerber, *supra* note 19, at 160-224.

80. Minnesota adopted child support Guidelines in 1983. 1983 Minn. Laws 1757, 1757-59. The original Minnesota statute did not require sharing of day care costs which was added in 1993. 1993 Minn. Laws 2267, 2270. In 1998 the informal sharing of uncovered medical expenses was made mandatory by statutory enactment. See *e.g.*, *Improving Child Support Guidelines in Minnesota*, *supra* note 37, at 817 nn.93-94 (explaining Minnesota statutory requirements for medical insurance constituting "medical support").

categories of expenses as only deviations from or additions to whatever formula is being applied, I suggest that when shared expenses are seen as the core of a solution, the deviation principles are actually the beginning step in building a comprehensive Child Support Plan.

Indeed, a compelling argument can be made that all fifty states teeter on the verge of now being able to adopt Child Support Plan legislation. Minnesota and other states have adopted the use of parenting plans rather than custody battles, rejecting the notion that it is necessary to determine who is a better or worse parent which then provides one parent a higher level of ownership and control of the children.⁸¹ Under the parenting plan approach, the battle over better or worse parent is discarded and couples self-design agreements about schedules of exchanges, ground rules for conduct, methods of communicating and other agreements about the shared parenting of the minor children. Similarly, a Child Support Plan provides a workable model that allows divorcing parents to address the realistic financial needs of their children, and more importantly, address differences in expenditure levels for the children tied to each family's history and desires.

III. SHARING THE COST OF CHILDREN USING THE CHILDREN'S CHECKBOOK ALLOWS FOR CREATING A CHILD SUPPORT PLAN

A. *Need to Ask a Different Question that Creates Cooperation*

Mediators have long known that there is great power in asking a different question. The form of the question asked influences how the issue or dispute is defined. Professor Morton Deutsch observes that “[c]ontrolling the importance of what is perceived to be at stake in a conflict may be one of the most effective ways of preventing the conflict from taking a destructive course.”⁸² Perhaps the reason the Children's Checkbook has been successful with a variety of couples at Erickson Mediation Institute (EMI) is the fact that EMI asks a completely different question than the guidelines. While the guidelines formulas all ask a series of questions about who is the absent or less time parent, what is that parent's or both parent's incomes, and how many children are there, the most important piece of the puzzle is left unasked by the guidelines formulas. This missing piece is most importantly, what have you been

81. See Minn. Stat. Ann. § 518.1705 (2004) (defining parenting plans).

82. MORTON DEUTSCH, THE RESOLUTION OF CONFLICT: CONSTRUCTIVE AND DESTRUCTIVE PROCESSES 370 (1973).

spending on your children in the past and what can you afford to spend on them in the future, given the fact that you now must incur the cost of a second household? We must ask the parents how they will share the costs of raising their children in the future and in order to answer this question, we must know who will be paying for what items. Building upon Deutsch's principles, it is possible to take the typical child support question and re-frame it from "How much do I have to pay in child support?" to "How can we share the costs of raising our children in the future so that it will be fair to both of us?" Thus, a mutual journey begins. In the task of answering the question, parents will learn new methods of cooperation. They will also have failures, but they will not view the task as a contest, where one side wins and the other side loses. They will rather begin to view the journey as a problem that must be solved. This new approach of creating a Child Support Plan welcomes and accounts for the inherent complexities that divorced and never-married parents face: they live in two separate homes, may have differing incomes, spend differing amounts of money on their children, and care for them differing amounts of time. Moreover, building a Child Support Plan acknowledges the need for and allows flexibility for parents to deal with the changes in children's expenses, for example increased extracurricular or sporting activities and expenses associated with becoming a teenager.

For too long, we have assumed that the child support question could be simply answered by looking at incomes and time variants and creating a formula. As long ago as 1989, some courts recognized that the wrong questions were being asked.⁸³ In an Idaho case, Justice Johnson's *Stockwell v. Stockwell* concurring opinion showed that he understood the implications of asking the correct questions by recognizing that the focus and questions should be centered on the parent's future decision making and not on ownership rights or time with the child.⁸⁴ More recently, the Oregon Statewide Family Law Advisory Subcommittee reached a similar

83. *Stockwell v. Stockwell*, 775 P.2d 611, 615-16 (1989) (Johnson, J., concurring specially).

84. *Id.* "The legal adversarial system asks, 'Who will be awarded custody of the minor children?' The result is that the parent who is not awarded custody is then labeled a non-custodial, visiting parent. In many ways, this question is much like the law school professor's example of an inappropriate leading question, the most famous of which is, 'When did you stop beating your wife?' Just as the wife-beating question assumes an answer by the way it is asked, the usual custody question assumes that it is necessary to determine two levels of 'ownership' of the minor children. This is absurd, because the question of ownership need not even be asked; the focus should be establishing the parenting obligations that must be practiced in the future by the spouses." *Id.* at 615 (citing *The Legal Dimension*, *supra* note 2, at 108-09).

conclusion by observing that the need to frame family law questions in a future focus requires a paradigm shift in thinking.⁸⁵

Disputes in Family law are poly-centric and do not always fit into neat patterns. The Futures Subcommittee recognized the concept [of parenting plans] represents a paradigm shift in family law. "Plan is a very different word than "award": plan is the future, award is the past; plan is collaborative, award is competitive; plan implies problem-solving, award implies a contest. The help attorneys and courts need to provide for families is to give them the knowledge and the skills to develop their own plans, not to provide "cookie cutter" plans.⁸⁶

To understand why we keep asking the wrong question, what I submit is that it is helpful to realize that how child support is paid is a factor in limiting our ability to make this necessary paradigm shift in thinking. In order to make this shift, we must acknowledge that there are really three methods for managing child support, not just one. First, child support can be paid from the absent parent to the other, but, second, it can also be paid by buying items directly for the children, or, thirdly, it can be paid by both parents to a checkbook that is then used to buy items or to pay for expenses for the children.

First, as discussed above, the guidelines support model always puts one parent in charge of buying items for the children.⁸⁷ This method assumes that because parents cannot live together as husband and wife, they certainly cannot raise their children together and therefore must put one parent in charge of the children and their care, because after all, one of them is the "absent" or perhaps "more absent" parent.⁸⁸ This method appears simple; it is the least complicated and supposedly the least conflict producing because the parents have no interaction other than money exchanging hands. Because the guidelines say nothing about what items the child support should cover, a complex system of deviations and add-ons has evolved.⁸⁹ Moreover, when nothing is said about what the child support covers, the following may likely occur:

Son, I can't possibly buy you that new 12 speed mountain bike you have been asking for. You'll have to speak with your

85. See Oregon Statewide Family Law Advisory Committee (SFLAC), *Oregon's Integrated Family Court of the Future*, 40 FAM. CT. REV. 474, 480 (2002) [hereinafter Oregon Statewide Family Law Advisory Committee].

86. *Id.*

87. See *infra* Part I.B.1.b.

88. See Family Support Act of 1988, Pub. L. No. 100-485, § 101, 102 Stat. 2343, 2344-45 (1988).

89. See *id.*

father, he earns three times as much as I do.” (Next time son is with dad) “Son, what is your mother doing with all of the money I send her, she gets \$1,321 a month from me in child support. She should use it on you.

The second method of managing child support is for each parent to pay for items directly. Indeed, there is beginning to be statutory and case law recognition of some parts of the Children’s Checkbook principle.⁹⁰ Parents can pay for items directly, or from a checkbook and not necessarily always be required to have the obligor send a formulaic amount of money over to the obligee who becomes the supply sergeant because we cannot trust them to cooperate. This method of direct payment of children’s expenses is beginning to be more frequently used by those couples who engage in approximately equal time sharing.⁹¹ It is also the principle announced in the Minnesota case of *Valento v. Valento*⁹² whereby the court declared that the higher income parent should send money to the other to help equalize the disparity in incomes. Yet the underlying assumption of the *Valento* case is that both parents will buy an approximately equal amount of food, clothing and other items used by the children because the children are with each parent equally. This is also the principle of the new Minnesota Income Shares Child Support Model effective January 1, 2007 in Minnesota. Under the new statute, there is no child support exchanged when there is equal income and equal time-sharing of the children.⁹³ However, in order for couples to be sure that they are each purchasing about equal amounts of child related items, it is necessary to have some system of record keeping. One attorney familiar with couples using the checkbook reports that those who do not use a checkbook seem to have more conflict than those couples who use a joint checkbook for paying and managing shared expenses.⁹⁴

This second form of child support, recognized not only in Minnesota but in other states, is to share certain children’s expenses by paying these costs directly and then to adjust, reimburse, or compensate

90. See *Hortis*, 367 N.W.2d at 635-36. See also *Valento*, 385 N.W. 2d at 862-63. This is also the concept of requiring one parent to pay directly for health insurance by continuing the cost through employment as a deduction from one’s salary check.

91. See *Valento*, 385 N.W. 2d at 862-63; see also *Broas v. Broas*, 472 N.W. 2d 671, 673-74 (Minn. Ct. App. 1991) (the *Valento* formula was used in a marital dissolution in order to equalize the parent’s incomes).

92. 385 N.W. 2d 860.

93. See MINN. STAT. § 518A.36 subdiv. 2 (2004 & Supp. 2006).

94. See Interview with John Schulz, Partner, McGrann, Shea, Anderson, Carnival, Straugh, & Lamb, in Minneapolis, Minn. (Dec. 2006) (explaining his experiences with Post Decree problems experienced by many high conflict divorcing couples).

the other for fronting the costs.⁹⁵ In the broad scheme of child support formulas, sharing payment for these costs such as day care expenses or shared medical support is not the central part of the core formula computation and paying for these items directly has been seen as add-ons or a deviations. With the use of a children's checking account to create a Child Support Plan, all items that are deemed to be shared expenses are paid directly from the checkbook and either one or both parents uses the checkbook. Therefore, a third method is to pay child support to a checking account and the checkbook is the mechanism for sharing the children's costs, much as several co-owners of a duplex may use one checkbook to track income and expenses of the operation.

B. Child Support Plan & the Children's Checkbook

Although there are a number of forms that a Child Support Plan could take, this article recommends the use of a Children's Checkbook as a tested and successful method of developing a Child Support Plan. Of all the methods of managing child support discussed here, a Child Support Plan and sharing the expenses through the use of a joint checkbook is the only method that resolves the flawed assumptions discussed above. Mediators have been using Child Support plans for many years. For two decades, parents mediating their divorces at EMI have used the Children's Checkbook Method to calculate and share child support.

The idea for the Children's Checkbook was originated in 1981 as a suggestion by EMI to parents adopting 50-50 time sharing. The Children's Checkbook calls for each parent to contribute monthly amounts into a joint account that is then used by each parent to pay for all agreed upon, or court ordered, expenses, incurred on behalf of the children. It establishes support levels based on the actual needs of each family, rather than a one-size-fits-all approach.

Because the amounts placed into the joint Children's Checkbook are tied to the unique and individual budget needs of the children, it allows the children to continue their standard of living as was established during the ongoing marriage.⁹⁶ By unhooking the calculation of child support from the custody and/or visitation determination, the checkbook arrangement also solves the problem of trading days for dollars.⁹⁷ By

95. See Neuville, *supra* note 12, at 5. See also Faerber, *supra* note 19, at 177 n.181 (Georgia allows for a deviation from the guidelines based upon "in-kind contribution of either parent").

96. See Rogerson, *supra* note 54, at 20.

97. See Morgan, *supra* note 16.

using a proportionate contribution most often based upon the gross incomes of the parents, the Children's Checkbook Method can also embrace another principle well established in the law which is that child support should be based upon ability to pay⁹⁸ and in those states with an income shares model, upon the abilities of both parents to pay⁹⁹. Finally, and most importantly, the checkbook method enhances cooperation by scheduling periodic reviews of the budget, obviating the need for constant motions to amend.

On balance, this approach does a better job of creating fairness, allows for a simplified method of modification, and creates a written record for the parties of their shared expenses that is automatically tracked through bank statements, all of which results in better compliance and more cooperation, goals that have previously eluded legislators, jurists and commentators of the current system. Because this joint account is shared and managed by both parents, it provides for the opportunity to not only create fairness, but to also more readily involve both parents in providing for the children's needs.¹⁰⁰

Children's Monthly Budget			
Expense Item (Estimated Monthly Cost)	Separately Paid by	Shared using Joint	Separately Paid by
Food and Groceries	100		100
Lunches at School		78	
Eating Out	50		50
Clothing		100	
Medical Insurance		(Through Mom) 121	

98. Minnesota's pre- January 1, 2007 "Percentage of Income of Obligor" model is discussed in Section II.A

99. Minnesota's "Income Shares" model effective January 1, 2007 is discussed in Section II.A

100. An exhaustive search of the literature indicates no discussion of the checkbook method, although the author reports on this as early as 1988. See STEPHEN ERICKSON, FAMILY MEDIATION CASEBOOK: THEORY AND PROCESS (1988). In the Texas case of *Bailey v. Bailey*, 987 S.W.2d 206 (Tex. App. 1999), Justice Quinn affirmed a trial court judge ruling that the lower court did not abuse its discretion in: "1) segregating a portion of the support into an account and specifying how the monies were to be expended; 2) requiring both parents to jointly determine how the sum would be spent; 3) retaining authority to disburse the sum if the parents could not jointly agree as to its disbursement; and 4) awarding to the child the funds remaining in the account once the obligation to support ends." *Id.* at 207.

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Children's Monthly Budget			
Expense Item (Estimated Monthly Cost)	Separately Paid by	Shared using Joint	Separately Paid by
Uncovered Medical Expenses		25	
Prescriptions		12	
Eye Care		15	
Therapy & Counseling			
Uncovered Dental Expenses		12	
Orthodontia		150	
Gas/Oil Oldest Child's Car		45	
Maintenance & Repairs		50	
Auto Insurance		120	
License		7	
Recreation/Entertainment	75		75
Vacations/Travel	50		50
Personal Care Items		25	
Hair Care		10	
Child Care		325	
Tuition			
Books/Supplies		10	
Allowances		25	
Non-School Classes/Enrichment		45	
Sports Fees		35	
Piano Lessons		55	
Pet Expenses		10	
Gifts		15	
TOTALS:	275	1290	275

EMI couples have helped refine the delineation between a shared expense and a separately paid expense not to be shared between the two parents. Much of this is common sense, but a search of other state statutes reveals that many states see these categories of additional expense as either added on to the basic child support amount paid or as a shared

expense between the parties.¹⁰¹

1. **FOOD AND GROCERIES:** Most often, food and groceries are not considered part of the shared categories of expenses. Even when there is a great disparity in incomes, the first task of the budget process is to ask both parents to estimate what they spend for food on themselves and what they spend for food on the children. Perhaps the reason parents see this cost not in the middle column of shared expenses is that no records should be kept as to which items are eaten or used by the children and which items are consumed by the parent. That would be too difficult to track. In those cases where the children are eating most of their meals at one home, parents can allow one parent to access the checkbook for some agreed upon amount each month to supplement their food costs. Of course, this would not be necessary if there were equivalent time sharing.

2. **CHILDREN'S LUNCHESES AT SCHOOL:** This is an easy category to consider shared because it can be identified and parents usually pay for it at the beginning of each week or each month.

3. **EATING OUT AND RESTAURANTS:** For many families, this is a ritual of living in America. Couples uniformly have decided to designate this as a personal expense not part of the Children's Checkbook. No one expects to go to the other parent or to the checkbook and say, you owe me two dollars for the four dollars I spent on the children last weekend at the Dairy Queen.

4. **CLOTHING:** Clothing has traditionally been viewed as a shared expense. Even for couples who do not run the shared expenses through the checkbook, clothing, at least the larger items, are generally seen as a shared expense. In Arkansas the cost of clothing is specifically listed as a reason for deviating from the guidelines formula.¹⁰² In Indiana, a deviation from the child support guidelines is permitted if the non-custodial parent purchases school clothes.¹⁰³

5. **MEDICAL INSURANCE:** As of 1998, forty-two states already viewed medical insurance premiums as an add-on to support guidelines,¹⁰⁴ with the most common approach for adjusting the formula

101. See Faerber, *supra* note 19, at 162-265 (summarizing how child support guidelines in each state deal with various expenses).

102. Clothing costs are seen as a deviation in Arkansas. See Faerber, *supra* note 19, at 166 n.114.

103. See *id.* at 184 n.222.

104. Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, District of Columbia, Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia and Wyoming all have medical insurance

being on a pro rata basis.¹⁰⁵ If the family has medical insurance coverage, this is usually a deduction from their salary check. The amount deducted can be noted here as a children's expense to be shared

6. UNCOVERED MEDICAL AND DENTAL EXPENSES:

Prescriptions, eye care, therapy, counseling, and orthodontia are expense categories are traditionally seen as shared expenses, not only in the Children's Checkbook process but also in Minnesota.¹⁰⁶ The couple is asked not to predict what these costs will be in the future, but to list a general level of family medical expense needs based upon past experience. Some families rely heavily on medicine while other families spend very little on this category of expenses. Costs depend on a family's level of health and access to medical services.

7. PERSONAL CARE ITEMS: These items may include grooming products, cosmetics and personal care products for teenagers, and other non-grocery items needed by the children. Generally, this category does not produce controversy and most often it is shared by the parents.

8. HAIRCARE: This is also often seen as a shared expense. Running this expense through the checkbook allows either parent to take the children for a hair care appointment and pay from the joint checkbook.

9. CHILDCARE: Not only do couples not take issue with sharing this expense, it is also either a shared item or an add-on deviation in many states.

10. EDUCATION EXPENSES: Tuition, books, supplies and other school costs can be listed here in more detail. These are always seen as shared expenses.¹⁰⁷

11. NON-SCHOOL CLASSES, ENRICHMENT, CAMPS: This category of expense has often caused controversy in the actual implementation of child support in the legal system. Costs of lessons, summer camp, dance and extracurricular activities are not specifically addressed by most state deviations other than saying they may be generally considered as grounds for deviating. In constructing the budget

premiums for the children addressed in their formulas as a separate consideration. *See* Venohr & Williams, *supra* note 17, at 19.

^{105.} *See id.* at 20.

^{106.} *See* McNabb & Anderson, *supra* note 31, at 12. Minn Stat 518A.41 Subd 5

^{107.} Educational needs or extraordinary educational expenses are seen as specifically stated deviations in Alaska, Arkansas, California, Connecticut, Georgia, Hawaii, Idaho, Illinois, Kentucky, Louisiana, Maine, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and Wyoming. Faerber, *supra* note 19, at 162-265 (summarizing how child support guidelines in each state deal with various expenses). Extraordinary educational expenses are added to the basic obligation in Vermont. *Id.* at 246

jointly, parents are asked to decide first if the activity is a desired expense and secondly what the cost is. Later, there will be a discussion about how the expense is shared.

12. **SPORTS FEES:** In the budgeting process, parents with children in sports and extracurricular activities see this category as somewhat different than enrichment and non-school classes. Activity fees charged by many schools may also be part of this category.

13. **AUTOMOBILE EXPENSES:** For those families that have teenage children driving automobiles, all of the expenses related to the car such as gas, oil, repairs and insurance can be listed here.

14. **GIFTS:** This line item relates only to gifts the children give to their friends at birthday parties and other special times. It has not been used to include gifts that the parents give to the children as that is seen not as a shared expense, but paid separately.

15. **RECREATION AND ENTERTAINMENT:** This category is seen as not part of the shared account because it is too difficult to keep track of and it is part of each parent's discretionary parenting. This category does not appear in any of the guidelines as a deviation or an add-on in any of the fifty states.

16. **HOUSING:** Although this has typically not been a shared cost, in some cases at Erickson Mediation Institute where one parent is staying in a costly home or could not stay in home ownership without some shared help from the other parent, the parents may decide to add this as a category of shared children's expenses. Interestingly, Georgia lists housing as a specific deviation.¹⁰⁸ Indiana lists this as a deviation (presumably downward) if "both parents are in the military and have housing provided."¹⁰⁹ New Hampshire cites special circumstances for deviating that include "economic consequences to either party of the disposition of a marital home for the benefit of the child."¹¹⁰

Colorado lists a blanket reason for deviation: "Deviation is allowed where application of the guideline would be inequitable, unjust, or inappropriate."¹¹¹ Most states appear to have a general fairness deviation such as New York's calling for deviation "if the amount is unjust or inappropriate when considering the financial resources of the parents and of the child."¹¹² Arkansas has a peculiar blanket deviation that to throws in everything except the kitchen sink. It says that "relevant factors [for a

108. *Id.* at 177.

109. *Id.* at 184.

110. *Id.* at 212.

111. *Id.* at 169.

112. *Id.* at 219.

deviation] include: food; shelter and utilities; clothing; medical expenses; educational expenses; dental expenses; child care; accustomed standard of living; recreation; insurance; transportation expenses; and other income or assets available to support the child from whatever source.”¹¹³

Finally, Minnesota’s new income shares model lists deviation factors. The Senate author of the bill that created the new statute writes:

Section 17 of the new law includes a philosophical statement that “deviation is intended to encourage prompt and regular payments, and to prevent either parent or the joint child from living in poverty.” The author [of the bill] expects that this statement will send a message to courts that they should allow deviation in order to create fair child support orders.¹¹⁴

After completing the task of building the budget, the parents have now answered the question of what it costs their particular family to raise the children. They next must determine how to share the costs as well as whether each of them is able to meet their combined living expenses when their personal budgets are added in. It is helpful when working with couples on this task to use a divorce planning software program to calculate their income, expenses and budget shortfalls. There are several available that are quite useful in helping couples view their entire cash flow picture.¹¹⁵ These software programs can also calculate the guidelines child support amount in their state for comparison purposes when discussing the use of the Children’s Checkbook.

IV. SUGGESTIONS FOR CHANGING EXISTING CHILD SUPPORT STATUTES

A. Implementing the Child Support Plan

1. Encourage Cooperation (Mutuality and Ownership of the Decisions)

I urge that greater use of the Children’s Checkbook Method will lead to more cooperation and mutuality of ownership of the final result. Child support statutes should require mediation to be the first choice. If mediation fails, the couple can always ask for a judicial ruling. This approach would begin to eliminate unhealthy conflict and positional

113. *Id.* at 166.

114. *See* Neuville, *supra* note 12, at 5-6.

115. Fin Plan software is available through West Publishing as well as the Family Law Software available through Dan Caine.

bargaining arguments so that the child support arrangements are driven more by actual numbers and by family choices rather than by which interpretation of a formula prevails. Or, as one commentator has observed in support of settlement as opposed to relying on court rulings for these intimate family decisions:

Through individually adaptive solutions in settlement we may see the limits of law and explore avenues for law reform. Settlement (and its sometime rejection of law) could just as easily be seen as a democratic expression of individual justice where rules made for the aggregate would either be unjust, or simply irrelevant to the achievement of justice in individual cases. Settlement is, thus, not “unprincipled,” but may be seen as questioning of particular principles or the application of different individually adaptive principles.¹¹⁶

Indeed, when parents are asked to jointly create a budget for what they believe they will spend on the children in the next twelve months, they are essentially designing their own deviations each time they decide what they can afford for their children and what they want their children to have. Jim Coogler, the Atlanta attorney widely credited with being the first to create a structured process of divorce mediation, often said to couples in the mediation room, “I want to help you create your own law of fairness.”¹¹⁷ He also found in his early work with couples that when he assigned them a joint task to complete, they would engage in the joint effort and forget about their differences.¹¹⁸ When couples are engaged in the joint task of discussing fairness and they are busy determining the amount of money they have to spend on their children, they are building trust and fairness. When couples are in the process of preparing for a temporary hearing, they are more likely to feel as if they are in an adversarial process and are less likely to recognize that because they are aligned together for the duration of the children’s minority, they must find a way to cooperate.

The Oregon Futures Commission recognized that when the focus of the task is changed from finding an “award” to creating a “plan,” a paradigm shift occurs.¹¹⁹ This shift in thinking is created by redefining the problem in a more future-focused manner that requires a joint effort to solve the problem. Perhaps other states could take the simplified

116. Carrie Menkel-Meadow, *Whose Dispute Is it Anyway?: A Philosophical and Democratic Defense of Settlement (In Some Cases)*, 83 GEO. L.J. 2663, 2676-77 (1995).

117. Interview with O.J. Coogler, President, Family Mediation Association, in Atlanta, Ga. (August 1980).

118. *Id.*

119. Oregon Statewide Family Law Advisory Committee, *supra* note 85, at 480.

approach that Tennessee takes with its parenting plan legislation and require that within 30 days of filing an action for dissolution, the parents must submit a proposed Child Support Plan (together with their proposed parenting plan) and if there are differences in the plans, the parties will be referred to mediation.¹²⁰

2. *Account for Differences in Each Family's Expenditures*

Child support statutes should take into account the actual specific costs of child-related expenses (sometimes referred to as 'the needs of the children') rather than relying upon outdated or generalized national data about average costs of raising children. In a curious backward way, the courts do take into account the cost needs of the children when a rote application of the guidelines formula to very high income parents results in unfair and preposterous child support amounts, sometimes referred to as the "three ponies rule."¹²¹ If high income parents are permitted to argue that the guidelines formulas infringe upon their right to "direct the lifestyle of his or her children," then why shouldn't all parents be permitted and indeed encouraged to engage in the same discussion about the level of funding that their children need or require?

3. *Account for Who Pays Which Expenses of the Children*

In addition to allowing each family to decide for itself the level of child related expenses, greater use of the Children's Checkbook would also direct which parent pays for which expenses of the children. This approach can take into account differences in housing, when, for example, in mediation, parties will frequently decide that the one parent should stay in the family home, even though that home is quite expensive and requires a joint sacrifice to be made by both parents. It is doubtful that judges could really "deviate" enough from the guidelines in order to take into account the need for this sacrifice. This is actually a decision

120. 19 W. WALTON GARRETT, TENNESSEE PRACTICE, TENNESSEE DIVORCE, ALIMONY & CHILD CUSTODY § 25:1 (2006).

121. In many instances appellate courts have disapproved child support awards that exceeded what could be deemed to be the child's reasonable needs. Those courts which have articulated the rationale for their decisions generally have cited at least one of three reasons: 1) such support constitutes the distribution of the obligor parent's estate; 2) such support provides an inappropriate windfall to the child; 3) such support may also infringe upon a parent's right to direct the lifestyle of his or her children. Hogan, *supra* note 70, at 353. The "three ponies rule" is the humorous rule that says "no child needs three ponies" as a result of the guidelines formulas being applied to the extremely wealthy parent. *Id.* at 352

that must be made by the parents.

Furthermore, in order to prevent confusion and to lessen conflict, it would be helpful if all couples getting divorced took some time to discuss exactly what items and at what level of costs the recipient of child support should be expected to purchase on behalf of the children. As more and more parents are engaging in equal or near equal time sharing and as men's and women's incomes reach more equivalency, the checkbook method assists couples in being clear and specific about how they will equally share the costs of raising the minor children.

For almost all parents who experience differing incomes, unequal time with the children, and dissimilar purchasing patterns for the children, allowing parents to clarify spending patterns through the use of the Children's Checkbook would also likely reduce the number of post decree motions to change child support.

B. Benefits of the Checkbook Model - Desirable Goals that the New Method Accomplishes

1. No More Trading Days for Dollars

The Children's Checkbook Method disconnects the child support calculation from the custody arrangement and the problem of trading days for dollars is eliminated. In other words, it does not matter whether one parent is the visitor, or the physical custody parent, or whether the parties are calling their arrangement a shared parenting plan, joint custody, split custody, sole custody, or whether the schedule is 50-50, 60-40, or 80-20 with each parent. The Children's Checkbook Method recognizes that the only expense that is really affected by changes in the schedule is the number of meals provided by each parent (and perhaps in some cases the electricity bill from kids leaving lights on and the water bill because of long showers). Otherwise, all of the other expenses remain constant and can be paid by either parent. It becomes simply a matter of determining who is going to pay for which items needed by the children and what these costs are. When they are paid through a checkbook mechanism, the real discussion can then center on what can be afforded and how much more the higher income parent should be contributing to these expenses. In most cases where couples are using and being successful at the checkbook method, the parents contribute to the checkbook on a proportional basis according to their gross or net incomes.

2. *Both Parents are Contributing to the Children's Expenses*

The checkbook method allows for and encourages more participation from both parents and does not allow for a slide back into the totally discretionary situation that the guidelines were determined to avoid. Just as the parenting plan approach adds much more detail to the typical one sentence custody award, the Children's Checkbook Method provides for a more comprehensive approach that also gives parents an easy record to review when modification is needed. When both parents participate in building the Support Plan, compliance with the final agreement will likely increase because the parents participated in designing the agreement themselves. Use of the checkbook allows for the lower income parent to fully participate in the purchases of items for the children rather than saying, "You will just have to get that from your mother, she makes more than I do."

3. *Alleviates the Mistrust*

Parents using the checkbook method can readily see where the funds are being spent. There is no need to keep track of and exchange receipts because the checkbook automatically records everything for the parents. The whole system is open and transparent to both. As to the obvious concern that one person will use the checkbook approach to control or harass the other parent, many mothers (who will often take on more of the purchasing of items for the children) report that the use of the checkbook "really proves how expensive it is to raise children."¹²²

4. *Easily Enforceable*

Courts could take the posture of the Texas court in *Bailey v. Bailey*¹²³ and supervise the use of the checkbook. They could also require parents to retain the checkbook for examination by the court in any dispute. However, more likely, if the parents cannot maintain cooperation around the use of the checkbook, the language as set forth in the Appendix suggests that they will simply discontinue the method and follow the existing child support statutes in force at the time they stop using the checkbook.

122. Interview with Marilyn McKnight, President-Elect of Association for Conflict Resolution and Family Mediator, Erickson Mediation Institute, in Minneapolis, Minn. (Dec. 2006).

123. 987 S.W.2d 206 (Tex. App. 1999).

5. *Self-Modifying*

The language used in the application of the checkbook method suggests that parents share the total agreed-upon costs of the children through a proportional sharing of the total monthly costs using gross income figures. Parents are expected to exchange income verification each year (usually W-2 statements are sufficient or some other verification mechanism such as tax returns) and as incomes change, the pro rata contribution to the checking account will change.

V. CONCLUSION

It is time to reject the notion that we might find the proper child support payment level through application of a perfect formula. Rather, let us use our energy and resources to encourage parents to create Child Support Plans.¹²⁴ We must recognize that, even when deviations from the formula are meant to take off the rough edges of rote application of the guidelines tables, fairness is always elusive, particularly when someone other than the parents makes such important decisions for them. If the impetus for parenting plans was a paradigm shift away from fighting over who was a better or worse parent, we should likewise begin to frame the child support question in a similar future-focused fashion that requires cooperation to answer the question. We should ask parents to jointly build Child Support Plans, and we must also give them the tools to accomplish this task. One of the tools is the language found in the Appendix that sets forth language developed by Erickson Mediation Institute during the past 30 years of practice. Divorcing couples can be successful at sharing the costs of raising children in two separate homes when *guided through* a process of first setting the amount of each category of children's costs and then negotiating the method of sharing these costs.

Realistically, a Child Support Plan would be no more difficult for courts and hearing officers to administer than the current task concerning parenting plans. However, most parents would need the assistance of a neutral mediator, much as they are doing now with the creation of parenting plans. Such a re-focusing of the statutes would recognize the complexity of the task and would allow each family to find fairness on its own with the guidance of a mediator. Just as the statutory movement towards parenting plan legislation was recognition that cooperation was better than adversarial posturing, this article argues that the use of a

124. See *supra* Part IV.

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Children's Checkbook approach is consistent with the family court's emphasis on the greater use of mediation to encourage post-divorce cooperation. The use of a Children's Checkbook is also consistent with each state's slow movement towards creating more shared categories of costs.¹²⁵

125. Minnesota adopted child support Guidelines in 1983. 1983 Minn. Laws 1757, 1757-59. The original Minnesota statute did not require sharing of day care costs which was added in 1993. 1993 Minn. Laws 2267, 2270. In 1998 the informal sharing of uncovered medical expenses was made mandatory by statutory enactment. *See e.g., Improving Child Support Guidelines in Minnesota, supra* note 37, at 817 nn.93-94 (explaining Minnesota statutory requirements for medical insurance constituting "medical support").

CHILD SUPPORT PLAN & CHILDREN'S CHECKBOOK:
SAMPLE LANGUAGE

**CHILD SUPPORT: Deviation from Child Support
Guidelines/No exchange of support:**

A. Method of Sharing Children's Costs. Husband and Wife have agreed to an arrangement for sharing the costs of raising their children that calls for itemizing all expenses related to the children and

OPTION 1: sharing these costs on a pro rata basis according to their gross incomes.

B. Amount of Support: Each will contribute and pay child support towards the below listed expenses of the children by depositing funds into a children's checking account each month. Husband earns ___% of the parents' combined gross income and therefore will deposit the sum of \$_____ each month. Wife earns ___% of the parents' combined gross income and therefore will deposit the sum of \$_____ each month.

OPTION 2: sharing these costs equally.

B. Amount of Support: Each will contribute and pay child support towards the below listed expenses of the children by depositing each month into a children's checking account the sum of \$_____.

The joint checking account will be exchanged each time the children are exchanged (or each will have a debit card for the account) and the parent who is caring for them will have the use of the checkbook for the authorized shared expenses to be paid from the checking account as outlined below:

Children's Monthly Budget			
Expense Item (Estimated Monthly Cost)	Paid by Mom Separately	Shared using Joint Checkbook	Paid by Dad Separately
Food and Groceries	125		125
Lunches at School		78	
Eating out	50		50

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Children's Monthly Budget			
Expense Item (Estimated Monthly Cost)	Paid by Mom Separately	Shared using Joint Checkbook	Paid by Dad Separately
Clothing		100	
Medical Insurance		(Thru Mom) 121	
Uncovered Medical Expenses		25	
Prescriptions		12	
Eye care		15	
Therapy & Counseling			
Uncovered Dental Expenses		12	
Orthodontia		150	
Gas/Oil Oldest Child's car		45	
Maintenance & Repairs		50	
Auto Insurance		120	
License		7	
Recreation/Entertainment	75		75
Vacations/Travel	50		50
Personal Care Items		25	
Hair Care		10	
Child Care		475	
Tuition			
Books/Supplies		10	
Allowances		25	
Non-School		45	
Sports Fees		35	
Piano Lessons		55	
Pet Expenses		10	
Gifts		15	

Children's Monthly Budget			
Expense Item (Estimated Monthly Cost)	Paid by Mom Separately	Shared using Joint Checkbook	Paid by Dad Separately
TOTALS:			

Each parent will pay separately for food, recreation, entertainment and travel expenses, which will not be deemed to be shared as a part of the joint checkbook arrangement.

From time to time and at least once every 12 months, the parents will meet and review the budgeted expenses for the children. At such review, they may add new categories of expenses and they may revise current expenditure levels. Upon a substantial change in their incomes, they shall also change their pro-rata contributions to the account. Should the unused balance reach \$2,000, or should there be a shortfall in the checkbook for a period of two consecutive months, both agree this will trigger an automatic review the expenditures for the children.

OPTION 1: At the yearly review, they will also exchange income verification upon a request by either.

OPTION 2: In February of each year, they will exchange W-2 income verification or tax returns in order to adjust their pro-rata contribution towards the children's checking account. Should there be any dispute about what their current gross income is, they will submit the dispute to _____, C.P.A. (or some other mutually agreed-upon C.P.A.).

Husband and Wife agree neither will spend from the checkbook for items other than the above categories authorized. Should there be extraordinary expenses for the children that are unusual or not anticipated and not part of their projected expense costs, they agree to first meet and discuss whether or not to incur the expense and if they agree, the item will be paid for them from the joint account. They agree that for the first year, Husband will receive the bank statements and will balance the

checkbook.

In the event they change their equal time sharing schedule or in the event either one of them believes the checkbook arrangement is no longer workable, either may return to mediation or to court to request a different child support exchange arrangement following the Minnesota Child Support Guidelines.

C. Duration of support. Husband and Wife will be responsible for the financial support of their children until each child reaches the age of 18 years, enters the Armed Forces of the United States, is emancipated, self-supporting, or deceased, or until each child reaches the age of 20 years if the child is still attending secondary school, or until further Order of the Court. Appendix A, describing the conditions for child support withholding, cost of living increases in child support, and other matters, is attached hereto and incorporated herein by reference; however, in any respects in which the terms of Appendix A may be inconsistent with the terms of the agreement as reflected in Judgment, the terms of the agreement and Judgment will prevail.

D. Cost of living increases. There will be no cost of living increases in child support as they will have a yearly review of expenses as part of the Children's Checkbook agreement.

E. Daycare support. Husband and Wife will be responsible for the daycare or latchkey expenses of their minor children through the use of the checkbook.

F. Uninsured expenses. Uninsured medical, dental, and optical expenses of the children will be paid from the Children's Checkbook account.

G. Extraordinary expenses. Before arranging for any elective uncovered health-related procedures, both will agree on the procedure before assuming the other parent will share in the costs of the procedure.