



Federal Mandate Review

Office of Performance Evaluations ♦ Idaho State Legislature

March 1999

Review 99-01HHW

Child Support Award Guidelines

Executive Summary

Federal funding to states for the administration of child support enforcement activities is contingent on the approval of a state plan for child support. As a condition for having their plans approved, states must establish guidelines for determining child support award amounts. Currently, language in Idaho Code authorizing the development and application of child support award guidelines will sunset in July 1999 unless specifically reauthorized.

Without this authorizing language, Idaho's current guidelines, found in the Idaho Rules of Civil Procedure, could be open to challenge. This, in turn, could result in noncompliance with federal requirements, the loss of some or all federal child support enforcement funding (totaling \$11.7 in fiscal year 1998), and reductions in funding from Temporary Assistance for Needy Families. Even if current authorizing language is retained, constitutional questions about the delegation of legislative authority to the courts may remain.

At Issue . . .

Idaho Code § 32-706A will sunset on July 1, 1999 unless specifically reauthorized. This section provides statutory authority for the development of guidelines that govern the determination of child support award amounts. Currently, language to reauthorize this statute is included in S. 1010. On February 25, 1999 the Office of Performance Evaluations was directed to review federal requirements concerning child support guidelines, the status of existing Idaho law, and S. 1010. We asked:

- What does the federal government require regarding child support award guidelines?
- Is I.C. § 32-706A needed to ensure federal requirements are met?
- If I.C. § 32-706A were to sunset, would Idaho be out of compliance with federal requirements? If so, would this also result in the loss of federal funding?

Federal mandate reviews examine federal legal requirements made of the state, associated federal funding, and state compliance with the requirements. Unlike performance evaluations, these reviews do not follow audit procedures and do not conclude with findings and recommendations. This review was completed at the request of the Speaker of the House of Representatives. Questions may be directed to the Office of Performance Evaluations, P.O. Box 83720, Boise, Idaho 83720-0055, or phone (208) 334-3880.

Federal Legal Requirements

- To receive federal funds for child support enforcement activities, states must have an approved state plan for child support, including guidelines governing awards (45 C.F.R. §§ 301.10, .15, 302.56). Enforcement activities include, but are not limited to, locating non-custodial parents, establishing paternity, and enforcing the support obligations determined by a court.
- Guidelines may be established “by law or by judicial or administrative action” (42 U.S.C. § 667(a)).
- There must be a rebuttable presumption that the child support award resulting from the application of the guidelines is the correct amount. That is, the amount of child support derived from application of the guidelines must be presumed the correct amount of child support. Explanations for deviations from the guidelines must be recorded (42 U.S.C. § 667(b)(2)).

Current State Compliance

- I.C. § 32-706A provides compliance with federal child support requirements by “authorizing and encouraging” the state Supreme Court to adopt and periodically review child support guidelines. It states that courts shall apply the guidelines in addition to considering the factors found in I.C. § 32-706. It also expressly includes the required rebuttable presumption.
- I.C. § 32-706, adopted prior to the establishment of federal requirements for child support enforcement guidelines, outlines factors to be considered in determining child support amounts.¹ However, the factors included in I.C. § 32-706 are general and do not meet the federal criteria for state guidelines in and of themselves. Further, this statute does not expressly include the required rebuttable presumption.
- Child support guidelines were adopted in 1989 in the Idaho Rules of Civil Procedure (I.R.C.P. 6(c)(6)). The current guidelines do not include an express rebuttable presumption, but otherwise appear to meet the criteria spelled out in federal regulations. As noted, the rebuttable presumption is found in I.C. § 32-706A.

Federal Funding Involved

- During state fiscal year 1998, Idaho received \$11.7 million in federal matching funds for all aspects of child support enforcement administration. The amount of federal funding a state receives varies by

¹ In *Rohr v. Rohr*, 128 Idaho 137, 138 (1995), the Supreme Court determined that the amount of support was to be calculated based on both sources.

year, depending in part on the state's child support collections and expenditures for program administration.

- Were the state to be out of compliance with federal requirements regarding child support enforcement, a period of appeal and review could ensue. Ultimately, partial or complete loss of federal child support enforcement funding could result.
- Federal law also requires the state to operate a child support enforcement program under an approved state plan in order to be eligible for federal funding for Temporary Assistance for Needy Families (42 U.S.C. § 602 (a)(2)). During state fiscal year 1998, the federal share of Temporary Assistance for Needy Families funding, excluding child support, totaled \$7.6 million. These funds could also be at risk if the state were to be out of compliance with federal requirements.

Legislative Options

1. **Reauthorize I.C. § 32-706A** or pass similar legislation. Given no other changes to federal law or the state plan, this would result in the state's continued compliance with federal requirements and no change in the status of federal funding. It should be noted, however, that the current law *may* unconstitutionally delegate legislative power to the judiciary by enacting a statute (I.C. § 32-706A) authorizing the Supreme Court to establish a substantive law—child support guidelines.
2. **Adopt the state guidelines into law.** Shifting the guidelines from court rule to law would eliminate any concerns about the potentially unconstitutional delegation of legislative authority. Drafters should also include express language ensuring a rebuttable presumption. As long as the guidelines continued to meet federal requirements, there would be no change in federal funding.
3. **Adopt the state guidelines into administrative rule.** The Department of Health and Welfare has the authority to promulgate rules to carry out statutory provisions. It may be possible for the department to adopt the current state guidelines as rules, including a rebuttable presumption. However, without additional research, it is uncertain if the department may govern *all* child support orders within the state. Consequently, it is difficult to determine whether departmental rules would meet federal requirements.
4. **Sunset I.C. § 32-706A.** As noted above, by not passing S. 1010 or similar legislation, I.C. § 32-706A will sunset on July 1, 1999. Without I.C. § 32-706A, child support award determinations would be based on I.C. § 32-706 and the current child support guidelines, neither of which include an express rebuttable presumption. In addition, the Court's guidelines could be challenged on the basis that they are *substantive law*

(rather than *procedural* law), and, as such, go beyond the authority granted the Court.² If the validity of the guidelines were challenged, the end result of sunseting the current code section would vary according to the determination of whether they are “procedural” or “substantive,” a determination that could ultimately require a court ruling.

- ◆ **If the guidelines were determined to be procedural**, they would remain applicable in determining child support awards in the state. Although I.C. § 32-706 would become the guiding child support statute, it would be superceded by the Court’s procedural rule, which are the current guidelines.³ In this case, it may be necessary for the Court to amend the guidelines to include the rebuttable presumption required in federal law and to refer to the appropriate statute, I.C. § 32-706. However, the Legislature has no authority to direct the Court to amend a procedural rule—in this case, the guidelines.
- ◆ **If the guidelines were determined to be substantive law**, they could be rendered invalid as going beyond the bounds of the Supreme Court’s rule-making authority. I.C. § 32-706 would govern a court’s determination of child support. However, this statute does not currently meet the federal requirements for guidelines. Without approved guidelines, the state would not meet federal requirements for child support enforcement funding.

² IDAHO CODE § 1-212 (1998); *R.E.W. Construction Co. v. District Court*, 88 Idaho 426 (1965).

³ *State v. Griffith*, 97 Idaho 52 (1975).