

National Council of Child Support Directors
2018 Annual Meeting & Conference
Child Support: A Safe Harbor for the Future
May 13 – 16, 2018 • Norfolk, Virginia



More than One Home Port: Proposals Regarding Presumption of 50/50 Parenting Time

Tuesday, May 15 • 11:30 a.m. – 12:15 p.m.

Meghan McCann, J.D., Senior Policy Specialist, National Conference of State Legislatures
Sharon Redmond, Chief of Policy, Washington State DCS



Outline

- Who is NCSL?
- NCSL's Work on Child Support Policy
- State Statutes Addressing Shared Parenting
- State Legislation Addressing Shared Parenting
- Other Issues to Consider
- NCSL Resources
- Contact Information



Who is NCSL?

- Bipartisan organization serving legislators and staff in all 50 states and territories
 - Provide state legislatures a strong, cohesive voice at the federal level
 - Improve the quality and effectiveness of state legislatures
 - Promote policy innovation and communication among state legislatures

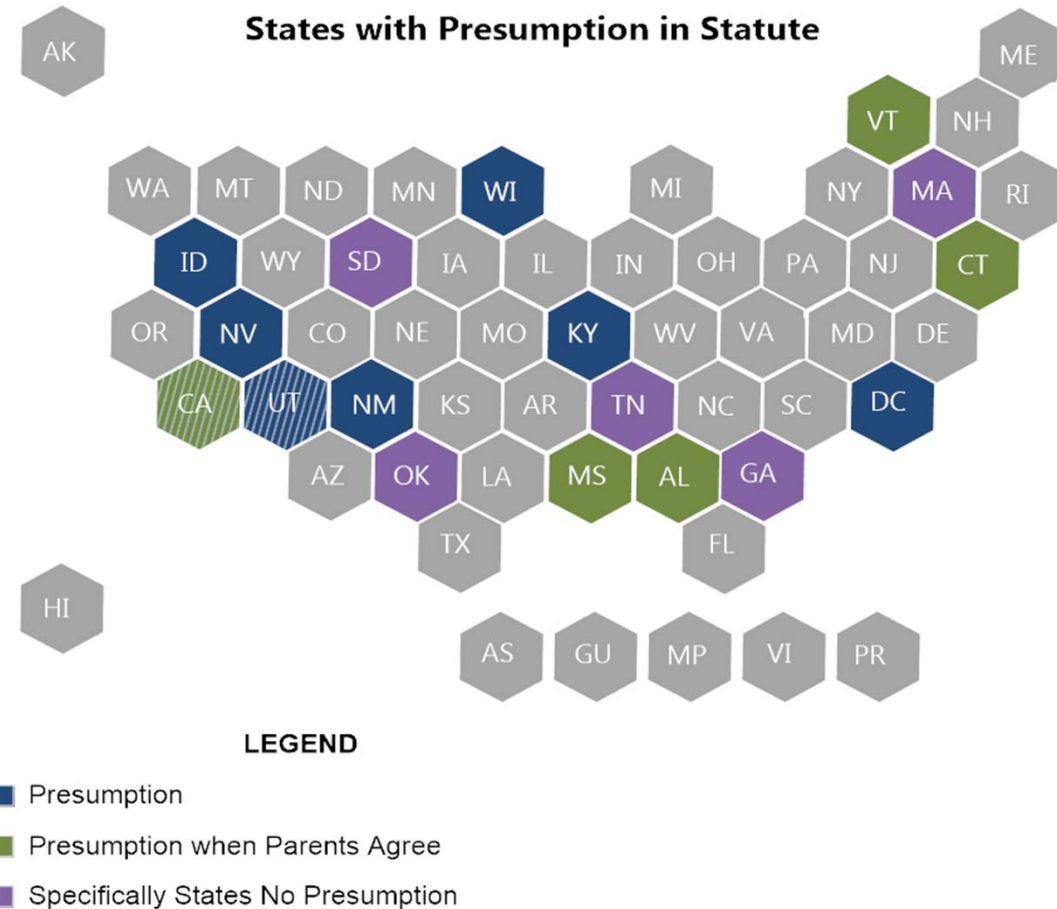
NCSL's Work on Child Support Policy

- Contract with OCSE to create clearinghouse of policy resources
- Track 50-state legislation on child support
- Connect legislators and child support directors
- Prepare policy briefs, 50-state comparisons, child support 101, quarterly newsletter
- Convene meetings, testify before state legislative committees
- Highlight state innovations



State Statutes

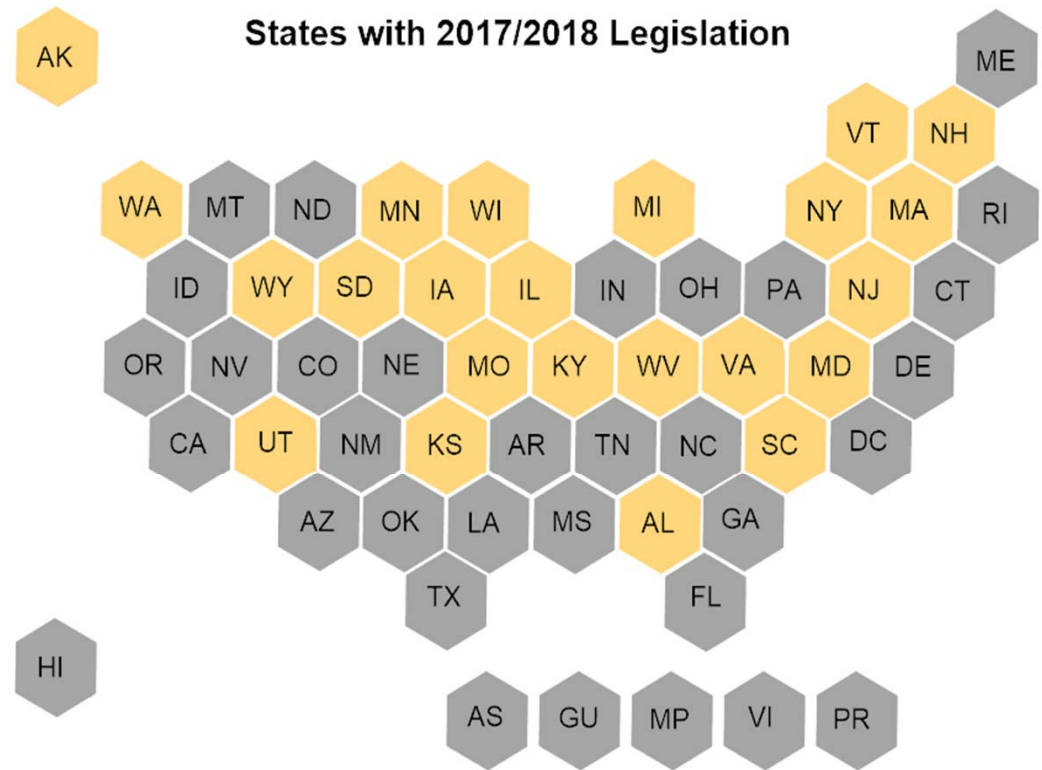
- 16 states and D.C. have a statute addressing joint/shared/equal custody (both legal and/or physical)
 - 6 states and D.C. have an existing presumption in favor of joint custody
 - 5 states have a presumption when the parents agree to joint custody
 - 7 states specifically state that there is no presumption, though a handful do state a preference for joint custody





State Legislation

- 38 states and Puerto Rico have introduced legislation since 2012 to create a presumption, or otherwise address joint/shared/equal custody
- 2017/2018 Legislation
 - 23 states considered 47 bills over the 2017/2018 biennium



LEGEND

- States with 2017/2018 Shared Parenting Legislation
- States without 2017/2018 Shared Parenting Legislation



2017/2018 Legislation Breakdown

- Rebuttable Presumption in Favor of Joint Custody (28 bills):
 - KY H 528 (Enacted): there shall be a presumption, rebuttable by a preponderance of evidence, that joint custody and equally shared parenting time is in the best interest of the child. If a deviation from equal parenting time is warranted, the court shall construct a parenting time schedule which maximizes the time each parent or de facto custodian has with the child and is consistent with ensuring the child's welfare.
- No Presumption in Favor or Against (4 bills):
 - WY S 20 (Enacted): In determining custody a court shall not favor or disfavor any form of custody. Custody shall be crafted to promote the best interests of the children, and may include any combination of joint, shared or sole custody.
- Requires Joint Custody (4 bills)
 - IA S 190 (Pending): This bill directs that the court shall, rather than may as under current law, award joint custody to both parties unless direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result from such contact with one parent.
- Other Legislation Addressing Shared Custody



Other Issues to Consider

- Domestic Violence Presumptions
 - 44 states and D.C. include domestic violence as a factor to be considered when determining custody
 - 22 states and D.C. created a rebuttable presumption against custody for a perpetrator
- Gender Preference Prohibitions
 - Approximately 34 states have some provision or language in the custody statutes preventing the court from giving preference to one parent or the other because of gender.
- Child Support Adjustments
 - 2 bills in 2018 (Illinois HB 5444; Tennessee HB 2194)



NCSL Resources

- Child Support and Family Law Legislation Database:
<http://www.ncsl.org/research/human-services/child-support-and-family-law-database.aspx>
- Child Support Homepage: <http://www.ncsl.org/research/human-services/child-support-homepage.aspx>
- A Guide for Child Support Professionals:
<http://www.ncsl.org/research/human-services/a-guide-for-child-support-professionals.aspx?ct=5bab04442d2bfb6ac0a96642153ba5d94708d91b62fb1a7e1de0eebbae3edd09d23f6db3a543fe3f5c0544a9a7d456212b9d2b8d28a34fdc7c28ce3f5f577b96>



Contact Information

Meghan McCann
Senior Policy Specialist
NCSL-Denver
303-856-1404

Meghan.McCann@ncsl.org

Judicial Process/Administrative Process





Legislative experience

- 50-50 residential time is **not** presently presumptive in Washington state
- We do get bills proposing such a presumption
- Most common residential plan is still a more traditional every other weekend plus breaks/summer (but determined on a case specific basis)

Nuts and Bolts around WA systems





Court Orders

- Based on legal custody
- Formal Parenting Plan
- Need to have jurisdiction over both parties
- Often must modify if child moves
- Split custody (Arvey) versus shared custody



Administrative Orders

- Based on physical custody
- Must have child(ren) majority of the residential time
- No parenting plan required
- Only have jurisdiction over one parent at a time
- Can suspend if child moves



Residential Credit

- Washington state does not have a formula around a residential credit (it is considered a deviation; considered on a case by case basis)
- Deviations for residential time are not allowed per the schedule if TANF is paid



Residential Credit

- Residential schedule. The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment.

Deviations for residential time

- When determining the amount of the deviation, the court shall consider evidence concerning the **increased expenses** to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the **decreased expenses**, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.



Issues around a formula

- Child overnights at CP's home but NCP provides care during the day in his home
- Count hours?
- Compare expenses and savings
- Child moves between parents' homes but no set schedule

**Worksheet B
Residential Schedule Adjustment**

19. Adjusted Basic Support (line 17 minus line 18e)	\$ 200	\$ 100	\$	\$
20. Overnights with Father	150	125		
21. Proportional Overnights with Father (divide each entry on line 20 by 365)	.41	.35		
22. Overnights with Mother	215	240		
23. Proportional Overnights with Mother (divide each entry on line 22 by 365)	.59	.65		
24. Father's Credit Proportion (for each child subtract .25 from the entry on line 21 and multiply the resulting amount times 2) Note: For answers less than 0 enter "0" For answers greater than 1.0 enter "1.0" For answers between 0 and 1 enter exact amount	.32	.20		
25. Mother's Credit Proportion (for each child subtract .25 from the entry on line 23 and multiply the resulting amount times 2) Note: For answers less than 0 enter "0" For answers greater than 1.0 enter "1.0" For answers between 0 and 1 enter exact amount	.68	.80		
26. Father's Residential Schedule Credits (for each child multiply the entry on line 24 times the entry on line 19)	\$ 64	\$ 20	\$	\$
27. Mother's Residential Schedule Credits (for each child multiply the entry on line 25 times the entry on line 19)	\$ 136	\$ 80	\$	\$
Return to Worksheet A, line 14d				

This worksheet has been certified by the State of Washington Office of the Administrator for the Courts.

Curves in the Road- Admin process





WAC 388-14A-1020 (admin orders)

- "Custodial parent or CP" means the person, whether a parent or not, with whom a dependent **child resides the majority of the time** period for which the division of child support seeks to establish or enforce a support obligation.
- Noncustodial parent or NCP" means the natural or biological parent, adoptive parent, adjudicated parent, presumed parent, responsible stepparent or person who signed and filed an affidavit acknowledging paternity, from whom the state seeks support for a dependent child. **A parent is considered to be an NCP when for the majority of the time during the period for which support is sought, the dependent child resided somewhere other than with that parent.**



Complexity around TANF eligibility

- If a child lives with more than one relative or parent because the relatives share custody of the child:

(a) We include the child in the assistance unit (AU) of the parent or relative that the child lives with for the majority of the time; or

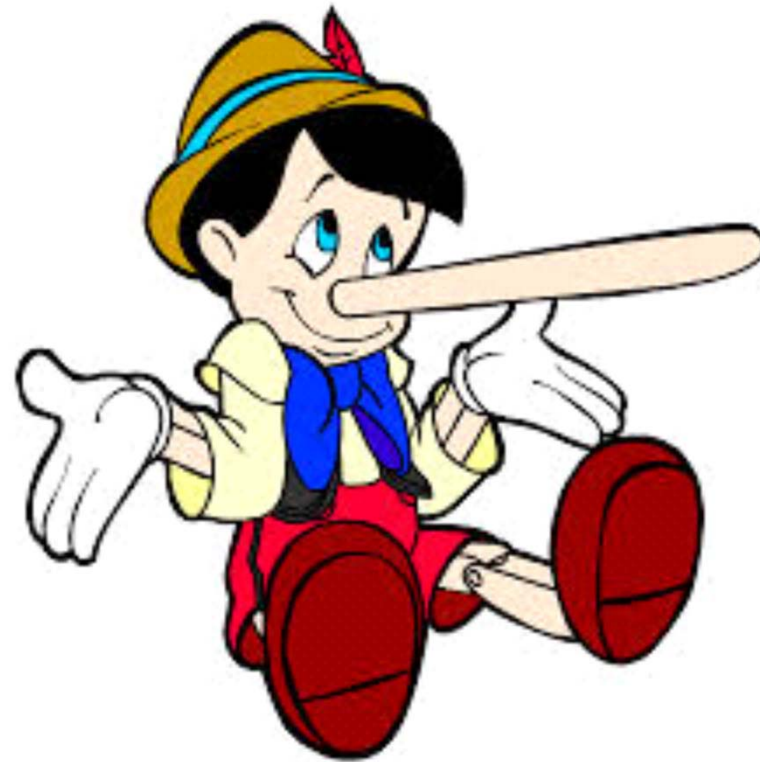
(b) *If relatives share physical custody of the child in equal amounts, we include the child in the Assistance unit of the parent or relative that first applies for assistance for the child.*



WA DCS authority:

- DCS has authority to establish administratively against a noncustodial parent
- In 50-50 custody, no noncustodial parent

Administrative Outcomes





Administrative issues

- Parties have a tendency to “over claim” 50-50 custody
- Good intentions around the claim, but not realistic
- Protective instincts around establishment
- Proof issues around factually establishing the residential schedule

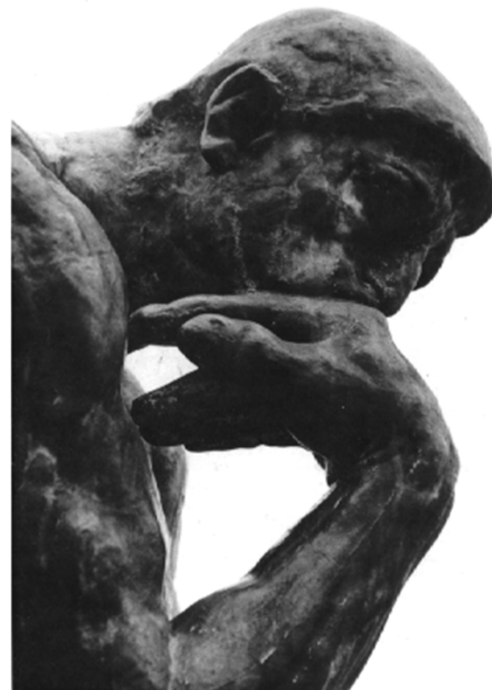


Brainstorming potential changes

- What if NCP is defined as the majority of time ...
- Additionally, an NCP may also be a parent who equally shares custody and is the non recipient of TANF or is the higher income share in a non TANF?

Brainstorming potential changes

- Only have jurisdiction over one parent
 - What if applicant turns out to be the one who owes after apply deviation
 - No jurisdiction over applicant to assess obligation
 - Withdraw and seek application from other party?



Questions

