

Fall 2012

Getting Back to Our Roots: Increasing the Age of Child Support Termination to Twenty-One

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Recommended Citation

Matthew Brandabur, *Getting Back to Our Roots: Increasing the Age of Child Support Termination to Twenty-One*, 47 Val. U. L. Rev. 169 (2012).

Available at: <https://scholar.valpo.edu/vulr/vol47/iss1/5>

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GETTING BACK TO OUR ROOTS: INCREASING THE AGE OF CHILD SUPPORT TERMINATION TO TWENTY-ONE

I. INTRODUCTION

Marilyn, a seventeen-year old girl, just entered her senior year of high school.¹ Her parents divorced when she was ten years old, and Marilyn lives with her mother, but she sees her father on the occasional weekend. Marilyn's father provides child support to Marilyn's mother, but Marilyn does not get any additional support from her father. Living with a single parent has been especially hard for Marilyn and, unfortunately, it is becoming increasingly difficult as Marilyn enters her last year of high school. The majority of Marilyn's friends carelessly and excitedly discuss their plans to attend college, which a majority of their parents will help fund. Conversely, Marilyn is worrying about her future and how she will pay for college, or instead if she should attempt to get a local job after high school. Marilyn is a great student, but she knows that she has to apply for financial aid to help pay for her college tuition.² To make matters worse, Marilyn's school counselor informed her that, when applying for financial aid, the income of both her father and mother will be used to calculate her loan eligibility. This compounds Marilyn's worries, because her parent's combined income will qualify her for less financial aid, yet her mother is the only person who will be supporting her in college. Furthermore, Marilyn's mother, Beth, knows that child support will cease upon Marilyn's graduation from high school. Beth is worried as to how she will be able to take care of Marilyn financially, as Marilyn makes such life decisions that will affect her future without any aid from Marilyn's father. Could something be done to help Marilyn and other similarly situated children and parents?³

¹ This hypothetical fact pattern is fictional and solely the work of the author and is used to describe the legal issues presented in this Note.

² Financial aid refers to federal student loans that allow students or parents to borrow money to pay for college. *Federal Versus Private Loans*, DEP'T OF EDUC., <http://federalstudentaid.ed.gov/federalaidfirst/> (last visited July 16, 2012). In formulating a student's financial aid eligibility, the total income of both parents provides a significant contribution to the calculation. *Understanding My Financial Aid*, BROWN UNIV., <http://www.brown.edu/about/administration/financial-aid/understanding-my-financial-aid/> (last visited Aug. 16, 2012). When parents are separated, some universities will require both parents to provide their financial information. *Id.* However, prospective student borrowers are not required to provide the financial information of the non-custodial parent when applying for federal student loans. *Id.*

³ See *infra* Part IV (proposing that all fifty states individually adopt the age of twenty-one as the age of termination for child support purposes).

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Instances like the one described above cannot be prevented, but the harmful effects that children and parents of non-intact family structures face could be alleviated if states were to terminate child support at the age of twenty-one.⁴ Absent such a rule, the young lady described in the scenario above—and many others just like her—may be forced to make some of the most important decisions of her life because of the effect that divorce has had on her life. Providing child support for an additional three years can give a child the extra bit of comfort and financial support needed to successfully enter the “real world.” Arguments supporting child support have always centered on the premise that child support is designed to provide the same opportunities for children from both intact and non-intact families.⁵ As a result, states should consider updating their current age of termination for child support due to the ever-changing landscape of family dynamics.

This Note proposes that every state should individually adopt legislation expanding the age of termination to twenty-one.⁶ In order to adequately address the continuing needs of parents and children, this Note also suggests that any state enacting such a law should include an opportunity for the court to increase child support obligations for issues such as post-secondary education and health problems, while allowing the court the discretion to decrease or eliminate child support obligations if certain factors are met.⁷

Part II of this Note describes the history of child support and provides a general understanding of how the child support system works.⁸ Part II also discusses the role of the federal government in

⁴ See *infra* Part III (analyzing the problems that occur when support is terminated at a younger age and also the benefits associated with terminating support at a later age); see also *infra* Part IV (discussing the benefits associated with terminating support at the age of twenty-one). For the purposes of this Note, a “traditional family structure” is a household consisting of two married parents and their biological children. See Barbara Schneider, Allison Atteberry & Ann Owens, *Family Matters: Family Structure and Child Outcomes*, ALA. POL’Y INST. 3 (2005), <http://www.alabamapolicy.org/pdf/currentfamilystructure.pdf> (providing the definition of a traditional family structure). Non-traditional families are considered those with a step-parent, a single parent, cohabitating parents, or other relatives as caretakers. *Id.*

⁵ See *infra* Part III (analyzing the public policy issues associated with each type of child support system); see also *infra* Part IV (noting the benefits associated with providing support for a child until the age of twenty-one).

⁶ See *infra* Part IV (proposing that all fifty states individually adopt a termination age of twenty-one for child support purposes).

⁷ See *infra* Part IV (proposing that the states that individually adopt the proposed statute have the ability to use their discretion in increasing support for post-secondary education and terminating support for child-initiated emancipation).

⁸ See *infra* Part II.A (discussing the history of the child support system in the United States).

family relations, the constitutional challenges courts have faced regarding child support issues, and how states differ in their approach to child support termination.⁹ Next, Part III of this Note analyzes the federal government's involvement in child support and evaluates the constitutionality of child support guidelines.¹⁰ Part III scrutinizes each state's approach to terminating child support and also evaluates the adequacy and deficiencies of each approach.¹¹ Finally, Part IV proposes that each state should individually adopt legislation expanding the age of termination of child support to twenty-one, but only when courts have adequate discretion to authorize child support for post-secondary education and terminate support for children who emancipate themselves.¹²

II. BACKGROUND

Currently, there is no uniform age requirement that states must follow to determine the age at which support is terminated, and therefore states differ in their approach. To date, roughly thirty-four states terminate child support at eighteen, nineteen, or when the child graduates from high school.¹³ Thirteen states terminate child support at

⁹ See *infra* Parts II.B-C (providing a general understanding of the role of the federal government in family relations and child support issues to illustrate the constitutionality of child support guidelines, as well as how states differ in their approach to child support).

¹⁰ See *infra* Part III.A (evaluating and analyzing the constitutionality of federally mandated child support guidelines).

¹¹ See *infra* Part III.B (scrutinizing the age at which each state terminates child support).

¹² See *infra* Part IV (contending that each state individually adopt the age of twenty-one for the termination of child support).

¹³ The following states have enacted legislation requiring the termination of child support at the ages of eighteen, nineteen, or when the child graduates from high school: Alaska, ALASKA STAT. § 25.24.140(a)(3) (2012); Arizona, ARIZ. REV. STAT. ANN. §§ 25-320(d)-(f) (2011); Arkansas, ARK. CODE ANN. § 9-14-237(a) (2012); California, CAL. FAM. CODE § 3901 (West 2012); Colorado, COLO. REV. STAT. § 14-10-115(13) (2011); Delaware, DEL. CODE ANN. tit. 13, § 501(d) (2012); Florida, FLA. STAT. § 743.07 (2009); Georgia, GA. CODE ANN. § 19-6-15(e) (2011); Idaho, IDAHO CODE ANN. § 32-706 (2011); Kansas, KAN. STAT. ANN. § 60-1610(a) (2011); Kentucky, KY. REV. STAT. ANN. § 405.020(1) (West 2011); Maryland, MD. CODE ANN., FAM. LAW Art. 1 § 24 (West 2012); Michigan, MICH. COMP. LAWS ANN. § 722.3 (West 2012); Minnesota, MINN. STAT. ANN. § 518A.26, subd. 2 (West 2011); Montana, MONT. CODE ANN. § 40-4-208(5) (2009); Nebraska, NEB. REV. STAT. § 42-371.01(1) (2000); Nevada, NEV. REV. STAT. § 425.300 (2011); New Hampshire, N.H. REV. STAT. ANN. § 461-A:14(V) (2010); New Mexico, N.M. STAT. ANN. § 40-4-7(b)(3)-4 (West 2011); North Carolina, N.C. GEN. STAT. § 50-13.4(b) (2011); North Dakota, N.D. CENT. CODE ANN. § 14-09-08.2(1) (West 2011); Ohio, OHIO REV. CODE ANN. § 3119.86(A) (West 2010); Oklahoma, OKLA. STAT. tit. 43, § 112(E) (2011); Pennsylvania, 23 PA. CONS. STAT. ANN. § 4321(2) (West 2011); South Carolina, S.C. CODE ANN. § 63-3-530(17) (2011); South Dakota, S.D. CODIFIED LAWS § 25-5-18.1 (2011); Tennessee, TENN. CODE ANN. § 34-1-102(b) (2012); Texas, TEX. FAM. CODE ANN. § 154.001(a) (West 2011); Utah, UTAH CODE ANN. § 78B-12-

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eighteen, nineteen, or upon high school graduation, but allow courts to order support to be extended for post-secondary education.¹⁴ Additionally, three states and the District of Columbia terminate child support at the age of twenty-one.¹⁵ Before analyzing the benefits associated with terminating child support at a later age, Part II.A briefly introduces the history of child support systems.¹⁶ Next, Part II.B discusses the role of the federal government in the child support system and the constitutional issues state courts face in making child support decisions.¹⁷ Last, Part II.C provides a general overview of the current state systems and details how they have differed in their approaches, interpretations of child support statutes, and guidelines.¹⁸

A. *A General Understanding of the Child Support System*

Historically, the father was in charge of providing support for the family.¹⁹ Although there has been a question of whether this is a duty

219(1) (West 2011); Vermont, VT. STAT. ANN. tit. 1, § 173 (2012); Virginia, VA. CODE ANN. § 16.1-228 (West 2012); Wisconsin, WIS. STAT. § 54.01(20) (2011); and Wyoming, WYO. STAT. ANN. § 14-1-101(a)-(b) (2011).

¹⁴ The following states have enacted legislation, or through case law have authorized the termination of child support at the ages of eighteen, nineteen, or when the child graduates from high school, but may require support to be extended for post-secondary education: Alabama, ALA. CODE § 26-1-1(a) (1975); Connecticut, CONN. GEN. STAT. § 46b-56c(a) (2011); Hawaii, HAW. REV. STAT. § 577-1 (2011); Illinois, 750 ILL. COMP. STAT. 5/513 (2011); Indiana, IND. CODE § 31-16-6-6 (2011); Iowa, IOWA CODE § 599.1 (2011); Louisiana, LA. CIV. CODE ANN. art. 29 (2011); Maine, ME. REV. STAT. tit. 19, § 1653(12) (2011); Missouri, MO. REV. STAT. § 452.340 (5) (2011); New Jersey, N.J. STAT. ANN. § 9:17B-3 (West 2011); Oregon, OR. REV. STAT. § 107.108 (2011); Rhode Island, R.I. GEN. LAWS ANN. § 15-5-16.2(b) (West 2011); Washington, WASH. REV. CODE § 26.19.090 (2011); West Virginia, W. VA. CODE § 48-11-103 (2011).

¹⁵ The following states have enacted legislation terminating support at the age of twenty-one, and some allow additional support for post-secondary education: District of Columbia, *Nelson v. Nelson*, 548 A.2d 109, 111 (D.C. 1988); Massachusetts, MASS. GEN. LAWS ch. 208, § 28 (2000); Mississippi, MISS. CODE ANN. § 93-11-65(8)(a) (West 2011); N.Y. DOM. REL. LAW § 240(1-b)(2) (McKinney 2011).

¹⁶ See *infra* Part II.A (introducing the child support system and providing a general understanding).

¹⁷ See *infra* Part II.B (discussing the role of the federal government in the support system and the constitutional issues state courts have faced in making child support decisions).

¹⁸ See *infra* Part II.C (presenting how state courts have differed in their approaches to child support issues).

¹⁹ See *Slater v. Slater*, 42 N.W.2d 742, 742 (Mich. 1950) (holding that the father's duty to support is imposed by statute as well as common law); *State ex rel. Div. of Family Servs. v. Standridge*, 676 S.W.2d 513, 515 (Mo. 1984) (holding that the father of minor children has the common law duty and obligation to support his children); see also *Ephesians* 5:23 ("For the husband is the head of the wife as Christ is the head of the church . . ."). Today, however, working fathers are no longer regarded as the exclusive breadwinner of the

imposed by common law or a duty imposed by moral obligation, it is clear that parents are now equally obligated to support their children.²⁰ Although both parents share a responsibility to support their children, child support laws have greatly undervalued the true costs associated with raising a child.²¹ According to a 2009 annual report by the U.S. Agriculture Department, a child born in 2009 will cost roughly \$222,360.00 to raise until the age of seventeen (roughly \$13,000.00 per year or \$1,090.00 per month).²² In contrast, according to a report by the U.S. Census Bureau, in 2007, custodial parents who received child support received roughly \$3,360.00 per year or \$280.00 per month to help alleviate the expenses of raising a child.²³ In calculating child support, state guidelines only require a non-custodial parent to pay an amount that he or she can afford.²⁴ Child support, as a whole, is an ongoing

family. Brad Harrington, Fred Van Deusen & Jamie Ladge, *The New Dad: Exploring Fatherhood Within a Career Context*, BOS. COLL. CTR. WORK & FAM. 4-8 (2010).

²⁰ HOMER H. CLARK, JR., *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* § 17, at 710 (2d ed. 1988). Early American common law approached child support as part of a natural moral obligation, and therefore it lacked the precision sought in statutes today. WALTER WADLINGTON & RAYMOND C. O'BRIEN, *FAMILY LAW IN PERSPECTIVE* 130 (2d ed. 2007). English philosopher John Locke was far ahead of his time when he stated "[paternal power] seems so to place the power of parents over their children wholly in the father, as if the mother had no share in it; whereas, if we consult reason or revelation, we shall find, she hath an equal title." JOHN LOCKE, *SECOND TREATISE OF CIVIL GOVERNMENT*, ch. 6, § 52 (J.W. Gough ed. 1946).

²¹ See SANFORD N. KATZ, *FAMILY LAW IN AMERICA* 99 (2003) (noting the costs associated with raising a child in comparison to typical child support awards). "[C]hild support orders very often bore no relationship to the cost of supporting a child, were not complied with after a few years, and were not zealously enforced." *Id.* at 100. One way state governments have combated this problem is through surveys conducted by the Agriculture Department to provide hard data regarding the cost of raising a child until the age of seventeen. Sue Shellenbarger, *Cost of Raising a Child Ticks up*, WALL ST. J. BLOG (June 11, 2010, 3:00 AM), http://finance.yahoo.com/news/pf_article_109765.html. Recent statistics show that the cost of raising a child has risen nearly forty percent over the last ten years. Jessica Dickler, *The Rising Cost of Raising a Child*, CNN MONEY (Sept. 21, 2011, 2:20 PM), http://money.cnn.com/2011/09/21/pf/cost_raising_child/index.htm.

²² Shellenbarger, *supra* note 21.

²³ See generally Timothy S. Grall, *Custodial Mothers and Fathers and Their Child Support: 2007*, U.S. CENSUS BUREAU: CONSUMER INCOME (U.S. Dep't of Commerce), Nov. 2009, <http://www.census.gov/prod/2009pubs/p60-237.pdf>.

²⁴ See WADLINGTON & O'BRIEN, *supra* note 20, at 131 (describing factors a court will consider in determining a child support award, including the financial resources of both parents). The judge will use the child support guidelines of the state to calculate the support amount, and only in a limited circumstance can the judge order something other than the guideline amount. *Child Support*, SUPERIOR CT. OF CAL., CNTY. OF ORANGE, <http://www.occourts.org/directory/family/child-support.html> (last visited Jan. 23, 2012). Guideline calculation depends on a variety of factors that are determined by each state and reflect the non-custodial parent's ability to pay. *Id.* Some factors include: (1) how much time each parent spends with his or her children, (2) how much money the parents earn or

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obligation for periodic payments to be made by one parent to the other parent for the financial support of a child or children that resulted from their relationship.²⁵ There is neither a gender requirement nor a marriage requirement for receiving support.²⁶ Typically, each state has its own formula, which is built into the state's child support guidelines and is used for determining the requisite amount that one parent should pay for the financial support of the child.²⁷

Since the early 1950s, family structures in the United States have continued to evolve, but the underlying principle of attempting to provide a child with the same life he or she would have otherwise had if his or her parents had stayed together has remained the same.²⁸ Child

can earn, (3) how much other income each parent receives, (4) the actual tax filing status of each parent, (5) support of children from other relationships, (6) health insurance expenses, (7) mandatory union dues, (8) mandatory retirement contributions, (9) the cost of sharing daycare and uninsured health costs, (10) traveling for visitation from one parent to another, and (11) educational expenses and other special needs. *Id.*

²⁵ See generally WADLINGTON & O'BRIEN, *supra* note 20, at 130–31. Typically, the parent that must pay is the non-custodial parent, and when there is joint custody of the child, one parent may still be required to provide support to the other custodial parent. CLARK, *supra* note 20, at 710. Some states may also require stepparents to provide support for their step children. *Id.* Additionally, some states require a husband to provide support for his wife's child, even when the child is not his, because marriage in these states eliminates the wife's right to bring a paternity suit. See *State v. Shoemaker*, 17 N.W. 589, 589 (Iowa 1883) (holding that the father of a child is not liable for its support, where the mother, after conception and during pregnancy, marries another man who has full knowledge of her pregnancy, since the latter thereby consents to stand *in loco parentis* to such child and is presumed to be its father); *Gustin v. Gustin*, 161 N.E.2d 68, 70 (Ohio Ct. App. 1958) (holding that when a man married a woman with full knowledge that she was pregnant with the child of another, and the child was born during their marriage and subsequently they divorce, the divorced husband who is not the legitimate father could be required to pay support for that child). *But see Kucera v. Kucera*, 117 N.W.2d 810, 815 (N.D. 1962) (holding that a husband, by marrying his wife with knowledge of pregnancy, did not adopt the child fathered by another man and was not responsible for support of that child); *Farris v. Farris*, 365 P.2d 14, 14 (Wash. 1961) (holding that a husband cannot be ordered to support his wife's children unless he is the father).

²⁶ CLARK, *supra* note 20, at 710. The equal rights provisions of state constitutions or the Equal Protection Clause of the Federal Constitution would clearly prohibit any statute from making any gender or marriage distinction. *Id.*. See *Orr v. Orr*, 440 U.S. 268, 276 (1979) (holding that the United States Constitution forbids gender discrimination with respect to support obligations within the family); see also *infra* Part II.B (discussing equal protection and gender discrimination issues in child support).

²⁷ See CLARK, *supra* note 20, at 710–11 (describing the inadequacy of child support awards and calling for lawyers, judges, and legislatures to face such problems); see also *infra* notes 47–53 and accompanying text (discussing the various methods states use in determining child support amounts, including the Income Shares Model, the Melson Formula Model, and the Percentage of Income Model).

²⁸ See WADLINGTON & O'BRIEN, *supra* note 20, at 130 (noting that, traditionally, child support was meant to assure that parents, and not the state, would bear the costs of raising children). When custodial parents apply for welfare, they are required to sign over any

support was first recognized as a serious issue when divorced women, with no other means of support, began to look toward departments of public welfare for assistance in raising their children.²⁹ This placed an immense amount of pressure on taxpayers and public welfare agencies that were feeling the pinch of providing additional support for these children and parents.³⁰ This caused the federal government to increase its focus on child support laws, and through legislative enactment, Congress began to condition welfare funding upon the states' implementation of child support guidelines.³¹ Specifically, all states

money owed to them for child support by the non-custodial parent to the government. Paul Raeburn, *Welfare and Child Support: Nobody Wins*, PSYCHOL. TODAY (Dec. 5, 2008), <http://www.psychologytoday.com/blog/about-fathers/200812/welfare-and-child-support-nobody-wins>. The custodial parent is typically required to sue the non-custodial parent for that child support amount. *Id.*

²⁹ KATZ, *supra* note 21, at 100. As would be expected, today many low-income non-custodial parents cannot afford to fulfill their child support obligations, and custodial parents are forced to turn to forms of welfare, such as Aid to Families with Dependent Children ("AFDC") for assistance. Jessica Yates, *Child Support Enforcement and Welfare Reform*, 1 WELFARE INFO. NETWORK, May 1997, at 1-2. Research indicates that if non-custodial parents paid as much as they could (\$34 billion more than they are currently paying), welfare costs for AFDC would decrease from \$12 billion to \$9.5 billion, roughly sixteen percent. *Id.*

³⁰ KATZ, *supra* note 21, at 100. The federal government began to find creative ways to force fathers to comply with support orders through its Child Support Enforcement Program, including: (1) wage withholding, (2) imposition of bonds, (3) securities, (4) liens on real and personal property, and (5) interception of state and federal tax refunds. *Id.* The Child Support Enforcement Program is a federal, state, and local partnership and was created to help families by promoting self-sufficiency and child well-being. *Office of Child Support Enforcement (OCSE)*, U.S. DEP'T OF HEALTH & HUM. SERVS., http://www.acf.hhs.gov/opa/fact_sheets/cse_factsheet.html (last visited Dec. 21, 2011). The Child Support Enforcement Program was established in 1975 by the enactment of Title IV-D of the Social Security Act; this law allowed the Secretary of Health and Human Services to establish a separate division to oversee the operation of the Enforcement Program. *Id.* The primary responsibility for operating the program was placed on each state. *Id.* The program began to provide some services as well, such as a parent locator service, state operational guidelines, and a periodic review of cases. *Id.*

³¹ 45 C.F.R. § 302.56 (2006). "The State shall establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State." *Id.* The statute further states that the guidelines must, at a minimum:

- 1) Take into consideration all earning and income of the noncustodial parent;
- 2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation; and
- 3) Address how the parents will provide for the child(ren)'s health care needs through health insurance coverage and/or through cash medical support

Id. § 302.56(c).

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receiving federal welfare funding must adopt child support guidelines and periodically review them to evaluate their effectiveness.³²

Historically, the majority of American families were traditional in structure; today, however, non-traditional—otherwise known as “non-intact”—families are much more common and socially acceptable.³³ The increase in non-traditional family structures throughout the world has led to an increase in legislation in the United States, including a greater emphasis on child welfare focused laws that are internationally recognized by the United Nations.³⁴ Although states are federally

³² 42 U.S.C. § 667(a) (2006). The statute provides the following:

Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support award amounts within the State. The guidelines may be established by law or by judicial or administrative action, and shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts.

Id.

³³ KATZ, *supra* note 21, at 100–02. In 1968, eighty-five percent of children lived in traditional family homes, which decreased to less than seventy percent in 2003. Schneider et al., *supra* note 4, at 3. Overall, research shows that children in non-traditional families can begin to see negative effects as early as the age of three, including: emotional or behavioral problems, lower grades, lower standardized test scores, higher high school drop-out rates, and a lower likelihood of attending post-secondary education. *Id.* at 3–16. Studies show that children from both stepfather and mother-only households are at least sixteen percent less likely to attend college than students from intact families. *Id.* at 16. Research also indicates that children in non-intact families are at an educational and social disadvantage in comparison to children from traditional family structures. *Id.* at 1. See KATZ, *supra* note 21, at 100–02 (discussing some of the recurring problems in child support, such as: serial marriages, economic conditions, unemployment, liability of stepfathers, and the responsibility of a parent for the support of his children from his first and second marriages).

³⁴ See generally *Somalia to Join Child Rights Pact: UN*, REUTERS AFR. (Nov. 20, 2009 1:19 PM), <http://af.reuters.com/article/topNews/idAFJOE5AJ0IT20091120>. For example, the UN Convention on Rights of the Child was adopted by all UN Nations, except Somalia and the United States. *Id.* The United States signed it in 1995 but did not ratify it. *Id.* The convention is “[t]he most widely ratified international human rights treaty[.] it declares that those under 18 years old must be protected from violence, exploitation, discrimination and neglect.” *Id.* See Andrew Schoenholtz, *Developing the Substantive Best Interests of the Child Migrants: A Call for Action*, 46 VAL. U. L. REV. 991, 1001 (2012) (providing that the CRC requires governments to apply the legal concept known as “the best interests of the child”); Nicole Angeline Cudiamat, Note, *Displacement Disparity: Filling the Gap of Protection for the Environmentally Displaced Person*, 46 VAL. U. L. REV. 891, 904–06 (2012) (discussing generally the rights enumerated by the CRC). See also UNIF. MARRIAGE & DIVORCE ACT § 309 (1970) (providing that a court can order parents to pay a reasonable or necessary amount toward support of a child based on a number of factors, including: (1) the financial resources of the child; (2) the financial resources of the parent; (3) the standard of living the child would have enjoyed had the parents stayed together; (4) the physical, educational, and emotional needs of the child; and (5) the financial resources and needs of the non-custodial parent).

required to evaluate their support guidelines every four years in search of the best methods, the changes in American family structures have continued to ensure that the interests of children are at the forefront of American society.³⁵ Unfortunately, the primary concern of the average non-custodial parent is determining the point at which he or she is no longer required to make support payments to the custodial parent.³⁶

Parents in non-intact family structures are legally obligated to support their children until the child reaches a certain age as determined by the state.³⁷ This is known as “the age of termination” and typically coincides with the states’ age of majority.³⁸ Until the 1970s, the age of termination in most states was twenty-one; however, that decade brought major reform to the states’ view of the maturity level of minors, and many states shifted views, finding that a child reached legal capacity at the age of eighteen.³⁹ A few states have since gone back to the age of

³⁵ See Laura Wish Morgan, *Child Support Enforcement in the United States and the Role of the Private Bar*, CHILD SUPPORT GUIDELINES.COM, <http://www.childsupportguidelines.com/articles/art200009.html> (last visited Jan. 23, 2012) [hereinafter *Child Support Enforcement*] (discussing the requirements the federal government has placed on the states in establishing and evaluating their guidelines).

³⁶ See CLARK, *supra* note 20, at 711–16 (describing the typical procedures in child support determinations, awards, and modifications). Additionally, it is common for non-custodial parents to become increasingly detached, fail to pay some of their support obligation, and fail to visit the child. Christine Winquist Nord & Nicholas Zill, *Non-Custodial Parents’ Participation in Their Children’s Lives: Evidence from the Survey of Income and Program Participation*, FATHERHOOD (Aug. 14, 1996), <http://fatherhood.hhs.gov/SIPP/pt2.htm>.

³⁷ See Leslie J. Harris, Dennis Waldrop & Lori Rathbun Waldrop, *Making and Breaking Connections Between Parents’ Duty to Support and Right to Control of Their Children*, 69 OR. L. REV. 689, 692 (1990) (describing the development of a parent’s legal duty to support his or her child). Historically, the parents’ duty to support was a moral one that evolved into “an obligation legally enforceable in the private realm.” *Id.* Currently, courts directly correlate the duty to provide support for the child with the parental right to custody. *Id.* at 696. Scholars have described the duty to support as a type of contractual relationship between the parents and the child:

The parent shows himself ready, by the care and affection manifested to his child, to watch over him, and to supply all his wants, *until he shall be able to provide them for himself*. The child, on the other hand, receives these acts of kindness; a tacit compact between them is thus formed; the child engages, by acts equivalent to a positive undertaking to submit to the care and judgment of his parents so long as the parent, and the manifest order of nature, shall coincide in requiring assistance and advice on the one side, and acceptance of them, and obedience and gratitude on the other.

Id. at 698–99 (emphasis added) (citation omitted).

³⁸ See CLARK, *supra* note 20, at 716 (describing the history of the age of majority, as well as the age of termination in the United States).

³⁹ See CLARK, *supra* note 20, at 716–17 (noting the changes in the United States and their impact on the way states viewed the maturity of children at the age of eighteen). The steady increase of adult children living at home is placing significant strains on many

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twenty-one for the termination of child support or have given the courts' discretion to extend the duration of child support to include post-secondary education or health deficiencies.⁴⁰ These states have recognized an overwhelming need for a college education, because regardless of how mature a child might be, he or she can still remain financially dependent.⁴¹ Although a parent's duty to support his or her

American families. Cheryl Hatch, *Study: Young Adults Linger at Home Longer*, CORVALLIS GAZETTE TIMES (April 28, 2010), http://www.gazettetimes.com/news/local/article_a0a7b8cc-5272-11df-bbdf-001cc4c002e0.html. In 1960, forty-three percent of young adults between the ages of eighteen and twenty-four were living at home, and by 2002 that number rose to fifty-one percent. *Parents, Their Adult Children and Money Dependence*, KATHRYN AMENTA, http://www.kathrynamenta.com/pdfs/money_dependence.pdf (last visited Dec 21, 2011). College enrollment is currently at an all-time high, and unemployment has reached record heights, which is causing adults to continue to live at home and those who have moved out to return to living with their parents. Wendy Wang & Rich Morin, *Home for the Holidays . . . and Every Other Day: Recession Brings Many Young Adults Back to the Nest*, PEW RESEARCH CTR. (Nov. 24, 2009), <http://pewresearch.org/pubs/1423/home-for-the-holidays-boomeranged-parents>. The shift to the age of eighteen was a direct result of several circumstances, including: (1) the Vietnam War, which in turn led to the military draft of eighteen-year-olds; and (2) the ratification of the Twenty-Sixth Amendment, which lowered the legal voting age to eighteen. Kathleen Conrey Horan, *Postminority Support for College Education – A Legally Enforceable Obligation in Divorce Proceedings?*, 20 FAM. L.Q. 589, 590 (1987). President Roosevelt originally lowered the minimum age for the military draft to eighteen during World War II. *The 26th Amendment*, HISTORY.COM, <http://www.history.com/topics/the-26th-amendment> (last visited Dec. 22, 2011). This led to enhanced activism regarding the right to vote, as the current age to vote was twenty-one. *Id.* The saying amongst activists became “[o]ld enough to fight, old enough to vote.” *Id.* Activism increased in the late 1960s during the Vietnam War, which led to President Nixon extending and amending the Voting Rights Act of 1965, which lowered the voting age to eighteen in all elections, state and federal. *Id.* Although he signed the bill, President Nixon himself believed it to be unconstitutional. *Id.* The law was challenged in *Oregon v. Mitchell*, in which the court held that Congress could regulate the minimum age in only federal elections. *Id.* This led to the proposal of the Twenty-Sixth Amendment, which would set a uniform national voting age of eighteen for all elections. *Id.* The Amendment was ratified within two months, the shortest period of time for any amendment in U.S. history. *Id.*

⁴⁰ See *Kujawinski v. Kujawinski*, 376 N.E.2d 1382, 1390 (Ill. 1978) (holding that if parents would be expected to provide for their adult child in absence of a divorce, it is not unreasonable to require them to do so after the divorce). Some simply accept the duty to provide for a child's education to be true; however, courts have also made it clear:

Basically it is indubitable that a common school education has for centuries been regarded as a necessary to which a child is entitled at the expense of the parent. Indeed it is a parental obligation which Blackstone characterized as one of supreme importance to the family life and to society in general. Solon excuses the children of Athens from supporting their parents if the latter had neglected to give them early training. We now have our compulsory education laws.

Jonitz v. Jonitz, 96 A.2d 782, 787 (N.J. Super. Ct. App. Div. 1953).

⁴¹ See *infra* note 97 and accompanying text (noting the need for post-secondary education in today's society). Vice President Joe Biden has gone so far as to say that sixty-two percent

child ends when the child reaches the age of termination, a parent's duty may also be terminated, regardless of the child's age, upon the occurrence of certain events, including if the child: (1) joins the armed forces, (2) gets married, or (3) leaves home and becomes self-supporting.⁴² Although a non-custodial parent may primarily focus on the duration of child support payments, both parents are equally concerned with when and how they may receive a child support order.

Typically, at this stage in the process, emotions run high and the child support and custody issues are very sensitive.⁴³ Although child

of all jobs in the next decade will require a post-high school degree. Gary Weckselblatt, *Biden Urges "Most Incredible Generation" to Continue Education*, THE INTELLIGENCER, Jan. 15, 2012, http://www.phillyburbs.com/news/local/the_intelligencer_news/biden-urges-most-incredible-generation-to-continue-education/article_dbd8bbd1-bc08-5eff-a12e-0a65afdfbd4d.html. Furthermore, unemployment for college grads is only roughly 4.5%, compared to over 8.5% for those who did not attend college. *Id.* Higher education is typically regarded as the route to a better life. Louis Menand, *Live and Learn*, THE NEW YORKER, June 6, 2011, http://www.newyorker.com/arts/critics/atlarge/2011/06/06/110606crat_atlarge_menand?currentPage=1. Critics of the need for a higher education are typically quick to point out that some of the most successful people in the world were college dropouts, such as Bill Gates and Mark Zuckerberg. *Id.* However, the majority of Americans are not Bill Gates or Mark Zuckerberg. *Id.* Average income is another example of a telling statistic regarding the need for a higher education. *Id.* The average income in 2008 of a student with an advanced degree (masters, professional, or doctoral) was \$83,144; a bachelor's degree was \$58,613; and for someone with only a high-school education, it was \$31,283. *Id.* The College Board has also published estimates that "college graduates earn on average 81 percent more than those with high school diplomas. Over a lifetime, the gap in earnings potential . . . is more than \$1 million." *College Graduation Rate Below 50 Percent*, CNN.COM/ (Aug. 16, 2001, 6:41 AM), <http://fyi.cnn.com/2001/fyi/teachers.ednews/08/15/college.dropout.ap/>.

⁴² CLARK, *supra* note 20, at 718. Some cases have held that the father is not liable for support when his child leaves home against his wishes and lives in a fashion of which he disapproves. *Parker v. Stage*, 371 N.E.2d 513, 516 (N.Y. 1977); *see, e.g., Willard v. Peak*, 834 N.E.2d 220, 223 (Ind. Ct. App. 2005) (holding that a child must be either supporting herself, or capable of doing so to be considered emancipated); *Garrison v. Garrison*, 147 S.W.3d 925, 928 (Mo. Ct. App. 2004) (enlisting in the Army Reserves constitutes emancipation). With the increasing importance of education, children marrying at a later point in life, the lack of a mandatory military draft, and the extremely high cost of financial dependency, children are much less likely to have a personal desire to become emancipated. WADLINGTON & O'BRIEN, *supra* note 20, at 141.

⁴³ *See generally* LAURA W. MORGAN, CHILD SUPPORT GUIDELINES: INTERPRETATION AND APPLICATION 19 (1996) (providing an understanding of the principles behind child support and the child support process). Parents are not the only ones facing difficult issues in a child support situation. *Id.* Children can often feel stressed, sad, or confused as a result of their family structure deteriorating. Jocelyn Block, Gina Kemp, Melinda Smith & Jeanne Segal, *Children and Divorce: Helping Your Kids Cope with the Effects of Separation and Divorce*, HELPGUIDE.COM, http://www.helpguide.org/mental/children_divorce.htm (last visited Aug. 21, 2012). Adjusting to a new family situation is difficult for any child, and the key to helping them adjust to the change is to provide as much stability and structure in their daily lives. *Id.* *See also* Kristina Diener, *Overcoming Divorce Trauma*, DIVORCE SOURCE,

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support orders may be decided by a court in conjunction with other relationship obligations that may result from the parents separating, such as: (1) the actual divorce, (2) custody litigation, (3) visitation rights, (4) contact rights, and (5) spousal support or alimony, they are considered to be separate court determinations.⁴⁴ At this stage in the child support process, the parents may choose to file a complaint for child support, or make their own contractual agreement for the amount of child support the non-custodial parent must pay.⁴⁵ However, the court in a divorce proceeding, unlike an alimony proceeding, may choose to award child support to the custodial parent without a formal complaint.⁴⁶

Determining how much child support will be paid is one of the most important elements to both the parents and the child. Each state has a different method for calculating the amount of child support a parent must pay.⁴⁷ Specifically, each state follows some variation of one of three

<http://www.divorcesource.com/CA/ARTICLES/diener1.html> (last visited Aug. 21, 2012) (discussing the damage that can occur in a divorce and suggesting ways to prevent divorce trauma).

⁴⁴ See *Child Support*, CAL. CTS. (2012) [hereinafter *Child Support*], <http://courts.ca.gov/selfhelp-support.htm> (providing that either parent can ask the judge to make a child support order, which typically occurs in one of the following situations: (1) divorce, (2) legal separation, (3) annulment for parents who are married or in a registered domestic partnership, (4) a petition to establish parental relationship for unmarried parents, (5) a domestic violence restraining order for married or unmarried parents, (6) a petition for custody and support of minor children for parents who have signed a voluntary declaration of paternity, or who are married or registered domestic partners that do not wish to become legally separated or divorced). See generally Donna Litman, *Financial Disclosure on Death or Divorce: Balancing Privacy of Information with Public Access to the Courts*, 39 SW. U. L. REV. 433 (2010) (discussing the financial privacy issues raised in child support proceedings).

⁴⁵ See *Webb v. Daiger*, 173 A.2d 920, 922 (D.C. 1961) (holding that an agreement cannot waive a non-custodial parent's obligation to support his or her child). Support orders can also be entered while the divorce is pending to ensure that the child will be supported throughout the divorce action. CLARK, *supra* note 20, at 709. Generally, states will allow parents to come to their own child support agreement, which may be higher or lower than the child support guideline of their state, provided they meet certain requirements. *Child Support*, *supra* note 44. Each state differs in its requirements, but some may include whether the parents: (1) know their child support rights, (2) know the guideline support amount of their state, (3) are not pressured or forced into an agreement, (4) are not receiving or have not applied for public assistance, (5) agree to an amount of support that will meet the needs of the children, (6) think that the child support amount is in the best interest of the children, and (7) have reached an agreement on child support payments that was approved by a judge. *Id.*

⁴⁶ See *Rinker v. Rinker*, 64 A.2d 910, 912-13 (N.J. Super. Ct. Ch. Div. 1949) (holding that when a divorce petition contains a prayer for general relief, but none for child support, the court can enter and enforce a child support decree).

⁴⁷ See *infra* Part II.C (analyzing how each state differs in its approach to child support orders).

basic models for calculating a child support obligation: (1) the Income Shares Model, (2) the Percentage of Income Model, or (3) the Melson Formula Model.⁴⁸

The Income Shares Model examines the amount of income that would have been devoted to the child had the parents stayed together.⁴⁹ The purpose of this formula is to use child support payments to help give the child the same amount of support that the child would have received if the parents had remained together.⁵⁰ The Percentage of Income Model determines child support by looking to the total income of the non-custodial parent and the needs of the child.⁵¹ The Melson

⁴⁸ WADLINGTON & O'BRIEN, *supra* note 20, at 133.

⁴⁹ *Id.* The Income Shares Model is the most widely used. *Id.* See WASH. REV. CODE ANN. § 26.19.050 (West 2012) (describing how the state of Washington makes a child support determination); 45 C.F.R. § 302.56(c)(2) (West 2011) (noting that state support guidelines must be “based on specific descriptive and numeric criteria and result in a computation of the support obligation” and that the state must take into consideration all earnings and income of the non-custodial parent). States implementing the Income Shares Model include: Alabama, Arizona, California, Colorado, Connecticut, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming. *Child Support Guideline Models by State*, NAT'L CONF. ST. LEGISLATURES, <http://www.ncsl.org/issues-research/human-services/guideline-models-by-state.aspx> (last visited Aug. 21, 2012) [hereinafter *National Conference of State Legislatures*]. Although there are three models, all of them have certain things in common such as: (1) a self-support reserve (meaning if the obligor does not meet a certain income level, no more than minimum support is calculated), (2) an imputed income provision, and (3) health care expenses. *Id.* See generally Robert G. Williams, *Guidelines for Setting Levels of Child Support Orders*, 21 FAM. L.Q. 281 (1987) (summarizing the Advisory Panel Recommendations regarding the development of child support guidelines).

⁵⁰ WADLINGTON & O'BRIEN, *supra* note 20, at 133. In a traditional family structure, both parents' income is usually used collectively for the benefit of all members of the household, children included. Williams, *supra* note 49, at 287. The Income Shares Model is generally considered a four-step process; first, the income of each parent is determined and added together. Laura Wish Morgan, *Child Support Guidelines*, FINDLAW (Mar. 26, 2008), <http://corporate.findlaw.com/law-library/child-support-guidelines.html>. Then, a basic child support obligation is computed using a table or grid based on economic data on household expenditures and children. *Id.* A presumptive child support obligation is computed by adding expenditures for child care, medical expenses, and other add-ons or deductions, such as shared custody, split custody, extra visitation, the needs of an older child, and other children. *Id.* Finally, the presumptive child support obligation is prorated between each parent based on his or her proportionate share of total income. *Id.* Critics argue that the Income Shares Model is incorrect and fails to accurately reflect the percentage of income that families use on their children, especially upper income families. *Id.*

⁵¹ *National Conference of State Legislatures*, *supra* note 49. This model has two variations, the Flat Percentage Model and the Varying Percentage Model. *Id.* The income of the custodial parent is not typically considered in states that use the Percentage of Income

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Formula is based on the Income Shares Model and allows for adjustments on the basis of an increase in parental income.⁵² When making an income determination, the needs and standard of living of each parent are of great importance.⁵³ When making the child support determination, the child support ordered must cover a child's basic needs as a first priority, but, to the extent either parent enjoys a higher

Model. *Id.* The Percentage of Income Model is considered the easiest to apply because not as many calculations are necessary when only one person's net income is used. ROBERT E. OLIPHANT & NANCY VER STEEGH, *FAMILY LAW: EXAMPLES AND EXPLANATIONS* 178 (2d ed. 2007). However, when the parents have joint physical or legal custody, the model will consider the income of both the custodial and non-custodial parent. *Id.* Typically the calculation is simple; the obligor's (parent being ordered to pay support) net income is provided, and the court deducts items allowed by the state, usually including: (1) taxes, (2) medical insurance, (3) social security, and (4) reasonable pension payments. *Id.* Living expenses, however, are not allowed to be deducted. *Id.* Once this calculation is complete, a court will go to the child support guideline worksheet provided by the state, which will then instruct the judge to use a chart based on the number of children and the result of the calculation to find the percentage of the total. *Id.* For example, if the total was \$10,000 per month, and the percentage based on one child was thirty-five percent, the obligor would be required to pay \$3,500 per month in child support. *Id.* States following the Percentage of Income Model include: Alaska, Arkansas, Illinois, Mississippi, Nevada, New Hampshire, New York, North Dakota, Texas, Wisconsin, and the District of Columbia. *National Conference of State Legislatures, supra* note 49.

⁵² *Id.* The Melson Formula is a more complicated version of the Income Shares Model and was developed by a Delaware family court judge. *Id.* When applying the Melson Formula, a court shall consider:

- 1) Each support obligor's monthly net income.
- 2) The absolute minimum amount of income each support obligor must retain to function at maximum productivity.
- 3) The number of support obligor's dependents in an effort to apportion the amount available for support as equally as possible between or among said dependents according to their respective needs.
- 4) The primary child support needs and the primary support obligation of each obligor.
- 5) The available net income for a Standard of Living Adjustment (SOLA) to be paid by each support obligor after meeting their own primary needs and those of dependents.
- 6) A consideration of the factors

DEL. FAM. CT. CIV. R. 52(c) (West 2011). The formula was designed to incorporate public policy considerations and to ensure that the needs of both parents and the children are met. *National Conference of State Legislatures, supra* note 49. However, only a few states have adopted this approach in calculating child support amounts, including: Delaware, Hawaii, and Montana. *Id.*

⁵³ See *In re Marriage of Rogers*, 802 N.E.2d 1247, 1249-50 (Ill. App. Ct. 2003) (discussing further what constitutes income).

than subsistence standard of living, the child is entitled to share in the benefit of that improved standard.⁵⁴

Some states describe the factors that courts take into account when making a child support determination more extensively than others.⁵⁵ Typically, the idea behind these factors is that, within the bounds of the parents' resources, the support order should meet the child's needs at the level enjoyed before the divorce or separation, which include expenses for: (1) food, (2) shelter, (3) clothing, (4) medical care, and (5) education.⁵⁶ Courts are increasingly facing situations in which the non-custodial parent has much greater financial means than the custodial parent, while the actual calculation for child support provides a significantly lower amount than the parent could easily provide.⁵⁷ In these situations, a court may increase the award to take into account the financial means of the non-custodial parent.⁵⁸ This is based on the

⁵⁴ CLARK, *supra* note 20, at 721. Most states provide for these principles in their child support guidelines. *Id.* at 721-22. For example, the Massachusetts child support guidelines state:

In establishing these guidelines, due consideration has been given to the following principles:

- 1) To minimize the economic impact on the child of family breakup;
- 2) To encourage joint parental responsibility . . . ;
- 3) To provide the standard of living the child would have enjoyed had the family been intact;
- 4) To meet the child's survival needs in the first instance, but to the extent either parent enjoys a higher standard of living to entitle the child to enjoy that higher standard;
- 5) To protect a subsistence level of income of parents at the low end of the income range whether or not they are on public assistance;
- 6) To take into account the non-monetary contributions of both the custodial and non-custodial parents;
- 7) To minimize problems of proof for the parties and of administration for the courts; and
- 8) To allow for orders and wage assignments that can be adjusted as income increases or decreases.

Child Support Guidelines, MASS. CT. SYS. (Feb. 15, 2006), <http://www.mass.gov/courts/formsandguidelines/csg2006.html>.

⁵⁵ CLARK, *supra* note 20, at 717.

⁵⁶ See *supra* note 29 (illustrating that, although states develop guidelines for support, the amount of support that ends up being paid is inadequate).

⁵⁷ See *Armstrong v. Armstrong*, 544 P.2d 941, 945 (Cal. 1976) (holding that if the parent has sufficient means to provide adequate support, then he must be required to provide that support); *Considerations in the Use of Child Support Guidelines*, NEW JERSEY JUDICIARY 4 (June 14, 2011), <http://www.judiciary.state.nj.us/csguide/ix-a.pdf> (explaining that discretionary income is used by intact families to improve the standard of living of children, and as family income rises, so does discretionary spending).

⁵⁸ See WADLINGTON & O'BRIEN, *supra* note 20, at 132 (providing an example of a professional basketball player with extreme financial means). Although the amount of support the guidelines suggest may be more or less than needed based on the financial

underlying premise for child support: that the court put the child in the same position he or she would have been had the parents stayed together, or as close to it as possible.⁵⁹ However, there remains understandable skepticism as to whether support payments are being properly used for the benefit of the child.⁶⁰ Although family issues are typically left to the states, child support has a history of federal involvement.

B. Federal Involvement in Family Relations and the Role of Federalism in the Child Support System

Although family law issues are traditionally left to the states, Congress, through its spending power in funding the welfare program Aid to Families with Dependent Children (“AFDC”), conditioned each state’s receipt of federal funds upon the state establishing child support enforcement programs under Title IV-D of the Social Security Amendments of 1974.⁶¹ The federal government initially became

means of a parent, most state guidelines account for this by allowing the trial court to make a fact-intensive decision as to how much support should be awarded. *Id.* In most states, the court will begin by accepting that the mandatory guideline amount is correct, and then may adjust the award based on statutory factors. *Id.* The decision of the trial court is then evaluated using an abuse of discretion standard. *Id.* “[The guidelines] establish[] a strong presumption that parental income levels, coupled with custodial time, and not parental discretionary spending patterns, shall determine the level of family support, absent some special and unusual circumstances” *In re Marriage of Denise & Kevin C.*, 67 Cal. Rptr. 2d 508, 511 (Cal. Ct. App. 1997) (emphasis omitted).

⁵⁹ See *Puckett v. Puckett*, 458 P.2d 556, 557–58 (Wash. 1969) (“Thus, the law, recognizing that young children are virtually helpless to affect their own economic future, aspires to perpetuate for the children of divorced parents a standard of living in some degree compatible with that provided them before the divorce.”) However, putting the child in the same position had the family remained intact can be impracticable in some cases. *Id.*

⁶⁰ This Note briefly discusses some of the difficulties in ensuring that child support is actually used for the child and the child’s expenses, but it will not focus on the issue. See Nicole M. Raymond, Comment, *The Child Support Recovery Act of 1992 – Is the Federal Government’s Involvement in the Criminal Enforcement of Child Support at an End After United States v. Lopez?*, 101 DICK. L. REV. 417, 421 (1997) (discussing the difficulties states face in enforcing child support awards).

⁶¹ 42 U.S.C. §§ 651–69 (2006). See generally Diane Dodson & Robert Horowitz, *Child Support Enforcement Amendments of 1984: New Tools for Enforcement*, 10 FAM. L. REP. 3051 (1984) (describing the provisions of this Act in detail). AFDC was transformed into Temporary Assistance for Needy Families upon the enactment of the Personal Responsibility and Work Opportunity Act of 1996 (more commonly referred to as the 1996 Welfare Reform Act), which also changed and expanded many of the ways states enforce and collect support. See Personal Responsibility and Work Opportunity Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (illustrating the Act’s expansion of the ways states are required to enforce and collect child support). By enacting the Welfare Reform Act, the Clinton Administration continued its tremendous progress in strengthening child support collections, which had increased nearly fifty percent since he was elected. *Fact Sheet:*

involved in enforcing child support in the 1970s; however, the biggest step in governmental enforcement of child support came from the enactment of Title IV-D.⁶² Title IV-D created a state-federal partnership for child support enforcement, which was specifically tied to the existing federal AFDC welfare program.⁶³ Two governmental goals fostered the enactment of Title IV-D: (1) the need to alleviate and recover the costs of public assistance paid out to families, and (2) the need to help get current recipients of public assistance off of public assistance and to allow families not receiving welfare to avoid having to turn to public assistance.⁶⁴ Under Title IV-D, before receiving federal AFDC funding, each state is required to designate a single agency to administer the collection and enforcement of child support orders in its state.⁶⁵

Administration for Children and Families, HEALTH & HUM. SERVS. (Sept. 1996), <http://aspe.hhs.gov/hsp/abbrev/prwora96.htm>. The Welfare Reform Act was considered “the most sweeping crackdown on non-paying parents in history” and also provided for uniform rules, procedures, and forms for interstate child support cases. *Id.* To increase the level of uniformity in enforcement procedures, Congress enacted the Uniform Interstate Family Support Act (“UIFSA”), which “solved the problems associated with multiple states claiming jurisdictional authority to issue or modify [child] support orders.” Eric M. Fish, *The Uniform Interstate Family Support Act (UIFSA) 2008: Enforcing International Obligations Through Cooperative Federalism*, 24 J. AM. ACAD. OF MATRIMONIAL L. 33, 37 (2011).

⁶² See 42 U.S.C. §§ 651–69 (providing federal guidelines for state implementation of child support guidelines); Laura W. Morgan, *The Federalization of Child Support a Shift in the Ruling Paradigm: Child Support As Outside the Contours of “Family Law”*, 16 J. AM. ACAD. OF MATRIMONIAL L. 195, 216 (1999) (arguing for the federalization of child support).

⁶³ CLARK, *supra* note 20, at 735. Some considered the requirements of Title IV-D to be “extremely pervasive,” because they applied to people who were not receiving any funding from the AFDC program. *Id.* Most considered the enactment of Title IV-D to mean that federal law, rather than state law, governed the guidelines and enforcement of child support orders. *Id.*

⁶⁴ *Child Support Enforcement*, *supra* note 35. The program also provides standards for: (1) locating non-custodial parents; (2) establishing paternity; (3) establishing and enforcing child support orders; and (4) collecting child support payments. *Module 2: Evolution of Child Support Enforcement*, DEPT HEALTH & HUM. SERVS. (last visited Aug. 23, 2012), http://www.acf.hhs.gov/programs/cse/resources/tribal/training/text/orientation/orientation_mod2_less2_1.html.

⁶⁵ *Child Support Enforcement*, *supra* note 35. “A State plan for child and spousal support must . . . provide for the establishment or designation of a single and separate organizational unit, which meets such staffing and organizational requirements as the Secretary may by regulation prescribe, within the State to administer the plan.” 42 U.S.C. § 654(3). Further, the states must also provide services to establish paternity and establish, modify, and enforce child support obligations throughout the state. *Id.* § 654(4)(A). Title IV-D also requires states to adopt new procedural methods for enforcing child support awards, including authorizing courts to: (1) impose liens on both real and personal property; (2) require absent parents to provide a type of security to secure payment; (3) intercept both state and federal income tax refunds; and (4) require mandatory income withholding. See *id.* § 666 (describing the statutorily prescribed procedures required to improve the effectiveness of child support enforcement in the United States).

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Congress expanded federal oversight and control of child support issues through its enactment of the 1984 Child Support Enforcement Amendments.⁶⁶ Congress enacted these amendments with the purpose of increasing uniformity across the states and to combat the ineffectiveness of the child support enforcement mechanisms in most states.⁶⁷ To ensure that all states were using the “best” child support practices, the 1984 Act required each state to individually adopt guidelines for setting and modifying child support awards and to evaluate those guidelines every four years.⁶⁸ The guidelines could be enacted by legislative enactment, administrative regulation, or court order.⁶⁹

State and federal child support laws, regulations, and guidelines have all been challenged on multiple grounds, including the primary argument which asserts that family law issues such as child support should be left up to the states.⁷⁰ In *Children’s and Parents Rights Ass’n of Ohio, Inc. v. Sullivan*, the Plaintiffs argued that the requirement of states to enact child support guidelines was unconstitutional.⁷¹ The court held

⁶⁶ See *Child Support Enforcement*, *supra* note 35 (describing the 1984 Child Support Enforcement Amendments and their effect on child support enforcement throughout the United States).

⁶⁷ *Child Support Enforcement*, *supra* note 35. One of the most effective tools for child support enforcement that was not being used by all states was income withholding. *Id.* Prior to 1984, a family receiving welfare would go to a state welfare agency to enforce child support orders, but a family not receiving welfare would have to hire a private attorney and fight all child support battles through the court system with no state agency to assist them. Jocelyn Elise Crowley, *The Gentrification of Child Support Enforcement Services, 1950–1984*, SOC. SERV. REV. 585, 586 (2003). The Child Support Enforcement Amendments merged the two enforcement procedures, gave state welfare agencies new powers in enforcing support orders, and made the agencies the primary source for processing child support cases. *Id.* This gave non-welfare families a much better opportunity to enforce child support orders. *Id.* In 1985, 6.3 million child support cases were from welfare families, while 2.1 million were non-welfare families. *Id.* By 1997, 9.1 million were welfare families, while 9.9 million were non-welfare families. *Id.*

⁶⁸ 42 U.S.C. § 667(a) (2006).

⁶⁹ *Child Support Enforcement*, *supra* note 35.

⁷⁰ See generally Laura W. Morgan, *The Constitutionality of Child Support Guidelines, Part I*, SUPPORT GUIDELINES.COM, <http://www.supportguidelines.com/articles/art200204.html> (last visited Jan. 23, 2012) [hereinafter *The Constitutionality of Child Support Guidelines, Part I*] (discussing the constitutional challenges to state child support guidelines).

⁷¹ 787 F. Supp. 724, 734 (N.D. Ohio 1991) [hereinafter *Sullivan I*]. The plaintiff argued that the mandate allowed the states too great a role in determining child support and that, because the federal government had taken the role of enforcing child support, it could not delegate the same authority to the states. *Id.* at 733. In the alternative, the plaintiff asserted that the federal government is overly involved in child support determinations, a matter that should be left to the states. *Id.* The plaintiff further argued that federal child support guidelines, which states must meet as a condition of receipt of federal Title IV-D funding, violated the due process clause because it established a rebuttable presumption of a

that federal policies can be validly executed with state cooperation, and the Constitution does not require that all welfare programs be run exclusively by the federal government or exclusively by the states.⁷² The Supreme Court has also recognized that the AFDC welfare program is based on a scheme of cooperative federalism, and therefore does not infringe upon states' rights.⁷³ Additionally, the Court has noted that the federal government, in the exercise of its spending power, may require states to adhere to certain rules as a condition for receiving federal funds.⁷⁴

Child support guidelines have consistently weathered storms of litigation on multiple grounds, including the allegation that the guidelines are a violation of: (1) separation of powers when enacted by court order, (2) equal protection, (3) due process, (4) free exercise of religion, (5) right to contract, (6) interference with property rights, and (7) vagueness.⁷⁵ In *Coghill v. Coghill*, a father argued that Alaska's child

support amount based on income. *Children's & Parents Rights Ass'n of Ohio, Inc. v. Sullivan*, 787 F. Supp. 738, 739 (N.D. Ohio 1992) [hereinafter *Sullivan II*]. However, the court disagreed and held that child support guidelines do not violate the due process clause because a meaningful hearing with an opportunity to rebut the presumption is available. *Id.* at 741.

⁷² *Sullivan I*, 787 F. Supp. at 734. The court stated: "If Plaintiff's constitutional theory were adopted, the federal government could not leave any decision to the states. All welfare programs necessarily would either be federally administered in whole, or left to the state entirely. The Constitution does not require such a result." *Id.* (footnote omitted).

⁷³ *King v. Smith*, 392 U.S. 309, 316 (1968). The Court further noted that the purpose of AFDC, the funding of which was conditioned upon child support guidelines, was to "meet a need unmet by programs providing employment for breadwinners." *Id.* at 328.

⁷⁴ *South Dakota v. Dole*, 483 U.S. 203, 206 (1987). The spending power is only limited by the requirement that it be used for the general welfare. *Id.* at 207. "Federal government, unless barred by some controlling constitutional prohibition, may impose the terms and conditions upon which its money allotments to the States shall be disbursed, and that any state law or regulation inconsistent with such federal terms and conditions is to that extent invalid." *King*, 392 U.S. at 333 n.34.

⁷⁵ See *The Constitutionality of Child Support Guidelines, Part I*, *supra* note 70. Enactment by court order has been challenged on the grounds that the judiciary is improperly making substantive law. See also *Schenek v. Schenek*, 780 P.2d 413, 413 (Ariz. Ct. App. 1989) (holding that Arizona's child support guidelines do not violate due process by being federally mandated, because they are equitably applied and provide for discretion to suit the facts of each case); *In re Marriage of Dade*, 281 Cal. Rptr. 609, 615-16 (Cal. Dist. App. 1991) (holding that the income from neither parent's current spouse was taken into consideration in the calculation of the child support award and, therefore, did not violate the non-custodial parent's equal protection rights); *In re Marriage of Armstrong*, 831 P.2d 501, 503 (Colo. Ct. App. 1992) (holding that the guidelines did not constitute an unconstitutional interference with property rights, because the court did not order the plaintiff to acquire, possess, use, enjoy, improve, or dispose of his assets in any particular manner); *Garrod v. Garrod*, 590 N.E.2d 163, 171 (Ind. Ct. App. 1992) ("Only statutes so vague that men of ordinary intelligence must guess at their meaning and differ as to their application violate due process."); *Shrivastava v. Mates*, 612 A.2d 313, 319-21 (Md. Ct.

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support guidelines violated the Equal Protection Clause by considering only the income of the non-custodial parent.⁷⁶ However, the court held that Alaska's support guidelines did not violate the Equal Protection Clause because the custodial parent and the non-custodial parent are not similarly situated persons.⁷⁷ The court also noted that the Equal Protection Clause has never required those situated differently to be treated the same.⁷⁸

Most states allowing post-secondary educational support have faced consistent equal protection challenges.⁷⁹ The main argument advanced in these cases is that divorced or separated parents cannot be required to provide post-secondary educational support for their children because married parents are not required to do the same.⁸⁰ A majority of courts

Spec. App. 1992) (challenging the application of Maryland's support guidelines as a violation of the Contract Clause, due to a contractual agreement between the estranged parents); *Hunt v. Hunt*, 648 A.2d 843, 850-52 (Vt. 1994) (holding that the state's guidelines did not violate the non-custodial father's first amendment right to free exercise of religion, because the duty to provide support was not a burden on his exercise of religion).

⁷⁶ See generally 836 P.2d 921 (Alaska 1992). The father, who was the non-custodial parent, argued that the court's child support order was unreasonable and unconstitutional, because it was not based on the custodial parent's actual costs of raising their children. *Id.* at 924. The father also challenged the State's support guidelines as being a violation of separation of powers, because the rule in question was promulgated by the court and not the legislature. *Id.* at 927. However, the court held that it did not modify or amend any existing law and that its rule simply allows courts to set child support awards, interpret the statutes, and establish guidelines used in making such awards. *Id.*

⁷⁷ *Id.* at 929. The court noted that the father was asking it to consider the income of both the non-custodial and custodial parents; however, "custodial and noncustodial parents are clearly not similarly situated for the purposes of child support." *Id.*

⁷⁸ *Id.* The court further held that the standard of review was rational basis, and therefore the state needed only to demonstrate a "fair and substantial relationship between the distinctions drawn by the rule and the purpose of the rule." *Id.*

⁷⁹ See *infra* note 80 (providing states that have faced equal protection challenges to their allowance of support for post-secondary educational expenses).

⁸⁰ See *Ex parte Bayliss*, 550 So.2d 986, 987 (Ala. 1989) (holding that a trial court has the authority to require parents to provide post-minority support for a college education); *Kujawinski v. Kujawinski*, 376 N.E.2d 1382, 1390-09 (Ill. 1978) (holding that requiring divorced parents to provide post-secondary educational support is reasonably related to a legitimate legislative purpose); *Neudecker v. Neudecker*, 577 N.E.2d 960, 962 (Ind. 1991) (holding that the goal of a post-secondary educational support statute is to order such support consistent with individual family values, which is why the court considers the standard of living the child would have enjoyed had the marriage not been dissolved); *In re Marriage of Vrban*, 293 N.W.2d 198, 202 (Iowa 1980) (challenging the constitutionality of Iowa's ability to order a divorced parent to pay support for his or her child's post-secondary educational expenses); *In re Marriage of McGinley*, 19 P.3d 954, 965 (Or. Ct. App. 2001) ("[A legislature's] decision to assist children of divorced parents, who are likely to be more economically vulnerable than are other children, is not irrational."); *Childers v. Childers*, 575 P.2d 201, 208 (Wash. 1978) (holding that divorced parents have the same responsibility as married parents to provide educational support, because "[p]arents who remain steadfast to their marital vows are frequently compelled by thrift, perseverance and

addressing this issue have held that divorced parents are not a suspect or quasi-suspect class, and therefore the state's child support guidelines must only pass a rational basis review.⁸¹ Most of these states have further held that higher education is "clearly a legitimate state interest," and have reasoned that discrimination against divorced parents is justified, because divorced parents are less likely than married parents to support their children through college.⁸²

On the other hand, a few states have held that requiring non-custodial parents to provide post-secondary educational support is a

economy to accumulate savings while their earning capacity is good, so as to be able to adequately educate their children when the time or occasion arrives").

⁸¹ See *Vrban*, 293 N.W.2d at 201 (holding that because "there is no suspect classification or fundamental right involved, we do not apply the strict scrutiny standard"). The court in *Vrban* used a rational basis test, stating "[a] statute will not be ruled invalid under this test unless it is patently arbitrary and bears no rational relationship to a legitimate governmental interest." *Id.* (citation omitted) (internal quotation marks omitted).

⁸² See *id.* at 202 ("Clearly higher education is a matter of legitimate state interest."). The court further explained:

[There is an] increasing importance which society places on education. The state has recognized this trend and has responded by maintaining three state universities (as well as other educational programs) at public expense. The substantial interest which the state has in this matter is attested to by the ever-increasing appropriations for educational expenses.

Id. at 202; Dan Huitink, Note, *Forced Financial Aid: Two Arguments as to Why Iowa's Law Authorizing Courts to Order Divorced Parents to Pay Postsecondary-Education Subsidies Is Unconstitutional*, 93 IOWA L. REV. 1423, 1434 (2008) (arguing that post-secondary educational support is unconstitutional, but noting it will be upheld if a court finds the state has a legitimate state interest); see also *Childers*, 575 P.2d at 209 ("The state has an overriding interest in the welfare of its children, for the good of the individual children and for the greater good of society as a whole, and the statute here challenged is rationally related to the protection of that interest."). The court also noted:

In all probability more married parents will be making sacrifices financially for their children 18 and up than will the divorced parents who, in the sound discretion of the trial court, will have a legally imposed duty to do so. Even if the legislation does create a classification, it rests upon a reasonable basis. It is based on considerations already mentioned, and the facts known to the legislature and this court as well as to the layman, of the disruptions to homelife, bitterness and emotional upset which attend most marital breaks. The irremediable disadvantages to children whose parents have divorced are great enough. To minimize them, when possible, is certainly a legitimate governmental interest.

Note too that the governmental interest at stake here extends beyond the children to our nation as a whole. A well-educated citizenry is one of the major goals of a democratic society.

Id. at 208-09.

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violation of the Equal Protection Clause.⁸³ For example, in 1995, the Pennsylvania Supreme Court held that requiring only those parents from non-intact families to provide support for post-secondary education and not requiring parents in traditional families to do the same was a violation of the Equal Protection Clause, because there is no legitimate state interest in such a requirement.⁸⁴ In 2010, South Carolina overturned years of legal precedent by similarly holding that there is no rational basis for permitting a family court to order a non-custodial parent to provide post-secondary educational support when parents of intact families are not required to do so.⁸⁵

These state and federal court decisions addressing the constitutionality of state child support guidelines have shown that states have a substantial amount of discretion in enacting their guidelines, and each state tends to differ in its approach.⁸⁶ Although Congress sought to establish uniformity by enacting the 1984 Child Support Enforcement Amendments, many states still vary greatly in the ways in which they handle child support issues.⁸⁷

C. Current State Systems Regarding the Age of Termination for Child Support

Each state differs not only in the way it formulates a support amount, but also in determining the age of termination.⁸⁸ As a general matter, child support can be terminated in a variety of ways, including when the child: (1) reaches a statutory age level, (2) reaches a statutory

⁸³ See, e.g., *Curtis v. Kline*, 666 A.2d 265, 274 (Pa. 1995) (holding that there is no rational reason to treat children of non-intact families different than those from intact families).

⁸⁴ *Curtis*, 666 A.2d at 269. In *Curtis*, the court used a rational basis review to find that the State had no rational basis to compel parents from non-intact families, but not intact families, to provide post-secondary educational support for their children. *Id.* The court reasoned that the children were similarly situated with respect to their need for assistance, instead of the way they are typically viewed as not similarly situated, because one group is from an intact family and the other a non-intact family. *Id.*

⁸⁵ *Webb v. Sowell*, 692 S.E.2d 543, 545 (S.C. 2010). However, this case has since been overruled by the South Carolina Supreme Court. See generally *McLeod v. Starnes*, 723 S.E.2d 198 (S.C. 2012) (holding that requiring a father to pay for post-secondary education would have been rationally related to the State's interest in ensuring that its youth are educated and productive members of society).

⁸⁶ See *infra* Part III (analyzing the age of termination categories for child support purposes).

⁸⁷ See *infra* Part II.C (discussing the three types of systems set up by state governments to enforce child support guidelines, specifically the age of termination).

⁸⁸ See *supra* notes 13-15 (providing the ages at which each state terminates child support).

education level, or (3) becomes emancipated.⁸⁹ Regarding age and termination, each state falls within one of three categories for the age it terminates support.⁹⁰ The first category, which consists of thirty-four states, terminates child support at the ages of eighteen, nineteen, or upon the child's graduation from high school.⁹¹ The second category, which currently consists of thirteen states, requires support until the ages of eighteen, nineteen, or upon the graduation of high school, but allows a court to determine whether support should continue if the child is enrolled in post-secondary education.⁹² The final category, which consists of three states and the District of Columbia, terminates support at the age of twenty-one.⁹³

The divergence in the way that states determine when to terminate child support depends on several factors.⁹⁴ For example, many states account for the fact that post-secondary educational support has become increasingly necessary, as the need for a college degree has become a societal norm.⁹⁵ However, states that do not require post-secondary educational support contend that parents who are separated should not

⁸⁹ See *Hawkins v. Cantrell*, 963 So.2d 103, 105 (Ala. Civ. App. 2007) (holding that children have a fundamental right to support from their parents until they reach the state age of termination); *Dowell v. Dowell*, 73 S.W.3d 709, 712 (Mo. Ct. App. 2002) (holding that emancipation of a minor child for child support purposes is generally accomplished when: (1) there is a relinquishment of parental control; (2) the child is able to receive and retain her own earnings; and (3) the parent's legal obligation to support the child is terminated); *Chestara v. Chestara*, 849 N.Y.S.2d 353, 354 (N.Y. App. Div. 2008) (holding that a non-custodial parent's fractured relationship with his child is not cause for emancipation of the child when it was a result of the non-custodial parent's conduct); *Kirkpatrick v. O'Neal*, 197 S.W.3d 674, 679 n.4 (Tenn. 2006) (holding that child support may continue indefinitely for a child who is disabled before the age of majority).

⁹⁰ See *infra* Part III.B (analyzing the age at which each state terminates child support).

⁹¹ See *supra* note 13 (discussing the states that terminate child support at the age of eighteen, nineteen, or upon the graduation of high school).

⁹² See *supra* note 14 (discussing the states that terminate child support at the age of eighteen, nineteen, or upon the graduation of high school, but that will allow a court to determine whether support should continue for post-secondary education).

⁹³ See *supra* note 15 (discussing the states that will terminate child support at the age of twenty-one).

⁹⁴ See *infra* note 95 and accompanying text (providing examples of factors included in a state's analysis, which take post-secondary education into account).

⁹⁵ See Judith G. McMullen, *Father (Or Mother) Knows Best: An Argument Against Including Post-Majority Educational Expenses in Court-Ordered Child Support*, 34 IND. L. REV. 343, 345-47 (2001) (discussing the current economic realities surrounding post-secondary education). Post-secondary education of some sort is "essential for most jobs currently capable of funding a middle class standard of living." *Id.* at 345. See also John H. Langbein, *The Twentieth-Century Revolution in Family Wealth Transmission*, 86 MICH. L. REV. 722, 734-35 (1988) (discussing the need for a college education and its role in wealth transmission).

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be required to make contributions if intact families are not required to do the same.⁹⁶

States that allow post-secondary educational support rely on empirical data, which shows the extreme financial difficulties that many non-intact families face as compared to traditional families.⁹⁷ For example, a decade long study on the effects of divorce on children reported that only thirty percent of children from non-intact families receive full or consistent partial college support from one or both parents, compared to ninety percent of those children from intact families.⁹⁸

Although many states terminate child support when a child reaches eighteen, the reality is that many of these children continue to remain at home with the custodial parent beyond this age.⁹⁹ In such situations, the

⁹⁶ See Leah duCharme, Note, *The Cost of a Higher Education: Post-Minority Child Support in North Dakota*, 82 N.D. L. REV. 235, 237 (2006) (discussing the need for post-secondary educational support throughout the United States, but focusing primarily on the issue as it relates to North Dakota). See generally Ryan C. Leonard, *New Hampshire Got it Right: Statutes, Case Law and Related Issues Involving Post-Secondary Education Payments and Divorced Parents*, 4 PIERCE L. REV. 505, 507 (2006) (evaluating the ways states handle post-secondary child support orders and presenting the position that the New Hampshire legislature, in overruling years of case law, got it right by refusing to allow such support). Those holding this view tend to feel that requiring married parents to pay for their child's education interferes with the sanctity of marriage. *Id.* at 506.

⁹⁷ See *Esteb v. Esteb*, 244 P. 264, 267 (Wash. 1926) ("It cannot be doubted that the minor who is unable to secure a college education is generally handicapped in pursuing most of the trades or professions of life . . ."); see also Monica Hof Wallace, *A Federal Referendum: Extending Child Support For Higher Education*, 58 U. KAN. L. REV. 665, 670-71 (2010) (noting that overall wages are increasing, but wages for workers without a college degree are on the decline); SANDY BAUM & KATHLEEN PAYEA, *EDUCATION PAYS 2004: THE BENEFITS OF HIGHER EDUCATION FOR INDIVIDUALS AND SOCIETY* 7 (2005), http://www.collegeboard.com/prod_downloads/press/cost04/EducationPays2004.pdf (noting the many benefits associated with attending institutions of higher education); Alison Damast, *State Universities Brace for Another Brutal Year*, BLOOMBERG BUS. WK. (Feb. 11, 2010), http://www.businessweek.com/bschools/content/feb2010/bs20100211_635552.htm (discussing the cost of college, the rise in tuition rates, and cuts in funding for state universities because of the recession); *infra* note 99 and accompanying text (providing empirical data which shows the likelihood of a child from a non-intact family receiving post-secondary educational support in comparison to a child from an intact family).

⁹⁸ Judith S. Wallerstein & Julia M. Lewis, *The Unexpected Legacy of Divorce: Report of a 25-Year Study*, 21 PSYCHOANALYTIC PSYCHOL. 353, 362 (2004). See generally Abraham Kuhl, Comment, *Post-Majority Educational Support for Children in the Twenty-First Century*, 21 J. AM. ACAD. MATRIMONIAL L. 763 (2008) (discussing the need for children from a non-intact family to receive a post-secondary education).

⁹⁹ See Christina Newberry, *The Hands-on Guide to Surviving Adult Children Living at Home*, ADULT CHILD. LIVING AT HOME, <http://adultchildrenlivingathome.com> (last visited Aug. 23, 2012) (stating that nearly twenty-five million adult children are living with their parents in the United States alone). According to a recent poll, forty percent of American adults ages eighteen to thirty-nine either live at home or have done so in the recent past. *Id.*

custodial parent is frequently expected to provide sole support for the child without the aid of child support from the other parent.¹⁰⁰ At this point, most children are faced with several options: (1) pursuing post-secondary education, (2) finding a job, or (3) joining the armed forces.¹⁰¹ The most important factor when making this decision for a child is his or her financial resources.¹⁰² A child is far more likely to pursue a path of continuing education if he or she knows that his or her parents will provide some sort of financial support.¹⁰³ Although educational loans are available, child support laws also play a role in determining how much a child may receive in loans.¹⁰⁴ Regardless of whether a non-custodial parent is providing any financial support, the non-custodial parent's income level can be used—in addition to the custodial parent's income—for determining the amount of financial aid the child can receive.¹⁰⁵ When applying for financial aid, the higher the parents' combined income, the lower the child's financial aid eligibility.¹⁰⁶ All of

¹⁰⁰ See *supra* note 42 and accompanying text (providing that upon the termination of support neither the custodial parent nor non-custodial parent is legally required to provide for the child as an adult).

¹⁰¹ See *Take Time to Explore*, MAPPING YOUR FUTURE, <http://mappingyourfuture.org/collegeprep/mhscfuture.htm> (last visited Dec. 19, 2011) (discussing three typical options for high school graduates; college, the armed forces, and employment). High school has become the new middle school; it is typically seen as preparation for the next level of education. Sara Bauknecht, *High School Isn't Enough for Job Market*, PITT. POST-GAZETTE, Feb. 10, 2011, <http://www.post-gazette.com/pg/11041/1123029-298.stm>. See also *Young Adults Living at Home, 1960-2005*, INFOPLEASE (2007) [hereinafter *Young Adults*], <http://www.infoplease.com/ipa/A0193723.html>.

¹⁰² See *supra* note 97 (describing the value of a college education).

¹⁰³ See Wallace, *supra* note 97, at 672 (discussing the challenges students face in finding financial support to pay for post-secondary education).

¹⁰⁴ See *supra* note 2 (discussing how financial aid can be calculated).

¹⁰⁵ See THE EFC FORMULA, 2011-2012 1 (2011) [hereinafter EFC], <http://ifap.ed.gov/efcformulaguide/attachments/101310EFCFormulaGuide1112.pdf> (describing the number that is used to establish eligibility for federal student aid for post-secondary education). Dependent children, in filling out the Expected Family Contribution ("EFC") form, are required to provide the income of their father and mother. *Id.* at 9. The "net access price" is the amount of money students and their families will be required to provide per year to attend college that loans and financial aid will not cover. Michael Planty et al., *The Condition of Education 2007*, U.S. DEP'T OF EDUC. (Nat'l Ctr. for Educ. Statistics, Washington D.C.), 2007, at 90, <http://nces.ed.gov/pubs2007/2007064.pdf>. During the 2003-2004 academic year, the net access price for a four-year public institution was \$9,300, or sixty-one percent of the total cost of attendance. *Id.* at 91.

¹⁰⁶ See EFC, *supra* note 105, at 3 (describing how a child can be determined an "independent," which eliminates the parents' income as a factor).

these factors have influenced states' decisions to adopt approaches that allow courts to award child support for post-secondary education.¹⁰⁷

A small minority of states are taking a different approach and returning to their child support roots by extending support until the age of twenty-one.¹⁰⁸ Typically, these states allow support only until the age of twenty-one; however, some will also allow support to continue beyond twenty-one if the child is enrolled in post-secondary education.¹⁰⁹ If a child graduates from high school and moves away to attend college, the support award can be adjusted on the basis of the child's needs while he or she is in college and can be readjusted if the child moves back home with the custodial parent.¹¹⁰ Unfortunately, when requesting post-secondary education in some states that terminate support at twenty-one, the court will make the education award a separate order, thus, creating excessive litigation and potentially causing complications when paying, adjusting, and modifying two different support orders.¹¹¹

Part III of this Note analyzes the various approaches used when determining child support and focuses on the various court decisions that have interpreted the constitutionality of numerous approaches to child support guidelines.¹¹²

III. ANALYSIS

Currently, states vary greatly regarding when to terminate support, which leads to conflicting results that can have far-reaching effects on children of non-intact families, depending on the state guideline to

¹⁰⁷ See *infra* Part III.B.2 (analyzing states that terminate support at the age of eighteen, nineteen, or upon the graduation of high school, but will allow a court to require support for post-secondary education).

¹⁰⁸ See *infra* Part III.C (analyzing states that terminate support at the age of twenty-one).

¹⁰⁹ See *supra* note 15 and accompanying text (providing the states that terminate support at the age of twenty-one).

¹¹⁰ *Indiana Rules of Court: Child Support Rules and Guidelines*, IN.GOV, http://www.in.gov/judiciary/rules/child_support/ (last visited Dec. 21, 2011) [hereinafter *Indiana Child Support Rules and Guidelines*]. Note that Indiana recently passed legislation terminating child support at the age of 18, 19, or when the child graduates from high school, which could prompt adjustments to these rules. See *supra* note 14 (describing states that terminate child support at the age of 18, 19, or upon the child's graduation from high school). However, they will still apply to support awards that are already in effect.

¹¹¹ See Laura Johnson, *Child Support & College Support*, SMART DIVORCE, <http://smartdivorce.com/articles/college.shtml> (last visited Aug. 31, 2012) (providing that, depending on the state, a post-secondary education support award may be made in addition to the child support award, a part of the child support award, or a separate payment after child support ends).

¹¹² See *infra* Part III (analyzing the different approaches taken by states when determining how to award child support).

which they are subjected.¹¹³ Part III.A examines the benefits associated with federal involvement in child support, as well as the arguments and constitutional challenges courts have faced when extending support for post-secondary education.¹¹⁴ Next, Part III.B evaluates the various approaches taken by states when determining when to terminate child support, focusing specifically on how some states have improved upon the majority's stance by requiring varying levels of child support beyond the age of eighteen.¹¹⁵

A. *Federal Involvement in Child Support Issues and Constitutional Challenges*

Since the 1970s, the federal government has played a fundamental role in determining how child support issues are handled by the states.¹¹⁶ Such federal involvement is beneficial in attempting to create a uniform system that provides children of non-intact families a support system as close as possible to the one they would have received if their parents remained together.¹¹⁷ Federal involvement keeps states accountable by ensuring that they continue to follow the "best" methods in their child support guidelines.¹¹⁸ However, many child support laws have faced constitutional challenges within the courts.¹¹⁹ Before addressing these challenges, this Part scrutinizes how the federal government has influenced state child support laws and guidelines.¹²⁰

1. Scrutinizing Federal Involvement in Child Support

Although states individually determine how to award child support, Congress could conceivably mandate a national child support guideline.¹²¹ Given that this is true, many have questioned why

¹¹³ See *supra* Part II.C (describing the various approaches taken by courts in determining when to terminate child support).

¹¹⁴ See *infra* Part III.A (analyzing federal involvement in child support and assessing the constitutional challenges regarding the Equal Protection Clause to child support guidelines).

¹¹⁵ See *infra* Part III.B (discussing states that allow child support to continue beyond the age of eighteen for post-secondary education).

¹¹⁶ See *infra* Part III.A (explaining the federal government's role in child support).

¹¹⁷ See *infra* Part III.A.1 (describing the benefits of the federal government's role in child support).

¹¹⁸ See *supra* note 32 (providing that states are required to evaluate their child support guidelines every four years).

¹¹⁹ See *infra* Part III.A.1 (scrutinizing the federal government's position in defining child support issues).

¹²⁰ See *infra* Part III.B (analyzing the constitutional challenges brought against various state child support laws).

¹²¹ See Morgan, *supra* note 62, at 216 (presenting the arguments for the federalization of child support laws). Through the Spending Power, Congress has the authority to require

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Congress has not already done so.¹²² Federalization of the child support system could be a positive step in creating uniformity and furthering the government's interest in ensuring that taxpayers are not required to shoulder the financial burden of raising the children of others.¹²³ However, as the Supreme Court noted, enforcement of child support issues are also of great importance to state and local communities that undoubtedly have "unparalleled familiarity with local economic factors affecting divorced parents and children."¹²⁴ Therefore, a concerted and combined effort between the states and the federal government has the potential to produce positive results.¹²⁵

Regardless of Congress' refusal to mandate a national child support guideline, the need for uniformity across the states is increasingly more evident when one considers the inadequacy of various states' approaches to determining child support.¹²⁶ The lack of uniformity creates inequity among children of non-intact families who are receiving differing levels of support in different states.¹²⁷ This lack of uniformity also creates enforcement issues. For example, when the child, custodial parent, or non-custodial parent moves, the enforcement or modification of an award becomes complicated.¹²⁸ Additionally, the lack of

the states to enact legislation governing both child support establishment and child support enforcement. *Id.* Direct federal legislation governing the enforcement of child support across state lines has also been upheld under the Commerce Clause. *Id.*

¹²² See *id.* (suggesting that Congress could implement a national child support guideline). *But see* Litman, *supra* note 44, at 471-76 (discussing whether Congress could implement a national child support guideline).

¹²³ See Morgan, *supra* note 62, at 216-17 (proposing that the federalization of child support could provide considerable benefits for everyone involved in the child support system).

¹²⁴ *Id.* at 217.

¹²⁵ See Morgan, *supra* note 62, at 216-17 (discussing the benefits of a uniform child support system).

¹²⁶ See *infra* text accompanying notes 141-60 (describing the problems associated with states that terminate support at age eighteen, nineteen, or upon graduation from high school); see also *infra* Part IV (suggesting that states increase age of termination to twenty-one to address the inadequacies inherent in child support systems that terminate support before a child reaches age twenty-one).

¹²⁷ See *supra* note 67 and accompanying text (noting that the federal government initially became involved with child support with the goal of increasing uniformity).

¹²⁸ See Fish, *supra* note 61, at 37 (explaining the role of the UIFSA in helping to alleviate some of the problems associated with child support enforcement in a system that lacks uniformity); Morgan, *supra* note 62, at 217 (explaining the benefits of a uniform child support system). Morgan points out that a uniform national child support system would eliminate forum shopping by parents looking for a greater opportunity to provide less child support. *Id.* The purpose of the UIFSA was to help eliminate forum shopping and jurisdictional issues to a certain extent, but it currently causes confusion and difficulty in trying to get an adequate child support award over different jurisdictions. See Fish, *supra* note 61, at 37.

uniformity enhances the disadvantages children and parents face in states that are behind in updating their support guidelines for issues such as the differing ways children can become emancipated, long-term health concerns of children, and post-secondary educational support.¹²⁹

So long as the irregularity between the states continues and states fail to provide child support for children throughout their transition into financial stability and adulthood, the federal government and taxpayers will be required to shoulder the burden.¹³⁰ By withholding state welfare funding, the federal government is able to hold states directly accountable by ensuring that they implement their child support guidelines efficiently and effectively.¹³¹ Indeed, there are numerous weaknesses inherent in many states' child support guidelines, which would be overcome with a more uniform system.¹³² The need for uniformity is clear; however, states cannot enact guidelines just for the sake of uniformity.¹³³ It is crucial to provide a uniform system that meets the needs of everyone involved.¹³⁴ As stated earlier, there have been many constitutional challenges to child support laws, which have had varying degrees of success in various jurisdictions.¹³⁵

2. Analyzing the Constitutional Ramifications of Requiring Child Support for Post-Secondary Education

The main concern, articulated when arguing against extending child support past a child's graduation from high school and allowing modifications in the amount of support to account for post-secondary education, stems from the Equal Protection Clause.¹³⁶ Non-custodial

¹²⁹ See Morgan, *supra* note 62, at 216–17 (providing support for a proposed federal child support guideline, which would enhance uniformity).

¹³⁰ See *infra* Part III.B (describing the problems children with divorced parents face when attempting to pursue a post-secondary education).

¹³¹ See *supra* Part II.B (providing a detailed understanding of how the federal government began to use welfare and social spending programs and explaining that the purpose of these programs was to ensure that states were implementing effective child support systems).

¹³² See *supra* notes 13–15 (listing each state and the age at which they terminate child support).

¹³³ Morgan, *supra* note 62, at 220–21.

¹³⁴ See *infra* Part IV (proposing that all states adopt a uniform age of termination for child support that meets the needs of everyone involved by focusing on making the situation as similar as possible to the way it would have been had the parents remained together).

¹³⁵ See *supra* Part II.B (discussing the constitutional challenges to child support guidelines); *infra* Part III.A.2 (analyzing the equal protection challenges to child support guidelines).

¹³⁶ See *supra* Part II.B (describing the equal protection analysis undertaken when courts require parents to provide child support beyond the age of majority). Compare *In re Marriage of Vrban*, 293 N.W.2d 198, 202 (Iowa 1980) (finding that a statute allowing a trial

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parents argue that statutes, which require a non-custodial parent to pay for post-secondary educational expenses, create “an unreasonable classification by treating adult children of divorced parents differently from adult children of married parents.”¹³⁷ Constitutionally, this argument is flawed in several respects.¹³⁸

First, all states that have faced the issue agree that there is no suspect classification or fundamental right involved, and therefore the strict scrutiny standard does not apply.¹³⁹ Each court has further held that these statutes hold a presumption of constitutionality, and they will only be ruled invalid if they fail rational basis review, requiring the classification to bear a rational relationship to a legitimate state purpose.¹⁴⁰ An overwhelming majority of states have held that these statutes pass rational basis review, because “[c]learly higher education is a matter of legitimate state interest.”¹⁴¹ These courts correctly found that the statutes are specifically designed by state legislatures to remedy a problem that only exists when a home is no longer intact.¹⁴² Most importantly, these courts correctly account for the fact that “most parents who remain married to each other support their children through college years,” and that “even well-intentioned parents, when deprived of the custody of their children, sometimes react by refusing to support them as they would if the family unit had been preserved.”¹⁴³ Further, many opponents of post-secondary educational support concede that there is clearly a rational basis for such a law.¹⁴⁴ Overall, the rational basis standard is good for proponents of post-secondary educational support,

court to order a divorced parent to pay support for an adult child who is a full-time student in college was designed to meet a specific and limited problem that the legislature could reasonably find to exist in a home split by divorce and does not violate equal protection by failing to impose a similar requirement upon married parents), *with* Curtis v. Klein, 666 A.2d 265, 269 (Pa. 1995) (finding that a statute requiring separated, divorced, or unmarried parents, but not married parents, to provide post-secondary education support to their adult children violated the Equal Protection Clause of the Fourteenth Amendment).

¹³⁷ *Vrban*, 293 N.W.2d at 201.

¹³⁸ See *infra* notes 141–56 and accompanying text (discussing the flaws associated with a constitutional challenge based on equal protection).

¹³⁹ *Vrban*, 293 N.W.2d at 201.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 202. The court noted that, under rational basis review, a statute will not be ruled invalid under the Equal Protection Clause unless it is patently arbitrary and bears no rational relationship to a legitimate governmental interest. *Id.* at 201. In this case, the court correctly acknowledged that higher education is a legitimate state interest. *Id.* at 202.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ See Huitink, *supra* note 82, at 1438–39 (arguing that post-secondary educational support is unconstitutional as a violation of equal protection, but conceding that the standard is rational basis and that this standard is clearly met).

because the state interest in education has increased each year, as evidenced by the increase in funding and support for multiple state universities.¹⁴⁵

Unlike the majority of decisions, which have recognized that a rational basis exists for post-secondary support, the two courts finding that their states' guidelines did not serve a rational basis are flawed.¹⁴⁶ Under rational basis review, a court must first decide whether the challenged legislation seeks to promote any legitimate state interest; next, it must decide whether the statute is reasonably related to the intended objective.¹⁴⁷ Further, the Constitution does not require individuals that are not similarly situated to be treated the same.¹⁴⁸ Unfortunately, two states are flawed in their reasoning that children of divorced parents and children of married parents are "similarly situated," because they fail to account for the distinction between children of non-intact families and those of intact families.¹⁴⁹ In effect, these decisions fail to recognize that states have a legitimate interest in assuring that children who are disadvantaged by the divorce or separation of their parents are not deprived of any opportunity, including post-secondary education, by virtue of insufficient funding in large part because of the fact that their parents are separated.¹⁵⁰ Finding

¹⁴⁵ See Damast, *supra* note 97 (discussing the funding of state universities and the effect of the recession on university budgets and tuition costs). For example, in December of 2009, the flagship university for the state of Louisiana, Louisiana State University, had an annual budget of more than \$430 million, which was controlled by the state. *Id.*

¹⁴⁶ See *Curtis v. Klein*, 666 A.2d 265, 269 (Pa. 1995) (holding that requiring divorced parents to provide post-secondary educational support to adult children violated the Equal Protection Clause); *Webb v. Sowell*, 692 S.E.2d 543, 544 (S.C. 2010) (finding that requiring parents to support children for post-secondary education violated the Equal Protection Clause); see also *supra* note 85 (providing that *Webb* has since been overturned).

¹⁴⁷ See *Curtis*, 666 A.2d at 269 (detailing how the court undertook its equal protection analysis).

¹⁴⁸ *Id.* at 267. It has long been held that the Fourteenth Amendment does not require that all persons under all circumstances enjoy identical protection under the law. *Id.*

¹⁴⁹ See *supra* text accompanying note 33 (explaining the problems that children with divorced parents face in comparison to children with parents in intact marriages); see also *Curtis*, 666 A.2d at 269-70 (finding that children of divorced parents and children of intact marriages should not be treated differently for the purposes of higher educational funding). The court explained that:

In the absence of an entitlement on the part of any individual to post-secondary education, or a generally applicable requirement that parents assist their adult children in obtaining such an education, we perceive no rational basis for the state government to provide only certain adult citizens with legal means to overcome the difficulties they encounter in pursuing that end.

Id.

¹⁵⁰ See *supra* notes 97-106 and accompanying text (describing some of the disadvantages children of non-intact families face in comparison to those of intact families).

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otherwise would not in any way devalue the rights of children from intact marriages; rather, statutes allowing additional support for children of non-intact families to a later age recognize that a non-intact family structure has a deleterious effect on children, which should be redressed.¹⁵¹

As noted by many courts, the state interest in the education of America's youth is exemplified by the numerous state universities and other educational programs that are funded at the public's expense.¹⁵² Many states have therefore made it clear that to further the state interest in the education of children, "[t]he differences in the circumstances between married and divorced parents establishes [sic] the necessity to discriminate between the classes."¹⁵³ Although extending support for children to the age of twenty-one is beneficial, not all states take this approach.¹⁵⁴

B. *Analyzing the Age at Which States Terminate Child Support*

Although there are obvious advantages to extending child support orders to the age of twenty-one, many states are reluctant to adopt this approach and still require support to be terminated at age eighteen.¹⁵⁵

1. *Analyzing the Current Majority: Terminating Child Support at the Age of Eighteen, Nineteen, or upon Graduation from High School*

In 1971, the ratification of the Twenty-Sixth Amendment to the U.S. Constitution led many states to lower the age of majority from the age of twenty-one to eighteen.¹⁵⁶ Therefore, many states instituted child support laws that require termination at the age of eighteen, nineteen, or upon the graduation from high school, leaving no discretion to the

¹⁵¹ See *infra* Part IV (proposing that states adopt the age of twenty-one as the age of termination for child support orders).

¹⁵² *In re Marriage of Vrban*, 293 N.W.2d 198, 202 (Iowa 1980).

¹⁵³ *Id.*

¹⁵⁴ See *supra* note 13 (describing the states that terminate support at the age of eighteen).

¹⁵⁵ See *supra* Part III.B.1 (explaining the drawbacks associated with terminating child support at age eighteen).

¹⁵⁶ See U.S. CONST. amend. XXVI, § 1. The Twenty-Sixth Amendment states, in relevant part, "The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age." *Id.* Enactment of this Amendment impacted the way states dealt with many child support issues. See duCharme, *supra* note 96, at 236 ("This change had a major impact on family law litigation: It essentially decreased the duty to pay child support by three years and eliminated child support throughout the child's college years.").

courts to determine whether to continue support.¹⁵⁷ Some states terminating support under this system created problems for the courts because they lacked the flexibility to adjust awards for children who: (1) have long-term health defects, (2) cannot immediately find work after graduating high school, (3) require support for post-secondary education, or (4) have other extenuating factors.¹⁵⁸

Proponents of terminating support upon high school graduation argue that instead of attempting to give children the life they would have had if their parents stayed together, the legal system should be focused on treating similarly situated people equally.¹⁵⁹ This appears to promote the idea that, because a court cannot require married adult parents to provide support beyond the age of majority, divorced parents should also not be required to provide such support.¹⁶⁰ However, this approach fails to account for the fact that children from non-intact family structures are not similarly situated to children from intact family structures.¹⁶¹ Furthermore, terminating support at the age of eighteen simply because it is the legal age of majority in this country is not supported by the empirical data, which shows that fifty-three percent of males and forty-six percent of females ages eighteen to twenty-four were living at home in 2005.¹⁶²

Another argument advanced by those in favor of terminating support at eighteen is that, because parents are free to disinherit their children, they should be free to refuse to support their children beyond the age of eighteen.¹⁶³ However, this argument fails to acknowledge that

¹⁵⁷ See *supra* note 13 (providing the states that terminate support at the age of eighteen, nineteen, or upon graduation from high school with no discretion to allow support beyond the age of termination).

¹⁵⁸ See duCharme, *supra* note 96, at 236 (“Prior to the change in the age of majority, courts could provide for college expenses by increasing the amount of child support as needed when the child entered college.”).

¹⁵⁹ See *supra* text accompanying notes 131–42 (providing the equal protection arguments applicable to requiring divorced parents to provide support for their college age child while not requiring parents with intact marriages to do the same).

¹⁶⁰ Compare *Curtis v. Klein*, 666 A.2d 265, 269–71 (Pa. 1995) (holding that requiring divorced parents to provide post-secondary educational support to adult children violated the Equal Protection Clause), and *Webb v. Sowell*, 692 S.E.2d 543, 544 (S.C. 2010) (finding that requiring parents to support children for post-secondary education violated the Equal Protection Clause), with *In re Marriage of Vrban*, 293 N.W.2d 198, 202 (Iowa 1980) (holding that the statute allowing a trial court to order a divorced parent to provide child support to help pay for a child’s college education did not violate the Equal Protection Clause).

¹⁶¹ See *supra* note 97 and accompanying text (providing the percentages of children from intact families who receive funding from their parents for college versus the percentage of children who receive support for their education in non-intact families).

¹⁶² *Young Adults*, *supra* note 101.

¹⁶³ See McMullen, *supra* note 95, at 362–66 (contending that the law should not force divorced parents to contribute to the post-minority education of their children). *But see*

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parents are now passing wealth to their children by investing in their skills and education, thereby furthering the inequality established between intact and non-intact families.¹⁶⁴ Proponents have even gone so far as to say that although requiring post-secondary educational support is unconstitutional, they concede it is reasonable to believe that eighteen is an unrealistically young age for the termination of support because many children are neither economically nor emotionally independent at this age.¹⁶⁵

Although this system negatively affects both the child and the custodial parent, it benefits the non-custodial parent because he or she is not required to support the child after high school graduation.¹⁶⁶ Furthermore, this system aids the non-custodial parent because the parent is free to pursue his or her own financial goals, such as supporting his or her own lifestyle, retirement, and perhaps other relationships or children.¹⁶⁷

While terminating support upon a child's graduation from high school is advantageous to the non-custodial parent, there are many clear

Kuhl, *supra* note 98, at 772 (arguing that parents should be required to support their children's post-secondary educational careers because they are in a better financial position).

¹⁶⁴ See generally Langbein, *supra* note 95 (describing the way in which parents pass wealth to their children by investing in their children's skills and education, which, some argue, further perpetuates the inequality established between intact and non-intact families).

¹⁶⁵ See duCharme, *supra* note 96, at 237 (discussing the maturity level of children at the age of eighteen). Regarding a child's maturity level at age eighteen in today's society, duCharme notes:

Years ago, children were generally more accustomed to supporting themselves at an earlier age since a college education was relatively uncommon. In contrast, children of today remain in school for a longer period of time, and consequently do not mature or become self-sufficient until later in life. Hence, children are maturing later in life but are expected to assume responsibility earlier. Stated in a different way, a child's employment opportunities do not improve merely because he reaches the age of majority. If a child cannot get a suitable job without a college education, and if he is incapable of earning a living while attending school, then the extent of support should be determined by the facts of each case. The age of the child should not be the only determinative factor the court considers when addressing the issue of post-minority support.

Id. (footnotes omitted).

¹⁶⁶ See *supra* Part III.B.1 (describing how states that do not allow support for post-secondary education benefit a non-custodial parent because the parent is not required to provide support for the child). As a result, custodial parents are frequently left to shoulder the burden of supporting their child in college without the aid of the non-custodial parent. Wallace, *supra* note 97, at 671.

¹⁶⁷ See *supra* note 149 (explaining the benefits associated with not requiring child support for college education for the non-custodial parent).

disadvantages to this approach.¹⁶⁸ Research indicates that children of divorced parents are at a much greater risk both emotionally and financially than children of intact families.¹⁶⁹ In addition to the daunting task of raising children as a single parent, the custodial parent is forced to find a way to provide for his or her children after high school if the child does not become completely independent.¹⁷⁰ Proponents and critics of this system can agree that it is unrealistic to think that a child will be a high school student one day and a self-sufficient adult the next.¹⁷¹ There is also little doubt that support beyond high school graduation would improve the viability of the career and educational opportunities for children who are disadvantaged by the divorce or separation of their parents.¹⁷² It is also conceded that parents of intact families are very likely to support their children beyond high school graduation, putting children of non-intact families at a further disadvantage and leaving the custodial parent to shoulder the burden of supporting the child until he or she is self-sustaining.¹⁷³ As a result,

¹⁶⁸ See *supra* text accompanying note 159 (describing the disadvantages associated with this approach).

¹⁶⁹ See Kuhl, *supra* note 98, at 771-72 (describing some of the difficulties children of non-intact families face).

¹⁷⁰ See *Young Adults*, *supra* note 101 (illustrating the daunting percentage of children eighteen to twenty-four who are still living at home).

¹⁷¹ See *supra* note 39 and accompanying text (discussing the reasons why states began to terminate support at the age of eighteen under the flawed assumption that because children could vote and go to war at eighteen, they are adults at eighteen).

¹⁷² See generally BAUM & PAYEA, *supra* note 97 (explaining the benefits of obtaining a college education). Specifically, this study notes that “[t]he typical bachelor’s degree recipient can expect to earn about 73 percent more over a 40-year working life than the typical high school graduate earns over the same time period.” *Id.* at 11. Further, this study states that, “[f]or all racial and ethnic groups, higher levels of education correspond to higher incomes.” *Id.* at 13.

¹⁷³ See Wallace, *supra* note 97, at 692-93 (explaining the burden that a custodial parent faces when required to support his or her child without the aid of a non-custodial parent). Wallace further expands on some of the nuances associated with failing to require aid for children in child support orders for post-secondary education:

Even for those noncustodial parents who remain in close contact with their children, they view their obligation as a legal one that has a termination date. Ultimately, the custodial parent is left to shoulder the burden of higher education for the child. In fact, some children even seem surprised to learn they have the right to ask for support after the legal obligation terminates. In line with this expected termination of support, a recent study indicates that fewer children of divorce are even applying to the nation’s top colleges.

Id. at 693. (footnotes omitted).

some states have attempted to alleviate these disadvantages by adopting an approach that includes child support for post-secondary education.¹⁷⁴

2. Scrutinizing the Majority: Terminating Support at the Age of Eighteen, Nineteen, or upon Graduation from High School, but Allowing the Court to Require Support for Post-Secondary Education

The growing need for a college education has led many states to require a non-custodial parent to provide support for his or her child's college expenses.¹⁷⁵ States that follow this system reap the benefits of eliminating the deficiencies created by not providing support for a college education, although the other problems that were associated with the first system continue to exist.¹⁷⁶ This system fails to alleviate the difficult problems children face when they choose not to attend post-secondary school, including the fact that they are not likely to have the maturity or financial stability of an adult the day after high school graduation.¹⁷⁷ Thus, the inevitable problem with a system that terminates support upon high school graduation continues: although the child has reached the age of majority, it is more likely than not that the custodial parent is still supporting the child.¹⁷⁸

The most notable advantage of this system is that it allows a court to use its discretion by ordering the non-custodial parent to provide post-secondary educational support.¹⁷⁹ Undoubtedly, a college education has become increasingly valuable, and some consider it essential in pursuing more than a minimum-wage job.¹⁸⁰ States that follow this model

¹⁷⁴ See *infra* Part III.B.2 (analyzing states that terminate support at the age of eighteen, nineteen, or upon graduation from high school, but allowing courts to require support for post-secondary education).

¹⁷⁵ See *supra* note 14 (listing the states that allow courts to require child support from a non-custodial parent for college expenses).

¹⁷⁶ See *supra* Part III.B.1 (explaining the drawbacks associated with terminating support at age eighteen, nineteen, or upon high school graduation).

¹⁷⁷ See generally BAUM & PAYEA, *supra* note 97 (explaining the drawbacks of not pursuing a college education and defining the differences between individuals with a college education and those without a college education).

¹⁷⁸ See text accompanying note 165 (discussing how custodial parents are frequently required to shoulder the burden of supporting their child throughout college without the assistance of the other non-custodial parent, absent a court requiring the non-custodial parent to do so).

¹⁷⁹ See *supra* text accompanying notes 95-101 (describing the advantages to the child when a court allows child support to be extended for a child's post-secondary education).

¹⁸⁰ Wallace, *supra* note 97, at 692. Wallace explains by saying:

While parents of intact families, even unhappy ones, feel pride when their children attend college, parents of divorce, due to physical or emotional distance, do not enjoy the same emotional connection even

generally allow a court to award support for an adult or minor child to pursue an education, as long as he or she is enrolled full-time.¹⁸¹ States will often limit the application period, requiring the child or custodial parent to apply for the educational support before the termination of the original support agreement.¹⁸² This can be detrimental to a child who is indecisive about attending post-secondary education.¹⁸³ The non-custodial parent is often required to make the post-secondary educational payments directly to the university but is also required to make a separate payment to the custodial parent for a portion of child support expenses.¹⁸⁴ This creates not only an inconvenience, but it can also create confusion and difficulty in making payments.

While some may argue that this is unfair, states following this system will not require a parent to provide financing for post-secondary education if the parent is financially unable to do so.¹⁸⁵ In fact, states consider numerous factors in determining whether the non-custodial parent should be required to provide college support.¹⁸⁶ These factors include, but are not limited to: (1) the financial resources of both parents, (2) the financial resources and needs of the child, (3) the expectation of the parents had the marriage remained intact, and (4) the child's academic prospects, desires, and aptitude.¹⁸⁷

though they acknowledge their legal obligation, which ends at eighteen. "I did all that was required" is a consistent theme.

Id. (footnotes omitted).

¹⁸¹ *Id.* at 678-79.

¹⁸² *Id.*

¹⁸³ See *supra* notes 101-02 and accompanying text (discussing the possible choices children have after graduating high school and the way financial resources factor into that decision).

¹⁸⁴ Wallace, *supra* note 97, at 679.

¹⁸⁵ Compare *id.*, at 671-73 (explaining how expanding child support orders to require support for children pursuing post-secondary education benefits children with divorced parents), with McMullen, *supra* note 95, at 366 (arguing against including post-majority educational expenses in court-ordered child support).

¹⁸⁶ See *infra* note 171 (providing examples of factors that states will consider when determining whether a parent should be required to subsidize a child's post-secondary education).

¹⁸⁷ See CONN. GEN. STAT. ANN. § 46b-56c(c)(1) (West 2011) (listing factors a court will consider when awarding support for post-secondary education). This statute states in relevant part:

The court may not enter an educational support order pursuant to this section unless the court finds as a matter of fact that it is more likely than not that the parents would have provided support to the child for higher education or private occupational school if the family were intact. After making such finding, the court, in determining whether to enter an educational support order, shall consider all relevant circumstances, including: (1) The parents' income, assets and other obligations, including obligations to other dependents; (2) the child's

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Although the benefits of this system for the child are obvious, forcing a non-custodial parent to provide support after the child graduates high school may ruin the incentive for the child to maintain a healthy relationship with the non-custodial parent, because the parent is required to provide financial support regardless of his or her relationship with the child.¹⁸⁸ This means that a non-custodial parent runs the risk of being excluded from the college decision-making process, “even though he or she” can still be expected to foot the bill.¹⁸⁹ Because these apprehensions are valid, several states have alleviated this problem by imposing a duty on the child receiving support.¹⁹⁰

For example, some states require the child to notify the parent of enrollment and academic achievements before receiving any parental support.¹⁹¹ Some states explicitly require that the supporting parent have full access to the child’s academic transcripts and student records.¹⁹² States may also require students to maintain certain academic standards, such as a specific grade-point-average, which presents a

need for support to attend an institution of higher education or private occupational school considering the child’s assets and the child’s ability to earn income; (3) the availability of financial aid from other sources, including grants and loans; (4) the reasonableness of the higher education to be funded considering the child’s academic record and the financial resources available; (5) the child’s preparation for, aptitude for and commitment to higher education; and (6) evidence, if any, of the institution of higher education or private occupational school the child would attend.

Id.

¹⁸⁸ See McMullen, *supra* note 95, at 365 (“[I]f a divorced parent is legally obligated to pay for higher education, a child may cut off all contact, reject the parent’s value system, and still collect the tuition money.”).

¹⁸⁹ See Wallace, *supra* note 97, at 668 (discussing the use of properly crafted legislation to reduce the concerns and negative effects of providing support for post-secondary education).

¹⁹⁰ See OR. REV. STAT. ANN. § 107.108(6)(a)(B)(ii) (2011) (stating that the child must give written consent, which “[g]ives the school authority to disclose to each parent ordered to pay support the child’s enrollment status, whether the child is maintaining satisfactory academic progress, a list of courses in which the child is enrolled and the child’s grades.”)

¹⁹¹ See *Van Brunt v. Van Brunt*, 16 A.3d 1127, 1128 (N.J. Super. Ct. Ch. Div. 2010) (“[B]oth the student and the custodial parent each have a responsibility and obligation to make certain that the non-custodial parent is provided with ongoing proof of the student’s college enrollment, course credits and grades.”).

¹⁹² See WASH. REV. CODE ANN. § 26.19.090(4) (West 2011) (“The child shall also make available all academic records and grades to both parents as a condition of receiving postsecondary educational support. Each parent shall have full and equal access to the postsecondary education records . . .”).

disadvantage to children who wish to attend college but have more difficulty meeting academic standards than others.¹⁹³

States that follow this approach are able to provide higher educational support while maintaining parental autonomy.¹⁹⁴ Although this approach improves upon the previous system, all of the problems remain for children who choose not to attend college, as well as the deficiencies associated with the way states implement post-secondary support awards.¹⁹⁵

3. Examining Courts That Have Gone Back to their Roots: Termination at the Age of Twenty-One or Later

Before the early 1970s, many states followed the common-law rule that a child reached the age of majority at twenty-one.¹⁹⁶ This approach alleviates controversy over support for post-secondary education by allowing students to seek support from their non-custodial parent until the age of twenty-one even if the child does not intend on pursuing post-secondary education.¹⁹⁷ States that follow this approach have had greater success in alleviating the differences between children of intact families and those of non-intact families.¹⁹⁸ States taking this approach get the best of both worlds: by providing support until the age of twenty-one, children are given an opportunity to mature and may receive support for up to three years after high school graduation.¹⁹⁹

¹⁹³ See IOWA CODE § 598.21.5A(d) (2011) (providing that the student must give each parent copies of his grades within ten days of receiving them and, unless the parties agree otherwise, the court must terminate an educational support order after the child has completed his first calendar year of instruction when his cumulative grade-point-average falls below the school's median); OR. REV. STAT. ANN. § 107.108(5)(a) (West 2005) (noting that children must maintain at least a "C" average and provide their parents copies of their grades and course enrollment records).

¹⁹⁴ See *supra* Part III.B.2 (analyzing the benefits associated with how states in the second category handle issuance of child support).

¹⁹⁵ See *supra* Part II.C (describing how support will be terminated by states following this approach if the child chooses not to pursue post-secondary education).

¹⁹⁶ Huitink, *supra* note 82, at 1428 (explaining that the common understanding prior to the 1970s was that a child reached the age of majority at twenty-one).

¹⁹⁷ See *supra* notes 39, 157 (discussing the effect of the Twenty-Sixth Amendment on child support).

¹⁹⁸ See *supra* text accompanying note 177 (detailing the benefits associated with allowing support after a child graduates from high school).

¹⁹⁹ See Kuhl, *supra* note 98, at 771 (describing the importance of advanced education for children in today's society). Author Kuhl notes, "[w]hen compared to what are considered 'intact families,' the incomes of single-parent families are consistently lower, which suggests that 'financial difficulties are a major obstacle in affording higher education. These difficulties are never more apparent than when a child of a single-parent family wishes to enroll in college.'" *Id.* at 771-72 (footnotes omitted).

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Considering financial and maturational perspectives, this approach provides children from non-intact families a better opportunity to be successful in the real world.²⁰⁰

States following this approach also allow courts to adjust awards on the basis of where the child is living, such as when the child is away at school or at home under the care of the custodial parent.²⁰¹ This approach takes into account the interests of everyone involved. Children who attempt to find a job upon high school graduation are eased into adulthood and are not immediately expected to be self-sufficient, while those children who choose to attend college are also supported.²⁰² The custodial parent is not required to take care of the child alone until that child becomes a self-sufficient adult, and the non-custodial parent's interests are protected through support termination requirements.²⁰³

This system is also advantageous because the court calculates support by considering each parent's financial resources.²⁰⁴ If a non-custodial parent is unable to afford college support payments, the original support order will remain and college support will not be awarded.²⁰⁵ This ensures that the child, at the very least, continues to receive the same support he or she would have received and also ensures that the child has the support needed to make better life choices.²⁰⁶ Additionally, many courts only award additional support for post-secondary education if the court finds that the parents would likely have

²⁰⁰ See *id.* at 772. Describing the position of most eighteen-year-olds, Kuhl explains: Parents are in a better financial position than their children and have more and greater resources. An eighteen year old student fresh out of high school has likely had little to no opportunities to build his or her credit or to save enough money to pay their own way through college. Children of divorced families, as well as their custodial parents, are less likely to be in a position to afford college due to the absence of a second income.

Id.

²⁰¹ See *supra* note 189 (explaining that states following this approach allow awards to be adjusted on the basis of where the child is living).

²⁰² See *supra* notes 101-02 and accompanying text (discussing the possible choices children have after graduating high school and the way financial resources factor into that decision).

²⁰³ See *supra* note 15 (providing the states in which both the children and parents reap the benefits of child support being terminated at the age of twenty-one while still safeguarding the interests of the non-custodial parent).

²⁰⁴ See Wallace, *supra* note 97, at 674 (explaining that courts will not require a parent to support the child's college education if the parent does not have the financial resources to do so).

²⁰⁵ *Id.*

²⁰⁶ See duCharme, *supra* note 96, at 236 (describing the effect that lowering child support age of termination from twenty-one to eighteen had on family law litigation).

provided support had they remained together.²⁰⁷ This system recognizes and protects the interests of everyone involved, not just the child, but the custodial and non-custodial parent as well.

One problem that states following this model have encountered is that, typically, the state makes the child support award separate from the post-secondary education award because the education award requires a new support calculation.²⁰⁸ This, in turn, results in more litigation, more trips to the courthouse, and less money being used to support the child. Furthermore, the child can apply for a post-secondary award any time before he or she turns twenty-one, and the award will include any post-secondary education that the student has already completed. For instance, if a student begins college at the age of eighteen, the child's support award is not automatically updated; rather, he or she must go to court to have the award modified. The child can choose to wait until the day before he or she turns twenty-one, go to court and have the award modified for his or her post-secondary education, and the non-custodial parent will be required to pay the modified award amount, not only for the court-required period, but also for the two years of education the child has already received.

Perhaps the most important difference between this system and the others discussed is that this third system acknowledges the immaturity of children and their inability to provide for themselves immediately after high school graduation.²⁰⁹ It further recognizes the interests of the custodial parent by not requiring them to independently provide for the child until they become self-sufficient, which could take years.²¹⁰ The interests of the non-custodial parent also remain intact, ensuring they are not providing support in situations they cannot afford, or would not have supported had the parents remained together.²¹¹ With this firm

²⁰⁷ See CONN. GEN. STAT. § 46b-56c(4)(c) (2011) (stating that a court cannot enter an educational support order unless it finds that the parents would likely have provided support had the couple remained intact). The statute provides that:

The court may not enter an educational support order pursuant to this section unless the court finds as a matter of fact that it is more likely than not that the parents would have provided support to the child for higher education or private occupational school if the family were intact.

Id.

²⁰⁸ *Indiana Child Support Rules and Guidelines*, *supra* note 110.

²⁰⁹ See *supra* Part II.C (explaining how states in the third category determine child support orders).

²¹⁰ See *supra* notes 39–41 (discussing the impact of terminating support at the age of eighteen).

²¹¹ See *supra* note 50 (detailing the underlying purpose of child support for everyone involved, which is to provide a situation as similar as possible to that which would have happened had the parents remained together).

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foundation established by the minority of states as a way to provide the best support for our children, other states are likely to follow suit; however, even this system can be improved.²¹²

IV. CONTRIBUTION

The federal government became involved in child support to create uniformity among the states, eliminate the possibility of taxpayers taking care of the children of others, and most importantly, provide the same opportunities for children from non-intact families as those from traditional families.²¹³ However, many jurisdictions are not promoting the original purpose of the child support system, which is to ensure that children from non-intact families are given the same opportunities they would have received had their parental structure remained intact.²¹⁴ As a result, child support termination statutes in each state must be amended to combat these issues and meet the needs of children in our ever-changing society.²¹⁵ To effectively address these issues, this Note encourages each state to individually adopt the model statute provided below to more efficiently serve the best interests of all parties involved in child support issues.

A. *Model Provision – Child Support: Termination, Modification, or Emancipation*

(A) *The duty to support a child under this section ceases when the child reaches twenty-one years of age, subject to the exceptions provided in subsection (B).*

(B) *Child support may be adjusted or terminated if the court finds that any of the following events occur:*

(1) *The child is emancipated before becoming twenty-one years of age if a court finds the child:*

(a) *is on active duty in the United States armed services;*

(b) *is married;*

(c) *is not under the care or control of either parent;*

or

²¹² See *infra* Part IV (proposing that child support orders be terminated at the age of twenty-one).

²¹³ See *supra* Part II.B (providing a background as to why the federal government began to get involved in child support issues).

²¹⁴ See *supra* note 13 (noting the states that do not allow support beyond high school graduation and that provide no discretion for the court to order such support).

²¹⁵ See *infra* Part IV (recommending that states individually adopt twenty-one as their age of termination for child support orders).

(d) is enrolled in post-secondary education and fails to meet court mandated academic requirements.

(2) The child is incapacitated, at which point support may continue beyond the age of twenty-one, until the court orders payments to cease.

(3) The child is at least eighteen years of age and is capable of supporting himself or herself through employment.

(C) Support shall be modified upon the enrollment in an accredited post-secondary educational institution. The award should be conditioned upon academic guidelines as determined by the court and reported to both parents. The post-secondary education award amount should be entered based on the guidelines set forth in this chapter and should specifically reflect the financial need of the child, the financial resources of both parents, and the amount of time the child spends with the custodial parent in comparison with the amount of time they live on campus.

B. Commentary

The language contained in the proposed statute more adequately protects the interests of all members of a family facing divorce or separation. Most importantly, the model language functionally promotes the ultimate goal of all child support orders: to place a child in as close to the same position that he or she would have been had the child's parents not gotten divorced. To accomplish this goal, this statute addresses three main areas: (1) it provides that the duty to support a child ceases when the child reaches the age of twenty-one; (2) it allows an optional extension should the child pursue post-secondary education, including support for the child's last year of school; and (3) it provides that child support shall be terminated upon the occurrence of certain stated events. Each of these three areas will be more specifically defined below.

As an initial matter, this model statute requires that child support be extended until the child reaches the age of twenty-one. Providing support until the child reaches age twenty-one is beneficial for several reasons.²¹⁶ For one, it protects children who choose to seek employment rather than pursuing post-secondary education yet continue to remain at home with their custodial parent. In such situations, children who are not yet mature enough to support themselves adequately will be

²¹⁶ See *supra* Part III.B.3 (exploring the benefits associated with terminating support at twenty-one).

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financially supported with the aid of his or her parents until the child learns how to sufficiently make a living in today's society. Additionally, this provision of the statute protects the custodial parent's interest—who arguably would be responsible for taking care of the child without the support of the non-custodial parent absent a court ordered requirement—by requiring the non-custodial parent to continue support until the child is more emotionally and financially mature.²¹⁷

Next, this statute more adequately protects the interest of a child pursuing a post-secondary education when that child has a non-intact parental structure by requiring support until the child reaches age twenty-one. This interest is furthered through a provision that allows a court to modify a child support award for the child's fourth year of post-secondary education if needed. The interest of the non-custodial parent is safeguarded by the judicial determination of the award in each state, because a judge will not require a parent to provide such support if he or she cannot afford it. Studies make it readily apparent that financial stability correlates highly with the amount of education that an individual possesses.²¹⁸ No one can doubt the importance of post-secondary education in today's society. However, it is also obvious that children with non-intact parents face much greater challenges in both funding and obtaining post-secondary education.²¹⁹ Consequently, it is up to the legislature in each state to combat these issues and remedy the disparity between children of intact families and those of non-intact families. This statute effectively combats this issue by requiring that non-custodial parents provide support until the child reaches age twenty-one. Under this statute, a child will still receive support during his or her first three years of college education, which eases the child into maturity, adulthood, and financial stability.

In addition to improving the child's ability to pursue post-secondary education, this statute fosters the interest of the non-custodial parent by requiring that, as a condition for support, the child actively include both the custodial parent and the non-custodial parent in the child's education. Specifically, the child must keep his or her parents up-to-date on the child's class schedule, enrollment status, academic achievements, and grades. This ensures that a non-custodial parent is included in the child's educational process and can see the benefits that his or her

²¹⁷ See *supra* note 39 (explaining that a custodial parent frequently shoulders the burden of supporting his or her child even after the non-custodial parent's order for child support has terminated).

²¹⁸ See *supra* note 41 (chronicling the need for a college education and how a child's level of education correlates directly to income).

²¹⁹ See *supra* notes 99-105 and accompanying text (describing many of the issues children from non-intact family structures face compared to children from intact structures).

funding is helping to create for the child. It further protects the interests of the non-custodial parent by providing that if the child is abusing the privilege of continued support for post-secondary education by not meeting certain academic standards, support will be terminated.

The third benefit of this statute is that it allows a judge to terminate support upon the occurrence of certain conditions. This provision ensures that children with non-intact parents are treated as closely as possible to how they would have been treated if their parents had remained together. For example, the statute provides that support ceases if the child: (1) gets married, (2) enters active duty in the military, (3) is not in the care or control of either parent, or (4) is over the age of eighteen and is capable of supporting himself or herself financially through employment. In any family structure, a parent's duty to support his or her child ceases if any of the above conditions are met.

Perhaps most importantly, adoption of this statute would provide uniformity across the states in the context of child support issues. Uniformity is necessary because it guarantees that all children in non-intact families will be treated fairly and equally, regardless of the laws to which the child is subjected.

Critics will argue that non-custodial parents should not be required to support their children past the age of eighteen, because the child should get a job on his or her own. They further argue that non-custodial parents should not be required to provide support for the post-secondary education of their children because married parents are not required to do the same. The former argument is addressed by the proposed statute, because once a child finds a job that allows him or her to be self-sufficient, support is terminated. One fundamental purpose of the statute is to help support the child while he or she is looking for a job at a crucial time of his or her life in a downtrodden economy. The latter argument is addressed by each state individually, as the proposed statute would still provide many of the benefits mentioned if the state chose to adopt the statute without the post-secondary educational aspects.

The majority of case law overwhelmingly supports the constitutionality of post-secondary support awards, while only two states have held such awards to be unconstitutional.²²⁰ Further, courts and opponents agree that, under a rational basis review, post-secondary support statutes pass constitutional muster, because the statute is

²²⁰ See *supra* Part III.A.2 (analyzing the equal protection arguments against post-secondary educational support).

rationally related to a legitimate state interest.²²¹ Overall, the proposed statute meets the needs of everyone involved and provides the best support system possible for a child to mature and have a successful transition into adulthood.

V. CONCLUSION

The well-being, education, and success of our nation's young people are more important than ever. A majority of our nation's child support systems are flawed in that they do not effectively promote the main goal of all child support laws: that a child be placed in as close to the same position as he or she would have been if his or her parents' relationship remained intact. The fact that traditional families can choose whether to financially support their children does not undermine this Note's approach because the overwhelming majority of traditional parents do indeed provide such support. The importance of a college education cannot be understated, and the financial need of children from non-intact families cannot be ignored.

The way to solve this problem is for each state to individually enact legislation changing its age of termination for child support purposes to twenty-one. Additionally, states should allow courts to modify original support awards to include support for post-secondary education, provided that court mandated academic requirements are met and reported to both parents. States should also include certain conditions that allow a court to terminate support, which would be similar to situations in which a child of a traditional family would no longer be receiving support. Overall, by adopting an age of termination of twenty-one for child support purposes, states will provide children of non-intact families with a better opportunity to be successful. Providing financial support to children after they graduate high school will help them transition into the real world and become successful, mature, and financially responsible adults.

Returning to Marilyn's unfortunate situation, had she lived in a state that follows the above proposed statute, she would be able to graduate high school and make the best decision for her future.²²² Whether Marilyn chooses to pursue post-secondary education, decides to seek a job, or joins the armed forces, Marilyn will not be thrust into adulthood until the age of twenty-one unless she feels ready enough and chooses to

²²¹ See *supra* notes 141–45 and accompanying text (discussing the use of the rational basis test in deciding the constitutionality of post-secondary educational support statutes).

²²² See *supra* Part I (introducing Marilyn and Beth in the context of a typical situation many families face in states that terminate child support at the age of eighteen, nineteen, or upon the graduation from high school).

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do so. Moreover, her mother and custodial parent, Beth, will be able to continue to care for her daughter while she is living at home and working toward becoming a mature, capable, and self-sufficient adult.

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* J.D. Candidate, Valparaiso University Law School (2013); B.S. Recreation, Sport and Tourism Management, University of Illinois at Urbana-Champaign (2010). First, I would like to thank my parents, Patrick and Beth, for their constant love and support. I would like to thank Lauren Levitt for her unwavering support, love, and companionship throughout my law school career. A special thanks to my grandmother Marilyn and my late grandfather Kenneth for always reminding me to “keep my eye on the ball” in sports and in life. Additionally, gratitude belongs to Brenda Ambrosius, Jessica, Kim, and Ron Levitt for their invaluable support throughout this process and my law school career, as well as Bruce Hunter for providing thoughtful discussion, inspiration for this topic, and for reviewing my Note. I would also like to thank Dana Rifai of Burke Costanza and Carberry, LLP for discussion and guidance in my research of this topic. Finally, I would like to thank the rest of my family from Washington State to North Carolina for their overwhelming love and support in my pursuit of my dreams.