

Maryland's New Child Support Law

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The child support formula used by the courts in Maryland changed effective October 1, 2010. This is the first revision to the actual formula in the child support law, commonly known as the "guidelines," since its inception in 1989 (although some changes in other aspects of the law have occurred). Generally, this revision increased the amount of support owed when compared with the prior version. Also, instead of stopping at a combined annual family income of \$120,000, this revision extends the guidelines to annual combined family income of \$180,000. Other, less widely applicable, changes also were made.

The original formula was meant to bring more uniformity and predictability to child support rulings from the Maryland courts, and to reflect more objectively the costs of raising children in Maryland. Most practitioners would agree that by and large those goals have been met, especially when compared with how child support was awarded before the guidelines. The revised formula comes more than 20 years after the original law. It is meant to update the guidelines for inflation in the cost of living, and for current typical income levels in Maryland.

This revision, naturally, comes with a healthy dose of legal uncertainty and controversy. Many of the concerns voiced by practitioners involve questions about how the revised guidelines work and whether the results are fair. After all, at their core, the guidelines should be a relatively mechanical application of mathematical inputs to get a predetermined fair result.

One of the criticisms leveled at the new guidelines formula relates to the proper application of the income shares approach. It seems that at the higher levels of the guidelines, and especially when extrapolated, increases in the income of the support recipient do little if anything to lower the support payor's obligation.

Thus, as an illustration, where the payor earns \$10,000 per month (\$120,000 per year) and the recipient earns \$2,000 per month (\$24,000 per year), the new revised basic recommended support obligation is \$1,294 per month (\$15,528 per year). If the recipient's income increases, whether to \$5,000 per month or to \$90,000 per month (or anywhere in between), the payor's support obligation remains essentially unchanged. Some have pointed out this seems counter-intuitive and out of step with an incomes shares approach.

The response seems to be that the guiding principle was more to ensure that the child(ren) receive the benefit of increased family income. As such, the rise of the recipient's income should enure to the child's benefit, as should the static obligation level of the payor. After all, the payor still makes the same amount. Moreover, it is argued the payor does receive an "income shares" benefit. It is just that the payor's income share decreases at the same time as the child's overall needs,

based on economic data and studies, increase. The payor, therefore, is paying a smaller share of a bigger overall support need. And, the payor will receive the full benefit from a smaller income share on all "below the line" fixed expenses, such as work related child care, health insurance, unreimbursed medical expenses, and other agreed upon or otherwise mandated expenses (e.g. private school). Finally, this phenomenon occurs mainly at the upper reaches of the guidelines, where cases are more rare, and in extrapolated situations where the guidelines are no longer presumptive, thus the courts can exercise their discretion to order a more "fair" result.

Another criticism is that the new guidelines failed to address the sole vs. shared guidelines consequences. Essentially, the argument is that a single overnight can reduce the support obligation to such an extent that it will drive custody negotiations, and result in more litigation. In addition to being fundamentally unfair, this situation also seems to be exacerbated by the phenomenon just discussed. This means the difference in amount paid in sole vs. shared guidelines cases increases dramatically as the recipient's income increases. This is true in large part precisely because the support owed in sole custody situations remains static regardless of the recipient's income. Thus, the higher the recipient's income, the greater the incentive for the payor to have a shared guidelines schedule.

A different perspective emphasizes that this phenomenon has always been the case to a certain degree. The number of cases truly affected is small, and, again, either at the top of the guidelines or in extrapolated situations where the courts have significant discretion. It also is pointed out that responsible legal counsel can help clients in this situation keep their priorities in line. It is important that clients consider the process and non-pecuniary costs of pursuing a custody schedule different from the child(ren)'s needs – all just for financial gain where the parents already surpass median income levels.

Another observation is that this phenomenon results from the realities of legislative change. Insufficient support (or too much opposition) existed for successful efforts to meaningfully address the shared guidelines "cliff." The benefits of revised guidelines for the majority of child support cases warranted the possible side effects in a small minority of upper income cases. It already took more than 20 years to get the legislature to make these modest changes. In other words, the damage from failing to address the "cliff" is too small compared with the benefits for so many of the revised guidelines. The risk of failing to get a guidelines revision by seeking greater perfection was too great. Legislative priorities dictated this trade-off.

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A third expressed regret is the failure to obtain a below the line income shares distribution of medical expenses over \$250 per month. The guidelines are based on economic analysis that \$250 per year is the proper amount of annual medical expenses to assume as part of the "basket" of needs. Where medical expenses exceed this amount, therefore, the recipient can be left to carry a larger part of the "basket." This improvement also was sacrificed to the legislative process.

Perhaps these debates also overlook the level of uncertainty and criticism already occasioned by the prior guidelines version. Indeed, both versions of the formula stop for combined incomes above a certain level. Both versions require inputs of income and certain expense information. The proper amount for these inputs can be hotly debated, especially income for the under-employed, self-employed or business owner. And both versions allow for exceptions, or "departures," in unusual factual situations.

As with so many family law issues, every effort to streamline and make more objective their resolution must confront at some point the emotional content of the dispute. Child support certainly can carry a heavy emotional content. Among some of the feelings expressed by clients are fear, inadequacy, shame,

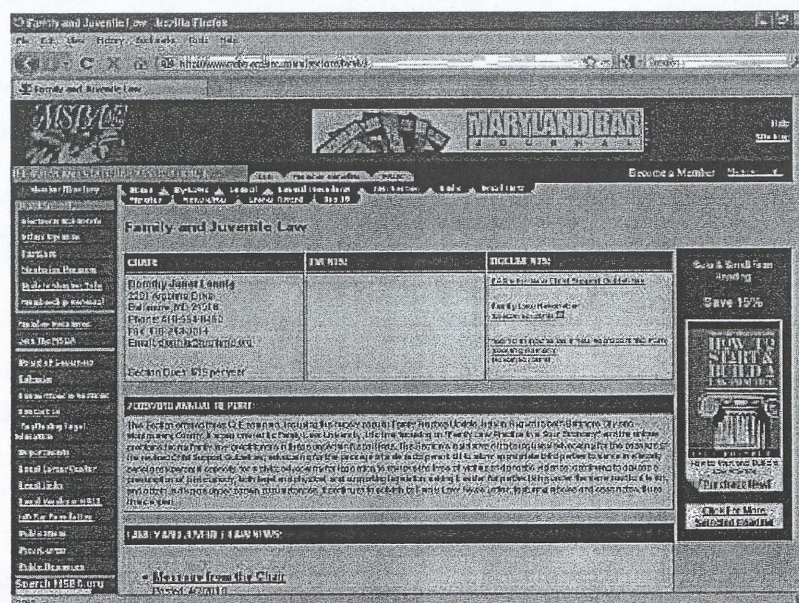
anger, jealousy, greed, injustice and outrage.

These feelings often run deep, and can be very different from first blush appearances. One memorable child support matter was resolved only after the combative payor was given a safe place to express his shame and disappointment at being unable to live up to a promise, made to himself, that he would never abandon his children the way he had been abandoned as a child. How do we put that into a new mathematical formula?

Obviously, it is impossible - unless sensitive, skilled, and wise people help apply the guidelines in a way that accommodates the clients' need to resolve the emotional issues, as well as the practical and financial ones. This is true whether the clients are being helped by a mediator, their private attorneys, the Office of Child Support Enforcement, or a judicial officer. Maybe the answer is not something so new after all.

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http://www.msba.org/sec_comm/sections/family/