

2013

Massachusetts Child Support Guidelines Quadrennial Review



Final Report of the 2012 Task Force
Commonwealth of Massachusetts
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Section I. Executive Summary

Federal law (45 C.F.R. § 302.56(c)) mandates that each state adopt child support guidelines (“the Guidelines”) that must:

1. be based on specific descriptive and numeric criteria;
2. take all earnings and income of the noncustodial parent into consideration; and
3. address how the parents will provide for the child’s healthcare needs through health insurance coverage and/or cash medical support.

In Massachusetts, the Guidelines are promulgated by the Chief Justice of the Trial Court (formerly known as the Chief Justice for Administration and Management).

Federal regulations require that each state “must review, and revise, if appropriate,” its guidelines “at least once every four years to ensure that their application results in the determination of appropriate child support award amounts.” As part of the quadrennial review, states are required to “consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines.” States must analyze the data “to ensure that deviations from the guidelines are limited.”¹

This document is the report of the Child Support Guidelines 2012 Task Force (the Task Force) that was formed by Chief Justice Robert M. Mulligan to review the Guidelines that were adopted in 2009 and make recommendations for changes, if any, to them. The Task Force was chaired by Hon. Paula M. Carey, Chief Justice of the Probate and Family Court Department; its members were Hon. Anthony R. Nesi, First Justice of the Bristol Probate and Family Court, John Johnson, Chief Probation Officer of the Hampden Probate and Family Court and Evelyn J. Patsos, Esq., Family Law Facilitator and Deputy Assistant Register of the Worcester Probate and Family Court.

To undertake its review, the Task Force solicited public comment, by email, letter and in a series of five public forums. It conducted surveys of the judges of the court and the Chief Probation Officers of each division. The Task Force surveyed case data in approximately five hundred child support cases drawn at random from five different courts to analyze the frequency of deviations from the presumptive support orders calculated under the Guidelines.

The Trial Court retained an independent economic consultant, Dr. Mark A. Sarro of Watermark Economics, LLC with Mark Rogers of Rogers Economics, Inc. as a

¹ 45 C.F.R. § 302.56(e).

subcontractor (hereinafter “Sarro and Rogers”) to gather information and provide an analysis of cost of living data and recent economic studies relative to the cost of raising children. Sarro and Rogers also analyzed the 2009 Guidelines, comparing them to the economic studies and the guidelines in other nearby states. Their separate report can be located at <http://www.mass.gov/courts/childsupport/index.html>.

Additionally, Sarro and Rogers provided technical support to the Task Force, modeling thousands of case scenarios with differing income levels of payors and recipients to gauge the impact on support orders of differing guidelines formulae.

The 2009 Guidelines were the result of the work of a prior task force. The 2009 Guidelines substantially rewrote the text of the Guidelines from those that had been in place, with minor amendments, since 1987. Additionally, the 2009 Guidelines adopted a version of the “Income Shares” model of child support, where the support amount is calculated based on the incomes of both parents, and is apportioned between them.

Utilizing the input from the public, the bar, the court, and economists Sarro and Rogers, the Task Force reviewed the text of the Guidelines to determine if clarification of any terms was needed; whether other changes to the law required new or different provisions; and how the revisions made four years ago were working in practice.

The Task Force also reviewed the support calculations that resulted from the application of the 2009 Guidelines in light of the report submitted by Sarro and Rogers, the frequency of deviation survey, and the input received from the court, the public and the bar.

A number of clarifications and changes to the Guidelines text are being recommended by the Task Force. Some are minor, others represent new or modified provisions. The most significant of them are:

- The standard for modification is clarified to reflect the recent Supreme Judicial Court decision in Morales v. Morales, 464 Mass. 507 (2013).
- Income from means tested benefits such as SSI, TAFDC, and SNAP are excluded for both parties from the calculation of their support obligations.
- The text makes clear that all, some, or none of income from secondary jobs or overtime may be considered by the court, regardless of whether this is new income or was historically earned prior to dissolution of the relationship.
- Reference is made to the 2011 Alimony Reform Act; the text does not, however, provide a specific formula or approach for calculating alimony and child support in cases where both may be appropriate.
- Clarification is given as to how child support should be allocated between the parents where their combined income exceeds \$250,000.

- A new formula is provided for calculating support where parenting time and expenditures are less than equal but more than the assumed standard split of two thirds/one third.
- Guidance and clarification is given in the area of child support over the age of eighteen where appropriate. While the Guidelines apply, the court may consider a child's living arrangements and post-secondary education. Contribution to post-secondary education may be ordered after consideration of several factors set forth in the Guidelines and such contribution must be considered in setting the weekly support order, if any.
- Availability of employment at the attributed income level must be considered in attribution of income cases.

When the Task Force reviewed the economic studies, the group determined that, while instructive about child expenditures, no study specifically reflected actual child expenditures by families in Massachusetts. The Task Force did, however, determine that the available economic data appear to suggest that the 2009 Guidelines tables produce support obligations which are above current estimates at the middle and high income ranges for one child. The deviation frequency survey showed that orders were often entered – by agreement of the parties or by judicial determination – that were below the amount suggested in the 2009 Guidelines. Thus, the Task force recommends that the percentage of combined income applied to support orders be reduced at all but the lowest income levels.

Conversely, the Task Force determined that the scaling factors applied to the obligation schedule when there are two or more children was below the increase in child expenditures in all the studies. Accordingly, the rate of increase in the basic (one child) support obligation schedule was adjusted upwards for orders covering two to five children.

In making its recommendations, the Task Force was mindful that the Child Support Guidelines impact thousands of families who come before the court each year. It is a rare case where families have excess resources after meeting the demands that raising children in two households create. The Task Force has, by its recommendations, attempted to strike a balance which is fair to both parents, and, most importantly, to the children.

Section II. Introduction

Since the late 1980's, Congress has required each state to develop one set of child support guidelines and to use them for establishing and modifying child support orders.² In 1987, the (national) Advisory Panel on Child Support Guidelines recommended to states that when enacting guidelines, states should consider that:

“Both parents should share legal responsibility for support of their children, with the economic responsibility divided between the parents in proportion to their income.”³

Although there are no national standards for setting child support amounts, the amount awarded under a state's guidelines is presumed to be the correct amount absent a finding to the contrary. The public policy of the Commonwealth is that dependent children shall be maintained, as completely as possible, from the resources of their parents, thereby relieving or avoiding, the financial responsibility from being placed on the citizens of Massachusetts.⁴ In Massachusetts, the first set of child support guidelines became effective in May 1987. Today, child support guidelines are promulgated by the Chief Justice of the Trial Court.⁵

The ‘face’ of the Massachusetts Guidelines are the children who benefit from them. Guidelines are used to establish a child support order when parents divorce or separate, when an unmarried parent seeks child support, and when child support is sought because a child resides in foster care, is receiving public assistance, or is under the care of a guardian or relative.

In 2010, the U.S. Census Bureau reported that there were approximately 1.4 million children under age 18 living in Massachusetts. At least thirty-one percent of Massachusetts children under age 18 are living with only one parent⁶, in foster care, or in another living arrangement without both parents. Most of these children are entitled to child support. These statistics do not account for the unknown number of Massachusetts children either living in intact, but separated families, or in intact

² The Family Support Act of 1988 (Public Law 100-485).

³ Robert Williams, *Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report* (U.S. Department of Health and Human Services, Office of Child Support Enforcement, 1987).

⁴ G. L. c. 119A, § 1.

⁵ G. L. c. 119A, § 3; G. L. c. 119A, § 13; G. L. c. 208, § 28; G. L. c. 209, § 32; G. L. c. 209, § 37; G. L. c. 209C, § 9; G. L. c. 209C, § 20.

⁶ U.S. Census Bureau, Census 2000 Supplemental Survey, 2001 Supplemental Survey and 2002-2011 American Community Survey (ACS).

families with a stepparent, or who are between the ages of 18 and 23. Many of these children may also be entitled to child support.

According to the Massachusetts Budget and Policy Center, recent data indicate that children in Massachusetts fare better than much of the rest of the nation, as child poverty in the Commonwealth remains unchanged and health insurance coverage is widespread, according to data released by the U.S. Census Bureau with its American Community Survey (ACS).⁷ In 2011, slightly more than one out of every seven children (14.9 percent) in Massachusetts lived in poverty, while nationally, more than one out of every five children (22.2 percent) is poor. Fewer than two percent of children in Massachusetts are uninsured, compared to one in thirteen children (7.5 percent) nationwide.⁸

Federal Review Requirements

Federal regulations require that each state “must review, and revise, if appropriate,” its guidelines “at least once every four years to ensure that their application results in the determination of appropriate child support award amounts.”⁹ As part of the quadrennial review, states are required to “consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines.”¹⁰ States must analyze the data “to ensure that deviations from the guidelines are limited.”¹¹ There is no requirement that states base their guidelines on any one set of economic data.

This report is prepared pursuant to this federal requirement.

The 2008 Review of the Massachusetts Guidelines

The last review of the Massachusetts Child Support Guidelines was conducted from 2006 to 2008, resulting in a set of Guidelines that became effective on January 1, 2009. The review resulted in wholesale revisions to the Guidelines, including the adoption of an Income Shares model as the basis for the Guidelines. Prior to 2008, Massachusetts was the only jurisdiction using a hybrid Income Shares/Percentage of Payor model to establish guidelines amounts. An Income Shares model considers both parents’ incomes when determining the child support award, whereas a Percentage of Payor model considers only the payor’s income. With an Income Shares

⁷ See, *Child Poverty in Massachusetts Unchanged, Most Children Have Health Insurance*, Massachusetts Budget and Policy Center, September 20, 2012 at http://www.massbudget.org/report_window.php?loc=census_child_poverty_2012.html.

⁸ *Id.*

⁹ 45 C.F.R. § 302.56(e).

¹⁰ 45 C.F.R. § 302.56(h).

¹¹ *Id.*

model, each parent is financially responsible for his or her prorated share of child-rearing expenses.¹²

In forming its recommendations, the 2008 Task Force considered economic research and empirical evidence on the magnitude of child costs and how those costs vary by household income and family size. The 2008 Task Force concluded that although the economic research was useful, establishing child support guidelines ultimately involves policy considerations and cannot be based purely on economic data. Therefore, the 2009 Guidelines reflect some broad principles and implications of the economic research, but not a specific numeric result. The broad principles include: (1) the importance of an economically sound household to a child; (2) the percentage of income devoted to children's needs often declines at higher income amounts; and (3) assumptions that older children are more expensive as a percentage of household income than younger children have not been proven.

The 2008 Task Force recognized that a child's economic welfare is inextricably linked to the economic wellbeing of her or his caregivers. For those reasons, the 2008 Task Force determined that isolation of the specific household costs attributable to the child, who is the objective goal of the economic models, was neither necessary nor appropriate. Details of the prior review can be found in the 2008 Child Support Guidelines Task Force Report.¹³

The 2008 review resulted in a set of Guidelines that consist of two separate documents and two court forms. The first document, titled, "Child Support Guidelines", contains specific descriptive criteria in a textual format. Overall, the text reflects policy decisions. The second document, titled, "Child Support Guidelines Chart", reflects the basic child support obligation schedule based on the combined gross available income of both parents after deducting allowable medical and dental/vision insurance and before adjusting for multiple children. The payor's weekly child support amount is calculated using the numeric formula specified in the revised Child Support Worksheet. The Worksheet calculations can be done by hand or by using an automated version of the Worksheet. If the court deviates from the Guidelines in any way, the court must enter specific findings. The specific findings are entered on the Child Support Findings form.

¹² See, e.g., Center for Policy Research, "Proposal to Adopt the Income Shares Model for the Illinois Child Support Guidelines," Draft Report (May 16, 2012), p. 3.

¹³ The October 2008 report is available at www.mass.gov/courts/childsupport.

Section III. The Current Review

The 2012 Task Force

The Task Force undertaking the current quadrennial review was appointed by Chief Justice for the Trial Court, Robert A. Mulligan. In light of the 2008 review and resultant wholesale revisions, Chief Justice Mulligan determined that the current review would be conducted by a smaller Task Force whose members are Trial Court judges and employees. The 2012 Task Force members are Hon. Paula M. Carey, Chief Justice of the Probate and Family Court (Chair); Hon. Anthony R. Nesi, First Justice of the Bristol Division of the Probate and Family Court; John Johnson, Chief Probation Officer of the Hampden Probate and Family Court; and Evelyn Patsos, Esq., Family Law Facilitator and Deputy Assistant Register from the Worcester Division of the Probate and Family Court. The Task Force was assisted by Trial Court personnel, attorneys Christine Yurgelun and Ann Archer.

The purpose of the Task Force was to consider the 2009 Guidelines, underlying assumptions, methodology, and concerns raised as a result of the application of the Guidelines since the last review and to formulate any recommendations for changes.

Economic Consultant

In addition to establishing a Task Force, the Trial Court also retained a consultant to gather information and provide an analysis of cost of living data for Massachusetts, focusing on data relative to the cost of raising a child in Massachusetts. The consultant was asked specifically to focus on the Guidelines promulgated on January 1, 2009 and how they reconciled with current cost of living data, with special attention to a comparison of the differences in cost between 2008 and the present.

The Trial Court engaged Watermark Economics, LLC, with Rogers Economics, Inc. as a subcontractor, to conduct this economic analysis. Dr. Mark Sarro of Watermark Economics and Mark Rogers of Rogers Economics were the consultants assigned to this project.

Overview of the Process

Once formed, the Task Force held a number of all day meetings between April 2012 and April 2013. Chief Justice Paula M. Carey, Chair of the Task Force, presided. Economist Mark Sarro attended most of the Task Force meetings, in a consulting capacity, presenting economic data and information to the Task Force and responding to questions of an economic nature. Economist Mark Rogers participated in several meetings via telephone.

Initial Meetings

During the first few meetings, the Task Force established a plan to solicit feedback from a wide range of stakeholders, including parents, judges and court staff, bar associations, legal services providers, and the state's Child Support Enforcement agency on the 2009 Guidelines. The Task Force identified and utilized the following methods to gather this information.

Public Comments

Since April 2012, comments could be directed to the attention of the Task Force via a dedicated email address and/or via US Postal Service. Chief Justice Mulligan wrote letters to the leaders of local and statewide Bar Associations announcing the appointment of the Task Force and inviting comments and suggestions. The Task Force also established a "Child Support Hub", located on the Probate and Family Court website, dedicated solely to child support information. All correspondence and written comments submitted to the Task Force have been reviewed and considered by all Task Force members.

To assist the public in voicing their opinions and making suggestions to the Task Force, there were five public hearings conducted in 2012 across the state, and any person who wished to speak was allowed to do so, often multiple times. The hearings were held in the following locations and dates: September 11 at the Fenton Judicial Center in Lawrence; September 12 at the Edward Brooke Courthouse in Boston; September 13 at the Worcester Courthouse; September 18 at the Hall of Justice in Springfield; and September 19 at the Courthouse in Plymouth. All Task Force members attended all hearings, and listened to all comments. Written materials were submitted to the Task Force at the hearings which were accepted and reviewed regardless of whether or not the individual submitting the written material elected to speak publicly.

A summary of the feedback provided by the public can be found in Appendix H.

Surveys

During the summer of 2012, all of the judges of the Probate and Family Court were surveyed concerning their experience with the current guidelines. Judges were asked about their experience and satisfaction with the guidelines as written and applied. A survey of the Probate and Family Court Probation Officers was also conducted during the summer, inviting suggestions and feedback from probation officers in all divisions. The surveys were intended to identify issues that the Task Force should consider, along with issues that should be given priority.

A summary of the results provided by the surveys can be found in Appendix G.

Case Data

Pursuant to federal requirements, the Task Force gathered data on the frequency of the occurrence of deviations from the guidelines. A review of 100 computerized random selection of cases in each of five divisions was undertaken to determine the frequency of deviations reflected in child support orders docketed during the period between July 1, 2010 and June 30, 2011. The case records in the Bristol, Essex, Hampden, Middlesex and Plymouth Divisions of the Probate and Family Court were reviewed to determine the frequency and dollar amount of deviations. The following case types were included in this review: Divorce; Child Support; Custody/Support/Visitation; Modification; and Contempt. The Task Force also considered whether the deviations occurred as a result of agreement (or stipulation) between the parties.

The specific results of the case data review are outlined in Section V of this report.

Legal research

Legal research was done on several issues, including whether the 2009 Guidelines meet the minimum general requirements established under the applicable federal regulations and issues related to post-majority child support.

Subsequent Meetings

Once feedback was gathered from all stakeholders, the Task Force turned to economists Sarro and Rogers for information. Sarro and Rogers provided the Task Force with data, analysis, and information regarding: (1) the economic approaches used to estimate child costs; (2) current estimates of child costs from economic studies and data sources; (3) how the structure and results of the Guidelines presumptive amounts compare to other states, especially states neighboring Massachusetts; and (4) alternative child support amounts under different formulas and percentage tables for various hypothetical fact patterns, to understand the potential impact of changes to the Guidelines. Their final report, "Economic Review of the Massachusetts Child Support Guidelines" was submitted to the Task Force in June 2013.

The report of economists Sarro and Rogers can be located at <http://www.mass.gov/courts/childsupport/index.html>.

Using economic data and stakeholder feedback as a starting point, the Task Force established a list of priorities for this review:

1. Evaluate the 2009 Guidelines percentages in Table A in light of updated economic studies and stakeholder feedback and update the 2009 Child Support Guidelines Chart, if necessary;
2. Analyze the current case data to determine the frequency of deviations;
3. Review and update, if necessary, the text of the 2009 Guidelines to reflect new case law, policy decisions and changes to basic child support amounts, if any;

4. Review and update, if necessary, the 2009 Child Support Guidelines Worksheet and 2009 Findings form to incorporate any changes if appropriate.

Armed with a list of priorities and feedback, the Task Force began its analysis.

Section IV. Analysis and Considerations

State Guidelines Set Amounts for Child Support

There are no national standards for determining child support amounts. Each state has its own formula for establishing child support amounts. Federal regulations (45 C.F.R. s. 302.56 (c)), only require that a state's guidelines must:

1. Be based on specific descriptive and numeric criteria;
2. Take all earnings and income of the non-custodial parent into consideration; and
3. Address how the parents will provide for the child's healthcare needs through health insurance coverage and/or cash medical support.

As a result, child support amounts differ between states to varying degrees. Currently, all states use one of three models to establish its guidelines amounts: (1) Income Shares, (2) Percent of Payor Income; or (3) the Melson Formula. What guidelines model a state uses is ultimately a policy decision.

Massachusetts, like the majority of states, uses the Income Shares model to set its guidelines amounts for child support. Table 1 shows each state by its selected guidelines model.

Table 1: Guidelines Approaches by State

Income Shares			Percent of Payor Income	Melson Formula
Alabama	Louisiana	Oklahoma	Alaska	Delaware
Arizona	Maine	Oregon	Arkansas	Hawaii
California	Maryland	Pennsylvania	Illinois	Montana
Colorado	Massachusetts	Rhode Island*	Mississippi	
Connecticut*	Michigan	South Carolina	Nevada	
Washington DC	Minnesota	South Dakota	New York *	
Florida	Missouri	Tennessee	North Dakota	
Georgia	Nebraska	Utah	Texas	
Idaho	New Hampshire*	Vermont*	Wisconsin	
Indiana	New Jersey	Virginia		
Iowa	New Mexico	Washington		
Kansas	North Carolina	West Virginia		
Kentucky	Ohio	Wyoming		
All			9	3
			76%	6%
*Neighboring MA			2	0
			40%	0%

Source: (All but NH) Center for Policy Research reports: 2009 (NH), p. 3; 2012 (PA), p. 4.

Note: New Hampshire's current child support guidelines are a flat percent of payor income, varying only by the number of children. However, per House Bill 597 passed in 2012, New Hampshire's child support guidelines will shift to the Income Shares approach, effective July 1, 2013.

The Income Shares Model

The Income Shares model was originally developed by the Child Support Guidelines Project of the National Center for State Courts. At the heart of the Guidelines is a chart or schedule of basic support amounts that reflect child-rearing expenditures for a range of combined parental incomes. The concept behind the Income Shares model is that a child should receive the same proportion of parental income that he or she would have received if the child's household remained intact. In an intact household, the income of both parents is generally pooled and spent for the benefit of all household members, including any children.¹⁴ After dissolution, the level of spending is prorated between the parents based on their respective incomes. The proportion allocated to the payor is the basic child support award. Most states have determined that guidelines based on an Income Shares model is a fairer approach to calculating child support for parents than the Percent of Payor Income approach or the Melson Formula because the Income Shares model apportions child-rearing expenditures between both parents based on their financial means.

Guidelines based on the Income Shares model reflect estimates of child-rearing expenditures for a range of combined parental incomes rather than the costs of basic

¹⁴ See, National Conference of State Legislatures, 'Child Support Guideline Models by Model Type', available at www.ncsl.org/issues-research/human-services/guideline-model-by-type.aspx.

needs. An example of a measure of the costs of a child's basic needs is the federal poverty level. No state bases its child support guidelines solely on the costs of a child's basic needs because most states, like Massachusetts, rely on the public policy position that children are entitled to share in the lifestyle afforded by their parent or parents and not just be entitled to basic needs. This policy decision recognizes that children of non-intact families should be afforded the same financial benefits as children of intact families with similar incomes. In other words, "children should not be forced to live in poverty because of their parents' decisions to separate, divorce, or not marry."¹⁵

Opponents of the Income Shares model argue that maintaining a child's standard of living, post separation, likely requires more income than is actually available to a non-intact household because the model fails to account for the costs associated with maintaining two separate households.¹⁶ Guidelines amounts should therefore be lower to account for the payor parent's household expense. Connecticut, an Income Shares state, counters this argument with the following guideline principle:

"Underlying the income shares model, therefore, is the policy that the parents should bear any additional expenses resulting from the maintenance of two separate households instead of one, since it is not the child's decision that the parents divorce, separate, or otherwise live separately."¹⁷

Although not expressly stated, the 2009 Massachusetts Guidelines echo a similar principle.

Estimating Child-Rearing Expenditures

Guidelines based on the Income Shares model rely, to some degree, on specific economic studies that estimate child expenditures.¹⁸ None of the economic studies, however, measure actual spending on children; nor are any of the economic studies based on state specific data. Instead, the economic studies estimate average child-rearing expenditures using national or regional data. Understanding these limitations is critical, because it means that estimates resulting from economic research most likely do not reflect an appropriate spending level for a given state let alone a specific case or family.

¹⁵ State of Colorado, Child Support Commission, Final Report (July 2011).

¹⁶ "Income Shares, Child Support Guidelines and the Issue of Second Household Adjustment" by R. Mark Rogers (2012). See also public comments in Appendix H of this report.

¹⁷ See, State of Connecticut, Commission for Child Support Guidelines, "Child Support and Arrearage Guidelines, Effective August 2005", Section (a) Basic Principles.

¹⁸ For a list of specific economic studies, see p. 16 of this report.

Economists Sarro and Rogers point out that part of the problem with measuring child-rearing expenditures is that most child expenditures are not directly observable.¹⁹ For example, necessities such as food and housing are indirect expenditures shared by both adults and children in the household. These expenditures cannot be directly attributed to a particular person in the household because economic data are not available on each person's share of the overall cost.

Another problem is that child-rearing expenditures are not uniform across households.²⁰ There is wide variation across and within income groups in what households typically spend on children. Therefore, the economic research is based on 'average' expenditures on children for a given level of household income and number of children.

Since the available economic data only reflect national estimates of child-rearing expenditures for any given time period, the economic studies (and data comparisons with other states) were considered 'informational only' by this Task Force. Economists Sarro and Rogers agree that the economic data should be considered as informative only.²¹ Similar to the prior Task Force (2008) during the last review, this Task Force believes that establishing child support guidelines ultimately relies on policy decisions and not purely economic principles.

Economists Sarro and Rogers point out, "The practical reality is that no simple child support guidelines formula, while presumptively correct as a policy matter, can be economically correct in all cases."²² As a fundamental matter, this Task Force agrees that establishing guidelines amounts solely based on national estimates of child-rearing expenditures simply cannot generate, precisely or objectively, economically appropriate guidelines amounts for Massachusetts.

Economic studies estimating child-rearing expenditures from 1981 to 2013 are as follows:

¹⁹ M. Sarro and R.M. Rogers, "Economic Review of the Massachusetts Child Support Guidelines" (June 2013), p. 12.

Note: For ease of the reader, all further citations to the economists report will be as follows: Sarro and Rogers at p. ____.

²⁰ Sarro and Rogers at p. 12.

²¹ Sarro and Rogers at p. 12.

²² Sarro and Rogers at p. 13.

Studies of Child Expenditures (listed from earliest to most recent)

Jacques van der Gaag (1981). *On Measuring the Cost of Children*. Discussion Paper 663-81. University of Wisconsin Institute for Research on Poverty, Madison, Wisconsin.

Thomas J. Espenshade (1984). *Investing in Children: New Estimates of Parental Expenditures*, Urban Institute Press: Washington, D.C.

David M. Betson (1990). *Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey*, Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, University of Wisconsin Institute for Research on Poverty, Madison, Wisconsin.

David M. Betson (2001). "Chapter 5: Parental Expenditures on Children," in Judicial Council of California, *Review of Statewide Uniform Child Support Guidelines*, San Francisco, California (2001). Available at <http://www.courtinfo.ca.gov/programs/cfcc/1058files2001/CH5.PDF>.76

Mark Lino (2002). *Expenditures on Children by Families: 2001 Annual Report* (2002), U.S. Department of Agriculture, Center for Nutrition and Policy Promotion. Miscellaneous Publication No. 1528- 2002, Washington, D.C.

David M. Betson (2006). "Appendix I: New Estimates of Child-Rearing Costs in PSI," *State of Oregon Child Support Guidelines Review: Updated Obligation Scales and Other Considerations, Report to State of Oregon*, Policy Studies Inc., Denver Colorado. Available at http://www.dcs.state.or.us/oregon_admin_rules/psi_guidelines_review_2007.pdf.

New Studies Since 2009

Thomas S. McCaleb, David A. Macpherson, & Stefan C. Norrbin (2008). *Review and Update of Florida's Child Support Guidelines*, Report to the Florida Legislature, Florida State University, Tallahassee.

Mark Lino (2010). *Expenditures on Children by Families: 2009 Annual Report*, U.S. Department of Agriculture, Center for Nutrition and Policy Promotion. Miscellaneous Publication No. 1528-2009. Available at <http://www.cnpp.usda.gov/ExpendituresonChildrenbyFamilies.htm>.

David M. Betson (2010). "Appendix A: Parental Expenditures on Children: Rothbarth Estimates," in Judicial Council of California, *Review of Statewide Uniform Child Support Guidelines*, San Francisco, California.

Crittenton Women's Union (March 2013). "Massachusetts Economic Independence Index 2013", available at www.liveworkthrive.org.

Source: (All but Crittenton Women's Union) Center for Policy Research Report: *2010 Review of the New York Child Support Guidelines* (November 2010). Exhibit 4.5 Studies of Child-Rearing Expenditures, p. 62.

The Best Method to Estimate Child-Rearing Expenditures

Simply put, there isn't one. Economists do not agree on the best method to estimate spending on children. To distinguish child-rearing expenditures from adult

expenditures in a household, economists typically use one of three methods: the Engel, the Rothbarth or the U.S. Department of Agriculture (USDA) approach.

The Engel and Rothbarth methods (often referred to as the Engel and Rothbarth ‘estimators’) use an indirect approach by comparing expenditures between couples with, and without, children, whereas the USDA method uses a direct approach by considering the expenditures made by certain households in various categories.

The Engel and Rothbarth Approach

The Engel and the Rothbarth methods are a marginal cost approach in that they measure child-rearing expenditures by comparing expenditures between families with the same standard of living with, and without, children. The difference in total spending between the two families is deemed child-rearing costs. The Engel and Rothbarth methods both predate child support guidelines calculations and neither method was originally developed to measure child-rearing expenditures. Both methods use a proxy or ‘estimator’ to first ensure that the families that are compared have the same standard of living.

The Engel approach assumes that if two families spend an equal percentage of their total spending on food, they have the same standard of living. The Engel approach uses the proxy or estimator of ‘food’ to estimate child-rearing expenditures based on the difference in total spending between equivalent households with the same food costs (as a proportion of income) but with different numbers of children.

Although a number of states originally implemented guidelines based on variations of the Engel-based estimates, some economists now feel that the Engel-based estimates are unreasonably high because children are “food intensive”, that is, food is a larger share of spending for children than it is for adults, resulting in a higher estimate of child costs.²³ As a result, Dr. David Betson at the University of Notre Dame applied a different proxy or estimator to the method originally developed by statistician Erwin Rothbarth to estimate household expenditures on children.²⁴

The Rothbarth approach uses the proxy or estimator of ‘adult clothing’ to measure a household’s economic well-being. The Rothbarth approach assumes that if two households (one with children and one without) spend the same amount on adult clothing (instead of food), then they are equally well off, or have the same standard of living, regardless of family size. Using this approach, child-rearing expenditures are then measured by the difference in total spending between households with the same adult-only clothing expenditures, but different numbers of children.

²³ See, e.g., David M. Betson, “Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey,” September 1990, pp.55-56, stating, “. . . given the high estimates that result from this methodology, even when compared to the per capita method, the estimates from the Engel method should be discounted.”

²⁴ Rothbarth estimates are often referred to as the “Betson-Rothbarth” estimates as a result.

Critique of the Engel and Rothbarth Approach

Dr. Mark Lino, an economist with the USDA's Center for Nutrition Policy and Promotion (CNNP), cautions that the Engel and Rothbarth estimators have several limitations:²⁵

- The Engel and Rothbarth estimators are not true marginal cost approaches.

A true marginal cost approach would track the same sample of families over time. Marginal cost approaches, as implemented, do not do this. They examine two different sets of families, those with children and those without children, at one point in time.

- The marginal cost approach does not consider substitution effects.

The marginal cost approach assumes parents do not change their expenditures on themselves after a child is added to a household. For example, many families may reduce the number of vacations they take once they have children. However, with the marginal cost method, transportation expenses of these families without children would be compared with expenses of families with children, likely leading to underestimates of transportation expenses on a child.

- Problems with the marginal cost method are likely to be more severe if used to calculate miscellaneous expenses on a child.

Published data show entertainment expenses, one of the major components of the miscellaneous category, were greater for husband-wife couples without children than for husband-wife families with young children (citing to U.S. Department of Labor, 2008). Using the marginal cost method in this case could lead to the questionable result of having negative entertainment expenditures on a child. The household entertainment expenses of husband-wife couples without children were about the same as those of husband-wife families with an oldest child over age 18 living in the household, suggesting a minuscule expenditure on a child (citing to U.S. Department of Labor, 2008).

- The marginal cost approach yields different results.

When using the marginal cost method in estimating expenditures on children, a researcher's estimator is crucial because different estimators yield different results.

Even using the same estimator can result in different estimates, depending on the years of data used and model specification. For example, the 2010 (referred to by Lino as "Rothbarth 2011" for the date of publication) study based on the Rothbarth estimator found that for two-child families, 37 percent of total family expenditures went to goods and services for children (Judicial Council of California, 2011), while the

²⁵ Lino, M. (2012). *Expenditures on Children by Families, 2011*. U.S. Department of Agriculture, Center for Nutrition Policy and Promotion. (Miscellaneous Publication No. 1528-2011). **Note: For ease of the reader, all further citations to the USDA (2012) report will be as follows: USDA (2012) at p. ____.**

2008 study using the Rothbarth estimator found that 47 percent of expenditures went to goods and services for two children (McCaleb et al., 2008). The 2008 study found the Rothbarth estimator to be the most sensitive to underlying data and sample restrictions. Also, the 2010 study calls into question the validity of the Engel approach.²⁶

The USDA Approach

Every year since 1960, the USDA has estimated household expenditures on children through age 17 for both married (husband and wife only) and single parent households. The USDA's most recent report was released in June 2012.²⁷ The USDA method to estimate child costs is not a marginal cost approach like the Engel or Rothbarth method. Instead, the USDA methodology is based on several steps: (1) identifying specific categories of typical household expenses, (2) allocating child-specific expenses (clothing, child care, and education) in the Consumer Expenditure Survey (CEX) data directly to children, (3) allocating household expenses such as food and health care to children based on findings from Federal surveys on children's budget shares or on a per capita basis (transportation and miscellaneous items), and (4) estimating housing expenses on a child by using an approach that accounts for the average cost of an additional bedroom.

Critique of the USDA Approach

As with the Engel and Rothbarth methods, economists caution that the USDA's methodology has its own limitations and may overstate child-rearing expenditures. For example, economists Sarro and Rogers state:

Prior to 2008, the USDA estimated expenditures for shared costs within a household, such as housing and transportation, on a per capita basis; that is, by dividing the expenditure by the number of people in the household. Most economists agree the per capita approach overstates actual child costs. It violates the economic principle that allocation decisions depend on marginal rather than average costs. Optimal decisions require balancing the additional benefits with the additional costs from any proposed, but per capita estimates simply reflect average costs. Notably, per capita allocation moves some pre-existing adult costs to child cost estimates.

As a result, the USDA discarded that approach for housing expenditures in its most recent reports.

²⁶ USDA (2012) at p. 19.

²⁷ USDA (2012) at p. 1.

Instead, housing expenditures on children are inferred from the average cost of an additional bedroom. Implicit in this approach is the assumption that the same household without children would live in a similar dwelling but with fewer bedrooms. That assumption may be correct in some cases, but not always. Also, the marginal cost approach does not apply only to just housing; it applies to other expenditure categories as well.

However, the USDA continues to simply prorate other expenses, such as food, transportation, and miscellaneous, by a pre-determined factor related to the number of people in the household. For example, the USDA essentially assumes a child's haircut costs the same as a woman's hair treatment. Also, the cost of transportation (such as automobile note payment and gasoline) are equally pro-rated between adults and children even though adults would incur nearly all of these expenses even without children. Finally, the USDA in recent years added payment on principal on house payments as part of its cost calculations. Other methodologies exclude payment on principal because it is considered an investment and not a cost. These factors lead most economists to view the USDA methodology to overstate child costs.²⁸

The Underlying Expenditure Data

Economic studies use national data from families participating in the Consumer Expenditure Survey (CEX) conducted by the U. S. Census Bureau²⁹ for various survey years to estimate child-rearing expenditures. The CEX is considered "the most comprehensive source of information on household expenditures available at the national level, containing expenditure data for housing, food, transportation, clothing, health care, child care and education, and miscellaneous goods and services."³⁰ The following list describes the specific items in each expenditure category

²⁸ Sarro and Rogers at pp. 24-25.

²⁹ For more information on the Consumer Expenditure Survey, see www.bls.gov/cex.

³⁰ USDA (2012) at p. 1.

Categories of Household Expenditures:

Housing expenses consist of shelter (mortgage payments, property taxes, or rent; maintenance and repairs; and insurance), utilities (gas, electricity, fuel, cell/telephone, and water), and house furnishings and equipment (furniture, floor coverings, major appliances, and small appliances). Mortgage payments included principal and interest payments. Overall, principal payments constituted 15 percent of overall housing expenses.

Food expenses consist of food and nonalcoholic beverages purchased at grocery, convenience, and specialty stores, including purchases with Food Stamp Program (now the Supplemental Nutrition Assistance Program) benefits; dining at restaurants; and household expenditures on school meals.

Transportation expenses consist of the monthly payments on vehicle loans, down payments, gasoline and motor oil, maintenance and repairs, insurance, and public transportation (including airline fares).

Clothing expenses consist of children's apparel such as diapers, shirts, pants, dresses, and suits; footwear; and clothing services such as dry cleaning, alterations, and repair.

Health care expenses consist of medical and dental services not covered by insurance, prescription drugs and medical supplies not covered by insurance, and health insurance premiums not paid by an employer or other organization. Medical services include those related to physical and mental health.

Child care and education expenses consist of day care tuition and supplies; baby-sitting; and elementary and high school tuition, books, fees, and supplies. Books, fees, and supplies may be for private or public schools.

Miscellaneous expenses consist of personal care items (haircuts, toothbrushes, etc.), entertainment (portable media players, sports equipment, televisions, computers, etc.), and reading materials (non-school books, magazines, etc.).

Source: USDA (2012) at p. 2.

Although the CEX is the nation's largest and most comprehensive survey of household expenditure data, economists Sarro and Rogers caution that estimates of child-rearing expenditures are only as good as the data on which they are based.³¹ For example, Sarro and Rogers note the following limitations with the CEX data:

³¹ Sarro and Rogers at p. 20.

- The CEX data are based on intact households only, which may not accurately reflect the cost of two separate households.
- The CEX data may include too few households to be reliable once the total number of respondents is divided into different income and family size categories.
- The CEX data show expenditures in excess of reported income for about half of the respondents, typically those in the lower income groups, which may indicate that actual income for lower income groups is higher than reported income or that respondents in the lower income groups are spending more than their income.
- At higher incomes, the CEX data show unreasonably high reported savings for high income groups, suggesting that expenditures may be underreported.³²

The Task Force (2012) considered the economic research utilizing the Rothbarth and USDA methodologies to estimate child-rearing expenditures. However, because economists in general do not agree that any one method best estimates child-rearing expenditures and because economists agree that the data underlying the economic studies has limitations, this Task Force has determined that no one approach provides the best method to estimate child-rearing expenditures. Consistent with the review by the prior Task Force, this Task Force (2012) finds the economic research informative, but not determinative.

To illustrate, the Task Force noted that the methodologies used to estimate child-rearing expenditures since 2000 have resulted in a range of estimates for child-rearing expenditures for one, two and three children. For example, the most recent USDA report (2012) published a table ³³ (Table 9, below) that illustrates the average percent of household expenditures attributable to children in intact households (specifically, husband-wife), by estimator and number of children.

³² Sarro and Rogers at pp. 20-21.

³³ USDA (2012) at p.19.

Table 9. Average percent of household expenditures attributable to children in husband-wife families, by estimator and number of children

Number of children	One	Two	Three
	<i>Percent</i>		
Estimator			
Engel (2001) ¹	30	44	52
Rothbarth (2001) ¹	26	36	42
Rothbarth (2006) ²	25	37	44
Engel (2008) ³	21	31	38
Rothbarth (2008) ³	32	47	57
Rothbarth (2011) ⁴	24	37	45
Average of above	26	39	46
USDA (2012)	27	41	47

¹From Judicial Council of California (2001).

²From Policy Studies Inc. (2006).

³From McCaleb, Macpherson, and Norrbin (2008).

⁴From Judicial Council of California (2011).

Source: USDA (2012) at p. 19.

The Table highlights that since 2000, for one child, the estimates ranged between 21 to 32 percent of household expenditures being spent on the child (11 percentage point difference); for two children, 31 to 47 percent (16 percentage point difference); and for three children, 38 to 57 percent (almost a 20 percentage point difference).

The Task Force (2012) finds that the various approaches to estimating child-rearing expenditures are overall informative, but are not determinative even on a national level.

The 2009 Guidelines

The changes from the 2008 review are reflected in the percentages and multipliers listed in Tables A and B on the 2009 Guidelines Worksheet, respectively. Table A on the Worksheet lists the marginal percentages of combined income used to determine the amount of child support for one child as income increases up to \$250,000 per year. Each marginal percentage represents the share of incremental combined

available income used to calculate the total child support amount. The resulting child support amount reflects the income-weighted average of the series of marginal percentages up to the actual amount of combined available income in a particular case. The marginal percentages range in an 'arc' from 21 percent of combined income at the lowest levels, to 26 percent of incremental income (between \$321 and \$500 per week), and gradually declining to 15 percent at the highest income levels (above \$3500 per week). The resulting effective (i.e., weighted average) percentages range from a minimum of 18 percent of combined income to as high as 25 percent.

TABLE A: CHILD SUPPORT OBLIGATION SCHEDULE						
<i>All amounts are \$ / week, rounded to the nearest dollar</i>						
COMBINED AVAILABLE INCOME FROM LINE 1(g)			CHILD SUPPORT AMOUNT (1 CHILD)			
Minimum		Maximum	At court discretion, but not less than \$80/month			
\$-	□:□	\$100	21%			
\$101	□:□	\$200	24%			
\$201	□:□	\$320				
\$321	□:□	\$500	\$77	+	26%	above \$320
\$501	□:□	\$1,000	\$124	+	25%	above \$500
\$1,001	□:□	\$1,500	\$249	+	22%	above \$1,000
\$1,501	□:□	\$2,500	\$359	+	19%	above \$1,500
\$2,501	□:□	\$3,500	\$549	+	17%	above \$2,500
\$3,501	□:	\$4,808	\$719	+	15%	above \$3,500

Source: 2009 Guidelines Worksheet, Table A

The shape of the arc under the 2009 Guidelines is shown in Figure 1, below. The shape of the arc was intended to reflect the marginal propensity to spend relatively more available income on children as household income increases from low-income levels, up to a point. For income levels outside of the poverty-level range, child-rearing expenditures represent a decreasing percentage of household income. At the lowest income levels, most expenditures cover fixed costs shared by children and adults in a household (e.g., housing, heat, etc.). As income increases, to a point, the household is able to spend relatively more on child-specific items, but at higher and higher income levels, marginal child costs represent a smaller share of overall household spending.³⁴

³⁴ Economic research shows that the proportion of income spent on children generally decreases as income increases. This relationship is reflected in virtually all of the economic estimates of child costs underlying child support guidelines in most states (i.e., so-called Income Shares states) (as cited by Sarro and Rogers at p. 9).

Figure 1: Current Guidelines Marginal Income Percentages (1 child)

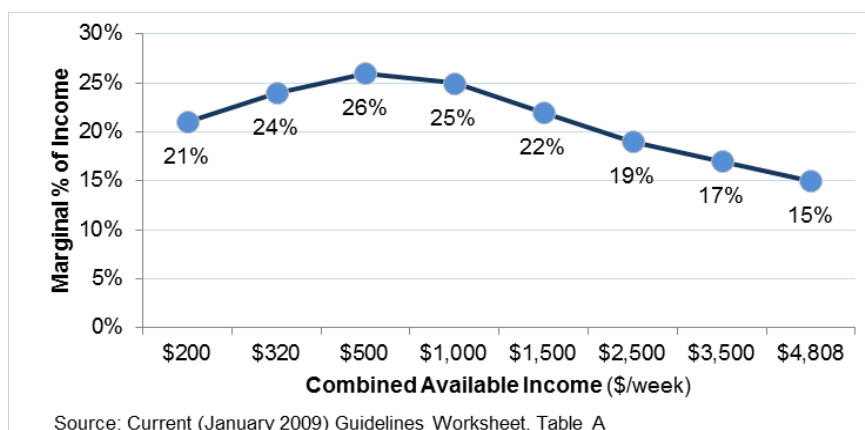


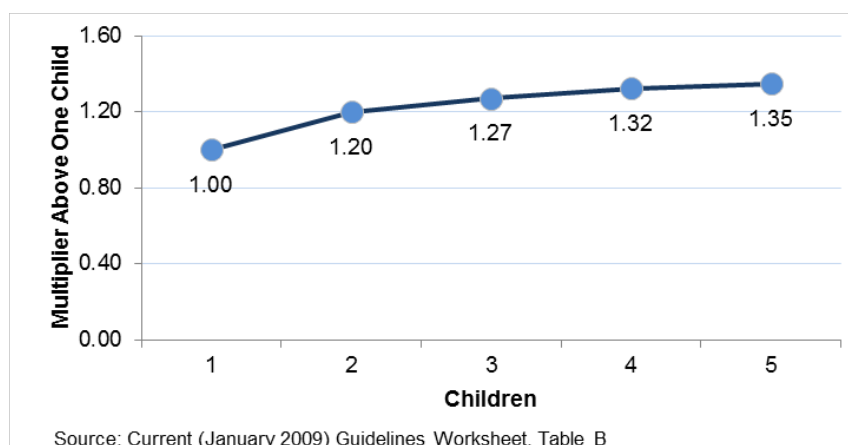
Table B (Adjustment for Number of Children) of the 2009 Worksheet provides adjustment factors for child support amounts for additional children. The child support amounts are increased by 20 percent for one additional child and by an additional 6 percent, 4 percent and 2 percent for each additional child. The corresponding adjustment factors for additional children under the 2009 Guidelines are 1.20, 1.27, 1.32, and 1.35 times the Guidelines amount for one child.

TABLE B: ADJUSTMENT FOR NUMBER OF CHILDREN	
CHILDREN	ADJUSTMENT
1	1.00
2	1.20
3	1.27
4	1.32
5	1.35

Source: 2009 Guidelines Worksheet, Table B

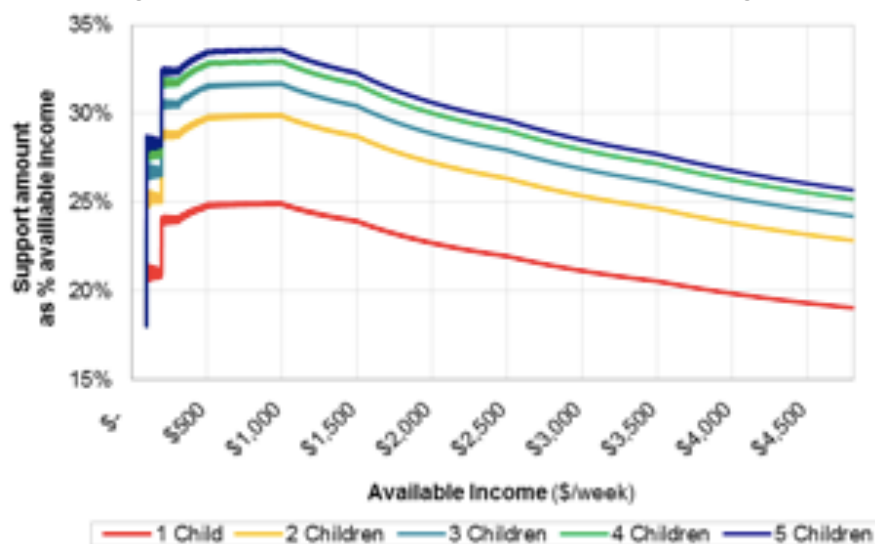
Figure 2 shows the shape of the adjustment factors under the 2009 Guidelines.

Figure 2: Current Guidelines Adjustment Factors for Additional Children



Based on the income percentages and adjustment factors in Figures 1 and 2, the Guidelines amounts for one child range from 18 to 25 percent of the combined gross available income of the payor and recipient. The Guidelines represent up to 30 percent of gross combined income for two children, and up to 35 percent for five children.

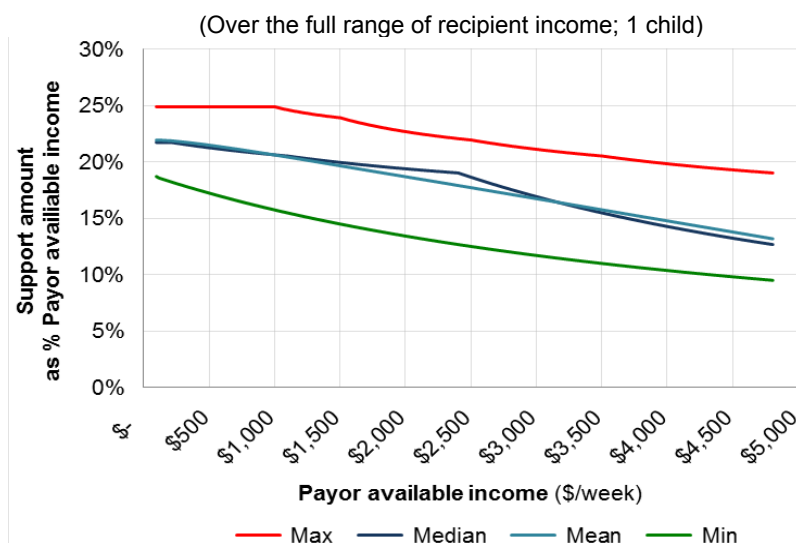
Figure 3: Current Guidelines Effective Income Percentage



Source: Sarro and Rogers at p. 10.

Within this range, the 2009 Guidelines amounts for one child represent 13 to 22 percent of a payor's gross available income, on average, depending on the relative incomes of the payor and recipient. Figure 4 shows the range of weekly support amounts under the Guidelines as a percent of the payor's gross available income over the full range of recipient income (i.e., recipient income ranging from zero to \$250,00 per year).

Figure 4: Current Guidelines as a Percent of Payor's Income

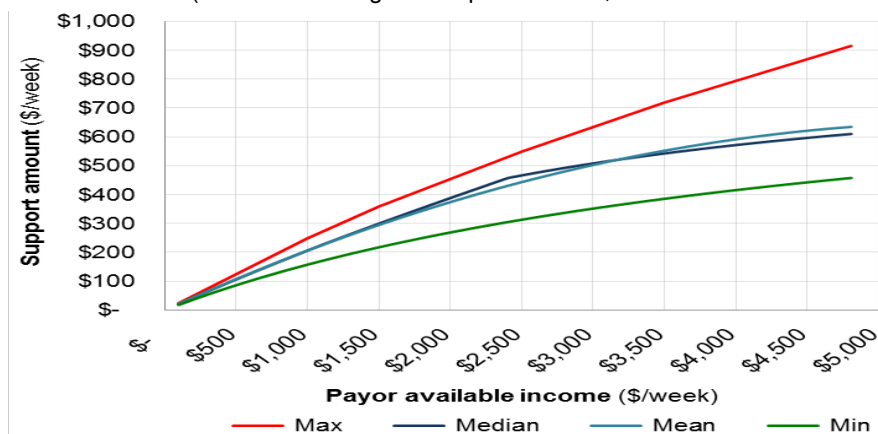


Source: Sarro and Rogers at p. 11.

Figure 5 shows the same weekly support amounts in dollars rather in percentage terms. In dollar terms, the percentages in Figure 4 correspond to child support amounts ranging from a minimum of \$18 per week to over \$600 per week on average, and as much as \$915 for a payor with the maximum gross available income on the 2009 Guidelines chart (\$250,000 per year, or \$4,808 per week) making a payment to a recipient with no income.

Figure 5: Current Guidelines Amounts

(Over the full range of recipient income; 1 child)



Source: Sarro and Rogers at p. 11.

Recent Studies Estimating Child-Rearing Expenditures

Since the prior review in 2008, three new studies have estimated child-rearing expenditures: 1) McCaleb, et al (2008); 2) Betson (2010); and 3) USDA (2012). In addition, a Massachusetts non-profit group, Crittenton Women's Union ("CWU"), periodically estimates the cost of living in the state.³⁵ The Task Force (2012) considered the Betson (2010) and USDA (2012) studies as part of its review. For reasons cited in their report, economists Sarro and Rogers recommended that the Task Force not consider estimates from the McCaleb (2008) study or the CWU report.³⁶

Betson-Rothbarth (2010)

In 2010, Dr. David Betson updated his prior estimates of child-rearing expenditures using data from the CE for 2004 through the first quarter of 2009. As in his three prior studies (1990, 2000, and 2006) his estimates measure child-rearing expenditures as a percentage of total family expenditures across a range of income levels.

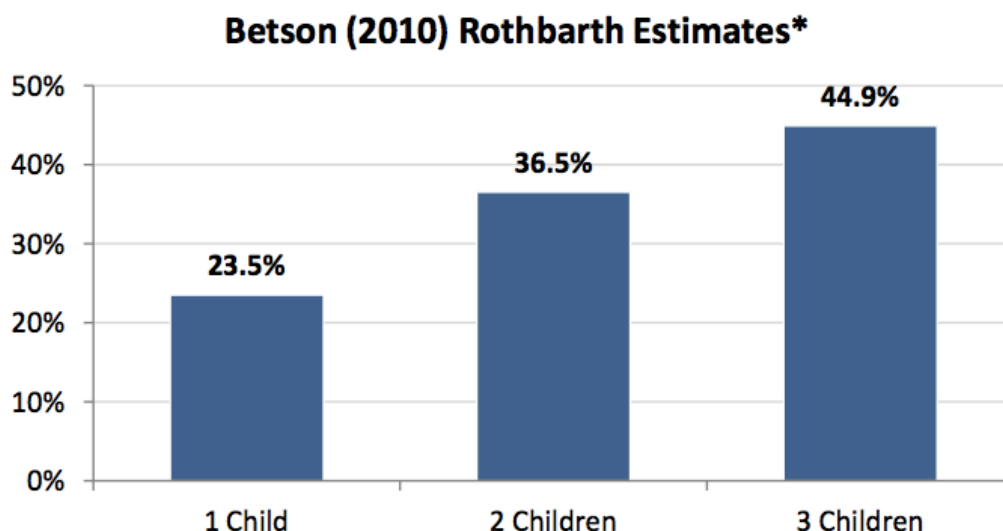
This latest study does not reflect any methodological changes in the application of the Rothbarth approach, but it does reflect two changes in the underlying CE data that Betson used to arrive at his estimates. First, Betson uses an income series newly created by the Bureau of Labor Statistics to correct for what may be a problem of income non-reporting in the CEX, particularly at low incomes. This likely decreases estimated child-rearing expenditures at low incomes. Second, Betson switched from using CEX data on household "expenditures" to using "outlays," which include finance charges and mortgage principal payments rather than treating them as changes in net liabilities. Ultimately, Betson's 2010 Rothbarth estimates are similar to those from his 2006 study.

According to the 2010 study, Betson found that (intact) households spend, on average, 24 % of total household spending (not income) for one child, 37 % for two children, and 45 % for three children.

³⁵ Crittenton Women's Union (March 2013). *Massachusetts Economic Independence Index 2013*, available at www.liveworkthrive.org. **Note: For ease of the reader, all further citations to the report will be as follows: Crittenton at p. ____.**

³⁶ Sarro and Rogers at p. 22 and p. 25 (The CWU estimates were considered by the Task Force as illustrative of possible costs in Massachusetts.).

Figure 5A. Average Share of Spending on Children as a Percent of Total Household Spending



*Average share of spending on children as a percent of total household spending.

Source: *Review of Statewide Uniform Child Support Guideline 2010: A Report to the California Legislature* (June 2011), Appendix A, Parental Expenditures for Children: Rothbarth Estimates, p. 150.

USDA (2012)

The latest USDA report was released in June 2012 and is based on CEX data from 2005–06 updated to 2011 dollars using the Consumer Price Index.³⁷ The report provides child cost estimates for each of seven expenditure categories (housing, food, transportation, clothing, child care and education, health care, and miscellaneous expenses) by child age, household income, and region. In addition, the report provides estimated adjustment factors for number of children.

The major findings of the report are summarized as follows:

“Child-Rearing Expenses and Household Income Are Positively Related”³⁸

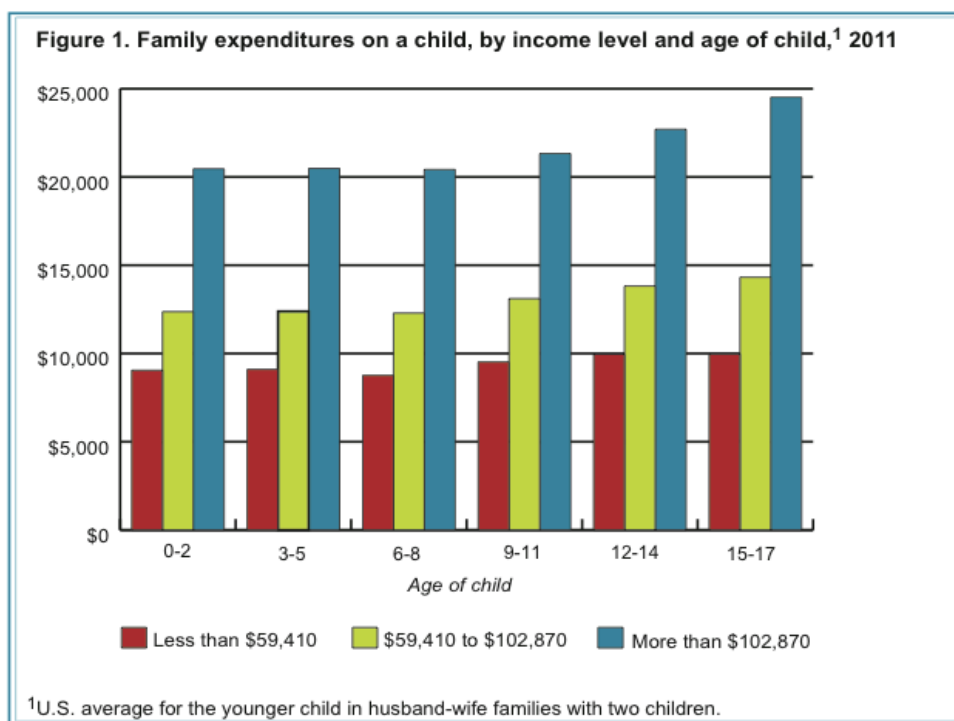
According to the USDA, in 2011, estimated annual average expenses on the younger child in two-child, husband-wife families increased as income level rose (see Fig. 1 below from the report). Depending on age of the child, annual expenses ranged from \$8,760 to \$9,970 for families with a before-tax income less than \$59,410, from \$12,290 to \$14,320 for families with a before-tax income between \$59,410 and

³⁷ USDA (2012) at p. 1.

³⁸ USDA (2012) at p. 10.

\$102,870, and from \$20,420 to \$24,510 for families with a before-tax income more than \$102,870.

On average, households in the lowest income group spent 25 percent of their gross income on a child; those in the middle-income group, 16 percent; and those in the highest group, 12 percent. The amount spent on a child by families in the highest income group, on average, was more than twice the amount spent by families in the lowest income group. In general, expenses on a child for necessities (e.g., food and clothing) did not vary as much as those considered to be discretionary (e.g., miscellaneous expenses) among households in the three income groups.



Source: USDA (2012) at p. 10.

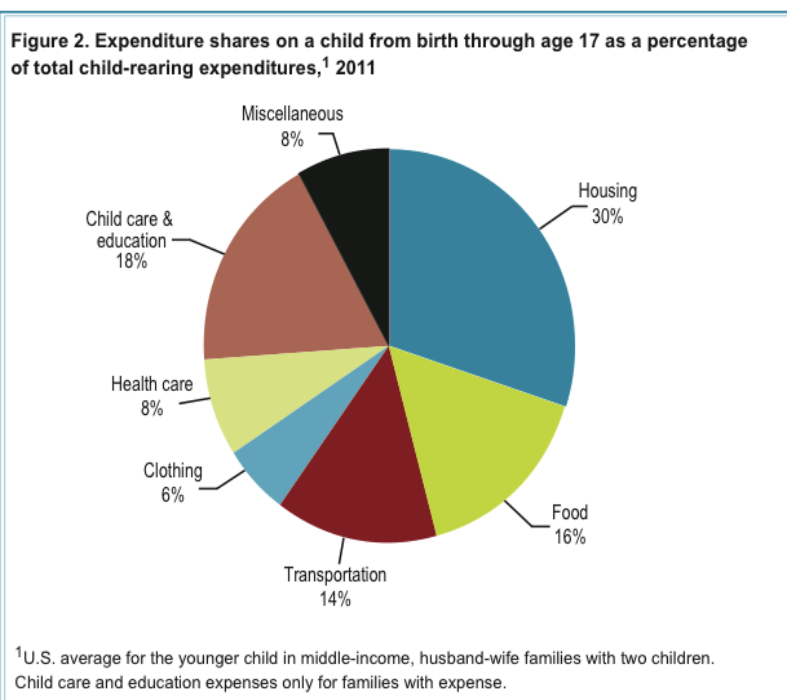
“Housing Is the Largest Expense on a Child ”³⁹

The USDA report estimates that housing accounted for the largest share of total child-rearing expenditures. Figure 2 from the report demonstrates this for the younger child in husband-wife, middle-income families with two children. Based on expenses incurred among all age groups, housing accounted for 32 percent of child-expenditures for a child in the lowest income group, 30 percent in the middle-income group, and 32 percent in the highest income group.

³⁹ USDA (2012) at p. 11.

For the middle and highest income groups (for households with the expense), child care and education was the second largest expenditure on a child, accounting for 18 and 23 percent of child-rearing expenses, respectively. For the lowest income group, child care and education accounted for 14 percent of total child-rearing expenses (again, for households with the expense). In lower income families, child care may be provided by relatives or friends at no cost due to affordability issues.

Food was the second largest expense on a child for families in the lowest income group, accounting for 18 percent of total expenditures. Food was the third largest expense on a child for families in the middle income group, accounting for 16 percent of total expenditures. Transportation made up 13 to 15 percent of total child-rearing expenses over the income groups.

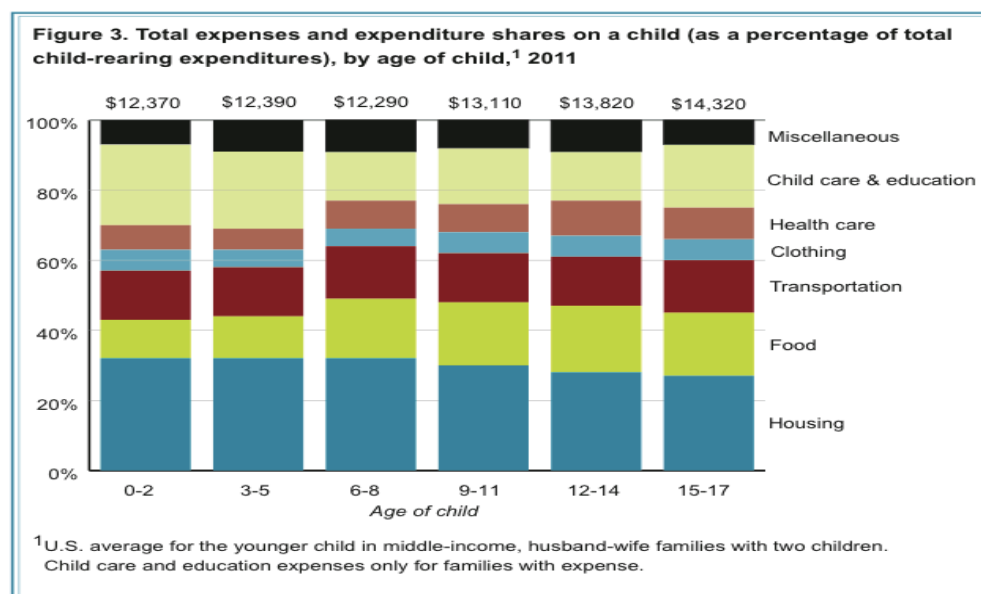


Source: USDA (2012) at p. 11.

Across the three income groups, miscellaneous goods and services accounted for 6 to 9 percent of child-rearing expenses; clothing (excluding gifts or hand-me-downs), 5 to 7 percent; and health care, 6 to 8 percent. Expenditures for health care consist of out-of-pocket expenses only (including insurance premiums not paid by an employer or other organizations) and not that portion covered by health insurance. Annual expenditures on clothing for teens, as based on the CEX data, are similar to the findings of another survey of annual spending on teen apparel (citing to Piper Jaffray, 2010).

“Expenses Increase as a Child Ages ”⁴⁰

For all three income groups, the USDA reports that food, transportation, clothing, and health care expenses on a child generally increased as the child grew older. As children age, they have greater nutritional needs so consume more food. Transportation expenses were highest for a child age 15 to 17, when he or she would start driving. Child care and education expenses were generally highest for a child under age 6. Most of this expense may be attributed to child care at this age. See Figure 3 from the report, below.



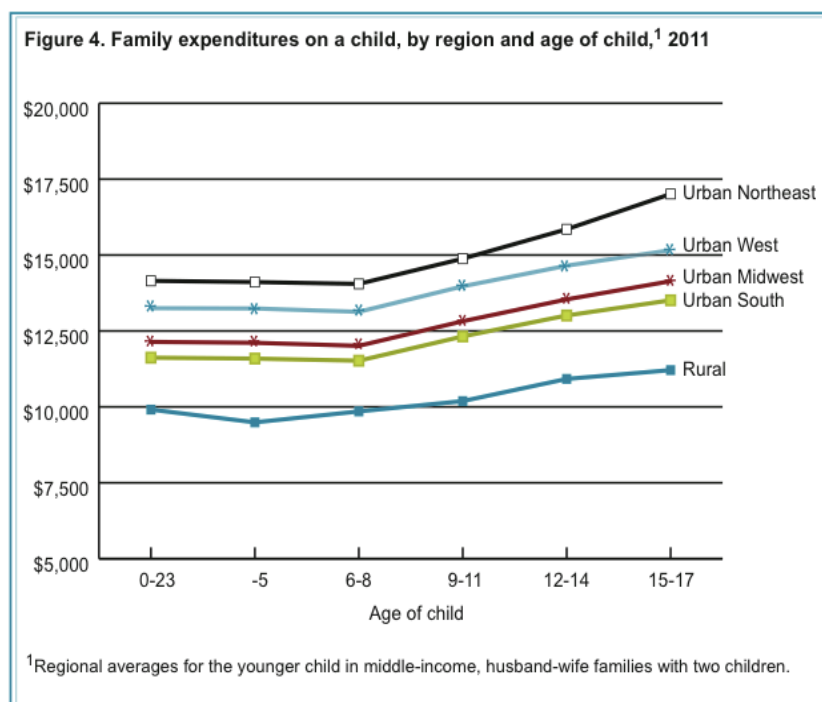
Source: USDA (2012) at p. 12.

“Child-Rearing Expenses Are Highest in the Urban Northeast ”⁴¹

Figure 4 from the report shows total child-rearing expenses by region and age of a child for the younger child in middle-income, two-child families. Overall, child-rearing expenses were highest in the urban Northeast, followed by the urban West and urban Midwest. Child-rearing expenses were lowest in the urban South and rural areas. Much of the regional difference in expenses on a child was related to housing costs and child care and education expenses. Total housing expenses on a child were highest in the urban Northeast and urban West and lowest in rural areas. Child care and education expenses were highest for families in the urban Northeast. Child-rearing transportation expenses were highest for families in the urban West and rural areas. This likely reflects the longer traveling distances in these areas.

⁴⁰ USDA (2012) at p. 12.

⁴¹ USDA (2012) at p. 13.



Source: USDA (2012) at p. 13.

Massachusetts Economic Independence Index (2013)

The CWU, a Massachusetts non-profit advocacy group for low-income women, periodically publishes estimates of the cost of living in Massachusetts. The CWU released its latest estimates in March 2013.⁴²

The CWU report estimates the costs of various household expenditures (e.g., housing, food, transportation, child care, health care, personal items, and taxes) for different types of households at the state level and by county. For example, it reports estimated costs for households with: only an adult; one adult, a pre-school age child, and a school-age child; and two adults with a pre-school age child and a school-age child. The resulting estimates reflect “index budgets” by family type and location, which assume each type of family makes certain types of expenditures. For example, the report assumes all adults work full-time, regardless of family type, and have certain work-related travel and child-care expenses. It also assumes all children under 14 years old require before and after school care, while children not in school require full-time child care.

⁴² The report is available at www.liveworkthrive.org (see footnote 35).

The CWU report was considered by the Task Force (2012) as illustrative of possible costs in Massachusetts.⁴³

Guideline Comparisons for the 2012 Review

To assess the 2009 Guidelines amounts, the Task Force (2012), with guidance from economists Sarro and Rogers, compared the 2009 Guidelines amounts to four benchmarks: (1) the Betson–Rothbarth (2010) estimates; (2) the USDA (2012) national estimates; (3) the USDA (2012) Northeast estimates and (4) guidelines amounts in five neighboring states (Connecticut, New Hampshire, New York, Rhode Island and Vermont). The comparisons involved analyzing the current economic studies and conducting thousands of preliminary calculations to simulate results at various income levels and under different methodologies.

Comparing the 2009 Guidelines amounts to the above benchmarks first required various adjustments to the estimates and other states' guidelines.

(1) Betson–Rothbarth (2010) Estimates

The Betson–Rothbarth (2010) estimates reflect spending on children as a percent of total expenditures and current consumption as a percent of a household's net income (not gross income) at various income levels and numbers of children, based on a national sample of households from the CEX data. The resulting estimates reflect child costs excluding child care and extraordinary health care costs (but including the children's share of health insurance premiums), since these expenses either do not always occur (e.g., child care) or are treated separately (e.g., health insurance premiums and extraordinary health care costs).

The Betson–Rothbarth (2010) estimates reflect that, on average, parents with one child, spend approximately 19 percent of net income on child costs, 29 percent of net income for two children, and 36 percent of net income for three children. Table 3 shows the average corresponding child cost percentages for a range of household net income.

⁴³ See, "Relative Costs and Income in Massachusetts", p. 52 of this report.

Table 3: Betson (2010) Child Cost as a Percent of Net Income

Net Income (Jan. 2012 \$/year)	Child Cost as % Net Income		
	1 Child	2 Children	3 Children
Less than \$ 15,000	21.7%	33.8%	41.7%
\$ 20,000	22.5%	35.0%	43.1%
\$ 25,000	22.7%	35.3%	43.5%
\$ 30,000	22.9%	35.6%	43.8%
\$ 40,000	23.1%	35.9%	44.2%
\$ 45,000	22.9%	35.6%	43.9%
\$ 50,000	22.3%	34.6%	42.6%
\$ 60,000	20.8%	32.3%	39.8%
\$ 65,000	19.9%	31.0%	38.1%
\$ 70,000	19.4%	30.1%	37.0%
\$ 75,000	18.3%	28.5%	35.0%
\$ 80,000	17.8%	27.6%	34.0%
\$ 90,000	17.8%	27.6%	34.0%
\$ 95,000	17.2%	26.8%	32.9%
\$ 100,000	17.1%	26.5%	32.6%
\$ 110,000	16.6%	25.7%	31.6%
\$ 120,000	15.7%	24.4%	30.0%
\$ 130,000	15.7%	24.4%	30.0%
\$ 150,000	14.6%	22.6%	27.8%
\$ 175,000	14.0%	21.7%	26.7%
More than \$ 175,000	12.1%	18.8%	23.1%
Maximum	23.1%	35.9%	44.2%
Minimum	12.1%	18.8%	23.1%
Average (Mean)	18.8%	29.2%	36.0%

Source: Table 2, Spending as % Net Income x Child Cost as % Spending

Source: Sarro and Rogers at p. 28.

To compare the Betson–Rothbarth (2010) child cost percentages and corresponding dollar amounts to the percentages and dollar amounts in the 2009 Guidelines, two additional adjustments were made. First, the annual income figures from the Betson–Rothbarth tables were converted to weekly amounts, since the 2009 Massachusetts Guidelines Chart is based on available weekly income. Second, the net income equivalents of gross weekly amounts for Massachusetts were calculated, since the Guidelines use gross income and the Betson–Rothbarth estimates use net income. This adjustment was made using state–specific income withholding tables for Massachusetts and standard withholding for Social Security.⁴⁴ This effectively restates

⁴⁴ For the Massachusetts income withholding tables, see Massachusetts Circular M, effective January 1, 2012. The standard Social Security withholding currently is 6.2 percent up to \$110,100 of income. The standard withholding was used since the temporary reduction in Social Security payroll taxes expired at the end of 2012.

the gross income amounts on the Guidelines Chart in terms of net income, for comparison to the Betson–Rothbarth estimates, but specifically for Massachusetts.⁴⁵

Betson’s estimates of current consumption were then used as a percent of net income to estimate total spending at each income level on the Guidelines Chart, and the percentages of child spending as a percent of total spending to calculate child costs for one to three children. Since the Guidelines apply up to five children, the same approach was used to estimate child costs for four and five children by applying published estimates of scaling ratios for four and five children to Betson’s cost estimates for three children.⁴⁶

The ultimate result of these calculations is a set of estimated child–rearing expenditures based on the Betson–Rothbarth (2010) estimates, but specific to Massachusetts and for the full range of incomes and number of children covered by our Guidelines.

Table 4 summarizes the resulting child cost estimates (excluding child care and extraordinary health care costs) over the full range of incomes covered by the Massachusetts Guidelines Chart (up to \$250,000 per year), both in dollars per week and as a percent of gross income.

Table 4: Betson (2010) Child Costs for Massachusetts

	Number of Children				
	1	2	3	4	5
	\$ /week				
Maximum	\$ 342	\$ 497	\$ 569	\$ 635	\$ 699
Minimum	\$ 24	\$ 40	\$ 51	\$ 57	\$ 63
MA Median	\$ 185	\$ 282	\$ 340	\$ 379	\$ 417
	% Gross Income				
Maximum	24%	39%	51%	56%	62%
Minimum	7%	10%	11%	12%	14%
MA Median	15%	23%	28%	32%	35%

Source: Massachusetts estimates based on Betson (2010).

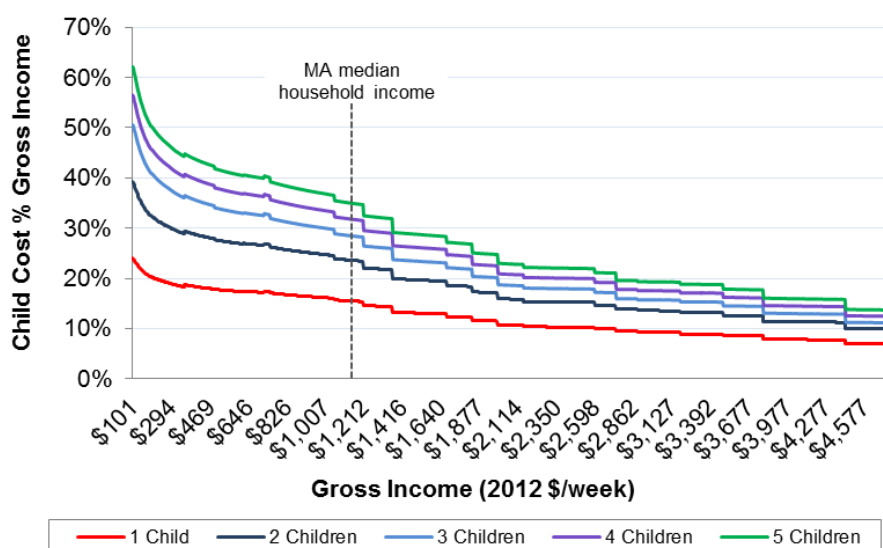
Source: Sarro and Rogers at p. 29.

⁴⁵ Applying the Massachusetts income withholding tables to the Betson–Rothbarth estimates results in estimates specific to Massachusetts. So, these estimates are different from, but are consistent with, Betson–Rothbarth estimates developed for other states for purposes of guidelines review.

⁴⁶ These scaling ratios were derived and explained in Constance F. Citro and Robert T. Michael, ed., *Measuring Poverty: A New Approach*, National Academy Press, Washington D.C. (1995), p. 161.

Figure 6 shows the child cost estimates underlying Table 4 as a percent of gross income over the full income range. For one child, the percentages range from 7 percent of gross income at the highest income levels to 24 percent at the lowest incomes. For two children, the percentages range from 10 percent to 39 percent of gross income and higher percentages for more children. At the current median level of household income in Massachusetts (\$62,895 per year, or \$1,210 per week), child costs account for 15 percent to 35 percent of gross income, depending on the number of children.

Figure 6: Betson (2010) Child Costs as a Percent of Gross Income



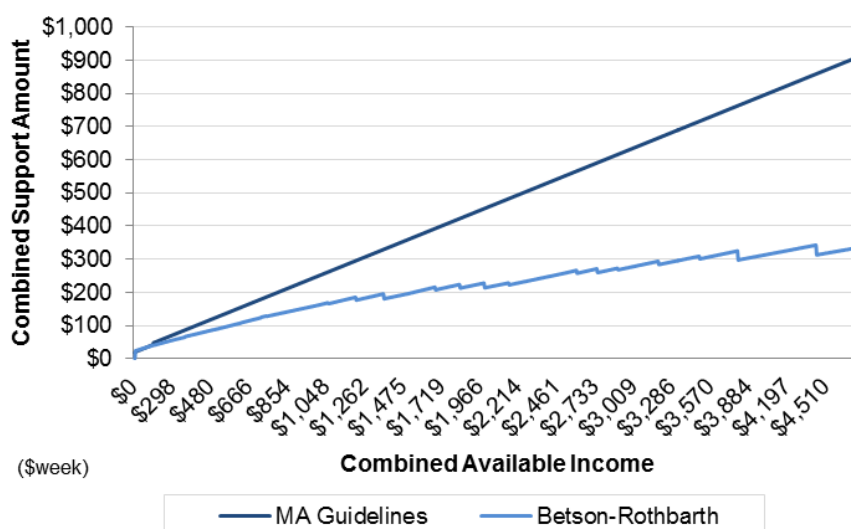
Source: Sarro and Rogers at p. 30.

In dollars, the Betson–Rothbarth estimates for one child range from as little as \$24 per week at the lowest income levels to \$342 at the highest income levels, and are \$185 per week at the current Massachusetts median income level. By comparison, child support amounts for one child under the 2009 Guidelines range from \$18 per week to \$915 per week, and are \$295 per week at median household income. This suggests that current Guidelines amounts in Massachusetts for one child are lower than the Betson–Rothbarth estimates at the lowest income range (from zero to \$165 per week) but are higher otherwise.

Figure 7 compares the 2009 amounts from the Guidelines Chart for one child with the Betson–Rothbarth estimates over the full range of incomes covered by the Guidelines.⁴⁷

⁴⁷ The staggering breaks in the Betson–Rothbarth curve are due to shifts from one tax bracket to the next for income taxes and payroll taxes as income increases.

Figure 7: Current Guidelines v. Betson (2010) Child Cost Estimates (1 child)



Source: Sarro and Rogers at p. 31.

The Guidelines amounts in Figure 7 represent combined child support amounts, so they are not necessarily the amounts a payor will pay in a specific case. How much of the total Guidelines amount shown in Figure 7 at a given combined income level is allocated to a payor or to a recipient, respectively, depends on their relative share of combined available income. Only when a recipient has no income at all will a payor pay the full combined Guidelines amount shown in Figure 7.

Conclusion: In all but very low-income cases, this comparison suggests that the 2009 Guidelines amounts for one child are higher than the same proportionate share of the corresponding Betson–Rothbarth (2010) estimates.

(2) USDA (2012) Estimates

The USDA estimates child costs at the national level for (husband–wife) and single–headed households, as well as for (husband–wife) households in the Northeast. The USDA is the only study to provide regional data for expenditures on children. The Task Force (2012) compared the 2009 Guidelines amounts to both the national and Northeast estimates. The USDA estimates that were considered excluded child care costs and health care costs in order to be consistent with the Betson–Rothbarth (2010) estimates.

In order to directly compare the 2009 Guidelines to the USDA child cost estimates some adjustments were required. The USDA reports estimated expenses by spending component (specifically, housing, food, transportation, clothing, child care and

education, health care, and miscellaneous expenses) for the younger child in a two-child household up to age 18. Overall, the economic evidence on whether child costs vary systematically by age is mixed. For example, Betson has found no significant differences in child costs by the age of the child using the Rothbarth approach,⁴⁸ and the current Betson–Rothbarth estimates are not reported separately by age. The USDA however, does find that expenses increase as a child ages.

The USDA cost estimates are published for only a limited number of income scenarios: three scenarios for married households (low, middle and high), and two (low and high) for single-headed households. These scenarios are available for the U.S. over all and by census region, including the Northeast. Each income scenario has a stated income range and specific average income over that range.

The USDA estimates are based on gross income, so there is no need to calculate net income as was done for the Betson–Rothbarth estimates. However, two other adjustments to the USDA estimates had to be made. First, the USDA estimates were converted from annual dollars to weekly amounts, since the 2009 Guidelines Chart uses weekly amounts. Second, the USDA estimates were adjusted for the number of children in a household.

Because the USDA estimates are for the younger child in a two-child household, the USDA report suggests adjustment factors to calculate estimated costs for a one-child household and for households with two and three children. Notably, the reported adjustment factors differ for two parent married and single-headed households, since the USDA estimates of child costs are lower in single-headed households.⁴⁹ For (married) households with two children, the USDA indicates that costs for the older child are approximately the same as the reported costs for the younger child. To calculate expenses for two children, the estimate for the younger child should be multiplied by two. In single-headed households, however, the estimate for the younger child should be multiplied by 1.97. Likewise, the adjustment factors are different for one child (1.25 for (married) household and 1.29 for single-headed household) and for each of three children (0.78 for (married) households and 0.77 for single-headed households).

To compare USDA estimates to the 2009 Guidelines amounts, the estimated cost of one, two, and three children using the reported costs and the suggested adjustment factors had to be calculated. As with the Betson–Rothbarth (2010) estimates, estimated costs for four and five children (since the Guidelines cover up to five children) using the same scaling ratios for four and five children relative to the USDA cost estimates for three children were completed.⁵⁰

⁴⁸ See, e.g., David M. Betson, “Chapter 5: Parental Expenditures on Children,” in *Judicial council of California, Review of Statewide Uniform Child Support Guidelines*, San Francisco, California, (2001).

⁴⁹ For example, total costs for the younger child in a two-child household are estimated to be \$181 per week in a married household and \$168 per week, or 7 percent lower, in a single-headed household. (See Tables 1 and 7 of USDA (2012), respectively). However, the lower child costs represent a larger share of income in single-headed households.

⁵⁰ See Citro (1995), *op. cit.*

a). **USDA National Estimates**

Table 5 shows the resulting USDA estimates for the overall U.S. by income group for both married and single-headed households. The dollar values at the top of the table are the average estimates within each group, stated in dollars per week. The percentages in the middle of the table report those dollar values relative to the average income level for each group. The percentages at the bottom of the table report the incremental cost of an additional child, calculated as the percentage change in estimated cost for going from one child to two children, two to three, etc. within each group. Table 5 reports the USDA estimates both for all costs, and excluding child care, education and health care, since different states' guidelines formulas handle these costs differently.

Table 5: USDA Child Cost Estimates (\$/week, Overall U.S.)

\$/week	All Costs							Excluding Child Care, Education, and Health Care					
	Married			Single				Married			Single		
	Income Group							Income Group					
	Low	Mid	High	Low	High			Low	Mid	High	Low	High	
Children	\$731	\$1,537	\$3,462	\$507	\$2,073	Average	\$731	\$1,537	\$3,462	\$507	\$2,073	Average	
Total													
1	\$226	\$314	\$520	\$217	\$460	\$347	\$175	\$233	\$373	\$168	\$328	\$256	
2	\$361	\$502	\$833	\$331	\$702	\$546	\$281	\$374	\$597	\$256	\$501	\$402	
3	\$423	\$587	\$974	\$388	\$823	\$639	\$328	\$437	\$699	\$300	\$588	\$470	
4	\$472	\$656	\$1,088	\$434	\$919	\$714	\$367	\$488	\$780	\$335	\$656	\$525	
5	\$519	\$721	\$1,197	\$477	\$1,011	\$785	\$403	\$537	\$858	\$369	\$722	\$578	
As % Income													
1	31%	20%	15%	43%	22%	26%	24%	15%	11%	33%	16%	20%	
2	49%	33%	24%	65%	34%	41%	38%	24%	17%	51%	24%	31%	
3	58%	38%	28%	77%	40%	48%	45%	28%	20%	59%	28%	36%	
4	65%	43%	31%	86%	44%	54%	50%	32%	23%	66%	32%	40%	
5	71%	47%	35%	94%	49%	59%	55%	35%	25%	73%	35%	44%	
Marginal Cost of Additional Child													
1													
2	60%	60%	60%	53%	53%	56%	60%	60%	60%	53%	53%	56%	
3	17%	17%	17%	17%	17%	17%	17%	17%	17%	17%	17%	17%	
4	12%	12%	12%	12%	12%	12%	12%	12%	12%	12%	12%	12%	
5	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	

Source: USDA, Expenditures on Children by Families, 2011 (June 2012). \$ are average \$/week.

For a more targeted comparison to the USDA national cost estimates, Table 6 reports the 2009 Guidelines amounts broken down into the same income groups as in the USDA report: less than \$1,143 per week, \$1,143 to \$1,978, and above \$1,978 for married households and below/above \$1,143 per week for single-headed households. The average income level within each group is different under the Guidelines than for the households in the USDA report. Therefore, Table 6 reports the Guidelines amounts both: 1) within each income group, on average, and 2) at the average level of income reported by the USDA for each group.

Table 6: Current Guidelines Amounts by Income Group
(\$/week for 1 child; USDA Overall U.S.)

	Income Group		
	Low	Mid	High
Average Available Income	\$ 571	\$ 1,561	\$ 3,394
Average Guidelines Amount	\$ 141	\$ 368	\$ 694
Guidelines Amount as % Income	25%	24%	20%

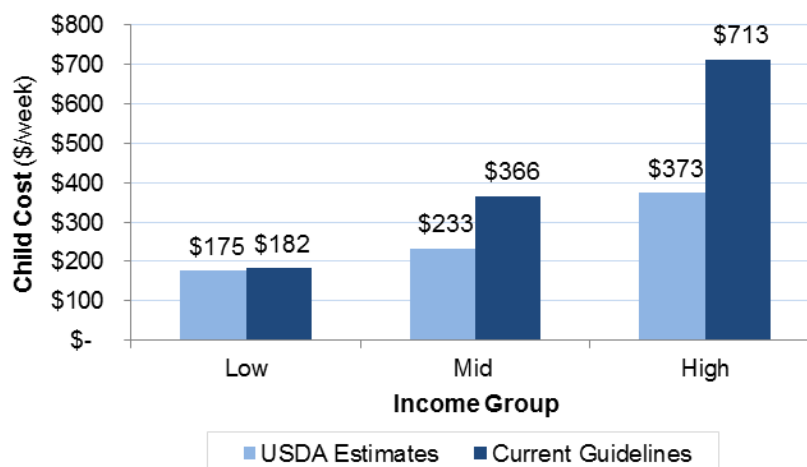
	Married			Single	
	Income Group			Income Group	
	Low	Mid	High	Low	High
USDA Average Income	\$ 731	\$ 1,537	\$ 3,462	\$ 507	\$ 2,073
Guidelines Amount	\$ 182	\$ 366	\$ 713	\$ 126	\$ 468
USDA U.S. Average	\$ 175	\$ 233	\$ 373	\$ 168	\$ 328
Difference (\$)	\$ 7	\$ 133	\$ 340	\$ (42)	\$ 140
(%)	4%	57%	91%	-25%	43%
Guidelines Amount as % Income	25%	24%	21%	25%	23%

Source: USDA (2012); Current (January 2009) Massachusetts Guidelines Chart

Figure 8 illustrates the 2009 Guidelines amounts and the USDA national estimates by income group.

Figure 8: Current Guidelines v. USDA Estimates

(\$/week for 1 child; Overall U.S.)



Source: Sarro and Rogers at p. 35.

Conclusion: Comparing the 2009 Guidelines amounts in Table 6 to the USDA national estimates in Table 5 for the same income groups suggests that the 2009 Guidelines amount for one child are roughly equivalent to the USDA estimates at relatively low incomes and higher at middle- and high-income levels both in dollars and as a percentage of income.

For example, the average USDA estimate for married households in the low-income group (average income of \$731 per week) is \$175 per week, compared to \$141 per week on average over the same range of incomes on the 2009 Guidelines Chart. At the USDA average income level for that group, the Guidelines amount is \$182 per week, or 4 percent higher than the USDA national estimate. Over the middle- and high-income ranges, the 2009 Guidelines amounts are higher than the USDA national estimates by 57 and 91 percent, respectively.

The same is true of the dollar amounts relative to income. At the low end, the 2009 Guidelines amounts represent a lower share of income than the average USDA national estimates: 25 percent of income, compared to 31 percent for married households and 43 percent for single-headed household (per Table 5). However, the Guidelines amounts are higher than USDA relative to income for middle- and high-incomes: 24 percent compared to 15 percent for middle incomes, and 21 percent compared to 11 percent, for example, for the high-income married group.

The result is similar to the comparison of the 2009 Guidelines amounts to the Betson-Rothbarth (2010) estimates (i.e., the current Guidelines amounts are lower at the low end and higher at the middle and upper end).

(4) USDA (2012) Northeast Estimates

In addition to the child cost estimates discussed above for the overall U.S, the USDA report includes estimates for (husband-wife) households in each of the same three income groups in the Northeast. Table 7 reports the USDA estimates of all child costs for both the Northeast and the overall U.S., side by side. The cost estimates for the Northeast are 10 percent higher, on average, than the national estimates across income groups.

Table 7: USDA Child Cost Estimates (\$/week, Northeast)

\$/week	All Costs (Married Households)											
	U.S.				Northeast				% Difference			
	Income Group				Income Group				Income Group			
	Low	Mid	High	Avg.	Low	Mid	High	Avg.	Low	Mid	High	Avg.
Children	\$731	\$1,537	\$3,462		\$734	\$1,544	\$3,478		0.5%	0.5%	0.5%	
	Total											
1	\$175	\$233	\$373	\$261	\$193	\$256	\$410	\$286	10%	9%	10%	10%
2	\$281	\$374	\$597	\$417	\$309	\$409	\$656	\$458	10%	9%	10%	10%
3	\$328	\$437	\$699	\$488	\$361	\$478	\$768	\$536	10%	9%	10%	10%
4	\$367	\$488	\$780	\$545	\$403	\$534	\$857	\$598	10%	9%	10%	10%
5	\$403	\$537	\$858	\$599	\$444	\$588	\$943	\$658	10%	9%	10%	10%
	As % Income											
1	24%	15%	11%	17%	26%	17%	12%	18%	9%	9%	9%	9%
2	38%	24%	17%	27%	42%	26%	19%	29%	9%	9%	9%	9%
3	45%	28%	20%	31%	49%	31%	22%	34%	9%	9%	9%	9%
4	50%	32%	23%	35%	55%	35%	25%	38%	9%	9%	9%	9%
5	55%	35%	25%	38%	60%	38%	27%	42%	9%	9%	9%	9%

Source: USDA, Expenditures on Children by Families, 2011 (June 2012). \$ are average \$/week (one child).

For comparison the USDA Northeast estimates, Table 8 reports the current Guidelines amounts broken down into the same income groups.

Table 8: Current Guidelines Amounts by Income Group
(\$/week for 1 child; USDA Northeast)

	Income Group		
	Low	Mid	High
Average Available Income	\$ 574	\$ 1,568	\$ 3,398
Average Guidelines Amount	\$ 142	\$ 370	\$ 695
Guidelines Amount as % Income	25%	24%	20%

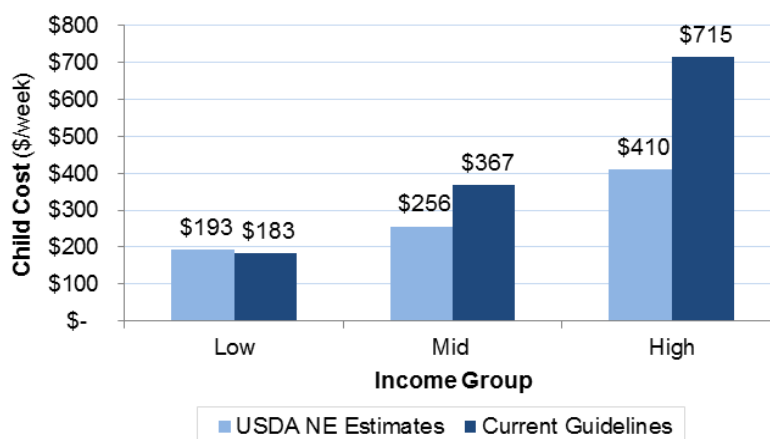
	Married			Single	
	Income Group			Low	High
	Low	Mid	High		
USDANE Average Income	\$ 734	\$ 1,544	\$ 3,478	NA	
Guidelines Amount	\$ 183	\$ 367	\$ 715		
USDA Northeast Average	\$ 193	\$ 256	\$ 410		
Difference (\$)	\$ (10)	\$ 111	\$ 305	NA	
(%)	-5%	44%	74%		
Guidelines Amount as % Income	25%	24%	21%		

Source: USDA (2012); Current (January 2009) Massachusetts Guidelines Chart

As with the national numbers in Table 6, the average income level within each group is different under the 2009 Guidelines than for the households in the USDA report, so Table 8 reports the 2009 Guidelines amounts both: 1) within each income group, on average, and 2) at the average level of income reported by the USDA. Figure 9 shows this comparison.

Figure 9: Current Guidelines v. USDA Estimates

(\$/week for 1 child; Northeast)



Source: Sarro and Rogers at p. 38.

Conclusion: The comparison to the USDA Northeast estimates reflects the same results as for the national estimates: the 2009 Guidelines amounts for one child are

roughly equivalent to the USDA estimates at relatively low incomes and are higher at middle and high incomes.

However, because the USDA estimates are higher for the Northeast than for the overall U.S., the differences between the USDA (2012) Northeast estimates and the Guidelines amounts are smaller. At the middle-income level, for example, the difference is 44 percent, on average (rather than 57 percent), with the USDA Northeast estimating child costs of \$256 per week relative to the 2009 Guidelines amount of \$367 per week.

(4) Guidelines Amounts in Neighboring States

For another basis of comparison, the Task Force compared the Massachusetts Guidelines amounts with the guidelines in each of Massachusetts' five neighboring states: Connecticut, New Hampshire, New York, Rhode Island and Vermont. The child support guidelines in four of these states (New Hampshire, Connecticut, Rhode Island and Vermont) use the Income-Shares model while New York uses a Percent of Payor Income approach. Three of these five states (New Hampshire, Rhode Island and Vermont) reviewed their guidelines in 2012. New Hampshire shifted in 2012 from a Percent of Payor approach to an Income Shares model, effective July 1, 2013.

For all five states and for Massachusetts, child support amounts were calculated over the range of income covered under the 2009 Guidelines, in different combinations of payor and recipient income. For Massachusetts and each neighboring state, child support amounts were calculated over the full range of potential income combinations under the Guidelines. Specifically, child support amounts were calculated for fifteen different income combinations, representing possible combinations of four different income levels for each of the payor and recipient (\$20,000, \$60,000, \$120,000, and \$200,000 per year)⁵¹ up to \$250,000 per year of combined income (the maximum income level on the Guidelines Chart), as well as the same four payor income levels run with zero recipient income.⁵² Table 9 shows the child support amounts from the 2009 Guidelines for each of the resulting fifteen income combinations.

Table 9: Current Guidelines Amounts for State Comparisons (1 child)

Recipient Income	Payor Income			
	\$385	\$1,154	\$2,308	\$3,846
\$0	\$94	\$283	\$513	\$771
\$385	\$95	\$274	\$501	\$754
\$1,154	\$69	\$256	\$478	off
\$2,308	\$54	\$235	\$443	Chart
\$3,846	\$46	off Chart		

Source: Current (January 2009) Guidelines. (\$/week)

⁵¹ The corresponding weekly amounts are \$385, \$1,154, \$2,308, and \$3,846 per week.

⁵² Income combinations at the highest income levels resulted in income combinations exceeding the maximum income level on the Guidelines Chart.

(a) Income Only Comparisons

Comparing these child support amounts to guidelines amounts for other states required certain assumptions about items such as taxes, child care costs, and health care costs, to the extent guidelines on different states handle those items differently. The 2009 Guidelines are based on gross income, as are New Hampshire and Rhode Island, whereas Connecticut, and Vermont are based upon net income. New York is based on gross income but with a theoretical cap applied subjectively at \$80,000 per year of combined gross income. Therefore, the guidelines amounts for each of those three states were calculated using the net income equivalents of the various gross income numbers used for Massachusetts.

The 2009 Guidelines account for the costs of child care and health care as deductions from gross income in computing available income on which the amount of child support is based. Because the adjustments for child care costs and health care costs in each state are highly specific and differ across states, as do the typical amounts of the costs themselves, the comparisons assume no child care or health care costs. Accordingly, these calculations may overstate the differences in child support amounts between Massachusetts and neighboring states whose guidelines directly adjust for those costs, resulting in higher guidelines amounts in cases in the other states where such costs are present.⁵³

The resulting guidelines amounts for one child for a given income combination sometimes are similar and sometimes vary widely across states due to differences in both the structure and percentages of each state's guidelines. For example, the guidelines amount for a low-income payor (\$20,000 per year or \$385 per week) and a recipient with no income are 18 percent of the payor's gross income for Rhode Island, 24 percent for Vermont, 21 percent for Connecticut, and 22 percent for New Hampshire. New York uses a flat 17 percent of the payor's income, regardless of the income level. For Massachusetts the 2009 Guidelines amount is 24 percent.

The guidelines amounts for a relatively high-income payor (\$120,000 per year or \$2,308 per week) and a recipient with no income range from 12 percent of the payor's gross income (Vermont) to 15 percent in New Hampshire and New York. In Massachusetts, the 2009 Guidelines amount is 22 percent of the payor's income. Table 10 shows the guidelines amounts across all five neighboring states, on average, for each of the fifteen possible income combinations, as well as the corresponding percentages for Massachusetts.

⁵³ To test the sensitivity of the comparisons to the presence of child care costs and health care costs, comparisons to the July 2013 New Hampshire guidelines were run including costs. These results are discussed later in this section.

Table 10: Guidelines Amounts as a Percent of Payor Income (1 child)

Recipient Income	Payor Income			
	\$385	\$1,154	\$2,308	\$3,846
	Massachusetts			
\$0	24%	25%	22%	20%
\$385	25%	24%	22%	20%
\$1,154	18%	22%	21%	
\$2,308	14%	20%	19%	off Chart
\$3,846	12%	off Chart		
	Average of Neighboring States			
\$0	20%	17%	13%	12%
\$385	19%	15%	13%	11%
\$1,154	17%	14%	12%	
\$2,308	19%	12%	11%	off Chart
\$3,846	13%	off Chart		

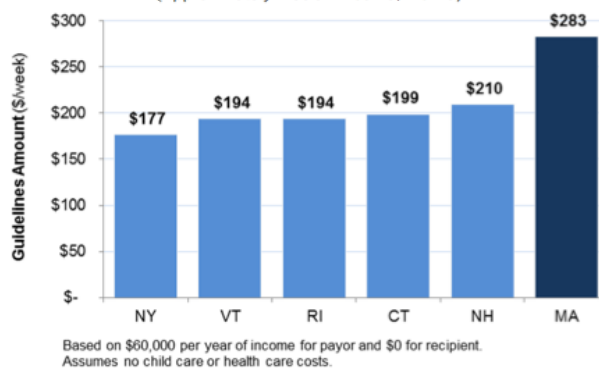
Guidelines calculations by state. (\$/week)
Note: assumes no child care or health care costs.

Source: Sarro and Rogers at p. 42.

Conclusion: For most income combinations in Table 10, the 2009 Guidelines amounts for one child are a higher percentage of the payor's income than the average of the five neighboring states. In two of the fifteen cases (e.g., very low-income payors with very high-income recipients) the Massachusetts percentages are lower on average. The 2009 Guidelines amount for one child are mostly higher on a state-by-state basis as well for the same income combinations. For example, the 2009 Guidelines amounts for one child compared to the July 2013 New Hampshire guidelines are: lower for low-income payors and high-income recipients by 3 to 10 percent, but otherwise higher by at least 8 percent, again in the absence of adjustments for child care or health care costs.

Figure 10 shows the guidelines amounts for Massachusetts and the average for neighboring states for a payor and recipient with one child and roughly median combined income⁵⁴: (\$60,000 per year, or \$1,154 per week) earned by the payor (i.e., no recipient income).

Figure 10: Current Guidelines v. Neighboring States
(Approximately Median Income; 1 child)



Source: Sarro and Rogers at p. 43.

⁵⁴ U.S. Census Bureau, 2011 American Community Survey, *op.cit.*

At this income combination, the 2009 Guidelines amount of \$283 per week for one child is 35 percent (\$73 per week) higher than the next-highest state, New Hampshire; 42 percent (\$84 per week) higher than Connecticut; 46 percent (\$89 per week) higher than Rhode Island and Vermont; and 60 percent (\$106 per week) higher than New York. The same figure for most income combinations would show a similar qualitative result. However, the 2009 Guidelines amounts of one child are lower than the amounts in neighboring states for low-income payors (\$20,000 per year or less) who are paired with high-income recipients (\$120,000 per year or more).

(b) Including Child Care Costs and Health Care Costs

The comparisons in Table 10 and Figure 10 are based only on the relative incomes of a recipient and payor, assuming no child care costs or health care costs. When these costs are present and are handled differently, in neighboring states, the 2009 Guidelines yield different relative results. Therefore, to test the sensitivity of the comparisons to the presence of child care costs and health care costs, the 2009 Guidelines amounts, with costs, were compared to the July 2013 New Hampshire guidelines with the same costs for all fifteen income combinations. These sensitivities were run relative to New Hampshire because: 1) the Massachusetts and New Hampshire guidelines handle child care costs and health care costs differently, and 2) the no-cost New Hampshire guidelines amounts (i.e., excluding child care costs and health care costs) are the closest of the neighboring states to the Massachusetts Guidelines amounts.

Under the Massachusetts Guidelines, out-of-pocket child care costs and total health insurance costs are deducted from the incomes of a payor and a recipient, and the combined child support amount is calculated based on the remaining combined available income. In New Hampshire, in order to determine the combined support amount, the guidelines deduct a payor's cost of health insurance coverage for the children covered by an order only and not the full cost of health insurance, like Massachusetts.⁵⁵ A recipient's income is adjusted for the cost of the children's health insurance or child care only after the combined support amount is determined, and then the combined support amount is prorated between a payor and a recipient based on their respective incomes adjusted for all costs.

To compare guidelines amounts with child care costs and health care costs requires an assumption about the magnitude of those costs. These comparisons are based on the average costs reported for Massachusetts. Child care costs average at least \$109 per week for Massachusetts, and \$99 per week nationally, depending upon a child's age.⁵⁶ The comparisons discussed here assumed \$100 per week. The average cost of a family health plan in Massachusetts is \$326 per week, and single coverage is 35 percent of that cost.⁵⁷ The Task Force assumed that the employee paid 50 percent of the

⁵⁵ Both states deduct health insurance costs. However, Massachusetts deducts the full cost, while New Hampshire deducts only the child's portion of the cost and also applies a 4% "reasonable cost" threshold.

⁵⁶ See Table 13 on p. 53 of this report.

⁵⁷ Sarro and Rogers at p. 57.

coverage, so the corresponding out-of-pocket health insurance cost is \$162 per week. The comparisons assumed \$160 per week for a family plan and \$56 per week (i.e., 35 percent of \$160) to cover a child. These costs were used in all scenarios with sufficient income to warrant them. For example, in the scenarios with zero recipient income, zero costs for the recipient were assumed. Also, the New Hampshire guidelines cap the “reasonable cost” of children’s health insurance at 4 percent of a payor’s gross income. So the comparisons used the lesser of \$56 or 4 percent of income.

Including child care and health care costs in the comparisons of Massachusetts and New Hampshire guidelines amounts for one child resulted in different numbers but the same qualitative result. The Massachusetts amounts are still higher for most income scenarios, but by less than in the income-only comparisons. For example, at approximately median payor income (\$60,000 per year) and no recipient income, with \$160 per month in health insurance costs, the 2009 Guidelines amount is \$248 per week in Massachusetts, or 22 percent higher than the \$204 per week under New Hampshire’s guidelines. The guidelines amounts for the same income scenario with no costs were \$283 and \$210 per week respectively.

Conclusion: As before, only in cases of low-income payors (paired with high income recipients) are the 2009 Guidelines amounts for one child lower than the New Hampshire amounts by approximately 20 percent, on average. The 2009 Guidelines amounts are otherwise higher even after accounting for the differences in handling child care costs and health care costs.⁵⁸

Marginal Increases for Additional Children

As discussed above, the 2009 Guidelines amounts for one child are relatively high when compared with the benchmarks, especially at middle and high incomes. However, the comparisons for one child reflect only the percentages in Table A on the Guidelines Worksheet and the amounts on the resulting Guidelines Chart.

Table B on the Worksheet provides adjustment factors for child support amounts for two to five children. The factors in Table B scale-up the Guidelines amounts for one child by decreasing percentages to reflect economies of scale in households with more children. The factors in Table B increase the Guidelines amounts by 20 percent for a second child, and by far less for each additional child (6 percent, 4 percent and 2 percent, respectively). The corresponding scale factors (shown in Figure 2) are 1.20, 1.27, 1.32 and 1.35 times the Guidelines amount for one child.

While the comparisons done by the Task Force suggest that the 2009 Guidelines for one child are consistently higher than the benchmarks, the scale factors in Table B are consistently lower than the same benchmarks.

Figure 11 shows the marginal increases in each of the benchmarks to account for additional children in a household.

⁵⁸ The analogous results for two and three children are noted in the next section.

Table 11: Marginal Increases for Additional Children

Benchmark	Number of Children				
	2	3	4	5	6
Child Cost Estimates					
Betson (2010)	55%	23%			
USDA (2012)	56%	17%	12%	10%	
Neighboring States					
Connecticut	34%	11%	11%	10%	9%
New Hampshire	37%	20%	8%	8%	8%
New York	47%	16%	7%	13%	13%
Rhode Island	50%	19%	11%	9%	8%
Vermont	51%	20%	12%	10%	9%
Benchmark Summary Statistics					
Min	34%	11%	7%	9%	8%
Max	56%	23%	21%	21%	21%
Median	50%	19%	11%	10%	9%
Mean	47%	18%	10%	10%	9%
MA Guidelines	20%	6%	4%	2%	

State guidelines, Betson (2010), and USDA (2012).

Source: Sarro and Rogers at p. 46.

Although the benchmarks are mostly lower than the 2009 Guidelines amounts for one child, the benchmark adjustments for additional children are all higher than the Massachusetts scale factors. For example, the marginal increases for a second child range from just above 30 percent (34 percent in Connecticut and 37 percent in New Hampshire) to 55 percent or more, based on the most recent Betson–Rothbarth and USDA child cost estimates. The average increase for a second child is 47 percent, or, more than double the increase under the 2009 Guidelines (20 percent). The average increases for a third and fourth child are 18 percent and 12 percent, respectively, or 3 times, and 2 times, the analogous increases in the current Guidelines. The average increase for a fifth child is 10 percent, or five times the Massachusetts adjustment. In the end, the scale factors in Table B on the Worksheet are lower than the benchmarks but are set against higher 2009 Guidelines presumptive amounts for one child.

To evaluate the 2009 Guidelines amounts for more than one child, the Task Force compared the 2009 Guidelines amounts for two and three children to each of the three economic benchmarks. For one child, the 2009 Guidelines amounts are higher than the Betson–Rothbarth estimates at all income levels higher than \$165 per week. For two and three children, the 2009 Guidelines amounts are higher than the Betson–Rothbarth estimates at incomes above \$342 and \$774, respectively.

Compared to the USDA estimates, both national and for the Northeast, the 2009 Guidelines amounts for more than one child are mostly, but not always, higher. For example, the 2009 Guidelines amounts for two and three children are lower or comparable at the low and middle income levels. Relative to the USDA national estimates, the 2009 Guidelines amounts for two children are 22 percent lower than the USDA at low income levels. For three children, the 2009 Guidelines amounts are 30

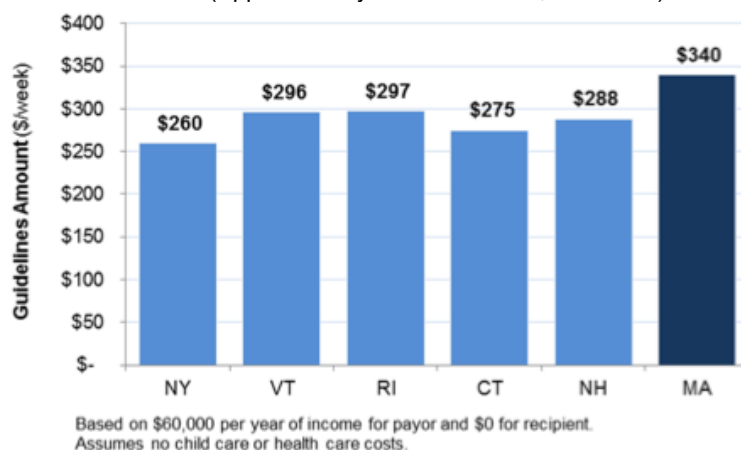
percent lower at low incomes and within 10 percent at middle incomes. The Guidelines amounts are higher than the USDA national estimates at higher income levels.

For USDA Northeast estimates, the 2009 Guidelines amounts for two children are 29 percent lower than the USDA at low incomes and within 10 percent at middle incomes, and higher at high incomes. For three children, the 2009 Guideline amounts are 36 percent lower at low incomes, and 2 percent lower at middle incomes.

Compared with the neighboring states, the 2009 Guidelines for more than one child are higher in most, but not all, cases. They tend to be lower than neighboring states for low-income payors paired with high-income recipients and otherwise higher, but by less than the differences in the amounts for one child. For example, where the 2009 Guidelines for two children are higher for the income combinations that were considered, they are within 12 percent of the New Hampshire guidelines amounts. Compared to other neighboring states, the 2009 Guidelines amounts for two children are relatively higher.

Figure 12 compares the guidelines amounts for two children at \$60,000 per year (\$1,154 per week) of payor income and no recipient income (i.e., analogous to Figure 10 above, but for two children rather than one). At this income combination, the 2009 Guidelines amount of \$340 per week for two children is 14 percent (\$43 per week) higher than Rhode Island; 15 percent (\$44 per week) higher than Vermont; 18 percent (\$52 per week) higher than New Hampshire (2013); 24 percent (\$65 per week) higher than Connecticut; and 31 percent (\$80 per week) higher than New York.

Figure 12: Current Guidelines v. Neighboring States
(Approximately Median Income; 2 children)



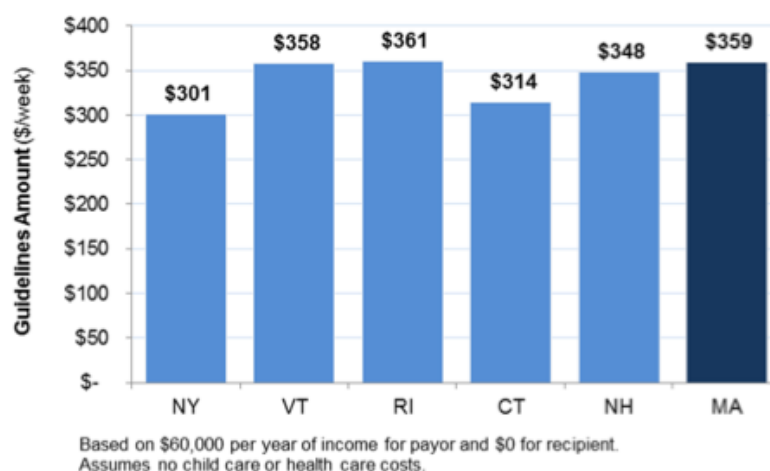
Source: Sarro and Rogers at p. 50.

Again, the sensitivity of this result to the inclusion of child care costs and health care costs in the comparison to the July 2013 New Hampshire guidelines was tested. Using the same costs described above, the 2009 Guidelines amount for two children is \$298

per week, rather than \$340 per week shown in Figure 12. This is only slightly above, the \$281 per week under New Hampshire's July 2013 guidelines.

Figure 13 compares the Guidelines amounts for three children at the same income combination as Figures 10 and 12 for one and two children respectively.

Figure 13: Current Guidelines v. Neighboring States
(Approximately Median Income; 3 children)



Source: Sarro and Rogers at p. 51.

For three children, at that income level, the 2009 Guidelines amounts are roughly comparable to neighboring states. Over the full income range, the 2009 Guidelines amounts for three children are comparable or lower for low income payors; comparable to New York for relatively high-income payors; and otherwise higher than neighboring states. Accounting for child care costs and health care costs in the comparisons to the July 2013 New Hampshire guidelines reduces the 2009 Guidelines amounts in this scenario from \$359 to \$315 per week or 7 percent less than the New Hampshire amount of \$339 per week with those costs.

Overall Conclusion: The 2009 Guidelines amounts for more than one child are mostly (but not always) higher than the Betson-Rothbarth estimates. The 2009 Guidelines are lower than the Betson-Rothbarth estimates at very low income levels (\$165 per week). For two and three children, the 2009 Guidelines are higher than the Betson-Rothbarth estimates at incomes above \$342 and \$774 per week.

Compared to the USDA national and Northeast estimates, the 2009 Guidelines amounts for two and three children are lower or comparable to the USDA estimates at low and middle incomes, but higher than the USDA estimates at high incomes.

Relative to neighboring states, the 2009 Guidelines for more than one child are higher in most, but not all cases. They tend to be lower than neighboring states for low income payors (paired with high income recipients) and otherwise higher for two

children, but by proportionately less than the differences for one child. For three children, the 2009 Guidelines amounts are comparable to, or just higher than guidelines amounts in neighboring states in most, but not all, cases and likely not after accounting for the presence and handling of child care costs and health insurance.

Relative Costs and Income in Massachusetts

The preceding comparisons suggest that the 2009 Guidelines amounts, particularly for one child, are somewhat high, especially at middle- and high-income levels. Accordingly, the Task Force looked to data on household costs to see if they are higher in Massachusetts, which could result in higher child-rearing expenditures.

The Task Force found that the data indicate that both household income and expenses in Massachusetts are above average.⁵⁹ Median household income in Massachusetts is nearly 25 percent higher than the national average.⁶⁰ Not all households in Massachusetts have similarly high incomes relative to the national average, but all households do face the state's higher cost of living.⁶¹ Therefore, household costs in Massachusetts may be disproportionately higher than income for some households when compared to other states. There are competing economic principles on the impact of above average household costs on child-rearing expenditures. Higher adult "overhead" (such as housing and utilities) may reduce income available for spending on children. Alternatively, some parents may choose to incur higher costs for their children. According to economists Rogers and Sarro, there is currently no study of this issue.⁶²

According to the USDA national (2012) estimates, housing costs are the largest cost component of child-rearing expenditures (approximately one-third), followed by child care and education (18 percent on average), food (16 percent), and transportation (14 percent). The CWU reports that child care costs actually exceed housing costs and are the costliest item in a budget for families with pre-school aged children.⁶³

Incomes as well as housing and child care costs are higher in Massachusetts than in the U.S. overall. Massachusetts' health care costs are higher as well.

⁵⁹ Sarro and Rogers at p. 52.

⁶⁰ Sarro and Rogers at p. 53.

⁶¹ Sarro and Rogers at p. 52.

⁶² Sarro and Rogers at p. 52.

⁶³ Crittenton at p. 4.

Housing Costs

Gross rent is higher in Massachusetts in dollar terms, but is below the national average as a percentage of income in all but two counties (Barnstable and Suffolk).⁶⁴ However, owner costs⁶⁵ are 10 percent higher, on average, and are higher in all but two counties (Franklin and Norfolk).⁶⁶

According to the CWU, in the past year rental costs in Massachusetts have increased and are expected to continue to increase.⁶⁷ For a two-bedroom apartment with utilities, Nantucket County has the highest costs (\$1,798 per month), Berkshire County the lowest costs (\$821 per month) and in Boston the cost is \$1,335 per month, just above the statewide average of \$1,172 per month.⁶⁸

Child Care Costs

Child care costs in Massachusetts are higher than in the U.S. overall and in neighboring states. Massachusetts ranks in the top ten least affordable states for child care for infants and toddlers.⁶⁹ In both categories, Massachusetts' child care costs for one, two and three children are the highest in the U.S. in dollar terms, and as a percent of income for households at the poverty level.⁷⁰ Table 13 summarizes child care costs for the U.S. overall, Massachusetts and the five neighboring states. Only for school age children is child care cost in Massachusetts less than the national average or any of the neighboring states.

Table 13: Child Care Costs: U.S., Massachusetts, and Neighboring States

State	Child Care Center (1 Child)					
	Infant		Toddler		School Age	
Massachusetts	\$ 288	100%	\$ 224	100%	\$ 109	100%
Connecticut	\$ 247	86%	\$ 203	90%	\$ 104	95%
New Hampshire	\$ 231	80%	\$ 183	82%	\$ 81	74%
New York	\$ 269	94%	\$ 223	99%	\$ 211	193%
Rhode Island	\$ 228	79%	\$ 191	85%	\$ 150	137%
Vermont	\$ 185	64%	\$ 168	75%	\$ 93	85%
U.S. Overall	\$ 185	64%	\$ 149	66%	\$ 99	90%

Source: Child Care Aware of America (2012), Appendix 1, stated in \$/week.

⁶⁴ U.S. Census Bureau, 2011 American Community Survey (as cited by Sarro and Rogers at p. 53).

⁶⁵ The Census Bureau data includes in owner costs all forms of debt where the property is pledged as security for repayment of the debt, including mortgages, home equity loans, deeds of trust, and land contracts. Such costs also include the costs of property insurance, utilities, real estate taxes, etc. (as cited by Sarro and Rogers at p. 53).

⁶⁶ Sarro and Rogers at p. 54.

⁶⁷ Crittenton at p. 5.

⁶⁸ Crittenton at p. 5.

⁶⁹ See, Child Care Aware of America, "Parents and the High Cost of Child Care" (2012), at Table 1 and 3 (as cited by Sarro and Rogers at p. 54).

⁷⁰ *Ibid*, at Tables 5 and 6 (as cited by Sarro and Rogers at p. 54).

The CWU reports that full-day preschool in Massachusetts costs an average of \$1,045 per month (\$241 per week) or \$12,540 annually.⁷¹ For a single parent with a preschooler and school-age child, child care represents 31% of the their budget.⁷² The cost of child care for a parent with preschool and school-age children has been steadily increasing, having grown by 7.3% since 2010. Costs also range across Massachusetts, with the least expensive care in the western counties and the most expensive care in Boston and the eastern part of the state.⁷³

Health Care Costs

Federal regulations require that state child support guidelines address how a child's health care needs will be provided for through health insurance coverage and/or cash medical support.⁷⁴ Under federal regulations, the court or child support agency in administrative hearings must address health insurance coverage in both private cases and child support agency cases. In Massachusetts, courts are also required to determine whether medical insurance coverage for children is available, and, if so, the courts must order the payor to obtain and maintain such insurance.⁷⁵

While health insurance coverage is not required to be part of a presumptive guidelines formula, most states do account for health insurance premiums in their guidelines formulas, typically as a deduction from available income or as a proportional credit against the guidelines amount. The current Massachusetts Guidelines, as well as four of the five neighboring states (all but New York), deduct health insurance costs from income.

A key point in ordering health insurance coverage is its affordability. Federal regulations require states to establish a definition of affordability, and offer guidance at 5 percent of the gross income of the parent paying for coverage. In applying the 5 percent standard, the cost is the cost of adding the child(ren) to the existing coverage or the difference between self-only and family coverage.⁷⁶ Each state may create its own definition of affordability. However, federal regulations require that the definition of affordability be based on income and be numeric. The definition of affordability in the 2009 Guidelines reflects current Massachusetts law, but is neither income-based nor numeric.⁷⁷

⁷¹ Crittenton at p. 5.

⁷² Crittenton at p. 5.

⁷³ Crittenton at p. 5.

⁷⁴ 45 CFR 302.56 (c)(3) (as cited by Sarro and Rogers at p. 55).

⁷⁵ Guidelines, Section G.1, referring to the requirements of Chapter 58 of the Acts of 2006, *An Act providing Access to Affordable, Quality, Accountable Health Care*, signed into law on April 16, 2006 (as cited by Sarro and Rogers at p. 55).

⁷⁶ 45 CFR 303.31(a) (as cited by Sarro and Rogers at p. 56).

⁷⁷ "Health care coverage shall be deemed available to the Payor at reasonable cost if it is available through an employer." Guidelines, Section G.1. (as cited by Sarro and Rogers at p. 56).

Available data show that health care costs in Massachusetts are high. Massachusetts spends more per capita on health care than any other state. Per capita spending in Massachusetts is higher than the national average in every major category of health care services (e.g., physician and hospital services, prescription drugs, and nursing home), with the widest gaps in spending on hospitals and nursing homes.⁷⁸ Health care spending in Massachusetts is 36 percent above the national average. This is driven, in part, by higher incomes and health care research funding. That gap increased from 29 percent above the national average in 2004, as per capita health care costs grew at an average annual rate of 6.6 percent in the 5 years from 2004 through 2009.⁷⁹

Massachusetts health insurance premiums are also higher than the national average. The average family premium in Massachusetts in 2011 was approximately 16 percent higher than the average cost in 2010, which is twice the national average increase of about 8 percent. The growth in premiums has slowed since Massachusetts passed health care reform legislation in 2006, to growth rates below the national average. However, the gap between Massachusetts and the rest of the U.S. in the cost of health insurance premiums is widening. A single premium in Massachusetts was 2 percent, 8 percent, and 10 percent higher than in the U.S. overall in 2000, 2006 and 2008, respectively. Likewise, the family premium was 6 percent, 8 percent and 12 percent above the national average for each of the same years.

The cost of health care for families in Massachusetts has increased steadily at rates greater than the annual inflation rate. Since 2010, economic data indicates that for a family of three, the cost of healthcare has increased by 21% and are expected to grow despite the passing of the Affordable Care Act in Massachusetts.⁸⁰

Food Costs

The cost of food has increased by 11% since 2010, representing a \$59 per month increase in cost for a family of three (i.e., one adult, one preschooler and one school-age child). The cost of food is predicted to continue to increase at 3–4% per year due to the high cost of grain, the impact of recent droughts, and the high cost of fuel (citing to Lowrey and Nixon 2012).⁸¹

With empirical evidence of higher costs for housing, child care, health care and food, it is not unreasonable to expect child costs in Massachusetts households to be higher than benchmarks reflecting national averages or overall costs in the U.S.

⁷⁸ Centers for Medicare and Medicaid Services, “Health Expenditures by State of Residence,” (2011) (*as cited by Sarro and Rogers at p. 56*).

⁷⁹ Sarro and Rogers at p. 56.

⁸⁰ Crittenton at p. 6.

⁸¹ Crittenton at p. 6.

Overall Conclusion: For one child, the 2009 Guidelines amounts are mostly higher than the Betson–Rothbarth and USDA estimates except at low income levels; and are higher than the guidelines amounts in neighboring states except when compared to low income payors with high income recipients.

For more than one child, the 2009 Guidelines amounts are mostly (but not always) higher than the Betson–Rothbarth estimates. The 2009 Guidelines are below the Betson–Rothbarth estimates at very low income levels (\$165 per week). For two and three children, the 2009 Guidelines are higher than the Betson–Rothbarth estimates at incomes above \$342 and \$774 per week. Compared to the USDA national and Northeast estimates, the 2009 Guidelines amounts for two and three children are lower or comparable to the USDA estimates at low and middle incomes, but higher than the USDA estimates at high incomes. Relative to neighboring states, the 2009 Guidelines for more than one child are higher in most, but not all cases. They tend to be lower than neighboring states for low income payors (paired with high income recipients) and otherwise higher, but by less than the differences in the amounts for one child. For three children, the 2009 Guidelines amounts are comparable to, or just higher than guidelines amounts in neighboring states in most, but not all, cases and likely not after accounting for the presence and handling of child care costs and health insurance.

None of the above comparisons account for the above average income and expenses in Massachusetts, especially the high costs of necessities such as housing, child care, food and health insurance costs experienced by Massachusetts families. From an economic perspective, Guidelines amounts that are higher than the benchmarks are appropriate due to overall higher incomes and child costs in Massachusetts.⁸²

Section V. Deviation Frequency

Case Review Results

In order to assess the frequency of deviations, the Task Force reviewed case files involving the following case types where child support orders may be issued: Divorce; Child Support; Custody/Support/Visitation; Modification; and Contempt. Child support orders docketed during the period between July 1, 2010 and June 30, 2011 were reviewed after the case files were randomly selected in five divisions of the Probate and Family Court. The case records in the Bristol, Essex, Hampden, Middlesex and Plymouth Divisions of the Probate and Family Court were reviewed to determine the frequency and dollar amount of deviations. The caseloads in these busy divisions reflect geographical and demographic variations occurring in the Probate and Family Court.

For each of the divisions, 100 case files were reviewed. Deviations in amounts greater than \$10.00 (i.e. the actual amount ordered as child support was \$10.00 or more

⁸² Sarro and Rogers at p. 52.

different than the amount calculated strictly under the guidelines) were noted for this review. In each division, case files reflected child support orders issued by various judges sitting in that division. In some of the cases, no child support order was issued.

Table 14 summarizes the data collected during this review.

Table 14: Deviation Results by Division

Summary of Sampled Cases

	County				
	Bristol	Essex	Hampden	Middlesex	Plymouth
Guidelines	52	69	43	64	48
Deviations	25	28	31	25	44
No Support	17	2	15	2	6
Unknown	6	1	11	9	2
Total Cases	100	100	100	100	100
% Guidelines	52%	69%	43%	64%	48%
% Deviations	25%	28%	31%	25%	44%
% No Support	17%	2%	15%	2%	6%
% Unknown	6%	1%	11%	9%	2%
Deviations > \$10					
Above Guidelines	9	10	8	8	18
As % of Deviations	36%	36%	26%	32%	41%
As % of Total	9%	10%	8%	8%	18%
Below Guidelines	16	18	23	17	26
As % of Deviations	64%	64%	74%	68%	59%
As % of Total	16%	18%	23%	17%	26%

Source: 2012 MA Task Force case review

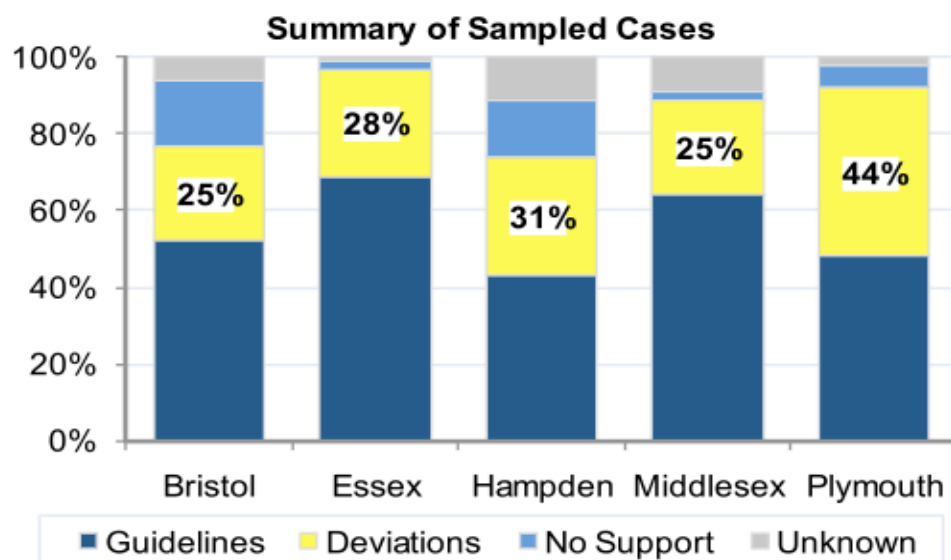
The data show deviations from the guidelines 25 – 44 % of the time.

It is important to note that deviations may occur as a result of a variety of circumstances. In some cases, parties voluntarily agree to an amount different from the guidelines amount, and they submit this proposed agreement to the Court. Although the Court is not required to accept the agreement, the fact that both parties have agreed upon the proposed amount carries some weight. In other cases, a deviation may occur where the parties have not agreed upon a deviation but the judge has determined that departure from the guidelines is consistent with the best interests of the child.

In this review of 500 case files, the greater frequency of deviations (i.e. 44% in Plymouth as compared to 25% in either Bristol or Middlesex) may be the result of many factors. The deviations may or may not have been agreed upon by the parties, technology difficulties may not have accurately recorded the results, and staff may not have docketed the deviation Findings form properly.

A summary of the case file data is illustrated in Figure 14.

Figure 14: Guidelines Deviation Rate by Division



Source: 2012 MA Task Force case review

The review was intended to assess the frequency of occurrence of deviations. In addition, it is noteworthy, as indicated by this data, that most deviations (of more than \$10.00/week in all five divisions) are deviations downward from the guideline amounts. The Task Force interpreted this as suggesting that the current guideline amounts are high. While the outcome of this review alone was not determinative, it was a valuable source of information considered by the Task Force.

Section VI. Recommendations

The Task Force considered many factors and information in reviewing the 2009 Guidelines. Most significantly, the Task Force considered, and was mindful of, the comprehensive review and thoughtful recommendations of the 2008 Task Force. As required by federal law, the Task Force considered the economic data on the cost of raising children and analyzed data obtained from case files on the application of, and deviations from, the Guidelines. Beyond the federal requirements, the Task Force considered the guideline amounts in neighboring states (Connecticut, New Hampshire, New York, Rhode Island and Vermont), feedback from all sources⁸³, and Massachusetts law and regulations.

⁸³ For a summary of all comments received from the public, see Appendix H (Summary of Public Comments).

In addition to the federal mandate to review its guidelines every four years, Massachusetts must also, if appropriate, revise its guidelines to ensure that their application results in appropriate child support award amounts. Based on this quadrennial review, the Task Force recommends that the text of the Child Support Guidelines, the Child Support Guidelines Chart (Income Shares Schedule) and the accompanying Worksheet and Findings forms be revised.

The specific recommendations of the Task Force and the rationale for each change are as follows:

A. Child Support Guidelines

The recommendations of the Task Force are listed in the same order as the subject appears in the text of the 2009 Guidelines, beginning with the Preamble. Any new language proposed by the Task Force is underlined and highlighted in red, and any deletion is noted by a strikethrough in blue.⁸⁴ The rationale for any proposed change follows, to aid the reader in understanding why the Task Force proposed the revision.

• Preamble

Recommendation: The Task Force recommends amending this section (1) to provide that the 2013 Child Support Guidelines, if adopted, shall take effect on August 1, 2013; and (2) to delete that existing child support orders and judgments less than three years old shall not be modified unless the income of one or both parties has changed or other new circumstances warrants modification.

Proposed New Language:

These guidelines shall take effect on ~~January~~ August 1, 2009~~13~~ and shall be applied to all child support orders and judgments entered after the effective date. There shall be a rebuttable presumption that these guidelines apply in all cases establishing or modifying a child support order. ~~Existing orders and judgments less than three years old as of the effective date of these guidelines shall not be modified unless the income of one or both parties has changed or other new circumstance warrants modification.~~

In recognition of the priority of the interests of the children of the Commonwealth, these child support guidelines are formulated to be used by the justices of the Trial Court, whether the parents of the children are married or unmarried, in setting temporary, permanent or final orders for current child support, in deciding whether to approve agreements for child support, and in deciding cases that are before the court to modify existing orders. The guidelines are intended to be of assistance to members of the bar and to litigants in determining what level of payment would be expected given the relative income levels of the parties. In all cases where an order for child support is requested, a guideline worksheet must be filled out, regardless of the income of the parties.

⁸⁴ See also, Appendix F (2012 Task Force Recommendations Redlined Against 2009 Child Support Guidelines).

Rationale: The guidelines should be effective as soon as possible in order to ensure that appropriate child support amounts are ordered. An effective date of August 1, 2013 is reasonable, notwithstanding the time required to implement the changes. For clarity, the Task Force suggests that all references to modification of an existing child support order be consolidated in the Guidelines section on modifications. See § III (“Modification”) of the proposed Child Support Guidelines (2013).

• **Principles**

Recommendation: The Task Force recommends amending this section (1) to reflect that due consideration has been given to promote, not just encourage, joint parental responsibility for child support in proportion to, or as a percentage of, income; and (2) to provide that parents should bear any additional expenses resulting from the maintenance of two separate households.

Proposed New Language:

Principles

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

- 1) to minimize the economic impact on the child’s standard of living;
- 2) to ~~encourage~~ **promote** joint parental responsibility for child support in proportion to, or as a percentage of, income;
- 3) 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;
- 4) 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;
- 5) **to recognize that the parents should bear any additional expenses resulting from the maintenance of two separate households instead of one, since it is not the child’s decision that the parents divorce, separate, or otherwise live separately.**
- 5)6) to recognize the non-monetary contributions and extent of involvement of both parents;
- 6)7) to recognize the monetary and/or in-kind contributions of both parents in addition to the child support order;
- 7)8) to promote consistency in the setting of child support orders at all income levels whenever appropriate;
- 8)9) to recognize the importance, availability, and cost of health insurance coverage for the child;
- 9)10) to allow for orders and wage assignments that can be adjusted as income increases or decreases; and
- 10)11) to minimize problems of proof for the parties and to streamline administration for the courts.

Rationale: The public policy of the Commonwealth is that dependent children shall be maintained, as completely as possible, from the resources of their parents, thereby relieving or avoiding, the financial responsibility from being placed on the citizens of Massachusetts⁸⁵. In 1987, the (national) Advisory Panel on Child Support Guidelines recommended to states that when enacting guidelines, states should consider that:

“Both parents should share legal responsibility for support of their children, with the economic responsibility divided between the parents in proportion to their income.”⁸⁶

⁸⁵ See G.L. c. 119A, § 1.

⁸⁶ Robert Williams, *Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report* (U.S. Dep’t of Health and Human Services, Office of Child Support Enforcement, 1987).

In light of the public policy of the Commonwealth, the recommendation of the 1987 Advisory Panel on Child Support Guidelines, and the shifting of parental responsibilities towards more joint parenting, the Task Force felt that the Guidelines should do more than passively encourage joint parental responsibility for child support. The recommendations of the Task Force, as embodied in the proposed Child Support Guidelines (2013), are intended to promote a more active role of both parents in the legal responsibility for support of their children in proportion to, or as a percentage of, income.

The Task Force recognizes that it is often more expensive to have two separate households when parents decide to live separately than it is to have one. Unfortunately, this may be an “economic reality” of living apart for many families. Guidelines based on the Income Shares model however reflect an estimate of the amount of spending that would have been made on the child(ren) had the household remained intact. In theory, the Income Shares model holds the child(ren) harmless for the parents decision to live separately. The Task Force, while acknowledging public comments on the expense of establishing two separate households, believes that the public policy of the Commonwealth and the Guidelines (historically) support the principle underlying the Income Shares model. As a result, the Task Force recommends expressly providing that the parents should bear any additional expenses resulting from the maintenance of two households and not the child.⁸⁷

• **Sources of Income**

Recommendation: The Task Force recommends amending this section (1) to clarify the manner in which Social Security retirement dependency benefits and Social Security Disability Insurance (SSDI) dependency benefits are treated for purposes of calculating child support; and (2) to exclude from the definition of income, income derived from a means-tested public assistance program, such as TAFDC (Transitional Assistance to Families with Dependent Children), SNAP (Supplemental Nutrition Assistance Program) and SSI (Supplemental Security Income) benefits.

Proposed New Language:

⁸⁷ See also, State of Connecticut, Commission for Child Support Guidelines, “Child Support and Arrearage Guidelines, (August 2005), (d), Basic Principles, p. ii.

For purposes of these guidelines, income is defined as gross income from whatever source regardless of whether that income is recognized by the Internal Revenue Code or reported to the Internal Revenue Service or state Department of Revenue or other taxing authority. Those sources include, but are not limited to, the following:

- 1) (a) salaries, wages, overtime and tips,
(b) income from self-employment;
- 2) commissions;
- 3) severance pay;
- 4) royalties;
- 5) bonuses;
- 6) interest and dividends;
- 7) income derived from businesses/partnerships;
- 8) social security excluding any benefit due to a child's own disability¹;
- 9) veterans' benefits;
- 10) military pay, allowances and allotments;
- 11) insurance benefits, including those received for disability and personal injury, but excluding reimbursements for property losses;
- 12) workers' compensation;
- 13) unemployment compensation;
- 14) pensions;
- 15) annuities;
- 16) distributions and income from trusts;
- 17) capital gains in real and personal property transactions to the extent that they represent a regular source of income;
- 18) spousal support received from a person not a party to this order;
- 19) contractual agreements;
- 20) perquisites or in-kind compensation to the extent that they represent a regular source of income;
- 21) unearned income of children, in the Court's discretion;
- 22) income from life insurance or endowment contracts;
- 23) income from interest in an estate, either directly or through a trust;
- 24) lottery or gambling winnings received either in a lump sum or in the form of an annuity;
- 25) prizes or awards;
- 26) net rental income;
- 27) funds received from earned income credit; and
- 28) any other form of income or compensation not specifically itemized above.

Income derived from a means-tested public assistance program (for example, TAFDC, SNAP and SSI benefits) shall not be counted as income for either party.

Rationale: Although the 2009 Guidelines included a footnote⁸⁸ to clarify the holding in Rosenberg v. Merida, 428 Mass.182 (1998) regarding the manner in which Social Security retirement dependency benefits and Social Security Disability Insurance (SSDI) benefits are treated for purposes of calculating child support, commentary suggests that further clarification is necessary.

Social Security retirement benefits and Social Security Disability Insurance (SSDI) benefits are cash benefits, but are not need-based. These benefits are determined

⁸⁸ Footnote 1 of both the 2009 and the proposed Child Support Guidelines (2013) provides:

If a parent receives social security benefits or SSDI benefits and the child(ren) of the parties receives a dependency benefit derived from that parent's benefit, the amount of the dependency benefit shall be added to the gross income of that parent. This combined amount is that parent's gross income for purposes of the child support calculation.

If the amount of the dependency benefit exceeds the child support obligation calculated under the guidelines, then the Payor shall not have responsibility for payment of current child support in excess of the dependency benefit. However, if the guidelines are higher than the dependency benefit, the Payor must pay the difference between the dependency benefit and the weekly support amount under the guidelines. Rosenberg v. Merida, 428 Mass. 182 (1998).

primarily by employment status, length of employment, and amount earned from employment.

As set forth in Rosenberg, if a parent receives Social Security retirement benefits or Social Security Disability Insurance (SSDI) benefits and the child(ren) of the parties receives a dependency benefit that derives from that parent's benefit, the amount of the dependency benefit should be added to the gross income of that parent. This combined amount is that parent's gross income for purposes of the child support calculation.

The payor's weekly child support obligation ultimately depends on whether or not the child's dependency benefit is greater than or less than the payor's child support obligation calculated under the Guidelines. The following examples illustrate the manner in which dependency benefits should be accounted for when determining the amount of the weekly child support obligation:

Example 1: Assume the following facts:

Taylor (parent 1) receives \$150 per week in SSDI benefits due to Taylor's disability. Chris (parent 2) has gross income of \$200 per week. Johnny (child of Taylor and Chris) receives a dependency benefit of \$100 per week based on Taylor's disability. Johnny himself is not disabled. For purposes of this calculation, assume Johnny's primary residence is with Chris and one-third of the time is spent with Taylor. What is Taylor's weekly child support obligation?

Taylor's Gross Available Income = \$250 per week:

Taylor's disability benefit =	\$150
Johnny's dependency benefit =	+ <u>\$100</u>
	\$250

Chris's Gross Available Income = \$200 per week.

The Combined Available Gross Income of the parties = \$450 (\$250 + \$200).

Assuming no deductions from gross income for purposes of this illustration, the combined child support amount, based on the proposed Child Support Guidelines Chart (2013), would be \$99 per week. Taylor's share of the combined child support amount is \$55, and the remaining \$44 is Chris's share.

Because the amount of Johnny's dependency benefit of \$100 is GREATER THAN Taylor's child support share of \$55, Taylor's total support obligation is simply equal to the amount of the SSDI dependency benefits. Taylor would not owe any additional child support amount beyond the SSDI dependency benefit. Taylor's weekly child support amount is therefore \$0 and should be reflected as such on the Child Support Guidelines Worksheet.

Example 2: Assume the following facts:

Taylor (parent 1) receives \$550 per week in SSDI benefits due to Taylor's disability. Chris (parent 2) has gross income of \$200 per week. Johnny (child of Taylor and Chris) receives a dependency benefit of \$100 per week based on Taylor's disability. Johnny himself is not disabled. For purposes of this calculation, assume Johnny's primary residence is with Chris and one-third of the time is spent with Taylor. What is Taylor's weekly child support obligation?

Taylor's Gross Available Income = \$650:

Taylor's disability benefit =	\$550
Johnny's dependency benefit =	+ \$100
	<u>\$650</u>

Chris's Gross Available Income = \$200 per week.

The combined available gross income of the parties is \$850 (\$650 + \$200).

Assuming no deductions from gross income for purposes of this illustration, the combined support amount based on the Child Support Guidelines Chart (2013) would be \$186. Taylor's share of the combined support amount is \$141, and the remaining \$45 is Chris's share. Because the amount of Johnny's dependency benefit of \$100 is LESS THAN Taylor's child support share of \$141, Taylor is allowed a credit equal to the amount of the SSDI dependency benefit. Taylor's net child support obligation is \$41 per week (\$141-\$100).

Income derived from a means-tested public assistance program, such as TAFDC (Transitional Assistance to Families with Dependent Children), SNAP (Supplemental Nutrition Assistance Program) and SSI (Supplemental Security Income) benefits should not be counted as income for either party. Public and other commentary suggests that in most cases, the child support received by a recipient will be counted against the amount of public assistance the family is eligible to receive, thereby reducing or eliminating the public assistance benefit altogether. For example, if a recipient is receiving TAFDC at the time the child support order is established, the TAFDC benefit may be terminated if the amount of support exceeds the benefit. In the case of food stamps, for every \$3.00 received in child support, the food stamp benefit is likely to be reduced by \$1.00. By including public assistance income that may not be available to the recipient once the child support is established, the amount of support calculated under the guidelines may not reflect the actual finances of the family after the order. In most cases, means-tested public assistance benefits are calculated based on the applicant's household income and cannot take into account child support owed by the applicant for a child in a different household. When the payor receives public assistance, usually there is no additional benefit that is provided to the payor to account for the child or children not in his or her household.

- **Overtime and Secondary Jobs**

Recommendation: The Task Force recommends amending this section to clarify that when establishing a child support order, the court may include or disregard income earned from overtime or a secondary job, even if this income was earned prior to the entry of the child support order. In its discretion, the court may consider none, some, or all of this income. See Morales v. Morales, 464 Mass. 507 (2013).

Proposed New Language:

If the Court disregards income, in whole or in part, from overtime or a secondary job, due consideration must first be given to certain factors including but not limited to the history of the income, the expectation that the income will continue to be available, the economic needs of the parties and the children, the impact of the overtime on the parenting plan, and whether the extra work is a requirement of the job. The Court may consider none, some, or all overtime income even if overtime was earned prior to entry of the order.

_____. If, after a child support order is entered, a Ppayor or Rrecipient obtains a secondary job or begins to work overtime, neither of which was worked prior to the entry of the order, there shall be a presumption that the secondary job or overtime income should not be considered in a future support order.

Rationale: Public commentary suggests that there is confusion and a reluctance by some judges to disregard income earned from overtime or a secondary job when that income was earned prior to the entry of the child support order, believing that this income must be included. The proposed language is intended to clarify and highlight the judicial discretion available when considering income earned from overtime or a secondary job, including when such income was earned prior to the entry of the order.

The Guidelines continue to instruct that if the court disregards this income, in whole or in part, due consideration must first be given to certain factors, including but not limited to, the history of the income, the expectation that the income will continue to be available, the economic needs of the parties and the children, the impact of the overtime on the parenting plan, and whether the extra work is a requirement of the job. The Guidelines do not describe the weight to be given to any factor in a given case.

- **Self-Employment or Other Income**

Recommendation: The Task Force recommends amending this section to clarify that the calculation of business income may recapture certain deductions or other adjustments taken for income tax purposes.

Proposed New Language:

Income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely-held corporation, is defined as gross receipts minus ordinary and necessary expenses required to produce income. In general, income and expenses from self-employment or operation of a business should be carefully reviewed to determine the appropriate level of gross income available to the parent to satisfy a child support obligation. In many cases

this amount will differ from a determination of business income for tax purposes. The calculation of income for purposes of this section may increase gross income by certain deductions or other adjustments taken for income tax purposes.

Expense reimbursements, in-kind payments or benefits received by a parent, personal use of business property, payment of personal expenses by a business in the course of employment, self-employment, or operation of a business may be included as income if such payments are significant and reduce personal living expenses.

Rationale: Public commentary indicates that clarification is necessary relative to the calculation of gross income where a party is self-employed. The additional language is intended to clarify that tax deductions such as depreciation may be added back in to the gross income calculation, in whole or in part.

- **Unreported Income**

Recommendation: The Task Force recommends no substantive change to this section. See § I, part D of the proposed Child Support Guidelines (2013).

- **Non-Parent Guardian**

Recommendation: The Task Force recommends no substantive change to this section. See § I, part F of the proposed Child Support Guidelines (2013).

Formatting Change: The Task Force recommends moving the “Attribution of Income” section from § II H of the 2009 Guidelines to the Income Definition section found in § I of the proposed Child Support Guidelines (2013). As a result, the Attribution of Income provision will now be labeled “E” in § I and the Non-Parent Guardian provision will be relabeled “F”.

- **Relationship to Alimony or Separate Maintenance Payments**

Recommendation: The Task Force recommends amending this section (1) to include the statutory requirements of G. L. c. 208, § 53(c)(2), as enacted in 2011; and (2) to provide guidance on calculating alimony in cases with child support.

Proposed New Language:

These guidelines have been developed with the understanding that child support is non-deductible by the Payor and non-taxable to the Recipient. These guidelines do not preclude the Court from deciding that any order be designated in whole or in part as alimony without it being deemed a deviation provided the tax consequences are considered in determining the order and the after-tax support received by the Recipient is not diminished. It is the responsibility of the parties to present the tax consequences of proposed orders to the Court.

Chapter 124 of the Acts of 2011 (An Act Reforming Alimony in the Commonwealth) amended G. L. c. 208 and now prohibits the use of gross income which the Court has already considered in making a child support order from being used again in determining an alimony order. See G. L. c. 208, § 53(c)(2). Consideration may be given by the parties to preparing alternate calculations of alimony and child support to determine the most equitable result for the child and the parties. Depending upon the circumstance, alimony may be calculated first, and in other circumstances child support will be calculated first. Judicial discretion is necessary and deviations should be considered.

Rationale: The 2011 amendment to G. L. c. 208, § 53(c)(2) now prohibits the use of gross income, which the court has already considered in calculating a child support order, from being used in determining an alimony order. However, the converse is not stated in the statute.

Since the Guidelines presumptively apply up to a combined available gross income of \$250,000, some have interpreted this language to mean that in cases where the gross income does not exceed \$250,000, alimony cannot be ordered when child support is awarded. The court, however, has discretion to designate a child support order, in whole or in part, as alimony provided the tax consequences are considered, and the after-tax support received by the recipient is not diminished. The parties are responsible for presenting the tax consequences of any proposed order to the court.

Despite being urged to develop a formula for calculating alimony when child support is ordered, the Task Force declines to do so in light of the fact that statutory change is being considered and to preserve judicial discretion in fashioning an appropriate support award.

Instead, the Task Force recommends that the parties prepare alternate calculations of alimony and child support for the court's consideration in order to determine the most equitable result for the child and the parties. Depending on the financial circumstances of the parties, it may be more advantageous to calculate alimony first, then child support or vice versa. Continued judicial discretion is preferred to a formulaic approach, especially in light of the potential tax consequences to the parties. If a statutory change does not occur, this issue should be reviewed during the next quadrennial review after development of case law on the subject.

The Task Force strongly suggests that any proposed order reflect consideration of both federal and state tax treatment distinguishing alimony and child support.⁸⁹

• Claims of Personal Exemptions for Child Dependents

Recommendation: The Task Force recommends no substantive change to this section. See § II, part B of the proposed Child Support Guidelines (2013).

• Minimum and Maximum Levels

Recommendation: The Task Force recommends amending this section (1) to update the minimum income level to which a minimum child support order applies from less than \$100 per week to \$150 dollars per week or less; and (2) to establish a formula for determining a child support order in cases where the combined available income is over \$250,000.

⁸⁹ See Internal Revenue Code Section 71; Department of Revenue Letter Ruling 85-38: Alimony and Child Support, Distinguished.

Proposed New Language:

These guidelines are ~~also~~ intended to protect a minimum subsistence level for those parents obligated to pay child support whose gross income is ~~less than \$150~~ per week ~~or less~~. However, it is the obligation of all parents to contribute to the support of their children. To that end, ~~in all cases~~, a minimum order of \$80 per month (\$18.46 per week) should enter. This minimum should not be construed as limiting the Court's discretion to set a higher or lower order, should circumstances warrant, as a deviation from the guidelines.

These guidelines are ~~not meant to apply where the~~ calculated up to a maximum combined available annual gross income of the parties ~~of exceeds~~ \$250,000. In cases where combined available income is over \$250,000, the guidelines should be applied on the first \$250,000 in the same proportion as the Recipient's and Payor's actual income as provided on line 1h of the child support guidelines worksheet. In cases where income exceeds this limit, the Court should consider the award of support at the \$250,000 level as the minimum presumptive order. ~~Additional amounts of child support may be awarded in the Court's discretion. The child support obligation for the portion of combined available income that exceeds \$250,000 shall be in the discretion of the Court.~~

Rationale: The 2009 Guidelines provide for a minimum order of \$80 per month when the payor's gross income is less than \$100 per week. Although this threshold is not categorized as a "self-support reserve", in essence it attempts to accomplish the same thing: namely, reserve a portion of the payor's income to meet his or her own basic needs, after paying child support. The Task Force acknowledged that if the Guidelines are intended to protect a minimum subsistence level for low-income payors, then the current threshold may not be enough to accomplish this goal.

The Task Force discussed the minimum income level a great deal. Initially, the Task Force discussed reducing the minimum order amount, but agreed that the minimum order amount of \$80 a month (approximately \$18.00 per week) should not be changed. Ultimately, after calculating thousands of mock case examples, and considering the Task Force's recommendation to exclude means-tested public benefits from the definition of income, the Task Force agreed to increase the minimum income level to which a minimum monthly order of \$80 would apply to \$150 or less per week. The Task Force concluded that adjusting the threshold, while also excluding means-tested public benefits from the definition of income, would be adequate and still provide an incentive to work and encourage noncustodial parents to pay support.

The Task Force was urged by the bar to provide guidance on how to calculate child support when the combined available income exceeds \$250,000. Public input suggests that a lack of guidance leads to inconsistency in results throughout Massachusetts. In an effort to alleviate any inconsistency, the Task Force suggests that in cases where combined available income exceeds \$250,000, the guidelines support amount should be applied on the first \$250,000 and then applied to the combined available income above \$250,000 (\$4,808 weekly) in the same proportion for both the recipient's and payor's income as provided on line 1h of the Child Support Guidelines Worksheet. See Appendix B (Proposed Child Support Guidelines Worksheet (2013)).

There was also commentary that it was unclear how much of each parties income was considered by the court in calculating the support at \$250,000. Line 3(b) shows how much of each party's income was not considered at the \$250,000 level.

• Parenting Time

Recommendation: The Task Force recommends amending this section (1) to provide that if parenting time is less than one-third for the nonresidential parent, the court may consider an upward adjustment to the amount provided under the Guidelines; and 2) to provide a formula for calculating child support when parenting time with the nonresidential parent is greater than one-third but less than 50%.

Proposed New Language:

These guidelines recognize that children should enjoy parenting time with both parents to the greatest extent possible consistent with the children's best interests.

These guidelines are based upon the child(ren) having a primary residence with one parent and spending approximately one-third of the time with the other parent. If parenting time is less than one-third for the parent who is not the residential parent, the Court may consider an upward adjustment to the amount provided under the child support guidelines.

Where two parents share equally, or approximately equally, the financial responsibility and parenting time for the child(ren), the child support shall be determined by calculating the child support guidelines twice, first with one parent as the Recipient, and second with the other parent as the Recipient. The difference in the calculations shall be paid to the parent with the lower weekly support amount.²

Where parenting time and financial responsibility are shared in a proportion greater than one-third, but less than 50%, the child support guidelines shall be calculated first with one parent as the Recipient, and second as if the parties shared custody equally. The average of the base child support and the shared custody cross calculation shall be the child support amount paid to the Recipient.

Where there is more than one child covered by this order and each parent provides a primary residence for one or more of these children, child support shall be determined by calculating the child support guidelines twice, first with one parent as the Recipient using the number of children in his or her care, and second with the other parent as the Recipient using the number of children in his or her care. The difference in the calculations shall be paid to the parent with the lower weekly support amount.³

Rationale: In 1987, the (national) Advisory Panel on Child Support Guidelines recommended that states enact guidelines that encourage the involvement of both parents in the child's upbringing and take into consideration the financial support provided by parents in shared custody and extended visitation arrangements.⁹⁰ In keeping with this recommendation, the Massachusetts Guidelines recognize that children should enjoy parenting time with both parents to the greatest extent possible consistent with the children's best interests.

The basic Guideline formula is based upon children having a primary residence with one parent and spending approximately one-third of the time with the other parent. The 2009 Guidelines provide a parenting time adjustment in two circumstances: (1) when parenting time is shared 50/50 and (2) in split custody arrangements. However, there is no guidance on how to calculate child support when parenting time for the nonresidential parent falls below the one-third threshold or when nonresidential parenting time is more than one-third, but less than 50% of the time.

⁹⁰ Robert Williams, *Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report* (U.S. Dep't of Health and Human Services, Office of Child Support Enforcement, 1987).

The Task Force considered the commentary both for and against providing an adjustment for shared-parenting time, the trend toward greater involvement of both parents in parental responsibility, and the research that suggests that the involvement of both parents improves child outcomes.

In an effort to provide guidance to the courts, bar and litigants and to ensure consistency across the state, the Task Force suggests that if the parenting time is less than the one-third presumed parenting time for the nonresidential parent, the court may consider an upward adjustment to the amount calculated under the Guidelines.

Conversely, if the nonresidential parent has parenting time greater than one-third, but less than 50% of the time, the guidelines shall be calculated first with one parent as the recipient, and second as if the parties shared custody equally. The results of each calculation shall be averaged and the final amount paid to the parent with the lower weekly support amount.⁹¹

To illustrate, assume parents, Taylor and Chris, share parenting time and financial responsibility for their daughter, Olivia. Taylor, the residential parent, spends approximately 60% of the time with Olivia, while Chris spends the remaining 40% of the time caring for her. Taylor earns \$25,000 per year (\$481 per week) and Chris earns \$50,000 (\$962 per week). To calculate an appropriate level of child support for Olivia based on the parties 60/40 shared parenting plan, three calculations must be done.

Step 1– Calculate child support as if Taylor and Chris had a traditional (one-third/two-thirds) parenting plan with Taylor as the recipient and Chris as the payor:

Chris's child support obligation based on a traditional (one-third/two-thirds) parenting plan is \$206 per week.

Step 2– Calculate child support as if Taylor and Chris shared custody of Olivia, 50/50. This simply involves calculating child support as if Chris was the recipient and Taylor was the payor. If using the automated Worksheet, the amount is already calculated and can be found in section 2.e ("Recipient's proportional share of support"). Subtract the result obtained from Step 1 from the result obtained in Step 2.

Chris's child support obligation based on a 50/50 shared parenting plan is \$105 per week: $\$206 - \$101 = \$105$ per week.

Step 3– Determine the average of Step 1 and Step 2 by adding the child support obligation calculated in Step 1 to the child support obligation calculated in Step 2 and divide by 2:

⁹¹ Footnote 3 and 4 of the proposed Child Support Guidelines (2013) instructs:

³ For purposes of these calculations, no deductions on line 1e of the Guidelines Worksheet shall be made.

⁴ For purposes of these calculations, no deductions on line 1e of the Guidelines Worksheet shall be made.

$$\$206 + \$105 = \$311/2 = \$156 \text{ (rounded to the nearest \$)}$$

Chris's child support obligation, based on a 60/40 shared parenting plan, is \$156.

- **Child Care Costs**

Recommendation: The Task Force recommends amending this section to provide that the court may consider a deviation when either the recipient or the payor deducts actual child care costs that are disproportionate to his or her income.

Proposed New Language:

Reasonable child care costs for the child(ren) covered by the order and due to gainful employment of either party are to be deducted from the gross income of the party who pays the cost. In appropriate circumstances, child care costs may include those due to training or education reasonably necessary to obtain gainful employment or enhance earning capacity. The Court may consider a deviation where the child care cost is disproportionate to income.

Rationale: Under the 2009 Guidelines, reasonable child care costs actually paid by the party, are deductible, dollar-for-dollar, from the gross weekly income of that party, provided the child care is due to gainful employment. The Task Force agrees that the selection of a third-party child care arrangement should continue to be within the parent's discretion. However, to the extent possible, in order to be deductible dollar-for-dollar, actual child care costs should be proportional to that parent's income.

This recommendation highlights to the court that deviations should be strongly considered where child care costs are disproportionate to income.

- **Age of Children**

Recommendation: The Task Force recommends amending this section to clarify that (1) payment of child support for children over the age of 18 is established by statute; and (2) orders for education costs for adult dependent children are not presumptive and any order for education costs must be considered by the court if any additional support is ordered.

Proposed New Language:

These guidelines create a rebuttable presumption that the dollar amount provided for under the guidelines shall apply in all to cases establishing or modifying a child support order involving children entitled to support from ages 0-18 and children over 18 who are still attending high school. Payment of child support for children over the age of 18 is established by statute.¹ In establishing support orders for children over age 18, to the extent permitted by law, the Court shall exercise its discretion in ordering support and/or college contribution. The Court shall considering the reason for the continued residence with and dependence on the Recipient, the child's academic circumstances, living situation, the available resources of the parents, the costs of post-secondary education for the child, the availability of financial aid and the allocation of those costs, if any, between the parents. Contribution to college costs is not presumptive, but is based upon the above factors. If a specific college contribution is ordered, this contribution shall be considered by the Court in setting the weekly support order, if any, and the availability of financial aid.

Rationale: In Massachusetts the court's authority to issue orders for support and/or education costs for an adult dependent child is provided by statute.⁹² The Guidelines themselves do not provide the source of authority nor can the Guidelines change this provision.

Under current law, the court may make orders of support and education for any child who is 18 years old and less than 21 years old if the child is domiciled with a parent and the child is dependent on that parent for his or her support. The court may also make orders of support and education for any child who is 21 years old and less than 23 years old if the child is domiciled with a parent and also principally dependent on that parent for support because of enrollment in an educational program (excluding a program beyond the undergraduate level).⁹³

As a result of public misunderstanding regarding the statutory basis for the court's authority, the Task Force felt that clarification was necessary and added the statutory reference by way of a footnote. The Task Force also added language to provide instruction to the court that if a party is ordered to contribute to an adult dependent child's educational costs, the court must consider this financial contribution if any additional child support is ordered.

- **Health Insurance**

Recommendation: The Task Force recommends no substantive change to this section. See § II, part G of the proposed Child Support Guidelines (2013).

Rationale: While no substantive recommendations are proposed at this time due to the upcoming implementation of federal and state legislative changes, health insurance as it relates to the Guidelines is an area of concern and worthy of continued consideration by the Task Force prior to the next quadrennial review. In conducting this review, the Task Force noted particular areas of concern worth mentioning at this juncture.

⁹² Footnote 4 of the proposed Child Support Guidelines (2013) instructs:
"See G. L. c. 208, § 28, G. L. c. 209C, § 9, and G. L. c. 209, § 37."

⁹³ See generally, G. L. c. 208, § 28, G. L. c. 209C, § 9, and G. L. c. 209, § 37.

Federal law requires that state guidelines must, at a minimum, address how parents will provide for the child(ren)'s health care needs through health insurance coverage and/or through cash medical support.⁹⁴ Cash medical support is a dollar amount ordered to be paid toward the cost of health insurance provided for a child by a public entity or by another parent through employment or otherwise, or for other medical costs not covered by insurance.⁹⁵ Cash medical support or the cost of private health insurance is considered 'reasonable' if the cost to the parent responsible for providing medical support does not exceed five percent of the parent's gross income, or at state option, a reasonable alternative income-based numeric standard defined in either state law, regulations, court rule or child support guidelines.

Current Massachusetts law does not provide for an order of cash medical support nor does it require both parents to provide health insurance. Additionally, the cost of health insurance under Massachusetts law is considered reasonable if it is simply "available at a reasonable cost". Massachusetts law does not define reasonable cost by any income-based numeric standard. Because Massachusetts law provides that only a payor can be ordered to provide health insurance for the child⁹⁶ and does not provide for court ordered cash medical support or define the reasonable cost of health insurance based on an alternative income-based numeric standard, the Task Force cautions that Massachusetts law (and therefore the Guidelines) appears to be in conflict with the federal requirements found in Title 45, § 302.56.⁹⁷

In keeping with the public policy of the Commonwealth that dependent children shall be maintained, as completely as possible, from the resources of both their parents, thereby relieving or avoiding the financial responsibility from being placed on the citizens of Massachusetts, the Task Force suggests a legislative amendment to current law so that either parent may be court ordered to maintain health care coverage for the child(ren) and/or a cash medical support. Private health insurance coverage should be provided by the parent who can obtain the best coverage for the child(ren) at the least cost. Reasonable cost should be defined by a numeric standard. A statutory amendment would provide consistency with federal law, the public policy of the Commonwealth and Guideline principles.

The Task Force also reviewed how the cost of health insurance fits within the Guidelines themselves. The Task Force considered the effect of the deduction on a child support order where the cost is significant and also considered whether the current structure provides a disincentive for the payor parent to assume direct health care coverage costs. The Task Force also considered reducing the deduction to the cost of the child or children's health care cost only.

⁹⁴ 45 CFR Ch.III, § 302.56 (c)(3).

⁹⁵ *Id.* at § 303.31 (a)(1).

⁹⁶ The text of the Guidelines suggests that a recipient may voluntarily agree in writing to provide a child's health insurance provided it is not MassHealth. See Section G(1) of the Guidelines.

⁹⁷ *Id.*

The Task Force fully considered the above issues but determined that the current formula should remain in place as a deduction for the full cost in light of the importance of health insurance generally, the mandatory nature of medical insurance in Massachusetts, and the uncertainty of the effects of the Affordable Care Act.

The Task Force recommends that as the Affordable Care Act provisions continue to evolve, health insurance costs as applied to the Child Support Guidelines continue to be reviewed.

- **Dental/Vision Insurance**

Recommendation: The Task Force recommends no substantive change to this section. See § II, part G (2) of the proposed Guidelines (2013).

- **Routine Uninsured Medical and Dental Expenses**

Recommendation: The Task Force recommends no substantive change to this section. See § II, part G (3) of the proposed Guidelines (2013).

- **Uninsured Extraordinary Medical and Dental Expenses**

Recommendation: The Task Force recommends no substantive change to this section. See § II, part G (4) of the proposed Guidelines (2013).

- **Attribution of Income**

Recommendation: The Task Force recommends (1) moving the Attribution of Income provision from § II of the Guidelines (Factors to be Considered in Setting the Child Support Order) and inserting it, as amended, in § I (Income Definition) of the Guidelines (2013) as part “E”; and (2) amending this section to provide that when employment is not available at the attributed income level, attribution of income may not be proper.

Proposed New Language:

~~Attribution of income is intended to be applied~~ **Income may be attributed** where a finding has been made that either party is capable of working and is unemployed or underemployed. The Court shall consider all relevant factors including without limitation the education, training, health, ~~and~~ past employment history of the party, and the **availability of employment at the attributed income level. The Court shall also consider the** age, number, needs and care of the children covered by this order. If the Court makes a determination that either party is earning less than he or she could through reasonable effort, the Court should consider potential earning capacity rather than actual earnings in making its order.

Rationale: Income may be attributed when the court makes a finding that a party is earning less than he or she could through reasonable efforts. In making this finding, the court must consider all relevant factors, including but not limited to, the education,

training, health, past employment history of the party, and the availability of employment at the attributed income level. When employment at the attributed income level is not available, the court should take this factor into consideration when determining if attribution of income is proper and at what income level.

Through no fault of an employee, employment may no longer be available at the attributed income level due to industry changes.

If employment is no longer available at a suggested attributed income level, the court should consider this fact when determining whether and how much to attribute income to either party.

• **Other Orders and Obligations**

Recommendation: The Task Force recommends amending this section (1) to clarify that amounts actually paid to support a former spouse or child, not covered by the order before the court, shall be deducted from gross income for purposes of calculating an initial order or when modifying an existing order; and (2) to highlight the concept that expenses of a subsequent family may be used as a defense to a requested increase in child support, but not as a reason to request a decrease in an existing order.

Proposed New Language:

When an initial order or a modification of an existing order is sought for a child covered by ~~the~~^{this} order, the following amounts actually paid to support a former spouse or a child not covered by this order shall be deducted from gross income for purposes of calculating the child support amount under this order:

- 1) the amount of prior orders for spousal and child support; or
- 2) voluntary payments to support a child with whom the Payor does not reside, to the extent the amounts are reasonable; or
- 3) a hypothetical amount of child support for a child with whom the Payor resides but for whom no child support order exists, which hypothetical child support amount shall be calculated according to the Guidelines Worksheet using the gross incomes of both parents of the child.

Obligations to a subsequent family may be used as a defense to a request to modify an order seeking an increase in the existing order but such obligations should not be considered a reason to decrease existing orders.

The party seeking to take such deductions from gross income must have a legal obligation or duty to support the former spouse or child and must provide evidence that such support or voluntary payments are actually being paid.

To the extent that prior orders for spousal and child support are actually being paid, the Court should deduct those payments from the party's gross income before applying the formula to determine the child support order. Voluntary payments for other children a party has a legal obligation to support may be deducted in whole or in part to the extent the amounts are reasonable. It is the party's obligation to provide evidence of the existence and payment of prior orders or voluntary payments.

~~**Obligations to a subsequent family may be used as a defense to a request to modify an order seeking an increase in the existing order but such obligations should not be considered a reason to decrease existing orders.**~~

Rationale: As provided by statute, when a court makes an order for maintenance or support, the court shall determine whether the payor under such order is responsible for the maintenance or support of any other children of the payor, even if a court order does not exist, or whether the payor is under a preexisting court order to support any other children.⁹⁸ If the court determines that such responsibility does exist, and that the payor is fulfilling such responsibility, the court shall take this into consideration in setting the amount paid under the current order for maintenance or support.⁹⁹

The Task Force clarifies that the procedure provided by this section to deduct amounts actually paid to support a former spouse or child from the gross income of the payor shall also apply to modification proceedings.

The Task Force retains and highlights in bold that expenses of a subsequent family may be used as a defense to a requested increase in child support, but not as a reason to request a decrease in an order.

- **Families with More than Five Children**

Recommendation: The Task Force recommends no substantive change to this section. See § II, part I of the proposed Child Support Guidelines (2013).

- **Other Child-Related Expenses**

Recommendation: The Task Force recommends no substantive change to this section. See § II, part J of the proposed Child Support Guidelines (2013).

- **Modification**

Recommendation: The Task Force recommends amending this section to provide the legal standards for modification of an existing child support order when the Guidelines apply.

Proposed New Language:

⁹⁸ See G. L. c. 208, § 28; G. L. c. 209C, § 9; G. L. c. 209, § 37.

⁹⁹ *Id.*

- A. A child support order may be modified if any of the following circumstances exist:
- 1) ~~the existing order is at least three years old; or there is an inconsistency between the amount of the existing order and the amount that would result from the application of the child support guidelines;~~
 - 2) health insurance previously available at reasonable cost is no longer available (or if available but not at reasonable cost); ~~or~~
 - 3) health insurance not previously available to a party at reasonable cost has become available; ~~or~~
 - 4) any other material ~~and substantial~~ change in circumstances has occurred.
- B. ~~In the event that the Department of Revenue is providing IV-D services, the provisions of G. L. c. 119A, § 3B(g) appear to apply to modification requests made within 0-3 years from the entry of the last order in which case the requesting party must demonstrate a substantial change in circumstances in addition to an inconsistency. See Morales v. Morales, 464 Mass. 507 (2013).~~
- C. Upon a request for modification of an order that deviated from the guidelines at the time it was entered, the guidelines shall apply unless:
- 1) the facts that gave rise to deviation still exist; and
 - 2) deviation continues to be in the child's best interest; and
 - 3) the guidelines amount would be unjust or inappropriate under the circumstances.

Paragraph C B above does not preclude deviations based on other grounds set forth in Section IV or grounds for modification as set forth in Paragraph A ~~or B~~ above.

Rationale: The procedure for calculating and modifying child support orders is governed by statute¹⁰⁰ and by the Guidelines. See *Morales v. Morales*, 464 Mass. 507 (2013). Massachusetts law provides two separate standards to be used by the court in reviewing a request for modification: (1) the inconsistency standard and (2) the material and substantial change standard. The standard that applies depends upon the statutory basis for bringing the modification action.

A State's receipt of certain Federal grants and reimbursements is conditioned on the State's creation of guidelines for child support that meet specific statutory criteria.¹⁰¹ To increase the effectiveness of a State's child support enforcement program, federal law (Title IV-D) requires that States enact laws and procedures that are consistent with federal requirements for review and adjustment of child support orders in cases enforced by the State's IV-D agency.¹⁰²

Federal law requires that every 3 years (or such shorter cycle as the State determines), upon the request of either parent or the IV-D agency (if there is an assignment), the IV-D agency must review and if appropriate, adjust an award in accordance with the guidelines if the amount of the existing child support award differs from the amount that would be awarded in accordance with the guidelines ("inconsistency standard").¹⁰³

¹⁰⁰ See G. L. c. 119A, § 13; G. L. c. 208, § 28; G. L. c. 209, § 32F; G. L. c. 209, § 37 and G. L. c. 209C, § 20.

¹⁰¹ See 42 U.S.C. § 655 (a)(1)(A); *id.* at § 602 (a)(2); *id.* at § 667; *id.* at § 654 (20)(A); *id.* at § 666.

¹⁰² 42 USC § 666 (a).

¹⁰³ 42 USC § 666(a)(10)(A)(i)(I).

In the 3-year cycle, a review and adjustment shall be made without a requirement for proof or showing of a change in circumstances. Outside of the 3-year cycle, the IV-D agency must review and if appropriate, adjust the child support order in accordance with the guidelines if the requesting party demonstrates a substantial change in circumstances (“substantial change in circumstances standard”).¹⁰⁴

In cases where the Massachusetts Department of Revenue Child Enforcement Division (the State’s IV-D agency) is providing IV-D services, G. L. c. 119A, § 3B is consistent with the above federal requirements.¹⁰⁵ Actions filed pursuant to G. L. c. 119A, § 3B are initiated by the Department of Revenue with or without a written agreement of the parties. G. L. c. 119A, § 3B does not apply to child support orders in cases not receiving IV-D services.

In cases not receiving IV-D services or when modification actions are filed directly by a party pursuant to the statutory authority granted in G. L. c. 208, § 28 (divorce), G. L. c. 209C, § 20 (out of wedlock), G. L. c. 209, § 32F (separate support) or G. L. c. 209, § 37 (support orders for children of separated parents), an existing child support award for a minor child may be modified at any time after the date of the original child support order (i.e., less than 3 years, at 3 years, greater than 3 years) provided there is an inconsistency between the amount of the current order and the amount that would result from the application of the Guidelines (“inconsistency standard”). Unlike actions filed by the Department of Revenue pursuant to G. L. c. 119A, § 3B, there is no requirement that a party demonstrate a substantial change in circumstances when an existing order is less than 3 years old. The requirement of the 2009 Guidelines that an existing order must be at least three years old or a material change in circumstances is required to modify an existing order was an attempt to treat cases not receiving IV-D services and cases receiving IV-D services uniformly.¹⁰⁶ However, requiring a material change in circumstances with respect to all modification requests filed less than three years after the date of the original child support order, although consistent with federal law and G. L. c. 119A, § 3B, ultimately conflicts with other state statutes.¹⁰⁷ Until there is legislative consistency, the language proposed by this Task Force should alleviate any discrepancy between statute and Guidelines. Although the Task Force was initially concerned that the current statutory discrepancy may be unconstitutional, the Task Force recognizes that any party receiving IV-D services may still request a modification by filing their own action pursuant to any of the applicable “inconsistency standard” statutes.

¹⁰⁴ 42 USC § 666(a)(10) (A)(iii)-(B).

¹⁰⁵ See G. L. c. 119A, § 3B, as amended through St.1998, c.64, § 77.

¹⁰⁶ See, “Report of the Child Support Guidelines Task Force,” October 2008, pp. 45-46.

¹⁰⁷ See *Morales* at 513.

• **Deviation**

Recommendation: The Task Force recommends amending this section to expand the circumstances for a deviation, above or below the guidelines, when either parent has (1) extraordinary health insurance expenses; (2) absorbs a child care cost that is disproportionate to income; or (3) provides less than one-third of the parenting time for a child or children. The Task Force also recommends amending the title of this section by deleting the “s” to be consistent with the previous section labeled “Modification”.

Proposed New Language:

The Court, or the parties by agreement approved by the Court, may deviate from the guidelines and overcome the presumptive application of the guidelines provided the Court enters specific written findings stating:

- 1) the amount of the order that would result from application of the guidelines;
- 2) that the guidelines amount would be unjust or inappropriate under the circumstances;
- 3) the specific facts of the case which justify departure from the guidelines; and
- 4) that such departure is consistent with the best interests of the child.

Circumstances which may support deviation, above or below the Child Support Guidelines, include, but are not limited to, the following:

- 1) the parties agree and the Court approves their agreement;
- 2) a child has special needs or aptitudes;
- 3) a child has extraordinary medical or other expenses;
- 4) application of the guidelines, particularly in low income cases, leaves a party without the ability to self support;
- 5) Payor is incarcerated, is likely to remain incarcerated for an additional 3 years and has insufficient financial resources to pay support;
- 6) application of the guidelines would result in a gross disparity in the standard of living between the two households such that one household is left with an unreasonably low percentage of the combined available income;
- 7) a parent has extraordinary medical expenses;
- 8) a parent has extraordinary travel or other expenses related to parenting;
- 9) application of the guidelines may adversely impact re-unification of a parent and child where the child has been temporarily removed from the household based upon allegations of neglect; ~~or~~
- 10) absent deviation, application of the guidelines would lead to an order that is unjust, inappropriate or not in the best interests of the child, considering the Principles of these guidelines;
- 11) a parent has extraordinary health insurance expenses;
- 12) one parent is absorbing a child care cost that is disproportionate in relation to their income;
- 13) one parent provides less than one-third of the parenting time for a child or children.

Rationale: Consistent with the requirements of the Family Support Act of 1988, federal regulations require that a state’s guideline must provide that in any judicial or administrative proceeding for the award of child support, there shall be a rebuttable presumption that the amount of the award which would result from the application of the state’s guideline is the correct amount of child support to be awarded.¹⁰⁸ Massachusetts provides for a rebuttable presumption in its guidelines Preamble:

¹⁰⁸ 45 C.F.R. § 302.56(f).

“There shall be a rebuttable presumption that these guidelines apply in all cases establishing or modifying a child support order.”

Federal regulations require a written finding or oral finding on the record in any proceeding where the application of the guidelines for an order of child support would be unjust or inappropriate in a particular case. The findings shall be sufficient to rebut the presumption, as determined by the criteria established by the state. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines shall state the amount of support that would have been required under the guidelines, and must include a justification of why the order should vary from the guidelines.¹⁰⁹ Massachusetts simplifies the finding through the use of the Child Support Findings for Deviation form.¹¹⁰

Federal regulations require that as part of a state’s quadrennial review, the State must analyze case data to ensure that deviations from the guidelines are limited.¹¹¹ States, in general, differ on if and when a court may deviate from the guidelines. In Massachusetts, the ability to deviate is viewed as a useful tool for judges to ensure that child support awards are in the best interest of the child and reflect Guideline principles. A list of possible circumstances that may warrant a deviation are provided in the Guidelines themselves, but this list is not exclusive. The court should retain judicial discretion to deviate if and when necessary. The ultimate goal of any deviation should be to ensure a just and appropriate child support award.

As a result of the review process, the Task Force identified three additional circumstances that may support a judicial finding for deviation. The additional circumstances are when either parent has (1) extraordinary health insurance expenses; (2) absorbs a child care cost that is disproportionate to income; or (3) provides less than one-third of the parenting time for a child or children. The new deviation factors are meant to provide more equitable awards if appropriate.

B. Child Support Guidelines Chart (2013)

The economic data and assumptions underlying the proposed Child Support Guidelines Chart (2013) (“Chart”) incorporates the child support obligation schedule and are summarized as follows:

- The Chart is not based on any one economic measurement of child-rearing expenditures;

¹⁰⁹ 45 C.F.R. § 302.56(g).

¹¹⁰ See Appendix D (Proposed Child Support Findings for Deviation form).

¹¹¹ 45 C.F.R. § 302.56(h); see also Section V of this report.

- The Chart does not include costs for childcare and child related health/dental/vision insurance premiums. The Task Force recommends continuing to deduct child care and child related health/dental/vision insurance premiums, dollar-for-dollar, from the gross income for the payor or recipient on a case-by-case basis;
- The Chart is based on children having a primary residence with one parent and spending approximately one-third of the time with the other parent;
- The Chart does not vary by age;
- The Chart does not require the recipient to account for child-rearing expenditures to the court or payor;
- The Chart incorporates a minimum order amount of \$80 per month for low-income payors;
- The Chart covers combined available gross incomes of \$0 to \$4808 per week, rounded to the nearest dollar; and
- The Chart is only part of the overall Guidelines and must be read and used together with the information contained in the text of the proposed Child Support Guidelines (2013).

Recommendation: The Task Force recommends (1) adjusting the child support obligation schedule, found in Table A on the Guidelines Worksheet, by decreasing the 2009 Guidelines percentages at all income levels while continuing to provide for guideline percentages that decrease at high incomes; (2) adjusting the scale factors, found in Table B, in cases with two to five children; and (3) updating the corresponding Child Support Guidelines Chart accordingly.

Rationale: Although the Task Force did not rely on any one economic study to estimate child-rearing expenditures, the available economic data appear to suggest that the 2009 Guidelines percentages produce child support obligations that are above current economic estimates at the middle and high income ranges. The economic data suggests that the 2009 Guidelines percentages should be decreased. A decrease in 2009 Guidelines percentages means that parents who have combined available income in the middle to high income ranges would, all things being equal, pay less under the proposed Guidelines (2013). The Task Force recommends decreasing the 2009 Guidelines percentages at middle and high income ranges.

Conversely, the available economic data suggests that the 2009 Guidelines percentages produce child support obligations that are below the current estimates for child costs at lowest income levels. The economic data therefore suggests that the 2009 Guidelines percentages should be increased at the lowest income levels. An increase in the 2009 Guidelines percentages at the lowest income levels mean that parents who have combined available income in the poverty range would, all things being equal, pay more under the proposed Guidelines (2013).

The Task Force does not recommend increasing the 2009 Guidelines percentages at the lowest income levels. At low income levels, parents simply don't have enough income to cover expenses. Instead, means-tested public assistance benefits such as SNAP, TAFDC, etc., supplement the custodial parent's household where the noncustodial parent's income can not due to a level of income that barely provides for subsistence. The Task Force recognizes that the most difficult cases that come before the court are when both parents are unable to meet their expenses. Although the needs of the family must be balanced, when a child support order is excessive and prevents a payor from meeting his or her own basic needs, the negative consequence of potential homelessness, excessive arrears, and less parental involvement is not in the child's best interest.

During this quadrennial review process, a number of judges, probation officers, and noncustodial parents echoed concerns with the 2009 Guidelines percentages for most income levels. One repeated concern the Task Force heard from court personnel and members of the bar related to circumstances in which guideline amounts were counter-intuitive. Specifically, at low income levels, when a custodial parent's income increases, the payor's support order increases. The apparent logical result should have been that the order stays the same or decreases. The Task Force identified the source of the anomaly to be the "arc" of the curve, i.e., the rise of marginal rates at the lower end of the combined income scale before the rates begin to decrease at higher incomes. The adjustments made to the marginal rates and the lower rate of increase at the lowest income levels has minimized this result. It was not possible to completely eliminate the result while maintaining a set of marginal rates which increase slightly at the lowest end. That increase was necessary to reflect the balance that had to be struck between affordability and child costs.

Additionally, a recurrent comment from noncustodial parents was the suggestion to base the Guidelines on net income instead of gross. The Task Force declines to recommend this change. The Task Force reasons that the current practice of utilizing the combined gross income of the parties remains the simplest option. A major objective of our Guidelines is to keep them as simple as possible for ease of application. Historically, the Guidelines have used the gross income of the parties when calculating a child support order. Litigants, members of the bar, judges and court staff are all familiar with using gross income and its ease of use. Using gross income is also less complicated and less likely to be subject to manipulation. The Task Force also notes that the majority of Income Shares states base their guidelines on gross income and not net income.

Since the 2008 review, economic conditions nationally and in Massachusetts have changed considerably. This may or may not have impacted stakeholder perception of the 2009 Guidelines percentages. The Task Force acknowledges that economic evidence as to the actual costs of raising children specifically in Massachusetts is critical to truly determine what constitutes an 'appropriate' child support award. Until that data is provided, the Task Force, can at best, only offer what is hoped to be perceived as reasonable and fair changes.

In summary, the Task Force proposes the following changes to the 2009 child support obligation schedule (as reflected in Table A and the Chart):

- For low income payors, the minimum child support order for one child should remain at \$80 per month. However, the minimum income level to which it applies should be increased from \$100 per week to \$150 per week or less;
- Beginning with combined available gross income of \$151 per week (\$7,852 per year) and up to a maximum of \$4,808 per week (\$250,000 per year), the recommended child support percentages range from 22 percent of the combined available gross income at the lowest income levels and gradually decline to a recommended 11 percent at the highest levels;
- Table A, as proposed and incorporated in the Child Support Worksheet, is as follows:

TABLE A: CHILD SUPPORT OBLIGATION SCHEDULE <i>All amounts are \$ / week, rounded to the nearest dollar</i>					
COMBINED AVAILABLE INCOME FROM LINE 1(g)		CHILD SUPPORT AMOUNT (1 CHILD)			
Minimum	Maximum	At court discretion, but not less than \$80/month			
\$-	\$150	22%			
\$151	\$319				
\$320	\$750	\$70	+	22%	above \$319
\$751	\$1250	\$165	+	21%	above \$750
\$1251	\$2,000	\$270	+	19%	above \$1250
\$2,001	\$3,000	\$413	+	15%	above \$2,000
\$3,001	\$4,000	\$563	+	12%	above \$3,000
\$4,001	\$4,808	\$683	+	11%	above \$4,000

Source: Proposed Guidelines Worksheet (2013), Table A

The Task Force also recommends increasing the adjustment factors for orders covering additional children as a multiple of the recommended one child order. For a second child, the adjustment is 1.25 or 25 percent higher than the order for one child, three children require an adjustment of 1.38 or 10 percent higher than the order for two children, four children require an adjustment of 1.45 or 5 percent higher than the order for three children and five children require an adjustment of 1.48 or 2 percent higher than the order for four children.

- Table B, Adjustments for Number of Children, as proposed and incorporated in the Child Support Worksheet, is as follows:

TABLE B: ADJUSTMENT FOR NUMBER OF CHILDREN	
CHILDREN	ADJUSTMENT
1	1.00
2	1.25
3	1.38
4	1.45
5	1.48

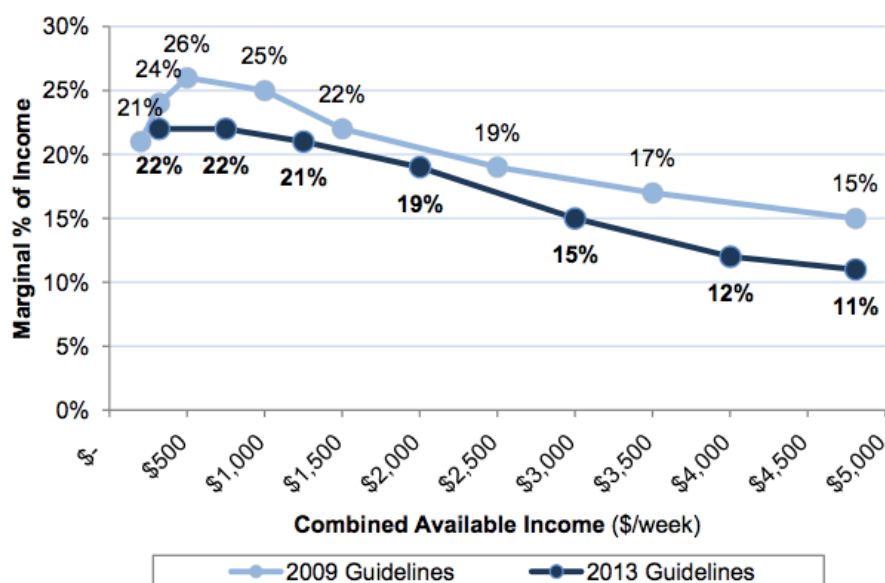
Source: Proposed Guidelines Worksheet (2013), Table B

A copy of the proposed Child Support Guidelines Chart (2013) can be found in Appendix C.

Comparisons of 2009 and Proposed Guidelines (2013) Amounts

As shown in Figure 15, the proposed Guidelines (2013) percentages for one child, overall, are lower than the 2009 Guidelines percentages at all income levels.

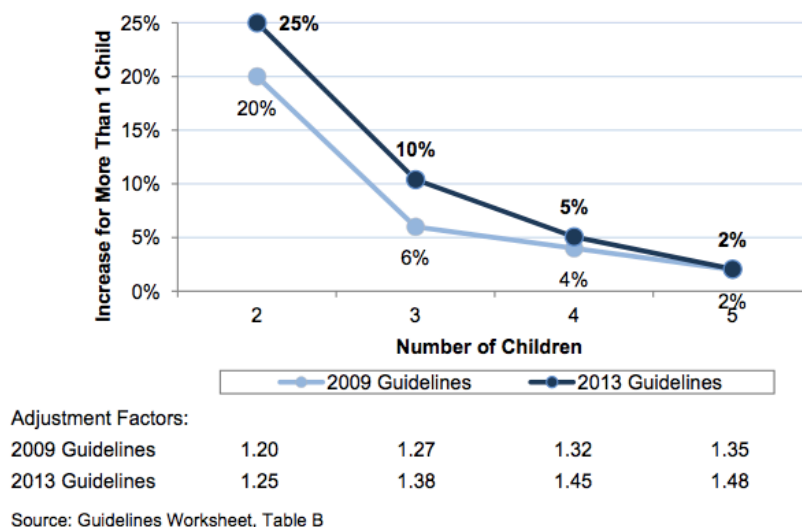
Figure 15: Proposed Guidelines (2013) Percentages



Source: Guidelines Worksheet, Table A

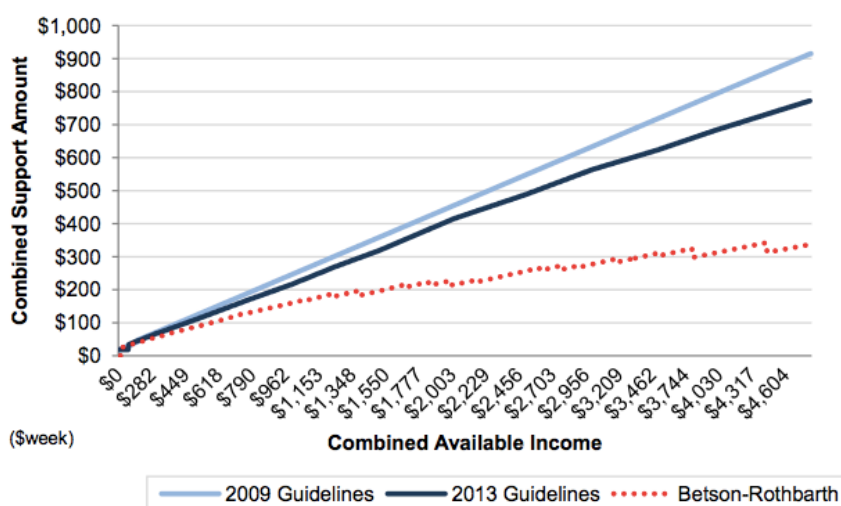
As shown in Figure 16, the proposed Guidelines (2013) adjustment factors increase the order for one child by 25 percent for a second child, 10 percent for a third child, 5 percent for a fourth child and 2 percent for a fifth child.

Figure 16: Proposed Guidelines (2013) Adjustment Factors for Two, Three, Four and Five Children



As shown in Figure 17, the proposed Guidelines (2013) amounts for one child are lower than the 2009 Guidelines percentages at all income levels and higher than the Betson-Rothbarth (2010) estimates at higher income levels.

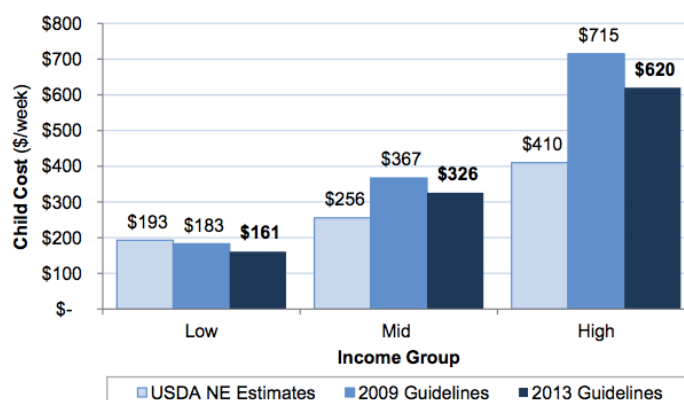
Figure 17: Proposed Guidelines (2013) Amounts Compared to Betson-Rothbarth (2010) Estimates



As illustrated in Figure 18, the proposed Guidelines (2013) amounts for one child are lower than the 2009 Guidelines amounts at all income levels and lower than the USDA Northeast estimates at low income levels, comparative to the USDA Northeast (2012)

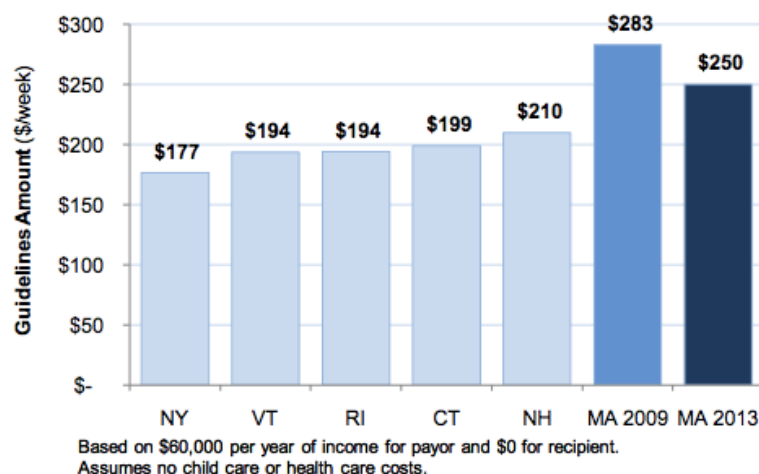
estimates at middle incomes and otherwise higher than the USDA Northeast estimates at high incomes.

Figure 18: Proposed Guidelines (2013) Amounts Compared to USDA Northeast (2012) Estimates



As indicated in Figure 19, at the median income level for Massachusetts, the proposed Guidelines (2013) amounts are lower than the 2009 Guidelines, comparative to New Hampshire guideline amounts and otherwise slightly higher than guideline amounts in Vermont, New York, Rhode Island and Connecticut. The below comparisons do not reflect adjustments for child care or health care deductions.

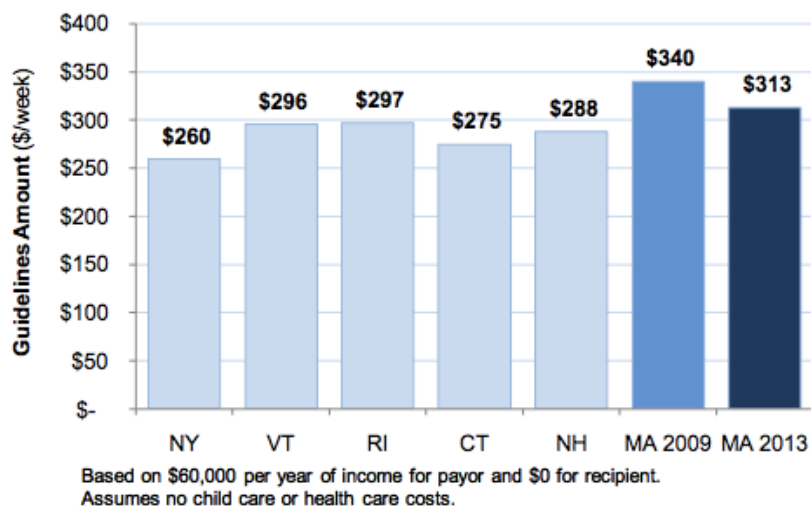
Figure 19: Proposed Guidelines (2013) Compared to Five Neighboring States



As shown in Figure 20, the proposed Guidelines (2013) amounts for two children at the median income level for Massachusetts are lower than the 2009

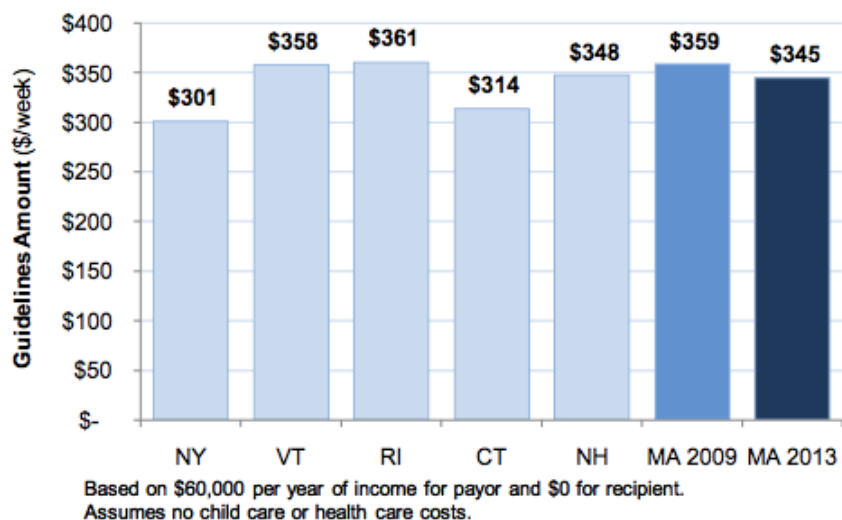
Guidelines amounts and comparable or slightly higher to guideline amounts for most of the five neighboring states.

Figure 20: Proposed Guidelines (2013)
Compared to Five Neighboring States for Two Children



For three children, Figure 21 illustrates that the proposed Guidelines (2013) amounts are lower than the 2009 Guidelines amounts and comparable to most of the five neighboring states.

Figure 21: Proposed Guidelines (2013)
Compared to Five Neighboring States for Three Children



To summarize, the proposed Guidelines (2013) amounts are lower than the 2009 Guidelines amounts at all income levels, lower than the USDA Northeast (2012) estimates at the lowest income levels, comparable to the USDA Northeast (2012) estimates and New Hampshire guidelines at the Massachusetts median income level, and otherwise higher than the benchmarks at high income levels. The Task Force considers the proposed Guidelines (2013) amounts appropriate for Massachusetts considering that household income and basic child-rearing expenditures such as housing, child care, food and health insurance costs are all above average in Massachusetts. From an economic perspective, Guidelines amounts that are higher than benchmarks are appropriate, if child costs (and income¹¹²) are higher than the benchmarks.¹¹³

C. Child Support Guidelines Worksheet

The Task Force recommends amending the 2009 Child Support Guidelines Worksheet to reflect the overall changes proposed by the Task Force. The amended Worksheet reflects the changes to Table A and Table B in the proposed Child Support Guidelines Chart (2013) as well as a new section “3” to calculate available income above the Guidelines maximum combined available income of \$4,808, if necessary. The Task Force suggests that in cases where combined available income exceeds \$250,000, the guidelines support amount should be applied on the first \$250,000 and then applied to the combined available income above \$250,000 (\$4,808 weekly) in the same proportion for both the recipient’s and payor’s income as provided on line 1h of the Child Support Guidelines Worksheet.

The Worksheet’s one-page design remains simple, straight forward, and easy to use.

For a copy of the proposed Child Support Guidelines Worksheet and proposed Instructions, see Appendix B and Appendix E, respectively.

D. Child Support Findings Form

The Task Force recommends amending the Child Support Findings form to reflect the updated deviation factors proposed by the Task Force and to highlight that the Findings form must be filed and docketed with the case whenever a deviation from the Guidelines occurs. For a list of updated deviation factors, see § IV of the proposed Child Support Guidelines (2013).

For a copy of the proposed Child Support Findings form, now titled, “Child Support Findings Form For Deviations”, see Appendix D.

¹¹² Median income in Massachusetts is nearly 25 percent higher than in the U.S. overall. See Sarro and Rogers at p. 53.

¹¹³ Sarro and Rogers at pp. 51-52.

E. Additional Suggestions

In addition to the specific recommendations listed above, the Task Force offers the following suggestions for consideration:

1. Develop and provide simple, written instructions for the bar and litigants to accompany the revised Child Support Worksheet.¹¹⁴
2. Develop a question-based automated Worksheet to assist pro se litigants.
3. Amend the Financial Statements to account for changes recommended by the Task Force in defining income sources.
4. Provide a Frequently Asked Questions (“FAQ”) resource on the Trial Court website to address questions related to child support.
5. The Task Force suggests that health insurance issues, as related to the Massachusetts Guidelines, should be continually reviewed and assessed with careful consideration given to rising costs. While no specific recommendations are included at this time due to the proximity of federal and state legislative changes, this is an area of concern and worthy of continual consideration.

Section VII. Conclusion

Life affords no greater responsibility, no greater privilege, than the raising of the next generation.- C. Everett Koop

Determining what is an appropriate child support award is a complex question that is made all the more complicated by the various fact patterns that are presented to the court every day. Since the 1980's, Massachusetts has promulgated Guidelines to increase uniformity for similarly situated families and to reduce the likelihood of inadequate awards that do not reasonably reflect the costs of child rearing. Since the Guidelines were first promulgated, a basic premise has remained constant: child support should be calculated as a percentage of parental income, up to a maximum income amount, with that percentage varying based on level of income and number of children. The basic support amount, calculated as a percentage of parental income, is intended to reflect estimated expenditures on children. Over the years, each succeeding set of Guidelines has been intended to reflect the best estimate of the cost of raising children and has been impacted by the economic data available, case law and public policy of the Commonwealth. The goal of this Task Force is that its recommendations and proposed 2013 Guidelines will represent an improved approach to this important and complex subject.

¹¹⁴ See Appendix E (Proposed Child Support Guidelines Instructions).

Section VIII. Appendices

Appendix A–	Proposed Child Support Guidelines (2013)
Appendix B–	Proposed Child Support Guidelines Worksheet (2013)
Appendix C–	Proposed Child Support Guidelines Chart (2013)
Appendix D–	Proposed Child Support Findings For Deviation Form (2013)
Appendix E–	Proposed Child Support Guidelines Instructions (2013)
Appendix F–	2012 Task Force Recommendations Redlined Against 2009 Child Support Guidelines
Appendix G–	Summary of Survey Results
Appendix H–	Summary of Public Comments

Appendix A – Proposed Child Support Guidelines (2013)

**THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE CHIEF JUSTICE
BOSTON, MASSACHUSETTS**

CHILD SUPPORT GUIDELINES

The attached CHILD SUPPORT GUIDELINES supersede any previous Guidelines and are effective August 1, 2013.

Robert A. Mulligan
Chief Justice of the Trial Court

Preamble

These guidelines shall take effect on August 1, 2013 and shall be applied to all child support orders and judgments entered after the effective date. There shall be a rebuttable presumption that these guidelines apply in all cases establishing or modifying a child support order.

In recognition of the priority of the interests of the children of the Commonwealth, these child support guidelines are formulated to be used by the justices of the Trial Court, whether the parents of the children are married or unmarried, in setting temporary, permanent or final orders for current child support, in deciding whether to approve agreements for child support, and in deciding cases that are before the court to modify existing orders. The guidelines are intended to be of assistance to members of the bar and to litigants in determining what level of payment would be expected given the relative income levels of the parties. In all cases where an order for child support is requested, a guideline worksheet must be filled out, regardless of the income of the parties.

Principles

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

- 1) to minimize the economic impact on the child's standard of living;
- 2) to promote joint parental responsibility for child support in proportion to, or as a percentage of, income;
- 3) 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;
- 4) 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;
- 5) to recognize that the parents should bear any additional expenses resulting from the maintenance of two separate households instead of one, since it is not the child's decision that the parents divorce, separate, or otherwise live separately.
- 6) to recognize the non-monetary contributions and extent of involvement of both parents;
- 7) to recognize the monetary and/or in-kind contributions of both parents in addition to the child support order;
- 8) to promote consistency in the setting of child support orders at all income levels whenever appropriate;
- 9) to recognize the importance, availability, and cost of health insurance coverage for the child;

- 10) to allow for orders and wage assignments that can be adjusted as income increases or decreases; and
- 11) to minimize problems of proof for the parties and to streamline administration for the courts.

I. INCOME DEFINITION

A. Sources of Income

For purposes of these guidelines, income is defined as gross income from whatever source regardless of whether that income is recognized by the Internal Revenue Code or reported to the Internal Revenue Service or state Department of Revenue or other taxing authority. Those sources include, but are not limited to, the following:

- 1) (a) salaries, wages, overtime and tips, (b) income from self-employment;
- 2) commissions;
- 3) severance pay;
- 4) royalties;
- 5) bonuses;
- 6) interest and dividends;
- 7) income derived from businesses/partnerships;
- 8) social security excluding any benefit due to a child's own disability¹;

¹ If a parent receives social security benefits or SSDI benefits and the child(ren) of the parties receives a dependency benefit derived from that parent's benefit, the amount of the dependency benefit shall be added to the gross income of that parent. This combined amount is that

- 9) veterans' benefits;
- 10) military pay, allowances and allotments;
- 11) insurance benefits, including those received for disability and personal injury, but excluding reimbursements for property losses;
- 12) workers' compensation;
- 13) unemployment compensation;
- 14) pensions;
- 15) annuities;
- 16) distributions and income from trusts;
- 17) capital gains in real and personal property transactions to the extent that they represent a regular source of income;
- 18) spousal support received from a person not a party to this order;
- 19) contractual agreements;
- 20) perquisites or in-kind compensation to the extent that they represent a regular source of income;
- 21) unearned income of children, in the Court's discretion;
- 22) income from life insurance or endowment contracts;
- 23) income from interest in an estate, either directly or through a trust;

parent's gross income for purposes of the child support calculation.

If the amount of the dependency benefit exceeds the child support obligation calculated under the guidelines, then the Payor shall not have responsibility for payment of current child support in excess of the dependency benefit. However, if the guidelines are higher than the dependency benefit, the Payor must pay the difference between the dependency benefit and the weekly support amount under the guidelines. *Rosenberg v. Merida*, 428 Mass. 182 (1998).

- 24) lottery or gambling winnings received either in a lump sum or in the form of an annuity;
- 25) prizes or awards;
- 26) net rental income;
- 27) funds received from earned income credit; and
- 28) any other form of income or compensation not specifically itemized above.

Income derived from a means-tested public assistance program (for example, TAFDC, SNAP and SSI benefits) shall not be counted as income for either party.

B. Overtime and Secondary Jobs

If the Court disregards income, in whole or in part, from overtime or a secondary job, due consideration must first be given to certain factors including but not limited to the history of the income, the expectation that the income will continue to be available, the economic needs of the parties and the children, the impact of the overtime on the parenting plan, and whether the extra work is a requirement of the job. The Court may consider none, some, or all overtime income even if overtime was earned prior to entry of the order.

If, after a child support order is entered, a Payor or Recipient obtains a secondary job or begins to work overtime, neither of which was worked prior to the entry of the order, there

shall be a presumption that the secondary job or overtime income should not be considered in a future support order.

C. Self-Employment or Other Income

Income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely-held corporation, is defined as gross receipts minus ordinary and necessary expenses required to produce income. In general, income and expenses from self-employment or operation of a business should be carefully reviewed to determine the appropriate level of gross income available to the parent to satisfy a child support obligation. In many cases this amount will differ from a determination of business income for tax purposes. The calculation of income for purposes of this section may increase gross income by certain deductions or other adjustments taken for income tax purposes.

Expense reimbursements, in-kind payments or benefits received by a parent, personal use of business property, payment of personal expenses by a business in the course of employment, self-employment, or operation of a business may be included as income if such payments are significant and reduce personal living expenses.

D. Unreported Income

When the Court finds that either parent's gross income, in whole or in part, is undocumented or unreported for tax or other governmental purposes, the Court may reasonably impute income to the parent based on all the evidence submitted, including but not limited to evidence of the parent's ownership and maintenance of assets, and the parent's lifestyle, expenses and spending patterns.

In circumstances where the Court finds that a party has unreported income, the Court may adjust the amount of income upward by a reasonable percentage to take into account the absence of income taxes that normally would be due and payable on the unreported income.

E. Attribution of Income

Income may be attributed where a finding has been made that either party is capable of working and is unemployed or underemployed. The Court shall consider all relevant factors including without limitation the education, training, health, past employment history of the party, and the availability of employment at the attributed income level.

The Court shall also consider the age, number, needs and care of the children covered by this order. If the Court makes a determination that either party is earning less

than he or she could through reasonable effort, the Court should consider potential earning capacity rather than actual earnings in making its order.

F. Non-Parent Guardian

The income of a non-parent guardian shall not be considered for purposes of calculating a child support obligation.

II. FACTORS TO BE CONSIDERED IN SETTING THE CHILD SUPPORT ORDER

A. Relationship to Alimony or Separate Maintenance Payments

These guidelines have been developed with the understanding that child support is non-deductible by the Payor and non-taxable to the Recipient. These guidelines do not preclude the Court from deciding that any order be designated in whole or in part as alimony without it being deemed a deviation provided the tax consequences are considered in determining the order and the after-tax support received by the Recipient is not diminished. It is the responsibility of the parties to present the tax consequences of proposed orders to the Court.

Chapter 124 of the Acts of 2011 (An Act Reforming Alimony in the Commonwealth) amended G. L. c. 208 and now prohibits the use of gross income which the Court has

already considered in making a child support order from being used again in determining an alimony order. See G. L. c. 208, § 53(c)(2). Consideration may be given by the parties to preparing alternate calculations of alimony and child support to determine the most equitable result for the child and the parties. Depending upon the circumstance, alimony may be calculated first, and in other circumstances child support will be calculated first. Judicial discretion is necessary and deviations should be considered.

B. Claims of Personal Exemptions for Child Dependents

In setting a support order, the Court may make an order regarding the claims of personal exemptions for child dependents between the parties to the extent permitted by law.

C. Minimum and Maximum Levels

These guidelines are intended to protect a minimum subsistence level for those parents obligated to pay child support whose gross income is \$ 150 per week or less. However, it is the obligation of all parents to contribute to the support of their children. To that end, a minimum order of \$ 80 per month (\$ 18.46 per week) should enter. This minimum should not be construed as limiting the Court's discretion to set a higher or lower order, should

circumstances warrant, as a deviation from the guidelines.

These guidelines are calculated up to a maximum combined available annual gross income of the parties of \$ 250,000. In cases where combined available income is over \$ 250,000, the guidelines should be applied on the first \$ 250,000 in the same proportion as the Recipient's and Payor's actual income as provided on line 1h of the child support guidelines worksheet. In cases where income exceeds this limit, the Court should consider the award of support at the \$ 250,000 level as the minimum presumptive order. The child support obligation for the portion of combined available income that exceeds \$ 250,000 shall be in the discretion of the Court.

D. Parenting Time

These guidelines recognize that children should enjoy parenting time with both parents to the greatest extent possible consistent with the children's best interests.

These guidelines are based upon the child(ren) having a primary residence with one parent and spending approximately one-third of the time with the other parent. If parenting time is less than one-third for the parent who is not the residential parent, the Court may consider an upward adjustment to the amount provided under the child support guidelines.

Where two parents share equally, or approximately equally, the financial responsibility and parenting time for the child(ren), the child support shall be determined by calculating the child support guidelines twice, first with one parent as the Recipient, and second with the other parent as the Recipient. The difference in the calculations shall be paid to the parent with the lower weekly support amount.²

Where parenting time and financial responsibility are shared in a proportion greater than one-third, but less than 50%, the child support guidelines shall be calculated first with one parent as the Recipient, and second as if the parties shared custody equally. The average of the base child support and the shared custody cross calculation shall be the child support amount paid to the Recipient.

Where there is more than one child covered by this order and each parent provides a primary residence for one or more of these children, child support shall be determined by calculating the child support guidelines twice, first with one parent as the Recipient using the number of children in his or her care, and second with the other parent as the Recipient using the number of children in his or her care. The difference in the calculations shall

be paid to the parent with the lower weekly support amount.³

E. Child Care Costs

Reasonable child care costs for the child(ren) covered by the order and due to gainful employment of either party are to be deducted from the gross income of the party who pays the cost. In appropriate circumstances, child care costs may include those due to training or education reasonably necessary to obtain gainful employment or enhance earning capacity. The Court may consider a deviation where the child care cost is disproportionate to income.

F. Age of the Children

These guidelines create a rebuttable presumption that the dollar amount provided for under the guidelines shall apply in all cases establishing or modifying a child support order involving children entitled to support from ages 0-18 and children over 18 who are still attending high school. Payment of child support for children over the age of 18 is established by statute.⁴ In establishing support orders for children over age 18, to the extent permitted by law, the Court shall exercise its discretion in ordering support and/or college contribution. The Court shall

² For purposes of these calculations, no deductions on line 1e of the Guidelines Worksheet shall be made.

³ For purposes of these calculations, no deductions on line 1e of the Guidelines Worksheet shall be made.

⁴ See G. L. c. 208, § 28, G. L. c. 209C, § 9 and G. L. c. 209, § 37.

consider the reason for the continued residence with and dependence on the Recipient, the child's academic circumstances, living situation, the available resources of the parents, the costs of post-secondary education for the child, the availability of financial aid and the allocation of those costs, if any, between the parents. Contribution to college costs is not presumptive, but is based upon the above factors. If a specific college contribution is ordered, this contribution shall be considered by the Court in setting the weekly support order, if any.

G. Health Insurance, Uninsured, and Extraordinary Medical Expenses

1) Health Insurance

Each party may deduct from gross income the reasonable cost of individual or family health insurance actually paid by that party.

However, if there is an additional cost to insure a person not covered by this order, and the Court determines that such additional cost would unreasonably reduce the amount of child support, then some or all of such additional cost shall not be deducted.

When the Court makes an order for child support, the Court shall determine whether health insurance is available through an employer or otherwise available at a reasonable cost that may be extended to

cover the child. When such insurance is available, the Court shall include in the support order a requirement that such insurance for the child be obtained or maintained. The Payor and Recipient must agree in writing that such insurance will be provided by other means not including MassHealth.

Health care coverage shall be deemed available to the Payor at reasonable cost if it is available through an employer. The Court may determine that the cost of health care coverage is unreasonable if it creates an undue hardship on the Payor. If the Court determines that health care coverage is not available to the Payor at a reasonable cost, then the Court shall enter an order requiring the Payor to obtain and maintain health care coverage for the child if and when the parent has access to such coverage at a reasonable cost.⁵

2) Dental/Vision Insurance

Each party may deduct from gross income the reasonable cost actually paid by that party of dental/vision insurance insuring the children covered by this order.

⁵ Current statutory language permits the Recipient of child support to provide health insurance if there is agreement, but absent agreement the Court lacks authority to require the Recipient to provide health insurance. At such time as the legislature amends the law, the Guidelines should be construed, to the extent possible, consistent with any amendments to Massachusetts law and federal regulations (45 C.F.R. parts 302, 303, 304, 305, and 308).

If there is an additional cost to insure a person not covered by this order, and the Court determines such additional cost would unreasonably reduce the amount of child support, then some or all of such additional cost shall not be deducted from gross income.

3) Routine Uninsured Medical and Dental Expenses

The Recipient shall be responsible for payment of the first \$250 each year in combined routine uninsured health and dental/vision expenses for all the children covered by this order. For amounts above that limit, at the time of entry of establishing or modifying the support order, the Court shall allocate expenses between the parties without adjustment to the child support order.

4) Uninsured Extraordinary Medical and Dental Expenses

The payment of uninsured extraordinary medical and dental expenses incurred for the children, absent agreement of the parties, shall be treated on a case-by-case basis. (Example: orthodontia, psychological/psychiatric counseling, etc.) Where the Court makes a determination that such medical and dental services are necessary and are in the best interests of the child(ren), the Court shall allocate such expenses between the parties.

H. Other Orders and Obligations

When an initial order or a modification of an existing order is sought for a child covered by the order, the following amounts actually paid to support a former spouse or a child not covered by this order shall be deducted from gross income for purposes of calculating the child support amount under this order:

- 1) the amount of prior orders for spousal and child support; or
- 2) voluntary payments to support a child with whom the Payor does not reside, to the extent the amounts are reasonable; or
- 3) a hypothetical amount of child support for a child with whom the Payor resides but for whom no child support order exists, which hypothetical child support amount shall be calculated according to the Guidelines Worksheet using the gross incomes of both parents of the child.

Obligations to a subsequent family may be used as a defense to a request to modify an order seeking an increase in the existing order but such obligations should not be considered a reason to decrease existing orders.

The party seeking to take such deductions from gross income must have a legal obligation or duty to support the former

spouse or child and must provide evidence that such support or voluntary payments are actually being paid.

To the extent that prior orders for spousal and child support are actually being paid, the Court should deduct those payments from the party's gross income before applying the formula to determine the child support order. Voluntary payments for other children a party has a legal obligation to support may be deducted in whole or in part to the extent the amounts are reasonable. It is the party's obligation to provide evidence of the existence and payment of prior orders or voluntary payments.

I. Families with More than Five Children

The guidelines formula applies to families with 1-5 children. For more than five children, the order should be at least the amount ordered for five children.

J. Other Child-Related Expenses

In such cases where the Court makes a determination that there are additional child-related expenses such as extra-curricular activities, private school, post-secondary education or summer camps, which are in the best interest of the child and which are affordable by the parties, the Court may allocate costs to the parties on a case-by-case basis.

III. MODIFICATION

A. A child support order may be modified if any of the following circumstances exist:

- 1) there is an inconsistency between the amount of the existing order and the amount that would result from the application of the child support guidelines;
- 2) health insurance previously available at reasonable cost is no longer available (or if available but not at reasonable cost);
- 3) health insurance not previously available to a party at reasonable cost has become available;
- 4) any other material and substantial change in circumstances has occurred.

B. In the event that the Department of Revenue is providing IV-D services, the provisions of G. L. c. 119A, § 3B(g) appear to apply to modification requests made within 0-3 years from the entry of the last order in which case the requesting party must demonstrate a substantial change in circumstances in addition to an inconsistency. See Morales v. Morales, 464 Mass. 507 (2013).

C. Upon a request for modification of an order that deviated from the guidelines at the time it was entered, the guidelines shall apply unless:

- 1) the facts that gave rise to deviation still exist; and
- 2) deviation continues to be in the child's best interest; and
- 3) the guidelines amount would be unjust or inappropriate under the circumstances.

Paragraph C above does not preclude deviations based on other grounds set forth in Section IV or grounds for modification as set forth in Paragraph A or B above.

IV. DEVIATION

The Court, or the parties by agreement approved by the Court, may deviate from the guidelines and overcome the presumptive application of the guidelines provided the Court enters specific written findings stating:

- 1) the amount of the order that would result from application of the guidelines;
- 2) that the guidelines amount would be unjust or inappropriate under the circumstances;
- 3) the specific facts of the case which justify departure from the guidelines; and

- 4) that such departure is consistent with the best interests of the child.

Circumstances which may support deviation, above or below the Child Support Guidelines include, but are not limited to, the following:

- 1) the parties agree and the Court approves their agreement;
- 2) a child has special needs or aptitudes;
- 3) a child has extraordinary medical or other expenses;
- 4) application of the guidelines, particularly in low income cases, leaves a party without the ability to self support;
- 5) Payor is incarcerated, is likely to remain incarcerated for an additional 3 years and has insufficient financial resources to pay support;
- 6) application of the guidelines would result in a gross disparity in the standard of living between the two households such that one household is left with an unreasonably low percentage of the combined available income;
- 7) a parent has extraordinary medical expenses;
- 8) a parent has extraordinary travel or other expenses related to parenting;
- 9) application of the guidelines may adversely impact re-unification of a parent and child where the child has been temporarily removed from the

- household based upon allegations of neglect;
- 10) absent deviation, application of the guidelines would lead to an order that is unjust, inappropriate or not in the best interests of the child, considering the Principles of these guidelines;
- 11) a parent has extraordinary health insurance expenses;
- 12) one parent is absorbing a child care cost that is disproportionate in relation to their income;
- 13) one parent provides less than one-third of the parenting time for a child or children.

Addendum:

Child Support Guidelines Worksheet

Instructions for Completing Worksheet

Child Support Guidelines Chart

Appendix C – Proposed Child Support Guidelines Chart (2013)

CHILD SUPPORT GUIDELINES CHART

Amounts are \$/week for one child, rounded to the nearest dollar.

If combined available income falls between two numbers, use the lower combined support amount.

Enter amount on line 2(a) of the Child Support Guidelines Worksheet.

Combined available income	Combined support amount	Combined available income	Combined support amount	Combined available income	Combined support amount	Combined available income	Combined support amount	Combined available income	Combined support amount
\$0	\$18	\$372	\$82	\$599	\$132	\$829	\$182	\$1,067	\$232
\$151	\$33	\$376	\$83	\$604	\$133	\$834	\$183	\$1,072	\$233
\$153	\$34	\$381	\$84	\$608	\$134	\$839	\$184	\$1,077	\$234
\$157	\$35	\$385	\$85	\$613	\$135	\$843	\$185	\$1,081	\$235
\$162	\$36	\$390	\$86	\$617	\$136	\$848	\$186	\$1,086	\$236
\$166	\$37	\$394	\$87	\$622	\$137	\$853	\$187	\$1,091	\$237
\$171	\$38	\$399	\$88	\$626	\$138	\$858	\$188	\$1,096	\$238
\$175	\$39	\$404	\$89	\$631	\$139	\$862	\$189	\$1,100	\$239
\$180	\$40	\$408	\$90	\$635	\$140	\$867	\$190	\$1,105	\$240
\$185	\$41	\$413	\$91	\$640	\$141	\$872	\$191	\$1,110	\$241
\$189	\$42	\$417	\$92	\$644	\$142	\$877	\$192	\$1,115	\$242
\$194	\$43	\$422	\$93	\$649	\$143	\$881	\$193	\$1,120	\$243
\$198	\$44	\$426	\$94	\$654	\$144	\$886	\$194	\$1,124	\$244
\$203	\$45	\$431	\$95	\$658	\$145	\$891	\$195	\$1,129	\$245
\$207	\$46	\$435	\$96	\$663	\$146	\$896	\$196	\$1,134	\$246
\$212	\$47	\$440	\$97	\$667	\$147	\$900	\$197	\$1,139	\$247
\$216	\$48	\$444	\$98	\$672	\$148	\$905	\$198	\$1,143	\$248
\$221	\$49	\$449	\$99	\$676	\$149	\$910	\$199	\$1,148	\$249
\$225	\$50	\$454	\$100	\$681	\$150	\$915	\$200	\$1,153	\$250
\$230	\$51	\$458	\$101	\$685	\$151	\$920	\$201	\$1,158	\$251
\$235	\$52	\$463	\$102	\$690	\$152	\$924	\$202	\$1,162	\$252
\$239	\$53	\$467	\$103	\$694	\$153	\$929	\$203	\$1,167	\$253
\$244	\$54	\$472	\$104	\$699	\$154	\$934	\$204	\$1,172	\$254
\$248	\$55	\$476	\$105	\$704	\$155	\$939	\$205	\$1,177	\$255
\$253	\$56	\$481	\$106	\$708	\$156	\$943	\$206	\$1,181	\$256
\$257	\$57	\$485	\$107	\$713	\$157	\$948	\$207	\$1,186	\$257
\$262	\$58	\$490	\$108	\$717	\$158	\$953	\$208	\$1,191	\$258
\$266	\$59	\$494	\$109	\$722	\$159	\$958	\$209	\$1,196	\$259
\$271	\$60	\$499	\$110	\$726	\$160	\$962	\$210	\$1,200	\$260
\$275	\$61	\$504	\$111	\$731	\$161	\$967	\$211	\$1,205	\$261
\$280	\$62	\$508	\$112	\$735	\$162	\$972	\$212	\$1,210	\$262
\$285	\$63	\$513	\$113	\$740	\$163	\$977	\$213	\$1,215	\$263
\$289	\$64	\$517	\$114	\$744	\$164	\$981	\$214	\$1,220	\$264
\$294	\$65	\$522	\$115	\$749	\$165	\$986	\$215	\$1,224	\$265
\$298	\$66	\$526	\$116	\$753	\$166	\$991	\$216	\$1,229	\$266
\$303	\$67	\$531	\$117	\$758	\$167	\$996	\$217	\$1,234	\$267
\$307	\$68	\$535	\$118	\$762	\$168	\$1,000	\$218	\$1,239	\$268
\$312	\$69	\$540	\$119	\$767	\$169	\$1,005	\$219	\$1,243	\$269
\$316	\$70	\$544	\$120	\$772	\$170	\$1,010	\$220	\$1,248	\$270
\$322	\$71	\$549	\$121	\$777	\$171	\$1,015	\$221	\$1,253	\$271
\$326	\$72	\$554	\$122	\$781	\$172	\$1,020	\$222	\$1,258	\$272
\$331	\$73	\$558	\$123	\$786	\$173	\$1,024	\$223	\$1,264	\$273
\$335	\$74	\$563	\$124	\$791	\$174	\$1,029	\$224	\$1,269	\$274
\$340	\$75	\$567	\$125	\$796	\$175	\$1,034	\$225	\$1,274	\$275
\$344	\$76	\$572	\$126	\$800	\$176	\$1,039	\$226	\$1,279	\$276
\$349	\$77	\$576	\$127	\$805	\$177	\$1,043	\$227	\$1,285	\$277
\$354	\$78	\$581	\$128	\$810	\$178	\$1,048	\$228	\$1,290	\$278
\$358	\$79	\$585	\$129	\$815	\$179	\$1,053	\$229	\$1,295	\$279
\$363	\$80	\$590	\$130	\$820	\$180	\$1,058	\$230	\$1,300	\$280
\$367	\$81	\$594	\$131	\$824	\$181	\$1,062	\$231	\$1,306	\$281

CHILD SUPPORT GUIDELINES CHART

Amounts are \$/week for one child, rounded to the nearest dollar.

If combined available income falls between two numbers, use the lower combined support amount.

Enter amount on line 2(a) of the Child Support Guidelines Worksheet.

Combined available income	Combined support amount	Combined available income	Combined support amount	Combined available income	Combined support amount	Combined available income	Combined support amount	Combined available income	Combined support amount
\$1,311	\$282	\$1,574	\$332	\$1,837	\$382	\$2,124	\$432	\$2,457	\$482
\$1,316	\$283	\$1,579	\$333	\$1,843	\$383	\$2,130	\$433	\$2,464	\$483
\$1,322	\$284	\$1,585	\$334	\$1,848	\$384	\$2,137	\$434	\$2,470	\$484
\$1,327	\$285	\$1,590	\$335	\$1,853	\$385	\$2,144	\$435	\$2,477	\$485
\$1,332	\$286	\$1,595	\$336	\$1,858	\$386	\$2,150	\$436	\$2,484	\$486
\$1,337	\$287	\$1,600	\$337	\$1,864	\$387	\$2,157	\$437	\$2,490	\$487
\$1,343	\$288	\$1,606	\$338	\$1,869	\$388	\$2,164	\$438	\$2,497	\$488
\$1,348	\$289	\$1,611	\$339	\$1,874	\$389	\$2,170	\$439	\$2,504	\$489
\$1,353	\$290	\$1,616	\$340	\$1,879	\$390	\$2,177	\$440	\$2,510	\$490
\$1,358	\$291	\$1,622	\$341	\$1,885	\$391	\$2,184	\$441	\$2,517	\$491
\$1,364	\$292	\$1,627	\$342	\$1,890	\$392	\$2,190	\$442	\$2,524	\$492
\$1,369	\$293	\$1,632	\$343	\$1,895	\$393	\$2,197	\$443	\$2,530	\$493
\$1,374	\$294	\$1,637	\$344	\$1,900	\$394	\$2,204	\$444	\$2,537	\$494
\$1,379	\$295	\$1,643	\$345	\$1,906	\$395	\$2,210	\$445	\$2,544	\$495
\$1,385	\$296	\$1,648	\$346	\$1,911	\$396	\$2,217	\$446	\$2,550	\$496
\$1,390	\$297	\$1,653	\$347	\$1,916	\$397	\$2,224	\$447	\$2,557	\$497
\$1,395	\$298	\$1,658	\$348	\$1,922	\$398	\$2,230	\$448	\$2,564	\$498
\$1,400	\$299	\$1,664	\$349	\$1,927	\$399	\$2,237	\$449	\$2,570	\$499
\$1,406	\$300	\$1,669	\$350	\$1,932	\$400	\$2,244	\$450	\$2,577	\$500
\$1,411	\$301	\$1,674	\$351	\$1,937	\$401	\$2,250	\$451	\$2,584	\$501
\$1,416	\$302	\$1,679	\$352	\$1,943	\$402	\$2,257	\$452	\$2,590	\$502
\$1,422	\$303	\$1,685	\$353	\$1,948	\$403	\$2,264	\$453	\$2,597	\$503
\$1,427	\$304	\$1,690	\$354	\$1,953	\$404	\$2,270	\$454	\$2,604	\$504
\$1,432	\$305	\$1,695	\$355	\$1,958	\$405	\$2,277	\$455	\$2,610	\$505
\$1,437	\$306	\$1,700	\$356	\$1,964	\$406	\$2,284	\$456	\$2,617	\$506
\$1,443	\$307	\$1,706	\$357	\$1,969	\$407	\$2,290	\$457	\$2,624	\$507
\$1,448	\$308	\$1,711	\$358	\$1,974	\$408	\$2,297	\$458	\$2,630	\$508
\$1,453	\$309	\$1,716	\$359	\$1,979	\$409	\$2,304	\$459	\$2,637	\$509
\$1,458	\$310	\$1,722	\$360	\$1,985	\$410	\$2,310	\$460	\$2,644	\$510
\$1,464	\$311	\$1,727	\$361	\$1,990	\$411	\$2,317	\$461	\$2,650	\$511
\$1,469	\$312	\$1,732	\$362	\$1,995	\$412	\$2,324	\$462	\$2,657	\$512
\$1,474	\$313	\$1,737	\$363	\$2,000	\$413	\$2,330	\$463	\$2,664	\$513
\$1,479	\$314	\$1,743	\$364	\$2,004	\$414	\$2,337	\$464	\$2,670	\$514
\$1,485	\$315	\$1,748	\$365	\$2,010	\$415	\$2,344	\$465	\$2,677	\$515
\$1,490	\$316	\$1,753	\$366	\$2,017	\$416	\$2,350	\$466	\$2,684	\$516
\$1,495	\$317	\$1,758	\$367	\$2,024	\$417	\$2,357	\$467	\$2,690	\$517
\$1,500	\$318	\$1,764	\$368	\$2,030	\$418	\$2,364	\$468	\$2,697	\$518
\$1,506	\$319	\$1,769	\$369	\$2,037	\$419	\$2,370	\$469	\$2,704	\$519
\$1,511	\$320	\$1,774	\$370	\$2,044	\$420	\$2,377	\$470	\$2,710	\$520
\$1,516	\$321	\$1,779	\$371	\$2,050	\$421	\$2,384	\$471	\$2,717	\$521
\$1,522	\$322	\$1,785	\$372	\$2,057	\$422	\$2,390	\$472	\$2,724	\$522
\$1,527	\$323	\$1,790	\$373	\$2,064	\$423	\$2,397	\$473	\$2,730	\$523
\$1,532	\$324	\$1,795	\$374	\$2,070	\$424	\$2,404	\$474	\$2,737	\$524
\$1,537	\$325	\$1,800	\$375	\$2,077	\$425	\$2,410	\$475	\$2,744	\$525
\$1,543	\$326	\$1,806	\$376	\$2,084	\$426	\$2,417	\$476	\$2,750	\$526
\$1,548	\$327	\$1,811	\$377	\$2,090	\$427	\$2,424	\$477	\$2,757	\$527
\$1,553	\$328	\$1,816	\$378	\$2,097	\$428	\$2,430	\$478	\$2,764	\$528
\$1,558	\$329	\$1,822	\$379	\$2,104	\$429	\$2,437	\$479	\$2,770	\$529
\$1,564	\$330	\$1,827	\$380	\$2,110	\$430	\$2,444	\$480	\$2,777	\$530
\$1,569	\$331	\$1,832	\$381	\$2,117	\$431	\$2,450	\$481	\$2,784	\$531

CHILD SUPPORT GUIDELINES CHART

Amounts are \$/week for one child, rounded to the nearest dollar.

If combined available income falls between two numbers, use the lower combined support amount.

Enter amount on line 2(a) of the Child Support Guidelines Worksheet.

Combined available income	Combined support amount	Combined available income	Combined support amount	Combined available income	Combined support amount	Combined available income	Combined support amount	Combined available income	Combined support amount
\$2,790	\$532	\$3,155	\$582	\$3,571	\$632	\$3,988	\$682	\$4,423	\$730
\$2,797	\$533	\$3,163	\$583	\$3,580	\$633	\$3,996	\$683	\$4,432	\$731
\$2,804	\$534	\$3,171	\$584	\$3,588	\$634	\$4,005	\$684	\$4,441	\$732
\$2,810	\$535	\$3,180	\$585	\$3,596	\$635	\$4,014	\$685	\$4,450	\$733
\$2,817	\$536	\$3,188	\$586	\$3,605	\$636	\$4,023	\$686	\$4,460	\$734
\$2,824	\$537	\$3,196	\$587	\$3,613	\$637	\$4,032	\$687	\$4,469	\$735
\$2,830	\$538	\$3,205	\$588	\$3,621	\$638	\$4,041	\$688	\$4,478	\$736
\$2,837	\$539	\$3,213	\$589	\$3,630	\$639	\$4,050	\$689	\$4,487	\$737
\$2,844	\$540	\$3,221	\$590	\$3,638	\$640	\$4,060	\$690	\$4,496	\$738
\$2,850	\$541	\$3,230	\$591	\$3,646	\$641	\$4,069	\$691	\$4,505	\$739
\$2,857	\$542	\$3,238	\$592	\$3,655	\$642	\$4,078	\$692	\$4,514	\$740
\$2,864	\$543	\$3,246	\$593	\$3,663	\$643	\$4,087	\$693	\$4,523	\$741
\$2,870	\$544	\$3,255	\$594	\$3,671	\$644	\$4,096	\$694	\$4,532	\$742
\$2,877	\$545	\$3,263	\$595	\$3,680	\$645	\$4,105	\$695	\$4,541	\$743
\$2,884	\$546	\$3,271	\$596	\$3,688	\$646	\$4,114	\$696	\$4,550	\$744
\$2,890	\$547	\$3,280	\$597	\$3,696	\$647	\$4,123	\$697	\$4,560	\$745
\$2,897	\$548	\$3,288	\$598	\$3,705	\$648	\$4,132	\$698	\$4,569	\$746
\$2,904	\$549	\$3,296	\$599	\$3,713	\$649	\$4,141	\$699	\$4,578	\$747
\$2,910	\$550	\$3,305	\$600	\$3,721	\$650	\$4,150	\$700	\$4,587	\$748
\$2,917	\$551	\$3,313	\$601	\$3,730	\$651	\$4,160	\$701	\$4,596	\$749
\$2,924	\$552	\$3,321	\$602	\$3,738	\$652	\$4,169	\$702	\$4,605	\$750
\$2,930	\$553	\$3,330	\$603	\$3,746	\$653	\$4,178	\$703	\$4,614	\$751
\$2,937	\$554	\$3,338	\$604	\$3,755	\$654	\$4,187	\$704	\$4,641	\$754
\$2,944	\$555	\$3,346	\$605	\$3,763	\$655	\$4,196	\$705	\$4,650	\$755
\$2,950	\$556	\$3,355	\$606	\$3,771	\$656	\$4,205	\$706	\$4,660	\$756
\$2,957	\$557	\$3,363	\$607	\$3,780	\$657	\$4,214	\$707	\$4,669	\$757
\$2,964	\$558	\$3,371	\$608	\$3,788	\$658	\$4,223	\$708	\$4,678	\$758
\$2,970	\$559	\$3,380	\$609	\$3,796	\$659	\$4,232	\$709	\$4,687	\$759
\$2,977	\$560	\$3,388	\$610	\$3,805	\$660	\$4,241	\$710	\$4,696	\$760
\$2,984	\$561	\$3,396	\$611	\$3,813	\$661	\$4,250	\$711	\$4,705	\$761
\$2,990	\$562	\$3,405	\$612	\$3,821	\$662	\$4,260	\$712	\$4,714	\$762
\$2,997	\$563	\$3,413	\$613	\$3,830	\$663	\$4,269	\$713	\$4,723	\$763
\$3,005	\$564	\$3,421	\$614	\$3,838	\$664	\$4,278	\$714	\$4,732	\$764
\$3,013	\$565	\$3,430	\$615	\$3,846	\$665	\$4,287	\$715	\$4,741	\$765
\$3,021	\$566	\$3,438	\$616	\$3,855	\$666	\$4,296	\$716	\$4,750	\$766
\$3,030	\$567	\$3,446	\$617	\$3,863	\$667	\$4,305	\$717	\$4,760	\$767
\$3,038	\$568	\$3,455	\$618	\$3,871	\$668	\$4,314	\$718	\$4,769	\$768
\$3,046	\$569	\$3,463	\$619	\$3,880	\$669	\$4,323	\$719	\$4,778	\$769
\$3,055	\$570	\$3,471	\$620	\$3,888	\$670	\$4,332	\$720	\$4,787	\$770
\$3,063	\$571	\$3,480	\$621	\$3,896	\$671	\$4,341	\$721	\$4,796	\$771
\$3,071	\$572	\$3,488	\$622	\$3,905	\$672	\$4,350	\$722	\$4,805	\$772
\$3,080	\$573	\$3,496	\$623	\$3,913	\$673	\$4,360	\$723	\$4,808	\$772
\$3,088	\$574	\$3,505	\$624	\$3,921	\$674	\$4,369	\$724		
\$3,096	\$575	\$3,513	\$625	\$3,930	\$675	\$4,378	\$725		
\$3,105	\$576	\$3,521	\$626	\$3,938	\$676	\$4,387	\$726		
\$3,113	\$577	\$3,530	\$627	\$3,946	\$677	\$4,396	\$727		
\$3,121	\$578	\$3,538	\$628	\$3,955	\$678	\$4,405	\$728		
\$3,130	\$579	\$3,546	\$629	\$3,963	\$679	\$4,414	\$729		
\$3,138	\$580	\$3,555	\$630	\$3,971	\$680	\$4,423	\$730		
\$3,146	\$581	\$3,563	\$631	\$3,980	\$681	\$4,432	\$731		

Appendix D – Proposed Child Support Findings For Deviation Form (2013)

CHILD SUPPORT FINDINGS FOR DEVIATION	Docket No. _____	Commonwealth of Massachusetts The Trial Court Probate and Family Court
Name: _____	Division _____	
CHILD SUPPORT FINDINGS FOR DEVIATION FROM GUIDELINES		

I. The amount of the order which would result from the application of the Child Support Guidelines is:

\$ _____ ☐ Weekly ☐ Biweekly ☐ Monthly ☐ Other (specify) _____

II. The Child Support Guidelines are applicable in this case however the Court finds the presumptiveness of the Child Support Guidelines has been rebutted because, after considering the best interests of the child(ren), the application of the Guidelines would be unjust or inappropriate.

The specific facts of this case which justify departure from the Guidelines are:

☐ The Court has reviewed the agreement dated _____ presented by the parties, and accepts the agreed-upon facts as stated in the agreement.

☐ The child (one of the children) has special needs or aptitudes which are:

☐ The child (one of the children) has extraordinary medical or other expenses which are:

☐ Application of the Guidelines, particularly in low income cases, leaves a party without the ability to self support.

☐ Payor is incarcerated, is likely to remain incarcerated for an additional 3 years and has insufficient financial resources to pay support.

☐ Application of the guidelines would result in a gross disparity in the standard of living between the two households such that one household is left with an unreasonably low percentage of the combined available income. which parent: _____

☐ A parent has extraordinary medical expenses. which parent: _____

☐ A parent has extraordinary travel or other expenses related to parenting. which parent: _____

☐ Application of the guidelines may adversely impact re-unification of a parent and child where the child has been temporarily removed from the household based upon allegation of neglect.

☐ Absent deviation, application of the guidelines would lead to an order that is unjust, inappropriate or not in the best interests of the child.

☐ A parent has extraordinary health insurance expenses. which parent: _____

☐ A parent is absorbing a child care cost that is disproportionate in relation to their income. which parent: _____

☐ A parent provides less than one-third of the parenting time for a child or children. which parent: _____

☐ Other (specify): _____

III. The Guidelines are not applicable in this case because:

☐ The combined gross income of the parties exceeds \$250,000.

☐ Other (specify): _____

Per Court Order dated _____ ☐ plaintiff/petitioner ☐ defendant/petitioner

was ordered to pay \$ _____ ☐ Weekly ☐ Biweekly ☐ Monthly

☐ Other (specify): _____

Date _____

THESE FINDINGS MUST BE FILED AND DOCKETED WITH THE CASE.

Appendix E – Proposed Child Support Guidelines Worksheet Instructions (2013)

INSTRUCTIONS FOR COMPLETING THE CHILD SUPPORT GUIDELINES WORKSHEET

At the top of the Worksheet, enter the **Case Name** (the names of the plaintiff/petitioner and defendant/respondent) and the **Docket Number** assigned by the court. Enter the **Date Prepared** and the **Name of the Preparer** (self, attorney, IV-D Agency, etc.)

LINE-BY-LINE INSTRUCTIONS FOR COMPLETING THE CHILD SUPPORT GUIDELINES WORKSHEET

Use financial information rounded to the nearest dollar in making these calculations. **All dollar entries are weekly.**

To convert data to weekly figures,

- Divide annual financial data by 52
- Divide monthly financial data by 4.33
- Divide bi-weekly financial data by 2

SECTION 1. INCOME

Line 1a. Gross Weekly income- Enter the total gross (before tax) weekly income in column 1 for the Recipient and in column 2 for the Payor. **The Recipient is the person who will receive child support. The Payor is the person who will pay child support.** (For an explanation of income, see the Child Support Guidelines text, § I. A, B, C, D, E, & F).

Line 1b. Minus Child Care cost paid - Enter the actual amount paid for work-related child care costs for the child(ren) covered by this order in column 1 for the Recipient and in column 2 for the Payor. (For an explanation of child care costs, see the Child Support Guidelines text, § II. E).

Line 1c. Minus Health Insurance cost paid - Enter the actual amount paid for the reasonable cost of individual or family health insurance for the child(ren) covered by this order in column 1 for the Recipient and in column 2 for the Payor. (For an explanation of health insurance, see the Child Support Guidelines text, § II. G (1)).

Line 1d. Minus Dental/Vision insurance cost paid - Enter the actual amount paid for the reasonable cost of dental/vision insurance for the child(ren) covered by this order in column 1 for the Recipient and in column 2 for the Payor. (For an explanation of dental/vision insurance, see the Child Support Guidelines text, § II. G (2)).

Line 1e. Minus Other Support Obligations paid - Enter the actual amount paid to support a former
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spouse or a child not covered by this order in column 1 for the Recipient and in column 2 for the Payor. (For an explanation of other orders and obligations, see the Child Support Guidelines text, § II. H).

Line 1f. Available Income - Subtract Lines 1b., 1c., 1d., and 1e. from Line 1a. in column 1 for the Recipient. Subtract Lines 1b., 1c., 1d., and 1e. from Line 1a. in column 2 for the Payor.

Line 1g. Combined Available Income - Add Line 1f. in column 1 for the Recipient and Line 1f. in column 2 for the Payor. Enter the result. (See also Worksheet line instructions).

Line 1h. Percent of Combined Available Income - Divide Line 1f. in column 1 for the Recipient by Line 1g. Multiply the result by 100 and enter the result in column 1 for the Recipient. Divide Line 1f. in column 2 for the Payor by Line 1g. Multiply the result by 100 and enter the final percent in column 2 for the Payor. (See also Worksheet line instructions).

SECTION 2. CHILD SUPPORT CALCULATION

Line 2a. Maximum combined available income - Enter the amount from Line 1g. up to a maximum of \$4,808. (See also Worksheet line instructions).

Line 2b. Combined support amount for one child - From the Child Support Guidelines Chart, find the row containing the Recipient's and Payor's Combined Available Income (as provided in Line 1g. of the

Worksheet). Enter the corresponding Combined Support Amount from the Chart. *(See also Worksheet line instructions).*

Line 2c. Adjustments for number of children covered by this order - Enter the number of children covered by this order and the corresponding adjustment factor from Table B of the Worksheet. *(For an explanation of the age of children covered by the Guidelines, see the Child Support Guidelines text, § II.F. For families with more than five children, see the Child Support Guidelines text, § II.I).*

Line 2d. Total combined support amount - Multiply Line 2b. times the adjustment factor in Line 2c. Enter the result. *(See also Worksheet line instructions).*

Line 2e. Minus Recipient's proportional share of support - Multiply Line 2d. times Line 1h. in the Recipient's column 1. Enter the result. *(See also Worksheet line instructions).*

Line 2f. Payor's proportional weekly support amount - Subtract Line 2d. from Line 2e. Enter the result. *(See also Worksheet line instructions).*

Line 2g. Weekly support amount as % of Recipient income - Divide Line 2f. by Line 1f. in the Recipient's column 1. Multiply the result by 100 and enter the final percent. *(See also Worksheet line instructions).*

Line 2h. Payor's adjusted weekly support amount - If Line 2g. is **10% or more**, then enter the amount from Line 2f.

This is the Payor's presumptive child support order.

If Line 2g. is **less than 10%**, then enter the **lesser of** Line 2f. or the following:

Multiply Line 2g. times Line 1.f from Recipient column 1. Multiply the result times .10 (i.e., 10%). Sum the total. *(See also Worksheet line instructions).*

This is the Payor's presumptive child support order.

The child support amount entered must not be lower than the minimum order of \$18.47 per week (i.e., \$80.00 per month).

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SECTION 3. AVAILABLE INCOME ABOVE \$4,808

(If Applicable Only)

(For an explanation of the treatment of income above \$4,808, see the Child Support Guidelines text, § II. C).

Line 3a. Combined - Enter the combined available income greater than \$4,808. The combined available income is the total gross (before tax) weekly income greater than \$4,808 for both the Recipient and the Payor.

Line 3b. Proportional share for the recipient and payor - Multiply Line 3a. times Line 1h in column 1, and enter the result in column 1 for the Recipient. Multiply Line 3a. times Line 1h in column 2, and enter the result in column 2 for the Payor.

In cases where income exceeds \$4,808, the Court should consider the award of support at the \$250,000 level as the minimum presumptive order *(see Line 2h.)*.

The child support obligation for the portion of combined available income that exceeds \$4,808 (\$250,000 annually) shall be in the discretion of the Court.

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Appendix F – 2012 Task Force Recommendations Redlined Against 2009 Child Support Guidelines

THE COMMONWEALTH OF MASSACHUSETTS
~~ADMINISTRATIVE~~ OFFICE OF THE ~~TRIAL COURT~~
~~CHIEF JUSTICE~~
BOSTON, MASSACHUSETTS

CHILD SUPPORT GUIDELINES

The attached CHILD SUPPORT GUIDELINES supersede any previous Guidelines and are effective ~~January~~ ~~August~~ 1, 20~~09~~~~13~~.

Robert A. Mulligan
Chief Justice ~~of the Trial Court for~~
~~Administration and Management~~

**COMMONWEALTH OF MASSACHUSETTS
ADMINISTRATIVE OFFICE ~~OF THE CHIEF JUSTICE~~
OF THE TRIAL COURT**

CHILD SUPPORT GUIDELINES

Preamble

These guidelines shall take effect on ~~January~~ August 1, 2009~~13~~ and shall be applied to all child support orders and judgments entered after the effective date. There shall be a rebuttable presumption that these guidelines apply in all cases establishing or modifying a child support order. ~~Existing orders and judgments less than three years old as of the effective date of these guidelines shall not be modified unless the income of one or both parties has changed or other new circumstance warrants modification.~~

In recognition of the priority of the interests of the children of the Commonwealth, these child support guidelines are formulated to be used by the justices of the Trial Court, whether the parents of the children are married or unmarried, in setting temporary, permanent or final orders for current child support, in deciding whether to approve agreements for child support, and in deciding cases that are before the court to modify existing orders. The guidelines are intended to be of assistance to members of the bar and to litigants in determining what level of payment would be expected given the relative income levels of the parties. In all cases where an order for child support is requested, a guideline worksheet must be filled out, regardless of the income of the parties.

Principles

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

- 1) to minimize the economic impact on the child's standard of living;
- 2) to ~~encourage~~ promote joint parental responsibility for child support in proportion to, or as a percentage of, income;
- 3) 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;
- 4) 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;
- 5) ~~to recognize that the parents should bear any additional expenses resulting from the maintenance of two separate households instead of one, since it is not the child's decision that the parents divorce, separate, or otherwise live separately.~~
- 6) ~~to recognize the non-monetary contributions and extent of involvement of both parents;~~
- 7) ~~to recognize the monetary and/or in-kind contributions of both parents in addition to the child support order;~~
- 8) ~~to promote consistency in the setting of child support orders at all income levels whenever appropriate;~~
- 9) ~~to recognize the importance, availability, and cost of health insurance coverage for the child;~~
- 10) ~~to allow for orders and wage assignments that can be adjusted as income increases or decreases; and~~
- 11) ~~to minimize problems of proof for the parties and to streamline administration for the courts.~~

I. INCOME DEFINITION

A. Sources of Income

For purposes of these guidelines, income is defined as gross income from whatever source regardless of whether that income is recognized by the Internal Revenue Code or reported to the Internal Revenue Service or state Department of Revenue or other taxing authority. Those sources include, but are not limited to, the following:

- 1) (a) salaries, wages, overtime and tips,
(b) income from self-employment;
- 2) commissions;

-
- 3) severance pay;
 - 4) royalties;
 - 5) bonuses;
 - 6) interest and dividends;
 - 7) income derived from businesses/partnerships;
 - 8) social security excluding any benefit due to a child's own disability¹;
 - 9) veterans' benefits;
 - 10) military pay, allowances and allotments;
 - 11) insurance benefits, including those received for disability and personal injury, but excluding reimbursements for property losses;
 - 12) workers' compensation;
 - 13) unemployment compensation;
 - 14) pensions;
 - 15) annuities;
 - 16) distributions and income from trusts;
 - 17) capital gains in real and personal property transactions to the extent that they represent a regular source of income;
 - 18) spousal support received from a person not a party to this order;
 - 19) contractual agreements;
 - 20) perquisites or in-kind compensation to the extent that they represent a regular source of income;
 - 21) unearned income of children, in the Court's discretion;
 - 22) income from life insurance or endowment contracts;
 - 23) income from interest in an estate, either directly or through a trust;
 - 24) lottery or gambling winnings received either in a lump sum or in the form of an annuity;
 - 25) prizes or awards;
 - 26) net rental income;
 - 27) funds received from earned income credit; and
 - 28) any other form of income or compensation not specifically itemized above.

Income derived from a means-tested public assistance program (for example, TAFDC, SNAP and SSI benefits) shall not be counted as income for either party.

B. Overtime and Secondary Jobs

If the Court disregards income, in whole or in part, from overtime or a secondary job, due consideration must first be given to certain factors including but not limited to the history of the income, the expectation that the income will continue to be available, the economic needs of the parties and the children, the impact of the overtime on the parenting plan, and whether the extra work is a requirement of the job. The Court may consider none, some, or all overtime income even if overtime was earned prior to entry of the order.

_____ If, after a child support order is entered, a Payor or Recipient obtains a secondary job or begins to work overtime, neither of which was worked prior to the entry of the order, there shall be a presumption that the secondary job or overtime income should not be considered in a future support order.

C. Self-Employment or Other Income

Income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely-held corporation, is defined as gross receipts minus ordinary and necessary expenses required to produce income.

¹ If a parent receives social security benefits or SSDI benefits and the child(ren) of the parties receives a dependency benefit derived from that parent's benefit, the amount of the dependency benefit shall be added to the gross income of that parent. This combined amount is that parent's gross income for purposes of the child support calculation.

If the amount of the dependency benefit exceeds the child support obligation calculated under the guidelines, then the Payor shall not have responsibility for payment of current child support in excess of the dependency benefit. However, if the guidelines are higher than the dependency benefit, the Payor must pay the difference between the dependency benefit and the weekly support amount under the guidelines. Rosenberg v. Merida, 428 Mass. 182 (1998).

-

In general, income and expenses from self-employment or operation of a business should be carefully reviewed to determine the appropriate level of gross income available to the parent to satisfy a child support obligation. In many cases this amount will differ from a determination of business income for tax purposes. The calculation of income for purposes of this section may increase gross income by certain deductions or other adjustments taken for income tax purposes.

Expense reimbursements, in-kind payments or benefits received by a parent, personal use of business property, payment of personal expenses by a business in the course of employment, self-employment, or operation of a business may be included as income if such payments are significant and reduce personal living expenses.

D. Unreported Income

When the Court finds that either parent's gross income, in whole or in part, is undocumented or unreported for tax or other governmental purposes, the Court may reasonably impute income to the parent based on all the evidence submitted, including but not limited to evidence of the parent's ownership and maintenance of assets, and the parent's lifestyle, expenses and spending patterns.

In circumstances where the Court finds that a party has unreported income, the Court may adjust the amount of income upward by a reasonable percentage to take into account the absence of income taxes that normally would be due and payable on the unreported income.

~~E.~~ E. Attribution of Income

Attribution of income is intended to be applied ~~Income may be attributed~~ where a finding has been made that either party is capable of working and is unemployed or underemployed. The Court shall consider all relevant factors including without limitation the education, training, health, ~~and~~ past employment history of the party, and the availability of employment at the attributed income level. ~~The Court shall also consider the~~ age, number, needs and care of the children covered by this order. If the Court makes a determination that either party is earning less than he or she could through reasonable effort, the Court should consider potential earning capacity rather than actual earnings in making its order.

~~F.~~ F. Non-Parent Guardian

The income of a non-parent guardian shall not be considered for purposes of calculating a child support obligation.

II. FACTORS TO BE CONSIDERED IN SETTING THE CHILD SUPPORT ORDER

A. Relationship to Alimony or Separate Maintenance Payments

These guidelines have been developed with the understanding that child support is non-deductible by the Payor and non-taxable to the Recipient. These guidelines do not preclude the Court from deciding that any order be designated in whole or in part as alimony without it being deemed a deviation provided the tax consequences are considered in determining the order and the after-tax support received by the Recipient is not diminished. It is the responsibility of the parties to present the tax consequences of proposed orders to the Court.

Chapter 124 of the Acts of 2011 (An Act Reforming Alimony in the Commonwealth) amended G. L. c. 208 and now prohibits the use of gross income which the Court has already considered in making a child support order from being used again in determining an alimony order. See G. L. c. 208, § 53(c)(2). Consideration may be given by the parties to preparing alternate calculations of alimony and child support to determine the most equitable result for the child and the parties. Depending upon the circumstance, alimony may be calculated first, and in other circumstances child support will be calculated first. Judicial discretion is necessary and deviations should be considered.

B. Claims of Personal Exemptions for Child Dependents

In setting a support order, the Court may make an order regarding the claims of personal exemptions for child dependents between the parties to the extent permitted by law.

C. Minimum and Maximum Levels

These guidelines are ~~also~~ intended to protect a minimum subsistence level for those parents obligated to pay child support whose ~~gross~~ income is ~~less than \$150~~ per week ~~or less~~. However, it is the obligation of all parents to contribute to the support of their children. To that end, ~~in all cases~~, a minimum order of \$80 per month (\$18.46 per week) should enter. This minimum should not be construed as limiting the Court's discretion to set a higher or lower order, should circumstances warrant, as a deviation from the guidelines.

These guidelines are ~~not meant to apply where the~~ calculated up to a maximum combined available annual gross income of the parties ~~of exceeds~~ \$250,000. In cases where combined available income is over \$250,000, the guidelines should be applied on the first \$250,000 in the same proportion as the Recipient's and Payor's actual income as provided on line 1h of the child support guidelines worksheet. In cases where income exceeds this limit, the Court should consider the award of support at the \$250,000 level as the minimum presumptive order. ~~Additional amounts of child support may be awarded in the Court's discretion. The child support obligation for the portion of combined available income that exceeds \$250,000 shall be in the discretion of the Court.~~

D. Parenting Time

These guidelines recognize that children should enjoy parenting time with both parents to the greatest extent possible consistent with the children's best interests.

These guidelines are based upon the child(ren) having a primary residence with one parent and spending approximately one-third of the time with the other parent. If parenting time is less than one-third for the parent who is not the residential parent, the Court may consider an upward adjustment to the amount provided under the child support guidelines.

Where two parents share equally, or approximately equally, the financial responsibility and parenting time for the child(ren), the child support shall be determined by calculating the child support guidelines twice, first with one parent as the Recipient, and second with the other parent as the Recipient. The difference in the calculations shall be paid to the parent with the lower weekly support amount.²

Where parenting time and financial responsibility are shared in a proportion greater than one-third, but less than 50%, the child support guidelines shall be calculated first with one parent as the Recipient, and second as if the parties shared custody equally. The average of the base child support and the shared custody cross calculation shall be the child support amount paid to the Recipient.

Where there is more than one child covered by this order and each parent provides a primary residence for one or more of these children, child support shall be determined by calculating the child support guidelines twice, first with one parent as the Recipient using the number of children in his or her care, and second with the other parent as the Recipient using the number of children in his or her care. The difference in the calculations shall be paid to the parent with the lower weekly support amount.³

E. Child Care Costs

Reasonable child care costs for the child(ren) covered by the order and due to gainful employment of either party are to be deducted from the gross income of the party who pays the cost. In appropriate circumstances, child care costs may include those due to training or education reasonably necessary to obtain gainful employment or enhance earning capacity. The Court may consider a deviation where the child care cost is disproportionate to income.

² For purposes of these calculations, no deductions on line 1e of the Guidelines Worksheet shall be made.

³ For purposes of these calculations, no deductions on line 1e of the Guidelines Worksheet shall be made.

F. Age of the Children

These guidelines create a rebuttable presumption that the dollar amount provided for under the guidelines shall apply in all cases establishing or modifying a child support order involving children entitled to support from ages 0-18 and children over 18 who are still attending high school. Payment of child support for children over the age of 18 is established by statute.⁴ In establishing support orders for children over age 18, to the extent permitted by law, the Court shall exercise its discretion in ordering support and/or college contribution. The Court shall considering the reason for the continued residence with and dependence on the Recipient, the child's academic circumstances, living situation, the available resources of the parents, the costs of post-secondary education for the child, the availability of financial aid and the allocation of those costs, if any, between the parents. Contribution to college costs is not presumptive, but is based upon the above factors. If a specific college contribution is ordered, this contribution shall be considered by the Court in setting the weekly support order, if any, and the availability of financial aid.

G. Health Insurance, Uninsured, and Extraordinary Medical Expenses

1) Health Insurance

Each party may deduct from gross income the reasonable cost of individual or family health insurance actually paid by that party. However, if there is an additional cost to insure a person not covered by this order, and the Court determines that such additional cost would unreasonably reduce the amount of child support, then some or all of such additional cost shall not be deducted.

When the Court makes an order for child support, the Court shall determine whether health insurance is available through an employer or otherwise available at a reasonable cost that may be extended to cover the child. When such insurance is available, the Court shall include in the support order a requirement that such insurance for the child be obtained or maintained. The Payor and Recipient must agree in writing that such insurance will be provided by other means not including MassHealth.

Health care coverage shall be deemed available to the Payor at reasonable cost if it is available through an employer. The Court may determine that the cost of health care coverage is unreasonable if it creates an undue hardship on the Payor. If the Court determines that health care coverage is not available to the Payor at a reasonable cost, then the Court shall enter an order requiring the Payor to obtain and maintain health care coverage for the child if and when the parent has access to such coverage at a reasonable cost.⁵

2) Dental/Vision Insurance

Each party may deduct from gross income the reasonable cost actually paid by that party of dental/vision insurance insuring the children covered by this order.

If there is an additional cost to insure a person not covered by this order, and the Court determines such additional cost would unreasonably reduce the amount of child support, then some or all of such additional cost shall not be deducted from gross income.

3) Routine Uninsured Medical and Dental Expenses

The Recipient shall be responsible for payment of the first \$250 each year in combined routine uninsured health and dental/vision expenses for all the children covered by this order. For amounts above that limit, at the time of entry of establishing or modifying the support order, the Court shall allocate expenses between the parties without adjustment to the child support order.

⁴ See G. L. c. 208, § 28, G. L. c. 209C, § 9 and G. L. c. 209, § 37.

⁵ Current statutory language permits the Recipient of child support to provide health insurance if there is agreement, but absent agreement the Court lacks authority to require the Recipient to provide health insurance. At such time as the legislature amends the law, the Guidelines should be construed, to the extent possible, consistent with any amendments to Massachusetts law and federal regulations (45 C.F.R. parts 302, 303, 304, 305, and 308).

4) Uninsured Extraordinary Medical and Dental Expenses

The payment of uninsured extraordinary medical and dental expenses incurred for the children, absent agreement of the parties, shall be treated on a case-by-case basis. (Example: orthodontia, psychological/psychiatric counseling, etc.) Where the Court makes a determination that such medical and dental services are necessary and are in the best interests of the child(ren), the Court shall allocate such expenses between the parties.

~~II. Attribution of Income~~

~~Attribution of income is intended to be applied where a finding has been made that either party is capable of working and is unemployed or underemployed. The Court shall consider all relevant factors including without limitation the education, training, health and past employment history of the party, and the age, number, needs and care of the children covered by this order. If the Court makes a determination that either party is earning less than he or she could through reasonable effort, the Court should consider potential earning capacity rather than actual earnings in making its order.~~

~~III. Other Orders and Obligations~~

When an initial order or a modification of an existing order is sought for a child covered by theis order, the following amounts actually paid to support a former spouse or a child not covered by this order shall be deducted from gross income for purposes of calculating the child support amount under this order:

- 1) the amount of prior orders for spousal and child support; or
- 2) voluntary payments to support a child with whom the Payor does not reside, to the extent the amounts are reasonable; or
- 3) a hypothetical amount of child support for a child with whom the Payor resides but for whom no child support order exists, which hypothetical child support amount shall be calculated according to the Guidelines Worksheet using the gross incomes of both parents of the child.

Obligations to a subsequent family may be used as a defense to a request to modify an order seeking an increase in the existing order but such obligations should not be considered a reason to decrease existing orders.

The party seeking to take such deductions from gross income must have a legal obligation or duty to support the former spouse or child and must provide evidence that such support or voluntary payments are actually being paid.

To the extent that prior orders for spousal and child support are actually being paid, the Court should deduct those payments from the party's gross income before applying the formula to determine the child support order. Voluntary payments for other children a party has a legal obligation to support may be deducted in whole or in part to the extent the amounts are reasonable. It is the party's obligation to provide evidence of the existence and payment of prior orders or voluntary payments.

~~**Obligations to a subsequent family may be used as a defense to a request to modify an order seeking an increase in the existing order but such obligations should not be considered a reason to decrease existing orders.**~~

~~II. Families with More than Five Children~~

The guidelines formula applies to families with 1-5 children. For more than five children, the order should be at least the amount ordered for five children.

~~JK. Other Child-Related Expenses~~

In such cases where the Court makes a determination that there are additional child-related expenses such as extra-curricular activities, private school, post-secondary education or summer camps, which are in the best interest of the child and which are affordable by the parties, the Court may allocate costs to the parties on a case-by-case basis.

III. MODIFICATION

A. A child support order may be modified if any of the following circumstances exist:

- 1) ~~the existing order is at least three years old; or there is an inconsistency between the amount of the existing order and the amount that would result from the application of the child support guidelines;~~
- 2) health insurance previously available at reasonable cost is no longer available (or if available but not at reasonable cost); ~~or~~
- 3) health insurance not previously available to a party at reasonable cost has become available; ~~or~~
- 4) any other material and substantial change in circumstances has occurred.

B. ~~In the event that the Department of Revenue is providing IV-D services, the provisions of G. L. c. 119A, § 3B(g) appear to apply to modification requests made within 0-3 years from the entry of the last order in which case the requesting party must demonstrate a substantial change in circumstances in addition to an inconsistency. See Morales v. Morales, 464 Mass. 507 (2013).~~

C. Upon a request for modification of an order that deviated from the guidelines at the time it was entered, the guidelines shall apply unless:

- 1) the facts that gave rise to deviation still exist; and
- 2) deviation continues to be in the child's best interest; and
- 3) the guidelines amount would be unjust or inappropriate under the circumstances.

Paragraph C B above does not preclude deviations based on other grounds set forth in Section IV or grounds for modification as set forth in Paragraph A or B above.

IV. DEVIATIONS

The Court, or the parties by agreement approved by the Court, may deviate from the guidelines and overcome the presumptive application of the guidelines provided the Court enters specific written findings stating:

- 1) the amount of the order that would result from application of the guidelines;
- 2) that the guidelines amount would be unjust or inappropriate under the circumstances;
- 3) the specific facts of the case which justify departure from the guidelines; and
- 4) that such departure is consistent with the best interests of the child.

Circumstances which may support deviation, above or below the Child Support Guidelines -include, but are not limited to, the following:

- 1) the parties agree and the Court approves their agreement;
- 2) a child has special needs or aptitudes;
- 3) a child has extraordinary medical or other expenses;
- 4) application of the guidelines, particularly in low income cases, leaves a party without the ability to self support;
- 5) Payor is incarcerated, is likely to remain incarcerated for an additional 3 years and has insufficient financial resources to pay support;
- 6) application of the guidelines would result in a gross disparity in the standard of living between the two households such that one household is left with an unreasonably low percentage of the combined available income;
- 7) a parent has extraordinary medical expenses;
- 8) a parent has extraordinary travel or other expenses related to parenting;
- 9) application of the guidelines may adversely impact re-unification of a parent and child where the child has been temporarily removed from the household based upon allegations of neglect; ~~or~~

10) absent deviation, application of the guidelines would lead to an order that is unjust, inappropriate or not in the best interests of the child, considering the Principles of these guidelines;

11) a parent has extraordinary health insurance expenses;

12) one parent is absorbing a child care cost that is disproportionate in relation to their income;

13) one parent provides less than one-third of the parenting time for a child or children.

Addendum

Child Support Guidelines Worksheet

Instructions for Completing Worksheet

Child Support Guidelines Chart

Appendix G – Summary of Survey Results

Judges and probation officers of the Probate and Family Court apply and use the Child Support Guidelines everyday and, therefore, can provide important insights concerning whether, how, or if, the Guidelines should be revised.

The Task Force invited all of the Probate and Family Court judges and probation officers to participate in on-line surveys. They were asked to indicate whether they believed there were issues that should be examined by the Task Force, which issues should be given priority, and whether additional items should be considered. Responses were anonymous and the electronic survey permitted additional comments so that feedback could be as expansive as respondents deemed appropriate. Responses were submitted by nineteen judges; there were twenty-six responses submitted from probation.

The surveys' initial questions asked whether the Guidelines should be changed. Half of the responding judges indicated the Guidelines, as presently structured, should remain unchanged. The reasons given for maintaining the status quo included: “they work – I have adequate opportunities to run hypotheticals to calculate the range of possible guidelines to accommodate various nuances of individual families, and options to deviate when appropriate”; “they seem to be working properly allowing both parents to care for their children”; “they provide predictability but still leave sufficient discretion to judge for deviation when warranted”; the guidelines are “basically fair” and “largely work effectively”; and “they give fair consideration to expenses like insurances, child care, and second families.” Responses from probation officers who indicated the Guidelines should remain unchanged provided these comments: “they seem to have considered all factors in the calculations”; “they are fair at all income levels”; and “they seem fair to both sides and the children.” One probation officer summarized as follows: “The guidelines help us settle cases. They factor in the important things like health insurance and child care costs. I wouldn't change them.”

Those respondents who felt changes were needed were asked to identify their primary reasons. Judicial responses included “the present guidelines do not fairly compensate a payor when the recipient earns money” and “the application of the guidelines to lower incomes results in an order that is disproportionately large in comparison to the payor's gross income”. The reasons offered by probation officers included “if someone is self-employed or subcontracting, they should have to prove they have regularly paid taxes in order to receive any deduction benefit in the [child support guideline] calculations.” One probation response provided “the lower level income homes seem to be hit the hardest given the lack of resources” because “part of it is that there isn't enough money to support one household, never mind two.”

Judges were asked to identify the recurring reasons causing them to deviate from the Guidelines amounts. The reasons provided by responding judges included “disproportionate percentage of weekly gross that does not permit the payor to maintain a modest lifestyle”; “parenting schedule inequity resulting in remaining income available to payor”; and “extraordinary family obligations in obligor's

household, extraordinary medical expenses for a party or dependent, extraordinary travel expenses to maintain relationship with absent parent, significant income in each household coupled with language in the agreement as to sharing of other extracurricular or academic expenses.”

If litigants voluntarily agree upon an amount of child support that differs from the amount resulting from the Guidelines calculation, they may submit this proposed amount to the Court. If the judge agrees, this proposed amount becomes the order, reflecting a deviation. Most of the judges who responded to the survey indicated they have approved agreements that reflect deviations, provided the judge determines “the rationale for the deviation is sound.” Other responses from the judges indicated “I need a reasonable explanation and to make sure that each side is aware of the guidelines amount, otherwise I decline to accept the [proposed deviation] amount” and [the agreed-upon deviation is accepted] “as long as the recipient is aware of what the guidelines are and as long as I am satisfied that he/she has made a well-informed and voluntary decision.”

The survey results were reviewed and fully considered by the Task Force. Interestingly, there were mixed opinions offered by members of each group: some judges and probation officers felt no changes were called for while some indicated changes were needed. The surveys helped the Task Force understand the perspectives of the judges and probation officers who daily see and hear from those parties directly affected by the Guidelines. While not determinative, these survey results help illustrate the range of opinions which were considered by the Task Force.

Appendix H – Summary of Public Comments

In April 2012, the Task Force began accepting public comments about the Guidelines via either a dedicated email address and/or regular mail. As a result, over 100 submissions were received. The submissions were from a variety of sources, the majority of them (64) coming from non-custodial parents. Comments were also received from custodial parents (7), spouses of non-custodial parents (4), parents of non-custodial parents (3), parents with 50/50 custody arrangement (2), one from an adult child, one from a friend of a non-custodial parent, one from a mother who did not identify her “status”, one from a father with both a non-custodial parent relationship and a split custody arrangement, and 5 for whom the “status” was not identified. In addition, 2 submissions were received from bar associations, 8 submissions were received from attorneys, one was received from a mediator, one was received from a non-profit organization, and a compilation of questions and concerns from the members of a professional organization was received. The Department of Revenue/Child Support Enforcement Division (DOR/CSE) also submitted comments.

The comments touched upon a wide range of subjects, some of which did not relate to the Guidelines specifically.

Costs of raising children

Fourteen (14) people and a non-profit organization commented that child support should be based on the needs of the child, not the income of the parents. A number of those commenting felt that the amount of child support paid often exceeds the needs of the child and that the excess goes to support the custodial parent. Several commented that this was damaging to the children. Some people suggested that child support should be based on a true analysis of what it costs to raise a child in Massachusetts. One person stated that it doesn’t take 25% of gross income to support a child. Another suggested that three parameters should be used to determine the parent’s ability to fund the child’s expenses: 1) the parents’ income; 2) the amount of time each parent has with the child; and 3) the total expense to raise the child.

One custodial parent felt that more weight should be added to the child support formula when one has one or more children with special needs because special needs children have extra costs. One attorney commented that the guidelines don’t adequately compensate the custodial parent for the cost of more than one child.

Comments received included:

“Excessive child support hurts children in many ways. When it constitutes a windfall to the custodial parent, well above the amount actually needed to support a child’s needs, it creates long lasting rancor and conflict.” *Non-custodial parent*

“Special needs children need a lot more care, have a lot more therapies and doctors appointments, need for medical supplies and can also have costs to the custodial parent for such things are (sic) extra curricular play groups and sports.” *Custodial parent*

Expenses of non-custodial parents

Thirty (30) people and one non-profit organization commented about the expenses of the non-custodial parents. Many of those who commented about this issue felt that the guidelines amounts were too high and resulted in the non-custodial parents being unable to adequately support themselves. Several non-custodial parents stated that they can barely make ends meet due to having to pay child support. Some noted that due to high child support payments, they don't have any extra money to spend on their children when the children are with them—they don't have money for an adequate place to live or for entertainment, vacations, and other activities. One non-profit organization commented that because the guidelines are too high, an income disparity is created between the child's two homes, resulting in the child experiencing a lower standard of living while in the non-custodial parent's home.

Several commented about travel expenses of the non-custodial parent when the child does not live near the non-custodial parent. One non-custodial parent commented the non-custodial parent often finds that the only lodging that he can afford is at a distance from where the children live, resulting in diminished parenting time. Another felt that the guidelines should incorporate credit to the non-custodial parent for extraordinary out-of-state travel expenses required in order to participate in parenting time. One person stated that the courts have interpreted the language in the guidelines about taking into account extraordinary travel expenses to mean only if the parent has moved away from Massachusetts if they had no choice in the matter and therefore has applicable extraordinary travel expenses. She implied that this gives the parent difficult choices: 1) giving up the constitutional right to move; 2) seeing the children less often; or 3) seeing the children as often as the job allows, but living at the national poverty level even if making over \$100, 000 per year.

Comments received included:

“A significant problem is that the current child support guidelines do not consider that, in addition to paying child support, non-custodial parents have nearly all of the financial obligations as custodial parents.” *Non-custodial parent*

“Please make the child support calculator output a fair number for divorced fathers. A number that will allow them to support their children but still live a reasonable life and be able to afford to do activities at least occasionally with their children when they get to spend quality time with them.” *Non-custodial parent*

Comments specific to the text of the Guidelines included the following:

Sources of income

Forty-five (45) people, a non-profit organization and DOR/CSE commented about what income should be considered in calculating child support guidelines amounts. Many expressed the view that child support should be based on net, not gross, income because gross income does not reflect the actual amount of money that a parent has available to support him or herself.

A number of people commented that both parents should contribute financially to the support of the children. Some commented that the custodial parent should be required to work, even if only part time, if the children are in school. Several felt that the child support that they pay is going to support the custodial parent's lifestyle, not just to support the children.

Other comments about income were:

- Third party gifts to a parent or child should be considered income. *Non-custodial parent*

- Third party payment of legal fees, child's education or other items should be considered income. *Non-custodial parent*
- Alimony received should be added to income. *Non-custodial parent*
- A sentence should be added at the end of section I.A providing that income derived from a means-tested public assistance program, such as TAFDC (cash assistance) or SNAP (food stamps) benefits, should not be considered income. *DOR/CSE*
- Income for those whose income is not steady should be averaged over a 3 year period. *Father with 50/50 custody*
- If the amount of income is in dispute, the court should make specific findings regarding each source of income alleged. The court should require the parties to produce documentation of income before determining or modifying child support. *Non-custodial parent*
- Bonus income should be treated on the same basis (i.e. percentage allocation) as base income because requiring a payor to give a higher percentage of bonus income to the recipient removes the incentive for payor's to earn a bonus. *Non-profit organization*

Comments received included:

"The parents' true standard of living is based on [their] take home pay, after all taxes and other obligatory payments. This is not a small adjustment for many people and can make child support reach 50% of real take-home pay, as taxes rise on the middle to upper class." *Non-custodial parent*

"Please understand as the spouse of a gentleman that has always paid his child support for his son from his first marriage and paid 100% for all sport activities. It is hard to understand why the courts do not require his ex-wife to contribute financially. This woman consistently takes my husband back to court for increases." *Spouse of non-custodial parent*

"As a matter of fairness to the children, recipient parents should not live off support payments, but should have an obligation to support themselves through their own incomes (and/or alimony, if any) and have a fiduciary responsibility to use child support for the child(ren) of the support order." *Non-profit organization*

Overtime or Secondary Jobs

Sixteen (16) people commented that income from overtime or second jobs should not be included as income for child support calculations. A number of people felt that second jobs or overtime cut into the amount of time they have available to spend with their child(ren). One person commented that it is the second family that feels the drain from a non-custodial parent's second job.

Comments received included:

"Secondly, I think we would see a stronger community if the amount paid was not based on overtime and just base salary fathers would have more time to spend with their children which is equally as important as money." *Non-custodial parent*

"The Guidelines should exempt overtime/second jobs from consideration for cases in which the recipient is not fully employed, if the children are of school age to encourage each parent to support the child and themselves and to free up the payor for greater parenting time." *Non-profit organization*

Self-Employment or Other Income

Two (2) individuals and members from one organization commented about self-employment income. Members of the organization suggested that it would be helpful if the guidelines gave specific examples

of business expenses allowed by the IRS on Schedule C that should be added back to a parent's income for the purposes of calculating child support, e.g., depreciation, home office expenses, because many people litigants don't understand the distinction. It was questioned whether the guidelines should require self-employed litigants to disclose to the spouse all expenses on business accounts or asserted to be business expenses which relate to personal expenses. A custodial parent suggested that there be some provisions for self-employed and commission earners to hold them to their past standard of earning with reasonable proof of past income. A non-custodial parent felt that the guidelines are unfair to fathers and even more unfair to a self-employed business owner who has higher taxes due to self-employment taxes and nets less money for which the guidelines do not account.

Unreported Income

Three (3) people reported that the other parent works "under the table" so that the income reported for the purposes of child support calculations is not accurate. A custodial parent commented that the court should check the information the custodial parent has about the non-custodial parent's income to ensure that all income (such as "off the books" income) earned by the non-custodial parent is considered when ordering child support.

Attribution of Income

Eleven (11) people and one non-profit organization commented about attribution of income. Several commented that the court should refrain from attributing income to a payor who is unable to earn the attributed income. Several people felt that the court should consider the state of the economy and that the unemployment of a parent may not be the fault of the parent. One person commented that attribution of income is discriminatorily applied only to non-custodial parents. Others commented that a parent's past employment status should be considered and that a reasonable amount of past earned income should be considered in attributing income with a certain amount of past income proof.

Other comments included:

"Restrain from attributing income to a payor who is unable to earn the attributed income. This may cause financial distress or incarceration." *Non-custodial parent*

"In short he has intentionally tanked his income. I have 4 children and my husband is intentionally trying to work the system because of the State Income guidelines.

There needs to be some provisions made for the self employed and commission earners that would hold them to their past standard of earning—with a reasonable amount of past income proof." *Custodial parent*

Relationship to Alimony or Separate Support Payments

Six (6) people commented about alimony. Several commented that child support has become a type of de facto alimony which is a windfall to the recipient and is unfair to the payor.

One lawyer recommended that the effect of alimony under the new alimony law on the child support calculation should be considered. One non-custodial parent recommended that child support should be taxable to the recipient and deductible by the payor. One person commented that the child support guidelines have no authority to force a party to pay alimony.

Claims of Personal Exemptions for Child Dependents

Five (5) comments were received about the tax consequences of paying or receiving child support. Among those comments were that the payor of child support should get a tax write off for the payment of child support, that the recipient should pay taxes on child support, and that the custodial parent should not be able to claim the child as a dependent every other year when she pays no taxes on child support.

Minimum and Maximum Levels

Thirty (30) comments were received about the amount of child support calculated under the Guidelines. A number of people felt that the guidelines amounts were excessive. Several people expressed the view that the rates at which child support is calculated in Massachusetts are among the highest in the country. Some expressed the view that child support amounts should be reduced for poor, middle class and “near wealthy” families, while still providing for the needs of the child. Some people commented that there should be a true self support reserve for poor payors.

DOR/CSE recommended that a presumption be added to section II.C. that if the Court finds that the payor’s only source of income derives from Supplemental Security Income (SSI), the current child support amount shall be zero dollars. One person thought that payments for one who is disabled should immediately be reduced to the minimum of \$80 per month for the period of disability. One mother noted that she can’t divorce her abusive husband because if she did, and he were ordered to pay child support, he would be unable to pay the minimum of \$80 per month and still pay his rent.

The view was also expressed that the child support amounts should not be lowered, especially for low income custodial parents. One bar association acknowledged that while it is difficult for low income payors to meet their own needs after paying for child support, it is equally, if not more, difficult for low income custodial parents to meet their child’s financial needs.

One bar association commented that the current guidelines formula produces results in certain situations which are counter-intuitive. For example, in some cases, an increase in the recipient’s income results in an increase in the amount of child support to be paid by the payor. In other cases, a decrease in income for the recipient may result in a decrease in the presumptive child support award using the guidelines formula. One suggestion to remedy this situation would be to provide guidance about when a deviation under such circumstances might be appropriate if the guidelines amount is unjust, inappropriate and not in the best interests of the child.

A number of people commented that the \$250,000 cap should be reduced. It was suggested that a lower figure be determined based on the actual median cost to raise a child. A bar association expressed a different view, stating that a combined income in excess of \$250,000 is not rare in today’s economy. The association suggested that thought should be given to limiting the court’s discretion by providing for support at a higher combined income level. This could be at a lower percentage for the payor of combined income over \$250,000, suggesting that consideration of a 10% amount from \$250,000 to \$500,000 might be appropriate.

Comments heard included:

“Guidelines should incorporate a true self-support reserve for poor payors...There is no point in creating unpayable support obligations leading to uncollectible arrearages and fugitive parents.” *Non-profit organization*

Parenting Time

Thirty-six (36) of the submissions received included comments about parenting time, in particular about shared parenting. Many commented that shared parenting should be encouraged by the court and that children benefit when both parents participate in their lives. Several people suggested that the courts should look at the best interests of the child and not assume that the father is a bad parent. A number of people commented that the state discriminates against men by automatically assuming that the mother is the more appropriate parent to have custody. Several people commented that shared parenting has not been implemented due to incentives for the custodial parent to retain more parenting time so that he or she receives more child support. One non-custodial parent expressed his hope that the Task Force would take action to encourage joint parenting and not foster a system “where some mothers choose to go against what may be in their children’s best interests, in favor of having control and financial benefit.”

Most of those who commented in favor of shared parenting felt that child support amounts should be prorated based on the amount of parenting time. One person suggested that if parenting time is 50/50, no child support should be payable by either parent. Another suggested that child support in these cases should be determined by the “offset method” divided by two. One person asked whether support should be increased above the guidelines amount if the payor spouse parents the child less than one third of the time. A non-custodial parent suggested that if the non-custodial parent is taking the child on an extended vacation, child support payment should be switched (custodial parent pays non-custodial parent) or should be deducted from child support payment for that period. One bar association suggested that a solution may be to include a presumption that both parents share equally all of the child(ren)’s living and other expenses and provide guidance about how to allocate the actual expenses paid.

Comments received included:

“A rebuttable presumption of shared parenting should be in place so shared parenting is the norm, not the exception.” *Non-profit organization*

“My point being, it is always stated that only parents who really get along can achieve a split custody arrangement that is in the best interest of the kids. It is untrue—We do not get along, but we love our kids even more than ourselves. Because we are both involved so much, it forces us to always put them 1st. Split custody forces us to work through our disagreements for the sake of the kids.” *Non-custodial parent.*

“My son accepts responsibility of his son and wants to provide for him and be an integral part of his life. He is a great father and wants what’s best for his son, but even with joint legal custody he is not always consulted about things going on in his son’s life by not being told about Dr’s appointments etc. Shared parenting would be a welcomed alternative so that he could have more time and influence in his son’s life.” *Mother of father with joint legal custody*

“While this Task Force does not have the authority to promulgate changes in custody law, it could help move the law in more constructive directions by making a recommendation for more shared parenting so as, among other things, to improve financial support of children, including voluntary support rather than coerced support that is not required of married parents.” *Non-custodial parent*

Child Care Costs

There were three (3) comments about the payment of child care costs. One bar association commented that child care costs present a problem under the guidelines because the exclusion of child care costs from a parent’s income (whether payor or recipient) results in a very small contribution from the other parent. This creates a disincentive for the custodial parent to work or for the non-custodial parent to assume the

direct cost of child care. A possible resolution suggested would be a percentage increase or decrease in child support payment that creates a significant adjustment for the child care costs for the parent who is paying the costs. It was also suggested that any adjustment take into consideration any resulting tax consequences.

One person felt that the child support calculations result in a significant bias against the child support recipient when the recipient pays child care costs, resulting in a lower standard of living for the recipient who has the primary responsibility of the children. Because the calculations require that child care costs be directly subtracted from the recipient's income, often the recipient ends up paying more in child care costs than the court-ordered child support. She recommended that the guidelines be changed to fairly distribute the cost of child care between the payor and the recipient when both parties work full time.

Another commented that there is a perception in the court that child care due to work obligations in the summer is not subject to a calculation through the guidelines and asked that this be

clarified, stating "It should not matter whether reasonable child care is obtained by either parent or obtained in the summer or any time of year."

Age of Children

Forty-one (41) people and three organizations commented about this topic. Most who commented felt that child support payments should end or only be de minimus when the child graduates high school or turns 18. Some commented that child support should continue after high school only if the child has special needs. One person suggested that any special needs be established by a licensed health care provider. One adult child commented that she thought that child support should be paid until the age of 26 because the custodial parent often continues to support the child after 18. She felt that it was unfair to let the non-custodial parent stop providing for his children at that point.

A number of people felt that it was unfair to require parents who are not together to pay for higher education when married parents are not required to do so. Some commented that if a child is in college, child support should only be ordered if the child lives at home. Several suggested that child support after 18 should go to the child or be paid directly to the college if the child goes to college. One person commented that the custodial parent or adult child should be required to provide proof of attendance at college. Others felt that there should be a limit on how much a parent can be ordered to pay for higher education. One person commented that the court should take into account how much disposable income each parent has when determining how much each parent should pay for college expenses. One bar association suggested that thought be given to a formulaic approach or more specific guidelines for college costs and the correlation of these costs with child support.

One individual expressed his view that the child support guidelines for children ages 18 through 23 who have graduated from high school and who are continuing their post-high school education, do not comply with federal law. He also felt that the enforcement of such orders should only be by the court and not by DOR.

DOR/CSE also expressed a concern that section II.F does not comply with federal law. DOR wrote that although federal law does not require that states provide for support to continue beyond a child's minority, if a state opts to provide for post-majority support, federal law requires that child support guidelines apply. DOR maintains that the first sentence of section II.F strongly suggests that the guidelines do not presumptively apply to proceedings for the award of post-majority child support. Therefore, DOR recommended that the first sentence of section II.F be deleted to ensure that the guidelines apply to all proceedings for child support as required by federal law.

Comments heard included:

“Child support should stop at the age of 18 or upon high school graduation unless the child attends college and should then promptly stop at the age of 21. Extending support past the age of 18, creates a crutch and prevents some children from being forced to learn job skills or work ethic between the age of 18-21.” *Non-custodial parent*

“I feel that one guideline that should be adjusted is the stoppage of payments when a child decides not to attend college/the age of 18. A child does not stop being a child (in a parent’s eyes along with most of society) when they turn 18. My mother still works very hard to support my brother and I, along with small foster children.” *Child*

“If ‘child support’ benefits are extended beyond the boys (sic) 18th birthday I submit that this situation is totally unfair and something must be done to put more responsibility on the mother and give more control to the father in regard to the purpose and consumption of ‘child support’.” *Father of non-custodial parent*

Health Insurance, Uninsured, and Extraordinary Medical Expenses

There were 11 comments about this topic. Several people felt that the calculation method for health insurance expenses was unfair. One person suggested that the costs of health, dental and medical insurance should be handled outside of the calculations for child support. One custodial parent recommended that the requirement in section II.G.3 that the recipient is responsible for payment of the first \$250 in combined routine uninsured health and dental/vision expenses for children covered under the order be stricken because it places an unfair burden on the custodial parent. She suggested that these expenses should be shared equally. A bar association also commented on section II.G.3, commenting that the use of “shall” in this section does not provide enough flexibility for the court to consider a deviation when warranted and recommending that the court should be given more flexibility with respect to allocating to the first \$250 of such costs.

Two bar associations noted that treating the cost of health insurance as a deduction creates a disincentive for either parent to be the one to provide health care coverage because the exclusion of health insurance costs from one parent’s income (whether payor or recipient) results in a very small contribution from the other parent. One bar association commented that this is compounded by the fact that the recipient parent cannot be ordered by the court to provide health insurance coverage except by agreement. One suggestion to remedy this problem could be to allocate the cost of the child’s portion of the insurance between the parents in proportion to income so that a disproportionate portion of the cost is not borne by one parent. Another possible resolution suggested would be a percentage increase or decrease in child support payment that creates a significant adjustment for the health insurance costs for the parent who is paying the costs. It was also suggested that any adjustment take into consideration any resulting tax consequences.

Other comments were:

- A payor should not be required to pay for health insurance for a child who is a full time college student and required by law to have medical insurance through the school. *Non-custodial parent*
- The Guidelines allow deduction from gross weekly wages of that party’s health insurance premiums even if the other spouse provides medical insurance for the children. However, it does not allow deduction of vision and dental insurance premiums unless the party provides for such coverage for the children. Should dental/vision insurance be given the same status as health insurance? *Organization member*
- Section II.G (1) and (2) should be replaced with simpler language that provides that each parent may reduce their gross weekly income by the amount of health, dental, vision premiums and also by the uninsured medical payments they pay which would “level the playing field” between all

types of insurance, deductibles and self insurance/direct payment of expenses. *Non-custodial parent*

Other Orders and Obligations

Sixteen (16) people and one non-profit organization commented on the effect the payment of child support for a first family has on a subsequent family. Both non-custodial parents and subsequent spouses commented about this issue. A number of these said that the guidelines should encourage equal treatment of all children and that the needs of all children, not just those of the first family, should be considered in fashioning a child support order. Some felt that a subsequent family suffers at the expense of the first family due to high child support orders. Several parents commented that due to the child support paid for children by a prior relationship, their subsequent children are subjected to a lower standard of living than the children of the prior relationship. Others commented that equal treatment may require decreases in child support orders for first families when second families are involved.

Comments received included:

“The birth of additional children should lower child support as one’s children should be treated equally.”
Non-custodial parent

Other Child-Related Expenses

Three (3) people commented about this topic. One person suggested that parents should not be required to pay for extracurricular activities, such as summer camp or kindergarten tuition, in addition to child support and that recreational activities should be paid for out of child support payments. Another commented that non-custodial parents should receive credit for some amount of private school tuition. Otherwise, the non-custodial parent is paying a portion of the tuition after taxes while the custodial parent is paying for tuition with tax free money.

Modification

Twelve (12) comments were received about modification of child support orders. A number of people felt that there should be a mechanism for more timely adjustments to child support orders in cases of unemployment or other change in employment status. A bar association commented that the previous statutory language requiring a substantial change in circumstances for modifications of support orders was amended 18 years ago and now provides that an order “shall be modified if there is an inconsistency between the amount of the existing order and the amount that would result from application of these guidelines.” The bar association recommended that section III be amended accordingly.

Other comments included:

- In cases of disability, the child support amount should be automatically adjusted to the \$80 per month minimum. *Non-custodial parent*
- Retroactive child support should only be given in cases where someone has missed payments, not based on an “assumed” increase in child support. *Non-custodial parent*
- Adjustment to child support should be retroactive so that interest and penalties don’t accrue. *Non-custodial parent*
- The guidelines should allow for recalculation of child support amounts each year based on W-2s or other objective factors and be incorporated into settlement agreements without the parties having to appear in court or file for a modification every year. *Mediator*
- The judge should be allowed greater discretion to lower or suspend payments when necessary. *Non-custodial parent*

Comments received included:

“Finally, in order to reduce the epidemic of homeless fathers, an automatic alimony and support reduction must be tied to the GDP to give temporary relief during major economic downturns.” *Non-custodial parent.*

Deviation

Three (3) people commented about deviations to the Guidelines. One person commented that any support over the presumptive level should only be if there are specific circumstances, such as special needs children. Another suggested that the terms “gross disparity” and “unreasonably low percentage” in section IV (6) should be defined.

General Child Support Guidelines comments

While most comments were about specific aspects of the Child Support Guidelines, many comments about the child support guidelines system generally were also received. A comment heard frequently was that the child support system negatively impacts the family structure for children even more than divorce. Other comments were:

- The guidelines should be strictly adhered to by the Probate and Family Court. *Non-custodial parent*
- The question is not just now much the guidelines should be, but whether they should even exist. *Non-custodial parent*
- In principle 1, “child” should be changed to “family” because it is the responsibility of the Probate and Family Court to do what’s best for the family, not just the child. *Non-custodial parent*
- Whether or not the guidelines stay the same should not depend on federal funding. *Non-custodial parent*
- Metrics should be put in place to measure the guidelines’ effectiveness. *Non-custodial parent*
- A provision should be added to section II permitting each party to deduct from gross income the reasonable cost of student loan debt in that party’s name actually paid by that party. *Attorney*
- A provision should be added to section II permitting the Court to use its discretion in cases of incarceration for a year or more to set or modify the amount of the child support to zero dollars or to the minimum monthly order for the duration of the incarceration because there is no practical benefit to an order that will only accrue arrears. *DOR/CSE*
- Where a dispute regarding the application of the guidelines exists, there should be an administrative hearing by a second judge. If non-compliance or issues were found they would be referred back to the original judge to review and correct. Providing for review within the lower court before the expense of an appeal would provide for simpler and less costly administration of justice. *Non-custodial parent*

Accountability for Child Support Payments

Thirty-five (35) people and one non-profit organization commented about the use of support payments. Many expressed the view that the custodial parent should be required to account in some way for how child support payments are spent. Some felt that the child support order should specify what expenses of the child should be covered by the child support and should be explicit about how the child support payments should be used. It was also suggested that the recipient be required to document how the child support is spent. Some non-custodial parents expressed their belief that the child support they paid was going to support the custodial parent’s lifestyle and was not being spent to benefit the child. One person

commented that the payor should have some say in how the child support payments are spent instead of “blindly” sending money to the other parent.

Several specific suggestions were: that the child support be put into a trust or escrow account to be administered by a trustee; that a FSA account be set up to which both parents contribute; that there be an audit of receipts on a regular basis for detailed expenditures of child support; that there be guidelines for how child support is spent; and that a EBT system should be used to track how child support payments are spent.

Comments heard included:

“More bluntly, there is no accountability for how support payments are spent. Recipients should be required to account for the expenses of the child, not only to at least somewhat justify how support money is spent, but also to give the Payor at least some influence in how his child is raised.” *Non-custodial parent*

Comments about the Department of Revenue

6 comments were received about issues relating to the Department of Revenue (DOR).

- In any case where support is paid and current, either parent may request that DOR not involve itself with the case, confirming that a parent has the right to pay a support order directly without government involvement. DOR services should only be available when a parent is not paying support and enforcement is needed. *Non-custodial parent*
- Actions of DOR/CSE for arrears should be set aside until a hearing takes place about income coming from disability payments. *Non-custodial parent*
- A legal services attorney said that she “would not object” to the guidelines being modified to allow DOR/CSE to waive child support arrears other than the \$50 per month pass through to the custodial parent on TANF, where the custodial parent is receiving cash assistance, as long as the custodial parent doesn’t receive less child support. *Attorney*
- Wage garnishment should not be permitted. Parents should have the option of paying directly. *Non-custodial parent*
- The way the collectors from the Commonwealth treat the payor should be changed. *Non-custodial parent*
- One mother said that DOR didn’t start license revocation proceedings against the father for failure to pay child support because DOR said that losing his license would affect the father’s ability to earn wages. She said that the judge told her to be patient and that she would get her money, that DOR is involved and it will take some time. *Custodial parent*

Penalties and Enforcement

Ten (10) people commented about this issue. These comments included:

- A penalty and enforcement section should be added to the guidelines. Penalties for non-payment of child support that result in loss of income, such as jail, should not be included because they are inconsistent with the goal of having parents support their children. *Non-custodial parent*
- There should be clear and convincing evidence before a parent is jailed for the inability to pay child support. *Non-custodial parent*
- The interest rate for late payments should be changed to more reasonable, current rates. *Non-custodial parent*
- There should be a more effective way to deal with arrears. Adding only 25% to the wage assignment is not enough. *Custodial parent*

- Local police should be informed of both driver's and professional license suspensions where the payor lives and works. *Custodial parent*
- Need consistency of discipline for parents who chose not to pay. *Child*
- The enforcement mechanisms for child support orders are draconian. *Non-custodial parent*
- Prosecute mothers who use child support payment for their own use instead of using the money for the children. *Non-custodial parent*
- Sanction custodial parents who make unilateral medical and educational decisions. *Non-custodial parent*
- There needs to be recourse for perjury in fraudulent affidavits. *Non-custodial parent*

"I feel that if the Court System is going to punish those with smaller debts who are making payments, but maybe not on time, then they should be yearning to get my father, a man who owes plenty to the state."
Child

"It is inconsistent with the goal of paying support to deprive a parent of income and liberty such that they are intentionally put into arrears on support. I suggest the guidelines need to be clear that courts not interfere with support being paid." *Non-custodial parent*

"States that DO NOT have interest and penalties attached to child support payments have better compliance. Do away with Interest and Penalties on child support." *Non-custodial parent*

"And why isn't the state arresting more deadbeat dads? Not guys that can't pay because they lost their jobs—I'm referring to the habitual evaders...the ones you guys know where they are but you continue to let them walk freely while children suffer!!...I know another person who owes over \$100,000 in child support but he is able to walk around freely without a care in the world while I struggle every paycheck because I'm paying over \$500/week for 3 children." *Non-custodial parent*

"I feel that arrears payments should be higher and the interest charged to these "default" amounts should be more consistent with what credit cards charge (20-25%)." *Custodial parent*

Miscellaneous Comments

In addition to specific and general comments about the guidelines, 29 people submitted comments about various aspects of the child support and divorce system that did not specifically address the guidelines.

Comments received included:

- Pro bono lawyers should be provided for both parties. *Non-custodial parent*
- Restraining orders are abused for financial and custody reasons in divorces. *Non-custodial parent*
- Mediated divorce settlements should be upheld. *Non-custodial parent*
- Mental health claims should require GAL review of records and a court report or some other mechanism to safeguard the rights of the non-custodial parent. *Non-custodial parent*
- A non-custodial parent asked if there are any support groups he could join. *Non-custodial parent*
- One father asked how the child could disavow the parent at majority but the court could still require him to pay child support. *Non-custodial parent*
- The system doesn't require the custodial parent to inform the non-custodial parent of decisions affecting the child. *Non-custodial parent*
- Educational records should be made available to the non-custodial parent upon request and not through forced subpoenas. *Non-custodial parent*
- Actions affecting a disabled person's child support case should be presented or available in a form/method that the disabled person can best cognitively digest in keeping with the Americans with Disabilities Act and the Rehabilitation Act. *Non-custodial parent*