THE COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS TRIAL COURT

EXECUTIVE OFFICE OF THE TRIAL COURT

BOSTON, MASSACHUSETTS

CHILD SUPPORT GUIDELINES

The attached CHILD SUPPORT GUIDELINES supersede any previous Guidelines and are effective September 15, 2017.

Paula M. Carey
Chief Justice of the Trial Court

July 18, 2017

Date

Preamble

These child support guidelines shall take effect on September 15, 2017 and shall be applied to all child support orders and judgments entered as of the effective date. In recognition of the priority of the interests of the children of the Commonwealth, these guidelines are formulated to be used by all of the justices of the Trial Court. There shall be a rebuttable presumption that these guidelines apply in all cases establishing or modifying a child support order, regardless of whether the parents of the child are married or unmarried, the order is temporary or final, or the Court is deciding whether to approve an agreement for child support. There shall also be a rebuttable presumption that the amount of the child support order calculated under these guidelines is the appropriate amount of child support to be ordered. These guidelines are based on various considerations, including, but not limited to, each parent's earnings, income, and other evidence of ability to pay. These guidelines are intended to be of assistance to attorneys 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 may be established or modified, a guidelines worksheet must be filled out, regardless of the income of the parties.

Commentary 2017 – Preamble

The Child Support Guidelines Task Force for the 2016-2017 review ("Task Force") was convened by Chief Justice of the Trial Court Paula M. Carey in the spring of 2016 to undertake the quadrennial review of the Massachusetts child support guidelines ("guidelines") as required by federal regulations. See 45 C.F.R. § 302.56. In January 2017, amendments to § 302.56 became effective. The Task Force for this quadrennial review was not required to implement the January 2017 amendments, and thus did not do so in this review. However, where appropriate and constructive, the Task Force considered the policies underlying the 2017 amendments when making its recommendations.

The comprehensive review of the Task Force included reviewing each section of the guidelines, line by line, as a whole and in subcommittees. In formulating its recommendations, the Task Force considered public comments, relevant research, information from economic consultants, and the comments and experience of Task Force members. The Task Force was cognizant that child support in Massachusetts seeks to reflect the incremental cost of raising a child, separate and distinct from expenses of other household members. The Task Force recommended edits for simplification, clarification, and policy considerations. These guidelines include commentary to indicate the reasoning and intent behind the recommendations of the Task Force. Trial Court departments, litigants and attorneys may use the commentary to resolve questions of interpretation or application of the guidelines.

The changes made in the Preamble reflect that the guidelines apply to child support orders entered as of September 15, 2017. The fifth sentence of the Preamble was added for clarification and is consistent with the January 2017 changes to 45 C.F.R. § 302.56 (c). The Task Force further clarified that the guidelines worksheet must be completed in all cases where a child support order may be established or modified. A guidelines worksheet is necessary for the Court to determine whether there is a deviation from the presumptive child support order such that findings must be completed. See Section IV.

Principles

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

1. promoting parental financial responsibility for children;
2. meeting the child's survival needs in the first instance, but, to the extent either parent enjoys a higher standard of living, allowing the child to enjoy that higher standard;
3. minimizing negative changes to the child's standard of living;
4. protecting a basic subsistence level of income of parents;
5. recognizing that deviations should be used when appropriate to tailor a child support order to the unique circumstances of a particular family;
6. recognizing that parents should bear any additional expenses resulting from the maintenance of two separate households;
7. recognizing the non-monetary contributions and involvement of both parents;
8. recognizing the monetary and/or in-kind contributions of both parents in addition to the child support order;
9. recognizing the importance, availability, and cost of health care coverage for the child;
10. promoting simplicity and consistency in establishing and modifying child support orders; and
11. streamlining administration and minimizing problems of proof.

Commentary 2017 – Principles

The Task Force refined and reorganized the Principles section for clarification. The Task Force included Principle 5 regarding deviation to highlight that, where appropriate, the Court should deviate from the presumptive child support order amount and that attorneys and litigants should offer reasons as to why a deviation may be warranted. In making this change, the Task Force acknowledged the sentiments expressed by attorneys and litigants that there may be hesitation by the Court to deviate from the presumptive child support order. The Principles section has also been revised to reflect the January 2017 changes to 45 C.F.R. § 302.56 (c) by adding "basic" in Principle 4 of the Principles and changing "health insurance coverage" to "health care coverage" in Principle 9 of the Principles.

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. However,

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

Sources of income include, but are not limited to, the following:

1. salaries, wages, overtime and tips,
2. income from self-employment;
3. commissions;
4. severance pay;
5. royalties;
6. bonuses;
7. interest and dividends;
8. income derived from businesses/partnerships;
9. social security excluding any benefit due to a child's own disability[1];
10. non means-tested veterans' benefits;
11. military pay, allowances and allotments;
12. insurance benefits, including those received for disability and personal injury, but excluding reimbursements for property losses;
13. workers' compensation;
14. unemployment compensation;
15. pensions;
16. annuities;
17. distributions and income from trusts;
18. capital gains in real and personal property transactions to the extent that they represent a regular source of income;

[1] If a parent receives social security benefits or SSDI benefits and the children of the parties receive 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 dependency benefit derives from the payor's benefit and 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 that derives from the payor's benefit, the payor must pay the difference between the dependency benefit and the weekly child support amount under the guidelines. See Rosenberg v. Merida, 428 Mass. 182 (1998); Schmidt v. McColluch-Schmidt, 86 Mass. App. Ct. 902 (2014).

19. spousal support received from a person not a party to this order;

20. contractual agreements;

21. perquisites or in-kind compensation to the extent that they represent a regular source of income;

22. unearned income of children, in the Court's discretion;

23. income from life insurance or endowment contracts;

24. income from interest in an estate, either directly or through a trust;

25. lottery or gambling winnings received either in a lump sum or in the form of an annuity;

26. prizes or awards;

27. net rental income;

28. funds received from earned income credit; and

29. any other form of income or compensation not specifically itemized above.

B. Overtime and Secondary Jobs

1. The Court may consider none, some, or all overtime income or income from a secondary job. In determining whether to disregard none, some or all income from overtime or a secondary job, due consideration must first be given 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 or secondary job on the parenting plan, and whether the overtime work is a requirement of the job.

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

C. Self-Employment and Other Business 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.

D. Imputation of Income

1. When the Court finds that a parent has, in whole or in part, undocumented or unreported income, 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.

2. Expense reimbursements, in-kind payments or benefits received by a parent, personal use of business property, and 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.

3. In circumstances where the Court finds that a parent 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

1. Income may be attributed where a finding has been made that either parent is capable of working and is unemployed or underemployed.

2. If the Court makes a determination that either parent is earning less than he or she could earn through reasonable effort, the Court should consider potential earning capacity rather than actual earnings in making its child support order.

3. The Court shall consider the age, number, needs and care of the children covered by the child support order. The Court shall also consider the specific circumstances of the parent, to the extent known and presented to the Court, including, but not limited to, the assets, residence, education, training, job skills, literacy, criminal record and other employment barriers, age, health, past employment and earnings history, as well as the parent's record of seeking work, and the availability of employment at the attributed income level, the availability of employers willing to hire the parent, and the relevant prevailing earnings level in the local community.

F. Non-Parent Guardian

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

Commentary 2017 – Section I. – Income Definition

A. Sources of Income

Although the Task Force did not recommend any substantive changes to Section I. A., Sources of Income, it considered whether to do so in light of emerging areas of income-producing activities such as transportation

networking companies, crowd funding, domain site flipping, and inconsistent, short-term home rentals. The Task Force determined that these income-producing activities were encompassed by the existing list of sources of income.

The Task Force received public comment regarding means-tested and non means-tested veterans' benefits and, in response, clarified that means-tested veterans' benefits are a type of income that is not included as income for child support calculation purposes. Due to the complexity of determining whether a veteran's benefit is means-tested, the Task Force strongly recommended that the Court should inquire regarding the benefit.

If the Court determines that there has been misrepresentation of income to a taxing authority or on a court-filed financial statement and/or guidelines worksheet, the Court may be required to report the information to the appropriate authority. See Rule 2.15(B) of SJC Rule 3:09: Code of Judicial Conduct.

B. Overtime and Secondary Jobs

The Task Force recommended continuation of the presumptive exclusion of certain overtime and secondary job income from the calculation of gross income for child support purposes. The Task Force rewrote and moved for clarification the sentence that previously read, "The Court may consider none, some, or all overtime income even if overtime was earned prior to the entry of the order." The Task Force also determined that the language in this section applies to payors and recipients since the income of both parents is considered in setting a child support order.

C. Self-Employment and Other Business Income

The Task Force renamed, reorganized and refined this section to focus on issues related to self-employment and the operation of a business. The Task Force moved the language regarding imputing income to the newly created Section I. D. entitled, "Imputation of Income". Because the Task Force felt it was redundant, it deleted from the guidelines the sentence, "The calculation of income for purposes of this section may increase gross income by certain deductions or other adjustments taken for income tax purposes.". The Appeals Court noted in Whelan v. Whelan, 74 Mass. App. Ct. 616, 626-27 (2009), "in determining income from self-employment, a judge must determine whether claimed business deductions are reasonable and necessary to the production of income, without regard to whether those deductions may be claimed for Federal or State income tax purposes." As further direction, the Appeals Court noted in an unpublished decision, Zoffreo v. Zoffreo, 76 Mass. App. Ct. 1105 (2010), "[t]he fact that [a parent] is permitted under the tax laws to deduct an amount for depreciation does not mean that those funds, which are not out of pocket expenses, are not available to pay child support."

For additional decisional guidance regarding calculating gross income, the Supreme Judicial Court held "that a determination whether and to what extent the undistributed earnings of an S corporation should be deemed available income to meet a child support obligation must be made based on the particular circumstances presented in each case." J.S. v. C.C., 454 Mass. 652, 662-63 (2009). The Supreme Judicial Court included a non-exhaustive list of relevant factors to consider when making this determination, such as "a shareholder's level of control over corporate distributions", "the legitimate business interests justifying corporate earnings", the "affirmative evidence of an attempt to shield income by means of retained earnings", and "the allocation of burden of proof in relation to the treatment of an S corporation's undistributed earnings for purposes of determining income available for child support[.]" J.S. v. C.C., 454 Mass. 652, 662-65 (2009).

In Fehrm-Cappuccino v. Cappuccino, 90 Mass. App. Ct. 525 (2016), the Appeals Court addressed the appropriateness of including rental income when determining income for child support purposes. The decision notes that "there is no risk of double counting, where 'neither the value of [the father's interest in [the asset]] nor the [father's] ability to earn income is diminished by treating the [father's interest in [the asset]] as a marital asset as well as a source of income by which [the father] can meet his support obligations.'" Fehrm-Cappuccino v. Cappuccino, 90 Mass. App. Ct. 525, 528 (2016) (quoting Champion v. Champion, 54 Mass. App. Ct. 215, 221 (2002)).

D. Imputation of Income

The Task Force renamed, reorganized and refined the section previously entitled, "Unreported Income" to focus on issues related to the imputation of income. Income may be imputed when there are actual resources available to the parent that are not reported for tax purposes.

In general terms, undocumented income is income that does not result in the issuance of a tax reporting form. Unreported income is any income that is received and required to be reported that the taxpayer does not report on his or her taxes.

The Appeals Court decision in Crowe v. Fong, 45 Mass. App. Ct. 673 (1988) is instructional regarding Section I. D. 2. In Crowe, the payor earned $275 per week working at a business owned by his mother, lived rent-free in a home owned by his father, and had use of a vehicle. The Appeals Court upheld the trial judge's "characterization of [the payor's] free use of the home as 'perquisite or in-kind income' for purposes of calculating his support obligation under the guidelines[.]" Crowe v. Fong, 45 Mass. App. Ct. 673, 680-81 (1988).

E. Attribution of Income

The Task Force reorganized and refined this section for clarification and to distinguish attributed income from imputed income. Income is attributed to a parent when the Court determines a parent is capable of earning more than is currently being earned and assigns a hypothetical amount of income to the parent. The Task Force, in consideration of the January 2017 changes to 45 C.F.R. § 302.56 (c) (2017), revised the factors to be considered when attributing income to a parent.

In P.F. v. Department of Revenue, 90 Mass. App. Ct. 707 (2016), the Appeals Court addressed attribution of income where the payor is incarcerated. "'Income may be attributed where a finding has been made that [the payor] is capable of working and is unemployed or underemployed,' . . . or where the payor owns 'substantial assets.'" P.F. v. Department of Revenue, 90 Mass. App. Ct. 707, 710 (2016) (quoting Wasson v. Wasson, 81 Mass. App. Ct. 574, 581 (2012), quoting from Flaherty v. Flaherty, 40 Mass. App. Ct. 289, 291 (1996)). However, where there is "no income or assets from which to pay child support", the Court may not attribute income to the payor based on the payor's prior earning capacity, even if the payor is incarcerated due to committing a crime against the child for whom child support is being paid. P.F. v. Department of Revenue, 90 Mass. App. Ct. 707, 710-11 (2016).

F. Non-Parent Guardian

The Task Force did not recommend any changes to this section.

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

A. Relationship to Alimony or Separate Maintenance Payments

1. These guidelines were developed with the understanding that alimony is for the support of a spouse, while child support is for the support of children.

2. These guidelines were 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 support order be designated in whole or in part as alimony or unallocated support without it being deemed a deviation, provided that the tax consequences are considered in determining the support order and the after-tax support received by the recipient is not diminished. The parties have the responsibility to present to the Court the tax consequences of proposed orders.

3. Chapter 124 of the Acts of 2011, entitled, "An Act Reforming Alimony in the Commonwealth", amended G. L. c. 208 and 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). The parties may consider preparing alternate calculations of alimony and child support to determine the most equitable result for the children and the parties. Depending upon the circumstances, alimony may be calculated first, and in other circumstances child support may be calculated first. Judicial discretion is necessary and deviations shall be considered.

B. Claims of Personal Exemptions for Child Dependents

In setting a support order, the Court and the parties shall consider the allocation of personal exemptions for child dependents between the parties to the extent permitted by law.

C. Minimum and Maximum Levels

1. These guidelines are intended to protect a minimum subsistence level for those parents obligated to pay child support whose gross income is $115 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 $25 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. See Section IV.

2. 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 2h of the 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 at the discretion of the Court.

D. Parenting Time

1. These 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 calculations under these guidelines are based upon the children having a primary residence with one parent and spending approximately one-third of the time with the other parent.

2. Where the children have a primary residence with one parent and spend approximately one-third of the time with the other parent, the guidelines worksheet is calculated and there is a rebuttable presumption that the amount calculated is the child support order.

3. Where two parents expect to or do share equally, or approximately equally, the financial responsibility and parenting time for the children, the child support order shall be determined by calculating the guidelines worksheet 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.

4. Where parenting time is substantially less than one-third for the parent who is not the residential parent, the Court may consider deviation by an upward adjustment to the amount calculated under the guidelines worksheet. See Section IV. B. 8.

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

E. Child Care Costs

1. Reasonable child care costs for the children covered by the child support order and due to gainful employment of either parent are to be deducted from the gross income of the parent who pays the cost. The guidelines worksheet makes an adjustment so that the parents share the burden of the cost proportionately. The adjustment involves a two-step calculation. First, a parent who is paying the child care deducts the out-of-pocket cost from his or her gross income. Second, the parties share the total child care costs for both parents in proportion to their income available for support. The combined adjustment for child care and health care costs is capped at fifteen percent of the child support order.

2. 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. See Section IV. B. 7.

F. Child Support for Children Between the Ages of 18 and 23

1. By statute, the Court has discretion either to order or to decline to order child support for children age 18 or older. If the Court exercises its discretion to order child support for children age 18 or older, the guidelines formula reduces the amount of child support in accordance with Table B of the guidelines worksheet. For the guidelines calculation to account for families with children both under age 18 and age 18 or older, the guidelines worksheet requires the input of information regarding the number of children age 18 or older and under age 18.

2. A child age 18 or older who is enrolled in and attending high school shall be deemed to be under age 18 for purposes of the guidelines and Table B, absent deviation.

3. In determining whether to order child support for a child age 18 or older, the Court shall consider the reason for the child's continued residence with and principal dependence on the recipient, the child's academic circumstances, the child's living situation, the available resources of the parents, and each parent's contribution to the costs of post-secondary education for the child and/or other children of the family. The Court may also consider any other relevant factors.

G. Contribution to Post-secondary Educational Expenses

1. By statute, the Court has discretion either to order or to decline to order a parent to contribute to post-secondary educational expenses. Contribution to post-secondary educational expenses is not presumptive.

2. In determining whether to order contribution to post-secondary educational expenses, the Court shall consider the cost of the post-secondary education, the child's aptitudes, the child's living situation, the available resources of the parents and child, and the availability of financial aid. The Court may also consider any other relevant factors.

3. No parent shall be ordered to pay an amount in excess of fifty percent of the undergraduate, in-state resident costs of the University of Massachusetts-Amherst, unless the Court enters written findings that a parent has the ability to pay a higher amount. Costs for this purpose are defined as mandatory fees, tuition, and room and board for the University of Massachusetts-Amherst, as set out in the "Published Annual College Costs Before Financial Aid" in the College Board's Annual Survey of Colleges. This section applies to all orders requiring parental contribution to post-secondary educational expenses, regardless of where the child resides or attends school.

4. When exercising its discretion to order child support for a child over age 18 and contribution to the child's post-secondary educational expenses, the Court shall consider the combined amount of both orders.

H. Health Care Coverage

1. a. Each parent may deduct from gross income the reasonable cost of individual or family health care coverage actually paid by that parent. 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 impact the amount of child support, then some or all of such additional cost shall not be deducted.

b. The guidelines worksheet makes an adjustment so that the parents share the burden of the cost proportionately. The adjustment involves a two-step calculation. First, a parent who is paying the health care deducts the out-of-pocket cost from his or her gross income. Second, the parties share the total health care costs for both parents in proportion to their income available

for support. The combined adjustment for child care and health care costs is capped at fifteen percent of the child support order.

2. When the Court makes an order for child support, the order shall include an order of health care coverage unless the payor and recipient agree in writing that such coverage will be provided by other means.

3. a. The Court shall determine whether health care coverage that may be extended to cover the child is available through an employer or otherwise available at a reasonable cost. Health care coverage shall be deemed available to the payor at reasonable cost if it is available through an employer.

b. If health care coverage is available at a reasonable cost, the Court shall then determine whether the cost of such coverage creates an undue hardship on the payor, and, if that determination is made, the payor shall not be required to provide such coverage. In determining whether the cost of health care coverage creates an undue hardship for the payor, the Court may consider whether the cost of maintaining health care coverage would prevent payment of some or all of the child support order, whether the available coverage lacks the comprehensiveness to meet the health care needs of the child such that significant uninsured medical expenses will be incurred, whether the payor's gross income is less than 300% of the federal poverty guidelines for the payor's household, and any other relevant factors.

c. When such health care coverage is available at a reasonable cost and does not cause an undue hardship, the Court shall include in the child support order a requirement that such insurance for the child be obtained or maintained.

d. If the Court determines that health care coverage is not available at a reasonable cost or that ordering health care coverage creates an undue hardship for the payor and the IV-D agency is providing services, the Court shall enter an order requiring the payor to notify the IV-D agency if access to health care coverage for the child becomes available. If the Court determines that health care coverage is not available at a reasonable cost or that ordering health care coverage creates an undue hardship for the payor and the IV-D agency is not providing services, the Court shall enter an order requiring the payor to notify the recipient if access to health care coverage for the child becomes available.

I. Dental/Vision Insurance

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

2. If there is an additional cost to insure a person not covered by this child support 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. The cost of dental/vision insurance insuring the children covered by this order is included on the guidelines worksheet in the combined child care and health care costs adjustment.

J. Routine Uninsured Medical and Dental/Vision Expenses and Extraordinary Uninsured Medical and Dental/Vision Expenses

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

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

K. Existing Support Obligations and Responsibility for Children Not in the Case under Consideration

1. When an initial order or a modification of an existing order is sought for a child covered by the order in the case under consideration, the amount actually paid by a parent pursuant to a pre-existing support order for a child or spouse not in the case under consideration shall be deducted from the gross income of that parent where that parent provides sufficient proof of the order and payments made. Payments on arrearages shall not be deducted from gross income.

2. When an initial order or a modification of an existing order is sought for a child covered by the order in the case under consideration, the amount of voluntary payments actually paid to support a child not in the case under consideration and with whom the parent does not reside shall be deducted from the gross income of that parent, but only to the extent the Court determines the payments to be reasonable. The parent who seeks the deduction must provide sufficient proof of the legal obligation to support the child and of actual payments made to the other parent or guardian.

3. When an initial order or a modification of an existing order is sought for a child covered by the order in the case under consideration, a hypothetical amount of child support for a child with whom the parent resides but for whom no child support order exists shall be deducted from the gross income of the parent. The parent seeking the deduction must provide sufficient proof of the legal obligation to support the child and of the gross income of that child's other parent. The hypothetical child support amount shall be calculated according to the guidelines worksheet using the gross incomes of both parents of the child for whom the hypothetical child support amount is being calculated.

4. 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 an existing order.

L. Families with More than Five Children

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

M. Contribution to Other Child-Related Expenses

In cases where the Court makes a determination that there are additional child-related expenses such as extra-curricular activities, private school, 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.

Commentary 2017 – Section II. – Factors To Be Considered In Setting The Child Support Order

A. Relationship to Alimony or Separate Maintenance Payments

The Task Force discussed the challenges related to the tax consequences of unallocated support. The Task Force recommended that the Court, especially in cases involving parties with disparate levels of income, consider an unallocated support order. By designating some, or all, of a payor's support obligation as tax-deductible to the payor and a taxable payment to the recipient, a significant tax benefit may be achieved.

Under Fechtor v. Fechtor, 26 Mass. App. Ct. 859 (1989), it is the responsibility of the parties to bring the tax implications of a support order to the attention of the Court. Parties and attorneys should familiarize themselves with the applicable provisions of I.R.C. § 71, which provides specific rules that must be followed in order to fashion support orders that will be deemed tax-deductible under the Internal Revenue Code.

The relationship between alimony and child support remained an issue during this review as it was during the 2012 review. When issuing an alimony order, "the court shall exclude from its income calculation gross income which the court has already considered for setting a child support order." G. L. c. 208, § 53 (c) (2). However, the converse is not stated in the statute.

Since the 2012 review and report, the Massachusetts appellate courts have not issued any decisions on point, nor has there been a statutory change. The Task Force discussed this conundrum and determined that, despite the desire to provide more instruction, no changes to this section were recommended at this time. The Task Force recommended that this issue be reviewed again during the next quadrennial review.

B. Claims of Personal Exemptions for Child Dependents

The Task Force refined this section to emphasize the importance of considering the allocation of the dependency exemptions.

C. Minimum and Maximum Levels

The Task Force considered whether the minimum support order required adjustment. The minimum support order has not changed since 2002 when it was established at $18.46 per week. After discussion, the Task Force

recommended that the minimum support order be increased to $25 per week. This increase is consistent with economic data on the increase in the overall cost of living in Massachusetts since 2002. The guidelines chart has been adjusted to reflect that the minimum support order applies to combined available income up to $115 per week.

For informational assistance with regard to child support when the parents' combined gross income is over $250,000, section 6 of the guidelines worksheet calculates the amount by which each parent's available income exceeds $250,000. Child support based on income above $250,000 is discretionary. The excess income information in section 6 of the guidelines worksheet may be considered on a case-by-case basis.

D. Parenting Time

The Task Force discussed at length the consequences of the changes that were incorporated by the 2012 Task Force with regard to when parenting time is more than one-third but less than fifty percent. The Task Force agreed that the provision relating to these circumstances needed to be eliminated. The Task Force considered public comment, attorney and judicial experience, the 2008 Report of the Child Support Guidelines Task Force, and the Final Report of the 2012 Task Force when making this determination. The 2012 change increased litigation and acrimony between parents, shifted the focus from a parenting plan that is in the best interests of the children to a contest about a parenting plan that attempts to reduce a child support order, and failed to create the consistency in child support orders that it sought to create.

The Task Force suggested that the first step in determining a child support order is actually creating a parenting plan that is best for the children, recognizing that children should enjoy parenting time with both parents to the greatest extent possible consistent with the children's best interests. Child support should not be driving the parenting plan. Once the parenting plan is established, then calculations may occur. It is important to note again here that the Task Force specifically created a principle regarding the appropriate use of a deviation where the circumstances of a family require one. See Principles, Principle 5.

The Task Force recommended deleting the provisions inserted in the 2009 guidelines that limited the deduction of other support orders from gross income when making certain calculations related to parenting time. This Task Force was unable to determine why the provisions were included, and thus determined that equity required their deletion.

E. Child Care Costs

The Task Force discussed at length how to address the concerns raised by many people regarding the significant costs of child care. The Task Force recommended a proportional adjustment to the child support order based on child care and health care costs. The proportional adjustment for the costs is not dollar-for-dollar because the significant costs of child care and health care coverage could unfairly skew a child support order. Instead, the adjustment is capped, either up or down, at fifteen percent of the child support order.

F. Child Support for Children Between the Ages of 18 and 23

The Task Force renamed and restructured the section previously entitled, "Age of the Children". The Task Force clarified that these guidelines apply in all cases where a child support order is established or modified and not just in cases involving children under age 18. See 45 C.F.R. § 302.56 (a) (2017). That Massachusetts by statute allows for, but does not require, child support until age 23 does not negate the federal requirement that the guidelines must apply in all cases. However, the C.F.R. does not mandate that the guidelines be identical for children of all ages. For dependent children between 18 and 21, child support may be ordered if the dependent child is domiciled with a parent and is principally dependent on that parent. See G. L. c. 208, § 28, G. L. c. 209C, § 9 and G. L. c. 209, § 37.

For dependent children between 21 and 23, child support may be ordered if the dependent child is domiciled with a parent and is principally dependent on that parent due to enrollment in an educational program, as long as the program is not beyond an undergraduate degree. See id. Although the Task Force received public comment suggesting that child support end at age 18, the Task Force did not amend the provision retaining discretion in entering child support orders for children between the ages of 18 and 23 because this discretion is statutory. The Task Force strongly recommended that, until or unless the Massachusetts Legislature amends the child support

statutes to clarify that child support is mandatory through graduation of high school, the Court consider child support orders for those children who have turned 18 but are still in high school as mandatory rather than permissive.

Because these guidelines apply to all child support orders, including those for children up to age 23, the Task Force discussed whether the application of the guidelines through the guidelines worksheet should result in a reduction in the base amount of child support for children who are age 18 or older and not attending high school, but nevertheless eligible for child support pursuant to Massachusetts law. The Task Force agreed that a twenty-five percent reduction is appropriate as it takes into consideration factors typical of this age group. For example, the child may be living away at school thereby reducing some of the household expenses for the recipient or the child may be living at home and is not enrolled in a post-secondary educational program and should be working and contributing to the household expenses. The reduction balances the requirement imposed by federal regulation that all child support orders are the product of a formula established by guidelines, while also considering important factors unique to children between the ages of 18 and 23. See M.C. v. T.K., 463 Mass. 226, 231 (2012) ("The Chief Justice of the Trial Court is authorized to promulgate guidelines establishing presumptive child support awards, based on articulated principles and calculated according to specified mathematical formulas.") Nothing in this section limits the ability of the Court to deviate from the presumptive order where appropriate. For example, the child may be living at home and commuting to a post-secondary educational program.

This section shall not be construed to change the rule set forth in Feinberg v. Diamant, 378 Mass. 131 (1979) allowing the Court to require a financially able parent to "contribute to the support of an adult child who by reason of mental or physical infirmity incurs expenses that he or she is unable to meet." Feinberg v. Diamant, 378 Mass. 131, 134 (1979). These matters are addressed in equity actions.

G. Contribution to Post-secondary Educational Expenses

The Task Force created a new section to address the complexity of contributions to post-secondary educational expenses. Post-secondary educational expenses have increased exponentially since 1976 when the Massachusetts Legislature amended statutes to permit the Court to order parents to pay for educational expenses. Overall, both public and private four-year college expenses for fees, tuition, room and board, have increased approximately 250%, as adjusted for inflation. See College Board, Annual Survey of Colleges, 2017. The Task Force shared the pervasive concern that many parents cannot pay post-secondary educational expenses from their income, while meeting other expense obligations. The Task Force intended to discourage orders requiring parents to incur liability for loans in excess of state university costs unless the parents agree to accept such liabilities. The Task Force also intended an expense limitation to provide general uniformity in court-ordered, post-secondary educational expenses contributions.

The limitation on post-secondary educational expenses orders is recommended for most cases, but it is not mandatory. The Task Force does not intend the limitation to apply to children already enrolled in post-secondary education before the effective date of these guidelines or to parents who are financially able to pay educational expenses using assets or other resources.

The University of Massachusetts-Amherst was designated as the benchmark for maximum orders because it was the flagship, and most expensive, Massachusetts state college when these guidelines became effective.

H. Health Care Coverage

The Task Force renamed, reorganized, and revised this section. The phrase "health care coverage" was changed from "health insurance" to reflect recent changes in federal law, which now references both private and public health care coverage. Under federal regulations, child support guidelines must "[a]ddress how the parents will provide for the child's health care needs through private *or public health care* coverage and/or through cash medical support." 45 C.F.R. § 302.56 (c) (2) (2017) (emphasis added). Under 45 C.F.R. § 303.31 (a) (3), "[c]ash medical support or the cost of health insurance is considered reasonable in cost if the cost to the parent responsible for providing medical support does not exceed five percent of his or her gross income or, at State option, a reasonable

alternative income-based numeric standard defined in State law, regulations or court rule having the force of law or State child support guidelines adopted in accordance with § 302.56(c) of [Chapter 45]." The Massachusetts Legislature has not amended G. L. c. 119A to reflect the federal definition of reasonableness or to grant the authority to order cash medical support. Nor does G. L. c. 119A allow the Court to order either parent to provide health care coverage. See G. L. c. 119A, § 12 (b) (5). The Task Force strongly recommended that the Massachusetts Legislature amend G. L. c. 119A to be consistent with the federal regulations.

The Task Force also made revisions that more clearly reflect the statutory requirements relating to orders for health care coverage. Before requiring a payor to obtain health care coverage, the Court must determine that such coverage is available at reasonable cost, "provided that the cost of such coverage does not create an undue hardship upon the [payor]." G. L. c. 119A, § 12 (b) (5). Because "undue hardship" is not defined by statute or case law, factors relating to determining whether an order of health care coverage creates an undue hardship on the payor are included in these guidelines. There are circumstances where the combined child support order and the cost to the payor for obtaining and maintaining health care coverage exceed the amount allowed under law to be ordered withheld from a payor's income. If health care coverage is ordered in these circumstances, and the costs for the health care coverage are deducted from the payor's income before the child support order is paid, the child support order is not paid in full and the payor accrues child support arrears. For purposes of this section, an undue hardship may occur if the combined health care coverage and child support order exceeds statutory garnishment limits. The Task Force determined that it was appropriate to adopt the percentage of poverty level that MassHealth's Children's Health Insurance Program (CHIP) uses for eligibility screening. See http://children.massbudget.org/masshealth. The Court retains the discretion to consider other relevant factors in making the determination regarding undue hardship.

If health care coverage is not currently available at a reasonable cost or the payment of health care coverage causes an undue hardship, the Task Force removed the requirement that the Court 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. Instead, the Task Force added a provision that requires the payor to notify the IV-D agency or the recipient if health care coverage becomes available. If health care coverage becomes available, a modification of the child support order may be appropriate to reflect the cost of such coverage, as well as to determine whether there is any undue hardship.

In addition to child care costs, the Task Force also discussed at length how to address the concerns raised by many people regarding the significant costs of health care coverage. The Task Force recommended a proportional adjustment to the child support order based on child care and health care costs. The proportional adjustment for the costs is not dollar-for-dollar because the significant costs of child care and health care coverage could unfairly skew a child support order. Instead, the adjustment is capped, either up or down, at fifteen percent of the child support order.

The Task Force recommended that, where appropriate, the Court should examine whether the parent who seeks to deduct the total amount of health care coverage is including in that total amount the cost for covering persons not covered by the order under consideration. In that circumstance, the Court may determine that some or all of the additional cost should not be deducted from gross income on the guidelines worksheet.

I. Dental/Vision Insurance

The Task Force reorganized this section. The Task Force determined that the costs of the dental and vision insurance covering children under this order shall be included as a component of the child care and health care adjustment.

J. Routine Uninsured Medical and Dental/Vision Expenses and Extraordinary Uninsured Medical and Dental/Vision Expenses

The Task Force reorganized the sections previously entitled, "Routine Uninsured Medical and Dental Expenses" and "Uninsured Extraordinary Medical and Dental Expenses" into one section without any substantive changes.

K. Existing Support Obligations and Responsibility for Children Not in the Case under Consideration

The Task Force recommended changes to this section to clarify the different circumstances that may result in a deduction from gross income when a parent has a legal responsibility to support a child not part of the case currently being considered. The Task Force clarified that where applicable either parent may seek the deductions from gross income and that sufficient proof must be provided. The Task Force reviewed language from the New Jersey, North Carolina, Ohio, and Tennessee child support guidelines to assist in drafting the clarifications.

In Department of Revenue v. Mason M., the Supreme Judicial Court endorsed the use of deducting a hypothetical support order from a parent's gross income where that parent had multiple children to support. Department of Revenue v. Mason M., 439 Mass. 665, 671-72 (2003). However, to calculate a hypothetical amount of child support, the gross incomes of both parents of that child must be used. This calculation can be difficult to compute because the Court does not have the non-party parent's gross income. The burden is on the parent who seeks to deduct a hypothetical amount to provide to the Court the information necessary for calculating the hypothetical amount, including the non-party parent's gross income.

L. Families with More than Five Children

The Task Force did not recommend any substantive changes to this section.

M. Contribution to Other Child-Related Expenses

The Task Force renamed this section for consistency. "Post-secondary education" was deleted from this section only because the Task Force created a new section that addresses contribution to post-secondary educational expenses. See Section II. G.

III. MODIFICATION

A. A child support order may be modified if any of the circumstances listed below exist.

1. There is an inconsistency between the amount of the existing order and the amount that would result from the application of the guidelines.

2. Previously ordered health care coverage is no longer available.

3. Previously ordered health care coverage is still available but no longer at a reasonable cost or without an undue hardship.

4. Access to health care coverage not previously available to a parent has become available.

5. Any other material and substantial change in circumstances has occurred.

B. Upon a request for modification of an order that deviated from the guidelines at the time it was entered, the Court shall apply the existing deviation to the modification action if:

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.

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

Commentary 2017 – Section III. – Modification

The Task Force deleted Paragraph B of the 2013 guidelines because it was premised on the assumption that Massachusetts law provides for a separate standard to be used by the Court when the Department of Revenue is providing IV-D services in a case where the order is less than three years old. While the Department of Revenue is not required to use the inconsistency standard when determining whether to provide IV-D services to seek a modification of an order that is less than three years old, the Court must apply the inconsistency standard once any complaint for modification is filed and is before the Court. See 57 Fed. Reg. 61559, 61577 (1992). See also G. L. c. 208, § 28, G. L. c. 209C, § 20 and G. L. c. 209, § 37.

The Department of Revenue's review process does not prohibit an individual from filing a complaint for modification on his or her own, regardless of whether the case is receiving IV-D services.

The Task Force refined the language to clarify that if circumstances that resulted in a deviation are still in existence during a modification action, those circumstances shall be considered to remain even though it may be appropriate to modify the existing order. For example, a child may have a medical condition that results in ongoing, extraordinary medical expenses and the existing child support order deviates from the guidelines amount. The recipient is now unemployed and files a complaint for modification. The underlying circumstances for the existing deviation remains; however, the Court also considers the additional circumstances.

IV. DEVIATION

A. The Court, or the parties by agreement approved by the Court, may deviate from these guidelines and overcome the presumptive application of these 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.

B. Circumstances which may support deviating, above or below the presumptive guidelines amount, including the minimum order amount, are as follows:

1. the parties agree and the Court determines the agreement to be fair and reasonable and approves their agreement;
2. a child has ongoing special needs or aptitudes with financial consequences;

3. a child has ongoing extraordinary mental, physical, or developmental needs with financial consequences;

4. a parent has ongoing extraordinary mental, physical, or developmental needs with financial consequences;

5. a parent has extraordinary expenses for health care coverage;

6. a parent has extraordinary travel or other expenses related to parenting;

7. a parent is absorbing a child care cost that is disproportionate in relation to his or her income;

8. a parent provides substantially less than one-third of the parenting time for a child or children;

9. the payor is incarcerated and has insufficient financial resources to pay support;

10. application of the guidelines, particularly in low income cases, leaves a parent without the ability to self support;

11. 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;

12. application of the guidelines may adversely impact reunification of a parent and child where the child has been temporarily removed from the household in accordance with G. L. c. 119; and

13. 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.

Commentary 2017 – Section IV. – Deviation

The Task Force refined and clarified the circumstances where deviation may be appropriate. The Task Force reordered this section for clarification purposes only and not to prioritize any one factor over another. The Task Force emphasized that a deviation may be appropriate for a family and encourages the Court to deviate where circumstances require it.

The Task Force clarified in the first phrase of Section IV. B. that it is permissible to deviate to an amount below the presumptive guidelines amount. Because the deviation circumstances affect an ongoing child support award, rather than a one-time or occasional allocation, the Task Force emphasized that certain circumstances must be ongoing and with financial consequences for them to be considered appropriate for a deviation. In Section IV. B. 8., the Task Force added “substantially” to emphasize as it did it Section II. D. that a parenting plan that is in the best interest of the child is the first step in determining a child support order. The inclusion of “substantially” provides a parameter with the goal of reducing acrimony and litigation between parents regarding the interaction of the parenting plan and the amount of the child support order.