

**Report of the Task Force for the 2020-2021 Quadrennial Review
of the Massachusetts Child Support Guidelines**

July 2021

2020-2021 Child Support Guidelines Task Force

In compliance with 45 C.F.R. § 302.56, in June 2020, Chief Justice of the Trial Court Paula M. Carey appointed the 2020-2021 Child Support Guidelines Task Force (“Task Force”) to conduct the quadrennial review of the Massachusetts Child Support Guidelines (“guidelines”) and make recommendations for changes as appropriate. The guidelines are promulgated by the Chief Justice of the Trial Court and used by the judges of the Massachusetts Trial Court in determining child support orders and in deciding whether to approve agreements that set a child support order. The comprehensive review began on June 23, 2020 and continued through June 2021 and included an examination of the assumptions, principles, and methodology that formed the basis of the current guidelines.

The Task Force was co-chaired by Chief Justice of the Probate and Family Court John D. Casey and Hon. Katherine Field. Task Force members were:

Kara Carey, Esq.
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Patrick Yoyo, Esq.
Kelly Zawistowski, Esq.

The economic consultant for this Task Force was The Brattle Group, led by Mark Sarro, Ph.D., with Christine Polek, Ph.D., Shastri Sandy, Ph.D., M.B.A., and Tessie McGough. The Task Force was supported by Project Manager Denise M. Fitzgerald, Esq. of the Probate and Family Court and Robert Dunphy, Jr., Esq. of the Legal Department of the Executive Office of the Trial Court.

2020-2021 Child Support Guidelines Task Force Review

During its review, the Task Force considered federal and Massachusetts statutory requirements, oral comments submitted at three public forums held virtually, written comments submitted to the Trial Court email address established for public comments, survey results from judges and staff of the Probate and Family Court and the Massachusetts Probation Service, as well as the comments and experience of the members of the Task Force. The Task Force reviewed deviation statistics, economic models and data, and information on the guidelines in all other states.

The Probate and Family Court used data from MassCourts to calculate the rate of deviation for all divisions of the Probate and Family Court by determining the number of case dispositions for domestic relations and paternity cases filed from June 15, 2018 through December 31, 2020 and the number of Findings and Determinations for Child Support and Post-secondary Education forms entered during that same time period. The average deviation percentage across all divisions of the Probate and Family Court for this period was 10.6%. The median deviation rate was 9.4%. More information about the deviation rate can be found in the Economic Review of the Child Support Guidelines 2020-2021 prepared by The Brattle Group.

In making its recommendations for the 2021 guidelines, the Task Force seeks to build upon the work of prior task forces while taking into consideration current economic, legal, and policy factors, and to update the guidelines so the guidelines can continue to be applied consistently.

Economic Review of the Child Support Guidelines

During the 2020-2021 review, the Task Force worked with the economic consultant, The Brattle Group. The Brattle Group was selected after the Trial Court published a Request for Proposals through the Commonwealth's official online procurement record site, COMMBUYS. The team from The Brattle Group included Mark Sarro, Ph.D., Christine Polek, Ph.D., Shastri Sandy, Ph.D., M.B.A., and Tessie McGough. The economic consultant provided analysis and professional advice on current economic data and information on child costs, economic concepts and principles as they relate to the guidelines, potential revisions that the Task Force discussed, and any other economic information the Task Force requested. They also responded to questions asked by members of the Task Force. The Task Force in this review, as in prior reviews, considered many factors and sources of economic data on child costs. However, as the economic consultant notes in their report, there are limitations to the economic data available. Notwithstanding these limitations, and in consideration of the public policies of Massachusetts, the guidelines recommended by the Task Force seek to reflect appropriate amounts of child support for children in Massachusetts.

2020-2021 Child Support Guidelines Task Force Recommendations

The Task Force retained the format of the 2017/2018 guidelines which includes the text of the guidelines with the accompanying commentary that explains the reasoning behind the recommendations of the Task Force. The 2021 Task Force report incorporates the 2021 guidelines and the accompanying forms and chart as recommended by the Task Force, and the report of the economic consultant.

The Task Force recommends edits for simplification and clarification, as well as substantive changes to the 2017/2018 guidelines. In making these recommendations, the Task Force fully considered previous versions of the guidelines and the reasoning behind the prior versions.

Below are highlights of the substantive changes the Task Force recommends. The commentary to the guidelines includes a complete analysis of all of the recommended changes.

1. Preamble

The Task Force recommends only one change to the text of the Preamble. The word “parties” replaces “litigants” in recognition that not all cases that involve child support result in litigation.

2. Section I – INCOME DEFINITION

The Task Force recommends a number of changes to Section I.

- a. For clarification, the Task Force recommends replacing “means-tested” with phrases that explain what is intended by “means-tested”. The recommended language explains that income derived from a benefit that is based on a person’s financial circumstances is not included as income for child support purposes.
- b. The Task Force recommends clarifying language relating to the types of social security payments that are considered income when calculating child support. In addition to changes to the text of the guidelines, the Task Force recommends changes to the guidelines worksheet to help parties calculate child support in accordance with Rosenberg v. Merida, 428 Mass. 182 (1998) and Schmidt v. McCulloch-Schmidt, 86 Mass. App. Ct. 902 (2014) when there is a social security dependency benefit involved in the case.
- c. For clarification, the Task Force recommends changes to Section I. A. 11. relating to military income.
- d. In revised Section 1. A. 29., the Task Force recommends highlighting a type of income that is more commonly being used to compensate employees, and that parties might not be aware should, in certain circumstances, be included as income when calculating child support.
- e. In Section I. A. 30., the Task Force recommends including text to highlight the recent Appeals Court decision of Calvin C. v. Amelia A., 99 Mass. App. Ct. 714 (2021). The decision reflects that there are occasions when alimony from a person who is a party to the child support order should be included as income to the recipient and deducted by the payor when calculating child support. Because there are occasions when the alimony would not be included as income, the Task Force recommends addressing the case in the catchall income provision of Section I. A.
- f. In Section I. B. 1., the Task Force recommends striking “first” in the second sentence to emphasize that all of the factors must be considered.

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

a. Section II. A. 3. – Relationship to Alimony or Separate Maintenance

The 2020-2021 Task Force extensively discussed the interplay between alimony and child support. The Task Force recommends changes to the text to emphasize that alimony and child support can be considered at any combined income level. Alimony is not reserved only for cases that fall above the maximum level.

b. Section II. C. – Minimum and Maximum Levels

Consistent with federal requirements, the Task Force examined self-support levels for payors. In Section II. C. 1., the Task Force recommends creating two tranches at the minimum level in Table A of the guidelines worksheet for payors with income up to \$249 per week, to include all payors with incomes below the 2021 U.S. Federal Poverty Guidelines. The presumptive orders will range from \$12 to \$20 per week. The Task Force emphasizes that the Court may still deviate to a higher or lower order, including entering a child support order of \$0.

In Section II. C. 2., the Task Force recommends increasing the maximum level to \$400,000 of combined available income, as the maximum level has not been increased since 2009. The Task Force considered the maximum income levels in other states' guidelines and the higher levels of income and costs in Massachusetts relative to other states. The Task Force recommends six tranches between \$250 and \$7,692 in weekly combined available income, for a total of eight tranches.

Also in Section II. C. 2., the Task Force recommends providing guidance on how to calculate child support when combined available income exceeds the maximum level. Any percentage applied to the payor's income above the maximum level, as listed in Line 8b of the guidelines worksheet, should be below the 10% applied to the highest income level listed in Table A of the guidelines worksheet.

c. Section II. E. – Child Care Costs

After much discussion and consultation, the Task Force recommends eliminating both the deduction of child care costs paid from the parent's gross income and the 15% cap on the child care credit from the 2017/2018 guidelines in Section II. E. 1. The Task Force recommends that parents share the actual costs of child care paid in proportion to their income, up to a benchmark amount of \$355 per child, per week. To account for situations where more than one child receives child care, the guidelines worksheet multiplies the benchmark amount by the number of children receiving child care. In making its recommendations, the Task Force acknowledges that these changes may significantly increase child support orders. Judges should continue to consider deviation where appropriate, especially where the overall current child support order is more than 40% of the payor's available

income as listed in Line 3a of the guidelines worksheet. This situation is addressed in Section IV. C. of the guidelines. To assist judges, attorneys, and parties, Line 7e of the guidelines worksheet indicates whether the support order is more than 40% of the payor's available income.

In Section II. E. 2., the Task Force recommends amending the text to be consistent with Section IV. B. 7. which clarifies that a deviation may be appropriate where child care costs for the children covered by the child support order are extraordinary.

d. Section II. F. 3. – Child Support for Children Between the Ages of 18 and 23

The Task Force recommends changing “the available resources of the parents” to “the available resources of each parent” to emphasize that each parent’s resources, including, but not limited to, savings, should be considered separately. It should be noted that the increase in the adjustment factors for more than one child in Table B of the guidelines worksheet (see below) increases the adjustment percentages for children between the ages of 18 and 23 in Table C for families with children both under the age of 18 and age 18 and over.

e. Section II. G. – Contribution to Post-secondary Education Expenses

In Section II. G. 2., the Task Force recommends changing “the available resources of the parents” to “the available resources of each parent” to emphasize that each parent’s resources, including, but not limited to, savings, should be considered separately. The Task Force felt that it was important to emphasize that the Court should consider whether one parent had saved for post-secondary education expenses, while the other parent did not save, but had had the ability to do so.

In Section II. G. 3., the Task Force recommends retaining the University of Massachusetts – Amherst as the benchmark for determining the parental share of post-secondary educational expenses. Although not the most expensive Massachusetts state college when these guidelines become effective, the University of Massachusetts – Amherst remains the flagship state college in Massachusetts.

In Section II. G. 4., the Task Force recommends language to clarify that ordering both child support for a child over age 18 and post-secondary education expenses is discretionary, but, if both are ordered, then the combined amount of the orders must be considered.

f. Section II. H. – Health Care Coverage

The Task Force recommends amending this section in its entirety to reflect the many statutory changes that occurred in July 2019. See G. L. c. 119, § 28; c. 119A, § 12; c. 208, § 28; c. 209, §§ 32, 37; c. 209C, § 9.

In Section II. H. 1., the Task Force recommends deleting the word “coverage” and replacing it with “premium/enrollment” to clarify what can be deducted on the guidelines worksheet.

The Task Force recommends eliminating the 15% cap on the health care credit that was included in the 2017/2018 guidelines by striking the previous Section II. H. 1. b. Although parties will not receive a credit for health care costs paid, parties will still be allowed to deduct certain health care costs actually paid.

- g. Section II. J. – Routine Out-of-Pocket and Uninsured Medical and Dental/Vision Expenses and Extraordinary Out-of-Pocket and Uninsured Medical and Dental/Vision Expenses

The Task Force recommends changing the title of the section from “Routine Uninsured Medical and Dental/Vision Expenses and Extraordinary Uninsured Medical and Dental/Vision Expenses” to “Routine Out-of-Pocket and Uninsured Medical and Dental/Vision Expenses and Extraordinary Out-of-Pocket and Uninsured Medical and Dental/Vision Expenses” to clarify what this section is addressing. For clarification, the Task Force also recommends changes to the text of the section. Routine out-of-pocket expenses refer to expenses paid when there is medical/dental/vision coverage, but the coverage does not cover all expenses, such as co-payments and deductibles. Uninsured medical/dental/vision expenses refer to expenses paid where there is no medical/dental/vision coverage.

- h. Section II. L. – Families with More Than One Child

The Task Force recommends changing the title of the section from “Families with More than Five Children” to “Families with More Than One Child.” The Task Force recommends increasing the adjustment factors in Table B of the guidelines worksheet when calculating child support for more than one child. Based on a combination of economic data and policy considerations, the incremental cost for each additional child was increased to 40% for two children, 20% for three children, 10% for four children, and 5% for five children. As a result of the increases to the incremental cost for each additional child, the adjustment factors in Table B of the guidelines worksheet were changed to: 1.4 for two children, 1.68 for three children, 1.85 for four children, and 1.94 for five children. The previous adjustment factors were: 1.25 for two children, 1.38 for three children, 1.45 for four children, and 1.48 for five children.

3. Section IV. – DEVIATION

In Section IV. B., the Task Force recommends text to again emphasize that in certain circumstances setting a child support order at \$0 may be appropriate.

The Task Force recommends inserting “time” at the end of Section IV. B. 6. to clarify that the expenses listed were related to parenting time with minor children.

The Task Force also recommends amending Section IV. B. 7. to clarify that a deviation may be appropriate where child care costs for the children covered by the child support order are extraordinary.

The Task Force recommends adding Section IV. C. to include a rebuttable presumption of a substantial hardship justifying a deviation where the overall current child support order is more than 40% of the payor's available income in Line 3a of the guidelines worksheet. In setting this percentage, the Task Force considered the range of marginal percentages in Table A of the guidelines, the amounts resulting from the application of the guidelines across the full range of income combinations, and economic estimates of child costs relative to income levels. A threshold of 40% falls between economic estimates of child costs for one child and two children reported by the Betson-Rothbarth, USDA, and MIT Living Wage studies. The Task Force's recommendation recognizes the need for additional protection in certain limited cases where the child support order would exceed this percentage. The guidelines worksheet in Line 7e indicates whether the current child support order is more than 40% of the payor's available income.

Child Support Guidelines Worksheet, Child Support Guidelines Chart, and Findings and Determinations for Child Support and Post-secondary Education Form

The Task Force recommends revising the Child Support Guidelines Worksheet to incorporate the recommendations noted above. Users of the Child Support Guidelines Worksheet are strongly encouraged to use the electronic version of the Child Support Guidelines Worksheet for easier completion. The only official electronic version of the guidelines and the Child Support Guidelines Worksheet are the versions found at www.mass.gov.

In accordance with the Trial Court's past practice of publishing a Child Support Guidelines Chart that calculates the dollar orders at incremental income amounts, the Task Force also includes a Child Support Guidelines Chart for the 2021 guidelines.

The Task Force recommends minor changes to the Findings and Determinations for Child Support and Post-secondary Education form. The changes to the form were made to incorporate the recommendations noted above.

Appendices

- A. Proposed Child Support Guidelines – 2021
- B. Economic Review of the Massachusetts Child Support Guidelines 2020-2021, report of The Brattle Group, economic consultant to the 2020-2021 Child Support Guidelines Task Force
- C. Proposed Child Support Guidelines Worksheet – 2021
- D. Proposed Child Support Guidelines Chart – 2021
- E. Proposed Findings and Determinations for Child Support and Post-Secondary Education Form – CJ-D 305