

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 422
Judiciary

(Delegate Dumais)

Child Support - Adjusted Actual Income - Multi-Family Adjustment

This bill alters the definition of “adjusted actual income” under the child support guidelines by requiring the deduction, from actual income, of an allowance for the support for each child in the parent’s home for whom the parent owes a legal duty of support but is not subject to the support order. The amount must be subtracted from the parent’s actual income before the court determines the amount of a child support award. The bill then requires the addition of employer-paid taxes or an equivalent amount, as specified, to actual income to determine adjusted actual income for purposes of determining the child support obligation.

Fiscal Summary

State Effect: The bill’s changes can be implemented with existing resources.

Local Effect: The circuit courts can implement the bill’s changes with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: In calculating the adjusted actual income for the child support obligation, the court is to subtract an allowance for the support of each child living in a parent’s home for whom the parent owes a legal duty of support if the child is not subject to the support order. The bill establishes the following formula for calculating this deduction:

1. the basic support obligation for each additional child in the parent's home must be determined according to the guidelines, using only the income of the parent entitled to the deduction; and
2. this amount is to be multiplied by 75%.

This amount is to be subtracted from the parent's actual income before the child support obligation is computed.

In determining adjusted actual income, after making the required subtractions, the court is to add: (1) taxes paid on a parent's income by an employer, excluding amounts to be paid by an employer for Social Security and Medicare; or (2) if the income is nontaxable, the amount of taxes that would be paid on a party's income if the income were taxable.

The bill makes conforming changes by repealing provisions that (1) allow the court to consider the presence of other children in the household and the expenses, as specified; and (2) prohibit the rebutting of the presumption of the propriety of the guidelines solely because of the presence of other children in the household of either parent.

Current Law: In a proceeding to establish or modify child support, whether *pendent lite* or permanent, the court is required to use child support guidelines. The basic child support obligation is established in accordance with a schedule provided in statute. The current schedule uses the combined monthly adjusted actual income of both parents and the number of children for whom support is required to determine the basic child support obligation.

The actual adjusted income is calculated from the "actual income" earned by both parents. "Actual income" means income from any source and includes salaries, wages, pensions and other income types, as specified. The court also has authority to consider severance pay, gifts, capital gains, or prizes as actual income depending on the circumstances of the case. Actual income does not include benefits received from means-tested public assistance programs.

The "actual adjusted income" which is the basis for the basic child support obligation is calculated from actual income minus preexisting child support obligations actually paid and, except as specified, alimony or maintenance obligations actually paid.

The child support statute establishes a rebuttable presumption that the amount of child support which would result from the application of the child support guidelines is the correct amount of child support that the court is to award. The presumption may be rebutted, however, by evidence that the application of the guidelines would be unjust or inappropriate in a particular case. In determining whether the application of the guidelines would be unjust or inappropriate, the court may consider, among other factors,

the presence in the household of either parent of other children to whom that parent owes a duty of support and the expenses for whom that parent is directly contributing. The presence of other children in the household of either parent may not be the sole basis, however, for rebutting the presumption that the child support guidelines establish the correct amount of support.

If the court determines that application of the guidelines would be unjust in a particular case, the court must make a written finding or specific finding on the record that states the reasons for departure from the guidelines, as required by statute.

Background: Federal regulations require states to review their child support guidelines at least once every four years. The Child Support Guidelines Advisory Committee established by the Department of Human Resources reviewed Maryland's child support guidelines in 2009 and found that one of the primary reasons courts deviate from the guidelines is to account for the presence of other children in the household.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources, Comptroller's Office, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 22, 2011
ncs/kdm

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