

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 252

(Senator Frosh, *et al.*)

Judicial Proceedings

Judiciary

Child Support Guidelines - Revision

This bill revises the schedule of basic child support obligations used to calculate child support amounts under the State's child support guidelines. The current schedule is expanded to include monthly incomes of up to \$15,000 and the minimum order of child support of \$20 to \$150 is altered to apply to incomes from \$100 to \$1,200. The bill defines "obligee" as an individual who is entitled to receive child support and an "obligor" as an individual who is required to pay child support under a court order. The bill substitutes "obligee" for custodial parent and "obligor" for noncustodial parent in statutory provisions relating to the guidelines. The bill establishes that the adoption or revision of the guidelines is not a material change of circumstances for the purpose of a modification of a child support award.

Fiscal Summary

State Effect: Minimal increase in special fund revenues to the extent that the bill increases the amount of child support ordered. The expansion of the guidelines to include additional income levels may improve operational efficiency for the Judiciary by eliminating a number of cases in which judges have no guidelines to apply.

Local Effect: The bill may improve operational efficiency for the circuit courts by eliminating a number of cases in which judges have no guidelines to apply.

Small Business Effect: None.

Analysis

Current Law: In a proceeding to establish or modify child support, whether *pendente lite* or permanent, the court is required to use the child support guidelines. The basic child support obligation is established in accordance with a schedule provided in statute. There is a rebuttable presumption that the amount of child support that would result from the application of the guidelines is the correct amount of support to be awarded. The presumption may be rebutted by evidence that the application of the guidelines would be unjust or inappropriate in a particular case. 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 maximum combined monthly income subject to the schedule is \$10,000. For parental income above the \$10,000 ceiling, the Court of Appeals has stated that:

[T]he guidelines do establish a rebuttable presumption that the maximum support award under the schedule is the minimum which should be awarded in cases above the schedule. Beyond this the trial judge should examine the needs of the child in light of the parent's resources and determine the amount of support necessary to ensure that the child's standard of living does not suffer because of the parents' separation. Further, the judge should give some consideration to the Income Shares method of apportioning the child support obligation. *Voishan v. Palma*, 327 Md. 318 (1992).

For monthly incomes up to \$850, the schedule provides for a basic child support obligation of \$20 to \$150 per month, based on the resources and living expenses of the obligor and the number of children due support.

In determining whether the application of the guidelines would be unjust or inappropriate in a particular case, the court may consider 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 adoption or revision of the guidelines may be grounds for requesting a modification of a child support award based on a material change in circumstances only if the use of the guidelines would result in a change in the award of 25% or more.

Unless the court finds from the evidence that the amount of the award will produce an inequitable result, for an initial pleading that requests child support *pendent lite*, the court must award child support for a period from the filing of the pleading that requests child support. Unless the court finds from the evidence that the amount of the award will produce an inequitable result, for an initial pleading filed by a child support agency that requests child support, the court must award child support for a period from the filing of

the pleading that requests child support. For any other pleading that requests child support, the court may award child support for a period from the filing of the pleading that requests child support.

Background: Maryland's current guidelines were originally enacted in 1989 in response to federal child support mandates. Federal regulations require states to review their child support guidelines at least once every four years. As part of the review, states must consider economic data on the costs of child-rearing expenditures. In Maryland, the Child Support Enforcement Administration (CSEA) of the Department of Human Resources (DHR) is required to review the child support guidelines to ensure the determination of appropriate child support award amounts and to report its findings and recommendations to the General Assembly. Maryland is one of nine states that has not updated its child support schedule since the adoption of guidelines in 1989. Although Maryland ranks first in the nation for median income, the amounts recommended for child support rank Maryland forty-first among all states and the District of Columbia. DHR recommended revisions to the child support guidelines in 2009 based on the recommendations of their Child Support Guidelines Advisory Committee. The revisions to the schedule of basic child support obligations in this bill reflect those proposed in House Bill 1401 of 2009.

Three child support guideline models are generally used in the United States. Twelve states (Alaska, Arkansas, Georgia, Illinois, Massachusetts, Minnesota, Mississippi, Nevada, North Dakota, Tennessee, Texas, and Wisconsin) and the District of Columbia use the "Percentage of Obligor's Income" model. Under this model, the child support level is set as a percentage of only the noncustodial parent's income. Three states (Delaware, Hawaii, and Montana) use what is referred to as the "Melson Formula." This model uses a proportion of income from both parents to establish financial support for the child but also provides for each parent's minimal self-support needs and the child's primary support needs and incorporates a standard-of-living adjustment. The premise of the "Income Shares" model used in 35 states, including Maryland, is that a child should receive the same proportion of parental income as would have been received if the parents lived together. The basic child support obligation is determined in accordance with a statutory schedule and then divided between the parents in proportion to the adjusted actual income of each parent.

The current child support schedule was based on economic estimates of child-rearing expenditures as a proportion of household consumption developed in 1988 by Dr. Thomas Espenshade using national data on household expenditures from the 1972-1973 Consumer Expenditure Survey conducted by the U.S. Bureau of Labor Statistics. A congressionally mandated federal study on child-rearing costs was conducted in 1990 by Dr. David Betson using data from 1980-1986. The revised

schedule uses the Betson data updated to 2008 price levels. The schedule is also adjusted to account for Maryland's above average housing costs.

The Child Support Guidelines Advisory Committee found that in applying current estimates of child-rearing expenditures across the board for all incomes, there was a higher percentage increase to incomes below \$10,000 and a lower percentage increase in award amounts for incomes above \$10,000. Because treating various income groups similarly was important, the committee applied the "average" increase in award amounts for incomes below \$10,000 to those incomes above \$10,000. The average increase was 24.5% for one child; 17.5% for two children; 11.2% for three children; 10.7% for four children; 12.2% for five children; and 14.5% for six children.

Since the adoption of the guidelines 21 years ago, it has become more common for combined monthly incomes to exceed \$10,000 and for more cases to fall outside of the guidelines. The advisory committee recommended increasing the combined monthly income ceiling to \$30,000. This change is intended to allow the courts to set a specific amount and eliminate discretionary, potentially unequal treatment of families whose income exceeds the current schedule.

The schedule is also updated to provide an updated "self-support reserve." This reserve allows a low-income noncustodial parent to retain a minimal amount of income before being assessed a full percentage of child support. This is intended to ensure that the noncustodial parent has sufficient income available to maintain a minimum standard of living which does not negatively affect his or her earning capacity, the incentive to continue working, and ability to provide for him or herself. It also shields low-income obligors from unrealistic support obligations which lead to noncompliance. The schedule was revised to ensure that the noncustodial parent retains a self-support reserve equivalent to the 2008 poverty level of \$867 per month. The current guidelines have a self-support reserve of \$481, which is equivalent to the 1988 federal poverty level. The bill maintains the minimum order of \$20 to \$150 for low-income obligors, but expands it to incomes of up to \$1,200 (approximating the new minimum wage of \$7.25 per hour as of July 2009).

State Revenues: Temporary Cash Assistance (TCA) recipients must assign their support rights to the State and federal governments as partial reimbursement for payments made on behalf of the children of the obligor. As a result, TCA child support collections are distributed 50% to the State and 50% to the federal government. Special fund revenues may increase to the extent that the amount of child support ordered to TCA recipients increases and is actually collected. Any such increase cannot be quantified due to the unavailability of data.

State and Local Effect: The expansion of the guidelines to monthly incomes of up to \$15,000 may improve operational efficiency within the administration of the Judiciary and the circuit courts by eliminating a number of cases in which judges have no guidelines to apply but must use their discretion in determining an amount of child support.

Additional Information

Prior Introductions: HB 1401 of 2009 received a hearing in the House Judiciary Committee but no further action was taken.

Cross File: HB 500 (Delegate Waldstreicher, *et al.*) - Judiciary.

Information Source(s): Department of Human Resources, Center for Policy Research, Internal Revenue Service, Department of Legislative Services

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