

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 367
Judiciary

(Delegate Dumais)

Child Support – Multifamily 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 support for each child in the parent’s home for whom the parent owes a legal duty of support but who is not subject to the support order. The bill also alters the factors that the court may consider in determining whether the application of the child support guidelines would be unjust or inappropriate when applied in a particular case.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances, including the workload of the Judiciary. Special fund revenues are not anticipated to be materially affected, as discussed below.

Local Effect: The bill does not materially affect the operations or finances of the circuit courts.

Small Business Effect: None.

Analysis

Bill Summary: The bill establishes the following formula for calculating the deduction:

- 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

- 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.

The bill makes conforming changes by repealing provisions that (1) allow the court to consider the presence of other children in the household of either parent and the expenses for those children, 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. The bill also specifies that the court may consider any financial considerations that the court deems relevant to the best interests of the child who is the subject of the child support order.

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. 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.

"Adjusted actual income," which is the basis for determining the basic child support obligation, is calculated from actual income minus preexisting reasonable 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 that results 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 is unjust or inappropriate in a particular case. In determining whether the application of the guidelines is 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 is unjust or inappropriate 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, as a condition of receiving Title IV-D funds, to review their child support guidelines at least once every four years; the 2016 review was completed in 2016. After the review noted areas of potential improvement, the Child Support Guidelines Advisory Committee began meeting in 2017 to further review the guidelines in light of the best interests of the State’s children and families. Multiple subcommittees were formed to facilitate the committee’s work. The Multi-Family Subcommittee found a lack of uniformity among jurisdictions regarding the establishment and modification of child support orders when there are other children in the household who are not subject to the order being established or modified. It also noted that 37 states authorize an income deduction for additional dependents not subject to the court order.

The Deviations Subcommittee noted that while statutory provisions allow courts to deviate from the guidelines if the application is unjust or inappropriate in a particular case, the statute also includes a specific list of factors that may be considered in making such a determination. Courts have recognized that the statute constitutes a non-exhaustive list and that no list of factors or considerations could identify every situation in which the guidelines’ application may produce an unjust or inappropriate result. (See, *Beck v. Beck*, 165 Md. App. 445,450 (2005) and *Tannehill v. Tannehill*, 88 Md. App. 4, 14 (1991)). The subcommittee recommended that a “catch all” provision be added to codify the court’s authorization to consider any additional factors.

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, after specified initial amounts are passed through directly to the family, TCA child support collections are distributed 50% to the State and 50% to the federal government. Accordingly, special fund revenues are impacted to the extent that child support ordered and collected in these cases differs from what would have been ordered and collected under current law. The bill may encourage additional parents in multifamily situations to comply with child support orders. On the other hand, the bill may reduce the adjusted actual income available for the child who is subject to the existing child support order. Any impact on child support collections involving TCA recipients cannot be reliably quantified but is not expected to materially impact State finances.

Additional Information

Prior Introductions: HB 279 of 2019 received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 639, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 191 of 2016, a similar bill, passed the House and received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 163 of 2015, a similar bill, passed the House and received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. In addition, similar bills were introduced in the 2013, 2012, and 2011 sessions.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Human Services; Department of Legislative Services

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