

**Report of the Task Force for the 2016-2017 Quadrennial Review
of the Massachusetts Child Support Guidelines**

June 2017

2016-2017 Child Support Guidelines Task Force

In compliance with 45 C.F.R. § 302.56, in March 2016, Chief Justice of the Trial Court Paula M. Carey appointed the 2016-2017 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 in March 2016 and continued through June 2017 and included an examination of the assumptions, principles, and methodology that formed the basis of the current guidelines.

In January 2017, 45 C.F.R. § 302.56 was amended. Because this quadrennial review began prior to the January 2017 amendments, Massachusetts is not required to implement the amendments required by § 302.56 at this time. However, where appropriate and constructive, the Task Force considered the amended provisions in making its recommendations and those amended provisions are noted in the commentary of the guidelines.

The Task Force was chaired by Chief Justice of the Probate and Family Court Angela M. Ordoñez. Task Force members were:

Rachel B. Biscardi, Esq.
Jennifer Clapp, Esq.
Associate Justice Kevin R. Connelly
Hon. Shawn Dooley for the Ninth Norfolk District
Jonathan E. Fields, Esq.
Fern Frolin, Esq.
Ruth J. Liberman
Linda Medonis, Esq.
Dolores E. O’Neill, Esq.
Arron Pridgeon
James J. Richards, Esq.
Michelle A. Yee, Esq.

The economic consultants for this Task Force were Mark Sarro, Ph.D. and R. Mark Rogers. The Task Force was supported by Project Manager Denise M. Fitzgerald, Esq., Christine Yurgelun, Esq. and Robert Dunphy, Jr., Esq.

2016-2017 Child Support Guidelines Task Force Review

During its review, the Task Force considered federal and Massachusetts statutory requirements, oral and written comments submitted at public forums throughout Massachusetts, written comments submitted to the email address established for public comments, survey results from judges and staff of the Probate and Family Court and the Massachusetts Probation Service, the 2008 Report of the Child Support Guidelines Task Force, the Final Report of the 2012 Task Force, 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 and the number of Child Support Findings for Deviation forms entered for 2015 and 2016. The average deviation percentage across all divisions of the Probate and Family Court for the two-year period was 9.61%.

In making its recommendations for the 2017 guidelines, the Task Force seeks to build upon the work of prior task forces while taking into consideration the current economic climate and to update the guidelines so they can continue to be applied consistently.

Economic Review of the Child Support Guidelines

During the 2016-2017 review, the Task Force worked with economic consultants, Mark Sarro, Ph.D. and R. Mark Rogers. The economic consultants 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 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 economists' note in their report, "there simply is not a definitive body of economic evidence to know with certainty whether the guidelines amounts will be appropriate in a given case." "The practical reality is that no simple child support guidelines formula, while presumptively correct as a policy matter, can be economically correct in all cases." Notwithstanding the limitations of the economic data, 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.

2016-2017 Child Support Guidelines Task Force Recommendations

The Task Force recommends a significant format change to the Task Force report and the guidelines. From the beginning of its review, the Task Force considered that the guidelines are used by many different types of people, such as litigants, attorneys, and staff and judges of the Trial Court, and that the guidelines are not always easy to understand and implement. In the past, the reasoning behind, and explanations of, the guidelines have been included in a lengthy report that is separate from the actual guidelines. The guidelines as drafted by the Task Force now include sections of text, as well as relevant and informative commentary that explains the reasoning of the Task Force and provides direction as to how the Task Force believes the guidelines should be interpreted and applied. Because of the format change to the guidelines, the Task Force report is shorter than previous reports. The Task Force report incorporates the 2017 guidelines and accompanying forms as recommended by the Task Force, as well as the report of the economic consultants.

The Task Force recommends edits for simplification and clarification, as well as substantive changes to the 2013 guidelines. In making these recommendations, the Task Force fully considered previous versions of the guidelines, with specific attention to the 2009 and 2013 guidelines and their accompanying task force reports.

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

1. Section II. C. – FACTORS TO BE CONSIDERED IN SETTING THE CHILD SUPPORT ORDER – Minimum and Maximum Levels

The Task Force recommends increasing the minimum support order to \$25 per week. The minimum support order has not changed since 2002 when it was raised to \$18.46 per week. After discussion, the Task Force determined that the minimum support order should 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 presumptive minimum support order amount applies to combined income up to \$115 per week. See Section III. B. of the Economic Review of the Massachusetts Child Support Guidelines, 2016-2017.

2. Section II. D. – FACTORS TO BE CONSIDERED IN SETTING THE CHILD SUPPORT ORDER – Parenting Time

The Task Force recommends removing the parenting time/child support calculation that was inserted into the 2013 guidelines. The Task Force considered and discussed at length the consequences of the changes that were incorporated into the 2013 guidelines with regard to when parenting time is more than one-third but less than fifty percent. 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. Despite the positive intentions of the inclusion of the provision in the 2013 guidelines, the actual application of the provision 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 at times failed to create the consistency in child support orders that it sought to create. The Task Force recognizes that for certain families a deviation from the calculations included in the 2017 guidelines may be appropriate. The Task Force created a new principle relating specifically to the appropriateness of deviation.

The Task Force also recommends 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.

3. Section II. E. – FACTORS TO BE CONSIDERED IN SETTING THE CHILD SUPPORT ORDER – Child Care Costs

The Task Force recommends changing how child care costs are considered in setting a child support order. The Task Force considered and discussed at length how to address the public comment concerns raised by many people regarding the significant costs of child care and the lack of a corresponding impact on child support orders. Child care adjustment formulas of other states were considered. The Task Force determined that the

most equitable way for parents to share the costs is for the parent who is paying the child care for the child at issue to deduct that from his or her gross income on the worksheet. Then, there is a proportional adjustment to the child support order to reflect a sharing of both the child care costs and the health care coverage costs. The adjustment is not a dollar-for-dollar credit because the Task Force recognizes that a dollar-for-dollar credit could result in a child support being offset entirely. To avoid excessive offset, the adjustment is capped at 15% of the child support order. The Task Force concluded that the 15% cap provided a meaningful adjustment in either direction without overwhelming the basic order. The guidelines worksheet has been reformatted to calculate the new adjustment for child care and health care coverage costs. See Section III. F. of the Economic Review of the Massachusetts Child Support Guidelines, 2016-2017.

4. **Section II. F. – FACTORS TO BE CONSIDERED IN SETTING THE CHILD SUPPORT ORDER – Child Support for Children Between the Ages of 18 and 23**

The Task Force recommends clarifying that the guidelines apply whenever 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). However, the Task Force recommends that the guidelines and the guidelines worksheet account for the age factor by reducing the amount of child support for children age 18 or older by 25%. The Task Force recommends the adoption of this reduction in the base amount of child support as it is calculated in the worksheet. This change balances the requirement imposed by federal regulation that all child support orders are the product of formulas established by guidelines, while also considering important factors unique to children between the ages of 18 and 23. Nothing in this section limits the ability of the Court to deviate from the presumptive order where appropriate.

5. **Section II. G. – FACTORS TO BE CONSIDERED IN SETTING THE CHILD SUPPORT ORDER – Contribution to Post-secondary Educational Expenses**

The Task Force recommends the creation of a new section to address the pervasive concern about orders to contribute to post-secondary educational expenses. The Task Force recommends incorporating language that caps a parent’s court-ordered contribution to post-secondary educational expenses at 50% of the undergraduate, in-state resident costs of 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. The limitation on post-secondary educational expenses orders is recommended for most cases, but it is not mandatory. The Court can order a parent to contribute more than this amount if written findings enter that a parent has the ability to pay a higher amount. 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.

6. Section II. H. – FACTORS TO BE CONSIDERED IN SETTING THE CHILD SUPPORT ORDER – Health Care Coverage

The Task Force recommends renaming, reorganizing, and revising this section. The Task Force seeks to clarify the statutory requirements relating to orders for health care coverage. Determining whether health care coverage is available to the payor at reasonable cost and without creating an undue hardship on the payor is the cornerstone of ordering a payor to have health care coverage for a child.

As with the costs for child care, the Task Force considered and discussed at length how to address the public comment concerns regarding the significant costs of health care coverage. Health care coverage adjustment formulas of other states were considered. Again, the Task Force determined that the most equitable way for parents to share the costs is for the parent who is paying the health care coverage to deduct that from his or her gross income on the worksheet. Then, there is a proportional adjustment to the child support order to reflect a sharing of both the child care costs and the health care coverage costs. The adjustment is not a dollar-for-dollar credit because the Task Force recognizes that a dollar-for-dollar credit could unfairly skew a child support order. The Task Force concluded that the 15% cap provided a meaningful adjustment in either direction without overwhelming the basic order. Because of this change, the guidelines worksheet has been reformatted to calculate the adjustment. See Section III. F. of the Economic Review of the Massachusetts Child Support Guidelines, 2016-2017.

7. Section III. – MODIFICATION

The Task Force recommends deleting Paragraph B of the 2013 guidelines. Paragraph B 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.

The Task Force also recommends refining the language regarding a complaint for modification when the underlying support order deviated from the guidelines at the time it was entered.

Child Support Guidelines Obligation Schedule, Worksheet and Instructions, and Chart; Findings and Determinations for Child Support and Post-secondary Education Form; and Financial Statements

The Task Force recommends only minor revisions to the Child Support Guidelines Obligation Schedule established in Table A of the Child Support Guidelines Worksheet. The substantive changes in the first two rows are necessary to reflect the increased minimum support order to \$25 per week from \$18.46 per week as included in Section II. C. 1. of the guidelines and discussed above. The Task Force reviewed deviation data for the Probate and Family Court in 2015 and

2016. Given the 9.61% rate of deviation, the Task Force deemed that the existing Child Support Guidelines Obligation Schedule remains equitable, subject to changes for specific circumstances discussed elsewhere.

The Task Force recommends revising the Child Support Guidelines Worksheet and Table B of the Child Support Guidelines Worksheet to adjust for both the number and ages of children being covered by the child support order being calculated. These changes are to incorporate the recommended reduction in the amount of child support for children age 18 or older, absent deviation, included in Section II. F. 1.

The Task Force recommends revising the Child Support Guidelines Worksheet to incorporate the recommended changes regarding the adjustment for the costs of child care in Section II. E. 1., health care coverage in Section II. H. 1., and dental/vision insurance in Section II. I. 3.

The instructions for completing the Child Support Guidelines Worksheet are detailed and encourage the use of the electronic version of the Child Support Guidelines Worksheet for easier completion. The instructions explicitly provide that the only official electronic version of the guidelines and the Child Support Guidelines Worksheet are the versions found at www.mass.gov/courts.

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 2017 guidelines.

The Task Force recommends to discontinue use of the form entitled, "Child Support Findings for Deviation" and to implement of a new form entitled, "Findings and Determinations for Child Support and Post-secondary Education". This form will allow a judge to record in one place findings and determinations required by the guidelines. This form will also assist in the data collection that is required by 45 C.F.R. for the next quadrennial review.

The Task Force recommends amending the financial statements to reflect that means-tested public assistance benefits are not included in gross income for child support purposes.

Appendices

- A. Proposed Child Support Guidelines – 2017
- B. Report of Mark Sarro, Ph.D. and R. Mark Rogers, economic consultants to the 2016-2017 Child Support Guidelines Task Force
- C. Proposed Child Support Guidelines Worksheet – 2017
- D. Proposed Instructions for Child Support Guidelines Worksheet – 2017
- E. Proposed Child Support Guidelines Chart – 2017
- F. Proposed Findings and Determinations for Child Support and Post-secondary Education Form
- G. Proposed Financial Statement – Short Form
- H. Proposed Financial Statement – Long Form