

December 9, 2020

Child Support Guidelines Task Force
VIA EMAIL

Dear Child Support Guidelines Task Force Members,

Thank you for the opportunity to comment on the Child Support Guidelines as they undergo their quadrennial review. The undersigned are attorneys at legal services agencies that represent low-income litigants in family law matters. We define low-income as having income at or below 125% of the Federal Poverty Guidelines or \$27,150 for a family of three. Many of our clients are working parents who are not receiving cash welfare benefits. Most of our clients hold down one or more low-wage jobs to try to make ends meet, while balancing the responsibilities of raising children. For our clients, child support is critical and every dollar makes a difference. For this reason, we focus our comments primarily on the portion of the Massachusetts Child Support Guidelines that falls within the low-income range.

Sadly, our testimony today is nearly identical in substance to that which we submitted in the last round of review. Very little changed in the Massachusetts Child Support Guidelines in 2017, and the economic situation of our clients and their children has only declined further since that time. The Guidelines continue to result in awards that are inadequate to meet the needs of low-income custodial parent households. The

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percentages used are too low, childcare costs are underweighted, permissible health insurance deductions are overly broad, and alimony is too-often overlooked. As stated frequently throughout the economic literature in this area, setting child support guidelines amounts requires more than economic analysis; it is ultimately guided by policy decisions. We are asking you to use this quadrennial review to put the focus of the Massachusetts Child Support Guidelines back on children.

A. Child Support Orders Do Not Align With Economic Estimates of Percentages of Income Expended on Children.

The percentage of income required to raise a child is in inverse relation to the amount of income available in a family; as a family's income goes up, the cost of raising a child becomes a smaller percentage of that family's budget. By contrast, lower family incomes require a higher percentage of family income to raise children. According to the most recent report published by the United States Department of Agriculture, families with income of \$59,200 or below spent 27% of their income on raising their child. (https://fns-prod.azureedge.net/sites/default/files/crc2015_March2017_0.pdf). Middle income families with income between \$59,200 and \$107,400 spent an average of 16%. Those in the highest income category – above \$107,400 – spent an average of 11%. Massachusetts's Child Support Guidelines do not line up with these percentages, especially at the low end of the income range.

The real costs of living that burden families are higher in Massachusetts than in most other places in the country. The average cost of home ownership is 37% higher in Massachusetts than the United States average. The average cost of rent is 20% higher in Massachusetts than the United States average. Massachusetts's child care costs are the highest in the nation, 41% above the United States average. (2016 Economic Review)

When the cost of necessities is high, the impacts falls disproportionately hard on those at the low end of the economic spectrum who have no luxuries to pare down.

Instead of keeping pace with cost-of-living increases, Massachusetts decreased its one-child support amounts in 2013. This change was noted in the field of child support reviews. (Jane Venohr, *Child Support Guidelines and Guidelines Reviews: State Differences and Common Issues*, *Family Law Quarterly*, Vol. 47, No. 3 (Fall 2013), pp. 327-352). As we testified in 2016, Massachusetts's low-income child support amounts are out of sync with the economic costs of raising children. At the low-end of the income range, child support amounts do not match – or even approach – the estimates of the cost of raising a child, nor, when a fair comparison is made, are they at the levels provided in neighboring states' guidelines. As stated in the 2013 Economic Review of the Massachusetts Child Support Guidelines by Mark Sarro and Mark Rogers, the current Guidelines are lower than the Income Shares estimates of child costs at relatively low-income levels, and lower than USDA national and Northeast estimates of child costs for low-income families. (2013 Economic Review, p.4.)

The 2016 Economist's Report repeats this same refrain and also points out that the cost of living in Massachusetts has increased significantly in recent years. Between March 1, 2002 and May 1, 2017, the Consumer Price Index for the Massachusetts area increased by 36.8%. (2016-7 Economic Review, pp. 22-3.) Despite this increase in costs, the only significant change made at the low end of the Guidelines in the 2017 review was a boost in the minimum amount from \$18.46 to \$25 per week. (Report of the Task Force for the 2016-2017 Quadrennial Review of the Massachusetts Child Support Guidelines, June 2017, p. 3.).

Unfortunately, these economic analyses did not result in needed policy change in 2013 or in 2016. For example, at 100% of the Federal Poverty Guidelines, the Guidelines currently recommend an award of only 18% of the parties' income or \$74 per week. By contrast, the USDA estimates that child-rearing costs in the lower income bracket represent 27% of a family's income. In real terms, the USDA estimates that it costs approximately \$216 per week to raise a child under the age of two in the Northeast in even the lowest income bracket.

As stated rather breezily in the Economic Review, there "may not be enough money to go around at lower income levels." Massachusetts's current Child Support Guidelines reflect a policy decision to place the burden of this poverty most squarely on children.

B. The Guideline's Treatment of Child Care and Health Care Expenses Results in an Inequitable Allocation of These Expenses.

In addition to the unjustifiably low percentages used when calculating support in low-income ranges, child support orders in Massachusetts are further skewed by the construction of the Guidelines formula and its treatment of certain expenditures. In Massachusetts, child care and health care costs are subtracted from gross income before completing the calculations. The formula caps any offset of these expenses at 15% of the order. This dulls the impact these expenses have on working parents and prevents an equitable allocation of the expenses between the two parents.

1. Child Care Costs

It is interesting that the 2013 Economist's Report states that, "For simplicity, most of our comparisons [to other states and to economic measures] assume no child care costs or health care costs." (2013 Economic Review, p.4.) This shortcut is shocking.

Working parents do not have the luxury of ignoring child care expenses. A direct allocation of child care expenses in proportion to percentage of contribution to available family income would be more equitable to the children in the household that bears this substantial expense.

Failure to account for child care costs creates a false and misleading comparison of Massachusetts to its neighbors. While the base percentages used in some other states may be lower than those in Massachusetts, the way child care expenses are allocated often results in ultimate child support amounts being higher in other states. On page 45, the 2013 Economist's Report states that after accounting for child care and health care costs, the Massachusetts Guidelines were lower by approximately 20% on average in the low-income range as compared to New Hampshire's child support amounts. (2013 Economic Review, p.45.) Massachusetts's child care costs are the highest in the US in dollar terms, and the highest as a percentage of income at the poverty level. (2013 Economic Review, p.54.)

In 2016, the Child Support Guidelines Task Force received many comments regarding the significant costs of child care and the lack of a corresponding impact on child support orders. (Report of the Task Force for the 2016-2017 Quadrennial Review of the Massachusetts Child Support Guidelines, June 2017, pp. 3-4.) The Task Force changed the Guidelines formula so that the deductions for health insurance and child care would be capped at 15% of the child support order. This did not and does not address the stated concerns, nor does it meet the needs of working parents.

The structure of the current formula produces absurd results for Recipients and children. A recent case illustrates the problem. "Rose" and "Kevin" have two young children. One child

is enrolled in preschool and the other is hybrid learning. Preschool costs \$280 per week. Enrollment is necessary to allow Rose and Kevin to work. Rose earns \$714 per week and Kevin earns \$958. Kevin has a prior child support order of \$211, which is properly subtracted from his available income before calculating support for their children in common. Rose has primary custody of the children, which includes all parenting time during all weekdays. Rose pays for all child care. The current child support order is \$232 week. This means that the child support Kevin pays goes only towards daycare, and Rose still pays an additional \$48 out-of-pocket in daycare expenses. In addition, Rose is responsible for almost all of the children's meals, transportation to and from daycare and school, clothing, and most other daily living expenses. The child support that is meant to contribute towards the children's basic needs goes entirely towards daycare.

The pandemic has only magnified the child care cost problem. The cost of daycare has skyrocketed, while front-line workers still must report to work every day. "The increased cost for [child care] providers to keep their doors open as well as the decreased number of students who can attend to ensure safety, has diminished the number of child care slots across the Commonwealth. Simultaneously, there has been an increased cost to parents, loss of wages for many, and no increase of available vouchers even though the need has increased dramatically. Subsequently, child care costs have risen making it inaccessible for many who need child care the most." (The Massachusetts Commission on the Status of Women, Child Care and Education During COVID-19: A Report on the Economic and Social Impact on Women in Massachusetts, October 2020, p.19.) The Guidelines should consider the full cost of child care and should do so in proportion to the parties' incomes.

2. Health Care Costs

The Guidelines are federally required to address *children's* health insurance. In Massachusetts, though, the Guidelines formula allows a parent to deduct the entire cost of their payment for health insurance, whether it covers the children or not. This results in children subsidizing their parent's health insurance premiums. Prior to the 2009 iteration of the Guidelines, only the difference between the cost of a single plan of health insurance and the cost of a family plan could be deducted in the Guidelines formula. In the current formula, a parent deducts the entire cost of their health insurance plan even if it does not cover the children. This formula often results in children subsidizing (through reduced support orders) the health insurance premium of the Payor parent, while the majority of their child care costs fall on the Recipient parent. (2016 Economist's Report, p. 45.) It should be noted that the Report lists many examples of offsets in child care and health insurance cost, but it does not take into account the very common scenario in which the Recipient and children receive health insurance coverage through Mass Health; the Recipient pays for the cost of child care that allows the Recipient to work; and the Payor has a plan of health insurance that covers a single person. In that scenario, the children are subsidizing the Payor's individual health insurance.

This is patently unfair, especially in light of the fact that employees' shares of premiums for family health insurance in Massachusetts are 5% lower than the national average, while individual plan costs are 27% higher. (2016 Economic Report, p. 43) Clearly, an individual plan of health insurance is not a child-related cost. There is no rational way to justify placing this economic burden upon children.

C. Alimony, Which Is Meant to Meet the Needs of a Household of One, Generally Results in Higher Orders Than Does Child Support for a Multi-Member Household.

Alimony, which is usually meant to help meet the needs of one person (a former spouse), generally results in higher orders than those determined under the Child Support Guidelines (which by definition are for the benefit of a multi-member household). This illustrates the need for change in two areas of the alimony/child support system: 1) child support amounts are clearly inadequate and should be increased; and 2) judges should be actively encouraged by clear language in the Guidelines to consider alimony in cases involving family incomes of \$250,000 or less and to award both alimony and child support when appropriate.

Section II.A.3 of the current Guidelines provides that, when considering the application of the Child Support Guidelines in connection with alimony: “The parties may consider preparing alternate calculations of alimony and child support to determine the most equitable result for the children and the parties. Depending upon the circumstances, alimony may be calculated first, and in other circumstances child support may be calculated first. Judicial discretion is necessary and deviations shall be considered.”

In reality, however, judges rarely award—or even consider—alimony if the parties’ combined incomes are less than \$250,000 a year. Particularly in the case of stay-at-home-parents who have been out of the workforce caring for the children, this reluctance can leave the children and the parent who has primary custody living in poverty while the paying parent continues to have a middle-class standard of living. The language in Section II.A.3 must be strengthened to make it clear that calculating alimony

first in certain cases is necessary to ensure that children's basic needs are met and their standard of living does not unnecessarily decline, consistent with the core principles of the Guidelines.

Take, for example, a recent case where "Rachel" and her husband "John" had been married for 15 years. They made the decision after their first child was born that Rachel would stay home and care for the children. The husband made a comfortable income – over \$100,000 a year – and they were able to live a middle-class lifestyle. They owned their own home in a good school district. Rachel had a seasonal job one day a week while their two children were in school. Application of the Guidelines would result in Rachel, who earned \$15 a week adjusted annually, receiving a child support order of approximately \$510 a week, leaving the children and her to live on \$27,300 a year. For a family of three, that puts her and the two children at 125% of the federal poverty level. By contrast, Rachel's husband of fifteen years would be at more than 400% of the federal poverty level with almost 75% of the parties' combined pre-tax income.

If Rachel had never had children, however, and was only seeking alimony, Rachel could expect, based on the length of the marriage and the parties' income, to receive approximately \$550 a week for one person, based on a 28% difference in the parties' income for non-deductible alimony.¹ Rachel would have been better off financially after the divorce if she had never had children.

If the alimony calculation was performed first, and then a child support calculation attributed the alimony payment to Rachel's income and deducted it from her husband's, Rachel would receive \$550 a week in alimony and child support of \$371 a

¹ The use of 28% is based on an adjustment of the statutory range of 30-35% to reflect recent changes in the federal income tax code performed by Marc Bello.

week. This would leave Rachel with income of \$936 a week to support herself and the two children, and her husband would have a roughly equal amount to support himself. While Rachel and the children, as a family of three, would still be at a standard of living much lower than what they had enjoyed when the family was intact, the children would not be in poverty while their father continued to enjoy a middle-class lifestyle.

Child support and alimony have the same intent: to address the difference in available incomes of the two households. Child support alone cannot achieve this if the income disparity between the parties is substantial. If the income disparity is based on decisions made during a marriage, it is inequitable to ignore the alimony statute when considering the post-separation needs of the family. If alimony is not available to custodial parents below a threshold total income of \$250,000, the result is that child support is stretched to meet the needs of children and their custodial parents, leaving them impoverished and the non-custodial parent unjustly enriched.

The Guidelines language should be changed from permissive to mandatory so that alimony is calculated first in all cases in which an award of alimony would be appropriately considered if the parties were childless. Only after alimony and alimony-adjusted child support are calculated will the court have all the substantive information needed to determine what type of order would best meet the needs of all family members. These adjustments will help the courts avoid the inequitable result in which a Payor retains the majority of the family income while the Recipient and children go without.

CONCLUSION

It is a federal requirement that the Child Support Guidelines have an economic underpinning. The current Massachusetts Guidelines are not related to estimates of child expenditures, do not adequately account for direct child expenditures, and are based on lower percentages than those used to calculate alimony. For the above reasons, we are requesting that:

- the Massachusetts Child Support Guidelines support amounts be increased by at least 36% across the board to account for increases in cost of living;
- the percentages of income used at the lower end of the Guidelines amounts be pegged more closely to the true percentages of income necessary to support children;
- the formula be changed to allocate the cost of child care between the parents in proportion to their incomes;
- only the cost difference between an individual plan of health insurance and the plan that covers the subject child or children be deducted from the formula; and
- the Guidelines state that parties are required to provide an alimony-first Guidelines calculation to the courts and clarify that courts can and should order both alimony and child support when appropriate, including in cases of family income below \$250,000.00.

Thank you for your time and consideration.

Very truly yours,

/s/ Christina Paradiso

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