

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE

House Bill 1401 (Chair, Judiciary Committee)(By Request - Departmental
 - Human Resources)

Judiciary

Child Support Guidelines - Revision

This departmental bill makes several changes to the child support guidelines, including: (1) revising the current guidelines to reflect more recent estimates of child-rearing expenditures; (2) expanding the guidelines to include monthly incomes of up to \$30,000; (3) altering the definition of “actual income” and establishing a formula by which parents who have additional children living with them receive an adjustment in calculating the adjusted actual income; (4) authorizing a court to consider all income and assets of each parent in determining whether a deviation from the guidelines is appropriate; and (5) altering the definition of “extraordinary medical expenses.”

Fiscal Summary

State Effect: Special fund expenditures increase \$33,300 in FY 2010 for the Department of Human Resources (DHR) for computer modifications. Potential minimal increase in general fund expenditures for the Judiciary for the management of additional child support modification hearings that may occur under this bill. Minimal increase in special fund revenues to the extent that the bill increases the amount of child support ordered.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
SF Revenue	-	-	-	-	-
GF Expenditure	-	-	-	-	-
SF Expenditure	\$33,300	\$0	\$0	\$0	\$0
Net Effect	(\$33,300)	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential minimal increase in circuit court expenditures for the Judiciary to handle additional child support modification hearings that may occur under this bill.

Small Business Effect: The Department of Human Resources has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: The bill revises the current child support guidelines to more accurately reflect today's costs of raising children. The current child support guidelines are expanded to include monthly income of up to \$30,000. The minimum order of child support of \$20 to \$150 is expanded to apply to incomes of up to \$1,250.

The bill redefines "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 child support statutory provisions.

The bill specifies that "actual income" includes military retirement pay, military disability benefits, military pension income, and retirement income from all sources. A court may, based on the circumstances of the case, consider contributions to a deferred compensation plan or to any other form of pension plan, retirement plan, or income deferral plan as actual income. Actual income does not include child care assistance. In calculating the adjusted annual income, the court is to subtract an allowance for support for 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 child 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;
2. this amount is to be multiplied by 75%;
3. 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 party's income by an employer, excluding amounts required by law 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 repeals provisions allowing the court to consider the presence of other children in the household of either parent to whom that parent owes a duty of support and the

expenses for whom that parent is directly contributing in determining whether the application of the guidelines would be unjust or inappropriate in a particular case. In determining whether the guidelines are appropriate, a court is authorized to consider all income and assets of each parent, including property that does not produce income and any other factor that the court considers relevant to the determination of whether the application of the guidelines is unjust or inappropriate.

For any pleading that requests child support, 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 to do so will produce an inequitable result.

The bill repeals the authorization of the court to order either parent to pay all or part of medical support for the child and instead authorizes a court to order either parent to pay all or part of the medical and hospital expenses for the child.

The definition of extraordinary medical expenses is altered to mean uninsured cost for medical treatment in excess of \$250 in any calendar year. The bill specifies that extraordinary medical expenses includes medically necessary medical, dental, and vision care as defined by Internal Revenue Service Publication 502.

By agreement of the parties or by order of the court, any expenses for travel by the child between the homes of the parents to facilitate parent-child access may be divided between the parents in proportion to their adjusted actual incomes.

Current Law: In a proceeding to establish or modify child support, whether *pendente 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 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.

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.

Extraordinary medical expenses means uninsured expenses over \$100 for a single illness or condition and includes uninsured, reasonable, and necessary costs for orthodontia, dental treatment, asthma treatment, physical therapy, treatment for any chronic health problem, and professional counseling or psychiatric therapy for diagnosed mental disorders.

The Internal Revenue Service Publication 502 defines medical expenses as:

“the costs of diagnosis, cure, mitigation, treatment, or prevention of disease, and the costs for treatments affecting any part or function of the body. They include the costs of equipment, supplies, and diagnostic devices needed for these purposes. They also include dental expenses. Medical care expenses must be primarily to alleviate or prevent a physical or mental defect or illness. They do not include expenses that are merely beneficial to general health, such as vitamins or a vacation.” Allowable dental expenses includes fees paid to dentists for x-rays, fillings, braces, extractions, dentures, etc. Fees paid for eyeglasses and contact lenses needed for medical reasons are also included.

By agreement of the parties or by order of the court, any expenses for the transportation of the child between the homes of the parents may be divided between the parents in proportion to their adjusted actual incomes.

The adoption or revision of the guidelines may not be grounds for requesting a modification of a child support award based on a material change in circumstances unless the use of the guidelines would result in a change in the award of 25% or more.

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 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 fortieth among all states and the District of Columbia.

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 19 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, 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 \$1,250 (approximating the new minimum wage of \$7.25 per hour as of July 2009).

The definition of “extraordinary medical expenses” is revised to mean uninsured expenses of over \$250 per year as a reflection of the fact that \$250 per year reflects the average out-of-pocket medical expenses incurred on behalf of a child. The advisory committee recommended the change because any expenses over that amount create an undue hardship on the part of the child’s custodian and should be divided equally between the parents.

The advisory committee also noted that the primary reason courts deviate from the guidelines is to account for the presence of other children in the household. Due to the frequency of this deviation, the advisory committee established a formula for use in the child support obligation worksheet for calculating other children in either household to whom a parent owes a duty of support. This is intended to ensure the uniformity of support orders.

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 bill increases the amount of child support ordered to TCA recipients and is actually collected. Any such increase cannot be quantified due to the unavailability of data.

State Expenditures: Special fund expenditures for DHR increase by \$33,270 in fiscal 2010 only for computer modifications. General fund expenditures may increase for the Judiciary to the extent that individuals file for modification of child support due to the revised guidelines. Because the revision of the guidelines is not grounds for a modification of a child support award based on a material change in circumstances unless the use of the guidelines results in a change in the award of 25% or more, the fiscal and operational impact on the courts is expected to be minimal. In addition, the authorization for the court to consider additional factors in determining whether the application of the guidelines is unjust or inappropriate may lead to longer, more complex trials. However, because the bill authorizes, but does not mandate, the use of these factors, and the factors are to be applied only to cases where the appropriateness of the child support guidelines is an issue, the fiscal impact on the courts due to this provision is also expected to be minimal. Furthermore, the expansion of the guidelines to monthly incomes of up to \$30,000 may improve operational efficiency within the Judiciary by eliminating a number of cases in which Judges have no guidelines to apply but must use discretion in determining an amount of child support.

Additional Information

Prior Introductions: Other similar bills have been introduced to revise child support guidelines. SB 156 of 2005 received an unfavorable report from the Senate Judicial Proceedings Committee. HB 284 of 2002 passed the House, as amended, and received an unfavorable report from the Senate Judicial Proceedings Committee. HB 822 of 2001 received an unfavorable report from the House Judiciary Committee and SB 380 of 2001 received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Department of Human Resources, Comptroller's Office, Judiciary (Administrative Office of the Courts), Center for Policy Research, Internal Revenue Service, Department of Legislative Services

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Child Support Guidelines - Revision

BILL NUMBER: HB 1401

PREPARED BY: Department of Human Resources

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.