

## Spiraling expenses a focus of child support guidelines

Changes address costs for child and health care, college

By Kris Olson  
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When new child support guidelines take effect in the Probate & Family Court Sept. 15, members of the task force responsible for drafting them hope that they will usher in a fairer way of apportioning major family expenses, such as child care, health care and college, while also reversing a change from the last round of revisions in 2012, which unintentionally spawned litigation and acrimony.

In all cases establishing or modifying a child support order, there is a rebuttable presumption that the guidelines apply. Federal regulations require the guidelines to be reviewed every four years, and charged with that duty this time around was a 13-member task force chaired by Probate & Family Court Chief Justice Angela M. Ordonez.

Beginning in March 2016, the task force spent 15 months poring over previous iterations of the guidelines, the last two in particular, and debating and researching possible changes.

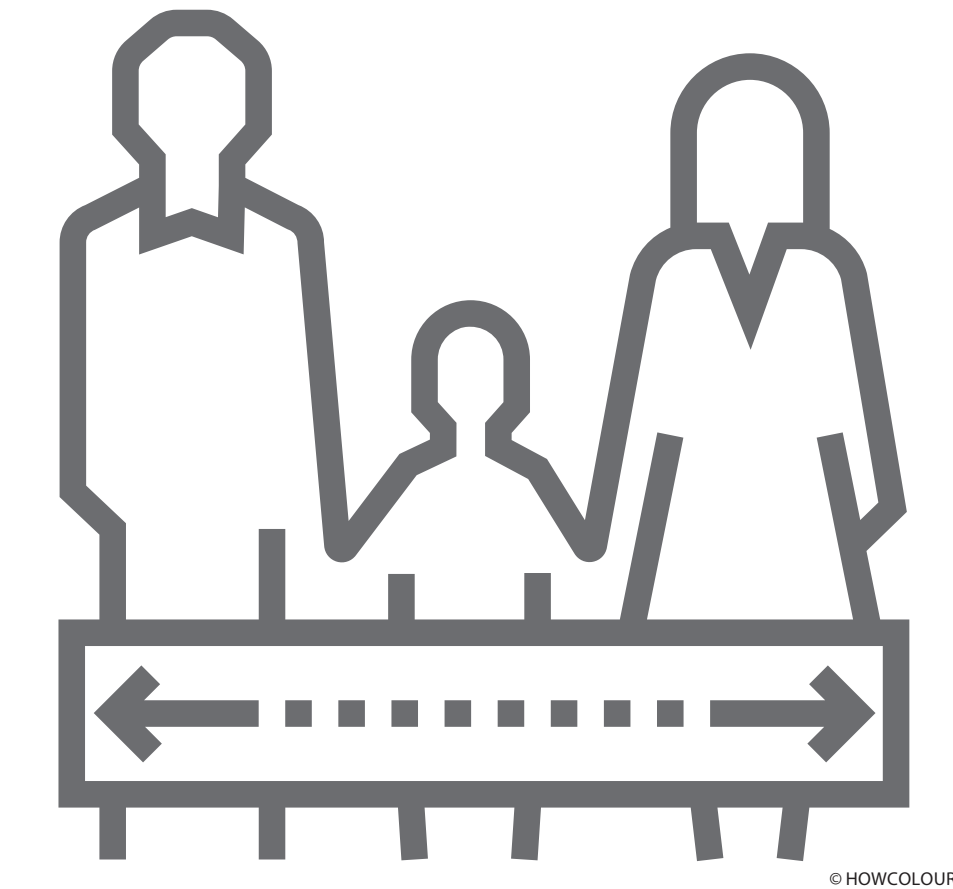
The goal, said task force member Fern L. Frolin of Boston, was to improve on previous editions of the guidelines, not “change for its own sake.”

The most significant change, said fellow member Jonathan E. Fields of Wellesley, may be the commentary that the task force has provided within the document itself for the first time, giving the practitioner an idea of how the panel was thinking about various issues.

Beyond that global change, however, there are also some important details. The full text of the 20-page guidelines can be found at [masslawyersweekly.com](http://masslawyersweekly.com).

### Reversal on parenting time

When it began soliciting comments from the family law bar, the task force heard one message loud and clear: A 2012 change to how



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parenting time was treated had led to unintended consequences.

The guidelines had long embodied two parenting-plan scenarios, one in which parenting was split 50-50, and another in which one parent had the children two-thirds of the time and the other parent the remaining third.

In 2012, a third category of parenting time was added: “more than one-third but less than 50 percent.”

Once implemented, the third category “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,” the task force explains in its commentary.

“Those particular paragraphs caused an incredible amount of litigation — obnoxious litigation from people trying to increase parenting time to decrease child support,” said Lynnfield family law attorney Lloyd D. Godson. “It cost clients too much money and caused too much stress on families.”

Fields agrees.

“We were finding people were counting hours and days. Custody was driving support and driving

litigation,” he said.

While the goal had been to create consistency in child support orders, the change had failed to achieve that goal. The solution was simple enough: Eliminate the third category of parenting time.

### College conundrum

Other changes were a bit more complicated. A new section in the guidelines deals with a parent’s contribution to college costs, which the task force notes have increased approximately 250 percent since the state Legislature first allowed the courts to order parents to pay for educational expenses in 1976.

The new section uses the state’s flagship — and most expensive — public college to establish the following baseline: “No parent shall be ordered to pay an amount in excess of fifty percent of the undergraduate, in-state costs of the University of Massachusetts-Amherst, unless the Court enters written findings that a parent has the ability to pay a higher amount.”

Essentially, the guidelines say that parents taking out loans to help fund their children’s post-secondary education should be a choice rather

than a requirement imposed by a judge.

Godson said that the guideline codifies what has been a “common baseline for a lot of practitioners for years.”

The “UMass cap” is not intended to apply to families that have money set aside for college but rather to those for whom college costs would compete for the same dollars that are keeping food on the table or the lights on, Frolin added.

More generally, the task force also decided to incorporate an “age factor” to child support orders involving children 18 to 23 and out of high school, which in Massachusetts are discretionary. The guidelines now say that, for this age group, whatever a support order would be for a younger child should be discounted by 25 percent to account for the fact that children between 18 and 23 are typically living away at college and thus less of a burden on household expenses, or working and contributing to family income.

The task force stresses that a judge can deviate from the presumptive order when appropriate.

### Child care and health care

Another loud cry from members of the bar was on behalf of the parent struggling under the weight of paying out of pocket for child care and health care.

Those are problems that affect everyone, Frolin said, and thus it was fitting for the task force to devote so much time and effort to address them. As part of the process, the group’s economists surveyed other states’ practices.

Where the task force arrived is a bit “complicated,” Frolin acknowledged. But what the guideline lacks in simplicity, it makes up for by more fairly apportioning the cost, or at least that’s the hope.

The new worksheet incorporates a “two-step calculation”: First, a parent who is paying for

child care deducts the out-of-pocket cost from his or her gross income. Then, the parties share the total child care costs for both parents in proportion to their income available for support.

So, if John has 70 percent of the income available for child support and is paying \$100 a week in child care expenses, the worksheet incorporates John's spouse, Joe, reimbursing John \$30 of that \$100 a week as part of the calculation, Frolin explained.

An identical two-tiered calculation is made for out-of-pocket costs of health care.

However, the combined adjustment for child care and health care costs is capped, either up or down, at 15 percent of the child support order, so as not to "unfairly skew a child support order."

"When we looked at the result, some of the adjustments were so big, they ate up the entire support order," Frolin said.

So, if the child support order would have yielded \$100 a week in child support, but the child care and medical care calculations yield a \$50 adjustment, that adjustment will be lowered to \$15 (15 percent of \$100).

While he believes the task force's intentions were good, family law attorney Gabriel Cheong said the guidelines continue to be "extremely complicated," especially for the large number of pro se litigants in Family Court.

"Things have to be simple, considering the audience. I don't think they totally get that," Cheong said of the task force.

In the past, he noted, the release of the guidelines had been accompanied by a PDF form that would perform the calculations for the user. That does not seem to be the case this time around, he said.

"If they can't push [the form] out from the task force, how do they expect people to fill it out?" he asked rhetorically.

Frolin said the worksheet is in "beta testing" and that it will be released when it's deemed 100 percent glitch-free. When the 2013 guidelines and worksheet were released, there was an error in the initial worksheet, she noted.

"Some folks downloaded it, never got the corrected one,

## There's an app for that

With the release of the state's new child support guidelines, Quincy family law attorney Gabriel Cheong will have to update more than just the advice he provides clients.

He also will have to update the Massachusetts Divorce App he helped create several years ago on behalf of his firm, Infinity Law Group. The app has 2,000-plus seemingly satisfied downloaders, many of them lawyers and judges.

It's a task he relishes — he is not just a developer but an avid user — and to which he brings a certain aptitude, having earned a degree in computer science and worked in the field before deciding to go to law school.

The initial impetus to create the app stemmed from the formulas in the worksheets becoming more intricate with each revision of the guidelines.

"Nine times out of 10, if you did [the calculations] twice, you'd get two different numbers," Cheong says.

Building the app was a way to automate calculations that had "gotten too complicated to do by hand" and

get more reliable results. The firm developed it for its own use first and then decided to share it with the world.

While Cheong is aware of one other firm that may have developed similar technology, he believes Infinity's app is unique, in that, instead of just displaying its results on the screen of a phone or tablet, it creates the PDF document to be filed in court.

While the new guidelines do not take effect until Sept. 15, Cheong says the firm hopes to release version 5.0 of the app soon — the iOS version first, and then an Android version a couple weeks later — especially given that attorneys have already begun running numbers in their cases using the formulas in the new guidelines.

At a mere \$1.99 per download, the app isn't a moneymaker for the firm, Cheong stresses, noting that he may never recoup the cost of its development. The firm outsourced the programming, though Cheong says his own knowledge of coding helped the process greatly.



CHEONG

and still use the erroneous one," which created an ongoing "mess," Frolin said.

The new worksheet is expected to be up and running soon.

"In the meantime, doing the hand calculations is a very good way to understand the new adjustments," Frolin said.

### 'Imputed' vs. 'attributed'

The new guidelines also draw a sharper distinction between "imputed" income and "attributed" income.

In the past, the words were often used interchangeably, Frolin said.

Now, it is clearer that "imputed income" is income that a parent "really gets," just in a form that may not show up on tax documents. If a job comes with a housing benefit, for example, or a business is paying for personal expenses, such income may be considered when setting child support payments, "if such payments are significant and reduce personal living expenses," the guidelines state.

Boston family law attorney Marc E. Fitzgerald said the change will be helpful in figuring out how to deal with self-employed litigants.

"It's a step in the right direction," he said.

"Attributed" income, meanwhile, results from a finding that "either parent is capable of working and is unemployed or underemployed."

Finding attributed income is "completely up to the court," Frolin said, and, "parroting" factors taken from federal guidelines, the court is encouraged to consider, among other things, whether the parent is affected by "employment barriers," like a criminal record or a lack of education, literacy or job training.

"My prediction as a practitioner is that this is going to make it very difficult to establish attributed income," Frolin said, suggesting that it may require expert testimony.

That may not have been her group's intent but is in keeping with the spirit of the federal regulations, she added.

Frolin said the task force also heard pleas from the bar to address the relationship between alimony and child support but ultimately decided to leave that section of the guidelines alone, in the absence of further guidance from the state's appellate courts and the

Suggest to Cheong that he could be charging a lot more for the app — or that versions could be created for all 50 states — and he just laughs.

"If I wanted to be an app developer, I could have stayed doing computer [work]," he says. "I made a career change for a reason."

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Legislature. The guidelines highlight the fact that the next team of quadrennial guideline reviewers should revisit the issue.

Over and above its technical fixes, the panel also wanted to encourage judges and parties to deviate from the guidelines when circumstances warrant it.

By looking at two years' worth of MassCourts data across all divisions of the Probate & Family Court, task force members determined that support orders deviated from the guidelines by just 9.61 percent on average.

While that may speak to the fact that the guidelines are well considered, the group also wanted to root out instances of the guidelines being applied in a "wooden, mechanical" manner, Fields said.

Federal law requires that child support orders deviate by 20 percent or less from the figures derived from using the formulas embodied in each state's guidelines.

Being well below that requirement "doesn't tell you anything" necessarily, Frolin said.

"But we have a lot of room to deviate more than we do," she added. **MLW**

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