

# THE MARYLAND BAR

JOURNAL

Volume XXXIX • Number 3

May/June 2006



## Children and the Law

# THE MARYLAND BAR

## JOURNAL

Published bimonthly by the  
**Maryland State Bar Association, Inc.**  
The Maryland Bar Center  
520 W. Fayette St.  
Baltimore, Maryland 21201  
Telephone: (410) 685-7878  
(800) 492-1964

Website: [www.msba.org](http://www.msba.org)  
Executive Director – Paul V. Carlin  
Editor – Janet Stidman Eveleth

Design – Alter Custom Publishing  
Art Direction – Jason Quick  
Designer – Jami Dodson  
Advertising Sales – Network  
Publications

Subscriptions: MSBA members receive  
THE MARYLAND BAR JOURNAL  
as \$20 of their dues payment goes to  
publication. Others, \$42 per year.

POSTMASTER: Send address change  
to THE MARYLAND BAR  
JOURNAL, 520 W. Fayette St.,  
Baltimore, MD 21201.

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XXXIX • Number 3

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# Maryland Child Support Guidelines—

## Time for an Overhaul?

By Cindy Callahan and Vincent M. Wills



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Although statewide child support guidelines are familiar features in the family law landscape, like cellular signal transmission towers they are a relatively new addition to the topography. First enacted in 1988, the Maryland Child Support Guidelines statute found at Md. Code Ann., Fam. Law § 12-201 *et seq.* (the "Guidelines") is promulgated on the original set of economic figures used to build the child support tables, some of which date to the early 1970's. Despite their relative youthfulness, the Guidelines are in need of an overhaul.

In 2004, the Maryland Department of Human Resources, Child Support Enforcement Division commissioned a study of the Guidelines. Policy Studies Inc. (PSI), a Denver, Colorado organization which has performed similar reviews of child support statutes around the country, performed the study and wrote a lengthy report entitled *Maryland: Economic Basis for Updated Child Support Schedule (the "Report")*. The introduction to the *Report* observed that

[a]lthough Maryland has conducted several reviews of its guidelines since 1988, none have resulted in an overhaul of the Schedule [the table at § 12-204 of the Guidelines]. Consequently, the existing Maryland Schedule is still based on economic factors dating back to 1988.

As the *PSI Report* notes, those "1988 economic factors" included national data on household expenditures derived from the U.S. Bureau of Labor Statistics' 1972-73 Consumer Expenditure Survey. Clearly, it's time to revisit those numbers. The question is how to do so in a manner that is fairest to Maryland's children.

Maryland's Guidelines adopt the Income Shares Model for calculation of support, one of two calculation

models recommended by the National Child Support Guidelines Panel in its final report in 1987. Both models were designed to meet the federal requirements that statewide guidelines were to be based on specific criteria, consider all earnings and income of a noncustodial parent, and provide for the health care needs of children. As summarized by the *PSI Report*, the income shares model

... presumes that the child should receive the same amount of expenditures the child would have received if the parents lived together and combined their incomes. In other words, the child is held harmless [from] the parents' decision to divorce, separate, or otherwise not live together.

The Income Shares Model is used by a majority of states, 34, as of January, 2004.

Both in theory and in practice, Maryland's Guidelines have been of enormous benefit in the quest for uniformity in awards of child support in our state. Consistently, however, the guidelines have created inequities for children whose parents are at the economic extremes of the Schedule. The cause of the difficulty is the methodology used to calculate the basic child support obligation, and the tension between the economic model and policy considerations that should play a significant role in the Schedule's creation.

Thus, at the lowest levels of the guidelines the required amounts to be paid have been criticized as too high and described as "punitive." Several attempts have been made over the years to correct this problem at the lower end of incomes, including the adjustment made to § 12-204 of the Maryland Guidelines in 2004. This both broadened the minimum

support amount range (now \$20 to \$150 at the court's discretion) and increased the gross income threshold to which that minimum applies (from \$500 to \$850).

Additional potential remedies might include a "self-support reserve" for payor parents below a specified level (e.g., \$1,800 per month). This adjustment would be calculated after the initial guidelines support amount is determined, subtracting the self support reserve from the payor's after tax "spendable income" (*PSI Report*, Appendix V).

At higher income levels, a consistent complaint has been that the § 12-204 table ends at \$120,000 per year in family income. In Maryland's wealthy suburban counties, the result is that the Guidelines do not specifically address child support amounts for those at higher income levels, relegating many children in those jurisdictions to an *ad hoc* calculation of child support. This system is reminiscent of the days before the Guidelines were enacted, when each judge or master had his or her method of arriving at the appropriate number. Technically, the calculation of child support in these matters is to be made with reference to the guidelines vis-a-vis its proportion of income concept, applied to the actual expenses of the children in question. *See, e.g., Voishan v. Palma*, 327 Md. 318, 6029 A.2d 319 (1992). While many, if not most, judges and masters now use child support calculation software which extrapolates from the Schedule, this is an inexact science. Extension of the Schedule to provide presumptively correct child support amounts for family income of up to \$240,000 per year is imperative.

The 2004 *PSI Report* includes a Schedule for family incomes up to \$240,000. However, its economic model excludes reasonable expenses of a family at the higher income levels

(roughly in excess of \$100,000 per year). The excluded expenses include such things as mortgage principal payments, life insurance payments, car payments, and other expense items which the economic model characterizes as "savings." A simple example illustrates the theory in direct application to individual families, rather than one step removed as part of the economic model used to create the Schedule. As an example, one family rents a residence at a monthly cost of \$2,000—the model includes that entire expense; however, another family pays a mortgage amount of \$2,000 per month (including principal, interest, taxes and insurance)—the model would adjust the second family's housing cost to exclude any amount being paid toward principal, as this falls into the "savings" category. The same adjust-

ment would be made, presumably, in the situation where one household leases a car for \$250 per month, and the other is purchasing a car for the same \$250 per month. Economic policy might support such adjustments, but in the context of an equitable calculation of child support, they are inappropriate.

The fact is that as the family income rises, the perquisites of life are available to children as they are to their parents. *See, e.g., Bagley v Bagley*, 98 Md. App. 18, 38, 632 A. 2d 229 (1993). Thus, children in a family whose income is \$240,000 per year might well have separate bedrooms, would more likely than not be living in a home which the parents were purchasing, and could have the benefit of two cars in the household. As children in this demographic grow up, they might be afforded their own

vehicle when they begin to drive. For the children of these families, excluding the so-called "savings" factors from the formulation of the Schedule denies them the promise that they will be "held harmless" from their parents' decision not to live together.

Over the years since the first enactment of the Maryland Guidelines, many efforts have been made to address other problems in a piecemeal fashion. Thus, there have been efforts to change the definitions, revise calculation of so-called "below the line" expenses (child care, tuition, and travel expenses, to name a few), and to eliminate the "Shared Custody" differential. In the 2006 Legislative session alone, at the time of writing of this article, there were no fewer than eight separate proposed bills on issues, including notice to payors regarding collection, notice



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from payors regarding their residence and employment information, adjusting the timing of the termination of child support, changing the calculation of the cost of health insurance from an "above the line" to a "below the line" item, and amending the considerations when a court deviates

from the guidelines. Each year, a few bills succeed, but many others do not. Ultimately, appending adjustments to the Guidelines fails to address the main difficulty within the statute itself: it is based on economic information that is significantly dependent on 1973 economic indicators. Thus,

the need to formulate a new economic base is paramount.

The dilemma for those revising the Guidelines Schedule is not only that they must create a sound policy, but also that they must fashion a Schedule that payors and payees alike believe is fair. Those involved in the process of

establishing guidelines should be heartened by a 1988 survey performed by the Survey Research Center of the University of Maryland. Bergmann, B. and S. Wetchler, *Child Support Guidelines vs. Public Opinion*, Fam. Law Quarterly, Vol. 29, No.3 (1995). The survey sought public opinion on child support awards. Conducted by telephone, the survey asked the participants to react to a fact pattern involving payment of child support in a family. The participants were given parental incomes, numbers of children and other variables to consider. The researchers found that the respondents, both male and female, supported substantial child support awards, often in excess of the amounts that would be awarded pursuant to the Maryland Guidelines. The participants also favored consistent enforcement. The predictability of the Guidelines is indeed one of their most appealing aspects, but only if the predictable results are perceived as fair.

A new Schedule must be promulgated. Remedies must be fashioned that honor both the integrity of the economic model and policy concerns about fairness for all children. Thus, the economic data used to generate the Schedule must be adjusted to reflect the current cost of living and re-introduce certain family expenses (the so called "saving" items), beginning at a reasonably selected point in the earnings scale. The Guidelines pledge support for a child at the highest level that *both* parents are able to afford. A new Schedule is necessary to make good on that pledge.

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