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OPINION

Bringing child support guidelines in line

by David B. Weden III

Child support guidelines will be reviewed this year in Massachusetts, and the Trial Court has an opportunity to bring the state's guidelines into conformity with practices followed by other states: child support guidelines need to be based on what it really costs to raise children. In fact, federal law requires this:

"As part of the review of a State's guidelines required under paragraph (e) of this section, a State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited." 45 C.F.R. § 302.56(h)

Sadly, Massachusetts's guidelines have been the product of political process, rather than a consideration of "economic data on the cost of raising children".

In September 2000 I completed a study, "Massachusetts Child Support Guidelines: A Benchmark Analysis". This study compared Massachusetts Child Support Guidelines with guidelines of other states, and with USDA cost estimates of family spending on children. (www.economic-indicators.com/CSXstates.html)

The results of the study demonstrated that Massachusetts's guidelines do not reflect child-rearing costs and showed that the state is out of step with the nation.

In family situations involving one child, Massachusetts's Guidelines are far higher than virtually all other states. For a non-custodial parent earning \$40,000 and a custodial parent earning \$15,000 and supporting one child, the Mass guidelines

produce presumptive awards twice the national average.

Further, the Massachusetts child support guidelines do not reflect rational spending patterns on children.

The USDA estimates for a family with income of \$90,100, expenditures on one child are \$15,574. However, under these same assumptions the Massachusetts guidelines produce a presumptive award of \$25,330; 63 percent over the USDA estimate.

The reverse situation is true for low-income families. For a family with income of \$22,300 the USDA says that families spend \$8,122 on one child. However, under these same assumptions, the Massachusetts guidelines produce an award of \$4,703 or 41 percent lower than USDA estimates.

Massachusetts is also one of only two states that require child support to be paid until a child reaches the age of 23, five years after the child can vote.

How did Massachusetts end up with such an odd system? The October 1985 "Report of the Guidelines Committee to the Governors Commission on Child Support" offers some explanation. This committee was charged with determining the state's initial guidelines, and its recommendations reveal assumptions that help explain the unique approach used by Massachusetts.

First, the committee recommended using the same guideline percentage rate to calculate presumptive awards for all levels of income, even though it cites studies that indicate child costs decline as a percentage of family income as family income rises. For example, the committee indicates that it relied on the work of Thomas J. Espenshade to develop percentages applied to non-custodial parent income for calculating child support orders. However, Espenshade concluded that families spend a decreasing share of their income on children as their income rises. This pattern is also found in the USDA cost estimates referenced by the committee. In fact, most other states used Espenshade's data and USDA cost estimates, and reflect this "declining

percentage" concept in their state guidelines.

Further, the committee prominently cites a statistic published by Lenore Weitzman that was subsequently found to be erroneous and retracted. Weitzman, a Harvard researcher, reported in the 1980s that a custodial parent's standard of living declines by 73 percent after divorce. However, Weitzman subsequently admitted to a transcription error. The real decrease was actually 27 percent.

Third, the committee stresses that the formula needs to be simple. Most states publish elaborate tables stipulating total child support amounts to be shared between parents. The Massachusetts guideline formula is essentially 3 percentages applied only to non-custodial parent income for one, two, or three or more children.

Fourth, the committee indicates it assumed 30 percent visitation. The committee does not cite any empirical or research basis for this assumption, and does not explain how the assumption was factored into their guideline formula. However, it applied it as a threshold for adjusting child support orders downward from guideline levels.

Fifth, most states use net income when computing child support. The committee recommended gross income. Using gross income means applying percentages to a higher income, thus producing higher awards. The committee reasons that using gross income is simpler, and that Massachusetts courts have used gross income in the past.

Finally, there was one custodial parent was on the committee, but non-custodial parents were not represented.

However, the most startling aspect of the report is that the guidelines recommended by the committee are different that those promulgated by the court, even though the committee report states that its recommended formula was adopted.

The committee recommended that support payments for one child be calculated at 22 percent of the noncustodial parent's gross income.

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But court officials subsequently promulgated a higher rate: 27 percent.

The committee recommended that support percentages not increase with the age of child, but the court promulgated such an adjustment, further increasing the state's guidelines.

The committee recommended that percentages applied to non-custodial parent income not decrease if custodial parent has income. However, the guidelines promulgated by the court include an adjustment to support orders when the custodial parent has an income. However, the effect the adjustment is mitigated, in that it sets aside the first \$15,000 of income of the custodial parent. Thus, if a custodial parent is earning less than \$15,000, the adjustment has no effect on the order as calculated. This "income disregard" concept is unique among states, and found only in Massachusetts and Washington DC.

On July 22, 1986, Governor Michael S. Dukakis released a press release titled, "Dukakis Signs Sweeping Child Support Legislation; Says New Law Will Provide Economic Justice for Vulnerable Families," which included the following statement:

"As part of the federal requirements mandated by Congress in 1984, Dukakis appointed a Governor's Child Support Commission in January 1985 and its recommendations were announced by the governor in October 1985. Legislation based largely on those recommendations died in the Legislature during the 1985 session. The new law reflects revisions made by

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the Commission's legislation committee, the Governor's Office of Human Resources, the courts and amendments made by the House of Representatives and Senate during 1986."

It thus appears that many forces were at work altering the commission's recommendations. If there was any economic basis or rationale related to the changes made by these forces, it was lost. Because the 1985 report does not explain the guidelines promulgated by the court, the state has no documented basis for the current guidelines (You read it here first). Reviews conducted by the court administrative office in 1993 and 1997 have essentially been a rubber stamp of the initial guidelines promulgated by the court. This writer has asked many questions about these reviews, and court officials have declined to answer, citing "internal document" privilege.

The magnitude of this issue may surprise you. Although no official statistics exist showing how much child support is paid in Massachusetts, if one extrapolates from the DOR caseload numbers it is clear that the guidelines affect more than 500,000 children and that annual support payments are well into the billions of dollars.

In 2001, the court needs to act courageously to correct the situation. As recommended by the American Bar Association, "States should have a broad representation of interests on the guidelines review board." The court should consider establishing such a board, and include custodial and non-custodial parents. The state should engage the services of an independent consultant to ensure that the Mass guidelines "consider economic data on the cost of raising children," and to compare the Massachusetts system with best practices of other states. Finally, the review should be public, and the court needs to justify their actions. House Bill 3571, now before the judiciary, would require this.

Child support will always be a contentious topic. But if parents clearly understand the basis for their support payments, and feel that the process is fair, they are more likely to accept the way they are treated in family court.

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Detail and analysis of child support guidelines throughout the U.S. and abroad may be found at <http://www.economic-indicators.com/CSXstates.html>