

A LONG ROAD TO DISAPPOINTMENT CHILD SUPPORT UNDER HB 366

BY JOHN ZOLLER

Prior to March 28, 2019, the Ohio legislature had last revised the Ohio Child Support Guidelines in 1992. While the administration and calculation of new child support orders improved with the new law, outcomes for children are financially inadequate.

According to the Bureau of Labor Statistics consumer price index, prices in 2018 were 78.98% higher than average prices throughout 1992. The dollar experienced an average inflation rate of 2.26% per year from 1992 to 2018. In other words, \$100.00 in 1992 is equivalent in purchasing power to about \$178.98 in 2018.

Changes wrought by HB 366

HB 366 went into effect on March 28 giving us a new table for Child Support, new worksheets, new administrative procedures for future revisions of tables and worksheets, and even a Child Support Manual to follow. Yet, our legislature passed a law giving children less support from their parents than children received during the prior 27 years.

Consider a family with two young children where parent A earns \$18,000 and Parent B earns \$14,500.00. The children receive health insurance through Parent B. Work related childcare of \$800.00 per month is paid by Parent B. Under the 1992 guidelines, Parent A would have had an order of \$557.00 per month. The 2019 order would be \$384.24/mo. Parents who pay support and who have 90 or more overnights per year with their children receive a 10% adjustment to the new table amount, further reducing support orders. When Parent A returns to court to gain 90 or more overnights per year, the new order would be adjusted further to only \$371.00 per month.

Consider another family, at the opposite end of the spectrum. Parent A makes \$500,000.00 per year and Parent B \$150,000.00. Their three children, two with work related child care of \$1,000.00/mo each, are insured for health

insurance by Parent A at a cost of \$1,200 per month. Parent A, who has always had more than 90 over nights per year, has a support order under the prior statute, with extrapolation above the old \$150,000.00 combined gross income cap, at \$4,783.00 per month. Applying the identical facts under HB 366, Parent A, even with extrapolation above the new combined gross income cap of \$336,000.00, will see a reduction in the order to \$4,443.00 per month.

To be fair, some children with parents who earn combined gross incomes between the amounts in these examples will see some modest increases in support. None of the examples explored for this article achieved the magic threshold of a ten percent increase in support such that a post-decree modification would be, for that reason alone, appropriate. The 10% adjustment downward for parenting time operates to further limit the instances where increases are likely.

Under HB 366, there is a now a finite Cash Medical Support amount of \$388.70 ordered for each child, allocated in proportion to the parents share of gross income. This figure is intended to cover basic out-of-pocket medical expenses, but can be deviated to zero; a feat unachievable under the old law. Cash Medical Support was the bane of many a practitioner and support worker's day. O.R.C. Sec. 3119.30 simplifies this calculation significantly.

The gross out-of-pocket cost of health insurance premiums are to be deducted from the health care obligor's income before the support amount is calculated. The parent receiving support is rebuttably presumed to be the Health Care Obligor. This will engender cries of foul play by the other parent who, normally, will also have a health insurance cost. It is conceivable that because of this deduction for health insurance premiums, parents will contest who is the health care obligor, ie — 'my plan's better than your plan.'

Calculating the net difference will be important. It is probable that many worksheets will deduct the cost of health insurance from both parent's gross incomes for support calculation purposes not because the new law calls for it, but simply to appease one or the other parent. Calculating the 'marginal difference' between health insurance with, and without children on the plan is no longer necessary.

Many parenting outcomes in Ohio now have parenting time schedules that call for equal parenting time. One northeast Ohio court's standard parenting time order is for 50/50 time. As referenced above, the new child support statute calls for a reduction of the calculated amount by 10% if the paying parent has 90 or more overnights with the children per year. If the overnights are more than 147, the statute calls for a substantial deviation but does not specify a formula. Courts are required to make findings of fact and conclusions of law to explain the adjustment, or lack of one, in a decision. The degree to which support should be reduced because of time allocation will certainly be the subject of vigorous advocacy in the coming months and years.

The new guidelines recognize that many parents share the cost of work related child care. Gone are the calculations where one parent pays 100% of a pricey Montessori day care causing the support coming through the Support parent pays 100% of a pricey Montessori day care causing the support coming through the Support Enforcement Agency to rise significantly. Instead, an amount limited on the basis of the child's age is applied for both parents who pay day care expenses. The allowable caps are defined by O.R.C. 3119.05 and have been met with unanimous incredulity because they are so low. This will be the subject of debate, advocacy and compromise in the form of deviations as the new support structure becomes ingrained in practice.

Deviations from the guideline support obligations are commonly argued and sometimes judicially determined. Deviations rarely increase the obligation from the guideline amount. Parties negotiate deviations for all kinds of reasons. The new statute eliminates some old deviations factors and creates some new factors. Among the new factors are the specific physical or psychological condition of the child, extended parenting time or extraordinary costs associated with that parenting time, including travel for parenting time, the financial resources of the children and the extraordinary work-related expenses incurred by either parent. The scope of potential deviations expanded with the explicit consideration of the responsibility of each parent for the support of others, including support of a child or children with disabilities who are not the subject of the support order. A parent who pays post-secondary educational expenses for their own child, regardless of whether the child is emancipated, will now have a compelling deviation argument. Costs incurred, or reasonably anticipated to be incurred by a parent in compliance with court ordered reunification efforts also give grounds for deviation.

There is a significant change in the way deviations will be handled in post decree modification of child support by the Child Support Enforcement Agencies in Ohio. The support agencies were unable to carry old deviations forward when administratively reviewing old orders. This limitation forced many parents to seek judicial review of administrative modifications. Now, support agencies are able to carry deviations forward if monetary or percentage values can be reasonably determined from the prior orders. Practitioners must be clear and specific so that old deviations are not the source of perpetual discord.

Low income families receive many benefits from the new law. There is now a Self Sufficiency Reserve (SSR) built into the table which allows financially disadvantaged obligors a basic amount of income to support themselves before child support is withheld from their income. O.R.C. Sec 3119.021(B)(2). The amount of the minimum child support order increased from \$50/mo. to \$80/mo. Special attention was given to families with multiple orders in an effort to reduce inequitable situations where one child of an obligor receives a substantially higher child support order than dependents covered by subsequent orders.

Many statutory provisions previously dependent on action by the legislature for



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change moved to the Ohio Administrative Code. The Ohio Department of Job and Family Services (JFS) now has rule-making authority to update the Basic Schedule for child support, Cash Medical Support and the SSR. JFS must develop training materials and update them as well as the worksheets at least once every five years. A Child Support Advisory Council made up of multidisciplinary stake holders is to work with JFS in reviewing the basic child support schedule. The review must take place every four years. This shift of responsibility for increasing the basic child support schedule to JFS frees the legislature from future political backlash when, in four years, the support table might begin to catch up with the cost of raising children. The Consumer Price Index will now be a specific factor in these administrative reviews.

While JFS is mandated to provide a basic child support calculator, two months after the effective date of the new law, JFS does not have an online calculator available to the general public on its website. Family Law Software, along with four other providers, currently markets software to the public that calculates child support.

Conclusions

The new guidelines and table do little to improve the economic situation of children, but there are many aspects of HB 366 that make substantial improvements to the administration and implementation of child support calculations. The worksheet itself shrank from six to two pages. It is much more user friendly. And, most importantly, we won't have to wait another 27 years for the table to be updated.



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