

# Child Support: Guidelines, Deviations

By K. Dean Kantaras and Joanna Hotalen

Over the last several decades, the means of calculating and enforcing child support awards have changed dramatically. While the process has become more transparent with most states passing strict enforcement measures, that wasn't always the case. Historically, the amount of child support awarded was completely within the discretion of the judge, based on the noncustodial parent's ability to pay and the needs of the child. These are still important considerations today, but in response to the federal Child Support Enforcement Amendments of 1984 and Family Support Act of 1988, states have since passed legislation which establish guidelines to ensure that children receive an appropriate amount of support and to achieve uniformity in child support awards.

Florida is one of forty-one states that have created child support guidelines using the income-shares model, which is rooted in the theory that a child should receive the same proportion of parental income that the children would have received as though the parents and children were still living in an intact household. The guidelines schedule set forth in Florida Statute § 61.30(6) covers combined net monthly incomes between \$800 and \$10,000 to determine a minimum support need for up to six children. For incomes above \$10,000 per month, a percentage of the payor's net income, ranging from 5% for one child to 12.5% for six or more children, is added to the top guideline support amount.

Even so, the presumptive amount provided by the guidelines is rebuttable. As helpful as they may be to an overburdened court, the guidelines are not intended to be self-regulating. A court should consider both the needs of the child and the overall financial circumstances of the parties. The guidelines expressly contemplate the exercise of judicial discretion and authority by allowing modification of a guideline amount found to be "unjust or inappropriate." In *Finley v. Scott*, 707 So.2d 1112 (Fla. 1998), the Florida Supreme Court recognized that decisions as to whether and how much to depart from amounts of child support dictated by the statutory guidelines require an intense fact-finding mission, and



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trial courts must weigh the actual expenditures for the needs of the child in their decisions.

Courts may deviate from the guidelines amount by up to 5% without providing an explanation, using the list of factors set forth in F.S. § 61.30(11), ranging from the age of the child, extraordinary needs, the impact of the federal tax dependency exemption, to seasonal variations in a parent's pay. Courts even have the discretion to order a deviation in circumstances in which a child spends a "substantial amount of time" with one parent. However, a deviation greater than five percent requires written justification for why the deviation is warranted. It is the parent seeking a deviation from guidelines who bears the burden of proof that the presumptive amount is inappropriate. *Gross v. Zimmerman*, 197 So.3d 1248 (Fla. 4th DCA 2016).

The obligation to support children who were born or adopted after a support obligation has arisen is treated differently. As a general rule, F.S. § 61.30(12) provides that the existence of subsequent children should not be considered as a basis for deviating from the guidelines

schedule amount in an initial proceeding. However, a parent supporting subsequent children may raise those children's needs as a justification for deviation from the guidelines schedule. If the issue of supporting subsequent children is raised, the income of the subsequent children's other parent is considered by the court in determining whether there is a basis for deviation from the guidelines schedule amount. As of now, the issue of subsequent children may only be raised in a proceeding for an upward modification of an existing award and may not be applied to justify a decrease in an existing award.

The trial court has discretion to award an appropriate amount above a child's needs to enable the child to share in the parent's "good fortune." In *Zak v. Zak*, 629 So.2d 187 (Fla. 2d DCA 1993), the court reversed a child support obligation set below the guidelines when the spouses' combined income exceeded the highest net income figure listed in the guidelines. The court held that the children had every right to share in the good fortune of their parents.

Under Florida statutes regarding child support law, adjustments to the guidelines may be premised on a parent's reasonable and necessary expenses. Providing support for other children can potentially be classified as a reasonable and necessary expense under the law. Downward departure from the guidelines may be based on expenses for other children, but not those who have reached majority, unless there is an express finding that the adult child is dependent. These cases can be complicated and require thorough Florida child support law knowledge. ❖

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