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Who Speaketh for the Child?

Ruth-Arlene W. Howe*

I. INTRODUCTION

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity, in the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

Principle 2, United Nations Declaration of the Rights of the Child

Those who participated in and spearheaded the more than three year process of developing the new child support guidelines for Massachusetts, effective January 1, 1988, are to be commended for their adherence to the above stated Principle 2 of the 1959 United Nations' Declaration of the Rights of the Child. They have endeavored to speak assertively for the children of the Commonwealth. In the future when one inquires, "[I]s it well with the child?," the response should be strongly affirmative for more Massachusetts children than ever in the past.

The Massachusetts child support guidelines are the result of a carefully designed and executed social policy planning process, initiated by staff of the Governor's Office of Human Resources. As one committed to the advancement of the well-being of children through law and social planning, it was a privilege to have the opportunity to be a participant in the process. In retrospect, it is very difficult to imagine what the content of the guidelines might be today without the phased developmental approach taken here in Massachusetts. Review of this process reveals an exciting case study — a model, worthy of replication, of how policy changes and new legal responses can result from diverse lay and professional citizen input and dynamic interaction between the executive, legislative and judicial branches of state government.

Social planning theoretician Alfred Kahn2 has stated that "[i]n a

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* Associate Professor of Law, Boston College Law School. Member of Guidelines Committee of the Governor's Child Support Commission and of the statutorily created Committee on Child Support Guidelines that advised the Chief Administrative Justice of the Massachusetts Trial Court on development of the Massachusetts Child Support Guidelines.

1. 2 Kings 4:26.
2. Howe, Development of A Model Act to Free Children for Permanent Placement: A
theoretical sense, . . . any citizen or group of citizens has the ‘right’ to plan and to offer policy guidelines and specific programmatic proposals to the politically established decision-making machinery.” Kahn also recognized that “[p]lanning begins with a problem, a widely felt need, major dissatisfaction or crisis.”3 It is a normative activity that can be broken down into various stages or steps. For example, Perlman and Gurin4 delineate five basic stages: (1) definition of the problem; (2) establishment of structural and communication links for consideration of the problem; (3) study of alternatives, solutions and adoption of a policy; (4) development and implementation of a program plan; and (5) monitoring and feedback.

Successful implementation of a rational planning process, according to Kahn, “involves policy choice and programming in light of facts, projections and application of values. [It] is a team activity dependent on subject matter expertise, research skills, social science scholarship, competence in administration and capacity to generate expression of value choices, and the achievement of consensus where possible.”5 All of these stages and ingredients were part of the process that resulted in promulgation of child support guidelines by the Chief Administrative Justice of the Trial Court of Massachusetts, first effective May 1, 1987 for use on an interim basis until December 31, 1987, and then in final form, effective January 1, 1988.

II. CHILD SUPPORT CRISIS: A PROBLEM OF “COMMUNITY NEGLECT”

While American society professes to be “child-centered” and to value children as its human resource capital for the future, unlike other western nations, the United States has no comprehensive family social policy which truly promotes the well-being of all children or attempts to guarantee that all children receive consistent nurture and adequate financial support. Instead, in our society it is easier to mobilize support and constituencies to combat a specific problem, condition or need that affects an identifiably delimited group, like physically handicapped or abused children in need of traditional child welfare agency protective services, foster care or adoption.

During the last quarter of a century, there has been grave public concern about the growing incidence of child maltreatment — physical, sexual and emotional abuse and neglect, occurring among all strata of society. Most of our societal response has defined the problem in terms of “parental unfitness” justifying state intervention into the privacy of

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3. A. Kahn, supra note 2, at 12.
5. A. Kahn, supra note 2, at 18.
the family unit under the concept of *parens patriae* when a parent fails to provide for a child's needs according to the dominant values and standards for childcare in the community. Rarely has there been any significant recognition of "community neglect" — i.e., persistent, inadequate provision of resources for children due to the behavior and attitudes of community authorities.\(^6\)

When Congress reviewed the ten year performance of the Federal Office of Child Support Enforcement (OCSE),\(^7\) it discovered that many children were the victims of economic abuse. Nationally, 15 million children, or roughly one out of every four children, were living in homes with an absent parent due to out-of-wedlock birth or divorce, up from 5.8 million or only one in ten in 1960.

Many children were in need because of non-adjudicated paternity and a lack of court support orders, a dismal record of non-existent or inadequate support awards or rampant non-compliance with existing orders following divorce. Approximately 30 percent of all single parent households received no child support; less than 50 percent received all that was due them.\(^8\) A United States Census Bureau study reported that in fiscal year 1983, there was $10.1 billion in child support due, but only $7.1 billion was collected.\(^9\) These figures reveal a $3 billion "compliance gap" in 1983. Robert G. Williams, Ph.D., president of Policy Studies, Inc. and a nationally renowned research expert on child support, however, asserts that there was an "adequacy gap" of more than $15 billion in 1983 because existing support awards are so critically deficient when measured against the economic costs of child rearing.\(^10\)

The Congressional response to this child support crisis was to pass the Child Support Enforcement Amendments (CSEA) of 1984\(^11\) that required the states to enact a number of specific procedures to improve their child support enforcement programs. If a state wanted to continue to receive partial funding for administration of its collection program and funding for its Aid to Families with Dependent Children (AFDC) program, it had to institute various changes by October 1, 1985. And, by October 1, 1987, each state was required to have devel-

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\(^9\) Id. at 3.


oped child support guidelines for use by judges and other officials in setting child support amounts in separation, divorce and paternity cases. The states were given latitude to establish guidelines by legislation, or by judicial or administrative action. They did not have to be binding, but they did have to be based on "specific, descriptive and numeric criteria and result in a computation of the support obligation." The guidelines, in other words, could not just be a list of discretionary factors for consideration by an adjudicator.

III. Establishment of Structural and Communication Links

In Massachusetts, the executive branch of government quickly moved to orchestrate compliance with the mandates of the 1984 CSEA. The Governor's lead staff person was Catherine M. Dunham, Director of the Governor's Office of Human Resources, who also chaired the Governor's Child Support Commission. Governor Michael S. Dukakis appointed the Commission in December 1984. On January 29, 1985 he swore in thirty-two members drawn from all constituencies interested in child support enforcement and all state agencies involved in the enforcement process. On the Commission were state legislators from the House (no one from the Senate served because the Senate President never appointed anyone); sitting judges and judicial administrators from the courts that deal with child support; attorneys, either district attorneys experienced in child support collection or members of the practicing family law bar serving both private and legal service agency clients; law and social work academicians with special interest and expertise in family law and child welfare; various public state welfare administrators, public and private social service administrators and citizens, representing client groups such as Concerned Fathers, Mothers United to Receive Child Support for Children Through Legislative Efforts and Parents Without Partners.

During the fall of 1985, Connie W. Williams, Chief Policy Analyst in the Governor's Office of Human Resources, identified and recommended persons to be invited to serve on the Commission. The importance of this initial task should not be underrated. Because of the care taken by Ms. Williams, no important perspective or concern, including those of racial and ethnic minorities was ignored. Later, great credibility and weight was accorded to the recommendations of the Child Support Commission because of the solid consensus forged among such a diverse group.

Selecting the commission membership, however, was only one aspect of the power wielded by Ms. Williams in her capacity as chief staff

person. It was also she who asked various persons to serve as chairs of
the four subcommittees established at the Commission’s first meeting
in February 1985. For the Guidelines Committee, Ms. Williams asked
family law practitioner, Marilyn Ray Smith, because as she later stated,
“I knew that she was already deeply invested in the issue of poverty and
its affect on women and children; and she was capable, smart and would
work hard.”14 Her judgment was correct.

IV. STUDY OF ALTERNATIVES; ADOPTION OF A POLICY

During the six month period, April to October 1985, Marilyn Ray
Smith skillfully chaired a ten member Guidelines Committee that in­
cluded the following: the Chief Administrative Justice of the Trial
Courts of the Commonwealth and the Chief Administrative Justice of
the Boston Municipal Court, both the Commissioner and Associate
Commissioner of the state Department of Public Welfare, a state repre­
sentative who chaired the House Committee on Public Service, a family
law professor, a Plymouth County district attorney, a private family law
practitioner and a legal services attorney. The federal director of the
regional Office of Child Support Enforcement attended meetings and
provided useful consultation.

The Guidelines Committee’s charge was to formulate a complete
set of guidelines for state courts to use in setting child support. The
key to the modus operandi of the Committee was education. The Chair
collected, duplicated and distributed materials for consideration at
each meeting. Most importantly, for the first formal subcommittee
meeting in April 1985, she prepared a memorandum, “Issues For Con­
sideration In Choice Of Guidelines”, that proposed an exhaustive list
of questions subsumed under four categories:

(1) Needs of the Child;
(2) Parent’s Ability to Pay; (3) Custody and Visitation Arrangements;
and
(4) Limitations of Guidelines. Members were asked, as they read
and analyzed materials, to think about how they would answer the vari­
ous presented questions or others that might come to them. In other
words, what underlying assumptions did members have and what were
their implications for setting social policy? The memo also asked mem­
bers to consider what weight to give to each issue so that committee
discussions could be directed toward building areas of consensus and
identifying areas of differences.

For each meeting, members were assigned readings to digest, sum­
marize and report on to the group. Through this procedure all mem­
bers were introduced to the work of the major writers and researchers
in the field.15 A variety of guidelines from other jurisdictions, includ­

14. Telephone interview with Connie M. Williams, Associate Professor, Boston
College School of Social Work (Mar. 5, 1988).
15. See D. Chambers, Making Fathers Pay: The Enforcement of Child
Support (1979); C. Edwards, USDA Estimates of the Cost of Raising a Child:
Committee deliberations were influenced by available 1980 Census Bureau data for Massachusetts. The median income for a female householder with children under age eighteen was shown to be less than one third ($7,393) of that of a comparable married couple family ($23,833), while the median income of a female householder with children under age six was only 23% ($4,588) of that of the married couple counterpart ($20,366). Although Massachusetts ranked among the top 10 states in child support collection, it was estimated in 1985 that over $100 million went uncollected annually. Approximately 137,000 single parent households (mostly headed by women) had annual incomes below $10,000. Fully 92% of the Massachusetts AFDC caseload (77,000 of 84,000 families with 150,000 children) were eligible because they were not receiving the child support payments to which they were entitled. Only 30,000 of the 77,000 families had an established child support court order; money, however, was only collected from about one-half (14,000) of these absent parents. It was estimated that one out of six absent parents not paying support earned over $25,000 a year. 

The Committee carefully reviewed the guidelines used by the Department of Public Welfare which set support amounts ranging from 30% to 50% of income, depending on the number of children. The Committee also considered the District Court Department’s support guidelines, developed by a previously convened committee, although never publicly released. Those guidelines provided for a starting allocation of one-third of gross income. And, yet another reference base was the widely used article 17 on guidelines by a Probate and Family Court judge, using percentage of gross income as a starting point, with

amounts ranging from 34% to 40% of gross income for one to four children, as undifferentiated alimony and child support.

As the Committee deliberated, a strong consensus crystallized that there was a need for guidelines in Massachusetts. Lack of uniformity and subjectivity in setting child support awards on a case-by-case basis fostered a perception by obligors of unfair treatment by the courts and discouraged payment in some cases. Inconsistency between courts led to forum shopping, due to the widely-held belief that the probate courts ordered higher awards than the district courts, and even within a single division of the probate court, knowledgeable attorneys would seek out individual judges known to rule more favorably in behalf of the interests of particular clients.18

Not only did the Committee become convinced that the courts were setting quite varied orders in similar cases, but also that awards were frequently so low that the needs of children were not being met because of a form of "community neglect." While the inadequacy of many awards had to be recognized as a contributing factor in the rapid increase of children living in poverty, the Committee also developed a consensus that the child support obligation is a personal one. Becoming a parent and having children, in effect, creates an irrevocable, non-transferable lien on the income and assets of each parent, and the responsibility for each parent’s share of the financial support should not be transferred to the other parent or to others (including the taxpayer) except under very unusual circumstances.19

Committee thinking was also shaped by the testimony heard at three public hearings held by the Commission, one in each of the following locations: Springfield, Worcester and Boston. The sixty-three persons who testified were concerned and knowledgeable about every aspect of the child support system and included custodial and noncustodial parents; court personnel; attorneys and paralegals from legal service organizations; family law practitioners; law enforcement officials; social workers and family therapists; guidance counselors; legislators; district attorneys; mediation experts; children of divorce; and representatives from civic and professional organizations, men’s groups and women’s groups.

Before the Committee began the task of determining which of the

18. MASSACHUSETTS GOVERNOR’S OFFICE OF HUMAN RESOURCES, THE REPORT OF THE GUIDELINES COMMITTEE TO THE GOVERNOR’S COMMISSION ON CHILD SUPPORT (October 1985) as reprinted in CHILD CUSTODY, SUPPORT AND SEXUAL ABUSE ALLEGATIONS IN DIVORCE LITIGATION (M.C.L.E. 1987) [hereinafter GUIDELINES REPORT].

three main approaches — income equalization, cost-sharing or income-sharing to follow in developing guidelines for Massachusetts, consensus was reached on a set of eight principles which fully explicated the underlying policy assumptions being made about how to balance the competing interests and allocate limited resources between children, parents, other family members, the state and society at large. Not only did these principles help the Committee to resolve many of the questions posed in Attorney Smith's initial outline, but they later were incorporated, almost verbatim, into the omnibus child support legislation that became law in July 1986. Under the statute, a Committee on Child Support Guidelines was to consider all relevant social, economic and legal principles in developing an advisory report to the Chief Administrative Justice of the Trial Court. The criteria set forth were derived from the policy objectives adopted by the Child Support Commission, and stated:

The committee shall be guided by the following principles: to minimize the economic impact on the child of family breakup; to encourage joint parental responsibility for child support, in proportion to or as a percentage of income; to provide the standards of living the child would have enjoyed had the family been intact; to meet a child's survival needs in the first instance, but to the extent either parent enjoys a higher standard of living to entitle the child to share in that higher standard; to protect a subsistence level of income of parents at the low end of the income range whether or not they are on public assistance; to take into account the non-monetary contributions of the custodial and non-custodial parent; to minimize problems of proof for the parties and of administration for the courts; and to allow for orders and wage assignments that can be adjusted as income increases or decreases.20

V. DEVELOPMENT AND IMPLEMENTATION

This fourth planning stage of actual development and implementation of the Massachusetts child support guidelines spanned the twenty-one month period from mid-summer of 1985 to May 1, 1987. It involved extensive interaction between all three branches of government, executive, legislative and judicial, and a variety of lay citizen and professional participants.

First, the final Report of the Guidelines Committee to the Governor's Child Support Commission recommended adoption of a formula consisting of a percentage of gross income, based on the number of children derived from economic analysis of percentages of expenditures devoted to children in an intact family as parents pool resources. A 2% credit would be given to a noncustodial parent who provided medical insurance and to a custodial parent who paid for routine unin-

sured medical expenses. The cost of medical insurance to the non-custodial parent would be deducted from gross income before applying the appropriate percentage; the cost of work-related day care would be deducted from the custodial parent's gross income before applying the appropriate percentage.

Simply stated, the report presented the formula\(^\text{21}\) as:

<table>
<thead>
<tr>
<th>Number of Children</th>
<th>Percentage of Gross Income After Deduction of Medical Insurance or Day Care, if Applicable</th>
<th>Medical Credit of Two Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>one child</td>
<td>24%</td>
<td>22%</td>
</tr>
<tr>
<td>two children</td>
<td>34%</td>
<td>32%</td>
</tr>
<tr>
<td>three children</td>
<td>40%</td>
<td>38%</td>
</tr>
<tr>
<td>four or more</td>
<td>44%</td>
<td>42%</td>
</tr>
</tbody>
</table>

In selecting the above formula, based on percentage of parental income, the Committee embraced an income-sharing approach which was thought to be simple to calculate and to provide predictability as both parents could determine their respective support obligations and plan for other parts of their lives accordingly.

However, because of the complexity of the subject matter (the Report of the Guidelines Committee fully discusses the various possible factors to be included or excluded in setting final percentages, such as: income base, tax treatment, definition of income, age of children, child care, medical expenses, income of current spouse, support orders for other dependents, custodial parent's income, range of income to which guidelines should apply, higher education costs, custody and visitation), the full Commission did not have time to debate and reach consensus on the recommended formula before filing its report to the Governor in October 1985. Instead, the Commission adopted the above referenced set of principles and reached agreement on the process by which guidelines would be promulgated. The Commission report to the Governor called for promulgation by a committee, chaired by the Chief Administrative Justice of the Trial Court, including members of the judiciary appointed by the Chief Administrative Justice of the Trial Court, members of the Child Support Commission and other gubernatorial appointees, who would be guided by the stated principles.

In order to attend to the implementation of its recommendations, the Commission agreed to continue for three months, until January 1, 1986. A fifth committee on Legislation, chaired by Carolyn Famiglietti, a Greater Boston Legal Services attorney, was created to help mold the Commission's work into a proposal for statutory change. Not only did

\(^{21}\) Guidelines Report, supra note 18, at 13.
this group play an active role in drafting legislation, but it also was very active in lobbying for passage of legislation to ensure that Massachusetts complied with the child support enforcement mandates of federal law.22

The first legislation filed in 1985 was passed by the House but died during the final hours of the session when the Senate failed to act upon it. During the first half of 1986, members of the Legislation Committee and staff of the Governor's Office of Human Resources worked assiduously to build support for the newly filed legislation. The House representatives who had served on the Child Support Commission played crucial roles in steering this legislation through to enactment in July 1986.

With respect to guidelines, the major battle involved the composition of the Committee on Child Support Guidelines and who would have power to appoint members. In early drafts, the Chief Administrative Justice of the Trial Court, who would serve as chair, was to appoint five members, the Governor was to appoint seven, at least five of whom served on the Governor's Commission on Child Support. The bill finally passed provided for a committee of fifteen, comprised of the Chief Administrative Justice as Chair, seven nominees of the Chief Administrative Justice, five nominees of the Governor, and the Commissioner of the Department of Revenue, the newly designated state IV-D agency. Since one of the Chief Administrative Trial Justice's appointees was a law professor who served on the Commission, the membership of the advisory Committee on Child Support Guidelines included six former Child Support Commission members: the Commission chair, chairs of the Guidelines Committee and the Expedited Process Committee, a family law professor and a family law practitioner who had each been members of the Guidelines and Expedited Process Committees. The Governor's one non-Commission member was an activist, custodial mother.

Between September and the end of December 1986, the advisory Committee met five times. While the thorough report of the Child Support Commission's Guidelines Committee provided a starting point, the educative approach of the Guidelines Committee was repeated with this newly constituted group. The Child Support Guidelines Committee invited Robert G. Williams, Ph.D., Director of the Child Support Guidelines Project, Institute of Court Management of the National Center for State Courts, to make a presentation to the Committee on the various economic theories, practical applications, and problems that other states have experienced in their formulation of child support guidelines.

Thereafter, Committee members at the third meeting began to discuss and consider how to formulate guidelines that furthered the policy principles enumerated in chapter 211B, section 15 of the Massachusetts General Laws. All the literature identified in the Report of the Guidelines Committee to the Governor’s Child Support Commission was closely reviewed and studied by the staff to the advisory Committee. Since authority to promulgate guidelines was vested in the Office of the Chief Administrative Justice of the Trial Courts, staff to the advisory Committee was drawn not from the executive branch but rather from the judicial branch. One staffer was from the Office of the Chief Administrative Justice; two from the Probate and Family Court Administrative Office and the Assistant Executive Secretary of the Probate and Family Court Department who coordinated the child support enforcement program for the Court. For each of the last three meetings, staff prepared and circulated working drafts of guidelines and case examples illustrating application of varying formulae.

Since all sessions were open to the public, there were always as many or more interested observers than committee members at meetings. Announcements of the meetings appeared in Massachusetts Lawyers Weekly and various bar association newsletters. Various family law sections and committees of the state, city and county bar groups set up study committees to review and critique the Report of the Child Support Guidelines Committee to the Governor’s Child Support Commission. Interested practitioners both in their individual capacity and as representatives of state, city and county bar groups attended meetings and submitted written concerns and suggestions. Throughout the fall of 1986, various members of the Advisory Committee made presentations at bar meetings and continuing legal education programs.

The final part of this development and implementation stage was the four month period — January through April 30, 1987. During this period the Chief Administrative Justice published a draft guideline in the Massachusetts Lawyers Weekly that elicited numerous comments and suggestions, some of which were incorporated into the interim guidelines promulgated, effective May 1, 1987, for use on an interim basis until December 31, 1987.

The interim guidelines, as described by William F. Ryan, Jr.,23 did “not follow exactly from any of the previous models or existing state guidelines. If given a name, the guidelines would best be called the ‘Massachusetts Modified Income Shares Approach.’ ”24 Because of the intensive deliberations by the fifteen member Committee on Child Support Guidelines and the dialogue commenced with the organized bar, the interim guidelines, as promulgated, embodied features that were

24. Id. at 2.
not included in the recommendations of the Child Support Commission's Guidelines Committee. For example, the formula for establishing a basic support order, while still working with percentages of gross weekly income and numbers of children, also recognized three ranges of income.

A. Basic Order

<table>
<thead>
<tr>
<th>Gross Weekly Income</th>
<th>Number of Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0-$200</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number of Children</th>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discretion of the court, but no less than $50.00 per month</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$201-$500</td>
<td>25%(+2%)</td>
<td>28%(+2%)</td>
<td>31%(+2%)</td>
</tr>
<tr>
<td>$501-max.</td>
<td>27%(+2%)</td>
<td>30%(+2%)</td>
<td>33%(+2%)</td>
</tr>
</tbody>
</table>

Note that the base percentage ranges now only go up to 35% for three children, rather than the 44% for four or more as in the 1985 Report of the Child Support Guidelines Committee. However, the interim guidelines provided for the following increasing orders to reflect the costs of raising older children.

B. Age Differential

<table>
<thead>
<tr>
<th>Age of Oldest Child</th>
<th>Percentage Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-6</td>
<td>Basic Order Applies</td>
</tr>
<tr>
<td>7-12</td>
<td>Basic Order + 10% of Basic Order</td>
</tr>
<tr>
<td>13-18</td>
<td>Basic Order + 15% of Basic Order</td>
</tr>
</tbody>
</table>

VI. MONITORING AND FEEDBACK

The process of feedback, generated by the publicity given both the 1985 Report of the Child Support Guidelines Committee to the Governor's Child Support Commission and the draft guidelines circulated in early 1987 by the Office of the Chief Administrative Justice of the Trial Court, continued throughout 1987. It undoubtedly will continue, given the type of initiative and willingness of members of the state bar to actively speak out in an attempt to shape the contours of the law, either statutory or by court rule.

25. COMMONWEALTH OF MASSACHUSETTS, OFFICE OF THE CHIEF ADMINISTRATIVE JUSTICE, CHILD SUPPORT GUIDELINES, reprinted in 5 MASS. FAM. L.J. 7-9 (May 1987). These guidelines were promulgated under the authority granted by ch. 310 of the acts of 1986 which amended ch. 211(B), § 15 for interim use through December 31, 1987. Id. at 7.
26. Id. at 9.
In the late fall of 1987, the Office of the Chief Administrative Justice prepared and circulated seven hundred questionnaires to lawyers, judges, probation officers and child support workers, inviting comments on how the guidelines were working and asking for suggestions how the guidelines might be improved. The final promulgated guidelines, effective January 1, 1988, reflect changes in response to concerns expressed in answers to the survey.

Susan B. Boyle, writing in the January 18 issue of the *Massachusetts Lawyers Weekly*, summarized these changes in the text of the guidelines, "amended to address concerns about adjustments for expenses of a spouse who has remarried and had children; noncustodial parents who incur large travel expenses in exercising visitation rights; and the monetary obligations of custodial parents who choose to stay home rather than work." The final guidelines urge the court to "examine closely" whether a new marriage should be considered in allocating available resources.

Other important changes in the final guidelines include addition of a fourth age group — "children age 18 and over" to Section F "Age of the Children." At the discretion of the court, an additional amount may be added to cover the needs of such an older child. A new sentence was also added to this section: "Where the parties file an agreement with the court that allows for private payment between the parties, it is suggested that the incremental age issue be addressed in the agreement." New language appears in the redrafted text to emphasize that issuance of the "guidelines in and of themselves do[es] not constitute a sufficient change of circumstances to warrant a modification." Although the court under the interim guidelines could allocate portions of an order as alimony or separate maintenance, new language appears in the final guidelines to underscore this and to clarify that: "it is the responsibility of counsel representing the parties to present the tax consequences of proposed orders to the court."

VII. Conclusion

Despite the initial furor from the private family law bar, the dire predictions of some — that the guidelines would force increased litigation as some parents sought custody just to avoid onerous support payments, or that others would flee the Commonwealth to avoid paying high orders, or simply give up gainful employment in disgust, have not

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28. *Id.* at 700.
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.*
come to pass. The experience to date has been very positive. The efforts, first of the Governor's Child Support Commission and later, of the advisory Committee on Child Support Guidelines, to lay a foundation for widespread acceptance of new expectations for parental financial support is beginning to bear fruit.

Judges are beginning to apply the guidelines; enforcement by the Department of Revenue is vigorous and has been spotlighted in the local print and visual media. One family law practitioner, who also has a sizeable mediation practice, was very laudatory in his comments about the way the guidelines are introducing more rationality and predictability into the divorce and separation negotiation and mediation processes around division of property. He stated that some fathers may be shocked, but they accept it as what is expected. He praised the Chief Administrative Judge and his office for the approach employed in developing the guidelines and said that the final version was much better than the interim guidelines.

Notwithstanding the positive view of the guidelines taken by some, there are various issues and problems yet to be resolved. For example, there are many, old District Court Criminal Non-support orders which now fall far below the levels now mandated by the new guidelines. Presently, as one practitioner recently observed, there is no comprehensive policy regarding these old District Court Criminal Non-support child support awards. There is no clarity about the appropriate forum — District Court or the Family and Probate Court, nor about what the role of the District Attorney’s office should be.

Private practitioners whose clients are in the very high income brackets that exceed the guideline's gross income limits of $100,000 for combined parental income or $75,000 for a non-custodial parent, worry that some judges will use the guidelines in these upper income cases without modification to the detriment of all parties and that the child support awards are then made at the expense of alimony.

In his overview of the Massachusetts child support guidelines, William R. Ryan, Jr., speaks of the letters received from parents and domestic relations practitioners, replete with criticism that under the guidelines "she will get this" or "he will get that." He flatly asserts that "[t]hose letters totally miss the intent of the guidelines." This writer wholeheartedly agrees. Furthermore,

34. Telephone interview with Attorney John A. Fiske, family law practitioner (Feb. 1, 1988).
37. Id.
38. Id.
[t]he interests of the children should not be used as bargaining chips in the conflict of family breakups. Although we will never be able to protect families from the emotional trauma of divorce and separation, the guidelines contain a strong statement that this Commonwealth intends to protect from impoverishment and to nurture its most important resource, its children. Children are our future and these guidelines are a significant public policy investment in that future. 39

39. Id.