

Louisiana Law Review

Volume 50
Number 5 *Family Law Symposium*
May 1990

Article 7

5-1-1990

Louisiana's Child Support Guidelines: A Preliminary Analysis

Sue Nations

Follow this and additional works at: <https://digitalcommons.law.lsu.edu/lalrev>



Part of the Law Commons

Repository Citation

Sue Nations, *Louisiana's Child Support Guidelines: A Preliminary Analysis*, 50 La. L. Rev. (1990)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol50/iss5/7>

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

Louisiana's Child Support Guidelines: A Preliminary Analysis

I. INTRODUCTION

One of the most pervasive cultural events of the last half of the twentieth century has been a change in the composition of the American family unit. As a direct result of both the number and the social acceptance of divorces and illegitimate births, the number of children being raised in single parent households or in households including a remarried parent and half or step siblings has greatly increased. In addition to the social and psychological effects on the children involved, this phenomenon also has had an undeniable economic impact. Empirical studies indicate that divorce often means economic devastation because the income that previously maintained one intact family in a single household must now be divided to provide for the maintenance of the non-custodial or non-domiciliary parent¹ in his² own home and for the custodial or domiciliary parent and their children in another home.

Three important factors that have contributed to the adverse economic consequences of divorce are the inconsistency in the amounts of child support awards,³ the frequent inadequacy of the award amounts,⁴

© Copyright 1990, by LOUISIANA LAW REVIEW.

1. In Louisiana, joint custody is presumed to be in the best interest of the child (La. Civ. Code art. 146) and is the preferred custodial arrangement following a divorce of the child's parents. Under the state's new child support guidelines, support payments may be enforced against a non-custodial parent or against a parent who has legal joint custody but is not the parent with whom the child usually resides. Therefore, in this article, the terms "non-domiciliary parent" and "non-custodial parent" will be used synonymously to refer to the parent obligated to pay child support, whether the child is in the sole legal custody of one parent or in the legal joint custody of both parents but living primarily in the domicile of the obligee parent. Likewise, the terms "custodial parent" and "domiciliary parent" will be used synonymously to refer to the parent receiving child support payments on behalf of his or her minor child, whether the obligee parent has sole or joint legal custody of the child.

2. The father is the non-custodial parent approximately 90% of the time. Goldfarb, *Child Support Guidelines: A Model for Fair Allocation of Child Care, Medical, and Educational Expenses*, 21 *Fam. L.Q.* 325, 331 (1987) [hereinafter Goldfarb].

3. See, e.g., Williams, *Guidelines for Setting Levels of Child Support Orders*, 21 *Fam. L.Q.* 281, 285 (1987) [hereinafter Williams, *Guidelines*] (a study of child support awards in the Denver District Court showed a single judge ordering payments for the support of one child ranging from 6% to 33% of parental income and payment for the support of two children ranging from 5.6% to 40% of parental income).

4. Informal studies in limited geographical areas have indicated that the implementation of child support guidelines caused an increase in awards by approximately 30% to 50%. Williams, *Deficiencies in Child Support: Consequences for Children and Implications for Courts*, *State Ct. J.*, Fall 1988, at 4 [hereinafter Williams, *Deficiencies*].

and the failure to effectively enforce child support judgments. Congress evidenced its concern with these factors in the Child Support Enforcement Amendments of 1984,⁵ which encouraged the states to pursue stronger enforcement strategies and to develop child support guidelines.

The importance of child support guidelines as an appropriate solution to the problems of inconsistency and inadequacy of child support awards was reiterated when Congress made such guidelines mandatory in all states through the enactment of the Family Support Act of 1988.⁶ In response to that Congressional mandate, Louisiana was forced to either enact a feasible and presumptively correct⁷ schedule of child support guidelines to be utilized by all of its courts hearing child support cases or risk losing millions of dollars in federal funding through public assistance programs.⁸ Substantive guidelines were enacted and became effective on October 1, 1989.⁹

This article will evaluate the theoretical model upon which the Louisiana child support guidelines are based and examine the various provisions of the new legislation. The procedure to be used in determining child support awards under the guidelines will be explained and problems likely to be encountered in interpreting the guidelines will be explored. It is hoped that this analysis will be of assistance to family law practitioners, judges, and parents seeking a more thorough understanding of the new legislation.

II. THEORETICAL MODELS FOR DETERMINING PROPER CHILD SUPPORT PAYMENTS

The Family Support Act of 1988 granted the states unlimited authority to devise their own child support guidelines. Researchers, however, have only developed a few models of systematic philosophical approaches to be used in determining the proper amount of support that also address the targeted problems and can, therefore, be offered as viable alternatives to the traditional rule of wide judicial discretion in the determination of child support amounts. These models provide the basic philosophy underlying the guidelines.

Louisiana adopted guidelines based on the income shares model. This model is more compatible with Louisiana's public policies regarding

5. Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, § 18(a), 98 Stat. 1305, 1321-22 (1984).

6. The Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343 (1988).

7. *Id.* at § 103.

8. Mingo, Child Support Law to Change Effective Oct. 1, Louisiana Woman, Aug. 1989, at 3.

9. 1989 La. Acts No. 9, 2d Extraordinary Sess. (codified as amended at La. R.S. 9:315-315.14 (Supp. 1990)) [hereinafter the Act].

a parent's child support obligations than are the cost sharing method and the income equalization method, the two other models most often proposed by researchers.¹⁰ A brief comparison of these three models will introduce the policy considerations and the theoretical methodology upon which the Louisiana child support guidelines are based.

A. *The Cost Sharing Model*

The cost sharing model is based on the premise that a non-domiciliary parent should share with the domiciliary parent only the actual expenses incurred in raising their children.¹¹ This runs counter to the policy expressed in the Louisiana Civil Code that "[e]ach parent shall be responsible for child support based on the needs of the child *and* the actual resources of each parent."¹² To facilitate this policy and in an effort to preserve as nearly as possible the financial status quo of the intact family even after the family's break-up, Louisiana jurisprudence has concluded that a parent's obligation to support his or her minor children must go beyond the mere subsistence level needs of the children and encompass the sharing of the non-domiciliary parent's lifestyle with the children.¹³ The cost sharing method would be inappropriate for use in Louisiana because of the policy that has guided the determination of child support awards in the past. Cost sharing takes into account only the actual financial needs of the children and ignores the added benefits available to the children, through the consideration of the resources and lifestyle of the non-domiciliary parent, that would automatically have been available to the children had their parents remained married to each other.

B. *The Income Equalization Model*

Compared to the cost sharing model, the income equalization model comes closer to meeting the goal of sharing the parents' standard of

10. See, e.g., Goldfarb, *supra* note 2, at 328-30; Williams, *Guidelines*, *supra* note 3, at 290-304; Brackney, *Battling Inconsistency and Inadequacy: Child Support Guidelines in the States*, 11 *Harv. Women's L.J.* 197, 201 (1988) [hereinafter Brackney]. Two other methods which have enjoyed limited application are the straight percentage of income formula utilized for several years in Wisconsin (and previously applied by the Louisiana Department of Health and Human Resources) and the Melson Formula, a combination of the cost sharing and income sharing models, which is used in Delaware.

11. Goldfarb, *supra* note 2, at 329.

12. La. Civ. Code art. 146 (emphasis added).

13. See, e.g., *Ducote v. Ducote*, 339 So. 2d 835, 838 (La. 1976); *Updegraff v. Updegraff*, 421 So. 2d 1165, 1167 (La. App. 2d Cir. 1982); *Dickinson v. Dickinson*, 461 So. 2d 1184, 1186 (La. App. 3d Cir. 1984), writ denied, 465 So. 2d 736 (1985); *Garcia v. Garcia*, 438 So. 2d 256, 258 (La. App. 4th Cir. 1983); *Hogan v. Hogan*, 465 So. 2d 73, 77 (La. App. 5th Cir.), writ denied, 468 So. 2d 120 (1985).

living with their minor children. In a deliberate attempt to insure that the custodial and non-custodial households share the same standard of living,¹⁴ the financial burden of supporting two households is shared by all family members.¹⁵ The financial resources of former spouses (and their current spouses, if any) are added together and then apportioned among the members of the two households on a per person basis.

This method, however, is incompatible with Louisiana's policy regarding alimentary obligations due persons other than minor children. Louisiana requires that support for a parent's minor children be at a level above mere subsistence, in accordance with the non-custodial parent's ability to pay child support and in keeping with the lifestyle that the parent's income permits. But our legislature has not endorsed such a high level of support for either former spouses or other family members above the age of majority. Instead, alimony is to be paid to a former spouse only when the obligee has been found to be without fault in the divorce proceeding and does not independently have sufficient means for his or her own support.¹⁶ Any obligation to pay alimony to a former spouse ends when the obligee remarries or enters a relationship in which he or she lives with a domestic partner short of marriage.¹⁷ A ceiling on the amount of spousal alimony is set at one-third of the obligor's income,¹⁸ while no such cap has ever been set with regard to a parent's financial obligation for his or her minor children. The alimentary obligation owed to family members other than one's minor children is a reciprocal obligation existing only between direct ascendants and descendants. The obligee must be proven incapable of providing for his or her own support and the obligor can be required to provide only the basic necessities of life.¹⁹ Obviously, Louisiana's interest in assuring that a parent provide financial support to his or her minor children is significantly greater than its interest in seeing that former spouses or adult family members are well provided for.

Furthermore, while Louisiana courts have held that the income of a stepparent may be considered in determining the amount of a child

14. Brackney, *supra* note 10, at 201.

15. Goldfarb, *supra* note 2, at 328.

16. La. Civ. Code art. 160.

17. *Id.* The termination of permanent alimony upon a finding of open concubinage by the obligee spouse is discussed in *Gray v. Gray*, 451 So. 2d 579 (La. App. 2d Cir.), writ denied, 457 So. 2d 13 (1984); *Thomas v. Thomas*, 440 So. 2d 879 (La. App. 2d Cir.), writ denied, 443 So. 2d 597 (1983); and *Cook v. Cook*, 436 So. 2d 743 (La. App. 3d Cir. 1983). For jurisprudential recognition of the termination of alimony upon the remarriage of the obligee spouse, see, e.g., *Miller v. Miller*, 308 So. 2d 379, 381 (La. App. 1st Cir.), amended, 321 So. 2d 318 (1975), modified on other grounds; and *McConnell v. McConnell*, 295 So. 2d 60, 63 (La. App. 4th Cir.), writ denied, 296 So. 2d 834 (1974).

18. La. Civ. Code art. 160.

19. La. Civ. Code art. 229.

support award,²⁰ stepparents in this state are not personally obligated to provide financial support for the children of their spouses.²¹ Thus, use of the income equalization model, which apportions each parent's income equally among children, former spouses, new spouses, and children of the former spouses would clearly be contrary to the public policy of Louisiana because it would ignore Louisiana's scheme of providing different levels of support for minor children, former spouses, and other alimentary obligees and would require, in all cases, that stepparents support the children of their spouses.

C. *The Income Shares Model*

The guidelines adopted by Louisiana are based on the income shares model.²² The major principles of this model are that the amount of money required for the support of a minor child is greater than the total cost of the child's subsistence level needs, that the required amount is dependant upon the income of the child's parents, and that each parent should contribute toward his or her child's financial support in proportion to that parent's income. These principles are identical to those forming the foundation of Louisiana's child support philosophy prior to the enactment of the new guidelines,²³ with the added benefit that this model includes a numerical schedule of child support awards designed to eliminate, in the theoretical sense at least, the extent of judicial discretion used in selecting a specific dollar amount to be awarded the domiciliary parent for application toward the support of the minor child.

To determine the level of support, the income of each parent is added to that of the other to determine their combined income. A columnar schedule is then consulted. This schedule, based on the number of children involved, provides the presumptive total amount of money

20. See, e.g., *Marcus v. Burnett*, 282 So. 2d 122, 124 (La. 1973); *Finley v. Finley*, 305 So. 2d 654, 657 (La. App. 1st Cir. 1974); *Culpepper v. Culpepper*, 514 So. 2d 701, 703 (La. App. 2d Cir. 1987); *Phillips v. Phillips*, 319 So. 2d 566, 567 (La. App. 4th Cir. 1975). But see *Barnes v. Rosen*, 359 So. 2d 1133 (La. App. 4th Cir.), writ denied, 362 So. 2d 1120 (1978), and *Alt v. Alt*, 433 So. 2d 400 (La. App. 4th Cir. 1983).

21. The policy regarding the possible inclusion of a stepparent's income in the calculation of a child support award is perpetuated under the new guidelines and is codified at La. R.S. 9:315(6)(c) (Supp. 1990). For a more thorough discussion of a stepparent's financial responsibility toward his or her spouse's children, see also Riley, *Stepparents' Responsibility of Support*, 44 La. L. Rev. 1753 (1984) [hereinafter Riley].

22. This method was originally designed by the Institute for Court Management of the National Center for State Courts under the Child Support Guidelines Project. Williams, *Guidelines*, supra note 3, at 291.

23. See, e.g., La. Civ. Code arts. 146, 227.

proper²⁴ for the support of the couple's children at the couple's income level. The total support amount is then multiplied by the percentage of income contributed by each parent. The domiciliary parent is expected to spend his or her proportionate share of the total support amount on the children each month while the non-domiciliary parent must pay his or her proportionate share to the domiciliary parent in satisfaction of a money judgment. This concept is in accord with Louisiana's policy that both parents are, consistent with their ability to pay,²⁵ responsible for the support, maintenance, and education of their children and that this obligation arises from the very act of marriage.²⁶

An example may help to illustrate both the methodology employed under this theory and the ease with which the amount of the child support award can be determined in an uncomplicated scenario.²⁷ Suppose the non-domiciliary parent's gross income is \$2,000 per month and the domiciliary parent's gross income is \$1,000 per month. Their total monthly income is thus \$3,000. If they have two minor children, the basic child support obligation, according to the schedule enacted by the Louisiana legislature,²⁸ is \$716. Since the non-domiciliary parent earns

24. "There shall be a rebuttable presumption that the amount of child support obtained by use of the guidelines set forth in this Part is the proper amount of child support." La. R.S. 9:315.1.A (Supp. 1990). It would be inaccurate to say that the number derived from utilizing this method is the amount of money the legislature has determined to be necessary for the support of the child involved. The use of a schedule such as the one found at La. R.S. 9:315.14 (Supp. 1990) to derive the "proper amount of child support" hides the policy decision as to what percentage of a family's total income is to be spent on each child. An examination of the Louisiana schedule, however, reveals that as income increases, the percentage of total income which is "proper" to be spent on the children decreases. The schedule also fails to reveal the fact that the child support formula assures that the "proper amount of child support" leaves the obligor parent with an income adequate for his own subsistence. The existence of the parental subsistence allowance is revealed in R. Williams, Child Support Guidelines Briefing Material (February 1, 1989) [hereinafter Briefing Material 1] and R. Williams, Child Support Guidelines Briefing Material (May 23, 1989) [hereinafter Briefing Material 2].

25. La. Civ. Code art. 146. *Marcus v. Burnett*, 282 So. 2d 122 (La. 1973).

26. La. Civ. Code art. 227. Despite the express statutory statement that the source of the obligation to support one's children arises from the marriage contract, Louisiana jurisprudence also maintains that the obligation arises not from marriage but from the act of parenthood. See, e.g., *Lewis v. Lewis*, 404 So. 2d 1230, 1233 (La. 1981); *Pierce v. Pierce*, 397 So. 2d 62, 64 (La. App. 2d Cir. 1981); *Clement v. Clement*, 506 So. 2d 624, 626 (La. App. 4th Cir. 1987); *Hoffman v. Hoffman*, 480 So. 2d 1031, 1033 (La. App. 5th Cir. 1985); *Lacassagne v. Lacassagne*, 430 So. 2d 818, 820 (La. App. 5th Cir. 1983).

27. La. R.S. 9:315.2 (Supp. 1990), entitled "Calculation of basic child support obligation," describes the basic process to be used under the guidelines in deriving the amount of the child support award. There is also a worksheet provided in La. R.S. 9:315.15 (Supp. 1990) to facilitate the procedure.

28. The schedule of basic child support obligations can be found at La. R.S. 9:315.14 (Supp. 1990).

two-thirds of the total income, he will be ordered by the court to pay two-thirds of \$716, or \$477, to the domiciliary parent each month. The domiciliary parent's one-third share of the total child support amount, \$239, is expected to be spent on the children, but no order will issue requiring that result.²⁹

The income shares model creates an inherent inequity, which is reflected in the new Louisiana guidelines, in that only one of the parents is subject to an enforceable child support judgment despite the Louisiana public policy that both parents are responsible for the support of their children. An obligor parent who fails to make child support payments is subject to a contempt citation, garnishment of wages, and possible imprisonment. The obligee parent, however, has only the theoretical responsibility to spend actual dollars in support of the minor children. There is no requirement that the obligee parent account for either the obligee's proportionate share of the total monthly child support obligation or for the use of the child support payment received from the obligor parent. The only recourse for an obligor parent who believes that the custodial parent is not properly discharging the financial responsibility to the children is to file criminal charges for neglect³⁰ or to sue for a change in the custody arrangement.³¹

The Louisiana legislature deleted from the new guidelines language³² creating a presumption that the custodial parent would spend the proper amount of money directly on the financial needs of the children. Attempts to amend the guidelines to provide for an accounting by the custodial parent of amounts actually spent on the children were also unsuccessful because the amendments were perceived to be administratively unwieldy.³³ Unfortunately, such reasoning ignores the practical inequity to the obligor parent³⁴ as well as the divergence of this rule from Louisiana's policy regarding the responsibility of both parents for the financial support of their children.

29. La. R.S. 9:315.8.D (Supp. 1990).

30. La. R.S. 14:74 (Supp. 1990).

31. *Simon v. Calvert*, 289 So. 2d 567, 570 (La. App. 3d Cir.), application denied, 293 So. 2d 187 (1974).

32. See, House Committee Amendments, Proposed by Committee on Civil Law and Procedure for the Louisiana House of Representatives to H.R. 18, 15th La. Leg. 2d Extraordinary Sess. (1989).

33. *State-Times* (Baton Rouge, Louisiana), July 10, 1989, at 4A, col. 4.

34. Child support guidelines which have resulted in significantly larger awards than those traditionally set have been criticized as "really a form of disguised maintenance [which] . . . may be used for the benefit of the custodial spouse rather than the children." Pontius, *Minnesota's Child Support Guidelines: Toward A Fair and Rational Standard for Child Support*, 9 *Hamline L. Rev.* 459, 493 (1986) [hereinafter Pontius]. This perception was mirrored in *State v. Hall*, 418 N.W.2d 187 (Minn. Ct. App. 1988), which held that it is inappropriate to use child support to upgrade the standard of living of custodial parents.

Proponents of the position that the custodial parent should not be forced to account but should instead be presumptively considered to spend his or her proportionate share of the total child support obligation on the children maintain that a custodial parent provides non-monetary services to the children³⁵ in the form of nurturing, nursing, help with homework, car pooling, and the like that are not factored into the child support guidelines and are, therefore, not shared by the non-custodial parent. It has been suggested that the provision of such services to the children may in fact impede the earning capacity of custodial parents whose disposable time and energies could be spent on their careers but is instead directed toward raising their children.³⁶

These are very real concerns, but the proper forum for addressing them would be in the confection of the actual schedule of basic child support obligations or the methodology to be used in applying that schedule.³⁷ The concerns should not be used to justify a custodial parent's failure to spend the judicially determined amount of money on the children or to relieve the custodial parent of the duty to account to the non-custodial parent for the use of his or her contributions to their children's welfare. Recognition of the custodial parent's non-monetary contributions must be balanced against the provision in the guidelines that requires the non-custodial parent to satisfy the child support judgment strictly in monetary terms, the rendering of goods or services not being recognized by the new guidelines as an appropriate means of discharging the judgment.³⁸ Should it be determined that the custodial parent's non-monetary support of the children should be shared by both

35. See, e.g., Elrod, *Kansas Child Support Guidelines: An Elusive Search for Fairness in Support Orders*, 27 *Washburn L.J.* 104, 127 (1987) [hereinafter Elrod]; Pontius, *supra* note 34, at 480; Bruch, *Developing Standards for Child Support Payments: A Critique of Current Practice*, 16 *U.C. Davis L. Rev.* 49, 54 [hereinafter Bruch]; Bruch & Wikler, *The Economic Consequences*, *Juv. & Fam. Ct. J.*, Fall 1985, at 5, 24; Douglas, *Factors in Determining Child Support*, *Juv. & Fam. Ct. J.*, Fall 1985, at 27, 28 [hereinafter Douglas]. Louisiana jurisprudence has also held that non-monetary contributions made to the support of the children should be considered when the amount of a child support order is fixed. See, e.g., *Seal v. Bell*, 464 So. 2d 1026 (La. App. 1st Cir. 1985); *Miller v. Miller*, 475 So. 2d 40 (La. App. 2d Cir. 1985); *Brinks v. Brinks*, 483 So. 2d 1307 (La. App. 4th Cir. 1986).

36. This is sometimes referred to as the "opportunity cost" or the "lost opportunity cost." Giampetro, *Mathematical Approaches to Calculating Child Support Payments: Stated Objectives, Practical Results, and Hidden Policies*, 20 *Fam. L.Q.* 373, 381 (1986); Pontius, *supra* note 34, at 493.

37. Perhaps the custodial parent's proportionate share of the basic child support obligation could, for example, be reduced by a fair percentage to compensate for non-monetary contributions and possible lost earnings rather than being based strictly on his or her proportionate contribution to the total gross income of the parents.

38. The recognition of child support payments as the only means of satisfying a child support judgment is not a change in the law of Louisiana. See, e.g., *Blankenship v.*

parents through a proportionate reimbursement in the form of increased child support payments, it should also be recognized that a non-custodial parent might make non-monetary contributions to the welfare of the children and that these should also be factored into the child support calculation and shared by the parents. It hardly seems reasonable that two different standards should apply simply because one of the parents lives with the children and the other parent does not, it being impossible for the children to be domiciled in two places at once.

III. ANALYSIS OF LOUISIANA'S GUIDELINES

Although the income shares model is largely compatible with Louisiana's public policy regarding a parent's child support obligation and its methodology can often be employed with ease, the provisions of the Act that implement the model illustrate the difficulty in drafting a comprehensive set of child support guidelines that takes into consideration all conceivable concerns,³⁹ solves all related problems, and is free from interpretational difficulties. It is important, therefore, that the specific provisions of Louisiana's guidelines be critically analyzed.

Blankenship, 382 So. 2d 982, 983 (La. App. 1st Cir. 1980); *Powell v. Barsavage*, 399 So. 2d 1308, 1312 (La. App. 4th Cir. 1981). The new guidelines do provide for direct payments to providers of four types of services: work-related net child care costs, health insurance premiums, extraordinary medical expenses, or other extraordinary expenses. None of these services, however, are factored into the basic child support obligation; instead, each is a category of services which may be added to the basic child support obligation upon order of the court. La. R.S. 9:315.3-315.6, 9:315.8.D (Supp. 1990).

39. Several items considered by other jurisdictions in the confection of child support guidelines were not addressed by the Louisiana legislation. Among these is the question of whether parents have a duty to provide a college education for their children. Cases in Louisiana have been decided both ways and the new guidelines ignore this issue. See, e.g., *Pettitt v. Pettitt*, 261 So. 2d 687, 689 (La. App. 2d Cir. 1972) (holding that the obligation to educate one's children includes providing a college education). But see, e.g., *Phillips v. Phillips*, 339 So. 2d 1299, 1301 (La. App. 1st Cir. 1976); *Dubroc v. Dubroc*, 284 So. 2d 869, 870 (La. App. 4th Cir. 1973); *Jordan v. Jordan*, 432 So. 2d 314, 318 (La. App. 5th Cir.), writ denied, 438 So. 2d 1111 (1983) (holding that the obligation to educate one's children ends when the child reaches the age of majority). Some states are currently attempting to solve the problems which can arise upon the death of a non-custodial parent. See, e.g., Douglas, *supra* note 35, at 30. There has been debate in other jurisdictions regarding the appropriateness of extending a parent's financial obligation to his or her children beyond their minority. For a discussion of the subject of postminority support, see Elrod, *supra* note 35, at 140. Notably absent in Louisiana's formula for the calculation of child support awards is a consideration of the child's age. The guidelines used in the state of Washington, for example, allow for increases in child support payments as children get older. Thompson and Paikin, *Formulas and Guidelines for Support*, *Juv. & Fam. Ct. J.*, Fall 1985, at 33, 35 [hereinafter Thompson & Paikin]. For more discussion of the need to increase support payments as children get older, see also Bruch, *supra* note 35, at 52; Williams, *Guidelines*, *supra* note 3, at 314.

A. *Calculation of a Party's Income Under the Guidelines*

1. *Defining Gross Income*

The combined "gross income" of both parents is, under the guidelines, the primary indicator of the amount of the child support award. "Gross income" is defined broadly to include

[t]he income from any source, including but not limited to salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, and spousal support received from a preexisting spousal support obligation.⁴⁰

Gross income also includes reductions to living expenses such as a company car or reimbursed meals as well as "[g]ross receipts minus ordinary and necessary expenses required to produce income" if the parent is self-employed.⁴¹ Child support received and benefits from public assistance programs, however, are not to be included in the gross income calculation.⁴²

a. *Gifts and Prizes*

One question that arises from the above definition of gross income concerns the propriety of including gifts and prizes in a parent's gross income. It is unclear whether the legislative intent was to include in gross income only monetary gifts and prizes or if the value of non-monetary gifts and prizes were also to be included. It seems inequitable that the number of real dollars a parent is required to spend on his or her children should be increased when his or her income has not been enhanced in real dollars. For a domiciliary parent, this provision could be quite damaging. When, for example, a domiciliary parent receives clothing as a gift in order for the parent to decrease expenses and allot a greater portion of disposable income to the children, a strict reading of this provision of the Act would penalize the parent by requiring him or her to report an increase in income equal to the retail price of the clothing received. This will increase the total amount of the child support obligation as well as change each parent's proportionate share of that obligation. This is unfair to the non-domiciliary parent because the child support obligation increases when the total combined income of both

40. La. R.S. 9:315(4)(a) (Supp. 1990).

41. La. R.S. 9:315(4)(b)-315(4)(c) (Supp. 1990).

42. La. R.S. 9:315(4)(d) (Supp. 1990).

parents rises. The domiciliary parent, while having to report an increased income, is not obligated to actually spend more real dollars on the support of the children since that parent's child support obligation is discharged under the assumption that his or her proportionate share of the joint obligation is paid. It might be advisable, however, for an attorney to seek a judicial interpretation of the legislative intent with regard to non-monetary gifts or to invoke the discretionary power of the trial court when the issue of non-monetary gifts arises, based on the inequitable result of the inclusion of gifts in the calculation of the recipient's gross income or the inequitable increase in the other party's child support obligation.

b. Inheritance

Another concern is whether an inheritance received by either parent is to be treated as a gift for the purposes of the child support guidelines and, furthermore, whether inheritances resulting from testate and intestate successions should be treated differently. Probably, property acquired through intestate successions would be held not to be gifts since the property would devolve by operation of law. On the other hand, property acquired through a testate succession probably would be held to be a gift since such inheritances require the intent of the donor rather than the simple operation of law. In those situations in which inheritances would be treated as gifts, it is conceivable that a parent's child support payments might skyrocket in a year in which he or she comes into an inheritance or that the recipient of an inheritance might be forced to liquidate real property received in order to pay an inflated child support award. A party could certainly invoke the discretion of the trial judge to determine whether income from inheritance should be included in the calculation. There may even be a basis for a constitutional challenge to the inclusion of inheritances in the broad category of gifts if it can be established that the child support guidelines require divorced couples to pass an inheritance along to their minor children in the form of increased child support payments even when the children are already being maintained at a comfortable financial level. Married couples have no such obligation to share this new-found wealth with their children so long as the children are well enough provided for that a claim of criminal neglect of the family would not lie.

2. Adjustments to Gross Income

Despite the broad definition of "gross income" in the Act, there are also specific ways in which a parent's gross income figure can be increased or decreased. Gross income may be increased to what the Act

refers to simply as "income"⁴³ by imputing potential income to an underemployed parent, or through remarriage, expense sharing, or "other sources."

Gross income may also be decreased by amounts the parent pays because of a preexisting child support or spousal support obligation owed to someone other than a party to the current proceedings or on behalf of a child who is not the subject of the current action. This "adjusted gross income"⁴⁴ is the figure used to determine the amount of the child support award under the new schedule.

The following subsections analyze these possible modifications to gross income.

a. Expense-Sharing

Similar to the problem of including gifts in a parent's income is the inclusion in income of the benefits a parent derives from expense-sharing.⁴⁵ It is unclear whether the legislature intended this provision of the Act to apply only in cases in which the parents have remarried or entered into a domestic partnership arrangement short of marriage or if it should also apply when a parent with limited financial resources enters into a platonic roommate arrangement⁴⁶ or moves in with family members in order to decrease household expenses and increase the amount of money that can be spent directly on the support of the children. A custodial parent would be penalized by enforcement of this provision of the Act in an extended family or platonic roommate situation because the contributions made by his or her roommate to their shared living expenses may be required to be reported as additions to income. Both the total amount of the child support obligation and the custodial parent's proportionate share of the obligation would increase. Similarly, a non-custodial parent who shares a home with a roommate would likely see most of the savings thus incurred redirected to a higher child support award.

Including the benefits of a parent's expense-sharing arrangement in the child support formula would, in all cases, be beneficial to the children

43. La. R.S. 9:315(6) (Supp. 1990).

44. La. R.S. 9:315(1) (Supp. 1990).

45. La. R.S. 9:315(6)(c) (Supp. 1990).

46. This provision of the Act may have been meant to guarantee the application of La. Civ. Code arts. 2345 and 2373 and the decision rendered in *Finley v. Finley*, 305 So. 2d 654 (La. App. 1st Cir. 1974), in the situation in which a parent contracts a second marriage under a separate property regime or lives in concubinage with a domestic partner short of marriage. The platonic roommate arrangement should be distinguished from either legal or "common law" marriage because the responsibilities of the partners to each other are so very different, and the inequities cited in the text as resulting from the enforcement of this provision of the Act are therefore more egregious in the former situation.

because the parent's gross income would increase and the total child support obligation would also increase correspondingly. It should be remembered, however, that all such expense-sharing arrangements are entered into voluntarily by the parents. Parents may choose to forego these arrangements once they understand the impact of the expense-sharing provision of the guidelines and perceive expense-sharing as counterproductive. It seems rather absurd that good faith attempts at reducing expenses should be discouraged rather than encouraged by the new law and it is recommended that an amendment to the guidelines deleting this provision be supported.

b. Income of a New Spouse

Income derived from a parent's remarriage may also be considered as an addition to the parent's income under the new Act.⁴⁷ The appellate courts have previously split on this issue, with some circuits including the income from the second marriage and other circuits excluding such funds from the child support calculation.⁴⁸ In addition to the same problem of shared expenses in a non-marital relationship, the decision of the new spouses to select a community property or separate property regime (or a modified hybrid of the two) may create further complications. Whether or not a community property regime exists is a significant inquiry in this context because an alimentary obligation legally imposed on one spouse, such as a child support judgment, is a community obligation and one-half of what the other spouse earns or acquires is owned by the obligor.⁴⁹ Stepparents, however, are not personally bound for such obligations imposed upon their spouses.⁵⁰ If the couple is living under a community regime, any contributions to the support of the stepchildren made from the salary or other assets of the stepparent which would be classified as forming a part of the community of acquets and

47. La. R.S. 9:315(6)(c) (Supp. 1990).

48. See *Marcus v. Burnett*, 282 So. 2d 122, 124 (La. 1973); *Finley v. Finley*, 305 So. 2d 654, 657 (La. App. 1st Cir. 1974); *Culpepper v. Culpepper*, 514 So. 2d 701, 703 (La. App. 2d Cir. 1987); *Phillips v. Phillips*, 319 So. 2d 566, 567 (La. App. 4th Cir. 1975). But see *Barnes v. Rosen*, 359 So. 2d 1133 (La. App. 4th Cir.), writ denied, 362 So. 2d 1120 (1978), and *Alt v. Alt*, 433 So. 2d 400 (La. App. 4th Cir. 1983).

49. La. Civ. Code arts. 2362, 2336.

50. The personal obligation to support minor children arises from the act of entering into a marriage which produces children (La. Civ. Code art. 227) or from parenthood (*Lewis v. Lewis*, 404 So. 2d 1230, 1233 (La. 1981); *Pierce v. Pierce*, 397 So. 2d 62, 64 (La. App. 2d Cir. 1981); *Clement v. Clement*, 506 So. 2d 624, 626 (La. App. 4th Cir. 1987); *Hoffman v. Hoffman*, 480 So. 2d 1031, 1033 (La. App. 5th Cir. 1985); *Lacassagne v. Lacassagne*, 430 So. 2d 818, 820 (La. App. 5th Cir. 1983)). The obligation does not flow from the act of marriage to someone who has previously become a parent.

gains would not be reimbursed to the stepparent upon termination of the community. If the spouses are living under a separate property regime, however, a stepparent who contributes a portion of his or her earnings or other separate assets to the support of his or her spouse's children might be entitled to claim reimbursement at the termination of the marriage based on the principle of *negotiorum gestio* (Louisiana Civil Code article 2295) or by analogizing this situation to that dealt with in Louisiana Civil Code article 2367.1. If the new spouses confect a matrimonial agreement specifying the proportions in which each would contribute to the expenses of the marriage,⁵¹ the former spouses (whether obligor or obligee under the child support judgment) could find themselves subject to a child support judgment based on income which is imputed to them but not actually available for their use. The resulting increase in the total child support obligation and the shift in the proportionate sharing of that obligation by the natural parents could, depending on the factual situation involved, be inequitable to one or both of them. The stepparent could also complain that funds which were supposed to be contributed by the other spouse to the expenses of the second marriage must now be redirected to meet an increased child support burden, effectively changing the proportions in which the new spouses agreed to contribute to the expenses of the marriage. If the provision in the Act is applied as mandatory, i.e. as *requiring* a new spouse's income to be incorporated into the child support formula, rather than as a possible consideration for increasing a parent's gross income in isolated situations, the number of couples living under separate property regimes may increase. This provision might even be interpreted by prospective spouses as a disincentive to marriage.

c. Spousal Support

Under the guidelines, a parent's gross income includes spousal support received from a preexisting support obligation. Adjusted gross income, however, can be reduced by this amount only if the obligation is owed to a party other than those involved in the current litigation. Literally interpreted, this provision means that if an order for spousal support is issued prior to the child support litigation, the obligee will have to include in income the amount of alimony received and the obligor will not be able to subtract the amount of alimony paid from his or her gross income. Thus, the amount of the alimony payment will be counted twice—once as gross income for the obligor when earnings are reported and once as gross income for the obligee when the spousal support amount is added to his or her earnings, thereby inflating the

51. Comment (c) to La. Civ. Code art. 98 indicates that the duty of spouses to support each other requires only the furnishing of "the necessities of life."

combined gross income of both parties. For example, if the non-custodial parent earns \$2,000 per month and the custodial parent earns \$1,000 per month, the total child support obligation for two children would be \$716 per month, \$477 of which would be paid by the non-custodial parent. If the custodial parent was also awarded a monthly alimony payment of \$500, the child support obligation for their two children would be based on gross income of \$3,500 rather than \$3,000. The total child support obligation would increase from \$716 per month to \$813, even though the total amount of money earned by the two parties did not increase.

Additionally, the proportions in which the child support obligation is to be borne would also change. In the above example, the non-custodial parent's disposable income has decreased twenty-five percent, yet he will be required to make a child support payment only two and one-half percent smaller (\$465 per month rather than \$477 had no alimony been awarded). The custodial parent whose gross income has increased by fifty percent will not bear a proportionate increase in the child support obligation, however, because he or she will receive from the non-custodial parent only twelve dollars less per month than before.

Perhaps the inconsistency in treatment of spousal support in the two definitions was merely an oversight. Nevertheless, as the guidelines read now, a clearly inequitable result will arise when there is a pre-existing alimony judgment, thus requiring a routine petition for deviation from the application of the guidelines.⁵²

An additional problem would arise if the child support issue were decided prior to the alimony issue. In that case, it would be necessary to decide whether the subsequent issuance of an alimony order would constitute a change in circumstances necessitating modification⁵³ of the child support order. Absent amendment of the new legislation, practitioners would be well advised to seek judgment on the spousal support issue in advance of resolution of the child support issue.

d. Potential Income

If a parent is voluntarily unemployed or underemployed, the guidelines provide that his or her gross income will be increased, solely for purposes of calculating the support amount, to the level of his or her potential earning capacity.⁵⁴ The key word in this provision is "vol-

52. See *infra* text, *Deviation From the Guidelines*, pp. 1083-87.

53. La. R.S. 9:311.A (Supp. 1990) provides that: "An award for support shall not be reduced or increased unless the party seeking the reduction or increase shows a change in circumstances of one of the parties between the time of the previous award and the time of the motion for modification of the award."

54. La. R.S. 9:315.9 (Supp. 1990).

untarily," which is consistent with pre-guidelines jurisprudence that held that "a parent's practical ability to pay [child support] does not allow that parent to avoid his share of the obligation when the inability arises from his own neglect or failure."⁵⁵

A worker who is laid off or can only find employment at wages lower than his or her potential should not be penalized by having additional income imputed to him or her. The clear intent of the legislature in enacting this provision was to punish the malingeringer who might attempt to evade his or her child support obligation by avoiding full employment. This is evident from the amendment⁵⁶ that removes the presumption found in the child support guidelines of some states⁵⁷ that all full-time employment is full employment.

The new guidelines also provide that a parent caring for a child of the parties under the age of five is exempt from the imputation of potential income. It seems that the intent is that mothers of young children will not be forced into the job market before their children begin to attend school, but that they are encouraged to seek employment once their children reach school age.⁵⁸

Despite the logical reasons for the legislature's inclusion of this provision in the guidelines, there are situations in which the imputation of additional income to a parent who has voluntarily changed to a lower paying position would be extremely inequitable. For instance, an attorney may choose to work as a law librarian or a law professor rather than as a practitioner in a large law firm. Because the attorney has made a choice to utilize his or her legal training in a career with likely lower

55. *McManus v. McManus*, 528 So. 2d 1105, 1107 (La. App. 3d Cir.), writ denied, 533 So. 2d 23 (1988). See also *Moseley v. Moseley*, 216 So. 2d 852, 854 (La. App. 2d Cir. 1968) (stating that "[a] father's obligation to support his wife and child are paramount to his right of voluntary retirement").

56. In the original and engrossed versions of House Bill No. 18 (which in the legislative process ultimately became the Act) section 315(6)(b) stated that "[a] party shall not be deemed underemployed if gainfully employed on a full-time basis." H.R. 18, 15th La. Leg., 2d Extraordinary Sess. (1989). A House floor amendment proposed by Representative Haik was adopted and the pertinent provision of the enrolled bill reads as follows: "A party shall not be deemed voluntarily unemployed or underemployed if he or she is absolutely unemployable or incapable of being employed, or if the unemployment or underemployment results through no fault or neglect of the party." House Floor Amendments, Proposed by Representative Haik of the Louisiana Legislature to Engrossed H.R. 18, 15th La. Leg., 2d Extraordinary Sess. (1989).

57. For a criticism of the retention of this presumption in Colorado, see Harhai, *Key Issues in the Colorado Child Support Guidelines*, 16 *Colo. Law.* 51, 52 (1987).

58. *Guidelines for Determination of Child Support: Hearings on House Bill No. 18 Before the Committee on Civil Law and Procedure for the Louisiana House of Representatives*, 2d Extraordinary Sess. (1989) (tape recording). An additional exemption from the operation of this provision occurs when a parent is physically or mentally incapacitated. La. R.S. 9:315.9 (Supp. 1990).

pay does not necessarily mean that he or she is underemployed. Consider the case of the powerful senior partner in a large law firm who decides that he or she can no longer handle the stress that accompanies the higher income and takes a corporate position at a much lower salary. While this attorney's income will certainly decrease, the change in careers might add several years to his or her life, years during which child support payments will continue but would otherwise have ceased. It seems inequitable that this change be penalized.

Another example of an inequitable application of the potential income provision involves the case of a custodial parent who changes careers in order to accommodate the children's school schedules. For instance, if a custodial parent is a degreed social worker or psychologist who could earn substantially more in a private practice, but decides instead to take a job with his or her local school system in order that his or her work hours closely approximate the children's school hours, imputing potential income achieves an inequitable result. The intent of the parent may have been to save the costs of day care or to provide an opportunity for spending more quality time with the children. Yet, the same law that supported the parent's decision to stay home with the pre-school age children will now penalize the parent for attempting to accommodate his or her schedule with that of the children, simply because they are now of school age.

This provision is also inequitable when a parent seeks additional education to guarantee a higher income and standard of living for himself or herself and his or her children in the future. For example, a mother with only a high school diploma may decide to seek a college degree once her children have all begun school and she now has more free time; or, a father holding a college degree may wish to resign from his position and temporarily work part-time while seeking a second degree that has a greater potential of higher earnings. In these cases, whether the parent involved is the custodial or non-custodial parent, the law works against the best interest of both the parent and the children by not looking beyond the short-term goal of awarding the largest possible child support check at that time.

This part of the statute could be improved by mandating an inquiry into the intent of the parent who has voluntarily changed his or her career path. A parent found to be in bad faith would be treated as though he or she were earning at his or her potential income level while a parent determined to be in good faith in view of the long term best interest of the children involved would make child support contributions only in accordance with his or her actual, though lower, gross income. In the absence of an amendment, parents faced with situations similar to those described above will, of necessity, be forced to seek judicial discretion in application of the child support guidelines based on a change in circumstances.

Perhaps the most problematic aspect of the section of the Act pertaining to parents who are voluntarily unemployed or underemployed is its final sentence, which reads:

The amount of the basic child support obligation obtained by use of this Section shall not exceed that amount which the party paying support would have owed had no determination of the other party's earning income potential been made.⁵⁹

It is possible that the purpose of this amendment was to affect the proportionate shares of child support to be borne respectively by the former spouses in situations in which potential income is imputed to one of them while leaving undisturbed the total child support obligation as determined in accordance with their actual gross income figures. Unfortunately, the amendment did not clearly accomplish this result. The failure to draft this provision unambiguously and to set forth their true intention may have caused the sponsors of the amendment to render the entire section meaningless rather than improving it.

The amendment also indicates that the legislature contemplated only the situation in which income may be imputed to the *obligee* parent and not that in which income may be imputed to the *obligor* parent. This either ignores the possibility of imputing potential earnings to both custodial and non-custodial parents or deliberately creates a dual approach depending upon whether it is the obligor spouse or the obligee spouse to whom potential income is imputed. If the intent of the legislature was to handle the two situations differently, custodial and non-custodial parents would then be treated differently under the Act, perhaps raising the specter of a constitutional challenge on equal protection grounds.

Assuming that a dual approach was intended, if it is the obligor parent to whom potential income is being imputed, then his or her larger income figure is entered into the equation as though it were his or her actual gross income and the formula is completed as in any other scenario. If it is the obligee parent to whom potential income is being imputed, however, then the inflated income figure cannot be used to increase the total amount of the basic child support obligation above the amount that the obligor would have owed had the other parent's income not been inflated. This renders the provision nonsensical because in each case in which the guidelines are utilized the basic child support

59. La. R.S. 9:315.9 (Supp. 1990). This sentence became a part of the Act as a result of an amendment to the originally proposed bill. See Senate Committee Amendments, Proposed by Judiciary Committee A for the Louisiana Senate to Reengrossed House Bill No. 18, 2d Extraordinary Sess. (1989).

obligation (the total amount owed by both parents based on their total income) must exceed the amount that one of the parties owes. The basic child support obligation is equal to the total of the amount that the two parties owe to the children. Therefore, in every case in which potential income is imputed to the obligee, a literal application of this provision would reduce the basic child support obligation to the amount that the obligor would have been obligated to pay to the custodial parent had no potential income been imputed. Presumably, that amount will be apportioned between the parents in accordance with their gross incomes. Rather than insuring that the child derives a benefit from the full earning potential of his or her parents, this means that the amount of support owed by the fully employed non-custodial parent is decreased because the custodial parent is underemployed. It hardly seems reasonable that the legislature would have withheld support money from a child in order to encourage a parent to seek full employment. It is suggested that this section of the Act be amended to correct this obvious inequity. In the meantime, trial attorneys would be advised to seek judicial deviation from this provision because its application is not in the best interest of the children involved.

B. Additions to the Basic Child Support Obligation

Once the basic child support obligation has been determined, the Act provides that four categories of expenses can then be added to the obligation figure prior to the apportionment of the total support amount to the parents. Despite the general policy of the Act that the child support obligation be satisfied only through monetary payments to the custodial parent, it is permissible for the court to order payments to be made directly to the providers of these four categories of expenses.⁶⁰ These four additional items are child care costs, health insurance premiums, extraordinary medical expenses, and other extraordinary expenses.

1. Child Care Costs

The Act mandates that net child care costs, defined as "the reasonable costs of child care incurred by a party due to employment or job search, minus the value of the federal income tax credit for child care,"⁶¹ be added to the basic child support obligation.⁶² Determining what is "reasonable" will be subject to judicial interpretation and should prevent misuse of this provision by one parent acting without the consent of the other in obtaining child care services. It is important to note

60. La. R.S. 9:315.8.D (Supp. 1990).

61. La. R.S. 9:315(7) (Supp. 1990).

62. La. R.S. 9:315.3 (Supp. 1990).

that while this section limits allowable child care costs to those incurred for employment purposes, it does not limit child care costs to those incurred by the domiciliary parent. If, for example, the need arises for the non-domiciliary parent to work overtime during weekend visitation, child care expenses thus incurred should be added to the basic child support obligation and shared by the parents.

An obvious area of concern not addressed by the Act is the need for child care when a parent seeks additional schooling. It would be to the benefit of all parties involved if a custodial parent, in a good faith effort to achieve a better education and correspondingly enhance his or her employability, were allowed to add to the basic child support obligation the reasonable cost of child care incurred to facilitate his or her further education. Otherwise, the high cost of child care might be perceived as a disincentive to the parent's goal of providing a better standard of living, a result the Act should not be perceived as fostering. Perhaps an amendment to the Act is in order to allow child care expenses for educational, as well as work-related, purposes. Careful drafting of the amendment to preserve the stipulation that such expenses be reasonable and to include an inquiry into the good faith intent of the student to pursue employment after schooling has been completed would be simple ways to prevent misuse of the provision.

2. *Health Insurance Premiums*

The Act also makes it mandatory that the cost of health insurance premiums for the child be added to the basic child support obligation.⁶³ Health insurance premiums are defined in detail in the Act⁶⁴ and the amount to be added to the child support figure is limited to the actual out-of-pocket cost to the parent of the child's proportionate share of the total health insurance premium should the child be insured under a policy providing family coverage. This provision does not mean that health insurance must be purchased for each child, nor does it mean that the obligor parent has the sole responsibility for providing health insurance coverage for the child. The clear intent was simply to recognize that health insurance coverage for children was not contemplated in the confection of the guideline's support schedule and to force the parents to share the cost of their children's health insurance premiums.

3. *Extraordinary Medical Expenses*

Extraordinary medical expenses may be added to the basic child support obligation only upon order of the court or agreement of the

63. La. R.S. 9:315.4 (Supp. 1990).

64. La. R.S. 9:315(5) (Supp. 1990).

parties.⁶⁵ Because such expenses are defined in the Act as including not only amounts in excess of \$100 per illness not reimbursed by health insurance, but also special medical procedures such as orthodontia, asthma treatments, physical therapy, and psychological consultation,⁶⁶ the requirement of joint parental consent or court order was necessary to assure that the non-domiciliary parent was required to share only the cost of reasonable medical expenses. An additional statutory safeguard is that professional counseling or psychiatric therapy may be considered as legitimate extraordinary medical expenses only if designed to treat "diagnosed mental disorders."⁶⁷ This language might require expert clarification in the future.

4. *Other Extraordinary Expenses*

Similarly, in the interest of assuring reasonableness, agreement of the parties or order of the court is necessary before expenses incurred in transporting a child from one parent to the other or for special or private schooling may be added to the basic child support obligation.⁶⁸ An additional requirement is placed upon the type of special or private schooling expense that can be added to the support calculation in that there must be a demonstration that the special school is necessary to meet the particular educational needs of the child. Judicial discretion and the skillful advocacy of the parents' attorneys will be crucial factors in obtaining approval for the addition of either of these two types of expenses to the basic child support obligation.

C. *Deductions from the Basic Child Support Obligation—Income of the Child*

The only method of decreasing the basic child support obligation is by applying the child's income to the amount determined to be proper for his or her support. This adjustment is permitted under the Act with the limitation that income earned by the child while a full-time student cannot be used for this purpose.⁶⁹ Additionally, the use of the child's funds for his or her own support is a discretionary matter requiring concurrence of the trial judge.⁷⁰

D. *The Schedule of Basic Child Support Obligations*

While the income shares model used as the foundation for the Louisiana child support guidelines is philosophically aligned with pre-

65. La. R.S. 9:315.5 (Supp. 1990).

66. La. R.S. 9:315(3) (Supp. 1990). This list is illustrative rather than exclusive.

67. La. R.S. 9:315(3) (Supp. 1990).

68. La. R.S. 9:315.6 (Supp. 1990).

69. La. R.S. 9:315.7 (Supp. 1990).

70. *Id.*

guidelines policy and jurisprudence, no information is provided in the text of the guidelines as to the origin of the specific numbers that appear on the numerical schedule incorporated into the Act or the philosophical or political agenda upon which those numbers were based.⁷¹ The briefing manuals prepared for use by the Louisiana legislature⁷² do, however, provide some clues as to the factors relied upon in deriving the actual numbers that comprise the schedule.⁷³ It is advised, however, that the figures that appear on the schedule be reviewed by expert researchers when the guidelines are evaluated in 1991.⁷⁴

For example, a self support reserve for the benefit of the obligor parent was woven into the schedule. The reserve is \$498 per month, the 1989 federal poverty standard for one person.⁷⁵ This reserve was designed to protect the obligor parent's interest in being able to meet a child support obligation and still support himself or herself at a level not falling below the federal poverty line. This concept was borrowed from the child support formula used in Delaware.⁷⁶

The schedule also incorporates the concept that the percentage of parental income designated for the support of minor children should not remain static at all income levels but should decrease as income increases. Similarly, the support figures for one child are not simply doubled to derive the support figure for two children, reflecting another policy decision not addressed in the text of the guidelines.

Perhaps most significantly, the legislation tells us that the *gross* income of the parents is to be used as the primary source from which the basic child support obligation is to be calculated. Proponents have

71. The schedule is found at La. R.S. 9:315.14 (Supp. 1990). The numbers were compiled by Mr. Robert G. Williams, president of Policy Studies, Inc. in Denver, Colorado, a consultant hired by the state to assist in the confection of the guidelines. Mr. Williams has published widely on the subject of child support guidelines. See, e.g., Williams, Guidelines, supra note 3; Williams, Deficiencies, supra note 4; Williams, Child Support and the Costs of Raising Children: Using Formulas to Set Adequate Awards, *Juv. & Fam. Ct. J.*, Fall 1985, at 41. He has assisted several other states, including Colorado, Maryland and Wyoming, in the development of child support guidelines. Letter from Robert G. Williams to Jerry G. Jones, Attorney, Committee on Civil Law and Procedure, La. House of Representatives (March 13, 1989) (discussing the draft statute for implementing child support guidelines in Louisiana) [hereinafter Williams-Jones Letter]. Mr. Williams has also assisted the federal government in the creation of child support policy and procedures. See, e.g., Williams, Guidelines, supra note 3, at 282 n.1; Williams, Deficiencies, supra note 4, at 5 ed.n.

72. Williams-Jones Letter, supra note 71; Briefing Material 1, supra note 24; Briefing Material 2, supra note 24.

73. See supra note 24 for additional discussion of this topic.

74. La. R.S. 9:315.12 (Supp. 1990) requires legislative review of the guidelines not less than once every four years, with the initial review scheduled for 1991.

75. Williams-Jones Letter, supra note 71.

76. See, e.g., Williams, Guidelines, supra note 3, at 295; Thompson & Paikin, supra note 39, at 36.

suggested this is preferable to relying upon net income figures because of the possibility that obligor parents seeking to avoid child support payments may manipulate their federal withholding levels and other variables in order to portray an unrealistic net income figure as compared with their actual gross income.⁷⁷ This problem was not cured in the confection of the Louisiana child support schedule. Instead, net income figures were arbitrarily manipulated to arrive at the gross income figures correlated, on the schedule, with "proper" child support amounts as explained below.

The Act requires each parent to provide financial information to the court and to the other parent.⁷⁸ It further requires that the gross income of each parent be calculated and that their combined total gross income be determined. Only then is the schedule of basic child support obligations consulted. Based on the adjusted total gross income of the parents and the number of children they have, the basic child support obligation is read from the schedule. While the numbers used for the parents' income throughout the formula are gross income figures, the corresponding figures for child support shown on the schedule have been derived by converting gross income figures to net income figures. This result was accomplished by applying 1988 federal tax rates, 1984 Louisiana tax rates, allowing for two standard deductions at the federal level and one at the state level, then adjusting the numbers for earned income tax credit and Social Security deductions, and finally converting the numbers back to gross income figures.⁷⁹ It is inconceivable that the application of these variables, for the presumed purpose of decreasing the administrative inconvenience of determining net income on a case-by-case basis, actually serves the goal of equity. The schedule of support amounts was drafted without providing flexibility for changes in tax rates, different numbers of deductions, or the possibility of sheltered income. While the guidelines must be reviewed at least every four years in order to be in compliance with the federal mandate that led to their adoption,⁸⁰ it is not expressed in the Louisiana act whether the same factors used to select the numbers appearing on the schedule will be among the items so reviewed. It is hoped that such is the case.

E. Joint Custody

While joint custody is presumed to be in the best interest of the child in Louisiana,⁸¹ the child support guidelines make very little allow-

77. See, e.g., Elrod, *supra* note 35, at 129.

78. La. R.S. 9:315.2.A (Supp. 1990).

79. Williams-Jones Letter, *supra* note 71.

80. Family Support Act of 1988, Pub. L. No. 100-485 § 103, 102 Stat. 2343, 2346 (1988).

81. La. Civ. Code art. 146.

ance for the situation in which physical custody of a child is shared by the parents. When child support guidelines were introduced in the regular 1989 legislative session, specific provisions detailing the way in which joint custody was to be handled were included.⁸² These provisions were perceived as being difficult to understand and equally difficult to apply; thus, they were deleted from the bill that was ultimately passed. Additional reasons for this deletion were to avoid having two statutory definitions of joint custody, to prevent posturing by parents who might feign a desire for custody of their children in order to take advantage of the joint custody provisions of the guidelines, and to discourage manipulation of both the child custody laws and the operation of the child support guidelines by parents seeking to achieve adjustments in the amount of the child support award. The new legislation leaves the factoring of joint custody into the child support equation to the discretion of the trial court. The Act states simply that:

In cases of joint custody, the court may consider the period of time spent by the child with the nondomiciliary party as a basis for adjustment to the amount of child support to be paid during that period of time. The court may include in such consideration the continuing expenses of the domiciliary party.⁸³

This is an instance in which the attorneys representing the parents should appeal to the judge hearing the case to deviate from the letter of the guidelines in order to reach a result that is equitable to both parents and that is also in the best interest of the child.

F. Modification of a Child Support Award

1. Change of Circumstances

There is no provision in the guidelines explaining the bases upon which a parent can seek modification of a child support award. Enactment of the new guidelines, however, is not to be deemed a "change in circumstances"⁸⁴ allowing either party an opportunity to petition the court for modification of an established child support award.⁸⁵ This

82. See H.R. 1383, 15th La. Leg., Regular Sess. (1989). The bill redefined "joint physical custody" for the purposes of the child support guidelines and set forth separate procedures to be followed in the case of sole custody and joint physical custody arrangements.

83. La. R.S. 9:315.8.E (Supp. 1990).

84. La. R.S. 9:311.A (Supp. 1990) provides that: "An award for support shall not be reduced or increased unless the party seeking the reduction or increase shows a change in circumstances of one of the parties between the time of the previous award and the time of the motion for modification of the award."

85. La. R.S. 9:315.11 (Supp. 1990).

provision thus allays the fears of some critics of the guidelines that the new legislation would multiply the amount of child support litigation. Because there is no express standard for modification provided in the guidelines, it appears that it will still be necessary, as under the pre-guidelines rules, that a party demonstrate a change in circumstances before seeking modification of an existing child support judgment. The jurisprudential standards requiring more than a mere change in circumstance⁸⁶ and, usually, a substantial change in circumstances,⁸⁷ must still be met.

Some states have dealt with the problem of subsequent modification trials by allowing parties to request modification every two years without showing a change in circumstances⁸⁸ or by requiring that the parents exchange financial information every few years in order that they can determine whether or not a modification is necessary.⁸⁹ Analysts have suggested alternative procedures for updating awards, such as making routine appearances before administrative review panels or mediators,⁹⁰ that are not as burdensome to parents as litigation, the traditional method utilized for award modification. Such procedures could easily be built into the guidelines⁹¹ so that they are known and understood by all parties involved and it is suggested that the Louisiana guidelines would benefit from such an amendment.

2. *In Globo Awards*

Prior to the enactment of the guidelines, child support judgments in Louisiana were either in the form of a "per child" award or an "in globo" award. The significant difference between the two was that a "per child" award was automatically reduced proportionately as the children reached the age of majority⁹² while an "in globo" award could be reduced only upon petition of the court, even when one of the children reached majority.⁹³ Under the guidelines, all child support awards in Louisiana are "in globo" awards.

Two basic theories underlying the design of the schedule of basic child support obligations are that certain household expenses considered

86. *Reavill v. Reavill*, 370 So. 2d 175, 177 (La. App. 3d Cir. 1979).

87. See, e.g., *Stagg v. Stagg*, 436 So. 2d 1202, 1205 (La. App. 4th Cir.), writ denied, 442 So. 2d 453 (1983); *Mortillaro v. Mortillaro*, 507 So. 2d 854, 855 (La. App. 5th Cir.), writ denied, 508 So. 2d 825 (1987).

88. *Brackney*, supra note 10, at 212 (Michigan).

89. *Mangum*, Arizona: New Child Support Guidelines, *Ariz. B.J.*, Dec./Jan. 1988, at 10 (Arizona).

90. *Brackney*, supra note 10, at 213.

91. *Id.*

92. La. R.S. 9:309.A.

93. La. R.S. 9:309.B.

in the cost of a child's support cannot simply be divided by the number of children in the home and thus equitably stated⁹⁴ and that a smaller percentage of total income is spent on each child as a result of the economies of scale as the number of children in a family increases.⁹⁵ However, because the schedule already contains numbers for one through six or more children at each income level considered, a complicated recalculation would not be necessary to determine the proper child support award when the number of children subject to the award changes. A simple amendment to the guidelines allowing the basic child support obligation to be reduced to the next lower category on the schedule each time a minor child reaches majority would eliminate the necessity of going back to court for a routine modification as each child turns eighteen.

G. *Stipulations by the Parties*

Should the parents negotiate a stipulation as to the amount of child support each of them will provide to their minor children, the court has the discretion to review the mutual agreement but is under no requirement to do so.⁹⁶ If reviewed, a stipulation must be found adequate in light of the child support guidelines but there is no requirement that information pertaining to the income of the parents be reviewed. It hardly seems possible that the adequacy of an award under a system correlating the award amounts directly to income can be assessed without examining information regarding the income of the parties. Nor does it seem plausible that a system designed to meet the goals of consistency and adequacy of child support awards would provide for unreviewed stipulations of the parties. That both of these are specifically permitted under the new guidelines illustrates the extent of judicial discretion retained under the new legislation.

Proponents of child support guidelines have suggested that an advantage to employing formulas and schedules for the determination of child support awards is that such a system increases the objectivity of the process by which child support awards are determined and results in a correspondingly higher number of out of court settlements of child support disputes.⁹⁷ Parents and children would be spared the trauma of

94. For a more detailed discussion of this phenomenon, see Weaver, *New Child Support Guideline Adopted*, *Fam. L. Newsl.*, Sept. 1986, at 1665 [hereinafter Weaver]; Williams, *Guidelines*, *supra* note 3, at 287.

95. Norton, *The Challenge of Mandatory Child Support Schedules*, *Cal. Law.*, Oct. 1985, at 59, 60.

96. La. R.S. 9:315.1.D (Supp. 1990).

97. See, e.g., Powers, *Massachusetts Child Support Guidelines of 1988*, 30 *B.C.L. Rev.* 644, 652 (1989); Williams, *Guidelines*, *supra* note 3, at 286; Goldfarb, *supra* note 2, at 326.

court appearances; funds that would otherwise have gone to pay the costs of litigation could be redirected to cover the costs of supporting the children; congested court calendars would be relieved; and the adequacy and consistency of the awards so determined would be increased. Anyone—judges, attorneys, the litigants themselves—could input the appropriate numbers into the formula, consult a table, and derive the presumptively correct child support award figure. Under Louisiana's new guidelines, however, so many variables have been written into the formula and so much discretion has been left in the hands of the judges that the goal of increasing out of court settlements will not likely occur because the guidelines do not provide the certainty of result required for such a by-product. It is just as plausible to predict that the legislation will, in fact, decrease the number of stipulated support decrees and increase the amount of child support litigation heard in Louisiana courtrooms because there are so many issues raised by the guidelines legislation that are left to the discretion of the court. The certainty required to encourage voluntary compliance with the guidelines would exist if it were necessary that stipulated settlements be reviewed by a judge and that they conform to the new guidelines. As the legislation now reads, however, the strategy for attorneys representing clients in the inherently adversarial atmosphere of child support disputes will be to use the discretionary features and the permissible variables addressed in the legislation to the advantage of the individual client. The typical strategy may be to challenge the application of the support calculation and numbers on the schedule in each particular set of circumstances rather than simply complying with the guidelines.

H. Deviation From the Guidelines

Like most other states, Louisiana has historically permitted its judges a great deal of discretion in setting the amounts of child support awards.⁹⁸ Parents relied on the ability of their attorneys to present most favorably the circumstances of their case. The amount of support determined was

98. "In most states, the judge's broad discretion is governed by only two general considerations—the needs of the child and the noncustodial parent's ability to pay." Elrod, *supra* note 35, at 107. For Louisiana decisions regarding the extent of judicial discretion permitted in fixing the amount of child support awards, see, e.g., *Ducote v. Ducote*, 339 So. 2d 835, 839 (La. 1976) (considerable discretion); *Nelms v. Nelms*, 413 So. 2d 1341, 1342 (La. App. 1st Cir.), writ denied, 415 So. 2d 944 (1982) (wide discretion); *Jones v. Jones*, 351 So. 2d 825, 826 (La. App. 1st Cir. 1977) (discretion); *Sims v. Sims*, 457 So. 2d 163, 164 (La. App. 2d Cir. 1984) (wide discretion); *Dickinson v. Dickinson*, 461 So. 2d 1184, 1186 (La. App. 3d Cir. 1984), writ denied, 465 So. 2d 736 (1985) (much discretion); *Ducree v. Thomas*, 415 So. 2d 1009, 1011 (La. App. 4th Cir. 1982) (considerable discretion); *Trinchard v. Trinchard*, 446 So. 2d 400, 401 (La. App. 5th Cir. 1984) (great discretion).

not likely to be changed on appeal because the standard for judicial review in the matter of child support determinations requires a showing of abuse of discretion by the trial judge.⁹⁹

Although providing for the best interest of the child is always the ideal sought by child support judgments, the children themselves are never represented in child custody or child support litigation.¹⁰⁰ Instead, the true focus of the proceedings is often subverted by the skillful advocacy of the parents' attorneys, locked in an emotionally-charged and sometimes hostile lawsuit.

Proponents of child support guidelines contend that the removal of judicial discretion better protects the interest of children by assuring adequate awards and better protects the interest of parents by assuring that consistent awards are issued.¹⁰¹ In practice, however, the newly enacted Louisiana guidelines may not actually accomplish those goals because our judges will retain a great deal of discretion.

While it establishes a rebuttable presumption that the amount of child support determined through the use of the guidelines is the proper amount to be awarded,¹⁰² the Act also expressly preserves the court's right to deviate from the guidelines.¹⁰³ In stating that "[t]he court may deviate from the guidelines set forth in this Part,"¹⁰⁴ judges are given the authority not only to change the award figure derived by employing the formula described in the legislation (a deviation only from the "Schedule for support" contained in Section 315.13) but also authority to change or to disregard any or all of the Act's other provisions (since the entirety of the legislation is entitled "Guidelines for Determination of Child Support"). The only limits placed on judicial deviation are the requirements that the judge find that the use of the guidelines achieved a result that was either not in the best interest of the child or inequitable to the parties and that he give an explanation of the reasons for the deviation in the trial record.¹⁰⁵ The use of the "best interest of the child" and "inequitable to the parties" standards preserves additional judicial latitude because a determination that either of these

99. See, e.g., *Nelms v. Nelms*, 413 So. 2d 1341, 1342 (La. App. 1st Cir.), writ denied, 415 So. 2d 944 (1982); *Jones v. Jones*, 351 So. 2d 825, 826 (La. App. 1st Cir. 1977); *Sims v. Sims*, 457 So. 2d 163, 164 (La. App. 2d Cir. 1984); *Dickinson v. Dickinson*, 461 So. 2d 1184, 1186 (La. App. 3d Cir. 1984), writ denied, 465 So. 2d 736 (1985); *Ducree v. Thomas*, 415 So. 2d 1009, 1011 (La. App. 4th Cir. 1982); *Trinchard v. Trinchard*, 446 So. 2d 400, 401 (La. App. 5th Cir. 1984).

100. Smith and Laramore, *Massachusetts' Child Support Guidelines: A Model for Development* 23 (1986) (unpublished paper); Williams, *Guidelines*, supra note 3, at 313.

101. See, e.g., Brackney, supra note 10, at 199-200.

102. La. R.S. 9:315.1.A (Supp. 1990).

103. La. R.S. 9:315.1.B (Supp. 1990).

104. *Id.*

105. *Id.*

standards has been satisfied requires a strictly subjective evaluation on the part of the trial court.

More particularly, the Act sets forth an illustrative list of five factors that may be considered by the court in making a decision to deviate from the guidelines.

First, a combined adjusted gross income lower or higher than that shown on the support schedule allows the judge to set the support amount based solely on the facts of the case. The only limit to this discretion is that when a higher income figure is being considered the court must set an award at least as large as the highest one shown on the schedule.¹⁰⁶ Some states have established a minimum award for those situations where the obligor's income is lower than the minimum amount on the state's schedule. For example, Colorado obligors who earn less than \$500 per month are required to pay between \$20 and \$50 per month in child support. This is thought to be responsive to the public policy that all parents should pay at least some minimal amount toward the support of their children.¹⁰⁷ Louisiana chose to leave both high-end and low-end determinations to the trial court's discretion.

A judge may also deviate from the guidelines when a party has a legal obligation to support a dependent living in that party's household but who is not involved in the current action.¹⁰⁸ This provision might pertain to a spouse or children from a subsequent marriage, children from a former marriage, or elderly parents. It might also include a child of the marriage between the present litigants who, through a split custody arrangement,¹⁰⁹ is in the custody of the non-custodial spouse in the current action. While the Act provides authority for deviation with regard to these dependents, it could certainly be argued, in the case where the additional dependents are minor children, that the schedule of presumptively proper support amounts should be used to arrive at an allocation of the parents' income to all of the children involved.

The next specific consideration for deviation is an extraordinary medical expense of either a party or a dependent of a party that has not already been factored into the support calculations.¹¹⁰ Extraordinary medical expenses are defined as those costing \$100 above insurance policy reimbursement for a single illness or those required by special medical treatments such as orthodontia or physical therapy.¹¹¹ The judge's

106. La. R.S. 9:315.1.C(1) (Supp. 1990).

107. Weaver, *supra* note 94, at 1665.

108. La. R.S. 9:315.1.C(2) (Supp. 1990).

109. A split custody arrangement is that in which each of the parents has legal custody of at least one of the children of their marriage.

110. La. R.S. 9:315.1.C(3) (Supp. 1990).

111. La. R.S. 9:315(3) (Supp. 1990).

discretion is unlimited in determining when the existence of such medical expenses warrants a deviation from the child support guidelines.

The existence of an extraordinary community debt of the parties is also a factor that may be considered by the judge in making the decision to deviate from the guidelines.¹¹² The term "extraordinary" is unfortunately not defined in the Act.

One critic of the new guidelines points out that a judgment of separation or divorce generally does not terminate the responsibility of the couple to their pre-existing financial obligations and questions whether house notes, car notes, and credit card payments might be considered extraordinary debts of the community.¹¹³ Practitioners will likely urge that house notes and similar community debts do fall into the category of extraordinary community debts.

Finally, the Act specifically permits a judge to consider deviating from the guidelines should the establishment of a temporary support order be necessary for the interim period between the actual filing for the order and the hearing on the matter.¹¹⁴ The amount of such a temporary order is to be determined at the discretion of the trial court. This provision was necessitated by the inherent delays in the judicial system and the fact that a child's financial needs do not yield to such considerations.¹¹⁵

It should be remembered that the Act does not create an irrefutable method of determining child support awards. So much judicial discretion has been retained that it is difficult to imagine a scenario in which a party will not have the opportunity to urge that the court deviate from at least one of the provisions incorporated in the guidelines.

It is impossible to predict the manner in which the state's judiciary will use the guidelines. An extreme reaction may be to view the guidelines as mere suggestions that can be easily circumvented. At the other extreme, the guidelines may be perceived as legislative mandates that must be adhered to with strict precision. Although leaving too much discretion in the judge's hands undermines the goals of consistency and certainty that were inherently sought in the decision to implement child support guidelines,¹¹⁶ rigid application of the guidelines in the absence of any judicial discretion would also be inequitable. Our courts have traditionally rejected the notion that a mathematical formula can weigh the innumerable variables that must be factored into a decision as important

112. La. R.S. 9:315.1.C(4) (Supp. 1990).

113. Holliday, *Child Support Guidelines: Is the New Law the Answer?* Louisiana Woman, Sept. 1989, at 14.

114. La. R.S. 9:315.1.C(5) (Supp. 1990).

115. *Guidelines for Determination of Child Support: Hearings on House Bill No. 18 Before the Committee on Civil Law and Procedure for the Louisiana House of Representatives*, 2d Extraordinary Sess. (1989) (tape recording).

116. Goldfarb, *supra* note 2, at 336.

as the apportionment of funds for the support of minor children.¹¹⁷ We can, therefore, expect several appellate court decisions relating to the interpretation of the discretionary provisions of the Act.

IV. CONCLUSION

The federal mandate for the implementation of child support guidelines afforded the Louisiana legislature a unique opportunity to revise the system traditionally used for the determination of child support awards and to attempt to achieve the goals of adequacy and consistency in the setting of those awards. The newly enacted guidelines embrace, in large part, the state's express public policies regarding family support obligations and were designed to provide for the best interest of the children involved while also treating parents equitably.

A likely impact of the legislation will be litigation regarding the extent of the latitude to be afforded trial courts under the new guidelines and the specific instances in which deviation from the guidelines will be permitted. It is likely that there will be a continuing interest in amendment of the guidelines to include topics not covered in the initial legislation and to modify specific provisions of the legislation once the legal community has had a chance to observe the actual effects of the Act on their clients. It is also anticipated that there will be a decrease in the number of negotiated settlements of child support disputes because too much judicial discretion was preserved under the new system. An increase in the number of child custody battles may also result when individual litigants realize that custody can be a self-serving arrangement when child support awards are large *and* only the non-domiciliary parent is required to satisfy the obligation with actual cash payments.

It is hoped that the needs of our state's children will always be the primary focus of child support disputes and that the guidelines discussed in this article will be used by our judges to mitigate the certain and sometimes catastrophic economic effects of divorce by enabling them to establish awards that are tailored to the best interest of the children but are also equitable to the parents.

Sue Nations

Postscript

A copy of the manuscript of this article was delivered to Representative Allen Bradley, the author of the bill containing child support

117. See, e.g., *Sims v. Sims*, 457 So. 2d 163, 164 (La. App. 2d Cir. 1984); *Stepp v. Stepp*, 442 So. 2d 1327, 1329 (La. App. 3d Cir. 1983); *Fall v. Fontenot*, 307 So. 2d 779, 781 (La. App. 3d Cir. 1975); *Clynes v. Clynes*, 450 So. 2d 372, 375 (La. App. 4th Cir. 1983); *Simon v. Simon*, 450 So. 2d 755, 757 (La. App. 5th Cir. 1984).

guidelines enacted in 1989. He discussed the content with other legislators and several suggestions of the author of the article were included in legislation introduced during the 1990 Legislative Session.

House Bill No. 1006 by Representative Randy Roach amended La. R.S. 9:315(4)(a), (d) (Supp. 1990) to delete "gifts" and "prizes" from the definition of "gross income." The bill passed both Houses of the Legislature and was signed by the Governor. (1990 La. Acts No. 117). In addition to amending the definition of "gross income" to exclude the two mentioned phrases, the definition now also excludes "per diem allowances." Furthermore, the Act provides that a specific cause justifying a deviation from the guideline amount may include "(b) permanent or temporary total disability of a spouse to the extent such disability diminishes his present and future earning capacity, his need to save adequately for uninsurable future medical costs, and other additional costs associated with such disability, such as transportation and mobility costs, medical expenses, and higher insurance premiums." (La. R.S. 9:315.1(C)(6)).