

Chapter 7 CHILD SUPPORT

SYNOPSIS

PART I: STRATEGY

§ 7.01 Scope

§ 7.02 Objective and Strategy

PART II: ASSERTING JURISDICTION FOR CHILD SUPPORT AND UIFSA

§ 7.03 CHECKLIST: Asserting Jurisdiction for Child Support and UIFSA

§ 7.04 Determining the Court in Which to File for Child Support

§ 7.05 Obtaining Personal Jurisdiction for the Payment of Child Support

§ 7.06 Addressing the Simultaneous Filing of Actions in Two States Under UIFSA

§ 7.07 Continuing Exclusive Jurisdiction Under UIFSA

§ 7.08 Resolving Conflicting Orders Issued by Two States

§ 7.09 Effectuating Cooperation Among States Under UIFSA

§ 7.10 Considering Evidentiary Issues Under UIFSA

§ 7.11 Registering Child Support Orders for Enforcement Under UIFSA

§ 7.12 Contesting the Registration and Enforcement of an Order

§ 7.13 Asserting Jurisdiction and Modifying a Child Support Order Issued by Another State

PART III: DETERMINING WHO IS LIABLE FOR CHILD SUPPORT

§ 7.14 CHECKLIST: Determining Who is Liable for Child Support

§ 7.15 Commencing a Child Support Action

§ 7.16 Determining the Parties Responsible to Pay Child Support

[1] Paying Child Support by a Non-Parent

[2] Asserting Paternity

[3] Awarding Child Support for Adopted Children

[4] Awarding Child Support in Annulment Actions

PART IV: CONSIDERING THE STATUTORY CRITERIA IN ESTABLISHING CHILD SUPPORT

§ 7.17 CHECKLIST: Considering the Statutory Criteria in Establishing Child Support

§ 7.18 Considering Statutory Criteria in Establishing Child Support

§ 7.19 Considering the Age of the Child

§ 7.20 Considering the Health of the Child

§ 7.21 Considering the Station of the Child

§ 7.22 Considering the Occupation, Sources of Income, Vocational Skills and Employability of the Child

§ 7.23 Considering the Educational Status and Expectations of the Child

§ 7.24 Considering the Child's Estate

§ 7.25 Considering the Needs of the Child

§ 7.26 Establishing Child Support in a Paternity Action

PART V: USING THE CHILD SUPPORT GUIDELINES

§ 7.27 CHECKLIST: Using the Child Support Guidelines

§ 7.28 Using the Child Support Guidelines

[1] Considering the Child Support Guidelines Is Mandatory

[2] Calculating Child Support Under the Guidelines

[3] Calculating Child Support When the Income Exceeds the Guidelines

[4] Calculating Contributions to Medical and Child Care Costs

[5] Adjusting the Child Support for Split Custody

[6] Adjusting the Child Support for Shared Physical Custody

[7] Adjusting Child Support for Another Qualified Child

§ 7.29 Determining Income for Purposes of the Child Support Guidelines

§ 7.30 Determining Income Other Than Salary and Wages

§ 7.31 Determining Deductions from Income

§ 7.32 Determining Deviation Criteria Under the Child Support Guidelines

[1] Setting Forth the Predicates for Employing Deviation Criteria

[2] Applying Other Financial Resources Available to a Parent as a Deviation Criterion
 [3] Applying Extraordinary Expenses for the Child's Care or Maintenance as a Deviation Criterion
 [4] Applying Extraordinary Parental Expenses as a Deviation Criteria
 [5] Applying the Needs of a Parent's Other Dependents as a Deviation Criterion
 [6] Applying the Coordination of Total Family Support as a Deviation Criterion
 [7] Applying Special Circumstances as a Deviation Criterion
 § 7.33 Making Orders for Health Care Coverage and Unreimbursed Medical Expenses
 § 7.34 Making Orders for Work-Related Child Care Expenses
PART VI: ESTABLISHING TEMPORARY CHILD SUPPORT ORDERS
 § 7.35 CHECKLIST: Establishing Temporary Child Support Orders
 § 7.36 Timing and Statutory Criteria for Awarding Temporary Child Support
 § 7.37 Preparing for a Temporary Child Support Hearing
 § 7.38 Stipulating to Child Support
 § 7.39 Terminating Child Support Orders Upon the Rendering of a Final Judgment
PART VII: ESTABLISHING PERMANENT CHILD SUPPORT ORDERS
 § 7.40 CHECKLIST: Establishing Permanent Child Support Orders
 § 7.41 Determining the Amount and Manner of Payment of Child Support
 [1] Using the Child Support Guidelines
 [2] Predicating Child Support on Bonus or Other Variable Income
 [3] Establishing a Wage Withholding
 § 7.42 Determining the Duration of a Child Support Order
 § 7.43 Determining the Source of Funds to Pay for Child Support
 § 7.44 Assessing a Child's Independent Right to Support and Non-Modifiable Orders
 § 7.45 Assessing a Parent's Independent Right to Receive Child Support on Behalf of Child
 § 7.46 Making Provisions for Health Insurance Coverage and Processing Claims
 § 7.47 Making Provisions for the Payment of Unreimbursed Medical, Dental, Orthodontia, or Mental Health Expenses
 § 7.48 Providing Security for Child Support
 § 7.49 Allocating Dependency Exemptions
 § 7.50 Providing for the Payment of Private School
PART VIII: PROVIDING FOR THE PAYMENT OF COLLEGE EDUCATION
 § 7.51 CHECKLIST: Providing for the Payment of College Education
 § 7.52 Establishing Orders for College Expenses by Agreement
 § 7.53 Establishing College Educational Orders Pursuant to Statute
 [1] Entering Educational Support Orders
 [2] Qualifying for an Educational Support Order
 [3] Determining the Amount to be Paid Under an Educational Support Order
 [4] Modifying an Educational Support Order
 [5] Providing Security for an Educational Support Order
 [6] Paying for College Educational Expenses from 529 Accounts
PART IX: PREPARING MOTIONS FOR MODIFICATION
 § 7.54 CHECKLIST: Preparing Motions for Modification
 § 7.55 Determining the Statutory Basis for Modification
 § 7.56 Modifying Child Support Where There is a Prior Deviation from the Child Support Guidelines
 [1] Demonstrating a Substantial Change in Circumstances
 [2] Modifying Child Support from an Unallocated Order
 § 7.57 Modifying the Dependency Exemption Allocation
 § 7.58 Modifying the Security for Child Support
 § 7.59 Retiring as a Basis for Modifying Child Support
 § 7.60 Modifying Child Support Retroactively

PART I: STRATEGY

CHILD SUPPORT

§ 7.01 Scope

This chapter covers:

- The jurisdictional basis necessary to order child support.
- Obtaining jurisdiction over a non-resident defendant under UIFSA.
- The application of UIFSA in making and enforcing child support orders.
- Determining the parties who may be liable for the support of a child.
- The statutory factors for determining the amount of child support.
- Calculating child support under the child support guidelines.
- Considerations when seeking temporary and permanent child support orders.
- Making orders for the payment of college educational expenses for the child.
- The circumstances and considerations when seeking to modify child support.

§ 7.02 Objective and Strategy

This chapter covers the manner in which jurisdiction may be asserted to award child support. Where there is a non-resident defendant, the provisions of UIFSA may govern interstate child support orders. Although typically parents are the only ones liable for child support, there are circumstances in which other people may be liable for child support, which is discussed in this chapter. The statutory provisions and criteria are discussed in depth in the chapter. The child support guidelines, application and deviation criteria, which are applicable in all cases in which there is a child, is analyzed. This chapter covers seeking temporary and permanent child support orders. The ability to obtain orders regarding the payment of college educational expenses is discussed in this chapter. Finally, this chapter covers the circumstances under which a modification of child support may be sought.

PART II: ASSERTING JURISDICTION FOR CHILD SUPPORT AND UIFSA CHILD SUPPORT

§ 7.03 CHECKLIST: Asserting Jurisdiction for Child Support and UIFSA

7.03.1 Asserting Jurisdiction for Child Support and UIFSA

- Determining which court to file for child support:
 - A child support action may be filed in superior court or the division.
 - Unmarried parties typically bring an action in the family support

magistrate division.

- Married parties will determine child support as part of the dissolution action. **Authority:** Conn. Gen. Stat. §§ 46b-1(4), 46b-302(11), 46b-302(24), and 46b-303(a). **Discussion:** See § 7.04, *below*.

- Obtaining personal jurisdiction for the payment of child support:

- Personal jurisdiction over the child support obligor is needed to make an enforceable order.

- Jurisdiction may be asserted over a non-resident defendant in three ways:

- The defendant can file an appearance and consent to jurisdiction.
 - The provisions of the long-arm statute may be met.
 - The long-arm provisions of UIFSA may be employed.

- UIFSA provides a broader definition of contacts sufficient to assert jurisdiction. **Authority:** 28 U.S.C. § 1738B(c); Conn. Gen. Stat. §§ 46b-46, 46b-84, 46b-215, 46b-301 *et. seq.*, 46b-311(a), and 46b-311(b); *Beardsley v. Beardsley*, 144 Conn. 725 (1957). **Discussion:** See § 7.05, *below*. See also Chapter 2, §§ 2.17–2.21, *above*.

- Addressing the simultaneous filing of actions in two states under UIFSA

- The family support magistrate may exercise jurisdiction if the Connecticut petition is filed before time expires in the other state to challenge jurisdiction, if a challenge has been made, and if Connecticut is the child's home state.

- The family support magistrate will refrain from exercising jurisdiction when the petition in the other state is filed before time expires to contest jurisdiction in Connecticut, a challenge has been made to Connecticut's jurisdiction, and the other state is the child's home state. **Authority:** Conn. Gen. Stat. §§ 46b-314(a), 46b-314(b), and 46b-343. **Discussion:** See § 7.06, *below*. **Discussion:** See § 7.06, *below*.

- Continuing exclusive jurisdiction under UIFSA:

- As long as either party or the child resides in Connecticut when the modification is being sought, Connecticut will have continuing exclusive jurisdiction over orders that it originally made.

- If the parties consent to another court exercising jurisdiction and the controlling order is not the Connecticut order, Connecticut will not exercise exclusive continuing jurisdiction. **Authority:** Conn. Gen. Stat. §§ 46b-315(a), 46b-315(b), 46b-315(d) and 46b-316. **Discussion:** See § 7.07, *below*.

- Resolving conflicting orders issued by two states:

- Where orders have been issued by two states, the following hierarchy will determine which order controls:

- If one court has continuing exclusive jurisdiction, that order will control.

- If two courts have continuing exclusive jurisdiction, the order rendered in the child's home state controls.

- If no state has continuing exclusive jurisdiction, the family support magistrate may issue an order.

- The court shall be provided with all prior orders and a record of payments made.

- The court that has the controlling court order will assume continuing exclusive jurisdiction over the order.

- A certified copy of the order will be registered in each state which had previously issued an order. **Authority:** Conn. Gen. Stat. §§ 46b-317(b),

46b-317(d), 46b-317(e), 46b-317(f), and 46b-317(g). **Discussion:** See § 7.08, *below*.

□ Effectuating cooperation between states under UIFSA:

- The non-resident defendant may respond through the state in which he or she resides.
- Connecticut, as the initiating state, will forward the petition to the responding state, where the defendant resides.
- Upon entering an order, the responding state may request the initiating state to issue a certificate of its findings, and if it is a foreign country, to convert the order into local currency.
- When Connecticut modifies or effectuates an order rendered by another state, the substantive and procedural law of Connecticut will apply.
- Any order modifying or enforcing the order will be sent to the initiating state. **Authority:** Conn. Gen. Stat. §§ 46b-320, 46b-330(a), 46b-330(b), 46b-331(a), 46b-331(c), 46b-344, and 46b-388. **Discussion:** See § 7.09, *below*.

□ Considering evidentiary issues under UIFSA:

- An out-of-state sworn financial affidavit will not be barred on the basis of hearsay.
- A certified record from the responding tribunal of payments made may be used.
- Bills regarding paternity testing and the mother's health care, provided at least ten days in advance, will be conclusive as to amount and reasonableness.
- Facsimile documents are not objectionable due to the means of transmission.
- Depositions may occur by telephone or electronic means.
- The court may draw an adverse inference if a party refuses to answer a question.
- The spousal privilege does not apply.
- The husband-wife and parent-child immunity defense may not be asserted.
- A certified acknowledgment of paternity is admissible.
- The initiating tribunal may request another state to assist with discovery. **Authority:** Conn. Gen. Stat. §§ 46b-342, and 46b-344. **Discussion:** See § 7.10, *below*.

□ Registering child support orders for enforcement under UIFSA:

- The initiating tribunal must provide:
 - A letter requesting the registration and enforcement of the order.
 - Two copies of the order and any modification, one of which must be certified.
 - A sworn statement as to the amount of the arrearage.
 - The obligor's name, address, and social security number; the obligor's employer's name and address; and a description of exempt property in Connecticut.
 - The obligee's name and address and the address where payments should be sent.
 - A statement detailing what proceedings are currently pending for the child's support.
- Such orders will then be filed as a foreign matrimonial judgment and sent to the obligor. **Authority:** Conn. Gen. Stat. §§ 46b-371(a), 46b-371(b),

46b-372, 46b-377, and 46b-388. **Discussion:** See § 7.11, below.

- Contesting the registration and enforcement of an order:
 - One of the following must be demonstrated to contest the registration and enforcement of an order from another state:
 - The court issuing the order did not have jurisdiction.
 - The order was obtained by fraud.
 - There was a later court order that vacated, modified, or suspended the order for which enforcement is being sought.
 - The order has been stayed pending appeal.
 - A defense under Connecticut law exists regarding a remedy sought through the order.
 - Full or partial payment has been made.
 - Enforcement is barred by the statute of limitations.
 - The order is not the controlling order. **Authority:** Conn. Gen. Stat. §§ 46b-379(a) and 46b-379(b). **Discussion:** See § 7.12, below.

□ Asserting jurisdiction and modifying a child support order issued by another state:

- Jurisdiction to modify an order issued by another state may be done only if:
 - The issuing state is not the residence of either party or the child.
 - The petitioner is a non-resident who is seeking to have Connecticut modify the order.
 - The family support magistrate division has personal jurisdiction over the respondent.
- The parties may also consent to Connecticut exercising jurisdiction.

Authority: Conn. Gen. Stat. §§ 46b-311(a), 46b-311(b), 46b-386, 46b-386(b), 46b-386(c), and 46b-388; *Studer v. Studer*, 320 Conn. 483 (2016). **Discussion:** See § 7.13, below.

§ 7.04 Determining the Court in Which to File for Child Support

Actions for child support may be brought in either the superior court or the family support magistrate division. Conn. Gen. Stat. §§ 46b-1(4) and 46b-303(a). Typically, in a dissolution action, the issue of child support is decided in the superior court where the action is pending. However, unmarried parties will typically utilize the family support magistrate division to seek orders for child support. This is especially true when a paternity determination is sought.

The family support magistrate or superior court will either act as the initiating tribunal or the responding tribunal under UIFSA. The initiating tribunal is where the child support order originates. Conn. Gen. Stat. § 46b-302(11). The responding tribunal is the one receiving the petition from the initiating state. Conn. Gen. Stat. § 46b-302(24).

#Comment Begins

Strategic Point: Even if the respondent is not an out-of-state defendant, there are certain advantages to bringing a support action before the family support magistrate. The family support magistrate division is more likely to require a child support obligor to undertake and document job support efforts, to incarcerate recalcitrant obligors, and to require periodic report backs to determine the status of payments.

#Comment Ends

§ 7.05 Obtaining Personal Jurisdiction for the Payment of Child Support

A child support order operates *in personam*. *Beardsley v. Beardsley*, 144 Conn. 725, 726–727 (1957). Accordingly, the court cannot enter orders binding a payor personally without acquiring personal jurisdiction over him or her. However, unlike alimony, which is waived unless an order is made at the time of the dissolution, an order of child support may never be waived. Conn. Gen. Stat. §§ 46b-84 and 46b-215.

Where the defendant is not a resident of Connecticut, personal jurisdiction may be asserted in one of three ways. Firstly, the defendant may voluntarily submit to the jurisdiction by filing an appearance. Secondly, through application of the long-arm statute requirements, i.e., that the nonresident party has received actual notice and the party seeking child support has met the residency requirements for a dissolution. Conn. Gen. Stat. § 46b-46. Finally, there are long-arm provisions of UIFSA. Conn. Gen. Stat. § 46b-301 *et seq.* UIFSA provides that personal jurisdiction may be asserted when:

1. Personal service is made on the defendant in Connecticut.
2. The defendant consents to the assertion of personal jurisdiction by filing an appearance and failing to contest jurisdiction, or by filing a responsive document that waives any claimed lack of jurisdiction.
3. The child and defendant reside in Connecticut.
4. The defendant provided prenatal expenses or support for the child and resides in Connecticut.
5. The defendant, by his or her acts or directives, has caused the child to reside in Connecticut.
6. The defendant and the other parent had sexual intercourse in Connecticut and the child may have been conceived as a result.
7. Any other reason that comports with constitutional requirements to assert jurisdiction, exists.

Conn. Gen. Stat. § 46b-311(a). For a more thorough discussion on personal jurisdiction, *see* Chapter 2, § 2.05, *above*.

The provisions under UIFSA are more detailed as to what will constitute sufficient contacts with Connecticut for jurisdiction over a nonresident, all of which are related to the child. The fact that a petitioner has participated in an action before a responding tribunal, which is the court in the state in which he or she resides, does not give the courts of Connecticut personal jurisdiction over the petitioner in any other proceeding. Conn. Gen. Stat. § 46b-311(b).

#Comment Begins

Strategic Point: Because the jurisdictional provisions of UIFSA are so broad, if an out-of-state

defendant meets any of the criteria to assert jurisdiction, it may be more beneficial to bring the action under UIFSA instead of employing the long-arm statute.

#Comment Ends

Once a court with jurisdiction has properly made a child support order, it will be subject to full faith and credit. The court rendering the child support order must have subject matter jurisdiction, personal jurisdiction, and provide reasonable notice to the defendant to be heard, in order to satisfy the jurisdictional requirements to receive full faith and credit recognition. [28 U.S.C. § 1738B\(c\)](#).

§ 7.06 Addressing the Simultaneous Filing of Actions in Two States Under UIFSA

There may be times when a petition for the support of the same child is filed in two states. So that there are not competing orders, UIFSA provides a mechanism for determining when a court may exercise jurisdiction where two petitions are pending. The family support magistrate may exercise jurisdiction over a petition, even if a petition is filed in another state, when:

1. The petition is filed in Connecticut prior to the expiration of time to contest jurisdiction where the other petition was filed;
2. Jurisdiction in the other state is timely challenged; and
3. If relevant, Connecticut is the home state of the child.

[Conn. Gen. Stat. § 46b-314\(a\)](#).

Conversely, the family support magistrate may not exercise jurisdiction when a petition is filed in another state, if:

1. The petition is filed in the other state prior to the expiration of time to contest jurisdiction in Connecticut;
2. Jurisdiction in Connecticut is timely challenged; and
3. If relevant, the other state is the home state of the child.

[Conn. Gen. Stat. § 46b-314\(b\)](#). These provisions seek to ensure that there will not be simultaneous proceedings in different jurisdictions over child support. It is likely that with simultaneous proceedings, the tribunals will communicate to discern the status of the litigation, aiding the determination of the appropriate jurisdiction. [Conn. Gen. Stat. § 46b-343](#).

#Comment Begins

Warning: If representing a client desiring to challenge the jurisdiction of Connecticut by claiming that another court has jurisdiction, the motion to dismiss must be filed within thirty days. The motion to dismiss should not be delayed, but filed as quickly as possible to avoid the

court acting on the petition.

#Comment Ends

§ 7.07 Continuing Exclusive Jurisdiction Under UIFSA

Connecticut will have continuing exclusive jurisdiction to modify its own order where, at the time of the modification, either party or the child continues to reside in Connecticut. [Conn. Gen. Stat. § 46b-315\(a\)](#). If neither party nor the child resides in Connecticut, jurisdiction may remain if the parties had agreed that Connecticut may exercise jurisdiction to modify the order. [Conn. Gen. Stat. § 46b-315\(a\)](#).

The Connecticut court will not exercise continuing exclusive jurisdiction for modification purposes when:

1. The parties consent that another court has jurisdiction and one of the parties resides with the child in the state that will modify the order and assume jurisdiction.
2. The Connecticut order is not a controlling order.

[Conn. Gen. Stat. § 46b-315\(b\)](#).

If Connecticut does not have exclusive jurisdiction, it may request, as the initiating tribunal, that another state modify the order. [Conn. Gen. Stat. § 46b-315\(d\)](#). Connecticut may request that another state enforce an order from Connecticut which has not been modified by another state or in which there is an arrears determination made prior to another court asserting jurisdiction. [Conn. Gen. Stat. § 46b-316](#). This does not relieve the Connecticut court from exclusive jurisdiction.

§ 7.08 Resolving Conflicting Orders Issued by Two States

There may be times when conflicting court orders may be issued by different states for child support. In such cases, the court which has personal jurisdiction over the obligor and the obligee will determine which order is valid in accordance with the following hierarchy:

1. If there is only one court that has continuing exclusive jurisdiction, that court order controls.
2. If more than one court would have continuing exclusive jurisdiction, the court that rendered the order in the child's home state would control. If there is no order within the child's home state, then the most recently issued court order would control.
3. If no state has continuing exclusive jurisdiction, the family support magistrate shall issue a child support order.

[Conn. Gen. Stat. § 46b-317\(b\)](#).

When making a determination as to which child support order applies, every prior order

shall be provided to the court together with a record of payments made. [Conn. Gen. Stat. § 46b-317\(d\)](#). Whichever court is determined to have the controlling court order will then have continuing jurisdiction over the order. [Conn. Gen. Stat. § 46b-317\(e\)](#). The court making the determination as to the applicable court order shall set forth within its decision the basis upon which the determination was made, the amount of the support, and what, if any, arrearages and accrued interest exist. [Conn. Gen. Stat. § 46b-317\(f\)](#). Within thirty (30) days of the order entering, a certified copy of the order will be registered with each court that has previously issued an order. [Conn. Gen. Stat. § 46b-317\(g\)](#). Registering the order in the other court prevents conflicting court orders from existing and being enforced.

§ 7.09 Effectuating Cooperation Among States Under UIFSA

Seeking child support through UIFSA is required when one party resides out of state. The non-resident defendant will not be required to appear in the state where the petition is filed, but will be able to respond through the court in his or her state. [Conn. Gen. Stat. §§ 46b-320 and 46b-344](#).

Where Connecticut is the initiating state, the petition should be forwarded to the responding state tribunal or state information agency if the tribunal is unknown. [Conn. Gen. Stat. § 46b-330\(a\)](#). The responding state may request the initiating state to: issue a certificate and make findings required by the responding state; and if the responding state is a foreign country, convert the order being sought into foreign currency in the jurisdiction in which enforcement is sought. [Conn. Gen. Stat. § 46b-330\(b\)](#). Clearly, by the terms of the statute, the reach of UIFSA is not solely within the continental United States, but may also apply in foreign countries to the extent that they will recognize the order.

Where Connecticut is the responding state, any petition from another state shall be filed with notification to the petitioner. [Conn. Gen. Stat. § 46b-331\(a\)](#). Any order rendered shall include calculations upon which the support order is based. [Conn. Gen. Stat. § 46b-331\(c\)](#).

Where the original order was issued by another state, but the parties currently reside in Connecticut and the child does not live in the issuing state, Connecticut may assert jurisdiction to modify or enforce the orders. [Conn. Gen. Stat. § 46b-388](#). In this instance, the procedural and substantive law of Connecticut apply. [Conn. Gen. Stat. § 46b-388](#).

§ 7.10 Considering Evidentiary Issues Under UIFSA

Since the parties to a UIFSA proceeding live in different states, the means to submit evidence, taking into account the interstate considerations, includes:

1. Where an out-of-state party has provided a signed sworn financial affidavit, it will not be barred on the basis of hearsay.
2. The record of child support payments certified by the responding tribunal may be used to demonstrate whether and what payments were made.
3. If the adverse party, at least ten days prior to trial, is provided with copies of bills regarding paternity testing and health care of the mother, both prenatal and postnatal, such bills will be evidence of the amount of the charges and the fact that they all are customary, reasonable, and necessary.

4. Documents provided by another state by facsimile or other means which is not the original document, shall not be objected to based upon the means of transmission.
5. Depositions of parties or witnesses residing out-of-state may occur by telephone or other electronic means.
6. A party who refuses to answer a question based upon self-incrimination will permit the court to draw an adverse inference.
7. The spousal privilege does not apply.
8. Neither party may assert a defense of immunity based upon a husband-wife or parent-child relationship.
9. An acknowledgment of paternity, which is certified as a true copy, is admissible in establishing paternity.

[Conn. Gen. Stat. § 46b-342](#). Connecticut as an initiating tribunal may request another state to assist with discovery, or may assist an initiating tribunal in obtaining discovery from a Connecticut resident. [Conn. Gen. Stat. § 46b-344](#).

#Comment Begins

Strategic Point: Another advantage to UIFSA is that the respondent may appear through the responding state. Accordingly, the responding state may act as a mechanism by which discovery is obtained from the respondent with the ability of the responding state compelling the discovery.

#Comment Ends

§ 7.11 Registering Child Support Orders for Enforcement Under UIFSA

When Connecticut is not the initiating state and is being requested to enforce orders, such orders must be registered in Connecticut. In order for Connecticut to register an order, the initiating tribunal must:

1. In a letter to support enforcement, request the registration and enforcement of the order.
2. Send two copies of the order and any modification, one copy of which must be certified.
3. Provide a sworn or certified statement as to the arrearage amount.
4. Provide the name, address, and social security number of the obligor; the obligor's employer's name and address; and a description of exempt property located in Connecticut.

5. Provide the obligee's name and address and the address where the payments should be sent.

6. Submit a statement detailing what, if any, other proceedings are currently pending for that child's support.

Conn. Gen. Stat. § 46b-371(a).

Once the order is registered, it will be filed as a foreign matrimonial judgment. Conn. Gen. Stat. § 46b-371(b). The registered order must be sent to the obligor. Conn. Gen. Stat. § 46b-377. Such orders are enforceable in the same manner as if Connecticut had issued the order. Conn. Gen. Stat. § 46b-372.

Where the original order was issued by another state, but the parties currently reside in Connecticut and the child does not live in the issuing state, Connecticut may assert jurisdiction to modify or enforce the orders. Conn. Gen. Stat. § 46b-388. In this instance, the procedural and substantive law of Connecticut apply. Conn. Gen. Stat. § 46b-388.

§ 7.12 Contesting the Registration and Enforcement of an Order

If a party wants to contest the registration and ultimate enforcement of a child support order from another state, one of the following must be demonstrated:

1. The issuing court did not have personal jurisdiction.
2. Fraud was used to obtain the child support order.
3. There was a later court order that vacated, modified, or suspended the order from which enforcement is sought.
4. The order from the issuing tribunal has been stayed pending appeal.
5. A defense under the law of Connecticut exists with respect to the remedy being sought in the enforcement of the order.
6. A full or partial payment of the order seeking to be enforced has been made.
7. Enforcement is precluded for all or part of the arrearage due to the statute of limitations.
8. The order is not a controlling order.

Conn. Gen. Stat. § 46b-379(a). The burden of proof is on the party contesting the registration to demonstrate why it should not be registered and enforced. Conn. Gen. Stat. § 46b-379(c).

§ 7.13 Asserting Jurisdiction and Modifying a Child Support Order Issued by Another State

If the court is modifying an order of another state or foreign country, the court will not acquire jurisdiction over a respondent merely because the requirements of [Conn. Gen. Stat. § 46b-311\(a\)](#) are met, but must also comply with the provisions of [Conn. Gen. Stat. §§ 46b-386 or 46b-388](#). [Conn. Gen. Stat. § 46b-311\(b\)](#). If the parties reside in Connecticut and the child does not reside in the state which issued the order, then Connecticut may modify the order. [Conn. Gen. Stat. § 46b-388](#). However, if both parties do not reside in Connecticut or if the child resides in the issuing state, Connecticut may modify an order of child support if the following are found by the court:

1. Neither of the parties nor the child resides in the issuing state;
2. A non-resident petition seeks modification; and
3. The respondent is subject to the personal jurisdiction of Connecticut;

OR

4. The child resides in Connecticut, or a party is subject to personal jurisdiction in Connecticut and all parties file a consent for Connecticut to modify the order and assume continuing, exclusive jurisdiction.

[Conn. Gen. Stat. § 46b-386](#).

Where the court has jurisdiction to modify an order issued from another state under [Conn. Gen. Stat. § 46b-388](#), the procedural and substantive law of Connecticut apply. [Conn. Gen. Stat. § 46b-388](#). Where the original order was issued by another state and Connecticut assumes jurisdiction to modify an order under [Conn. Gen. Stat. § 46b-386](#), the procedures and defenses of Connecticut apply. [Conn. Gen. Stat. § 46b-386\(b\)](#). However, the court may not modify any part of the child support which would be non-modifiable of the state issuing the original order, including duration. [Conn. Gen. Stat. § 46b-386\(c\)](#). For purposes of determining the initial controlling order, it is the order from the first state which issued a child support order, not a subsequent modification. *Studer v. Studer*, 320 Conn. 483 (2016).

PART III: DETERMINING WHO IS LIABLE FOR CHILD SUPPORT

CHILD SUPPORT

§ 7.14 CHECKLIST: Determining Who is Liable for Child Support

7.14.1 Determining Who is Liable for Child Support

- Commencing a child support action:
 - Married parties will typically have a child support determination made

as part of the dissolution.

- Non-married parents may file a support petition. **Authority:** Conn. Gen. Stat. §§ 46b-61 and 46b-215b; *Eisenbaum v. Eisenbaum*, 44 Conn. App. 605 (1997). **Discussion:** See § 7.15, below. **Forms:**

JD-FM-161—Custody/Visitation Application, see Chapter 20, § 20.12, below.

JD-FM-162—Order to Attend Hearing and Notice to Respondent, see Chapter 20, § 20.13, below.

- Determining the parties responsible to pay child support:

- A non-biological father may not be permitted to contest a claim for payment of child support where equitable estoppel principals apply.

- A child's guardian may not be ordered to pay child support, but may seek child support from the parents.

- The court may order a party to pay child support pending the parentage.

- The court may order child support to be paid on behalf of adopted children. **Authority:** Conn. Gen. Stat. §§ 46b-58, 46b-60, and 46b-61; P.A. 21-15 §§ 24,25,30 and 31; *Fischer v. Zollino*, 303 Conn. 661 (2012), *W. v. W.*, 248 Conn. 487 (1999), *Favrow v. Vargas*, 231 Conn. 1 (1994), *Perkins v. Perkins*, 3 Conn. App. 322 (1985), *Mills v. Theriault*, 40 Conn. Supp. 349 (1985), and *Holcomb v. Holcomb*, 2003 Conn. Super. LEXIS 961 (2003). **Discussion:** See § 7.16, below. See also Chapter 10, §§ 10.03–10.08, below.

§ 7.15 Commencing a Child Support Action

Typically, married parents will have a child support determination made as part of the dissolution action filed in superior court. Where the parents of the child are not married, a separate support action may still be maintained. Conn. Gen. Stat. §§ 46b-61 and 46b-215b. Although Conn. Gen. Stat. § 46b-61 does not refer to the child support statute as part of the statutory scheme to be considered when making child support orders for children of unmarried parents, the court has indicated it should consider those factors. *Eisenbaum v. Eisenbaum*, 44 Conn. App. 605 (1997). A child support order, which is not part of a dissolution action, should be commenced by petition.

#Comment Begins

Forms: JD-FM-161—Custody/Visitation Application, see Chapter 20, § 20.12, below. JD-FM-162—Order to Attend Hearing and Notice to Respondent, see Chapter 20, § 20.13, below.

#Comment Ends

§ 7.16 Determining the Parties Responsible to Pay Child Support

[1] Paying Child Support by a Non-Parent

There are rare instances in which a non-parent may be required to pay child support. Most often this occurs when there are paternity issues. One legal principal providing for payment of child support by a nonbiological parent is equitable estoppel. *W. v. W.*, 248 Conn. 487 (1999). To succeed in an estoppel claim, two elements must be proven: “The party must do or say something which is intended or calculated to induce the other to believe in the existence of certain facts and to act on that belief; and the other party, influenced thereby, must actually change his position or do something to his injury which he otherwise would not have done.” *Remkiewicz v. Remkiewicz*, 180 Conn. 114, 119 (1980). Accordingly, a nonbiological father, who promises to care for a child

as his own while discouraging attempts by the mother to find the biological father, will be equitably estopped from making a claim he should not be paying child support. *W. v. W.*, 248 Conn. at 504–505. A father who had the opportunity to litigate paternity at the time of the dissolution and did not, will not be permitted to contest paternity at a later date. *Perkins v. Perkins*, 3 Conn. App. 322 (1985). However, a party will not be equitably estopped from denying paternity and being relieved of any child support obligation when paternity is unknown until immediately prior to it being contested. *Fischer v. Zollino*, 303 Conn. 661 (2012).

Guardians for a child may not be ordered to pay support and their income may not be included in determining the child support guideline amounts. *Favrow v. Vargas*, 231 Conn. 1 (1994). A guardian may seek child support from a parent by commencing a separate support action. *Mills v. Theriault*, 40 Conn. Supp. 349 (1985). Similarly, where the parties are legal guardians for a child, the court may not award child support to be paid for the child in a dissolution action between the legal guardians. *Holcomb v. Holcomb*, 2003 Conn. Super. LEXIS 961 (2003).

[2] Asserting Paternity

For a child support order to enter against an individual, it must be determined that the individual is a parent. In addition to adjudicating an individual's a parent, an individual can sign an acknowledgment of parentage if that individual is: (a) an alleged genetic parent; (b) a presumed parent; or (c) unintended parent who consented to use of assisted reproductive technologies. If that acknowledgment has not been rescinded within 60 days of becoming effective, it may be challenged on very limited bases. If challenge, the duty to pay child support continues during the pendency of the challenge, unless good cause is shown. P.A. 21-15 §§ 24, 25, 30 and 31. For a more thorough discussion on establishing paternity, see Chapter 10, §§ 10.03–10.08, below.

[3] Awarding Child Support for Adopted Children

A court has authority to order child support for a child who has been adopted by both parents, or who is the natural child of one parent but has been adopted by the other parent. Conn. Gen. Stat. § 46b-58.

[4] Awarding Child Support in Annulment Actions

Where a party seeks annulment, any child who is issue of a void or voidable marriage is deemed to be a legitimate child and entitled to support by the parents. Conn. Gen. Stat. § 46b-60. Parents who lived separately may seek a separate action for support of the minor children. Conn. Gen. Stat. § 46b-61.

PART IV: CONSIDERING THE STATUTORY CRITERIA IN ESTABLISHING CHILD SUPPORT

CHILD SUPPORT

§ 7.17 CHECKLIST: Considering the Statutory Criteria in Establishing Child Support

7.17.1 Considering the Statutory Criteria in Establishing Child Support

- Considering the statutory criteria in establishing child support:
 - Parents are required to support children in accordance with his or her respective abilities.
 - The statutory criteria require the court to consider the parents' age, health, station, occupation, earning capacity, amount and sources of income, estate, vocational skills, and employability of each of the parents.
 - The statutory criteria require the court to consider the child's age, health, station, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate and needs.
 - The child support guidelines must be considered in every child support determination. **Authority:** Conn. Gen. Stat. §§ 46b-37(b), 46b-84(a), and 46b-84(d); *Maturo v. Maturo*, 296 Conn. 80 (2010), *Schoenborn v. Schoenborn*, 144 Conn. App. 846 (2013), and *Braun v. Beard*, 2012 Conn. Super. LEXIS 1790 (2012). **Discussion:** See § 7.18, below. See also Chapter 5, §§ 5.05–5.12, above.
- Considering the age and health of the child:
 - The age of a child is stated in every decision and attains importance when considered with other factors.
 - Health will impact the cost of unreimbursed expenses to be divided by the parents.
 - The cost of health insurance for the child will be considered as well.**Authority:** *Teschendorf v. Teschendorf*, 2012 Conn. Super. LEXIS 1027 (2012). **Discussion:** See §§ 7.19 and 7.20, below.
- Considering the station of the child:
 - A child's style of living may be considered in making a child support order.
 - Proof must be provided of a child's station to have it impact the child support orders. **Authority:** *Maturo v. Maturo*, 296 Conn. 80 (2010) and *Golden v. Mandel*, 110 Conn. App. 376 (2008). **Discussion:** See § 7.21, below.
- Considering the child's occupation, sources of income, vocational skills, employability, educational status and expectations, estate and needs:
 - Most children are neither employed nor have assets from which to provide for their own support.
 - The educational status of a child primarily concerns issues over attendance at private or vocational schools.
 - A parent may not use an account held for a child to pay child support.
 - A child support order should be dictated by the needs of the child.
 - An order may include the payment of certain expenses for the child, including extracurricular activities. **Authority:** Conn. Gen. Stat. § 45a-577 *et seq.*; *Misthopoulos v. Misthopoulos*, 297 Conn. 358 (2010), *Maturo v. Maturo*, 296 Conn. 80 (2010), *Brown v. Brown*, 190 Conn. 345 (1983), *Ferraro v. Ferraro*, 168 Conn. App. 723 (2016), *Mettler v. Mettler*, 165 Conn. App. 829 (2016) and *Fox v. Fox*, 152 Conn. App. 611 (2014). **Discussion:** See §§ 7.22, 7.23, 7.24, and 7.25, below. See also § 7.50, below.
- Establishing child support in a paternity action:
 - Paternity actions are distinguished from other child support actions in that a putative father may be ordered to pay support retroactively for a

period of up to three years.

- Retroactive support is available only if the putative father failed to provide support for the child.

- It is the ability to pay support, not the child's needs, that governs the amount of retroactive support. **Authority:** Conn. Gen. Stat. §§ 46b-172(b)(2) and 46b-215(a)(7); *Dowling v. Szymczak*, 309 Conn. 390 (2013) and *Rostad v. Hirsch*, 148 Conn. App. 441 (2014); Regs. Conn. State Agencies, § 46b-215a-3(b)(2). **Discussion:** See § 7.26, below. See also § 7.32[3], below.

§ 7.18 Considering Statutory Criteria in Establishing Child Support

Parents have a statutory duty to support their family, being liable for hospital expenses for a minor child and for any article purchased by either parent that has in fact gone to the support of the family. Conn. Gen. Stat. § 46b-37(b). Notwithstanding this statutory duty to support, in any dissolution, paternity, or visitation action, child support should not be sought in reliance on this statute. More typically, this statute is employed by medical professionals to seek payment of their fees. *Braun v. Beard*, 2012 Conn. Super. LEXIS 1790 (2012).

In a dissolution or support action, should a minor child be in need of support, the parents are required to provide such support in accordance with their respective abilities. Conn. Gen. Stat. § 46b-84(a). Similar to alimony, there are statutory criteria to be considered in establishing child support. Conn. Gen. Stat. § 46b-84(d). The statute distinguishes factors to be considered as they relate to the parents and the child. With respect to the parents, the court is to consider “the age, health, station, occupation, earning capacity, amount and sources of income, estate, vocational skills and employability of each of the parents.” Conn. Gen. Stat. § 46b-84(d). It should be noted that these factors are virtually identical to alimony, with the exception that the length of the marriage, the causes for the dissolution, the estates and needs of the parents, the property division, and the advisability of the custodial parent working in light of the ages and needs of the children, are not considered. In addition, the statute specifically states that the court may consider earning capacity for child support determination. There are no specific cases interpreting the statutory criteria relating to the parents for purposes of awarding child support, separate and apart from alimony. Accordingly, the interpretation of the statutory criteria should be done in light of the alimony statutory criteria. For a more thorough discussion on the alimony statutory criteria, see Chapter 5, §§ 5.05–5.12, above.

While the court is to consider these factors, taking into consideration a party's earning capacity is not the same as using an earning capacity to determine the support. The court is not required to deviate from the child support guidelines on the basis of earning capacity when an earning capacity is considered. *Schoenborn v. Schoenborn*, 144 Conn. App. 846 (2013). However, the court must determine the child support guideline amount using actual earnings. The resulting child support may then be deviated based upon earning capacity.

#Comment Begins

Warning: Earning capacity for child support guideline purposes is a deviation ~~criteria~~criterion. The amount determined for an earning capacity may not be used as the income amount for the child support guideline. Do not provide the court with only child support guidelines based on earning capacity as that will be reversible error should the court rely on those guidelines exclusively.

#Comment Ends

With respect to the child for whom support is to be determined, the factors to be considered by the court are the child's "age, health, station, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate and needs." [Conn. Gen. Stat. § 46b-84\(d\)](#).

While child support is similar in some respects to alimony, it is also a distinct order. Child support is for the support of a particular child, while alimony is based upon support of a former spouse. Quite often, it is difficult to separate the expenses attributable solely to a child in comparison with the household and other family expenses.

In addition to the statutory factors, the court is to also consider the Connecticut child support guidelines in all cases where there is a minor child. [Maturo v. Maturo](#), 296 Conn. 80, 109 (2010). This is true regardless of whether the income of the parties is within or exceeds the child support guidelines. [Maturo](#), 296 Conn. at 109.

§ 7.19 Considering the Age of the Child

As with the age of the parents, the court is to consider the age of the child. This factor is typically mentioned in decisions, but attains its importance when considered in conjunction with the other factors, such as the employability of the parents.

§ 7.20 Considering the Health of the Child

The health of a child is an important consideration affecting the court's orders. Health is relevant where there are significant unreimbursed medical, dental, or psychological expenses incurred on behalf of a child. These might be taken into account in fashioning the orders. [Teschendorf v. Teschendorf](#), 2012 Conn. Super. LEXIS 1027 (2012). The cost for the health insurance should likewise be ~~considered, and~~ considered and is part of the child support guideline calculation. Often one parent will have medical insurance through his or her employment that will cover the children.

#Comment Begins

Strategic Point: Where a child has significant health issues, expert testimony should be elicited to demonstrate the health issue. Additionally, in the case of a disabled child, a parent may be required to help the child in his or her daily functioning, such as bathing or dressing. The monetary cost of the health issues should also be provided to the court, as significant health expenses will certainly influence the amount of child support.

#Comment Ends

§ 7.21 Considering the Station of the Child

A child's station in life or style of living will affect child support orders typically where the income of the parents is in excess of the child support guidelines. [Maturo v. Maturo](#), 296 Conn. 80 (2010). Where station is to be considered, proof of a child's station and how it may be affected by the court's orders must be demonstrated. [Golden v. Mandel](#), 110 Conn. App. 376 (2008).

#Comment Begins

Strategic Point: When a child has a particular station in life that will not be met by a child support guidelines order, evidence must be submitted to demonstrate those additional expenses or "needs." Such evidence should include activities, lessons, tutoring, and professional care in which

the child has been involved. It may also include evidence of vacations and the manner of travel, as well as where the child shops for clothing.

#Comment Ends

§ 7.22 Considering the Occupation, Sources of Income, Vocational Skills and Employability of the Child

These criteria rarely if ever become an issue regarding child support orders. Most children are not expected to secure employment to provide for their support.

§ 7.23 Considering the Educational Status and Expectations of the Child

The consideration of the educational status of a child has import where a parent seeks to have a child attend a private or vocational school for which tuition will be paid. For a more thorough discussion on private school expenses, *see* § 7.50, *below*.

§ 7.24 Considering the Child's Estate

This criterion will rarely be applicable, as few, if any, children are independently wealthy and able to provide for their own support. A child is not expected to use his or her assets for support. The most common asset which a child may have is an account under the Uniform Transfer to Minors Act. *Conn. Gen. Stat. § 45a-557 et seq.* However, where the parties have agreed to make certain payments out of substantial trusts for the children's benefit, a court in a subsequent modification cannot terminate those payments absent a change in circumstances regarding the trust. *Fox v. Fox*, 152 Conn. App. 611 (2014).

#Comment Begins

Strategic Point: When there are custodial accounts to be held by one parent for a child, the judgment should provide that the other parent ~~receives~~^{receives} periodic statements from the account. This will enable the other parent to ensure the funds are being used appropriately.

#Comment Ends

§ 7.25 Considering the Needs of the Child

The primary consideration by a court will be the needs of a child. In the event an order is disproportionate to the child's needs, the order will not be upheld. *See Brown v. Brown*, 190 Conn. 345 (1983) (a child support order in excess of the weekly needs on the custodial parent's financial affidavit could not stand and was viewed as a disguised alimony order).

The needs of a child play a factor in the determination of child support especially when the income of the parties is above the child support guidelines. *Maturo v. Maturo*, 296 Conn. 80 (2010) and *Misthopoulos v. Misthopoulos*, 297 Conn. 358 (2010). The child support order cannot be a flat percentage of a fluctuating bonus, absent a correlation between the order and the child's needs. *Maturo*, 296 Conn. at 106. For a more thorough discussion on child support orders on variable income, *see* § 7.29, *below*.

One manner by which a child's needs ~~isare~~^{isare} considered is direct payment or contribution by the parents to specific costs of the child, such as activities and extracurricular expenses. A court making such orders must have an evidentiary basis for the existence and cost of such

expenses. *Ferraro v. Ferraro*, 168 Conn. App. 723 (2016). When defining the payment of such expenses, two issues must be considered: (1) exactly which expenses shall be part of the direct contribution of each parent, and (2) how will disagreements regarding such payments be resolved. Without clearly specifying the parameters of such payment of expenses, a court may find such provision to be ambiguous and require extrinsic evidence to determine the expenses to be paid. *Mettler v. Mettler*, 165 Conn. App. 829 (2016).

#Comment Begins

Strategic Point: Typical language to be included in an agreement regarding the parties' expenses can include: (1) that the parties agree the children may continue with the activities in which they are currently involved; (2) any new activities for the children would require the prior written approval (so there is no issue regarding whether or not approval was given) of both parties; (3) in the event of a disagreement, either one parent has final decision making or the parties employ a mediator to help them resolve the issue; and (4) that the reimbursement of expenses from one parent to the other must be made within a specified time frame of the receipt of the bill.

#Comment Ends

§ 7.26 Establishing Child Support in a Paternity Action

Generally, child support in a parentage action is decided in the same manner as child support in any other action. The distinguishing factor is that in a parentage action, the putative parent may be ordered to pay child support retroactive for three years prior to an agreement or the filing of the petition. Conn. Gen. Stat. §§ 46b-172(b)(2) and 46b-215(a)(7). Where a petition is filed, the retroactive child support will apply if the putative parent has failed or refused to provide support during that previous three-year period. Conn. Gen. Stat. § 46b-215(a)(7). Accordingly, a putative parent providing support for the child will not be deemed to have failed or to have refused to provide such support for purposes of a claim of retroactivity, except during a period of time in which he or she did not pay. *Rostad v. Hirsch*, 148 Conn. App. 441 (2014).

The determination of the amount of child support for the three-year period depends on the obligor's ability to pay pursuant to the child support guidelines, not on the expenditures made for the child by a parent during that time. *Dowling v. Szymczak*, 309 Conn. 390 (2013). However, that does not mean that extraordinary expenses for child should be ignored, as that is one of the factors by which there can be a deviation of the child support guidelines. Regs. Conn. State Agencies, § 46b-215a-3(b)(2). For a more thorough discussion on the deviation criteria of extraordinary expenses for the child's care or maintenance, see § 7.32[3], below.

PART V: USING THE CHILD SUPPORT GUIDELINES

CHILD SUPPORT

§ 7.27 CHECKLIST: Using the Child Support Guidelines

7.27.1 Using the Child Support Guideline

- Using the child support guidelines:
 - In every case where there is a child, the child support guidelines must

be considered, [even if child support is not requested](#).

- Under the parentage act, a child may have more than two parents, and until the child support guidelines make allowances for this, the child support guidelines cannot be used.

- Even in cases in which an unallocated alimony and support order is entered, the child support guidelines must be considered.

- The child support is calculated based upon the combined net incomes of the parties.

- When the total net income of the parents is in excess of the maximum amount under the guidelines, the top amount in the guidelines is the presumed minimum and the top percentage of the guidelines is a presumed maximum amount of support.

- The child support guidelines also compute each parent's share of the unreimbursed medical expenses and work related [child-care](#)~~childcare~~ costs attributable to the child, [which must be specifically related to work](#).

- Split custody is when each parent is the custodial parent for at least one child.

- Shared custody is when parents have the child for substantially equal time.

- Adjustments must be made for a qualified child, either as a deduction from net income or as a credit. **Authority:** Conn. Gen. Stat. §§ 46b-84(d), 46b-215a, 46b-215a-1(11)(A)(xi), 46b-215b(a), and 46b-475; *Dowling v. Szymczak*, 309 Conn. 390 (2013), *Tuckman v. Tuckman*, 308 Conn. 194 (2013), *Maturo v. Maturo*, 296 Conn. 80 (2010), *Morris v. Morris*, 262 Conn. 299 (2003), [V.H. v. J.B., 234 Conn. App. 792 \(2024\)](#), [Trent v. Trent, 226 Conn. App. 791 \(2024\)](#), *Buxenbaum v. Jones*, 189 Conn. App. 790 (2019), *Cyganovich v. Cyganovich*, 189 Conn. App. 164 (2019), *Fox v. Fox*, 152 Conn. App. 611 (2014), and *O'Brien v. O'Brien*, 138 Conn. App. 591 (2012); Regs. Conn. State Agencies, §§ 46b-215a-11(23), 46b-215a-11(24), 46b-215a-2c(a)(2), 46b-215a-2c(c)(7)(A), and 46b-215a-2c(d)(1). **Preamble to the Child Support and Arrearage Guidelines** (2015), §§ (b)(5), (d), (e) and (h)(1)(A)(ii).

Discussion: See § 7.28, below. See also §§ 7.32[7], 7.33 and 7.34, below.

Forms: JD-FM-220—Worksheet for CT Child Support and Arrearage Guidelines, see Chapter 20, § 20.30, below.

□ Determining income for purposes of the child support guidelines:

- The child support guidelines enumerate 22 specific categories of income which are includable in determining child support.

- The child support guidelines set forth six specific categories of income which are excludable in determining child support. **Authority:** *Tuckman v. Tuckman*, 308 Conn. 194 (2013), *Marrocco v. Giardino*, 255 Conn. 617 (2001), *Unkelbach v. McNary*, 244 Conn. 350 (1998), *Jenkins v. Jenkins*, 243 Conn. 584 (1998), *Robinson v. Robinson*, 172 Conn. App. 393 (2017), *Barbour v. Barbour*, 156 Conn. App. 383 (2015), *McKeon v. Lennon*, 155 Conn. App. 423 (2015) (cert. granted), *Fox v. Fox*, 152 Conn. App. 611 (2014), *Harlow v. Stickels*, 151 Conn. App. 204 (2014), *Lusa v. Grunberg*, 101 Conn. App. 739 (2007), *Aley v. Aley*, 101 Conn. App. 220 (2007), *Bartel v. Bartel*, 98 Conn. App. 706 (2006), *Bishop v. Freitas*, 90 Conn. App. 517 (2005), *Shearn v. Shearn*, 50 Conn. App. 225 (1998), and *Simpson-Givens v. Givens*, 2011 Conn. Super. LEXIS 155 (2011); Regs. Conn. State Agencies, §§ 46b-215a-1(11)(A) and 46b-215a-1(11)(A)(ix); **Preamble to the Child Support and Arrearage Guidelines** (2015), §§ (b)(3)(A) and (h)(1)(A)(iii). **Discussion:** See § 7.29, below.

- Determining income other than salary and wages:
 - A supplemental child support order may be entered for lump sum or variable income, such as a bonus or commissions, profit sharing, the exercise of stock options or restricted stock, or for incentive or deferred compensation.
 - Any supplemental child support order must be consistent with the premise behind the child support guidelines that the percentage of net income used for child support decreases as net income increases.
 - Supplemental awards may take into account the demonstrated needs of the child.
 - An award based upon earning capacity may not double dip with a supplement award on a bonus, which may have been included within the earning capacity amount. **Authority:** *McKeon v. Lennon*, 321 Conn. 323 (2016), *Maturo v. Maturo*, 296 Conn. 80 (2010), *Renstrup v. Renstrup*, 217 Conn. App. 252, Cert. den'd 346 Conn. 915 (2023), *Hendricks v. Haydu*, 160 Conn. App. 103 (2015), *Barcelo v. Barcelo*, 158 Conn. App. 201, cert. denied, 319 Conn. 910 (2015), and *Gentile v. Carneiro*, 107 Conn. App. 630 (2008); Regs. Conn. State Agencies, §§ 46b-215a-2c(c)(1)(B), 46b-215a-2c(c)(1)(B)(i), and 46b-215a-2c(c)(1)(B)(ii). **Discussion:** See § 7.30, *below*.
- Determining deductions from income:
 - The child support guidelines list ten items that are permitted to be deducted from income to determine a party's net income for child support purposes. **Authority:** *Kirwan v. Kirwan*, 185 Conn. App. 713 (2018), *Utz v. Utz*, 112 Conn. App. 631 (2009) and *Martone v. Martone*, 28 Conn. App. 208 (1992); Regs. Conn. State Agencies, § 46b-215a-1(1). **Discussion:** See § 7.31, *below*.
- Setting forth the predicates for deviation criteria under the child support guidelines:
 - If the court deviates from the child support guidelines, it must make three findings: the presumptive child support amount; that the amount under the guidelines would be inappropriate or inequitable; and state the basis for the deviation. **Authority:** *Maturo v. Maturo*, 296 Conn. 80 (2010), *Unkelbach v. McNary*, 244 Conn. 350 (1998), *Favrow v. Vargas*, 231 Conn. 1 (1994), *Anketell v. Kulldorff*, 207 Conn. 807, cert. denied 340 Conn. 905 (2021), [*Wald v. Cortland-Wald*, 226 Conn., App. 752 \(2024\)](#), *Righi v. Righi*, 172 Conn. App. 427 (2017), *Deshpande v. Deshpande*, 142 Conn. App. 471 (2013), *O'Brien v. O'Brien*, 138 Conn. App. 544 (2012), and *Wallbeoff v. Wallbeoff*, 113 Conn. App. 107 (2009). **Discussion:** See § 7.32[1], *below*.
- Applying other financial resources available to a parent as a deviation criterion:
 - Other financial resources cannot include income that was already included in the guidelines for the child support determination.
 - Other financial resources may include:
 - Substantial assets owned by one of the parties.
 - The earning capacity of a parent.
 - Parental support being paid to a minor who is the parent of the child whose support is being determined.
 - Regularly recurring gifts from a spouse or domestic partner.
 - Overtime income not to exceed 52 hours per week. **Authority:** *Maturo v. Maturo*, 296 Conn. 80 (2010), *Lucy v. Lucy*, 183 Conn. 230 (1981), *Renstrup v. Renstrup*, 217 Conn. App. 252, cert den'd 346 Conn. 915 (2023),

Keusch v. Keusch, 184 Conn. App. 822 (2018), *Barcelo v. Barcelo*, 158 Conn. App. 201, **cert. denied**, 319 Conn. 910 (2015), *Fox v. Fox*, 152 Conn. App. 611 (2014), *Schoenborn v. Schoenborn*, 144 Conn. App. 846 (2013), *Winters v. Winters*, 140 Conn. App. 816 (2013), *Syragakis v. Syragakis*, 79 Conn. App. 170 (2003), *Russack v. Russack*, 58 Conn. App. 517 (2000), and *Lemons v. Wells*, 2008 Conn. Super. LEXIS 3197 (2008); Regs. Conn. State Agencies, §§ 46b-215a-5c(b)(1), 46b-215a-5c(b)(1)(A), 46b-215a-5c(b)(1)(B), 46b-215a-5c(b)(1)(C), 46b-215a-5c(b)(1)(D), and 46b-215a-5c(b)(1)(E).

Discussion: See § 7.32[2], *below*.

□ Applying extraordinary expenses for the child's care or maintenance as a deviation criterion:

○ The expenses for ~~child-care~~childcare or maintenance must be ongoing and extraordinary. **Authority:** *Kissell v. Kissell*, 2010 Conn. Super. LEXIS 3013 (2010); Regs. Conn. State Agencies, § 46b-215a-5c(b)(2). **Discussion:** See § 7.32[3], *below*.

□ Applying extraordinary parental expenses as a deviation criterion:

○ The expense must be one that is significant for exercising visitation, an unreimbursed worked-related expense, or an unreimbursed medical or disability expense.

○ Evidence beyond mere generalities that travel expenses will be incurred must be provided ~~that travel expenses will be incurred~~. **Authority:** *Battistotti v. Suzanne A.*, 182 Conn. App. 40 (2018), *Kavanah v. Kavanah*, 142 Conn. App. 775 (2013), *Sheppard v. Sheppard*, 80 Conn. App. 202 (2003); Regs. Conn. State Agencies, § 46b-215a-5c(b)(3). **Discussion:** See § 7.32[4], *below*.

□ Applying the needs of a parent's other dependents as a deviation criterion:

○ A parent with a child from another relationship, who lives with him or her, and an imputed amount for the support of such child is not deducted from his or her income for the determination of the child support guidelines amount, that child's needs may be used as a deviation criterion in four instances:

- The child has resources available to him or her.
- There are ~~child-care~~childcare expenses for the child, which can only be used as a deviation in the original child support order or as a defense for a modification.
- Support payments are made for a child not residing with that parent.
- The significant and essential needs of a spouse may be used only as a defense against an increase in the order, not to decrease the order.

Authority: Regs. Conn. State Agencies, §§ 46b-215a-2c(d), 46b-215a-5c(b)(4)(A), 46b-215a-5c(b)(4)(B), 46b-215a-5c(b)(4)(C), and 46b-215a-5c(b)(4)(D).

Discussion: See § 7.32[5], *below*.

□ Using the coordination of total family support as a deviation criterion:

○ The total family support considers the property division, alimony and tax considerations.

○ It is typically used where there are tax savings justified by an unallocated alimony and support order. **Authority:** Regs. Conn. State Agencies, § 46b-215a-5c(b)(5). **Discussion:** See § 7.32[6], *below*.

□ Applying special circumstances as a deviation criterion:

○ Special circumstances include:

• Shared physical custody that substantially reduces a custodial parent's expenses or increases expenses for the noncustodial parent.

- Extraordinary disparity in parental income where the custodial parent has more income than the non-custodial parent and the non-custodial parent will be able to better foster a relationship with the child with a deviation from the child support guidelines.

- When the child support orders exceed 55% of the obligors net income.

- The best interests of the child dictate a deviation.

- Other equitable factors. **Authority:** *Maturo v. Maturo*, 296 Conn. 80 (2010), *Marrocco v. Giardino*, 255 Conn. 617 (2001), [Wald v. Cortland-Wald](#), 226 Conn., App. 752 (2024). *Korsgren v. Jones*, 108 Conn. App. 521 (2008), *Lefebvre v. Lefebvre*, 75 Conn. App. 662 (2003), and *Ferraro v. Ferraro*, 45 Conn. App. 230 (1997); Regs. Conn. State Agencies, §§ 46b-215a-1(23), 46b-215a-5c(b)(6)(A), 46b-215a-5c(b)(6)(B), 46b-215a-5c(b)(6)(C), 46b-215a-5c(b)(6)(D), and 46b-215a-5c(b)(6)(E); *Preamble to the Child Support and Arrearage Guidelines* (2005), § (j)(4). **Discussion:** See § 7.32[7], below.

- Making orders for unreimbursed medical expenses:

- The amount of child support is to be added to the net weekly income of the child support recipient and deducted from that of the child support obligor to determine a new percentage, which will be a parent's contribution to unreimbursed medical expenses.

- A medical health care support order may also include contributions to the health insurance premiums or, in some circumstances concierge services. **Authority:** *Graham v. Graham*, 222 Conn. App. 560 (2023), *Doyle v. Doyle*, 150 Conn. App. 312 (2014), and *Guaragno v. Guaragno*, 141 Conn. App. 337 (2013); Regs. Conn. State Agencies, §§ 46b-215a-1(12), 46b-215a-1(13), 46b-215a-2c(f), 46b-215a-2c(f)(1), 46b-215a-2c(f)(1)(C), 46b-215a-2c(f)(2), and 46b-215a-2c(f)(3). **Discussion:** See § 7.33, below.

- Making orders for work-related ~~child-care~~childcare expenses:

- The percentage calculated for unreimbursed medical expenses will apply for work-related ~~child-care~~childcare expenses.

- The ~~child-care~~childcare expenses must be:

- Reasonable.

- Necessary to allow a parent to work.

- Not subsidized or reimbursed.

- Similar in cost to that of a licensed ~~child-care~~childcare provider.

Authority: *Curtis v. Curtis*, 134 Conn. App. 833 (2012), *Irizarry v. Irizarry*, 90 Conn. App. 340 (2005), and *Gereg v. Gereg*, 2011 Conn. Super. LEXIS 1887 (2011); Regs. Conn. State Agencies, §§ 46b-215a-2c(g)(1), 46b-215a-2c(g)(2)(A), and 46b-215a-2c(g)(2)(B). **Discussion:** See § 7.34, below. See also § 7.33, below.

§ 7.28 Using the Child Support Guidelines

[1] Considering the Child Support Guidelines Is Mandatory

In every case regarding support of a minor child, the child support guidelines must be considered. Conn. Gen. Stat. § 46b-215b(a), *Maturo v. Maturo*, 296 Conn. 80 (2010), and *Tuckman v. Tuckman*, 308 Conn. 194 (2013). Moreover, even if a party has not requested child support, the court must consider the guidelines. *V.H. v. J.B.*, 234 Conn. App. 792 (2024). This includes cases in which the court made orders of unallocated alimony and support. *O'Brien v.*

O'Brien, 138 Conn. App. 591 (2012). Although the Tax Cuts and Jobs Act of 2017 has rendered unallocated orders obsolete, they are still applicable to any unallocated order made prior to 2019 which is modified subsequent to January 1, 2019. The Income Shares Model, which presupposes that a child should receive the same percentage of support from their parents as he or she would have had the parents continued to reside together, is the predicate behind the child support guidelines. *Preamble to the Child Support and Arrearage Guidelines* (2015) § (d). The child support guidelines are mandated to be reviewed once every four years, with the current edition being effective as of July 1, 2015. Conn. Gen. Stat. § 46b-215a. In the current iteration of the guidelines, the maximum combined weekly net amount is \$4,000.

#Comment Begins

Warning: The Appellate Court, in *D'Amato v. Hart-D'Amato*, 169 Conn. App. 669 (2016), unartfully handled the issue of child support being paid by a non-custodial parent by stating that a parent who enjoys visitation also has to pay a share of child support. Firstly, child support, under the guidelines, is mandatory, not optional. Secondly, the payment of child support is not dependent upon exercise or enjoyment of visitation with the child. Any citation to this case should be severely limited.

#Comment Ends

With the passage and implementation of the Connecticut Parentage Act, P.A. 21-15, it is now possible for child to have more than two legal parents and, consequently, for more than two parents to be obligated to support the child financially. Our current Child Support Guidelines have no mechanism for determining child support in a situation that involves more than two parents. “If a court has adjudicated a child to have more than two parents. ... The child support guidelines shall not apply until such guidelines have been revised to address the circumstances when a child has more than two parents. ...” Conn. Gen. Stat. § 46b-475 However, until that time, any court entering an order for child support shall consider the guidelines and criteria used to establish an award under the guidelines. Where two or more of the parents still reside together, it may be helpful to run the guidelines by combining the income of those parents in the same residence in order to derive a more equitable child support number, understanding the child support envisions the separation and apportionment of combined net income to different households.

[2] Calculating Child Support Under the Guidelines

In order to determine each parent’s share of the child support, necessary taxes and deductions, which are not voluntary deferrals or withholding, are subtracted from his or her gross income in order to arrive at a net weekly figure. Expenses which are voluntarily withheld, such as a contribution to a 401(k), will not be deducted from the gross income. A court that does not make a finding of the net income of the parties and bases its decision on gross income, violates the mandates of the child support guidelines and the resulting order cannot stand. *Morris v. Morris*, 262 Conn. 299 (2003). The net weekly income of the parties is then added together for purposes of determining the total net weekly income upon which child support is to be based. The combined net weekly income and the number of children will determine the amount of the child support. Thereafter, each parent’s percentage of total combined net income is determined and multiplied by the weekly child support number to arrive at each parent’s weekly obligation towards child support.

[3] Calculating Child Support When the Income Exceeds the Guidelines

When the income of the parties is in excess of the maximum amount set forth in the child support guidelines, the amount of child support at the top level of the Guidelines is the presumed minimum amount of child support to be awarded and the maximum child support amount is the top percentage multiplied by the combined net income. [Regs. Conn. State Agencies § 46b-215a-2c\(a\)\(2\)](#), *Dowling v. Szymczak*, 309 Conn. 390 (2013), and *Maturo v. Maturo*, 296 Conn. 80, 1 (2010). Provided that the child support is within this range (i.e., between the top of the guidelines and the top percentage applied to net income) no deviation from the child support guidelines is necessary. *Fox v. Fox*, 152 Conn. App. 611 (2014). However, the minimum and maximum amounts may, upon applying deviation criteria or the statutory criteria of [Conn. Gen. Stat. § 46b-84\(d\)](#), be rebutted. *Preamble Child Support and Arrearage Guidelines* (2015), § (b) (5).

[4] Calculating Contributions to Medical and Child Care Costs

In addition to the Child Support Guideline calculation for weekly support amounts, the guidelines also determine the contributions each party must make for unreimbursed medical costs and the work-related ~~child care~~[childcare](#) costs. For a more thorough discussion of unreimbursed medical expenses and work-related ~~child care~~[childcare](#) costs, see §§ 7.33 and 7.34, *below*.

For childcare costs to be reimbursable under the child support guidelines, they must be incurred to allow a parent to work. Although costs for an extended school day may constitute a reimbursable childcare cost, it will not be so considered when it is not necessary for the obligee to work. *Trent v. Trent*, 226 Conn. App. 791 (2024).

[5] Adjusting the Child Support for Split Custody

Split custody is defined as “a situation in which there is more than one child in common and each parent is the custodial parent of at least one of the children.” [Regs. Conn. State Agencies, § 46b-215a-1\(24\)](#). To calculate the amount of support owed in a split custody situation, two child support calculations must be completed. Each calculation provides the amount of child support which would be due to each parent based upon the child living with him or her. [Regs. Conn. State Agencies, § 46b-215a-2c\(c\)\(7\)\(A\)](#). For example, if the mother primarily had two of the children in her custody and the father primarily had one of the children in his custody, the amount due to the mother would be calculated based upon two children and the amount due to the father would be calculated based upon one child. The lesser amount of child support is then deducted from the greater amount resulting in the presumed amount of child support to be paid. [Regs. Conn. State Agencies, § 46b-215a-2c\(c\)\(7\)\(A\)](#). There is no preclusion for the application of deviation criteria to this amount.

It is important that the concept of split custody be differentiated from shared physical custody. The former applies to the primary residence of more than one child and calculating the child support while the latter describes a virtual equal parenting plan with a child. The two types of custody may not be used interchangeably when calculating child support. *Cyganovich v. Cyganovich*, 189 Conn. App. 164 (2019).

The mere fact that a court, before the evidence was concluded, began computing ~~the child~~[child](#) support based upon split custody, did not amount to judicial bias and a predetermination of custodial issues. *Buxenbaum v. Jones*, 189 Conn. App. 790 (2019). While justifying the decision on the basis that a court may begin to construct a decision prior to the

conclusion of evidence, is that not the definition of bias?

[6] Adjusting the Child Support for Shared Physical Custody

“A situation in which the physical residence of the child is shared by the parents in a manner that ensures the child has substantially equal time and contact with both parents” is the definition of shared physical custody. [Regs. Conn. State Agencies, § 46b-215a-1\(23\)](#). There need not be an exact equal sharing of physical custody to find shared physical custody. The presumptive amount under the guidelines will be the amount calculated under the guidelines to be paid by the higher wage earner to the lower wage earner. [Regs. Conn. State Agencies, § 46b-215a-2c\(c\)\(7\)\(B\)](#). The only time this would really change the typical child support calculation is if the person who would have been the custodial parent is the high income earner, in which case under the regular guideline calculation, there would be no payment of child support, but under shared physical custody there is. This does not preclude the employment of deviation criteria for shared physical custody or other reasons. For a more thorough discussion on deviation for shared physical custody, *see* [§ 7.32\[7\]](#), *below*.

[7] Adjusting Child Support for Another Qualified Child

A qualified child is one who: (1) lives with the parent; (2) is a dependent of the parent; (3) is not the subject of the support determination; and (4) the child support paid for such child has not been deducted from the gross income calculation for the child support guidelines. [Regs. Conn. State Agencies, § 46b-215a-2c\(d\)\(1\)](#). If these criteria are met a parent can claim the qualified child deduction in the establishment of an initial award or to defend against a modification. The child support calculation for this deduction, computes the child support for all children, including those whose support is being determined, by only using the income of the parent with the qualifying child. The amount of support calculated for the children whose support is being determined is then subtracted from the support calculated for all children to arrive at the qualified ~~child-care~~[childcare](#) deduction. Essentially this deduction gives the parent the benefit of child support for other children he or she may have, either as an amount to be deducted from gross income or as this deduction.

#Comment Begins

Forms: JD-FM-220—Worksheet for CT Child Support and Arrearage Guidelines, *see* [Chapter 20, § 20.30](#), *below*.

#Comment Ends

§ 7.29 Determining Income for Purposes of the Child Support Guidelines

The definition of income is set forth in the child support regulations, and includes the following:

1. Salary. The amount of income must be part of the evidence and the child support guidelines are not evidence. [Aley v. Aley, 101 Conn. App. 220 \(2007\)](#).
2. Hourly wages not to exceed 45 hours per week. Accordingly, overtime income or income from a second job, to the extent it exceeds 45 hours per week, will not be included in a child support determination. [Simpson-Givens v. Givens, 2011 Conn. Super. LEXIS 155 \(2011\)](#).

3. Tips, commissions and bonuses. The court should include bonuses in the calculation of child support, otherwise a significant portion of the income will be excluded from a guideline calculation. *Bartel v. Bartel*, 98 Conn. App. 706 (2006).

4. Payments from a profit-sharing, deferred compensation plan, incentive-based compensation, or received as severance. However, income received when restricted stock and stock options are paid out that had been awarded to the obligor at the time of the dissolution are part of the property division and cannot be counted as income for child support purposes. *McKeon v. Lennon*, 155 Conn. App. 423 (2015) (cert. granted). The party seeking to include this income has the burden of proof to demonstrate what was awarded at the time of the dissolution versus post dissolution. *McKeon*, 155 Conn. App. at 445. With the 2015 amendments to the Child Support Guidelines, this definition was expanded to include incentive-based compensation. Incentive based compensation is defined to include, but not be limited to “stock options, restricted stock, restricted stock units, phantom stock, stock appreciation rights, and other forms of delayed or deferred compensation.” *Preamble to Child Support and Arrearage Guidelines* (2015), § (h)(1)(A) (ii).

#Comment Begins

Warning: When summarizing the changes to the Guidelines, the Preamble indicates that the incentive-based compensation is includible income if, and, or when vested or exercisable. *Preamble of the Child Support and Arrearage Guidelines* (2015), § (b)(3)(A). However, the mere fact that the incentive compensation is vested or exercisable does not automatically convert it to cash income, it only means that is a viable option. Care should be taken when including such compensation in a definition for child support as to whether or not it should be based upon the ability to exercise or the actual exercise of the compensation.

#Comment Ends

5. Tribal stipend and other incentives.

6. In-kind compensation or perquisites received from employment. This can include a rent-free apartment provided by an employer. *Shearn v. Shearn*, 50 Conn. App. 225 (1998). A recurrent automobile allowance is includable as income for child support purposes. *Harlow v. Stickels*, 151 Conn. App. 204 (2014).

7. Fringe benefit payments for military personnel.

8. Unemployment insurance benefits, workers compensation benefits, strike pay, disability insurance benefits, or any benefits received in place of earned income.

9. Veterans benefits.

10. Social security benefits paid to the parent for his or her own needs. If, however, the parent receives Supplement Social Security and disability or retirement social security benefits, the income inclusion of the latter will not exceed \$5 per week.

11. Social Security benefits, which include those received on behalf of a child. This provision was added to be consistent with precedent that social security dependency benefits paid to a child should be included in gross income for purposes of calculating child support. *Jenkins v. Jenkins*, 243 Conn. 584, 595 (1998). The 2015 guidelines made a further clarification that this is to be included in the income of the parent whose income is being determined. Regs. Conn. State Agencies, § 46b-215a-1(11)(A)(xi).

12. Net proceeds received as a result of contractual arrangements.

13. Income received from pension or retirement funds.

14. Net rental income, after reasonable and necessary expenses of the rental are deducted.

15. Income received from an estate or trust.

16. Royalty income.

17. Income from annuities, interest, and dividends. If a court is to apply a rate of return to assets, in a fashion similar to determining alimony, then there must be evidence of the rate of return found by the court. *Fox v. Fox*, 152 Conn. App. 611 (2014).

18. Earnings from self-employment after deducting reasonable and necessary expenses incurred in operating the business. Certain depreciation expenses may be deducted from a party's gross income in a Subchapter S corporation representing a reinvestment in the business in contrast to income. *Bishop v. Freitas*, 90 Conn. App. 517, 522–523 (2005). On a case-by case-basis the court must determine the amount of undistributed Subchapter S corporate earnings available to a parent for purposes of paying child support. *Tuckman v. Tuckman*, 308 Conn. 194 (2013). In so In reviewing the earnings, care should be taken to determine the need to retain money for business operations versus using the corporate entity to shield income. *Tuckman*, 308 Conn. at 211.

While a court may not find the recitation of the obligor's income on his financial affidavit to be truthful, the court may still use the income for purposes of determining the child support amount. *Pencheva-Hasse v. Hasse*, 221 Conn. App. 113 (2023).

Strategic Point: The oblige in *Pancheva-Hasse v. Hasse*, 221 Conn. App. 113 (2023), essentially provided the court with a document dump of records to show that the obligees claimed income was untruthful. However, the document dump came with no analysis by the oblige or her attorney. If you want to prove that a party has misstated his or her income, you need to provide the court with an analysis of the documents put into evidence; don't rely on the court to do your work.

19. Receipt of alimony from one who is not a party to the child support determination. Specifically, this cannot include alimony being received by a party or obligor to the child support action. *Robinson v. Robinson*, 172 Conn. App. 393 (2017).

20. For a child whose support is being determined, any adoption subsidy benefits being received by a custodial parent.

21. Lottery, gambling, and prize winnings and regularly recurring gifts, except if they are being provided by a spouse or domestic partner. When the concept of contributions by a new spouse or cohabitant was first considered, the court included in the parent's income the amount of these contributions made to expenses when determining the amount of child support. *Unkelbach v. McNary*, 244 Conn. 350 (1998). Subsequently, the child support guidelines changed to exclude these contributions as income, but to allow them to be assessed as a deviation criteria. While gifts from a spouse or domestic partner are expressly excluded from income, parental gifts are not and, therefore, may be properly included. *Lusa v. Grunberg*, 101 Conn. App. 739 (2007).

22. Educational grants. This includes fellowships and subsidies which are taxable under the Internal Revenue Code.

Regs. Conn. State Agencies, § 46b-215a-1(11)(A).

#Comment Begins

Strategic Point: If there is any dispute over what is or is not income, evidence must be provided to the court to allow a proper determination to be made as to whether it comes under one of the inclusions.

#Comment Ends

In addition to specifically including items, there are income categories specifically excluded from income:

1. Support being received for a child living in the home of a parent whose income is being determined.

2. Supplementary Security Income (hereinafter "SSI") payments, which are payments to those age 65 and older, the blind, or the disabled, including for the child living with the parent whose support is being determined. Additionally, the fact that a parent receives SSI payments will not formulate a reason for deviation from the guidelines. *Marrocco v. Giardino*, 255 Conn. 617, 630 (2001).

3. Social Security disability or retirement over \$5 per week when the parent is also receiving Supplemental Security Income (SSI). This exclusion was added to make it consistent with the new inclusion of the \$5 per week.

4. Public assistance grants through any federal, state, or local government entity.

5. The earned income tax credit.
6. Regularly recurring contributions or gifts and income of a spouse or domestic partner. This section is the corollary to #21 in the income inclusions.

Regs. Conn. State Agencies, § 46b-215a-1(11)(A).

A party may not rely solely upon the child support guideline worksheet to support an order of child support. The record must contain evidence of the figures ~~inputted into~~ used in computing the child support guidelines. *Barbour v. Barbour*, 156 Conn. App. 383 (2015). This is an important fact that counsel often overlook; if amounts on the child support guideline worksheet differs from the financial affidavit, additional evidence to support those inconsistent numbers must be provided.

§ 7.30 Determining Income Other Than Salary and Wages

Where a party has income received in a lump sum or by variable payments, such as a bonus or commissions, the court may enter a supplemental child support order based upon this income. Regs. Conn. State Agencies, § 46b-215a-2c(c)(1)(B). However, any such supplemental payment must be made in a manner consistent with the guideline percentages where the income is under the maximum of the guidelines. Regs. Conn. State Agencies, § 46b-215a-2c(c)(1)(B)(i) and *Maturo v. Maturo*, 296 Conn. 80 (2010). The term “consistent with the guidelines” includes whether such a supplemental order is based upon gross or net income. *Barcelo v. Barcelo*, 158 Conn. App. 201, cert. denied, 319 Conn. 910 (2015). An order which is predicated upon earning capacity but contains a supplemental order of a percentage payment of a bonus is ambiguous in that the earning capacity amount may possibly subsume the bonus income and therefore constitute a double dip of income for the obligor upon which he is to pay child support. *Barcelo*, 158 Conn. App. at 215-216. Where the combined net income is in excess of the guidelines, the supplemental award may be determined on a case by case basis, but must be consistent with statutory law. Regs. Conn. State Agencies, § 46b-215a-2c(c)(1)(B)(i). Such orders must contain findings regarding the needs of the minor child pursuant to Conn. Gen. Stat. § 46b-84. *Renstrup v. Renstrup*, 217 Conn. App. 252, Cert. den’d 346 Conn. 915 (2023). The definition of income has changed in the 2015 Guidelines to specifically include deferred and incentive based compensation, which forms of compensation would give rise to such a supplemental order. Such a supplemental order must be based upon the net income received, not on gross income. *Gentile v. Carneiro*, 107 Conn. App. 630, 643 (2008). While it is difficult to determine the exact deductions from a future lump sum payment, the court is permitted to estimate the deductions in order to craft an appropriate order consistent with the guidelines. *Gentile*, 107 Conn. App. at 647. The court is to consider profit sharing, deferred compensation and severance when determining gross income for child support purposes, and failure to do so is error. *Hendricks v. Haydu*, 160 Conn. App. 103 (2015). The exercise of stock options and vesting of restricted stock should be considered as a portion of the gross income for purposes of making a child support determination. *McKeon v. Lennon*, 321 Conn. 323 (2016).

#Comment Begins

Strategic Point: Prior to the change in the definition of income to include deferred and incentive based compensation (i.e., stock options, restricted stock, stock incentive units, etc.) these forms of compensation were not typically included in the child support calculation. Now it should be clearly considered in a supplemental order.

#Comment Ends#Comment Begins

Strategic Point: Instead of allowing the court to estimate taxes on a bonus or commission income, providing expert testimony as to the tax consequences will eliminate speculation and provide an accurate basis upon which the court may make an order.

#Comment Ends#Comment Begins

Strategic Point: The strict adherence to the child support guidelines continues to dominate Appellate and Supreme Court decisions. When seeking a supplemental award, it is necessary to specifically demonstrate how such an award will relate to the children. The court may not treat supplemental awards as it does with alimony and property division by stating that it has considered the statutory criterion without a recitation of each and every finding that satisfies such criterion. With a supplemental award, the court must discuss its relationship to the factors in [Conn. Gen. Stat. § 46b-84\(d\)](#).

#Comment Ends

In order for the supplemental payment of child support based upon bonus or commission income to be consistent with the guidelines percentages, it must conform to the basic tenets of the guidelines, namely that the percentage of income paid for purposes of child support decreases as income increases. [Gentile, 197 Conn. App. at 648](#). In considering the appropriate percentages of child support on a lump sum payment, attention must be paid to the manner in which the order is necessary to meet the needs of the child. [Maturo, 296 Conn. at 106](#).
#Comment Begins

Strategic Point: In a case involving a client whose spouse has variable bonuses or other variable income, the client should compile documentation as to the needs of the child to buttress an additional amount of child support to be paid from the variable income.

#Comment Ends

§ 7.31 Determining Deductions from Income

Inasmuch as child support is calculated based upon net and not gross income, only certain deductions are permitted to determine net income. In general, the deductions are those mandated and not voluntary, such as contributions to a retirement plan. The allowable deductions from gross income are:

1. Federal and state income taxes. These taxes must be actual tax payments. It is improper to deduct taxes when they have not been paid in the past and there is no evidence of payment in the future. [Martone v. Martone, 28 Conn. App. 208 \(1992\)](#). The evidence must support whatever tax rate is used. [Utz v. Utz, 112 Conn. App. 631 \(2009\)](#).
2. Social security taxes. However, if social security is not deducted, as is the case for teachers, then the deductions for retirement up to the maximum allowed for social security is permitted. The deduction is permitted for the total amounts paid by those who

are self-employed, as it includes the employee's share and what the employer would typically pay.

3. Medicare taxes.

4. Insurance premiums for health, medical, dental, or hospitalization coverage, including contributions to HUSKY for the parent or his or her dependent.

5. Premiums for court-ordered life insurance on behalf of the child whose support is at issue. A party cannot fail to include the amount of the life insurance premium because he does not want to provide for such insurance and then complain, when the court provides for the life insurance, that it erred in calculating the child support guidelines. *Kirwan v. Kirwan*, 185 Conn. App. 713 (2018).

6. Premiums for court-ordered disability insurance.

7. Mandatory union dues deducted by an employer.

8. If deducted by the employer, the cost of mandatory uniforms and tools.

9. Court-ordered alimony and child support for those whose support is not being determined. However, a deduction will not be permitted for any arrearages owed.

10. An imputed support obligation for a qualified child, who is not a child for whom current support is being determined, and there is no child support order deducted from income in making the current child support determination. This provision applies to a parent who does not pay child support for a child other than the one whose current support order is being determined. An amount of child support that that parent would pay on behalf of the child would be imputed and then deducted from the net income.

Regs. Conn. State Agencies § 46b-215a-1(1).

§ 7.32 Determining Deviation Criteria Under the Child Support Guidelines

[1] Setting Forth the Predicates for Employing Deviation Criteria

In every determination of child support, the court must make a finding as to the amount of child support to be paid in accordance with the child support guidelines. *Favrow v. Vargas*, 231 Conn. 1, 20 (1994) and *Unkelbach v. McNary*, 244 Conn. 350, 367 (1998). This applies even if there is an interim period where there are differing support orders pending the sale of the marital residence. *Wald v. Cortland-Wald*, 226 Conn., App. 752 (2024). Since the implementation of the child support guidelines, many practitioners have taken the position that in the event the income of the parties is in excess of the child support guidelines, the guidelines do not apply and the award can be crafted in any manner. This position is unfounded as the child support guidelines must be considered in all cases where there are children. *Maturo v. Maturo*, 296 Conn. 80 (2010) and *O'Brien v. O'Brien*, 138 Conn. App. 544 (2012). In the event the court orders a

deviation from the child support guidelines, it must set forth the amount of child support which would be paid pursuant to the guidelines, the reasons why applying that amount would be inappropriate or inequitable, and to explain the deviation criteria which justifies the order.

Anketell v. Kulldorff, 207 Conn. App. 807, cert. denied 340 Conn. 905 (2021), *Wallbeoff v. Wallbeoff*, 113 Conn. App. 107, 112 (2009) and *Savage v. Savage*, 25 Conn. App. 693 (1991). Failure to set forth the amount of child support is reversible error, even when making orders of unallocated alimony and support. *O'Brien*, 138 Conn. App. at 550.

#Comment Begins

Strategic Point: Even when requesting the court modify unallocated orders, which entered prior to 2019 and for which the parties seek to continue the tax deductibility/includability treatment, the child support guidelines must be calculated and submitted to the court.

#Comment Ends

The child support guidelines enumerate criteria permitting a child support order that deviates from the guidelines. Every case in which there is a deviation from the child support guidelines, whether by agreement or court order, must determine the amount of child support and the basis for the deviation and must determine that it is inequitable or inappropriate to apply the guidelines. *Deshpande v. Deshpande*, 142 Conn. App. 471 (2013). If the deviation criteria is not set forth or the facts do not support a particular deviation criterion, deviation from the child support guidelines is inappropriate. If the trial court does not find that the guideline amount of child support is inequitable or inappropriate when making the original order, which deviates from the child support guidelines, such a finding cannot be inferred in a later attempt to modify the order. *Righi v. Righi*, 172 Conn. App. 427 (2017). The deviation criteria apply to the child support amount, orders regarding unreimbursed medical and work-related ~~child-care~~childcare, and the payment of a child support arrearage.

[2] Applying Other Financial Resources Available to a Parent as a Deviation Criterion

The first deviation criterion is other financial resources available to a parent. The definition of income for purposes of inclusion in the child support guidelines is very specific. There may be instances in which the child support amount would be unfair in light of the other financial resources available to a parent. However, such other resources must not be ones that may be used to support a child, but are not included in the definition of net income. *Regs. Conn. State Agencies*, § 46b-215a-5c(b)(1) and *Maturo v. Maturo*, 296 Conn. 80, 100 (2010). Accordingly, a child support order will not stand where the income stated to be part of other financial resources was included in the income utilized to determine the child support amount. *Maturo*, 296 Conn. at 100. Such financial resources available to a parent would include:

1. Substantial assets owned by the party, which can be either income or non-income producing. *Regs. Conn. State Agencies*, § 46b-215a-5c(b)(1)(A). Where both parties are left with substantial assets at the time of the dissolution, this deviation criterion may not be used. *Maturo*, 296 Conn. at 101. However, where one party has accumulated substantial assets since the dissolution, it will support a modification and deviation based upon the substantial assets of a party. *Syragakis v. Syragakis*, 79 Conn. App. 170 (2003).
2. The earning capacity of a parent. This criterion applies when there is a belief that the parent is unemployed or underemployed. However, it does not mean that the amount

determined to be the parent's earning capacity is then substituted for the actual earnings in the child support guidelines worksheet. [Regs. Conn. State Agencies, § 46b-215a-5c\(b\)\(1\)\(B\)](#). When seeking to deviate based upon earning capacity, the court must calculate the child support based upon the actual earnings, make a determination that imposition of the amount of child support under the guidelines would be inequitable or inappropriate, and then deviate from the presumptive amount by reason of earning capacity. [Keusch v. Keusch](#), 184 Conn. App. 822 (2018), [Barcelo v. Barcelo](#), 158 Conn. App. 201, *cert. denied*, 319 Conn. 910 (2015) and [Fox v. Fox](#), 152 Conn. App. 611 (2014). The amount of the deviation must logically flow from the facts found. The court cannot deviate upward when finding that the child support obligee has an earning capacity; such a finding would warrant a downward deviation. [Renstrup v. Renstrup](#), 217 Conn. App. 252, *cert. den'd* 346 Conn. 915 (2023). When making a determination of earning capacity, there must be evidence upon which the earning capacity is based. [Lucy v. Lucy](#), 183 Conn. 230, 234 (1981). The trial court can predicate a modification of child support on the obligor's earning capacity. [Russack v. Russack](#), 58 Conn. App. 517 (2000). The mere fact that a court considers earning capacity does not require a deviation based upon earning capacity. [Schoenborn v. Schoenborn](#), 144 Conn. App. 846 (2013). Courts are more likely to order an earning capacity where a party is being secretive about income or his or her testimony contradicts the objective facts of the case. [Lemons v. Wells](#), 2008 Conn. Super. LEXIS 3197 (2008).

#Comment Begins

Warning: It is extremely important when arguing that there should be a deviation of child support based upon earning capacity, that the court is provided with the child support guidelines based upon the current earnings. The court must make a finding as to the child support guidelines amount and that it is unfair or inequitable for the court to order that amount in light of the earning capacity of one or both of the parties. It would then be beneficial to provide the court with a second child support calculation that is made based upon the actual earning capacity being sought.

#Comment Ends

3. Parental support that is being provided to an obligor who was a minor. [Regs. Conn. State Agencies, § 46b-215a-5c\(b\)\(1\)\(C\)](#). This applies to a minor who becomes a parent and is supported by his or her parent. Presumably this deviation criterion would only apply during the minor parent's minority.

4. A spouse or domestic partner providing regularly recurring gifts or contributions, which has led a parent to either reduce his or her income or results in an extraordinary decrease in his or her living expenses as a result of the gifts, will support a deviation. [Regs. Conn. State Agencies, § 46b-215a-5c\(b\)\(1\)\(D\)](#). While these contributions cannot be counted as income, they may be used as a deviation criterion. A determination that money received is a gift and not a loan must be based upon competent evidence, and only then may the gifts be used as a deviation criterion. [Winters v. Winters](#), 140 Conn. App. 816 (2013).

5. To the extent a parent earns overtime income in excess of 45 hours per week, such income is to be considered up to a maximum of 52 hours per week if the following three requirements are met:

- a. These earnings have been consistently earned in the past and it is reasonably anticipated they will continue in the future;
- b. It is in the child's best interest to consider these wages; and
- c. They will not be considered in a modification if, when the original order entered, he or she worked less than 45 hours per week.

Regs. Conn. State Agencies, § 46b-215a-5c(b)(1)(E).

[3] Applying Extraordinary Expenses for the Child's Care or Maintenance as a Deviation Criterion

The second deviation criterion is the extraordinary expenses for the care of a child. To the extent that a parent incurs expenses for a child who support is being determined regarding education, unreimbursed medical expenses, or expenses for special needs, which are extraordinary and exist on a continuing basis, it may justify a deviation from the child support guidelines. *Regs. Conn. State Agencies, § 46b-215a-5c(b)(2)*. If an extraordinary expense falls outside of the enumerated categories, this deviation criterion may not be used. *Kissell v. Kissell*, 2010 Conn. Super. LEXIS 3013 (2010).

[4] Applying Extraordinary Parental Expenses as a Deviation Criteria

To qualify an extraordinary parental expense as a deviation criterion, it must either be a significant expense for exercising visitation, represent an unreimbursed work-related expense, or be an unreimbursed medical or disability expense. *Regs. Conn. State Agencies, § 46b-215a-5c(b)(3)*. To justify a deviation based upon travel costs, there must be more than a generalized finding that travel costs will be incurred. *Kavanah v. Kavanah*, 142 Conn. App. 775 (2013). A court has permitted deduction for commutation expenses to New York where the payor lived in Connecticut to be near his child. *Sheppard v. Sheppard*, 80 Conn. App. 202, 211 (2003).

#Comment Begins

Strategic Point: Where the child support obligor must travel to exercise parenting time, proof of the costs of travel and lodging should be submitted to demonstrate these extraordinary expenses.

#Comment Ends

A court which requires visitation to be in a certain locale, which is not where the child support obligor resides, must consider the costs the obligor incurs to maintain a residence for visitation when establishing a child support order. *Battistotti v. Suzanne A.*, 182 Conn. App. 40 (2018).

[5] Applying the Needs of a Parent's Other Dependents as a Deviation Criterion

Where a parent has a child from another relationship, the courts distinguish between a

qualified child and the child for whom support is being determined ~~as~~^{as} a deviation criterion in determining the applicability of the child support guidelines. A qualified child is one who lives with and is dependent upon the parent, whose support is not being determined, and whose parent did not deduct from gross income the amount of support being paid for that child. *Regs. Conn. State Agencies, § 46b-215a-2c(d)*. The deviation is only permitted in the following circumstances:

1. If a qualified child has resources available to him or her. *Regs. Conn. State Agencies, § 46b-215a-5c(b)(4)(A)*.
2. ~~Child care~~^{Childcare} expenses incurred for the qualified child, but only to deviate from the presumptive child care contribution in the child support guidelines for an initial child support award or in defense against a modification award. *Regs. Conn. State Agencies, § 46b-215a-5c(b)(4)(B)*.
3. Support payments by a parent for a dependent child who is not residing with that parent. *Regs. Conn. State Agencies, § 46b-215a-5c(b)(4)(C)*.
4. The significant and essential needs of a spouse, which may be used as a defense against an increase in the support order, but not a reason to decrease the support order. The spouse's income, assets, and earning capacity will be considered in determining whether to deviate from the child support guidelines. *Regs. Conn. State Agencies, § 46b-215a-5c(b)(4)(D)*.

[6] Applying the Coordination of Total Family Support as a Deviation Criterion

This section considers the overall resolution of the case in light of the child support orders. Accordingly, it may be appropriate to deviate from the child support guidelines based upon the property division, provisions made for alimony, and tax considerations. *Regs. Conn. State Agencies, § 46b-215a-5c(b)(5)*. This section is the most frequently cited section for purposes of employing deviation criteria usually based upon the tax savings as a result of an unallocated alimony and support order, which will now apply to a modification of such orders.

[7] Applying Special Circumstances as a Deviation Criterion

The court may deviate from the child support guidelines for five special circumstances. First, a deviation may be based upon shared physical custody, which implicates both the financial impact of such shared custody and the amount of time a child is with each parent. However, shared physical custody must substantially reduce a custodial parent's expenses or increase the non-custodial parent's expenses without which this deviation criterion may not be used. *Korsgren v. Jones, 108 Conn. App. 521 (2008)*. Such a deviation is permitted provided that the basic needs of the child will be met by the parent receiving support. *Regs. Conn. State Agencies, § 46b-215a-5c(b)(6)(A)*. In determining whether there is a substantial increase in expenses, the court compares the financial affidavits at the time of the original order with the expenses at the time the modification is sought. *Korsgren, 108 Conn. App. at 530*. The increase in expenses should be related to the change in custody.

Shared physical custody is defined as the child's physical residence being shared so that the child has substantially equal time with each parent. *Regs. Conn. State Agencies,*

§ 46b-215a-1(23). A deviation for shared physical custody may be applied when it reduces the child's expenses for the parent with the lower income or increases the child's expenses for the parent with the higher income. Regs. Conn. State Agencies, § 46b-215a-5c(b)(6)(A). There must be a finding that either sufficient funds remain for the parent who is receiving support to meet the child's needs after implementing the deviation or the parents have substantially equal income. Regs. Conn. State Agencies, § 46b-215a-5c(b)(6)(A). Without such findings, any child support order which deviates based upon shared physical custody will not stand. *Wald v. Cortland-Wald*, 226 Conn. App. 752 (2024).

#Comment Begins

Warning: Under the previous iterations of the Child Support Guidelines, shared physical custody was defined as being in excess of a normal visitation scheduled, which was to be considered as every other weekend and occasional overnights during the week. The new definition requires substantially equal time. Accordingly, do not rely upon cases prior to the 2015 guidelines, which defined what does and does not constitute shared physical custody in light of this new definition.

#Comment Ends#Comment Begins

Strategic Point: Obtaining a deviation based upon shared custody is difficult in an initial award because there is nothing to which current financial circumstances are to be compared.

#Comment Ends#Comment Begins

Warning: Many clients erroneously believe that if there is a shared custodial arrangement, he or she will not receive or pay child support. This shared physical custody deviation criterion can only be used to deviate from the presumptive child support amount, not as an exemption from paying.

#Comment Ends

A second special circumstance is an extraordinary disparity in parental income such that the custodial parent's income is higher than the non-custodial parent. Regs. Conn. State Agencies, § 46b-215a-5c(b)(6)(B). To satisfy this criterion, the lower income parent's ability to foster a relationship with the child must be enhanced and the party who is receiving the support must have funds remaining to meet the child's basic needs after the deviation. This deviation criterion may only be used when the child support recipient has the higher income, not the child support payor. *Maturo v. Maturo*, 296 Conn. 80, 101 (2010).

A child support award exceeding 55% of the obligors net income provides the third special circumstance. Regs. Conn. State Agencies, § 46b-215a-5c(b)(6)(C). This allows the court to deviate from the presumptive amount of any component of the child support award, i.e., child support, medical care coverage, or work related ~~child care~~ childcare, so that the total obligation is below 55%.

The fourth special circumstance permits the court to deviate based upon the best interests of the child. Regs. Conn. State Agencies, § 46b-215a-5c(b)(6)(D). However, this deviation criterion may not be used to consider income that is otherwise excluded from income under the child support guidelines. *Marrocco v. Giardino*, 255 Conn. 617 (2001).

The fifth special circumstance is the catchall, other equitable factors. [Regs. Conn. State Agencies, § 46b-215a-5c\(b\)\(6\)\(E\)](#). These last two deviation criteria allow the exercise of discretion to deviate from child support orders based upon the particular circumstances of the case that are not necessarily captured within any other deviation criteria.

§ 7.33 Making Orders for Health Care Coverage and Unreimbursed Medical Expenses

Any child support order shall ~~include for~~[include](#) health care coverage to be provided by either or both parents. [Regs. Conn. State Agencies, § 46b-215a-2c\(f\)](#). Such an order for health care coverage may include maintaining a child on an insurance policy at a reasonable cost, obtaining a federal or state funded insurance plan, or an order to pay a certain amount towards the premium. [Regs. Conn. State Agencies, § 46b-215a-2c\(f\)\(1\)](#). A cash medical support order, which is part of the child support calculations, includes an amount paid towards the premiums and an amount to be paid for extraordinary or unreimbursed expenses. [Regs. Conn. State Agencies, § 46b-215a-2c\(f\)\(1\)\(C\)](#). A court is not permitted to order a parent to pay a cash medical support order if they are a low income obligor or is the custodial parent of a child covered under HUSKY. [Regs. Conn. State Agencies, § 46b-215a-2c\(f\)\(2\)](#). The cost of health insurance must be reasonable as defined by statute.

As part of the child support calculation, a determination of each parent's share of the unreimbursed medical expenses is calculated. The amount of child support paid to the obligee is added to his or her net weekly income and is subtracted from the obligor's net weekly income. The 2015 Child Support Guidelines has eliminated alimony from the calculation of unreimbursed medical expenses and work related ~~child care~~[childcare](#). [Regs. Conn. State Agencies, § 46b-215a-2c\(f\)\(3\)](#). The percentages each parent has to the combined net weekly income is then determined and is the amount to be paid by that parent towards the unreimbursed medical expenses. [Regs. Conn. State Agencies, § 46b-215a-2c\(f\)\(3\)](#).

The Child Support Guidelines, as amended in 2015, specifically references the payment of unreimbursed medical and dental expenses. [Regs. Conn. State Agencies, § 46b-215a-2c\(f\)\(3\)](#). Health care costs ~~is are~~[is are](#) defined to include, medical, mental health, vision, and dental costs. [Regs. Conn. State Agencies, § 46b-215a-1\(12\)](#). Health care expenses include costs for "the overall treatment for the child's physical or mental health by a licensed health care provider, including, but not limited to those for diagnosing, treating or preventing disease, injury or other damage to the body or mind." [Regs. Conn. State Agencies, § 46b-215a-1\(13\)](#).

It should never be assumed that by filing child support guidelines an order allocating unreimbursed medical and dental expenses is in place. Without an express order as to the payment of medical expenses, a party cannot be compelled to reimburse the other for such medical expenses. [Doyle v. Doyle, 150 Conn. App. 312 \(2014\)](#).

Typically, orders regarding the payment of medical expenses will contain a caveat that such expenses need the prior consent of both parents. However, if consent was not sought, but would have been given had it been sought, a party will be liable for the medical expenses. [Guaragno v. Guaragno, 141 Conn. App. 337 \(2013\)](#).

In certain instances, payments for concierge medical insurance can be considered an unreimbursed medical expense. In *Graham v. Graham*, 222 Conn. App. 560 (2023), the court distinguished between an access fee and a medical expense. Given that the doctor reported that the concierge fee was based upon an assessment of medical expense costs for the year, it was

[considered an unreimbursed medical expense to be shared by the parties.](#)

§ 7.34 Making Orders for Work-Related Child Care Expenses

In making an order for child support, the court shall also make an order for the contribution to work-related ~~child care~~[childcare](#). [Regs. Conn. State Agencies § 46b-215a-2c\(g\)\(1\)](#). The percentage each parent owes for ~~child care~~[childcare](#) is calculated in the same manner as for unreimbursed medical expenses. *See § 7.33, above*. Costs may be subject to contribution under the guidelines to the extent they are:

1. Reasonable.
2. Necessary to permit a parent to be employed.
3. Not subject to subsidization or reimbursement.
4. In line with the cost to provide ~~child care~~[childcare](#) from a licensed provider.

[Regs. Conn. State Agencies § 46b-215a-2c\(g\)\(2\)\(A\)](#). The calculation under the Child Support Guidelines results in a percentage of such ~~child care~~[childcare](#) costs to be paid by each parent. The payment can be an actual dollar amount if the parties agree or in the event one party is not in compliance with the child support order. [Regs. Conn. State Agencies, § 46b-215a-2c\(g\)\(2\)\(B\)](#). If there has been noncompliance, the amount is determined by estimating the average of the ~~child care~~[childcare](#) costs to that parent's percentage owed under the Child Support Guidelines. [Regs. Conn. State Agencies, § 46b-215a-2c\(g\)\(2\)\(B\)](#). These factors do not establish the burden of proof used by the party seeking reimbursement of work-related ~~child care~~[childcare](#) expenses. *Curtis v. Curtis*, 134 Conn. App. 833, 844 (2012). Competent evidence, not argument from counsel, must be presented for the cost of ~~child care~~[childcare](#). *Irizarry v. Irizarry*, 90 Conn. App. 340 (2005). One court has found that summer camp expenses that allow a parent to work qualify as work-related ~~child care~~[childcare](#). *Gereg v. Gereg*, 2011 Conn. Super. LEXIS 1887 (2011). For a more thorough discussion on calculating payments of unreimbursed medical expenses, *see § 7.33, above*.

PART VI: ESTABLISHING TEMPORARY CHILD SUPPORT ORDERS

CHILD SUPPORT

§ 7.35 CHECKLIST: Establishing Temporary Child Support Orders

7.35.1 Establishing Temporary Child Support Orders

- Timing and statutory criteria for awarding temporary child support:
 - An order may be sought any time after the return date and will be retroactive to the date the motion was filed, giving credit for payments made.
 - Either party may file a motion for child support. **Authority:** [Conn. Gen.](#)

- Stat. §§ 46b-64, 46b-83, 46b-84(d), and 46b-215b. **Discussion:** See § 7.36, *below*. See also § 7.18, *above*. **Forms:** JD-FM-176—Motion for Orders Before Judgment (*P.L.*) in Family Cases, see Chapter 20, § 20.20.
- Preparing for a temporary child support hearing:
 - The Child Support Guideline calculation must be prepared and submitted at the time of the hearing.
 - Each party should complete and exchange, five days prior to the hearing, sworn financial affidavits.
 - The affiant should ensure that the income and expense sections of the financial affidavit are accurate. **Authority:** *Marcus v. Cassara*, 223 Conn. App. 69 (2023), *Bee v. Bee*, 79 Conn. App. 783 (2003) and *Watson v. Watson*, 20 Conn. App. 551 (1990); P.B. §§ 25-30(a) and 25-30(e). **Discussion:** See § 7.37, *below*. **Forms:** JD-FM-6—Financial Affidavit, see Chapter 20, § 20.03, *below*. JD-FM-220—Worksheet for CT Child Support and Arrearage Guidelines, see Chapter 20, § 20.30, *below*.
 - Stipulating to child support:
 - Any stipulation submitted to be a court order should include:
 - The amount and frequency with which child support will be paid.
 - The date the child support commences.
 - The credit or arrearage that has accrued prior to the stipulation for retroactive child support and how it will be paid.
 - The parent who will be maintaining the medical insurance on behalf of the child.
 - Each parent's contribution to unreimbursed medical expenses and work-related ~~child-care~~childcare expenses.
 - Any additional child-related expenses to be split by the parents.
 - ~~As a result of COVID-19, these~~Some agreements ~~are being~~can be taken on the papers and must be accompanied with the appropriate affidavits and requests to approve the agreement. **Discussion:** See § 7.38, *below*. **Forms:** JD-FM-280—Affidavit in Support of Request for Approval of Final Agreement on Motion(s), see, Chapter 20, § 20.89, *below*, and JD-FM-282—Request for Approval of Final Agreement Final Agreement without Court Appearance, see, Chapter 20, § 20.91, *below*.
 - Terminating child support orders upon the rendering of a final judgment:
 - All temporary child support orders terminate upon the final judgment.
 - A dismissal of an action is a final judgment that will terminate child support orders. **Authority:** *Febroriello v. Febroriello*, 21 Conn. App. 200 (1990), *Weinstein v. Weinstein*, 18 Conn. App. 622 (1989), and *Paparello v. Paparello*, 1998 Conn. Super. LEXIS 63 (1998). **Discussion:** See § 7.39, *below*.

§ 7.36 Timing and Statutory Criteria for Awarding Temporary Child Support

Either party may seek an order of temporary child support any time after the return date, and the order will be retroactive to the date of filing, giving credit for any payments made from the date the motion was filed. Conn. Gen. Stat. § 46b-83. The motion may be filed and served at the same time as the complaint, but it may not be heard until after the return date. Conn. Gen. Stat. § 46b-83. The motion need not be filed by the party seeking the order, but may be filed by the obligor. The advantage to the obligor filing the motion is the certainty of a determination as to his or her obligations for paying support instead of writing a blank check with no orders entering.

The court may make orders prior to the return date if a motion is filed and a show cause order issued. [Conn. Gen. Stat. § 46b-64](#).

#Comment Begins

Strategic Point: A child support obligor should document all payments made on behalf of the children or to the other party upon a motion being filed so that proper credit may be assessed if a retroactive award is made.

#Comment Ends#Comment Begins

Warning: From a practical standpoint, it makes little sense to file a motion and seek a show cause order prior to the return date. There is no guarantee when obtaining a show cause date that it will be prior to the return date, and will likely be after.

#Comment Ends

The court, in a temporary child support hearing, is to consider the same factors as it would for a final determination. [Conn. Gen. Stat. §§ 46b-83 and 46b-84\(d\)](#). In every determination of child support, the child support guidelines must also be considered. [Conn. Gen. Stat. § 46b-215b](#). For a more thorough discussion of the statutory factors, *see* [§ 7.18, above](#).

#Comment Begins

Forms: JD-FM-176—Motion for Orders Before Judgment (*P.L.*) in Family Cases, *see* [Chapter 20, § 20.20, below](#).

#Comment Ends

§ 7.37 Preparing for a Temporary Child Support Hearing

Provided the court has personal jurisdiction over the child support obligor, the court may enter child support orders. The support must be determined by taking into consideration the child support guidelines. A temporary child support order focuses on two main issues, the incomes of the parties and the needs of the child. Accordingly, it is important that the financial affidavits be prepared accurately, especially with these two issues in mind. The parties should exchange financial affidavits five days prior to a hearing on temporary child support. Practice Book (hereinafter “P.B.”) § 25-30(a). If the moving party does not provide the financial affidavit within that time period, the opposing party may seek to have the hearing postponed until such time as the financial affidavit is timely filed. However, the court is permitted to proceed with a hearing in the absence of the financial affidavit for the opposing party. P.B. § 25-30(a). Thus, an opposing party may not seek to delay the hearing by not filing his or her financial affidavit.

#Comment Begins

Strategic Point: If it is believed that the opposing party may not file his or her financial affidavit at the hearing, the moving party should have documents, which may be admitted into evidence, demonstrating the income of the opposing party such as tax returns, paystubs, W-2’s, or bank statements showing the deposit of income.

#Comment Ends

In preparing the financial affidavit for a temporary hearing, special attention should be

paid to the expenses. Since one consideration is the needs of the child, those needs that are specific to the child should be set forth individually. That will allow the court to easily determine the child's needs, especially where they are not usual and customary. The financial affidavit should not represent a parent's wish list or project expenses unless there is a reasonable basis for such projection. *Watson v. Watson*, 20 Conn. App. 551, 559 (1990).

In addition, the child support guidelines must be prepared and submitted to the court. P.B. § 25-30(e). Should there be a request for deviation that is listed on the second page of the child support guidelines. A party who fails to submit child support guidelines cannot later appeal the ruling claiming the court failed to follow the guidelines. *Bee v. Bee*, 79 Conn. App. 783 (2003).
#Comment Begins

Forms: JD-FM-6—Financial Affidavit, *see* Chapter 20, § 20.03, *below*. JD-FM-220—Worksheet for CT Child Support and Arrearage Guidelines, *see* Chapter 20, § 20.30, *below*.

#Comment Ends

As a result of the Pathways program, hearings on child support motions will typically be handled at the Case Date established your particular case. Since the Case Date hearing is only 45 minutes, counsel should be well prepared with exhibits in advance of the hearing. Those exhibits should be exchanged with counsel and, if at all possible, stipulated as full exhibits. The courts have begun to implement limited motion calendar practice and it may be possible to have a motion referred to that calendar instead of waiting for a case date.

§ 7.38 Stipulating to Child Support

Frequently, the parties will be able to arrive at an agreement regarding child support without the need for a court hearing. It is necessary to put the agreement in writing and have the court approve the agreement.

When drafting the stipulation, the terms should be as clear and comprehensive as possible. If at all possible, draft proposed orders in advance, so they can be used as the template for a stipulation. The stipulation should include:

1. The amount of child support and the frequency with which it will be paid.
2. The date on which the child support will commence, and if it is retroactive to the date it was filed, credit should be provided for payments made during that time.
3. If there is an arrearage calculated, which can be from the time the motion was filed until the stipulation is approved by the court, clearly state the amount of the arrearage and the manner in which it will be paid. The payment should reflect that it is either in accordance with the arrearage guidelines or why there should be a deviation from the guidelines.
4. The parent who will be maintaining medical insurance on behalf of the child.

5. The contributions each parent will make to unreimbursed medical expenses and ~~child care~~childcare costs. If it is a deviation from the child support guidelines, the reasons for the deviation must be set forth.

6. If there are any additional expenses to be split by the parties, such as camp, tutors, extracurricular activities or lessons, the agreement should specify how the parties are to agree to these expenses and each parent's responsibility toward the total. It should also delineate the time frame within which the expenses will be reimbursed.

~~Currently, as a result of COVID-19, these s~~Stipulations ~~are being~~may be presented to the court for approval on the papers, instead of by court appearance. The parties must submit the agreement, the financial affidavits of the parties, the affidavit in support of the request for approval of the final agreement, and the request for approval without court appearance. The purpose of the affidavit, which is signed by each party is to substitute for the normal canvass of each party which would be conducted by counsel in the presence of the court.

#Comment Begins

Strategic Point: If the child support, allocation of medical or ~~child care~~childcare expenses, as set forth in the agreement either deviate from the guidelines or is in excess of the maximum provisions in the guidelines, the parties should add an addendum to their affidavits filed in court. The reason and rationale for the deviation should be clearly stated within the guidelines in the affidavit. If the parties' incomes are above the maximum amount of the guidelines, the parties should set forth the minimum and maximum amounts of the child support so that the court may properly determine if deviation criteria need to be applied.

The Appellate Court will not uphold a collateral attack on an order for extracurricular activities, the payment for which was tied into the child support guideline amounts, when such order was not part of the child support sought to be modified in the pleadings. *Marcus v. Cassara*, 223 Conn. App. 69 (2023).

Strategic Point: The court is limited by the pleadings filed in terms of what is relevant information for it to hear as well as the basis upon which it can make its orders. As *Marcus v. Cassara*, 223 Conn. App. 69 (2023) demonstrated, the court's unilateral finding that there was no stated deviation criterion for the extracurricular activities as a basis to vacate that award was erroneous. Moreover, the extracurricular activities are not part of the child support guideline basic orders and do not require deviation findings. To err on the side of caution, parties should specifically provide that such orders are not part of the child support guidelines.

#Comment Ends#Comment Begins

Forms: JD-FM-280—Affidavit in Support of Request for Approval of Final Agreement on Motion(s), *see*, [Chapter 20, § 20.89, below](#), and JD-FM-282—Request for Approval of Final Agreement Final Agreement without Court Appearance, *see*, [Chapter 20, § 20.91, below](#).

#Comment Ends

§ 7.39 Terminating Child Support Orders Upon the Rendering of a Final Judgment

Upon the issuance of a final order, or the withdrawal of the action, all temporary orders for child support will terminate. *Paparello v. Paparello*, 1998 Conn. Super. LEXIS 63 (1998).

Where final orders enter, which includes the dismissal of the action, the temporary orders cease. *Febbrioriello v. Febbrioriello*, 21 Conn. App. 200, 206 (1990). In addition, an action which is dismissed and later reinstated will not serve to reinstate the temporary orders. *Febbrioriello*, 21 Conn. App. at 206.

#Comment Begins

Strategic Point: Because temporary orders will not be reinstated upon the dismissal of an action, it is imperative that all documents required for the case management conference be submitted in a timely manner. Failure to do so could result in a dismissal of the action and, therefore, the termination of the child support obligations.

#Comment Ends

The court is not permitted to issue orders that would be considered an impermissible retroactive modification of support at the time of the final hearing. See *Weinstein v. Weinstein*, 18 Conn. App. 622 (1989) (although the order was an unallocated alimony and support order, the court improperly delayed modifying the order until the dissolution trial, and thus the order was an impermissible retroactive modification).

#Comment Begins

Strategic Point: If there is a child support arrearage at any time prior to the final hearing, a motion for contempt should be filed. If it is not heard prior to the trial, it should be heard at the time of the trial. If an arrearage develops after the trial, but prior to the rendering of the memorandum of decision, a motion for contempt should be brought to the attention of the court. In the alternative, a motion to open the evidence and submit new evidence should be filed.

#Comment Ends

PART VII: ESTABLISHING PERMANENT CHILD SUPPORT ORDERS

CHILD SUPPORT

§ 7.40 CHECKLIST: Establishing Permanent Child Support Orders

7.40.1 Establishing Permanent Child Support Orders

- Determining the amount and manner of payment of child support:
 - The easiest determination of child support is a straight guideline calculation.
 - The court may not decline to enter a child support award absent a deviation finding.
 - A supplemental order may enter for additional income, but must be consistent with the Child Support Guideline principals.
 - A mandatory wage execution may enter. **Authority:** Conn. Gen. Stat. §§ 52-362 and 52-362(f); *Dowling v. Szymczak*, 309 Conn. 390 (2013), *Maturo v. Maturo*, 296 Conn. 80 (2010), *Ferraro v. Ferraro*, 168 Conn. App. 723 (2016), *Chowdhury v. Masiat*, 161 Conn. App. 314 (2015), and *Strobel v. Strobel*, 73

Conn. App. 428 (2002). **Discussion:** See § 7.41, *below*. **Forms:** JD-FM-71—Advisement of Rights, see Chapter 20, § 20.06, *below*. JD-CV-3—Wage Execution, Proceedings, Application, Order, Execution, see Chapter 20, § 20.39, *below*.

□ Determining the duration of the child support order:

- All judgments entering after July 1, 1994 will provide that child support continues until a child attains the age of eighteen, unless he or she is still in high school, in which case it continues until the earlier of the child's graduation from high school or attaining the age of nineteen.

- In limited circumstances, child support can continue until the child attains age 21 and for dissolutions occurring on or after October 1, 2023 until age 26:

- The child suffers from mental retardation or a medical or physical disability.

- The child must reside with and be dependent upon a parent.

Authority: Conn. Gen. Stat. §§ 1-1(g), 46a-51(15), 46a-51(20), 46b-84(a), and 46b-84(c); *McKeon v. Lennon*, 147 Conn. App. 366 (2013), *Sheppard v. Sheppard*, 80 Conn. App. 202 (2003) and *Pisano v. Pisano*, 2007 Conn. Super. LEXIS 2982 (2007). **Discussion:** See § 7.42, *below*.

□ Determining the source of funds to pay for child support:

- A parent is responsible to pay child support out of his or her own resources.

- A parent may not pay child support obligations out of an account held for a child, including a UTMA account. **Authority:** *Kravetz v. Kravetz*, 126 Conn. App. 459 (2011), *Mangiante v. Niemiec*, 98 Conn. App. 567 (2006), *Plikus v. Plikus*, 26 Conn. App. 174 (1991), and *Weisbaum v. Weisbaum*, 2 Conn. App. 270 (1984). **Discussion:** See § 7.43, *below*.

□ Assessing a child's independent right to support and non-modifiable orders:

- Courts will look unfavorably on non-modifiable child support orders.

- A parent cannot bargain away a child's support.

- A non-modifiable unallocated alimony order is modifiable upon a change in custody.

- An unallocated alimony and support order that is modifiable under a limited number of circumstances, deemed relevant to alimony only, will permit the modification of the child support. **Authority:** *Tomlinson v. Tomlinson*, 305 Conn. 539 (2012), *Guille v. Guille*, 196 Conn. 260 (1985), *Malpeso v. Malpeso*, 140 Conn. App. 783 (2013), *Amodio v. Amodio*, 56 Conn. App. 459 (2000), and *Rempt v. Rempt*, 5 Conn. App. 85 (1985). **Discussion:** See § 7.44, *below*. See also, Chapter 18, § 18.07[3], *below*.

□ Assessing a parent's independent right to receive child support on behalf of a child:

- A non-custodial parent cannot unilaterally determine to stop paying child support when the child is no longer living with the custodial parent.

- Child support cannot be diverted from the custodial parent and placed in an account for the child. **Authority:** *Gray v. Gray*, 131 Conn. App. 404 (2011) and *Rempt v. Rempt*, 5 Conn. App. 85 (1985). **Discussion:** See § 7.45, *below*.

□ Making provisions for health insurance coverage and processing claims:

- A parent with medical insurance will be obligated to cover the child under that insurance.

- The custodial parent's signature on a health insurance reimbursement claim is valid for processing insurance claims.
- A parent with few resources and no independent health insurance may be ordered to apply for HUSKY benefits for the child, and the court may make orders for cash medical support payments. **Authority:** Conn. Gen. Stat. §§ 46b-84(e), 46b-84(f)(2), 46b-84(f)(2)(A), 46b-84(f)(2)(B), 46b-84(f)(2)(D), 46b-84(f)(2)(E), and 46b-84(f)(2)(F); *Benedetto v. Benedetto*, 55 Conn. App. 350 (1999). **Discussion:** See § 7.46, *below*. **Forms:** JD-FM-125—Order to Maintain Health Insurance for Minor Child(ren), see Chapter 20, § 20.07, *below*.
- Making provisions for the payment of unreimbursed medical, dental, orthodontic, or mental health expenses:
 - Medical expenses must be incurred as part of the treatment of the child.
 - The judgment should include an order allocating the percentage each party is to pay of the unreimbursed expenses.
 - Some therapeutic boarding schools may qualify as a medical expense if there is a component of therapy or medical services offered. **Authority:** Conn. Gen. Stat. § 46b-37; *Kiniry v. Kiniry*, 299 Conn. 308 (2010), *Scott v. Scott*, 90 Conn. App. 883 (2005), *Keays v. Keays*, 43 Conn. App. 575 (1996), *Calway v. Calway*, 26 Conn. App. 737 (1992), and *Bucy v. Bucy*, 23 Conn. App. 98 (1990); Regs. Conn. State Agencies, § 46b-215a-2b(f)(3). **Discussion:** See § 7.47, *below*. See also § 7.33, *above*.
- Providing security for child support:
 - Security, including life insurance, may be provided for the child support order.
 - Life insurance may be ordered unless the obligor demonstrates it is not available or he or she is unable to pay for the insurance. **Authority:** Conn. Gen. Stat. §§ 46b-84(f)(1) and 46b-84(g). **Discussion:** See § 7.48, *below*.
- Allocating dependency exemptions:
 - If a child is a qualified child, he or she may be claimed as a dependent.
 - The primary custodial parent is typically entitled to the dependency exemption.
 - The exemption may be allocated between the parties. **Authority:** 26 U.S.C. § 152(c)(1); *Serrano v. Serrano*, 213 Conn. 1 (1989), *Lehane v. Murray*, 215 Conn. App. 305 (2022), *Lopardo v. Lopardo*, 2009 Conn. Super. LEXIS 686 (2009), and *Koldys v. Koldys*, 1992 Conn. Super. LEXIS 3342 (1992); 26 C.F.R. §§ 1.152-4(d), 1.152-4(d)(ii)(4), and 1.152-4(e). **Discussion:** See § 7.49, *below*.
- Providing for the payment of private school:
 - If there has been a history of the child attending private school, a parent may be ordered to pay for private school.
 - Private school may be appropriate depending upon the child's aptitude and upon the current schooling's ability of meeting the child's educational needs. **Authority:** *Hardisty v. Hardisty*, 183 Conn. 253 (1981), *Kirwan v. Kirwan*, 187 Conn. App. 375 (2019), *Carroll v. Carroll*, 55 Conn. App. 18 (1999), *Flynn v. Flynn*, 7 Conn. App. 745 (1986), and *Corttis v. Corttis*, 2001 Conn. Super. LEXIS 3504 (2001). **Discussion:** See § 7.50, *below*.

§ 7.41 Determining the Amount and Manner of Payment of Child Support

[1] Using the Child Support Guidelines

The simplest determination of child support is the amount to be paid under a child support guidelines calculation. Provided there is no deviation from the child support guidelines, nothing further will be needed to enter the child support order. A court may not decline to enter a child support order for a child who is 17 without setting forth the amount of child support attributable to the child and the appropriate deviation criteria. *Chowdhury v. Masiat*, 161 Conn. App. 314 (2015).

There must be an evidentiary basis for the entering of the child support order. A court which prepares its own child support guidelines without evidentiary support and bases the child support on those guidelines commits reversible error. *Ferraro v. Ferraro*, 168 Conn. App. 723 (2016).

[2] Predicating Child Support on Bonus or Other Variable Income

If the child support obligor receives ~~bonusa~~ bonus or other variable income that is to be used in a child support determination, evidence should be presented to the court as to the taxes on such income so that the net amount may be determined. To the extent such additional income will result in income in excess of the child support guidelines, any child support order should be at a minimum the top of the guidelines and at a maximum the top guideline percentage applied to the actual income. *Dowling v. Szymczak*, 309 Conn. 390 (2013), *Maturo v. Maturo*, 296 Conn. 80 (2010).

[3] Establishing a Wage Withholding

If a child support recipient requests, the child support will be paid by wage execution. Conn. Gen. Stat. § 52-362. *Strobel v. Strobel*, 73 Conn. App. 428 (2002). This will require the employer to garnish the obligor's wages and send the payments to the state disbursement unit, who then forwards payment to the child support recipient. Conn. Gen. Stat. § 52-362(f). The alternative is to have a contingent wage execution that may be converted into a mandatory wage execution.

#Comment Begins

Strategic Point: The child support obligor should pay the amount of child support directly to the obligee until the wage execution becomes effective.

#Comment Ends#Comment Begins

Warning: A wage execution cannot be levied against one who is self-employed and is not receiving wages, but is compensated in another manner.

#Comment Ends#Comment Begins

Forms: JD-FM-71—Advisement of Rights, see Chapter 20, § 20.06, *below*. JD-CV-3—Wage Execution, Proceedings, Application, Order, Execution, see Chapter 20, § 20.39, *below*.

#Comment Ends

§ 7.42 Determining the Duration of a Child Support Order

For any dissolution, legal separation, or annulment final judgment, the orders of child support continue until a child attains the age of eighteen, unless he or she has not yet graduated from high school, in which case it continues until the earlier of the child graduating from high school or attaining the age of nineteen. [Conn. Gen. Stat. § 46b-84\(a\)](#). For support past the child's 18th birthday, the child must be enrolled full time in high school. [Conn. Gen. Stat. § 46b-84\(a\)](#). Due to the operative date of this statute, it will apply to virtually all child support situations encountered by the practitioner. Where an agreement or court order is silent as to the duration of payments for expenses on behalf of a child, such payments terminate upon the child attaining the age of majority, absent any express provision to continue thereafter. [McKeon v. Lennon](#), 147 Conn. App. 366 (2013).

In limited circumstances, for dissolutions occurring before October 1, 2023, the court may extend child support until a child has attained the age of 21. For any dissolution, legal separation or annulment after October 1, 1997, if it is demonstrated that a child suffers from mental retardation, a mental disability or a physical disability and the child primarily resides with and is dependent upon a parent, the court may order child support until that child attains the age of 21. [Conn. Gen. Stat. § 46b-84\(c\)](#). Mental retardation is “a significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.” [Conn. Gen. Stat. § 1-1g](#). Additionally, a child who suffers from a mental or physical disability will qualify under this statute. “ ‘Physically disabled’ refers to any individual who has any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic processes or changes or from illness, including, but not limited to, epilepsy, deafness or hearing impairment or reliance on a wheelchair or other remedial appliance or device.” [Conn. Gen. Stat. § 46a-51\(15\)](#). This would include an ailment impacting sight for which the child seeks regular treatment from a specialist. [Pisano v. Pisano](#), 2007 Conn. Super. LEXIS 2982 (2007). “ ‘Mental disability’ refers to an individual who has a record of, or is regarded as having one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association’s ‘Diagnostic and Statistical Manual of Mental Disorders.’ ” [Conn. Gen. Stat. § 46a-51\(20\)](#).

In all cases, the mentally or physically disabled child or one who suffers from mental retardation must reside with and be principally dependent upon a parent for his or her support. The child support will be primarily needs based. In making claims under this provision to extend the child support, the moving party must demonstrate to the court, through competent expert medical testimony, the ailment from which the child suffers. [Sheppard v. Sheppard](#), 80 Conn. App. 202, 208 (2003).

For any dissolution of marriage occurring on or after October 1, 2023, the court may make orders until a child attains age 26 for a child with an intellectual disability defined in [Conn. Gen. Stat. § 1-1g](#); mental or physical disability as defined in [Conn. Gen. Stat. § 46a-51](#), if the child resides with and is principal dependent upon a parent. [Conn. Gen. Stat. § 46b-84\(c\)](#).

§ 7.43 Determining the Source of Funds to Pay for Child Support

A parent is responsible to pay child support from his or her own resources. [Weisbaum v. Weisbaum](#), 2 Conn. App. 270 (1984). An account held for the child's benefit under the Uniform Transfers to Minors Act (hereinafter “UTMA”) may not be used by a parent to pay his or her child support obligation. [Plikus v. Plikus](#), 26 Conn. App. 174 (1991). A parent cannot convert the funds in a UTMA or similar account into his or her own name and seek a credit for expenses paid on behalf of a child, when ordered to replenish the account. [Plikus](#), 26 Conn. App. at 177. A

parent who uses a custodial account for the payment of his or her child support obligation is subject to a lawsuit for breach of fiduciary duty by the child for whose benefit the account is held. *Mangiante v. Niemiec*, 98 Conn. App. 567 (2006).

It is improper for a court to order the invasion of a custodial account to pay expenses on behalf of a child, except for circumstances that are extraordinary and in the child's best interest. *Weisbaum*, 2 Conn. App. at 272. However, where an order has been made as to the use of accounts held for the benefit of a child, a parent who uses the funds contrary to that order may be required to pay back the account. *Kravetz v. Kravetz*, 126 Conn. App. 459 (2011).

§ 7.44 Assessing a Child's Independent Right to Support and Non-Modifiable Orders

Parents of a minor child have a statutory obligation to support their child, which creates a right to the support by the child. *Guille v. Guille*, 196 Conn. 260 (1985). In this regard, child support is much different than alimony. The dissolution judgment establishes the duties each parent has towards the other in supporting the child, not the child's separate right of support against each parent. *Guille*, 196 Conn. at 263. Parents may not bargain away a child's right to support, especially where that child was unrepresented. *Guille*, 196 Conn. at 267–268. However, a parent who has agreed to pay child support in excess of the child support guidelines, may limit his or her ability to modify the child support in the future.

Because of this independent right of support, courts look unfavorably on child support orders which are non-modifiable. *Rempt v. Rempt*, 5 Conn. App. 85 (1985). A non-modifiable unallocated alimony and support order will not render the child support non-modifiable upon a change in custody. *Tomlinson v. Tomlinson*, 305 Conn. 539 (2012).

#Comment Begins

Strategic Point: Most courts will not enforce non-modifiable provisions for child support. If an unallocated order is made, which is non-modifiable, it should set forth the bases for modification in the event of a change with respect to the children.

#Comment Ends

An unallocated alimony and support order that is modifiable in a limited number of circumstances will apply only to the alimony portion, where other provisions of the agreement support such a reading. *Malpeso v. Malpeso*, 140 Conn. App. 783 (2013). Because there is a presumption favoring modifiability of child support, courts will make every effort to find in favor of modifiability. *Malpeso*, 140 Conn. App. at 787.

#Comment Begins

Strategic Point: The dissent in *Malpeso* highlights the concern of allowing the child support portion of an unallocated alimony and support order to be modified. Modifying the order requires a determination of that part of the unallocated alimony and support attributable to child support. By doing this, the tax benefit of unallocated alimony and support is nullified. For a more thorough discussion on the tax benefits of unallocated alimony and support, see Chapter 18, § 18.07[3], below.

#Comment Ends

§ 7.45 Assessing a Parent's Independent Right to Receive Child Support on Behalf of Child

A custodial parent is entitled to receive child support and make the determination on how that support will be spent for the benefit of the child. *Rempt v. Rempt*, 5 Conn. App. 85, 89 (1985). While a child may not be living with the custodial parent, it is up to the court, not the non-custodial parent, to determine the extent to which the child support should be modified due to the child's living arrangement. *Rempt*, 5 Conn. App. at 89. Likewise, a parent cannot unilaterally decide to pay the child support directly into an account for a child instead of paying the custodial parent. *Gray v. Gray*, 131 Conn. App. 404 (2011).

§ 7.46 Making Provisions for Health Insurance Coverage and Processing Claims

In many circumstances, one of the parents will have medical insurance coverage through his or her employment. That parent will be obligated to provide medical insurance for the child. Additionally, it is permissible for a court to order a parent to cover a child under dental insurance, especially where he or she lists such an expense on the financial affidavit. *Benedetto v. Benedetto*, 55 Conn. App. 350 (1999).

The court can order the parents to apply for HUSKY, only if the cost to the parent is reasonable. An order for HUSKY may only be made if medical or hospitalization insurance does not exist or is unavailable at a reasonable cost to either parent. Conn. Gen. Stat. § 46b-84(f)(2)(B). Reasonable cost is 5% of a parent's net income if they would qualify as a low income obligor under the child support guidelines or 7 1/2% of the net income if he or she is not a low-income obligor. Conn. Gen. Stat. § 46b-84(f)(2)(D).

Where health insurance is ordered, the court shall provide that the signature of the custodial parent will be a valid authorization for purposes of processing insurance reimbursement to the custodial parent. Conn. Gen. Stat. § 46b-84(e). Neither party shall interfere with the processing of the insurance reimbursement claim. Conn. Gen. Stat. § 46b-84(e). If a parent receives insurancean insurance reimbursement claim but did not pay the bill, he or she shall submit the insurance reimbursement to the other parent. Conn. Gen. Stat. § 46b-84(e).

The court can make orders for cash medical support payments. A cash medical support payment is an amount to be paid towards the premiums for public health insurance, such as HUSKY, or towards medical insurance provided by a parent through employment or otherwise. Conn. Gen. Stat. § 46b-84(f)(2)(E)(i). A cash medical support payment is also an amount to be paid to the medical provider, or to the person obligated to pay the provider, for extraordinary medical and dental expenses which are ongoing for the child and not covered by insurance. Conn. Gen. Stat. § 46b-84(f)(2)(E)(ii). Cash medical support payments may be ordered in lieu of requiring a parent to cover a child under the parent's health insurance. However, a cash medical support payment to offset the cost of public insurance cannot be ordered against a noncustodial parent who is a low income obligor. Conn. Gen. Stat. § 46b-84(f)(2)(F).

#Comment Begins

Forms: JD-FM-125—Order to Maintain Health Insurance for Minor Child(ren), see Chapter 20, § 20.07, below.

#Comment Ends

§ 7.47 Making Provisions for the Payment of Unreimbursed Medical, Dental, Orthodontia, or Mental Health Expenses

A medical expense must be incurred as part of the overall treatment of a child, which will include psychological expenses. *Bucy v. Bucy*, 23 Conn. App. 98 (1990). The contributions to unreimbursed medical expenses are calculated pursuant to the child support guidelines. For a more thorough discussion on how the unreimbursed medical expense allocation is calculated, *see* § 7.33, *above*.

The judgment should contain a provision for the payment of unreimbursed medical expenses. *Regs. Conn. State Agencies* § 46b-215a-2b(f)(3) and *Kiniry v. Kiniry*, 299 Conn. 308 (2010). Without an order for the payment of unreimbursed medical expenses, any such medical expense incurred would not be required to be paid by either party, and likewise neither party could be held in contempt for not paying those expenses. *Calway v. Calway*, 26 Conn. App. 737 (1992). The court may not use the provisions of *Conn. Gen. Stat. § 46b-37* to create an order for the payment of unreimbursed medical expenses, when such an order is not in the judgment. *Calway*, 26 Conn. App. at 745.

The court may not, without the agreement of the parties, order a parent to pay the unreimbursed medical expenses for a child past the age of majority. *Keays v. Keays*, 43 Conn. App. 575, 577 (1996).

It is also possible that certain boarding school expenses could be considered medical expenses if there is a component of therapeutic or medical services offered. *Scott v. Scott*, 90 Conn. App. 883 (2005).

§ 7.48 Providing Security for Child Support

The court may order security given for the child support order, including life insurance. Parties may be ordered to obtain life insurance unless they are able to prove that the insurance is not available, they are unable to pay for the insurance, or they are uninsurable. *Conn. Gen. Stat. § 46b-84(f)(1)*.

#Comment Begins

Warning: Prior to the revision of *Conn. Gen. Stat. § 46b-84* on October 1, 2003, the court was unable to order life insurance, in addition to that already being maintained by the obligor, without proof of cost. The 2003 revision places the burden on the obligor. There are several cases regarding life insurance that were decided prior to the change in the statute. Care should be taken in citing them for authority, as the statute changed the burden of proof.

#Comment Ends

Where an order is not otherwise secured, the court may require the obligor to execute a bond or post other security sufficient for the support order, providing that the court makes a finding that the obligor is able to procure and pay the bond premium. *Conn. Gen. Stat. § 46b-84(g)*.

§ 7.49 Allocating Dependency Exemptions

A child may be claimed as a dependency exemption, if the child is a qualified child. A qualified child is defined as:

1. A child of the taxpayer, which includes adopted children.
2. A child is under the age of 24 at the end of the year, if he or she is enrolled full time at an institution of higher learning for at least five months during the calendar year. If the child is not a full-time student, he or she is only a dependent until age nineteen.
3. The residence of the taxpayer must be the child's residence.
4. The taxpayer paid for more than one-half of the child's support.
5. The child must not have filed a joint return with a spouse. This will require a child under the age limits in paragraph 2 to be married.

26 U.S.C. § 152(c)(1). By definition, the primary custodial parent is the parent entitled to claim the dependency benefits. A custodial parent is the one with whom the child spends the majority of nights per year. 26 C.F.R. § 1.152-4(d). However, if the child is with both parents for an equal number of nights, the parent with the higher adjusted gross income is entitled to claim the dependency exemption. 26 C.F.R. § 1.152-4(d)(ii)(4). The custodial parent may release his or her right to claim the dependency exemption by signing IRS Form 8332, for a given year or for all years. 26 C.F.R. § 1.152-4(e). Under the Tax Cuts and Jobs Act of 2017, there is no longer a dependency exemption. However, allocation of a child for purposes of being a dependent is still valuable for claiming the ~~child-care~~ childcare credit.

The court has the authority to allocate the dependency benefits between the parents. *Serrano v. Serrano*, 213 Conn. 1 (1989). If an agreement or court order allocates the dependency benefits but does not state that such allocation continues past the child attaining age eighteen, the dependency exemption will revert to the custodial parent by law. *Koldys v. Koldys*, 1992 Conn. Super. LEXIS 3342 (1992). If the separation agreement of the parties provides that each party may claim a child as a dependency exemption for as long as permitted by law, that will include past the age of majority. *Lopardo v. Lopardo*, 47 Conn. L. Rptr. 407 (2009).

A separation agreement providing that the allocation of the dependency exemption was not modifiable is enforceable by the court. *Lehane v. Murray*, 215 Conn. App. 305 (2022). In *Lehane*, the court stated in a footnote that the delegation of the dependency exemption is property division.

#Comment Begins

Strategic Point: Despite the language in the *Lehane* footnote, counsel has historically treated the dependency exemption as modifiable, in the same fashion as life insurance. However, in light of this footnote, counsel would be well advised to include a provision that the dependency exemption is being allocated as part of the child support order and therefore modifiable.

#Comment Ends

§ 7.50 Providing for the Payment of Private School

The court has the ability to order a party to pay for the private school educational expenses of the child. *Hardisty v. Hardisty*, 183 Conn. 253 (1981). The considerations in making an order regarding private school educational expenses are: whether a parent agrees with the

educational choice; the needs of the child both educationally and psychologically to attend private school; and the inability of the child to receive comparable services at a public school. *Hardisty*, 183 Conn. at 265–266. Prior history of private school attendance and payment would provide support for a court to enter an order allocating the cost of private school between the parents. *Carroll v. Carroll*, 55 Conn. App. 18, 25 (1999). Where the parents agreed the child would attend private school, but one party subsequently refused to consent to the child’s enrollment, that parent may be ordered to pay for such school expenses. *Corttis v. Corttis*, 2001 Conn. Super. LEXIS 3504 (2001). The children attending a private school prior to the parties entering into an agreement requiring the parties to approve of school is not a new decision requiring approval, but was a decision that had already been made, thus obligating both parties to share in the expense pursuant to the court order. *Kirwan v. Kirwan*, 187 Conn. App. 375 (2019). Where circumstances warrant, if the parties have the ability to pay for private school and the child has attended private school in the past, the court may order a party to pay for such expenses. *Flynn v. Flynn*, 7 Conn. App. 745 (1986).

#Comment Begins

Strategic Point: It is possible that a judge may believe that he or she should not or cannot make the decision regarding which school the child should attend. Any such motion filed regarding a child’s attendance at private school should request a change in legal custody to allow a particular parent to make educational decisions.

#Comment Ends

PART VIII: PROVIDING FOR THE PAYMENT OF COLLEGE EDUCATION

CHILD SUPPORT

§ 7.51 CHECKLIST: Providing for the Payment of College Education

7.51.1 Providing for the Payment of College Education

- Establishing orders for college expenses by agreement:
 - Orders for college education prior to 2002 were required to be in a written agreement of the parties.
 - Any such written agreement prior to 2001 could not be modified unless the parties expressly provided that the court could modify the agreement.
 - A written agreement after 2001 may be modified in the same manner as child support orders.
 - An agreement that states the parties will pay in accordance with their financial abilities allows a court to determine those financial abilities.

Authority: Conn. Gen. Stat. §§ 46b-56c, 46b-66(a), 46b-66(b), and 46b-86; *Barnard v. Barnard*, 214 Conn. 99 (1990), *LeSueur v. LeSueur*, 186 Conn. App. 431 (2018), *Carpender v. Sigel*, 142 Conn. App. 379 (2013), *Bonhotel v. Bonhotel*, 64 Conn. App. 561 (2001), *Legg v. Legg*, 44 Conn. App. 303 (1997), *Cattaneo v. Cattaneo*, 19 Conn. App. 161 (1989), *Albrecht v. Albrecht*, 19 Conn. App. 146 (1989), *Gallagher v. Gallagher*, 11 Conn. App. 509 (1987), and *Arseniadis v. Arseniadis*, 2 Conn. App. 239 (1984). **Discussion:** See § 7.52, *below*.

- Establishing college educational orders pursuant to statute:
 - The statute applies only where the initial support order is entered after October 1, 2002.
 - The court may make an educational support order if it finds that the parties, more likely than not, would have provided for their child's college education to the best of their abilities.
 - The court, if it has not been provided with sufficient evidence, must alert the parties that no educational support order may enter to ensure the order is entered knowingly by both parties.
 - The parents shall confer and agree on the institution in which the child will attend or submit it to court for determination.
 - The parties may execute the waiver of an educational support order by affidavit.
 - The court, if a child is in college, may enter an order for payment of college at that time, or reserve jurisdiction to make an order when the child becomes enrolled in college.
 - To obtain an educational support order, the institution must be accredited, the course of study is consistent with the child's aptitude, the child must be in good academic standing, and the child must provide the parent with his or her academic records.
 - The costs include room, board, dues, tuition, fees and application costs up to in-state costs for the University of Connecticut.
 - The educational support order may be modified and enforced in the same manner as child support.
 - An educational support order cannot be sought retroactively.
 - A parent may be required to provide security for an educational support order.
 - 529 accounts may be considered as part of a property division and not an educational support order. **Authority:** Conn. Gen. Stat. §§ 46b-56c, 46b-56c(a), 46b-56c(b), 46b-56(b)(2), 46b-56c(c), 46b-56c(d), 46b-56c(e), 46b-56c(f), 46b-56c(h), and 46b-56c(k); *Buehler v. Buehler*, 211 Conn. App. 357 (2022), *Barcelo v. Barcelo*, 158 Conn. App. 201, *cert. denied*, 319 Conn. 910 (2015), *Barbour v. Barbour*, 156 Conn. App. 383 (2015), *Greenan v. Greenan*, 150 Conn. App. 289 (2014), *Bock v. Bock*, 127 Conn. App. 553 (2011), *Lederle v. Spivey*, 113 Conn. App. 177 (2009), *Crews v. Crews*, 107 Conn. App. 279 (2008), *Sander v. Sander*, 96 Conn. App. 102 (2006), *Robinson v. Robinson*, 86 Conn. App. 719 (2004), *Weisbaum v. Weisbaum*, 2 Conn. App. 270 (1984), *Rosner v. Rosner*, 2016 Conn. Super. LEXIS 2446 (2016), *Bock v. Bock*, 2010 Conn. Super. LEXIS 726 (2010), *Hornblower v. Hornblower*, 2009 Conn. Super. LEXIS 2110 (2009), and *Trueheart v. Greco*, 2009 Conn. Super. LEXIS 1686 (2009).
- Discussion:** See § 7.53, *below*.

§ 7.52 Establishing Orders for College Expenses by Agreement

Prior to the enactment of Conn. Gen. Stat. § 46b-56c in 2002, the only manner by which a parent could be ordered to pay for the college educational expenses of a child was by agreeing in writing to do so. Conn. Gen. Stat. § 46b-66(a). No court was able to make orders pertaining to college education without a written agreement. An oral agreement placed on the record is not sufficient to hold a party responsible to pay for the college educational expenses. *Arseniadis v. Arseniadis*, 2 Conn. App. 239 (1984). An oral agreement to modify the provision for the payment of college educational expenses is not enforceable. *Albrecht v. Albrecht*, 19 Conn. App. 146

(1989).

Unless the parties specifically set forth in the agreement that modification of the college educational agreement is permissible, for any agreement entered into prior to January 1, 2001, the court is only permitted to enforce such agreements. *Barnard v. Barnard*, 214 Conn. 99 (1990). For any agreement entered into after January 1, 2001, the court may modify the post-majority orders consistent with Conn. Gen. Stat. § 46b-86. Conn. Gen. Stat. § 46b-66(b).

Frequently, the agreement to pay for college education will be predicated upon the financial ability of the party to pay. *Gallagher v. Gallagher*, 11 Conn. App. 509 (1987). A court may interpret and enforce the agreement by determining the financial abilities of each of the parties to pay for college, which will not be deemed a modification of the college educational order. *Cattaneo v. Cattaneo*, 19 Conn. App. 161 (1989).

How college expenses are to be paid by the parties should be carefully delineated in an agreement. Stating that the parties will be equally responsible for the college educational costs of the children unless they disagree on the school or allocation of expenses, in which case the court may allocate such costs subject to the UConn cap, creates potential unwanted results. With such a provision, a parent, to escape the full cost of tuition, merely needs to disagree on either the school or allocation of expenses and will thus likely reduce his or her exposure in paying such expenses. *LeSueur v. LeSueur*, 186 Conn. App. 431 (2018).

#Comment Begins

Warning: The provision in *LeSueur* demonstrates the downside of endless compromising to get a deal done. One party likely thought that they would each be responsible for one half of the total cost, while the other realized there was an escape hatch.

#Comment Ends

Often disagreements regarding post-majority support include defining the terms of the agreement to determine which expenses are included and which are not. Parties who agree to pay for room and board, without any further elaboration, will be responsible for board expenses for the child irrespective of whether the child resides on campus or lives in one of the homes of the parents. *Legg v. Legg*, 44 Conn. App. 303, 307 (1997). Additionally, where a school does not provide for on-campus housing, board costs could also include off-campus housing. *Bonhotel v. Bonhotel*, 64 Conn. App. 561, 568 (2001).

Parties entering into a *pendente lite* stipulation agreeing to pay college educational expenses out of particular account does not constitute a waiver of an Educational Support Order to then allow the court to order one parent to pay all of the child's college educational expenses. *Dumbauld v. Dumbauld*, 163 Conn. App. 517 (2016). Such an order violates the requirements of Conn. Gen. Stat. § 46b-56c.

Agreements for the payment of college educational expenses often require the mutual consent of the parents. If a parent does not know which school a child is attending until the tuition is due and therefore could not have consented to the school, there can be no finding that he or she unreasonably withheld consent. *Carpender v. Sigel*, 142 Conn. App. 379 (2013).

§ 7.53 Establishing College Educational Orders Pursuant to Statute

[1] Entering Educational Support Orders

In 2002, legislation provided the court with the ability to make college educational orders subject to certain restrictions. [Conn. Gen. Stat. § 46b-56c](#). Educational support orders under the statute apply only to cases where the initial support order was entered on or after October 1, 2002. [Conn. Gen. Stat. § 46b-56c\(k\)](#). An educational support order can be entered for any child under the age of 23 and will terminate no later than the child's 23rd birthday. [Conn. Gen. Stat. § 46b-56c\(a\)](#).

To enter an educational support order, the court must find that it is more likely than not that had the parties remained an intact family, they would have provided support to the child for college educational expenses. [Conn. Gen. Stat. § 46b-56c\(c\)](#). This finding must be expressly made by the court and cannot be implied by the record. *Sander v. Sander*, 96 Conn. App. 102, 117–118 (2006).

The parties may waive the right for an educational support order. However, to do so, it must be in writing and the parents must attest under oath that they understand the ramifications of such waiver and that no restraining or protective order has been issued. [Conn. Gen. Stat. § 46b-56c\(b\)\(2\)](#). The court has the ability to require the parties to appear in court to testify as to the waiver. [Conn. Gen. Stat. § 46b-56c\(b\)\(2\)](#).

At the time of entering a dissolution or a support order, which is considered the initial order, the court may enter an educational support order, if requested by one parent. [Conn. Gen. Stat. § 46b-56c\(b\)\(1\), \(3\), and \(4\)](#). The educational support order may be an actual monetary order for a child who is enrolled in college or may be a reservation of jurisdiction by the court to enter a future order. However, if there is no educational support order entered at the time of the initial support order, the court may not enter an educational support order in the future. In addition, where an educational support order is not requested, the court must inquire of the parents and obtain a knowing waiver of the provision. *Robinson v. Robinson*, 86 Conn. App. 719, 726 (2004). The parties may specifically waive the entering of an educational support order by affidavit, which states that they understand the consequences of the waiver and that no restraining or protective order is currently in effect. [Conn. Gen. Stat. § 46b-56c\(b\)\(2\)](#). If the parties request an educational support order but the court does not believe the requisite evidence was submitted to satisfy the statute, the court must alert the parties to this and ensure that they understand neither party will be permitted to seek an educational support order in the future. *Barcelo v. Barcelo*, 158 Conn. App. 201, cert. denied, 319 Conn. 910 (2015).

#Comment Begins

Strategic Point: It is prudent in a contested case to specifically request an educational support order in your proposed orders and have your client testify that the parties would have provided for the support if they had remained an intact family. Do not presume that merely because such a request is contained in the proposed orders of both parties that the court will grant the request without evidence. Additionally, it is advisable to put such a provision into the separation agreement if the parties are agreeing to a support order at the time of the dissolution. Conversely, if an educational support order is being waived, the agreement should state that the parties have knowingly waived having an educational support order enter.

#Comment Ends

When a child, for whom an educational support order entered, commences the college search process, both parents are to participate and agree upon the college or private occupational school the child will attend. [Conn. Gen. Stat. § 46b-56c\(d\)](#). If the parents cannot agree upon the educational institution, the matter may be submitted to the court for a decision. [Conn. Gen. Stat. § 46b-56c\(d\)](#). A parent cannot refuse to participate in the decision for college as an excuse to escape financial responsibility for payment of an educational support order. *Buehler v. Buehler*, 211 Conn. App. 357 (2022).

#Comment Begins

Strategic Point: In *Beuhler*, the father took no steps to participate in the college process besides demanding information from the mother. He did not talk to his daughter who was to attend college. He did not fill out financial aid applications. His only steps were to accuse the mother of excluding him from the process. These actions will not allow a litigant to escape a court order for payment of college. Had he made the efforts required and been rebuffed, he likely would not have had an order entered for the payment of college educational expenses.

#Comment Ends

[2] Qualifying for an Educational Support Order

An educational support order is not a guarantee that a parent will pay for college. For child to qualify for an educational support order, the child must:

1. Be enrolled in an occupational school or college that is accredited.
2. Pursue studies that are consistent with the child's aptitude, taking at least one half of the full-time course load.
3. Be in good academic standing.
4. Make available to the parents all academic records while the order is effective.

[Conn. Gen. Stat. § 46b-56c\(f\)](#). If a child does not comply with these four provisions, the support order will be suspended.

[3] Determining the Amount to be Paid Under an Educational Support Order

In determining the amount to be paid by each parent, the court shall consider:

1. The income, assets and other obligations of the parents, which other obligations may include support of other dependents.
2. The child's assets and the child's ability to earn income in terms of the support needed.
3. Whether financial aid, grants and loans are available to the child.

4. How reasonable it is to fund college in light of the financial resources and the child's academic performance.
5. The commitment and preparation the child has for higher education.
6. Evidence of where the child will go to school.

Conn. Gen. Stat. § 46b-56c(c).

The costs for which an educational support order may enter include “room, board, dues, tuition, fees, registration and application costs,” and may also include books and medical insurance. Conn. Gen. Stat. § 46b-56c(f). College educational expenses do not include restaurant meals, lodging or transportation. *Barbour v. Barbour*, 156 Conn. App. 383 (2015). However, the total amount of the expenses shall not exceed what is charged by the University of Connecticut for in-state room, board, and tuition for the year in question. Conn. Gen. Stat. § 46b-56c(f). To the extent the parties have 529 accounts for college, payments from the accounts will be used in determining the total expenses to be paid, subject to the cap of in-state costs for the University of Connecticut. *Trueheart v. Greco*, 2009 Conn. Super. LEXIS 1686 (2009). In light of the specificity of expenses in the statute, the court will not expand the definition of expenses beyond those listed. *Barbour*, 156 Conn. App. at 401–402.

A party may not seek an educational support order retroactively for educational costs already incurred. *Rosner v. Rosner*, 2016 Conn. Super. LEXIS 2446 (2016).

[4] Modifying an Educational Support Order

An educational support order may be modified and enforced in the same manner as a child support order. Conn. Gen. Stat. § 46b-56c(i). The court may review the income and assets of the parties to determine their respective shares of the college costs. *Hornblower v. Hornblower*, 2009 Conn. Super. LEXIS 2110 (2009). Caution should be taken when agreeing to a modification. Any modification should conform in its entirety with the statute. If it does not conform, it will no longer be deemed an educational support order. *Bock v. Bock*, 127 Conn. App. 553 (2011). While the parties are not able to modify an improperly modified educational support order, they are not foreclosed from seeking a new order. *Bock v. Bock*, 2010 Conn. Super. LEXIS 726 (2010).

[5] Providing Security for an Educational Support Order

The court may require a parent to provide security for an educational support order. Although the statute does not specifically provide for security, the court has found that this can include the court entering orders to provide for security for the educational support order. *Sander v. Sander*, 96 Conn. App. 102, 120 (2006). One typical way to secure the educational support order is by requiring a parent to maintain life insurance, which should be for the duration of the support order. *Lederle v. Spivey*, 113 Conn. App. 177, 194 (2009) and *Crews v. Crews*, 107 Conn. App. 279, 304 (2008). In addition, it is preferable that the court order indicates that the security for the educational support order would lapse if there were no educational support order entered. *Lederle*, 113 Conn. App. at 195. This security can take the form of a trust and funding the trust with the sale proceeds of a particular asset. *Sander*, 96 Conn. App. at 121–122.

[6] Paying for College Educational Expenses from 529 Accounts

Each state has established 529 accounts, which are qualified tuition programs, as a means

to establish funds for post-high-school educational expenses. The benefit of these plans is that the income grows tax-free and there is no tax if withdrawn for qualified educational cost of the beneficiary/student. *IRS Fact Sheet: 529 Plans: Questions and Answers (2014)*. Unlike UGMA (Uniform Gifts to Minors Act) and UTMA (Uniform Transfers to Minors Act) accounts, a 529 account belongs to the person who establishes the account. UGMA or UTMA accounts are not distributable property in a dissolution action, as they are assets of the child, *Weisbaum v. Weisbaum*, 2 Conn. App. 270 (1984), and moreover, the cases have also found that UGMA and UTMA accounts may not be specifically delegated to pay expenses for the child. *Weisbaum*, 2 Conn. App. at 274. A court that ordered a 529 account to be maintained for the benefit of the children was not considered an educational support order, but it was considered in the nature of a property division. *Greenan v. Greenan*, 150 Conn. App. 289 (2014).

#Comment Begins

Warning: Despite the ruling in *Greenan*, the trial court seemingly indicated that the 529 account, by being maintained for the child, would be used for educational purposes. With that in mind, it is difficult to reconcile a finding that it is in the nature of a property division rather than an educational support order.

#Comment Ends#Comment Begins

Strategic Point: Care must be taken when making orders regarding a 529 account. Since it is not an account owned by the child, the actual owner has control over the funds. If the intent is for the funds to be used to pay for the educational expenses of the beneficiary/student, it would seem prudent to consider the 529 account as part of an educational support order rather than as a property division. There should also be a provision as to the disposition of the 529 account after paying for the beneficiary's educational expenses. The account could be rolled over into an account for another child or divided between the parties. To the extent that the account is divided between the parties, care should be taken in addressing the tax considerations from liquidation and transfer of the asset.

#Comment Ends

PART IX: PREPARING MOTIONS FOR MODIFICATION

CHILD SUPPORT

§ 7.54 CHECKLIST: Preparing Motions for Modification

7.54.1 Preparing Motions for Modification

- Determining the statutory basis for modification:
 - The modification may be based upon a substantial change in circumstances or a substantial deviation from the child support guidelines.
 - To obtain retroactivity for ~~child-care~~childcare contributions, the motion must be served on the other party.
 - There is a rebuttable presumption that a deviation of 15% or more from the guideline amount is substantial. **Authority:** Conn. Gen. Stat. §§ 46b-86(a), 46b-215e, and 52-50; *McKeon v. Lennon*, 321 Conn. 323 (2016),

Dan v. Dan, 315 Conn. 1 (2014), *Olson v. Mohammadu*, 310 Conn. 665 (2013), *Trent v. Trent*, 226 Conn. App. 791 (2024), *DeAlmeda-Kennedy v. Kennedy*, 188 Conn. App. 670 (2019), *Bolat v. Bolat*, 182 Conn. App. 468 (2018), *Farmassony v. Farmassony*, 164 Conn. App. 665 (2016), *Weinstein v. Weinstein*, 104 Conn. App. 482 (2007), *Prial v. Prial*, 67 Conn. App. 7 (2001); and *Denomme v. Denomme*, 2014 Conn. Super. LEXIS 547 (Mar. 12, 2014); P.B. § 25-26(e). **Discussion:** See § 7.55, *below*. See also, Chapter 5, § 5.36, *above*.

□ Modifying child support where there is a prior deviation from the child support guidelines:

- If there is a prior deviation from the child support guidelines, the only way in which the support may be modified is upon a showing of a substantial change in circumstances.

- A deviation criterion that is no longer applicable may serve as a basis for the modification of child support.

- To modify the child support portion of an unallocated order, it must first be determined how much of the original order was child support and then determined if there has been a substantial change in circumstances.

Authority: *Dowling v. Szymczak*, 309 Conn. 390 (2013), *Maturo v. Maturo*, 296 Conn. 80 (2010), *Brown v. Brown*, 199 Conn. App. 134 (2020), *Flood v. Flood*, 199 Conn. App. 67 (2020), *Righi v. Righi*, 172 Conn. App. 427 (2017), *Robinson v. Robinson*, 172 Conn. App. 393 (2017), *Malpeso v. Malpeso*, 165 Conn. App. 151 (2016), *Gabriel v. Gabriel*, 159 Conn. App. 805 (2015), *Gibbons v. Gibbons*, 139 Conn. App. 1 (2012), *Weinstein v. Weinstein*, 104 Conn. App. 482 (2007) and *McHugh v. McHugh*, 27 Conn. App. 724 (1992). **Discussion:** See §§ 7.56[1] and 7.56[2], *below*.

□ Modifying the dependency exemption allocation:

- The dependency exemption allocation is modifiable in the same manner as child support. **Authority:** P.L. 115-97 §§ 11022 and 11041, 26 U.S.C. §§ 24 and 151, *Weinstein v. Weinstein*, 87 Conn. App. 699 (2005) and *Ciolino v. Ciolino*, 2005 Conn. Super. LEXIS 106 (2005). **Discussion:** See § 7.57, *below*.

□ Modifying the Security for Child Support:

- Security that is ordered for child support may be modified based upon a substantial change in circumstances. **Authority:** *Sagalyn v. Pederson*, 140 Conn. App. 792 (2013). **Discussion:** See § 7.58, *below*.

□ Retiring as a Basis for Modifying Child Support:

- A court will assess the validity of the reason for retiring in determining whether or not to modify the support. **Authority:** *Denomme v. Denomme*, 2014 Conn. Super LEXIS 547 (Mar. 12, 2014). **Discussion:** See § 7.59, *below*.

□ Modifying Child Support Retroactively:

- To obtain retroactivity, unless it is specified in the judgment, a motion must be served on the other party.

- A change in custody to the child support obligor will suspend the child support obligation. **Authority:** Conn. Gen. Stat. §§ 46b-224 and 52-50; *Tomlinson v. Tomlinson*, 305 Conn. 539 (2012) *Mason v. Ford*, 176 Conn. App. 658 (2017), and *Malpeso v. Malpeso*, 165 Conn. App. 151 (2016). **Discussion:** See § 7.60, *below*.

§ 7.55 Determining the Statutory Basis for Modification

Child support may be modified if one of two tests are proven. The first is the proving of a substantial change in ~~circumstances~~the circumstances of either party. *Conn. Gen. Stat. § 46b-86(a)*. The second is to show that there is a substantial deviation from the child support guidelines so long as there had not been a finding of deviation from the child support guidelines in the original order. There is a rebuttable presumption that a deviation of 15% or more is substantial for purposes of a modification of child support. *Conn. Gen. Stat. § 46b-86(a)*. The motion must specifically set forth that the party is seeking a modification of child support, a court is not required to review all child support orders any time a modification is filed. *DeAlmeda-Kennedy v. Kennedy*, 188 Conn. App. 670 (2019).

The substantial change alleged must be set forth in the motion, as well as the original order and its date. P.B. § 25-26(e). The motion for modification may not be granted based upon a substantial change in circumstances not alleged in the original motion. *Prial v. Prial*, 67 Conn. App. 7 (2001). However, even if the motion alludes to an increase in income, without using the words ‘substantial change’ a party may be permitted to seek a modification on that basis. *Bolat v. Bolat*, 182 Conn. App. 468 (2018). The Supreme Court declined to extend the holding of *Dan v. Dan*, 315 Conn. 1 (2014), to child support determinations. *McKeon v. Lennon*, 321 Conn. 323 (2016).

Generally, an obligor whose income decreases due to his or her voluntary action will not receive a modification due to voluntary behavior in causing the substantial change in circumstances. However, the Connecticut Supreme Court has determined that the motivations behind the voluntary conduct must be viewed to determine the reasonableness of the decrease in assessing the modification. *Olson v. Mohamadu*, 310 Conn. 665 (2013). Circumstances such as taking a lower-paying job ~~in order to~~ move closer to a child or the inability to remain in the Armed Forces for health and psychological reasons were determined to be reasonable to support a substantial change in circumstances for a modification. *Olson*, 310 Conn. at 665 and *Denomme v. Denomme*, 2014 Conn. Super. LEXIS 547 (Mar. 12, 2014).

While there are four components to child support, i.e. the weekly payments, health care coverage, childcare contributions, and arrearage payments, a party does not need to seek a modification of all four components to obtain a modification of one component. *Trent v. Trent*, 226 Conn. App. 791 (2024).

A child support obligor may not seek a modification solely based upon his or her incarceration, if the incarceration was by reason of an offense against the child or custodial parent. *Conn. Gen. Stat. § 46b-215e*. In all other cases, it may be modified based upon the inmate’s income and substantial assets applying the child support guidelines. *Conn. Gen. Stat. § 46b-215e*.

The court must make a finding on the record as to the reason for the modification of the child support, either as a substantial change or a deviation from the amount provided for under the guidelines. *Weinstein v. Weinstein*, 104 Conn. App. 482 (2007).

#Comment Begins

Strategic Point: If the decision on a child support order does not contain the language that the court finds a substantial change in circumstances or that it finds a substantial deviation from the child support amount, file a motion for clarification or articulation to allow the trial court to clarify the underlying reason for the modification.

#Comment Ends

A child attaining the age of majority, provided he or she has graduated from high school, constitutes a substantial change in circumstances. *McKeon*, 155 Conn. App. at 436.

~~In order to~~To obtain retroactivity for a modification, the motion must be served on the other party pursuant to Conn. Gen. Stat. § 52-20. An order for ~~child-care~~childcare contributions is considered part of the support order and, thus, requires service to obtain retroactivity. *Farmassony v. Farmassony*, 164 Conn. App. 665 (2016). For a more thorough discussion of retroactivity, see Chapter 5, § 5.36, above.

§ 7.56 Modifying Child Support Where There is a Prior Deviation from the Child Support Guidelines

[1] Demonstrating a Substantial Change in Circumstances

A trial court may find a substantial change in circumstances to modify child support when payor had been ordered to pay private school for the children through a certain grade, and thereafter they went to public school relieving him of that obligation. *Flood v. Flood*, 199 Conn. App. 67 (2020).

#Comment Begins

Strategic Point: What is not obvious in the *Flood* case is how the consideration for the husband to pay private school education was made. Since it was an obligation for short period of time, approximately one year, did he agree to do so out of the assets that he was awarded, was he awarded additional assets to pay for this, or was it just a year that he agreed to reallocate his own resources to make sure this could happen. The trial court ultimately ordered the husband to pay additional alimony to the wife in an amount equal to 80% of what he was paying in tuition. When agreeing to these types of provisions for the payment of extraordinary children's expenses, specify in the separation agreement how it was ~~arrived at~~determined that one party should pay this expense or the allocation for the payment determined.

#Comment Ends

A court may deny a motion for modification to a payor who becomes ~~unemployed,~~ but unemployed but has an obligation to continue paying private school tuition for his three sons, due to the fact that he had in excess of \$10 million in assets. *Brown v. Brown*, 199 Conn. App. 134 (2020).

Where there has been a prior child support determination with a deviation, the only manner in which the child support may be modified in the future is by showing a substantial change in circumstances. *Weinstein v. Weinstein*, 104 Conn. App. 482 (2007). Showing that the order deviates by more than 15% will not support a modification. A child support order, which claimed to be a deviation from the child support guidelines, where the court failed to find that application of the guidelines would be inequitable or inappropriate at the time of the original order, is not a properly deviated order and therefore can be modified either upon a change in circumstances or a deviation from the child support guidelines. *Righi v. Righi*, 172 Conn. App. 427 (2017). Where the deviation criteria present at the time of the original order is no longer applicable, the court may modify child support. *Gibbons v. Gibbons*, 139 Conn. App. 1 (2012). If the deviation criterion is seemingly present, although somewhat murky, the court can find that

there is no change in the original reason for the deviation when modifying the child support order. *Robinson v. Robinson*, 172 Conn. App. 393 (2017).

#Comment Begins

Strategic Point: *Righi* points out the necessity to ensure that all required findings are made by the trial court when entering the original order of child support. Failure to do so will allow the order to be modified in the event of a change in circumstances or a substantial deviation from the guidelines i.e., 15% or more.

#Comment Ends#Comment Begins

Warning: Because of the restrictions in modifying a child support order which deviated from the child support guidelines, thought and care should be given to the original deviation and exactly how it applies. In *Robinson*, the parties deviated based upon shared physical custody with no set parenting plan that allowed the children to come and go as they pleased. Such a deviation does not fit within the parameters of the child support guidelines. Thought must be given to how circumstances in the family may change and the impact on the child support order, not just throwing in a deviation criterion to satisfy the negotiated child support amount.

#Comment Ends

However, in the event the original child support order did not deviate from the child support guidelines, any future modification, providing there is no such deviation criteria applied, can be modified and deviation criteria applied. *McHugh v. McHugh*, 27 Conn. App. 724 (1992).

[2] Modifying Child Support from an Unallocated Order

Often times, for tax reasons, the initial dissolution judgment establishes an unallocated alimony and support order, thus combining the child support and alimony into one taxable and tax deductible figure. Subsequently, circumstances may arise which require a modification of the child support portion of the unallocated order, including the emancipation of one child, the remarriage of the payee, or a change in custody. Modifying the child support portion of an unallocated order is a two-step process. Firstly, the court must determine the amount of child support at the time of the original unallocated order and, secondly, must then compare the circumstances from the time of the original order to the present to determine if there is a change in circumstances sufficient to warrant a modification. *Malpeso v. Malpeso*, 165 Conn. App. 151 (2016). In determining ~~the child~~ child support, the court must use the child support guidelines applicable at the time of the order being modified. *Malpeso*, 165 Conn. App. at 177. Failure to determine the child support portion of the award when issuing a modification is improper. *Gabriel v. Gabriel*, 159 Conn. App. 805 (2015).

#Comment Begins

Strategic Point: At the time of the dissolution or a subsequent modification of an unallocated alimony and support order, child support guidelines must have been submitted to the court to allow the court to approve the unallocated order as a deviation from the child support guidelines. Those child support guidelines should be the starting point in determining the amount of child support in the unallocated order. However, it should be remembered that child support, by itself, is not taxable to the payee nor tax deductible to the payor. Therefore, the child support portion of the unallocated order should be adjusted for taxes.

#Comment Ends

The difficulty arises where the income of the parties is in excess of the original child support guidelines. Oftentimes with an unallocated order in these situations, neither the court nor the parties made an actual determination of the amount of the child support, thus leaving an ambiguity for a future modification. Accordingly, when the court does seek to modify the child support portion of the unallocated order, it must determine the amount of the original order in accordance with the mandate of *Dowling v. Szymczak*, 309 Conn. 390 (2013). *Malpeso*, 165 Conn. App. at 166. In addition, the 2015 guidelines incorporate the mandates of *Dowling* and *Maturo v. Maturo*, 296 Conn. 80 (2010). Since the presumptive amount of child support, in these circumstances, will be, as a floor, the top amount in the child support guidelines, and, as a ceiling, the top percentage of the guidelines multiplied by the amount of net weekly income, there is much uncertainty as to the actual amount to be attributed to the child support from the original order.

#Comment Begins

Strategic Point: In cases where the child support would be in excess of the guidelines and an unallocated alimony and support order will enter, it is best to be very specific in the financial affidavits about the expenses, both routine and extraordinary, which apply to the children. Such detail may be of great aid to a court for a future determination of the child support portion of an unallocated alimony and support order.

#Comment Ends

§ 7.57 Modifying the Dependency Exemption Allocation

Since the dependency exemption is an element of support, it is modifiable in the same manner as child support orders. *Ciolino v. Ciolino*, 2005 Conn. Super. LEXIS 106 (2005). However, parties may limit the circumstances under which it is modifiable. Parties' who allocate the dependency exemption and specify that it may be reallocated if the custodial parent's earnings exceed a specific threshold, may not modify the dependency exemption based upon his or her earning capacity. *Weinstein v. Weinstein*, 87 Conn. App. 699 (2005).

It should be noted that the dependency exemption is suspended for the period January 1, 2018 through December 31, 2025. P.L. 115-97 § 11041, 26 U.S.C. § 151. Notwithstanding, it is wise to allocate such dependency exemptions for purposes of the child credit which increased to \$2,000 per year during the time that the dependency exemptions are suspended. P.L. 115-97 § 11022, 26 U.S.C. § 24.

§ 7.58 Modifying the Security for Child Support

As with alimony, the court may enter orders to provide for security for the payment of child support. A party who is required to maintain life insurance for a child may seek a modification of the life insurance based upon a substantial change in circumstances. *Sagalyn v. Pederson*, 140 Conn. App. 792 (2013). Life insurance for the benefit of a child cannot be construed as a property division between the parents instead of between the parent and child. *Sagalyn*, 140 Conn. App. at 797.

§ 7.59 Retiring as a Basis for Modifying Child Support

Typically, it is very difficult to modify child support based upon the obligors voluntary retirement. Courts will assess the reasons for such voluntary decision to determine if it provides for a sufficient basis to allow a modification. A good basis may include retiring ~~from~~from the

military, after active duty, which resulted in a mental breakdown. *Denomme v. Denomme*, 2014 Conn. Super. LEXIS 547 (Mar. 12, 2014).

§ 7.60 Modifying Child Support Retroactively

Typically, the only manner by which a child support order may be modified retroactively is by the service on of a motion for modification. Conn. Gen. Stat. § 52-50. The parties may not seek retroactive orders prior to the date the motion for modification was served. *Mason v. Ford*, 176 Conn. App. 658 (2017). However, language may be inserted in a separate agreement to allow for a modification of child support retroactive to a specific event, such as the remarriage of the alimony recipient in the event of an unallocated order, or the emancipation of a child. *Malpeso v. Malpeso*, 165 Conn. App. 151 (2016). In addition, should there be a modification of custody to the child support obligor, the child support is suspended. Conn. Gen. Stat. § 46b-224 and *Tomlinson v. Tomlinson*, 305 Conn. 539 (2012).

#Comment Begins

Warning: While the suspension of child support is statutorily provided with a change in custody, it is better to obtain a court order modifying the child support so that nothing is left in doubt.

#Comment Ends