

Cal Fam Code § 4055

DEERING'S CALIFORNIA CODES ANNOTATED
 Copyright (c) 2010 by Matthew Bender & Company, Inc.
 a member of the LexisNexis Group.
 All rights reserved.

*** THIS DOCUMENT IS CURRENT THROUGH 2009-2010
 EXTRAORDINARY SESSIONS 1-5, ***
 7, AND 8, AND URGENCY LEGISLATION THROUGH CH 217
 OF THE 2010 REGULAR SESSION

FAMILY CODE
 Division 9. **Support**
 Part 2. **Child Support**
 Chapter 2. Court-Ordered **Child Support**
 Article 2. Statewide Uniform **Guideline**

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Fam Code § 4055 (2010)

§ 4055. Formula for statewide uniform guideline for determining child support

(a) The statewide uniform **guideline** for determining **child support** orders is as follows: $CS = K [HN - (H\%)(TN)]$.

(b)

(1) The components of the formula are as follows:

(A) CS = **child support** amount.

(B) K = amount of both parents' income to be allocated for **child support** as set forth in paragraph (3).

(C) HN = high earner's net monthly disposable income.

(D) H% = approximate percentage of time that the high earner has or will have primary physical responsibility for the children compared to the other parent. In cases in which parents have different time-sharing arrangements for different children, H% equals the average of the approximate percentages of time the high earner parent spends with each **child**.

(E) TN = total net monthly disposable income of both parties.

(2) To compute net disposable income, see Section 4059.

Practitioner's Toolbox

[History](#)

[Comments](#)

[Notes](#)

[Notes of Decisions](#)

Resources & Practice Tools**Related Statutes & Rules**

- > Application to child support order during pendency of action: Fam C § 3621.
- > Information on approximate percentage of time each parent has primary responsibility for children compared to other parent: Fam C § 4056.
- > Presumption of amount of award established by formula: Fam C § 4057.

[More...](#)

Collateral References

- > Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 33, Custody and Visitation Orders § 33.04.
- > Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 33, Custody and Visitation Orders § 33.50.
- > Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 40, Duty to Support Children and Jurisdiction to Order Support § 40.05.

[More...](#)

Law Review Articles

- > Lurking in the shadow (child custody bargains). 68 S Cal LR 493.
- > A "Dual System" of Family Law Revisited: Current Inequities in California's Child Support Law. 35 USF LR 593.

[More...](#)

(3) K (amount of both parents' income allocated for **child support**) equals one plus H% (if H% is less than or equal to 50 percent) or two minus H% (if H% is greater than 50 percent) times the following fraction: [Click here to view image.](#)

For example, if H% equals 20 percent and the total monthly net disposable income of the parents is \$1,000, $K = (1 + 0.20) \times 0.25$, or 0.30. If H% equals 80 percent and the total monthly net disposable income of the parents is \$1,000, $K = (2 - 0.80) \times 0.25$, or 0.30.

(4) For more than one **child**, multiply CS by: [Click here to view image.](#)

(5) If the amount calculated under the formula results in a positive number, the higher earner shall pay that amount to the lower earner. If the amount calculated under the formula results in a negative number, the lower earner shall pay the absolute value of that amount to the higher earner.

(6) In any default proceeding where proof is by affidavit pursuant to Section 2336, or in any proceeding for **child support** in which a party fails to appear after being duly noticed, H% shall be set at zero in the formula if the noncustodial parent is the higher earner or at 100 if the custodial parent is the higher earner, where there is no evidence presented demonstrating the percentage of time that the noncustodial parent has primary physical responsibility for the children. H% shall not be set as described above if the moving party in a default proceeding is the noncustodial parent or if the party who fails to appear after being duly noticed is the custodial parent. A statement by the party who is not in default as to the percentage of time that the noncustodial parent has primary physical responsibility for the children shall be deemed sufficient evidence.

(7) In all cases in which the net disposable income per month of the obligor is less than one thousand dollars (\$1,000), there shall be a rebuttable presumption that the obligor is entitled to a low-income adjustment. The presumption may be rebutted by evidence showing that the application of the low-income adjustment would be unjust and inappropriate in the particular case. In determining whether the presumption is rebutted, the court shall consider the principles provided in Section 4053, and the impact of the contemplated adjustment on the respective net incomes of the obligor and the obligee. The low-income adjustment shall reduce the **child support** amount otherwise determined under this section by an amount that is no greater than the amount calculated by multiplying the **child support** amount otherwise determined under this section by a fraction, the numerator of which is 1,000 minus the obligor's net disposable income per month, and the denominator of which is 1,000.

(8) Unless the court orders otherwise, the order for **child support** shall allocate the **support** amount so that the amount of **support** for the youngest **child** is the amount of **support** for one **child**, and the amount for the next youngest **child** is the difference between that amount and the amount for two children, with similar allocations for additional children. However, this paragraph does not apply to cases in which there are different time-sharing arrangements for different children or where the court determines that the allocation would be inappropriate in the particular case.

(c) If a court uses a computer to calculate the **child support** order, the computer program shall not automatically default affirmatively or negatively on whether a low-income adjustment is to be applied. If the low-income adjustment is applied, the computer program shall not provide the amount of the low-income adjustment. Instead, the computer program shall ask the user whether or not to apply the low-income adjustment, and if answered affirmatively, the computer program shall provide the range of the adjustment permitted by paragraph (7) of subdivision (b).

History:

Added Stats 1993 ch 219 § 138 (AB 1500). Amended Stats 1993 ch 1156 § 1 (SB 541); Stats 1994 ch 906 § 1.5 (AB 923); Stats 1998 ch 581 § 15 (AB 2801); Stats 2003 ch 225 § 1 (AB 1752), effective August 11, 2003.

Notes:

- 1. Former Sections
- 2. Amendments
- 3. Historical Derivation

1.

Former Sections:

Former § 4055, similar to present Fam C § 4057, was enacted Stats 1992 ch 162 § 10, to become operative January 1, 1994, and repealed Stats 1993 ch 219 § 137.

- 2. Amendments:
 - 1994 Amendment
 - 1998 Amendment
 - 2003 Amendment

1994 Amendment:

(1) Added subds (b)(7) and (c); and (2) redesignated former subd (b)(7) to be (b)(8).

1998 Amendment:

(1) Amended subd (b) by (a) adding the second and third sentences in subd (b)(6); and (b) substituting "in which" for "where" after "not apply to cases" in the second sentence of subd (b)(8); and (2) substituted "If" for "In the event" at the beginning of subd (c).

2003 Amendment:

Amended subd (b)(7) by (1) substituting "there shall be a rebuttable presumption that the obligor is entitled to" for "the court shall rule on whether"; (2) deleting "shall be made" from the end of the first sentence; (3) substituting "presumption may be rebutted by evidence showing that the application of the low-income adjustment would be unjust and inappropriate in the particular case. In determining whether the presumption is rebutted, the court shall consider" for "ruling shall be based on the facts presented to the court,"; (4) substituting "The" for "Where the court has ruled that a" in the fourth sentence; (5) substituting "reduce" for "shall be reduced"; (6) deleting "shall be reduced" before "by an amount"; and (7) deleting "If a low-income adjustment is allowed, the court shall state the reasons supporting the adjustment in writing or on the record and shall document the amount of the adjustment and the underlying facts and circumstances." from the end of the subdivision.

3.

Historical Derivation:

(a) Former Fam C § 4053, as enacted Stats 1992 ch 162 § 10, to become operative January 1, 1994, and repealed Stats 1993 ch 219 § 137, with an effective date of January 1,

1994.

(b) Former CC § 4720.2, as added Stats 1991 ch 110 § 13, amended Stats 1991 ch 542 § 4.5.

(c) Former CC § 4721, as added Stats 1992 ch 46 § 9, amended Stats 1992 ch 848 § 6 (SB 1614)

(d) Former CC § 4721, as added Stats 1984 ch 1605 § 4, operative July 1, 1985, amended Stats 1985 ch 379 § 2, effective July 30, 1985, Stats 1987 ch 964 § 1, Stats 1988 ch 153 § 3, Stats 1990 ch 1493 § 13.

(e) Former CC §§ 4722, 4723, as added Stats 1984 ch 1605 § 4, amended Stats 1985 ch 379 §§ 3, 4, Stats 1990 ch 1493 §§ 15, 17.

(f) Former CC §§ 4724, 4727, 4728, as added Stats 1984 ch 1605 § 4, amended Stats 1990 ch 1493 §§ 19, 23, 24.

(g) Former CC §§ 4729, 4730, as added Stats 1984 ch 1605 § 4.

Comments:

Law Revision Commission Comments:

1993

Section 4055 supersedes former Civil Code Section 4721(a)-(b). Note. This section includes amendments made by 1993 Cal. Stat. ch. 1156, § 1 (SB 541).

Related Statutes & Rules:

Application to **child support** order during pendency of action: Fam C § 3621.

Information on approximate percentage of time each parent has primary responsibility for children compared to other parent: Fam C § 4056.

Presumption of amount of award established by formula: Fam C § 4057.

Additions to amount of **child support** calculated under formula: Fam C § 4061.

Application of formula in Judicial Council's worksheets: Fam C § 4068.

Circumstances evidencing hardship: Fam C § 4071.

Affidavits generally: CCP §§ 2009 et seq.

Guidelines for the Operation of Family Law Information Centers and Family Law Facilitator Offices: Cal. Rules of Court, Rules Appx Div V.

Ethics Standards for Neutral Arbitrators in Contractual Arbitration: CRC Rules Appx Div VI.

📌 Collateral References:

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 33, Custody and Visitation Orders § 33.04.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 33, Custody and Visitation Orders § 33.50.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 40, Duty to **Support** Children and Jurisdiction to Order **Support** § 40.05.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 40, Duty to **Support** Children and Jurisdiction to Order **Support** § 40.09.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 40, Duty to **Support** Children and Jurisdiction to Order **Support** § 40.25.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 40, Duty to **Support** Children and Jurisdiction to Order **Support** § 40.45.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 40, Duty to **Support** Children and Jurisdiction to Order **Support** § 40.46.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 40, Duty to **Support** Children and Jurisdiction to Order **Support** § 40.100.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 40, Duty to **Support** Children and Jurisdiction to Order **Support** § 40.102.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 41, **Child Support** Orders § 41.03.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 41, **Child Support** Orders § 41.05.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 41, **Child Support** Orders § 41.06.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 41, **Child Support** Orders § 41.07.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 41, **Child Support** Orders § 41.08.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 41, **Child Support** Orders § 41.30.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 41, **Child Support** Orders § 41.31.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 41, **Child Support** Orders § 41.42.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 41, **Child Support** Orders

§ 41.100.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 41, **Child Support** Orders § 41.101.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 41, **Child Support** Orders § 41.106.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 41, **Child Support** Orders § 41.100A.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 42, Modification of **Child Support** Orders § 42.21.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 42, Modification of **Child Support** Orders § 42.22.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 42, Modification of **Child Support** Orders § 42.23.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 42, Modification of **Child Support** Orders § 42.24.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 42, Modification of **Child Support** Orders § 42.26.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 91, Initial Client Contact § 91.04.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 121, Statement of Decision § 121.04.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 141, Special Remedies for Enforcement of **Support** § 141.221.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 141, Special Remedies for Enforcement of **Support** § 141.225.

Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 160, Tax Effects of Dissolution § 160.04.

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 220 "Dissolution of Marriage: Master Procedural Guide".

10 Witkin Summary (10th ed) Parent and **Child** §§ 387, 396, 405, 406, 409, 411, 512.

Cal Jur 3d (Rev) Discovery and Depositions § 31.

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 221 "Dissolution Of Marriage: Procedure".

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 223 "Dissolution Of Marriage: **Child** Custody".

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 224 "Dissolution Of Marriage: **Child Support**".

Cal. Legal Forms, (Matthew Bender) §§ 123.21[1], 123.200[1], 123.201[1], 123.203[1], 123.207[1], 123.209[1], 123.210[1], 123.211[1], 123.217[1], 124.201[1].

Matthew Bender(R) Practice Guide: California Contract Litigation, 18.10

Matthew Bender(R) Practice Guide: California Contract Litigation, 18.10.

Proof of paternity may trigger production of financial records. CEB Civil Litigation Reporter (1986) Vol 8 No. 2 p 69.

Rutter Cal Prac Guide, Family Law §§ 6:165 et seq.

Law Review Articles:

Silver spoon **child support**. 25 Bev Hills BJ 207.

The new statewide uniform **child support guideline**: Background & commentary. 15 Family L News No. 3 p 11.

An introduction to California's **child support guidelines**. 3 San Diego Justice Journal 551.

Lurking in the shadow (**child** custody bargains). 68 S Cal LR 493.

A "Dual System" of Family Law Revisited: Current Inequities in California's **Child Support** Law. 35 USF LR 593.

Hierarchy Notes:

[Div. 9, Pt. 2, Ch. 2, Art. 2 Note](#)

Notes of Decisions:

Decisions Under Current Law

-  1. Generally
-  2. Legislative Intent
-  3. Construction
-  4. Application
-  5. Discretion
-  6. Modification
-  7. Error
-  8. Special Circumstances
-  9. Public Assistance

Decisions Under Former CC § 4721

-  1. Generally
-  2. Legislative Intent
-  3. Construction
-  4. Applicability
-  5. Modification

- 6. Error
- 7. Unpaid Taxes

Decisions Under Current Law

1. Generally

Guideline amount of **child support** is calculated by applying a mathematical formula to the relative incomes of the parents, and is presumptively correct under the provisions of Cal. Fam. Code §§ 4055, 4057(a); that presumption may be rebutted by admissible evidence showing that application of the formula would be unjust or inappropriate in the particular case, consistent with the principles set forth in Cal. Fam. Code § 4053. Cal. Fam. Code § 4057(b). In re Marriage of De Guigne (2002, Cal App 1st Dist) 97 Cal App 4th 1353, 119 Cal Rptr 2d 430, 2002 Cal App LEXIS 4034.

2. Legislative Intent

In proceedings to modify **child support**, the trial court erred in directing a noncustodial father to produce detailed information and documentation relating to his income, expenses, and assets, where there was no question as to the father's ability to pay any reasonable **support** order, and where he had stipulated that he could and would pay any reasonable amount of **child support**. The judicial rule that discovery is unnecessary, unduly burdensome, and oppressive in such a case has not been abrogated by legislative enactments, and nothing in the uniform **guideline** formula in Fam C § 4055 (formerly set forth in CC § 4721), precludes application of the rule. In fact, the Legislature adopted the rule when it provided that the presumption of correctness of the amount of **child support** established by the **guideline** formula may be rebutted on a showing that the parent being ordered to pay has an extraordinarily high income and the amount determined under the formula would exceed the children's needs (Fam C § 4057, subd. (b); CC former § 4721, subd. (e)(4)). Estevez v. Superior Court (1994, Cal App 2d Dist) 22 Cal App 4th 423, 27 Cal Rptr 2d 470, 1994 Cal App LEXIS 113, review denied (1994, Cal) 1994 Cal LEXIS 2074.

In determining the amount of **support** a father was required to pay for his disabled adult **child**, the trial court did not err in using the uniform **child support guidelines** (Fam C § 4050 et seq.). The express statutory language demonstrate that the **guidelines** apply to cases involving adult children. With one exception, the Legislature uses the term "**child**" rather than "minor **child**" throughout these provisions. In related statutes, the Legislature differentiated between minor and adult children, and the Legislature's use of the unqualified word "**child**" in the **guidelines** must be deemed to have been a conscious, deliberate choice intended to refer to any **child** owed a duty of **support** by a parent. Also, Fam C § 3910 (duty to **support** incapacitated **child** of any age), does not displace the **guidelines** with respect to **support** for adult children. Further, although cases involving disabled adults may be different from a typical case involving a minor and the **guidelines** embody various assumptions about parents and minor children, the **guidelines** are not fatally inflexible with respect to the special circumstances of disabled adult children and their parents. Generally, when any assumption operating through the **guideline** formula produces an unjust or inappropriate result due to special circumstances in the particular case, Fam C § 4057, effectively vests trial courts with considerable discretion to approach unique cases on an ad hoc basis. In re Marriage of Drake (1997, Cal App 2d Dist) 53 Cal App 4th 1139, 62 Cal Rptr 2d 466, 1997 Cal App LEXIS 231, review denied (1997, Cal) 1997 Cal LEXIS 3395.

3. Construction

The amount of **child support** ordered pursuant to the statutory formula in Fam C § 4055, takes into account the income of each parent. If only one parent is employed, the full burden of **child support** can fall on the employed parent, although both parents have the responsibility to **support the child**. When **child support** is ordered at a time when both parents are employed, and thereafter one arbitrarily decides to stop working, perhaps because of remarriage to someone with significant income, the court must possess the discretion to consider that parent's earning capacity in ordering **child support** orders. Otherwise, one parent, by a unilateral decision, could eliminate his or her own responsibility to contribute to the **support of the child**, thereby causing the entire burden of supporting the **child** to fall upon the employed parent. In re Marriage of Paulin (1996, Cal App 1st Dist) 46 Cal App 4th 1378, 54 Cal Rptr 2d 314, 1996 Cal App LEXIS 616.

In a postjudgment dissolution proceeding to adjudicate the wife's petition to modify a **child support** order concerning the couple's disabled adult **child**, the trial court properly determined the husband's obligation under the uniform **child support guidelines** (Fam C § 4050 et seq.). First, the **child's** income from a trust that the wife had previously established did not directly discharge or offset any **support** obligation the husband had. Although a trial court has the discretion to reduce the amount of **child support** when a disabled adult **child** has independent income or assets, in this case there was no abuse of discretion. The court treated the trust as if it were one of the **child's** parents, rather than as an independent source of income. This treatment was warranted by the circumstances: the wife's death before the conclusion of the proceeding, her intention that the trust should continue in her place after her death, and her directing the trust administrators to maintain the **child's** environment of care. Second, the award represented an amount roughly equivalent to the husband's share of the total net income jointly available to him and the trust. Third, although the **guidelines** incorporate time-sharing as a factor, and many disabled children do not reside with either parent, in this case the wife and her successors had full responsibility for the **child's** physical situation and care, and the husband had none. Fourth, the requirement that both parents **support** a disabled **child** did not require the court to impose a monetary amount on the wife or her successors. In re Marriage of Drake (1997, Cal App 2d Dist) 53 Cal App 4th 1139, 62 Cal Rptr 2d 466, 1997 Cal App LEXIS 231, review denied (1997, Cal) 1997 Cal LEXIS 3395.

For purposes of timeshare percentage for **child support**, if a parent desires credit for time the **child** is not physically with them, then the parent has the burden of producing admissible evidence demonstrating he or she is primarily responsible for that **child** during those challenged times; relevant factors include: (1) who pays for transportation or who transports the **child**; (2) who is designated to respond to medical or other emergencies; (3) who was responsible for paying tuition (if any) or incidental school expenses; and (4) who participates in school activities, fundraisers, or other school-related functions. DaSilva v. DaSilva (2004, Cal App 4th Dist) 119 Cal App 4th 1030, 15 Cal Rptr 3d 59, 2004 Cal App LEXIS 1008.

There is no statutory basis for limiting imputed income to cases of bad-faith failure to earn, as that limitation would conflict with the law's policy of making the **child's** best interests the leading consideration in **child support** cases. Accordingly, in a case in which a trial court modified the **child support** obligation of a father, who was also a defendant in a pending capital murder prosecution, the trial court had discretion to impute interest based on the assets that the father had immediately before he chose to devote all his available resources to his defense. Brothers v. Kern (2007, 5th Dist) 2007 Cal App LEXIS 1348.

4. Application

Former husband, a surgeon, was properly ordered to pay temporary **child** and spousal **support** of \$13,488 per month and \$30,000 per month, respectively. The record lacked

evidence to show that application of the formula would be unjust and that a lower award would be consistent with the children's best interests; further, the minor children were to share in the standard of living of both parents, and the amount of **support** could appropriately improve the standard of living of the custodial household to improve the lives of the children. In re Marriage of Wittgrove (2004, Cal App 4th Dist) 120 Cal App 4th 1317, 16 Cal Rptr 3d 489, 2004 Cal App LEXIS 1239.

Because the trial court calculated **child support** pursuant to Fam C § 4055 in a divorce proceeding, its ruling was presumed correct, and the wife was unable to carry her burden under Fam C § 4057(b) of showing that the trial court misapplied the formula or that the application of the formula was unjust or inappropriate. In re Marriage of Ackerman (2006, Cal App 4th Dist) 146 Cal App 4th 191, 52 Cal Rptr 3d 744, 2006 Cal App LEXIS 2056, review denied In re Ackerman (2007) 2007 Cal. LEXIS 2075.

5. Discretion

In a proceeding to modify a father's **child support** obligation, the trial court did not abuse its discretion by imputing the **child's** time in boarding school to the father, thus reducing the mother's parenting time from 38 percent to 17 percent and reducing the **child support** she was entitled to under the uniform **guideline** formula (Fam C § 4055), where the father had been the primary custodial parent, signed the contract with the school and assumed overall physical responsibility for the **child** while he was away at school. Further, the mother's showing was remarkably weak: she did not arrange for payment for the schooling, did not share in the transportation responsibilities, and there was no evidence that she was the one who would have to respond to medical or other emergencies. In re Marriage of Katzberg (2001, Cal App 3d Dist) 88 Cal App 4th 974, 106 Cal Rptr 2d 157, 2001 Cal App LEXIS 324.

6. Modification

In a postdissolution proceeding to adjudicate the wife's request for an upward modification of a **child support** order, in which the trial court calculated the new amount using a 20 percent time share factor rather than the correct 28 percent time share factor, the trial court erred in estimating the new amount when the husband brought the incorrect percentage to the court's attention. California **child support** law has become highly deterministic. In light of such determinism, ascertaining the correct "uniform **guideline**" becomes extraordinarily important, because the trial court may only depart from that **guideline** by specifying three things--the **guideline** amount, the reason why the amount ordered differs, and the reason the different amount is consistent with the best interests of the **child** (Fam C § 4056). Consistent with Fam C §§ 4055 and 4056, deviations cannot be justified simply by making an estimate. If a trial court is going to use its discretion to vary the **guideline** amount, it must make an accurate computation of that amount, then actually use its discretion and state reasons for the variance on the record, not just estimate the **guideline** amount in a context where it evidently does not intend to vary the **guideline**. In re Marriage of Whealon (1997, Cal App 4th Dist) 53 Cal App 4th 132, 61 Cal Rptr 2d 559, 1997 Cal App LEXIS 153.

Exception to the changed circumstances rule for modification of **child support** orders that did not conform to the **guideline** formula did not apply to a **child support** order that postdated the establishment of the **child support guideline** under Fam C § 4055. The parent could not rely on the establishment of the **child support guideline** to satisfy the changed circumstances rule, which was that all the "exception" arising from Fam C § 4069 allowed. In re Schopfer (2010, 3d Dist) 2010 Cal App LEXIS 1060.

Mere fact that a supported **child** who is a full-time high school student turns 18 does not constitute a change of circumstances that renders the **guideline** in Fam C § 4055

inapplicable. As long as, based on the facts of the case, it is possible to reasonably assign physical "responsibility" for an adult **child, the guideline** formula remains applicable, even though neither parent (or any other person) has "custody" of the **child**. In re Schopfer (2010, 3d Dist) 2010 Cal App LEXIS 1060.

Father's obligation to pay **guideline support** under Fam C § 4055 continued for a 19-year-old **child** who was finishing high school at a boarding school. The trial court properly found that the **child's** attendance at boarding school did not change the fact that the stepfather was "responsible" for her 100 percent; he was responsible for enrolling her, maintained frequent and continuing contact, and exchanged visits, and the **child** intended to return home to live with him upon graduating. In re Schopfer (2010, 3d Dist) 2010 Cal App LEXIS 1060.

7. Error

In a postdissolution proceeding to adjudicate the wife's request for an upward modification of a **child support** order, the husband waived any error in the trial court's use of only the last month of the husband's income instead of the average of the last 12 months. California **child support** law now resembles determinate sentencing in the criminal law. The actual calculation required of the trial judge is so complicated (Fam C § 4055) that, to conserve judicial resources, any errors must be brought to the trial court's attention at the trial level while the error can still be expeditiously corrected. In this case, while the husband brought a motion for reconsideration of a related custody issue, he failed to mention that his income had been overstated. In re Marriage of Whealon (1997, Cal App 4th Dist) 53 Cal App 4th 132, 61 Cal Rptr 2d 559, 1997 Cal App LEXIS 153.

In a divorce proceeding, the trial court improperly considered spousal **support** as gross income for the purpose of determining **guideline support** or a modification therefrom as spousal **support** received from a party to the **child** proceedings did not constitute gross income for the purposes of determining the presumptively correct **guideline child support** under Fam C § 4055 and § 4058; the trial court could not exercise its discretion to consider spousal **support** received from a party to the **child support** proceedings as a special circumstance in justifying departure from the **guideline** under Fam C § 4057. In re Marriage of Corman (1997, Cal App 2d Dist) 59 Cal App 4th 1492, 69 Cal Rptr 2d 880, 1997 Cal App LEXIS 1039.

A decision not to order the **guideline** amount for **child support** pursuant to Fam C § 4055 is legal error unless the trial court finds that a special circumstance is present. The court can deviate from the **guideline** where the supporting parent has an extraordinarily high income, and the **guideline** amount would exceed the needs of the children, in which event the court has the discretion to order whatever amount it decides will meet the reasonable needs of the children, consistent with the basic principles of Fam C § 4053. In re Marriage of Bonds (1999, Cal App 1st Dist) 71 Cal App 4th 290, 83 Cal Rptr 2d 783, 1999 Cal App LEXIS 318, modified, rehearing denied (1999, 1st Dist) 72 Cal App 4th 94d, 1999 Cal. App. LEXIS 469, review gr, depublished Supreme Court Minute 07-21-1999 (1999) 87 Cal. Rptr. 2d 410, 981 P.2d 40, 1999 Cal. LEXIS 4859, rev'd, superseded (2000) 24 Cal 4th 1, 99 Cal Rptr 2d 252, 5 P3d 815, 2000 Cal LEXIS 6117.

In a dissolution proceeding in which the trial court awarded a percentage of future option income as additional **child support**, it was error to apply the **guideline** formula (Fam C § 4055) without a finding that the amount ordered would not exceed the **child's** needs (Fam C § 4057). A percentage award would be permissible so long as a maximum amount is set that would not exceed the **child's** needs. In re Marriage of Kerr (1999, Cal App 4th Dist) 77 Cal App 4th 87, 91 Cal Rptr 2d 374, 1999 Cal App LEXIS 1108.

The trial court in a dissolution of marriage proceeding committed reversible error in making a **child support** order requiring the payment of an arbitrary percentage of one parent's income above a certain level without regard to fluctuations in the other parent's income. The order differed on its face from the formula **guideline** set forth in Fam C § 4055, and could not be saved as an exercise of discretion because the court did not make the statement of reasons required by Fam C § 4056. *In re Marriage of Hall* (2000, Cal App 4th Dist) 81 Cal App 4th 313, 96 Cal Rptr 2d 772, 2000 Cal App LEXIS 443.

Trial court believed it was following the law when it mistakenly calculated the "H percent" factor under Fam C § 4055 solely on a father's awarded hours of physical custody, and it appeared that the father should have been credited for at least some of the time the **child** spent at school, and thus the court reversed the trial court's timeshare percentage orders and remanded for a new calculation; the court reiterated that it still agreed with those cases interpreting the "H percent" factor to require calculations based on the parents' respective periods of primary physical "responsibility" for the children, rather than physical "custody." *DaSilva v. DaSilva* (2004, Cal App 4th Dist) 119 Cal App 4th 1030, 15 Cal Rptr 3d 59, 2004 Cal App LEXIS 1008.

8. Special Circumstances

The trial court did not abuse its discretion by reducing a father's **child support** obligation below the low-income adjustment calculated under the formula in Fam C § 4055, subd. (b) (7). Under Fam C § 4055, the court may order a low-income adjustment to the amount of **child support** ordered if the obligor's net disposable income per month is less than \$1,000. However, Fam C § 4057, specifically provides that the court has discretion to set **support** in an amount other than that provided in Fam C § 4055. Although the amount of **child support** established by the formula under Fam C § 4055, is presumed to be the correct amount (Fam C § 4057, subd. (a)), that presumption may be rebutted by evidence showing that "application of the formula would be unjust or inappropriate due to special circumstances in the particular case" (Fam C § 4057, subd. (b)(5)). In this case, the evidence showed that application of the formula set forth in Fam C § 4055, would have left the father with only \$14 per month for expenses. Moreover, the father maintained physical responsibility of his children for 20 percent of the time. Thus, the trial court did not abuse its discretion by reducing the father's **support** obligation to zero and urging him to locate a roommate in order to reduce his monthly expenses. *City & County of San Francisco v. Miller* (1996, Cal App 1st Dist) 49 Cal App 4th 866, 56 Cal Rptr 2d 887, 1996 Cal App LEXIS 920, review denied (1996, Cal) 1996 Cal LEXIS 7264.

In a case in which a trial court modified the **child support** obligation of a father, who was also a defendant in a pending capital murder prosecution, by basing the new monthly amount on the interest that could have been earned on the proceeds of the father's liquidated assets rather than on his income before his arrest, the trial court properly found special circumstances to justify its substantial departure from the **support** figure based on the statutory **guideline** where, among other things, the trial court found that: (1) the **child's** standard of living could not be sustained if the **guideline** figure were used; (2) the father would no longer be contributing **support** via visitation; and (3) the father's own standard of living would not be impacted because he was incarcerated. Contrary to the father's assertion that none of the exceptional circumstances identified under the law existed, the trial court acted within its discretion and acted consistently with the principles set forth in Fam C § 4053 when it found the **guideline** presumption to be rebutted on the basis of the factors that it recited. *Brothers v. Kern* (2007, 5th Dist) 2007 Cal App LEXIS 1348.

Application of **child support guideline** formula would be unjust or inappropriate as contemplated by Fam C § 4057(b)(5); although the parties had agreed to share college expenses, their son received a full financial aid package, and neither parent had physical

responsibility for him under Fam C § 4055(b)(1)(D). *Edwards v. Edwards* (2008, 2d Dist) 2008 Cal App LEXIS 589.

9. Public Assistance

If public assistance is provided for a **child** as a consequence of separation from or desertion by the parent, the parent is obligated to the county for sums equivalent to those the parent would otherwise be obligated to provide in **child support** under the state **guidelines** for such awards, former W & I C § 11350, (see now Fam C § 17402); Fam C § 4055. Sums that may be collected by the county for unpaid amounts or arrearages through a recoupment action of this sort are subject to a three-year statute of limitations (CCP § 338(a)). In determining the correct amount of a current **child support** award, or **support** arrearage, the provisions of Fam C § 4057 relating to the state **child support guidelines** come into play, former W & I C § 903(c)(4), (see now Fam C § 17402). Fam C § 4057 establishes a rebuttable presumption that the appropriate level of **support** is that established by the **guidelines**; the presumption may be rebutted by evidence that the **guideline** amount is unjust or inappropriate due to special circumstances in the particular case based on a showing beyond a preponderance of the evidence of certain enumerated factors, which include that application of the formula would be unjust or inappropriate due to special circumstances in the particular case (Fam C § 4057(b)(5)). In the present proceeding to determine paternity, **child support** award, and retroactive **support**, the trial court did not abuse its discretion when it reduced the amount of retroactive **support** requested, having found that because the minor was almost 16 years old at the time of the proceeding, it would be unjust, because of the city's delay in seeking recoupment, for defendant's obligation for past **support** to be a financial burden he would bear for many years into the future. Moreover, in light of defendant's present efforts to reunify with the minor, the court found that it would not be in the minor's best interests to impose the greater obligation upon him. *City & County of San Francisco v. Funches* (1999, Cal App 1st Dist) 75 Cal App 4th 243, 89 Cal Rptr 2d 49, 1999 Cal App LEXIS 872.

Decisions Under Former CC § 4721

1. Generally

Under CC (former) § 4722 (computation of **child support**), where one spouse does not work outside the home, the other spouse bears the entire burden of paying, at least, the minimum award as determined by the aid to families with dependent children standard for the number of children involved. This is true no matter whether the unemployed spouse is penurious or living extravagantly on the income of a subsequent spouse or nonmarital partner. In re *Marriage of Nolte* (1987, Cal App 5th Dist) 191 Cal App 3d 966, 236 Cal Rptr 706, 1987 Cal App LEXIS 1697.

2. Legislative Intent

Former CC § 4721, subd. (e), (see now Fam C § 4057.5), which prohibited the trial court from considering the separate income of either parents' current spouse or nonmarital partner in calculating the minimum required amount of **child support**, did not conflict with former CC § 4724, subd. (e), (see now Fam C § 4057.5 (a)), which permitted the court to consider such income with regard to a **support** award above the minimum required amount. Nor did former CC § 4721, subd. (e), (see now Fam C § 4057.5), conflict with former CC § 5120.150, (see now Fam C § 915), which provided that where community funds of a subsequent marriage were used to satisfy **child** or spousal **support** obligations, the community might be entitled to reimbursement, but which did not disable the court from considering the earnings of a subsequent spouse. It had to be assumed that the Legislature intended that such consideration would be consistent with award setting provisions, such as former CC § 4721,

subd. (e), (see now Fam C § 4057.5). In re Marriage of Nolte (1987, Cal App 5th Dist) 191 Cal App 3d 966, 236 Cal Rptr 706, 1987 Cal App LEXIS 1697.

The statutory definition of "annual gross income" for purposes of determining **child support** obligations, former CC § 4721, (see now Fam C § 4058 (a)), by using the term "including" with the enumerated items, did not necessarily limit the original term to the listed inclusions. Therefore, although the statute did not specifically include lottery winnings within the definition of income, the broad reach of the statute indicated that the Legislature intended to include such items within its reach. County of Contra Costa v. Lemon (1988, Cal App 1st Dist) 205 Cal App 3d 683, 252 Cal Rptr 455, 1988 Cal App LEXIS 1026.

3. Construction

With respect to the right to discover financial records of an alleged father for purposes of awarding **child support** in an action to establish parentage, pursuant to former CC §§ 4700.7, (see now Fam C § 3552), and 4721, subd. (d), (see now Fam C § 4056), financial information need not be divulged with regard to awarding pendente lite **support** until after a prima facie showing of paternity had been made. Mandatory disclosure was not required under either Civil Code section for the purpose of making a temporary **support** award. Thomas B. v. Superior Court (1985, Cal App 4th Dist) 175 Cal App 3d 255, 220 Cal Rptr 577, 1985 Cal App LEXIS 2831.

4. Applicability

Former CC §§ 4700.7, (see now Fam C § 3552), and 4721, subd. (d), (see now Fam C § 4056), requiring parents to produce state income tax returns in proceedings involving **child** or spousal **support**, did not apply in actions to establish parentage until the issue of paternity was finally adjudicated. Thus, in an action to adjudicate an alleged father's paternity as to plaintiff's minor **child**, and for an award of **child support**, the trial court erred in ordering the putative father to produce state income tax returns. Former CC § 4721, subd. (d), (see now Fam C § 4056), was intended to apply only to "parents." Also, even though the putative father had already been adjudicated a parent at a hearing for an order to show cause for interim **support**, the court's finding of paternity for this limited purpose was not tantamount to a finding of paternity for purposes of former CC §§ 4700.7, (see now Fam C § 3552), and 4721, subd. (d), (see now Fam C § 4056). Until such time as parentage was conclusively established, the policy favoring confidentiality of tax returns had to prevail. Thomas B. v. Superior Court (1985, Cal App 4th Dist) 175 Cal App 3d 255, 220 Cal Rptr 577, 1985 Cal App LEXIS 2831.

By definition, a trial court which determined the mandatory minimum amount of **child support** under the Agnos **Child Support** Standards Act, former CC § 4722, had considered the minimum necessary to **support** a **child**. However, if the parent's net disposable income as multiplied by the appropriate factor for the number of children involved rendered an amount less than the AFDC standard, the trial court had to set that lesser amount as the minimum **support** award. In re Marriage of Everett (1990, Cal App 1st Dist) 220 Cal App 3d 846, 269 Cal Rptr 917, 1990 Cal App LEXIS 544.

5. Modification

In requesting a modification of **child support** payments, the proponent of the request generally must demonstrate changed circumstances to **support** the modification. However, the Agnos **Child Support** Standards Act of 1984, former CC § 4720 et seq., provided that its enactment constitutes a sufficient change of circumstances to **support** a request for

modification as to **support** orders entered prior to July 1, 1985. Thus, a proponent of a request for modification of **child support** need have made no further showing. [See Cal.Jur.3d, Family Law, § 324; Am.Jur.2d, Divorce and Separation, § 1139.] In re Marriage of Nolte (1987, Cal App 5th Dist) 191 Cal App 3d 966, 236 Cal Rptr 706, 1987 Cal App LEXIS 1697.

In an action by a father to modify his **child support** payments, the trial court used an improper method to reduce the father's payments to reflect the time the children were with him pursuant to a shared physical custody arrangement former CC § 4727. The court's mechanical application of former § 4727, in which it considered only the percentage of time the children were with each parent, was contrary to the legislative intent of the statute. That method failed to consider the expenses or savings realized by each parent as a result of the arrangement. In re Marriage of Norvall (1987, Cal App 5th Dist) 192 Cal App 3d 1047, 237 Cal Rptr 770, 1987 Cal App LEXIS 1835.

6. Error

In an action for the establishment of **child support**, the trial court erred in making an award lower than that provided for in the Agnos **Child Support** Standards Act of 1984, former CC § 4720 et seq., on the ground that former CC § 4727, which created two classes of individuals--those noncustodial parents whose children were supported by public assistance and those noncustodial parents whose children were not--was unconstitutional as violative of equal protection guarantees. The minimum payment the statute imposed only on noncustodial parents whose children were supported by aid to families with dependant children was rational in that this group affected the public fisc in a way that children not receiving such **support** did not. State of Washington v. Cobb (1987, Cal App 4th Dist) 194 Cal App 3d 773, 239 Cal Rptr 726, 1987 Cal App LEXIS 2092.

In proceedings to modify **child support**, the trial court's finding that former CC § 4721, subd. (e), (see now Fam C § 4057.5), denied equal protection of the law had no basis and was erroneous. Under the statute, the income of the current spouse of neither parent was to be taken into consideration in the calculation of the mandatory minimum award, and thus custodial and noncustodial parents received equal treatment, contrary to the trial court's mistaken premise. In re Marriage of Dade (1991, Cal App 1st Dist) 230 Cal App 3d 621, 281 Cal Rptr 609, 1991 Cal App LEXIS 543.

7. Unpaid Taxes

In a marital dissolution proceeding, the trial court, in determining the husband's ability to pay mandatory minimum **child support**, former CC § 4721, (see now Fam C §§ 4055 et seq.), did not err in refusing to deduct unpaid delinquent income taxes from his gross income. Although the statute required that a parent's annual net disposable income be determined, in part, by deducting income tax liability from annual gross income, such a deduction was inappropriate when a self-employed spouse refused to pay taxes. The evidence supported the finding that the husband, a computer consultant, had willfully refused to pay his taxes; he testified he was not required to pay income tax because he received "compensation" rather than "income." There was no evidence that the trial court's order was intended to punish the husband for nonpayment of taxes, since it stated that the husband's payment of taxes would constitute changed circumstances justifying modification of the award, and the **child support** actually awarded to the wife was slightly less than the amount listed in the county schedule. In re Marriage of McQuoid (1992, Cal App 1st Dist) 9 Cal App 4th 1353, 12 Cal Rptr 2d 737, 1991 Cal App LEXIS 1540.

Source: **Combined Source Set 1**  - CA - Deering's California Codes Annotated, Constitution, Court Rules & ALS, Comb

Terms: **child support guidelines** ([Edit Search](#) | [Suggest Terms for My Search](#))

View: Full

Date/Time: Monday, September 13, 2010 - 2:48 PM EDT



[About LexisNexis](#) | [Terms & Conditions](#) | [Contact Us](#)

[Copyright ©](#) 2010 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.