

Beyond the Guidelines: The Use of Mental Health Experts in Determining Appropriate Levels of Child Support for Affluent Families

by

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It is well documented that poverty is associated with a variety of negative developmental outcomes for children, affecting physical health, social and behavioral development, academic achievement and cognitive functioning.¹ What may be surprising is that affluence is similarly associated with a wide range of variability in developmental outcomes for children. The consequence for any individual child depends on factors that exacerbate or buffer negative effects and accentuate the positive outcomes.² A central premise of this article is that *both* tails of the distribution of family standard of living create non-specific risk factors for children's social-emotional development.³ The more extreme the standard deviation from the median standard of living, the more developmental risk is present for children (see figure 1). This article will focus on the affluent tail of the bell curve.

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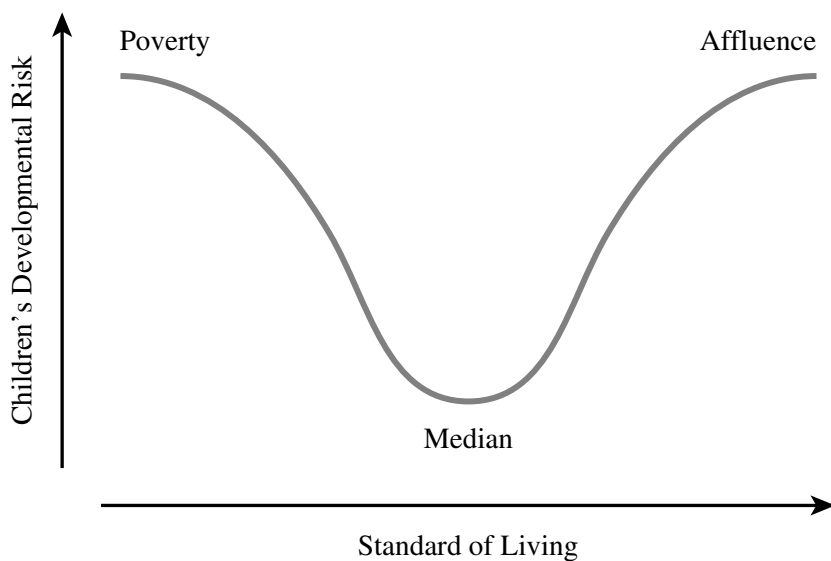
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¹ Jeanne Brooks-Gunn & Greg Duncan, *The Effects of Poverty on Children*, 7 FUTURE OF CHILDREN 55, 58 (Summer-Autumn 1997).

² Peter Jaffe & Claire Crooks, *The Role of Affluence in Child Development: Potential Implications for Child Support Guidelines in Exceptional Circumstances*, 22(3) CAN. FAM. L.Q. 319, 321 (2004).

³ Suniya Luthar & Shawn Latendresse, *Children of the Affluent: Challenges to Well-Being*, 14 CURRENT DIRECTIONS PSYCHOL. SCI. 49, 51 (Mar. 2005).

Figure 1: Bell Curve of Standard of Living and Developmental Risk for Children



What is affluence? Affluence is the state of having a great deal of money or wealth or a high standard of living. Affluence is not simply defined by income level or a family's net worth, but rather a family's standard of living, as understood in the context of the community standard of living in which the family resides. A certain level of income in much of the Midwest, for example, does not translate into the same standard of living in the San Francisco Bay Area. Affluence and extraordinary wealth create financial resources well beyond those necessary to meet one's personal needs which may include basic food and clothing, a comfortable residence, a child's quality education, enrichment activities, vacation travel, and domestic support (such as child care and house cleaning) to name a few.

While the affluent are no doubt an elite group, they comprise a considerable number. The top 1% in the United States owns 35.5% of the wealth, with an individual family net worth of 10 million dollars, while the top 10% have a net worth of just over 1 million dollars. In the United States alone, there are over

8 million millionaires.⁴ More than 10% of households in the District of Columbia and four other states earn \$200,000 or more a year. A new report from the Economic Policy Institute finds, that to be among the top 1% of U.S. earners, a family needs an income of \$421,926. However, the threshold varies significantly among states. In Connecticut, for example, an annual income of \$700,800 is required to be in the top 1%.⁵

Also relevant to this article is our experience that affluent families disproportionately utilize the family court system to address disputes about all aspects of custody, division of marital property, and determination of family support (child and spousal). The costs of litigating child custody and support can be exorbitant, resulting in settlements for those who cannot afford attorney fees, child custody evaluations, and court fees. Affluent families do not face the same hurdles and often have greater access to the court system.

Outside the overburdened public court system, the significant resources of affluent spouses allow such litigants greater access to use of private judges.⁶ Private judges allow families the privacy to litigate their cases outside of public scrutiny and afford families the access to a decision-maker with more time to carefully construct tailored orders. In the public courthouse, by contrast, cases are often pushed through quickly under rote, inflexible systems often inapplicable to families of extreme wealth.

Affluence is a double-edged sword, creating benefits and challenges for children who are raised in wealthy families. Table 1 juxtaposes the benefits and risks associated with wealth, highlighting what privilege, security, opportunity and status can provide a child, and how wealth can create stress, entitlement, extreme materialism, and significant social, psychological and identity problems.

⁴ Statista.com, <https://www.statista.com/statistics/203961/wealth-distribution-for-the-us/> (last visited May 30, 2019).

⁵ Estelle Sommeiller & Mark Price, *The New Gilded Age: Income Inequality in the U.S. by State, Metropolitan Area and County*, ECON. POL'Y INST. (July 2018).

⁶ See, e.g., CAL CONST. art. VI, § 21.

Table 1: Pros and Cons of Children's Experience in Affluent Families

<u>Positive</u>	<u>Negative</u>
Financial security	Lack of motivation to work/achieve
Freedom to learn/explore	Laziness, complacency
Enriching opportunities	Activity overload
Privilege/Status	Entitlement, Narcissism
Philanthropic values	Overindulgence
Friendships with other privileged children	Social isolation, exploitation by peers
Appreciation of effort leading to reward/achievement	Extreme materialism and consumption

Risk factors related to several negative emotional, behavioral, and character outcomes can be exacerbated or mitigated by parenting practices. Since resource allocation for the purpose of raising children is determined by parents, maximizing the benefits of financial resources and minimizing the deleterious effects of affluence is determined by parenting practices, that is, how parents make and implement decisions about the utilization of resources in raising children when the resources are abundant, if not limitless. Parents must decide how to *manage* opportunities for themselves and their children in the areas of residence and community, education, travel, leisure, enrichment, activities, domestic support, social life, and philanthropy. This article will first provide a comprehensive review of the social science literature on the impact of wealth on children. This literature provides the basis to understand the psychological considerations for children relevant to levels of support in extraordinarily wealthy families. This will be followed by a review of the legal framework for child support determinations in families of extraordinary wealth. This section considers the shortcomings of child support guidelines in relation to the prevailing child support policy of protecting the child's best interests by maintaining the standard of living the child would have enjoyed had the parents stayed together and promoting financial responsibility of parents. The final section of this article will provide guidance about factors to consider relevant to the psychological aspects of child support for courts and family law professionals.

I. The Impacts of Wealth on Children

Wealth provides advantages for children not afforded to lower earning families, including financial security, comfort and opportunity, extracurricular activities, the freedom to explore and learn, education at elite schools, philanthropic opportunities, and relationships with others who also have wealth.⁷ But it is a double-edged sword.⁸ Comfort and opportunity can lead to over-indulgence. Material comforts can encourage materialism. Unlimited opportunities can lead to emotional overload and pressure. Financial security can result in a lack of motivation to work or achieve independence. Relationships with other affluent children can create insularity and arrogance. Children can also be affected by less direct parenting, higher expectations, and parenting practices that undermine the development of self-confidence and independence. Children living in affluent communities are often not held accountable for their actions. As Dan Kindlon writes, “We can live in safe neighborhoods, get high quality medical care, go to good schools, drive in crash-resistant SUVs. But money can’t protect our kids from the discomforts of maturation, and it can’t buy them character.”⁹

The negative impacts of wealth are routinely experienced by children of divorce. For example, when a substantial wealth disparity exists between the two homes, the child is compelled to simultaneously live at two different standards of living. It is often the case that the parent with higher wealth will attempt to influence the child to see their home experience preferentially – put simply, the parent may attempt to buy the child’s love. Affluence can also mask problems that might otherwise be addressed including substance abuse, neglect, domestic violence, or parental psychopathology.¹⁰ The literature reviewed below explores the impact of significant wealth on children, focusing on how it impacts the development of initiative, attitudes about work and responsibility, attitudes about money and consumption, identity

⁷ EILEEN GALLO ET AL, SILVER SPOON KIDS 1 (2002).

⁸ Matthew Sullivan, Child Support in High Income Cases: Psychological Perspectives at AAML Symposium (Apr. 2002).

⁹ DAN KINDLON, TOO MUCH OF A GOOD THING: RAISING CHILDREN OF CHARACTER IN AN INDULGENT AGE 9 (2001).

¹⁰ Sullivan, *supra* note 8.

development, self-esteem, and the development of empathy, coping skills, and parenting.

Not many theorists will disagree that children raised in poverty face a unique set of risk factors.¹¹ But more surprising is that children raised in affluent homes also face adjustment problems.¹² Authors have used a variety of terms to describe the negative impact of wealth on children's development: Silver Spoon Syndrome,¹³ WASP Rot,¹⁴ and Affluenza,¹⁵ each raising concerns about developmental risks for children who are brought up in affluent families.

Jessie O'Neill, heir to the General Motors fortune, writes about the negative impact of affluence in her book, *The Golden Ghetto*. She states that the Golden Ghetto is "inhabited by people from all walks of life who are bound together by a common illusion: the myth of the American dream, the conviction that money can, does, and should guarantee happiness."¹⁶ O'Neill discusses the psychological impact affluence or "affluenza" has on families. The challenges of wealth are intergenerational. Parenting tasks are often delegated to employees who may not have adequate parenting knowledge and who often do not have the authority to set limits. Additionally, the absence of parents often creates abandonment and trust issues for children of the affluent, and a lack of consistency in modeled values for the child. The children may exhibit a "false sense of entitlement, a loss of future

¹¹ Brooks-Gunn, *supra* note 1, at 56; Althea C. Huston, et al., *Children and Poverty: Issues in Contemporary Research*, 65 *CHILD DEV.* 275, 275 (1994).

¹² See generally KINDLON, *supra* note 9, at 10; MADELINE LEVINE, *THE PRICE OF PRIVILEGE* (2d ed. 2008); RICHARD A. MORRIS & JAYNE A. PEARL, *KIDS, WEALTH, AND CONSEQUENCES 1* (2010); JESSIE H. O'NEILL, *THE GOLDEN GHETTO: THE PSYCHOLOGY OF AFFLUENCE* (1997); Jaffe & Crooks, *supra* note 2, at 321; Suniya S. Luthar, *The Culture of Affluence: Psychological Costs of Material Wealth*, 74 *CHILD DEV.* 1581, 1582 (Nov. 2003); Suniya S. Luthar & Bronwyn E. Becker, *Privileged but Pressured? A Study of Affluent Youth*, 73 *CHILD. DEV.* 1593, 1594 (Aug. 2002); Luthar & Latendresse, *supra* note 3, at 49.

¹³ Joyce LaBeau, *The "Silver-Spoon" Syndrome in the Super Rich: The Pathologic Linkage of Affluence and Narcissism in Family Systems*, 42 *AM. J. PSYCHOTHERAPY* 425, 425 (1988).

¹⁴ Abigail Trafford, Op-Ed., *The WASP Rot Chronicles: How the American Uppercrust Crumbled*. *WASH. POST*, Feb. 21, 1993, at C1.

¹⁵ O'NEILL, *supra* note 12, at 35; Jaffe & Crooks, *supra* note 2, at 321.

¹⁶ O'NEILL, *supra* note 12, at 37.

motivation, and an inability to delay gratification and tolerate frustration.”¹⁷ Further, self-esteem, self-worth, and self-confidence can be damaged by inheriting money. The accomplishments of affluent parents, particularly those who earn their wealth, often cannot be attained by their children.

There is growing research support that substantial wealth can have a negative impact on youth. The majority of this research has been conducted by Suniya Luthar¹⁸ and her colleagues. The upper middle class youth studied by Luthar included families with a median income of \$102,121 in 1999¹⁹ and

¹⁷ *Id.* at 37-38.

¹⁸ For a sampling of Luthar’s work, see Lucia Ciciolla, Alexandria S. Curlee, Jason Karageorge & Suniya S. Luthar, *When Mothers and Fathers Are Seen Disproportionately Valuing Achievements: Implications for Adjustment Among Upper Middle Class Youth*, 46 J. YOUTH & ADOLESCENCE 1057, 1057 (2016); Insights with Dick Goldberg, *The Problem with Rich Kids*, YouTube (Mar. 12, 2015), <https://www.youtube.com/watch?v=woDrR6FUUjc>; Luthar, *supra* note 14, at 1581; Suniya S. Luthar, *The Problem with Rich Kids*, PSYCHOL. TODAY (Nov. 5, 2013); Suniya S. Luthar & Samuel H. Barkin, *Are Affluent Youth Truly “At Risk”? Vulnerability and Resilience Across Three Diverse Samples*, 24(2) DEV. PSYCHOPATHOLOGY 429, 429 (2012); Luthar & Becker, *supra* note 12, at 1593; Suniya S. Luthar & Karen D’Avanzo, *Contextual Factors in Substance Use: A Study of Suburban and Inner-City Adolescents*, 11(4) DEV. PSYCHOPATHOL. 845, 845 (1999); Suniya S. Luthar & Adam S. Goldstein, *Substance Use and Related Behaviors Among Suburban Late Adolescents: The Importance of Perceived Parent Containment*, 20(2) DEV. PSYCHOPATHOLOGY 591, 591 (2008); Luthar & Latendresse, *supra* note 3, at 49; Suniya S. Luthar & Barry Schwartz, *Sometimes ‘Poor Little Rich Kids’ Really Are Poor Little Rich Kids*, REUTERS (Jan. 5, 2016); Suniya S. Luthar & Chris C. Sexton, *The High Price of Affluence*, 32 ADV. CHILD DEV. BEHAV. 125, 125 (2004); Emily L. Lyman & Suniya S. Luthar, *Further Evidence on the “Costs of Privilege”: Perfectionism in High-Achieving Youth at Socioeconomic Extremes*, 51(9) PSYCHOL. SCH. 913, 913 (2014); Madeline H. Meier, Melanie L. Hill, Phillip J. Small & Suniya S. Luthar, *Associations of Adolescent Cannabis Use with Academic Performance and Mental Health: A Longitudinal Study of Upper Middle Class Youth*, 156 DRUG ALCOHOL. DEPEND. 207, 20 (2015); Sarah J. Racz, Robert J. McMahon & Suniya S. Luthar, *Risky Behavior in Affluent Youth: Examining the Co-occurrence and Consequences of Multiple Problem Behaviors*, 20(1) J. CHILD. FAM. STUD. 120, 120 (2011); Tuppett M. Yates, Suniya S. Luthar & Allison J. Tracy, *Nonsuicidal Self-Injury Among “Privileged” Youths: Longitudinal and Cross-Sectional Approaches to Developmental Process*, 76 J. CONSULT. CLIN. PSYCHOL. 52, 52 (2008).

¹⁹ Suniya S. Luthar & Blair C. Sexton, *The High Price of Affluence*, 32 ADV. CHILD DEV. BEHAV. 125, 131 (2004).

\$162,735 in 2011,²⁰ and include samples from the East Coast and Midwest in Luthar's studies and throughout the United States in the Parenting Practices at the Millennium Study.²¹ Participants in "The Joys and Dilemmas of Wealth," a study of the "super-rich" conducted by the Center on Wealth and Philanthropy at Boston College had an average net worth of \$78 million.²² According to *Forbes* magazine, citing data from the government's Survey of Consumer Finances and tax return data from the IRS, the top 1% have an annual income of \$438,000 in California and a net worth that is more than \$7.6 million.²³

In the highest income group, parents are concerned that their children might not know if their achievements are a function of their efforts or their money. They are worried that their children might be treated differently because they are rich and might not know if they were loved for themselves or for their wealth.²⁴ These parents express concern about what will motivate their children. They worry about whether their children will be entitled or be prevented from developing empathy or compassion and wonder how they will lead meaningful lives. Parents also express concern about social isolation.²⁵

These parents seem to understand something about the challenges that exist for their children, as the adults themselves express concerns about their own well-being. The more time they have at work, the less time they have for leisure pursuits and the development of intimacy. The more focus on wealth, which may require self-protectiveness and opportunism, the less focus on personal growth, community service, and the development of re-

²⁰ Racz et al., *supra* note 18, at 122.

²¹ KINDLON, *supra* note 9, at 223.

²² Graeme Wood, *Secret Fears of the Super-Rich*, ATLANTIC (Apr. 2011), <https://www.theatlantic.com/magazine/archive/2011/04/secret-fears-of-the-super-rich/308419/>.

²³ Steve Kraus, Op-Ed., *Even Affluent Americans Think 'The 1%' Are Pulling Away*, FORBES (Apr. 28, 2016), <https://www.forbes.com/sites/forbesinsights/2016/04/28/even-affluent-americans-think-the-1-are-pulling-away/#638671fe1086>.

²⁴ Amy Novotney, *Money Can't Buy Happiness*, 43 AM. PSYCHOL. ASS'N. 24 (July/Aug. 2012).

²⁵ Robert Kenny, Paul G. Schervish & John Havens, *The Joys and Hopes, Fear and Anxieties of Wealth* 9 (Mar. 31, 2011) (unpublished report, on file with Center on Wealth and Philanthropy at Boston College); Wood, *supra* note 22.

relationships. These adult concerns also have an impact on the parent-child relationship. As Luthar states, those that prioritize “Yuppie values” over intimacy are twice as likely to be unhappy.²⁶ Further, the affluent tend to experience less joy as a result of outwardly measuring their wealth against that of others, rather than inwardly assessing wealth in the context of their own lifestyle and needs. As Peter Jaffe and Claire Crooks state, “[a]ffluence is hypothesized to be a non-specific risk factor related to a host of negative emotional, behavioral and character outcomes”²⁷ Affluence does not guard against depression, somatic complaints, or anxiety²⁸ and in fact may be, in part, responsible for it. Children from affluent families show a range of emotional, behavioral, and identity challenges. Internalizing symptoms include anxiety, depression, stomachaches, insomnia, and headaches.²⁹ These children can be narcissistic and self-centered, have a poor work ethic, and exhibit difficulties with delay of gratification and frustration tolerance.³⁰ Externalizing behaviors include substance abuse, premature sexual activity and delinquent behavior.³¹ These teens can lack the motivation to achieve and work, can exhibit laziness, show activity overload, have a sense of entitlement and snobbery, show extreme materialism, and have a poor capacity for empathy.³² These challenges can be tied to the pressure to succeed, an external locus of control, poor parental consequences, and the lack of opportunity to develop coping skills. Our experience is that consumerism and materialism can result, and teens can be exploited by their peer group as affluent youth may have unlimited use of credit cards, access to trust funds, and poor money management skills.

Problems seem to first manifest for these children around the seventh grade, though the negative impacts of affluence occur well before this age. A combination of the normal developmental changes in adolescence, negotiated in the context of

²⁶ Luthar, *The Culture of Affluence*, *supra* note 12, at 5.

²⁷ Jaffe & Crooks, *supra* note 2, at 321.

²⁸ LEVINE, *supra* note 12, at 16.

²⁹ Luthar, *supra* note 19, at 132.

³⁰ Jaffe & Crooks, *supra* note 2, at 324.

³¹ Suniya S. Luthar, *The Problem with Rich Kids*, PSYCHOL. TODAY (Nov. 5, 2013), <https://www.psychologytoday.com/us/articles/201311/the-problem-rich-kids>.

³² GALLO ET AL., *supra* note 7, at 3; KINDLON, *supra* note 9, at 71.

affluence, is the culprit. As these adolescents explore their identities, one question they ask is, “what will I amount to?”³³ Achievement pressure is one of the significant factors that leads to high rates of depression, anxiety, and substance abuse.³⁴ These pressures stem from a variety of factors, including the child trying to measure up to the often-incredible accomplishments of their parents, parents’ pressure for their children to succeed, and peer and community pressures for academic and extracurricular excellence. Higher rates of non-suicidal self-injurious behavior were also found in samples of adolescents on both the East Coast and the West Coast, with nearly one-third of the 1300 youth in affluent families reporting that they had engaged in eleven different kinds of self-destructive behaviors and three-quarters of this group reporting multiple, recurring incidents.³⁵ In Palo Alto, California, for example, the community has seen suicide clusters,³⁶ and the ten-year suicide rate is four to five times higher than the national average for two of the community’s high schools. On the surface, as Hanna Rosin notes, “the rich kids seem to be thriving. They have cars, nice clothes, good grades, easy access to health care, and, on paper, excellent prospects. But many of them are not navigating adolescence successfully.”³⁷ Perceptions of parental criticism predicted suicidal ideation with adolescents experiencing alienation from their parents.³⁸

The pressure to excel in the affluent community comes from parents, teachers, coaches, and peers³⁹; yet, the “laissez-faire monitoring” of the parents is likely to contribute to some of the challenges in these children. Low parental containment and lack

³³ Suniya S. Luthar, Samuel H. Barkin, Elizabeth J. Crossman, “*I Can, Therefore I Must*”: Fragility in the Upper-Middle Classes, 25 *DEV. & PSYCHOPATHOLOGY* 1529, 1531 (2013).

³⁴ Luthar & Latendresse, *supra* note 3, at 50.

³⁵ Tuppett M. Yates, Suniya S. Luthar & Allison J. Tracy, *Nonsuicidal Self-Injury Among “Privileged” Youths: Longitudinal and Cross-Sectional Approaches to Developmental Process*, 76 *J. CONSULTING & CLINICAL PSYCHOL.* 52, 59 (2008).

³⁶ Hanna Rosin, Editorial, *The Silicon Valley Suicides*, *ATLANTIC* (Dec. 2015), <https://www.theatlantic.com/magazine/archive/2015/12/the-silicon-valley-suicides/413140/>.

³⁷ *Id.*

³⁸ Luthar & Barkin, *supra* note 18, at 438.

³⁹ Luthar et al., *supra* note 33, at 1531.

of consequences for teens that break the rules produces a variety of repercussions. While adolescents perceive they are their parents' central priority over work or other commitments (perceived parental commitment),⁴⁰ research suggests these parents value their children's academic and career success over character traits such as kindness and respect (perceived parental values).⁴¹ Parental criticism is a powerful factor affecting the outcome of these children.⁴²

While a close relationship with a parent can be a mitigating factor,⁴³ studies of affluent youth have shown an increased risk for substance abuse, including use of cigarettes, alcohol, marijuana, and hard drugs.⁴⁴ Luthar and her colleagues found that affluent youth reported using more substances than their lower income intercity counterparts.⁴⁵ Further, in comparison to normative samples of low-income intercity youth, alcohol (72% vs. 61%) and drug use (59% vs. 38%) are higher. The rates of substance abuse, including alcohol and marijuana increased over time, with 60% of high school senior girls and 53% of high school senior boys reporting that they drank to the point of intoxication, and 60% of girls and 40% of boys reporting marijuana use. Madelaine Meier, Melanie Hill, Phillip Small, and Suniya Luthar found that persistent marijuana use by teens in an affluent community resulted in lower grades and more externalizing symp-

⁴⁰ Suniya S. Luthar & Adam S. Goldstein, *Substance Use and Related Behaviors Among Suburban Late Adolescents: The Importance of Perceived Parent Containment*, 20(2) DEV. PSYCHOPATHOLOGY 591, 594 (2008).

⁴¹ Luthar et al., *supra* note 33, at 1532.

⁴² Luthar & Barkin, *supra* note 18, at 439.

⁴³ Luthar & Goldstein, *supra* note 40, at 594.

⁴⁴ Amanda L. Botticello, *School Contextual Influences on the Risk for Adolescent Alcohol Misuse*, 43(1-2) AM. J. COMMUNITY PSYCHOL. 85 (2009); Luthar & Goldstein, *supra* note 40, at 602; Megan E. Patrick, et al., *Socioeconomic Status and Substance Use Among Young Adults: A Comparison Across Constructs and Drugs*, 73(5) J. STUD. ALCOHOL & DRUGS 772, 775 (2012); Beth A. Reboassin, et al., *Geographic Clustering of Underage Drinking and the Influence of Community Characteristics*, 106 DRUG & ALCOHOL DEPENDENCE 38, 47 (Sept. 2010); Eun-Young Song, et al., *Selected Community Characteristics and Underage Drinking*, 44(2) SUBSTANCE USE & MISUSE 179, 179 (2009).

⁴⁵ Suniya S. Luthar & Karen D'Avanzo, *Contextual Factors in Substance Use: A Study of Suburban and Inner-City Adolescents*, 11 DEV. & PSYCHOPATHOLOGY 845, 853 (1999); *see also* Luthar & Becker, *supra* note 12; Luthar & Latendresse, *supra* note 3, at 49.

toms.⁴⁶ Substances may be used to alleviate the symptoms of depression and anxiety.⁴⁷

While some experimentation with substances in adolescence is normal, Luthar states affluent teens “generally have easier access to substances, ample money to purchase them, good access to providers, and the best fake IDs.”⁴⁸ They are drinking to get drunk; binge drinking is commonplace. Parents are likely aware of serious incidents associated with substance abuse, which may include stomach pumping, undesired sexual experiences, or violence, and yet many episodes go undetected.⁴⁹ Peers have an influence as well, with inebriation being an accepted and desirable behavior. Beer-pong, beer-bongs, pre-gaming, and spring break trips to expensive resorts with extensive alcohol consumption and promiscuity are on the rise.⁵⁰ Luthar, Samuel Barkin, and Elizabeth Crossman conclude, “upper-middle class youth, who are en-route to the most prestigious universities and well-paying careers in America, are more likely to be more troubled than their middle-class counterparts.”⁵¹ They further suggest that pressure to excel academically, in extracurricular activities, and in their social circle, creates the attitude of “work hard, play hard.”⁵²

Peer status also contributes to substance use, especially for boys. Relational aggression for girls and physical aggression for boys also received peer admiration.⁵³ There is a double standard for boys and girls around sexual experiences, with boys gaining respect for having different sexual partners and girls being seen as unworthy for exhibiting the same behavior. Girls are expected to succeed not only in academics and sports, like their male peers, but are also expected to show inner qualities of kindness

⁴⁶ Madeline H. Meier, Melanie L. Hill, Phillip J. Small & Suniya S. Luthar, *Associations of Adolescent Cannabis Use with Academic Performance and Mental Health: A Longitudinal Study of Upper Middle Class Youth*, 156 *DRUG & ALCOHOL DEPENDENCE* 207, 213 (2015).

⁴⁷ Luthar & D’Avanzo, *supra* note 45, at 854.

⁴⁸ Luthar, *supra* note 31.

⁴⁹ Luthar & Barkin, *supra* note 18, at 438.

⁵⁰ Hara E. Marano, Op-Ed., *Rocking the Cradle of Class*, *PSYCHOL. TODAY*, Sept. 2005, at 52.

⁵¹ Luthar et al., *supra* note 33, at 1529.

⁵² *Id.* at 1531.

⁵³ *Id.* at 1532.

and caring which seems to result in their having serious symptoms of depression and anxiety along with alcohol and drug use, rule breaking, and other delinquent behavior.

Parents contribute to the substance use of their teens with poor containment,⁵⁴ few consequences, and a higher likelihood of bailing their children out.⁵⁵ Twenty-three percent of these parents would intervene on their adolescent's behalf for a repeated alcohol offense at school. Such intervention robs youth of experiencing the consequences of their actions, which is a necessary tool for overall development. These children lack parental guidance or age-appropriate oversight and have unfettered access to consumer luxuries.⁵⁶

There is also rule-breaking in this group including stealing from parents, petty theft,⁵⁷ and cheating.⁵⁸ Jean Twenge reports plagiarism more than doubling from 34% in 1969 to 74% in 2002, though cheating declined to 51% by 2012.⁵⁹ These incidents of cheating the system are not limited to school testing and passing off other's work as their own. The scandals go so far as to bribing school officials to gain admission, paying other students to take college admissions tests in their place, and falsifying credentials to cheat their way into elite colleges. All this is done to game the system.⁶⁰ The rise of this behavior is attributed to a number of factors, including parents bailing their children out without consequence, the affluent feeling of being "above the law" and having the means to implement sophisticated schemes to cheat the system, and an external locus of control. Adolescents do not see their behavior as being related to their own effort but rather to luck, which culminates in feelings of helplessness and despair, resulting in impulsive maladaptive actions.⁶¹ Softening the societal consequences of these violations can support an antisocial per-

⁵⁴ Luthar & Barkin, *supra* note 18, at 436.

⁵⁵ Luthar et al., *supra* note 33, at 1535.

⁵⁶ See, e.g., KINDLON, *supra* note 9, at 163.

⁵⁷ Suniya S. Luthar & Nadia S. Ansary, *Dimensions of Adolescent Rebellion: Risks for Academic Failure Among High- and Low-Income Youth*, 17 DEV. & PSYCHOPATHOLOGY 231, 244 (2005).

⁵⁸ Luthar et al., *supra* note 33, at 1535.

⁵⁹ *Id.*, citing JEAN M. TWENGE, GENERATION ME 33 (2d ed. 2014).

⁶⁰ Jenny Anderson & Peter Applebome, Op-Ed., *Exam Cheating on Long Island Hardly a Secret*, N.Y. TIMES, Dec. 2, 2011, at A1.

⁶¹ Luthar et al., *supra* note 33, at 1535.

sonality trajectory that has dire consequences for healthy adult adjustment. It is a socially reinforced narcissism supported by a privileged status due to wealth, e.g., parents owning a building in a private school the child attends and local police handling a criminal offense more benignly because of the family's celebrity status. The recent college admissions bribery scandal has exposed the pervasive, sometimes criminal practice by affluent parents in supporting the best educational opportunities for their children. Claire Miller and Jonah E. Bromwich, note, "[s]ome affluent mothers and fathers now are more like snowplows: machines chugging ahead, clearing any obstacles in their child's path to success, so they don't have to encounter failure, frustration or lost opportunities."⁶²

Barry Schwartz contends there is a cycle starting from affluence and the illusion of control to feelings of depression and difficulties developing intimacy in relationships that affects these youth.⁶³ The freedom to make any life choices can result in an exaggerated sense of control and subsequent experience of self-blame if choices do not materialize or bear fruit. There is an expectation of perfection, both in their lives and in themselves, with failures attributed to personal shortcoming rather than factors that may be beyond their control. This can lead to depression and shame. The push to succeed is a way to counter these feelings but there is also habituation to the "addictive potential of wealth."⁶⁴ As play becomes professionalized, the focus is on winning rather than having fun. When the focus is on performance and achievement rather than developing the child's unique interests and passions, the exploration of one's own identity gives way to achievement and maximizing success rather than the development of relationships and community, and loneliness and depression can ensue.

Affluent youth exhibit a grandiose sense of self-importance as a result of their exposure to often limitless resources. Being provided with the best education and opportunities, travel experiences, luxury cars, and allowances including credit cards without

⁶² Claire C. Miller & Jonah E. Bromwich, Op-Ed., *The Unstoppable Snowplow Parent*, N.Y. TIMES, Mar. 16, 2019, at ST1.

⁶³ Barry Schwartz, *Self-Determination: The Tyranny of Freedom*, 55 AM. PSYCHOL. 79, 86 (Jan. 2000).

⁶⁴ Luthar et al., *supra* note 33, at 1536.

spending limits can lead to a sense of entitlement, lack of responsibility for actions, and a disconnect between effort and reward. Affluent children are often not challenged to work to achieve goals. Their need for personal accomplishment diminishes as does their ability to delay gratification and their capacity for frustration tolerance. At the same time, and paradoxically, the high expectations of their parents leave these youth feelings they cannot meet these demands and they just stop trying.⁶⁵

There are gender differences in the affluent youth.⁶⁶ Boys may be susceptible to the development of narcissistic traits as social status and wealth are emphasized over the development of intimate personal relationships. This group was envious of their peers in the areas of physical attractiveness, peer acceptance and popularity, especially among girls.⁶⁷ Paul Schervish states, “When wealth is taken for granted, the wealthy child becomes morally at risk.”⁶⁸ The developmental tasks of young adulthood including engaging in satisfying work or a career can be undermined by the anticipation of significant wealth being transferred to “trust fund babies” after reaching the age of majority. Luthar, Barkin, and Crossman note for boys the preoccupation with power tied to sex and money can result in boys struggling to separate their sexual identity from their monetary status.⁶⁹ Perhaps it is not surprising that of the top fifteen colleges with the highest rates of sexual assault, five are Ivy League Schools (Dartmouth, Princeton, Brown, Yale, and Harvard). Two others (Vanderbilt and Stanford) have acceptance rates between 5 and 11%.⁷⁰ Luthar, Barkin, and Crossman suggests that “as these boys strive even harder to be at the top, or in their vernacular, to be ‘the big man on campus,’” there may be costs including a “low capacity for authentic caring at the least and at the worst, chauvinistic,

⁶⁵ Jaffe & Crooks, *supra* note 2, at 326.

⁶⁶ Luthar et al., *supra* note 33, at 1533.

⁶⁷ Emily L. Lyman & Suniya S. Luthar, *Further Evidence on the “Costs of Privilege”: Perfectionism in High-Achieving Youth at Socioeconomic Extremes*, 51(9) PSYCHOL. SCH. 913, 922 (2014).

⁶⁸ Paul G. Schervish, *Passing It On: The Transmission of Wealth and Financial Care*, in CARE AND COMMUNITY IN MODERN SOCIETY 109, 115 (Paul G. Schervish & Virginia A. Hodgkinson eds., 1995).

⁶⁹ Luthar et al., *supra* note 33, at 1533.

⁷⁰ US News and World Report, <https://www.usnews.com/best-colleges/compare> (last visited).

callous attitudes toward women.”⁷¹ For boys in particular, a pre-occupation with gaining power and status which is often associated with sex and money puts them at risk for having less kindness and empathy and more narcissism and chauvinism, twice as much as a more diverse sample of youth.⁷² As it is hard for them to obtain the standard of living of their parents, and they compare themselves to their immediate context, feelings of deprivation and inadequacy result, even while surrounded by those who have become extremely successful.

Girls raised in affluent families often experience more pressure and have even more challenges than their male counterparts. They must show what Luthar describes as “effortless perfection.”⁷³ Not only must they be kind, caring, polite, likeable, and attractive, they must also excel in the more traditional domains of their male peers, sports and academics. They show both internalizing and externalizing symptoms. Internalizing problems include depression, anxiety, and eating disorders, and externalizing symptoms include acting out that is more typically seen in males: rule-breaking, stealing, cheating, and alcohol and drug use; yet, they are likely to feel a disconnection in their relationships.

For both sexes, there is a push to achieve academically and athletically, in extracurricular activities, in popularity, and in overall achievement. They have limited interactions with peers outside of the specific activities in which they are involved. They are encouraged to hide their vulnerabilities or weaknesses, which inhibits intimacy and increases emotional isolation. These youth, at the same time, are likely to feel that they are fully responsible for their success or failure and experience a sense of control over their lives that is out of proportion to reality.

Since affluent families can buy services, the development of community or the formation of supportive networks is often lacking.⁷⁴ Luthar notes that “wealthy communities can, paradoxically, be among those most likely to engender feelings of friendlessness and isolation in their inhabitants.”⁷⁵ Material

⁷¹ Luthar et al., *supra* note 33, at 1533.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Luthar, *supra* note 12, at 1586.

⁷⁵ *Id.*

wealth reduces the need to rely on friends, since nannies, athletic trainers, educational tutors, or drivers can be hired and mutual dependence that often creates a sense of community is unnecessary. Rather than address challenges within the community, affluent youth are sent to wilderness camp or therapeutic boarding schools, furthering their sense of isolation.

Madeline Levine suggests overachieving parents may see their children as a measure of their own achievements, which only adds to the pressure to succeed for these youth.⁷⁶ They rescue their children, do not allow them to experience failure, and want them to be perfect; in doing so, they rob these children of the opportunity to struggle and fail, both of which are necessary to learn self-efficacy. Levine notes that these affluent parents are focused on achievement more than on relationships, yet the focus on achievement feels intrusive to children, and the lack of emotional support leads to social isolation.⁷⁷ It is the focus on materialism which emphasizes wealth, status, image, and material consumption, not the money itself, that creates problems for these children in a variety of areas and contributes to unhappiness. Creating purpose requires direction but if children have everything they need and want, they have no need to work. Children who are focused on extrinsic goals, such as wealth or success, may find that rather than experiencing happiness and satisfying their basic psychological needs, social comparison and ego involvement are amplified.⁷⁸ When the balance tips toward extrinsic versus intrinsic goals, the risks for psychological impairment in a variety of areas noted above increase. To mitigate the potential negative effects of affluence, parents must “focus on prioritizing intrinsic, prosocial values that promote affiliation and community, at least as much as, or more than, they prioritize academic performance and external achievement.”⁷⁹

To guard against the challenges that are inherent for children of affluent families, parents must instill “an ethic of finan-

⁷⁶ LEVINE, *supra* note 12, at 28.

⁷⁷ *Id.* at 30.

⁷⁸ See generally Helga B. Dittmar, Rod Hurst & Megan Kasser, *The Relationship Between Materialism and Personal Well-Being: A Meta-Analysis*. 107 J. PERSONALITY & SOC. PSYCHOL. 879 (2014).

⁷⁹ Ciciolla et al., *supra* note 18, at 1059.

cial care” in their children.⁸⁰ Earning allowance or working to obtain money to purchase what they want may help children understand the value of what they have. Restricting the luxuries of daily life and keeping information about their wealth from the children are other strategies used by these families. But Schervish also points out the contradiction in these practices as families take extravagant vacations or insist their children do not work during college. Parental modeling can “impart an ethic of financial responsibility” to their children and this may include their philanthropy, teaching a work ethic, and placing the value of relationships and family over material items.⁸¹

Parents in affluent families can believe they are invincible and are not willing to question their own attitudes, admit to mistakes, take feedback, or be open to new learning. They can be controlling and set high standards and expectations which undermine their child’s self-confidence and independence. Time limitations due to other commitments often result in these children being raised by nannies without adequate attention from their parents. Delegation of parenting can also result in these children not having to take responsibility for age appropriate behaviors, becoming dependent upon others and not taking care of themselves. Childcare providers and other assistants in affluent families can overfunction for children, interfering with their mastery of developmental tasks. Early examples of this are bathing, clothing, toileting, and picking up after young children well beyond the time they are capable of doing such personal care. Later examples are the involvement of tutors and personal athletic trainers and coaches who similarly rob a child of the struggles necessary to have an experience of mastery in educational and extracurricular activities.⁸²

The challenge for parents is to help children appreciate their financial privilege without guilt or entitlement. However, this cannot occur if children do not learn how to understand the ef-

⁸⁰ Schervish, *supra* note 68, at 117.

⁸¹ *Id.* at 120.

⁸² LEE HAUSNER, CHILDREN OF PARADISE: SUCCESSFUL PARENTING FOR PROSPEROUS FAMILIES (1990) (examining the “pitfalls and challenges” frequently encountered in affluent families and suggesting an action plan to increase parental effectiveness in raising emotionally healthy and productive children).

fort required to earn something and to value their financial assets so they can manage them. In addition, the focus should be on the internal needs of the child, not external appearances. If children do not develop a sense of being valued for what they can do and who they are rather than for what they have, challenges to identity are quite likely to emerge. For the parent, this means understanding the child's personality, strengths, weaknesses and interests. Affluent children can grow up with less awareness of economic realities and poor money management skills, resulting in their being less prepared for the workplace. They need ambition and purpose, and these come from understanding that it is their effort that makes a difference in what they can achieve. These problems in adult adjustment are well documented in wealthy families that provide exorbitant trust funds to their young adult children.⁸³

A key to protecting children from the pernicious impact of wealth is to be aware of its risks on the developing child and to actively work to guard against the negative consequences. The high net worth parents in the Robert Kenny et al. study were aware of the risks that affluence brings: entitlement, a lack of empathy, poor motivation and initiative, social and emotional isolation, a lack of appreciation for what they have, difficulty understanding that success or failure is based upon their children's own merits, a poor capacity to take responsibility for their actions, an increased need for risk taking, and a poor understanding of the realities of most people's lives.⁸⁴ As one parent stated, "[c]learly, for us, giving kids a 'normal life' in the midst of wealth and privilege is a daily/weekly/monthly challenge . . . you try and yield the best from it and shield/hide the worst."⁸⁵ Philanthropy is a way to develop empathy, perspective taking and purpose, and to help these children develop their own moral biography, that is, combining their personal capacity and their moral compass.⁸⁶ Advice for wealthy families is not only abundant but consistent: don't indulge either financially or emotion-

⁸³ Kenny et al., *supra* note 25, at 9.

⁸⁴ *Id.* at 9.

⁸⁵ *Id.* at 10.

⁸⁶ Paul G. Schervish, *The Moral Biography of Wealth: Philosophical Reflections on the Foundation of Philanthropy*, 35(3), *NONPROFIT & VOLUNTARY SECTOR Q.* 477, 453 (2006).

ally, be present but not overinvolved, and do not pressure to achieve. There is a wealth of literature that explains how overindulgence can lead to a sense of entitlement and self-esteem tied to the family's wealth, and the pressure to be perfect can result in depression and drug use.⁸⁷

To guard against the risks of wealth, Eileen Gallo and Jon Gallo found that financially intelligent parents:

- i. have developed a healthy relationship with money;
- ii. understand the emotional meaning of money;
- iii. do not hold extreme views about money;
- iv. are not fearful about losing it all;
- v. educate their children about financial issues;
- vi. provide an allowance;
- vii. consider the values communicated through "money behaviors";
- viii. talk with their children about issues related to money;
- ix. do not have difficulty saying "no";
- x. do not use money as a bribe or to buy their children's affection;
- xi. involve their children in charitable activities; and
- xii. take advantage of teachable moments around monetary issues.

Parents can promote a work ethic by assigning chores to encourage participation in the maintenance of the household and fostering a sense of accomplishment for these tasks. They can encourage children to do their best, rather than be the best, in academic and extracurricular pursuits, and support and involve themselves in their children's activities. Importantly, parents must model child-centered money values to instill the positive aspects of affluence, such as: "financial security, freedom to learn/explore, more interesting things to do, exposure to the finer

⁸⁷ See generally JAMES V. D'AMICO, *THE AFFLUENZA ANTIDOTE* (Rose B. Ericson ed., 2010); COVENTRY EDWARDS-PITT, *RAISED HEALTHY, WEALTHY & WISE* (2014); GALLO ET AL., *supra* note 7; EILEEN GALLO & JON GALLO, *THE FINANCIALLY INTELLIGENT PARENT* (2005); HAUSNER, *supra* note 82; KINDLON, *supra* note 9; STEVEN Z. LEDER, *MORE MONEY THAN GOD: LIVING A RICH LIFE WITHOUT LOSING YOUR SOUL* (Volt Press 2005); LEVINE, *supra* note 12; RON LIEBER, *THE OPPOSITE OF SPOILED* (2016); MORRIS ET AL., *supra* note 12; O'NEILL, *supra* note 12.

things in life, philanthropic opportunities, friendships with other bright, affluent kids, and appreciation for the rewards of hard work.”⁸⁸

The ability of a parent to instill healthy, child-centered financial values are often complicated by family separation. Generally, children benefit from the experience of comparably modeled values in each home, but it is often the case that the parents’ values diverge, thereby creating inconsistent environments for the children. To further complicate matters, there is a third set of values introduced in such cases – the family court system’s. In disputed child support cases the court must step in to determine the appropriate level of financial support paid by one parent to the other. As discussed below, in affluent families, the court is tasked with making what some would consider value-based decisions as to the reasonableness of certain expenses for children and the “appropriate” allocation of funds for the children involved. The following section explores the framework as to how courts make such significant decisions.

II. Child Support Laws and Wealth

A. Early Child Support Frameworks

The goal of child support is to protect the needs of the child.⁸⁹ It provides a minimum level of support for the child by both parents.⁹⁰ Rooted in early nineteenth century government welfare programs, child support has evolved significantly over the last century with the rise in the number of single-parent households, changes in the “traditional” family structure, increased awareness of discriminatory practices, and concentration of wealth, among other demographic, cultural, and economic changes.

⁸⁸ GALLO ET AL., *supra* note 7, at 3.

⁸⁹ Though child support policies differ by jurisdiction, each must comport with federal mandates. The “stated goals of federal involvement in child support enforcement are threefold: fiscal savings, child economic well-being, and public enforcement of parental responsibilities.” See JYL J. JOSEPHSON, GENDER, FAMILIES, AND STATE: CHILD SUPPORT POLICY IN THE UNITED STATES 1-2 (1997) (describing the three goals and noting the “clearest norm . . . is the emphasis on the financial responsibility of legal parents.”).

⁹⁰ Margaret Ryznar, *The Obligations of High-Income Parents*, 43 HOFSTRA L. REV. 481, 484-85 (2014).

Historically, child support was determined based on an individual child's best interests,⁹¹ which required a careful discretionary, case-by-case analysis.⁹² This discretionary system was based on the child's needs and noncustodial parent's ability to pay,⁹³ and was somewhat simpler to implement at the time given the fewer number of cases, and the judge's familiarity with each family in the courtroom, though it resulted in a lack of uniformity. At the time, the goal was to protect children from poverty. In recent years, at the opposite end of the spectrum, the issue of appropriate child support orders in high-income families has taken center stage.

As recently as the early and mid-1980s, courts continued to exercise "pure discretion" over child support orders, and generally calculated support based on the child's needs and noncustodial parent's ability to pay.⁹⁴ Critics argue the system was primitive and irrational based on the wide disparities in resulting orders.⁹⁵

Ultimately, the discretionary system was sharply curtailed by the promulgation of the Child Support Amendments of 1984 and later the Family Support Act of 1988 (hereafter "federal mandates"). This occurred during a time of significant welfare reform in the 1980s and a significant rise in cases after the introduction of "no fault" divorce.

To help encourage predictability and consistency in support orders, the new federal mandates required each state to implement advisory guidelines to calculate child support. Indeed, the Family Support Act directed that guideline calculations are to be presumptively correct in all cases; and to deviate, the decision-maker must make specific findings as to why the presumptive amount would be unjust or inappropriate based on the child's

⁹¹ Lori W. Nelson, *High Income Child Support*, 45 FAM. L.Q. 191, 191 (2001).

⁹² Ryznar, *supra* note 90, at 485.

⁹³ June Carbone, *Child Support Comes of Age: An Introduction to the Law of Child Support*, in CHILD SUPPORT: THE NEXT FRONTIER 3, 10 (J. Thomas Oldham & Marygold S. Melli eds., 2000).

⁹⁴ *Id.*

⁹⁵ Nan D. Hunter, *Child Support Law and Policy: The Systematic Imposition of Costs on Women*, 6 HARV. WOMEN'S L.J. 1, 1 (1983).

best interests.⁹⁶ The federal regulations did not mandate any particular guideline model, but rather required that each jurisdiction implement its own guidelines based on certain criteria. At a minimum, the guideline formulas must be based on specific descriptive and numeric criteria; take into consideration all earnings and income of the non-custodial parent; provide that incarceration may not be treated as voluntary unemployment; and address how the parents will provide for the child's health care needs.⁹⁷ In an effort to ensure that guideline formulas reflect current costs of raising children and minimize guideline deviations,⁹⁸ the federal mandates require states to review guidelines at least once every four years. As part of this review process, states must consider economic evidence of the current costs of raising children and evaluate their criteria for deviating from guideline support. The process of establishing one set of guidelines has proven to be complex, inconsistent, and at times, fallible. The following section addresses the differing systems employed in establishing federally-mandated guidelines.

B. States Grapple with Guidelines

In compliance with the new federal mandates, each jurisdiction undertook the daunting task of drafting federally-compliant child support guidelines. States were required to create one mathematical formula to generate a presumptive amount of child support. Drafters faced many challenges. They grappled with how to generalize the actual "needs" of a child — should they be based on actual expenses paid, the parents' level of income, or perhaps the average family's needs, budget, and values? Many states consulted economic surveys, but that data failed to account for particular family values or families at either end of the income spectrum. How could *one* guideline system be implemented to produce fair results in every case? Ultimately, guideline draft-

⁹⁶ Family Support Act of 1988, PUB. L. NO. 100-485 § 103, 102 Stat. 2343 (codified as amended at 42 U.S.C. § 667(b)(2) (1988)).

⁹⁷ 45 C.F.R. § 302.56 (2012).

⁹⁸ Jane C. Venhor, *Differences in State Child Support Guideline Amounts: Guidelines, Models, Economic Basis and Other Issues*, 29 J. AM. ACAD. MATRIM. LAW. 377, 382 (2017).

ers focused their efforts on using parents' income as a measure of the child's need.⁹⁹

Indeed, every state has now implemented presumptive guidelines, which are intended to fairly allocate family wealth for the benefit and support of the child. Not only do guideline models differ by jurisdiction, but also by income level and need within each state's model. Generally, each jurisdiction follows one of three models:

- (1) **Income Shares model**, based on the concept that a child should receive the same proportion of parental income that he or she would have received if the parents lived together;
- (2) **Percentage of Income model**, which sets support as a percentage of only the noncustodial parent's income; and
- (3) **Melson formula**, which is similar to the Income Shares model, but uses several public policy judgments designed to ensure that each parent's basic needs are met in addition to the children's.¹⁰⁰

The trend suggests the Income Shares model is the favored approach. As of 2018, forty-one states, including the District of Columbia, have implemented some version of the Income Shares model. Departing from the Percentage of Income model, at least eight jurisdictions have adopted the Income Shares model since 2005. The preference for the Income Shares model may be attributed to its application to shared custody arrangements and focus on maximizing support to the child by considering both parents' incomes.¹⁰¹

⁹⁹ See Carbone, *supra* note 93; Jo M. Beld & Len Biernat, *Federal Intent for State Child Support Guidelines: Income Shares, Cost Shares and the Realities of Shared Parenting*, 37 FAM. L.Q. 165, 165-66 (2003) (noting that guidelines "reflect an intricate mix of estimated and actual expenditures on children; program provisions in related policy areas, such as child care, health care, tax policy, and welfare reform; and research on the realities of life in separated families, such as shared parenting time and multiple families . . . [and] broad requirements of federal law").

¹⁰⁰ For a table of guideline models by jurisdiction, see National Conference of State Legislatures, *Child Support Guideline Models by State* (Feb. 20, 2019), <http://www.ncsl.org/research/human-services/guideline-models-by-state.aspx>. See also Venohr, *supra* note 98 at 385-86, Table 1.

¹⁰¹ See Beld & Biernat, *supra* note 99.

One consideration left unresolved by any guideline model is the unique allocation of family expenses in particularly low- or high-income families. Low-income families tend to allocate a greater proportion of their income toward child expenses than high-income families.¹⁰² However, total expenses overall are greater in high-income families who tend to spend more on private education, lavish vacations, luxury clothing, and expensive lessons. Additionally, unlike lower income families, high-income families contribute at higher rates to retirement, savings, and investments, and make considerable contributions to philanthropic causes. We see heightened judicial discretion regarding child support orders at both ends of the income spectrum as a result.¹⁰³ To ignore the particularized needs of these families would risk insufficient or exorbitant amounts of support, thereby creating a significant disparity in the child's standard of living at each home based on the differing socio-economic statuses. Child support policies aim to reduce this dual life for the child.

Over the past two decades, along with the dramatic increase in wealth concentration and the widening income gap, states have seen increased changes to, and criticism of, guideline support. Some commentators argue they increase litigiousness and are an inappropriate measure of support because they are based on arbitrary and contested assumptions.¹⁰⁴ Others argue they are too rigid and formulaic to account for particular family needs and

¹⁰² See, e.g., Consumer Expenditure Survey, collected by the U.S. Census Bureau, which provides annual estimates of household expenditures from a representative sample of households; MARK LINO, KEVIN KUCZYNSKI, NESTOR RODRIGUEZ & TUSA REBECCA SCHAP, EXPENDITURES ON CHILDREN BY FAMILIES, 2015, U.S. DEPT. OF AGRIC, CENTER FOR NUTRITION POLICY AND PROMOTION, Misc. Pub. No. 1528-2015, at 10 (2015, rev. Mar. 8, 2017) (on average, households in the lowest income group spent 27% of their before-tax income on a child, those in the middle-income group spent 16%, and those in the highest group spent 11%).

¹⁰³ See LAURA W. MORGAN, CHILD SUPPORT GUIDELINES: INTERPRETATION & APPLICATION § 8.07(E) (2d ed. 2013); Nancy D. Polikoff, *Looking for the Policy Choices Within an Economic Methodology: A Critique of the Income Shares Model*, in ESSENTIALS OF CHILD SUPPORT GUIDELINES DEVELOPMENT: ECONOMIC ISSUES AND POLICY CONSIDERATIONS (Women's Legal Defense Fund 1987); see also Laura W. Morgan, *Child Support Guidelines and the High-Income Parent: The Use of the "Good Fortune Trust,"* 9 DIVORCE. LITIG. 92 (May 1997).

¹⁰⁴ See Ryznar, *supra* note 90, at 487 n.42.

the best interests of the child. To address the unique issues raised in families of extreme affluence, states have employed a variety of methodologies to determine the appropriate amount of child support.

When guidelines were first enacted, the decision-maker was given discretion to enter child support orders in high-income families where income levels exceeded the cap. Resulting from these discretionary orders is a body of case law regarding “excess” child support – i.e. support in excess of the child’s reasonable needs.¹⁰⁵ Early case law suggested that courts viewed child support in excess of reasonable needs as a: “(i) distribution of the obligor’s estate, not support; (ii) an inappropriate ‘windfall’ to the child; (iii) an abridgement of the parent’s right to direct the lifestyle of his/her child.”¹⁰⁶ Over time, legislators clarified the contours of support calculations in high-income cases. Of course, the threshold question is, what level of income constitutes a “high-income earner”?

C. *Who Is the “High-income Earner”?*

Where child support is calculated under a different standard for affluent families, judges, experts, legislators, practitioners and clients alike often ask, “What level of income qualifies as high-income?” The answer varies by jurisdiction, and some make the determination on a case-by-case basis.

Most jurisdictions utilize income tables as part of their guideline support calculation. The tables set forth presumptive child support amounts based on the income of one or both parents (or one in a parental role). In these states, a high-income earner is typically anyone whose income exceeds the upper limit. The upper guideline limit varies widely by state. For example, in Arkansas, the guideline cap is \$60,000 annual net income for the obligor. By stark contrast, consider Utah’s guideline cap of \$1,200,000 combined annual adjusted gross income.¹⁰⁷ Thirteen states have presumptive maximum income levels fall within the

¹⁰⁵ *Id.* at 482 n.6.

¹⁰⁶ *Id.*

¹⁰⁷ UTAH CODE ANN. § 78B-12-301.

\$240,000 - \$360,000 annual combined adjusted gross income range.¹⁰⁸

Jurisdictions without income tables provide little guidance on what constitutes a “high-income earner.” For example, California does not utilize an income table and thus has no income “cap” for guideline support. In California, courts may deviate from guideline support where the obligor parent has an “extraordinarily high-income”¹⁰⁹ and the amount determined under the formula would “exceed the needs of the children.”¹¹⁰ There is little guidance in California as to what constitutes an “extraordinarily high” income, but the trend points to annual earnings in excess of \$3 million.

Threshold income levels vary widely by state, in part due to diverging view of fairness, child rearing values, and disparities in the cost of living by jurisdiction. As to the latter, in the present culture of increased interstate family movement, it is not uncommon for the obligor and child to reside in different jurisdictions. High-income child support in such scenario gains complexity where the two states have a wide disparity in income thresholds and costs of living. Assuming both states consider the family’s total earnings in setting support, which state’s income threshold applies? If the resulting order would exceed the child’s actual expenses in the lower cost of living state, it may position the child to live above the income level of the residence community and increase the risks to the child previously described.¹¹¹

¹⁰⁸ As of the time of publication, jurisdictions with income caps in this range include: Alabama, Arizona, Colorado, D.C., Georgia, Idaho, Iowa, Louisiana, Massachusetts, Missouri, New Mexico, North Carolina, Oregon, Rhode Island, South Carolina and Tennessee.

¹⁰⁹ Note, California has no exception for an ordinary “high-income earner” like other jurisdictions, only the “*extraordinarily* high-income earner.” CAL. FAM. CODE § 4057(b)(3) (emphasis added).

¹¹⁰ *Id.*

¹¹¹ Courts have upheld cost of living adjustments in some jurisdictions. *See, e.g.,* People *ex rel.* A.K., 72 P.3d 402 (Colo. App. 2003); Booth v. Booth, 44 Ohio St. 3d 142 (1989); Dortch v. Straka, 801 P.2d 279 (Wash. Ct. App.1990)), and indeed some jurisdictions statutorily permit deviations where parents reside in different jurisdictions.

D. *Determining Child Support for High-Income Families:
Current Trends*

Guidelines are intended to encourage “steady, reliable support” from the obligor parent and help families “achieve economic stability.”¹¹² Federal mandates require periodic review of child support guidelines including consideration of economic evidence regarding the cost of raising children.¹¹³ The intent of this review process is to ensure guidelines more accurately reflect the current cost of raising children.¹¹⁴ States have taken a variety of approaches to determining child support in high-income cases where the economic data used to determine average child-rearing costs does not apply.

1. *Methodologies for Determining Child Support in High-Income Cases*

Given that child-rearing expenses vary significantly based on family wealth, parental values, socio-economic status, and geographic location, determining the “average” expenses for guideline formulas often renders guidelines inapplicable or inequitable for many families. However, federal mandates require a baseline. To create this baseline, states typically rely on one of nine nationally-based studies in evaluating child-rearing expenditures.¹¹⁵ The economic data underlying guideline calculations is based primarily on the *average* family’s spending patterns, and a sampling of *nationwide* data. Thus, it fails to account for the unique spending patterns of any one individual family, and in particular, the extraordinarily low- or high-income family. As a result, guidelines do not necessarily reflect typical allocation of resources of raising a child in a family of extreme affluence.

In such cases, states have employed a variety of methodologies to determine child support in these above-guideline cases. Generally, states follow one of three approaches:

¹¹² U.S. Dept. of Health and Human Services, Admin. for Children & Families, OSCE (June 2012), *Establishing Realistic Child Support Orders: Engaging Noncustodial Parents* (Child Support Fact Sheet Series, Pub. No. 1).

¹¹³ 45 C.F.R. § 302.56(e) (2015).

¹¹⁴ See Venhor, *supra* note 98, at 382.

¹¹⁵ For an in-depth discussion of the economic studies, and implementation and use of the studies in determining reasonable child-related expenses by jurisdiction, see *id.*

- (1) use of a pure, statutory formula to calculate support based on income level;
- (2) set child support at the guideline cap, then discretionary deviation upward or downward; or
- (3) pure discretion to determine the appropriate amount of child support.¹¹⁶

In the jurisdictions that utilize a pure formula under the first approach, child support is calculated based on a predetermined, statutory percentage of one or both parents' incomes. However, both the second and third approaches involve some level of court discretion based on the needs of the child and the parties' standard of living. It is in these two approaches that courts give considerable attention to the "reasonableness" of children's needs in high-income cases.

Judicial determination of a child's needs in a high-income family presents complex procedural, moral, and ethical issues. The decision-maker must decide the reasonableness of purported expenses and prioritize one parent's values over the other. In making this determination, the trends suggest courts consider family values established during the marriage, attainable standards of living, historical expenses, anticipated expenses, and the reasonableness of contended expenses.

For example, in California, courts have determined that the needs of the child vary according to the parents' circumstances.¹¹⁷ A recent California case confirmed that children are "entitled to the standard of living *attainable* by the parent's income."¹¹⁸ In *Marriage of Macilwaine*, the court instructed,

[a] child of extraordinarily wealthy parents is entitled to, and therefore 'needs' something more than the bare necessities of life. . . . Thus, the trial court should 'assess[s] [the child's needs] differently depending on whether [the supporting parent] earns \$12 million a year [or] . . . \$1

¹¹⁶ For a list of methodologies by jurisdiction, see Charles Meyer, *Child Support Determinations in High-Income Families – A Survey of the Fifty States*, 28 J. AM. ACAD. MATRIM. LAW. 483, 516-519, App'x IX (2016); see also National Conference of State Legislatures, *States' Treatment of High and Low Income Parents in Making Child Support Determinations* (May 14, 2013), <http://www.ncsl.org/research/human-services/states-treatment-of-low-high-income-child-support.aspx>.

¹¹⁷ *In re Marriage of Hubner*, 94 Cal. App. 4th 175, 178 (2001).

¹¹⁸ *In re Marriage of Macilwaine*, 26 Cal. App. 5th 514, 536 (2018) (emphasis in original).

million’ While a child’s needs are not definitely measured by parental income, it is an important consideration, as the court must ascertain their needs based on their parents’ financial circumstances.¹¹⁹

The determination of whether purported expenses for the child are in fact “reasonable” often requires detailed financial disclosures and party testimony regarding anticipated expenses, the standard of living, and the child’s needs. It may also require expert testimony by forensic accountants to explain the income and standards of living analyses, or an economist to explain financial trends. It is suggested that expert testimony from a mental health professional may aid the Court’s analysis of reasonable expenses by explaining the psychological impacts of wealth on children in setting the amount of support on a child’s needs rather than the applicable state guideline. Indeed, the use of such testimony was upheld on appeal in at least one case. In an unpublished 2007 decision, *Grinberg v. Van Phillips*, the California Court of Appeal found no error in the trial court’s assessment and use of a mental health expert’s testimony in a child support modification case.¹²⁰ There, the trial court, based on the testimony of the mental health expert, made a finding that a “dramatic increase in child support would potentially have negative effects on [the child]’s psychological well-being and her relationships with peers.”¹²¹ The mother appealed, in part, on the basis that the testimony regarding the “negative effects of wealth on children” was improper evidence, and that the witness was not qualified to testify as an expert. The California Court of Appeal found no error in the trial court’s admission of the expert’s testimony, where the mother had an opportunity to cross-examine the expert, and her own rebuttal expert testified as to the effects of wealth on children.

In Florida, courts have considered the “appropriate” lifestyle of the child based on the family’s overall financial circumstances. In 1998, the Supreme Court of Florida upheld a “good

¹¹⁹ *Id.*

¹²⁰ *Grinberg v. Van Phillips*, No. SCUK-CVSP-01-85190 Cal. App. Unpub. LEXIS 8460,*28 (2007) (note, California prohibits citation to or reliance on unpublished opinions not certified for publication or ordered published, except as specified in C.R.C. 8.1115(b)).

¹²¹ *Id.* at *10-11.

fortune” award of child support in furtherance of its policy that children should share in the overall financial circumstances of each parent. In *Finley v. Scott*, the father, a professional athlete, earned \$266,926 per month. Guideline temporary child support was over \$10,000 per month. The mother’s total living expenses for herself and two children were \$2,128 per month. The court considered which parent’s standard of living should apply – the mother’s based on actual expenses, or the father’s higher standard of living. Ultimately, the appellate court upheld the trial court’s temporary support order of \$5,000 per month on the basis that it was “consistent with the actual and bona fide needs of the minor child and the overall financial circumstances of each parent and will therefore foster and promote an appropriate lifestyle for her.”¹²²

In his concurring opinion, Justice Anstead agreed that children should share in the good fortune of their parents consistent with an “appropriate lifestyle,” but noted, “we do not mean to imply that the child of a multimillionaire should be awarded enough support to be driven to school each day in a chauffeured limousine.”¹²³ The question remains, what is an “appropriate” lifestyle, and upon whose standards should this be based?

Courts in New York attempt to determine the “appropriate lifestyle” for the child. Two high-profile cases address child support determinations where the parties’ income exceeded the statutory cap. In *Anonymous v. Anonymous* the Supreme Court of New York held that child support in above-guideline cases shall be based on the child’s actual needs with reference to the “prior standard of living.”¹²⁴ In that case, the mother’s child related expenses were \$13,500 per month. The father was ordered to pay child support in the amount of \$12,825 per month, plus 100% of the child’s educational, medical, extracurricular, and camp costs, as well as up to \$60,000 per year for nannies employed by the mother. The court noted the amount would “enable the child to significantly enjoy aspects of the parties’ marital standard of living, to enhance her development, to fully provide for her educa-

¹²² *Finley v. Scott*, 707 So.2d 1112, 1113 (Fla. 1998).

¹²³ *Id.* at 1118 (Anstead, J., concurring).

¹²⁴ *Anonymous v. Anonymous*, 286 A.D.2d 585, 586 (N.Y. App. Div. 2001).

tion, her physical and psychological health, and consistent with the social milieu in which she is raised.”¹²⁵

Five years later, in *Matter of Brim v. Combs*, the Supreme Court of New York similarly held that in high-income cases, child support should be calculated based on the child’s actual needs and the amount required for the child to live an “appropriate lifestyle, rather than the wealth of one or both parties.”¹²⁶ Notably, in *Brim v. Combs*, the court did not limit the lifestyle to a “prior” standard of living.

Pennsylvania recently clarified the scope of judicial discretion in considering the “reasonable needs” in above-guideline cases. In 2010, Pennsylvania legislators had enacted a formulaic statutory scheme for high-income earner cases, departing from its prior use of “reasonable needs” analysis outlined in *Melzer v. Witsberger*.¹²⁷ In 2018 in *Hanrahan v. Bakker*, the Supreme Court of Pennsylvania clarified that “discrete consideration” of the child’s reasonable needs was still necessary in high-income cases, “given the lack of economic data establishing children’s needs in these cases.”¹²⁸

2. *Determining the Children’s “Reasonable Needs” in Affluent Families*

Courts, practitioners, and experts grapple with what constitutes a particular child’s “reasonable” or “appropriate” needs. Where a child’s needs are based largely on the parent’s level of income, in cases of extreme affluence, courts are faced with the question of whether child support caps are in the best interests of the children. One court opined, “no child, no matter how wealthy the parents, needs to be provided [with] more than three ponies.”¹²⁹ Certainly, parents should be able to provide for their children in a manner they deem appropriate based on their family values and the child’s best interests. The state does not inter-

¹²⁵ *Id.*

¹²⁶ *Matter of Brim v. Combs*, 25 A.D.3d 691, 693 (N.Y. App. Div. 2006).

¹²⁷ *Melzer v. Witsberger*, 480 A.2d 991 (Pa. 1984) (noting that the calculus set forth for determining child support in high-income earner cases included determination of children’s reasonable needs and the respective abilities of the parents to support the children).

¹²⁸ *Hanrahan v. Bakker*, 186 A.3d 958, 972-73 (Pa. 2018).

¹²⁹ *In re Patterson*, 920 P.2d 450, 455 (Kan. Ct. App. 1996).

ferre with this right in intact families. However, for children of divorced or unwed parents, the state interjects judgments as to what constitutes that child's "reasonable needs" which may run contrary to a parent's values and limit a child's access to financial resources.

Critics may argue that regulation of parental values in this way is an overreach by the state into family matters. However, recall the origins of the child support regime. The goal was to protect children from poverty and shift financial burdens from the state to parents. Child support orders generally reflect the minimum amount of support owed for the care and support of the child while in the other parent's care. Courts do not restrict either parent's ability to spend *more* on their children, rather they set a baseline level of financial support from one parent to the other. In this way, parents are free to buy the fourth pony, but courts are reluctant to enter orders requiring a parent to subsidize such a lifestyle.

Indeed, courts generally do not oversee how parents allocate support once the order is entered, and only a handful of jurisdictions specifically authorize judicial oversight of the parent's use of child support payments,¹³⁰ most allow the support recipient

¹³⁰ COLO. REV. STAT. § 14-10-115(15)(b) (a court may refer parties to mediation to resolve disputes as to whether support is being used for benefit of the child); DEL. CODE ANN. tit. 13, § 518 (for good cause shown, a court may order an obligee to account for the expenditure and management of child support funds); FLA. STAT ANN. § 61.13(1)(a)(2) (a court retains jurisdiction to require an obligee to report on the disposition of child support payments); IND. CODE ANN. § 31-16-9-6 (upon a showing of necessity, a court may require an accounting of future expenditures, though not to resolve disputes as to spending values (*see Olive v. Olive*, 650 N.E.2d 766 (Ind. Ct. App. 1995))); LA. REV. STAT. ANN. § 9:312 (upon a finding of good cause after review of expenditures for six months prior to the filing of the motion, a court shall order the recipient to render an accounting); MO. REV. STAT. § 452.342 (upon good cause shown, a court may order a custodial parent to furnish a regular summary of expenses paid on behalf of the child); NEB. REV. STAT. § 42-364(4) (upon a showing of abusive disregard of the use of child support money, a court may require an obligee to file periodic reports on the manner in which the money was used); OR. REV. STAT. § 107.105(1)(c) (a court may at any time require an accounting from the custodial parent with reference to the use of the money received as child support); WASH. REV. CODE ANN. § 26.23.050(2)(a)(ii) (the receiving parent may be required to submit an accounting of how the support is being spent to benefit the child).

unbridled discretion to allocate child support on expenses as that parent sees fit.¹³¹ The vast majority of jurisdictions do not statutorily provide for accountings; in practice courts routinely scrutinize a parent's expenses. This occurs particularly in above-guideline cases where courts are required to make judgment calls as to "reasonable" expenses and determine whether, for example, three ponies or a limousine ride to school is excessive in any particular case. In so doing, courts routinely act *in loco parentis* by making value judgments as to what is in the best interests of the child.

An informal survey of family law practitioners nationwide suggests the use of mental health experts in above-guideline cases is a rare, but potentially useful tool to help educate the decision-maker in this arena. Families of extreme affluence do not necessarily fit the same mold as the "typical" family for which guidelines were intended. In certain cases, allocation of funds to philanthropic causes, for example, may promote a particular child's best interests more so than material goods or experiences. This is not to say that as a rule, more or less financial support to a child is necessarily in that child's best interests. Nor is it suggested that the court regulate parental values. Rather, where decision-makers are tasked with designing individualized child support orders in high-income cases, the child's best interests may require thoughtful analysis of the impact of wealth on the child.

III. Role of the Mental Health Expert in Above-Guideline Child Support Cases

Mental health experts can provide some guidance related to a child's best interest and parenting practices for the wealthy.¹³² Though child support guideline methodologies and principles vary by jurisdiction, the prevailing goals of child support are to maintain the child at the standard of living had the parents not separated, and ensure the child enjoys a relatively comparable lifestyle in each home. As discussed, in above-guideline cases, the decision makers routinely scrutinize the reasonableness of the child's needs, which are generally based on the parents' lifestyle

¹³¹ *In re Marriage of Chandler*, 60 Cal. App.4th 124, 128 (1997).

¹³² *Jaffe & Crooks*, *supra* note 2, at 330.

and standard of living. Notably, the standard of living is not necessarily determined by either parent's income alone. It requires consideration of the parent's assets, access to wealth, lifestyle, and values. Query whether income and assets not directly enjoyed by a child may nonetheless shape her lifestyle in that parent's home, and thereby create a disparity between the homes. For example, if the higher-income earner owns multiple residential/investment properties, but the child only lives in the residence local to the other parent, are those other properties relevant to standard of living comparisons? Similarly, if the income earner travels privately for personal and business travel, but first class commercially when traveling with the children, which type of travel is relevant for standard of living comparison? Should the child enjoy the highest standard of living of her parents, or the one she directly experiences? Certainly, in keeping with the policy of maximizing support for children, the higher standard should prevail, yet at a certain point child support may become an improper redistribution of wealth and unreasonably exceed the child's needs.

As discussed, social science literature indicates that the impact of extreme wealth on children may lead to serious behavioral, emotional, psychological, and social disturbance in children, among other problems. To determine appropriate levels of child support in above-guideline cases, it is suggested that expert testimony from a mental health professional as to the impact of wealth on the child may aid in protecting the child's best interests. To render a psychological expert opinion about the child's best interest a number of factors should be considered. As discussed below, the expert should consider the family's standard of living, the parent's financial values, the child's level of functioning, and the coparenting dynamics.

1. Standard of Living: The starting points for information pertaining to the parent's standard of living are the parent's financial disclosures outlining their income and expenses. In addition to the financial disclosures, the parents typically provide a spreadsheet of the "reasonable needs" and "anticipated expenses" that underlie the monthly child support they are requesting of the other parent. In affluent families, the child's expenses and lifestyle considerations may include:

- a. Residence: mortgage, rent, property taxes, insurance, maintenance, repairs, improvements, utilities;
- b. Neighborhood/community: amenities provided by the respective neighborhoods where the parents' residences are located, if not the same (quality and type of schools, parks, safety, etc.);
- c. Transportation: vehicles (quantity and type); cost of car payments, insurance, repairs and maintenance; use of personal drivers and cost associated; Uber and Lyft rides;
- d. Meals and household expenses: cost and type of groceries or grocery services, dining out, personal chef, household supplies, furnishings, laundry;
- e. Entertainment: movies, subscriptions, live performances, sporting events, parties;
- f. Vacation: number of trips, destinations, flights (commercial or private, first class or coach), hotels, meals, drivers, activities, gifts;
- g. Education: school (private or public), academic support (tutoring, etc.), supplies, donations;
- h. Extracurricular activities/experiences: number and type of camps, gym memberships, club memberships, personal trainers, extracurricular activities, hobbies, elite sports or other specialized training, experiential learning opportunities;
- i. Personal care: clothing (frequency of purchases, designer or name brand), salon services including massage, nail care, haircuts, personal shoppers;
- j. Telephone/internet: plan fees, access, version of cellular phone and electronic devices;
- k. Health care costs: insurance, out-of-pocket costs, mental health counseling, substance abuse treatment, chiropractic care, acupuncture, supplements;
- l. Domestic staff: childcare, including nannies and au pairs, cleaners, security, gardeners, personal assistants, house managers;
- m. Discretionary funds to child: amount of and requirements for allowances, philanthropic contributions on behalf of the child;

n. College education: contribution to 529 plans, and ongoing college contributions;¹³³

It is recommended that these categories of expenses, and the parent's preferences as to continuation of such expenses, or anticipated inclusion of the same be further explored during interviews or depositions of the parents. Included at Appendix 1 is a sampling of questions that may elicit further details concerning the particular family's expenses, and allocation of resources to the same.

2. Parenting practices as they relate to levels of financial resources: Information about parenting practices can help link the financial information to the impact that wealth can have on children in a particular family. Parenting practices that have been found to promote healthy child development and those that are associated with maladaptive psycho-social development are central to the opinions a psychological expert can provide in these cases. The basic implication of testimony is that levels of child support that significantly exceed reasonable needs may do more harm than good to children depending on how those financial resources are utilized by a parent. For example, a child who has no involvement in the care of a horse(s) they ride, or an adolescent who has unlimited access to a credit card, may not develop skills necessary for independent functioning or feel their efforts have been a part of their success.

3. Information about the child's functioning: An understanding of the particular vulnerabilities and needs of a child can

¹³³ The court's jurisdiction to make orders for payment of college expenses is somewhat limited. Generally, child support orders terminate when the child reaches the age of majority, except in the case of an adult-child with disabilities. In intact, affluent families, parents often plan to pay for their children's college education and create college funds in anticipation of the same. Diverging values upon divorce often results in litigation over payment of such expenses. Most states do not permit orders for payment of college expenses, given that the court's jurisdiction terminates at the age of majority. However, in at least one state, courts have jurisdiction to enforce and modify *agreements* to pay college expenses. (*Drescher v. Gross*, 225 Cal.App.4th 478 (2014)). In jurisdictions with a higher age of majority, such as Alabama, Mississippi, and Nebraska, child support orders, and thus orders for payment of college expenses, may continue through age 19 or even 21. Other states such as Connecticut and Iowa permit courts to enter orders for payment of college expenses, and others condition it upon the child living in the home with the parent.

provide information about how they may be affected by their parents' wealth. Evidence of any developmental difficulties, mental health issues, and character pathologies, discussed above, may increase the child's susceptibility to the detrimental impacts of wealth, if they are not already present. Although typically more evident in pre-adolescents, negative wealth effects may present in younger children as well. A young child's skills for developing age-appropriate independence, such as self-care (bathing, toileting, feeding) and responsibilities in the home (cleaning up after oneself, chores) can be delayed or otherwise impacted by the use of household staff and nannies, who may over-function for young children. If children are young, the psychological analysis may be limited to only highlighting concerns about the future problems that may emerge, based upon the particular parenting practices and lifestyle at issue.

4. Information about co-parenting: Parental consistency in modeling healthy, child-centered financial values may help combat negative impacts of wealth on children. The mental health expert should gather information about the history of co-parenting dynamics in this regard. This may include any prior discussions, agreements, commitments, differences, and disputes the parents may have had about the risks of wealth, as well as their values and methods of instilling such values in their children. Where parental values diverge, consider evidence of the respective views that reflect managing risk and promoting healthy development versus parenting behaviors that exacerbate risks in children.

5. Additional considerations:

a. Is the income earner intentionally depressing their standard of living to gain an advantage in child support orders, or as a sudden change post-divorce in their "new lease on life" mentality? When the income earner has a depressed standard of living compared to what was experienced by the child during the marital relationship, a comparison of standards of living at each household may be distorted and less relevant to determining the child's reasonable needs based on the parent's lifestyle. Reliance on the distorted information may result in a "too-low" child support order and cause an abrupt and detrimental change to the child's lifestyle.

b. Parental involvement: A higher level of parental involvement in the child's upbringing may suggest a greater understanding of the child's current and reasonable needs. Parents who have had little or no involvement may have a general sense of appropriate levels of support and the needs of a similarly situated child, but it is unlikely they fully understand this particular child's needs. In such a case, that parent's position on appropriate levels of support for the particular child may hold less weight.

c. Developmental considerations: Typically, the reasonable needs of children increase over the course of their development. Reasonably anticipated future expenses are considered by courts in calculating child support in above-guideline cases. These expenses may include anticipated increases in cost of tuition, orthodontia, costlier future activities, and school trips. However, courts have declined to include "wish list" expenses such as moving into a substantially larger home than enjoyed during the marriage, or extraordinary fees for activities in which the child has never demonstrated an interest.¹³⁴

d. Payment of a larger share of expenses: A child's awareness of one parent's payment of his or her expenses may shape the child's relationship with both parents. Where one parent pays exclusively for some or all of the child-related expenses (residence, private school, health care, activities, etc.), consider the psychological impact on the child and the possibility he or she views one parent as more caring, or more involved.

e. Special needs considerations: Where one or both parents contend their child has special needs, calculating the child's reasonable needs becomes more complicated when parental views about the extent of the special needs and appropriate interventions diverge.

¹³⁴ For example, in *S.P. v. F.G.*, 4 Cal.App.5th 921 (2016), the California Court of Appeal upheld a trial court's decision declining to "rubber stamp" the mother's purported child-related expenses in a high income child support case. The court found that the trial court properly considered the child's reasonable future expenses, but where some of the mother's "proposed needs" had no factual support, or were purposefully inflated and facially unreasonable, they properly were excluded from the "reasonable needs" analysis. An example of the mother's questionable "proposed needs" was \$1,200 per month for the minor child's cosmetology, massages, and spa treatments because the child was "extremely beautiful" and the mother knew she would "be a top model." *Id.* at 926.

IV. The Psychological Expert's Testimony

A first analysis relevant to child support determination is whether a disparity in standard of living exists in the children's experience between households. A second analysis is whether the current or proposed standard of living exceeds the child's reasonable needs, and if so, whether the risks of negative wealth effects are evident or likely to be increased if child support is ordered at the level requested.

One of the well-established policies of child support is that the child is entitled to enjoy the benefits of the standard of living that can be provided by the shared financial resources of the parents.¹³⁵ Child support laws also seek to minimize the likelihood that a child may develop a preference for living in a particular parent's household simply based on the standard of living disparity. Therefore, child support levels are intended to create some parity in the financial resources devoted to the child's environment and experience as the child move between the parents' homes. Associated with this disparity analysis, which can cut either way, with either parent having a significantly more affluent standard of living in their household, is how each parent utilizes the financial resources they have to support healthy developmental outcomes for their children. This analysis is best demonstrated by considering a few case scenarios. For the first two scenarios, assume the following: This is an above-guideline child support determination in the context of a divorce. The parents, Blair and Tyler, had a long-term marriage. Blair is a professional athlete, earning \$10 million per year. It is undisputed that Blair is a high-income earner. Tyler is a school teacher, and earns \$40,000 per year. The parties are parents of one minor child, age ten.

Scenario 1: During the marriage, the parties lived frugally, saved considerably, and encouraged healthy money values for the child. Blair now lives an extravagant lifestyle and implements parenting practices shown to increase negative wealth effects on the child, which have resulted in child development issues. Tyler

¹³⁵ See, e.g., California's guideline child support principles, outlined in California Family Code § 4053(f) (a parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life; children should share in the standard of living of both parents; the guideline takes into account each parent's actual income and level of responsibility for the children).

requests a level of support that would allow their child to maintain a standard of living commensurate with Blair's now extravagant lifestyle. Blair requests a lower amount of child support, commensurate with the child's historic standard of living to avoid significant disruption. In this scenario, expert testimony may be useful as to the potential for disparity in lifestyles at each parent's home, should the court order a lower level of support commensurate with historic expenses paid to the child. The expert testimony may also be useful in educating the court on detrimental wealth effects occurring in Blair's household, to help the court tailor not only the level of child support, but also provide opinions about the psychological impact of spending provisions on the child where possible.

Scenario 2: During the marriage, the parties lived frugally, saved considerably, and encouraged healthy money values for the child. The child's activities during the marriage included art class after school, and summer vacations with the parents at the grandparent's house. Blair has maintained the modest lifestyle, despite extraordinary income, and demonstrates appropriate, child-centered parenting practices. Blair has managed financial resources to maximize the benefits of wealth for the child, while minimizing risks. Tyler requests child support be set at a level commensurate with Blair's high earnings and offers a needs analysis that would for the first time provide the child with a driver, nanny, allowance of \$1,000 per month, and ten vacations abroad per year. Tyler also includes line items for horseback riding and piano lessons, a trip to Europe to purchase and transport an expensive dressage horse, and a grand piano. The child had never ridden a horse or played the piano. Tyler intends to move from the parties' two-bedroom townhouse, into a 5,000 square foot home, and argues that their child should have "everything they want." Blair argues for a lower amount of child support, contending those additional resources would increase the child's psychological risks. In this scenario, the mental health expert may be useful in educating the court on the resulting disparity in lifestyle in each parent's home, the risks the child will develop a preference for Tyler and Tyler's home based on the "better" lifestyle, and the potential risk to the child from unfettered allocation of resources.

Scenario 3: Morgan and Taylor met through mutual friends, had a whirlwind romance, and married within six months of meeting. They agreed that Taylor should not work and should stay at home to take care of the major construction project on Morgan's 15,000 square foot house which was under construction and oversee the decoration and design of Morgan's Hawaiian vacation home. Morgan had already made it big as a venture capitalist and having been married once before, wanted to be sure that their property would stay separate. It is undisputed that Morgan is a "high income" earner. Morgan specifically wanted to avoid creating any community property and for each party to waive spousal support. They signed a premarital agreement with these terms. A few months after they married, they had a baby. After two years, their relationship fell apart. Because their child was only two years old, there were no established patterns of spending related to activities or education. They had a day nanny and a night nanny (only for the first year), but other than that they had not spent much money specifically on the child's needs. Upon divorce, Taylor seeks guideline child support, extrapolated to account for Morgan's high level of income. Morgan argues guideline support would be unjust and well-exceed the child's reasonable needs. Morgan seeks a child support order commensurate with the child's current, actual needs. With no pattern on historical spending on the child's reasonable needs, Taylor argues that the child needs comparable housing, a full-time nanny, a comparable vacation home, and enough spending money to make sure their child enjoys the same lifestyle in each home. The only "income" Taylor would have is from child support payments. Before they married, Taylor worked as an administrative assistant at a world renowned non-profit, but Taylor's salary was less than the annual salary they pay their nanny. How can a psychological expert guide the court in determining when enough is enough? Morgan may wish to confer with a mental health expert to formulate an opinion admissible at trial that child support at the level sought could be detrimental to the child's emotional wellbeing, based on information about Taylor's anticipated use of funds and financial values. However, with no established standard of living, and a young child whose needs are not yet known, it is unlikely such expert opinion could be based on the true particularities of this family.

V. Conclusion

Social science literature suggests children of affluence, in the absence of effective, child-centered modeled financial values, are at a heightened risk of developmental dysfunction in the areas of emotional well-being, healthy parental attachment, character development, academic success, and healthy lifestyle choices. In separated families, the child's risk may be heightened, given that there are now two households, often with competing financial values, in which the child's needs must be carefully evaluated. In child support cases, the court is tasked with determining a level of support that would allow the child to maintain a standard of living commensurate with the parents' lifestyle.

Child support guidelines were enacted to provide consistency in child support orders and promote the parents' involvement in the child's life. This formulaic approach to determining appropriate child support levels is applicable to most families in all jurisdictions. However, federal mandates permit deviation from guideline child support where the result would be unjust or inappropriate, as in the case of high-income families given their unique financial needs.

Legal professionals often struggle with determining appropriate levels of child support in such high-income families. Courts routinely focus objectively on the child's "reasonable needs" in the context of the parents' lifestyle. However, the more subjective question becomes which "needs" are reasonable and against which lifestyle should they be measured – the child's historic needs and lifestyle? Current needs and lifestyle? Future needs and attainable lifestyle?

In answering these questions, the child's wellbeing must be at the forefront – after all, the function of child support is to provide financial support for the child. Given the growing body of research on the potential risk of psychological harm to the children, including the potential for disparity in lifestyles at each parent's home, the unbridled use of funds leading to unhealthy developmental patterns, and the development of unwarranted animosities toward one parent or the other, the authors suggest legal professionals consider the impact of wealth on children in setting appropriate child support orders. In addition to considering developmental risk factors in relation to a too high or too low amount of support, it is suggested that legal professionals con-

sider the parenting practices known to help guard against these risks in determining the reasonableness of proposed child expenses, the level of overall child support, and the method of allocating payment of child-related expenses. The techniques suggested in this article are intended to help assess whether mental health expert testimony is appropriate in a particular child support case, and the methods by which practitioners may gather information relevant to the child's needs. In this era of the "rich getting richer" and with the growing number of affluent families, there is a heightened awareness of the impact of wealth on the child's psychological development. In the case of divorce, children of affluent parents are particularly vulnerable. In this regard, the legal community is encouraged to meaningfully consider the potential psychological risks and benefits in determining appropriate levels of financial support for children.