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## INVITATION TO COMMENT

**SP22-01**

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**Title**

Review of the Statewide Uniform Child Support Guideline 2021

**Proposed Rules, Forms, Standards, or Statutes**

None

**Proposed by**

Family and Juvenile Law Advisory Committee  
Hon. Stephanie E. Hulse, Cochair  
Hon. Amy M. Pellman, Cochair

**Action Requested**

Review and submit comments by February 21, 2022

**Proposed Effective Date**

N/A

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### Executive Summary and Origin

Under Family Code section 4054, the Judicial Council periodically reviews the Statewide Uniform Child Support Guideline to recommend to the Legislature any appropriate revisions. Prior to submission to the Legislature, the report is made available for public comment, with any comments received attached as an appendix to the report, so that they can be forwarded to the Legislature for its consideration.

The committee is seeking comments from the public on California's child support guideline but is specifically seeking comment on the most significant recommendations from the report which are to revise the guideline to:

- Provide that incarceration is not voluntary unemployment;
- Provide for the consideration of the factors listed in federal regulation when income imputation or presumption is authorized; and
- Improve the current low-income adjustment (LIA) to ensure protections for low-income parents.

### Background

This report is prepared under Family Code section 4054(a), which requires that at least every four years the Judicial Council review the Statewide Uniform Child Support Guideline to recommend appropriate revisions to the Legislature. Federal regulations (45 C.F.R. § 302.56)

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.*

also require that each state review its guideline at least every four years. The primary purpose of this requirement is to ensure that the guideline results in the determination of appropriate child support award amounts. Federal and state requirements additionally specify that the review must include an assessment of the economic data on child-rearing costs and a review of case data to analyze the application of the guideline and to ensure that deviations from the guideline are limited.

In June 2021, the Judicial Council, through a competitive bidding process, contracted with the Center for Policy Research (CPR) to assist with the preparation of California's child support guideline review. Federal and state requirements for review of the guideline were met through the following activities:

- Reviewing and analyzing current and historical economic research on the cost of raising children, including a critical analysis of the economic analyses used to construct child support guidelines in the United States;
- Reviewing and analyzing labor market data by occupation and skill level for state and local job markets and the impact of guidelines policies and amounts on parents who have family incomes below 200 percent of the federal poverty level;
- Considering the basic subsistence needs of obligors who have a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve;
- Reviewing and examining other states' guidelines and policy models on presumed income and imputed income (i.e., ability to pay) practices.
- Analyzing whether current California law and practices regarding when a child support order is based on presumed or imputed income satisfy the requirement that the individual circumstances of the obligor be considered prior to making such an order;
- Analyzing payment data on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, based on presumed income or determined using the low-income adjustment;
- Considering economic data on the cost of raising children, including an analysis of whether the *K-factor* anchors or bands should be adjusted;
- Collecting and analyzing court case file data from a review of recently established and modified child support orders, including an analysis of the application of the guideline and how often courts deviate from the child support guideline, rates of default and imputed child support orders and orders determined using the low-income adjustment, and whether child support orders based on imputed or presumed income take into consideration the specific circumstances of the parents; and

- Seeking input from stakeholders about the comprehensiveness and fairness of the California guideline through several focus groups.

Judicial Council staff worked closely with CPR on the items listed above, including the analysis of the case file data. The findings from the guideline review are detailed in the guideline study report. Based on the findings from this research and in order to ensure California is in compliance with federal regulations, several recommendations and options are proposed for consideration by the Legislature and the Judicial Council. The Family and Juvenile Law Advisory Committee requests public comment on these recommendations and options for consideration.

### **Recommendations and Options for Consideration**

The guideline study makes the following recommendations and options for consideration, which represent the most important discussions and conclusions from the investigations into the current guideline. The considerations are organized by topics, as reflected in the table below. A detailed discussion of each recommendation begins at page 221 of the report.

<b>Topic</b>	<b>Considerations</b>
<b>1. Legislative Changes Needed to Move California into Compliance with Federal Final Rule by September 2024</b>	Provide that incarceration is not voluntary unemployment.
	Provide for the consideration of the factors listed in federal regulation when income imputation or presumption is authorized.

<p><b>2. Improve the Low-Income Adjustment (LIA)</b></p>	<p>Revise the current LIA to increase the threshold to ensure protections for low-income obligors and revise the income bands for low-income parents. There are three components to revamping the LIA:</p> <ol style="list-style-type: none"> <li>1. Update the LIA income threshold but continue to allow for cost-of-living increases. Alternatively, it could be updated based on: a percentage of the federal poverty guidelines for one person, median fair market rent (FMR) in California, or the gross state minimum wage.</li> <li>2. Modify the bottom income bands of the <i>K-factor</i> formula by increasing the income ranges of the lowest bands, changing the <i>K-factor</i> for those income bands, and adding a new income band for lower incomes.</li> <li>3. Address the adverse impact of the multiplier for additional children by capping support or providing a deviation factor for support exceeding a threshold relating to the Consumer Credit Protection Act (CCPA) limit.</li> </ol>
<p><b>3. Revising Judicial Council Forms</b></p>	<p>To ensure transparency and show compliance with the federal regulations, Judicial Council forms should be revised to include a checkbox to record whether imputed income was used and space for noting the factors supporting the imputed amount and to allow for the local child support agency (LCSA) to provide information about the source of actual income used when making requests to establish or modify a child support order.</p>
<p><b>4. Improve the Guideline Formula</b></p>	<p>Better match the <i>K-factor</i> bands to the findings in economic studies.</p>

**Public Comment Period**

The Family and Juvenile Law Advisory Committee invites the public to comment on the report. The comment period is from January 25 to February 21, 2022. Upon completion of the public comment period, the report, with the public comments attached as an appendix, will be submitted to the Judicial Council through the standard process for its review and approval prior to its submission to the Legislature.

Comments can be provided by completing the online form (see link below the proposal title on the Invitations to Comment [webpage](#)) or by e-mail to [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov).

Please note that public comments will become part of the public record and will be submitted to the Legislature for its consideration. This submission will include the names and titles of the commenters.

**Attachments and Links**

1. *Review of the Statewide Uniform Child Support Guideline 2021*

# **Review of the Statewide Uniform Child Support Guideline 2021**

Dec. 21, 2021

Center for Families, Children, and the Courts  
Judicial Council of California

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# Executive Summary

This report documents the findings from the 2021 review of the California child support guideline. The guideline is set in state statute.<sup>1</sup> Federal regulations (45 C.F.R. § 302.56) require states to review their guideline at least once every four years. (Federal regulations are shown in Appendix A.) The review must consider economic data on the cost of raising children, the analysis of case file data, and input from a wide range of stakeholders. The expectation is that the information will be used to develop recommendations that ensure the guideline results in appropriate child support orders, and that deviations from the guideline are limited.

The core formula of the California guideline was adopted in 1992, and only the parameters of the low-income adjustment (LIA) has been changed since then. When adopting the statute, the California legislature intended to ensure that the state remained in compliance with federal regulations for state guidelines.<sup>2</sup>

The guideline is to be applied presumptively in any judicial proceeding where child support is at issue. The guideline may be rebutted if the application of the formula would be unjust or inappropriate. Federal regulations require each state to have a uniform rebuttable presumptive guideline with state-determined deviation criteria. The guideline applies to all child support judgments or orders statewide, whether or not the case is a IV-D cases or non-IV-D cases. IV-D stands for Title IV-D of the Social Security Act<sup>3</sup> that enables government child support programs, including local child support agencies (LCSAs) in California, to establish and enforce child support orders. IV-D cases are also sometimes referred to as AB 1058 cases for the California legislation that created the Child Support Commissioner and Family Law Facilitator Program<sup>4</sup> and the unique statutory scheme for LCSAs to establish child support judgments. Non-IV-D cases refer to all other cases where a child support order may be established, such as a divorce or parentage action.

Many California children are eligible for child support. There were almost nine million children living in California in 2019.<sup>5</sup> Many California families benefit from child support. In FFY 2020, the statewide IV-D program (i.e., the combination of all 55 LCSAs within the state) established 47,710 support orders and collected and distributed over \$2.8 billion in child support.<sup>6</sup> The number of non-IV-D orders established per year is estimated to be about the same as the number of IV-D orders. Collections and distributions on non-IV-D orders are likely to be more than IV-D child support collections and distributions because the IV-D caseload has a larger share of

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<sup>1</sup> California Family Code sections 4050 - 4076.

<sup>2</sup> California Family Code section 4050.

<sup>3</sup> The child support statutes are found in Sections 451 through 469B of the Social Security Act (42 U.S.C. §651 through §669b).

<sup>4</sup> Family Code sections 4250-4253 and 10000-10015.

<sup>5</sup> U.S. Census American Community Survey 2019. Retrieved from <https://data.census.gov>.

<sup>6</sup> *Id.* Table 3.5 and Table 4.1.

low-income cases.<sup>7</sup> Although state data are not available, a 2015 national study found that without child support, the child poverty rate would be 7.0 percentage points higher.<sup>8</sup> A recent U.S. Congressional Research Services (CRS) report finds that many obligors are economically vulnerable: CRS estimates that more than one-third of obligors have low income in 2018, which the CRS defines as income less than 200 percent of the federal poverty threshold.<sup>9</sup> The fact that there are many custodial families and obligors who are low income or live in poverty calls for a delicate balance when crafting guideline amounts,

## **Federal Requirements Have Expanded**

In 2016, federal regulations expanded the requirements of state guideline reviews and guideline.<sup>10</sup> Many of the expanded requirements aim to better address the issues of low-income families. The additional requirements are:

- At a minimum, a guideline must consider other evidence of ability to pay in addition to a parent’s earnings and income (45 C.F.R. § 302.56(c)(1)(i));
- A guideline must consider the basic subsistence needs of the noncustodial parent who has a limited ability to pay (45 C.F.R. § 302.56(c)(1)(ii));
- If imputation of income is authorized, a guideline must also consider, to the extent known, the specific circumstances of the obligor, such as the 14 specific factors identified in the federal rule (45 C.F.R. § 302.56((c)(1)(iii));<sup>11</sup> and
- A guideline may not treat incarceration<sup>12</sup> as voluntary unemployment in establishing or modifying support orders (45 C.F.R. § 302.56(c)(3)).

The existing California guideline<sup>13</sup> already fulfills the federal requirement to consider the basic subsistence needs of the obligor by providing a low-income adjustment (LIA), albeit the parameters of its application make it ineffective for what is considered low income today. California does not use the term income imputation in its statutes concerning the establishment of child support, but it does provide for the use of earning capacity and income presumption, which fit into the scope of the federal definition of income imputation. California Family Code section 4058(b) provides for the discretionary consideration of earning capacity in lieu of the

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<sup>7</sup> There are no firm counts of non-IV-D orders within the state and no firm count of the amount collected and distributed among non-IV-D orders. Evidence suggests, however, that non-IV-D orders tend to involve higher income parties than IV-D orders, so order amounts and collection/distribution amounts are higher.

<sup>8</sup> Sorensen, Elaine. (Dec. 2016). “The Child Support Program Is a Good Investment.” *The Story Behind the Numbers*. Federal Office of Child Support Enforcement. p. 8. Retrieved from [https://www.acf.hhs.gov/sites/default/files/programs/css/sbtn\\_csp\\_is\\_a\\_good\\_investment.pdf](https://www.acf.hhs.gov/sites/default/files/programs/css/sbtn_csp_is_a_good_investment.pdf).

<sup>9</sup> U.S. Congressional Research Service. (Oct. 2021). *Demographic and Socioeconomic Characteristics of Nonresident Parents*. Retrieved from <https://crsreports.congress.gov/product/pdf/R/R46942>.

<sup>10</sup> Federal Register/Vol. 81, No. 244. (Dec. 20, 2016.) Department of Health and Human Services Centers for Medicaid Services. Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs. Vol. 81, No. 244. Retrieved from <https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-29598.pdf>.

<sup>11</sup> See the end of Appendix A for the steps that the agency must take to gain a factual basis of income and earnings to be used in the guidelines calculation (45 C.F.R. § 303.4).

<sup>12</sup> Several states specify incarceration of over 180 days to be congruent with the provision in 45 C.F.R. § 303.8 that is also shown in Appendix A.

<sup>13</sup> California Family Code section 4055(b)(E)(7).

parent’s income in certain circumstances. Other California statutes<sup>14</sup> provide for the LCSA to request an initial child support order based on presumed income (i.e., fulltime minimum wage) when the income of the obligor is unknown to the LCSA. Whether California meets all of these expanded federal requirements is explored in this report, and recommendations to bring California in full compliance with these federal regulations by September 2024 are made when appropriate.

### **Overview of Impetus for Federal Changes**

The federal rule changes are grounded in research that finds compliance is lower and unpayable arrears accrue when income is imputed.<sup>15</sup> The specific concern is when income is imputed beyond what an obligated parent, particularly an obligated parent with income below or near poverty, actually earns or has the capacity to earn. The intent is to use the best evidence available on actual income, including income information from automated sources and verbal testimony.<sup>16</sup> Addressing order amounts at the front-end can avoid the need for enforcement actions and is more responsive to the Supreme Court decision in *Turner v. Rogers*, 564 U.S. 431, 131 S Ct. 2507 (2011), which concerned a civil contempt action for non-compliance of a child support order, that was also an impetus for the rule changes.<sup>17</sup> In addition, the federal rule changes recognize the importance of healthy parent–child relationships in the development of children and how unpaid child support in some situations can inadvertently create barriers to the healthy interaction between the child and the parent obligated to pay support.

### **Additional Factors to Be Considered when Reviewing a State’s Guideline**

Additionally, the requirements of a state guideline’s review were expanded. Not only must they consider economic evidence on the cost of raising children and collect and analyze case file data on the application of and deviation from the guideline, but they must also consider labor market data; consider the impact of guideline amounts on parties with low incomes; consider factors that influence employment rates among obligors and compliance with child support orders; analyze rates of default and imputed child support orders and orders determined using the adjustment for the obligor’s basic subsistence needs; analyze payment patterns; provide opportunity for public input, including input from low-income parents and their representatives, and the state/local IV-D agency; make all reports public and accessible online; make membership of the reviewing body known; and publish the effective date of the guidelines and the date of the next review. This report fulfills all of the analysis requirements.

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<sup>14</sup> California Family Code sections 17400(d)(2), 17404.1(b).

<sup>15</sup> See pp. 68553–56 of U.S. Department of Health and Human Services. (Nov. 17, 2014). “Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs.” *Federal Register*, Vol. 79, No. 221. Retrieved from <https://www.govinfo.gov/content/pkg/FR-2014-11-17/pdf/2014-26822.pdf>.

<sup>16</sup> U.S. Department of Health and Human Services (2016). *Supra*, note 25, p. 93495.

<sup>17</sup> U.S. Department of Health and Human Services. (Nov. 17, 2014). “Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs.” *Federal Register*, Vol. 79, No. 221. p. 68555. Retrieved from <https://www.gpo.gov/fdsys/pkg/FR-2014-11-17/pdf/2014-26822.pdf>.



## **Timeline for Meeting New Federal Requirements**

The original deadline for meeting these expanded requirements was tied to the state’s guideline review cycle, but several states including California obtained an extension due to the COVID-19 pandemic. California has until September 2024 to meet these expanded requirements. Nonetheless, all of the new data analysis requirements are fulfilled in this report.

## **Activities of the 2021 Guideline Review**

Under Family Code section 4054, the Judicial Council oversees the review of the guideline. In June 2021, the Judicial Council, through a competitive bidding process, contracted with a vendor to provide technical assistance. Federal and state requirements for the review of the guideline were met through many activities including: reviewing the underlying premises and economic data of the existing guideline formula and other more current economic studies; examining the impetus for federal rule changes; reviewing whether California’s current LIA adequately addresses the circumstances of low-income families particularly in light of the research underlying the federal requirement for a LIA, and California housing costs and earnings among low-income workers; conducting a legal analysis of the new federal requirements pertaining to income available for support to assess whether California fulfills them; collecting and analyzing case file data from a review of recently established and modified child support orders that included the federally-required analyses; seeking input from parents and other stakeholders about how the guideline is being applied, the appropriateness of the guideline, and whether it serves the best needs of children; and comparing selected provisions of the California guideline and their application with those of other states’ guidelines.

## **Chapter Summaries**

This report includes seven chapters.

### **Chapter 1: Introduction**

Chapter 1 provides more detail about federal requirements of a state guideline and the activities conducted for this review as well as more statistics on California children and child support. It also describes the proceedings for establishing or modifying child support orders within the state. Key stakeholders include the LCSAs, that petition to establish or modify child support orders, the Department of Child Support Services (DCSS) that administers the statewide IV-D program to ensure all federal requirements are met, child support commissioners and judges who hear child support cases and make evidentiary findings, calculate guideline child support, and make orders establishing or modifying child support, and Family Law Facilitators who assist parents gain access to the courts to participate in child support proceedings.

The 2021 review is the sixth conducted by the Judicial Council. With the exception of the last review, the economic evidence examined in earlier reviews suggested that the core California guideline formula resulted in appropriate amounts of child support. The last review suggested that the formula may be too high, but did not make the assessment based on all studies of child-rearing expenditures. Previous reviews also found evidence that the low-income adjustment

(LIA) was not being applied to all eligible obligors and that the income threshold for applying it was outdated. This resulted in legislative changes that made the LIA presumptive and reset the income threshold to a higher amount and provided for an annual cost-of-living increase.

## **Chapter 2: Basis of the Child Support Guideline Formula and Economic Evidence on the Cost of Raising Children**

The major purpose of this chapter is to review economic data on the cost of raising children, which is a federal requirement; then, use it to assess the adequacy and appropriateness of the California formula. The chapter reviews over a dozen studies of child-rearing expenditures that vary in methodologies used to measure child-rearing expenditures and data years. An economic methodology is necessary to separate the child's share of total household expenditures.

Economists generally do not agree which methodology best estimates actual child-rearing expenditures. Many economists and policymakers, however, agree that comparing the amounts of a state guideline to a range of measurements can gauge the adequacy and appropriateness of the guideline amounts. If the guideline amounts are below the lowest of credible measurements, the guideline amount inadequately provides for the children. This type of comparison was made for California. The major conclusion is:

- The California guideline amounts are not inadequate when compared to economic data on the cost of raising children.

### **There Are Many Underlying Premises and Parameters of the Existing Formula**

This chapter also reviews the underlying premises, economic data and parameters of the existing formula. Child support formulas are part policy and part economic data. Some of the major policy premises are both parents are financially responsible for the support of their children, each parent should provide support according to the parent's ability, children should share in the standard of living of both parents, and adjustments for shared physical responsibility of the children should reflect the increased cost of raising the children in two homes. To this end, the existing formula considers each parent's net disposable income, the percentage of time the child is with each parent, and other factors. The consideration of each parent's share of income is a key component of the income shares model, which California and most states use as the basis for their guidelines. Another key component of the income shares model is that the child is entitled to the same level of expenditures that the child would have received had the child and parents lived together and the parents pooled financial resources. Some of these premises may be outdated and no longer appropriate for California families of today and in the future.

The existing California formula is mathematically efficient, but is more complex and not as transparent as other states' formulas. The amount that each parent is expected to contribute to raising the child and the amount of the adjustment for shared-parenting time are not clear. The existing formula is based on economic studies of child-rearing expenditures conducted in the 1980s. Generally, the estimated percentages of total expenditures devoted to child-rearing expenditures has not changed significantly over time. The conclusion, however, becomes less definitive when considering income bands, multipliers for number of children, and other factors.

One reason is that although the percentage of total expenditures devoted to children has generally been stable over the time, incomes have changed rendering some of the income bands of the existing California formula ineffective, specifically, the income bands that apply to low-income parents.

The existing formula provides a table that shows the percentage of the total net disposable income of both parents to be allocated for the support of one child for a range of income bands. The percentage from the table is called the “*K-factor*” to guideline users, albeit it the term is not specifically used in the guideline.<sup>18</sup> The highest *K-factor* (which is 0.25 for one child and sometimes refers to as the “anchor *K-factor*”) applies to the income band that considers net disposable incomes of both parents ranging from \$801 to \$6,666 per month. For income bands above this, the *K-factor* gradually declines. The lowest income band, which considers total net disposable income of both parents ranging from \$0 to \$800 per month is intended to assign a lower percentage of support (0.20) to low-income parents. Because it has never been updated, most incomes exceed the lowest income band. Even minimum-wage parents would fall into the income band that assigns the highest percentage of income to child support.

The formula also considers parenting time and provides multipliers for up to 10 children. Some, but not all studies, also suggest the percentages for higher income bands and the multipliers for more children may be too high. Additionally, the shared-parenting time adjustment builds in some assumptions about how much more it costs to raise a child when the child spends time with each parent that are not always sensible. Another reason to reconsider the multipliers for larger families is they can result in child support orders of 50 percent or more of the obligor’s net disposable income for three or more children in the low- and middle-income ranges. This generally exceeds what can be legally withheld from the obligor’s paycheck according to the Consumer Credit Protection Act. Some states cap the support at a percentage of income either through their formula or providing it as a deviation factor. The premise is that child support should not be set higher than can be collected through wage garnishment.

### **Chapter 3: Low-Income Adjustment (LIA) and the Analysis of Labor Market Data**

Child support helps many low-income families. Still, many obligors are also low-income and living in poverty and cannot even provide for their own basic subsistence needs. Setting appropriate guideline amounts for low-income families requires a delicate balance. Recent changes in federal regulation now require state guidelines to consider the basic subsistence needs of the obligor through a low-income adjustment such as a self-support reserve. Federal regulation also gives states the option of extending the adjustment to custodial parents. The new federal requirement is based on research that finds that setting support beyond what a low-income parent has the ability to pay has many outcomes that do not serve the best interest of the child.

#### **The Income Threshold for Applying the LIA Is Too Low**

The California formula provides a range for the low-income adjustment. The highest amount is the guideline-determined amount. The lowest amount is a proportional reduction to the guideline

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<sup>18</sup> The guideline (Fam. Code, § 4055(b)) states that the “*K*” which is either “one plus H% (if H% is less than or equal to 50 percent) or two minus H% (if H% is greater than 50 percent) times” the *K-factor*. See page 18 for more detail.

amount.<sup>19</sup> The lower the income, the larger the adjustment. The closer the obligor's net disposable income is to the LIA income threshold (\$1,837 per month in 2021), the adjustment decreases to a nominal amount. Although the LIA is indexed for changes in the cost-of-living, it no longer applies to minimum-wage earners because increases to minimum wage have outpaced annual LIA changes. Paying the LIA-adjusted order amount can leave the obligor with income below poverty. The LIA income threshold is low compared to California housing costs. It is less than the Fair Market Rent (FMR) of an efficiency apartment in five California counties.<sup>20</sup>

### **The First Two Income Bands of the K-factor Formula Limit the Effectiveness of the LIA**

The income bands of the *K-factor* formula have never been updated since the formula was adapted in 1992. The first income band (\$0 to \$800 per month) was obviously intended to produce lower amounts for parents with incomes near federal poverty levels. Since then, the federal poverty level and the state minimum wage has more than doubled. Due to this, very few families fall into the first income band. Instead, most low-income families fall into the second income band of the *K-factor*, which has the highest percentage of income assigned to child support (25 percent). This negates the effectiveness of the LIA.

### **Other States Use a Different Approach**

California is the only state to use its formula to adjust for low incomes. Most states rely on a self-support reserve (SSR) as their LIA. The amount of the self-support reserve and its application vary considerably among states. Both are at state discretion. Most states relate the SSR to the federal poverty guideline (FPG) for one person. New Jersey has the highest SSR: 150 percent of the FPG. Arizona relates its SSR to its state minimum wage. In Arizona, if the obligor's income is less than the SSR, the order is typically set at zero. Some state guidelines provide a minimum order instead. If the obligor's income is slightly above the SSR, the maximum order amount is the difference between the obligor's income and the SSR. When the regular guideline calculation produces a lower amount, the SSR is no longer applied. Due to this, there is no income threshold for applying the SSR and it can usually apply to incomes over twice as much the California LIA income threshold. Some of the strengths of the SSR-test are that it is unaffected by the obligee's income and the timesharing arrangement, which was a criticism heard in the focus group with professionals about the California LIA. The major weakness surrounds implementation issues such as developing business rules, modifications to automated guideline calculators, and training. It may also conflict with another state statute indicating that the obligor's needs do not take precedent over supporting the child.

Few states exercise the federal option to extend their LIA to the custodial parent because it doesn't always benefit families, particularly when the family receives TANF benefits (which are known as CalWORKs in California) because child support is assigned to the state in TANF cases.

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<sup>19</sup> Specifically, the lowest amount is the guideline-calculated amount multiplied by the ratio of the obligor's net disposable income to the LIA income threshold and the guideline-calculated amount.

<sup>20</sup> Representing the 40<sup>th</sup> percentile of regional rent, the U.S. Department of Housing and Urban Development calculates regional FMRs for administering housing assistance programs.

## **Analysis of Labor Market Data and Impact of the Guidelines**

Federal regulations require the analysis of the impact of the guideline amount among families with low incomes and labor market data. In general, the existing California LIA produces orders higher for low-income cases than the guidelines of neighboring states and other states with high living costs.

Many obligors have limited earning capacity. Despite increases in the state minimum wage, there are many low-paying jobs in California. Many are in industries where workweeks are less than 40 hours per week, there is no sick pay or paid vacation days, and there is high turnover. The average hours worked per week in California is 35 hours. In summary, the labor market evidence suggests that presumption of a 40-hour workweek at the state minimum wage is not a realistic scenario.

## **Chapter 4: Legal Analysis: Meeting New Federal Requirements**

The 2016 changes to federal regulation included many changes that affect how states define income available for child support including the imputation and presumption of income. The amended regulation requires that child support guidelines must, at a minimum, provide that the child support order be based on the noncustodial parent's "earnings, income, and other evidence of ability to pay." The regulation further requires that the order must take into consideration "all earnings and income of the noncustodial parent (and at the State's discretion, the custodial parent)." If imputation of income is authorized, the order must take into consideration "the specific circumstances of the noncustodial parent (and at the State's discretion, the custodial parent) to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case."<sup>21</sup> The regulation also requires that the guideline provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders.

### ***California Complies with Some but Not All of the New Requirements that Must be in Effect by September 2024***

The legal analysis found that that California Family Code section 4058(b) complies with the federal regulation regarding the definition of income, but California does not fulfill the other two provisions: consider the individual circumstances of the obligor when income imputation is authorized and provide that incarceration is not voluntary unemployment. Although California has relevant case law, it must have "statutes, rules or procedures which have the force and effect of law" and meet the explicit provisions of 42 United States Code, section 667(a) and the implementing regulations. Section 667(a) requires each state, as a condition for having its state plan approved, to establish child support guidelines by law or by judicial or administrative action. Family Code section 4058, which provides for income imputation at earning capacity, considers some but not all of the factors listed in the federal regulation. The presumption of

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<sup>21</sup>45 C.F.R. § 302.56((c)(1)(iii).

income in Family Code section 17400(d)(2) does not require a consideration of any of the individual circumstances of the obligor as outlined in federal regulations. California has until September 2024 to meet the new requirements.

## **Chapter 5: Analysis of Case File Data**

This chapter fulfills the federal requirements to analyze case file data. Case file data were obtained from two data sources: a random sample of 1,205 orders from court files in 11 counties; and a data extract of 123,880 IV-D child support orders from the DCSS automated system. The sample of 1,205 court cases contained 594 non-IV-D orders and 611 IV-D orders. The courts that participated in the case file review were selected to represent the state's diversity in county size and regions and other considerations including the use of electronic case management systems. The data extract is statewide. Both samples were selected from 2018 court orders that resulted in a new or modified child support amount. Using 2018 as the base sample year also helped to avoid any anomalies due to the COVID-19 pandemic. Payment data were collected for the 12 months after the effective date of the new or modified order. Payment data were only obtained for IV-D orders. Data were not matched between the two sources.

### **Federally-Required Data Analysis**

The major findings from the federally-required data analysis are summarized below.

- **The guideline deviation rate is not statistically different from the last review.** This study found a guideline deviation rate of 15 percent, which is less than the last review (17 percent), but the difference was not statistically different. Other deviation patterns are similar to those of previous reviews: the deviation rates are higher among non-IV-D orders than IV-D orders and stipulated orders than default or contested orders, most deviations are adjusted downward from the guideline-calculated amount, and the most common reason for deviations is stipulation.
- **The percentage of orders entered by default has decreased.** This review found an overall default rate of 23 percent, and a default rate of 34 percent among IV-D orders and 12 percent among non-IV-D orders. These are statistically less than the default rates found from the previous review. Stakeholders participating in the focus groups attributed the reduction to LCSA outreach, the use of text messaging to remind parents of important dates, information provided by Family Law Facilitators and other actions to better engage parents.
- **Rates of income imputation/presumption are low.** The 2016 federal rule changes now require states to measure the frequency that income is imputed. Unlike most states and the federal regulation, California discerns between income imputation and income presumption. For federal purposes, they are both a type of income imputation. In California, income may be imputed due to a variety of circumstances. The most common is imputation at potential earnings because the parent is voluntarily unemployed or underemployed. State statute provides that in a IV-D case income must be presumed at full-time, minimum wage earnings where the obligor's income or income history is unknown to the local child support agency when preparing a proposed judgment as part

of a child support complaint. In short, by law income presumption is limited to IV-D cases. The obligor's income was known to be imputed in only 2 percent of the court case files (both IV-D and non-IV-D) and income presumption was noted in only 5 percent of the IV-D court case files. These rates are less or about the same as the rates found for the previous review.

- **The low-income adjustment (LIA) is likely to be applied less frequently now due to the increases in minimum wage.** The LIA was applied to 18 percent of the court case sample, which only included orders established or modified in 2018. The LIA application rate for the previous review was 11 percent. The percentage of eligible obligors also increased. Undoubtedly, this was due to the annual cost-of-living increase to the LIA income threshold. As the LIA income threshold increases, more obligors become eligible. However, in 2018, the LIA income threshold was more than after-tax income from full-time, minimum wage earnings. As a result, minimum-wage workers were eligible for the LIA. Recently, increases to the state minimum wage have surpassed increases to the LIA income threshold. The 2021 LIA income threshold is \$1,837 per month. After-tax income from full-time employment at the 2021 state minimum wage is \$2,040 per month assuming the obligor's tax filing status is single. The LIA application rate is probably lower today because the LIA income threshold is less than after-tax income from full-time, minimum wage earnings.
- **The Majority of Obligor with IV-D Cases Make Payments.** Most (89 percent) of obligors who owed child support in a IV-D case in the twelve months following order establishment or modification made at least one payment. The median amount paid over the twelve months was \$3,300. The percentage of obligors who paid and the median amount paid were lower among orders entered by default, when income was presumed to the obligor, and when the low-income adjustment was applied.

### **Other Major Findings**

- The median order amount has increased since the last review: It increased from \$300 per month to \$456 per month.
- About one fifth (21 percent) of orders are set at zero. This is a decrease from the last review, which was 25 percent.
- Just over half (56 percent) of orders are for one child, 31 percent are for two children, 9 percent are for three children, and 4 percent are for four to six children. There were no orders for seven or more children in the court-sampled orders. The highest number of children in the DCSS data extract was nine.
- Incomes tend to be very low in IV-D cases. The median net incomes of obligors and obligees with IV-D orders were \$1,698 per month and \$1,285 per month, respectively. These median incomes are below 175 percent of federal poverty levels. In contrast, the median incomes of parents with non-IV-D orders were roughly twice as much as those with IV-D orders.

- Zero timesharing is still the most common timesharing arrangement when calculating support for IV-D orders. Just over half (54 percent) of IV-D orders are calculated indicating the child spends no time with the obligor. In contrast, most (80 percent) of non-IV-D orders indicate a timesharing arrangement other than zero.

## **Chapter 6: Findings from the Focus Groups**

Focus groups were held to gain input from stakeholders. There were four groups: child support commissioners and family law judges; attorneys from LCSAs and DCSS administrators and staff; parents who are owed and who owe support; and self-help center and Family Law Facilitator staff. The questions aimed to gain context to some of the findings from the case file data and for each group to identify changes they would recommend to California’s child support calculation. All focus groups were conducted through videoconference.

Some of the common recommendations of the focus groups with professionals were to update the low-income adjustment (LIA), provide for consideration of high housing costs (even as a deviation factor), and lessen the increase in the guideline calculation for low-income obligors when the obligee had no income. Many professionals expressed issues with the parenting time adjustment, but the issue varied among groups. Some thought the adjustment had too much of a weight in the child support calculation and others thought it provided an inadequate adjustment to the obligor when the obligee had no to little income. Another issue that emerged in the focus group with commissioners and judges was the treatment of additional expenses (i.e., child support add-ons) such as work-related child care expenses. Family Code 4061 provides that these expenses be split equally between the parties, but can be prorated between the parties upon the request of a party and with proper documentation that apportionment would be more appropriate. Prorating is consistent with how base support is determined and the parenting time adjustment is applied. Parties often do not know that apportionment is an option and that they have to request the proration.

The focus group of the parents included a mixture of parents receiving and paying child support. This is unprecedented. In child support research usually the two groups are separated, albeit they were usually conducted in person. The mixture did not appear to be an issue for focus group participants. The parents agreed on many issues such as that child support should be a shared responsibility and that the guideline should consider regional differences in cost of living. Many of the participants would like DCSS to use more of their automated sources to verify and discover income.

The focus groups are not the only opportunity for stakeholder input. A preliminary version of this report was posted on the JCC website for public comment. The comments are attached to the final report.



## Chapter 7: Conclusions and Recommendations

There are two major recommendations that require legislative action.

### Recommendations to Move California into Compliance with New Federal Requirements by September 2024

- Provide that incarceration is not voluntary unemployment; and
- Provide for the consideration of the factors listed in federal regulation when income imputation or presumption is authorized.

In order for California child support guidelines to move into compliance with the federal regulation and the intent expressed in federal responses to comments by September 2024, the guidelines should: provide guidance as to when imputation is appropriate; if imputation of income is authorized, require the court to consider evidence of the noncustodial parent's specific circumstances, including the factors listed in the federal regulation; and, if California wants to provide exceptions to income imputation, it can do so as long as such exceptions are enacted as rebuttable presumptions. California may also want to review its court forms for establishment of support to determine whether to include a checkbox to record whether imputed income was used and space for noting the factors supporting the imputed amount. In addition, California may want to amend its forms to allow for information about the source of the income used to make the child support order.

California should also review the statutory scheme in Family Code section 17400 that created the option for establishing child support orders in IV-D cases based on presumed income. A 1990's task force established by the governor reviewed IV-D child support practices. Its mandate was to recommend improvements that would create efficiencies and reduce conflict for cases primarily involving self-represented litigants. The task force made a number of recommendations that established the statutory scheme in Family Code section 17400 that provides for presumed income, currently at of full-time minimum wage without regard to the obligor's individual circumstances as required by the new federal regulation. In determining whether to change or eliminate the option to use presumed income, California should determine whether additional provisions within section 17400 need to be revised to ensure compliance with federal regulations and still meet the original goals of the task force.

### Recommendations to Improve the LIA

- Revamp the LIA.

There are three components to revamping the LIA. The **first** is to update the LIA income threshold, but continue to allow for cost-of-living increases. The **second** element is to modify the bottom income bands of the *K-factor* formula so the total net disposable income of the low-income parents does not put them in the income band that assigns the highest percentage of income to support. The **third** part is to address the adverse impact of the multiplier by capping support or providing a deviation factor for support exceeding a threshold relating to the CCPA limit. Additionally, it would be helpful to provide guidance for deviations for extraordinary housing costs in certain counties.

## **Other Recommendations**

There are several other recommendations that California should consider but are not required to comply with federal regulations.

### ***Other Recommendations to Improve the Formula***

There are many other recommendations to improve the formula that require more policy considerations than economic data. This includes making the formula more transparent and revisiting the underlying premises of the California formula to ensure that they are appropriate for today's circumstances. In turn, this could mean adapting a different guideline formula, using a specific approach to measure child-rearing expenditures, keeping the existing formula but better match the K-factors to economic studies, using a different approach to adjust for timesharing, revamping or limiting the multipliers for more children, and other recommendations.

### ***Recommendations for Conducting Next Review***

If the sample size is sufficient, a California-specific study of child-rearing expenditures should be conducted using the California consumer expenditure data collected by the U.S. Bureau of Labor Statistics. California should continue to explore how to improve the data collected for the study. This may include sampling from more counties, increasing the sample size, collecting data from other court case management systems, collaborating with DCSS to do data validity checks across the two data sources. It also could mean taking measures to improve court records or adding fields to forms to note whether income was imputed. There should be more opportunities for stakeholder input. This could consist of an internet survey of all stakeholders conducted prior to completing the preliminary report. There should also be more focus groups with parents and a consideration of how to offer a financial incentive for their participation.

## **Next Steps**

Ultimately any guideline changes are up to the Legislature. Federal regulations require the publication of the date of the next review and the effective date of any guideline changes resulting from the review. California's next review is scheduled for 2026. Any guideline changes and the date they become effective is at the discretion of the Legislature.

# Chapter 1: Introduction

This Chapter provides an overview of the federal requirements of a state guideline, background statistics on child support in California, an overview of the proceedings for establishing or modifying a child support order, a summary of the activities of the 2021 guideline review, an overview of previous reviews, and a description of how the report is organized.

California sets its child support guideline in state statute.<sup>22</sup> The core formula of the guideline was adopted in 1992, and only the parameters of the low-income adjustment (LIA) have been changed since then. When adopting the statute, the California legislature intended to ensure that the state remained in compliance with federal regulations for state guidelines.<sup>23</sup> Federal regulations (which are shown in Appendix A.) impose many requirements of state guidelines. Federal regulations require that a state review their guideline at least once every four years. Additionally, federal regulations impose requirements on how a state conducts their guideline review. The purpose of requiring a periodic guideline review is to determine whether the state guideline's application results in appropriate child support order amounts. Federal regulation directs the state to revise their guideline if the state finds that its application does not result in appropriate amounts.

This report documents the findings from the review of the California child support guideline that commenced in 2021 and recommends changes to the guideline to improve the appropriateness of its application as well as meet federal requirements that were expanded in 2016. Most states have had to make changes to their guideline or are making changes to comply with the expanded federal requirements. There is a rolling timeline for meeting the expanded federal requirements that coincide with a state's guideline review cycle. Some states including California received an extension due to the COVID-19 pandemic. California has until September 2024 to meet the new requirements.

The previous review commenced in 2017 and resulted in a report that was published in 2018.<sup>24</sup> The review (and previous reviews of the California guideline) fulfilled all federal requirements of state guideline reviews. Since federal regulations of state guidelines and what they consider as part of their review were expanded in December 2016, this review also assesses whether California is in compliance with the 2016 changes, and conducts additional analysis and activities to fulfill the expanded requirements of a state's guideline review process.

Under Family Code section 4054, the Judicial Council oversees the review of the guideline. It sought technical assistance through a competitive bid process. A contract was awarded to Center for Policy Research in June 2021. Like previous reviews, an Invitation to Comment on the preliminary version of the report is sent to key stakeholders and posted on the Judicial Council's

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<sup>22</sup> California Family Code section 4050 – 4076.

<sup>23</sup> California Family Code section 4050.

<sup>24</sup>Judicial Council of Cal., Review of Statewide Uniform Child Support Guideline (Jan. 2018).

website to allow for public comment. The public comments are attached to the final report. The Judicial Council’s Legislative Committee and Family and Juvenile Law Advisory Committee reviewed both the preliminary report and public comment to make recommendations to the Judicial Council to determine what if any, recommendations should be put forth to the Legislature. However, ultimately any guideline changes are up to the Legislature. Federal regulations require the publication of the date of the next review and the effective date of any guideline changes resulting from the review. California’s next review is scheduled for 2026. Any guideline changes and the date they become effective are at the discretion of the Legislature.

## **Federal Requirements of a State Guideline**

Federal requirements for state guidelines were initially imposed in 1987 and 1989 and have had no major changes until December 2016 when the Modernization Rule (MR) was published.<sup>25</sup> The 1984 Child Support Amendments to the Social Security Act required each state with a governmental child support program through Title IV-D of the Social Security Act to have one child support guideline to be used by all judicial or administrative tribunals having authority to determine child support orders within the state by 1987.<sup>26</sup> The Family Support Act of 1988 expanded the requirement by mandating that the application of a state’s guideline be a rebuttable presumption and that states review their guideline at least once every four years and, if appropriate, revise their guideline.<sup>27</sup> States could determine their own criteria for rebutting their guideline; however, the federal requirements made it clear that states should aim to keep guideline deviations at a minimum. For several decades, the federal requirements were:

- Have one uniform guideline to be used by judicial officers (and all persons within a state with the authority) to issue a child support order;
- Provide that the guideline is rebuttable and develop state criteria for rebutting it;
- Consider all earnings and income of the obligor in the calculation of support (and the obligee at a state’s discretion);
- Produce a numeric, sum-certain amount;
- Provide for the child’s healthcare coverage; and
- Review their guideline at least once every four years and as part of that review analyze guideline deviations.

In summary, the additional requirements are:

- At a minimum, a guideline must consider other evidence of ability to pay in addition to a parent’s earnings and income (45 C.F.R. § 302.56(c)(1)(i));

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<sup>25</sup> Federal Register/Vol. 81, No. 244. (Dec. 20, 2016.) Department of Health and Human Services Centers for Medicaid Services. Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs. Vol. 81, No. 244. Retrieved from <https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-29598.pdf>.

<sup>26</sup> See the 1984 Amendments of the Social Security Act (Public Law 98-378).

<sup>27</sup> See 1988 Family Support Act (Public Law 100-485).

- A guideline must consider the basic subsistence needs of the noncustodial parent who has a limited ability to pay (45 C.F.R. § 302.56(c)(1)(ii));
- If imputation of income is authorized, a guideline must also consider, to the extent known, the specific circumstances of the obligor, such as the 14 specific factors identified in the federal rule (45 C.F.R. § 302.56((c)(1)(iii));<sup>28</sup> and
- A guideline may not treat incarceration<sup>29</sup> as voluntary unemployment in establishing or modifying support orders (45 C.F.R. § 302.56(c)(3)).

The existing California guideline<sup>30</sup> already fulfills the federal requirement to consider the basic subsistence needs of the obligor by providing a low-income adjustment (LIA), albeit the parameters of its application make it ineffective for what is considered low income today. California does not use the term income imputation in its statutes concerning the establishment of child support, but it does provide for the use of earning capacity and income presumption, which appear to fit into the scope of the federal definition of income imputation. California Family Code section 4058(b) provides for the discretionary consideration of earning capacity in lieu of the parent's income in certain circumstances. Other California statutes<sup>31</sup> provide for the Local Child Support Agency (LCSA) to request an initial child support order based on presumed income (i.e., full-time minimum wage) when the income of the obligor is unknown to the LCSA. Whether California meets these expanded federal requirements is explored in this report, and recommendations to bring California in full compliance with these federal regulations by September 2024 are made.

The federal rule changes are grounded in research that finds compliance is lower and unpayable arrears accrue when income is imputed.<sup>32</sup> The specific concern is when income is imputed beyond what an obligated parent, particularly an obligated parent with income below or near poverty, actually earns or has capacity to earn. The intent is to use the best evidence available of actual income, including income information from automated sources and verbal testimony.<sup>33</sup> Addressing order amounts at the front-end can avoid the need for enforcement actions and is more responsive to the Supreme Court decision in *Turner v. Rogers*, 564 U.S. 431, 131 S Ct. 2507 (2011), which concerned a civil contempt action for non-compliance of a child support order, that was also an impetus for the rule changes.<sup>34</sup> In addition, the federal rule changes recognize the importance of healthy parent–child relationships in the development of children

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<sup>28</sup> See the end of Appendix A for the steps that the agency must take to gain a factual basis of income and earnings to be used in the guidelines calculation (45 C.F.R. § 303.4).

<sup>29</sup> Several states specify incarceration of over 180 days to be congruent with the provision in 45 C.F.R. § 303.8 that is also shown in Appendix A.

<sup>30</sup> California Family Code section 4055(b)(E)(7).

<sup>31</sup> California Family Code sections 17400(d)(2), 17404.1(b),

<sup>32</sup> See pp. 68553–56 of U.S. Department of Health and Human Services. (Nov. 17, 2014). “Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs.” *Federal Register*, Vol. 79, No. 221. Retrieved from <https://www.govinfo.gov/content/pkg/FR-2014-11-17/pdf/2014-26822.pdf>.

<sup>33</sup> U.S. Department of Health and Human Services (2016). *Supra*, note 25, p. 93495.

<sup>34</sup> U.S. Department of Health and Human Services. (Nov. 17, 2014). “Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs.” *Federal Register*, Vol. 79, No. 221. p. 68555. Retrieved from <https://www.gpo.gov/fdsys/pkg/FR-2014-11-17/pdf/2014-26822.pdf>.

and how unpaid child support in some situations can inadvertently create barriers to the healthy interaction between the child and the parent obligated to pay support.

Additionally, the new requirements as part of a state's guidelines review are to:

- Consider labor market data by occupation and skill level;
- Consider the impact of guideline amounts on parties with incomes below 200 percent of the federal poverty guidelines;
- Consider factors that influence employment rates among obligors and compliance with child support orders;
- Analyze rates of default and imputed child support orders and orders determined using the adjustment for the obligor's basic subsistence needs;
- Analyze payment patterns;
- Provide opportunity for public input, including input from low-income parents and their representatives and the state/local IV-D agency;
- Make all reports public and accessible online;
- Make membership of the reviewing body known; and
- Publish the effective date of the guidelines and the date of the next review.

This report fulfills all of the analysis requirements.

## **California Children and Child Support**

Child support is an important source of income to many California children. Based on the U.S. Census American Community Survey, there were almost nine million children living in California in 2019.<sup>35</sup> The 2021 Kids Count, which is an extensive annual report card on child well-being published by the Annie E. Casey Foundation, reports several statistics mostly from 2019 that are relevant to child support.<sup>36</sup>

- The percentage of California children living in poverty is 16 percent, while it is 17 percent nationally.
- The percentage of California children whose parents lack secure employment is 27 percent, while it is 26 percent nationally.
- The percentage of California children living in single-parent families is 33 percent, while it is 34 percent nationally.
- The percentage of California female-headed families receiving child support is 18 percent, while it is 26 percent nationally.<sup>37</sup>

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<sup>35</sup> U.S. Census American Community Survey 2019. Retrieved from <https://data.census.gov>.

<sup>36</sup> Annie E. Casey Foundation. (2021). 2021 Kids Count Data Book: State Trends in Child Well-Being. Retrieved from <https://assets.aecf.org/m/resourcedoc/aecf-2021kidscountdatabook-2021.pdf>.

<sup>37</sup> For this particular data field, the data is actually from 2018–2020. Retrieved from <https://datacenter.kidscount.org/data/tables/10453-female-headed-families-receiving-child-support?loc=52&loc=2#detailed/2/6,52/false/1985,1757,1687/any/20156,20157>.

Many California families benefit from child support. The Department of Child Support Services (DCSS) publishes many of the statistics that they must report to the federal Office of Child Support Enforcement (OCSE) and other pertinent statistics to the IV-D program annually. In federal fiscal year (FFY) 2020, the combined statewide IV-D caseload across all 55 LCSAs is 1,088,672 cases.<sup>38</sup> (Most LCSAs are at the county level but some are regional, particularly for smaller counties). In FFY 2020, the statewide IV-D program (the combination of all LCSAs) established 47,710 support orders and collected and distributed over \$2.8 billion in child support.<sup>39</sup> The guideline would also apply to modified orders. There is not a published count of modified orders. There are also child support cases that are not part of statewide IV-D caseload. Albeit all orders established and modified are to be reported to the state child support case registry that DCSS oversees, its count of non-IV-D orders is understated due to failure of individuals to complete and submit the form necessary to be registered with the state case registry. State child support agencies are not required to report collections on non-IV-D cases to OCSE so tracking is nominal. Although the amount is unknown, it is likely to exceed IV-D collections.<sup>40</sup>

Although state data are not available, a 2015 national study found that without child support, the child poverty rate would be 7.0 percentage points higher.<sup>41</sup> A new U.S. Congressional Research Services (CRS) report finds that many obligors also are economically vulnerable: CRS estimates that more than one-third of obligors have low income in 2018, which the CRS defines as income less than 200 percent of the federal poverty threshold.<sup>42</sup> In addition, a recent report by the Pew Foundation provides additional background information about the issue of incarcerated parents.<sup>43</sup> It found that about 500,000 children in California (5 percent of all children in the state) had parents who were incarcerated in 2011 or 2012, while the comparable percentage is 7 percent nationally.

## **Proceedings for Establishing or Modifying Child Support Orders**

California superior courts establish or modify child support orders. Certain child support orders—those established or modified pursuant to part D of Title IV of the Social Security Act

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<sup>38</sup> California Child Support Services. (Feb. 2021.) *Comparative Data for Managing Program Performance: Federal Fiscal Year 2020*. Table 02.2. [https://childsupport.ca.gov/wp-content/uploads/sites/252/2020/10/2021-2-4\\_FFY-2020-Comparative-Data-Report.pdf](https://childsupport.ca.gov/wp-content/uploads/sites/252/2020/10/2021-2-4_FFY-2020-Comparative-Data-Report.pdf)

<sup>39</sup> *Id.* Table 3.5 and Table 4.1.

<sup>40</sup> The authors suggest this based on data from various sources that non-government child support cases tend to have higher orders and higher payments data.

<sup>41</sup> Sorensen, Elaine. (Dec. 2016). “The Child Support Program Is a Good Investment.” *The Story Behind the Numbers*. Federal Office of Child Support Enforcement. p. 8. Retrieved from [https://www.acf.hhs.gov/sites/default/files/programs/css/sbtn\\_csp\\_is\\_a\\_good\\_investment.pdf](https://www.acf.hhs.gov/sites/default/files/programs/css/sbtn_csp_is_a_good_investment.pdf).

<sup>42</sup> U.S. Congressional Research Service. (Oct. 2021). *Demographic and Socioeconomic Characteristics of Nonresident Parents*. Retrieved from <https://crsreports.congress.gov/product/pdf/R/R46942>.

<sup>43</sup> The Annie E. Casey Foundation. (Apr. 2016). *A Shared Sentence: The Devastating Toll of Parental Incarceration on Kids, Families and Communities*, p. 5. Retrieved from <http://www.aecf.org/m/resourcedoc/aecf-asharedsentence-2016.pdf>.

(commonly referred to as the “IV-D program”)—are established within California’s child support commissioner program (Fam. Code, § 4250). California’s IV-D program is administered by the Department of Child Support Services (DCSS), but services are delivered at the county and regional level by local child support agencies (LCSAs). LCSAs can file petitions to establish parentage, establish and enforce child support orders, collect child support, obtain and enforce health insurance coverage for the child, and file requests to modify existing child support orders. IV-D services are automatically provided in cases where public assistance monies have been expended. IV-D services are also provided in non–public assistance cases at the request of a parent for a nominal fee in certain cases.<sup>44</sup> Services include locating a parent; establishing parentage; establishing, modifying, and enforcing a court order for child support; and establishing, modifying, and enforcing an order for health coverage. Some LCSAs also provide referrals to employment services, typically to unemployed obligated parents, and referrals to other community services. The federal government and, in part, states and local governments fund the IV-D program.

In California, the LCSA files the initial complaint in IV-D program cases in the name of the county in which the application for Title IV-D services is made. The attorney for the local child support agency does not represent either parent. The custodial parent is joined as a party to the case once the judgment is entered. Either parent can apply for Title IV-D services and/or use the IV-D program to request a modification, including an obligor who is seeking a downward modification.

Child support commissioners hear all support actions (child and spousal) and parentage actions filed in cases where the LCSA is providing services. The commissioner’s duties include taking testimony, establishing a record, evaluating evidence, making decisions or recommendations, and entering judgments or orders based on stipulated agreements. Family law facilitators are attorneys employed by the court and available to assist either parent with child support issues in cases heard by commissioners, free of charge. For example, Family Law Facilitators provide parents with educational materials, distribute and help complete necessary court forms, and prepare guideline calculations. However, this interaction between facilitator and parent does not create an attorney-client relationship.<sup>45</sup>

“Non-IV-D cases” are those in which child support orders are established and modified outside the IV-D system. A number of large and medium-sized counties have dedicated family law courtrooms to hear cases involving child support and other family law issues (e.g., custody, visitation, dissolution of marriage, and domestic violence restraining orders). The role of these courts in hearing child support cases is to take testimony, establish a record, evaluate evidence, make decisions as to support, enter judgment or orders, and approve stipulated agreements between parties.

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<sup>44</sup> See *supra* note 1.

<sup>45</sup> Fam. Code, § 10013.



Under Family Code section 4065, the parties to a child support order (regardless of IV-D status) may stipulate to an amount of support with the approval of the court. Where the parties stipulate to a below guideline child support order, the court must ensure that the parties have been informed of their rights, that the parties were not coerced into agreeing to the stipulation, the needs of the children will be adequately met, the right to support has not been assigned to the county and no public assistance application is pending and that the agreement is in the best interest of the children.

## **Activities of the 2021 Guideline Review**

In June 2021, the Judicial Council, through a competitive bidding process, contracted with the Center for Policy Research (CPR) to provide technical assistance for California's child support guideline review. Federal and state requirements for review of the guideline were met through the following activities:

- Reviewing the economic studies underlying the existing California guideline formula;
- Conducting a literature review of studies estimating child-rearing expenditures, including the most recent economic evidence, and comparing the results of these studies with the parameters (i.e., the anchor *K-factor* and income bands) of the California guideline formula;
- Examining the impetus for federal rule changes that expanded requirements of state guidelines including the requirement for a low-income adjustment (LIA), and the consideration of the individual obligor when income imputation is authorized;
- Reviewing whether California's current LIA adequately addresses the circumstances of low-income families particularly in light of the research underlying the federal requirement for a LIA;
- Using labor market data and case scenarios to assess the impact of the guideline on low-income families;
- Conducting a legal analysis of the new federal requirements of state guidelines to assess whether California fulfills them;
- Collecting and analyzing case file data from a review of recently established and modified child support orders;
- Measuring how frequently the guideline is applied and deviated from, as well as the reasons for, amount of, and upward and downward direction of deviations;
- Analyzing how frequently orders are entered by default, income is imputed or presumed to the obligor, and the LIA is applied, and payment patterns for these three factors;
- Analyzing parents' characteristics and circumstances in which support is established or modified;
- Adding context to the statistical results of case data analysis and improving interpretation through focused discussion groups with a broad cross-section of child support commissioners and stakeholder groups involved in child support issues;
- Seeking input from parents and other stakeholders about how the guideline is being applied, the appropriateness of the guideline, and whether it serves the best needs of the children; and

- Comparing selected provisions of the California guideline and their application with those of other states' guidelines.

## **Previous Reviews by the Judicial Council**

The 2021 review is the sixth conducted by the Judicial Council. The previous reviews also examined the most current economic evidence on child-rearing expenditures and analyzed case file data to determine how the guideline was being applied and the extent of deviation from the guideline. With the exception of the last review, the economic evidence examined in these earlier reviews suggested that the core California guideline formula resulted in appropriate amounts of child support. The last review suggested that the formula may be too high relative to recent research, but did not make the assessment based on all studies of child-rearing expenditures. Previous reviews also found evidence that the low-income adjustment was not being applied to all eligible obligors and that the income threshold for applying it was outdated. This resulted in legislative changes that made the adjustment presumptive and reset the income threshold to a higher amount and provided for an annual cost-of-living increase. The analyses of case file data in these earlier reviews found that the guideline was, in general, being applied and that few orders deviated from the guideline.

## **Organization of This Report**

The remainder of this report consists of six chapters. The main purpose of Chapter 2 is to review the economic basis of the current formula and to analyze the most current economic evidence on the costs of child rearing. The chapter relates the economic evidence to the principles underlying the state guideline.

Chapter 3 discusses the impetus for the new federal requirement of states to have a low-income adjustment. It considers the impact of child support on low-income parents by using labor market data and through case scenarios. It compares California's computation of support awards for low-income parents to those of other state guidelines.

Chapter 4 presents the finding from the legal analysis of the federal changes to how state's consider income available for child support. It analyzes how other states are meeting the federal changes and whether California needs statutory changes to meet the expanded federal requirements.

Chapter 5 presents findings from the analysis of case file data. The purpose of the analysis is to examine how the guideline is being applied by judicial officers around the state and to identify reasons that judicial officers may enter order amounts different from those based on the guideline. It also presents the findings from additional federally-required analysis on the frequency of default judgments, income imputation/presumption, and the application of the low-income adjustment and the analysis of payment data by these three factors. The chapter presents

statistics on the frequency with which child support orders deviate from the guideline, the application of permissible adjustments to income, and other case and order characteristics.

Chapter 6 presents the findings from the four focus groups including one with parents who pay or receive child support. It presents the participants' perspectives of the guideline and recommendations for improving it. The stakeholders include a broad cross-section of groups involved in child support as identified in Family Code section 4054(f).

Chapter 7 presents conclusions and recommendations resulting from the 2021 review process.

## **Chapter 2:**

# **Basis of the Child Support Guideline Formula and Economic Evidence of the Cost of Raising Children**

Both federal regulation and state statute require the examination of economic evidence on the cost of raising children as part of the review of the child support guideline. This chapter satisfies this requirement and determines whether the current child support guideline meets the needs of children in California. The review concludes that the first income band of the California formula (which applies to extremely low-income parents) is out of date, however the other income bands are within the range of the economic evidence on the cost of raising children. Additionally, some tweaks and refinements to adjust for more children are appropriate.

Most state guidelines, including California's, base their guideline formulas or schedules on measurements of child-rearing expenditures. Federal regulation (45 C.F.R. § 302.56(h)) and state statute (Fam. Code, § 4054(f)) require consideration of economic data on the cost of child rearing in the periodic review of the guideline and revise it if it appropriate.<sup>46</sup> The intent is to ensure that state guidelines reflect current economic data. The California formula was developed almost 30 years ago and, with the exception of the low-income adjustment, the formula has never been updated.

This chapter reviews the basis of the existing California child support formula, then unpacks the formula into subcomponents in order to compare it to the most current economic evidence of child-rearing expenditures as well as other economic studies and assumptions underlying current state child support guidelines.

### **Historical Basis of the California Formula**

Prior to the 1984 Child Support Amendments to the Social Security Act (Public Law 98-378) that required each state to have a statewide advisory guideline by 1987,<sup>47</sup> several California counties already provided child support guidelines. In addition, through the Agnos Child Support Standards Act of 1984, California provided a minimum statewide standard that considered the public assistance amount of an Aid to Families with Dependent Children (AFDC) grant for the

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<sup>46</sup> The requirement states the "cost" of child rearing, but most states rely on measurements of expenditures because costs do not necessarily increase with income, particularly the cost of a child's minimum basic needs. The policy decision underlying all state guidelines is that the support order should be higher the more income that the parent paying support has. The underlying premise is that the child should share in the lifestyle that the parent owing support can afford.

<sup>47</sup> The 1984 Child Support Amendments to the Social Security Act (Public Law 98-378) required each state with a government child support program through Title IV-D of the Social Security Act to have one set of child support guidelines to be used by all judicial or administrative tribunals that have authority to determine child support orders within the state by 1987. The Family Support Act of 1988 (Public Law 100-485) expanded the requirement by requiring that the application of a state's guideline be a rebuttable presumption.

same number of children in the child support case.<sup>48</sup> In 1986, the Judicial Council adapted a formulaic version of the Santa Clara child support schedule and required counties to use their own formula or the Council's formula when setting child support orders.<sup>49</sup>

The Judicial Council selected the Santa Clara child support schedule over other county schedules as the basis of the Council's formula based on input and recommendations from guidelines users.<sup>50</sup> Those who provided input gave several reasons for favoring the Santa Clara guidelines, "including that its figures are reasonably close to the true cost of child-rearing, that it [the Santa Clara guidelines], promotes uniformity, and that it aids on pro rata sharing of transportation, child care, and medical and dental expenses."<sup>51</sup>

The Family Support Act of 1988 (Public Law 100-485) expanded the federal requirement for states to have advisory guidelines to provide for one statewide rebuttal presumptive guideline.<sup>52</sup> Due to this change, there was some concern in California that the expanded federal requirement no longer lent itself to the use of the Judicial guideline and multiple county guidelines; rather, there would be a need for one statewide guideline. To address this concern and other issues, the 1990 California legislature directed the Judicial Council to develop a temporary child support guideline to be adopted by court rule, and a framework for developing a permanent guideline.<sup>53</sup> The 1993 California legislature adopted the child support formula that is still in effect today.

One key difference between the initial temporary child support guideline and today's California guideline was that the initial temporary guideline restricted the adjustment for shared custody to cases where each parent had the child at least 30 percent of the child's time.<sup>54</sup> However, even before the 30 percent threshold could become effective, it was eliminated in response to criticism that setting a threshold would encourage custody and visitation litigation among parents around the 30 percent threshold either to achieve or prevent the application of the adjustment.<sup>55</sup> After the introduction of a few other legislative proposals that varied in their treatment of custody and visitation, the 1992 legislature passed a compromise bill.<sup>56</sup> It changed the consideration of shared physical custody to the consideration of "primary physical responsibility" and "approximate" percentage of time.<sup>57</sup> In 1993, the *K-factor* in the formula was also revised to "smooth out" the reduction in the guidelines-determined amount as income rises.<sup>58</sup>

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<sup>48</sup> The minimum was the lower of the AFDC grant or a percentage of total family income that varied by the number of children: 18 percent for one child, 27 percent for two children, 36 percent for three children, and 4 percent more for each additional child up to 10 children. Judicial Council of Cal., *Review of Statewide Uniform Child Support Guideline* (Dec. 1993), at 9.

<sup>49</sup> Judicial Council of Cal., *Review of Statewide Uniform Child Support Guideline* (Dec. 1993), at 122.

<sup>50</sup> *Id.* at 117.

<sup>51</sup> *Id.*

<sup>52</sup> See 45 C.F.R. § 302.56.

<sup>53</sup> Judicial Council of Cal. (1993) *supra* note 49, at 13.

<sup>54</sup> *Id.* at 14.

<sup>55</sup> *Id.* at 15.

<sup>56</sup> *Id.* at 18.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 21.

## Overview and Basis of California Formula

This section focuses on the assumptions and data underlying the existing California formula. The intent is to pull it apart in order to understand their appropriateness for today and in the future.

### Underlying Premises of the Existing California Formula

The report documenting the 1993 review of the California child support guideline noted that the California guideline formula is based on the income shares model because the California guidelines consider each parent's share of income when determining the support order amount.<sup>59</sup> Today, 41 states including California use the income shares guidelines model.<sup>60</sup>

### Income Shares Model

A state's guideline model dictates the type of economic measurements to be considered in a its guideline formula. Generally, three options exist: childrearing expenditures among intact families,<sup>61</sup> childrearing expenditures among single-parent families, and the cost of the child's basic subsistence needs. Economic data on childrearing expenditures in shared-parenting situations that could be used to inform a state's guideline formula do not exist. Most guideline models in use by states rely on estimates of childrearing expenditures among intact families for base support, then adjust for the current circumstances of the case, including shared-parenting time and other children a parent has a financial obligation to support besides the children for whom support is being determined. No state uses a guideline model that relies solely on estimates of expenditures among single-parent families or the child's basic subsistence needs. (Nonetheless, these basic subsistence needs are identified in Chapter 2 that explores low-income adjustments.)

The income shares model is a "continuity of expenditures model," which presumes that the child support order should allow the children to benefit from the same level of expenditures had the children and both parents lived together.<sup>62</sup> Researchers generally categorize the income shares model and the percentage-of-obligor model (which is currently used by seven states) as subtypes of the continuity of expenditures model. The income shares model calculates the support order amount assuming that each parent is responsible for their prorated share of child-rearing expenditures. In contrast, most percentage-of-obligor guidelines presume that the parent receiving support devotes the same percentage of income or dollar amount to child-rearing expenditures as what the other parent is required to pay in child support.

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<sup>59</sup> *Id.* at 26.

<sup>60</sup> Nat'l Conf. of State Legislatures., Child Support Guideline Models. (Jul. 2020). Retrieved from <https://www.ncsl.org/research/human-services/guideline-models-by-state.aspx>.

<sup>61</sup> To be clear, historically, this has been measured from two-parent families where the two parents are a husband and a wife. Recent estimates also consider intact families with domestic partners.

<sup>62</sup> Ingrid Rothe & Lawrence Berger. "Estimating the Costs of Children: Theoretical Considerations Related to Transitions to Adulthood and the Valuation of Parental Time for Developing Child Support Guidelines." *IRP Working Paper* (Univ. of Wisconsin Inst. For Research on Poverty, Apr. 2007). Retrieved from <https://www.irp.wisc.edu/resource/estimating-the-cost-of-children-theoretical-considerations-related-to-transitions-to-adulthood-and-the-valuation-of-parental-time-for-developing-child-support-guidelines/>.

Quoting a 1987 federal OCSE-sponsored study, the 1993 California guideline review explains that the income shares model is based on the concept that:

[T]he child should receive the same proportion of parental income he or she would have received if the parents lived together. Under this model, a basic child support obligation is computed based on the combined income of the parents (replicating total income in an intact household.) This basic obligation is then pro-rated in proportion to each parent's income.

(California 1993 report, at 26.)

The architects of the income shares model designed a prototype model to adjust for the current realities of the parents and children by including adjustments for a parent's additional dependents, shared-parenting time, a self-support reserve for a low-income payors, and other factors.<sup>63</sup> Still, the underlying principle of the income shares model and other continuity-of-expenditures models is that the guidelines should apply equally to children of divorce and children of unmarried parents, regardless of whether the parents ever lived together, and that children should not be economically disadvantaged by their parents' decisions to live apart.<sup>64</sup>

### ***Other Guideline Models***

Besides continuity-of-expenditures guidelines models, three states (i.e., Delaware, Hawaii, and Montana) use the Melson formula, which is characterized as a hybrid between the income shares model and a percentage-of-obligor guidelines model. The Melson formula subtracts a basic subsistence amount from each parent's income used to determine support, prorates the cost of the child's basic subsistence needs between the parents, and assigns a flat percentage of the obligor's remaining net income after subtracting the obligor's basic subsistence needs and the obligor's share of the child's basic subsistence needs to child support. The Melson formula first calculates base support, then adjusts for the time-sharing amount. Every state currently using the Melson formula requires that each parent have at least a certain amount of time-sharing before providing an adjustment (i.e., 79 nights in Delaware, 143 nights in Hawaii, and 110 nights in Montana).

All guideline models used by states today (i.e., the income shares model, the percentage-of-obligor guideline model, the Melson formula) provide higher support amounts when the obligor has more income, rather than calculate child support using the cost of the basic needs of the child only. Although states have considered several other guidelines models over the past few

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<sup>63</sup> National Center for State Courts. (1987). Development of Guidelines for Child Support Orders, Final Report. Report to U.S. Department of Health and Human Services, Office of Child Support Enforcement, Williamsburg, VA.

<sup>64</sup>More information about the underlying premises, application and impact of different guideline models can be found in Venohr, J. (Apr. 2017). Differences in State Child Support Guidelines Amounts: Guidelines Models, Economic Basis, and Other Issues. *Journal of the American Academy of Matrimonial Lawyers*.

decades,<sup>65</sup> all states that have switched guideline models in the past two decades have switched to the income shares model.<sup>66</sup>

Critics of the income shares model claim that it is a backward-looking method and have developed alternative models that are “forward-looking methods” for calculating support because they consider the living standard of each parent and the children after the transfer of child support. These models include the cost shares model introduced by the Children’s Rights Council,<sup>67</sup> the American Law Institute’s model (ALI), and Arizona’s Child Outcome-Based Support model (COBS).<sup>68</sup> None of these models have been adapted by any state. The cost shares model considers child-rearing expenditures in single-parent families rather than expenditures in intact families, and rather than considering the combined income of the parents, the cost shares model considers the average income of the parents. This has the mathematical outcome of reducing the amount of base child support order by up to half as much as the amount provided by the income shares model. The USDA estimates that single-parent and married-couple households with before-tax income below \$59,200 per year spend about the same amount to raise one child from birth through age 17 in 2015 (*i.e.*, \$172,200 for single parents and \$174,690 for married-couple households).<sup>69</sup> Yet, as a percentage of household income, a single parent devotes a higher share to child-rearing expenditures than a married couple devotes. This is because the single parent does not benefit from a dual income and a significant share of single-parent households live in poverty (*i.e.*, 30 percent of California female-headed households with minor children live in poverty in 2019).<sup>70</sup> Some versions of the cost shares model also use child-related tax benefits (*e.g.*, the Earned Income Tax Credit and the child tax credit) to offset the cost of raising children. In other words, they view the cost of raising a child to be the responsibility of the parents and the government.

The ALI model exists mostly in conceptual form, but influenced the COBS model that was developed by a legal scholar for use in Arizona, although Arizona never adapted it. One principal objective of the COBS is to narrow the income gap between the households when the obligor has considerably more income than the custodial household. Another principle of COBS is that the guidelines-determined amounts should not impoverish very low-income obligors. Application of

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<sup>65</sup> Examples of other guidelines models can be found at Judicial Council of Cal., Review of Statewide Uniform Child Support Guideline (Nov. 2010), at 27–28.

<sup>66</sup> Venohr, Jane & Matyasic, Savannah. *Review of the Arkansas Child Support Guidelines* (Sept. 2019), <https://www.arcourts.gov/sites/default/files/formatted-files/review-of-arkansas-child-support-guidelines.pdf>, at 2.

<sup>67</sup> Foohey, Pamela. “Child Support and (In)ability to Pay: The case for the cost shares model.” (2009). *Articles by Maurer Faculty*. 1276. Retrieved from

<https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2271&context=facpub>.

<sup>68</sup> More information about COBS can be found in Arizona Child Support Guidelines Review Committee, *Interim Report of the Committee*, Submitted to Arizona Judicial Council, Phoenix, Arizona on October 21, 2009. More information about the ALI can be found in the *1999 Child Support Symposium* published by *Family Law Quarterly* (Spring 1999).

<sup>69</sup> Lino, Mark. (2017). *Expenditures on Children by Families: 2015 Annual Report*. U.S. Department of Agriculture, Center for Nutrition and Policy Promotion. Miscellaneous Publication No. 1528-2015, Washington, D.C. Retrieved from [https://fns-prod.azureedge.net/sites/default/files/crc2015\\_March2017\\_0.pdf](https://fns-prod.azureedge.net/sites/default/files/crc2015_March2017_0.pdf), at 13.

<sup>70</sup> U.S. Census 2019 American Community Survey. Poverty Status in the Past 12 Months of Families by Family Type by Presence of Related Children under 18 years by age of related children. Retrieved from <https://data.census.gov>.



the COBS model generally produced lower amounts than Arizona's income shares model for very low-income cases and higher amounts than Arizona's income share model for very high-income cases. The COBS model yielded amounts closest to income shares when the parents have nearly equal income and nearly equal time-sharing.

### **Other Principles of the California Guideline Model**

In addition to considering each parent's share of income, the California guideline formula is predicated on the principle that the guideline amount shall consider the amount of time the child spends with each parent:

The court shall apply the guideline by dividing child support obligations among the parents based on income and amount of time spent with the child by each parent.

(Fam. Code, § 4052.5(a))

Exhibit 1 shows other guidelines principles provided in statute that are consistent with California's application of the income shares model. They also provide a framework for examining whether a guideline change is warranted based on economic evidence.

### **Exhibit 1: Principles to Be Considered in Implementing the Statewide Uniform Guideline**

Fam. Code, § 4053. In implementing the statewide uniform guideline, the courts shall adhere to the following principles:

- (a) A parent's first and principal obligation is to support the parent's minor children according to the parent's circumstances and station in life.
- (b) Both parents are mutually responsible for the support of their children.
- (c) The guideline takes into account each parent's actual income and level of responsibility for the children.
- (d) Each parent should pay for the support of the children according to the parent's ability.
- (e) The guideline seeks to place the interests of children as the state's top priority.
- (f) Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children.
- (g) Child support orders in cases in which both parents have high levels of responsibility for the children should reflect the increased costs of raising the children in two homes and should minimize significant disparities in the children's living standards in the two homes.
- (h) The financial needs of the children should be met through private financial resources as much as possible.
- (i) It is presumed that a parent having primary physical responsibility for the children contributes a significant portion of available resources for the support of the children.
- (j) The guideline seeks to encourage fair and efficient settlements of conflicts between parents and seeks to minimize the need for litigation.
- (k) The guideline is intended to be presumptively correct in all cases, and only under special circumstances should child support orders fall below the child support mandated by the guideline formula.
- (l) Child support orders shall ensure that children actually receive fair, timely, and sufficient support reflecting the state's high standard of living and high costs of raising children compared to other states.

Of most concern to the guideline review is Fam. Code, § 4053(l) that appears to reference California's higher cost of living, particularly housing expenses, compared to other states, although it phrases it as "the state's high standard of living." It is also assumed that the phrase "sufficient support" was intended to mean sufficient support to reflect California's high cost of living when affordable by the parents. With 12 percent of California families living in poverty,<sup>71</sup> it is not realistic to presume all California parents have the financial means to sufficiently support their children at a high standard of living.

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<sup>71</sup> U.S. Census 2019 American Community Survey. Poverty Status in the Past 12 Months of Families by Family Type by Presence of Related Children under 18 years by age of related children. Retrieved from <https://data.census.gov>,

## Description of the Existing California Formula

The California guideline calculates child support using the following factors:

- Each parent’s net disposable income as well as their combined net disposable income;
- The number of children; and
- The percentage of time that each parent has primary physical responsibility for the children.

The California guideline (Fam. Code, § 4059) provides a definition of a parent’s net disposable income. The definition begins with the parent’s gross income that is also defined in the California guideline (Fam. Code, § 4058). California’s definition of net disposable income allows for deductions for each party’s Federal Insurance Contributions Act (FICA) contribution and state and federal income tax liability with restrictions on how it is considered (e.g., it must bear accurate relationship to the tax status of the parent, such as whether the parent files taxes as a single taxpayer or head of household). To this end, it may consider the federal child tax credit and the earned income tax credit. Other permissible deductions are any court-ordered child or spousal support actually being paid, support paid for other children for whom the parent has a duty of support who are not covered by a court order,<sup>72</sup> deductions for health insurance or health plan premiums for the parent and for any children the parent has an obligation to support, and other deductions. Income does not include any income derived from any public assistance program.

Fam. Code, § 4055(a) provides the following formula:

$$CS = K [HN - (H\%) (TN)]$$

where *CS* means the “child support” amount determined by the formula to be payable for one child. For more than one child, *CS* is multiplied by the factors shown below.

1.6 for 2 children	2.0 for 3 children	2.3 for 4 children
2.5 for 5 children	2.65 for 6 children	2.75 for 7 children
2.813 for 8 children	2.844 for 9 children	2.86 for 10 children

*K* stands for the percentage of the total net disposable income of both parents to be allocated to child support.<sup>73</sup>

*HN* stands for the net monthly disposable income of the high earner between the two parents.

*H%* stands for the approximate percentage of time the high earner spends with the children.

*TN* stands for the total net disposable income of both parents.

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<sup>72</sup> See Fam. Code, § 4059(e).

<sup>73</sup> Fam. Code, § 4055(b) provides this definition. As discussed later, this is not entirely accurate mathematically.

*K-Factor* is provided for in Fam. Code, § 4055(b)(3) and used to calculate *K*, which is the fraction of total net disposable income of both parents allocated for child support. The *K-factor* is shown in Exhibit 2. It is set up like a tax table. Although not specifically stated in the guideline and discussed in greater detail later, it is intended to reflect the percentage of combined parental income devoted to child-rearing expenditures for one child in one household. Its reflection of economic data on the child-rearing expenditures is most evident for the total net disposable income range of \$801 to \$6,666 per month, where the *K-factor* is 25 percent. As discussed later, 25 percent is a common average estimate for the percentage of total expenditures that families devote to childrearing for one child.<sup>74</sup>

**Exhibit 2: *K-factor* from Fam. Code § 4055(b)(3)**

Total net disposable income per month	<i>K-factor</i> (amount of both parents' income allocated for child support)
\$ 0–\$800	$0.20 + TN/16,000$
\$801–\$6,666	0.25
\$6,667–\$10,000	$0.10 + 1,000/TN$
Over \$10,000	$0.12 + 800/TN$

Fam. Code § 4055(b)(2) provides two formulas for determining *K* using the *K-factor* (that varies by income) and *H%* (approximate percentage of time the higher earner has the child). Which formula is to be used depends on whether the high earner's time share with the child is more than 50 percent or 50 percent or less. If *H%* is less than or equal to 50 percent, then *K* is calculated by adding 1 to the *H%* and multiplying by the relevant *K-factor*. If *H%* is greater than 50%, *K* equals 2 minus *H%* multiplied by the pertinent *K-factor*. Exhibit 3 illustrates an example of this calculation.

**Exhibit 3: Illustration of California Formula Calculation: One Child**

	High Earner	Low Earner	Total
Net disposable income per month	\$4,000 ( <i>HN</i> )	\$1,000	\$5,000 ( <i>TN</i> )
Amount of time higher earner has with the child	20% ( <i>H%</i> )		
<i>K-factor</i>	0.25		
$K = K\text{-factor} \times (1 + H\%)$	$(K) = 0.30 = 0.25 \times (1 + 0.20)$		
Child Support $CS = K[HN - (H\%)(TN)]$	$(CS) = .30 [4,000 - (.20)(5,000)]$ $= .30 [4,000 - 1,000]$ $= .30 [3,000]$ $= \$900$		

### Underpinnings of the *K-factor*

Exhibit 4 identifies the tacit underpinnings of the *K-factor* by assuming the high earner has no time with the child (i.e., *H%* equals zero). The calculated *K* values shown in Exhibit 4 suggest

<sup>74</sup> To be clear, most of the studies estimate childrearing expenditures in married-couple households—that is, the child is being raised in one household. There are new data that extends the estimates to domestic partners. No state bases their child support formula or schedule on estimates of child-rearing expenditures in single-parent households.

that, on average, 25 percent of the total net disposable income of the parents is devoted to raising one child for combined net incomes of \$801 per month to \$6,666 per month. Between total net disposable incomes of \$6,667 to \$10,000 per month, the percentage gradually decreases to imply 20 percent, on average, of total net disposable income is devoted to raising one child. For total net disposable incomes over \$10,000 per month, the percentage continues to decrease and eventually reaches 12 percent for an extremely high amount of total net disposable income (e.g., more than \$100,000 net per month). As discussed later, the *K-factor* of 0.25 appearing in the second income range (also called the “anchor *K-factor*”) is “loosely based”<sup>75</sup> on two early studies of child-rearing expenditures published in the 1980s.

**Exhibit 4: Calculated K from Fam. Code, § 4055(b)(3) when No Time-sharing**

Total net disposable income per month	<i>K-factor</i> formula	K = <i>K-factor</i> (assuming <i>H%</i> = 0)
<b>First income range (\$0–\$800)</b>	0.20 + <i>TN</i> /16,000	0.200
\$0		
\$80		
\$400		
\$800		
<b>Second income range (\$801–\$6,666)</b>	0.25	0.250
\$801		0.250
\$6,666		0.250
<b>Third income range (\$6,667–\$10,000)</b>	0.10 + 1,000/ <i>TN</i>	0.250
\$6,667		
\$10,000		
<b>Highest income range (above \$10,000)</b>	0.12 + 800/ <i>TN</i>	0.120
\$160,001		

The documentation of the assumptions and data underlying the *K-factor* and income bands is not thorough. The reduction in the *K-factor* for higher income is consistent with the finding of van der Gaag (1981) that the percentage of income needed for child-rearing expenditures declines with income.<sup>76</sup> There is evidence that the income bands of the current California formula were adapted and slightly modified from the income bands used for the Santa Clara County guideline; however, the basis of the Santa Clara County income bands and the subsequent modification of those income bands is unknown, particularly whether the incomes bands related to economic data and how. Further, there was some smoothing of the percentages in 1993 that may mean the percentages do not precisely relate to economic studies on the cost of raising children.

***K-Factor Formula for Lowest Income Interval***

As shown in Exhibit 2, the *K-factor* is less for the first income band, which covers combined incomes of \$0 to \$800 net month. The 1993 guideline review suggests that it is intended to be a low-income adjustment,<sup>77</sup> but does not explain the precise basis of using an income threshold of \$800 net per month and providing a *K-factor* formula that produces 20.0 to 25.0 for that first

<sup>75</sup> Judicial Council of Cal. (1993), *supra* note 49, at 21.

<sup>76</sup> Jacques van der Gaag, On Measuring the Cost of Children, Discussion Paper No. 663-81 (Univ. of Wisconsin Inst. for Research on Poverty, 1981), at 21.

<sup>77</sup> Judicial Council of Cal. (1993), *supra* note 49, at 31 and 113.

income band. The existing first income band is lower than that of the Agnos formula, which was the original statewide formula, that provided a *K-factor* of 26.0 for an income band of \$0 to \$1,667 net per month.<sup>78</sup> Several of the county and other guidelines in use prior to California's adaption of a statewide uniform guideline obviously had a low-income adjustment built into their guideline tables. For example, both the Agnos and Sacramento County tables provided for zero child support if the obligor's net income was less than \$350 per month, which was just about the federal poverty guidelines for one person at that time,<sup>79</sup> and then gradually increased the amounts for incomes above that. There may have been a recognized need for a low-income adjustment in the 1980s when these guidelines were being implemented. A 1987 federally sponsored report providing technical assistance to states on the development of guidelines recommended that states adopt a low-income adjustment to consider the subsistence needs of the parents.<sup>80</sup> If the federal poverty level for one person at that time was used as an indicator of basic subsistence needs, doubling it to consider each parent's basic subsistence needs would produce about \$800 per month in total net disposable income for both parents, which is the end point of the lowest income band. The original California uniform guideline did not contain the existing low-income adjustment; rather, California adapted it in 1994 and modified its income threshold later.<sup>81</sup> This may have occurred if the first income band was deemed inadequate or policymakers did not realize it was intended to be a low-income adjustment or both. (The need for the additional low-income adjustment is discussed in the next chapter.)

### **Underpinning of Including *H%* in the Calculation of *K***

A simplified explanation of the difference between the *K-factor* and *K* could be summarized as the *K-factor* is the percentage of combined parental income spent on one child on average for a particular income range when the child is being raised in one household,<sup>82</sup> while *K* considers the total amount expended for one child in both households because each parent has time with the child—that is, *H%* is greater than zero. This explanation is loosely corroborated by the summary discussion of why the *K-factor* is adjusted for *H%* in calculating *K* in the 1993 California guideline review report.<sup>83</sup>

A comparison of the results in Exhibit 3 and Exhibit 4 illustrate the significance of *H%* in the calculation of *K*. Exhibit 3 shows that *K* is 30 percent when the high earner has the child 20 percent of the time (*H%* equals 0.20), while Exhibit 4 shows that *K* is 25 percent when the high

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<sup>78</sup> *Id.* at 122.

<sup>79</sup> The federal poverty guidelines for one person in 1987 was \$458 per month. Retrieved from <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/prior-hhs-poverty-guidelines-federal-register-references>.

<sup>80</sup> National Center for State Courts. (1987). Development of Guidelines for Child Support Orders, Final Report. Report to U.S. Department of Health and Human Services, Office of Child Support Enforcement, Williamsburg, VA, at I-4 and II-60.

<sup>81</sup> Judicial Council of Cal., Review of Statewide Uniform Child Support Guideline (1998), at 2–15.

<sup>82</sup> As discussed in more detail later, there may be an exception to this for the lowest income band, which appears to be a low-income adjustment.

<sup>83</sup> Judicial Council of Cal. (1993), *supra* note 49, at 31. It states: “[T]he more time that the child spends with the noncustodial parent, the higher the percentage of total family income allocated to child support. This result is based on the legislative determination that higher amounts of shared custody result in greater child rearing costs.”

earner has the child 0 percent of the time ( $H\%$  equals 0). In other words,  $K$  increases when there is time-sharing. The reason is it costs more to raise a child in two households than one household because of some duplication of expenses such as housing for the child.  $K$  represents the presumed percentage of combined parental net income needed across both households.

Most state child support guidelines that adjust for time-sharing assume that 50 percent of child-rearing expenditures are duplicated after the obligor's time with the child reaches a state-determined threshold.<sup>84</sup> As mentioned earlier, although never implemented, the temporary version of the California statewide uniform guideline had a threshold of 30 percent. One reason for the threshold is that the child-rearing expenditures incurred by the parent with the greater amount of time with the child are not significantly reduced at low levels of time-sharing. For example, the parent with greater amount of time with the child still incurs housing expenses for the child. Arguably, even the cost of the child's food is not significantly reduced due to volume discount prices.

The California guideline formula presumes that the level of duplication is proportionate to the time spent. To illustrate this mathematically, continue with the scenario in Exhibit 4 where the  $K$ -factor of 25 percent is increased by 20 percent (which is the percentage of the child's time with the high earner) to arrive at  $K$ : 20 percent ( $H\%$ ) of 25 percent ( $K$ -factor) is 5 percent. This means that total child-rearing expenditures across both households ( $K$ ) are 25 percent plus 5 percent due to the duplication of some child-rearing expenditures by the parents. If the parents had equal time, 12.5 percent would be added to the  $K$ -factor of 25 percent to account for duplication of some child-rearing expenditures when arriving at  $K$ —that is, the total amount expended on one child by both parents ( $K$ ) would be 37.5 percent of their combined net income under equal parenting time.

### **Applying the Income Shares Consideration of Each Parent's Prorated Share**

The income shares model presumes each parent is responsible for their prorated share of the total amount expended for the child. For the higher earner, this would be  $HN$  (the net income of the higher earner) divided by  $TN$  (total net income).

$$\text{higher earner's share of total income} = HN/TN$$

The income shares model presumes that the parent receiving support contributes their prorated share of total child-rearing expenditures directly to the child. In California, since the net income of the lower earner is the difference between  $TN$  (total net income) and  $HN$  (the net income of the higher earner), the share of total amount expended for the child owed by the lower earner can be written as:

$$\text{lower earner's share of total income} = (TN - HN) / TN = 1 - HN/TN$$

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<sup>84</sup> Oldham, Thomas & Venohr, Jane. The Relationship Between Child Support and Parenting Time. *Family Law Quarterly* (2020). Retrieved from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3671945](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3671945).

Although embedding  $H\%$  into the formula is a simple algebraic way to reduce the child support calculation into one formula, most states provide for the calculation in a two-step formula process: one that addresses the proration of the total amount expended for the child between the parents, then a second formula that adjusts for time-sharing. California's simplified formula obscures the proration of the total amount expended for the child.

Assuming the high earner has less time, the obligor's share of total child-rearing expenditures would be:

$$HN's \text{ share of total expenditures} = HN/TN \times K \times TN$$

where

$$K = (K\text{-Factor}) \times (1 - H\%)$$

Since  $TN$  occurs in both the numerator and denominator, they cancel each other out and the above equation can be rewritten as:

$$HN's \text{ share of total expenditures} = HN \times K$$

If the higher earner has no time with the child,  $K$  is equal to the  $K$ -factor. As a consequence, the child support order could be calculated based on  $HN$  and the  $K$ -factor alone when there is no time-sharing. The total income of the parents is only used to lookup the  $K$ -factor. For example, if the higher earner's income is \$4,000 per month, using the information from Exhibit 4, the  $K$ -factor would be 0.25. When multiplied by  $HN$ , this results in an order of \$1,000 per month assuming zero time.

This could also be rewritten as follows if  $HN$  has no time with the child (i.e.,  $H\%$  equals 0).

$$HN's \text{ share of total expenditures} = HN/TN \times K\text{-factor} \times TN$$

where

$$K = (K\text{-Factor}) \times (1 - H\%)$$

This rewritten equation makes the proration obvious. It would also result in an order of \$1,000 per month assuming zero time. For example, if the lower earner's net income is \$1,000, the total income ( $TN$ ) would be \$5,000 per month and the high earner's share would be 80 percent (\$4,000, which is the  $HN$  in this scenario, divided by \$5,000, which is the  $TN$  in this scenario).

$$\$1,000 = 80\% \times 0.25 \times \$5,000$$



Understanding this is critical to comparing the California formula to measurements of child-rearing expenditures and the child support guidelines of other states because neither embed time-sharing into them.

***Differences between California’s Formula and Conventional Income Shares Schedule***

Income proration is clearer in other income shares states because most income shares states provide a schedule of basic obligations, which is the amount owed by both parents, for a range of combined parental incomes and number of children; then the schedule amount is prorated between the parents. The obligor’s prorated share forms the foundation of the child support order. There may be other adjustments on top of that for time-sharing and other considerations. Exhibit 5 provides an example of a typical income shares schedule: it is excerpted from Arizona’s child support guidelines. The basic obligations in the Arizona schedule reflect economic data on the costs of raising children for a particular combined parental income and number of children.

**Exhibit 5: Excerpt of Arizona Income Shares Schedule**

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
4000	765	1108	1306	1458	1604	1744
4050	771	1115	1314	1468	1614	1755
4100	776	1123	1322	1477	1625	1766
4150	781	1130	1330	1486	1635	1777
4200	786	1137	1339	1495	1645	1788
4250	791	1144	1347	1504	1655	1799
4300	796	1152	1355	1514	1665	1810
4350	802	1159	1363	1523	1675	1821
4400	807	1166	1371	1532	1685	1832
4450	812	1173	1379	1541	1695	1842
4500	817	1180	1388	1550	1705	1853
4550	822	1188	1396	1559	1715	1864
4600	827	1195	1404	1568	1725	1875
4650	833	1202	1412	1577	1735	1886
4700	838	1209	1420	1586	1745	1897
4750	843	1216	1428	1596	1755	1908
4800	848	1224	1437	1605	1765	1919
4850	853	1231	1445	1614	1775	1930
4900	858	1238	1453	1623	1785	1940
4950	863	1245	1461	1632	1795	1951
5000	869	1252	1469	1641	1805	1962

To illustrate the prorating, assume that one parent’s gross income (the petitioner in Exhibit 6) is \$4,000 per month and the other parent’s gross income (the respondent in Exhibit 6) is \$1,000 per month. (Arizona bases its guidelines on gross income rather than net disposable income.) The basic obligation for one child and a combined parental income of \$5,000 per month is \$869 per month. The parent with gross income of \$4,000 per month is responsible for 80 percent of the basic obligation (where \$4,000 divided by \$5,000 is 80 percent). This produces a preliminary child support order of \$695 per month (80 percent of \$869 is \$695, which is shown on Line 6 of Exhibit 6). After completing this step, the Arizona guidelines then provides a formula to adjust for the percentage of time that the child is with each parent (see Lines 7–10 of Exhibit 6). As evident in Exhibit 6, the steps allow for parents to clearly see what the order amount would be with and without the time-sharing adjustment. The advantage of this approach is transparency. The amount the Arizona guidelines presumes is needed to support the child is clearly presented in the schedule. The Arizona adjustment amount for time-sharing is a line item that is calculated from another lookup table. The disadvantages of this schedule/worksheet approach are it is not as succinct and efficient as the California formula, and it requires more tables and instructions.

**Exhibit 6: Arizona’s Income Shares and Parenting-Time Adjustment<sup>85</sup>**

	Petitioner	Respondent	Combined
Line 1: Monthly gross income	\$4,000	\$1,000	\$5,000
Line 2: Monthly adjusted gross income	\$4,000	\$1,000	\$5,000
Line 4: Basic child support obligation for 1 child(ren)			\$ 869
Line 5: Percentage share of income (each parent’s income on line 2 divided by combined income)	80%	20%	100%
Line 6: Preliminary child support obligation (Line 4 multiplied by Line 5)	\$695	\$174	
<b>Parenting Time Cost Adjustment</b>			
Line 7: Parenting time cost adjustment is for petitioner			
Line 8: Number of parenting days	73 days		
Line 9: Adjustment percentage (from Arizona’s Parenting Time Table)	10.5%		
Line 10: Dollar amount of adjustment (Line 4 multiplied by Line 9)	\$ 91		
<b>Final Order Amount</b>			
Line 11: Child support obligation to be paid by petitioner (Line 6 minus Line 10)	\$604		

The Santa Clara County child support guideline consisted mostly of a lookup table.<sup>86</sup> Similarly, most other California county guidelines and the Agnos child support guidelines were in table format. However, the table formats differed from the typical income shares schedule of today. Exhibit 7 shows an excerpt from Santa Clara County’s table in effect in 1989. This format

<sup>85</sup> This is an abbreviated version of the Arizona child support guidelines worksheet provided by Arizona Judicial Branch. (n.d.). 2018–2021 Child Support Calculator. Retrieved from <https://www.azcourts.gov/familylaw/2018-Child-Support-Calculator>. It assumes no adjustments for work-related childcare expenses, the cost of the child’s health insurance income deductions, support for other children, or other factors that can be considered in the Arizona child support guidelines.

<sup>86</sup> Santa Clara also provided a formula in its original formula that appears to be replaced with tables when Santa Clara County modified its guidelines.

incorporates the prorating within the table. Santa Clara County provided eight individual tables for one through eight children. The obligor’s income was on the vertical axis, and the obligee’s income was on the horizontal axis.<sup>87</sup>

Santa Clara County assumed the obligor’s time with the child was 20 percent in each of its eight tables. Essentially, the existing California statewide formula was derived to reflect these table amounts and provide for other time-sharing percentages besides 20 percent. The existing California statewide formula eliminated the need for several tables, but still resulted in about the same amount as the Santa Clara County guideline.

**Exhibit 7: Excerpt of Santa Clara County Table for One Child in Effect in 1989**

		Income of Parent Receiving Support										
		0	100	200	300	400	500	600	700	800	900	1000
Income of Parent Paying Support	500	103	98	93	88	83	77	72	67	62	57	51
	600	124	119	114	109	103	98	93	87	81	75	70
	700	145	140	135	129	124	119	114	109	103	98	93
	800	166	161	155	150	145	140	140	135	129	124	112
	900	187	187	181	176	166	161	155	150	144	138	131
	1000	207	202	197	192	187	181	176	170	163	156	149
	1100	228	223	218	213	207	202	196	189	181	174	168
	1200	249	244	239	233	228	222	214	207	199	193	186
	1300	278	265	239	243	248	240	232	225	217	211	204
	1400	291	285	280	274	265	257	250	242	235	228	222
	1500	311	306	300	291	282	275	267	260	253	246	239
	1600	332	326	316	308	300	292	284	277	270	263	257
	1700	352	343	333	325	316	309	301	294	287	281	274
1800	368	358	349	341	333	326	318	311	305	298	297	
1900	383	374	366	358	350	343	335	329	322	315	309	

**Underpinning of the Adjustment for the Obligor’s Time with the Child**

A clear advantage of the existing California statewide formula is it can easily adjust for the percentage of time with each parent and does not require individual tables for every possible time-sharing arrangement. Mathematically, the amount of the adjustment when the higher earner has 50 percent or less of the child’s time is:

*HN's adjustment for time-sharing is  $H\% \times K \times TN$*

In other words, the time-sharing adjustment is a simple percentage adjustment of the total amount expended for the child when the percentage adjustment is the high earner’s time-share

<sup>87</sup> The actual Santa Clara County table used the terms “supported parent” and “supporting parent” and included separate amounts for child support and spousal support.

( $H\%$ ). For example, if the total amount expended for the child is \$1,000 and the higher earner's percentage of time with the child ( $H\%$ ) is 20 percent, the high earner receives a credit of \$200 per month off their prorated share of total child-rearing expenditures. It is an offset (which is called a cross-credit formula in most states) where a theoretical order is calculated for each parent and then reduced by that parent's percentage of time with the child and the difference in the theoretical orders reduced for parenting time is the order amount owed by the parent with the larger theoretical order reduced for parenting time.

The California adjustment implicitly presumes that the amount of direct child-rearing expenditures incurred by the obligor is in proportion to the obligor's percentage of time with the child. This is consistent with Fam. Code, § 4052.5(a) that provides that child support must be divided by the amount of time spent with the child by each parent.

### ***When High Earner Has More Time with the Child***

As mentioned earlier, Fam. Code, § 4055(b)(2) provides two formulas for determining  $K$  using the  $K$ -factor and  $H\%$ . The above calculations rely on the  $K$  formula when the high earner has the child 50 percent of the time or less. Nonetheless, a similar interpretation of the California formula can be arrived at using the other formula; specifically, that the California formula:

- considers each parent's prorated share of total child-rearing expenditures;
- factors in that it costs more to raise a child in two households than one household; and
- provides for the obligor to receive an adjustment based on the obligor's percentage of time with the child.

To be clear, the parent with less time with the child is not always the parent who will pay support under the California formula. This is due to California's time-sharing adjustment, which is known as the cross-credit formula.<sup>88</sup> The cross-credit formula can result in a higher earner parent owing a lower earner parent even if the child spends more time with the higher earner parent.<sup>89</sup>

### **Underpinning of the Adjustment for More than One Child**

The California formula essentially recognizes that there are some economies of scale to having more children—that is, the second child does not cost the same amount as the first. At a practical level, there may be some sharing of living space such as bedrooms or hand-me-down clothes. As shown earlier, the California formula assumes that raising two children is 160 percent of what is needed to raise one child, so  $CS$  (child support for one child) is multiplied by 1.6; raising three children is twice as much of what is needed to raise one child, so  $CS$  is multiplied by 2.0; and raising four children is 230 percent more than what is needed to raise one child, so  $CS$  is

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<sup>88</sup> Judicial Council of Cal. (1993), *supra* note 49, at 32.

<sup>89</sup> Oldham and Venohr. *supra* note 84, at 171–178. For example, assume the higher earner has a net income of \$4,000 per month and the lower earner has an income of \$1,000 per month. ( $HN = \$4,000$  net per month, and  $TN = \$5,000$  per month.) The higher earner has the child 60 percent of the time ( $H\% = 60\%$ ).  $K$  is  $(2 - 60\%)$  multiplied a  $K$ -factor of 0.25:  $K$  equals 0.35. These values are plugged into the guidelines formula:  $K [HN - H\% (TN)]$ , which is  $0.35 [4,000 - 60\% \times 5000]$ . This results in \$350 in child support that the higher earner pays the lower earner.

multiplied by 2.3. Fam. Code, § 4055(b)(4) makes other incremental increases for up to 10 children.

### **Summary of Key Components of the California Formula and Their Underpinnings**

- The California formula relates to economic evidence of child-rearing expenditures through the *K-factor*. It implicitly represents the average percentage of combined parental income devoted to child-rearing expenditures for one child when the child is being raised in one household.
- The *K-factors* decrease within most income bands as income increases to reflect economic evidence that the percentage of income devoted to child-rearing expenditures declines as income increases.
- The first income interval is intended to be a low-income adjustment. It does not appear to be based on economic evidence on child-rearing expenditures for that income level.
- The California formula considers the economies of scale from more than one child.
- The California formula tacitly assumes that more is expended on the child when the child is raised in two households; and the increased amount relates to the percentage of time with the obligor.<sup>90</sup> In other words, if the obligor has more time, the increase is more.
- Each parent is responsible for their prorated share of total child-rearing expenditures incurred by both households.
- The California formula incorporates a reduction for the obligor's time with the child that is simply the percentage of obligor's time with the child multiplied by total child-rearing expenditures incurred by both households. It can result in the parent with more time with the child being required to pay support to the parent with less time when the parent with more time has more income than the parent with less time.

## **Comparing the California Formula to Economic Evidence on Child-Rearing Expenditures**

The California formula is compared to economic evidence of child-rearing expenditures by considering key components of the formula separately:

- The *K-factor*;
- The multiplier for more children; and
- The adjustment for shared parenting time.

Although closely related, a separate chapter reviews the low-income adjustment that is provided in the California child support guideline. The low-income adjustment is discussed separately because of a new federal requirement to address the basic subsistence needs of the obligor (45 C.F.R. § 302.56(c)(ii)).

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<sup>90</sup> This is most clear when the higher earner has 50 percent or less of the child's time because the higher earner will be the obligor. When the lower earner is the obligor, the increase is the percentage of the child's time with the lower earner parent.

## Overview of Economic Studies of Child-Rearing Expenditures

In all, this research considers over a dozen different studies of child-rearing expenditures. The studies vary by age and methodology used to separate the child's share of expenditures from total expenditures. Most of the studies have been discussed in reports for previous California child support guidelines reviews. Besides the original research on child-rearing expenditures conducted for California's 2018 guideline review, only two studies of child-rearing expenditures have been conducted since 2018. One study was conducted in 2020 by Professor David Betson, University of Notre Dame, for the State of Arizona using expenditures data collected in 2013–2019.<sup>91</sup> Another study was conducted in 2021 for the purposes of this report and is shown in Appendix B.

All of the studies consider what families actually spend on children rather than the minimum or basic needs of children. This is because the premise of most state guidelines is that children should share in the lifestyle afforded by their parents—that is, if the obligor's income affords the obligor a higher standard of living, the support order should also be more for that higher-income parent. Still, studies examining the cost of basic needs can inform the appropriate low-income adjustment and will be discussed in that chapter.

As discussed in previous reports, economists do not generally agree on which methodology best measures actual child-rearing expenditures. To compensate for this, California and most states follow the recommendation of a 1990 report commissioned by the U.S. Department of Health and Human Services.<sup>92</sup> That report recommends that the adequacy of a state's guideline amounts can be gauged by comparing them to the lower bound of estimates of child-rearing expenditures. State guideline amounts above the lower bound are adequate. The same study also compares state guidelines to the upper bound of the estimates of child-rearing expenditures. Any guideline amount between the lowest and highest of credible measurements of child-rearing expenditures can be deemed to be an appropriate amount. Using this approach, both the 2006 and 2010 reviews of the California guideline determined that the California formula generally fell within the range of estimates of child-rearing expenditures but at the higher end of the range.<sup>93</sup> Using more recent expenditure data and over a longer time period, however, the 2018 review suggested that the *K-factor* should be lowered.<sup>94</sup> Both of these studies are discussed in more detail later in this chapter.

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<sup>91</sup> Betson, David M. (2021). "Appendix A: Parental Expenditures on Children: Rothbarth Estimates." In Venohr, Jane & Matyasic, Savannah. (Feb. 23, 2021). *Review of the Arizona Child Support Guidelines: Findings from the Analysis of Case File Data and Updating the Child Support Schedule*. Report to the Arizona Supreme Court Administrative Office of the Courts. Retrieved from <https://www.azcourts.gov/Portals/74/FCIC-CSGR/SupplementalPacket-030121-FCIC-CSGRS.pdf?ver=2021-02-26-161844-187>.

<sup>92</sup> Lewin-ICF, *Estimates of Expenditures on Children and Child Support Guidelines* (U.S. Dept. of Health & Human Services, 1990).

<sup>93</sup> Judicial Council of Cal., Review of Statewide Uniform Child Support Guideline (Nov. 2010), at vi and 122.

<sup>94</sup> Judicial Council of Cal., Review of Statewide Uniform Child Support Guideline (Jan. 2018), at 31.

## Overview of Underlying Expenditure Data

Most of the studies rely on expenditure data collected from families participating in the Consumer Expenditure Survey (CE) that is conducted by the U.S. Bureau of Labor Statistics (BLS).<sup>95</sup> Economists use the CE because it is the most comprehensive and detailed survey conducted on household expenditures and consists of a large sample. The CE surveys households on hundreds of items. However, most studies of child-rearing expenditures do not itemize individual expenditure items (e.g., housing expenditures for the child, transportation expenditures for the child, and food expenditures for the child). Rather, most methodologies measure the child's share of total household expenditures. Still, the detailed questions and itemization of the CE contribute to the accuracy of the CE's measure of total expenditures.

The CE surveys about 5,500 households per quarter on expenditures, income, and household characteristics (e.g., family size). Households are selected to represent the entire U.S. civilian noninstitutional population, so the survey includes a range of incomes. Households remain in the survey for four consecutive quarters, with households rotating in and out each quarter.<sup>96</sup> Most economists combined several years of data to increase the sample size and used three or four quarters of expenditures data for a surveyed family.

Like most surveys, the BLS has made several improvements to the data it captures over time. Some of these improvements may explain some of the differences in study results over time. For example, in 2004, BLS made improvements to its income measurement that inadvertently affected the measurements of child-rearing expenditures at lower incomes. It appeared to reduce the numbers of low-income households with expenditures exceeding their income and the level that expenditures exceeded income. Still, average annual expenditures exceeding income is observed in the CE today. The BLS explains this may occur if there is a spell of unemployment or a self-employed consumer has a business loss and expenditures are maintained by drawing on savings, students using loans, and retirees drawing down on savings and investments.<sup>97</sup>

Around the same time, the BLS began reporting “outlays.” Outlays—as opposed to “expenditures,” which was previously used in older economic studies of child-rearing expenditures—are similar in that they both measure the cost of economic goods and services, including the sales tax on these items. They differ in their treatment of purchases of homes, vehicles, and other items procured through installment payments. Expenditures track more closely to how gross domestic product is measured by considering home purchases to be an investment in physical capital, so expenditures consider only the payment of mortgage interest, while outlays consider payments of both mortgage interest and principal, even if it is a second mortgage or home equity loan. (To be clear, the CE also captures rents for non-homeowners and other housing expenses such as utilities and HOA fees.) Expenditures captures the full purchase

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<sup>95</sup> More information about the CE can be found at <https://www.bls.gov/cex/>.

<sup>96</sup> Until recently, households remained in the survey for five consecutive quarters, so some of the earlier studies benefited from more data.

<sup>97</sup> U.S. Bureau of Labor Statistics. (June 2020). *Consumer Expenditure Surveys: Frequently Asked Questions*. Retrieved from <https://www.bls.gov/cex/csxfags.htm>.

price of any vehicle purchased during the survey period, whereas outlays consider only the monthly installment payments during the survey year for vehicles that are financed. In 2013, the BLS improved how it measured taxes. This is important to using the data to form child support guidelines because most households base expenditure decisions on their after-tax income, which is the amount available for expenditures, rather than their gross income. In turn, this also affects expenditures to after-tax income ratios that are often used to convert measurements of child-rearing expenditures to child support schedules and formulas.

The CE is designed to be a nationally representative survey with sufficient sampling to detect regional differences but not state differences. No state has tried to replicate the CE due to its prohibitive costs and resources involved. Beginning in 2017, however, the BLS has begun statewide sampling for five states including California. Most economists estimating childrearing expenditures combine data for about five years to achieve a sufficient sample size. The California CE is only available through 2019.

### **Comparing the *K-factor* to Economic Evidence on Child-Rearing Expenditures**

Several research questions are posed in the comparison of the *K-factor* to economic evidence on child-rearing expenditures:

- Whether 25 percent is the appropriate anchor for the *K-factor*—that is, the average percentage of family income devoted to child-rearing expenditures for one child when the child is being raised in one household;
- Whether and how the *K-factor* should vary with lower and higher incomes;
- Whether and how the evidence, which is mostly based on national data, can be adjusted to consider California’s higher cost of living;
- Whether and how the *K-factor* should be adjusted to recognize that some common child-rearing expenses are considered elsewhere in the guideline calculation—namely, the California guideline provides for the cost of child’s health insurance to be deducted from the income of the parent paying the child’s insurance and the treatment of additional child support to cover employment-related childcare costs and the uninsured health-care costs for the children.

As discussed in more detail, a recurring limitation to answering these research questions is that the *K-factor* relates to net incomes while most economic studies of child-rearing expenditures relate to total expenditures. As long as a family spends exactly the same amount as their net income and not more or less, expenditures will equal net income. In all, the results of most economic studies are not presented in a format comparable to the California formula. To compensate for this, additional assumptions are made to make them comparable when appropriate in this chapter. The limitations to these assumptions are also identified.

### **Comparing the *K-factor* Anchor to Economic Evidence**

The *K-factor* is the core of the California formula. For the largest income range, it suggests that families devote 25 percent of their net income to raising one child when the child lives in one



household. That percentage is “loosely based”<sup>98</sup> on two early studies of child-rearing expenditures by:

- Dr. Jacques van der Gaag, an economist with the University of Wisconsin Institute for Research on Poverty, for the state of Wisconsin in 1981;<sup>99</sup> and
- Dr. Thomas Espenshade, an Urban Institute economist, through a U.S. Department of Health and Human Services grant in 1984.<sup>100</sup>

The van der Gaag (1981) study was actually a literature review of 11 studies of child-rearing expenditures available at the time. The study found no consensus on the exact value of the cost of a child from the literature. To narrow the range, however, van der Gaag determined that the true cost of one child was between 20 and 30 percent of a couple’s income and so suggested that 25 percent was an obvious point estimate.<sup>101</sup> Although van der Gaag sometimes interchanges the words “income” and “expenditures,” he did say “income” in his statement but did not specify whether it was gross or net.

Espenshade (1984) estimated child-rearing expenditures from the 1972–1973 CE. Espenshade did not provide point estimates of child-rearing expenditures as a percentage of income or total family expenditures in his study, but other researchers have calculated them from Espenshade’s research. They find that the percentage of total family expenditures devoted to child rearing are 24 percent for one child and 41 percent for two children.<sup>102</sup> What Espenshade actually reported is a range of child-rearing expenditures for two-child families by socioeconomic class and other household characteristics.<sup>103</sup> Espenshade used the Engel methodology to separate the child’s share of expenditures from total household expenditures. Economists classify the Engel methodology as a marginal cost approach because it compares expenditures between two equally well off families: (1) a married couple with children, and (2) a married couple of child-rearing age without children. The difference in expenditures between these two families is attributed to child-rearing expenditures. To determine whether families are equally well off, the Engel methodology relies on food shares. Through calculus, economists believe that the Engel methodology overstates actual child-rearing expenditures.<sup>104</sup> The layperson explanation is that children are food intensive so families with children have to spend more on food, which drags the difference in expenditures between families with and without children up.

### ***New Economic Studies***

Four new studies of child-rearing expenditures since California began its last review in 2017 that was completed in 2018. Three of the studies use a marginal cost approach to estimate child-

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<sup>98</sup> Judicial Council of Cal. (1993) *supra* note 49, at 21.

<sup>99</sup> Jacques van der Gaag, *On Measuring the Cost of Children*, Discussion Paper No. 663-81 (Univ. of Wisconsin Inst. for Research on Poverty, 1981).

<sup>100</sup> Thomas J. Espenshade, *Investing in Children: New Estimates of Parental Expenditures* (Urban Inst. Press, 1984).

<sup>101</sup> van der Gaag, *supra* note 99, at 21.

<sup>102</sup> Lewin-ICF, *supra* note 9292, at 4–19.

<sup>103</sup> Espenshade, *supra* note 100, at 67.

<sup>104</sup> Lewin-ICF, *supra* note 92, at 2-27–2-28

rearing expenditures. For the 2018 California review, Professor William Rodgers, Rutgers University, developed estimates of child-rearing expenditures. Professor David Betson, University of Notre Dame, developed estimates in 2021 for Arizona. Also, economists from Florida State University updated their 2008 study in 2017.<sup>105</sup> Their earlier study was reported in the 2018 California report, but not their 2017 study. A marginal cost approach is an indirect way to estimate child-rearing expenditures. Appendix B provides a direct method applied to the same data Betson used for his 2021 study.

The 2018 California review recommended that the *K-factor* anchor be lowered to 21 percent.<sup>106</sup> This is based on estimates of child-rearing expenditures for one child measured from expenditures data from the 2000–2015 CE using the Rothbarth methodology.<sup>107</sup> Like the Engel methodology, economists classify the Rothbarth methodology as a marginal cost approach. Instead of food shares, however, to equate equally well-off families, the Rothbarth methodology relies on expenditures on adult goods.<sup>108</sup> Economists generally believe that the Rothbarth methodology understates actual child-rearing expenditures.<sup>109</sup> In layperson’s terms, this relates to families devoting a smaller budget share to adult goods once they have children. Measurements of child-rearing expenditures based on the Rothbarth methodology are the most commonly used measurements for state guidelines. They form the basis of 32 state guidelines.<sup>110</sup>

For the 2018 California review, Rodgers developed several different estimates that varied in data years used, sample selection criteria, and specification of the estimation model. Although most studies use the most current CE data available, for one variation, Rodgers included data from the 2000–2015 CE so it would encompass both the economic recession and growth periods because household expenditures sometimes change with macroeconomic cycles. Another variation of Rodgers’ research attempted to replicate measurements of child-rearing expenditures in the 2010 California review that were prepared by Betson using expenditures data from the 2004–2009 CE.<sup>111</sup> Betson has updated his measurements using expenditure data from 2013–2019.<sup>112</sup> This study is the most current study of child-rearing expenditures. Betson used the Rothbarth methodology to separate child-rearing expenditures for both studies.

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<sup>105</sup> Norribin, Stefan C., et al. (Nov. 2017.) *Review and Update of Florida’s Child Support Guidelines*. Retrieved from <https://www.courts.ca.gov/documents/lr-2018-JC-review-of-statewide-CS-guideline-2017-Fam-4054a.pdf>

<sup>106</sup> Judicial Council of Cal. (2018), *supra* note 94, at 31.

<sup>107</sup> The report calls the method used for separately the child-rearing expenditures from total expenditures the “Betson-Rothbarth model,” but this is believed to be an error. It is believed the reference to Betson is actually a reference to how Betson restricts the CE data when applying the Rothbarth model.

<sup>108</sup> Earlier Rothbarth studies including expenditures on adult goods to include adult clothing, alcohol, and tobacco. More recent studies just rely on adult clothing. Some also clearly adjust for some adult clothing being spent on teenage children in the home.

<sup>109</sup> A more technical explanation of the Rothbarth estimator is provided in Betson (2021), *supra* note 91. Additional analysis of both the Rothbarth and Engel estimators are also provided in Lewin-ICF (1990), *supra* note 92 at pp. 2-27–2-28.

<sup>110</sup> Laura Morgan. (Forthcoming). *Child Support Guidelines: Interpretation and Application*. Third Edition.

<sup>111</sup> Judicial Council of Cal. (2018), *supra* note 94.94

<sup>112</sup> Betson (2021), *supra* note 91.

For Betson's most current Rothbarth study, he provided four sets of child-rearing expenditures that varied slightly in sample selection of families.<sup>113</sup> The baseline set of measurements relied on married couples of child-rearing age with no other adults living in the household, which is the same specification of his previous studies. One alternative included families with older children, another included families with domestic partners, and the third alternative considered quarterly wage data rather than annualized data. In general, Betson found few differences in the results from these alternatives than the results from his baseline set of measurements. Betson found that estimated child-rearing expenditures when including domestic partners never exceeded 0.9 percent of the baseline estimates; that including families with adult children living in the household produced lower estimates than the baseline but was a small share of families; and that using quarterly data produced higher estimates than the baseline but that expenditures averaged over the year may be a more appropriate reflection of expenditures. To that end, the remainder of the discussion about Betson's 2020 findings refer to his baseline measurements.

#### *Side-by-Side Comparisons*

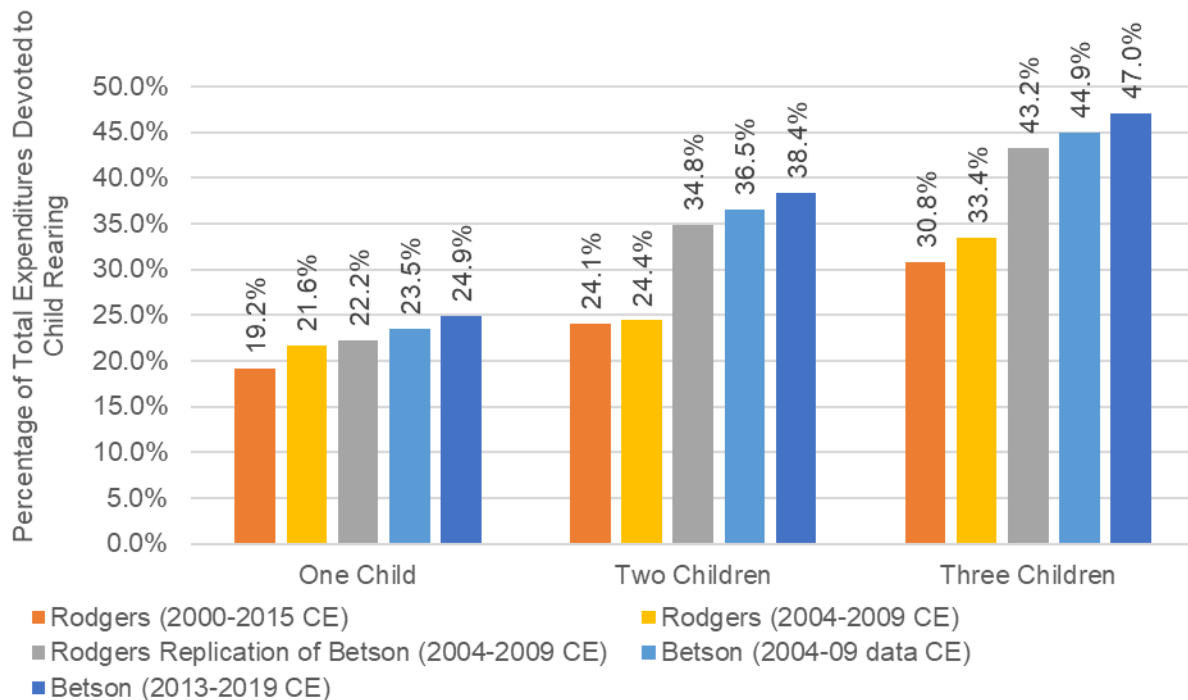
Exhibit 8 compares some of Rodgers' measurements to Betson's core measurements for one, two, and three children. As shown in Exhibit 8, the most current Betson measurements found that families devote 24.9 percent of their total expenditures to raising one child. Using older data, Rodgers found the percentage is less than 25 percent.

Using the Rodgers estimates alone would suggest that the California's anchor *K-factor* of 25.0 is too high. Betson's most recent Rothbarth estimate suggests that 25.0 percent is about right. One issue with relying on either study to assess the appropriateness of the *K-factor* anchor is that the Rothbarth method is known to understate actual child-rearing expenditures. Exacerbating that is both economists use national data while California is known to have a higher cost of living. (The consideration of California's higher cost of living is discussed in more detail later.)

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<sup>113</sup> More detail about the differences in the samples can be found in Betson (2021), *supra* note 91, at A-28.

**Exhibit 8: Comparison of Rodgers and Betson Measurements of Child-Rearing Expenditures**



There are many other differences underlying the Rothbarth estimates developed by Rodgers and Betson. Besides CE data years, Rodgers and Betson differ in their sample selection criteria and their application of Rothbarth’s theory, which, in turn, causes differences in their estimation model. An example of their differences in modeling is that Betson uses a quadratic equation to allow the percentage of expenditures to vary as the parents’ income increases, while Rodgers uses a linear function.<sup>114</sup> An example of their difference in sample selection criteria is that Betson excludes families with a third adult (who can be an adult child) in the household in his core measurements, while Rodgers does not. More detail about the study differences is provided in the Arizona report, which includes Betson’s most recent measurements.<sup>115</sup>

*Direct Measurements of Child-Rearing Expenditures Using 2013–2019 CE Data*

For the purposes of this review, Betson also estimated child-rearing expenditures from 2013–2019 CE data using another approach. Appendix B provides the results of this study. The other recent estimates of child-rearing expenditures relied on the Rothbarth methodology, which is known to understate actual child-rearing expenditures. Initially, Betson planned to replicate the USDA approach that directly measures child-rearing expenditures and apply it to the same subset of CE data that he used to develop his most recent Rothbarth estimates. He abandoned this approach because of insufficient documentation to replicate how the USDA arrived at the child’s share of housing expenses and medical expenses. Still, Betson was able to use approaches similar

<sup>114</sup> The 2018 California review suggested consideration of a linear approach. Judicial Council of California (2018), *supra* note 94, at 10.

<sup>115</sup> Betson (2021), *supra* note 91.

to the USDA to estimate the child's food costs, transportation costs, clothing, childcare, and miscellaneous expenses.

To arrive at the child's housing expenses, he used two different approaches. For one, he followed the current concept of the USDA approach, which is to base it on the cost of additional bedroom. For the other, he relied on the old USDA approach that uses a per capita approach to estimate the child's share of housing expenses. To arrive at the child's out-of-pocket medical expenses, he also relied on Medical Expenditure Panel Survey data like the USDA does. His estimates varied significantly depending on how he measured housing. When he used the cost of additional bedroom, he estimated that percentage of total expenditures allocated to children were 22.5 percent for one child, 35.6 percent for two children, and 45.7 percent for three or more children. When he used the per capita approach, he estimated that percentage of total expenditures allocated to children were 28.8 percent for one child, 43.7 percent for two children, and 54.8 percent for three or more children. The different results highlight how sensitive the overall estimate is to how the child's housing expenses are estimated. Housing expenses comprise the largest share of the total household budget. Betson suggests that the true value may be somewhere near the average of the two estimates: 25.7 percent for one child; 39.7 percent for two children; and 50.3 percent for three or more children.

Besides changes over time and differences in how housing and medical expenses were measured, Betson's direct measurement approach differed in other ways from the USDA approach. The USDA relies on quarterly data rather than annualized data and quarterly data is known to produce larger estimates. The USDA restricts its measurements for individual expenses to those with non-zero amounts. For example, the USDA measurement of childcare and education only includes families that have some childcare and education expenses.

#### *Florida State University Study Using Expenditures Data from 2009-2015*

The Florida researchers estimated child-rearing expenditures using both the Engel and Rothbarth approach. They reported their estimates as a percentage of consumption (total household expenditures) for five quintiles of income. Using the Engel methodology, they ranged from 19.2 to 21.9 percent for one child; 30.9 to 35.1 percent for two children, and 39.0 to 44.1 percent for three children.<sup>116</sup> Using the Rothbarth methodology, they ranged from 24.5 to 25.2 percent for one child; 37.7 to 38.8 percent for two children, and 46.2 to 47.4 percent for three children.<sup>117</sup> For the Engel methodology, the percentages were their largest at the lowest quintile of income and their smallest at the highest quintile of income. For the Rothbarth measurements, the converse was true. The Florida researchers also made a slight modification to their Engel and Rothbarth estimating equations to examine the impact of a variable indicating whether an examined household was from Florida. They found a slight increase.<sup>118</sup>

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<sup>116</sup> Norribin, Stefan C., et al. *supra* note 105 at p. 25.

<sup>117</sup> *Ibid* at p. 28.

<sup>118</sup> *Ibid* at p. 31.

Although the Florida researchers recognized that the Engel measurements were less than the Rothbarth estimates and that the Engel measurements were decreasing over time, they did not speculate why. However, a theoretical reason is provided in the 2010 California report. It stems from the observation that per capita food consumption decreases with family size increases, when it should theoretically increase if the family is better off.<sup>119</sup> Florida did not update their child support schedule using the Florida State study. Like California, Florida continues to rely on old measurements of child-rearing expenditures; specifically, the Espenshade estimates published in 1984.

### ***Comparisons to Older Studies***

For previous reviews, California has compared its guidelines amounts to a range of studies of child-rearing expenditures. As discussed earlier, this is a common approach used by many states and was recommended in a U.S. DHS report.<sup>120</sup> If a state's guidelines amounts are less than study forming the lower bound of credible measurements of child-rearing expenditures, this is an indication that the guidelines amount provides an inadequate level of support for children. If the state's guidelines amounts are above the study forming the highest bound of credible measurements of child-rearing expenditures, it is an indication that the guidelines amounts may not be appropriate. Most states use Rothbarth measurements as the lower bound and Engel or the United States Department of Agriculture (USDA) measurements as the upper bound. The limitation of using this approach for this review is that there have been no new Engel or USDA studies since California last reviewed its guidelines. Nonetheless, as shown in Exhibit 9, the estimates of child-rearing expenditures do not vary that much with different CE years, so may still provide useful comparisons.

Exhibit 9 shows that the most current USDA measurement indicates 26.0 percent of total expenditures are devoted to raising one child and the most recent Betson-Engel estimate, which was measured from 1996–1998 CE data, is well over 25 percent. Exhibit 9 shows the midpoint (3<sup>rd</sup> quintile) percentage of the Florida State University estimates because they reported their results for income quintiles and not for one income quintile. In all, the information in Exhibit 9 does not overwhelmingly corroborate Rodgers' suggestion that the *K-factor* anchor is too high.

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<sup>119</sup> Betson (2010). *supra* note, Appendix A-5.

<sup>120</sup> Lewin-ICF (1990), *supra* note 92.

**Exhibit 9: Comparison of Findings on the Average Percentage of Total Expenditures Devoted to Children**

<b>Economist/Methodology and CE Data Years</b>	<b>Number of Children</b>		
	<b>1</b>	<b>2</b>	<b>3</b>
<b>Betson/Rothbarth</b>			
2013–2019 CE	24.9%	38.4%	47.0%
2004–2009 CE	23.5	36.5	44.9
1998–2004 CE	25.2	36.8	43.8
1996–1998 CE	25.6	35.9	41.6
1980–1986 CE	24.2	34.2	39.2
<b>Rodgers/Replication of Betson Rothbarth</b>			
2004–2009 CE	22.2	34.8	43.2
<b>Rodgers/Rothbarth</b>			
2000–2015 CE	19.2	24.1	30.8
2004–2009 CE	21.5	24.4	33.4
2000–2011 <sup>121</sup>	21.0	25.0	31.0
<b>Florida State University/Rothbarth</b>			
2009-2015 CE	24.9	38.3	46.9
<b>USDA</b>			
2011–2015 CE <sup>122</sup>	26.0	39.0	49.0
2000–2005 CE <sup>123</sup>	27.0	41.0	48.0
1990–1992 CE <sup>124</sup>	26.0	42.0	48.0
<b>Florida State University/Engel</b>			
2009-2015 CE	20.3	32.6	41.4
<b>Betson/Engel</b>			
1996–1998 CE	32.0	39.0	49.0
1980–1986 CE	33.0	46.0	58.0
<b>Espenshade/Engel</b>			
1972–73 CE	24.0	41.0	51.0
<b>van der Gaag</b>			
1981 Literature Review	25.0	37.5	50.0

<sup>121</sup> New Jersey Child Support Institute (March 2013). *Quadrennial Review: Final Report*, Institute for Families, Rutgers, the State University of New Jersey, New Brunswick, NJ. Retrieved from [http://www.judiciary.state.nj.us/reports2013/F0\\_NJ+QuadrennialReview-Final\\_3.22.13\\_complete.pdf](http://www.judiciary.state.nj.us/reports2013/F0_NJ+QuadrennialReview-Final_3.22.13_complete.pdf), at 97.

<sup>122</sup> Lino, Mark. (2017). *Expenditures on Children by Families: 2015 Annual Report*. U.S. Department of Agriculture, Center for Nutrition and Policy Promotion. Miscellaneous Publication No. 1528-2015, Washington, D.C. Retrieved from [https://fns-prod.azureedge.net/sites/default/files/crc2015\\_March2017\\_0.pdf](https://fns-prod.azureedge.net/sites/default/files/crc2015_March2017_0.pdf).

<sup>123</sup> Lino, Mark. (2010). *Expenditures on Children by Families: 2009 Annual Report*. U.S. Department of Agriculture, Center for Nutrition and Policy Promotion. Miscellaneous Publication No. 1528-2009. Retrieved from <http://www.ers.usda.gov/publications/pub-other/crc2009.pdf> (azureedge.net).

<sup>124</sup> Lino, Mark. (1999). *Expenditures on Children by Families: 1998 Annual Report*. U.S. Department of Agriculture, Center for Nutrition and Policy Promotion. Miscellaneous Publication No. 1528-1998. Retrieved from [https://fns-prod.azureedge.net/sites/default/files/expenditures\\_on\\_children\\_by\\_families/crc1998.pdf](https://fns-prod.azureedge.net/sites/default/files/expenditures_on_children_by_families/crc1998.pdf), at 9.

All studies underlying current state child support guidelines are shown in Exhibit 9 except the economic study underlying the Kansas child support guidelines. It is not shown because it does not report the average percentage of expenditures devoted to one child.<sup>125</sup> Most states (31) base their child support guidelines on one of the Betson/Rothbarth studies. Georgia relies on the average between the Betson/Rothbarth study and the Betson/Engel study measured from expenditures data from the 1996–1998 CE. New Jersey is the only state to rely on a Rodgers/Rothbarth study. Minnesota relies on an older USDA study. Like California, several states still rely on the Espenshade/Engel or the van der Gaag study. There are also a few states in which the economic basis of their guidelines is unknown.

The Espenshade/Engel and van der Gaag studies were the basis of most child support guidelines developed in the 1980s. Many states, however, switched to the Rothbarth measurements in the 1990s and later. When Congress first passed legislation (i.e., the Family Support Act of 1988) requiring presumptive state child support guidelines, they also mandated the U.S. Department of Health and Human Services to develop a report analyzing expenditures on children and explain how the analysis could be used to help states develop child support guidelines. This was fulfilled by two reports that were both released in 1990. One was by Betson.<sup>126</sup> Using five different economic methodologies to measure child-rearing expenditures, Betson concluded that the Rothbarth methodology was the most robust and, hence, recommended that it be used for state guidelines. The second study resulting from the Congressional mandate was by Lewin/ICF that recommended assessing state guidelines by comparing guidelines amounts to the studies forming lowest and highest bounds of credible estimates of child-rearing expenditures.

Until 2017, the USDA produced annual or biannual updates to its measurements. The USDA first measures expenditures for seven different categories (i.e., housing, food, transportation, clothing, health care, childcare and education, and miscellaneous), then sums them to arrive at a total measurement of child-rearing expenditures. Some of the methodologies use a pro rata approach, which is believed to overstate child-rearing expenditures. The USDA provides measurements for the U.S. as a whole and four regions: the South, Mid-West, Mid-Atlantic, and West. Using expenditure data from 2011 through 2015, the USDA found that average child-rearing expenses were \$10,240 to \$24,150 per year for the youngest child in a two-child family in the urban West, which includes California, in 2015. The amount varies by age of the child and household income.

Still another study that have received the attention of a few recent state guideline reviews was led by a University of California at Santa Barbara Professor Emeritus William Comanor.<sup>127</sup>

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<sup>125</sup> William T. Terrell & Jodi Messer Pelkowski. (2010). XII. *Determining the 2010 Child Support Schedules*. Retrieved from <http://www.kscourts.org/Rules-procedures-forms/Child-Support-Guidelines/PDF/Child%20Support%20Determination%20Economist%20FINAL%20REPORT.pdf>.

<sup>126</sup> Betson, David M. (1990). *Alternative Estimates of the Cost of Children from the 1980–86 Consumer Expenditure Survey*. Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. University of Wisconsin Institute for Research on Poverty, Madison, WI.

<sup>127</sup> William S. Comanor, Mark Sarro, & R. Mark Rogers, “The Monetary Cost of Raising Children.”



Comanor's study was included in the 2018 California review. Comanor also presented to JCC as part of this review. He reported that for middle incomes (i.e., married couples with an average income of \$76,207 per year), child-rearing costs \$4,749 per year for one child and \$6,633 per year for two children.<sup>128</sup> Although Comanor made the presentation in 2021 and tailored it to California, he did not note what year he used for the dollar amounts. It may be based on his 2015 article, which used expenditure data collected in 2006-2009 and 2011 dollars when reporting his findings.<sup>129</sup> The 2011 federal poverty guidelines sets the poverty threshold at \$10,890 per year for one person and \$3,820 per year for each additional person.<sup>130</sup> The 2021 federal poverty guidelines set the poverty thresholds at \$12,880 per year for one person and \$4,540 per year for each additional person.<sup>131</sup> The Comanor amount for one child is close to the 2021 poverty guideline for an additional person and about \$900 more per year than the 2011 poverty guideline for an additional person. No state uses the Comanor measurements as the basis of its state child support guidelines. Comanor did not publish his measurements as a percentage of total expenditures, so they are not included in Exhibit 9.

### *Limitations of the Comparisons*

It is important to note that the estimates of child-rearing expenditures presented in Exhibit 9 are only comparable to the anchor *K-factor* when total household expenditures equal net income. This only occurs at middle incomes. Most economists estimate child-rearing expenditures as a percentage of total household expenditures. Total household expenditures may be more or less than net income (after-tax income), which is used in the California guideline to determine the *K-factor*. Both Betson and Rodgers recognize that expenditures is often different than net income so provided additional statistics on total household expenditures and after-tax income from the same data they used to measure child-rearing expenditures. Both Betson and Rodgers found that average total household expenditures exceeded net income for low-income families and average net income exceeded total household expenditures for higher incomes. In turn, this means that converting the estimates based on percentage of expenditures to net income by adjusting for average expenditures to net income ratios would result in higher percentages than the percentages shown in Exhibit 9 for low-income households who spend more than their after-tax income on average and lower percentages than the percentages show in Exhibit 9 for upper-middle and high income families Exhibit 9. Exhibit 10 provides a graphical representation of this data finding. This limitation becomes a greater issue when comparing the *K-factor* for various income ranges to the economic evidence. How lower and lower-middle income families spend more than their income is not clear. The federal agency responsible for collecting the data has

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In James Langenfeld, ed., *Economic and Legal Issues in Competition, Intellectual Property, Bankruptcy, and the Cost of Raising Children* (Research in Law and Economics, Vol. 27), at 209–251 (Emerald Group Publ. Ltd., 2015).

<sup>128</sup> Comanor, William. (Oct. 6, 2021). Presentation to Judicial Council of California. Presentation via Zoom.

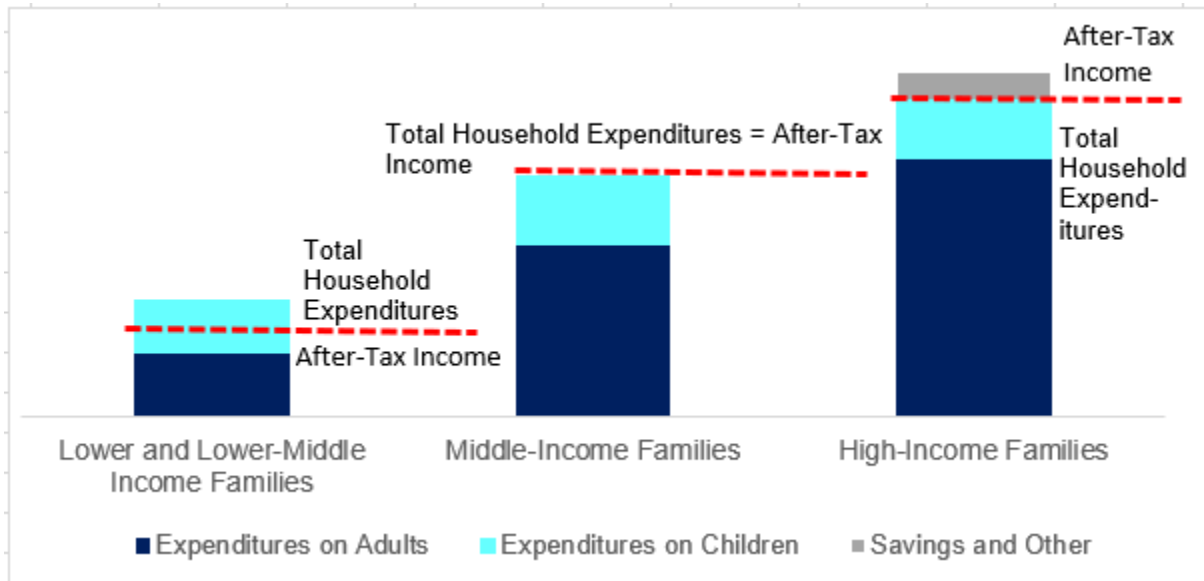
<sup>129</sup> William S. Comanor, Mark Sarro, & R. Mark Rogers. (2015). *Supra* note 127 at 219.

<sup>130</sup> U.S. Department of Health and Human Services. (2011). *2011 Poverty Guidelines for the 48 Contiguous States and the District of Columbia*. <https://aspe.hhs.gov/2011-hhs-poverty-guidelines>.

<sup>131</sup> U.S. Department of Health and Human Services. (2021). *2021 Poverty Guidelines for the 48 Contiguous States and the District of Columbia*. Retrieved from <https://aspe.hhs.gov/2021-poverty-guidelines>.

speculated that they are using savings and borrowing. The difference between net income and total expenditures for upper-middle and high-income families is savings, donations, gifts to individuals outside the home, and similar expenditures.

**Exhibit 10: Schematic Illustration of the Relationship between Child-Rearing Expenditures, Total Expenditures, and Net Income**



### Comparing the *K-factors* for a Range of Incomes

As evident in the *K-factors* in Exhibit 2, the California guideline formula tacitly assumes that child-rearing expenditures for one child being raised in one household are:

- 25 percent for combined net incomes of \$801 to \$6,666 per month; and
- Less than 25 percent for combined net incomes of \$6,667 per month or more.

It is assumed that the first income interval, which provides less than 25 percent for combined net incomes of \$800 per month or less, was intended to be a low-income adjustment. Still, economic data on the cost of raising children for this income range is also considered. It does not suggest that low-income families devote a lower share of their total expenditures to child rearing.<sup>132</sup>

<sup>132</sup> A DCSS-commissioned (Economic Forensics and Analytics, Inc. (July 2019). *Subsistence Needs: Income Levels for Non-Custodial and Custodial Parents*. Report to the California Department of Child Support Services, at 20, cites a study (Coley, Rebakah Levine; Sims, Jacqueline, and Vortruba-Drazal, Elizabeth. (Sept. 2017). “Family expenditures support children across income and urbanicity strata.” *70 Children and Youth Service Review*, 129–142) that the proportion of spending on children likely rises with income. That finding, however, pertained to investments in children (e.g., educational expenses, fees for recreational equipment and lessons, and non-school related books) and discretionary expenses (e.g., electronics and décor, vacation homes, trips, entertainment) rather than basic needs (e.g., shelter, transportation, clothing, food, and health care). The budget share devoted to basic expenditures declined with income, and because the budget share devoted to basic needs is over 70 percent for all income ranges, it overshadows any increase in child investments or discretionary items. In short, the study does not justify an increasing *K-factor* for higher incomes.

This subsection aims to answer the following research questions:

- Do economic studies of child-rearing expenditures indicate that child-rearing expenditures as a percentage of net disposable income decrease as the combined parental income increases?
- Do economic studies of child-rearing expenditures indicate that low-income families spend less?
- Do the income bands of the existing California guideline align with the economic evidence on child-rearing expenditures?

The ability to answer these questions is limited by the data because most measurements of child-rearing expenditures are expressed as a percentage of total expenditures and the guideline is based on net income. If total expenditures exactly equal net income, then the percentages shown in Exhibit 10 can be applied to net income. If, on average for a particular income band, families have savings, child-rearing expenditures measured as a percentage of total expenditures will be less when expressed a percentage of net income.

#### ***At What Incomes Are Total Family Expenditures Equal to Net Income?***

The first step to answering the research question is identifying at what net incomes levels are expenditures equal to net income. Both Rodgers and Betson provide information that can be used to calculate the average ratio of expenditures to net income. Using household data from the same CE data they used to measure child-rearing expenditures for their respective studies, both economists also provided expenditures to income ratios for a range of incomes. Based on 2016 price levels and data from the 2000–2015 CE, Rodgers finds that the income range of families who spend, on average, about 100 percent of their net income is about \$40,000 to \$55,000 net per year (which would be about \$3,333 to \$4,600 net per month in 2016 dollars).<sup>133</sup> Based on 2020 price levels and data from the 2013–2019 CE, Betson finds that the income range of families who spend, on average, about 100 percent of their net income is about \$35,000 to \$50,000 per year (which would be about \$2,900 to \$4,200 net per month in 2020 dollars).<sup>134</sup> Both studies indicate that the income band for applying the *K-factor* anchor should be much narrower than currently provided.

Both Rodgers and Betson find that families, on average, spend more than their net income for lower income ranges and less of their net income for higher income ranges. Exhibit 11 and Exhibit 12 show this outcome for high incomes, and Exhibit 13 and Exhibit 14 show this outcome for low incomes.

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<sup>133</sup> The actual average percentage are 97 to 104 percent for these income ranges. Judicial Council of CA (2018), *supra* note 94 at 128.

<sup>134</sup> The actual average percentages are 97 to 104 percent for these income ranges. Betson (2021), *supra* note 91, Appendix B, at 1.

**Exhibit 11: Rodgers' Estimated Percentage of Total Expenditures and Average Expenditures to Net Income Ratios by High Income Ranges**

Net annual income range (2016)	Estimated percentage of total expenditures devoted to one child	Average expenditures to net income ratio	Estimated percentage of net income devoted to one child
\$55,000–\$59,999	0.181	0.953	0.172
\$60,000–\$64,990	0.182	0.921	0.168
\$65,000–\$69,999	0.193	0.93	0.179
\$70,000–\$74,999	0.181	0.861	0.156
\$75,000–\$87,499	0.174	0.838	0.146
\$87,500–\$99,999	0.184	0.784	0.144
\$100,000–\$124,999	0.188	0.763	0.143
\$125,000–\$149,999	0.171	0.697	0.119
More than \$150,000	0.164	0.605	0.099

**Exhibit 12: Betson's Estimated Percentage of Total Expenditures and Average Expenditures to Net Income Ratios by High Income Ranges**

Net annual income range (\$2016)	Estimated percentage of total expenditures devoted to one child	Average expenditures to net income ratio	Estimated percentage of net income devoted to one child
\$50,000–\$54,990	0.245	0.927	0.227
\$55,000–\$59,999	0.246	0.905	0.223
\$60,000–\$64,990	0.246	0.861	0.212
\$65,000–\$69,999	0.247	0.840	0.207
\$70,000–\$74,999	0.247	0.827	0.204
\$75,000–\$79,999	0.248	0.817	0.202
\$80,000–\$84,999	0.249	0.839	0.209
\$85,000–\$89,999	0.249	0.787	0.196
\$90,000–\$94,999	0.249	0.757	0.188
\$95,000–\$99,999	0.249	0.768	0.192
\$100,000–\$104,999	0.250	0.751	0.188
\$105,000–\$109,999	0.250	0.760	0.190
\$110,000–\$119,999	0.251	0.731	0.183
\$120,000–\$129,999	0.251	0.700	0.176
\$130,000–\$139,999	0.252	0.742	0.187
\$140,000–\$159,999	0.253	0.707	0.179
\$160,000–\$179,999	0.253	0.613	0.155
\$180,000–\$199,999	0.254	0.640	0.163
\$200,000 or more	0.256	0.584	0.149

***K-factor for Higher Incomes***

Both Rodgers and Betson also calculated the percentage of total expenditures devoted to raising one child for a range of incomes. For the purposes of this discussion, high income is defined as incomes where the household's average expenditures are less than the household's net (after-tax) income. Exhibit 11 shows Rodgers' calculations for high incomes based on 2016 price levels and data from the 2000–2015 CE. For incomes ranging from \$55,000 to \$124,999 per year, Rodgers' estimated percentages of total expenditures devoted to one child do not decrease substantially: they range from 0.174 to 0.193 and mostly seem to be in the 0.180 range. In other words, the percentage of expenditures devoted to one child does not change much as income changes.

However, when the percentages are converted to a percentage of net income, they do decrease dramatically. This is due to the positive correlation between net income and savings. Higher income families save a greater share of their income and spend a smaller share of their income as their income increases. In turn, the decreasing consumption rate (expenditures divided by net disposable income) causes the percentage of net disposable income devoted to childrearing to decline at higher incomes. Exhibit 12 shows similar results based on Betson’s 2021 analysis of 2013–2019 CE data—that is, the precipitous decrease is more pronounced when childrearing expenditures are converted to a percentage of net income.

Whether and how the estimates of child-rearing expenditures should be adjusted for the fact that higher income families have savings requires an assumption about the relationship between expenditures and net income. Most states relying on one of Betson/Rothbarth studies convert total expenditures to net income for high income by multiplying the estimated percentage of total expenditures devoted to childrearing by the average expenditures to net income ratio for that particular income range. A few states made exceptions based on policy decisions. Rhode Island and Colorado made small adjustments to the expenditures to net incomes at high incomes to accommodate above-average, owner-occupied housing costs in their respective states. Although the District of Columbia’s first draft of its income shares model adjusted for the expenditures to net income ratio, it was removed because public commenters had concerns that the adjustment resulted in children not receiving the full benefit of their parents’ incomes when the parents were living in separate households.<sup>135</sup>

### ***K-factor for Lower Incomes***

Most economic studies do not find that low-income families devote a smaller share of their total expenditures to child rearing.<sup>136</sup> Exhibit 13 and Exhibit 14 illustrate this using the Rodgers and Betson data for families with incomes below incomes where expenditures were found to equal net income on average. Exhibit 13 and Exhibit 14 also show that low-income families spend more than their income on average. For example, at the combined net income of \$15,000 to \$19,000 net per year, Exhibit 13 shows families spend 183 percent of their net income on average. As a result, when child-rearing expenditures are converted to a net income, it makes the percentages larger and non-sensible.

Most states using Betson/Rothbarth measurements simply cap the expenditures to income ratio at 1.0 when converting the expenditures estimates to a net income base because they take the policy position that families should not be asked to spend more than their income. Another option would be to apply the low-income adjustment at these income levels.

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<sup>135</sup> Report of the District of Columbia Child Support Commission: Final Recommendations. (July 2004), at 17.

<sup>136</sup> See Coley et al., *supra* note 132.

**Exhibit 13: Rodgers' Estimated Percentage of Total Expenditures and Average Expenditures to Net Income Ratios by Low Income Ranges**

Net annual income range (\$2016)	Estimated percentage of total expenditures devoted to one child	Average expenditures to net income ratio	Estimated percentage of net income devoted to one child
Less than \$15,000	0.185	N/A	--
\$15,000–\$19,999	0.202	1.83	0.370
\$20,000–\$22,499	0.195	1.585	0.309
\$22,500–\$24,999	0.174	1.596	0.278
\$25,000–\$27,499	0.179	1.401	0.251
\$27,500–\$30,000	0.170	1.512	0.257
\$30,000–\$32,499	0.184	1.220	0.224
\$32,500–\$34,999	0.182	1.249	0.227
\$35,000–\$39,999	0.176	1.284	0.226

**Exhibit 14: Betson's Estimated Percentage of Total Expenditures and Average Expenditures to Net Income Ratios by Low Income Ranges**

Net annual income range (\$2016)	Estimated percentage of total expenditures devoted to one child	Average expenditures to net income ratio	Estimated percentage of net income devoted to one child
Less than \$20,000	0.224	385.758	--
\$20,000–\$29,999	0.237	1.342	0.242
\$30,000–\$34,999	0.241	1.078	0.246

### ***Income Bands***

Whether the economic evidence suggests that the income bands of the existing California guideline align with the economic evidence on child-rearing expenditures depends on the assumption about net income when converting the measurements of child-rearing expenditures from a total expenditures base to a net-income base. Once that policy decision is made, there are several methods that could be used to update the income bands. Either the Rodgers or Betson data cited above could be used to update the income bands. For example, based on Betson's finding that families with net incomes of \$35,000 to \$50,000 per year spend about 100 percent of their income, the *k-value* anchor of 25.0 could be applied to net incomes of about \$2,900 to \$4,200 net per month in 2016 dollars. (The incomes are presented in 2016 dollars because Betson reports his findings in 2016 dollars. The incomes could easily be increased to 2021 dollars using changes in the consumer price index for California consumers). The merit to this approach is that it is based on the most current economic data available. The limitation to this approach is that neither the *K-factors* nor the estimates of childrearing expenditures are California specific. Adopting either the Rodgers or Betson estimates would generally lower the *K-factors* for higher incomes.

The 2018 California review also provided alternative updates. One was to update the income bands for inflation.<sup>137</sup> Another was to also update for more current estimates of child-rearing expenditures.<sup>138</sup> Exhibit 15 provides another example using Betson’s latest study. It assumes that for incomes where Betson finds that families spend more than their income on average the low-income adjustment would apply. For this income range, the 0.200 *K-factor* minimum is retained. The anchor *K-factor* would be 0.249 for net disposable incomes of \$2,901 to \$4,200 per month to match Betson’s finding that, on average, families devote 0.249 of their total expenditures for one child and that at this income range, expenditures generally equal net income on average. Except for the last income range shown in Exhibit 15, the income ranges are arbitrary and set to reflect income points in the current *K-factor* table. The last income range is the midpoint of the highest income considered by Betson.

**Exhibit 15: Example of Betson/Rothbarth Measurements Converted to California *K-factors***

Total net disposable income per month	<i>K-factor</i> (amount of both parents’ income allocated for child support)
\$0–\$2,900	0.200 + $TN/59814$
\$2,901–\$4,200	0.249
\$4,201–\$6,666	0.141 + $454/TN$
\$6,667–\$10,000	0.111 + $661/TN$
\$10,001–\$21,600	0.126 + $503/TN$
Over \$21,600	0.15

Effectively, the alternative formulas for the *K-factors* shown in Exhibit 15 produce a *K-factor* of 0.209 when *TN* is \$6,666, 0.177 when *TN* is \$10,000, and 0.15 when *TN* is over \$21,600 per month. (These amounts correspond to last column of Exhibit 12 for the respective income range with some rounding. They reflect the percentage of net income devoted to raising one child.) Exhibit 15 does not show a decreasing percentage for incomes above \$21,600 net per month. This is because it approximates the midpoint of the highest income range for which Betson provides estimates. Consequently, there is not sufficient information to know how families with incomes above this point decrease their expenditures as the total net disposable income exceed \$21,600 per month. Some states have estimated the percentage reduction by using the percentage reductions at lower incomes.

In all, the discussion surrounding Exhibit 15 illustrates that updating the formula to precisely relate to estimates of child-rearing expenditures also requires additional assumptions (e.g., the number of income bands, the range of income for each income band, and whether to assume a decreasing percentage for the highest income band). Using the estimates will not result in the rounded values in the current formula.

The 2018 report recommended a cost-living adjustment to the current *K-factor* table. The advantages of a cost-of-living adjustment are it is simple and can be periodically updated using

<sup>137</sup> Judicial Council of Cal., *supra* note 94, at 32.

<sup>138</sup> *Id.*

data regularly reported on price changes. The major limitation is that the bands do not reflect current economic data.

### **Adjusting the *K*-factor for California's Higher Cost of Living**

Fam. Code, § 4053 indicates that California has a higher cost of living than other states. All of the studies of child-rearing expenditures that consider a range of incomes (i.e., studies that are not minimum needs studies) reflect national data. The USDA provides separate measurements for the urban Northeast, urban South, urban Midwest, urban West, and rural areas, but does not provide separate measurements for any state. One reason that there are no state studies is until recently the BLS designed the CE to be representative of the nation and four regions (i.e., the Northeast, South, Midwest, and West), but not representative of individual states. Beginning in 2017, however, the BLS began compiling expenditure data at the state level for the five largest states: California, Florida, New Jersey, New York, and Texas.<sup>139</sup> The data are available for 2017, 2018, and 2019. Most economists estimating child-rearing expenditures combined about five years of data to obtain a sufficient sample size.

Still, several states with below or above average income or prices have adjusted a national study of child-rearing expenditures to reflect that particular state's income or price levels. For example, Rodgers realigned his measurements of child-rearing expenditures based on national data for New Jersey's higher income distribution.<sup>140</sup> The realignment assumes expenditures are comparable by income distribution. To conceptualize this, consider two lines, one for U.S. families and the other for New Jersey families, and that families are lined up by income starting with the lowest. Now examine the incomes and expenditures of the U.S. and New Jersey family at the position representing 10 percent of the families (10% of the line). Since the New Jersey family at the 10th percentile has more income, this shifts the U.S.-based measurements upward.

Nebraska adjusted Rothbarth measurements from Betson's fourth study for its price parity.<sup>141</sup> The U.S. Bureau of Economic Analysis measures price parity for states. A price parity of 100 percent means the price of economic goods and services within a state are the same as that of the U.S. average. A price parity below (above) the national average, means prices in that particular state are below (above) average. Nebraska's price parity was 90.5. The most current price parity data, which is from 2019, calculates California's price parity at 116.4.<sup>142</sup> There are several limitations to these adjustments. The income realignment assumes the families at the same percentile of income have similar expenditures patterns regardless of where they live. Adjusting for price parity assumes that lower and higher income households have the same composition of economic goods and services, while the economic data indicates they do not. Changes in price levels are not uniform (e.g., recently the increase in used vehicle prices has outpaced the increase

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<sup>139</sup> U.S. Bureau of Labor Statistics. Retrieved from <https://www.bls.gov/cex/tables/geographic/mean.htm#state>.

<sup>140</sup> New Jersey Child Support Institute, *supra* note 121, at 311.

<sup>141</sup> 2018 Nebraska Child Support Guidelines Review: Findings and Recommendations. (Dec. 2018). Retrieved from <https://supremecourt.nebraska.gov/sites/default/files/rules/FindingsAndRecommendations.pdf>, at 14.

<sup>142</sup> U.S. Bureau of Economic Analysis. (Dec. 2020). 2019 Regional Price Parities by State (US = 100). Retrieved from Real Personal Income by State and Metropolitan Area, 2019 | U.S. Bureau of Economic Analysis (BEA).



in food, while lower income households devote a larger share of their expenditures to food than higher income households). The use of price parity also does not account for wages being generally lower in places with a lower cost of living and higher in places with a higher cost of living. This compensating wage differential may negate the need for any adjustment or affect the adjustment level.

### **Adjusting the *K-factor* for Additional Child-Rearing Expenses**

Most economists, including Rodgers and Betson, estimate all child-rearing expenditures including any expenditures for the childcare and child's health-care needs, which encompasses the cost of health-care coverage for the child and uninsured medical expenses for the child. Consequently, an adjustment to the estimates of child-rearing expenditures is warranted when updating a child support formula or schedule if that state's guideline considers the actual cost of the childcare and the child's health-care expenses on a case-by-case basis. Such a justification is warranted for California because Fam. Code, § 4062 provides for the consideration of additional expenses including employment-related childcare, uninsured health-care costs for children, costs relating to the education or special needs of the child, and travel-related expenses. However, the income deduction for the cost of any health plan covering the children and the parents under Fam. Code, § 4058(c) makes this adjustment less straightforward because some of the child's health-care expenses are treated as add-ons and others as income deductions.<sup>143</sup>

Many states exclude the childcare and all or most of the child's health-care costs from their child support formulas and lookup schedules.<sup>144</sup> This effectively lowers estimated percentage of total expenditures devoted to child-rearing expenditures when developing a child support schedule or formula. There is no documentation to suggest that a similar exclusion was done when deriving the California formula.

Both Rodgers and Betson provide information that can be used to calculate the average amount expended for childcare and the child's health-care expenses for a range of incomes. At a combined parental income of \$50,000 net per year, Rodgers finds that 0.8 percent of total expenditures are devoted to childcare expenses and 0.9 percent are devoted to medical expenditures.<sup>145</sup> It is assumed that these percentages reflect the percentage for one child. To this end, the sum of these expenditures (1.7% could be subtracted from Rodgers' estimated amount of expenditures for one child (21.5% as shown in Exhibit 9). The remainder, 19.8, would be an appropriate *K-value* for this income range using the Rodgers estimated adjusted for childcare

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<sup>143</sup> It is more straightforward when all child-related health-care expenses are treated as add-ons. Treating both the cost of the child's health insurance coverage and the child's unreimbursed medical expenses is the common approach among states. Deducting the cost of the child's health insurance coverage from income from the parent paying is the expense is proven to be less equitable usually to the parent paying the expense.

<sup>144</sup> Many states leave up to \$250 per child per year for uninsured medical expenses. This reduces the need for parents to exchange receipts for every medical expense incurred for the child. The amount \$250 approximates average out-of-pocket medical expenses for a child. Most states do not adjust for the costs of educational or special needs because they are less common and travel expenses for visitation would not occur if the parents and children live in one household.

<sup>145</sup> Judicial Council of Cal. (2018), *supra* note 94, at 128, Table 11a.

expenses and the child's medical expenses. Using the 2020 Betson estimates, the comparable amount that would be subtracted for a combined parental income of \$50,000 net per year is 2.3 percent or less, depending on how health-care expenses are adjusted. In turn, this would mean the *K-value anchor* would be 22.6 instead of 24.9 (as shown in Exhibit 9) if California were to use the most current data available.

This type of adjustment generally affects the amounts more at higher incomes than lower incomes. This may be because lower incomes are more likely to be eligible for childcare subsidies and Medi-Cal, which reduces out-of-pocket medical expenses, and higher incomes are more likely to use more expensive childcare and have health plans with high deductibles. The amount subtracted ranges from about 2.0 and 4.0 percent.

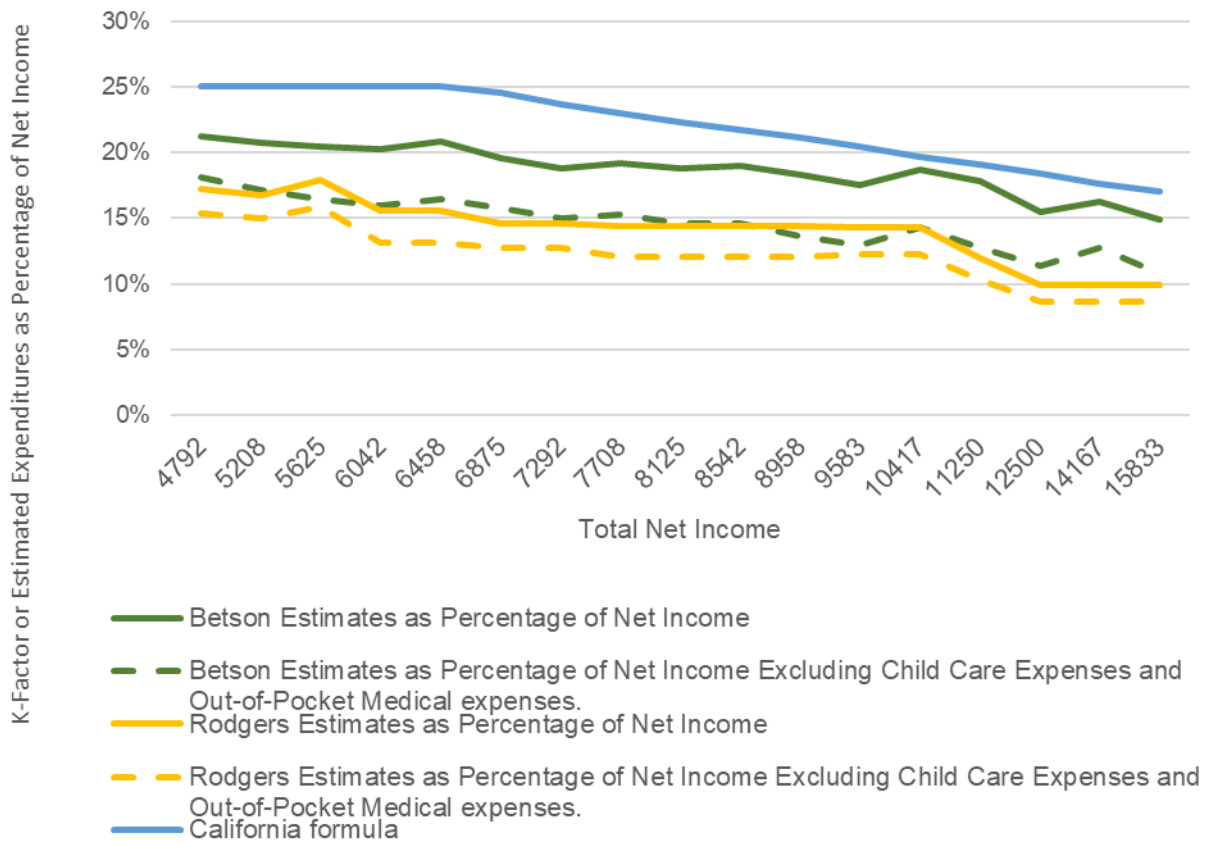
There are several caveats to this adjustment. One of the major caveats is that the California guideline treats the cost of the health plan as a deduction from income and childcare as add-on. The adjustment only makes sense when both are treated as add-ons. Others concerns how childcare and the child's health-care costs are measured. The CE does not provide sufficient information to discern from work-related childcare expenses and non-work-related childcare expenses. Most state guidelines, including the California guidelines, only adjust for work-related childcare expenses. Consequently, subtracting average childcare expenses, as measured using CE data, probably subtracts too much. The CE also does not note whether a health-care expense was made on behalf of a child or an adult in the same household, so an additional adjustment is necessary to account for that.

### **Comparisons of Adjusted Estimates and *K-Factors***

Exhibit 16 compares the existing *K-factors* for a range of income using the most current Rothbarth estimates developed by Rodgers and Betson. The Rothbarth estimates are converted using the expenditures to net income ratios calculated by each economist. One estimate includes childcare and out-of-pocket health-care expenses, and the other does not. The estimates have not been adjusted for anomalies or "smoothed" to create gradual decreases. The graph starts at a total net income of \$4,792, which is the midpoint of the income range where Rodgers finds some families have savings.

Most economists believe that the Rothbarth understates actual child-rearing expenditures. Still, it is useful barometer in assessing the adequacy of child support amounts. Since all of the estimates are below the California *K-factors*, the California *K-factor* adequately provides for children (at least before consideration of the time-sharing adjustments).

**Exhibit 16: Comparisons of Adjusted Rothbarth Estimates and K-Factors**



**Comparing the Multipliers for More Children to Economic Evidence**

The California guideline covers up to 10 children. Exhibit 17 also shows the results from the equivalence scale used by the U.S. Census to adjust poverty measurements for family size.<sup>146</sup> An equivalence scale measures how much more spending is needed to achieve the same level of well-being when the number and composition of the family changes. The U.S. Census equivalence scale is based on the scale recommended by National Academy of Sciences Panel on Poverty.<sup>147</sup>

The findings presented in Exhibit 17 suggest that the California multipliers are not definitively too high compared to other studies.

<sup>146</sup> U.S. Census. (Oct. 2021). *Equivalence Adjustment of Income*. Retrieved from <https://www.census.gov/topics/income-poverty/income-inequality/about/metrics/equivalence.html>.

<sup>147</sup> Citro, Constance F. & Robert T. Michael (eds.). (1995). *Measuring Poverty: A New Approach*. National Academy Press. Washington, D.C.

**Exhibit 17: Comparison of California Multiplier for More Children to Economic Evidence**

	Number of Children								
	2	3	4	5	6	7	8	9	10
<b>Multiplier Provided in California Guideline</b>	1.6	2.0	2.3	2.5	2.625	2.75	2.813	2.844	2.86
<b>U.S. Census Equivalence Scales</b>	1.533	2.040	2.526	2.993	3.446	3.885	4.312	4.728	5.135
<b>Economic Study</b>									
<b>Betson/Rothbarth</b>									
2013–2019 CE	1.542	1.888							
2004–2009 CE	1.553	1.911							
1998–2004 CE	1.460	1.738							
1996–1998 CE	1.402	1.625				N/A			
1980–1986 CE	1.413	1.620							
<b>Betson/Direct (per capita housing costs)</b>									
2013-2019 CE	1.58	2.03							
<b>Betson/Direct (housing cost based on additional bedroom )</b>									
2013-2019 CE	1.52	1.90							
<b>Rodgers/Replication of Betson Rothbarth</b>									
2004–2009 CE	1.568	1.946							
<b>Rodgers/Rothbarth</b>									
2000–2015 CE	1.225	1.604							
2004–2009 CE	1.135	1.553							
2000–2011 <sup>148</sup>	1.190	1.476							
<b>USDA</b>									
2011–2015 CE	1.500	1.885							
2000–2005 CE	1.519	1.778							
1990–1992 CE	1.615	1.846							
<b>Betson/Engel</b>									
1996–1998 CE	1.219	1.531							
1980–1986 CE	1.394	1.758			N/A			N/A	
<b>Espenshade/Engel</b>									
1972–73 CE	1.708	2.125							
<b>van der Gaag (1981)<sup>149</sup></b>	1.563	1.953	2.075	2.205					

<sup>148</sup> New Jersey Child Support Institute, *supra* note 121, at 97.

<sup>149</sup> van der Gaag, *supra* note 76, at 25, Table 3.

### ***Multipliers Used by Other States***

In contrast to California covering up to 10 children, most other states provide up to six children. Some also specify that the amount for six children applies to six or more children. A few states only provide up to five children rather than six children. Although this does not recognize that each additional child is an added cost, it does recognize that income withholding limits restrict what can be reasonably collected through income withholding. The underlying policy premise is that child support should be set at an amount that can be reasonably collected. The Consumer Credit Protection Act (CCPA) limits the amount that be garnished for court-ordered child support to 50 to 65 percent of a worker's disposable earnings depending on whether worker is supporting another spouse or child or there are arrears.<sup>150</sup> Some states (e.g., Florida<sup>151</sup> and Washington<sup>152</sup>) provide that orders cannot exceed a threshold that approximates the CCPA threshold or that guideline amounts exceeding that threshold can be used to justify a guideline deviation. The California multipliers produce orders amounts that would exceed over 50 percent of an obligor's net income for three or more children if there is no time-sharing and the combined net income is between \$800 and \$6,666 net per month.

### **Comparing the Adjustment for Time-sharing to Other Evidence**

Time-sharing adjustments in state guidelines are largely based on policy and perceptions of how parents share child-rearing expenditures, rather than empirical evidence. In all, there is a dearth of empirical evidence on how parents share expenses when the child spends time with each parent. The CE, which is the predominant source of most studies of child-rearing expenditures, does not track expenditures among matched households. No survey is known to track matched households, and there appears to be bias when the information is reported by parents (e.g., obligors report more time than obligees).<sup>153</sup>

California is the only state to use a formula, rather than a schedule or table, to determine base support and to incorporate the percentage of time-sharing within that formula. In contrast, the few states (e.g., New York and Texas) with formulas do not incorporate a time-sharing adjustment. The more common practice consists of determining base support, then an adjustment for time-sharing. An advantage to this is transparency. Base support with no time-sharing is transparent, as well as the adjustment amount for time-sharing. The advantage of the California formula is that it is efficient and concise mathematically.

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<sup>150</sup> U.S. Department of Labor Wage and Hour Division. Fact Sheet #30: The Federal Wage Garnishment Law, Consumer Credit Act's Title III (CCPA). (n.d.). Retrieved from <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs30.pdf>.

<sup>151</sup> Florida uses a threshold of 55 percent of gross income. See Florida Statutes Section 61.30 (11)(a)(9). Retrieved from [http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0000-0099/0061/Sections/0061.30.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0000-0099/0061/Sections/0061.30.html).

<sup>152</sup> Washington uses a threshold of 45 percent of net income. Revised Code of Washington 26.19.065. Retrieved from <https://app.leg.wa.gov/RCW/default.aspx?cite=26.19.065>.

<sup>153</sup> For example, see Seltzer, Judith A., & Brandereth, Yvonne. (March 1994). "What fathers say about involvement with children after separation." *Journal of Family Issues*. Vol. 15, No. 1. Retrieved from <https://journals.sagepub.com/doi/10.1177/019251394015001003>.

When there is equal custody, the California formula will reduce base support by the same amount as the cross-credit formula with the 150 percent multiplier, which is the most common time-sharing formula used among states. (Most states use a 150 percent multiplier to account for about 50 percent of child-rearing expenditures, such as housing, being duplicated between the parents' households. Exhibit 18 illustrates this using a scenario where the petitioner's net disposable income is \$3,000 per month and the respondent's disposable income is \$2,000 per month. The *K-factor* for this total net disposable income is 25.0. Lines 3, 4, and 5 show the additional steps in the conventional income shares calculation. In contrast, if *H%* (percentage of the high earner's time with the child is zero), the California formula would arrive at Line 5 by simply applying the formula:

$$\begin{aligned}
 CS &= K [HN - (H\%) (TN)] \text{ where } K = (K\text{-factor}) \times (1 + H\%) \\
 &= [K\text{-factor} \times (1 + H\%)] [HN - (H\%) (TN)] \\
 &= [0.25 \times (1 + 0\%)] [\$3,000 - (0\%) (\$5,000)] \\
 &= 0.25 [\$3,000] \\
 &= \$750
 \end{aligned}$$

This results in the high earner owing \$750 per month in base child support, which is the amount on Line 5.

**Exhibit 18: Illustration that Cross-Credit Formula with 150% Multiplier Produces Same Amount as California Formula when Equal Custody**

	Petitioner	Respondent	Combined
Line 1: Monthly net disposable income	\$3,000	\$2,000	\$5,000
Line 2: <i>K-factor</i>			25.0
Line 3: Basic child support obligation for 1 child(ren) (Line 1 multiplied by Line 2)			\$1,250
Line 4: Percentage share of income (each parent's income on Line 1 divided by combined income)	60%	40%	100%
Line 5: Base child support with no time-sharing adjustment (Line 3 multiplied by Line 4)	\$750	\$500	
<b>Parenting-Time Adjustment</b>			
Line 6: Shared-parenting basic obligation (150% of Line 3)			\$1,875
Line 7: Each parent's share of shared-parent basic obligation (Line 3 multiplied by Line 6)	\$1,125	\$750	
Line 8: Number of overnights with each parent	182.5	182.5	
Line 9: Percentage of child's total time over year (Line 8 divided by 365 overnights)	50%	50%	
Line 10: Amount retained by parent to support child in parent's home (each parent's Line 7 multiplied by Line 9)	\$563	\$375	
Line 11: Amount owed other parent (Line 7 minus Line 10)	\$563	\$375	
Line 12: Child support order adjustment for time sharing (comparing each parent's amount on Line 11, subtract the smaller from the larger and place the difference in the column of the parent with the larger amount on Line 11)	\$188		

Lines 6–12 adjust for parenting time using the more conventional cross-credit formula with 150 percent multiplier. Using the California formula, the calculation is simply:

$$\begin{aligned}
 CS &= [K\text{-factor} \times (1 + H\%)] [HN - (H\%) (TN)] \\
 &= [0.25 \times (1 + 50\%) ] [\$3,000 - (50\%) (\$5,000)] \\
 &= [0.25 \times 150\%] [\$500] \\
 &= \$188.
 \end{aligned}$$

Both the conventional cross-credit formula with 150 percent multiplier and California formula produce a child support order of \$188 per month when there is equal time-sharing.

$$\begin{aligned}
 CS &= [K\text{-factor} \times (1 + H\%)] [HN - (H\%) (TN)] \\
 &= [0.25 \times (1 + 50\%) ] [\$3,000 - (50\%) (\$3,000)] \\
 &= [0.25 \times 150\%] [\$1,500] \\
 &= \$188
 \end{aligned}$$

The cross-credit with the 150 percent multiplier and California formula will not produce the same amount when time-sharing arrangement is other than 50 percent. In fact, the California formula will provide a larger adjustment for the parent with less time than the more conventional approach. They do not produce the same amount because of the differences in their multipliers. The California formula presumes that the level of duplication of child-rearing expenditures between the parents is proportionate to the time spent, so if the obligor's percentage of time-sharing is 20 percent, the multiplier is 120 percent and if the obligor's percentage of time-sharing is 30 percent, the multiplier is 130 percent. A multiplier tied to the percentage of time arguably does not capture all duplicated expenses. For example, housing, which is generally considered a duplicated housing expense, comprises about 30 to 40 percent of total expenditures.<sup>154</sup> Consequently, any multiplier below 30 percent would not encompass all housing expenses. Exacerbating this issue is the inclusion of transportation as a duplicated expense. Most states address this issue by applying a multiplier of at least 150 percent at all levels of time-sharing. The limitation to a higher multiplier, which is also arguable, is that it provides no reduction at low levels of time-sharing and can even mathematically produce a higher order amount than what would be calculated for sole custody. Since all states with a multiplier require that time-sharing meet a certain threshold (e.g., each parent must have the child at least 30% of the time) and many states provide that the shared custody order cannot not be more than the sole custody order, this is rarely an issue. The California formula had a threshold in a previous version, and whether to have a threshold was extensively debated in the formation of the California formula.

Still, even though the California formula provides a larger adjustment than the cross-credit formula with the 150 percent multiplier, some focus group participants thought that the California formula results in too little of an adjustment when the obligee has no to very little income, and this was unfair to the obligor. (This finding is discussed more in the chapter discussing the findings from the focus group.) Since California adapted its statewide uniform guideline, alternative approaches have been developed to address the shortcomings of the cross-credit formula (albeit not necessarily California's unique variation of it). These states (Arizona

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<sup>154</sup> Rodgers finds it comprises about 30 percent, whereas Betson finds it comprises more. For example, see Judicial Council of Cal. (2018), *supra* note 94, at 113.

Indiana, Missouri, and New Jersey) recognize that some expenses (e.g., food) are time variable so easily transferable between the parents, while others (e.g., housing) are not because they are “fixed” expenses. Further, some fixed expenses are duplicated and some are not. Housing is an example of a fixed expense that is duplicated by a parent, and the child’s cell phone an example of a non-duplicated, fixed expense. Most of these states presume that one parent “controls” or is responsible for the non-duplicated, fixed expenses. Generally, these alternative time-sharing adjustments provide an adjustment at low levels of time-sharing to cover the time variable expenses such as food. Whether they provide more or less than the California formula depends on the parameters of the adjustment. For example, the states using this adjustment presume slightly different percentages of total child-rearing expenditures are time variable, which in turn affect how that state’s amounts compare to California.<sup>155</sup>

Another criticism of the California time-sharing formula is the low-income adjustment is layered on top of the time-sharing adjustment. The more common practice is to provide either the low-income adjustment or the time-sharing adjustment, not both.

## **Major Findings and Recommendations Based on Economic Data**

The major findings about the general basis of the California child support guideline formula are that:

- It is based on the income shares model that presumes that each parent is responsible for their prorated share of what would have been spent on the child had the parents combined financial resources and lived as an intact family.
- It is generally and “loosely” based on economic studies of child-rearing expenditures in intact families that are over 35 years old.
- New studies indicate that families devote about the same percentage of total expenditures to children as they did 35 years ago.
- It provides amounts lower than economic studies of child-rearing expenditures for its first income band (\$0 to \$800 net per month), that appears to be intended to be a low-income adjustment.
- It includes a time-sharing adjustment in its formula.
- The underpinnings of the time-sharing adjustment include many underlying assumptions about the level of duplicated child-rearing expenditures (e.g., housing for the child in each parent’s home) and how those expenses are shared between the parents.
- It is not a transparent formula—that is, the amount of total child-rearing expenditures, each parent’s share of total child-rearing expenditures, and the reduction for time-sharing are not clear in the calculation.

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<sup>155</sup> More information about these alternative adjustments can be found in Oldham and Venohr, *supra* note 84.



When compared to economic evidence of child-rearing expenditures, the California guideline formula:

- Provides an anchor *K-factor* that is in the range of current economic evidence of child-rearing expenditures;
- Does not extend the lowest income band (\$0 to \$800 net per month), which appears to be intended to be a form of a low-income adjustment, to what is considered low-income today;
- Provides for amounts that are arguably too high at higher income depending on the consideration of household expenditures and savings at higher income and the treatment of additional child-rearing expenditures such as childcare expenses and the cost of the child's health insurance if both were considered add-ons to support; and
- Provides adjustments for more children that are generally within range of the economic evidence.

There are several other major findings.

- Most studies of child-rearing expenditures underlying state guidelines are based on child-rearing expenditures on intact families because most state guideline models, including the California guideline model, are based on a continuity of expenditures model, which means the child is entitled to the same level of expenditures the child would have received had the parents lived together and shared financial resources; and each parent is responsible for their prorated share of that amount.
- Most studies of child-rearing expenditures are based on national data and combine data from several years to obtain a sufficient sample size.
- The multipliers for more children, particularly for large families, exceed what can be legally withheld from obligor's paychecks.

Recommendations:

- Expand the lowest income band (\$0 to \$800 per month in total net disposable income), which provides a lower *K-factor* to consider what is low income today.
- Revamp its multipliers for more children. This may include tweaking the multipliers for two and three children so they better align with the economic evidence. It also includes replacing the multipliers for more than six children with a multiplier that covers six or more children.
- Create a deviation factor for orders exceeding a percentage of the obligor's net income that relate to a cap on income withholding (e.g., 50 percent of the obligor's net disposable income). For the next review, determine whether the California CE (which began in 2017) has sufficient sample size to develop California-specific measurements.
- Revise the California guideline so its underpinning calculations are transparent—that is, clearly state the base support owed by each parent before the time-sharing adjustment and the reduction due to shared-parenting time.

## **Chapter 3: Low-Income Adjustment and Analysis of Labor Market Data**

Changes to the federal regulations mandate that each state considers the basic subsistence needs of the noncustodial parent by incorporating a low-income adjustment into the child support guideline and consider the state's labor market data. The purpose of this chapter is to review California's current low-income adjustment to ensure it meets the requirement of the new federal regulations and reviews how other states are meeting this requirement. The analysis of California labor market data establishes that many parents have low income and justifies the need for an updated low-income adjustment. The Chapter concludes that California's low-income adjustment and first income band are out-of-date and makes recommendations to improve the effectiveness of the low-income adjustment for orders for more children.

A new U.S. Congressional Research Services (CRS) report finds that many obligors are economically vulnerable: CRS estimates that more than one-third of obligors have low income, which the CRS defines as income less than 200 percent of the federal poverty threshold.<sup>156</sup> This chapter reviews California's existing low-income adjustment (LIA) for obligors and fulfills the federal requirement to analyze labor market data. The labor market analysis also provides insights on the adequacy and need for the LIA. Although the current California LIA fulfills a new federal requirement of state guidelines to incorporate a LIA, it is inadequate given California's current cost of living. Recent changes in federal regulations require states to consider the basic subsistence needs of an obligor who has limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve, into their child support guideline. It also provides for state discretion to consider the basic subsistence needs of the custodial parent and children when considering the obligor's basic subsistence needs. Exhibit 19 shows both the requirements for a LIA and to analyze labor market data.

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<sup>156</sup> U.S. Congressional Research Service. (Oct. 2021). *Demographic and Socioeconomic Characteristics of Nonresident Parents*. Retrieved from <https://crsreports.congress.gov/product/pdf/R/R46942>.

**Exhibit 19: Federal Regulations Requiring Low-Income Adjustment and Analysis of Labor Market Data**

45 C.F.R. 302.56

- (b) The State must have procedures for making the guidelines available to all persons in the State.
- (c) The child support guidelines established under paragraph (a) of this section must at a minimum:
  - (1) Provide that the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay that:
    - (ii) Takes into consideration the basic subsistence needs of the noncustodial parent (and at the State's discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method determined by the State; and . . .
- (h) As part of the review of a State's child support guidelines required under paragraph (e) of this section, a State must:
  - (1) Consider economic data on the cost of raising children, labor market data (such as unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level for the State and local job markets, the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level, and factors that influence employment rates among noncustodial parents and compliance with child support orders;

The overarching goal of the chapter is to provide options for improving California's LIA. This is accomplished by first explaining California's existing LIA, then summarizing the reasons for the new federal requirement for state guidelines to have a LIA. Besides research suggesting that LIAs can better serve families and children through regular and timely child support payments and through other avenues, the publication of the federal rule changes cited research that arrears accrue and compliance rates are lower when orders are set at 20 percent or more of an obligor's gross income. This research, which includes California-specific research and subsequent research on the issue, are extensively reviewed because some believe the simple policy solution to avoiding arrears accumulation and achieving full compliance is to not set orders at 20 percent or more of an obligor's gross income. As explained in detail, the research does not definitively support this policy solution.

In turn, LIAs in other states, which mostly consider a self-support reserve (SSR) test are reviewed. This sets the stage for discussing whether updating the existing LIA or switching to a SSR-Test will better consider basic subsistence needs of California obligors and better serve California families and children. The discussion identifies the advantages and disadvantages of updating the LIA and fixing other provisions compared to adapting the SSR-Test and various options for each approach. The discussion uses case comparisons to illustrate the impact of these alternatives and to meet the federal requirement to consider the impact of a state's guideline on low-income families. It also considers how states are exercising the federal option to consider basic subsistence needs of the other parent and the children.

The chapter closes with the analysis of California labor market information. (Federal regulation requires the analysis of labor market data as part of a state's guideline review.) Labor market data reflects the availability of employment opportunities throughout the state, the pay and usual

hours of those opportunities particularly for parents who have the capacity to work but few employment skills, low educational attainment, and little experience. The analysis provides further insights on whether and how the existing California low-income adjustment should be updated.

## **California’s Existing Provisions for Low Income**

Once income available for support is determined (which may include imputed income and deductions from incomes such as a hardship deduction for other children residing in the home based on Fam. Code, § 4058 and 4059), the existing California guideline meets the federal requirement for a LIA in two ways. Exhibit 20 shows the primary way, which is also officially called a “Low-Income Adjustment” in the California guideline and referred to as the LIA in its application. The LIA provides for a percentage reduction to the guideline-calculated amount for parties with incomes below the LIA income threshold. Exhibit 20 shows an excerpt of the statute providing the LIA. It specifically mentions a LIA income threshold of \$1,500 net per month, but also provides for an annual inflationary adjustment. The 2021 LIA income threshold is \$1,837 net per month. Based on the mathematical formula for calculating the LIA, only obligors with net disposable incomes below the LIA income threshold are eligible for the LIA. In contrast, the self-support reserve (SSR) adjustment, which is the most common way other states adjust for low income obligors and was specifically mentioned in federal regulations, does not require an income threshold for its application and will apply to higher net incomes than California’s LIA. As shown later, the SSR also reduces the order amounts to a level that ensures the obligor’s basic subsistence needs are met regardless of the number of children; whereas, the LIA does not unless the income threshold is extremely high (e.g., about three times the self-support reserve depending on how the SSR is set up.)

### **Exhibit 20: California’s Current Low-Income Adjustment (Fam. Code, § 4057(7))**

In all cases in which the net disposable income per month of the obligor is less than one thousand five hundred dollars (\$1,500), adjusted annually for cost-of-living increases, there is a rebuttable presumption that the obligor is entitled to a low-income adjustment. The Judicial Council shall annually determine the amount of the net disposable income adjustment based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the California Department of Industrial Relations, Division of Labor Statistics and Research. The presumption may be rebutted by evidence showing that the application of the low-income adjustment would be unjust and inappropriate in the particular case. In determining whether the presumption is rebutted, the court shall consider the principles provided in Section 4053, and the impact of the contemplated adjustment on the respective net incomes of the obligor and the obligee. The low-income adjustment shall reduce the child support amount otherwise determined under this section by an amount that is no greater than the amount calculated by multiplying the child support amount otherwise determined under this section by a fraction, the numerator of which is 1,500, adjusted annually for cost-of-living increases, minus the obligor’s net disposable income per month, and the denominator of which is 1,500, adjusted annually for cost-of-living increases.

This is the first time in several years that income from full-time, minimum wage employment exceeds the LIA income threshold (\$1,837 per month in 2021). To understand this, the LIA formula is shown mathematically. Specifically, the LIA formula using the \$1,500 income threshold can be written as:

$$LIA = CS \times (\$1,500 - \text{obligor's net disposable income}) / \$1,500$$

where *CS* means the “child support” amount determined by the formula described in the previous chapter. To illustrate its application, assume that *CS* is \$450 per month and the obligor’s net disposable income is \$1,000 per month.

$$\begin{aligned}LIA &= CS \times (\$1,500 - \$1,000) / \$1,500 \\ &= \$450 \times \$500 / \$1,500 \\ &= \$450 \times 0.33 \\ &= \$150\end{aligned}$$

This means the *CS* of \$450 per month can be reduced by up to \$150 per month. If reduced by that amount, the order would be \$300 per month. Mathematically, there will be no LIA reduction if the obligor’s net disposable income is exactly equal to the LIA income threshold; the LIA reduction could be up to a 100 percent of the guideline-calculated base order amount if the obligor’s income is zero. With that said, it is important to be clear that the LIA-adjusted amount and guideline-determined base amount without the LIA will both yield a zero order if the obligor’s income is zero.

California added the LIA to the guideline in 1994 and subsequently modified it a few times. One modification changed its application from a discretionary adjustment to a rebuttal presumptive adjustment. In 2013, California amended the LIA provision to reset the threshold amount to \$1500 and allow for annual inflationary updates to the income threshold for applying the LIA. Another amendment that became effective in 2020, requires guideline calculators to show the LIA as a range where the range is the order amount assuming the full LIA is applied and the order amount when the LIA is not applied.<sup>157</sup>

The second provision for low-income parents in the existing California guideline that would meet the federal requirement is less lucid: it is the first income band (\$0 to \$800 combined net per month) of the *K-factor* formula, which was discussed in the previous chapter (Exhibit 2). In summary, \$800 combined income of both parents per month would have been considered low income at the time the statute was adopted. Nonetheless, the first income band obviously did not provide a sufficient reduction because a few years after the uniform California guideline was adapted, the LIA, as provided in Fam. Code, § 4057(7) was added to the California guideline. It is not clear whether the first income band was inadequate because its income range was too low, the *K-factor* was too high, or both. Since the original LIA had an income threshold of \$1,000 net per month, it suggests that both the income range was too low and the *K-factor* was too high for the first income band.

As mentioned in the previous chapter, a combined income of \$800 net per month would have approximated twice the federal poverty guideline (FPG) for one person at that time. The FPG is

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<sup>157</sup> California Rule of Court, rule 5.275(b)(6).

the mathematical basis for most low-income adjustments and self-support reserves in state guidelines. Perhaps, California doubled the FPG to account for the combined incomes of the parents for the 20.0 *K-factor* income band. The 2021 FPG is \$1,073 per month for one person.<sup>158</sup> Some states consider the maximum Supplemental Security Income (SSI) benefit, which is a means-tested disability program, or the state minimum wage when setting the parameters of their low-income adjustments. The maximum SSI benefit for a single individual will be \$841 per month in 2022.<sup>159</sup> California does not consider SSI to be income available for child support because it is a means-based program. In 2021, the California minimum wage is \$13.00 per hour for employers with 25 or fewer employees and \$14.00 per hour for employers with 26 or more employees.<sup>160</sup> The after-tax income for a single tax filer from minimum wage employment with a 40-hour workweek would be \$1,911 net per month using a wage of \$13.00 per hour and \$2,040 net per month using a wage of \$14.00 per hour, surpassing the \$1,837 LIA threshold.<sup>161</sup> As a reminder, California provides for the presumption of income at full-time, minimum wage earnings when calculating child support in certain circumstances.<sup>162</sup>

## **Basis, Intent and Scope of Federal LIA Requirement**

Federal regulations pertaining to child support guidelines vastly expanded in 2016. The expansion aims to increase regular, on-time payment to families, to increase the number of obligors working and supporting their children, and to reduce the accumulation of unpaid arrears.<sup>163</sup> In particular, the changes focused on low-income, obligors and ending practices at setting orders beyond what an obligor with limited financial resources could pay. The federal rule changes also recognized the importance of healthy parent–child relationships in the development of children and how unpaid child support in some situations can inadvertently create barriers to the healthy interaction between the child and the parent obligated to pay support. All these changes were based on research findings.

Federal regulations now requires that states address the basic subsistence needs of the obligor through a low-income adjustment. The intent is to ensure that parents meet their child support obligations and to help states comply with the Supreme Court decision in *Turner v. Rogers*, 564 U.S. 1, 131 S. Ct. 2507 (2011), that essentially requires the determination of ability to pay prior

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<sup>158</sup> U.S. Social Security Administration. (n.d.) *SSI Federal Payments Amounts for 2022*. Retrieved from <https://www.ssa.gov/oact/cola/SSI.html>.

<sup>159</sup> U.S. Department of Health and Human Services. (Feb. 2021). *U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs*. Retrieved from <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/prior-hhs-poverty-guidelines-federal-register-references/2021-poverty-guidelines#guidelines>.

<sup>160</sup> California Department of Industrial Relations. (n.d.) *Minimum Wage*. Retrieved from [https://www.dir.ca.gov/dlse/faq\\_minimumwage.htm](https://www.dir.ca.gov/dlse/faq_minimumwage.htm).

<sup>161</sup> Calculated from California Child Support Services. (n.d.) *Guidelines Calculator*. Retrieved from <https://childsupport.ca.gov/guideline-calculator/>.

<sup>162</sup> California Fam. Code, § 17400(d)(2).

<sup>163</sup> U.S. Department of Health and Human Services. (Nov. 17, 2014). “Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs.” 79 Fed. Reg. 68,548. Retrieved from <https://www.govinfo.gov/content/pkg/FR-2014-11-17/pdf/2014-26822.pdf>.

to incarceration for nonpayment of child support.<sup>164</sup> Addressing order amounts at the front-end by setting an accurate order based upon the ability to pay can avoid the need for enforcement actions and improves the chances that the obligor will continue to pay over time.<sup>165</sup> There are two components to achieving this federal objective: using the actual income of the parent (rather than an imputed or presumed income, particularly when that imputed or presumed amount exceeds the actual income of the parent); and providing a low-income adjustment.

The federal Office of Child Support Enforcement (OCSE) cited several research studies in their proposed and final rule changes where payment of child support is strongly correlated with ability to pay. In its announcement of the proposed rule changes, OCSE cited studies from a few jurisdictions (including Orange County, California) that found child support compliance declined when the support order is set above 15 to 20 percent of the income of the obligor.<sup>166</sup> OCSE also cited research that finds most child support arrearages are uncollectible and owed by obligors with reported incomes less than \$10,000 per year, and child support arrearage can deter child support payment and reduce formal earnings.<sup>167</sup> In addition, OCSE cited research conducted by the U.S. Department of Health and Human Services (HHS) Office of the Inspector General on low-income parents that concluded that setting child support orders above what a low-income parent can pay are ineffective.<sup>168</sup>

“High orders do not translate to higher payments when the noncustodial parent has limited income.”

U.S. Dept. of Health and Human Services (2016). P. 93517.

In the finalized rule, OCSE added citations to research that found that many obligors do not meet their child support obligations because they do not earn enough to pay the amount of child support ordered and that setting support orders beyond the obligor’s “ability to pay can result in numerous deleterious effects including unmanageable debt, reduced low-wage employment, increased underground activities, crime, incarceration, recidivism, and reduced contact with their children.”<sup>169</sup> OCSE also cited a collaborative project between the National Women’s Law Center and the Center on Fathers, Families, and Public Policy addressing child support for low-income

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<sup>164</sup> *Supra* note 8, at 68,553.

<sup>165</sup> U.S. DHHS (2014), *supra* note 8, at 68,554.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> 81 Fed. Reg. 93,516 (Dec. 20, 2016.) Department of Health and Human Services Centers for Medicaid Services. Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs. Retrieved from <https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-29598.pdf>.

families when concluding that high orders do not translate to higher payment when the obligor has limited income.<sup>170</sup>

The federal requirement for states to provide for the basic subsistence needs is evidence based including research finding that setting support orders beyond the obligate parent’s ability to pay can result in “numerous deleterious effects including unmanageable debt, reduced low-wage employment, increased underground activities, crime, incarceration, recidivism, and reduced contact with their children.”

U.S. Dept. of Health and Human Services (2016). P. 93516.

### **Defining Basic Subsistence Needs and Option to Apply to Both Parents**

In defining “subsistence,” OCSE referred to a dictionary definition meaning that it is the minimum necessary to support life and used food and shelter as examples of necessary items.<sup>171</sup> Still, OCSE made it clear that subsistence was to be defined by the state and put in a state’s guideline.<sup>172</sup> The proposed rule did not mention the option of considering the subsistence needs of the custodial parent and the children, but this was later added to the final rule due to numerous commenters on the draft rules indicating that the basic subsistence needs of the each parent as well as the children should be considered.<sup>173</sup> In responding to these concerns, OCSE clarified that the purpose of the low-income adjustment was to ensure that a low-income, obligor could meet their basic subsistence need, pay the full amount of child support owed, and continue employment.<sup>174</sup>

“Subsistence is defined in the Meriam-Webster dictionary as the minimum (as of food and shelter) necessary to support life.”

U.S. Dept. of Health and Human Services (2014). P. 68,555

### **Research on the 20 Percent Threshold**

Of specific interest to updating the mathematical parameters of the current California guideline are the research studies OCSE cites about child support not being paid if the child support order exceeds 15 to 20 percent of an obligor’s income. OCSE cites two specific studies with the 20 percent threshold: one conducted by the Orange County child support agency, and the other conducted by the State of Washington child support agency.<sup>175</sup> These

<sup>170</sup> 81 Fed. Reg. 93,517.

<sup>171</sup> DHHS (2014), *supra* note 8, at 68,555.

<sup>172</sup> *Id.*

<sup>173</sup> 81 Fed. Reg. 93,518.

<sup>174</sup> *Id.*

<sup>175</sup> OCSE references three studies when citing the 15 to 20 percent threshold. The third study does not contain a threshold. That study was the U.S. Dept. of Health and Human Services. (2000.) *The Establishment of Child Support*



studies and subsequent studies are reviewed extensively to inform the *K-factor* for the lowest income band of the California guideline. As shown in Exhibit 2, the lowest income band results in one-child order amounts of 20 to 25 percent of the obligor’s net income when the combined net income of the parents is \$800 per month or less. The percentages would be considerably larger for more children due to the multiplier for more children that is set in the guideline.

Before reviewing the studies, it is important to note that OCSE makes it clear that the mathematical parameters of a state’s low-income adjustment are to be determined by a state based on what a state deems most appropriate for its state. This is also evident by OCSE not providing an operational definition of subsistence in response to a comment requesting a definition<sup>176</sup> and OCSE’s disagreement with a comment suggesting a federal cap on child support, such as setting the maximum amount of child support at no more than 20 percent of the income of the obligor.<sup>177</sup>

Another important note is that the OCSE-cited studies and subsequent studies on the issue consider order amounts as a percentage of gross income rather than net disposable income, which is the income basis of the California guideline. When adjusted for payroll taxes in particular, the threshold percentage would be larger based on net disposable income than it would be when based on gross income. Still, the appropriateness of using gross income and adjusting the results for after-tax income is questionable. Economic theory and empirical research find that expenditures decisions are made based on “spendable income,” which is essentially after-tax income, not gross income—that is, the income an individual or household has available for expenditures. Federal income tax rates confound the issue for two reasons. Federal income tax rates (and some state income tax rates) become larger with more income. Federal tax reform that became effective in 2018 reduced the effective federal tax rate, and arguably the reduction was greater at higher incomes. Federal tax rates distort the applicability of research findings about ratios based on gross income when a state uses net income as the basis of their guidelines. In addition, changes in federal tax rates over time limit the ability to compare the research findings conducted over different time periods.

None of the studies considered child support as a proportion of spendable income. One reason is that most of the studies relied on quarterly wage data, which is a gross income amount, and did not have specific information to calculate spendable or after-tax income readily available. All states collect quarterly wage data from their labor department for the purposes of the state’s unemployment program. However, only employers covered by the state unemployment program report wage data. In turn, a state’s labor department provides the quarterly wage data to the state’s child support agency that uses it to find the parent’s employment and income information

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*Orders for Low Income, Noncustodial Parents*, OEI-05-99-00390. Retrieved from <https://oig.hhs.gov/oei/reports/oei-05-99-00390.pdf>.

<sup>176</sup> Id.

<sup>177</sup> 81 Fed. Reg. 93,515 (Dec. 20, 2016). Department of Health and Human Services Centers for Medicaid Services. Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs. Retrieved from <https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-29598.pdf>.

for the purposes of establishing and enforcing child support orders. Most of the studies recognized this as a limitation since quarterly wage data would not capture income of self-employed individuals, employees working for employers who do not have to report earnings (e.g., railroads), and employees working for employers who fail to report.

Additionally, some of the studies use 28 as the threshold for two or more children and other studies use 29 percent. The reason for this slight difference is not clear.

### **2011 Orange County Study**

Completed in 2011, the OCSE-cited Orange County study examined just over 100,000 IV-D child support cases extracted from the DCSS automated system.<sup>178</sup> The sample consisted of newly established child support orders January 2009 to December 2010.<sup>179</sup> The statistical analysis controlled for other factors that may influence payments, such as the obligor's percentage of time with the child and the number of children.

The study found that orders set above 19 percent of the obligor's gross income had lower levels of child support compliance and arrears growth and missed monthly payments.<sup>180</sup> The Orange County researchers found significant decreases in the percentage of current support paid and the percentage of months with payments between obligors whose orders were set at 10 to 19 percent of gross income and those whose orders set at 20 to 29 percent of gross income.<sup>181</sup> For those with lower orders, they had an average compliance rate of 71.7 percent: and, for those with higher orders, they had an average compliance rate of 53.1 percent. The Orange County study was referenced in the federal rules as providing evidence that lower orders result in more regular payments. The specific finding is that for those with lower orders, they paid in 72.7 percent of the payment months examined; and for those with higher orders, they paid in 54.4 percent of the payment months examined. For low-income families with three or more children, the Orange County researchers found that the threshold was higher: payment performance declined for orders set above 29 percent of gross income.<sup>182</sup>

### **2003 Washington Study**

Investigating the causes of arrears buildup, the 2003 Washington State study relied on data from its state child support program matched to quarterly wage data reported to the state department of labor.<sup>183</sup> The study tracked cases over 15 quarters beginning in 1995 and ending in 1997.<sup>184</sup> The major finding was that the bulk of arrears growth over the 15-month study period could be

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<sup>178</sup>Orange County Department of Child Support Services Research Unit (Oct 2011). *How Do Child Support Order Amounts Affect Payments and Compliance*. Orange County, CA Department of Child Support Services. Retrieved from <https://www.css.ocgov.com/sites/css/files/import/data/files/blobid=27829.pdf>

<sup>179</sup> *Id.* at 13.

<sup>180</sup> *Id.* at 2.

<sup>181</sup> *Id.* at 20.

<sup>182</sup> *Id.* at 2.

<sup>183</sup> Carl Formoso. (2003). *Determining the Composition and Collectability of Child Support Arrearages, Volume 1: The Longitudinal Analysis*. Retrieved from <https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/cv011prn.pdf>

<sup>184</sup> *Id.* at 2-1.

attributed to obligors with gross earnings of \$1,400 per month or less, and these low-earning obligors were not able to pay their support orders.<sup>185</sup> The study also concluded that arrears will grow when child support orders are set above 20 percent of the obligor's gross income.<sup>186</sup> Another finding was that child support payments were three times more likely to be regularly received when the obligor's child support order was 20 percent of the obligor's earnings or less.<sup>187</sup>

### **Studies Conducted after the 2016 Federal Rule Changes**

Since the federal rule changes in 2016, Orange County updated its study and seven separate studies were conducted using Wisconsin, Maryland, Pennsylvania and Georgia data. (With the exception of Georgia, each state conducted two studies that inform the 2011 Orange County study findings.) In general, the results from subsequent research are mixed. Some are consistent with earlier research, others find that the 20 percent of gross income threshold for determining compliance is less pronounced than the influence of other factors such as income imputation and presumption, and still others simply do not support the OCSE-cited studies. The 2021 Orange County Study and the University of Wisconsin studies are discussed next. The Wisconsin study was the most thorough and used more rigorous methods than the other studies. Appendix C summarizes the other studies as well as some findings regarding the 20 percent threshold based on the analysis of case file data.

### **2021 Orange County Study**

In 2021, the Orange County Department of Child Support Services updated its study.<sup>188</sup> It used almost 300,000 records of DCSS child support guideline calculations across the state from 2010 to 2019. Of particular interest was whether compliance with child support orders set above 19 percent of the obligor's gross income decreased. It found that the decrease was not as distinct as its previous study.<sup>189</sup> Among obligors without presumed and imputed income, the study found a small difference in compliance rates among orders set at 18 to 19 percent of the obligor's gross income and those with orders set at 19 and 20 percent of the obligor's gross income: the compliance rate was 75 percent for the former group and the compliance rate was 72 percent for the latter group. The compliance rate for those with only imputed or presumed income was considerably less regardless of the level that the order was set at: the compliance rate is 42 percent for both obligors whose orders were 17 to 18 percent of gross income and those whose orders were 19 to 20 percent of gross income. The study concluded that income source and order entry method were better predictors of payment compliance than the ratio of the child support order to the gross income of the obligor.<sup>190</sup> Specifically, those with presumed and imputed income have the lowest compliance rate, and compliance was lower among default orders.<sup>191</sup>

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<sup>185</sup> *Id.* at 8-1.

<sup>186</sup> *Id.* at 1.

<sup>187</sup> *Id.* at 4.

<sup>188</sup> Orange County Department of Child Support Services. (June 2021.) *Revisiting the 19 Percent Ratio of Order to Wage Threshold on Payment Compliance*. Retrieved from [https://www.css.ocgov.com/sites/css/files/2021-06/Revisiting%2019%20Percent%20Ratio%20of%20Order%20to%20Wage%20FINAL%20June%202021\\_0.pdf](https://www.css.ocgov.com/sites/css/files/2021-06/Revisiting%2019%20Percent%20Ratio%20of%20Order%20to%20Wage%20FINAL%20June%202021_0.pdf).

<sup>189</sup> *Id.* at 2.

<sup>190</sup> *Id.* at 3.

<sup>191</sup> *Id.* at 2.

## 2008 and 2020 Wisconsin Studies

University of Wisconsin Institute of Research on Poverty (IRP) researchers conducted both studies, although different IRP researchers conducted each study. Using Wisconsin specific data, the 2008 study finds that payments are higher when the order is more than 15 percent of the obligor's gross income than when it less than 15 percent.<sup>192</sup> The 2020 study compared the results from the 2011 Orange County study and the 2008 Wisconsin study. The 2020 study relied on data from first-time Wisconsin orders set in 2010 to 2012 and tracked payments for three years afterwards.<sup>193</sup> It used a rigorous statistical method that controls for other factors that may affect payment (e.g., whether the obligor has a subsequent order and whether the child was born through marriage) to explore the relationship between the child support order as a percentage of the obligor's gross income and payment and compliance.<sup>194</sup>

The 2020 study made a distinction between payment (which is the dollar amount paid) and compliance (which is the percentage of support due that is paid). They noted that higher orders may not result in 100 percent of compliance but may result in more dollars being paid even if the compliance rate is lower. At a policy level, the distinction has important ramifications. Full compliance may be an important policy goal when setting support orders for low-income obligors to reduce the “negative consequences of child support enforcement for low-income families.”<sup>195</sup> Although not specifically mentioned in the study, this can include driver's license suspension and other enforcement remedies that impede work and contact with the child for low-income obligors who simply do not have the means to pay current child support or past-due child support. Still, if the policy goal is to maximize child support dollars received for the children's benefit, full compliance may not be achieved in every case or for every income situation for a variety of reasons, including willingness to pay, rather than just ability to pay.

The Wisconsin researchers found some similar findings and contradictory findings as to whether higher ratios of child support to income were associated with lower payments and compliance when comparing the study results.<sup>196</sup> The findings across the two Wisconsin studies were generally similar. There were similar findings regarding the correlation between compliance and order amounts between the Wisconsin studies and the Orange County study, but not regarding the correlation between payments and order amounts. The findings from the 2020 Wisconsin study were that payments were higher when the ratio was more than 15 percent than when it was 15 percent or less and that payments increase until the ratio was at least 30 percent of earnings.<sup>197</sup> In other words, payments increase when the ratio rises and then decline at about 30 percent of income, and increase again such that those with ratios of up to 50 percent pay more

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<sup>192</sup> Leslie Hodges, Daniel R. Meyer, & Maria Cancian. “What Happens When the Amount of Child Support Due is a Burden? Revisiting the Relationship Between Child Support Orders and Child Support Payments.” *Social Service Review*, 94(2), p. 247. Retrieved from <https://www.journals.uchicago.edu/doi/abs/10.1086/709279>.

<sup>193</sup> *Id.* at 251.

<sup>194</sup> The Wisconsin researchers also used a fixed effects model to control for differences over time. *Id.* at 248 and 255

<sup>195</sup> *Id.* at 276.

<sup>196</sup> *Id.* at 247.

<sup>197</sup> *Id.* at 273.

than the lowest orders set at zero to 9 percent of income.<sup>198</sup> The Wisconsin researchers identified several data limitations to their empirical findings. This includes the lack of data on other factors that may influence payments such as the parents' relationship, the extent that the parents co-parent, and whether enforcement tools were used limited their data. The Wisconsin researchers also recognized that some of the differences between the findings from the Wisconsin studies and the Orange County study could be attributed to differences in state child support policies, data years, and study methodologies.

### **Economic Forensics and Analytics, Inc. 2019 Study**

Although this study did not explore the 20 percent threshold, the study provides much in-depth analysis with insights to improving the California LIA. The study estimated subsistence-level needs at the California county level in 2019. It found that the subsistence needs of one adult averaged \$1,222 per month and ranged from \$949 to \$1,496 per month.<sup>199</sup> Other study findings were that obligors who qualify for the LIA adjustment have a higher compliance rate than obligors in general (i.e., 67.3 percent compared to 64.8 percent.) The study recommended a county-specific or regional SSR. The study did address whether a county-specific or regional SSR would comply with the federal requirement for one statewide guideline.

## **Findings on the Application of the California LIA**

The findings from the analysis of case file data, which are discussed in greater detail in Chapter 5, inform how the LIA is being applied. California case file data come from two different sources: a random sample of court files from 11 counties and a data extract from the DCSS statewide case management system that includes all California counties. Both samples consider child support orders entered in 2018. The court sample includes data from IV-D cases (i.e., cases in which the local child support agency is involved) and non-IV-D orders, whereas DCSS-sampled orders include only IV-D orders.

The orders extracted from the DCSS automated system only noted if the LIA was applied if the order was an amount greater than zero. They do not consider orders in which the obligor's income was zero to be LIA orders because even without the LIA, the California formula would result in a zero-order amount.<sup>200</sup>

For consistency, Exhibit 21 imposes the same limitation among court-sampled orders. (Chapter 5, which summarizes the findings from the analysis of case file data, provides more analysis of the LIA without imposing any limitations.) Exhibit 21 shows 18 percent of all (both IV-D and non-IV-D orders from the court-sampled orders) are set using the LIA and that the LIA is applied more frequently in local child support agency caseload: the LIA was applied to 34 percent of IV-D orders among the court file sample and 34 percent of the orders extracted from the DCSS

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<sup>198</sup> *Id.* at 274.

<sup>199</sup> Economic Forensics and Analytics, Inc. (July 2019). *Subsistence Needs: Income Levels for Non-Custodial and Custodial Parents*. Report to the California Department of Child Support Services (DCSS).

<sup>200</sup> As further discussed in Chapter 5, historically the analysis of court file data has counted obligors with no income as eligible for the LIA, then reported the application of the LIA as a percentage of eligible obligors.

automated system. In the sample year (2018), the LIA income threshold was less than after-tax income from full-time, minimum wage earnings. Exhibit 21 also shows that the LIA was applied infrequently among non-IV-D orders and with no consistent variation by the number of children. Undoubtedly, the LIA is applied more frequently in orders that are part of the local child support agency caseload because they tend to involve parents with significantly lower incomes than parents with cases that are not part of the local child support agency caseload

**Exhibit 21: Frequency of LIA Application among Reviewed Orders (percentage of orders examined, n = number of orders examined)**

	Court File Sample			Sample from DCSS automated system
	All orders	Non-IV-D orders	IV-D orders	
<b>All</b>	(n=1,205) 18	(n=594) 2	(n=611) 34	(n=74,874) 34
<b>Orders for one child</b>	(n=673) 20	(n=310) 2	(n=363) 35	(n=48,498) 36
<b>Orders for two children</b>	(n=380) 13	(n=214) 3	(n=166) 27	(n=19,089) 31
<b>Orders for three children</b>	(n=105) 17	(n=56) 0	(n=49) 37	(N=5,589) 32
<b>Orders for four to nine children*</b>	(n=47) 34	(n=14) 0	(n=33) 48	(n=1,698) 37

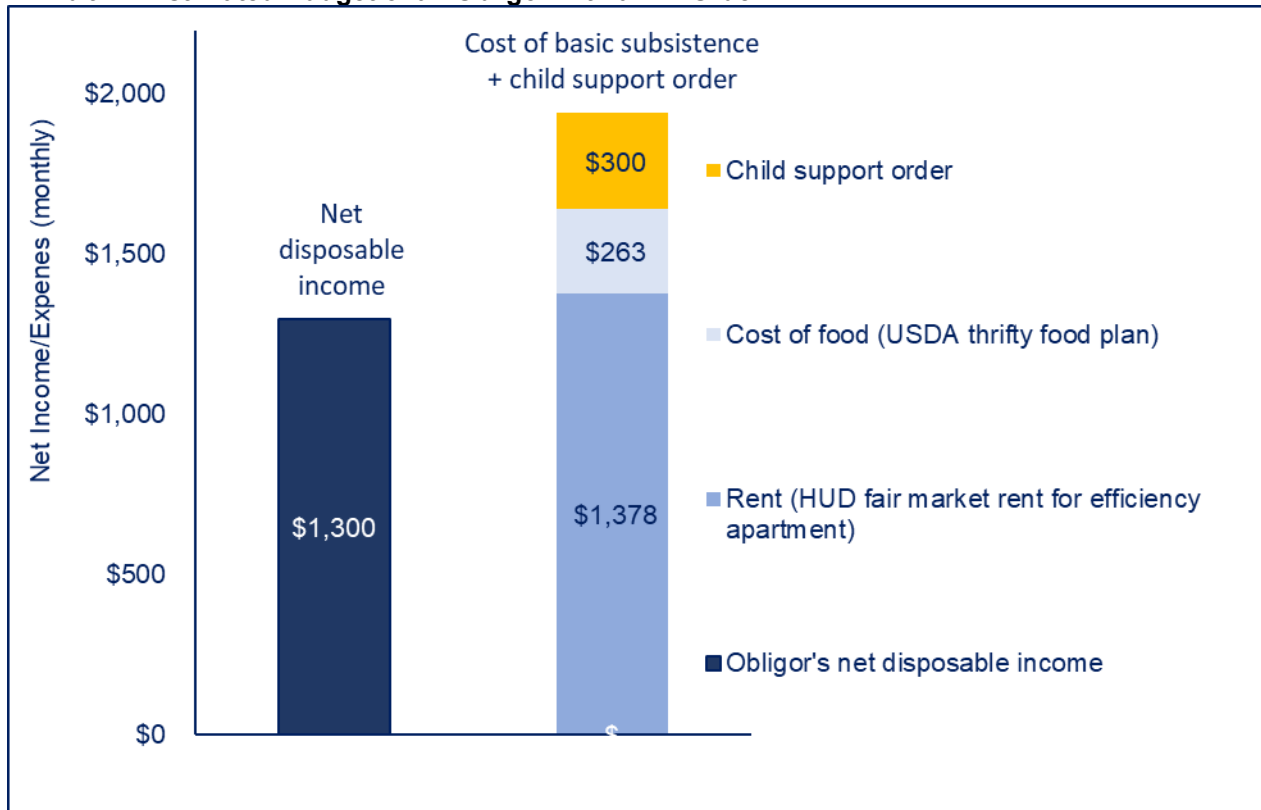
*\*There were no orders for 10 or more children. The maximum number of children on a case was six in the court file sample and nine in the DCSS sample.*

The median amount ordered for one-child orders when the LIA was applied was \$256 and \$288 per month among the IV-D court sample and DCSS case management sample, respectively. For two children, it was considerably more: \$454 and \$400 per month, respectively. The maximum amount of any order where the LIA was applied was \$842 per month among IV-D orders in the court file sample and \$1,456 per month in the DCSS case management sample. Both orders covered a large number of children. In contrast, in the sample year, the LIA income threshold was \$1,692 per month. The median net disposable income of the obligor among LIA orders was \$1,296 per month among all (IV-D and non-IV-D) court case files and \$1,323 per month among DCSS orders from the case management sample. In all, the data suggest that the LIA works better for orders covering one child and not as well for orders covering two or more children. The multiplier for more children, which was discussed in the previous chapter, would contribute to this outcome.

### **Is the Obligor’s Basic Subsistence Needs Met When the LIA Is Applied?**

Another way to look at the issue is to consider the basic subsistence needs of the obligors as federally required. As mentioned earlier, although OCSE leaves the definition of basic subsistence needs to the discretion of the state, OCSE references a dictionary definition of subsistence that identified food and shelter as necessary items. Exhibit 22 demonstrates that a typical obligor has insufficient net disposable income to meet his or her basic subsistence needs (rent and food), let alone pay child support even when the order is adjusted for the obligor’s low income.

**Exhibit 22: Estimated Budget of an Obligor with a LIA Order**



The underlying assumptions of Exhibit 22 are:

- The order is equivalent to \$300 per month (the median LIA order was \$318 per month among court sampled IV-D orders and \$300 per month among DCSS case management sampled orders).<sup>201</sup>
- The order amount has not been modified.
- The obligor’s net disposable income is \$1,300 per month (the median net disposable income of obligors with LIA orders was \$1,298 per month among court sampled IV-D orders and \$1,323 per month among DCSS case management sampled orders).
- The obligor’s income is steady and has not increased or decreased since the order was established.
- The obligor rents an efficiency at HUD’s fair market rent (FMR), which is \$1,378 per month in 2022.<sup>202</sup>

<sup>201</sup> As an aside, the guideline-calculated amount for this scenario using the 2018 LIA would be \$252 for one child and \$403 for two children. The \$300 amount is the median across all family sizes with LIA orders.

<sup>202</sup> See Appendix D for FMR’s by California county. A statewide FMR was calculated by weighing each county’s FMR for its proportion of the total state population. FMRs are obtained from [https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022\\_code/select\\_Geography.odn](https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022_code/select_Geography.odn).



- The obligor’s food costs are equivalent to the USDA thrifty food plan for a male age 20 to 50 (\$262.90 per month as of September 2021).<sup>203</sup>
- The obligate parent is ineligible for CalFresh (California’s Supplemental Nutritional Assistance Program) because the parent’s income exceeds the income threshold.<sup>204</sup>

### Impact of Multipliers for More Children and Use of Different Income Bands

The scenario in Exhibit 22 depicts the most common scenario. The gap between total expenses and net disposable income would be significantly higher for obligors with child support orders that cover more children because the order amount would be higher.

Further, as noted above, the median income of an obligor with a LIA order is about \$1,300 net per month. Assuming the receiving party has a net disposable income somewhere in the range of

The income ranges of the lowest income band is outdated. Only 3 percent of all sampled orders had combined parental incomes of \$1 to \$800 per month.

zero to \$5,700 per month (which is highly likely), this puts the *K-factor* at its maximum possible level, 25.0. It negates the effectiveness of the LIA. It also underscores that the lowest income band of the existing *K-factor* (\$0 to \$800 per month) is no longer effective. In fact, when zero income cases are excluded,<sup>205</sup> few

orders were in the first income band: 3 percent of all sampled court files, 4 percent of sampled IV-D court orders, and 3 percent of DCSS case management sampled orders. The fact that few orders are even in the income range of the first income band further testifies to the inapplicability and suggest the need for modification of this income band.

### Use of Deviations in Setting Low-Income Orders

Many focus group participants expressed concerns that the existing California LIA was inadequate because of extraordinary high housing costs in many areas of California. There was some evidence that this was being used as a deviation reason under Fam. Code, § 4057(b)(5) that provides for a deviation when application of the guideline formula would be inappropriate due to special circumstances in the case. One participant referred to case law that the participant viewed as supporting deviations because obligors cannot meet their monthly expenses such as rent.<sup>206</sup> Of particular concern is this premise will increase the number of guideline deviations in the future while federal regulations call for limiting the number of guideline deviations. In short, this sentiment provides another rationale for updating or improving the current LIA.

<sup>203</sup> U.S. Department of Agriculture. (Oct. 2021). *Official USDA Thrifty Food Plan: U.S. Average, September 2021*. <https://fns-prod.azureedge.net/sites/default/files/media/file/CostofFoodSep2021Thrifty.pdf>.

<sup>204</sup> At the time this report was prepared, the income threshold was \$1,383 gross per month for a one-person household. It is assumed that the payroll taxes were at least \$83 per month, which would mean an individual with a net income of \$1,300 per month had a gross income in excess of \$1,383 per month.

<sup>205</sup> As a reminder to the reader, zero orders are excluded because they are often due to the obligor having zero income. The order amount would be zero without the LIA applied under any *K-factor*. The other circumstance that would yield zero orders are stipulations and when the parents have equal incomes and equal timesharing.

<sup>206</sup> *In City and County of San Francisco v. Miller* (1996) 49 Cal.App.4th 866.



## Low-Income Adjustments in Other States

The 1984–1987 National Advisory on Child Support Guidelines that was established by the U.S. OCSE at the request of the U.S. Congress to make recommendations to help states develop statewide guidelines recommended that a state’s guideline consider the subsistence needs of each parent.<sup>207</sup> The Advisory report included a prototype income shares guideline that considered the subsistence needs of the obligor through a self-support reserve. Since several states adapted the prototype income shares guideline,<sup>208</sup> many states have guidelines that have also considered the basic subsistence needs of the parent. Research conducted in 2019 found that most states (45 states) provide a guideline adjustment when the obligor has low income.<sup>209</sup> Many of them specifically define a level of basic subsistence needs for the obligor through providing an SSR, which is typically based on the federal poverty guidelines (FPG) for one person, but some states use other amounts. California’s LIA, which is a percentage reduction to the base support below the LIA-income threshold, is unique to California. No other state provides a similar adjustment.

### Self-Support Reserve Adjustment

California’s neighboring states of Arizona and Oregon provide an SSR adjustment in their guidelines. The U.S. Bureau of Economic Analysis measures price parity for the 50 states and the District of Columbia.<sup>210</sup> Price parity measures how much a state’s or region’s prices are below or above the national average. California, District of Columbia, Hawaii, New Jersey, and New York) have the highest price parities. All but California rely on an SSR for their low-income adjustment. Nonetheless, not only do these states (and all states using an SSR) vary in the amount of the SSR they use, but they also vary in how they apply it. Consequently, none yield identical results.

Exhibit 23 illustrates how an SSR adjustment works using Arizona’s approach. Arizona calls its SSR adjustment a “Self-Support Reserve Test” and provides for it as a line item on its automated guideline calculator and its hardcopy guideline worksheet, which is an Arizona court-issued form. The illustration considers a scenario where there are three children, the obligor’s income (the petitioner in this scenario) is \$2,400 gross per month, and the respondent’s income is \$1,600 gross per month. (Arizona starts its calculation with each party’s gross income.) To keep it simple, this scenario assumes no income deductions, no adjustment for timesharing, and no

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<sup>207</sup> National Center for State Courts. (1987). *Development of Guidelines for Child Support Orders, Final Report*. Report to U.S. Department of Health and Human Services, Office of Child Support Enforcement, Williamsburg, VA.

<sup>208</sup> California did not adapt the prototype income shares guideline.

<sup>209</sup> Hodges, Leslie & Vogel Klein, Lisa. (Nov. 2020). “Too Much, Too Little, or Just Recent Changes to State Child Support Guidelines for Low-Income Noncustodial Parents.” *Journal of Policy Practice and Research*. Retrieved from <https://www.irp.wisc.edu/wp/wp-content/uploads/2020/01/CS-2018-2020-T4.pdf>, at 7.

<sup>210</sup> A state’s “price parity” is used to compare the cost of living among states. It considers all consumption goods and services, including housing rent. A price parity of 100 price is the national average. States with price parities above 100 percent have prices above the national average. The five states with the highest price parity are Hawaii (119.3), California (116.4), New York (116.3), New Jersey (116.0), and the District of Columbia (115.2). Source: U.S. Bureau of Economic Analysis. (Dec. 2020). *2019 Regional Price Parities by State (US = 100)*. Retrieved from <https://www.bea.gov/news/2020/real-personal-income-state-and-metropolitan-area-2019>.

adjustment for work-related childcare expenses, the cost of the child’s health insurance coverage, or another expense. For the combined adjusted gross income in this scenario, the basic obligation as shown on Line 4 of Exhibit 23 is \$1,306 per month. (As discussed in Chapter 2, most income shares guidelines provide a schedule of basic obligations that reflects average childrearing expenditures for a particular income and number of children. This is the total amount expected to be spent on the child by both parents.) Each parent is responsible for their prorated share of the basic obligation. Since there are no other adjustments in this scenario, each parent’s prorated share is shown on Line 6 as the preliminary child support obligation for each parent. Line 7 and Line 8 illustrate how a self-support reserve test is conducted for the petitioner. Line 7 shows the 2021 Arizona self-support reserve of \$1,685 per month. It is subtracted from the obligor’s adjusted gross income. The difference (\$715 per month) is shown on Line 8. The final child support order is the lower of the preliminary child support obligation on Line 6 (\$784 per month) and the amount on Line 8 (\$715 per month). If the amount on Line 8 is less than zero, Arizona allows for judicial discretion, but most Arizona judges will enter a final child support order of zero in this situation. Other states (e.g., Oregon) provide a rebuttal presumptive minimum order.<sup>211</sup> Oregon’s minimum order is \$100 per month, but \$50 per month is a more typical minimum order amount.

**Exhibit 23: Arizona’s SSR Adjustment<sup>212</sup>**

	Petitioner	Respondent	Combined
Line 1: Monthly gross income	\$2,400	\$1,600	\$4,000
Line 2: Monthly adjusted gross income	\$2,400	\$1,600	\$4,000
Line 4: Basic child support obligation for 3 child(ren)			\$1,306
Line 5: Percentage share of income (each parent’s income on Line 2 divided by Combined Income)	60%	40%	100%
Line 6: Preliminary child support obligation (Multiple Line 4 by Line 5)	\$784	\$522	
<b>Self-Support Reserve Test</b>			
Line 7: Self-support reserve for petitioner	\$1,685		
Line 8: Adjusted gross income less self-support reserve	\$ 715		
Line 9: Child support order to be paid by petitioner (lower of Line 6 and Line 8)	\$ 715		

Not all state guidelines using an SSR as their low-income adjustment provide for it as a line item in their child support calculation. The advantages to putting an SSR-Test as a line item to the child support calculation are that it is a transparent policy and the SSR can be easily updated without affecting the rest of the guideline formula calculation. The other methodologies are more complicated and do not lend themselves well to California’s unique guideline formula format. For example, one methodology is to incorporate the SSR into the income shares schedule, but

<sup>211</sup> Oregon Child Support Guidelines Rule (OAR 137-050-0755). Retrieved from [https://justice.oregon.gov/child-support/pdf/guidelines\\_commentary.pdf](https://justice.oregon.gov/child-support/pdf/guidelines_commentary.pdf).

<sup>212</sup> This is an abbreviated version of the Arizona child support guidelines worksheet provided by Arizona Judicial Branch. (n.d.). 2018–2021 Child Support Calculator. Retrieved from <https://www.azcourts.gov/familylaw/2018-Child-Support-Calculator>.

since California does not have an income shares schedule, California cannot use that methodology.

### State SSR Amounts

Each state determines its own level for the SSR amount. Still, most states relate their self-support reserve to the federal poverty guidelines (FPG) for one person. The 2021 FPG is \$1,073 per month.<sup>213</sup> Several states use more than 100 percent of the FPG as their SSR amount. New Jersey applies the largest percentage increase: 150 percent.<sup>214</sup> New York uses 135 percent<sup>215</sup> and Oregon uses 116.7 percent.<sup>216</sup> Hawaii has the highest price parity, California has the second highest price parity, New York has the third highest price parity, New Jersey has the fourth highest price parity, and the District of Columbia has the fifth highest price parity.<sup>217</sup> To that end, it is not surprising that New Jersey and New York apply higher percentage increases to the FPG when setting their SSR than other states. In contrast, Hawaii and the District of Columbia have much lower SSRs. Hawaii uses its FPG rather than the FPG for the lower 48 states.<sup>218</sup> (The Hawaii FPG is about 115 percent more than the FPG for the lower 48 states.) The District of Columbia sets its SSR at 133 percent of the FPG and provides for a minimum order of \$50 below that. The 2013 District Commission expressed concerns about this because when coupled with the District's minimum wage and a job that offered less than a 40-hour workweek (which is common in the service sector), it produced a \$50 order in circumstances when the parent receiving support also worked at the District's minimum wage and at a job that offered less than a 40-hour workweek.<sup>219</sup> (The District has historically had a minimum wage exceeding the amounts of all states. In 2021, District relies on a minimum wage of \$15.20 per hour.<sup>220</sup>) The Commission leaned toward having a dual SSR that considers among other things, the amount of child support passed through to the family if the children are on Temporary Assistance to Needy Families (TANF). In response to the Commission's concern, the District adopted an exception

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<sup>213</sup> U.S. Department of Health and Human Services. (2021). 2021 Poverty Guidelines for the 48 Contiguous States and the District of Columbia. Retrieved from <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/prior-hhs-poverty-guidelines-federal-register-references/2021-poverty-guidelines>.

<sup>214</sup> New Jersey Rules of Court (eff. Sept. 2021). *Appendix IX-A Considerations in the Use of Child Support Guidelines*. Retrieved from <https://www.njcourts.gov/attorneys/assets/rules/app9a.pdf>.

<sup>215</sup> New York Child Support Program. (n.d.). *Child Support Standards*. Retrieved from [https://www.childsupport.ny.gov/dcse/child\\_support\\_standards.html](https://www.childsupport.ny.gov/dcse/child_support_standards.html).

<sup>216</sup> Oregon Child Support Guidelines Rule (OAR 137-050-0745). Retrieved from [https://justice.oregon.gov/child-support/pdf/guidelines\\_commentary.pdf](https://justice.oregon.gov/child-support/pdf/guidelines_commentary.pdf).

<sup>217</sup> U.S. Bureau of Economic Analysis, *supra* note 68.

<sup>218</sup> Hawaii Judiciary: Family Court of the First Circuit Senior Family Court Judges. (Oct. 2020). *Memorandum to All Persons Utilizing the Child Support Guidelines*. Retrieved from [https://www.courts.state.hi.us/wp-content/uploads/2020/10/CSG\\_Memo\\_FINAL\\_with\\_signatures.pdf](https://www.courts.state.hi.us/wp-content/uploads/2020/10/CSG_Memo_FINAL_with_signatures.pdf).

<sup>219</sup> District of Columbia Child Support Guideline Commission. (Dec. 2013). *Report of the District of Columbia Child Support Guideline Commission*. P. 22. Retrieved from [https://cssd.dc.gov/sites/default/files/dc/sites/cssd/service\\_content/attachments/Child%20Support%20Guideline%20Commission%20Report%202013.pdf](https://cssd.dc.gov/sites/default/files/dc/sites/cssd/service_content/attachments/Child%20Support%20Guideline%20Commission%20Report%202013.pdf).

<sup>220</sup> U.S. Department of Labor. (Sept. 30, 2021). *Consolidated Minimum Wage Table*. Retrieved from <https://www.dol.gov/agencies/whd/mw-consolidated>.

for special circumstances, and an SSR of 100 percent of the FPG for use in these special circumstances.<sup>221</sup>

Oregon, which bases its guideline calculation on gross income, explains that it increases the FPG to account for taxes. Historically, the FPG has been viewed as an after-tax amount. Yet, recently the federal office responsible for publishing the FPG makes it clear that when the FPG is used to determine income eligibility, the program may define the income basis of the FPG as the program deems appropriately, which could be gross or net income or however that program defines income.<sup>222</sup> This is because the intent of the FPG is to use it for administrative purposes. The official poverty measure, which closely relates to the FPG and is released later, is used to measure poverty. Most importantly, it is assumed that this reasoning behind the optional viewing of the FPG as gross or net income could be extended to using the FPG as an SSR as well. In short, no adjustment for gross or net income is necessary: the FPG can be used as is.

Still other states, particularly very low-income states, use less than the FPG to account for their lower cost of living.<sup>223</sup> Many of the states that use higher percentages (e.g., New York, New Jersey, and Oregon) also index their SSR so it is updated each year with annual updates to the FPG. The FPG is usually updated by February of each year. Most states, however, only update their SSR when they review their guideline. The advantages of this approach are that it does not require annual updates to automated guideline calculators and forms and avoids confusion among guideline users and stakeholders over

Most self-support reserves relate to the federal poverty guideline (FPG) for one person. New Jersey's SSR is one of the highest: it is 150 percent of the FPG and is compared to the obligor's net income.

Arizona is the only state to relate its SSR to its state minimum wage.

New Jersey and Arizona have the highest SSRs among states.

<sup>221</sup> See Code of the District of Columbia § 16-916.01(g-1)(1). Retrieved from <https://code.dccouncil.us/us/dc/council/code/sections/16-916.01>.

<sup>222</sup> The FPG is often confused with the official federal poverty threshold, which is used to measure poverty statistics. The FPG is actually a simplified version of the poverty threshold. It is designed administrative purposes such as determining financial eligibility for certain federal programs (e.g., Head Start and Children's Health Insurance Program.) The FPG is released early in the calendar year, whereas the finalized poverty threshold is issued later, so they can be adjusted for changes in price levels in the year for which poverty is measured. The U.S. Department of Health and Human Services Assistant Secretary for Planning and Evaluation, which is the agency that publishes the FPG, clarifies that the FPG can be used as a gross-income, after-tax income, or however the program using it for determining income eligibility defines it. See U.S. Dep't Office of the Assistant Secretary for Planning and Evaluation. (n.d). *Frequently Asked Questions Related to the Poverty Guidelines and Poverty*. Retrieved from <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/frequently-asked-questions-related-poverty-guidelines-poverty>.

<sup>223</sup> Arkansas Judiciary. (Apr. 2020). *Administrative Order 10: Child Support Guideline 2020*. Retrieved from [https://rules.arcourts.gov/w/ark/administrative-orders#!fragment/zoupio-\\_Toc77155197/BQCwhgzIbcwMYgK4DsDWszIOewE4BUBTADwBdoAvbRABwEtsBaAfX2zgHYOBGAVI+4BODgEoANMmyICEAIqJCuAJ7QA5KrEQ4ubABtdAYSRpOaQmSbCYXAnmKV6y9YQBIPKQBCKgEoBRADK+AGoAggByBr5ipGAARtCk7ClIQA](https://rules.arcourts.gov/w/ark/administrative-orders#!fragment/zoupio-_Toc77155197/BQCwhgzIbcwMYgK4DsDWszIOewE4BUBTADwBdoAvbRABwEtsBaAfX2zgHYOBGAVI+4BODgEoANMmyICEAIqJCuAJ7QA5KrEQ4ubABtdAYSRpOaQmSbCYXAnmKV6y9YQBIPKQBCKgEoBRADK+AGoAggByBr5ipGAARtCk7ClIQA).

changed amounts. The major disadvantage is it does not capture annual inflationary changes to the FPG.

Arizona is the only state to specifically relate its SSR amount to minimum wage: Arizona uses 80 percent of the state minimum wage.<sup>224</sup> Arizona's 2021 minimum wage is \$12.15 per hour and will increase to \$12.80 per hour in 2022.<sup>225</sup> Arizona uses 80 percent of its minimum wage based on the 20 percent threshold cited in the federal rule changes from Orange County's 2011 study as being the pivot point for when orders expressed as a percentage of gross income threshold where compliance begins to decrease.<sup>226</sup> Arizona also generally presumes a minimum income of full-time, minimum wage earnings after considering all of the circumstances named in federal regulations when imputing income.<sup>227</sup>

Unlike California (which uses net disposable income as the basis of its guideline calculation), the Arizona guideline relies on gross income. Arizona's SSR will be \$1,775 gross per month beginning in 2022, when Arizona updates its minimum wage. The advantage of using a state's minimum wage is that most states with a minimum wage more than the federal minimum wage recognize the shortcomings of the FPG, specifically how it is inadequate measure of poverty,<sup>228</sup> and set minimum wage to reflect a more realistic cost of living in their state. One disadvantage of using a state's minimum wage is that it may not be updated annually so it will not capture changes in price levels over time like the FPG will if the state minimum wage is not updated annually.

No state relates its SSR explicitly to a measurement of housing costs in that state. Additionally, no state provides for regional variation in their SSR to account for regional differences in cost of living within their state other than through a guideline deviation.

### **Other State Differences in Providing for an SSR**

There are many other differences in how states apply the SSR including how the SSR interacts with the income shares schedule, which is not relevant to California because California does not rely on an income shares schedule. The differences most relevant to integrating an SSR in the California guideline are whether to provide a minimum order for when income is below the SSR, whether to provide an SSR-Test or the SSR as a deduction to income, whether to provide an

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<sup>224</sup> The Arizona Child Support Guidelines. Retrieved from <https://www.azcourts.gov/Portals/31/AOCDRS10H2022.pdf?ver=2021-10-01-123004-923>, at 24.

<sup>225</sup> Arizona Industrial Commission. (n.d.). *Labor Department-Minimum Wage*. Retrieved from <https://www.azica.gov/labor-minimum-wage-main-page>.

<sup>226</sup> Arizona Supreme Court Committee for an Interim Review of the Child Support Guidelines. (Dec. 2017). *Final Report and Recommendations*, at 4. Retrieved from <https://www.azcourts.gov/Portals/31/CompiledPreliminaryReportRecommendations.pdf?ver=2019-04-10-163655-570>.

<sup>227</sup> See Arizona Guidelines, *supra* note 84, at 7, and Arizona Interim Committee, *supra* note 86, at 7.

<sup>228</sup> There are several studies that identify the limitations and inadequacies of the official federal poverty measure. For example, see the U.S. Census webpage entitled "Historical 1995 Based National Academy of Sciences (NAS) Measures." Retrieved from <https://www.census.gov/topics/income-poverty/supplemental-poverty-measure/data/tables/historical-nas-measures.html>.



economic incentive to increase earnings, and whether to conduct the SSR-Test before considerations of additional expenses such as childcare.

### ***When Income is Less than the SSR, Does a State Provide a \$0 Order or Minimum Order?***

Whether to provide a minimum order or a zero order when the difference between the obligor's income and the SSR is less than zero is a policy decision. States are mixed in their approaches. Arizona provides for court discretion, but in practice typically enters a zero order. Illinois provides a minimum order of \$40 per month per child, with an exception for parents with no gross income, whose only income is from means-tested assistance, who cannot work due to a medically proven disability, or who are incarcerated or institutionalized.<sup>229</sup> The advantage of a zero order is it recognizes that an obligor whose income does not cover their basic subsistence needs has no ability to pay. The advantage of a minimum order, even if a token amount such as \$50 per month, is that it ostensibly establishes the precedent that every parent has a financial responsibility to their child no matter what their income is. The counterargument is the parent may have no ability to pay.

### ***Providing an SSR-Test or an SSR as an Income Deduction?***

Arizona's application of the SSR is an SSR-Test—that is, the Arizona guideline ensures that the obligor's income after payment of the full child support order would leave the parent with sufficient income to meet the SSR when applied. Most income shares states with an SSR use an SSR-Test. (When the SSR is incorporated into the schedule, it usually is an SSR-Test.) States using the Melson formula (which is used by three states and discussed more in Chapter 2) treat their SSR as a deduction from income when calculating income available for the child support guideline.<sup>230</sup> Both parents are eligible for the SSR in states relying on the Melson formula. Guam is the only jurisdiction using the income shares guideline to treat its SSR as a deduction from income when calculating income available for child support.

The advantage of deducting the SSR from income is equal treatment of each party's income. Not only is the obligor and obligee treated equally, but all parents at every income level are treated equally: each parent is entitled to an SSR deduction no matter how small or large their income is. The advantage of an SSR-Test is that the obligor always has sufficient income after paying the child support order to meet their basic subsistence needs (assuming a minimum order is not applied) and if the obligor's basic subsistence needs are met, the support is set at an appropriate level. In contrast, deducting the SSR from income does not always ensure that the obligor's basic subsistence needs are met or that support is set at an appropriate level. The difference is similar to the difference between a tax credit and a deduction from taxable income. The tax credit has a greater impact like a SSR-Test conducted as the last step of the guideline calculation would.

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<sup>229</sup> Illinois Compiled Statutes (750 ILCS 5/505). Retrieved from <https://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=075000050K505>.

<sup>230</sup> Hawaii uses a mixed approach. It does not deduct its SSR (which is called primary support in Hawaii) from income used to determine each parent's share of the child's basic support but does not deduct it from income available for additional support—that is, the standard of living adjustment that ensures that the child shares in the financial standard of living afforded by an obligor who have income in excess of their SSR.

Among states using the income shares guidelines, a deduction from income interferes with achieving the principle of the income shares model to provide the child with same level of expenditures the child would have received had the children and parents lived together and the parents pooled financial resources. By deducting an SSR from both parents' incomes, the pooled financial resources available for childrearing expenditures is less.

### ***Providing an Incentive to Increase Earnings***

One limitation of the simple application of the SSR-Test is that each dollar of income above the SSR is assigned to child support. This provides no economic incentive to increase income because it all goes to child support. Several states address this by providing an economic incentive into their SSR adjustment by only assigning a percentage of each additional dollar of income to child support. West Virginia is an example of a state that provides an obvious work incentive as part of its SSR adjustment in its automated child support calculator and guideline worksheet, which is set in statute.<sup>231</sup> Several other states also incorporate a work incentive into their SSR through their income shares schedule, but since California does not have an income shares schedule, this is not an option for California.

### ***Is the SSR-Test Conducted before or after the Consideration of Additional Support?***

Although not shown in Exhibit 23, Arizona's SSR-Test is the last consideration in the child support calculation. It occurs after consideration of add-ons for work-related childcare expenses, the cost of the child's health insurance, the cost of the child's extraordinary out-of-pocket medical expenses, and other extraordinary child expenses specific to the case for which child support is being determined. In contrast, many states using the income shares calculation only apply the SSR-Test to the base support obligation. Whether to conduct the SSR before or after the consideration of additional childrearing expenses is a policy decision. The advantage of conducting the SSR after the consideration of all expenses is that it preserves the intent of the SSR. The disadvantage is that the obligee must carry these additional expenses if the obligor has insufficient income to meet their SSR.

### **Other LIA Adjustments**

There are a few states with LIA adjustments that cannot be considered an SSR adjustment. Nevada and Utah provide a separate look-up table to determine the amount of the child support order for low-income parents. Nevada defines low-income as an obligor whose gross income is below 150 percent of the FPG for one person.<sup>232</sup> Still other states (e.g., Mississippi) provide a low-income adjustment as a deviation factor.<sup>233</sup> Some of these alternative methods are cumbersome, do not lend themselves to consistent and predictable order amounts, or are inappropriate for California. A notable exception would be a separate look-up table for low-income parents for California depending on how it is set up.

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<sup>231</sup> See W.Va. Code § 48-11. Retrieved from <https://www.wvlegislature.gov/WVCODE/code.cfm?chap=48&art=13>.

<sup>232</sup> Nevada Child Support Guideline. (NRS Chapter 125B). Retrieved from <https://www.leg.state.nv.us/nrs/nrs-125b.html>.

<sup>233</sup> Mississippi Child Support Guideline. (Mississippi Code Annotated § 43-19-101.) Retrieved from <https://www.mdhs.ms.gov/wp-content/uploads/2020/05/Child-Support-Guidelines-Revised.pdf>.

Decades ago, a couple of states adapted a low-income adjustment that equalized the after-tax, after-child support incomes of the parents when both have minimum-wage earnings. Due to the way California calculates the net disposable income and with the insights of the 2019 Economic Forensics and Analytics, Inc. study that considers how to balance the needs of both households, this approach may be appealing. To equalize income, each parent's after-tax income is first calculated as a percentage of the FPG. For the obligor, the FPG for one person was used, and for a custodial household with one child, the FPG for two persons was used. To illustrate this, assume that each parent's only income is from a 40-hour per week job at minimum wage (which would yield \$2,427 per month using the 2021 California minimum wage of \$14.00 per hour).<sup>234</sup> Based on the DCSS child support calculator, if the obligor's tax filing status is single, the obligor's net disposable income is \$2,040 per month, which is 190 percent of the 2021 FPG for one person (\$1,073 per month). Similarly, the DCSS child support calculator is used to calculate the net disposable income of the obligee: it is \$2,468 per month due to the child-related tax benefits assuming head-of-household tax filing status. When divided by the 2021 FPG for two persons (\$1,452 per month), the percentage is 170 percent. To equalize income in proportion to each parent's respective FPG, the child support order would have to be \$125 per month. This would leave the obligor with \$1,915 in net disposable income after payment of child support (which is 178.5 percent of the FPG for one person). If \$125 is paid to the obligee every month, the obligee's net disposable income after payment of child support would be \$2,593, which is 178.5 percent of the FPG for two persons. The limitation of this approach is the equalizing amount of support always changes due to increases in minimum wage and changes in income tax code.

### ***Caps on Order Amounts***

A few states provide that a guideline's calculation exceeding a certain threshold are grounds for a guideline deviation. South Dakota presumes that if the total amount of the child support obligation, including any adjustments for the cost of the child's health insurance and childcare expenses exceeds 50 percent of the net income of the obligor, it is a financial hardship on the obligor and a reason for a guideline deviation.<sup>235</sup> New Mexico provides that the guideline-calculated amount exceeding 40 percent of the obligor's gross income is grounds for a guideline deviation.<sup>236</sup> Iowa took it a step further and built a cap of 44 percent of net income within its income shares schedule. (The 44 percent of net income applies to calculating support for five or more children in Iowa.)

These caps are generally not considered part of the state's LIA but function as one, particularly for guideline calculations for more children that may exceed these thresholds. The policy premise of the cap is that a child support order should not exceed what can be legally withheld

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<sup>234</sup>This was the minimum wage in effect at the time of the study. Although the 2022 minimum wage is known, the 2022 IRS income tax withholding formulas were not available when the study was written. This information is necessary to estimate after-tax income.

<sup>235</sup> South Dakota Child Support Guideline. (SDCL Chapter 25-7). Retrieved from [https://sdlegislature.gov/Statutes/Codified\\_Laws/2050105](https://sdlegislature.gov/Statutes/Codified_Laws/2050105).

<sup>236</sup> New Mexico Child Support Guideline. (NM Stat. § 40-4-11.1 (2020)). Retrieved from <https://law.justia.com/codes/new-mexico/2020/chapter-40/article-4/section-40-4-11-1/>.



from an obligor's paycheck. Title III of the federal Consumer Credit Protection Act (CCPA) limits the amount of earnings that may be garnished pursuant to court orders for child support or alimony. The garnishment law allows a standard income withholding limit of a worker's disposable earnings to be garnished depending on whether the worker is supporting another spouse or child and if wages are being garnished to also pay arrears.<sup>237</sup> Nationally, most child support collections are through income withholding: 72 percent of national collections were through income withholding in federal fiscal year 2019.<sup>238</sup> In the same year, California found that 70 percent of its statewide collections were from income withholding.<sup>239</sup>

### **Consideration of the Other Parent's Basic Subsistence Needs**

Federal regulations provide that a state may consider the basic subsistence needs of both parents and the children. Several states specifically provide for the consideration of the subsistence needs of each parent in the application of the low-income adjustment to the obligor. Delaware, Guam, Hawaii, and Montana consider their SSR to be an income deduction apply the SSR to each parent. In addition, those states that provide an SSR-Test as a line item in their guideline calculation or worksheet ostensibly consider each parent's basic subsistence needs.

In general, the consideration of the other parent's basic subsistence needs can limit the application of the state's low-income adjustment to low-income obligors. For example, New Jersey prohibits a low-income obligor from receiving the SSR adjustment if the obligee's net income minus the other parent's share of the total obligation is more than 150 percent of the poverty guideline.<sup>240</sup> The Arizona guideline provides for the application of its SSR after the court considers the financial impact the reduction in the order amount caused by the application of the SSR would have on the obligee's household.<sup>241</sup> In practice, however, the Arizona SSR is usually applied in all cases where the obligor is eligible and the child support order is calculated using the full amount of the SSR.<sup>242</sup> Other states that include an SSR for each parent in the worksheet find that it does not mathematically affect the amount the obligor owes, but still include it because it has the appearance of equitable treatment and can ease the calculation of

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<sup>237</sup>According to the U.S. Department of Labor, "The garnishment law allows up to 50% of a worker's disposable earnings to be garnished if the worker is supporting another spouse or child, or up to 60% if the worker is not. An additional 5% may be garnished for support payments more than 12 weeks in arrears." U.S. Department of Labor Wage and Hour Division. (n.d.). *Fact Sheet #30: The Federal Wage Garnishment Law, Consumer Credit Protection Act's Title III (CCPA)*. Retrieved from <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs30.pdf>.

<sup>238</sup> U.S. Federal Office of Child Support Enforcement. (Jun. 2017). *FY 2020 Preliminary Annual Report and Tables*. <https://www.acf.hhs.gov/css/policy-guidance/fy-2020-preliminary-annual-report-and-data>.

<sup>239</sup> California Child Support Services. (Feb. 2021). *Comparative Data for Managing Program Performance: FFY 2020*. Table 4.4.1. Retrieved from [https://childsupport.ca.gov/wp-content/uploads/sites/252/2020/10/2021-2-4\\_FFY-2020-Comparative-Data-Report.pdf](https://childsupport.ca.gov/wp-content/uploads/sites/252/2020/10/2021-2-4_FFY-2020-Comparative-Data-Report.pdf).

<sup>240</sup> New Jersey Rules of Court (eff. Sept. 1, 2021). *Appendix IX-A: Considerations in the Use of Child Support Guidelines*. Section 7h. Retrieved from <https://www.njcourts.gov/attorneys/assets/rules/app9a.pdf>.

<sup>241</sup> Arizona Child Support Guidelines, at 24. Retrieved from <https://www.azcourts.gov/Portals/31/AOCDRS10H2022.pdf?ver=2021-10-01-123004-923>.

<sup>242</sup> Venohr, Jane & Matyasic, Savannah. (Mar. 2021). Review of the Arizona Child Support Guidelines Findings from the Analysis of Case File Data and Updating the Child Support Schedule, at 22. Submitted to Arizona Supreme Court Administrative Office of the Court. Retrieved from <https://www.azcourts.gov/Portals/31/2021AZEconomicandCaseFileReviewFCICCGRS.pdf?ver=2021-04-14-192639-973>.

support in shared physical custody situations.<sup>243</sup> Another reason for not considering the subsistence needs of the other parent is because it generally prohibits the application of the SSR to the obligor in cases where the other parent does not receive the child support payment, rather the state receives it because the other parent receives Temporary Assistance to Needy Families (TANF, which is called CalWORKs in California). The fact that child support payments are retained by the state was a major issue among obligors participating in a recent child support debt relief pilot in San Francisco and contributed to the study recommendation that California adapt a 100 percent passthrough and disregard of child support payments.<sup>244</sup>

### **Comparison of California's LIA to SSR Adjustments in Other States**

To illustrate the differences between low-income adjustments based on an SSR and California's LIA (as well as differences in the base guideline amounts among state), Exhibit 24, Exhibit 25, and Exhibit 26 compare the order amounts under the California, Arizona, District of Columbia, Hawaii, Massachusetts, New Jersey, Nevada, New York, and Oregon guidelines for one, two and three children. Massachusetts is also added because recent research shows that the Massachusetts guideline produces the highest level of support for minimum wage cases.<sup>245</sup> Massachusetts ranks sixth highest among the 50 states and the District of Columbia in cost of living using the 2019 state price parities.<sup>246</sup> In summary, the comparisons consider other states with high cost of living and neighboring states.

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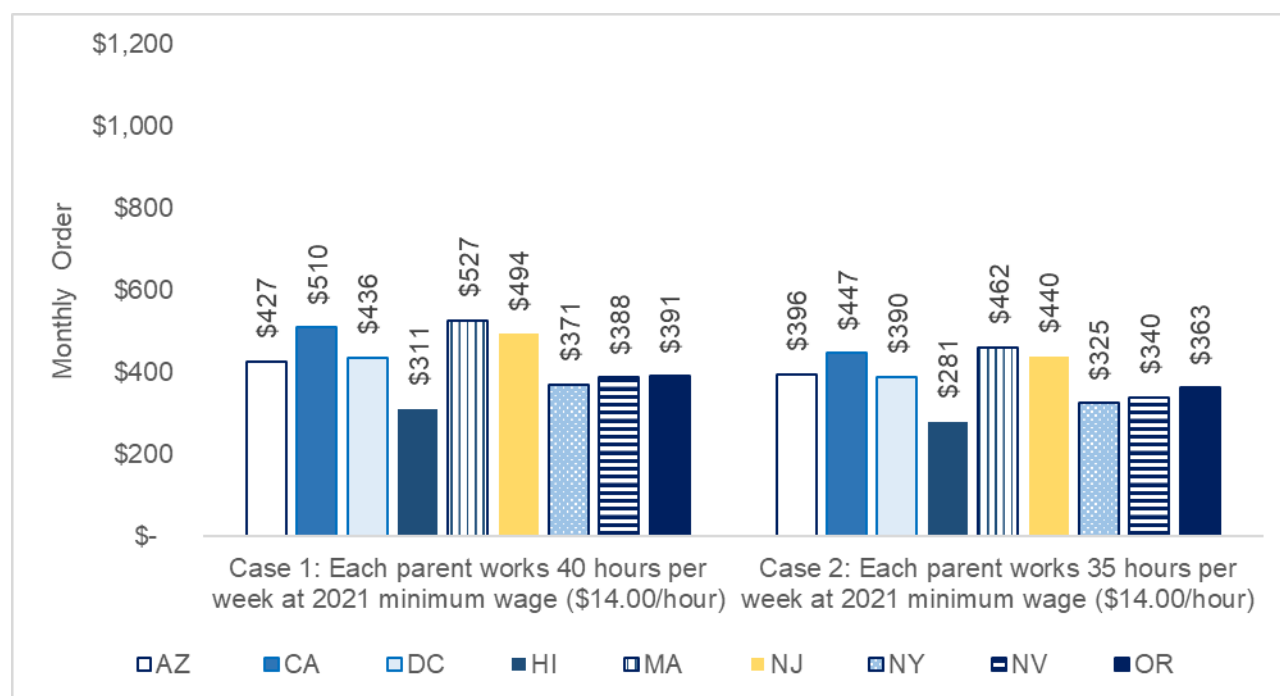
<sup>243</sup> For example, see Alabama's proposed child support guideline worksheet. Retrieved from [Revised Child Support Worksheet \(10-15-21\).pdf \(alacourt.gov\)](#).

<sup>244</sup> Hahn, Heather. (Aug. 2019). Relief from Government-Owed Child Support Debt and Its Effect on Parents and Children: Evaluation of the San Francisco Child Support Debt Relief Pilot. Urban Institute. Retrieved from [https://www.urban.org/sites/default/files/publication/100812/relief\\_from\\_government-owed\\_child\\_support\\_debt\\_and\\_its\\_effects\\_on\\_parents\\_and\\_children\\_4.pdf](https://www.urban.org/sites/default/files/publication/100812/relief_from_government-owed_child_support_debt_and_its_effects_on_parents_and_children_4.pdf).

<sup>245</sup> Hodges, Leslie & Vogel Klein, Lisa. (Nov. 2020). "Too Much, Too Little, or Just Recent Changes to State Child Support Guidelines for Low-Income Noncustodial Parents." *Journal of Policy Practice and Research*. Retrieved from <https://www.irp.wisc.edu/wp-content/uploads/2020/01/CS-2018-2020-T4.pdf>.

<sup>246</sup> For more information about price parity, see U.S. Bureau of Economic Analysis. (Dec. 2020). *2019 Regional Price Parities by State (US = 100)*. Retrieved from <https://www.bea.gov/news/2020/real-personal-income-state-and-metropolitan-area-2019>.

**Exhibit 24: Comparison of State Guidelines Amounts: One Child**

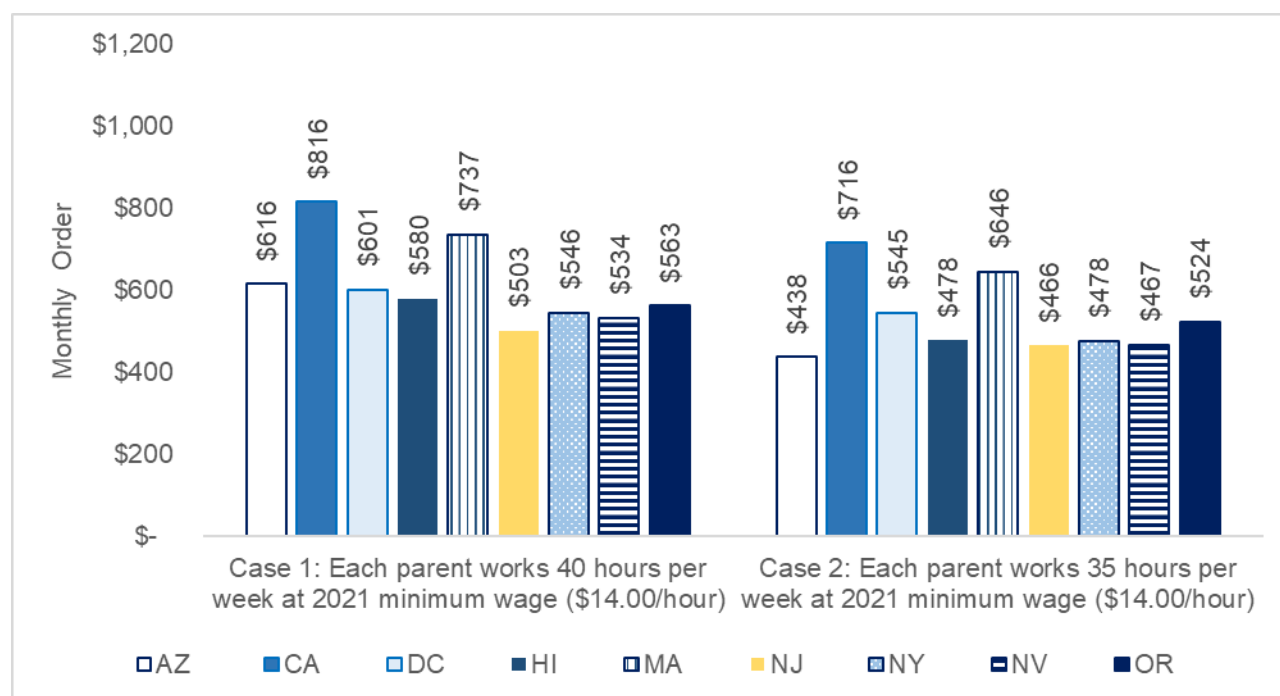


Two different case scenarios are considered: one where both parents work 40 hours per week at the 2021 state minimum wage (\$14.00 per hour), and the other where both parents also work at the minimum wage but average 35 hours per week, which is the average hours worked in California.<sup>247</sup> To focus on the impact of the SSR and LIA, there are no other factors considered in the calculation (*i.e.*, no adjustments to income, no cash medial support, no adjustment for older children, zero timesharing, and no additional support for childcare or other expenses). Zero timesharing is consistent with Fam. Code, § 4055(b)(6), which provides zero timesharing when income is presumed or there is known income information for the obligor and there is no evidence on the timeshare. Fam. Code, § 17400(d)(2) also directs the income presumption at full-time (40 hours per week) minimum wage earnings in default orders. The economic reality, however is that many low-paying jobs do not offer 40-hour workweeks. That is why 35 hours is used for the second scenario, although, as also discussed later, this is still more than what low-paid workers make in certain industries (e.g., hospitality and entertainment). A state official automated calculator is used except where noted to calculate each state’s guideline amount.<sup>248</sup>

<sup>247</sup> U.S. Bureau of Labor Statistics. (2020). *Establishment Data: State Hours and Earnings Annual Averages*. Table 4. Average hours and earnings of all employees on private nonfarm payrolls. Retrieved from <https://www.bls.gov/sae/tables/annual-average/table-4-average-hours-and-earnings-of-all-employees-on-private-nonfarm-payrolls-by-state.htm>.

<sup>248</sup> The weblinks to the automated guideline calculators are Arizona (<https://www.azcourts.gov/familylaw/2018-child-support-calculator> where the 2020 SSR was used); California (<https://childsupport.ca.gov/guideline-calculator/>); District of Columbia (<http://csgc.oag.dc.gov/application/main/Custody.aspx>); Hawaii (<https://www.courts.state.hi.us/child-support-guidelines>); New York (<https://www1.nyc.gov/site/hra/help/child-support-calculator.page>); Nevada (<https://selfhelp.nvcourts.gov/images/misc/childsupport-worksheeta-pdf->

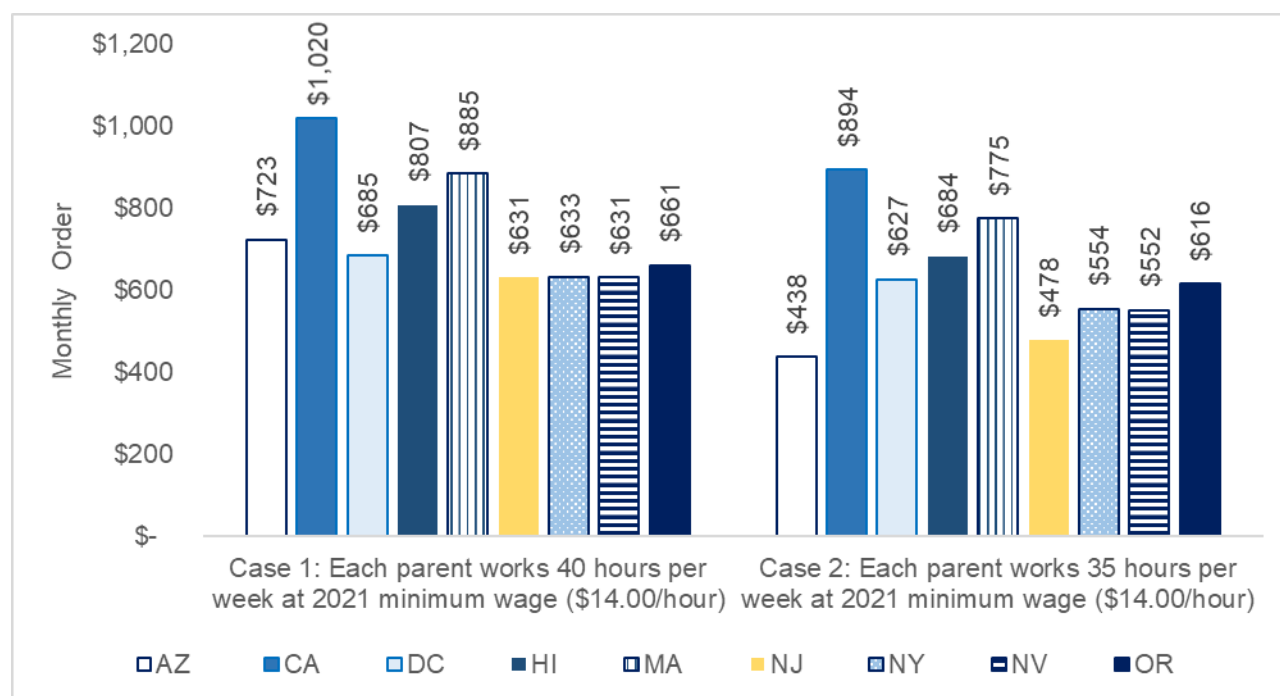
**Exhibit 25: Comparison of State Guidelines Amounts: Two Children**



A LIA or SSR adjustment rarely applies under most of the state guidelines considered. When it does apply, it is typically for the lower income scenario (Case Scenario 1) and when there are more children. The main reason it rarely applies is because the gap between a state’s minimum wage and the FPG, which is the basis of most SSRs, has grown. A 40-hour workweek at the 2021 California minimum wage would yield a gross income of \$2,427 per month, which amounts to \$2,040 net per month based on single taxpayer status using the tax conversion in the 2021 California guideline calculator. In 2021, this net income exceeded California’s LIA income threshold (\$1,837 net per month). The gross income less the order amount also exceeds Arizona’s SSR (\$1,685 gross per month), which has one of the highest SSRs in the nation. Although New Jersey also has one of the highest SSRs (\$1,610 net per month, which is 150 percent of the 2021 FPG), New Jersey does not apply it if the obligee’s net income after their share of the child support obligation is less than the SSR. Since this is the situation for both Case Scenarios 1 and 2, the SSR is never applied to the New Jersey calculated amounts. The orders shown in Exhibit 24, Exhibit 25, and Exhibit 26 that are adjusted for the LIA or SSR are the California order amounts under Case Scenario 2 since the obligor’s net disposable income is less than \$1,813 per month; the Arizona order amounts for two and three children under Case Scenario 2; and the Hawaii order amounts for three children under Case Scenario 1 and the order amounts for two and three children under Case Scenario 2.

[fillable.pdf](#)); and Oregon (<https://www.doj.state.or.us/child-support/calculators-forms/child-support-calculator/>). The New York City calculator was used because the state does not provide an online calculator. Massachusetts and New Jersey were calculated manually.

**Exhibit 26: Comparison of State Guidelines Amounts: Three Children**



The exhibits also show that even though the LIA was applied in Case Scenario 2, California yields the highest or second highest order amounts for both Case Scenarios 1 and 2 regardless of the number of children. For one-child orders, the California guideline yields the second highest, while the Massachusetts guideline yields the highest. When the guidelines are compared for two and three children, California is always the highest. This is because California’s multipliers for more children are high. To arrive at the two-child amount, the California guideline multiplies the one-child amount by 1.6, whereas Massachusetts uses 1.4 and other states implicitly use about 1.4 to 1.5. To arrive at the three-child amount, the California guideline multiplies the one-child amount by 2.0, whereas Massachusetts uses 1.68 and other states’ implicit percentage is significantly less than 2.0. Massachusetts also uses the same percentages for five or more children, while California increases its percentage for up to 10 children. The reason the California amounts are the highest is because the anchor *K-factor*, which applies in both case scenarios, is higher than the effective percentage guideline amount among most states for this income range. However, the reality is that California, in practice, applies its timesharing adjustment more frequently than other states and applies it at lower levels of timesharing. Once timesharing is accounted for, the gaps between California guideline amounts and those of other states close.

### **Updating the California LIA and Alternatives**

This subsection explores updating the California LIA through a three-prong approach: updating the income threshold for applying the LIA, updating the first income band, and controlling the mathematical impact the multipliers for more children can have at low incomes. It also explores using a SSR to meet the federal requirement to consider the subsistence needs of the obligor. The

analysis is intended to explore the potential impact of these changes. Ultimately, any changes involve policy decisions and thus are at the discretion of the legislature.

### **Increasing the LIA Income Threshold**

In 1994 California originally set the LIA income threshold at \$1,000 per month. Beginning in 2013, it was increased to \$1,500 per month and indexed to increase annually using the Consumer Price Index published by the California Department of Industrial Relations. In 2021, it stands at \$1,837 per month. The underlying bases of the \$1,000 and \$1,500 thresholds are unclear from the legislative history.

### **Background Information and California Housing Costs**

Regarding child support guidelines, it would seem that the same data used by states to determine their self-support reserve amounts, which is generally the federal poverty measure or the state minimum wage, could be used to inform updating the LIA income threshold. However, the \$1,000 and \$1,500 per month obviously did not relate to poverty or minimum wage. The 1993 and 2013 FPG for one person were \$613 and \$958 per month, respectively, in those years. Since it was last changed in 2013, the LIA has always been below after-tax income from minimum-wage earnings until 2021. A 40-hour workweek at the 2021 California minimum wage (\$14.00 per hour) yields \$2,040 net per month based on single tax filing status. The 2013 California minimum wage was \$8.00 per hour, which would yield about \$1,150 net per month estimating the payroll tax in that year.

As discussed in more detail in Chapter 5 that describes the findings from the focus groups with a range of stakeholders, many focus group participants indicated that the current LIA income threshold inadequately reflected the cost of living in California, particularly considering California housing costs. The most current U.S. Census data finds that California ranks second highest in median gross rent (which includes utilities) among states, second only to Hawaii: 2019 median gross rent is \$1,614 per month in California, \$1,651 per month in Hawaii, and \$1,097 per month nationally.<sup>249</sup> In other words, gross rent is about 60 percent higher in California than it is nationally. Statistics on the cost of owner-occupied housing paint a similar story. U.S. Census data for 2019 finds that median monthly owner costs (which includes mortgage costs among those with mortgages) is \$1,835 per month in California and \$1,125 per month nationally. California ranks second to the District of Columbia in median mortgage costs.

Recent increases in home prices and large regional variances within California exacerbate the issue. National housing prices increased 20 percent from August 2020 through August 2021.<sup>250</sup> Increases in housing prices have outpaced increases in price levels in general. The 2019 median gross rents (according to U.S. Census data) vary significantly by county (e.g., \$1,982 per month in Alameda County, \$810 per month in Imperial County, \$1,577 per month in Los Angeles

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<sup>249</sup> U.S. Census, 2019 American Community Survey. Retrieved from <https://data.census.gov>.

<sup>250</sup> St. Louis Federal Reserve. S&P/Case-Shiller Home Price Indices. Retrieved from <https://fred.stlouisfed.org/release/tables?rid=199&eid=243552#snid=243562>.



County, \$2,096 per month in Marin County, \$1,260 per month in San Joaquin County, and \$2,392 per month in Santa Clara County).<sup>251</sup>

Another barometer of housing prices that is more appropriate for low-income families is the Fair Market Rent (FMR) that is calculated by the U.S. Department of Housing and Urban Development (HUD) for the purposes of housing assistance. FMR represents the 40<sup>th</sup> percentile of rents for about 2,600 different regions across the county including nearly 100 in California. HUD releases FMRs a month before the beginning of each federal fiscal year. The most current rates available are from federal fiscal year 2022. HUD uses U.S. Census data to calculate FMRs specifically from recent movers to capture current rent rather than stayers who may not be paying the most current rent. HUD forecasts rent inflation when developing the FMR for the future year.<sup>252</sup>

### **Alternative Measures of Poverty and Subsistence**

In discussing measures of poverty, it is important to recognize the different purposes of the closely related poverty measures: the federal poverty guideline (FPG) and the official federal poverty threshold, which is used to measure poverty statistics. The FPG is what has been discussed so far. Designed for administrative purposes (e.g., determining income eligibility for various assistance programs), the FPG is released by February of each year. The poverty threshold is released later to account for price changes in the year for which poverty is being measured. The official federal poverty measure dates to the 1960s and an assumption that families spend about one-third of their income on food thus uses three times the cost of food as the poverty threshold.

California's extraordinary housing costs are one reason many researchers believe the official federal poverty level is not an appropriate measure of poverty in California. Still, applying alternative methodologies is challenged by data availability and other issues.<sup>253</sup> The Public Policy Institute of California (PPIC) and the Stanford Center on Poverty and Inequality developed the California Poverty Measure (CPM),<sup>254</sup> which builds upon the Supplemental Poverty Measure (SPM)<sup>255</sup> that the U.S. Census uses as an alternative measure to count how many individuals and households live in poverty. The CPM, however, drills down to more regional levels than the SPM does. The CPM and SPM both consider many more individualized factors such as regional difference in housing, work expenses, and noncash benefits when determining whether an individual or household is impoverished. Due to this, there is not one

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<sup>251</sup> U.S. Census, *supra* note 249

<sup>252</sup> For more information about the FMR methodology, see U.S. Dep't of Housing and Urban Development. (Aug. 2018). *Proposals to Update the Fair Market Rent Formula*. Retrieved from <https://www.huduser.gov/portal/sites/default/files/pdf/Proposals-To-Update-the-Fair-Market-Rent-Formula.pdf>.

<sup>253</sup> For example, see Orange County Department of Child Support Services Research Team. (May 2019). *Estimating Poverty in the Child Support Program*. Retrieved from <https://www.css.ocgov.com/sites/css/files/import/data/files/99179.pdf>.

<sup>254</sup> Danielson, Caroline. (Oct. 2013). *The California Measure: A New Look at the Social Safety Net*. Retrieved from <https://www.ppic.org/publication/the-california-poverty-measure-a-new-look-at-the-social-safety-net/>.

<sup>255</sup> Orange County Department of Child Support Services Research Team. (May 2019). *Estimating Poverty in the Child Support Program*. Retrieved from <https://www.css.ocgov.com/sites/css/files/import/data/files/99179.pdf>.

point estimate like the FPG, rather when identifying a poverty threshold it reflects the monetary resources needed to maintain a basic standard of living for a specific household type within a specific region (e.g., a family of four with minor children living in Kern County). Still, the most recent CPM finds an average California family of four needs \$35,600 per year to meet its basic needs in 2019.<sup>256</sup> The Economic Forensics and Analytics, Inc. (EFAI) study used the CPM to measure the subsistence needs of one adult, one adult with one or two children, and two adults with one or two children. The study found that the 2019 subsistence needs of one adult averaged \$1,222 per month and county-specific levels ranged from \$949 to \$1,496 per month.<sup>257</sup> Although this information is useful to understanding county differences in poverty and for implementing a SSR, it is not that informative to updating the LIA income threshold. It is not clear how the EFAI arrived at 2019 levels. In general, the CPM and SPM are backward-looking measurements of poverty because they look at retrospective data.

There are also other notable studies measuring subsistence at the state level: the Self-Sufficiency Standard,<sup>258</sup> United Ways of California's Real Cost Measure,<sup>259</sup> and the Massachusetts Institute of Technology (MIT) Living Wage.<sup>260</sup> All of the measurements are similar in that they arrive at the amount of financial resources to meet the basic needs of a California family by adding up the cost of housing, childcare, food, transportation, healthcare, and miscellaneous expenses from secondary data sources and then adjusting for taxes. Their differences are nuanced such as what family size needs a two-bedroom rather than a one-bedroom apartment. Most report individually for various family sizes and child ages and regions. MIT reports the financial resources as a wage rate assuming 2,080 hours of work per year. The MIT living wage is \$18.66 per hour for one adult with no children and \$40.34 for one adult with one child. Transformed into monthly amounts this would be \$3,234 and \$6,992 gross per month, respectively, for a one-adult household and a one adult with a child household.

The most recent Self-Sufficiency Standard (SSS) is from 2021. The SSS is not a statewide reported rate; rather, rates are reported for individual counties. For example, the SSS for a one adult (with no children) in Alameda County is \$3,636 gross per month and the SSS for one adult with a school-age child is \$6,874 gross per month.<sup>261</sup> United Way does not report a measurement for a single individual; rather, most of its measurements are for a family of four that includes two children.

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<sup>256</sup> Public Policy Institute of California. (Jul. 2021). *Poverty in California*. Retrieved from <https://www.ppic.org/publication/poverty-in-california/>.

<sup>257</sup> Economic Forensics and Analytics, Inc. (July 2019). *Subsistence Needs: Income Levels for Non-Custodial and Custodial Parents*. Report to the California Department of Child Support Services (DCSS), *supra* note 56.

<sup>258</sup> Pearce, Diana. (Feb. 2018). *Methodology Report: The Self-Sufficiency Standard for California: 2018*. Retrieved [http://www.selfsufficiencystandard.org/sites/default/files/selfsuff/docs/CA2018\\_Methodology.pdf](http://www.selfsufficiencystandard.org/sites/default/files/selfsuff/docs/CA2018_Methodology.pdf).

<sup>259</sup> Manzo, Peter, et al. *Struggling to Move Up: The Real Cost Measure in California: 2021*. Retrieved from <https://www.unitedwaysca.org/images/RealCostMeasure2021/The-Real-Cost-Measure-in-California-2021-Executive-Summary.pdf>.

<sup>260</sup> Massachusetts Institute of Technology. (n.d.). Living Wage Calculation for California. Retrieved from <https://livingwage.mit.edu/states/06>.

<sup>261</sup> Self Sufficiency Standard. (n.d.). *Self-Sufficiency Standard Tables: 2021*. Retrieved from <http://www.selfsufficiencystandard.org/california>.



### **Options for Updating the LIA Income Threshold**

Any update the LIA income threshold should reflect the current cost of living in California and consist of a data source that is available for annual updates. The latter requirement precludes measurements of poverty that are backward-looking such as the SPM and the CPM. The SSS measure, United Way measure, and Living Wage may not be available each year because they are published by private organizations or institutions. In contrast, federal measurements used to administer government programs such as the FPG and FMR, however, are updated annually and made readily available.

There are at least four practical options for updating the LIA income threshold:

- A. Update the amount to a reasonable amount and continue to update it annually for changes in California price levels;
- B. Relate it to a percentage (e.g., 200 percent) of the FPG, which is updated by February of each year;
- C. Relate it to the state minimum wage; or
- D. Relate it to a percentage (e.g., 150 percent) of local or state median Fair Market Rent.

There are also other options that are a combination of these factors.

#### ***Option A: Update the Threshold and Continue to Annually Update for Price Levels***

There is already a precedent, structure, and system to updating the LIA threshold for annual changes in California prices. Still, the economic evidence suggests that there needs to be a refresh to the \$1,500 threshold that appears in statute. Any of the other sources discussed below could be used for that update (e.g., a percentage of the FPG, state minimum wage or FMR), as well as another amount. One limitation to this approach is that the legislature may have to revisit the issue within the decade as the cost of living, housing expenses, and wages continue to change.

#### ***Option B: Update the Threshold Using a Percentage of the FPG***

The 2021 FPG is \$1,073 per month. Increasing it by 200 to 250 percent would bring it to \$2,146 or \$2,683 per month. It would also be higher than the highest SSRs of any state, although at a mathematical level the LIA income threshold should be higher than an SSR. New Jersey and Arizona have the highest SSRs. New Jersey's SSR, which is 150 percent of the FPG, amounts to \$1,610 net per month in 2021; Arizona's SSR, which is 80 percent of its minimum wage, amounts to \$1,685 gross per month in 2021. If California were to update its threshold using a percentage of the FPG, it then could rely on annual increases to the FPG as updates or continue to update using California-specific changes to price levels as currently provided by statute.

#### ***Option C: Update the Threshold for the State Minimum Wage***

Historically, the LIA income threshold has always been above after-tax income from full-time earnings at minimum wage. It has been about 30 to 50 percent higher. Recognizing the

shortcomings of the federal minimum wage, the California legislature has implemented a state minimum wage that steps up each year. It will reach \$15.00 per hour in 2022, which will amount to \$2,500 gross per month or approximately \$2,100 net per month for an individual with a single-tax filing status. This could be used as the basis as the LIA income threshold (e.g., 130 percent of the net equivalent to full-time earnings at the 2022 minimum wage would be about \$2,700 net per month). Another option is to set the LIA income threshold at a gross-income amount, specifically a gross-income amount greater than full-time, minimum wage earning. The latter would ensure that the LIA always applied to minimum-wage earners. One possible limitation is the cost-of-living may not always increase each year. In turn, the LIA income threshold would not be updated.

#### ***Option D: Update the Threshold using Fair Market Rent (FMR)***

Housing expenses comprise about 35 to 42 percent of total expenditures among low-income families with children.<sup>262</sup> The inverse of that suggests families need about 2.4 to 2.9 times their housing expense to meet their total expenditures. Information is not readily available for a single individual to know whether the percentages are similar. The weighted average FMR for an efficiency apartment in California is \$1,378 per month, and the median is \$921 per month. (See Appendix D for the calculation of the weighted average.) In turn, this would suggest a LIA threshold of \$2,209 if a single individual needs 2.4 times the median rent value. Using the weighted average would suggest an amount of \$3,307 per month.

There are a few advantages to updating the low-income adjustment for the FMR. Due to the timing of the federal fiscal year, it is published in September of each year, so would be available when annual changes are made to automated guideline calculators for payroll taxes. It already includes a forecasted rent increase. It is based on housing expenses, which was a repeated concern among focus group participants and the EFAI study. One disadvantage is that it requires the calculation of the weighted average or median FMR depending on what is used. Another disadvantage is that it may overstate the basic subsistence needs of the obligor if the obligor's housing expenses are lower because the obligor has a roommate or lives with friends, relatives, or a domestic partner. A final concern is if housing prices plummet and the consequences that would have on an SSR based on the FMR.

#### **Updating the First *K-Factor* Income Band**

Chapter 2 suggests that the second *K-factor* income band should match the economic data on childrearing expenditures—that is, it should only apply to net incomes where families devote about 25 percent of their income to childrearing expenditures. Below this income, the *K-factor* should be adjusted to preserve its original intent to provide a lower order amount for low-income families. The current lowest income band results in a *K-factor* of 20 to 25 percent for one child depending on the combined net disposable income of the parents. Based on the research about

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<sup>262</sup> Calculated for a low-income family from Table 3 of Lino, Mark. (2017). *Expenditures on Children by Families: 2015 Annual Report*. U.S. Department of Agriculture, Center for Nutrition and Policy Promotion. Miscellaneous Publication No. 1528-2015, Washington, D.C. Retrieved from [https://fnsp.prod.azureedge.net/sites/default/files/crc2015\\_March2017\\_0.pdf](https://fnsp.prod.azureedge.net/sites/default/files/crc2015_March2017_0.pdf); and Venohr & Matyasic, *supra* note **Error! Bookmark not defined.**, at 70.

the 20 percent threshold, there is not compelling evidence it should be decreased for one child, but the evidence does suggest a decrease for two or more children.

Further, the economic evidence suggests that the net disposable income range where approximately 25 percent of income is devoted to one child is about \$2,901 to \$4,200 per month. In turn, the first income range should be written as shown in Exhibit 27. To be clear, this does not mean that low-income families spend less at this income, rather it updates what is considered low income and effectively applies a *K-factor* percentage of 20.0 to 25.0 over this income range. As shown in the previous chapter, this is the income range where families spend more than their after-tax income (which is a sign of insufficient income), and it also aligns close to various recommended amounts for the LIA-income threshold (i.e., a net disposable income of \$2,683 per month using 250 percent of the FPG, \$2,700 per month using 130 percent of after-tax earnings for an obligor with full-time, minimum wage earnings, and \$2,756 per month using twice the weighted average FMR for an efficiency apartment).

**Exhibit 27: Updating the First *K-Factor* Income Band for Economic Evidence**

Total net disposable income per month		<i>K-factor</i> (amount of both parents' income allocated for child support)	
Existing	Proposed	Existing	Proposed
\$0 -\$800	\$0-\$2,900	$0.20 + TN/16,000$	$0.200 + TN/59,814$
\$801 - \$6,666	\$2,901-\$6,666	0.250	0.250

One limitation of the proposed first income band shown in Exhibit 27 is it produces a *K-factor* of 32.0 to 40.0 for two-children order amounts and even higher levels for three or more children. As shown earlier, compliance is lower among orders for two or more children when the percentage is higher.

Exhibit 28 uses a *K-factor* formula for the first income band that would allow for a lower *K-factor* when net disposable income is near zero. It is mathematically impossible to design lower income bands, however, that do not result in a *K-factor* of at least 40.0 for two or more children without a precipitous increase between income bands.

**Exhibit 28: Alternative Update to the First *K-Factor* Income Band**

Total net disposable income per month		<i>K-factor</i> (amount of both parents' income allocated for child support)	
Existing	Proposed	Existing	Proposed
\$0 -\$800	\$0-\$2,900	$0.20 + TN/16,000$	$0.165 + TN/34,118$
\$801 - \$6,666	\$2,901-\$6,666	0.250	0.250

Regardless of what is used for the first *K-Factor* income band, the second income band is a barrier to mathematically arriving at an appropriate order amount for low-income parents when the total net disposable income of both parents is considered. Most working low-income families fall into the second income band (\$2,901-\$6,666), which assesses 25 percent of the obligor's net

disposable income for one child, 40 percent for two children, and 50 percent for three children. For example, if both parents are earning \$15.00 per hour and working 40 hours per week, their total net disposable income is about \$4,750 per month assuming the obligor’s tax-filing status is single and the obligee’s tax-filing status is head-of-household with one dependent child.

An alternative “patch” to the K-factor table that would partially alleviate this outcome is to create two low-income bands as shown in Exhibit 29. This option keeps the *K-factor* below 20 percent for one child if the total net disposable income is below \$2,900 per month, and between 20 to 25 percent for total net disposable incomes between \$2,901 to \$5,000 per month.

**Exhibit 29: Alternative Update to the K-Factor Table that Adds an Income Band**

Total net disposable income per month		<i>K-factor</i> (amount of both parents’ income allocated for child support)	
Existing	Proposed	Existing	Proposed
\$0 -\$800	\$0–\$2,900	0.20 + $TN/16,000$	0.165 + $TN/82,857$
\$801 - \$6,666	\$2,901–\$5,000	0.250	0.200 + $TN/10,000$
	\$5,001 -\$6,666		0.250

Although not shown, the first income range could also provide a zero *K-factor*. In all, a policy decision is required when setting the *K-factor* and the range of incomes for the income bands. Alternatively, California could consider replacing its *K-factor* approach with a conventional income shares approach or the Melson formula and more current economic evidence on childrearing expenditures at all income levels. Both lend themselves better to addressing income disparities than California’s current *K-factor* table.

### Using a Percentage Threshold to Limit Order Amounts for More Children

One simple way to overcome the impact of the multipliers for more children is to consider a percentage threshold cap. Mathematically, the California formula can produce orders exceeding 50 percent of the obligor’s net income for three or more children due to the *K-factor* anchor of 25.0 and the multipliers for three and more children being at least 2.0. Combined, this mathematically results in order of at least 50 percent of the obligor’s net disposable income. As already mentioned, some states provide that an order in excess of a state-determined percentage of an obligor’s income is a deviation factor or set their child support guideline formula so it does not exceed a certain percentage of the obligor’s income. The policy perspective is that a child support guideline should not be set at a level that exceeds what can be legally withheld from an employee’s paycheck. Using the CCPA threshold, this would be about 50 percent of the obligor’s net disposable income, albeit the guideline definition of net disposable income differs slightly from the CCPA definition.

Although a percentage threshold appears to be a simple solution to high orders resulting from application of the multipliers for three or more children, the reality is that it may be unnecessary due to other factors considered in the guideline calculation and typical case characteristics. According to the analysis of case file data, only 2 percent of orders sampled from the court files and 1 percent of order sampled from DCSS were more than 50 percent of the obligor’s net

disposable income. One reason for the low percentage is that most orders are for one and two children (87 percent of the court case sample and 90 percent of the DCSS sample) rather than three or more children. Besides the multiplier for more children and the *K-factor*, other components of the existing formula may lower the order amount (e.g., deductions from income, application of the time-sharing formula or the existing LIA, or a higher combined net disposable income, which lowers the *K-factor*, or a guideline deviation). In short, the percentage cap, although sensible at a mathematical level, is unlikely to be the root cause of orders set at over 50 percent of the obligor's net disposable income.

### **Adopting an LIA Alternative: the SSR-Test**

Another option is an SSR-Test. As discussed, this is the most common method used among states to address the basic subsistence needs of the parent and was recommended in the EFAI report. To illustrate how the SSR-Test could be incorporated into the certified child support guideline calculator, Exhibit 30 first shows an excerpt from the DCSS guideline calculator result when there are three children, the child's time with Parent 1 is zero, and each parent's income is \$2,427 gross per month (which is earning from full-time employment at \$14.00 per hour, the 2021 California minimum wage.) There is no SSR-Test in this exhibit. Exhibit 31 shows a modified version that includes a SSR-Test. For simplicity, it assumes an SSR of \$1,378.00 net per month, which is the weighted average FMR for an efficiency apartment in California. In actuality, the SSR would be set more than the FMR to include the cost of food and other items needed for basic subsistence.

New Line 7 of Exhibit 31, which is a SSR reflective of the statewide FMR (\$1,378.00 per month) for an efficiency apartment, could be easily changed for the FMR of a specific county.<sup>263</sup> For example, Marin County's 2022 FMR of \$2,115 for an efficiency apartment could be inserted in New Line 7, which would reduce the order to zero since \$2,115 is more than the obligor's net disposable income. As mentioned earlier, many focus group participants thought it important to consider regional housing differences. One focus group participant thought it was consistent with the decision in *In City and County of San Francisco v. Miller (1996) 49 Cal.App.4th 866*. In this case, the obligor's basic subsistence needs including rent were considered because it would have interfered with the obligor's ability to provide for the children during their custodial time, and that would not be in the best interest of the children.

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<sup>263</sup>One concern is federal regulations require one statewide guideline. Since the SSR is just one component of the guideline, it is unclear whether a SSR that varies by region could be viewed as in conflict with this requirement. The only other state to provide for regional variations is Kansas, but it is in the context of when one party lives in other state. There are no known issues with the Kansas provision. (See the Kansas child support guideline.)

**Exhibit 30: Excerpt of DCSS Guideline Calculator Printout Involving Three Children and Minimum Wage Earners and no Time with Parent 1**

Child Support Results			
Monthly Support Totals			
	Type	Parent 1 (\$)	Parent 2 (\$)
Line 1	Monthly child support amount owed	1020.00	0.00
Line 2	Basic child support amount	1020.00	0.00
Monthly Tax/Income Information (Tax Year: 2021)			
	Type	Parent 1 (\$)	Parent 2 (\$)
Line 3	Monthly net disposable income	2040.00	2939.00
Line 4	Monthly net disposable income after Support	1378.00	3601.00
Line 5	Monthly gross income	2427.00	2427.00

**Exhibit 31: Illustration of an SSR-Test for Scenario Involving Three Children**

Child Support Results			
Monthly Support Totals			
	Type	Parent 1 (\$)	Parent 2 (\$)
Modified Line 1	PRELIMINARY monthly child support amount owed	1020.00	0.00
Line 2	Basic child support amount	1020.00	0.00
Monthly Tax/Income Information (Tax Year: 2021)			
	Type	Parent 1 (\$)	Parent 2 (\$)
Line 3	Monthly net disposable income	2040.00	2939.00
Line 4	Monthly net disposable income after Support	1378.00	3601.00
Line 5	Monthly gross income	2427.00	2427.00
New Section Self-Support Reserve Test			
New Line 6	Monthly net disposable income (from Line 3)	2040.00	2468.00
New Line 7	Self-Support Reserve	1378.00	1378.00
New Line 8	Income available for support (New Line 6 minus New Line 7)	662.00	1110.00
<b>New Line 9</b>	<b>Final order amount (Lower of Line 2 and New Line 7)</b>	<b>662.00</b>	<b>0.00</b>

One advantage of the SSR-Test is that it clearly specifies what the amount of basic subsistence needs level is; hence, it directly responds to the federal requirement to consider the basic subsistence needs of the obligor. It is a transparent adjustment. It ostensibly applies to both parents. Although ultimately the amount of the SSR is a state policy decision, the SSR can relate

to California housing prices and be easily adjusted to account for regional differences in housing expenses. The SSR-Test does not produce higher order amounts when the obligee has income or there is no timesharing, which are criticisms of the existing LIA mentioned in the focus groups with professionals. Some of the major disadvantages of the SSR-Test are that it is a change in methodologies that will require system changes to automated guideline calculators and new policy and business rules. In its simplest application, it assigns every additional dollar in net disposable income to child support and produces the same amount regardless of the number of children. Both issues (if of policy concern) can be easily circumvented by assigning only a percentage of the difference between the obligor's net disposable income and the SSR to the child support order and varying that percentage by the number of children. Another issue is that it may be inconsistent with Family Code Section 4011 that provides that "[p]ayment of child support ordered by the court shall be made by the person owing the support payment before payment of any debts owed to creditors." This statute is often used to counter arguments for reduction in child support due to the expenses of an obligor parent. If California were to adapt an SSR-Test, this provision should be reviewed for the sake of consistency and to avoid conflict in the law.

If the SSR varies regionally to account for regional differences in housing costs, this creates additional implementation and ongoing operations considerations including more system modifications to guideline calculators and additional policy and business rules to address various circumstances. For example, the obligor lives in a county that differs from the county enforcing the order, and whether one parent moving to another region with more or less expensive housing costs is a change in circumstance that warrants an order modification. Depending on the policy, this could inadvertently increase requests for modifications and affect DCSS and court workloads. The EFAI report provides a statistic that sheds light on the likelihood that some of these issues will occur: it notes that the obligor lives in a county other than the county enforcing the order in 39 percent of DCSS orders.<sup>264</sup>

Another concern is whether adjusting the regional differences is necessary if regions with higher housing costs generally pay higher wages or a party works in a county with an above average wage and lives in a neighboring county with below average housing costs. In other words, regional pay may compensate for the region's higher housing cost. (This may even be reflected in a local minimum wage set higher than the state minimum wage.<sup>265</sup>) This sort of compensation is generally observed when median housing cost of a particular region are compared to median earnings of a particular region, but the relationship has not been extensively investigated when comparing a region's FMR to typical earnings for low-income employment in the same region. Exhibit 33 provides a simple comparison by comparing county wages at the 25th percentile in the first quarter of 2021 to FMR for an efficiency apartment.<sup>266</sup> The 25th percentile is the wage

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<sup>264</sup> Economic Forensics and Analytics, Inc. (July 2019). *Subsistence Needs: Income Levels for Non-Custodial and Custodial Parents*. Report to the California Department of Child Support Services (DCSS), at 34.

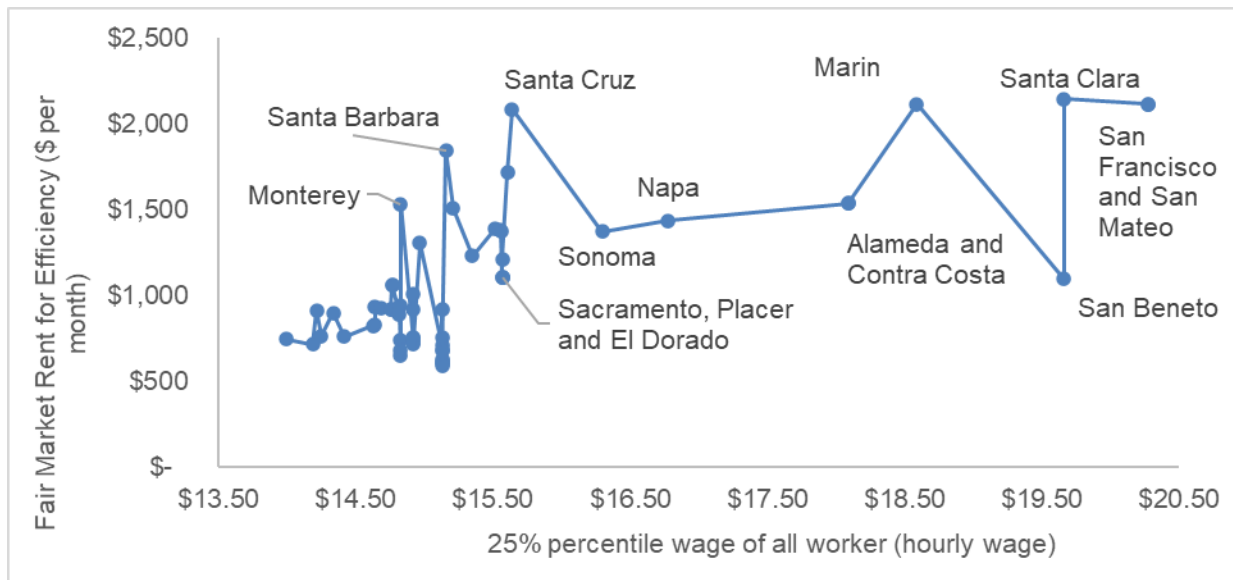
<sup>265</sup> More information about city and regional minimum wages within California can be found at <https://www.paycor.com/resource-center/articles/california-minimum-wage/>.

<sup>266</sup> California Employment Development Department. (n.d.). *OEWS Employment and Wage Statistics Data Tables*. Retrieved from <https://www.labormarketinfo.edd.ca.gov/data/oes-employment-and-wages.html>.

where 25 percent of all workers earn wages less than that amount. As shown in Exhibit 33, the 25th percentile wages across most counties are generally concentrated at or just above the 2021 California minimum wage of \$14.00 per hour. Most of these counties have FMRs for an efficiency apartment near \$1,000 per month. However, there are a few outliers (e.g., Monterey, Santa Barbara, and Santa Cruz counties) where the 25th percentile wage is in the range of \$15.00 to \$16.00 per hour and the county has a higher FMR than other counties with a similar 25th percentile wage. These are medium-sized counties that establish about 800 to 1,600 orders enforced by the local child support agency per year, and only a proportion of these orders involve low-income parents.<sup>267</sup> A deviation factor may be a more efficient way to handle the higher housing expenses in these counties than to complicate the guideline formula.

The graphical comparison also shows that for 25th percentile wages above about \$16.00 per hour, there appears to be a positive correlation between FMR and the 25th percentile wage, with some outliers such as San Benito County that has a low FMR but high 25th percentile wage.

**Exhibit 32: Scattergram Comparing Hourly Wage at 25% Percentile and FMR for Efficiency Apartment by County**



**Graphical Comparisons of Updated LIA and SSR Alternative**

Exhibit 34 summarizes the case scenarios used to compare the difference between an updated LIA and a SSR adjustment. Exhibit 35, Exhibit 36, Exhibit 37, Exhibit 38, and Exhibit 39 compare the impact of graphically for one, two, and three children. The scenarios assume no deductions from income, time-sharing adjustments or additional childrearing expenses. The LIA update uses an income threshold of \$2,700 net per month and the proposed first income band shown in Exhibit 27, which is the most conservative option presented. The \$2,700 net amount is

<sup>267</sup> California Child Support Services. (Feb. 2021). *Comparative Data for Managing Program Performance: FFY 2020*. Table 3.5. Retrieved from [https://childsupport.ca.gov/wp-content/uploads/sites/252/2020/10/2021-2-4\\_FFY-2020-Comparative-Data-Report.pdf](https://childsupport.ca.gov/wp-content/uploads/sites/252/2020/10/2021-2-4_FFY-2020-Comparative-Data-Report.pdf).



just above the estimated net disposable income of an obligor working full time at the 2022 California minimum wage (assuming single tax-filing status) and approximates 250 percent of the FPG. The SSR is 150 percent of the FPG (\$1,610 net per month), which is the highest net-income SSR used by any state. To be clear, the intent is to show the differences in updating the LIA and using the SSR. The levels to be used for an updated LIA and an SSR are policy decisions. Further, the impact will vary depending on what income is used for the LIA threshold, the parameters of an updated first income band, or the amount for the SSR. There are many reasonable policy options for any of these levels. Still, the patterns observed in the exhibits will be similar regardless of the parameters.

**Exhibit 33: Case Scenarios Used to Compare Updated LIA and SSR Alternative**

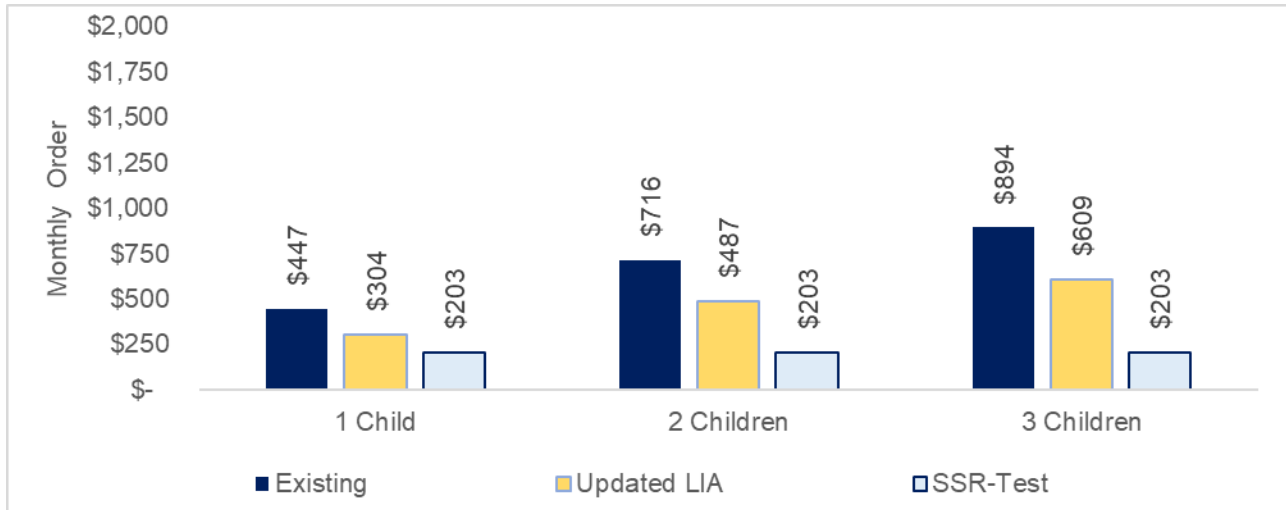
	Net disposable income of obligor <sup>a</sup>	Net disposable income of obligee <sup>a</sup>		
		1 child	2 children	3 children
Case A: Both parents earn minimum wage (\$14.00 per hour and work 35 hours per week)	\$1,813	\$2,725	\$2,575	\$2,691
Case B: Obligor earns minimum wage and works 40 hours per week; <sup>b</sup> obligee has no income	\$2,040	\$0	\$0	\$0
Case C: Each parent's earnings reflect median earnings of California workers with less than a high school degree <sup>c</sup>	\$2,139	\$1,967	\$2,272	\$2,334
Case D: Each parent's earnings reflect median earnings of California workers whose highest educational attainment is a high school degree or GED less than a high school degree <sup>c</sup>	\$2,693	\$2,381	\$2,685	\$2,862
Case E: Each parent's earnings reflect median earnings of California workers with some college or an associate's degree <sup>c</sup>	\$3,246	\$2,789	\$3,086	\$3,305

<sup>a</sup> Net disposable income is calculated from the DCCS calculator assuming that the obligor files taxes as a single taxpayer and the obligee files as a head of household and claims the children.

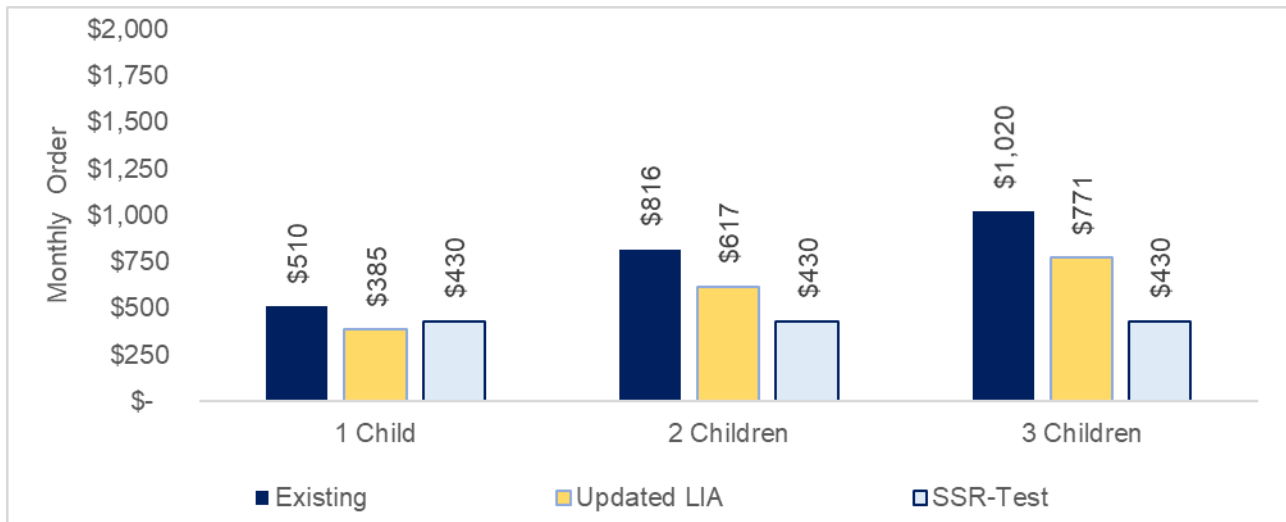
<sup>b</sup> California Fam. Code, § 17400(d)(2) provides for the presumption of full-time, minimum wage earnings.

<sup>c</sup> Median earnings from 2019 U.S. Census American Community Survey, Table B20004: Median Earnings in the Past 12 Months (in 2019 Inflation-Adjusted Dollars) by Sex by Educational attainment for the Population 25 years and Over. Retrieved from <http://data.census.gov>. The median earnings for a California worker whose highest educational attainment is less than high school graduate is \$30,720 per year for males and \$20,245 per year for females; high school graduate or equivalence is \$39,805 per year for males and \$27,455 per year for females; and some college or associate's degree is \$48,759 per year for males and \$35,131 per year for females. The male's median earnings are used for the obligor's income and the female's earnings are used for the obligee's income. Gross income is converted to net available income using the DCSS calculator. A slight modification was made to Scenario D since the net disposable income equivalent was \$2,705 per month, for an income of \$39,805. Instead, a gross income of \$3,300 per month was used that yields a net disposable income of \$2,693 per month to better illustrate the impact of updating the LIA threshold to \$2,700 per month.

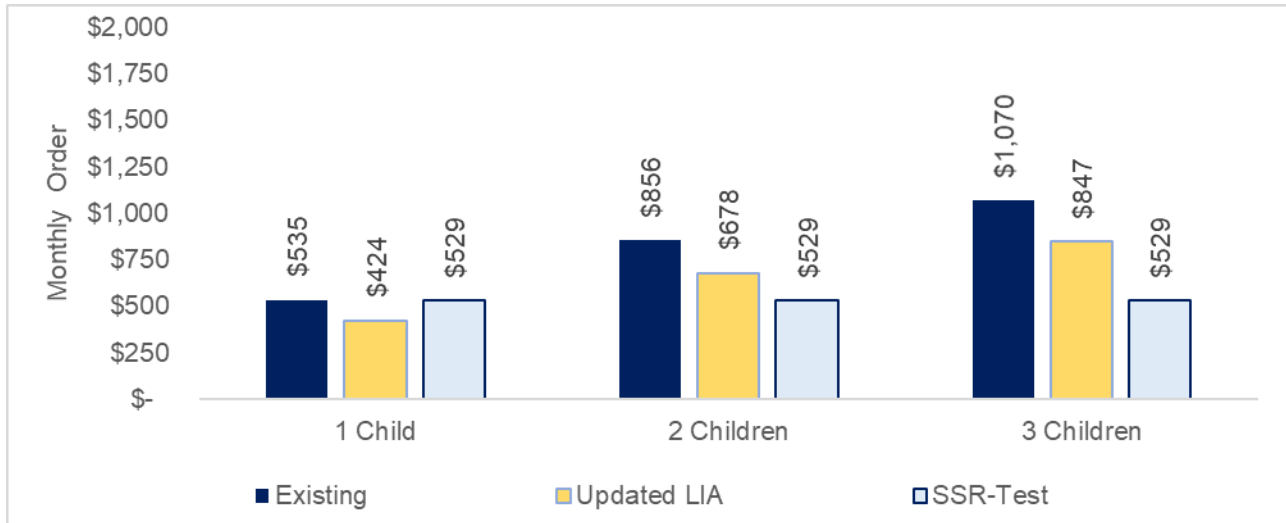
**Exhibit 34: Comparison of LIA Alternatives: Scenario A (Obligor's Net Disposable Income = \$1,813 per month)**



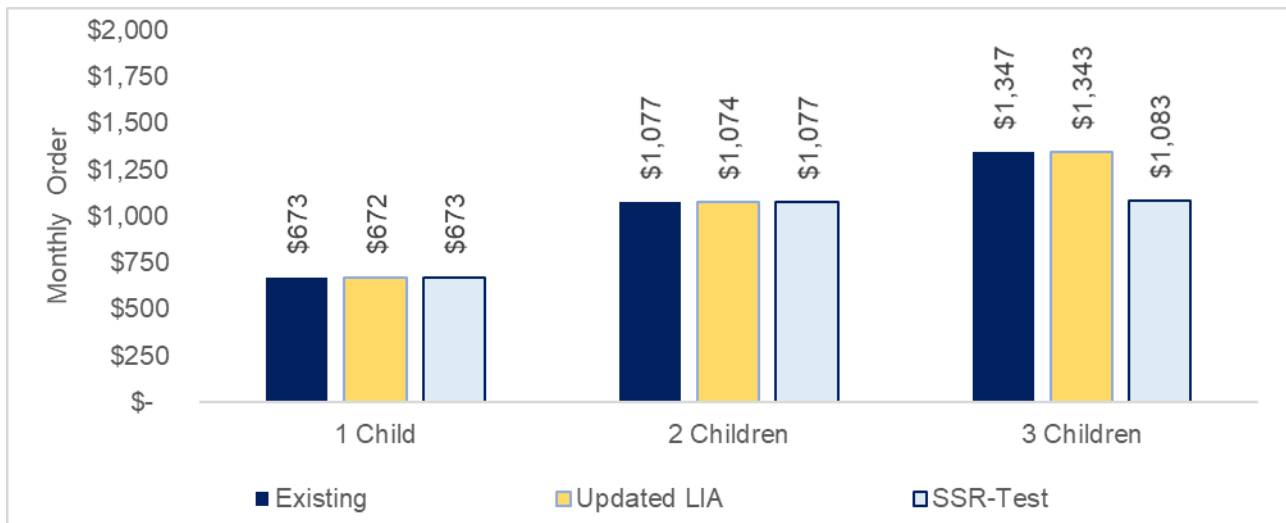
**Exhibit 35: Comparison of LIA Alternatives: Scenario B (Obligor's Net Disposable Income = \$2,040 per month)**



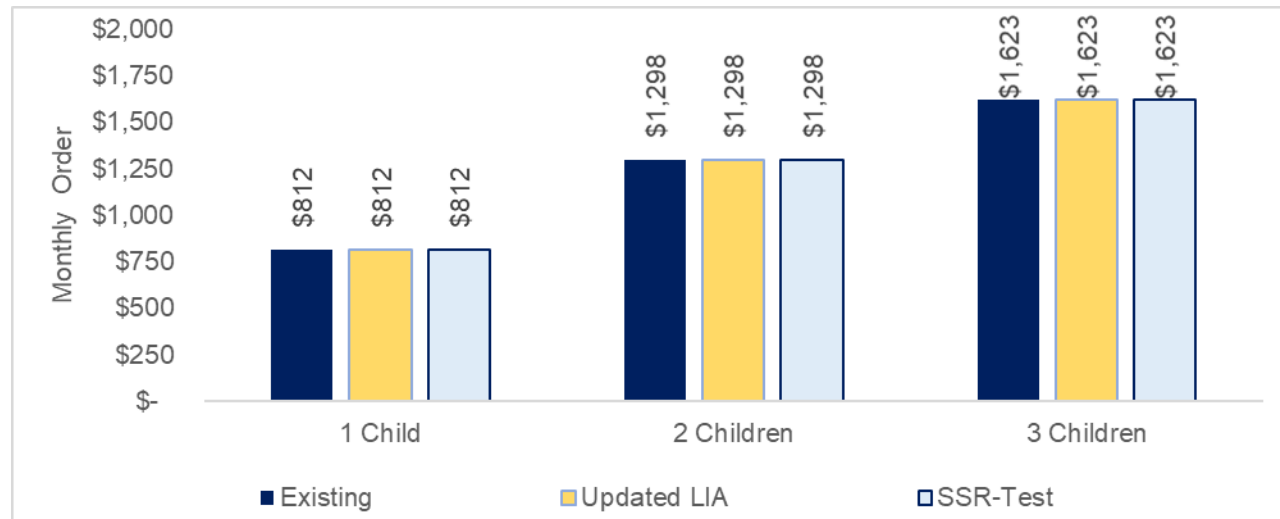
**Exhibit 36: Comparison of LIA Alternatives: Scenario C (Obligor's Net Disposable Income = \$2,139 per month)**



**Exhibit 37: Comparison of LIA Alternatives: Scenario D (Obligor's Net Disposable Income = \$2,693 per month)**



**Exhibit 38: Comparison of LIA Alternatives: Scenario E (Obligor’s Net Disposable Income = \$3,246 per month)**



There are several observations that can be made from the graphical comparisons.

- The SSR-Test generally reduces order amounts more than updating the LIA income threshold and first income band. One reason for this is that the SSR-Test is not limited by an income eligibility threshold. Rather, it is based on ensuring that the income remaining after paying the full child support order is at least sufficient to cover the amount of the SSR.
- The SSR-Test shown in the graphical comparisons produces the same amounts regardless of the number of children for Scenarios A and B. Some states slightly modify the SSR-Test so it produces a higher order amount for more children.
- The SSR-adjusted order amount is never more than the difference between the obligor’s net disposable income and the SSR under the SSR-Test. This is not true about the updated LIA.
- As income increases, the impact of an updated LIA or SSR-Test generally fade. For example, Scenario D, which is charted in Exhibit 38, shows that the order amount for one and two children under the SSR-Test are the same as the order amount under the existing guideline. Scenario D involves an obligor with a net disposable income of \$2,693 per month. For the last scenario (Scenario E), which involves an obligor with a net disposable income of \$3,246 per month, the updated LIA and the SSR-Test have no impact. For example, the order amount is \$1,623 per month for three children under all three guideline methods. This amounts to 50 percent of the obligor’s net disposable income. Still, the obligor has sufficient income after paying the guideline amount of \$1,623 to meet the proposed SSR of \$1,610 per month.

## Relevant Labor Market Information

Federal regulation (45 C.F.R. § 302.56(h)) requires the consideration of labor market data. It can inform income imputation provisions and help understand the plight of low-income parents. It requires the examination of unemployment rates, hours worked and wages, the local job market and factors that influence employment rates among obligors, and compliance with child support orders.

### Obligors: Employment and Barriers to Employment

Recent national research explored the demographic and socioeconomic characteristics of parents not living with one or more of their children under age 21.<sup>268</sup> This includes parents with child support orders (nonresident parents) and those without child support orders. Over one-third (35 percent) had incomes below 200 percent of poverty. These low-income non-resident parents were more likely to not work full time and year-round than moderate- and higher-income nonresident parents were. About a quarter (27 percent) of low-income, non-residents parents worked full time, year-round compared to 73 percent of moderate- and higher-income nonresident parents.

There are many factors that contribute the lack of full time, year-round work. Some pertain to the employability of low-income, nonresident parents, and other factors pertain to the structure of low-wage employment. The highest educational attainment of 60 percent of the low-income, nonresident parents was a high school degree or less. Nonresident parents also face other barriers to employment. A recent multisite national evaluation of obligors in a work demonstration program provides some insights on this.<sup>269</sup> It found that 64 percent of program participants had at least one employment barrier that made it difficult to find or keep a job. Common employment barriers consisted of problems getting to work (30 percent), criminal records (30 percent), and lack of a steady place to live (20 percent). Other employment barriers noted not having the skills sought by employers, taking care of other family members, health issues, and alcohol or drug problems. Many of the participants also cited mental health issues, but few noted it as being a major barrier to employment.

### Low-Wage Work and Economic Vulnerability

Low-wage jobs do not always provide consistent hours week to week or an opportunity to work every week of the year. This causes uncertain income, which can affect child support compliance. Over half (58 percent) of workers are paid hourly.<sup>270</sup> As discussed later, the usual weekly hours are considerably less in some industries (e.g., leisure and hospitality). A Brookings

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<sup>268</sup> U.S. Congressional Research Service. (Oct. 2021). *Demographic and Socioeconomic Characteristics of Nonresident Parents*. Retrieved from <https://crsreports.congress.gov/product/pdf/R/R46942>.

<sup>269</sup> Canican, Maria, Meyer, Daniel, & Wood, Robert. (Dec. 2018). *Characteristics of Participants in the Child Support Noncustodial Parent Employment demonstration (CSPED) Evaluation*, at 20. Retrieved from <https://www.irp.wisc.edu/wp-content/uploads/2019/05/CSPED-Final-Characteristics-of-Participants-Report-2019-Compliant.pdf>.

<sup>270</sup> Ross, Martha & Bateman, Nicole. (Nov. 2019). *Meet the Low-Wage Workforce*. Brookings Institute. Retrieved from [https://www.brookings.edu/wp-content/uploads/2019/11/201911\\_Brookings-Metro\\_low-wage-workforce\\_Ross-Bateman.pdf](https://www.brookings.edu/wp-content/uploads/2019/11/201911_Brookings-Metro_low-wage-workforce_Ross-Bateman.pdf).

Institute study defines vulnerable workers as those earning less than median earnings and having no healthcare benefits.<sup>271</sup> Most vulnerable workers are concentrated in the hospitality, retail, and healthcare sectors. There are considerable turnover in some of these industries. For example, the leisure and hospitality industry has an annual quit rate of 55.4 percent and a 21.5 percent annual rate of layoffs and discharges.<sup>272</sup> High levels of turnover contribute to periods of non-work that can depress earnings.

The lack of healthcare benefits also contributes to fewer hours, fewer weeks worked, and voluntary and involuntary employment separations. Only one-third of workers in the lowest 10th percentile of wages have access to paid sick time, compared to 78 percent among all civilian workers.<sup>273</sup> For those with access to paid sick time, the average is eight days per year. Similarly, those in the lowest 10th percentile of wages are less likely to have access to paid vacation time: 40 percent have access, compared to 76 percent of all workers. Those with paid vacation time have an average of 11 days per year. Without paid sick time or vacation time, a worker may terminate employment voluntarily or be involuntarily terminated when the worker needs to take time off due to an illness or to attend to personal matters. If a parent without access to paid sick time and paid vacation time did not work for 19 days (which is the sum of the average number of paid sick days and paid vacation days), they would miss about four weeks of work throughout the year.

Another indicator of economic vulnerability is the percentage of households that cannot cover a \$400 emergency expense. A Federal Reserve survey finds that 36 percent of households could not in 2020.<sup>274</sup> Although the Federal Reserve survey does not specifically address child support debt and considers all households not just those where a household members owes child support, it is a salient finding when considering low-income obligors in a vulnerable labor market where automated child support enforcement actions (e.g., driver's license and professional license suspension) are triggered when child support is 30 days past due. The \$400 level in the Federal Reserve study is less than many child support orders.

### **Specific Findings about the California Labor Market**

The California Employment Development Department (EDD) tracks, compiles, and publishes labor market statistics across the state. EDD's most recent monthly report is the data source of all

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<sup>271</sup> Jund-Mejean, Martina & Escobari, Marcela. (Apr. 2020). Our employment system has failed low-wage workers. How can we rebuild. Brookings Institute. Retrieved from <https://www.brookings.edu/blog/up-front/2020/04/28/our-employment-system-is-failing-low-wage-workers-how-do-we-make-it-more-resilient/>.

<sup>272</sup> Bahn, Kate & Sanchez Cumming, Carmen. (Dec. 31, 2020). *Improving U.S. Labor Standards and the Quality of Jobs to Reduce the Costs of Employee Turnover to U.S. Companies*. Retrieved from <https://equitablegrowth.org/improving-u-s-labor-standards-and-the-quality-of-jobs-to-reduce-the-costs-of-employee-turnover-to-u-s-companies>.

<sup>273</sup> U.S. Bureau of Labor Statistics. Table 6. Selected Paid Leave Benefits: Access (March 2020). Retrieved from <https://www.bls.gov/news.release/ebs2.t06.htm>.

<sup>274</sup> Federal Reserve. (May 2021). *Report on the Economic Well-Being of U.S. Households in 2020*. Retrieved from <https://www.federalreserve.gov/publications/2021-economic-well-being-of-us-households-in-2020-dealing-with-unexpected-expenses.htm>.

statistics in this section unless noted.<sup>275</sup> The statistics underscore the vulnerability of many low-wage workers, particularly considering the COVID-19 recession. Not only does this include job losses, but fewer and uncertain hours, and temporary layoffs. The result is uncertain monthly income available to pay child support.

### ***Unemployment Rates and Labor Force***

California, the nation, and the world are still experiencing the economic repercussions of the COVID-19 pandemic. At the time this report was written, the most recent unemployment data were from September 2021. The national unemployment rate was 4.8 percent.<sup>276</sup> The California unemployment rate was 6.4 percent and the county unemployment rates ranged from 3.6 percent in Marin County to 18.1 percent in Imperial County.<sup>277</sup> Imperial County is the only county to have an unemployment rate in double digits. Several counties, however, have an unemployment rate of 8.0 percent or more (i.e., Alpine, Colusa, Kern, Kings, Los Angeles, Merced, and Tulare counties). As of April 2020, which was the height of the initial COVID-19 pandemic quarantine, California reached its highest unemployment rate in years: 16 percent.<sup>278</sup> In contrast, the U.S. unemployment rate was 14.8 percent. EDD reports 2.6 million nonfarm jobs, including almost a million leisure and hospitality jobs (which is about half of the jobs in that industry), were lost in 2020 due to the pandemic.<sup>279</sup> In 2021, California gained many jobs back, but the labor market has not reached its pre-pandemic levels. California's unemployment in 2018, which is the sample year, was 4.3 percent.<sup>280</sup>

As of September 2021, the California labor force consisted of 19 million workers. The labor force participation rate was 61.1 percent, which was up from its 59.2 percent rate the year prior. Among the 1.4 million who were unemployed, over a million had lost their job. A smaller number of the unemployed had re-entered the labor force but could not find a job.

The unemployment rates that are reported above are based on the U-3 measurement methodology, which is the official unemployment rate reported nationally. It only counts those who are participating in the labor force, either through employment or active job-seeking, within the last four weeks. It does not account for discouraged workers who stopped searching for employment, those working part time who wanted full-time work, and other circumstances that

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<sup>275</sup> California Employment Development Department. (Sept. 2021). *Labor Market Review*. Retrieved from <https://www.labormarketinfo.edd.ca.gov/Publications/Labor-Market-Analysis/calmr.pdf>.

<sup>276</sup> U.S. Bureau of Labor Statistics. (Nov. 2021). *Labor Force statistics from the Current Population Survey Series Id LNS14000000*. Retrieved from <https://data.bls.gov/timeseries/LNS14000000>.

<sup>277</sup> California Employment Development Department. (Oct. 2021). *Report 400C: Monthly Labor Force Data for Counties: September 2021 Preliminary*. Retrieved from <https://www.labormarketinfo.edd.ca.gov/file/lfmonth/countyur-400c.pdf>.

<sup>278</sup> California Employment Development Department. (Sept. 2021). *Employment Development Department Issues Annual Labor Day Report, Details Top In-Demand Occupations* Retrieved from [https://www.edd.ca.gov/About\\_EDD/pdf/news-21-54.pdf](https://www.edd.ca.gov/About_EDD/pdf/news-21-54.pdf).

<sup>279</sup> California Employment Development Department. (Sept. 2020). *A Labor Day Briefing*. Retrieved from <https://www.labormarketinfo.edd.ca.gov/Publications/LDB/Labor-Day-Briefing-2020.pdf>.

<sup>280</sup> U.S. Bureau of Labor Statistics. (Mar. 2021). *Unemployment Rates for States: 2018 Annual Averages*. Retrieved from <https://www.bls.gov/lau/lastrk18.htm>.

generally yield higher rates. EDD provides counts of workers in these circumstances. For example, in September 2021, EDD reported that 5.1 percent of California workers involuntarily worked part time, and there were over a million people not in the labor force who wanted a job but had not looked for employment in the last four weeks.

### ***Hours Worked***

EDD reports that most (82.3 percent) employed Californians work at least 35 hours per week. Weekly hours average 34.6 hours for all private industries as of September 2021. They vary significantly by industry and region. The leisure and hospitality industry has the lowest average weekly hours (26.7 hours per week), and “other services” (which includes retail) has an average of 31.0 hours per week. Both industries also tend to have many low-wage jobs. In September 2021, the average earnings were \$615 per week in leisure and hospitality and \$952 per week in other services. These averages include low-wage workers and high-level management. Several metropolitan statistical areas had average weekly hours below the state average. The lowest was 29.3 hours per week, which was the average for the Hanford Corcoran MSA (Kings County). In general, the labor market data does not support the presumption of a 40-hour workweek.

### ***Low-Skilled Jobs and Employment Opportunities***

The availability of low-skilled jobs and their pay are important to obligors with little work history, low educational attainment, and few skills. They are also important to obligors recently released from prison.

Around Labor Day of each year, EDD issues a briefing on state and regional labor market trends that also identifies in-demand occupations.<sup>281</sup> The September 2021 briefing identified the following entry-level jobs requiring a high school diploma or less as in high demand: retail salespersons, laborers, and freight and stock workers. Other high-demand occupations requiring more skill levels consisted of truck driving, bookkeeping, accounting, and auditing clerks. In 2021, the median wage of retail cashiers and farmworkers and laborer was \$15.02 and \$14.13 per hour. These wages are close to full-time earnings from California’s 2021 minimum wage of \$14.00 per hour. Although California’s median wage is \$23.34 per hour, California’s wage at the 25th percentile is \$15.56 per hour. In other words, 25 percent of California workers earn a wage less than \$15.56 per hour. Appendix D lists the 25th percentile wage by county. It shows that over half of California counties have a 25th percentile wage of less than \$15.00 per hour.

### ***Factors that Influence Employment Rates and Compliance***

Federal regulation (45 C.F.R. § 302.56(h)(2)) requires the consideration of “factors that influence employment rates among noncustodial parents and compliance with child support orders.” The implication is that child support can affect an obligor’s decision to work and whether to work for

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<sup>281</sup> California Employment Development Department. (Sept. 2021). *Employment Development Department Issues Annual Labor Day Report, Details Top In-Demand Occupations*. Retrieved from [https://www.edd.ca.gov/About\\_EDD/pdf/news-21-54.pdf](https://www.edd.ca.gov/About_EDD/pdf/news-21-54.pdf).



an employer that can garnish wages for child support. As noted in the OCSE 2016 rule and in the 2010 California guideline review report, there are some studies that suggest child support reduces work in the formal economy and increases underground employment.<sup>282</sup> One study found mixed results depending on the level of arrears.<sup>283</sup> It found that the probability of formal work increases when the arrears obligation is low relative to income, but in the aggregate, child support arrears reduces average weeks worked in the formal labor market, particularly among obligors with high arrears and no income in the previous year.

This study underscores that there are more factors that influence employment than child support, such as labor force attachment. In all, the factors that affect employment status and level of work are many and complex. Among other things, they include labor force attachment, employment opportunities, income tax rates, whether the person has other assets or resources, and the person's value on consumption and leisure. Some of these factors may overshadow any impact child support has on employment status and level of work. In addition, the pandemic has vastly changed attitudes about work. An empirical investigation that would disentangle these factors from the impact that child support has on employment decisions requires wage data, may not be that timely since it would have to be conducted using retrospective data, may be overshadowed by the impact of the pandemic, and overall is beyond the scope of this study. It may be a research topic to be tackled in future reviews using income data from automated sources available to DCSS such as quarterly wage data.

As is, labor force participation rates plummeted when the pandemic began and have increased somewhat recently but are still not back to pre-pandemic levels. Definitive research on the causes of the decline in labor force participation are not available yet. There are hypotheses ranging from parents dropping out of the labor force to deal with childcare issues and fears of contracting COVID-19 at work. Research from the Pew Research Center found that fewer parents (with children younger than 18 years old) were working due to the pandemic.<sup>284</sup> The research did not note whether they were no longer participating in the labor force because they are sick or caring for a sick child, fear contracting COVID-19 at work, or another reason. Regardless, the relevance to child support concerns whether these are valid reasons not to impute potential income. Some state guidelines address extreme circumstances that share some similarities to the pandemic. For example, the Louisiana guideline specifically mention that a party who is temporarily unable to find work or temporarily forced to take a lower-paying job as a direct result of Hurricanes Katrina or Rita shall not be deemed voluntarily unemployed or

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<sup>282</sup> 81 Fed. Reg. 93,516 (Dec. 20, 2016), and Judicial Council of Cal. Review of Statewide Uniform Child Support Guideline (2010), at 70.

<sup>283</sup> Miller, Daniel P., & Mincy, Ronald B. (Dec 2013). "Falling Further Behind? Child Support arrears and Fathers' Labor Force Participation." *Social Service Review*, 86(4), pp. 604–635. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3737002/>.

<sup>284</sup> Kochhar, Rakesh. (Oct. 22, 2020). *Fewer mothers and fathers in U.S. are working due to COVID-19 downturn; those at work have cut hours*. Pew Research Center. Retrieved from <https://www.pewresearch.org/fact-tank/2020/10/22/fewer-mothers-and-fathers-in-u-s-are-working-due-to-covid-19-downturn-those-at-work-have-cut-hours/>.

underemployed.<sup>285</sup> Similarly, to ensure that the obligor is not denied a means of self-support or a subsistence level, the Indiana guideline provide for the consideration of “a natural disaster.”<sup>286</sup>

## Chapter Summary and Recommendations

Federal regulations now require state guidelines to consider the basic subsistence needs of the obligor who has limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve (SSR). Most states, including California, already fulfill that requirement. California fulfills it through a proportional reduction in the guideline-determined amount for obligors with net disposable incomes less than \$1,837 per month in 2021. California’s LIA is unique to California. No other state uses a similar method. Although updated each year for changes in price level (i.e., changes in the CPI), the LIA income threshold has not kept up with increases in housing prices and California’s cost of living in general. The income threshold is now below what would be realized from full-time, minimum wage earnings. Historically, it has always been more. In addition, other parameters of the California formula interfere with the effectiveness of the LIA. The first income band of the *K-factor*, which technically could also meet the federal requirement for a LIA, only considers total net disposable incomes of both parents up to \$800 per year, while the 2021 federal poverty guideline for one person is \$1,073 per month alone. Consequently, many low-income, obligors fall into the second income band, which sets the *K-Factor* at the maximum level, 25 percent of the obligor’s net disposable income for one child and at 50 percent or more for three or more children. A smaller proportion of income would be assigned if their incomes fell into the first income band.

The recent federal rule changes aim to increase regular and on-time child support payments and the number of obligors working and supporting their children and reduce the accumulation of unpaid arrears. It focuses on policies affecting low-income, obligors and families. The federal rule changes also encourage states to develop provisions and policies to comply with the Supreme Court decision in *Turner v. Rogers* that essentially requires the determination of ability to pay prior to incarcerating an obligor for nonpayment of child support. Addressing order amounts at the front end by setting orders based on actual income and ability to pay can avoid the need for enforcement actions and improve payments over the life of the child.

The federal requirement to consider the basic subsistence needs of the obligor is grounded in research that finds that setting orders beyond an obligor’s ability to pay can increase unmanageable debt, reduce employment, and contact with the child, and is correlated with underground employment, crime, incarceration, and recidivism. OCSE cites several research studies that correlate payments with the amount of the order including studies where child support compliance decreased significantly among orders set above 20 percent of the obligor’s gross income. One of those studies was conducted using California data in 2011. Since then that study has been updated and several other studies have been conducted. The updated study using

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<sup>285</sup> Louisiana Revised Statute 9:315.11 C.(1).

<sup>286</sup> Indiana Rules of Court (amended Jan. 1, 2020). *Guideline 2. Use of the Guidelines Commentary*. Retrieved [https://www.in.gov/courts/rules/child\\_support/](https://www.in.gov/courts/rules/child_support/).

California data finds that income presumption and default orders have a larger impact than the order level. In general, some of the studies support the 2011 finding and others do not. One study notes the difference in policy ramifications between compliance and the amount paid. For low-income parents and families, compliance may be a larger policy concern because of inability to pay (some caused by the vulnerability and uncertainty of low-wage work) may trigger enforcement actions. At higher incomes, however, there is a greater policy concern with the amount paid and those who can pay, but not the willingness to pay.

There was some evidence in case file data and from the focus groups that guideline deviations are being made to compensate for the inadequacy of the current LIA adjustment, particularly considering California's current housing costs. Some of the case file data collected mentioned that the obligor was impoverished and used Fam. Code § 4057(b)(5) that provides for a deviation in special circumstances. One focus group participant specifically mentioned case law where a deviation was made in the best interest of the child so an obligor could meet their monthly expenses including rent and exercise timesharing.<sup>287</sup> There was also consideration of using other factors considered in the guideline calculation (e.g., imputing income to the obligee and increasing the time-sharing percentage of the obligor) to lower the order amount to a level that a low-income obligor could reasonably pay and retain sufficient income to meet the obligor's basic subsistence needs and provide for the child when the child was in the obligor's care.

### **Summary of Self-Support Adjustments**

California's LIA is unique compared to other states. Most states rely on an SSR-Test. The advantages of the SSR-Test are that it clearly relates and identifies the basic subsistence needs of the parent, it is a transparent adjustment, it can relate to California's specific housing cost, and it is not limited by an income threshold. The disadvantage is that it will require modifications to automated systems and guideline calculators, new business and policy rules, increase the number of cases with zero child support orders, and would require amendments to other sections of the Family Code. Another disadvantage is that there are numerous parameters and policy decisions within setting up an SSR adjustment that would require time and resources to develop. Arizona and New Jersey provide for the highest levels of SSRs among states in 2021 (\$1,685 gross per month and \$1610 net per month, respectively). Arizona's SSR considers gross income and relates to its state minimum wage. New Jersey's SSR considers net income and is based on 150 percent of the federal poverty guidelines.

The SSR adjustment can be set up to address regional differences in housing expense. Fair Market Rents (FMRs), which are developed and used by the U.S. Department of Housing and Urban Development, for housing assistance may be used to gauge reasonable housing costs and regional differences. Nonetheless, due to the complications of setting up an SSR that varies by region including the development of rules and policies to address moves and parents living in regions with different housing costs, it may be more appropriately addressed by setting an SSR that reflects housing expenses in the majority of the regions (though it may overstate them in

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<sup>287</sup> *In City and County of San Francisco v. Miller* (1996) 49 Cal.App.4th 866.

some lower cost regions) and providing extraordinary housing expenses to be a deviation for the few counties that will have housing expenses above that level.

### **Applying the SSR to Both Parents**

Federal changes give states the option to consider the basic subsistence needs of both parents and the children. This is inherent in states using the Melson formula, which subtracts an SSR (called primary support in the Melson formula) from each parent's income and at all income levels. For states relying on an income shares guideline with an SSR incorporated into their guideline worksheet, which is typically a court-ordered form similar to the printout from a certified child support guideline calculator, an SSR to either or both parents is ostensibly in the worksheet. Mathematically, however, it does not affect the order amount. A couple states limit the SSR when the custodial household is also of low income. The disadvantage is if the child support order has been assigned to the state because of TANF receipt (which is called CalWORKs in California), the custodian household does not receive more child support payments. Instead, the payments go to the state.

### **Summary of Other Adjustments Used by States**

Nevada and Utah provide a separate lookup table as their low-income adjustment. A few other states provide unique methods that are not appropriate for a large state like California or dovetail with California's existing guideline formula.

Although not necessarily considered a low-income adjustment, some states provide that an order amount exceeding a state-determined percentage of income is a reason for a guideline deviation. The thresholds used by states are slightly less than the maximum that can be legally garnished from an obligor's wages based on the Consumer Credit Protection Act (which is 50 to 65 percent depending on whether the parent has additional dependents or arrears).

### **Summary of Findings from Case Scenarios and Analysis of Labor Market Data**

Federal regulations require the analysis of the impact of the guideline amount among families with incomes less than 200 percent of poverty and labor market. In general, the existing California LIA produces orders higher for low-income cases than the guidelines of other states with high cost of living and neighboring states. The analysis of labor market data finds that a significant share of obligors have limited earning capacity, there are many low-paying jobs in California, many of those jobs are in industries where workweeks are less than 40 hours per week and there is high turnover, which inadvertently may result in low-wage workers not being employed every week of the year. In turn, this means that presumption of a 40-hour workweek at the state minimum wage is not a realistic scenario. It is likely to result in nonpayment and produce other negative consequences identified in studies cited in federal rulemaking.

### **Recommendations**

The evidence overwhelmingly suggests that California needs to update its low-income adjustment. The simplest solution would be to increase the low-income adjustment (LIA) income threshold, expand the first income band of the *K-factor* to cover a more reasonable range of low income, provide an additional band that represents low-income parents' incomes, and provide a

deviation factor for orders exceeding a percentage threshold less than the Consumer Credit Protection Act limit on income withholding. There are many reasonable, data-based sources for setting an updated LIA income threshold (e.g., a percentage of the poverty level, state minimum wage, or fair market rent). Other alternatives that could better serve low-income families but are more complicated to implement include a Self-Support Reserve (SSR) Test or adaption of the Melson formula, which deducts the SSR from each parent's income when calculating the guideline amount. The issue deserves more time and thought, specifically on what adjustment and parameters will better serve the best interest of California children and are appropriate for California families and obligors.

## Chapter 4: Legal Analysis of Federal Regulations Regarding Income Available for Child Support

The new federal regulations require child support guidelines to be based on actual income and other evidence of ability to pay, limit the use of imputed and presumed income, and provides that state guidelines may not treat incarceration as voluntary unemployment. This Chapter examines whether California is compliant with these changes and concludes that California is in compliance with some, but not all new federal regulations that must be in effect by September 2024 and makes recommendations to move California into compliance by then.

In 2016, a final rule entitled Flexibility, Efficiency, and Modernization in Child Support Programs amended 45 Code of Federal Regulations, section 302.56. Section 302.56 governs child support guidelines. As part of its quadrennial guideline review, JCC has requested a literature review of several legal issues, particularly those related to the regulatory changes regarding income available for child support. These changes include:

- Use of all actual income of the parties;
- Consideration of the individual circumstances of the party when income imputation or presumption is authorized; and
- A prohibition of treating incarceration as voluntary unemployment when establishing or modifying a child support order.

This chapter analyzes the federal rule changes; summarizes other states' guideline policies regarding the definition of income, income imputation, and incarceration; and identifies legislative trends. It also analyzes California's guideline provisions, including whether California provisions on earning capacity and presumed income comply with the final federal rule. The chapter includes recommended statutory changes to comply with the new federal requirements by the September 2024 deadline. The chapter also identifies research conducted by Wisconsin and California to develop an algorithm for considering factors the federal regulation requires courts to consider when imputing income. Currently there is no federal guidance regarding how the factors should be weighed.

### Use of Income of the Parties

In an attempt to increase the use of objective criteria in the establishment of child support orders, the Child Support Enforcement Amendments of 1984 required states, as a condition of receiving federal funds, to develop mathematical calculations to determine appropriate child support awards.<sup>288</sup> Initially the guidelines were only advisory. The Family Support Act of 1988 required the states to provide that the guideline calculation creates a rebuttable presumption that it is the appropriate amount of support.<sup>289</sup> If the tribunal deviates from the guideline amount, it must make a written finding or specific finding on the record that the application of the guidelines

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<sup>288</sup> Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305.

<sup>289</sup> Family Support Act of 1988, Pub. L. No. 100-485, §103, 102 Stat. 2343, 2346.

would be unjust or inappropriate. Implementing regulations appear at 45 Code of Federal Regulations, section 302.56.

## **Federal Regulations**

Prior to the Final Rule, *Flexibility, Efficiency, and Modernization in Child Support Programs*,<sup>290</sup> 45 Code of Federal Regulations, section 302.56 had required support guidelines to include all earnings and income of the noncustodial parent.<sup>291</sup> The Notice of Proposed Rulemaking (NPRM) was published in the Federal Register on November 17, 2014.<sup>292</sup> It contained a number of proposed amendments to section 302.56. In the NPRM, OCSE noted that “[s]etting child support orders that reflect an actual ability to pay is crucial to encouraging compliance, increasing accountability for making regular payments, and discouraging uncollectible arrearages.”<sup>293</sup> With that goal in mind, OCSE proposed to amend then current section 302.56(c)(1) to require guidelines to take into consideration a noncustodial parent’s “actual” earnings and income rather than “all” earnings and income. When the regulation was finalized in 2016, OCSE responded to comments it had received. Based on those comments, it retained “all income and earnings” in paragraph (c)(1)(i) and did not change “all” to “actual” income and earnings as it had proposed in the NPRM. It moved the phrase “and other evidence of ability to pay” from then current section 302.56(c)(4) to paragraph (c)(1) based on comments to require child support guidelines to provide that the child support order is based on the noncustodial parent’s earnings, income, and other evidence of ability to pay. Based on comments, it also added “(and at the State’s discretion, the custodial parent).”

Current federal requirements at 45 Code of Federal Regulations, section 302.56 (c)(1)(i) now require that child support guidelines must provide the child support order is based on the noncustodial parent’s earnings, income, and other evidence of ability to pay that “(i) Takes into consideration all earnings and income of the noncustodial parent (and at the State’s discretion, the custodial parent).”

## **All Earnings and Income**

Federal responses to public comments on the Final Rule, *Flexibility, Efficiency, and Modernization in Child Support Programs*, expanded upon OCSE’s intent in requiring inclusion of “all earnings and income.” According to those responses, the federal regulation “establish[es] only minimum components for child support guidelines. States have the discretion and responsibility to define earnings and income, ... since they are in a better position to evaluate economic factors within their states and have broad discretion to set guidelines.”<sup>294</sup> OCSE declined a suggestion that the guidelines be required to take into consideration the assets of the noncustodial parent, in addition to earnings and income. The federal response noted that the term “all income” “allows States to consider depreciation, deferred income, or other financial

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<sup>290</sup> 81 Fed. Reg. 93,492–93,569 (Dec. 20, 2016).

<sup>291</sup> This report uses the term “noncustodial parent” because that is the term used in the federal regulations governing the Title IV-D child support program, which include the child support guideline regulations.

<sup>292</sup> 79 Fed. Reg. 68,548–68,587 (Nov. 17, 2014).

<sup>293</sup> 79 Fed. Reg. 68,554 (Nov. 17, 2014).

<sup>294</sup> 81 Fed. Reg. 93,517–93,518 (Dec. 20, 2016).

mechanisms used by self-employed to adjust actual income. ... States have discretion to determine whether to add assets or define which assets should be considered in their child support guidelines as a basis for determining child support amounts.”<sup>295</sup>

### **Ability to Pay**

The federal responses to public comments noted a trend among some states “to reduce case investigation and to impose high standard minimum orders without developing any evidence or factual basis for the child support ordered amount.”<sup>296</sup> OCSE stated that these orders are set not based upon a factual inquiry into the noncustodial parent’s income or ability to pay but are based on standardized amounts well above the parents’ ability to pay. OCSE emphasized that “the guidelines must provide that orders must be based upon evidence of the noncustodial parent's earnings and income and other evidence of ability to pay in the specific case.”<sup>297</sup> It stated:

We revised § 302.56(c)(1) to clarify that the child support guidelines established under paragraph (a) must provide that the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay. The guidelines must take into consideration all earnings and income, the basic subsistence needs of the noncustodial parent who has a limited ability to pay, and if income is being imputed, the specific circumstances of the noncustodial parent (and at the State's discretion, the custodial parent) to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.<sup>298</sup>

### **Other States’ Guideline Definitions of Income**

#### **Included Within Income**

In defining income, state child support guidelines typically begin with language similar to that used in California: for the purposes of the guidelines, income “includes income from any source, including but not limited to ...” The guidelines then usually include a list of illustrative examples of income. Certain examples are common to all state child support guidelines that include such a list:

- Salary or wages (most states expressly include tips)
- Commissions
- Bonuses
- Royalties
- Rents
- Dividends and interest

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<sup>295</sup> 81 Fed. Reg. 93,518 (Dec. 20, 2016).

<sup>296</sup> 81 Fed. Reg. 93,516 (Dec. 20, 2016).

<sup>297</sup> 81 Fed. Reg. 93,517 (Dec. 20, 2016).

<sup>298</sup> 81 Fed. Reg. 93,520 (Dec. 20, 2016).



- Pensions and annuities
- Trust income
- Disability insurance benefits if benefits are compensation for lost earnings
- Workers compensation benefits
- Unemployment compensation insurance benefits
- Social Security benefits
- Income from the proprietorship of a business (income derived from businesses or partnerships) or self-employment

Other types of income that are often expressly included within the definition of income are:

- Spousal support or preexisting periodic alimony actually received from a person who is not a party to the child support proceeding
- Severance pay

A majority of states,<sup>299</sup> as well as the District of Columbia and Guam,<sup>300</sup> expressly include severance pay within their definition of income for support guideline purposes. Three states<sup>301</sup> include it at the discretion of the court, depending on the circumstances of the case.

- Capital gains

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<sup>299</sup> Ala. R. Jud. Admin. R. 32(B)(1)-(2)(b) (2018); Ariz. Child Support Guidelines (eff. Jan. 1, 2022); Colo. Rev. Stat. § 14-10-115(5)(a) (2019); Del. Fam. Ct. R. Civ. P. 502 (2019); Ga. Code Ann. §§ 19-6-15(f)(1)(A) and (f)(5) (2019); Hawai'i Child Support Guidelines (2020); Indiana Child Support Rules and Guidelines (2020); Ky. Rev. Stat. Ann. §§ 403-212 (2020); La. Stat. Ann § 9:315(c)(3)(9) (2019); Me. Rev. Stat. Ann. tit. 19-A, §§ 2001(5)(A)-(D) (2020); Mass. Child Support Guidelines (2021); Mo. Code Regs. tit. 13, § 40-102.010 (2021); Mont. Admin. R. 37.62.105(1)-(2), (5) (2021); N.J. Rules of Court, Rule 5.6A, Appendix IX-A and IX-B (2021); N.M. Stat. Ann. § 40-4-11-1 (2020); N.C. Child Support Guidelines (2019); N.D. Admin. Code § 75-02-04.1 (2020); Okla. Admin. Code § 340:40-7-11 (2021); Or. Admin. R. 137-050-0715 (2020); R.I. Family Court Child Support Formula and Guidelines (Fam. Ct. Admin. Order 2017-01); S.C. Code Regs. § 114-4720 (2020); Tenn. Comp. R. & Reg. 1240-02-04-.04 (2020); Tex. Fam. Code § 154.062 (2019); Utah Code Ann. § 78B-12-203 (2020); Va. Code Ann. § 20-108.2 (2020); Vt. Stat. tit. 15, § 653 (2020); Wash. Rev. Code § 26.19.071 (2020).

<sup>300</sup> D.C. Code § 16-916.01(d)(1) (2021); Guam Child Support Guidelines, Sec. 1203(a) (2019).

<sup>301</sup> Idaho R. Civ. P. 6(c)(6) (2021); Md. Code Ann., Fam. Law §§ 12-201(5)(A)-(D) (2020); W.Va. Code Ann. § 48-1-228 (2020).

A majority of states,<sup>302</sup> as well as Guam,<sup>303</sup> expressly include capital gains or net capital gains within their support guideline's definition of income, with a few states<sup>304</sup> excepting nonrecurring capital gains. Two states provide that its inclusion is discretionary, depending on the circumstances of the case.<sup>305</sup>

- Gifts, prizes

Many states expressly include gifts and/or prizes in their guideline definition of income.<sup>306</sup> In some states, inclusion of gifts or prizes as income is within the discretion of the court, based on the circumstances of the case.<sup>307</sup>

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<sup>302</sup> Ala. R. Jud. Admin. R. 32(B)(1)-(2)(b) (2019); In re: Administrative Order No. 10. Ark. Child Support Guidelines (2020); Ariz. Child Support Guidelines (eff. Jan. 1, 2022); Colo. Rev. Stat. § 14-10-115(5)(a) (2019); Del. Fam. Ct. R. Civ. P. 502 (2019); Ga. Code Ann. §§ 19-6-15(f)(1)(A) and (f)(5) (2019); Hawai'i Child Support Guidelines (2020); Ind. Child Support Rules and Guidelines (2020); Ky. Rev. Stat. Ann. §§ 403.212 (2020); La. Stat. Ann. § 9:315(c)(3)(a) (2019); Me. Rev. Stat. Ann. tit. 19-A §§ 2001(5)(A)-(D) (2020); Michigan Child Support Guidelines (2021) (net capital gains are included as income. When attributable to a single event or year, or when cash may not be immediately available to the parent, the court should consider them to the extent they can be used to represent income over several years. To the extent that a party proves that a portion of the capital gain was considered in the property division of the judgment of divorce between the parties, that portion should not be included as income); Mont. Admin. R. 37.62.105(1)-(2), (5) (2021); N.J. Rules of Court, Rule 5.6A, Appendix IX-A and IX-B (2021); N.M. Stat. Ann. § 40-4-11.1 (2020); 23 Pa. C.S. 4302 (2019) (gains derived from dealings in property); R.I. Family Court Child Support Formula and Guidelines (Fam. Ct. Admin. Order 2017-01); S.C. Code Regs. § 114-4720 (2020); S.D. Codified Laws § 25-7-6.3 (2019); Tenn. Comp. R. & Reg. 1240-02-04-.04 (2020); Tex. Fam. Code § 154.062 (2019); Utah Code Ann. § 78B-12-203 (2020); Va. Code Ann. § 20-108.2 (2020); Vt. Stat. tit. 15 § 653 (2020); Wash. Rev. Code § 26.19.071 (2020). *See also* Alaska R. Civ. P. 90.3(a)(1) Commentary (2021).

<sup>303</sup> Guam Child Support Guidelines, Sec. 1203(a) (2019).

<sup>304</sup> Fla. Stat. § 61.30(2)(a) (2020); Mass. Child Support Guidelines (2021); N.D. Admin. Code § 75-02-04.1 (2020).

<sup>305</sup> Md. Code Ann., Fam. Law § 12-201(3)-(5) (2019); W.Va. Code Ann. § 48-1-228 (2020).

<sup>306</sup> Ala. R. Jud. Admin. R. 32(B)(1)-(2)(b) (2019); Ariz. Child Support Guidelines (eff. Jan. 1, 2022) (gifts must be recurring); Colo. Rev. Stat. § 14-10-115(5)(a) (2019) (monetary gifts and prizes); D.C. Code Ann. § 16-916.01(d)(1) (2021); Ga. Code Ann. §§ 19-6-15(f)(1)(A) and (f)(5) (2019) (includes gifts that consist of cash or other liquid instruments, or which can be converted to cash); Guam Child Support Guidelines, Sec. 1203(a) (2019); Hawai'i Child Support Guidelines (2020) (monetary gifts); Ind. Child Support Rules and Guidelines (2020); Ky. Rev. Stat. Ann. § 403.212 (2020); La. Stat. Ann. § 9:315(c)(3)(a) (2019) (recurring monetary gifts); Me. Rev. Stat. Ann. tit. 19-A, §§ 2001(5)(A)-(D) (2020) (prizes from an ongoing source); Mass. Child Support Guidelines (2021); Michigan Child Support Formula Manual (2021); N.M. Stat. Ann. § 40-4-11.1 (2020); N.C. Child Support Guidelines (2019); N.D. Admin. Code § 75-02-04.1 (2020) (gifts and prizes to the extent they annually exceed \$1000 in value); Okla. Admin. Code § 340:40-7-11 (2021); Or. Admin. R. 137-050-0715 (2020); R.I. Family Court Child Support Formula and Guidelines (Fam. Ct. Admin. Order 2017-01); Utah Code Ann. § 78B-12-203 (2020); Tenn. Comp. R. & Reg. 1240-02-04-.04 (2020) (prizes, and gifts that consist of cash or other liquid instruments, or which can be converted to cash); Tex. Fam. Code § 154.062 (2019); Vt. Stat. tit. 15, § 653 (2020); 16 V.I. Code Ann. § 341 (2021) (prizes from games of chance); Va. Code Ann. § 20-108.2 (2020). *See also* Alaska R. Civ. P. 90.3(a)(1) Commentary (2021).

<sup>307</sup> Idaho R. Civ. P. 6(c)(6) (2021); Md. Code Ann., Fam. Law § 12-201(3)-(5) (2019); Mo. Code Regs. tit. 13, § 40-102.010 (2021); W. Va. Code Ann. § 48-1-228 (2020).

- Perquisites or in-kind compensation to the extent that they reduce living expenses, including but not limited to employer provided housing,<sup>308</sup> meals or room and board, and transportation benefits

Many states expressly include perquisites (perks) and in-kind compensation (also called fringe benefits under some support guidelines) as income if they reduce a party's personal expenses.<sup>309</sup> To be included as income, some state support guidelines also require that such compensation be significant or received regularly.<sup>310</sup> In a few states, perquisites and in-kind compensation are included as income at the discretion of the decision-maker.<sup>311</sup> A few states clarify that perks do not include money paid by an employer for benefits like tuition reimbursement, education cost reimbursement, uniforms, and HSA contributions.<sup>312</sup>

There are three additional types of income that many support guidelines address with varying approaches: overtime pay, income from second jobs, and military/veterans benefits and allowances.

- Overtime pay

Based on a review of state support guidelines in August 2021, only 14 states — including California — do not specifically address overtime pay within their support guideline or guideline commentary.<sup>313</sup> The support guidelines of Guam, Puerto Rico, and the Virgin

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<sup>308</sup> The Oklahoma support guideline provides that housing includes Basic Allowance for Housing, Basic Allowance for Subsistence, and Variable Housing Allowances for service members (Okla. Admin. Code § 340:40-7-11 (2021).

<sup>309</sup> Ariz. Child Support Guidelines (eff. Jan. 1, 2022) (a cash value is assigned to in-kind or other non-cash employment benefits); Colo. Rev. Stat. § 140190115(5)(a) (2019); CT. Admin. Code §§ 46b-215(a)-1(11)(A) and 46(b)215(d) (2020); D.C. Code § 16-916.01(d)(1) (2021); Fla. Stat. § 61.30(2)(a) (2020); Hawai'i Child Support Guidelines (2020); Me. Rev. Stat. Ann. tit. 19-A §§ 2001(5)(A)–(D) (2020); Md. Code Ann., Fam. Law § 12-201(3)–(5) (2019); Minn. Stat. § 518(a).29 (2020); Mont. Admin. R. 37.62.105(1)–(2), (5) (2021); N.J. Rules of Court, Rule 5.6A, Appendix IX-A and IX-B (2020); Or. Admin. R. 137-050-0715 (2020); Tenn. Comp. R. & Reg. 1240-02-04-.04 (2020); Vt. Stat. tit. 15, § 653 (2020); W.Va. Code Ann. § 48-1-228 (2020). *See also* Alaska R. Civ. P. 90.3(a)(1) Commentary (2021).

<sup>310</sup> In re: Admin. Order No. 10 Ark. Child Support Guidelines (2020); Del. Fam. Ct. R. Civ. P. 502 (2019); Idaho R. Civ. P. 6(c)(6) (2021); Ind. Child Support Rules and Guidelines (2020); La. Stat. Ann. § 9:315(c)(3)(a) (2019); Mass. Child Support Guidelines (2021); Michigan Child Support Formula (2021); N.M. Stat. Ann. § 40-4-11.1 (2020); N.C. Child Support Guidelines (2019); N.D. Admin. Code § 75-02-04.1 (2020); Okla. Admin. Code § 340:40-7-11 (2021); R.I. Family Court Child Support Formula and Guidelines (Fam. Ct. Admin. Order 2017-01); S.C. Code Regs. § 11404720 (2020).

<sup>311</sup> Cal. Fam. Code § 4058 (2020); Mo. Code Regs. tit. 13, § 40-102.010 (2021); N.Y. Dom. Rel. Law § 240(1-b) (2020).

<sup>312</sup> In re: Administrative Order No. 10, Ark. Child Support Guidelines (2020); Michigan Child Support Formula Manual (2021).

<sup>313</sup> Ala. R. Jud. Admin. R. 32(B)(1)-(2)(b) (2019); Cal. Fam. Code § 4058 (2020); 750 Ill. Comp. Stat. 5/505(3)(A) (2019); Chapter 9 of the Iowa Court Rules (Dec. 2018); Me. Rev. Stat. Ann. tit. 19-A, §§ 2001(5)(A)–(D) (2020); Md. Code Ann., Fam. Law § 12-201(3)-(5) (2019); Miss. Code § 43-19-101(3)(a) (2021); N.M. Stat. Ann. § 40-4-11.1 (2020); N.C. Child Support Guidelines (2019); 23 Pa. C.S. 4302 (2019); R.I. Family Court Child Support Formula and Guidelines (Fam. Ct. Admin. Order 2017-01); S.C. Code Regs. § 114-4720 (2020); Vt. Stat. tit. 15 § 653 (2020); Wis. Admin. Code DCF § 150.01(13)(a) (2021).

Islands also do not address overtime pay. The majority of jurisdictions address overtime pay within their support guidelines or guideline commentary. However, their approaches vary.

- Expressly included within definition of income

Ten states and the District of Columbia expressly include overtime pay in their list of examples of income.<sup>314</sup> Other states expressly include overtime pay on certain conditions, such as including it only if the overtime is required by the employer, or if it is recurring.<sup>315</sup>

- Expressly included within definition of income but court may consider facts

A few states include overtime pay in their definition of income but, recognizing that it is irregular or not guaranteed, require the court to be sensitive to the facts.<sup>316</sup> The Commentary to the Indiana Support Guideline provides additional direction:

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<sup>314</sup> In re: Admin. Order No. 10, Ark. Child Support Guidelines (2020); Del. Fam. Ct. R. Civ. P. 502 (2019); D.C. Code § 16-916.01(d)(1) (2021); Fla. Stat. § 61.30(2)(a) (2020); Ga. Code Ann. §§ 19-6-15(f)(1)(A) and (f)(5) (2019); Hawai'i Child Support Guidelines (2020); Mass. Child Support Guidelines (2021); Michigan Child Support Formula Manual (2021); N.D. Admin. Code § 75-02-04.1 (2020) (expressly included within definition of income but guideline also excepts “atypical overtime wages or nonrecurring bonuses over which the employee does not have significant influence or control.”); Ohio Rev. Code Ann. § 3119.01 (2021); Tex. Fam. Code § 154.062 (2019). *See also* Alaska R. Civ. P. 90.3(a)(1) Commentary (2021).

<sup>315</sup> Colo. Rev. Stat. § 14-10-115(5)(a) (2019) (if the overtime is required by the employer as a condition of employment); Mont. Admin. R. 37.62.105(1)–(2), (5) (2021) (If overtime is mandatory and the worker has no control over whether or not overtime is worked, the overtime earnings are included in income for child support. In the case of voluntary overtime earnings or earnings from a job that is in addition to a full-time job, and the earnings are expected to continue for the foreseeable future, the earnings are presumed to be available for child support and are included in the calculation subject to rebuttal of the presumption; N.J. Rules of Court, Rule 5.6A, Appendix IX-A and IX-B (2021) (if recurring or will increase the income available to the recipient over an extended period of time. For overtime pay or income from a second job, the average is based on the prior 12 months or first receipt, whichever time is greater. The court may exclude sporadic income if the party can prove that it will not be available in an equivalent amount in the future ); Nev. Rev. Stat. § 425.025 (2020) ( if such overtime pay is substantial, consistent and can be accurately determined); Or. Admin. R. 137-050-0715 (2020) (if regularly recurring. Sporadic overtime is not generally included. Overtime is calculated based on an annual amount, prorated over a 12-month period. The calculation of annual overtime takes into consideration those occupations that customarily have seasonal overtime. With evidence of a recent voluntary reduction in overtime hours, a fact finder may determine an annual average of overtime based on historic accumulation of overtime. The Guideline Commentary states that “Irregular income, such as seasonal, commission, or overtime work, or volatile investment income, may be computed based on a representative period, such as one or two years, with the goal of accurately estimating ongoing ability to pay support.”).

<sup>316</sup> Ind. Child Support Rules and Guidelines (2020) (Commentary to the guideline states: “The fact that overtime . . . has been consistent for three (3) years does not guarantee that it will continue in a poor economy. Further, it is not the intent of the Guidelines to require a party who has worked sixty (60) hour weeks to continue doing so indefinitely just to meet a support obligation that is based on that higher level of earnings. Care should be taken to set support based on dependable income, while at the same time providing children with the support to which they are entitled.”); Kan. Child Support Guidelines (Sup. Ct. Admin. Order 307) (2020) (It may be necessary for the court to consider historical information and the seasonal nature of employment. For example, if overtime is regularly earned by one of the parties, then a historical average of one year should be considered.); Mo. Code Regs. tit. 13, § 40-102.010 (2021) (included in appropriate circumstances. When determining whether to include overtime

When the court determines that it is not appropriate to include irregular income in the determination of the child support obligation, the court should express its reasons. When the court determines that it is appropriate to include irregular income, an equitable method of treating such income may be to require the obligor to pay a fixed percentage of overtime, bonuses, etc., in child support on a periodic but predetermined basis (weekly, bi-weekly, monthly, quarterly) rather than by the process of determining the average of the irregular income by past history and including it in the obligor's gross income calculation.

- Expressly included but guideline limits amount included or requires averaging

Four states limit the amount of overtime included within the definition of income.<sup>317</sup>

- Expressly excluded from income

Three states expressly exclude overtime hours from income, but in very different ways. New Hampshire's guideline provides that no income earned at an hourly rate for hours worked, on an occasional or seasonal basis, in excess of 40 hours in any week shall be considered as income for the purpose of determining gross income so long as the hourly rate income is earned for actual overtime labor performed by an employee who earns wages at an hourly rate in a trade or industry which traditionally or commonly pays overtime wages. The exclusion from income of overtime pay does not apply to professionals, business owners, business partners, self-employed individuals and others who may exercise sufficient control over their income so as to recharacterize payment to themselves to include overtime wages in addition to a salary. North Dakota's guideline

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compensation and earnings from secondary employment and, if so, the amount to include in a parent's "gross income," a court or administrative agency must consider all relevant factors. The regulation lists five factors that must at a minimum be considered.); Neb. Court Rules, Chap. 4, Art. 2 § 4-204 (2021) (if the overtime is a regular part of the employment and the employee can actually expect to regularly earn a certain amount of income from working overtime. In determining whether working overtime is a regular part of employment, the court may consider such factors as the work history of the employee for the employer, the degree of control the employee has over work conditions, and the nature of the employer's business or industry.); Okla. Stat. tit. 43, § 118(B) (2020); Tenn. Comp. R. & Reg. 1240-02-04-.04 (2020) (variable income such as . . . overtime pay . . . shall be averaged over a reasonable period of time consistent with the circumstances of the case and added to a parent's fixed salary or wages to determine gross income).

<sup>317</sup> Connecticut (income includes hourly wages for regular, overtime and additional employment not to exceed 45 total paid hours per week. In cases in which an obligor is an hourly wage earner and has worked less than 45 hours per week at the time of the establishment of the support order, any additional income earned from working more than 45 hours per week shall not be considered income for purposes of such guidelines); N.J. Rules of Court, Rule 5.6A, Appendix IX-A and IX-B (2021) (for overtime pay, the amount of sporadic income to be included as gross income is based on the average over the prior 12 months or from the first receipt whichever time is greater.); Wash. Rev. Code § 26.19.071 (2020) (income includes overtime, except income for overtime or income from second jobs beyond 40 hours per week averaged over a 12-month period worked to provide for a current family's needs, to retire past relationship debts, or to retire child support debt, when the court finds the income will cease when the party has paid off his or her debts.); W.Va. Code Ann. § 48-1-228 (2020) (Income includes an amount equal to 50% of the average compensation paid for personal services as overtime compensation during the preceding 36 months: Provided, that overtime compensation may be excluded from gross income if the parent with the overtime income demonstrates to the court that the overtime work is voluntarily performed and that he or she did not have a previous pattern of working overtime hours prior to separation or the birth of a nonmarital child.).

provides that income does not include atypical overtime wages or nonrecurring bonuses over which the employee does not have significant influence or control. Virginia's child support guideline provides that income does not include secondary employment income, not previously included in "gross income," where the payor obtained the income to discharge a child support arrearage established by a court or administrative order and the payor is paying the arrearage pursuant to the order. "Secondary employment income" includes but is not limited to income from an additional job, from self-employment, or from overtime employment.

- Expressly excluded from income based on court findings or court discretion

Several states exclude overtime from income based on findings of the court.<sup>318</sup> For example, Massachusetts's guideline provides that the court may consider none, some, or all overtime income or income from a secondary job. In determining whether to disregard none, some, or all income from overtime or a secondary job, due consideration must be given to the history of the income, the expectation that the income will continue to be available, the economic needs of the parties and the children, the impact of the overtime or secondary job on the parenting plan, and whether the overtime work is a requirement of the job. If, after a child support order is entered, a payor or recipient begins to work overtime or obtains a secondary job, neither of which was worked prior to the entry of the order, there shall be a presumption that the overtime or secondary job income should not be considered in a future child support order.

- Expressly excluded but court has discretion to include

Utah's support guideline states that income from earned income sources is limited to the equivalent of one full-time 40-hour job. If and only if during the time before the original support order, the parent normally and consistently worked more than 40 hours at the parent's job, may the court consider extra time as a pattern in calculating the parent's ability to provide child support.

Wyoming's guideline provides that income shall not include any earnings derived from overtime work unless the court, after considering all overtime earnings derived in the preceding 24-month period, determines the overtime earnings can reasonably be expected to continue on a consistent basis.

- Generally excluded from income but court has discretion to include

Arizona's guideline answers the question "When is overtime included in Child Support Income?" The guideline answers that the court generally does not include more income than earned through full-time employment. Each parent should have the choice of working additional hours through overtime without increasing the child support

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<sup>318</sup> Idaho R. Civ. P. (6)(c)(6) (2021); La. Stat. Ann. § 9:315(c)(3)(a) (2019); Mass. Child Support Guidelines (2021); Minn. Stat. § 518A.29 (2020); S.D. Codified Laws § 25-7-6.3 (2019).

obligation. However, the guideline allows the court to consider overtime in certain circumstances:

The court may consider income actually earned if it is greater than would have been earned by full-time employment if that income was historically earned and is anticipated to continue into the future. The court generally does not attribute additional income to a parent if it would require an extraordinary work regimen. Determination of what constitutes an extraordinary work regimen depends upon all relevant circumstances, including the choice of jobs available within a particular occupation, working hours, and working conditions. It also may depend upon the parent's relevant medical or personal circumstances.<sup>319</sup>

- Income from second job

State support guidelines address income from second jobs far less frequently than overtime pay. Based on a review of state support guidelines in August 2021, 15 states specifically address income from a second job within their support guideline or guideline commentary. Usually, the guideline clarifies that employment is secondary if the parent's primary employment is substantially full time (40 hours/week). The treatment of income from secondary employment varies.

- Expressly included within definition of income

Only Hawaii expressly includes income from additional jobs in its illustrative list of examples of income for support guideline purposes.<sup>320</sup>

- Expressly included but guideline limits amount included

Connecticut and Washington limit the amount of income from secondary employment that is included within the definition of income.<sup>321</sup>

- Expressly included within definition of income but court may consider facts

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<sup>319</sup> Ariz. Child Support Guidelines (eff. Jan. 1, 2022), <https://www.azcourts.gov/Portals/31/AOCDRS10H2022.pdf?ver=2021-10-01-123004-923>.

<sup>320</sup> Hawai'i Child Support Guidelines (2020).

<sup>321</sup> Connecticut (income includes hourly wages for additional employment not to exceed 45 total paid hours per week); Wash. Rev. Code § 26.19.071 (2020) (income includes overtime, except income for overtime or income from second jobs beyond 40 hours per week averaged over a 12-month period is excluded if it is worked to provide for a current family's needs, to retire past relationship debts, or to retire child support debt, when the court finds the income will cease when the party has paid off his or her debts.).

Commentary to Indiana’s support guidelines includes income from additional employment in their definition of income but, recognizing that it is irregular or not guaranteed, requires the court to be sensitive to the facts.<sup>322</sup>

- Presumed to be included within income

Montana’s guideline provides that earnings from a job that is in addition to a full-time job, and which are expected to continue for the foreseeable future, are presumed to be available for child support and are included in the calculation subject to rebuttal of the presumption.<sup>323</sup>

- Included within income at court’s discretion

A few state guidelines expressly provide the court discretion in deciding whether to include income from secondary employment or from work exceeding a full-time 40-hour week in the determination of support.<sup>324</sup> Of these, the guidelines of Delaware and Missouri provide a list of factors for the court to consider in exercising its discretion.<sup>325</sup> For example, Delaware’s guideline provides:

Whether income from secondary employment is included in the determination of support is determined on a case-by-case basis and: (1) Existing secondary employment income is more likely to be included if it: (i) Was historically earned especially when or if the parents resided together and significantly enhanced the family's standard of living; (ii) Substantially raises the standard of living of the parent or the parent's household to an extent not shared by the child or children before the court; or (iii) Is necessary to meet the minimum needs of the child or children before the court; and (2) Existing second employment income is more likely to be excluded if it: (i) Merely allows the parent to "make ends meet" especially with regard to the needs of other dependent children; (ii) Is used to pay extraordinary medical or educational expenses (including those of an emancipated child) or to service extraordinary indebtedness; (iii) Is necessary because the other parent of the child or children before the court is not providing adequate

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<sup>322</sup> Commentary to Ind. Child Support Rules and Guidelines (2020) (“Overtime . . . voluntary extra work and extra hours worked by a professional are all illustrations, but far from an all inclusive list, of [irregular income]. Each is includable in the total income approach taken by the Guidelines, but each is also very fact sensitive. Each of the above items is sensitive to downturns in the economy. . . . Further, it is not the intent of the Guidelines to require a party who has worked sixty (60) hour weeks to continue doing so indefinitely just to meet a support obligation that is based on that higher level of earnings. Care should be taken to set support based on dependable income, while at the same time providing children with the support to which they are entitled. When the court determines that it is not appropriate to include irregular income in the determination of the child support obligation, the court should express its reasons.”)

<sup>323</sup> Mont. Admin. R. 37.62.105(1)–(2), (5) (2021).

<sup>324</sup> Del. Fam. Ct. R. Civ. P. 502 (2019); Mass. Child Support Guidelines (2021); Mo. Code Regs. tit. 13, § 40-102.010 (2021).

<sup>325</sup> Del. Fam. Ct. R. Civ. P. 502 (2019); Mass. Child Support Guidelines (2021).



support; or (iv) Substantially conflicts with the parent's contact with the child or children before the court.<sup>326</sup>

- Expressly excluded from income

Only Colorado expressly provides that gross income does not include income from additional jobs that result in the employment of the obligor more than 40 hours per week or more than what would otherwise be considered to be full-time employment.<sup>327</sup> Utah does not expressly address secondary employment but provides that income from earned income sources is limited to the equivalent of one full-time 40-hour job.<sup>328</sup>

- Expressly excluded from income based on court findings

Three states exclude earnings from secondary employment or “excess employment” from gross income if the party demonstrates, and the court finds, certain specified factors.<sup>329</sup> Among the factors cited in the Idaho and Minnesota guidelines are that the excess employment is voluntary and not a condition of employment; the excess employment is in the nature of additional employment compensable by the hour or fraction of an hour; and the party’s compensation structure has not been changed for the purpose of affecting a support or maintenance obligation.<sup>330</sup> Virginia’s guideline provides that income does not include income received by the payor from secondary employment income not previously included in “gross income” where the payor obtained the income to discharge a child support arrearage established by a court or administrative order and the payor is paying the arrearage pursuant to the order.<sup>331</sup>

- Generally excluded from income but court has discretion to include

Arizona’s guideline answers the question “When is overtime included in Child Support Income?” In answering the question, the guideline also discusses additional employment. The response is that the court generally does not include more income than earned through full-time employment. Each parent should have the choice of working additional hours through overtime or at a second job without increasing the child support obligation. However, the guideline allows the court to consider income greater than employment at 40 hours per week in certain circumstances. These circumstances are noted in the earlier discussion of overtime pay.<sup>332</sup>

- Hybrid approach

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<sup>326</sup> Del. Fam. Ct. R. Civ. P. 502 (2019).

<sup>327</sup> Colo. Rev. Stat. § 14-10-115(5)(a) (2019).

<sup>328</sup> Utah Code Ann. § 78B-12-203 (2020).

<sup>329</sup> Idaho R. Civ. P. 6(c)(6) (2021); Minn. Stat. § 518A.29 (2020); Va. Code Ann. § 20-108.2 (2020).

<sup>330</sup> Idaho R. Civ. P. 6(c)(6) (2021); Minn. Stat. § 518A.29 (2020).

<sup>331</sup> Va. Code Ann. § 20-108.2 (2020).

<sup>332</sup> Ariz. Child Support Guidelines (eff. Jan. 1, 2022),

<https://www.azcourts.gov/Portals/31/AOCDRS10H2022.pdf?ver=2021-10-01-123004-923>.

The support guidelines of New Jersey and Washington take a hybrid approach. The New Jersey guideline includes income from a second job in its definition of income for guideline purposes. However, recognizing its sporadic nature, the Appendix to the Court Rule also provides that the income from a second job is the average based on the prior 12 months or first receipt whichever time is greater. The court may exclude sporadic income if the party can prove that it will not be available in an equivalent amount in the future.<sup>333</sup> The Washington guideline includes income from second jobs with an exception. Income from a second job beyond 40 hours per week averaged over a 12-month period and worked to provide for a current family's needs, to retire past relationship debts, or to retire child support debt is excluded from income when the court finds the income will cease when the party has paid off his or her debts.<sup>334</sup>

- Military/Veterans benefits and allowances

Almost half of state support guidelines expressly include military pay or military allowances within their definition of income. A number of state support guidelines detail the types of military pay and allowances included.<sup>335</sup> For example, Hawaii's guideline provides that income includes "military base and special pay and allowances, such as basic allowance for housing (BAH), basic allowance for subsistence (BAS), hazardous duty pay, cost-of-living allowance (COLA), selective reenlistment bonus (SRB), retired/retainer pay, reserve pay, etc.;" National Guard and Reserve drill pay; and locality pay.<sup>336</sup> Some support guidelines list BAH and BAS as examples of in-kind payments received from employment that should be included in a parent's income if they reduce personal living expenses.<sup>337</sup>

More than half of state support guidelines expressly include veterans' benefits within their definition of income. Most often the guideline simply refers to veterans' benefits.<sup>338</sup> A few include veterans' benefits, except those that are means based.<sup>339</sup> Some support guidelines, when including distributions from government and private retirement plans, expressly

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<sup>333</sup> N.J. Rules of Court, Rule 5.6A, Appendix IX-A and IX-B.

<sup>334</sup> Wash. Rev. Code § 26.19.071 (2020).

<sup>335</sup> See, e.g., Ariz. Child Support Guidelines (eff. Jan. 1, 2022); In re: Administrative Order No. 10, Ark. Child Support Guidelines (2020); Del. Fam. Ct. R. Civ. P. 502(a)(4) (2019); Hawai'i Child Support Guidelines (2020); Kan. Child Support Guidelines (Sup. Ct. Admin. Order 307) (2020); Michigan Child Support Formula Manual, sec. 2.01(C) (2020); Ohio Rev. Code Ann. § 3119.01 (2021); Okla. Stat. tit. 43, § 118(B) (2020). See also Alaska R. Civ. P. 90.3(a)(1) Commentary (2021).

<sup>336</sup> Hawai'i Child Support Guidelines (2020).

<sup>337</sup> See, e.g., D.C. Code § 16-916.01(d)(1) (2021).

<sup>338</sup> Ala. R. Jud. Admin. R. 32(B)(1)-(2)(b) (2019); In re: Administrative Order No. 10, Ark. Child Support Guidelines (2020); CT. Admin Code. § 46b-215a-1 (2020); D.C. Code § 16-916.01(d)(1) (2020); Hawai'i Child Support Guidelines (2020); Idaho R. Civ. P. 6(c)(6) (2021); Michigan Child Support Formula Manual (2021); Minn. Stat. § 518A.29 (2020); Mont. Admin. R. 37.62.105(1)-(2), (5) (2021); N.H. Rev. Stat. § 458-C:2 (2021); N.Y. Dom. Rel. Law § 240(1-b) (2020); N.D. Admin. Code § 75-02-04.1 (2020); S.C. Code Regs. § 114-4720 (2020).

<sup>339</sup> See Alaska R. Civ. P. 90.3(a)(1) Commentary (2021); Mass. Child Support Guidelines (2021).

mention retirement plans offered by the United States Department of Veterans Affairs.<sup>340</sup> Others expressly refer to veterans disability payments.<sup>341</sup>

### **Excluded from Income**

All state support guidelines also include examples of income that are exceptions and should not be included within the definition of income for purposes of the guideline calculation. The most common examples are:

- Child support received for other children; and
- Benefits received from means-tested public-assistance programs.

### **California's Guideline Definition of Income**

California's definition of income for child support guidelines purposes is in Family Code section 4058. It provides the following:

#### **§ 4058. Annual gross income of each parent**

(a) The annual gross income of each parent means income from whatever source derived, except as specified in subdivision (c) and includes, but is not limited to, the following:

(1) Income such as commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, social security benefits, and spousal support actually received from a person not a party to the proceeding to establish a child support order under this article.

(2) Income from the proprietorship of a business, such as gross receipts from the business reduced by expenditures required for the operation of the business.

(3) In the discretion of the court, employee benefits or self-employment benefits, taking into consideration the benefit to the employee, any corresponding reduction in living expenses, and other relevant facts.

(b) The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children, taking into consideration the overall welfare and developmental needs of the children, and the time that parent spends with the children.

(c) Annual gross income does not include any income derived from child support payments actually received, and income derived from any public assistance program, eligibility for which is based on a determination of need. Child support

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<sup>340</sup> Ga. Code Ann. §§ 19-6-15(f)(1)(A) and (f)(5) (2019); N.J. Rules of Court, Rules 5.6A, Appendix IX-A and IX-B; S.D. Codified Laws § 25-7-6.3 (2019); Tenn. Comp. R. & Reg. 1240-02-04-.04 (2020).

<sup>341</sup> Kan. Child Support Guidelines (Sup. Ct. Admin. Order 307) (2020); Ohio Rev. Code Ann. § 3119.01 (2021); Or. Admin. R. 137-050-0715 (2020); Tenn. Comp. R. & Reg. 1240-02-04-.04 (2020); Tex. Fam. Code § 154.062 (2019); Wis. Admin. Code DCF § 150.01(13)(a) (2021).

received by a party for children from another relationship shall not be included as part of that party's gross or net income.

California addresses fluctuating income in Family Code section 4064: "The court may adjust the child support order as appropriate to accommodate seasonal or fluctuating income of either parent."

## Analysis and Recommendations

The intent of federal regulations governing child support guidelines is that states focus on a parent's earnings and income, from whatever source derived. Within that directive, states have discretion in how to factor income within their numerical child support formula.

The definition of income in Family Code section 4058(a)(1-3) is broad enough to comply with the federal regulation as well as the intent expressed in the federal rule.

Although no amendment to California's definition of income is necessary to comply with federal requirements, based on legislative trends in other states and California case law<sup>342</sup> we recommend the legislature consider amending Family Code section 4058(a) to expressly include the following as examples of income:

- Severance pay
- Capital gains

California is home to over 1.5 million former service members, which is the largest veteran population of any state in the United States.<sup>343</sup> There are more active duty members assigned to California than in any other state.<sup>344</sup> And California is home to more DoD and DHS Coast Guard reservists than any other state.<sup>345</sup> Because of the large number of service members and veterans residing in California, we also recommend that the definition of income expressly include:

- Veterans benefits that are not needs based
- Military allowances for housing and food

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<sup>342</sup> See *In re Marriage of Samson* (2011) 197 Cal.App.4th 23; *In re Marriage of Alter* (2009) 171 Cal.App.4th 718. *Alter* holds that nothing in the law prohibits considering recurring gifts to be income for purposes of child support but concludes that whether such gifts should be considered income for purposes of the child support calculation is one that must be left to the discretion of the trial court.

<sup>343</sup> <https://census.ca.gov/resource/veterans/> (last visited Oct. 13, 2021).

<sup>344</sup> U.S. service members are comprised of DoD Active Duty military personnel (1,326,200) and DHS's Coast Guard Active Duty members (40,830). While the Active Duty population is located throughout the world, 87.4% are assigned to the United States and its territories. Of personnel stationed in the United States, there are 157,226 service members residing in California, making it the state with the most Active Duty personnel. See Department of Defense, Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy, 2019 Demographics Profile of the Military Community (2020), <https://download.militaryonesource.mil/12038/MOS/Reports/2019-demographics-report.pdf>.

<sup>345</sup> The majority (99.3%) of the Selected Reserve is located throughout the United States and its territories. California has the highest number of reserve personnel at 57,121. See Department of Defense, Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy, 2019 Demographics Profile of the Military Community (2020).

Amending Family Code section 4058(a) to expressly include military allowances for housing and food would codify the holding in *In re Marriage of Stanton* (2010) 190 Cal.App.4th 547, and provide greater clarity to parties.

## **Imputation of Income**

Child support guidelines are based on the assumption that the tribunal has accurate information about the parents' financial resources. If the tribunal has no evidence of parental income or determines that the parent is earning less than what the tribunal believes to be the parent's potential income, states allow for income imputation or attribution. Income imputation is an assumption of what a parent is able to earn, in lieu of using actual income or earnings.

### **Federal Regulations**

#### **Imputed Income**

Prior to the Final Rule, *Flexibility, Efficiency, and Modernization in Child Support Programs* (FEM),<sup>346</sup> the federal regulation governing child support guidelines was silent regarding imputation of income.

When the NPRM was published,<sup>347</sup> it stressed that "basic fairness requires that child support obligations reflect an obligor's actual ability to pay them."<sup>348</sup> The NPRM noted the practice of many states to impute income to the noncustodial parent in a child support proceeding if the state was unable to obtain data on the earnings and income of the noncustodial parent. "In some cases, imputation of income is based on an analysis of a parent's specific education, skills, and work experience, while in other cases, imputation of income is standardized based on full-time, full-year work at minimum or median wage."<sup>349</sup>

Yet research indicated that orders set with imputed income had low rates of payments, with many set at a level exceeding the noncustodial parent's actual ability to pay.<sup>350</sup> In order to set more accurate orders based on actual income, the NPRM proposed a new criterion as 45 Code of Federal Regulation, section 302.56(c)(4):

We propose that State guidelines take into consideration the noncustodial parent's subsistence needs (as defined by the State in its guidelines) and provide that

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<sup>346</sup> 81 Fed. Reg. 93,492–93,569 (Dec. 20, 2016).

<sup>347</sup> 79 Fed. Reg. 68,548–68,587 (Nov. 17, 2014).

<sup>348</sup> 79 Fed. Reg. 68,553 (Nov. 17, 2014).

<sup>349</sup> 79 Fed. Reg. 68,555 (Nov. 17, 2014).

<sup>350</sup> See Carl Formoso, *Determining the Composition and Collectability of Child Support Arrearages, Volume 1: The Longitudinal Analysis* (2003); HHS OIG Report, *The Establishment of Child Support Orders for Low Income Non-custodial Parents*, OEI-05-99-00390 (2000); Office of Child Support Enforcement, *The Story Behind the Numbers: Understanding and Managing Child Support Debt* (2008); Mark Takayesu, *How Do Child Support Order Amounts Affect Payments and Compliance?* Orange County, CA Department of Child Support Services (2011); Vicki Turetsky & Maureen Waller, "Piling on Debt: The Intersections Between Child Support Arrears and Legal Financial Obligations," 4 *UCLA Criminal Justice Law J.* 117 (2020); Maureen Waller & Robert Plotnick, "Effective Child Support Policy for Low-Income Families: Evidence from Street Level Research," *J. of Policy Analysis and Management* 20(1) (2001).

amounts ordered for support be based upon available data related to the parent’s actual earnings, income, assets, or other evidence of ability to pay, such as testimony that income or assets are not consistent with a noncustodial parent’s current standard of living. . . . The proposed regulation in § 302.56(c)(4) allows a State to impute income where the noncustodial parent’s lifestyle is inconsistent with earnings or income and where there is evidence of income or assets beyond those identified. We recognize, however, that some noncustodial parents may not make support payments because they are unwilling to do so. An example of this would be a noncustodial parent who, despite good educational credentials and marketable job skills, simply refuses to work. In this situation the court may deviate from the guidelines.<sup>351</sup>

OCSE specifically invited comments on this provision. OCSE also proposed a new criterion at section 302.56(c)(5) to prohibit the treatment of incarceration as “voluntary unemployment.” Treating incarceration as voluntary unemployment allows a court to impute income under most state guidelines or case law.

There were numerous comments to the proposed federal rule regarding imputed income.<sup>352</sup> Many of them focused on when income can be imputed. According to OCSE, these commenters had a mistaken belief that imputed income would only be allowed when a noncustodial parent’s standard of living was inconsistent with reported income. Commenters articulated three other types of circumstances where they believed imputation is appropriate and grounded in case law: “(1) When a parent is voluntarily unemployed, (2) when there is a discrepancy between reported earnings and standard of living, and (3) when the noncustodial parent defaults, refusing to show up or provide financial information to the child support agency.”<sup>353</sup>

OCSE responded that “[t]here was considerable misunderstanding about the scope and intent on this aspect of the NPRM. Our intent was to require a stronger focus on fact-gathering and setting orders based on evidence of the noncustodial parent’s actual income and ability to pay, rather than based on standard imputed (presumed) amounts applied across the board. However, we also intended to recognize certain established grounds for imputation when evidentiary gaps exist, including voluntary unemployment and discrepancies between reported income and standard of living.”<sup>354</sup>

Several times in response to scenarios that commenters put forward, OCSE noted that a state has the discretion to determine when it is appropriate to impute income consistent with guidelines requirements. Therefore, the final rule does not spell out specific circumstances in which a state may impute income.<sup>355</sup> However, in its response to comments, OCSE also emphasized the necessity of an individualized approach to imputation:

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<sup>351</sup> *Id.*

<sup>352</sup> See 81 Fed. Reg. 93,519–93,526 (Dec. 20, 2016).

<sup>353</sup> 81 Fed. Reg. 93,519 (Dec. 20, 2016).

<sup>354</sup> 81 Fed. Reg. 93,519 (Dec. 20, 2016).

<sup>355</sup> 81 Fed. Reg. 93,523 (Dec. 20, 2016); 81 Fed. Reg. 93,524 (Dec. 20, 2016).

[W]e revised the proposed language in § 302.56(c)(1) to clearly indicate that a child support order must be based on the noncustodial parent’s ability to pay using evidence of the parent’s earnings, income, and other evidence of ability to pay whenever available. We have also added § 302.56(c)(1)(iii) to indicate that if imputation is authorized in the State’s guidelines, the State’s guidelines must require the State to consider evidence of the noncustodial parent’s specific circumstances in determining the amount of income that may be imputed, including such factors as the noncustodial parent’s assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors.<sup>356</sup>

According to OCSE, this approach “emphasizes the expectation that support orders will be based upon evidence to the extent available, while recognizing that in limited circumstances, income imputation allows the decision-maker to address evidentiary gaps and move forward to set an order.”<sup>357</sup>

One of the comments appears to be based on California law. The commenter indicated that in IV–D cases when the noncustodial parent’s income is unknown and the parent fails to provide information, its law requires child support to be based on “presumed” income. According to the commenter, this is not “actual income,” but the state’s law also requires that the order be set aside as soon as the noncustodial parent’s actual income is determined. The commenter said that the NPRM references “presumed” income as a problem, but it is never a problem when the law is properly applied. Rather, according to the commenter, it is an efficient “locate” tool that encourages cooperation while not shifting unnecessary burden to the custodial parent.

OCSE responded:

We understand there will be situations where income must be imputed, but this should only occur after investigative efforts by the IV–D agency staff. The problem is that some States do not impute income based on the specific circumstances of the noncustodial parent to fill evidentiary gaps—instead, imputation has become the standard practice of first resort in lieu of fact-gathering. While this State’s law sets aside an order when the actual income is determined, we are concerned that unrealistic and high arrearages will accumulate, particularly in cases involving indigent, unrepresented noncustodial parents prior to the order being set aside. When an arrearage accumulates, it often results in a low compliance rate over the life of the child support order, which does not benefit the children and families.<sup>358</sup>

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<sup>356</sup> 81 Fed. Reg. 93,519 (Dec. 20, 2016).

<sup>357</sup> 81 Fed. Reg. 93,520 (Dec. 20, 2016).

<sup>358</sup> 81 Fed. Reg. 93,525 (Dec. 20, 2016).

Other comments focused on the amount of any presumed or imputed income. One commenter recommended that OCSE revise the NPRM to allow states to use imputed income, such as state median wage, occupational wage rates, or other methods of imputation as defined by state law, as a last resort when the parent has not provided financial information and the agency cannot match to automated sources.<sup>359</sup> Another commenter voiced concern about such presumptions that a parent, at a minimum, is capable of working full-time at the minimum wage. This commenter noted that many low-income parents cannot get a job or retain steady employment to realize full-time employment. Therefore, the commenter recommended that OCSE prohibit “the presumption of a minimum amount of income to a parent in excess of the parent’s actual or potential income as verified or ascertained using state-determined evidence of income that must include income data from automated sources available to the IV–D agency in a IV–D case unless evidence is presented that the parent is voluntarily unemployed or underemployed and has the capacity to earn the minimum amount of income presumed or more.”<sup>360</sup>

In response, OCSE definitively stated that “[i]mputing standard amounts in default cases based upon State median wage or statewide occupational wage rates does not comply with this rule because it is unlikely to result in an order that a particular noncustodial parent has the ability to pay.”<sup>361</sup> “When other information about the noncustodial parent’s ability to pay is not available, information about residence will often provide the decision-maker with some basis for making this calculation. In addition, information provided by the custodial parent can provide the basis for a reasonable calculation, particularly in situations when the noncustodial parent fails to participate in the process.”<sup>362</sup>

After considering the suggestion to expressly prohibit the presumption of a minimum amount of income, OCSE revised the final rule to clarify that child support orders must be based on the noncustodial parent’s earnings, income, and other evidence of ability to pay in section 302.56(c)(1). If there is no evidence or insufficient evidence of earnings and income, or it is inappropriate to use earnings and income as defined in section 302.56(c)(1), section 303.4(b)(3) requires that the amount of income imputed to the noncustodial parent must be based on the specific circumstances of the noncustodial parent as listed in section 302.56(c)(1)(iii).<sup>363</sup>

There were also comments asking about exceptions to imputation of income. For example, one commenter believed that no income should be imputed to a noncustodial parent gainfully employed for at least 30 hours per week if the custodial parent was working voluntarily less than 30 hours per week. This same commenter believed that exceptions should be allowable if the custodial parent had children with special medical or educational needs or children less than two years of age. OCSE did not agree with suggestions to incorporate specific exceptions into federal rules. Such exceptions do not provide for a case-by-case review of the specific circumstances of the noncustodial parent, evidence of the voluntariness of unemployment or underemployment, and a case-specific determination of the noncustodial parent’s ability to pay. OCSE also again emphasized that “States may determine when imputation of income is allowed, so long as the

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<sup>359</sup> 81 Fed. Reg. 93,525 (Dec. 20, 2016).

<sup>360</sup> 81 Fed. Reg. 93, 523 (Dec. 20, 2016).

<sup>361</sup> 81 Fed. Reg. 93,525 (Dec. 20, 2016).

<sup>362</sup> 81 Fed. Reg. 93,525 (Dec. 20, 2016).

<sup>363</sup> 81 Fed. Reg. 93, 522–23 (Dec. 20, 2016).



resulting order considers the factors listed in § 302.56(c)(iii) and reflects a noncustodial parent’s ability to pay it.”<sup>364</sup>

Some commenters expressed concerns that substantially limiting the use of imputed income in guideline calculations would cause delays in the establishment and modification of child support orders. OCSE agreed the final rule may result in increased time to establish and modify a child support order. However, it pointed out that orders based on a noncustodial parent’s ability to pay, as required by federal child support guidelines law and policy, “should result in better compliance rates and higher collections rates, saving time and resources required to enforce orders and resulting in actual payments to more children.”<sup>365</sup> OCSE also noted that the rules applied to both judicial and administrative proceedings.

Finally, in its responses to comments, OCSE highlighted section 467 of the Social Security Act, which requires “a written finding or specific finding that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case.” OCSE encouraged states to establish deviation criteria when to impute income and document the deviation in a finding on the record that is rebuttable.

### **Imputation in Low-Income Cases**

Although historically courts imputed income to fill specific evidentiary gaps in a particular case, OCSE observed a trend among some states “of reducing their case investigation efforts and imposing high standard minimum child support orders across-the-board in low-income IV-D cases, setting orders without any evidence of ability to pay.”<sup>366</sup> In some jurisdictions, “a two-tiered system exists with better-off noncustodial parents receiving support orders based upon evidence and a determination of their individual income. Poor, low-skilled noncustodial parents, usually unrepresented by counsel, receive standard-issue support orders. Such orders lack a factual basis and are instead based upon fictional income, assumptions not grounded in reality, and beliefs that a full-time job is available to anyone who seeks it. Orders that routinely lack a factual basis and are based upon standard presumptions erode the sense of procedural fairness and the legitimacy of the orders, resulting in lower compliance.”<sup>367</sup> OCSE stressed that “[f]ictional income should not be imputed simply because the noncustodial parent is low-income, but instead only used in limited circumstances when the facts of the case justify it.”<sup>368</sup> OCSE stated that “States need to exercise discretion on a case-by-case basis in determining a low-income noncustodial parent’s ability to pay when evidence of earnings and income is not available. We encourage States to take this into consideration in developing the criteria for determining when to impute income.”<sup>369</sup>

In addition to a IV–D agency’s responsibility to conduct further investigation when evidence of earnings and income is not available, OCSE noted state procedures that mandate financial

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<sup>364</sup> 81 Fed. Reg. 93,521 (Dec. 20, 2016).

<sup>365</sup> 81 Fed. Reg. 93,523 (Dec. 20, 2016).

<sup>366</sup> 81 Fed. Reg. 93,519 (Dec. 20, 2016).

<sup>367</sup> 81 Fed. Reg. 93,524 (Dec. 20, 2016).

<sup>368</sup> 81 Fed. Reg. 93,520 (Dec. 20, 2016).

<sup>369</sup> 81 Fed. Reg. 93,524 (Dec. 20, 2016).

disclosure by parents with appropriate penalties for noncompliance, “a practice that is intended to increase accurate order-setting and decrease overuse of imputation.”<sup>370</sup>

### **Incarceration as Basis for Imputation**

Prior to the updated regulation, some states’ case law had found incarceration to be voluntary unemployment based on the parent’s actions.<sup>371</sup> Voluntary unemployment occurs when an individual intentionally reduces income by quitting a job, failing to seek employment, or working in a job beneath their skill set or education level, sometimes in order to avoid child support obligations. These states treated incarceration as voluntary unemployment since it was the result of a conviction for an intentional criminal act. As a consequence, these states imputed income to the obligor in calculating the child support obligation. They also disallowed incarceration as a basis for modification. The NPRM proposed a new criterion at 45 Code of Federal Regulations, section 302.56(c)(5) to prohibit the treatment of incarceration as “voluntary unemployment.”

According to OCSE, over 600 commenters supported the proposed section 302.56(c)(5) to prohibit the treatment of incarceration as “voluntary unemployment.” However, four commenters believed that such a limitation should not apply where the parent is incarcerated for a crime against the supported child or custodial parent. Some commenters also thought that this limitation should not apply where the parent has been incarcerated for intentional failure to pay child support. These commenters thought that strong public policy dictates against affording relief to an obligor who commits a violent crime against the custodial parent or child, or an obligor who has the means to pay child support but refuses to do so. The commenters urged OCSE to include these important exceptions in the final rule. In response, OCSE stated that it agreed with the overwhelming majority of commenters. It noted that three-quarters of states have eliminated treatment of incarceration as voluntary unemployment in recent years. Accordingly, OCSE did not make the suggested changes.<sup>372</sup>

The final rule, redesignated at 45 Code of Federal Regulations, section 302.56(c)(3), requires that a state child support guideline must provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders. Additionally, if a state authorizes the imputation of income, 45 Code of Federal Regulations, section 302.56(c)(1)(iii) requires the state to consider a number of factors in determining the circumstances in which imputing income is appropriate. One of the explicit factors is the noncustodial parent’s criminal record. In its response to comments, OCSE noted that incarceration often serves as a barrier to employment. “One study showed that after release from jail, formerly incarcerated men were unemployed nine more weeks per year, their annual earnings were reduced by 40 percent, and hourly wages were 11 percent less than if they had never been incarcerated.”<sup>373</sup>

On September 17, 2020, OCSE revisited the issue of incarceration. It issued an NPRM proposing to provide states with the flexibility to incorporate in their child support guidelines two optional

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<sup>370</sup> 81 Fed. Reg. 93,524 (Dec. 20, 2016).

<sup>371</sup> See, e.g., *State ex. rel. Dept. of Human Services v. Baggett*, 990 P.2d 235 (Okla. 1999); *In re Marriage of Thurmond*, 962 P.2d 1064 (Kan. 1998).

<sup>372</sup> 81 Fed. Reg. 93,526 (Dec. 20, 2016).

<sup>373</sup> 81 Fed. Reg. 93,524 (Dec. 20, 2016).

exceptions to the prohibition against treating incarceration as voluntary unemployment. These proposed exceptions, under section 302.56(c)(3)(i) and (ii), would be for incarceration (1) due to intentional nonpayment of child support resulting from a criminal case or civil contempt action in accordance with guidelines established by the state under section 303.6(c)(4); and/or (2) for any offense of which the individual's dependent child or the child support recipient was a victim. Under the proposed rule, the state may apply the second exception to the individual's other child support cases.<sup>374</sup> On November 10, 2021, OCSE withdrew the NPRM, effective immediately.<sup>375</sup> In withdrawing the NPRM, OCSE noted that it had received 49 comments to the proposed rule and that most states were in compliance with the prohibition against treating incarceration as voluntary unemployment as stated in the final FEM rule.

### **Importance of Case Investigation**

In its response to comments to the proposed FEM rule, OCSE stressed that “case investigation to develop case-specific evidence is a basic program responsibility,” including contact with both parents to obtain financial information and testimony, as well as documents.<sup>376</sup> This fact-finding applies to both initial and modified orders.<sup>377</sup>

The revised 45 Code of Federal Regulations, section 303.4(b) requires IV–D agencies to use appropriate state statutes, procedures, and legal processes in establishing the child support obligation and assisting the decision-maker. At a minimum, the IV-D agency must (1) take reasonable steps to develop a sufficient factual basis for the support obligation, through such means as investigations, case conferencing, interviews with both parties, appear and disclose procedures, parent questionnaires, testimony, and electronic data sources; (2) gather information regarding the earnings and income of the noncustodial parent and, when earnings and income information is unavailable or insufficient in a case, gather available information about the specific circumstances of the noncustodial parent, including such factors as those listed under section 302.56(c)(iii); (3) base the support obligation or recommended support obligation amount on the earnings and income of the noncustodial parent whenever available. If earnings and income are unavailable or insufficient to use as the measure of the noncustodial parent's ability to pay, then the recommended support obligation amount should be based on available information about the specific circumstances of the noncustodial parent, including such factors as those listed in section 302.56(c)(iii); and (4) document the factual basis for the support obligation or recommended support obligation in the case record.<sup>378</sup>

Even if the state IV–D agency has no evidence of earnings and income or insufficient evidence to use as the measure of the noncustodial parent's ability to pay, OCSE noted that they can contact the custodial parent for information. And, at a minimum, child support agencies

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<sup>374</sup> 85 Fed. Reg. 58,029–58,032 (Sept. 17, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-09-17/pdf/2020-17747.pdf>.

<sup>375</sup> 86 Fed. Reg. 62,502 (Nov. 10, 2021).

<sup>376</sup> 81 Fed. Reg. 93,521 (Dec. 20, 2016); 81 Fed. Reg. 93,523 (Dec. 20, 2016).

<sup>377</sup> 81 Fed. Reg. 93,523 (Dec. 20, 2016).

<sup>378</sup> 81 Fed. Reg. 93,521–22 (Dec. 20, 2016).

generally will know the noncustodial parent’s address, which can be used to provide information about available employment and average earnings.<sup>379</sup>

## Research

Although a 2017 survey of state child support program directors suggested that income imputation is used as a “last resort” in order determination,<sup>380</sup> analyses of child support caseload data reveal a different story. In a Wisconsin study of cases filed with the courts from July 2007 to August 2010 and in 2013, about one in five orders (21%) had income imputed, but the rate of imputed income was double (42%) among low-income noncustodial parents.<sup>381</sup> A Maryland study using a sample of orders from Maryland’s 2011 to 2014 case-level guidelines review found that income was imputed to obligors in one-quarter (24.1%) of cases.<sup>382</sup> An analysis of New Mexico case data conducted as part of its quadrennial guideline review revealed that 13% of current support orders were based on income imputed at full-time minimum wage earnings.<sup>383</sup>

These studies post issuance of the FEM final rule also confirm research findings cited by OCSE that imputed income orders are associated with lower compliance. In the Wisconsin study, researchers found that cases with imputed income had much worse outcomes than those without, and the outcomes were statistically significant. For example, only 62% of cases with imputed orders had payments made in the first year, relative to 85% of cases without imputed income. Compliance was 31% for those with imputed income and 72% for those without.<sup>384</sup> The Maryland study found that only 31% of all support owed by obligors with imputed income was paid, compared to 67% paid among obligors without imputed income. The percentage of obligors who made any payment in the year after establishment was similarly striking. While the majority of obligors in both groups made a payment, 68.5% of obligors with imputed income did so compared to 91.1% obligors without imputed income.<sup>385</sup> In New Mexico, the recent guidelines review also found a lower compliance rate in imputed income cases—52.4% versus 63.3% in cases without imputed income.<sup>386</sup>

A large reason for the lower compliance is that imputed income is often higher than the actual income of the noncustodial parent. This is especially true when income is imputed at full-time minimum wage.<sup>387</sup> In examining orders based on imputed income, the Maryland study found that

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<sup>379</sup> 81 Fed. Reg. 93,521 (Dec. 20, 2016).

<sup>380</sup> James Fleming, “Imputed Income and Default Practices: The State Directors’ Survey of State Practices Prior to the 2016 Final Rule,” NCSEA Child Support Communique (Apr. 2017), [http://www.ncsea.org/documents/Imputed-Income-and-Default-Practices\\_CSQ-April-2017.pdf](http://www.ncsea.org/documents/Imputed-Income-and-Default-Practices_CSQ-April-2017.pdf).

<sup>381</sup> Maria Cancian, Steven Cook, & Daniel R. Meyer, Institute for Research on Poverty, Univ. of Wisconsin–Madison, Child Support Payments, Income Imputation, and Default Orders (Aug. 2019).

<sup>382</sup> Natalie Demyan & Letitia Logan Passarella, Univ. of Md. School of Social Work, Actual Earnings and Payment Outcomes among Obligor with Imputed Income (Aug. 2018).

<sup>383</sup> Jane Venohr, Center for Policy Research, Review of the New Mexico Child Support Guidelines. Submitted to the New Mexico Human Services Department, Child Support Enforcement Division (2018).

<sup>384</sup> Cancian, Cook, & Meyer, *supra* note 94, at 11.

<sup>385</sup> Demyan & Passarella, *supra* note 95, at 12.

<sup>386</sup> Venohr, *supra* note 96.

<sup>387</sup> See Vicki Turetsky, “Reforming Child Support to Improve Outcomes for Children and Families,” The Abell Report, Vol. 32, No. 5 (June 2019), [https://abell.org/sites/default/files/files/Abell%20Child%20Support%20Reform%20-%20Full%20Report%202020%20edits%20v1\\_3.pdf](https://abell.org/sites/default/files/files/Abell%20Child%20Support%20Reform%20-%20Full%20Report%202020%20edits%20v1_3.pdf).

the actual income of obligors one year prior to order establishment was 72% less than the income imputed to them at full-time minimum wage. Employed obligors' annual earnings increased by about \$2,000 in the year after establishment, so the difference declined to 59%, but that still meant a substantial gap between actual earnings and worksheet income for obligors with imputed income.<sup>388</sup> Based on Unemployment Insurance (UI) wage records for the parents, they also found that only 50.6% of parents with imputed income orders had any employment in the year after establishment, and only 40.9% were employed in all four quarters.<sup>389</sup>

### **Other States' Provisions Regarding Imputation of Income**

The final rule regarding imputation of income was issued in December 2016. Because of OCSE's strong statement that there should be limited use of income imputation to establish child support and that any such imputation must be based on an examination of a number of enumerated factors, many of the states that have reviewed their support guidelines post 2016 have included a focus on low-income obligors and imputation of income during their guideline reviews.<sup>390</sup>

In August 2021, Public Knowledge researched current state child support guidelines and their use of imputed income.

### **Criteria for Income Imputation**

The overwhelming majority of states include criteria for when a tribunal may impute income to a parent within their support guideline. The most frequent criterion is if a parent is voluntarily unemployed or underemployed.<sup>391</sup>

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<sup>388</sup> Demyan & Passarella, *supra* note 95.

<sup>389</sup> *Id.*

<sup>390</sup> See Leslie Hodges & Lisa Vogel, Institute for Research on Poverty University of Wisconsin–Madison, Recent Changes to State Child Support Guidelines for Low-Income Noncustodial Parents (Aug. 2019). Of the 11 states (Arizona, Delaware, Florida, Georgia, Massachusetts, Nebraska, New Hampshire, New Mexico, North Dakota, Ohio, and Rhode Island) they analyzed, they found that six state guideline reviews recommended changes to language surrounding income imputation, and three states implemented changes consistent with these recommendations. Georgia had already implemented legislative changes pursuant to the final rule. In general, these changes were aimed at improving fact-finding processes based on the individual circumstances of a noncustodial parent's case and avoiding imputation as a default practice. All states that recommended changes to imputation practices borrowed directly or closely from the final rule's language about circumstances to be taken under consideration. Specific changes recommended included adding clarifying language regarding when imputation was permitted and evidentiary standards for imputation; removing language referring to imputation as a standard practice not reflective of individual circumstances; editing language to indicate imputation is allowable, but not required; and adding examples of when imputation might not be appropriate for a given case.

<sup>391</sup> See, e.g., Ala. R. Jud. Admin. 32(A)(5) (2019); Ariz. Child Support Guidelines (eff. Jan. 1, 2022); Colo. Rev. Stat. § 14-10-115(5)(b)(l) (2019); Delaware Child Support Guidelines (2018), Fam. Ct. Civil P. Rule 501; Fla. Stat. § 61.30(2)(b) (2020); Hawaii Child Support Guidelines (2020); Idaho R. Fam. L.P., Child Support Guidelines, R.120 (2021); 750 Ill. Comp. Stat. 5/505(3.2) (2019); Ind. Child Support Guidelines (2020); Iowa Child Support Guidelines, Iowa Ct. R. 9.11(4) (2018); Ky. Rev. Stat. Ann. § 403-212 (2021); La. Stat. Ann. § 9:315.11(A)(1) (2021); Mass. Child Support Guidelines (2021); Michigan Child Support Formula Manual (2021); Minn. Stat. § 518A.32 (2020); Mo. 13 CSR 40-102.010 (2021); Mont. Admin. R. 37.62.106 (2021); Nev. Rev. Stat. § 425.125 (2020); N.H. Rev. Stat. Ann. § 458-C:2 (2021); N.J. Rules of Court, Rule 5.6A, App. IX-A (2021); N.M. Stat. Ann. § 40-4-11.1 (2020); N.D. Admin. Code § 75-02-04.1-07 (2020); Ohio Rev. Code Ann. § 3119.01(17) (2021); Okla.

Some states include a definition for underemployment.<sup>392</sup> For example, North Dakota’s guideline provides that an obligor is “underemployed” if the obligor's gross income from earnings is significantly less than the state's statewide average earnings for persons with similar work history and occupational qualifications. An obligor is presumed to be underemployed if the obligor's gross income from earnings is less than the greater of: (a) Six-tenths of the state's statewide average earnings for persons with similar work history and occupational qualifications; or (b) A monthly amount equal to 167 times the federal hourly minimum wage.<sup>393</sup> Whereas the presumption in subsection (a) is tied to the obligor’s circumstances, the presumption in subsection (b) is not. Presuming underemployment based on earnings tied to the federal minimum wage rather than any circumstances of the obligor appears to be contrary to federal regulatory intent.

Idaho’s guideline provides that a parent “will not be deemed under-employed if gainfully employed on a full-time basis at the same or similar occupation in which he/she was employed for more than six months before the filing of the action or separation of the parents, whichever occurs first. On post-judgment motions, the six month period is calculated from the date the motion is filed. Ordinarily, a parent will not be deemed underemployed if the parent is caring for a child not more than under 6 months of age.”<sup>394</sup>

Minnesota’s guideline provides:

A parent is not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis upon a showing by the parent that:

- (1) the unemployment, underemployment, or employment on a less than full-time basis is temporary and will ultimately lead to an increase in income;
- (2) the unemployment, underemployment, or employment on a less than full-time basis represents a bona fide career change that outweighs the adverse effect of that parent's diminished income on the child; or
- (3) the unemployment, underemployment, or employment on a less than full-time basis is because a parent is physically or mentally incapacitated or due to incarceration.<sup>395</sup>

A number of states also provide for imputation of income if the noncustodial parent fails to appear or participate in the child support proceeding,<sup>396</sup> or fails to provide sufficient

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Stat. tit. 43, § 118B(D)(2) (2020); S.C. Code Regs. § 114-4720 (2020); Vt. Stat. Ann. Tit. 15, § 653 (2020); Va. Code Ann. § 20-108.1 (2020); Wash. Rev. Code § 26.19.071 (2020); W. Va. Code Ann. § 48-1-205 (2020); Wyo. Stat. Ann. § 20-2-307 (2020).

<sup>392</sup> See Delaware Child Support Guidelines (2018), Fam. Ct. Civil P. Rule 501; Idaho R. of Fam. L.P., Child Support Guidelines, R.120 (2021); N.D. Admin. Code § 75-02-04.1-07 (2020).

<sup>393</sup> N.D. Admin. Code § 75-02-04.1-07 (2020).

<sup>394</sup> Idaho R. Fam. L.P., Child Support Guidelines, R.120 (2021).

<sup>395</sup> Minn. Stat. § 518A.32 (2020).

<sup>396</sup> See Delaware Child Support Guidelines (2018), Fam. Ct. Civil P. Rule 501; Fla. Stat. § 61.30(2)(b) (2020); Utah Code Ann. § 78B-12-203 (2020).

documentation of employment or income.<sup>397</sup> North Dakota guidelines allow the tribunal to impute income if the obligor fails, upon reasonable request made in any proceeding to establish or review a child support obligation, to furnish reliable information concerning their earnings and that information cannot be obtained from sources other than the obligor.<sup>398</sup>

### Exceptions to Income Imputation

In its responses to comments to the NPRM, OCSE did not agree with the suggestion to incorporate specific exceptions to the imputation of income into the final FEM rule. It stated that generic exceptions do not provide for a case-by-case review of specific circumstances of the noncustodial parent. However, the majority of states do exclude certain categories of people from the imputation of income or a determination of voluntary unemployment or underemployment. Where there is an exception, some guidelines phrase it as a directive<sup>399</sup> whereas others grant the tribunal discretion.<sup>400</sup> The most common exceptions are parents who are physically or mentally handicapped<sup>401</sup> and parents caring for a young child to whom the parents have a joint legal responsibility.<sup>402</sup> A few state guidelines give the tribunal discretion to decline attribution of income if the parent is engaged in career or occupational training to establish basic job skills<sup>403</sup> And some states provide that a court shall not impute up to 35 or 40 hours of work if certain conditions are present, but allow the court discretion to impute less than that amount.<sup>404</sup>

States address incarceration in a number of ways:

- Some state guidelines prohibit a court from attributing income or determining potential income to a person who is incarcerated.<sup>405</sup>

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<sup>397</sup> See, e.g., Delaware Child Support Guidelines (2018), Fam. Ct. Civil P. Rule 501; Fla. Stat. § 61.30(2)(b) (2020); Mont. Admin. R. 37.62.106 (2021).

<sup>398</sup> See also Ga. Code Ann. § 19-6-15(4)(A) (2019); Tenn. Comp. R. & Regs. 1240-02-04-04 (2020).

<sup>399</sup> See, e.g., Alaska R. Civ. P. 90.3 (2021); Colo. Rev. Stat. § 14-10-115(5)(b)(I)(2019); D.C. Code § 16.916.01(b)(10); Hawaii Child Support Guidelines (2020); Mont. Admin. R. 37.62.106 (2021); N.C. Child Support Guidelines (2019); Wash. Rev. Code § 26.19.071(2020).

<sup>400</sup> See, e.g., Ariz. Child Support Guidelines (eff. Jan. 1, 2022); (the court may decline to attribute income if (1) a parent is physically or mentally disabled; (2) a parent is engaged in reasonable career or occupational training to establish basic skills or that is reasonably calculated to enhance earning capacity; (3). Unusual emotional or physical needs of a natural or adopted child common to the parties if that child requires that parent's presence in the home; or (4) A parent is the caretaker of a young child common to the parties and the cost of childcare is prohibitive.); Idaho R. Fam. L.P., Child Support Guidelines, R.120 (2021).

<sup>401</sup> See, e.g., Alaska R. Civ. P. 90.3 (2021); Colo. Rev. Stat. § 14-10-115(5)(b)(I) (2019); D.C. Code § 16.916.01(b)(10) (2021); Idaho R. Fam. L.P., Child Support Guidelines, R.120 (2021); Ky. Rev. Stat. Ann. § 403-212 (2021); La. Stat. Ann. § 9:315.11(A)(1) (2021); Mont. Admin. R. 37.62.106 (2021); N.H. Rev. Stat. Ann. § 458-C:2 (2021); N.C. Child Support Guidelines (2019); S.D. Codified Laws Ann. § 25-7-6.4 (2019); Utah Code Ann. § 78B-12-203 (2020); Vt. Stat. Ann. tit. 15, § 653 (2020).

<sup>402</sup> See, e.g., Alaska R. Civ. P. 90.3 (2021); Ariz. Child Support Guidelines (eff. Jan. 1, 2022) (also requires finding that cost of childcare is prohibitive); Colo. Rev. Stat. § 14-10-115(5)(b)(I)(2019); Hawaii Child Support Guidelines (2020); Ky. Rev. Stat. Ann. § 403-212 (2021); La. Stat. Ann. § 9:315.11(A)(1) (2021).

<sup>403</sup> See Ariz. Child Support Guidelines (eff. Jan. 1, 2022); Utah Code Ann. § 78B-12-203 (2020); Vt. Stat. Ann. tit. 15, § 653 (2020); Va. Code Ann. § 20-108.1 (2020); W. Va. Code Ann. § 48-1-205 (2020).

<sup>404</sup> Delaware Child Support Guidelines (2018), Fam. Ct. Civil P. Rule 501.

<sup>405</sup> See, e.g., Colo. Rev. Stat. § 14-10-115(5)(b)(I) (2019).

- Some guidelines either prohibit a court from attributing income to a person who is incarcerated or prohibit a court from assuming an ability to earn based on pre-incarceration wages, but instead provide that the court may establish or modify support based on actual income and assets available to the incarcerated parent.<sup>406</sup>
- Some guidelines mirror the requirement of the federal regulation and state that a finding of voluntary unemployment or underemployment shall not be made for a parent who is incarcerated.<sup>407</sup>

Other examples of situations where a support guideline prohibits the imputation of income or provides that it may be inappropriate to attribute income are:

- The parent is receiving means-tested public assistance.<sup>408</sup>
- Unusual emotional or physical needs of a legal dependent require the parent's presence in the home.<sup>409</sup>
- The obligor is receiving: (1) Supplemental security income payments; (2) Social security disability payments; (3) Workers' compensation wage replacement benefits; (4) Total and permanent disability benefits paid by the railroad retirement board; (5) Pension benefits paid by the veterans benefits administration; or (6) Disability compensation paid by the veterans benefits administration based on an overall disability rating of one hundred percent.<sup>410</sup>
- Reasonable costs of child care for the parents' minor children approach or equal the amount of income the custodial parent can earn.<sup>411</sup>
- The parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts or under a voluntary placement agreement with an agency supervising the child.<sup>412</sup>

### **Basis of Imputed Amount**

The final FEM rule provided that the compliance date for the amended child support guideline regulation, 45 Code of Federal Regulations, section 302.56(a)–(g), was one year after completion of the first quadrennial review of the state's guidelines that commences more than one year after publication of the final rule in December 2016. The compliance date for the amended regulation governing guideline reviews, 45 Code of Federal Regulations, section 302.56(h)), was the first quadrennial review of the guidelines commencing after the state's guidelines have initially been revised under this final rule. OCSE granted California an extension until 2024.

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<sup>406</sup> See Ariz. Child Support Guidelines (eff. Jan. 1, 2022); Ga. Code Ann. § 19-6-15(4)(A) (2019).

<sup>407</sup> See, e.g., Ky. Rev. Stat. Ann. § 403-212 (2021).

<sup>408</sup> See D.C. Code § 16.916.01(b)(10) (2021); Minn. Stat. § 518A.32 (2020). *But see* S.C. Code Regs. § 114-4720 (2020).

<sup>409</sup> See, e.g., Ariz. Child Support Guidelines (eff. Jan. 1, 2022); Mont. Admin. R. 37.62.106 (2021); Mo. 13 CSR 40-102.010 (2021); N.D. Admin. Code § 75-02-04.1-07 (2020); W. Va. Code Ann. § 48-1-205(c) (2020).

<sup>410</sup> See N.D. Admin. Code § 75-02-04.1-07 (2020).

<sup>411</sup> See Utah Code Ann. § 78B-12-203 (2020).

<sup>412</sup> Wash. Rev. Code § 26.19.071 (2020).



Since 2016, a number of states have amended their state guidelines to add language that mirrors what is in the final rule, i.e., if income is imputed to a parent, the income must be based upon, to the extent known, factors such as the parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, record of seeking work, the local job market, the availability of employers willing to hire the parent, prevailing earnings level in the local community, and other relevant background factors.<sup>413</sup>

Current support guidelines also list other factors for the court to consider when imputing potential income or earning capacity:

- Reasonable needs of the children<sup>414</sup> or presence of a young, mentally or physically disabled child necessitating parent's need to stay home<sup>415</sup>
- Potential income for non-income or low income-producing assets<sup>416</sup>
- Access to transportation<sup>417</sup>
- Availability of employment at the attributed income level.<sup>418</sup>

Despite listing a number of factors for a tribunal to consider when imputing income to a parent, many support guidelines focus on a parent's employment history. They provide that in the absence of information about a parent's wages or employment history, there is a rebuttable presumption that a parent is capable of earning at least a certain level of income. The most common imputed amount of income is 40 hours of work at federal minimum wage.<sup>419</sup> A few guidelines presume, in the absence of contrary evidence, income at 40 hours of work at federal or state minimum wage, whichever is greater.<sup>420</sup> South Dakota imputes income at 40 hours at state

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<sup>413</sup> See, e.g., Ala. R. Jud. Admin. 32(A)(5) (2019); Ariz. Child Support Guidelines (eff. Jan. 1, 2022); In re Administrative Order No. 10, Ark. Child Support Guidelines (2020); Delaware Child Support Guidelines (2018), Fam. Ct. Civil P. Rule 501; Ga. Code Ann. § 19-6-15(4)(A) (2019); Kan. Child Support Guidelines (Sup. Ct. Admin. Order 307) (2020); Ky. Rev. Stat. Ann. § 403-212 (2021); La. Stat. Ann. § 9:315.11(A)(1) (2021); Michigan Child Support Formula Manual (2021); Mont. Admin. R. 37.62.106 (2021); Nev. Rev. Stat. § 425.125 (2020); R.I. Family Court Child Support Formula and Guidelines (Fam. Ct. Admin. Order 2017-01); Utah Code Ann. § 78B-12-203 (2020).

<sup>414</sup> See Hawaii Child Support Guidelines (2020).

<sup>415</sup> See Ala. R. Jud. Admin. 32(A)(5) (2019).

<sup>416</sup> See Alaska R. Civ. P. 90.3(2021); Idaho R. of Fam. L.P., Child Support Guidelines, R.120 (2021); Ohio Rev. Code Ann. § 3119.01(17) (2021); W. Va. Code Ann. § 48-1-205 (2020); Wis. Admin. Code DCF § 150.02 (2021).

<sup>417</sup> See Michigan Child Support Formula Manual (2021).

<sup>418</sup> See Mass. Child Support Guidelines (2021).

<sup>419</sup> See, e.g., Kan. Child Support Guidelines (Sup. Ct. Admin. Order 307) (2020); Tex. Fam. Code § 154.068 (2019); W. Va. Code Ann. § 48-1-205 (2020). See also N.C. Child Support Guidelines (2019) (If the parent has no recent work history or vocational training, potential income should not be less than the minimum hourly wage for a 40-hour work week. Statute does not specify whether minimum hourly rate is federal or state.).

<sup>420</sup> See, e.g., Ariz. Rev. Stat. Ann. § 25.320 N (2020) and Ariz. Child Support Guidelines (eff. Jan. 1, 2022). Cf. La. Stat. Ann. § 9:315.11(A)(1) (2021) (Absent evidence of a party's actual income or income earning potential, there is a rebuttable presumption that the party can earn a weekly gross amount equal to 32 hours at a minimum wage, according to the laws of his state of domicile or federal law, whichever is higher); Minn. Stat. § 518A.32 (2020) (Determination of potential income must be made according to one of three methods, as appropriate. One method is the amount of income a parent could earn working 30 hours per week at 100% of the current federal or state minimum wage, whichever is higher.).

minimum wage, subject to rebuttal by either parent.<sup>421</sup> Examples of other imputed amounts are below:

- If there is insufficient work history to determine employment potential and probable earnings level, there shall be a rebuttable presumption that the parent's potential income is 75% of the most recent United States Department of Health and Human Services Federal Poverty Guidelines for a family of one person.<sup>422</sup>
- If there is no employment and earnings history and no higher education or vocational training, the facts of the case may indicate that Weekly Gross Income be set at least at the federal minimum wage level, provided the resulting child support amount is set in such a manner that the obligor is not denied a means of self-support at a subsistence level.<sup>423</sup>
- If the obligor fails, upon reasonable request made in any proceeding to establish or review a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, and if that information cannot be reasonably obtained from sources other than the obligor, income must be imputed based on the greatest of: a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage. b. An amount equal to one hundred percent of this state's statewide average earnings for persons with similar work history and occupational qualifications. c. An amount equal to one hundred percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months included in the current calendar year and the two previous calendar years before commencement of the proceeding before the court, for which reliable evidence is provided.<sup>424</sup>
- If the information concerning a parent's income is unavailable, a parent fails to participate in a child support proceeding, or a parent fails to supply adequate financial information in a child support proceeding, income shall be automatically imputed to the parent and there is a rebuttable presumption that the parent has income equivalent to the median income of year-round full-time workers as derived from current population reports or replacement reports published by the United States Bureau of the Census.<sup>425</sup>
- Absent evidence of a party's actual income or income earning potential, there is a rebuttable presumption that the party can earn a weekly gross amount equal to thirty-two hours at a minimum wage, according to the laws of his state of domicile or federal law, whichever is higher.<sup>426</sup>

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<sup>421</sup> S.D. Codified Laws Ann. § 25-7-6.4 (2019).

<sup>422</sup> 750 Ill. Comp. Stat. 5/505(3.2) (2019).

<sup>423</sup> Ind. Child Support Guidelines (2020).

<sup>424</sup> N.D. Admin. Code § 75-02-04.1-07 (2020).

<sup>425</sup> Fla. Stat. § 61.30(2)(b) (2020). A 2017 guideline review noted with concern that the state median wage exceeded the state minimum wage by over 2.5 times. Department of Economics at Florida State University, Review and Update of Florida's Child Support Guidelines, Report to the Florida Legislature (Nov. 1, 2017). Note also that the statute provides for certain exceptions to the imputation of income.

<sup>426</sup> La. Stat. Ann. § 9:315.11(A)(1) (2021).

Guidelines that presume income based on a standardized number of hours at federal or state minimum wage, without regard to any circumstances of the obligor, are inconsistent with federal regulatory intent as expressed by OCSE in response to comments to the FEM final rule.

A few guidelines break down the amount of imputed income based on the parent's circumstances. However, even these guidelines include, at some point, an imputation of hours based on a standard unrelated to the particular parent. For example, the Missouri support guideline provides:

A parent whose actual income cannot be determined or who has no income will be imputed income as follows: A. A parent who is not currently employed, whether or not he/she has a work history, and is now disabled and unable to work, or has a child at home whose condition or circumstance requires a parent's presence in the home, will be imputed zero income; B. A parent who has no work history and has a child in the home under the age of six (6) years will be imputed zero income; C. A parent who has no work history and has a child at home between the ages of six (6) and twelve (12) years, will be imputed part-time (twenty (20) hours per week) at federal minimum wage or minimum wage in the state where the party resides, whichever is higher; or D. A parent with no work history, and no children under age thirteen (13), will be imputed income (up to forty (40) hours per week) at federal minimum wage or the minimum wage in the state where the party resides, whichever is higher.<sup>427</sup>

Washington establishes a priority for the court to adhere to when imputing income.

(a) Except as provided in (b) of this subsection, in the absence of records of a parent's actual earnings, the court shall impute a parent's income in the following order of priority:

- (i) Full-time earnings at the current rate of pay;
- (ii) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;
- (iii) Full-time earnings at a past rate of pay where information is incomplete or sporadic;
- (iv) Earnings of thirty-two hours per week at minimum wage in the jurisdiction where the parent resides if the parent is on or recently coming off temporary assistance for needy families or recently coming off aged, blind, or disabled assistance benefits, pregnant women assistance benefits, essential needs and housing support, supplemental security income, or disability, has recently been released from incarceration, or is a recent high school graduate. Imputation of earnings at thirty-two hours per week under this subsection is a rebuttable presumption.

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<sup>427</sup> Mo. 13 CSR 40-102.010 (2021).

(v) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, has never been employed and has no earnings history, or has no significant earnings history;

(vi) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports, or such replacement report as published by the bureau of census.

(b) When a parent is currently enrolled in high school full-time, the court shall consider the totality of the circumstances of both parents when determining whether each parent is voluntarily unemployed or voluntarily underemployed. If a parent who is currently enrolled in high school is determined to be voluntarily unemployed or voluntarily underemployed, the court shall impute income at earnings of twenty hours per week at minimum wage in the jurisdiction where that parent resides. Imputation of earnings at twenty hours per week under this subsection is a rebuttable presumption.

Montana addresses imputation of income to students:

Income is imputed according to a parent's status as a full- or part-time student, whose education or retraining will result, within a reasonable time, in an economic benefit to the child for whom the support obligation is determined, unless actual income is greater. If the student is: (a) full-time, the parent's earning capacity is based on full-time employment for 13 weeks and approximately half of full-time employment for the remaining 39 weeks of a 12-month period; or (b) part-time, the parent's earning capacity is based on full-time employment for a 12-month period.<sup>428</sup>

### **Incarceration**

Since issuance of the final REM rule, a number of states have amended their support guidelines to provide that incarceration shall not be treated as voluntary unemployment for the purpose of establishing or modifying a child support award. In doing so, some states have defined incarceration. For example, the Arkansas guideline provides that “incarceration” means a conviction that results in a sentence of confinement to a local jail, state or federal correctional facility, or state psychiatric hospital for at least 180 days and excludes credit for time served before sentencing.<sup>429</sup>

A review of current support guidelines reveals that other guidelines expressly address imputation of income when a parent is incarcerated. For example, Colorado’s guideline prohibits the determination of potential income for an incarcerated parent sentenced to one year or more.<sup>430</sup> Montana’s guideline similarly prohibits imputation but lowers the applicable incarceration time

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<sup>428</sup> Mont. Admin. R. 37.62.106 (2021).

<sup>429</sup> In re Administrative Order No. 10, Ark. Child Support Guidelines (2020). *Accord* La. Stat. Ann. § 9:315.11(A)(1) (2021) (incarceration for at least 180 days).

<sup>430</sup> Colo. Rev. Stat. § 14-10-115(5)(b)(l) (2019).

to more than 180 days.<sup>431</sup> And the Texas guideline reduces the time even more: “The presumption required by Subsection (a) [in the absence of evidence of a party’s resources, income is presumed to be equal to the federal minimum wage for a 40-hour week] does not apply if the court finds that the party is subject to an order of confinement that exceeds 90 days and is incarcerated in a local, state, or federal jail or prison at the time the court makes the determination regarding the party’s income.”<sup>432</sup>

A few states also address earnings of an incarcerated parent. For example, Delaware’s guideline provides that service of a term of incarceration that exceeds 180 days of continuous confinement “may be considered as evidence of a diminished earning capacity unless the individual: (1) Has independent income, resources or assets with which to pay an obligation of support consistent with his or her pre-incarceration circumstances; or (2) Is incarcerated for the nonpayment of child support or for any offense of which his or her dependent child or a child support recipient was a victim.”<sup>433</sup> Maine’s guideline states that a party who is incarcerated in a correctional or penal institution is deemed available only for employment that is available through such institutions.<sup>434</sup> And Georgia’s guidelines provide that if a parent is incarcerated, the court or the jury shall not assume an ability for earning capacity based upon pre-incarceration wages or other employment related income, but income may be imputed based upon the actual income and assets available to such incarcerated parent.

### **Focus on Individual Circumstances**

Federal regulations require that if income is being imputed, the support guideline must take into consideration the specific circumstances of the noncustodial parent (and at the state’s discretion, the custodial parent) to the extent known. In response to the emphasis OCSE placed on the importance of an individualized review, Michigan amended its support guideline to highlight that fact:

Imputing an income to a parent to determine a support obligation by using any of the following violates case law and does not comply with this section. See: *Ghidotti v. Barber*, 459 Mich 189; 586 NW2d 883 (1998) and *Stallworth v Stallworth*, 275 Mich App 282 (2007) [sic]. (a) Inferring based on generalized assumptions that parents should be earning an income based on a standardized calculation (such as minimum wage and full time employment, median income, etc.), rather than an individual’s actual ability and likelihood. (b) Absent any information or indication concerning a parent’s ability, assuming that an individual has an unexercised ability to earn an income. (c) Failing to articulate information about how each factor in §2.01(G)(2) applies to a parent having the actual ability and a reasonable likelihood of earning the imputed potential income, or failing to state that a specific factor does not apply. (d) Inferring that commission of a crime is voluntary unemployment, without evidence that the

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<sup>431</sup> Mont. Admin. R. 37.62.106 (2021). See also N.D. Admin. Code § 75-02-04.1-07 (2020).

<sup>432</sup> Tex. Fam. Code § 154.068 (2019).

<sup>433</sup> Delaware Child Support Guidelines (2018), Fam. Ct. Civil P. Rule 501.

<sup>434</sup> Me. Rev. Stat. Ann. tit. 19-A, § 2001 (2020).

parent committed the crime with the intent to reduce income or to avoid paying support.<sup>435</sup>

Mississippi House Bill 1295 – 2021 Regular Session, would have amended the Mississippi support guideline at section 43-19-101 to provide: “(5) The court shall not base the imputation of income upon a standard amount in lieu of fact gathering.” Additional amendments spelled out the factors the court must consider, based on those listed in the FEM final rule governing child support guidelines. However, the bill died in committee.

### Factual Findings

In its response to comments to the final FEM rule, OCSE encouraged states to establish deviation criteria when to impute income and make a rebuttable finding on the record when they impute income as the basis for a support order.<sup>436</sup> A number of support guidelines require such findings in both judicial and administrative proceedings, although the imputation of income is not necessarily characterized as a deviation. Illustrative provisions are below:

Citation	Language
D.C. Code § 16.916.01(b)(10) (2021)	The judicial officer shall issue written factual findings stating the reasons for imputing income at the specified amount. <sup>437</sup>
Iowa Child Support Guidelines, Iowa Ct. R. 9.11(4) (2018)	The court shall not use earning capacity rather than actual earnings or otherwise impute income unless a written determination is made that, if actual earnings were used, substantial injustice would occur or adjustments would be necessary to provide for the needs of the child(ren) or to do justice between the parties.
Pa. R. Civ. P. 1910.16-2 (2019)	In order for an earning capacity to be assessed, the trier of fact must state the reasons for the assessment in writing or on the record.
Utah Code Ann. § 78B-12-203 (2020)	Income may not be imputed to a parent unless the parent stipulates to the amount imputed, the parent defaults, or, in contested cases, a hearing is held and the judge in a judicial proceeding or the presiding officer in an administrative proceeding enters findings of fact as to the evidentiary basis for the imputation. If a parent has no recent work history or a parent's occupation is unknown, that parent may be imputed an income at the federal minimum wage for a 40-hour work week. To impute a greater or lesser income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation.
Va. Code Ann. § 63.2-1918. Administrative establishment of obligations	The Department shall set child support at the amount resulting from computations pursuant to the guideline .... There shall be a rebuttable presumption that the amount of the award which would result from the application of the guidelines is the correct amount of child support to be awarded. In order to rebut the presumption the Department shall make written findings in its order that the application of the guidelines would be unjust or

<sup>435</sup> Michigan Child Support Formula Manual (2021).

<sup>436</sup> 81 Fed. Reg. 93, 520 (Dec. 20, 2016), citing 42 U.S.C. § 667.

<sup>437</sup> D.C. Code § 16.916.01(b)(10) (2021). *See also* Kan. Child Support Guidelines (Sup. Ct. Admin. Order 307) (2020).

inappropriate in a particular case as determined by ... relevant evidence pertaining to imputed income to a person who is voluntarily unemployed or who fails to provide verification of income upon request of the Department.”
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According to Vicki Turetsky, the former Commissioner of OCSE, a state policy treating “potential income” as a deviation from the guidelines, requiring a written justification, would establish imputation as an exception, not the rule. It would also help the state identify imputed orders as part of its quadrennial guidelines review.<sup>438</sup>

### **California’s Guideline Provisions on Imputation of Income/Presumed Income**

California has two provisions addressing income that is other than actual income. One is in Family Code section 4058(b). It allows the court, in its discretion, to consider the earning capacity of a parent in lieu of the parent’s income. The other is in Family Code section 17400(d)(2). It provides an expedited process for establishing orders in IV-D cases, which includes the possibility of presumed income at full-time minimum wage when the support obligor’s income or income history is unknown to the local child support agency.

#### **Earning Capacity**

California’s child support guideline statute at Family Code section 4058(b) allows the court, in its discretion, to consider a parent’s earning capacity rather than the parent’s actual gross income, as defined in Family Code section 4058(a):

#### **§ 4058. Annual gross income of each parent**

(a) The annual gross income of each parent means income from whatever source derived, except as specified in subdivision (c) and includes, but is not limited to, the following:

- (1) Income such as commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, workers’ compensation benefits, unemployment insurance benefits, disability insurance benefits, social security benefits, and spousal support actually received from a person not a party to the proceeding to establish a child support order under this article.
- (2) Income from the proprietorship of a business, such as gross receipts from the business reduced by expenditures required for the operation of the business.
- (3) In the discretion of the court, employee benefits or self-employment benefits, taking into consideration the benefit to the employee, any corresponding reduction in living expenses, and other relevant facts.

(b) The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent’s income, consistent with the best interests of the children,

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<sup>438</sup> See Vicki Turetsky, *supra* note 100.

taking into consideration the overall welfare and developmental needs of the children, and the time that parent spends with the children.

There is no statutory guidance on *when* the court should exercise such discretion. And the only guidance as to *how* the court should consider a party's earning capacity is that such consideration should (1) be consistent with the best interests of the children, (2) take into consideration the overall welfare and developmental needs of the children, and (3) take into consideration the time that parent spends with the children. The last two factors were added to the statute in 2018.

### **Presumed Income**

Income presumption is not expressly addressed in the California child support guideline statute but is addressed in a separate statute at Family Code section 17400(d)(2) and is only applicable in cases being enforced by the local child support agencies.

#### **§ 17400.**

(d)(2) The simplified complaint form shall provide notice of the amount of child support that is sought pursuant to the guidelines set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 based upon the income or income history of the support obligor as known to the local child support agency. If the support obligor's income or income history is unknown to the local child support agency, the complaint shall inform the support obligor that income shall be presumed to be the amount of the minimum wage, at 40 hours per week, established by the Industrial Welfare Commission pursuant to Section 1182.11 of the Labor Code unless information concerning the support obligor's income is provided to the court. The complaint form shall be accompanied by a proposed judgment. The complaint form shall include a notice to the support obligor that the proposed judgment will become effective if the obligor fails to file an answer with the court within 30 days of service. Except as provided in paragraph (2) of subdivision (a) of Section 17402, if the proposed judgment is entered by the court, the support order in the proposed judgment shall be effective as of the first day of the month following the filing of the complaint.

Unlike the guideline provision at Family Code section 4058, this statute only applies to IV-D cases. If the noncustodial parent's income or income history is unknown in a IV-D case, the statute permits the local child support agency (LCSA) to file a complaint seeking a proposed judgment based on presumed income in the amount of the state's minimum wage at 40 hours per week. Minimum wage was \$4.25/hour in 1993 (the year the statute was first enacted); and was \$10.50/hour in 2017 (the year the statute was last amended). Today the minimum wage is \$14 per hour if the employer has 26 or more employees, and \$13 per hour for 25 or fewer employees. When calculated on a 40-hour work week, this results in a monthly imputed gross wage in 2021 of \$2426 and \$2253, respectively. This presumed income is above the \$1837 per month net disposable income, which currently results in a presumptive low-income adjustment under the



state's child support guidelines.<sup>439</sup> (Cal. Fam. Code § 4055(b)(7)). Therefore, the court may presume income to a parent in a IV-D case in an amount which currently exceeds the amount of income that might entitle the parent to a low-income adjustment under the child support guideline applicable to all child support cases, IV-D and non-IV-D.

### Case Law

Although there is no statutory definition of earning capacity, California courts established its meaning in 1989 in the case of *Marriage of Regnery*.<sup>440</sup> The court in *Regnery* created a three-prong test before the capacity to earn standard may be applied. "Earning capacity is composed of (1) the ability to work, including such factors as age, occupation, skills, education, health, background, work experience and qualifications; (2) the willingness to work exemplified through good faith efforts, due diligence and meaningful attempts to secure employment; and (3) an opportunity to work which means an employer who is willing to hire." If all three factors are present, the court must apply the earning capacity standard to derive the mandatory minimum support payment to the extent the application is consistent with the needs of the child. The court further explained: "When the ability to work or the opportunity to work is lacking, earning capacity is absent and application of the standard is inappropriate. When the payor is unwilling to pay and the other two factors are present, the court may apply the earnings capacity standard to deter the shirking of one's family obligations."

Subsequent case law removed the "willingness to work" component of the three-prong test. The definition of earning capacity is now satisfied when the payor has both the ability and opportunity to work.<sup>441</sup>

If a parent becomes unemployed due to their own misconduct, the court must still satisfy the two-part test (ability and opportunity) before imputing income.<sup>442</sup> However, in the case of voluntary and deliberate divestiture of financial resources, the court may impute income based on the prior job without evidence of opportunity to earn at the same level.<sup>443</sup> The trial court's consideration of earning capacity is not limited to cases in which there has been a deliberate attempt to avoid support responsibilities. "While deliberate avoidance of family responsibilities is a significant factor in the decision to consider earning capacity [citation], the statute explicitly authorizes consideration of earning capacity in all cases."<sup>444</sup> California case law also allows the imputation of income when the court finds a parent's financial statements are misleading and unreliable.<sup>445</sup> "[T]he only limitations against imputing income to an unemployed or

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<sup>439</sup> The Judicial Council annually determines the amount of the net disposable income adjustment based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the California Department of Industrial Relations, Division of Labor Statistics and Research.

<sup>440</sup> *Marriage of Regnery* (1989) 214 Cal.App.3d 1367.

<sup>441</sup> See, e.g., *Marriage of Berger* (2009) 170 Cal.App.4th 1070; *Marriage of McHugh* (2014) 231 Cal.App.4th 1238.

<sup>442</sup> See *Marriage of Eggers* (2005) 131 Cal.App.4th 695.

<sup>443</sup> *Marriage of McHugh* (2014) 231 Cal.App.4th 1238.

<sup>444</sup> *Marriage of Ilas* (1993) 12 Cal.App.4th 1630, 1638-1639.

<sup>445</sup> See *Marriage of Barth* (2012) 210 Cal.App.4th 363.

underemployed parent is where the parent in fact has no "earning capacity" ... or relying on earning capacity would not be consistent with the children's best interest...." <sup>446447</sup>

### **California's Guideline Provisions Related to Incarceration**

California has not enacted a guideline provision related to incarceration. There is case law addressing earning capacity when an obligor is incarcerated. It provides that incarcerated parents are not exempt from child support. However, both elements of the earning capacity standard must be satisfied. Therefore, if a person in prison does not have an opportunity to work, the earning capacity test is not satisfied and cannot be used to determine their child support payments.<sup>448</sup>

California Family Code, section 4007.5 also addresses incarceration. It requires the suspension of any money judgment or order for child support "for any period exceeding 90 consecutive days in which the person ordered to pay support is incarcerated or involuntarily institutionalized." There is an exception if:

- (1) the person owing support has the means to pay support while incarcerated or involuntarily institutionalized; or
- (2) The person owing support was incarcerated or involuntarily institutionalized for an offense constituting domestic violence, as defined in Section 6211, against the supported party or supported child, or for an offense that could be enjoined by a protective order pursuant to Section 6320, or as a result of the person's failure to comply with a court order to pay child support.

The child support obligation resumes by operation of law on the first day of the first full month after the obligor's release. The section does not preclude the obligor from seeking a modification of the child support order, based on a change in circumstances or any other appropriate reason. For purposes of this section, "incarcerated or involuntarily institutionalized" includes, but is not limited to, "involuntary confinement to the state prison, a county jail, a juvenile facility operated by the Division of Juvenile Facilities in the Department of Corrections and Rehabilitation, or a mental health facility."

### **Analysis and Recommendations**

#### **Imputation of Income**

Neither of California's statutes related to the establishment of a child support order uses the term "imputed income." Section 4058(b) of the Family Code refers to "earning capacity," and section 17400(d)(2) of the Family Code talks about "presumed" income.

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<sup>446</sup> *Marriage of Hinman* (1997) 55 Cal.App.4th 988, 998.

<sup>448</sup> *See State of Oregon v. Vargas* (1999) 70 Cal.App.4th 1125.

States use a variety of terms to refer to attributed income that is not based on actual earnings or income. Many guidelines use the term “imputed income.” A few use the term “attributed income.”<sup>449</sup> Some, like California, reference “earning capacity” in their support guidelines when attributing income to an obligor.<sup>450</sup> Some guidelines talk about “income earning potential” or “potential income.”<sup>451</sup> And in its response to comments to FEM, OCSE expressly addressed the term “presumed income”: “OCSE views presumed income and imputed income similarly since they are both based on fictional income. Therefore, we use these terms interchangeably.”<sup>452</sup> Both California statutes should therefore move into compliance with the new federal regulations by requiring that the tribunal consider and evaluate all the circumstances of a noncustodial parent prior to income imputation.

California should also evaluate its current statutes in light of federal regulatory intent. In response to comments, OCSE expressly stated that imputing a standard amount in default orders based upon state median wage or statewide occupational wage rates fails to comply with federal regulations “because it is unlikely to result in an order that a particular noncustodial parent has the ability to pay.”<sup>453</sup> If a support obligor’s income or income history is unknown to the local child support agency, Family Code section 17400(d)(2) presumes income based on a 40-hour work week at minimum wage. This standard amount is unlikely to result in an order that a particular noncustodial parent has the ability to pay, especially a low-income obligor. There is no requirement in Family Code section 17400(d)(2) that the agency conduct an examination of the obligor’s circumstances other than the obligor’s employment history. Federal regulations (45 C.F.R. § 303.4) require that in a IV-D case, the IV-D agency must:

- Take reasonable steps to develop a sufficient factual basis for the support obligation;
- Gather information regarding the earnings and income of the noncustodial parent and, when earnings and income information is unavailable or insufficient in a case, gather available information about the specific circumstances of the noncustodial parent, including such factors as those listed under 45 Code of Federal Regulations, section 302.56(c)(1)(iii); and
- Base the support obligation or recommended support obligation amount on the earnings and income of the noncustodial parent whenever available. If evidence of earnings and income is unavailable or insufficient to use as the measure of the noncustodial parent's ability to pay, then the support obligation or recommended support obligation amount

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<sup>449</sup> See, e.g., Ariz. Child Support Guidelines (eff. Jan. 1, 2022); W. Va. Code Ann. § 48-1-205 (2020).

<sup>450</sup> See, e.g., Iowa Child Support Guidelines, Iowa Ct. R. 9.11(4) (2018); Mass. Child Support Guidelines (2021); Neb. Court Rules, Ch. 4, Art. 2, § 4-204(E)(2) (2021); N.D. Admin. Code § 75-02-04.1-07 (2020); Pa. R. Civ. P. 1910.16-2 (2019); Wyo. Stat. Ann. § 20-2-307 (2020).

<sup>451</sup> See, e.g., Idaho R. Fam. L.P., Child Support Guidelines, R.120 (2021); 750 Ill. Comp. Stat. 5/505(3.2) (2019); La. Stat. Ann. § 9:315.11(A)(1) (2021); Michigan Child Support Formula Manual (2021); Minn. Stat. § 518A.32 (2020); Or. Admin. R. 137-50-0715 (2020).

<sup>452</sup> 81 Fed. Reg. 93,519, footnote 29 (Dec. 20, 2016).

<sup>453</sup> 81 Fed. Reg. 93,525 (Dec. 20, 2016).

should be based on available information about the specific circumstances of the noncustodial parent, including such factors as those listed in section 302.56(c)(1)(iii).

### **Incarceration**

The Code of Federal Regulations, section 302.56(c)(5) requires that a state child support guideline must provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders. Section 302.56(d) provides that the state must include a copy of the child support guidelines in its state plan. A determination of whether a plan is given approval is based on whether the state's "statutes, rules or procedures which have the force and effect of law" meet the explicit provisions of federal statutes – which include 42 United States Code, section 667(a) – and the implementing regulations. Section 667(a) requires each state, as a condition for having its state plan approved, to establish child support guidelines by law or by judicial or administrative action. California's case law providing that a court cannot use the earning capacity test to impute income to an incarcerated person if that person does not have an opportunity to work does not satisfy the requirement to have a guideline providing that incarceration may not be treated as voluntary unemployment when establishing or modifying support orders. The provision needs to be in the guideline that California has established by law or by judicial or administrative action.

### **Recommended Statutory Amendments**

In order for California child support guidelines to move into compliance with the final FEM federal regulation and intent expressed in federal responses to comments by September 2024, the guidelines should:

- Provide guidance as to when imputation is appropriate;
- If imputation of income is authorized, require the court to consider evidence of the noncustodial parent's specific circumstances, including the factors listed in the federal regulation; and
- Provide that incarceration of a parent shall not be treated as voluntary unemployment for the purpose of establishing or modifying a child support order, as required by 45 Code of Federal Regulations, section 302.56(c)(3).<sup>454</sup>

If California wants to provide exceptions to income imputation, it can do so as long as such exceptions are enacted as rebuttable presumptions. Any generic cross the board mandated exception does not provide for "a case-by-case review of the specific circumstances of the noncustodial parent, evidence of the voluntariness of unemployment or underemployment, and a case-specific determination of the noncustodial parent's ability to pay."<sup>455</sup>

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<sup>454</sup> Ass. Bill 3314, which was filed February 21, 2020, and died in committee, proposed the following amendment: "When determining the earning capacity of the parent pursuant to this subdivision, the court shall not consider incarceration or involuntary institutionalization as voluntary unemployment for purposes of determining a parent's earning capacity. Incarceration or involuntary institutionalization includes, but is not limited to, involuntary confinement to a federal or state prison, a county jail, a juvenile facility, or a mental health facility."

<sup>455</sup> 81 Fed. Reg. 93,521 (Dec. 20, 2016).

California may also want to review its court forms for establishment of support to determine whether to include a checkbox to record whether imputed income was used and space for noting the factors supporting the imputed amount.

California should also review the statutory scheme in Family Code section 17400 that created the option for establishing child support orders in IV-D cases based on presumed income. From 1993 to 1995, a task force established by the governor reviewed IV-D child support practices. Its mandate was to recommend improvements that would create efficiencies and reduce conflict for cases primarily involving self-represented litigants. The task force was comprised of a broad section of stakeholders who made a number of recommendations that established the current statutory scheme in Family Code section 17400. This statutory scheme includes a simplified summons and complaint that is served on the obligor along with a proposed judgment. The statute allows LCSAs to plead for a child support order based on presumed income<sup>456</sup> if no information about parental income or income history is known. If no answer is filed, the LCSA files a request to enter a default judgment. If the final judgment matches the proposed judgment, the judicial officer must sign the judgment with no discretion to make any amendment or require a prove up hearing.

The presumption in Family Code section 17400 of full time minimum wage without regard to the obligor's individual circumstances is contrary to the final federal regulations. In determining whether to change or eliminate the option to use presumed income, California should determine whether additional provisions within section 17400 need to be revised to ensure compliance with federal regulations and still meet the original goals of the task force. Specifically, California should consider requiring the LCSA to plead with more specificity regarding the source of income to calculate support. In addition, courts should have the option of requiring LCSAs to prove up the proposed judgment before entry of a default judgment. As another option, California could consider revising the presumption of income statute to require the LSCA at the beginning of the case to gather information about the obligor related to the federally required factors and provide statutory guidance to the agency with regard to the weight of the factors. These options would provide more transparency to parents and the court.

## **Algorithm for Imputing Income Based on Regulatory Factors**

If income imputation is authorized under a state support guideline, federal regulations require consideration of the specific circumstances of the noncustodial parent to the extent known, including such factors as listed in 45 Code of Federal Regulations, section 302.56(c)(iii). There is no guidance regarding the weight to give the various factors. A review of state support guidelines reveals that no state guideline provides the tribunal guidance on what it should do if the parent is illiterate, has a history of incarceration, or faces any of the other enunciated special circumstances.

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<sup>456</sup> Because the presumed income is based on unknown actual income, the legislation provides additional protections and the opportunity for entry of a child support order based on the actual income of the parent. Fam. Code § 17432 allows the financial aspects of the child support judgment to be set aside (retroactive to the original effective date) within one year of the first collection. The LCSA has an affirmative duty to locate actual income and move to set aside the judgment if it learns the obligor's actual income.

## Wisconsin Research

In preparation for the 2020-21 review of Wisconsin's support guidelines, researchers at the Institute for Research on Poverty, University of Wisconsin-Madison, explored three alternative approaches to imputing noncustodial parent income that could be considered consistent with the federal regulations.<sup>457</sup> The Wisconsin guideline currently provides:

If evidence is presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unavailable, the court may impute to the parent the income that a person would earn by working 35 hours per week for the higher of the federal minimum hourly wage under 29 USC 206(a) (1) or the state minimum wage in s. DWD 272.03.<sup>458</sup>

Based on a review of the typical forms Wisconsin courts use to collect information and a small number of child support case files, the researchers prioritized factors that are likely to be important determinants of a noncustodial parents' economic circumstances and potentially available to courts (such as sex, race, locality, occupation, and level of education). For each approach, they reported average monthly imputed income amounts at three different points in the distribution: the 25th percentile, the median (50th percentile), and the mean. They varied the characteristics of the noncustodial parent by locality (Dane County, Marathon County, Milwaukee County, and Price County), occupation (production occupations, food preparation and serving related occupations), and level of education (less than high school diploma, high school diploma/GED, four-year degree). They reported estimates for all workers and, where possible, separately by sex (male, female) and by race (white, black).<sup>459</sup>

## Hours Worked

Under the first approach, the researchers kept the federal minimum wage (\$7.25) as the hourly wage rate but used estimates of hours worked by locality, occupation, and level of education. The first approach was largely motivated by evidence that hours of available work vary across labor markets and across occupations and industrial sectors.<sup>460</sup> The approach was also motivated by national estimates of the percentage of workers working less than full-time due to economic reasons and evidence that, particularly in some service industries and occupations, work hours can vary from week to week or even day to day. The estimates are from the 2017 American Community Survey (ACS) that is publicly available from the Integrated Public Use Microdata Series (IPUMS) USA database (Ruggles et al., 2019). Finally, this type of approach to imputing income was motivated by concerns that in some states noncustodial parents with imputed

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<sup>457</sup> Leslie Hodges, Chris Taber, Jeffrey Smith. Institute for Research on Poverty, Univ. of Wisconsin- Madison, Alternative Approaches to Income Imputation in Setting Child Support Orders (Sept. 2019), <https://www.irp.wisc.edu/wp/wp-content/uploads/2020/01/CS-2018-2020-T6.pdf>.

<sup>458</sup> Wis. Admin. Code DCF § 150.01(13)(a).

<sup>459</sup> The report notes that there may be legal constraints that prohibit the courts from considering race and gender in order determination. However, they concluded that reporting the results from the different model cases for all individuals and separately by sex and race, provided a sense of how much a gender-neutral or race-neutral approach masks important differences between workers that would result in variation in imputed income amounts.

<sup>460</sup> See, e.g., Venohr, *supra* note 96.

incomes based on full-time work at the minimum wage may not qualify for a low-income adjustment to their order.

### **Earnings of Workers in Wisconsin**

In the second approach, researchers calculated income using annual earnings estimates by locality, occupation, and level of education for workers in Wisconsin.<sup>461</sup> Like the estimates of hours worked, the estimates for earnings are from the 2017 American Community Survey (ACS) that is publicly available from the Integrated Public Use Microdata Series (IPUMS) USA database (Ruggles et al., 2019). However, in its response to comments when issuing the final FEM rule, OCSE noted that imputing standard amounts in default cases based upon state median wage or statewide occupational wage rates did not comply with the rule “because it is unlikely to result in an order that a particular noncustodial parent has the ability to pay.”<sup>462</sup> And a 2017 Florida guideline review report noted that the Florida state median wage was more than 2.5 times the minimum wage.<sup>463</sup> Sharing a similar concern, for this approach the researchers considered annual earnings of workers at the 25th percentile of the earnings distribution, as well as median earnings and mean earnings. They also noted that state-level estimates likely mask substantively meaningful within-state variation in earnings by locality, occupation, and education.

### **Earnings of Noncustodial Parents with Imputed-Income Orders**

For the third approach, the researchers constructed a sample of noncustodial parents with imputed-income orders from previous Wisconsin child support cases. They then matched the noncustodial parents on these cases to Wisconsin UI wage records in order to calculate income using their average earnings in the year following their court order. The approach also provided additional information to evaluate the other two approaches by allowing them to examine the extent to which those approaches resulted in imputed incomes that align with what is known about the actual earnings of noncustodial parents on imputed-income cases with similar characteristics. They obtained the estimates for the third approach from Wisconsin Court Records Data (CRD) matched to UI wage records. The UI wage records only report earnings for individuals with covered jobs in the state of Wisconsin. Therefore, there was no data on earnings for individuals who work outside of Wisconsin, who work for certain employers (such as the federal government), who work informally (for example, do odd jobs for cash), or who are self-employed.

### **Conclusions from Wisconsin Research**

The researchers concluded that each of the approaches had strengths and weakness in terms of “right-sizing” orders as well as accounting for the specific circumstances of the noncustodial parent in accordance with the language of the federal regulation. The first two approaches consider multiple factors listed in the regulation, including locality, occupation, and education.

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<sup>461</sup> North Dakota has incorporated a similar approach in its guideline statute. It provides that gross income based on earning capacity equal to the greatest of three approaches, less actual gross earnings, must be imputed to an obligor who is unemployed or underemployed. One of the approaches is income imputation at six-tenths of the state’s statewide average earnings for persons with similar work history and occupational qualifications. N.D. Admin. Code § 75-02-04.1-07 (2020).

<sup>462</sup> 81 Fed. Reg. 93,525 (Dec. 20, 2016).

<sup>463</sup> Department of Economics at Florida State University, Review and Update of Florida’s Child Support Guidelines, Report to the Florida Legislature (Nov. 1, 2017).

The scale of the data (large number of observations) makes it possible to generate estimates at a fairly granular level (for example, for a black male with a high school diploma working in a food service occupation in Milwaukee). In contrast, with the third approach, using the Wisconsin Court Records Data (CRD), it is not possible to obtain earnings estimates at the same level of detail, due to the small number of imputed-income cases and limited information available in the case records where the income of the noncustodial parents is unknown. The researchers stated that transparency is also a factor. For the first two approaches, the data are publicly available. Additionally, the process for obtaining the estimates is fairly easy to implement and understand, so that the estimates could be updated on a regular basis. The researchers felt this was a clear advantage of the first two approaches compared to the third.

The first approach, using mean hours worked per week at the federal minimum wage, resulted in less variation and also lower order amounts than the second approach, using median earnings. Both approaches typically resulted in higher orders than the third approach, which used the actual earnings of noncustodial parents with imputed income orders. In fact, according to the researchers, the results from the third approach were stunning. With some exceptions, the third approach led to substantially lower orders compared to the first two approaches. The researchers concluded that this creates a challenge for child support policymakers who must consider the implications of lower orders, especially for the well-being of the children on the case. If the earnings of past noncustodial parents with imputed income orders are indicative of the earnings of future noncustodial parents with income imputed orders, then more than half have earnings consistent with a no-support order (that is, below the minimum amount on the Wisconsin guidelines tables for low-income payers). Clearly, some of these noncustodial parents will have earnings from informal employment arrangements. However, absent any way to track these informal earnings, it seems unlikely that having more information about their economic circumstances (such as a prior history of incarceration or literacy) would lead to different conclusions.

### **California Research**

As part of a 2019 study for the California Department of Child Support Services, Economic Forensics and Analytics, Inc., developed an algorithm for adjusting presumed income in California for noncustodial parents when the parents' income is unknown.<sup>464</sup> The baseline, monthly presumed income starts at the current, statewide minimum wage at 40 hours of work per week for a 52-week work year. The algorithm uses two core adjustments. If a noncustodial parent lives in a region where low-wage jobs are relatively difficult to find (for regions with the lowest wage workers being paid at relatively lower wages than the state overall or regional unemployment rates at higher levels than the state overall), reductions are made to presumed hours worked at statewide minimum wages. If the noncustodial parent has specific characteristics that suggest difficulty in finding work even if jobs are plentiful at low wages, further reductions to presumed hours are made.

The study provides data and considerations on regional wage distributions and regional unemployment rates to help determine any baseline presumed income adjustments for

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<sup>464</sup> Economic Forensics and Analytics, Inc., Presumed Income: Labor Market Considerations for Setting Presumed Income Levels for California Department of Child Support Services (DCSS) (Aug. 2019).



noncustodial parents facing difficult labor-market conditions. In looking at BLS estimates of wages by occupation and metropolitan statistical areas and non-metro areas in California, the study focuses on “All Occupations,” “remaining indifferent as to the actual occupation of the NCP in question and simply looking for region-wide data.”<sup>465</sup>

The study acknowledges that noncustodial parents may also face individual barriers to employment. Based on research about barriers that may be more prevalent than others, the study builds categories of barriers to help the Department of Child Support Services (DCSS) quickly determine whether adjustments to baseline presumed hours of work are warranted for individual noncustodial parents with specific characteristics such as age, felony jail time, lack of work experience, children at home, lack of transportation options, mental and physical health issues, and low education levels.

The study shows eight categories as a way to guide DCSS decisions on individual barriers and potential adjustments to presumed monthly income for noncustodial parents. Those categories are based on barriers social assistance programs have noted to employment, not the factors listed in the federal regulation. The categories are age and experience, female with children, drug dependencies, health/dependent issues, former welfare recipient/long spell of unemployment, English proficiency issues, lack of transportation options, and former incarceration.

For the algorithm connecting to each of these categories, Economic Forensics and Analytics, Inc proposed that DCSS would reduce the presumed work hours by 2.5 hours. Because the authors consider part-time work 20 hours per week, if all eight categories are present for a noncustodial parent, the maximum reduction in presumed hours based on these individual barriers would be from 40 to 20 hours per week. Adjustments are reductions by a specific amount to the presumed 40 hours of minimum wage work. According to the authors, the algorithm allows DCSS to quickly use these estimated macroeconomic and microeconomic factors to determine a final presumed income as needed in a child support case. Note that under current statutes, DCSS does not have the ability to presume income other than at the level set by Family Code section 17400.

### **Conclusions Regarding Algorithms**

If a state authorizes imputation or presumption of income to a parent when establishing a child support order, federal regulations now require that the state guidelines provide that the child support order is based on consideration of the circumstances of the individual parent. The federal regulation lists factors a tribunal should consider. However, there is no guidance to the decision-maker on how to weigh those factors. There is some interest in developing a calculator that would use a prediction model based on outside data sources such as the ACS and the Survey of Income and Program Participation (SIPP), as well as draw down earnings records. However, when Wisconsin used later earnings records of noncustodial parents with imputed-income orders, it concluded that such an approach would produce income estimates that would often result in \$0 obligations. In Wisconsin, the distribution of earnings (from UI wage records) in the year after order establishment showed that half of noncustodial parents with imputed-income orders had less than \$50 in formal earnings and less than 10% had earnings greater than \$17,500 (140% of

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<sup>465</sup> Economic Forensics and Analytics, Inc., Presumed Income: Labor Market Considerations for Setting Presumed Income Levels for California Department of Child Support Services (DCSS) (Aug. 2019), p.7.

the federal poverty line in 2019). Orders of \$0 create challenge for child support policymakers who must also consider the well-being of children.

An alternative would be to use only publicly available data for the calculator, such as used in the first two approaches of the Wisconsin study. Although that approach provides for transparency, it may also result in orders that are actually beyond the obligor's ability to pay. Another alternative would be similar to that proposed in the California study, which is to combine publicly available data with parent-specific data and determine an arbitrary reduction in presumed hours based on those factors.

More research needs to be done before recommending a particular approach. For any calculator, there would be logistical factors to consider, such as the availability of resources for development, implementation, and maintenance, as well as the appropriateness of the application.

## **Chapter Conclusions and Recommendations**

California Family Code section 4058(b) complies with the federal regulation regarding the definition of income.

California must move into compliance with the new federal regulation governing imputation or presumption of income by September 2024. Neither the determination of earning capacity in Family Code section 4058 nor the presumption of income in Family Code section 17400(d)(2) is based on consideration of the individual circumstances of the obligor as outlined in federal regulations.

California also needs to amend its guideline to provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders. Although California has relevant case law, it must have "statutes, rules or procedures which have the force and effect of law" and meet the explicit provisions of 42 United States Code, section 667(a) and the implementing regulations. Section 667(a) requires each state, as a condition for having its state plan approved, to establish child support guidelines by law or by judicial or administrative action. California has until September 2024 to implement the final rule (45 C.F.R. § 302.56 (c)(3)).

Finally, additional research is needed before recommending a particular approach to weighing the factors the federal regulation requires courts to consider when imputing or presuming income.

# Chapter 5: Findings from the Analysis of Case File Data

Case file data were collected and analyzed to better understand how the guideline is being applied and the frequency and reasons for guideline deviations. Federal regulation requires the analysis of case file data as part of a state’s periodic guideline review. Prior to discussing findings, sampling and data collection methods are summarized and compared to previous methods. Findings are placed in two groups: findings of federally-required analysis and other findings. The chapter concludes with a summary and recommendations.

## Overview of Federal Requirements

The federal regulations requiring states to collect and analyze case file data has been in place for nearly three decades. The findings from the analysis should inform the development of recommendations to improve the appropriateness of the guideline and limit the number of deviations. The 2016 federal regulations expanded the data that must be collected and analyzed for a state guideline review. In addition to analyzing the application of the guideline and deviations from the guideline, states must also analyze the frequencies that orders are set by default judgments, using income that is imputed or presumed to the obligor, and based on the state’s low-income adjustment (LIA); and payments among orders set using these three factors. Exhibit 40 shows the federal regulation. The findings presented in this chapter fulfill the requirements. With that said, California is ahead of the timeline for meeting the requirements. States essentially have a year after their review commencing one year after the rule change was published to meet the new data requirements. The federal Office of Child Support Enforcement (OCSE) has granted states (including California) extensions due to the COVID-19 pandemic. California has until September 2024 to meet the new federal requirements.

### Exhibit 39: Federal Requirement to Analyze Case File Data

45 CFR 302.56

As part of the review of a State’s child support guidelines required under paragraph (e) of this section, a State must:

(2) Analyze case data, gathered through sampling or other methods, on the application of and deviations from the child support guidelines, as well as the rates of default and imputed child support orders and orders determined using the low-income adjustment required under paragraph (c)(1)(ii) of this section. The analysis must also include a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment required under paragraph (c)(1)(ii). The analysis of the data must be used in the State’s review of the child support guidelines to ensure that deviations from the guidelines are limited and guideline amounts are appropriate based on criteria established by the State under paragraph (g)...

## Previous Case File Reviews

California has collected and analyzed case file data for every periodic review of its guideline since the mid-1990s. For the last few reviews, case file data were collected manually by attorneys in contract with JCC from a random sample of court files in selected counties. Collecting data from all 58 California counties was not feasible. The selected counties represented a range of county sizes and geographical regions. Until this review, the case files were sampled from the same 11 counties for each review, with some exceptions among the smaller counties.

The number of orders collected from court files typically ranges between 1,000 to 1,200 orders for each review, where about half are IV-D orders, and the other half are non-IV-D orders. For this review, information from court files was collected for 1,205 orders. This is a sufficient sample size to detect statistical differences in the guideline deviation rate over time. Data about the order amount, the incomes of the parties used to calculate support, and whether the order was based on a deviation are gathered by reviewing copies of orders, completed court forms, a printout of the findings from a guideline calculator certified by the Judicial Council (which is called the “guideline calculator report”) when available and other records. Examples of some of the court forms used include the *Income and Expense Declaration* (form FL-150) and the *Non-Guideline Child Support Findings Attachment* (form FL-342(A)).

### Changes in Sampling and Data Collection Approach

This review marks at least three major changes in sampling and data collection from prior reviews: remote case file access, sampling from different counties than previous studies, and inclusion of DCSS data. Instead of collecting the information from court files at the court’s physical location, information was collected through the data collector’s remote access to a court’s electronic case management system. When the sampling strategy was developed, almost half of California courts used e-filing system, and about a third used the same e-filing system. Whether a court allowed e-filing was used as a proxy to identify courts with electronic case management systems. The use of these systems eliminates the need for data collection from physical records. More courts plan to switch to an electronic case management system in the future. This will open more opportunities to obtain data more efficiently and expand the number of sampled counties.

Those using the same case management system were identified as potential study courts. Sampling from courts using the same electronic case management system would avoid the need to learn more than one system, allow for the same set of instructions to be used across sampled courts, and generally ease the transition from physical to electronic review. Due to this additional criterion, not all of the same 11 courts from the previous reviews were sampled. Fresno, Los Angeles, Santa Clara, and San Diego continued to be sampled. Seven new courts were added to the sample: Calaveras, Kings, Merced, Orange, Santa Cruz, Stanislaus, and Yolo. Previously sampled courts that were not sampled for this review included Alameda, Amador, San Luis Obispo, Siskiyou, Solano, Tehama, and Tulare.

### **Including Data from a Second Source: the DCSS Automated System**

The third major change is the inclusion of case file data from an additional source: the DCSS automated statewide child support system. This is the data source used to fulfill the federal requirement to analyze payment data. The DCSS automated system extensively tracks payments, establishment and enforcement actions, and other information to manage LCSA cases. Data from the DCSS automated system is what is reported to the federal Office of Child Support Enforcement to fulfill federal reporting requirements about the state IV-D caseload. It is called “IV-D” because Title IV-D of the Social Security Act enables government child support programs. Government child support programs are always supervised by the state, but services are provided at the county or regional level. States have discretion whether to administer and manage local child support services through the state, county, or region. California administers its IV-D program at the county and regional levels.

DCSS tracks detailed payment information for IV-D orders. DCSS also tracks basic payment data for non-IV-D orders paying through the State Disbursement Unit but not at the same detail as it does for IV-D orders through its automated system. For example, compliance rates can be calculated with the information DCSS captures for IV-D orders but not for non-IV-D orders. To that end, payment information was only obtained for IV-D orders. DCSS provided the researchers with a data extract of over 135,000 orders established or modified in the sample period. The sample was drawn from all counties across the state. It was not matched to the court file sample. The data extract contained no personal identifying information (e.g., case participant names and addresses).

Most state automated systems tracking IV-D cases do not contain specific data fields that align with the new federal data analysis requirements (i.e., whether an order was entered by default, whether the order was based on income imputed or presumed to the obligor, and whether their Low-Income Adjustment (LIA) was applied when determining the order). Sometimes, the information can be obtained with some data coding by comparing court dates, changes in order amounts, and other data fields. DCSS allocated staff resources in order for this data and the payment data to be identified, validated and ultimately extracted and transferred to the researchers so California could meet these data analysis requirements.

### **Court Case Files**

Data collection requires the identification of sources of specific data fields, timeframe, sampled counties, and sample size. Appendix E provides more detail about these parameters. The target sample size for this review was 1,000 cases. Participating courts were asked to provide 1,200 total cases, split equally between IV-D and non-IV-D cases. This review was able to randomly sample 1,205 useable cases from the 11 sampled courts.

### **Sample Selection**

In addition to using a common electronic case management system, sampled courts were selected to represent diversity in county size and region. Once the sampled courts were identified, court case files were randomly sampled from lists of orders that were established or modified in calendar year 2018. The year 2018 was selected as the base sampling year for two reasons. One

concerned obtaining payment data for a full 12 months after order establishment or modification. The other was to avoid collecting the majority of payment data during the COVID-19 pandemic that began in March 2020. Payment data were collected for the first 12 months following the effective date of the new or modified order. Effective dates vary by case. All analyzed payment months occurred in 2018 or 2019.

DCSS provided JCC with lists of established and modified orders separately for IV-D and non-IV-D orders. The DCSS automated system is a federal Office of Child Support Enforcement certified system that states must have as part of their IV-D child support program. States are also required to have a state case registry that tracks all child support orders established and modified in the state; specifically, both IV-D and non-IV-D orders. The information that state case registries must track is very limited. DCSS administers the case registry and used it to provide the JCC with a list of non-IV-D orders. In turn, the JCC generated random samples of IV-D orders and non-IV-D orders for each court. The targeted sample counts are equally divided between IV-D and non-IV-D orders. As discussed more in Appendix E, there are firm counts of the number of IV-D orders established within the state, but there are not firm counts of the non-IV-D orders established or modified within the state. The limited information that does exist suggests that equal numbers of IV-D orders and non-IV-D orders are being established.

### **Sample Size and Methodology**

The target sample size for the case file review was 1,000 cases. This was the same sample size that was requested from the 2018 and 2011 reviews. This sample size was determined to be sufficient to determine statistical differences in deviation rates between study years. To help fulfill the targeted sample size, the sampling strategy oversampled by 20 percent. With oversampling, this increased the targeted sample size to 1,200 orders. The sample size requested for each of the 11 counties was based on the county's proportionate share of all LCSA orders within the state (i.e., all IV-D orders in the state using the federal term, IV-D). A small adjustment was made to accommodate the extraordinary size of Los Angeles County to appropriately weigh it in the sample.

### **Data Collection**

Case file data was obtained for this review in a manner similar to previous case file reviews, except instead of reviewing physical case files, data reviewers examined electronic records. The JCC contracted with and trained data reviewers who were all attorneys very familiar with child support. Most data reviewers were assigned to three counties. The JCC coordinated with the courts to secure the reviewer's access to a court's case management system. Reviewers accessed case files by logging into the individual court's online case management system, finding a particular case then completing an online data collection instrument using SurveyMonkey based on the information from the electronic record of that particular case. In turn, the JCC extracted the data into an Excel spreadsheet that was shared with the data analysts for data cleaning (e.g., eliminating duplicated cases) and analysis. Due to time-limited access to the court case management system, there was no opportunity to double-check questionable data entries. There were very few. Data collection began in September 2021 and was completed in October 2021.

## **DCSS Sample and Data Elements**

The sample period for the DCSS sample mirrored the court case sample: orders established or modified in calendar year 2018. The data analysts provided DCSS with sample selection criteria, a data wish list that they had used to obtain similar data from other states reviewing their guidelines, and examples of file layouts from other state guideline reviews. The sample selection criteria excluded interstate cases (to avoid cases where another state's guideline may apply) and limited the sample to orders established and modified for current support. For some states, identifying current order establishment and modifications can be a difficult task because some states track an action (e.g., the order was modified) but this action may be a modification for medical support, an arrears order, or something other than current support. Medical support and arrears orders generally do not require application of the guideline formula, but the current support order does. Another limitation is that a state's automated system may pick up that the court entered an order, although the order wasn't modified. Instead, the current order amount was re-entered as part of an enforcement hearing. DCSS was able to overcome these barriers typical of other states when preparing the data extract.

Due to time limits and data coding issues, DCSS was not able to provide all data requested. The following fields were provided from the DCSS extract:

- County where the order was established;
- File date;
- Amount of current support amount;
- Arrears amount at the time of establishment or modification;
- Whether the order was set by consent, default, or stipulation;
- Whether the order was set using the low-income adjustment (LIA);
- Whether the order was based on presumed income;
- Whether the order was based on a deviation;
- The deviation reason, if applicable;
- The current support due in each of the 12 months examined;
- The total amount paid toward current support and arrears in each of the same 12 months; and
- Whether information from the guideline calculator report was available. If available, a limited amount of information from the report was also included, such as the gross and net disposable incomes of the obligor and obligee used to calculate support.

Some of these data fields are not standard data fields in the DCSS automated system, but DCSS was able to create them from other information tracked on the DCSS automated system and then validate the data prepared specifically for this project.

Upon receipt of the data, the analysts noticed that payment data included both payments toward current support and arrears rather than just payments toward current support. The precedent is to analyze compliance rates as the ratio of current support paid divided by current support due. Information on the amount of arrears to be paid each month was not collected. Not all cases would have arrears or a monthly order of arrears on top of their monthly order for current

support. Further, federal and state income tax intercepts are a large source of arrears payment. The amount intercepted, if any, varies significantly from case to case. It depends on the tax circumstances of the obligor and the obligor’s arrears rather than the amount of current support ordered. Due to time constraints, this issue was resolved by assuming any payment in excess of current support was payment toward arrears. This estimated arrears payment was excluded from the analysis.

DCSS and the data analysts began coordinating the data extract in July 2021, and the data extract was received in October 2021.

## Orders Available for Analysis

### *Case File Data from Court Files*

Final extraction resulted in 1,279 total cases; 612 non-IV-D cases, and 667 IV-D cases. Removal of duplicated orders resulted in 1,205 total usable orders: 594 non-IV-D orders, and 611 IV-D orders. Exhibit 41 displays the requested number of case files from each court, as well as the actual sample size by IV-D and non-IV-D orders. As shown, most courts reached or exceeded their target number of usable orders; of those that did not, Orange and Santa Clara reached over 95 percent of their target, while San Diego and Santa Cruz achieved just under 90 percent of the target. Additionally, all counties were able to achieve a nearly-even split, with the exception of Yolo, which encountered difficulty obtaining valid non-IV-D case numbers.

**Exhibit 40: Sampling by County for Case File Review**

County Size	Superior Court	Recommended Sample Size	Actual Sample Size		
			Non-IV-D Cases	IV-D Cases	Total Sample Size
Very Large/Large	Los Angeles	295	154	157	311
	Orange	177	93	76	169
	San Diego	159	73	69	142
	Fresno	194	90	111	201
	Santa Clara	92	47	44	91
	Stanislaus	61	31	35	66
Medium	Kings	36	22	22	44
	Merced	58	39	40	79
	Yolo	21	9	23	32
Small/Very Small	Calaveras	22	12	12	24
	Santa Cruz	52	24	22	46
<b>Total</b>		<b>1,200</b>	<b>594</b>	<b>611</b>	<b>1,205</b>

### *Data Extracted from the DCSS Automated System*

The full extract from the DCSS automated system included 135,777 IV-D orders, 42 percent of which were from the 11 counties selected for the case file review. Several orders appeared to be duplicates where there was a change in the obligee or another circumstance, but not a change in the order amount in which the guideline would have been used. For example, the children



switched from living with a parent to living with a grandparent, so the obligee changed from the parent to the grandparent. There was no change in the order, the amount of the order was not revisited, and there was no guideline calculation made when the obligee changed. This was an issue for less than 10 percent of the cases. For simplicity, these cases were excluded from the analysis. Analyzing them would have required collecting more detailed information about the reason for the change and the date of the change. This left 123,880 orders available for analysis, 44 percent of which were from the 11 case file counties.

To analyze payments, non-charging orders, including zero orders, were excluded. For the purposes of data analysis, a non-charging order is defined and identified by having zero payments due for all months of the payment year. The order could have been established or modified to zero or the case was closed. Of all analyzed orders from the DCSS automated system, 24 percent were set at zero. A slightly larger percentage (27 percent) did not owe current support in the payment year. (The difference is likely to be case closures or order terminations.) Still, the number of orders with current support due in the sample payments months was large: 87,974 orders were available for the payment analysis.

### **Data Limitations and Availability**

One of the major limitations to the court case file data alone is that it lacks payment information, which is necessary to fulfill federal requirements. In general, court records are a better source of how the guidelines are applied for both IV-D and non-IV-D orders, while DCSS data is the only source of payment information but is limited to IV-D orders.

### **Availability of Data from Sampled Court Files**

The reviewers only examined documents in the court file. It was not feasible to examine oral records. Exhibit 42 explores the availability of key data fields and data sources in the court file data for the 2021 and 2018 reviews. Information about whether the order was entered by default, stipulation, or consent was available for every order for this review. Although the percentage available for the 2018 review wasn't noted, it was also likely to be 100 percent.

**Exhibit 41: Availability of Selected Data Sources and Data Fields in the Court File Sample (percentage of orders)**

	2021 Review			2018 Review
	All Orders (n = 1,205)	Non-IV-D Orders (n = 611)	IV-D Orders (n = 594)	All (n = 1,203)
<b>Order entry method (default, stipulation or contested)</b>	100	100	100	NA
<b>Whether the order is guideline amount or more/less than the guideline amount is known</b>	78	66	88	67
<b>Guideline calculator report attached to order</b>	72	60	83	65
<b>Source of income reported for obligor</b>	76	68	84	85
<b>Source of income reported for obligee</b>	73	68	79	75
<b>Income amount available for obligor</b>	78	69	86	76
<b>Income amount available for obligee</b>	75	69	80	67

*The source of the 2018 review is Exhibit 5-1 on p. 277.*

*NA- not available from the above data source for the 2018 review.*

**Measuring Deviations**

When measuring deviations, it is assumed that all deviations were properly noted in the record. Reviewers were able to determine whether the amount of child support order was the guideline amount, below the guideline amount, or above the guideline amount for 78 percent of orders sampled from court files for the 2021 review. The data collection instrument did not simply ask whether there was a deviation; rather, it provided four options for noting the relationship between the order amount and the guideline amount: guideline applied, above guideline, below guideline, and unknown. The advantage of this approach is it makes it easier for the reviewer to detect deviations since they can be identified in many different places within the court record. The disadvantage is that unknown may mean that whether the guideline was applied may not be known, or the direction of the deviation was not known, but a deviation was still made. For previous reviews, when a deviation could be identified, the direction of the deviation could also be identified. Nonetheless, due to the skip logic and nesting of the questions in the data instrument, the issue could not be resolved by cross-referencing the reasons for the deviation.

The comparable percentage of orders noting the guideline amount, below the guideline amount or above the guideline amount for the 2018 review was lower: 67 percent. The difference may result from an actual increase in knowing whether the guideline was applied/deviated or the exclusion of deviations in which the direction was not known. The same sort of skip logic and nesting did not occur in the 2018 data collection instrument.

Still, as shown in Exhibit 42, reviewers could determine guideline application/deviation direction better among sampled IV-D orders than non-IV-D orders: reviewers could determine a guideline application/deviation direction in 88 percent of the IV-D orders and 66 percent of non-IV-D orders. Differences in the percentage of orders where the reviewer could determine a

guideline/application or deviation also varied by other case characteristics. The rates were higher among orders set by default (81 percent) and contested hearings (85 percent) than stipulations (70 percent). Due to these data issues, deviation rates may have been even greater than reported among non-IV-D cases and cases where orders were entered pursuant to a stipulation.

### **Guideline Calculator Report**

One of the primary sources of information is the guideline calculator report. While calculators are not required to be attached to orders, some forms allow for income to be entered into the form itself. The calculator report can be used to inform whether the guideline was applied and is one source of the parent's gross and net disposable income used in the child support calculation. It is unknown if the data reviewer used the income guideline calculator report, an income and expense declaration, or other information in the electronic case file as the source of income when completing the data collection instrument. However, whenever the guideline report was available, reviewers used the parental income information from the report.

As shown previously in Exhibit 42, the guideline calculator report was available for 72 percent of orders sampled from court files. Guideline calculator reports were more likely to be available among sampled IV-D orders than sampled non-IV-D orders: 83 percent of sampled IV-D court files had guideline calculator reports, and 60 percent of sampled non-IV-D court files had guideline calculator reports. They are often not filed when the obligor's net disposable income is zero and when the order is stipulated. The percentage of sampled court orders with guideline calculator reports attached were 74 percent among default orders, 82 percent among contested orders, and 63 percent among stipulated orders. The guideline calculator report was attached to 42 percent of orders set at zero, and 80 percent of orders set greater than zero. A zero order may indicate that the obligor's net disposable income was zero. In this circumstance, the guideline-calculated amount of base support is zero. This can be calculated without the aid of an automated guideline calculator so that may explain why there was no guideline calculator report attached.

### **Source of Income Information**

The source of the income is important to measuring income imputation and income presumption rates, particularly among obligors because federal regulations require that they be measured. Exhibit 42 shows that the source of income for the obligor was available for 76 percent of the court files reviewed for the 2021 study. This is statistically less than the 85 percent rate found for the 2018 review. The rates also vary by IV-D status and order entry method. The percentage of sampled court orders where the reviewer could identify the source of the obligor's income was 84 percent among IV-D orders and 68 percent among non-IV-D orders. The percentage of sampled court orders where the reviewer could identify the source of the obligor's income was 81 percent among default orders, 82 percent among contested orders, and 69 percent among stipulated orders. The percentage of sampled court orders where the reviewer could identify the source of the obligor's income was 48 percent of orders set at zero, and 84 percent of orders set greater than zero.

The court-issued forms to identify the obligor's income were located in the court file for 30 percent of all court-sampled orders. (18 percent among IV-D orders and 42 percent among non-

IV-D orders). Those forms are the *Income and Expense Declaration* (form FL-150) and the *Financial Statement (Simplified)* (form FL-155). The comparable percentages for obligees were 33 percent among all sampled court orders, 18 percent among IV-D orders, and 48 percent among non-IV-D orders.

### **Income Amount and LIA**

Exhibit 42 also shows whether the amount of income was missing for a party. This is important for determining the income eligibility of the LIA, particularly when the guideline calculator report is not attached, which is the primary source of noting whether the parent was eligible for the LIA and noting if it was applied. The data collection instruments notes LIA eligibility and LIA application for those eligible. For those who were eligible, the field noting its application was always populated for the 2021 review.

### **Availability of Data from the Extract of the DCSS Automated System**

Information about whether the order was entered by default, stipulation, or hearing was available for every order extracted from the DCSS automated system. For most of the data fields noting an event occurred (e.g., there was a deviation, income presumed, or the LIA was applied), DCSS simply noted a yes or no if that particular event occurred. The guideline calculator report was the only source of income data provided from the extract of the DCSS automated system. It was available from 73 percent of orders sampled from the DCSS automated system.

## **Findings from Federally-Required Analysis**

This section documents the findings from the analysis of the 2021 case file and DCSS data for the analyses to fulfill the federal requirements. In addition to analyzing guidelines deviations, federal regulations now require the analyses of income imputation, default rates, application of the low-income adjustment, and payment patterns. These requirements complement the new requirements to consider the subsistence needs of a low-income, obligated parent in the guidelines calculation and to consider the individual circumstances of the obligated parent when income imputation is authorized (45 CFR 302.56(c)(1)). These new requirements are based on research that finds income is sometimes imputed beyond what a low-income parent actually earns and a negative correlation between income imputation and payments.<sup>466</sup> The findings from the analysis of case file data may inform how to better consider a parent's subsistence needs and impute income more appropriately. Guideline deviations are analyzed because of the federal objective to keep guidelines deviations at a minimum.<sup>467</sup>

### **Guideline Deviations**

The intent of evaluating deviations is to understand how the guideline is being applied, the frequency of guideline deviations, and the reasons for the deviations. Federal regulation specifies

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<sup>466</sup> See page 68555 of U.S. Department of Health and Human Services. (Nov. 17, 2014). "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs." Federal Register, vol. 79, no. 221. Retrieved from <https://www.gpo.gov/fdsys/pkg/FR-2014-11-17/pdf/2014-26822.pdf>.

<sup>467</sup> 45 C.F.R. 302.56(c)(1)

that the reason for analyzing deviations is to ensure that guideline deviations are limited. In general, deviations may be considered in order to meet the best needs of the child while taking into account the relative circumstances of each party. Each state determines its own deviation criteria. Exhibit 43 shows the deviation criteria under the California guideline.

**Exhibit 42: Deviation Criteria. Family Code Section 4057(a)**

4057 (a) The amount of child support established by the formula provided in subdivision (a) of Section 4055 is presumed to be the correct amount of child support to be ordered.

(b) The presumption of subdivision (a) is a rebuttable presumption affecting the burden of proof and may be rebutted by admissible evidence showing that application of the formula would be unjust or inappropriate in the particular case, consistent with the principles set forth in Section 4053, because one or more of the following factors is found to be applicable by a preponderance of the evidence, and the court states in writing or on the record the information required in subdivision (a) of Section 4056:

- (1) The parties have stipulated to a different amount of child support under subdivision (a) of Section 4065.
- (2) The sale of the family residence is deferred pursuant to Chapter 8 (commencing with Section 3800) of Part 1 and the rental value of the family residence where the children reside exceeds the mortgage payments, homeowner's insurance, and property taxes. The amount of any adjustment pursuant to this paragraph shall not be greater than the excess amount.
- (3) The parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children.
- (4) A party is not contributing to the needs of the children at a level commensurate with that party's custodial time.
- (5) Application of the formula would be unjust or inappropriate due to special circumstances in the particular case. These special circumstances include, but are not limited to, the following:
  - (A) Cases in which the parents have different time-sharing arrangements for different children.
  - (B) Cases in which both parents have substantially equal time-sharing of the children and one parent has a much lower or higher percentage of income used for housing than the other parent.
  - (C) Cases in which the children have special medical or other needs that could require child support that would be greater than the formula amount.
  - (D) Cases in which a child is found to have more than two parents.

Exhibit 44 shows deviation rates across the past several reviews. The deviation rate in the 2021 case file review is 15 percent, which is two percent lower than the 2018 review; this difference is not statistically significant. As discussed earlier, there is a slight difference in how the 2021 review defines deviation that may have caused the decrease. A more accurate percentage may be measured from only those orders that have a guideline calculator report attached. This would suggest a guideline deviation rate of 19 percent.

**Exhibit 43: Deviation Rates in Case File Data by Year of the Review (Percentage of sampled files)**

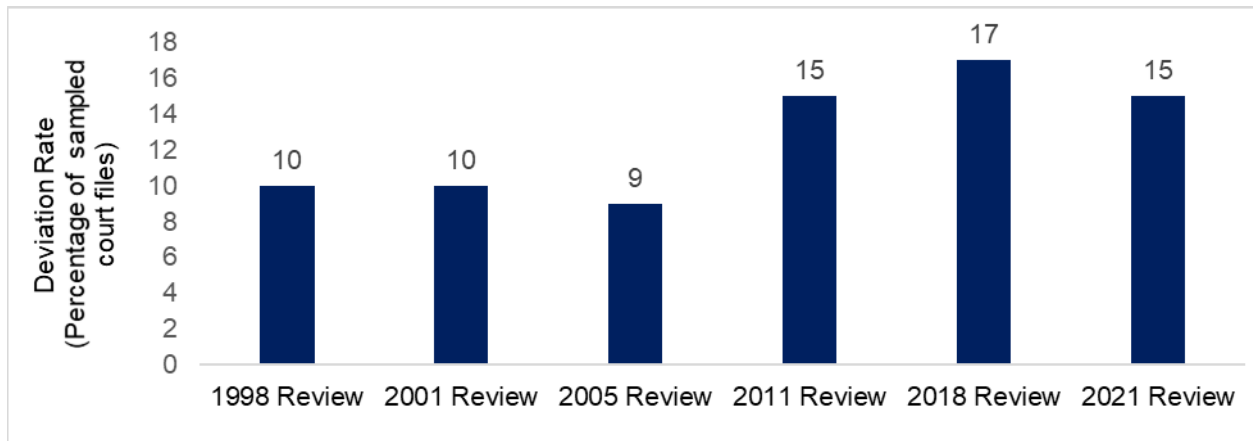
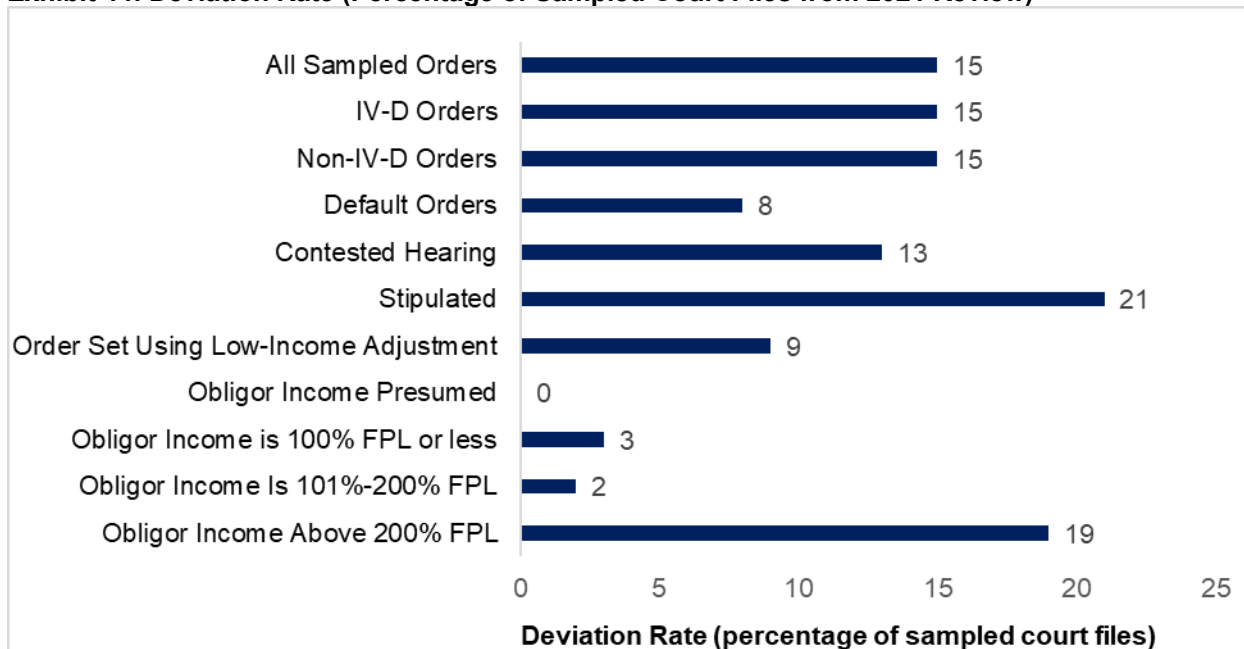


Exhibit 45 shows the deviation rate by selected characteristics. Like previous reviews, the deviation rate was higher for stipulated orders than contested orders and defaults; and higher among modified orders than new orders. The deviation rate for IV-D and non-IV-D appears to be the same, but that may be driven by the guideline application/deviation direction being identifiable among 66 percent of non-IV-D orders compared to being 88 percent of IV-D orders. The deviation rates are also very low among orders where the low-income adjustment was applied (9 percent) and default orders (8 percent). There is also a correlation between deviations and obligor incomes. The deviation rate is much lower for obligors with incomes below 100 percent of the federal poverty line (FPL) for one person in 2018 (which is the base sample year) than those with above poverty incomes.

**Exhibit 44: Deviation Rate (Percentage of Sampled Court Files from 2021 Review)**



### Reason for the Deviation

Exhibit 46 shows the reason for deviation between the 2021 and 2018 case file reviews. Within the 2021 review, the most common reason for deviation (51 percent of deviations) was stipulation by the parties. The second-most common reason (20 percent) was that the amount was unjust or inappropriate. Of those that were adjusted because the guideline amount was deemed to be unjust or inappropriate, 63 percent of those stated a reason related to the obligor’s low income or poverty status. Other reasons for unjust or inappropriate included the basic needs of the child and issues relating to time-sharing arrangements

**Exhibit 45: Deviation Reason (Percentage of Cases with Deviations)**

Deviation Reason	2021 Case File Review			2018 Review
	All	Non-IV-D	IV-D	
Stipulation	51	63	40	56
Unjust/Inappropriate	20	7	32	8
Other	9	10	9	20
Unstated	20	20	19	15

### Direction and Amount of the Deviation

Deviations can be either above or below the guideline amount. Exhibit 47 shows that 80 percent of deviations were for amounts below the guidelines (downward), and the remaining 20 percent were upwards deviations. This is similar to the 2018 review, in which 76 percent were downward deviations, 22 percent were upward deviations, and 2 percent were not stated. IV-D orders were more likely to have downward deviations than non-IV-D orders, with 89 percent of IV-D deviations being downward, compared to 69 percent for non-IV-D orders.

**Exhibit 46: Direction of the Deviation by Review Year (Percentage of Cases with Deviations)**

Deviation Direction	2021 Review			2018 Review	2011 Review
	All	Non-IV-D	IV-D		
Deviated Downward	80	69	89	76	59
Deviated Upward	20	31	11	22	14
Unstated	-	-	-	2	17

For orders that were deviated upwards, the average guideline amount was \$708, and the average order amount after deviation was \$873, meaning that for orders with an upward deviation, the average increase was \$165. For orders with downward deviations, the average guideline amount was \$691, and the amount after deviation was \$441, an average decrease of \$250.

### Deviation Rates in Other States

The California guideline deviation rate is generally lower than those of bordering states. Arizona conducted a case file review in 2020 and found a guideline deviation rate of 27 percent.<sup>468</sup>

<sup>468</sup> *Review of the Arizona Child Support Guidelines*. (Mar. 2021.) Retrieved from <https://www.azcourts.gov/Portals/31/2021AZEconomicandCaseFileReviewFCICCGRS.pdf?ver=2021-04-14-192639-973>

Nevada found a guideline deviation rate of 35 percent during its last review in 2016.<sup>469</sup> Oregon's last guideline review appeared to be conducted in 2012, and the documentation of the review does not include a deviation rate.<sup>470</sup>

Florida, the third-largest state in the nation, reported a deviation rate of less than one percent in its 2018 report.<sup>471</sup> Pennsylvania, the sixth-largest state, just completed its review and found a deviation rate of 25 percent.<sup>472</sup> Georgia, the ninth-largest state, found different deviation rates depending on whether the data was collected from court records or an extract from its IV-D automated system: the deviation rate was 47 percent among court-sampled private cases, 35 percent among court-sampled IV-D cases, and 11 percent among from data extract from its automated system.<sup>473</sup>

### ***Default Orders***

Federal regulations require measuring the percentage of orders entered by a default judgment. In general, orders may be entered through the following methods:

- Default: The respondent or defendant did not file an answer to the Summons and Complaint in a IV-D case or failed to file a response or appear at the hearing in a non-IV-D case, and there was no stipulation on record.
- Contested: The respondent or defendant filed a response or appeared at the hearing and there was no stipulation on record.
- Stipulation: There was a written or oral stipulation taken and attached to the record.

As noted in previous reviews, these definitions are a somewhat restrictive in that it is not always known why an order was entered by default. For example, some default orders may be uncontested because the parties agreed and decided not to appear in response to the notice.

Exhibit 48 displays the percentage of default orders for the past three reviews. Overall, it appears that default rates are declining. The rates of default regardless of IV-D status are significantly lower in the 2021 case file review than it was in the 2018 review. Exhibit 48 also displays that the default rate for IV-D orders among the 2021 case file data was 34 percent, which is significantly higher than that of non-IV-D orders at 12 percent. This same trend was observed in the previous reviews; the default rate from the 2018 review was 47 percent for IV-D orders and 24 percent for non-IV-D orders.

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<sup>469</sup> *Review of the Nevada Child Support Guidelines*. (Oct. 2016). Retrieved from <https://www.leg.state.nv.us/Session/79th2017/Exhibits/Senate/JUD/SJUD144D.pdf>

<sup>470</sup> See Oregon Child Support Program, 2011-2012 Child Support Guideline Review (Mar. 2012). Retrieved from [https://justice.oregon.gov/child-support/pdf/guidelines\\_advisory\\_committee\\_report\\_and\\_recommendations\\_2011-12.pdf](https://justice.oregon.gov/child-support/pdf/guidelines_advisory_committee_report_and_recommendations_2011-12.pdf)

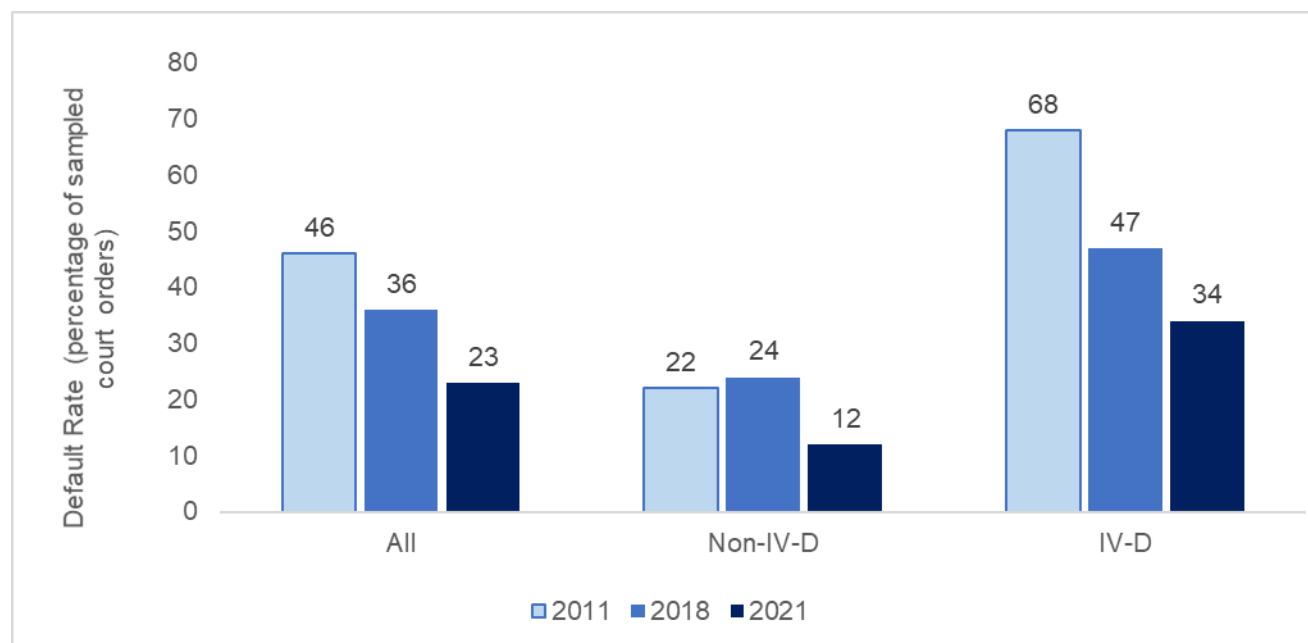
<sup>471</sup> Norribin, Stefan C., et al. (Nov. 2017.) Review and Update of Florida's Child Support Guidelines. Retrieved from <https://www.courts.ca.gov/documents/lr-2018-JC-review-of-statewide-CS-guideline-2017-Fam-4054a.pdf>

<sup>472</sup> *Review of the Pennsylvania Child Support Guidelines*. (Nov 2021). Retrieved from <https://www.pacourts.us/storage/rules/Preliminary%20Report%20Jan%206%202021%20-%20011012.pdf>

<sup>473</sup> Georgia Commission on Child Support: Final Report. Retrieved from <https://csc.georgiacourts.gov/wp-content/uploads/sites/8/2020/08/GACommChildSupportRptFullPDF2018.pdf>.



**Exhibit 47: Default Rate by Year and Order Type (percentage of court-sampled orders)**



### **Income Imputation and Presumption**

Federal regulations view income presumption as a special type of income imputation. The new federal requirements to analyze orders with income imputation/presumption are based on research that finds income is sometimes imputed beyond what a low-income parent actually earns and a negative correlation between income imputation and payments.<sup>474</sup> The findings from the analysis of case file data may inform how to better consider a parent’s basic subsistence needs and impute or presume income more appropriately. In California, income can be imputed or presumed. No other state makes a similar distinction. Presumption can occur only in IV-D cases when the income or income history of the obligor is not known to the LCSA. It must be presumed at full-time, minimum-wage earnings. Income imputation can happen when the parent or party is known to be unemployed or underemployed or to account for the income that could be generated from asset when idle or unknown (e.g., the parent owns a vacant apartment building). Courts have discretion in how they will attribute income, and will usually attribute income based on either earning capacity or previous evidence of work history.

Exhibit 49 shows the source of income as a percentage of all orders for the 2021 and 2018 case file reviews. As shown, the 2021 case file has a significantly higher percentage of orders with actual incomes. Within the 2021 review, both obligors and obligees had actual incomes in 70 percent of orders, compared to 56 percent for obligors and 47 percent for obligees in the 2018 review. Among the 2021 IV-D orders, income was presumed for 5 percent of obligors, while it was 4 percent for obligors in the 2018 review. Among all 2021 case file orders, income was imputed for 2 percent of obligors and 2 percent for obligees, the same as it was in the 2018

<sup>474</sup> See page 68555 of U.S. Department of Health and Human Services. (Nov. 17, 2014). “Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs.” Federal Register, vol. 79, no. 221. Retrieved from <https://www.gpo.gov/fdsys/pkg/FR-2014-11-17/pdf/2014-26822.pdf>.

review. The source of income was “other” or “not specified” for 26 percent of obligors and 29 percent of obligees, which are similar portions to the 2018 review.

**Exhibit 48: Source of Income by Year and IV-D Status (percentage of court-sampled orders)**

	2021 Case File Review			2018 Case File Review		
	All	Non-IV-D	IV-D	All	Non-IV-D	IV-D
<b>Obligor’s Income Source</b>						
Actual Income	70	66	73	56	53	59
Presumed Income	2	-	5	3	1	4
Imputed Income	2	1	3	2	1	5
Other/Not Specified/Unknown	26	33	19	25	29	21
Missing Value	-	-	-	14	16	11
<b>Obligee’s Income Source</b>						
Actual Income	70	66	73	47	45	48
Presumed Income	-	-	-	<1	<1	<1
Imputed Income	2	2	2	2	1	3
Other/Not Specified/Unknown	29	32	24	27	30	25
Missing Value	-	-	-	24	25	24

Income is presumed at full-time, minimum-wage earnings. During the sample period for the 2021 review (CY 2018), California’s minimum wage was \$10.50 an hour or \$1,733 per month for small employers (25 or fewer employees) and \$11 per hour, or \$1,907 per month for employers with more than 25 employees. Due to lags in court filings and changes in minimum wage, 2017 minimum wage may have also been used. The minimum wage in 2017 was \$10.00 per hour, or \$1,820 per month for small employers, and \$10.50 per hour or \$1,733 per month for employers with more than 25 employees. For obligors with imputed income, over half (54 percent) had incomes attributed to full-time, minimum-wage earnings; 8 percent had gross incomes of \$1,733, and 46 percent had incomes of \$1,820. For obligees with imputed incomes, 53 percent had incomes attributed to full-time minimum wage earnings; 11 percent had gross incomes of \$1,733 and 42 percent had incomes of \$1,820.

Deviation and default rates differed little between orders where income was not imputed to the obligated parents. Most orders with presumed income were set by default. The average support order was \$461 for obligors with imputed income, \$470 for obligors with presumed income, and \$754 for orders with actual income. This difference is statistically significant.

### **Application of the Low-Income Adjustment (LIA)**

In the data sample year, the LIA income threshold was \$1,644 per month. Exhibit 50 displays the percentage of orders for the 2021 and 2018 reviews that were eligible for the low-income adjustment and the percentage where the LIA was actually applied. Within the 2021 case file review, 21 percent of obligors had incomes qualifying for the low-income adjustment. This is up 2 percent from the 2018 review, though this difference is not statistically significant. There was a small cost-of-living increase between the two sample periods, but the state minimum wage increased more.

Within the 2021 review, the low-income adjustment was granted for 85 percent of eligible orders (18 percent of all orders); this was higher than the 2018 review, in which the low-income

adjustment was applied in 60 percent of eligible orders (around 11 percent of all 2018 orders). This is an overall increase in the percentage of orders in the 2021 review, where the low-income adjustment was applied compared to the 2018 review.

**Exhibit 49: Application of the Low-Income Adjustment by Case File Review Year (percentage of sampled court orders)**

	2021 Case File Review			2018 Case File Review		
	All	Non-IV-D	IV-D	All	Non-IV-D	IV-D
<b>LIA-eligibility (percentage of all orders)</b>	(N=1,205)	(N=594)	(N=611)	(N=1,203)	(N=591)	(N=612)
Not Eligible for LIA	79	95	62	81	92	71
LIA-Eligible	21	5	38	19	8	29
<b>LIA Applied (percentage of eligible orders)</b>	(n=258)	(n=27)	(n=231)	(n=226)	(n=48)	(n=178)
LIA Applied	84	44	89	60	9	74
LIA Not Applied	10	37	7	18	24	16
Unknown	5	19	3	19	67	6
Missing	-	-	-	3	0	4

The LIA was more likely to be applied among eligible IV-D orders than for eligible non-IV-D orders: it was applied to 89 percent of eligible IV-D and 44 percent of eligible non-IV-D orders. This difference is statistically significant. This trend was also seen among the 2018 orders.

The average order amount for orders when the LIA was applied was \$222 per month, which is significantly lower than the average for all orders. Additionally, 29 percent of orders that were eligible for the low-income adjustment were zero orders, while only 19 percent of non-eligible orders were zero orders. The average and median net incomes of obligors with adjusted orders were \$954 and \$1,270, respectively. The source of obligor’s income was considerably more likely to be imputed or presumed income in cases where the low-income adjustment was applied. Overall, 13 percent of orders adjusted for low income had presumed income and 5 percent had imputed income among non-LIA orders. The average LIA order was set for 22 percent of the obligor’s net income. Orders that were adjusted for low income had lower deviation rates than non-adjusted orders; 9 percent and 23 percent, respectively. Additionally, nearly half (49 percent) of LIA orders were entered by default, compared to 18 percent for non-LIA orders.

Exhibit 51 compares the order amounts by the number of children when the LIA is applied and not applied. For those where the LIA was not applied, it includes both those that are LIA-eligible and those that are not. A comparison between 2018 and 2021 orders shows that generally order amounts are increasing even when the LIA is applied.

**Exhibit 50: Support Amounts by LIA and Number of Children (Average dollar amount)**

	2021		2018	
	LIA	Not LIA	LIA	Not LIA
<b>Average Support Amount Ordered by Number of Children</b>				
1 Child	\$180	\$612	\$148	\$554
2 Children	\$305	\$1,023	\$201	\$498
3 Children	\$192	\$904	\$195	\$843
4 Children	\$399	\$1,304	\$206	\$605

Source of 2018 statistics is Table 4-11a.

**Payment Patterns**

Federal regulation (45 CFR § 302.56(h)(2)) requires the analysis of payment data, specifically by “case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment . . .” Payment data was tracked for the twelve months following the date that the new or modified order became effective. This includes the first date that the new amount is due. This section analyzes the payment patterns of obligors, including the percentage that made any payments during the 12-month payment period (CY 2019), the total dollar amount paid toward current support due, the percentage of current support paid, and the average number of months over the 12 months that payments were received and distributed.

Of special consideration for the analysis was whether or not payment patterns varied between the DCSS data as a whole from those of the 11 courts selected for the case file analysis. Exhibit 52 compares payment patterns among all orders extracted from the DCSS automated system and those for the eleven sampled courts. As shown, payment patterns did not vary significantly by whether the order was part of the 11 courts, meaning that the 11 courts are likely representative of the state. For all orders, the majority (89 percent) of charging orders made at least some payment throughout the year. The average total amount of payment over the 12 months examined was \$4,804 for all orders, with a median total payment of \$3,300. The average percent of current support due that was paid was 72 percent, and the median was 97 percent. The average number of months with payments was 7.8, with a median of 10 months.

**Exhibit 51: Payment Patterns among All Orders Sampled from the DCSS Automated System**

	All (N=87,974)	11 Court Sample (N=38,314)
<b>Made Payments (percentage of orders)</b>		
No Payments (zero)	11	11
Some or all Payments	89	89
<b>Total Annual Payment</b>		
Average	\$4,804	\$4,796
Median	\$3,300	\$3,369
<b>Percent of Total Support Due that is Paid</b>		
Average	72	72
Median	97	97
<b>Months with Payments</b>		
Average	7.8	7.8
Median	10.0	10.0

The average percentage paid exceeds the DCCS compliance rate (66 percent) reported in their most recent performance report.<sup>475</sup> The measurements are not exactly the same. The percentage of current support paid in this report is calculated individually for each case, then averaged. For federal reporting purposes, the total amount of current support paid among all cases is summed, the total amount of current support due among all cases is summed, then the two sums are divided.

### Payments for Default Orders

National research and research from other states find that orders set by default generally have worse payment patterns than other order types, despite having lower order amounts. As shown in Exhibit 53, only 71 percent of orders set by default made any payments in the payment year, which is significantly lower than the percent making payments for other order types. The average order amount for default orders in the DCSS data was \$478 per month; however, they tended to pay only 42 percent of the total amount that was due over an average of 4.7 months. These payment patterns are significantly worse than those set by hearing or stipulated orders. The problem may be inherent to other characteristics of the default orders that do not directly relate to the guideline. For example, a default may be an indication that the obligor does not want to engage with the judicial or child support system.

**Exhibit 52: Payment Patterns by Order Entry Method**

	All Charging Orders (N=87,974)	Orders by Entry Method		
		Default (N=20,012)	Hearing (N=45,400)	Stipulation (N=20,994)
<b>Made Payments (percentage of orders)</b>				
No Payments (zero)	11	29	7	3
Some or all Payments	89	71	93	97
<b>Total Annual Payment</b>				
Average	\$4,804	\$2,397	\$5,465	\$5,195
Median	\$3,300	\$783	\$3,865	\$3,960
<b>Percentage of Total Support Due that is Paid</b>				
Average	72	48	76	84
Median	97	42	99	100
<b>Months with Payments</b>				
Average	7.8	4.7	8.4	9.3
Median	10.0	4.0	10.0	11.0

*Data Source: Extract from DCSS automated system*

### Payment for Orders with Low-Income Adjustments

As discussed previously, the low-income adjustment can reduce the order amounts for obligors with low income. The average order amount for LIA orders was \$309 per month, which is considerably lower than the average order amount of \$568 for all charging orders (i.e., orders set to an amount other than zero). Exhibit 54 compares overall payment patterns between all charging orders. Orders that were adjusted for low-income generally had worse payment

<sup>475</sup> California Child Support Services. October 2021. Preliminary Performance Data Federal Fiscal Year 2021. Table 1. Retrieved from [https://childsupport.ca.gov/wp-content/uploads/sites/252/2021/10/2021-10-29\\_Preliminary-FFY-2021-Performance-Data.pdf](https://childsupport.ca.gov/wp-content/uploads/sites/252/2021/10/2021-10-29_Preliminary-FFY-2021-Performance-Data.pdf)

patterns, with 76 percent making any payments and paying 54 percent of the total current support due over an average of 5.5 months. The underlying issue may be their low income rather than the adjustment.

**Exhibit 53: Payment Patterns by whether LIA Was Applied**

	<b>All Charging Orders</b> (N=87,974)	<b>Low-Income Adjusted*</b> (N=24,160)
<b>Made Payments (percentage of orders)</b>		
No Payments (zero)	11	24
Some or all Payments	89	76
<b>Total Annual Payment</b>		
Average	\$4,804	\$1,731
Median	\$3,300	\$935
<b>Percentage of Total Support Due that is Paid</b>		
Average	72	54
Median	97	63
<b>Months with Payments</b>		
Average	7.8	5.5
Median	10.0	5.0

*\*Using the 2018 LIA threshold.*

*Data Source: Extract from DCSS automated system*

**Payment Patterns for Orders Set Using Presumed Income**

Federal guidelines require the examination of income imputation/presumption. The extract from the DCSS automated system noted when income was presumed to the obligor but not when income was imputed. Exhibit 55 shows that few (39 percent) of orders based on presumed income made any payments during the payment year. While the average order amount for obligors with presumed income was \$425 per month (lower than the average), they only paid 19 percent of the total support that was due over 1.8 months, and many (61 percent) made no payments at all. Obligor's had average gross incomes of \$1,792 per month, and the median amount was \$1,820 per month, which is the minimum wage. For orders based on presumed income, the average order was for 28 percent of the obligor's income, while the order amount for those not based on presumed income was 23 percent.

**Exhibit 54: Payment Patterns Among 2021 DCSS Orders by Imputed (Presumed) Income**

	<b>All Charging Orders</b> (N=87,974)	<b>Order Based on Presumed Income</b> (N=4,829)	<b>Order Not Based on Presumed Income</b> (N=83,145)
<b>Made Payments (percentage of orders)</b>			
No Payments (zero)	11	61	8
Some or all Payments	89	39	92
<b>Total Annual Payment</b>			
Average	\$4,804	\$717	\$5,041
Median	\$3,300	\$0	\$3,582
<b>Percentage of Total Support Due that is Paid</b>			
Average	72	19	75
Median	97	0	99
<b>Months with Payments</b>			
Average	7.8	1.8	8.1
Median	10.0	0.0	10.0

*Data Source: Extract from DCSS automated system.*

## Other Findings

This section covers other components and characteristics of the order, beginning with factors that influence the guidelines calculations, such as the number of children, percent of parenting time, and parental incomes.

### Number of Children on the Order

Within the 2021 case file review, the average and median number of children on the order were 1.6 and 1.0, respectively. More than half (56 percent) of orders were for only one child, 31 percent were for two children, 9 percent were for three children, and 4 percent were for four to six children. In the 2018 case file review, 58 percent were for one order, 28 for two children, 9 percent for three children, and 2 percent were for four or more. Within the 2021 case file review, the number of children on the order did not vary significantly by type of order, order entry method, or by whether the order was new or modified.

**Exhibit 55: Number of Children on the Order by Review Year (percentage of sampled court files)**

	<b>2021 Case File Review</b>	<b>2018 Case File Review</b>
<b>Number of Children on the Order</b>		
1 Child	56	58
2 Children	31	28
3 Children	9	9
4 or More	4	2
0 or missing	-	2

### Parenting Time

Within the 2021 case file review, the average percent of the time spent with the obligor was 17 percent for all orders and was significantly lower for IV-D orders than for non-IV-D orders. Among IV-D orders, the average percent of time spent with the obligor was 13 percent,

compared to 22 percent in non-IV-D cases. Exhibit 57 displays the percent of parenting time as a percentage of all orders by case type. As shown, the 2021 case file data has similar patterns to the 2018 review, in that IV-D orders were significantly more likely to have zero parenting time and half as likely to have more than 40 percent of parenting time. In the 2021 case file data, there was no physical responsibility (zero parenting time) for 54 percent of IV-D orders and 24 percent for non-IV-D orders. This is similar to the findings from the 2018 study, which showed that the percent of time spent with obligor was zero in 43 percent of orders; 64 percent for IV-D orders, and 20 percent for non-IV-D orders. The percent of time spent with obligor was greater than 40 in 19 percent of orders; 11 percent for IV-D and 26 percent for non-IV-D.

**Exhibit 56: Percent of Time Spent with Obligor by Review Year (percentage of sampled court files)**

	2021 Case File Review			2018 Case File Review		
	All (N=1,205)	Non-IV-D (N=594)	IV-D (N=611)	All (N=949)	Non-IV-D (N=451)	IV-D (N=451)
<b>Time with Obligor</b>						
Zero Percent	39	24	54	43	20	64
1 to 20 percent	26	32	21	27	35	19
21 to 40 percent	15	19	12	12	18	8
41 percent or higher	19	26	13	18	27	9

### Parental Gross and Net Incomes

Exhibit 58 displays the average and median gross and net disposable incomes of the parties. The number of orders (N size) with orders is also shown because the amount of income was not available for every sampled order. Both parties had significantly higher incomes within non-IV-D orders than IV-D orders, with median incomes being about half or less for IV-D orders than non-IV-D orders.

**Exhibit 57: Gross and Net Disposable Incomes of Parties (percentage of sampled court orders with income information available)**

	All	Non-IV-D	IV-D
<b>Obligor Gross Income</b>	(N=928)	(N=407)	(N=521)
Average	\$5,649	\$9,280	\$2,813
Median	\$3,131	\$4,883	\$1,985
<b>Obligor Net Income</b>	(N=884)	(N=365)	(N=519)
Average	\$3,292	\$4,837	\$2,206
Median	\$2,314	\$3,752	\$1,698
<b>Obligee Gross Income</b>	(N=898)	(N=409)	(N=489)
Average	\$2,279	\$3,159	\$1,544
Median	\$1,820	\$2,427	\$1,181
<b>Obligee Net Income</b>	(N=858)	(N=370)	(N=488)
Average	\$1,912	\$2,538	\$1,437
Median	\$1,892	\$2,226	\$1,285

Overall, incomes among both IV-D and non-IV-D orders sampled for the 2021 review have risen significantly since the 2018 review for both parties. Among the 2018 case file review, the average and median gross incomes for obligors were \$4,813 and \$2,745, respectively, and the



average and median net incomes were \$2,897 and \$2,007 per month. For obligees, the average and median gross incomes were \$2,194 and \$1,560, respectively, and the average and median net disposable incomes were \$1,761 and \$1,727 per month. On average, Exhibit 58 shows that obligees earned 58 percent of obligor’s median gross incomes and 80 percent of median net disposable incomes. This is similar to the 2018 review, in which obligees earned 56 percent of the obligor’s median gross income and 80 percent of the obligor’s net income.

Exhibit 59 looks at the relative income of the parties. It shows a range of net disposable income bands for the obligee and whether the obligor’s net disposable income was in the same income band or a lower or higher band. It shows that for orders in which the obligee has zero income, only 26 percent of obligors also have zero incomes, and most (74 percent) have higher income. When the obligee has little income, less than \$2,000 net per month, most obligors have more income. It also shows that when the obligee has more income, the incomes of the parties tend to be more similar.

**Exhibit 58: Percentage of Orders where Obligor’s Net Income Is More or Less than Obligee’s Net Income (percentage of sampled court orders with income information available for both parties)**

	Obligor’s Net Disposable Income					
	\$0 (N=238)	\$1- \$1,000 (N=49)	\$1,001- \$2,000 (N=172)	\$2,001- \$3,000 (N=202)	\$3,001- \$4,000 (N=104)	\$4,001+ (N=83)
<b>Obligor’s Net Income Is More or Less than Obligee’s</b>						
Less	-	-	4	27	41	40
Same	26	6	27	27	19	60
More	74	94	69	46	40	-
<b>Total</b>	100	100	100	100	100	100

### Hardship Deductions

Upon the request of a party, the courts may grant a parent a hardship deduction under the following circumstances: the parent is financially responsible for extraordinary health expenses or uninsured catastrophic losses, or the parent is obligated to support other children that reside with the parent.

Among the 2021 case file data, 11 percent of orders noted a hardship deduction for either or both parents. Deductions for other children were the most common reason for deduction: 6 percent of obligors and 6 percent of obligees had a deduction for other minor children. Less than one percent of orders had hardship deductions for catastrophic losses, extraordinary medical expenses, or other. During the 2018 review, the hardship deduction was reported by the party’s relationship to the child. Approximately 4 percent of mothers and 5 percent of fathers had hardship deductions, and most were deductions for other child support, with 4 percent of mothers and 4 percent of fathers having deductions for other child support.

### Order Amounts

Exhibit 60 compares order amounts across the 2021 and 2018 reviews. In general, it appears that the average order amount for sampled-court data has increased from the 2018 review. The

average and median order amounts for the 2021 review were \$737 and \$456, up from \$545 and \$300 in the 2018 review. As with previous reviews, non-IV-D order amounts are higher than IV-D order amounts. The average and median order amounts for non-IV-D orders were \$1,040 and \$651, while the average and median for IV-D orders were \$442 and \$364.

**Exhibit 59: Order Amounts by Year**

	All	Non-IV-D	IV-D
<b>2021 Order Amounts</b>			
Average	\$737	\$1,040	\$442
Median	\$456	\$651	\$364
<b>2018 Order Amounts</b>			
Average	\$545	\$847	\$268
Median	\$300	\$533	\$191

Exhibit 61 also compares the average order amounts by the number of children on the order. Interestingly, in the 2021 review, it appears that there is a decrease in the average order amount between two-child orders and three-child orders within the case file data, however this difference is not statistically significant.

**Exhibit 60: Average Order Amounts by Number of Children and Review Year**

	All	Non-IV-D	IV-D
<b>2021 Average Order Amounts</b>			
1 Child	\$527	\$750	\$336
2 Children	\$926	\$1,177	\$603
3 Children	\$782	\$1,025	\$504
4 Children	\$1,077	\$1,925	\$700
<b>2018 Average Order Amounts</b>			
1 Child	\$371	\$560	\$250
2 Children	\$751	\$1,039	\$310
3 Children	\$975	\$1,404	\$320
4 Children	\$972	\$1,670	\$324

**Zero Orders and Reserved Orders**

An order may be for \$0 per month if the obligor has no income. Zero orders are typically entered if it is known that the obligor is incarcerated and has no other income. Zero orders made up 21 percent of the 2021 case file sample, 25 percent of the 2018 review, and 14 percent of the 2011 review. Within the 2021 case file data, nearly all (97 percent) of cases in which the obligor had zero income were zero orders. Zero orders were more common in IV-D orders (24 percent) than non-IV-D orders (17 percent); and more common in default orders (32 percent) than stipulated (24 percent) or contested orders (9 percent).

**Exhibit 61: Percentage of Zero Orders by Review Year (percentage of court sampled cases)**

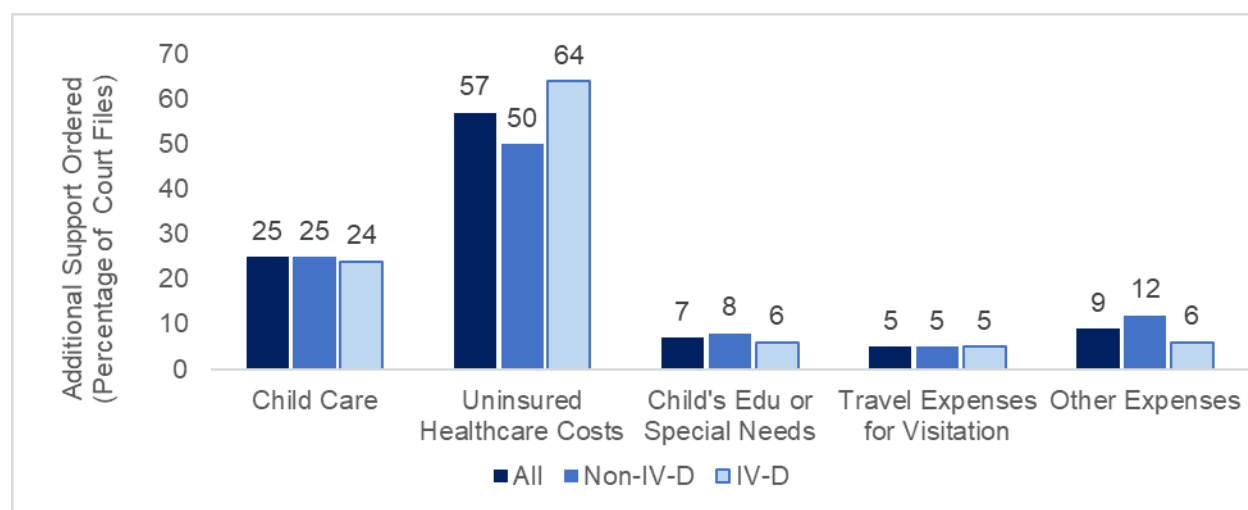
	2021	2018	2011
Percentage of Orders for Which the Monthly Support Order was \$0	21	25	14

Child support orders may be reserved if courts postpone making judgments on a child support order. In the 2021 case file review, it was noted that 5 percent of all orders were reserved, which is a significant decrease from the 2018 review, in which 12 percent were reserved.

### Orders for Additional Support

The court may also order additional child support to pay for costs for childcare, education costs for special needs children, travel expenses, uninsured medical expenses, or other expenses. Additional child support was ordered in 61 percent of the 2021 case file sample. Exhibit 63 displays the percentage of orders that had additional support orders. As shown, about a quarter of orders contained an additional support order for childcare, 57 percent had additional orders to cover uninsured healthcare costs, 7 percent covered the child’s education or special needs, 5 percent were ordered to cover travel expenses, and 9 percent were ordered to pay some other expense. The patterns in Exhibit 63 are similar to those shown in the 2018 review, in which 19 percent covered childcare, 52 percent were ordered to pay uninsured healthcare costs, 5 percent for child’s education or special needs, 1 percent for travel expenses, and 2 percent for other expenses.

**Exhibit 62: Orders for Additional Support (percentage of sampled court orders)**



### Other Case Characteristics

#### Order Establishments and Modification

Exhibit 64 displays the percentage of orders in the past several reviews by whether they were newly-established or modifications. In the 2021 case file review, 56 percent were new orders, and 41 percent were modifications. The percentage of orders that were new was significantly

lower in the 2021 review than the 70 percent of new orders in the 2018 review, which was less than in the 2011 review, but higher than in the 2005 review.

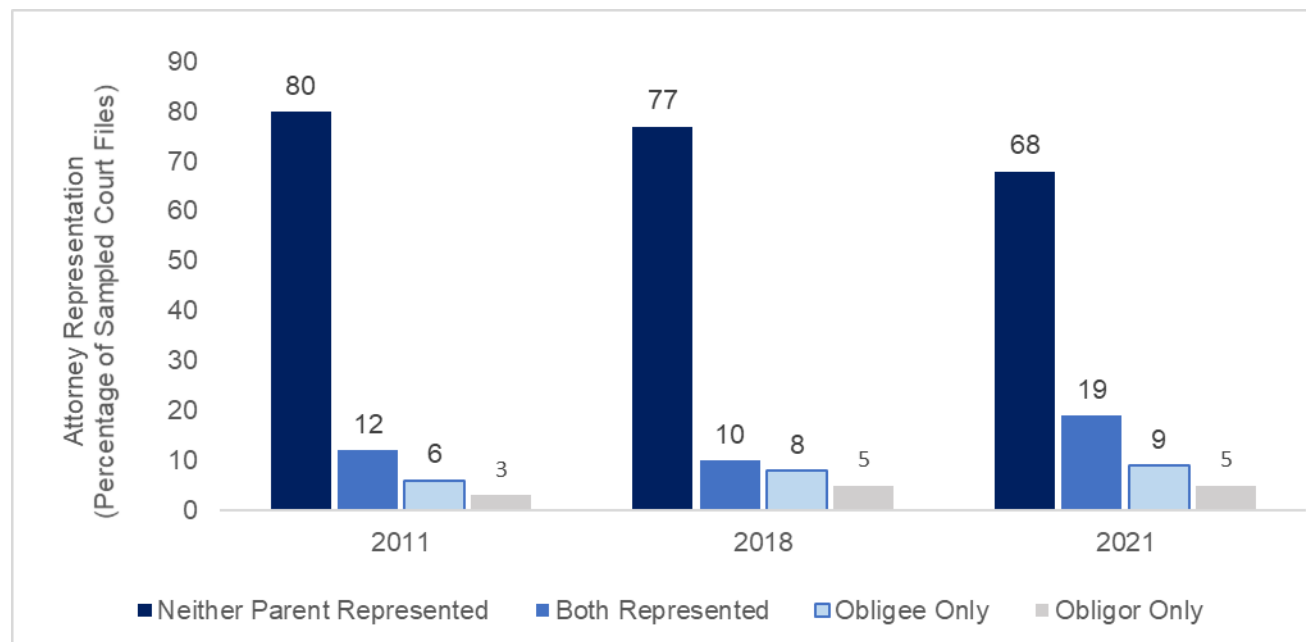
**Exhibit 63: Order Establishment or Modification by Review Year (percentage of sampled court files)**

	2021 Review	2018 Review	2011 Review	2005 Review
<b>New and Modified</b>				
New	56	70	93	49
Modified	41	30	7	51

### Attorney Representation

Attorney representation refers to private counsel retained by a parent in a child support case. When comparing previous case file reviews, it appears an overall trend that the percentage of cases with representation for either or both parties is increasing over time. In the 2021 case file review, only 68 percent of orders were without representation, down from 77 percent in the 2018 review and 80 percent from the 2011 review.

**Exhibit 64: Attorney Representation in Court File Data by Year (percentage of sampled court files)**



IV-D orders are considerably less likely to have attorney representation than non-IV-D orders. For the 2021 review, 92 percent of IV-D orders and 43 percent of non-IV-D orders were without representation for either parent. These are similar to the 2018 findings, which showed 94 percent of IV-D and 62 percent of non-IV-D were without representation.

### Comparisons between Data Sources

This marks the first review where data were collected from two different sources on several key data fields for IV-D orders. The primary data source is the sample of court files from 11 courts.

The extract from the DCSS automated sample represents all filings for order establishments and modifications from the same sample period. This provides a unique opportunity to see if the 11-county sample is representative of all IV-D orders in the state. Exhibit 66 and Exhibit 67 show that for most data fields, the proportions or average values are similar between the data sources. This corroborates that the sample is representative of the state.

**Exhibit 65: Comparison of Averages among Data Fields Collected from Both Data Sources**

	<b>IV-D Court-Sampled Orders</b>	<b>Extract from DCSS Automated System</b>
<b>Order Amount</b>	(n=611) \$442	(n=123,880) \$438
<b>Obligor Gross Income</b>	(n=521) \$2,813	(n=90,495) \$2,604
<b>Obligor Net Income</b>	(n=519) \$2,206	(n=90,495) \$1,967
<b>Obligee Gross Income</b>	(n=489) \$1,544	(n=90,495) \$1,406
<b>Obligee Net Income</b>	(n=488) \$1,437	(n=90,495) \$1,284

**Exhibit 66: Comparison of Percentages among Data Fields Collected from Both Data Sources (Percentage of orders from each source)**

	<b>IV-D Court-Sampled Orders (N=611)</b>	<b>Extract from DCSS Automated System (N=123,880)</b>
<b>Orders Set at \$0</b>	24	24
<b>Deviation Rate</b>	15	13
<b>Income Was Presumed to the Obligor</b>	5	4
<b>Order Entry Method</b>		
Default	34	23
Hearing/Contested	33	49
Stipulation	33	27
Other	-	1
<b>The LIA Was Applied</b>	34	37

## **Chapter Conclusions and Recommendations**

There are several findings based on the federally required analysis.

The guideline deviation rate appeared to decline from 17 percent (2018 review) to 15 (2021 review), but the difference was not statistically different. There was also a slight change to the data collection tool that could have resulted in a small measurement difference. The review found an overall default rate of 23 percent, and a default rate of 34 percent among IV-D orders, and 12 percent among non-IV-D orders. These are statistically less than the default rates found

from the previous review. The obligor's income was known to be imputed in only 2 percent of the court case files and income presumption was noted in only 5 percent of the IV-D court case files. These rates are less or about the same as the rates found from the previous review.

In all, there has been an uptick in the use of actual income: the source of the obligor's income used in the guideline calculation was the obligor's actual income among 70 percent of court case files. The comparable rate for the last review was 56 percent. Still, the source of obligor's income used for the guideline calculation was unknown, not specified, or other for 26 percent of the court case files. The rate was slightly higher for obligees: 29 percent. Both rates are comparable to those from the last review.

The Low-Income Adjustment (LIA) is applied more frequently. The LIA was applied to 18 percent of the court case sample. The LIA application rate for the previous review was 11 percent. The percentage of eligible obligors also increased. Undoubtedly, this was due to the annual cost-of-living increase to the LIA income threshold. As the LIA income threshold increases, more obligors become eligible. However, increases in the state minimum wage have outpaced the annual cost of living increases to the LIA making fewer obligors eligible.

The majority of obligors with IV-D cases make payments. Most (89 percent) of obligors who owed child support on an IV-D case in the twelve months following order establishment or modification made at least some payment. The median amount paid over the twelve months was \$3,300. The percentage of obligors who paid and the median amount paid were lower among orders entered by default, when income was presumed to the obligor, and when the low-income adjustment was applied.

There are several other major findings. The median order amount has increased since the last review: It increased from \$300 per month to \$456 per month. About one-fifth (21 percent) of orders are set at zero. This is a decrease from the last review, which was 25 percent. Just over half (56 percent) of orders are for one child, 31 percent are for two children, 9 percent are for three children, and 4 percent are for four to six children. There were no orders for seven or more children in the case file data. The highest number of children in the DCSS data extract was nine.

Incomes tend to be very low in IV-D cases. The median net incomes of obligors and obligees with IV-D orders were \$1,698 per month and \$1,285 per month, respectively. These median incomes are below 175 percent of federal poverty levels. In contrast, the median incomes of parents with non-IV-D orders were roughly twice as much as those with IV-D orders. Zero time-sharing is still the most common time-sharing arrangement when calculating support for IV-D orders. Just over half (54 percent) of IV-D orders are calculated, indicating the child spends no time with the obligor. In contrast, most (80 percent) of non-IV-D orders indicate a time-sharing arrangement other than zero.

## **Recommendations**

This review marked several changes in data collection: the collection of data from electronic court case management systems and the data extract from the DCSS automated system. The

move to electronic case management systems may present opportunities to sample more courts and collect data more efficiently. The JCC may want to debrief the data reviewers and sampled courts on what worked well and what could have worked better when collecting data from the court case management system. Additionally, the JCC should continue to monitor and explore the adaption of electronic case management systems in other counties to expand the potential pool of sampled counties.

Eventually, the JCC may be able to rely on more data extracted from the DCSS automated system, at least for IV-D orders. Before doing that, the JCC and DCSS may want to use the comparison of the descriptive statistics of common data elements in the sampled court files and the extract from the DCSS automated data to identify differences in how the data elements are defined and collected. This could be used to improve data collection instruments as well as identify ways that better and more data could be obtained. This may include revising court forms to include a checkbox noting income was imputed or encouraging more thorough recordkeeping through local child support agency staff and judicial training and outreach. Recommendations for improvement should focus on federally required analysis.

## Chapter 6: Findings from the Focus Groups

To provide an opportunity to gather input from a broad cross-section of groups involved in child support issues, this review of California’s child support guideline included focus groups with judicial officers, child support professionals, and parents. This Chapter summarizes the findings from the focus groups including suggestions to improve affordability of child support orders and compliance for low-income parents by updating the low-income adjustment.

In 2016, the final federal rule *Flexibility, Efficiency, and Modernization in Child Support Programs* imposed new federal requirements for child support guidelines. Among the changes in section 302.56 of Title 45 of the Code of Federal Regulations are requirements related to the quadrennial guideline review. In addition to economic data and case data, the guideline review must “provide a meaningful opportunity for public input, including input from low-income custodial and noncustodial parents and their representatives.” California Family Code section 4054 also identifies groups who should be consulted during the guideline study process.

In order to comply with federal and state requirements, PK facilitated four focus group discussions in coordination with CPR on behalf of the JCC. Prior to convening the focus groups, CPR analyzed the data from what data had been collected at that point and made preliminary findings. This helped inform the focus group discussions, and the input gathered through the focus groups added context to those preliminary findings.

The four focus groups were:

- Parents who are owed and who owe support;
- Attorneys from Local Child Support Agencies (LCSAs) from the sampled counties and
- Child Support Commissioners and Family Law Judges from the sampled counties; and
- Self-Help / Family Law Facilitator staff.

Additionally, staff from the Department of Child Support Services (DCSS) listened to the LCSA focus group with the intention that they would comment after the LCSA focus group ended to add a broader, state perspective. In general, DCSS representatives thought the issues brought up by the focus group participants reflected what DCSS hears across the state.

PK and CPR sought perspectives on several issues including default orders, presumed and imputed income orders, zero income, zero-dollar orders, guideline deviations, low-income adjustments, and documentation of income supporting the order. Focus group facilitators also asked each group to identify changes they would recommend to California’s child support guideline. This chapter highlights shared insights identified across groups and distinct perspectives within groups.



## **Major Themes**

The participants in each focus group discussed a number of topics. Within the comments, certain themes arose.

### **Themes from the focus group of parents**

Child support should:

- Increase relative to the number of children shared between the two parents;
- Help maintain the child's lifestyle across households;
- Be a shared responsibility with rare exceptions;
- Be based on the average cost of raising a child, adjusted to the cost of living in the child's place of residence; and
- Include "add-ons" dependent on each child's unique set of circumstances (e.g., a child's need for counseling).

### **Themes from the focus group of Local Child Support Agency (LCSA) attorneys**

- Default orders have declined possibly due to improved outreach to parents;
- Greater access to evidence seems to have led to a decline in income imputation and presumption rates;
- More cases with shared parenting time contribute to an increase in \$0 orders and deviations;
- Average obligations are too high because the Low-Income Adjustment (LIA) is too low;
- The most common stated reason for guideline deviation is stipulation between the parties. Where the reason is unstated in the system, it appears that an obligor's financial circumstance – for example, multiple children to support or an attempt to recover from adverse situations such as homelessness or addiction – also is a large reason for deviation from the guideline; and
- Available information about parents' income is not always documented in the court file.

### **Themes from the focus group of Child Support Commissioners and Family Law Judges**

- Default orders have declined possibly due to improved outreach to parents;
- The LIA should be changed to account for regional and individual circumstances;
- Improvements are needed for mandatory add-ons to the guideline amount; and
- The shared parenting time adjustment provisions in the guideline should be reviewed, especially when the custodial parent is receiving cash public assistance such that the obligor receives an adequate adjustment.

### **Themes from the focus group of self-help and Family Law Facilitators**

- The guideline should account for differences in cost of living, especially housing costs;
- Parenting time should be settled before child support is calculated; and
- Parenting time is "too large" of a factor in the guideline calculator, and accurate evidence of time share is usually unavailable.

## Convening the Focus Groups

Focused discussion groups provide contextual insights on topics beyond what can be gained from aggregate data analysis. Section 4054 of the California Family Code recognizes the importance of meaningful public input. It requires the JCC to consult with a broad cross-section of groups involved in child support issues when developing its recommendations for revisions to California’s support guideline. Federal regulations also require that quadrennial child support reviews “provide a meaningful opportunity for public input, including input from low-income custodial and noncustodial parents and their representatives.”<sup>476</sup>

For this review, the focus groups were parents owing support and parents who are owed support, attorneys from local child support agencies, members of the judiciary, and Family Law Facilitators. PK conducted the group discussions virtually using video conferencing platforms (Zoom and WebEx). Zoom was used for all except self-help/Family Law Facilitator Family Law Facilitator staff because the focus group with them was part of their weekly meeting with JCC that is held via WebEx. All participants, including parents, were familiar and comfortable with the video conferencing platforms. Both Zoom and WebEx provided the capability for audio and video recording, polling, and engagement through chat. The facilitator guide for each focus group, including the questions each group discussed, is in Appendix F.

### Outreach Strategy and Diverse County Representation

Jointly with CPR and JCC, PK designed outreach strategies to identify and invite individuals who are familiar or have first-hand experience with the application of child support guideline. The focus group participants were from all over the state, including individuals from the following 11 counties that are participating in a random sample of case file data for this quadrennial review:

- Calaveras
- Fresno
- Kings
- Los Angeles
- Merced
- Orange
- San Diego
- Santa Clara
- Santa Cruz
- Stanislaus
- Yolo

Each focus group had participants from multiple California counties.

### Engaging Parents

JCC created a one-page focus group advertisement that self-help center staff and Family Law Facilitator Family Law Facilitators distributed to parents. The flyer included a readable barcode (QR code) that directed parents to an online site with inclusion criteria screening questions. The screening questions asked the parents to select their preferred focus group time and to indicate their annual income, county of residence, child support role (payor or payee) and other relevant

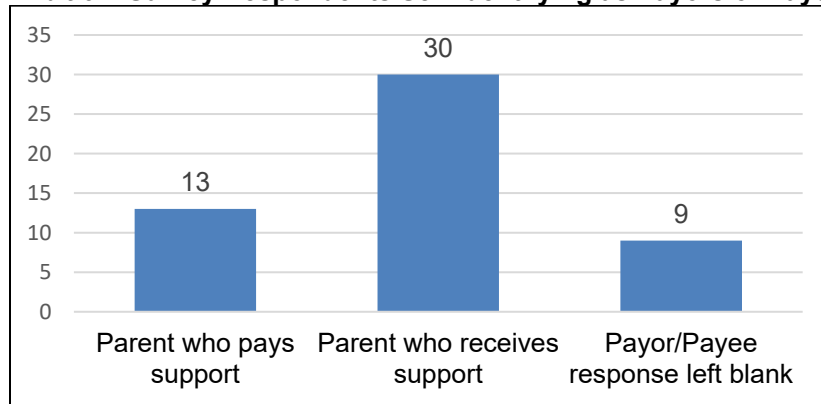
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<sup>476</sup> 45 C.F.R. § 302.56.

information. The initial goal of engaging at least 25 parents was exceeded. In the three weeks the survey was open, 52 parents responded. Of those 52 parents, 46 parents have a child support case, and of those, 30 self-identified as “parents receiving support.” Later, through the focus group, it was revealed that some parents are both an obligor and an obligee. The survey did not allow for that option.

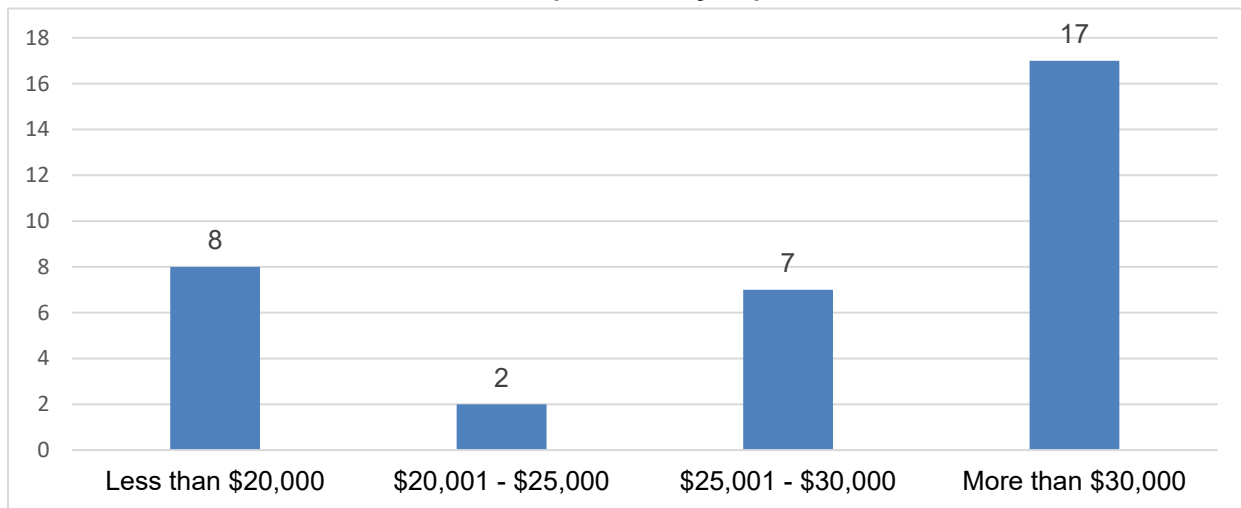
CPR, PK, and JCC decided to hold the focus group at noon on September 22, 2021, based on a plurality of parents responding to the screening questions indicating their availability for that time. As an incentive, participating parents received a \$25 gift card donated by CPR.

**Exhibit 67: Survey Respondents Self-Identifying as Payors or Payees**



Half of the survey respondents (17) indicated their annual income is more than \$30,000, and half of the survey respondents (17) indicated their annual income is less than \$30,000.<sup>477</sup> Some survey respondents did not provide income information.

**Exhibit 68: Number of Respondents by Reported Annual Income**



<sup>477</sup>\$30,000 approximates earnings from full-time work at the 2022 California minimum wage.

Invitations were emailed a week prior to the meeting. A reminder text message was sent the day before the meeting, and a reminder email was sent the morning of the focus group.

In the end, six parents participated in the focus group. All of the parents earned more than \$30,000/year. Scheduling a focus group that included low-income parents was a challenge because the lower-income parents responding to the survey had more limited time availability compared to the other parents responding to the survey. In all, the participation rate was good compared to the industry standard for engaging parents juggling work and family. Three parents identified as parents owing support and three identified as parents who are owed support. It was later revealed that some parents were both or had a spouse or domestic partner that was the other. Although there was some discussion of separating the parents, the decision was made to keep the parents in the same virtual space during the focus group. This is unprecedented in child support research. Historically, the common practice is to conduct in-person focus groups and separate focus groups with obligors and obligees. Due to the focus groups being held via a video conferencing platform where participants were asked to be respectful and could be muted if not and contractual reasons, the focus groups included obligors, obligees and parents who identified themselves as both. The researchers believed an added advantage of this approach would be that parents of different positions could have a respectful dialogue and develop solutions that worked for all perspectives.

### **Inviting Child Support Attorneys, Commissioners and Family Law Judges**

JCC initiated targeted outreach to local child support agencies (LCSAs), child support commissioners, and family law judges from the 11 counties participating in the sampling of case file data. PK followed up with commissioners and judges with a “Save the Date” email. JCC contacted LCSA representatives through the LCSA directors. Participants were provided information about the purpose of the focus group and how their feedback would help inform the study. Neither group received focus group questions in advance. Both groups received reminder emails the day before the scheduled discussions.

Most LCSAs selected one attorney from their agency to participate. Fresno and Merced each sent two attorneys.

In the judicial focus group, eight counties were represented by a commissioner or judge. Three counties (Calaveras, Kings and Santa Cruz) were unable to participate and did not have representation.

### **Reserving Time with Self-Help Center Staff and Family Law Facilitators**

The JCC facilitates a virtual weekly meeting with Self-Help Center and Family Law Facilitator (FLF) staff. These weekly meetings are an opportunity for information exchange between centers and updates regarding JCC initiatives. The meeting is held each Friday afternoon through WebEx, and on average 40 to 50 FLF staff participate.

The group reserved 50 minutes of their October 15, 2021, meeting for focus group discussion on the child support guideline review. Representatives from 14 counties participated in the focus

group. Five of those 14 counties were part of the case data sampling: Kings, Los Angeles, Orange, Santa Cruz, and San Diego.

The focus group with self-help center and Family Law Facilitators had less engagement than the other focus groups. What appeared to be video conference fatigue may have been because the focus group was scheduled after a multi-day online conference.

### **Focus Group Logistics**

Before each focus group, PK oriented participants to the structure and purpose of the discussion. The Judicial Officer, DCSS, and parent focus groups each lasted 75 minutes. The Family Law Facilitator focus group lasted 50 minutes. With the exception of the focus group of self-help center staff and Family Law Facilitators held using WebEx, PK conducted the focus groups virtually using Zoom as the video conferencing platform because of its intuitive functionality and recording capability.

PK held a “tech check” ahead of each focus group to allow technical troubleshooting. PK created slide decks for use with each focus group. The visual cues helped keep the conversation targeted and on schedule. A video recording of each meeting was shared with CPR and JCC for research purposes.

### **Focus Group Facilitation**

PK collaborated with CPR and JCC to develop facilitator guides, standardized ground rules, and group-specific discussion questions. JCC observed each focus group. PK facilitated the parent focus group. PK and CPR co-facilitated the other three focus groups. Because the focus groups were scheduled before CPR had finalized the case analysis findings, it was important to include CPR as a co-facilitator of the LCSA and commissioner and judges focus groups.

The PK and CPR facilitators solicited input using questions based on preliminary findings from the case file analysis. Participants provided their views on the current guideline’s application, how California is meeting new federal requirements governing child support guidelines, and recommendations for reducing deviations and improving the appropriateness of the guideline. Analysis from payment data was not available at the time of the focus groups, and therefore, was not a topic of discussion.

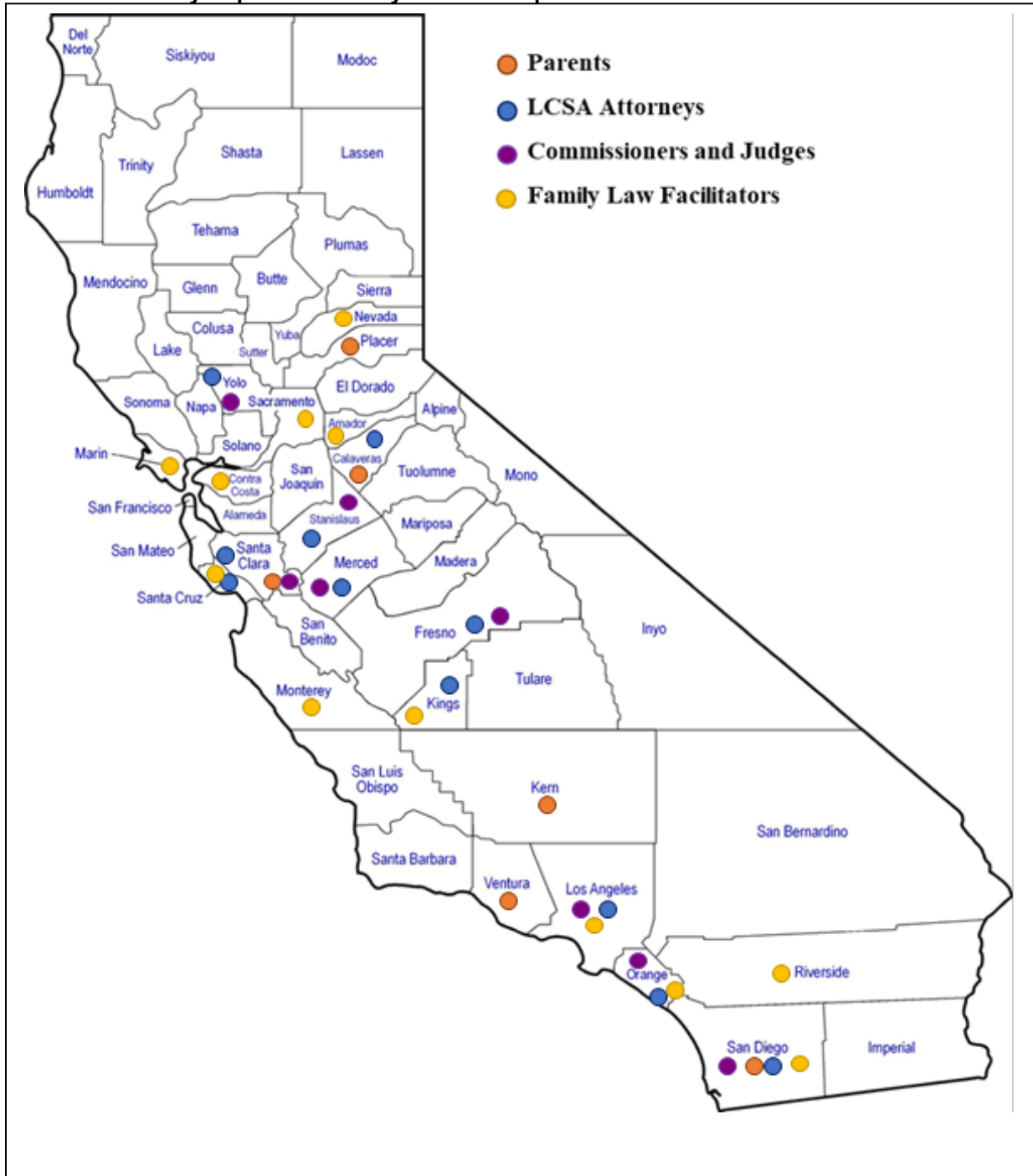
### **Diversity of Geographic Representation**

PK's use of video conferencing to conduct focus groups resulted in more geographically diverse participants than in-person meetings would have allowed. Participants represented 21 of California’s 58 counties.

**Exhibit 69: Focus Group Participants, All Groups**

<b>County</b>	<b>Parents</b>	<b>LCSA</b>	<b>Commissioners and Judges</b>	<b>Family Law Facilitators</b>	<b>Participation in Case File Review</b>
Amador				1	No
Calaveras	1	1			Yes
Contra Costa				1	No
Fresno		2	2		Yes
Kern	1				No
Kings		1		1	Yes
Los Angeles		1	2	4	Yes
Marin				2	No
Merced		2	1		Yes
Monterey				1	No
Nevada				1	No
Orange		1	3	1	Yes
Placer	1				No
Riverside				1	No
Sacramento				1	No
Santa Clara	1	1	2		Yes
Santa Cruz		1		1	Yes
San Diego	1	1	1	1	Yes
Stanislaus		1	1		Yes
Ventura	1				No
Yolo		1	1		Yes
<b>TOTAL</b>	<b>6</b>	<b>13</b>	<b>13</b>	<b>16</b>	

**Exhibit 70: County Representation by Focus Group Audience**



## Parent Focus Group

On September 22, 2021, PK held a parent focus group with six parents—half identifying as parents ordered to receive support and half identifying as parents ordered to pay child support. All participants have annual incomes over \$30,000. Participants currently reside in Calaveras, Kern, Placer, San Diego, Santa Clara, and Ventura counties. PK used three fictional scenarios to guide the discussion with participants. The appendix includes the facilitator guide and PowerPoint slide deck.

### Thematic Analysis of Parent Focus Group Discussion

The following themes arose during the parent focus group discussion.

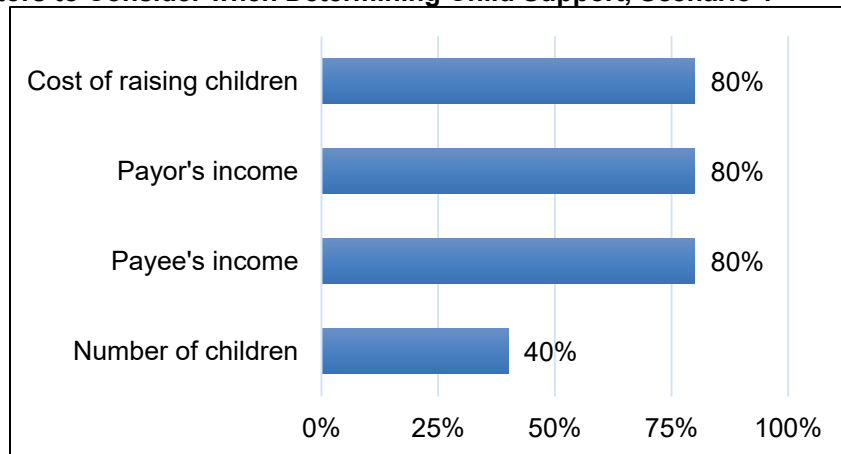
#### Support should be relative to the number of children and cost of living

In the first scenario parents Kris and Alex had separated, and Kris wants child support from Alex. PK asked the parent participants what factors should be considered when determining the monthly child support. The polling presented several possible responses. Parents could select multiple responses, as well as write in answers.

Parents selected three of the options equally (80 percent): cost of raising children and each parent's income. Forty percent of the parents selected “number of children.” There were a few write-in responses including “age of children” and “children's reasonable activities beyond basic expenses.”

#### Question 1: What things should we take into account as part of the “child support formula” when deciding how much monthly child support Alex should owe Kris?

Exhibit 71: Factors to Consider when Determining Child Support, Scenario 1



PK probed further about “number of children” being an important factor in calculating support. Four of the six parents said child support should be more if the parents have more than one child together. Parents agreed that the cost of raising multiple children is more than the cost of raising



one child. There was consensus that doubling the child support amount would be unreasonable and that applying some sort of “sliding scale” would be better.

PK then asked parents if they believed child support should increase if the payor (Alex in the scenario) has more income than the average wage earner. Participants were split in their opinions. Three parents said higher income should not automatically lead to a higher obligation. One explained that the support amount should be based on the needs of the child and not fluctuate based on parental income. Two parents said that higher earning parents should pay more support because the child should benefit from their ability to provide a higher standard of living. One parent responded that the answer depends on the case.

### **Support should be a shared responsibility and maintain the child's lifestyle across households**

PK asked several questions related to low-income parents. The first question asked what other factors the guideline should consider if the payor has low earnings. The most common responses were the cost of raising children and the living expenses of each parent.

Facilitators asked if there was any situation where a low wage earner should not be ordered to pay child support. One parent responded with the examples of when a parent is incarcerated or has given up their parental rights. Another parent commented that in the case of incarceration, the parent caring for the child still has expenses and perhaps there should be retroactive support.

Facilitators asked if responses would change if the payor was low income and the parent with the child had sufficient income to care for the child. Most parents said no. One participant summarized the conversation with, “it took two parents to ‘make that child’” and it should be both parents who contribute to the care and costs of raising their child.

There were different opinions about how to determine “reasonable” child rearing costs. One parent suggested factoring in the age of the child, federal per diem rates for meals, and formulas for what percentage of one’s income should go toward housing. Other parents talked about factoring in a child’s individualized needs such as counseling, tutoring, or social activities. Another parent mentioned the importance of including health care. Most participants agreed that the cost of raising children should go beyond basic necessities of shelter and food. They also agreed there should be add-on amounts to the formula that are specific to the child, such as health expenses, counseling services, and extracurricular activities. as the needs for children include meeting their mental and emotional needs. Add on amounts could be based on proof of payment. Child rearing costs should also look at the cost of living for the specific area where the child lives. PK did not advise participants that federal law requires a uniform guideline applied throughout the state, without differences based on geographic residency.

### **Income imputation or presumption is sometimes necessary**

PK asked parents to consider what should happen if a parent fails to appear for their child support court hearing or fails to provide income information. Most parents selected the response: “reschedule the court hearing.” Other parents split between the choices of “assume income and

use full-time minimum wage or some other amount” and “order \$50/month or some other designated amount.” One parent suggested that the agency send the payor a letter saying “Until we have income information from you, we are going to calculate your support amount at full-time minimum wage and will include health insurance coverage for the child. If you want to follow up with us, get in touch with us.”

The discussion shifted to a focus on proof of income. Several parents said they need help in proving another parent’s income, especially when they believe that person has alleged inaccurate income or has earning capacity beyond the stated income. Participants noted that the child support agency has the technology and resources to determine a person’s work history or receipt of unemployment. They believe that child support agencies should not ask the parent seeking support to investigate the other parent’s earnings. There was one statement that seemed to resonate among multiple parents, “the court expects us to bring the proof, but we need help...we don’t have the money to hire someone who will track down the other parent’s income.”

### **Parents want a flexible guideline to account for families' unique circumstances**

PK asked parents what change they would like California to make to the child support formula. Several parents mentioned how the guideline factors in parenting time. One parent noted that sometimes a parent wants to see their child, but the parent with the child will deny visitation in order to receive more support. Two parents said they would like to see changes in how the guideline treats new spouse income. If that income allows the parent with the child not to work, the formula should consider the parent’s access to that income rather than require the obligor to pay a higher amount of support because their income is higher than the nonworking parent. Several participants talked about maintaining a child’s standard of living across households. There could be a baseline standard guideline amount but then adjustments based on each family’s circumstances.

There was also discussion about how child support orders can result in conflict between the parents. Participants noted that parents should be able to agree to a support amount. Another parent stated that if the child is spending equal time with both parents and both parents have the ability to provide for the child, perhaps there should not be a child support order. That parent said the goal should be to look at a particular family and decide what will provide for the child and also reduce conflict between the parents.

Participants also were concerned that parents were not always truthful on their Income and Expense Declarations. They did not believe the court and agency should rely exclusively on the declarations when calculating support. They believe there should be an independent verifier of statements made about income and expenses.

### **Key takeaways from the parent focus group**

Parents, regardless of their payor or payee status, articulated shared beliefs and perspectives. They would like to see the formula use a standard cost of raising a child based on where the child resides within California. Parents also would like the guideline to allow for the addition of other costs relative to a family’s circumstances, when appropriate. There seemed to be a consensus that

child support was about maintaining the child’s lifestyle rather than simply providing for a child’s basic needs of food and shelter. They also recognized that the needs of a child include medical care and mental health support.

The participants did not propose changes to how the guideline treats low-income parents.

There was a shared sense that child support calculations were not always “fair” to parents who report their income accurately compared to parents who hide their earnings or are willfully under-employed. If there was a question about the accuracy of information, they felt strongly that the child support agency was in a better position to seek information about a parent’s earning capacity or work history than either of the parents.

Overall, this group expressed that child support should:

- Increase relative to the number of children shared between the two parents;
- Help maintain the child’s lifestyle across households;
- Be a shared responsibility with rare exception;
- Be based on the average cost of raising a child, adjusted to the cost of living in the child’s place of residence; and
- Include “add-ons” dependent on the individualized needs of the child and each family’s unique set of circumstances.

## **Local Child Support Agency and Judicial Partners Focus Groups**

There were two focus groups that responded to questions from a legal perspective: the local child support agency (LCSA) focus group and the Commissioners and Family Law Judges focus group. Whereas the parent focus group and Family Law Facilitators focus group each discussed a unique set of questions, these two legal focus groups addressed the same primary set of questions. The format for these focus groups was also similar.

On October 1, 2021, PK and CPR co-facilitated a focus group with attorneys from 11 local child support agencies (LCSAs) in the counties participating in the guideline review. On October 8, 2021, PK and CPR co-facilitated a focus group with 10 Child Support Commissioners and five family law judges from eight counties. Calaveras, Kings and Santa Cruz counties did not have any representation.

**Exhibit 72: Number of participants by focus group and county**

<b>County</b>	<b>LCSA attorneys</b>	<b>Commissioners and Judges</b>
Calaveras	1	
Fresno	2	2
Kings	1	
Los Angeles	1	2
Merced	2	1
Orange	1	3
Santa Clara	1	2
Santa Cruz	1	
San Diego	1	1
Stanislaus	1	1
Yolo	1	1
<b>TOTAL</b>	<b>13</b>	<b>13</b>

PK held the focus groups over video conference. Most participants in each group had their video feature turned on, allowing for face-to-face interaction. A minority of participants elected to have their video feature turned off, but still participated via audio. Each group provided their perspectives on several issues including default orders, presumed or imputed income, zero-dollar orders, guideline deviations, and low-income adjustments.

CPR drafted the focus group questions used with each group. The questions stemmed from the preliminary findings of the analysis of court case file data collected to date. The court orders were from 2018 and before the COVID-19 pandemic. Each group's discussion lasted 90 minutes and was guided by nine primary questions and several follow-up questions. Appendix F includes the facilitator guide.

The nine primary questions that focus group facilitators asked the LCSA and judicial officer focus groups were as follows:

1. California's default rate appears to be decreasing over time. Why do you think that is so?
2. In general, the rates of income presumption and income imputation to the parent who will be paying support are low compared to other states. The federal rule from 2016 was intended to reduce income presumption/imputation. What is California doing that may contribute to low rates of income presumption/imputation?
3. Both the percentage of orders set at \$0 and percentage of obligors with \$0 income have increased. What factors explain this?
4. The application of the low-income adjustment has increased. Why?

5. The preliminary findings show that when the LIA is applied, it often results in \$0 orders and the non-zero orders averaged just over \$300 in 2018. Does that seem right? Is it too much or too little? Why?
6. The preliminary deviation rate is about the same as the last review (about 13% for IV-D). The most common reasons for IV-D orders are stipulation (49%) and unstated (20%). The percentage with unstated has increased. Can you help us understand what was the reason for the deviation in these cases and why they aren't being stated?
7. Although documentation in court files has gotten better, several orders still are missing worksheets and income information. What can be done to improve documentation?
8. What provisions of California guideline do not work well? How can they be improved?
9. If you were us, what would you recommend that California change about how child support is calculated?

### **Thematic Analysis of LCSA Focus Group Discussion**

Three main themes emerged from the focus group with LCSA attorneys. The first revolved around the need for a higher LIA income threshold. This is particular concern since presumed income at full-time minimum wage now exceeds the threshold for the LIA. The second theme was the need to reexamine the impact of shared parenting time on calculating child support obligations in low-income cases. LCSA attorneys noted that when the time share is 0 percent, the obligation is higher, and many parents are less likely to be able to pay the guideline amount. They also noted problems when an obligor has visitation, but the custodial parent has no income; the result is that the obligor has a support obligation in an amount as if there were no time share.

Several participants also expressed concerns about the wide variation in the cost of living, especially housing costs, across California. While some LCSA attorneys noted that wages are higher in areas where housing is more expensive, everyone acknowledged that parents earning low wages face harder circumstances. Focus group participants explained that the statewide formula does not account for regional differences in the parents' earnings and expense differences. They pointed to situations where a payee resides in a higher cost of living county and the payor lives in a rural community with lower wages and lower cost of living. The formula does not include a factor that would account for that wide variation in regional cost of living.

### **Default orders have declined possibly due to improved outreach**

The LCSA attorneys agreed that "early intervention" helps their office obtain information from parents who otherwise might not have responded to the summons and complaint. Participants described early intervention as outreach to parents and assistance provided by self-help centers and DCSS to engage parents. In discussion prompted by question number one, the attorneys believe this change in communication is correlated with a decrease in the number of default orders.

The majority of the LCSA attorneys who responded to the first question expressed their belief that electronic communication, including email, DocuSign, and text messaging, elicits increased and quicker responses from parents. They feel that many parents do not respond to phone calls or letters.

### **Greater access to evidence leads to a decline in income imputation and presumption rates**

The second question turned the conversation towards the number of California support orders based on income imputation or income presumption compared to other states. One of the LCSA attorneys explained the difference between income imputation and income presumption under California law. Under California law, presumed income occurs at the summons and complaint stage in IV-D cases when there is a lack of evidence of a parent's income.<sup>478</sup> Income imputation is based on court findings related to evidence of a parent's income and includes the use of potential income for those who are voluntarily unemployed or underemployed.

In response to a question about when income is imputed, the LCSA attorneys provided a number of examples. One LCSA attorney said their court will impute income at the parent's last wage if the parent has voluntarily quit their employment in order to avoid paying child support. Another attorney said income may be imputed if the court finds the obligor is underemployed.

Participants said case law allows a judicial officer to impute income when a parent has a steady stream of income from another individual, such as a spouse, to pay their expenses. Another LCSA attorney commented that a judicial officer may opt to partially impute income, in addition to the person's earnings, if the court considers the covering of certain expenses by another individual — such as housing — as a “recurring gift.” An LCSA attorney said their commissioner will impute income at minimum wage or the amount of the obligor's expenses if the obligor deliberately does not comply with the commissioner's seek work order. Another LCSA attorney said that some commissioners will impute income at full-time minimum wage if the parent is only working part-time. This attorney noted that the differences in judicial officers' philosophies regarding imputing income at a “full-time, minimum wage floor” lead to disparate imputation rates between counties. Four LCSA attorneys said their judicial officers usually refrain from imputing and presuming income unless extraordinary circumstances arise.

Most LCSA attorneys indicated they try to avoid presumed income. If there is no information about the parent's current income, they will look for any information about a person's income history. One focus group participant added they sometimes must make assumptions that a case participant's historical income will be an accurate representation of their actual income, to avoid the presumption of income. Additionally, information on actual income is used, even if it is less than minimum wage, if the information was provided by the party themselves. One LCSA

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<sup>478</sup> Cal. Fam. Code § 17400(d)(2), which only applies to IV-D cases, provides: “The simplified complaint form shall provide notice of the amount of child support that is sought pursuant to the guidelines . . . based upon the income or income history of the support obligor as known to the local child support agency. If the support obligor's income or income history is unknown to the local child support agency, the complaint shall inform the support obligor that income shall be presumed to be the amount of the minimum wage, at 40 hours per week, established by the Industrial Welfare Commission pursuant to Section 1182.11 of the Labor Code unless information concerning the support obligor's income is provided to the court.”

attorney added their county uses quarterly wage information to determine actual income. Another attorney stated their office has informally investigated parents' social media accounts such as Facebook to attempt to find evidence of income not otherwise disclosed.

### **Increased visitation by obligors contribute to an increase in \$0 orders**

Question three asked LCSA attorneys to discuss why they thought there were increases in orders set at \$0 and orders where the obligor had \$0 income. (The preliminary analysis indicated this, but when all the data were received and analyzed, this was not the situation. The percentage of \$0 orders has decreased.) One attorney conjectured that the increase in \$0 support orders may be due to an increase in female obligors with other children, who may be on aid for these children. Most participants agreed that increases in visitation by the obligor accounted for much of the increase in the number of \$0 orders, especially where the obligor is low income. One attorney provided the example of a case where the noncustodial parent has 30 to 50 percent visitation, and the disparity in parental income would mean the custodial parent owes child support; in that situation the court may set a \$0 support order. Another attorney provided the example of a low-income obligor who has substantial visitation but whose income would result in a support order; some commissioners will set support at \$0 so the parents can "keep their heads above water."

Visitation issues also arose in response to question nine. That question asked the attorneys for recommended changes to the California support guideline. The attorneys again spent time discussing the impact of shared parenting time on the calculation of support and child support compliance, especially in low-income cases. Several attorneys noted that in the absence of shared time, the guideline amount can be quite high and beyond the obligor's ability to pay. Although they agreed that shared time resulted in increased expenses and should factor into the support amount, at least one attorney questioned whether the current statute gives the appropriate weight to shared parenting time. Additionally, another focus group participant noted that even when there is shared parenting time, a noncustodial parent may not receive a substantial adjustment in the support amount if the custodial parent has no income. Another participant agreed this is the situation in foster care and non-relative cases as well.

Attorneys noted many possible reasons for an increase in orders where the income for the obligor is stated as \$0. Reasons for zero income included incarceration, receipt of public assistance, disability, and no proof of jobs available. One attorney noted that the LIA does not apply to presumed income orders based on minimum wage because minimum wage has increased. The attorney conjectured that may result in an increase in \$0 income orders.

### **Average obligation is too high because the low-income adjustment is too low**

According to preliminary data analysis from sampled case files, non-zero-dollar orders established in 2018 averaged just above \$300 a month. Question five asked the group to consider whether the non-zero-dollar order average was too high. The attorneys who responded all thought that amount was too high if the obligor was making minimum wage. They noted the large increase in living expenses in California such as housing and gasoline. One attorney said that if orders seem insurmountable to obligors, it will drive them into the underground economy. Noncompliance can result in suspension of their drivers' license. "It can derail their whole life."

Another attorney commented that high orders can impact the obligors' ability to visit with their children because they cannot afford transportation costs and other related expenses. That can create a vicious cycle because if they visit less, the support amount can increase. This attorney noted that the problem increases exponentially if the obligor has multiple children in different cases.

The attorneys pointed out that in the past, obligors who made minimum wage qualified for the LIA. That is no longer the case because the Consumer Price Index on which the LIA is based has not increased at a commensurate rate with California's minimum wage. The group discussed increasing the LIA threshold as a solution. One attorney said they thought the LIA should always apply if someone is only earning minimum wage. It should be noted that the issue of minimum wage exceeding the LIA threshold is a recent occurrence and was not an issue in 2018, the year for which the case data on established orders was collected.

### **Reasons vary for deviation from the guideline**

According to the case data, the most common reason for guideline deviations is the parties' stipulation to a support amount. Where the reason for deviation is unstated, the focus group facilitators asked the attorneys to speculate what they thought was the most common reason. The attorneys believed the unstated reason was often related to the obligor's financial circumstances. They provided three examples. One example was an obligor with multiple children to support. Another example was a parent who is trying to recover from personal hardship such as homelessness or addiction and is unable to provide for their own support in addition to child support. The third example was an obligor who is considered to have income under the federal poverty level.

The discussion continued with concerns over regional differences in cost of living across one state. One LCSA attorney expressed that the guideline is "too broad" to apply to "the entire state with the incredibly diverse financial circumstances and opportunities." A second attorney added that a statewide guideline seems impractical given the extreme differences in cost of living among California counties. The group seemed to agree that any statewide guideline formula that is inflexible to the unique circumstances of parents and their families forces a one-size fits all approach that contributes to non-compliance.

### **Available information about parent income is not always documented in the court file**

When reviewing case data files as part of the quadrennial guideline review, CPR found income information about the obligated parent (whether in an income and expense declaration, in guideline worksheets, or stated in the support order) was not always available in the files. The focus group facilitators asked the LCSA attorneys why documentation might be missing and how to increase documentation. Respondents noted they often do not receive income information until the day of the proceeding. If a person brings a pay stub to court, it may not make it into the court file. Two attorneys noted that documentation filed in advance with the court is not a concern for them so long as the bench officer has income information at the time of the proceeding. Another LCSA attorney indicated many parents give them needed case information through informal means such as e-mail. One LCSA attorney stated that if the goal is to make the



process easier for parents, parents should be able to e-file their income and expense declaration and income documentation. This attorney noted that any process needs to increase accessibility to parents as well as seek accurate income information.

### **Thematic Analysis of the Commissioners and Judges Focus Group**

Child support commissioners and family law judges from eight counties (see Exhibit 73) participated in a 90-minute focus group. CPR and PK co-facilitated the group using the same primary questions from the LCSA focus group. Some of the themes this group focused on were the need for regional adjustment in the LIA to account for variations in the cost of living, the need to better educate parents about their ability to request apportionment of mandatory add-ons based on their respective incomes, and an improvement to the shared parenting time adjustment.

A more in-depth discussion of the themes that emerged from the focus group follows.

### **Default orders and orders based on imputation or presumption of income have declined, possibly due to improved outreach**

The CPR and PK co-facilitators began by asking the group about the decrease in default orders, as well as orders based on imputed or presumed income. Most focus group participants correlated the reduction to increased efforts to engage parents. They also attributed most of the increased outreach to efforts by the LCSAs. The outreach includes electronic communication, text messages, increased communication to veterans, and improved collaboration with prisons (getting information to incarcerated parents). When there is an upcoming court hearing, they will send reminders of the proceeding to parents by email or text message. They may also call the parents in advance to see if they can reach an agreement on the support amount.

Participants distinguished between default judgments where there is no response to a summons and complaint in AB 1058 cases and default orders where a parent fails to appear for a hearing after service. One person noted that often in paternity cases, an LCSA worker will even call parents the day of the hearing to see if people want to participate remotely rather than have a default order entered. Participants noted that the availability of remote access through video conferencing and other electronic means has increased participation in hearings by parents.

Participants stated the increased parental participation has also resulted in fewer orders based on imputed or presumed income. A commissioner noted that since finalization of the federal rule governing guidelines, LCSAs have been very proactive in conducting research on a case. They are researching employment history and using available data such as EDD information rather than imputing or presuming income based on minimum wage.

### **The LIA should be changed to account for regional and individual circumstances**

Focus group facilitators asked participants if they could explain why application of the LIA had increased in the case file data from orders analyzed for the 2021 review (which includes filings from 2018) compared to those from examined for previous guideline reviews. The participants responded that because the income threshold for applying the LIA has increased over time, more parents are eligible for the LIA. They also noted that a high rate of unemployment and

suppressed wages has increased qualification among parents owing support. When answering the question, respondents were offering the explanation for the change between the LIA-application rate measured for the previous review compared the LIA application rate from orders filed in 2018, which was the sample year for the 2021 study. They also acknowledged that in 2018 the LIA income threshold was more than full-time earnings from the state minimum wage but that is no longer the situation because increases in the state minimum wage have outpaced the cost-of-living adjustment to the LIA income threshold.

As with the LCSA focus group, CPR informed the participants that preliminary case file data showed the average obligation for non-zero orders where the LIA had been applied was \$300 and asked the group whether \$300 a month seemed "too much or too little." One focus group participant stated the amount of an LIA non-zero order can sometimes be too high, too low, or just right because "it is what it is" and "it is math." Most participants agreed that it depends on the fact of the case. A non-zero order of \$300 may be high depending on where the obligor parent lives or whether the obligor has multiple children. One participant noted that if the obligor has more than three children, in low-income cases the guideline amount will leave the parent below the federal poverty level; in such cases, the participant will deviate from the guideline.

Another focus group participant made the connection between high child support order amounts and child support arrears. The participant said that parents with limited financial means will usually pay their own basic subsistence costs (e.g., food and shelter) first. If the parent has no remaining income after paying for those costs, child support will go unpaid, and arrears will pile up. Large arrearages can be crippling. It can cause problems with family relationships. The person's credit is ruined. The person may lose their driver's license. Participants agreed that support orders should be based on the obligor's ability to pay. It needs to be an obligation they can afford, while meeting their own subsistence needs.

To better set an affordable obligation, one participant stated they begin by seeing where a parent falls relative to the federal poverty guidelines because it provides "a hard number." Then the court examines the parent's Income and Expense Declaration to see if the parent is living above, below, or within the parent's means. They use the declaration to decide where to fall within the LIA range. They also use it in deciding whether to deviate from the guideline amount after application of the LIA. However, another participant noted most parents indicate their expenses are higher than their income.

CPR asked participants how application of the LIA could be consistent if the courts are considering regional costs of the parents in deciding how to apply the LIA or whether to deviate. One suggestion was to regionally adjust the LIA since the cost of living varies so much within California. They suggested adding the county of residence into the guideline calculator of the LIA.

The participant noted that under the proposed solution the guideline formula would remain the same, but the regional adjustment would provide an additional factor the court could consider to make child support orders more affordable. Two participants agreed a regional adjustment in the

child support calculator could help account for circumstances that differ from county to county, namely housing costs. When asked about other factors that vary regionally and should be considered in the guideline calculation, participants identified transportation costs and income fluctuation due to the local jobs available. The example of fluctuating income was agricultural work, which tends to be seasonal and pay less.

Several participants noted they will deviate from the guideline amount, even with application of the LIA. They pointed out that it is a judicial officer's responsibility to be aware of their county's demographics and how regional and individual circumstances may affect a parent's ability to meet their obligation.

CPR asked whether the income threshold for the LIA should be increased. The participants who responded all agreed that it should be. They thought it was too low given the cost of living in California.

CPR noted that costs for the custodial parent's household have also increased and asked how the guideline should address that. A participant suggested that the LIA apply to both parents. The participant noted, however, that applying the LIA to the custodial parent could be problematic if the custodial parent is receiving cash public assistance because that person's income is noted as zero; the guideline provides means-tested income is not income available for child support.

### **The guideline provisions related to mandatory add-ons and shared parenting time adjustment need improvement**

CPR and PK facilitators asked participants to identify provisions of the California guideline that do and do not work well. One participant noted the disconnect between the Family Code, which allows the joinder of other parents, and the guideline calculator, which does not allow for more than two parents. Other perceived gaps are that the automated guideline calculator has no option for parents living in an intact family with a child or children not involved in the support proceeding, and no option for cases where a child does not live with either parent. Another participant believed the *K-factor* is too high.

Most of the discussion revolved around the need for improvement in two areas. First, multiple participants agreed the provisions surrounding mandatory add-ons for childcare and unreimbursed medical expenses were problematic. One focus group participant stated they receive a lot of requests to include childcare costs, which can be significant. The participant suggested that the costs of childcare should become part of the basic child support calculation and prorated between the parties. A second participant said the problem with the add-on for childcare costs is that the current statute divides the costs equally between the parties. The court cannot apportion the childcare costs based on the parents' respective incomes unless the parties themselves request that alternative approach, and most parties are not aware they need to make that request. A third participant agreed and said the lack of an apportionment typically causes a child support order to be unaffordable.

The second concern expressed by the focus group participants was the shared parenting time adjustment. One participant stated the shared parenting time adjustment “works mostly” but “not completely.” The same participant specified the adjustment benefits a parent owing support less at lower time share amounts, because it “barely moves the needle” of their obligation. Another participant stated there is more possibility to deviate from the guideline amount in shared time cases. The example the person provided is that even at 40 percent time share, the guideline amount may be high. If the participant believes that the amount is too high given the parent’s income and not in the child’s interest, they may deviate. Another participant noted that because time share is such a significant portion of calculation, there is an incentive for an obligor to want more time for monetary reasons. This person has heard complaints that there is a lot of manipulation around shared time. On the other hand, this person also noted that when there is zero time share, the support obligation is high compared to some parents’ abilities to pay. And these obligors have sometimes complained that they want to see their children, but the obligee will not agree to shared parenting time.

All participants agreed that shared parenting time can have a dramatic impact on the support amount. They also agreed that a great deal of judicial time is spent trying to verify what shared time actually occurs. California case law requires the court to base support on the actual time share. They cannot rely on terms in the order or agreement. As a result, determining actual shared parenting time can be very time consuming.

**The guideline needs to include more appropriate ways to address circumstances where the custodial family receives cash public assistance and the obligor who has time with the child is low income**

PK asked the commissioners and judges to recommend guideline changes. The most common answer concerned the calculation of support when the obligee had no income for a variety of reasons including where the household was receiving CalWORKs and the obligor has little income. Specifically, CalWORKs is means-tested public assistance and is not considered income for the purposes of child support. One participant noted that when the obligee has no income, even where the obligor has timeshare with the child, the obligor usually ends up paying the highest amount of support, which often is more than they can afford.

**Comparison Between LCSA and Judges and Commissioners Focus Groups**

We identified several common themes between the LCSA focus group and the Judges and Commissioners focus group.

**Improved, successful outreach to parents may be contributing to lower rates of default orders, income imputation, and income presumption**

Both focus groups believe that enhanced outreach to parents has positively affected the outcome of support proceedings. The majority of participants in the LCSA focus group believed that improved outreach efforts had increased parent participation in support proceedings. These improved efforts, or “early intervention,” focus on electronic communications such as text messages and emails. While the LCSAs still use phone calls and letters to communicate with

parents, LCSA attorneys noticed increased response from parents when electronic communication was used. Most of the LCSA focus group participants believed these improved efforts are a large reason for the lower rates of default orders, although no definite evidence was provided.

All LCSA focus group participants believed improved parent participation and greater access to income information from electronic sources, such as the Work Number,<sup>479</sup> contributed to the reduction in using income presumption and income imputation for order establishment. Many LCSA attorneys believed that improved outreach has also resulted in parents being more willing to provide more accurate information about their income.

Likewise, participants in the Judges and Commissioners focus group believed engaging parents before the hearing and encouraging parents to reach a stipulated agreement in lieu of a hearing has also led to a lower rate of default orders. Like LCSA attorneys, participants agreed using electronic communication has improved parental engagement. In addition, participants believe caseworkers' efforts to help parents connect virtually have expanded parent participation, especially in the wake of COVID-19. Two participants expressed that effective communication with parents usually depends on the LCSA.

All agreed more parental participation has led to obtaining more accurate income information and, in turn, lower presumption and imputation rates. As such, effective and appropriate outreach efforts should continue.

### **The LIA should be changed**

While the discussion between the two focus groups surrounding the LIA was different, both groups reached the conclusion that the LIA itself needs adjusting. The LCSA focus group noted that because of the current LIA threshold, persons making minimum wage do not qualify for it although their income is low.

Preliminary data showed that where there is no application of the LIA, non-zero-dollar orders averaged just above \$300 in 2018. LCSA attorneys believed this was too high for minimum wage earners. They cited increased housing costs and the impact of a high order on a parent's ability to visit with their child. They said the problem increases exponentially if the obligor has multiple children in different cases. Due to these concerns, multiple LCSA attorneys believed increasing the LIA threshold was an appropriate solution. The Judges and Commissioners focus group said the reasonableness of a \$300 order depended on the facts of the case.

The common theme in the LIA discussion between the LCSA focus group and the Judges and Commissioners focus groups was how regional differences in cost of living affects a parent's

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<sup>479</sup> The Work Number is an employment and income verification system that most California government departments and campuses use. More information can be found at: [https://sco.ca.gov/ppsd\\_se\\_worknumber.html#:~:text=The%20Work%20Number%20is%20an%20employment%20and%20income,organizations%20such%20as%20mortgage%20companies%20or%20rental%20agencies.](https://sco.ca.gov/ppsd_se_worknumber.html#:~:text=The%20Work%20Number%20is%20an%20employment%20and%20income,organizations%20such%20as%20mortgage%20companies%20or%20rental%20agencies.)

ability to pay his or her support obligation. One participant in the Judges and Commissioners focus group stated that a parent owing support needs an obligation they can afford. Establishing an affordable order usually requires deviating from the LIA range. The deviation typically occurs because low-wage workers often do not earn the income they need to cover their basic expenses. In turn, their child support obligation goes unpaid, resulting in arrears accruing.

### **The impact of shared parenting time on the calculation of child support should be reexamined**

Both groups were dissatisfied with the current shared time adjustment.

Participants in the LCSA focus group identified two major issues. When there is no shared parenting time, they thought the support order was too high for a minimum wage obligor. The other concern was that the parenting time adjustment is insufficient in certain circumstances; it provides a negligible adjustment when the primary custodial parent has no income and very little adjustment if the primary custodial parent has little income. As a result, the parent owing support is unable to benefit from the impact shared parenting time would otherwise have on their obligation. The resulting order is similar to what the obligor would be paying if there was no time share. The LCSA attorneys agreed that the guideline should consider time share because of extra expenses, but they did not agree with the current approach.

Participants in the Judges and Commissioners focus group mainly agreed with the opinions expressed by LCSA attorneys. One person noted that at lower shared time levels, the adjustment “barely moves the needle,” whereas at other levels it can have a dramatic impact depending on the income of the parties. Another participant noted that even at almost equal shared parenting time, a parent owing support will often have to pay the full obligation under the California guideline. The judges and commissioners also noted how much judicial time was spent trying to verify what shared time actually occurs.

LCSA attorneys, judges, and commissioners appear to agree that there should be reconsideration of the shared time adjustment amount. LCSA attorneys highlighted those cases when the obligor is low income, and where there is shared parenting time and the custodial parent has no or little income.

## **Family Law Facilitator Focus Group**

Each week there is a meeting hosted by the JCC that many Self-Help Center (SHC) and Family Law Facilitator (FLF) staff attend. CPR and PK were invited to conduct a focus group during the meeting on October 15, 2021. CPR and PK encouraged participants to engage through audio and video, but the Family Law Facilitators chose to remain off camera. Participants engaged primarily through the WebEx platform’s chat feature. CPR and PK used questions with this group that were different from the previous three focus group audiences and tailored to their experience helping parents with child support issues. Appendix F includes the facilitator guide.

The first question asked participants to indicate which county they represented.

**Exhibit 73: Family Law Facilitator and Self-Help Center Staff by County**

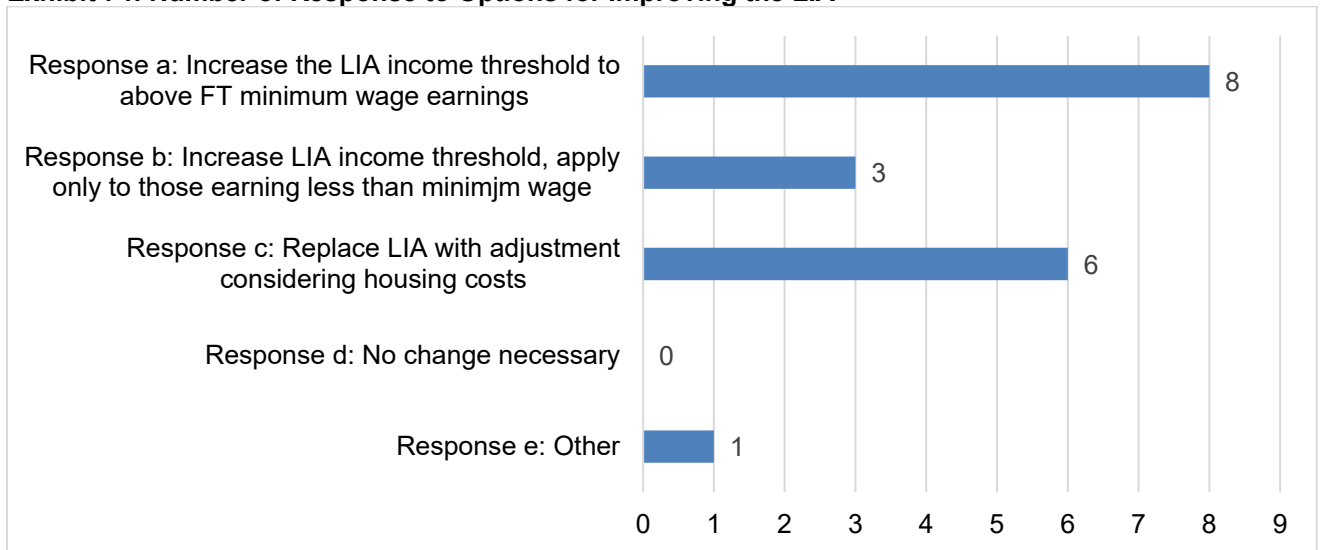
<b>County</b>	<b>Family Law Facilitators</b>
Kings	1
Los Angles	4
Orange	1
Santa Cruz	1
San Diego	1
<b>Non-case sample counties</b>	
Amador	1
Contra Costa	1
Marin	2
Monterey	1
Nevada	1
Riverside	1
Sacramento	1
<b>TOTAL</b>	<b>16</b>

The next two questions were polling questions, presented using Mentimeter. Although more than 30 people participated in the focus group, only 18 people responded to the Mentimeter poll. The questions and results follow.

**Question 2: Which ONE statement do you most agree with about improving the Low-Income Adjustment (LIA)?**

- a) The LIA income threshold should be increased so it always applies to a parent working full-time at the state minimum wage.
- b) The LIA income threshold should be increased, but the LIA should only apply to parents who don't have the capacity to earn full-time, minimum wage earnings.
- c) The existing LIA should be replaced with an adjustment that considers California's housing costs.
- d) No changes to the current LIA are necessary.
- e) Other \_\_\_\_\_

**Exhibit 74: Number of Response to Options for Improving the LIA**



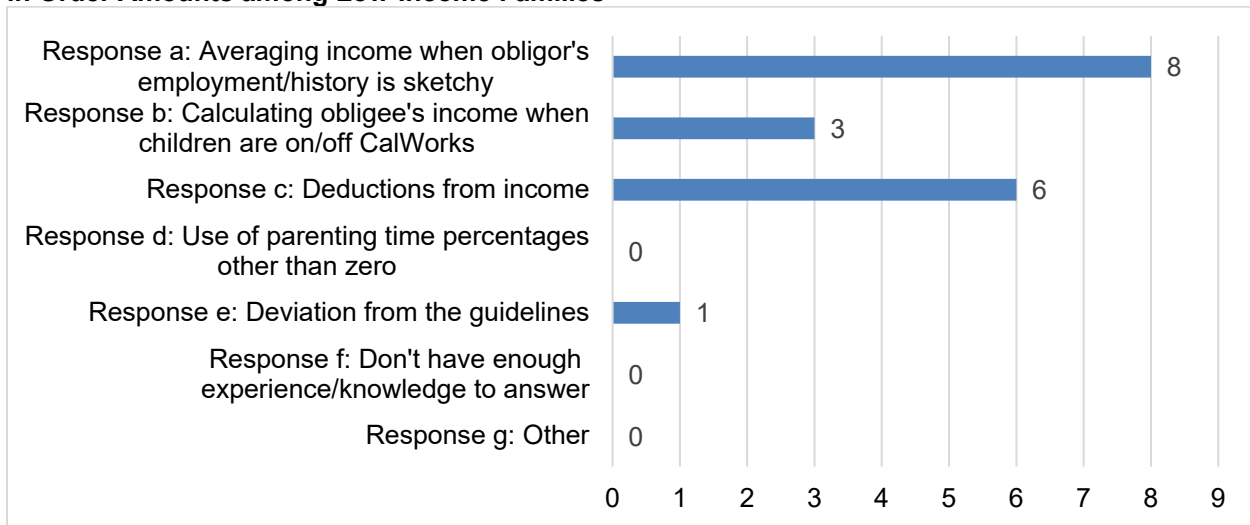
The poll respondent who selected “e” said the LIA should be adjusted to take into account the total cost of living, not just the cost of housing.

**Question 3: Based on your experiences, what other factors typically contribute to differences in order amounts among low-income families. (Check all that apply.)**

- a) The averaging of income when the obligor’s current employment or earning history is sketchy
- b) Calculating the obligee’s income when the children are on/off CalWORKs
- c) Deductions from income
- d) Use of parenting time percentages other than zero
- e) Deviation from the guideline
- f) Don’t have enough experience or knowledge to answer question
- g) Other \_\_\_\_\_



**Exhibit 75: Number of Responses to Question 3: What Factors Typically Contribute to Difference in Order Amounts among Low-Income Families**



After each question, CPR and PK facilitated follow-up discussion.

### **Thematic Analysis of Family Law Facilitator (FLF) Focus Group Discussion**

The following themes arose during the focus group discussion of Self-Help Center staff and Family Law Facilitators.

#### **The guideline should account for differences in cost of living, especially housing costs**

Focus group participants emphasized the high cost of housing and the variation in cost of living across the state. Based on responses to question two about whether and how the LIA should be improved, most FLFs agree that the LIA threshold should be increased so that it applies to parents earning minimum wage. The other suggestion is to replace the LIA with an adjustment that considers cost of living. Participants who provided additional explanation described how costly food and housing are, and how variable they both are based on a person's place of residence and specific circumstances. One FLF described a situation where a father was living in a rented room "without kitchen privileges" and the father estimated spending \$50 a day on dine-out food.

When focus group facilitators asked how evidence of earnings and income is determined, participants did not identify any inconsistencies of concern with the practice of averaging income across time periods (e.g., if a seasonal worker only works 11 out of 12 months, their total income over that 11 months would be averaged over 12 months). One participant illustrated income averaging by using an example where the parent is working as a day laborer, which is an employment situation where the parent's income would vary just because of the nature of the work. The parent's income is variable because their work hours are variable. In these instances of variable hours and income, the court takes testimony regarding the average hourly earnings and average hours to determine what income should be used to calculate the child support

obligation. Another said the LCSA can check whether a parent is receiving CalWORKs (public assistance benefits). A different participant said the LCSA can access quarterly income information from the Employment Development Department (EDD), but the information may be outdated.

### **Time share should be settled before support is calculated**

The SHC staff and FLFs expressed that deviation from the guideline occurs when parenting time share percentages are greater than zero. There was no dissent when one participant said that evidence of time share is rarely based on accurate record keeping. The participant went on to say that parenting time share is determined based on parent testimony. Another FLF observed that some payors ask to change their parenting time order once they discover the impact the change would have on the child support calculation. One participant returned the conversation to the variation in cost of living. They indicated they have seen parents argue over time share when they live in different counties—with one parent living in a higher cost-of-living county. The focus group suggested child support calculations could be “more procedurally fair” if the LCSA could settle time share first.

### **Financial hardship deductions are unevenly applied**

Unlike the parent, LCSA, and judicial focus groups, the SHC staff and FLFs said there is too much discretion in the current system. While the other groups seemed to advocate for greater flexibility to account for unique family circumstances, the FLF focus group noted that outcomes can vary too widely. Along the same lines, the FLF focus group said the financial hardship deductions are not applied consistently. They said parents are not aware that they can ask for a financial hardship deduction. They also said that even if a parent is aware, the parent may not be able to effectively advocate for the deduction when they are in court.

### **There were shared perspectives between the FLF focus group and other focus groups**

Participants from each of the four focus groups touched on similar concerns regarding the high costs of housing, great variation in cost of living across California, and the impact of time share on guideline calculations. Even as wages in some California counties have increased, parents continue to face greater housing and child rearing expenses. Each of the focus groups believe that the cost of living should be adjusted and included as a factor in child support calculations. The four groups echoed the concern that a statewide child support formula can lead to obligations that parents cannot pay. The LCSA attorney, commissioner and judge, and FLF focus groups said that deviations are necessary when unique circumstances of a parent or the two households are not accounted for by the standard guideline calculation. All the groups want the guideline to allow for local discretion in applying the guideline or deviating from the guideline—whether it is through stipulated orders, recommendations by the LCSA, or determination by the court.

## **Lessons Learned from Focus Group Outreach**

CPR, PK, and JCC debriefed after each focus group and discussed lessons learned. Three substantive lessons are documented below.

Gain input from more parents, particularly low-income parents. This may include providing more than one focus group opportunity and at different time slots, offering them at different hours of the day, offering larger participation incentives, conducting the outreach and focus groups in other languages besides English, and expanding outreach to other organizations working with parents, particularly low-income parents. An online survey could also be provided. The survey distribution strategy through self-help centers in the 11 counties participating in the guideline review was straightforward and reached 52 parents over the course of three weeks. If a screening survey is used next time, JCC may consider distributing the survey through local community organizations or county public offices such as Women, Infant and Children, workforce centers, fatherhood or parenting programs, and local child support offices. Distribution of the survey to these groups could reach more lower-income parents and increase the likelihood that low-wage working parents would participate in a focus group.

The survey of potential parent participants identified the day of the focus group discussion and listed six time slots on that day from which parents could select. That may have led to a choice overload effect. Parents with income below \$30,000 made multiple selections across the six options. The time slot that most respondents selected, however, was noon. Unfortunately, none of the lower-income families had selected that time.

One potential way to have a broader range of income levels represented among parent focus group participants is to reduce the number of options parents can select. For example, instead of having three time slots during the mid-day period and three time slots during the afternoon, list the option as: morning, mid-day, afternoon, and early evening. Another strategy might be to facilitate more than one focus group with parents. If we had offered two groups, it is possible that more parents could have attended or that monolingual Spanish-speaking parents could have been included in the study. This last point is especially important given the demographics of California and its child support caseload.

### **Facilitating focus groups after completion of the case analysis may lead to more specific feedback from participants**

Focus group questions for the LCSA representatives and child support commissioner and family law judges were based on preliminary findings from the case data collection and analysis efforts. A few participants questioned the preliminary findings. They were uncertain about the application of the LIA and zero orders. Questions based on completed case data analysis with more comprehensive information may have enabled participants to provide more specific feedback.

## Chapter Conclusions

A wide variety of themes emerged from the four focus groups. Some of these themes were present in all the focus groups, but participants' perceptions made the discussions unique.

Participants in the LCSA, Judges and Commissioners, and Family Law Facilitators focus groups all discussed the impact of parenting time on an obligor's child support obligation. While LCSA attorneys, judges, and commissioners believed that parenting time should impact the child support obligation, they also expressed dissatisfaction with the current approach. The LCSA attorneys particularly focused on low-income obligors. Where there is no shared parenting time, they thought the support obligation was too high. Where there is shared parenting time, and the custodial parent has no or little income, they felt the adjustment has too little impact on the obligor's support obligation. Family Law Facilitators also noted that parenting time had a significant impact on the support calculation and "did not work" in certain circumstances. They raised concerns similar to those raised by the LCSA attorneys. They also noted that their responsibility to determine the level of actual parenting time was time-consuming, as both parents tend to contradict each other. The judges and commissioners noted a similar issue. They said that evidence of parenting time share percentage is often challenging for courts to obtain. Even when submitted, parenting time share information can be contradictory.

Participants from all four focus groups emphasized a need for an adjustment in the guideline based on differences in cost of living. Parents believed the adjustment should be based on where the child lives. Family Law Facilitators opined that the guideline should give special attention to housing costs. LCSA attorneys, judges, and commissioners communicated the need for a higher LIA threshold, as parents are having difficulties supporting themselves financially and complying with their child support obligations. Judges and commissioners proposed a calculator with a regional adjustment to the LIA to account for individual disparities parents face, which could result in higher compliance with obligations.

Especially in the wake of COVID-19, LCSA attorneys and courts have reached out to parents via text message and email encouraging them to stipulate to a support amount or participate in their cases. These efforts have led to increased parent participation and increased parent response.

LCSA attorneys, judges, and commissioners supported early intervention with parents and communication by electronic means. Both the LCSA and judges and commissioners focus groups believe improved outreach to parents has resulted in decreased default rates and a decrease in income imputation and income presumption. As an added benefit, LCSA attorneys believe court file documentation will increase if parents can e-file their responses.

In conclusion, the biggest proposed changes to the child support guideline to increase affordable child support obligations and compliance with those obligations were:

- Continued improved outreach to parents via email and text message;
- An increased income threshold for the LIA;

- A reexamination of the impact of shared parenting time on low-income parents, especially when the custodial parent has little or no income; and
- A calculator with a regional adjustment to the LIA

## Chapter 7: Conclusions and Recommendations

This report documents the findings from the 2021 review of the California child support guideline. California provides a statewide uniform guideline that is to be applied presumptively in any judicial proceeding where child support is an issue. The guideline may be rebutted if the application of the formula would be unjust or inappropriate. Federal regulation requires each state to have a rebuttable presumptive guideline with state-determined deviation criteria.

Additionally, federal regulation requires states to review their guideline at least once every four years. State statute also requires periodic guideline reviews. The review must consider economic data on the cost of raising children, the analysis of case file data, and input from a wide range of stakeholders. The expectation is that the state will use the information to develop recommendations that ensure the guideline results in appropriate child support orders, and that deviations from the guideline are limited.

The guideline applies to both IV-D cases and non-IV-D cases. IV-D stands for Title IV-D of the Social Security Act that enables the government child support program, including local child support agencies (LCSAs) in California, to establish and enforce child support orders. IV-D cases are also sometimes referred to as AB 1058 cases for the California legislation that created the Child Support Commissioner and Family Law Facilitator Program and the unique statutory scheme for LCSAs to establish child support judgments.<sup>480</sup>

### Major Conclusions

Conclusions are drawn from the analysis of case file data, economic data on the cost of child rearing, labor market data; legal analysis of the federal requirements of state guidelines; and the findings from focus groups with various stakeholders. The low-income adjustment (LIA) was also analyzed in the context of the new federal requirement of state guidelines to provide an LIA and whether California's existing LIA is adequate.

#### Analysis of Case File Data

Case file data were obtained from two data sources: a random sample of 1,205 orders from court files in 11 counties; and a data extract of 123,880 IV-D child support orders from the DCSS automated system. The courts who participated in the case file review were selected to represent the state's diversity in county size and regions and other considerations including the use of electronic case management systems. The data extract is statewide. Both samples were selected from child support orders established or modified in 2018 that resulted in a new or modified child support order. Using 2018 as the base sample year also helped to avoid any anomalies due to the COVID-19 pandemic. With a few exceptions, a guideline calculation should have been made for each of these orders, as well as a decision to either apply the guideline calculation or to deviate from the guideline calculation. If a deviation is made, the court must state its reasons in writing or on the record.

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<sup>480</sup>Family Code sections 4250-4253 and 10000-10015.

Payment data were collected for the 12 months after the effective date of the new or modified order. Since each order has a different effective date, payment data are not from the same 12-month period. For most cases, their payment sample period was prior to the COVID-19 pandemic. The court case file data included both IV-D and non-IV-D orders. The sample of 1,205 court cases contained 594 non-IV-D orders and 611 IV-D orders. Due to data limitations, payment data were obtained from the other data source: the data extract from the DCSS automated system. The extract included IV-D orders only. Not only did DCSS provide payment data from these cases but provided information on whether the order was entered through a default judgment, whether income was presumed to the obligor, and whether the low-income adjustment was applied. The DCSS automated system does not track information for non-IV-D orders. There is no other data source that can be used to track the rate of child support compliance for non-IV-D orders. Data were not matched between the two sources.

### **Analysis of Federally-Required Data Elements**

The 2016 federal rule changes require states to analyze more data as part of their guideline review. The federally-required data fields are guideline deviations, default judgments, income imputation/presumption, and the application of the low-income adjustment; and payments by whether the order was established by default, income was imputed or presumed or the low-income adjustment was applied. The expanded data requirements aim to provide states with more information that can be used to recommend changes that encourage the use of actual income over income imputation/presumption, limit defaults and appropriately adjust for low income.

#### ***The Guideline Deviation Rate Is Not Statistically Different from the Last Review***

This study found a guideline deviation rate of 15 percent, less than the last review (17 percent), but the difference was not statistically different. It is also less than that of other states. Other deviation patterns are similar to those of previous reviews: the deviation rates are higher among non-IV-D orders than IV-D orders and stipulated orders than default or contested orders, most deviations are adjusted downward from the guideline-calculated amount, and the most common reason for deviations is stipulation.

There is some concern, however, that all deviations are not being recorded in writing, rather they are part of oral record. Data were only collected from written records. This was also an issue for previous reviews. The limitation is more likely to exist among non-IV-D orders than IV-D orders, and stipulated orders than orders set through default judgments or contested hearings. The lack of written information from the case file for non-IV-D and stipulated orders may understate the actual deviation rate for these case types.

#### ***The Percentage of Orders Entered by Default Has Decreased***

Due to the 2016 changes, federal regulation requires states to measure the frequency that orders are entered by default. The intent is to lower default rates and better engage obligors in the child support process. Engaged parents are more likely to provide accurate income information, notify the agency of address changes, and take other actions that prevent the need for child support enforcement actions and better serve children.

This review found an overall default rate of 23 percent, and a default rate of 34 percent among IV-D orders and 12 percent among non-IV-D orders. These are statistically less than the default

rates found from the previous review. The rates from the 2018 review were 36 percent among all court-sampled orders, 47 percent among IV-D court-sampled orders, and 24 percent among non-IV-D court-sampled orders. Stakeholders participating in the focus groups attributed the reduction to LCSA outreach, the use of text messaging to remind parents of important dates, information provided by Family Law Facilitators and other actions to better engage parents.

### ***Rates of Income Imputation/Presumption Are Low***

The 2016 federal rule changes now require states to measure the frequency that income is imputed. Unlike most states and the federal regulation, California discerns between income imputation and income presumption. For federal purposes, they are both a type of income imputation. In California, income may be imputed due to a variety of circumstances. The most common is imputation at potential earnings because the parent is voluntarily unemployed or underemployed. State statute provides that income must be presumed at full-time, minimum wage earnings in a IV-D case where the obligor's income or income history is unknown to the LCSA when preparing a proposed judgment as part of a child support complaint. In short, by law, income presumption is limited to IV-D cases.

The obligor's income was known to be imputed in only 2 percent of the court case files (both IV-D and non-IV-D) and income presumption was noted in only 5 percent of the IV-D court case files. These rates are less or about the same as the rates found for the previous review. In all, there has been an uptick in the use of actual income: the source of the obligor's income used in the guideline calculation was the obligor's actual income among 70 percent of court case files. The comparable rate for the last review was 56 percent. Still, the source of obligor's income used for the guideline calculation was unknown, not specified, or other for 26 percent of the court case files. The rate was slightly higher for obligees: 29 percent. Both rates are comparable to those from the last review.

### ***The Low-Income Adjustment (LIA) Was Applied More Frequently in 2018 than the Previous Review, but That Trend Is Not Likely to Hold Today***

The LIA was applied to 18 percent of the court case sample. The LIA application rate for the previous review was 11 percent. The percentage of eligible obligors also increased. Undoubtedly, this was due to the annual cost-of-living increase to the LIA income threshold. As the LIA income threshold increases, more obligors become eligible.

For the data sample years, the LIA income threshold (which is based on net disposable income) was \$1,692 per month in 2018 and \$1,755 per month in 2019. In those years, the LIA income threshold was more than after-tax income from full-time, minimum wage earnings. As a result, minimum-wage workers were eligible for the LIA. Recently, increases to the state minimum wage have surpassed increases to the LIA income threshold. The 2021 LIA income threshold is \$1,837 per month. After-tax income from full-time employment at the 2021 state minimum wage is \$2,040 per month assuming the obligor's tax filing status is single. The LIA application rate is probably lower today because the LIA income threshold is less than after-tax income from full-time, minimum wage earnings.



### ***The Majority of Obligor with IV-D Cases Make Payments***

Most (89 percent) obligors who owed child support on an IV-D case in the twelve months following order establishment or modification made at least one payment. The median amount paid over the twelve months was \$3,300. The percentage of obligors who paid and the median amount paid were lower among orders entered by default, when income was presumed to the obligor, and when the low-income adjustment was applied.

### ***Other Major Findings***

- The median order amount has increased since the last review: It increased from \$300 per month to \$456 per month.
- About one fifth (21 percent) of orders are set at zero. This is a decrease from the last review, which was 25 percent.
- Just over half (56 percent) of orders are for one child, 31 percent are for two children, 9 percent are for three children, and 4 percent are for four to six children. There were no orders for seven or more children in the court-sampled orders. The highest number of children in the DCSS data extract was nine.
- Incomes tend to be very low in IV-D cases. The median net incomes of obligors and obligees with IV-D orders were \$1,698 per month and \$1,285 per month, respectively. These median incomes are below 175 percent of federal poverty levels. In contrast, the median incomes of parents with non-IV-D orders were roughly twice as much as those with IV-D orders.
- Zero timesharing is still the most common timesharing arrangement when calculating support for IV-D orders. Just over half (54 percent) of IV-D orders are calculated indicating the child spends no time with the obligor. In contrast, most (80 percent) of non-IV-D orders indicate a timesharing arrangement other than zero.

### **The Guideline Formula and Economic Data on Cost of Raising Children**

Child support formulas are part policy and part economic data. Some of the major policy premises of the existing California formula are both parents are financially responsible for the support of their children, each parent should provide support according to the parent's ability, children should share in the standard of living of both parents, and adjustments for shared physical responsibility of the children should reflect the increased cost of raising the children in two homes. To this end, the existing formula considers each parent's net disposable income, the percentage of time the child is with each parent, and other factors. The existing formula is based on economic studies of child-rearing expenditures conducted in the 1980s. Those studies found that families devote about 25 percent of their total expenditures to raising one child. That percentage has been examined each guideline review using more current economic data. In general, the more current studies do not overwhelmingly find that the percentage has changed significantly.

The existing formula provides that a percentage of the total net disposable income of the parents be allocated for child support. This percentage is called the “*K-factor*” to guideline users, albeit the term is not specifically used in the guideline.<sup>481</sup> Mathematically, each parent is responsible for their prorated share with some adjustments to consider the “approximate percentage of time that each parent has primary physical responsibility for the children.”<sup>482</sup> The *K-factor* varies by the total net disposable income of both parents. The highest *K-factor* (which is 0.25 for one child) applies to the income band that considers net disposable incomes of both parents ranging from \$801 to \$6,666 per month. For income bands above this, the *K-factor* gradually declines to 0.12 for one child.

### ***Economic Studies Used for Analysis***

Over a dozen studies of child-rearing expenditures and costs were reviewed. There are two types of studies reviewed. Studies on the cost of meeting basic subsistence needs were reviewed when assessing the low-income adjustment. Most states including California, however, do not base their guideline formula or schedule on the cost of basic subsistence needs. Rather, they base them on studies on what families of comparable incomes and family size spend on children. The premise is that child support should provide for a higher level of support when the obligor’s income can afford the obligor of higher standard of living.

Most of child-rearing expenditures study were conducted using the Consumer Expenditure Survey (CE) that is a nationally-representative sample, and about five years of data to achieve a sufficient sample size. Until recently, the CE did not measure data for any state separately. The CE began providing state-specific measurements for California and other large states beginning in 2017. The review did consider studies measuring the cost of basic subsistence needs in California, however.

The studies vary in their data years examined and the economic methodology used to determine child-rearing costs and expenditures. Economists do not agree which methodology best measures actual child-rearing costs. Some methodologies rely on direct approaches by trying to enumerate each expense for the child (e.g., food and clothing). Other methodologies consist of indirect approaches. The indirect methodologies are necessary because the vast majority of expenditures (e.g., housing, food and transportation) are consumed by both children and adults living in the same household. The child only consumes a share of these expenses. When using the study results to assess the adequacy and appropriateness of state guideline levels, most states examine whether their guideline amounts are generally in the range of the study result. If their guideline amounts are below most of the results, the guideline amounts are considered to provide an inadequate amount of support, and increases are recommended.

### ***The Economic Analysis Does Not Suggest Increasing Guideline Percentages***

The newer studies do not suggest that an increase to the formula is warranted despite cost of living increasing over time. The reason for this is that the formula is expressed as a percentage of

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<sup>481</sup> The guideline (Fam. Code, 4055(b)(3)) states that the “K” which is either “one plus H% (if H% is less than or equal to 50 percent) or two minus H% (if H% is greater than 50 percent) times” the *K-factor*. See page 18 for more detail.

<sup>482</sup> This mirrors the language used in (4055(b)(1)(D)).

net disposable income (where the percentage is the *K-factor*), so it adjusts with changes in income over time.

### ***Multipliers for More Children and K-Factors Could Be Tweaked***

Some of the multipliers to adjust for more children are slightly above some, but not all, of the economic studies that were reviewed. The California multipliers are generally higher than those of other states examined. The guideline percentages (*K-factors*) at middle and higher incomes are also above some of the percentages indicated by economic evidence. The existing California guideline provides multipliers for up to 10 children. Most state guidelines cover up to six children. For larger family sizes in these state guidelines, the six-child amount is applied or it a guideline deviation factor.

Another reason to reconsider the multipliers for larger families is they can result in child support orders of 50 percent or more of the obligor's net disposable income for three or more children in the low- and middle-income ranges. This generally exceeds what can be legally withheld from the obligor's paycheck according to the Consumer Credit Protection Act (CCPA). Some states cap the support at a percentage of income either through their formula or providing it as a deviation factor. The premise is that child support should not be set higher than can be collected through wage garnishment.

### ***The Premises Underlying the Formula Are Not Transparent and May No Longer Be Appropriate***

Although the current guideline formula is mathematically efficient, it is not transparent and does not clearly relate to the underlying premises of the guideline. Transparency is necessary to review whether the underlying premises are still appropriate. Unlike other state guideline formulas, the California formula does not clearly identify how much the obligee is expected to contribute to the child, the total amount that is expended for children of that family size and level of total net disposable income, or the amount that the order is reduced to account for timesharing.

Some of the major underlying premises of the formula concern the income shares model and the adjustment for parenting time. The income shares guideline model, which is the model used by vast majority of states including California, presumes each parent is responsible for their prorated share of what would have been spent on the child in an intact family with income equivalent to the combined incomes of the parents. To that end, the income shares guidelines rely on economic data from child-rearing expenditures from intact families. Some individuals have concerns with using estimates of expenditures from "intact families" because it is not representative of the diversity of families today; specifically not all children today have ever lived in an "intact", two-parent household. Most states applying the income shares model, including California's application, provide adjustments to consider the current circumstances of the families (e.g., provide adjustments for timesharing, a parent's additional children for whom the parent has a financial responsibility to support, and a low-income adjustment). Further, single-parent families devote the same dollar amount as intact families to child rearing, but they devoted a higher percentage because they have less income than dual income households.

The California formula adjusts for timesharing by calculating a theoretical order for each parent, then offsetting them. The formula also includes an adjustment to base support because it costs

more to raise a child in two households. Stakeholders participating in the focus groups conducted for this project criticized this approach for providing an insufficient adjustment when the obligee had no to little income. Parent stakeholders thought the adjustment should equalize the standard of living experienced by the child across households. There are also economic criticisms of the approach including how it determines duplicated child-rearing expenditures (e.g., both parents incur housing expenses for the child).

### **Low-Income Adjustment (LIA)**

Child support helps many low-income families. Still, many obligors are also low-income and cannot even provide for their own basic subsistence needs. Setting appropriate guideline amounts for low-income families requires a delicate balance. Recent changes in federal regulation now require state guideline to consider the basic subsistence needs of the obligor through a low-income adjustment such as a self-support reserve. Federal regulation also gives states the option of extending the adjustment to custodial parents. The new federal requirement is based on research that finds that setting support beyond what a low-income parent has the ability to pay does not result in higher child support compliance, contributes to unpayable debt, reduces employment, increases underground activities, crime, incarceration, recidivism, and reduced contact with their children. Additionally, setting orders amounts at levels that low-income obligors can pay avoids the triggering of automatic enforcement mechanisms (e.g., driver's license suspension) that may have other repercussions (e.g., impede work or contact with the child).

#### ***The LIA Income Threshold Is Too Low***

The California formula provides a range for the low-income adjustment. The highest amount is the guideline-determined amount. The lowest amount is a proportional reduction to the guideline amount.<sup>483</sup> The lower the income, the larger the adjustment. The closer the obligor's net disposable income is to the LIA income threshold (\$1,837 per month in 2021), the adjustment decreases to a nominal amount. Although the LIA is indexed for changes in the cost-of-living, it no longer applies to minimum-wage earners because increases to minimum wage have outpaced annual LIA changes. The LIA can leave an obligor with little income when there are many children and the obligor's income is just above the LIA income threshold.

The California LIA is less effective at reducing orders for more children than other methods typically used by other states because it is not sufficient to offset the multipliers for more children. (On the other hand, more children cost more.) The LIA income threshold is low compared to California housing costs. It is less than the Fair Market Rent (FMR) of an efficiency apartment in five California counties. Representing the 40<sup>th</sup> percentile of regional rent, the U.S. Department of Housing and Urban Development calculates regional FMRs for administering housing assistance programs. In general, even when the LIA is applied, the obligor does not have sufficient income to pay for rent, food, and the full child support order.

#### ***The First Two Income Bands of the K-factor Formula Limit the Effectiveness of the LIA***

The income bands of the *K-factor* formula have not been updated since the formula was adapted in 1993. The first income band for the total net disposable incomes of both parents (\$0 to \$800

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<sup>483</sup> Specifically, the lowest amount is the guideline-calculated amount multiplied by the ratio of the obligor's net disposable income to the LIA income threshold and the guideline-calculated amount.

per month) was obviously intended to produce lower amounts for parents with incomes near federal poverty levels. Since then, the federal poverty level and the state minimum wage has more than doubled. Due to this, very few families fall into the first income band. Instead, most low-income families fall into the second income band of the *K-factor*, which has the highest percentage of income assigned to child support, 25 percent). This negates the effectiveness of the LIA.

### ***Other States Use a Different Approach***

Most states rely on a self-support reserve as their LIA. A self-support reserve test can be conducted at the end of the guideline calculation. A state-determined self-support reserve (e.g., 150 percent of the federal poverty guideline for one person) is subtracted from the obligor's income. If the remainder is more than the guideline-calculated amount, the obligor has sufficient income to meet their basic subsistence needs and pay the guideline-calculated amount. If the remainder is less than the guideline-calculated amount, the order amount is adjusted downward. Some states even adjust it to zero. One of the major strengths of the self-support reserve test is that it does not have an income cap, so can apply to higher incomes when appropriate (e.g., orders covering a large number of children or when the obligor's share of the work-related childcare expenses is a large amount). Another strength is that it is unaffected by the obligee's income and the timesharing arrangement, which was a criticism heard in the focus group with professionals. The amount of the self-support reserve and its application vary considerably among states. Both are at state discretion.

Few states exercise the federal option to extend their LIA to the custodial parent because it doesn't always benefit families. Extending it generally precludes the use of the LIA for the obligor. If the custodial family has very little income, they may be eligible for CalWORKs (which is California's Temporary Assistance from Needy Families- TANF program). TANF requires that child support rights be assigned to the state. If the custodial family receives CalWORKs and if the LIA is not applied, the low-income obligor faces a higher order, and their payments are distributed to the state.

### **Analysis of Labor Market Data and Impact of the Guidelines**

Federal regulations require the analysis of the impact of the guideline amount among families with incomes less than 200 percent of federal poverty guidelines and labor market data.

### ***The California Guideline Produces Amounts Higher than Most States***

In general, the existing California LIA produces orders higher for low-income cases than the guidelines of neighboring states and other states with high living costs.

### ***Many Low-Paying Jobs Offer Less than 40-Hour Workweeks and Have High Turnover***

Many obligors have limited earning capacity. Despite increases in the state minimum wage, there are many low-paying jobs in California. Many are in industries where workweeks are less than 40 hours per week, there is no sick pay or paid vacation days, and there is high turnover. The average hours worked per week in California is 35 hours. Average hours are less for certain industries (i.e., entertainment and hospitality). In sum, the labor market evidence suggests that presumption of a 40-hour workweek at the state minimum wage is not a realistic scenario.

### **Legal Analysis: Meeting New Federal Requirements**

The 2016 changes to federal regulation included many changes that affect how states define income available for child support including the imputation and presumption of income. The amended regulation requires that child support guidelines must, at a minimum, provide that the child support order be based on the noncustodial parent's "earnings, income, and other evidence of ability to pay." The regulation further requires that the order must take into consideration "all earnings and income of the noncustodial parent (and at the State's discretion, the custodial parent)." If imputation of income is authorized, the order must take into consideration "the specific circumstances of the noncustodial parent (and at the State's discretion, the custodial parent) to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case." The regulation also requires that the guideline provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders.

### ***California Complies with Some but Not All of the New Requirements that Must be in Effect by September 2024***

The legal analysis found that that California Family Code section 4058(b) complies with the federal regulation regarding the definition of income, but California does not fulfill the other two provisions: consider the individual circumstances of the obligor when income imputation is authorized and provide that incarceration is not voluntary unemployment. Although California has relevant case law, it must have "statutes, rules or procedures which have the force and effect of law" and meet the explicit provisions of 42 United States Code, section 667(a) and the implementing regulations. Section 667(a) requires each state, as a condition for having its state plan approved, to establish child support guidelines by law or by judicial or administrative action. Family Code section 4058 which provides for income imputation at earning capacity considers some but not all of the factors listed in the federal regulation. The presumption of income in Family Code section 17400(d)(2) does not require a consideration of any of the individual circumstances of the obligor as outlined in federal regulations.

### **The Focus Groups Provided Context to the Data Analysis and Made Recommendations**

Focus groups were held to gain input from stakeholders. There were four groups: child support commissioners and family law judges; attorneys from LCSAs and DCSS administrators and staff; parents who are owed and who owe support; and self-help center and Family Law Facilitator staff. The questions aimed to gain context to some of the findings from the case file data and for each group to identify changes they would recommend to California's child support calculation. All focus groups were conducted through videoconference.

The professionals provided many insights on the data analysis. Some of the common recommendations of the focus groups with professionals were to update the low-income adjustment (LIA), provide for consideration of high housing costs (even as a deviation factor), and lessen the increase in the guideline calculation for low-income obligors when the obligee had

no income. Many professionals expressed issues with the parenting time adjustment, but the issue varied among groups. Some thought the adjustment had too much of a weight in the child support calculation and others thought it provided an inadequate adjustment to the obligor when the obligee had no to little income. Another issue that emerged in the focus group with commissioners and judges was the treatment of additional expenses (i.e., child support add-ons) such as work-related child care expenses. The current provision provides that these expenses be split equally between the parties, but can be prorated between the parties at the request of a party. Prorating is consistent with how base support is determined and the parenting time adjustment is applied. Parties often do not know they have to request the proration.

The focus group of the parents included a mixture of parents receiving and paying child support. This is unprecedented. In child support research usually the two groups are separated, albeit they were usually conducted in person. The mixture did not appear to be an issue for focus group participants. The parents agreed on many issues such as that child support should be a shared responsibility and that the guideline should consider regional differences in cost of living. Many of the participants would like the agency to use more of their automated sources to verify and discover income.

The focus groups are not the only opportunity for stakeholder input. A preliminary version of this report was posted on the JCC website for public comment. The comments are attached to the final report.

## **Recommendations for Legislative Changes**

### **Recommendations to Move California into Compliance with New Federal Requirements by September 2024**

- Provide that incarceration is not voluntary unemployment; and
- Provide for the consideration of the factors listed in federal regulation when income imputation or presumption is authorized.

### **Recommendations to Improve the LIA**

- Revise the current LIA to increase the threshold to ensure protections for low-income obligors and revise the income bands for low-income parents..

There are three components to revamping the LIA. The first is to update the LIA income threshold, but continue to allow for cost-of-living increases. Alternatively, it could be updated based on:

- A percentage of the federal poverty guidelines for one person,
- Median Fair Market Rent (FMR) in California, or
- The gross state minimum wage.

The poverty guidelines and FMR are updated annually. The poverty guidelines are updated by February of each calendar year and the FMR is typically updated in September before the next federal fiscal year begins. The advantage to using the gross minimum wage as the LIA threshold, is that all full-time minimum wage earners would qualify for a LIA adjustment.

The second element is to modify the bottom income bands of the *K-factor* formula so the total net disposable income of the low-income parents does not put them in the income band that assigns the highest percentage of income (which is called the *K-factor*) to support. This requires increasing the income ranges of the lowest band(s), but could also benefit from changing the *K-factor* for those income bands. An additional income band could also be added at lower incomes. The following recommendation would provide the most protection for low-income obligors.

Total net disposable income per month		<i>K-factor</i> (amount of both parents' income allocated for child support)	
Current	Recommended	Current	Recommended
\$0 - \$800	\$0-\$2,900	$0.20 + TN/16,000$	$0.165 + TN/82,857$
\$801 - \$6,666	\$2,901-\$5,000	0.250	$0.200 + TN/10,000$
	\$5,001 - \$6,666		0.250

The third part is to address the adverse impact of the multiplier by capping support or providing a deviation factor for support exceeding a threshold relating to the CCPA limit.

Additionally, it would be helpful to provide guidance for deviations for extraordinary housing costs in certain counties. The intent is to recognize California's high housing costs, but provide a barometer so it is consistently considered across the state and provides predictable amounts to parents. The deviation guidance could refer to the HUD fair market rents.

### **Other Recommendations**

There are several other recommendations that are not necessary to comply with federal regulations but could improve the transparency of guidelines and data collection.

#### ***Changes to Judicial Council Forms***

In order to ensure transparency and more easily demonstrate compliance with the federal regulations, the Judicial Council should review its forms to include a checkbox to record whether imputed income was used and space for noting the factors supporting the imputed amount. In addition, the Judicial Council should revise its forms to allow for the LCSA to provide information about the source of the income used when making requests to establish or modify a child support order.

#### ***Other Recommendations to Improve the Formula***

There are many other recommendations to improve the formula that require more policy considerations than economic data. This includes making the formula more transparent and revisiting the underlying premises of the California formula to ensure that they are appropriate for today's circumstances. In turn, this could mean adapting a different guideline formula, using a specific approach to measure child-rearing expenditures, keeping the existing formula but better match the K-factors to the findings economic studies, using a different approach to adjust for timesharing, revamping or limiting the multipliers for more children, and other recommendations.



### ***Recommendations for Conducting Next Review***

- If the sample size is sufficient, a California-specific study of child-rearing expenditures should be conducted using the California CE data.
- California should continue to explore how to improve the data collected for the study. This may include sampling from more counties, increasing the sample size, collecting data from other case management systems, collaborating with DCSS to do data validity checks across the two data sources. It also could mean taking measures to improve court records or adding fields to forms to note whether income was imputed.
- There should be more opportunities for stakeholder input. This could consist of an internet survey of all stakeholders conducted prior to completing the preliminary report. There should also be more focus groups with parents and a consideration of how to offer a financial incentive for their participation.

### **Next Steps**

Ultimately any guideline changes are up to the Legislature. Federal regulations require the publication of the date of the next review and the effective date of any guideline changes resulting from the review. California' next review is scheduled for 2026. Any guideline changes and the date they become effective is at the discretion of the Legislature.

## Appendix A: Federal Regulation

### Exhibit A-1: 45 C.F.R. § 302.56 Guidelines for setting child support orders

(a) Within 1 year after completion of the State's next quadrennial review of its child support guidelines, that commences more than 1 year after publication of the final rule, in accordance with § 302.56(e), as a condition of approval of its State plan, the State must establish one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support order amounts within the State that meet the requirements in this section.

(b) The State must have procedures for making the guidelines available to all persons in the State.

(c) The child support guidelines established under paragraph (a) of this section must at a minimum:

(1) Provide that the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay that:

(i) Takes into consideration all earnings and income of the noncustodial parent (and at the State's discretion, the custodial parent);

(ii) Takes into consideration the basic subsistence needs of the noncustodial parent (and at the State's discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method determined by the State; and

(iii) If imputation of income is authorized, takes into consideration the specific circumstances of the noncustodial parent (and at the State's discretion, the custodial parent) to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.

(2) Address how the parents will provide for the child's health care needs through private or public health care coverage and/or through cash medical support;

(3) Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders; and

(4) Be based on specific descriptive and numeric criteria and result in a computation of the child support obligation.

(d) The State must include a copy of the child support guidelines in its State plan.

(e) The State must review, and revise, if appropriate, the child support guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support order amounts. The State shall publish on the internet and make accessible to the public all reports of the guidelines reviewing body, the membership of the reviewing body, the effective date of the guidelines, and the date of the next quadrennial review.

(f) The State must provide that there will be a rebuttable presumption, in any judicial or administrative proceeding for the establishment and modification of a child support order, that the amount of the order which would result from the application of the child support guidelines established under paragraph (a) of this section is the correct amount of child support to be ordered.

(g) A written finding or specific finding on the record of a judicial or administrative proceeding for the establishment or modification of a child support order that the application of the child support guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case will be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must take into consideration the best interests of the child. Findings that rebut the child support guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

As part of the review of a State's child support guidelines required under paragraph (e) of this section, a State must:

Consider economic data on the cost of raising children, labor market data (such as unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level for the State and local job markets, the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level, and factors that influence employment rates among noncustodial parents and compliance with child support orders;

Analyze case data, gathered through sampling or other methods, on the application of and deviations from the child support guidelines, as well as the rates of default and imputed child support orders and orders determined using the low-income adjustment required under paragraph (c)(1)(ii) of this section.

The analysis must also include a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment required under paragraph (c)(1)(ii). The analysis of the data must be used in the State's review of the child support guidelines to ensure that deviations from the guidelines are limited and guideline amounts are appropriate based on criteria established by the State under paragraph (g); and

Provide a meaningful opportunity for public input, including input from low-income custodial and noncustodial parents and their representatives. The State must also obtain the views and advice of the State child support agency funded under title IV–D of the Act.

#### Other Provisions of the New Federal Rule that Indirectly Affect Low-Income Provisions of State Guidelines

##### § 303.4 Establishment of support obligations.

(b) Use appropriate State statutes, procedures, and legal processes in establishing and modifying support obligations in accordance with §302.56 of this chapter, which must include, at a minimum: (1) Taking reasonable steps to develop a sufficient factual basis for the support obligation, through such means as investigations, case conferencing, interviews with both parties, appear and disclose procedures, parent questionnaires, testimony, and electronic data sources; (2) Gathering information regarding the earnings and income of the noncustodial parent and, when earnings and income information is unavailable or insufficient in a case gathering available information about the specific circumstances of the noncustodial parent, including such factors as those listed under §302.56(c)(1)(iii) of this chapter; (3) Basing the support obligation or recommended support obligation amount on the earnings and income of the noncustodial parent whenever available. If evidence of earnings and income is unavailable or insufficient to use as the measure of the noncustodial parent's ability to pay, then the support obligation or recommended support obligation amount should be based on available information about the specific circumstances of the noncustodial parent, including such factors as those listed in §302.56(c)(1)(iii) of this chapter. (4) Documenting the factual basis for the support obligation or the recommended support obligation in the case record.

##### § 303.8 Review and adjustment of child support orders.

\*\*\*\*\* (b)

\*\*\* (2) The State may elect in its State plan to initiate review of an order, after learning that a noncustodial parent will be incarcerated for more than 180 calendar days, without the need for a specific request and, upon notice to both parents, review, and if appropriate, adjust the order, in accordance with paragraph (b)(1)(i) of this section. \*\*\*\*\* (7) The State must provide notice— (i) Not less than once every 3 years to both parents subject to an order informing the parents of their right to request the State to review and, if appropriate, adjust the order consistent with this section. The notice must specify the place and manner in which the request should be made. The initial notice may be included in the order. (ii) If the State has not elected paragraph (b)(2) of this section, within 15 business days of when the IV–D agency learns that a noncustodial parent will be incarcerated for more than 180 calendar days, to both parents informing them of the right to request the State to review and, if appropriate, adjust the order, consistent with this section. The notice must specify, at a minimum, the place and manner in which the request should be made. Neither the notice nor a review is required under this paragraph if the State has a comparable law or rule that modifies a child support obligation upon incarceration by operation of State law. (c) \*\*\* Such reasonable quantitative standard must not exclude incarceration as a basis for determining whether an inconsistency between the existing child support order amount and the amount of support determined as a result of a review is adequate grounds for petitioning for adjustment of the order.

## Appendix B: Additional Research on the Cost of Raising Children

This appendix provides a set of estimates of parental spending on children using current data and a methodology that differs from the methodology used for the most current study of child-rearing expenditures. These estimates fill a research gap. When reviewing their guidelines, states find it helpful to compare their guideline amounts to at least two different current estimates that vary in their methodologies used to estimate child-rearing expenditures. This is because economists disagree about which methodology best measures actual child-rearing expenditures. Instead of comparing their guideline amounts to one estimate, states prefer to compare their guideline amounts to a range of credible estimates to determine whether their guideline amounts are adequate and appropriate. The most current estimates of child-rearing expenditures rely on expenditure data collected in 2013-2019 and are estimated using the Rothbarth methodology.<sup>1</sup> The next most current estimates were developed from 2011-2015 expenditure data using the USDA methodology.<sup>2</sup>

The estimates developed in this appendix are developed from the same 2013-2019 expenditures data used to develop the most current Rothbarth estimates. They employ a strategy of examining the family's purchases and allocating their reported outlays to the children. We denote this strategy as 'direct' because, for each family in the sample, an estimate of the family's spending on children is constructed. The USDA has employed this strategy in its annual reports on the expenditures on children by families. While the estimates presented in this appendix share a common methodology with the USDA's approach to estimating spending on children, they do not replicate the USDA's procedures.

Unfortunately, the magnitude of the direct estimates of spending on children is sensitive to how the methodology allocates the family's spending to individual family members. Given the uncertainty over which allocation procedure is correct, an alternative to the direct approach is an indirect approach. The Rothbarth methodology is in an indirect approach. An indirect approach infers the family's spending on children from how the family alters their consumption purchases due to the presence of the children by comparing outlays of families with and without children. The Rothbarth approach infers the total amount of spending on children from how the adults reduce consumption on themselves – adult goods.

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<sup>1</sup> Betson, David M. (2021). "Appendix A: Parental Expenditures on Children: Rothbarth Estimates." In Venohr, Jane & Matyasic, Savannah. (Feb. 23, 2021). *Review of the Arizona Child Support Guidelines: Findings from the Analysis of Case File Data and Updating the Child Support Schedule*. Report to the Arizona Supreme Court Administrative Office of the Courts. Retrieved from <https://www.azcourts.gov/Portals/74/FCIC-CSGR/SupplementalPacket-030121-FCIC-CSGRS.pdf?ver=2021-02-26-161844-187>

<sup>2</sup> Lino, Mark, Kevin Kuczynski, Nestor Rodriguez and Tusu Rebecca Schap (2017). Expenditures on Children by Families, 2015 Annual Report. Report No. 1528-2015. U.S. Department of Agriculture, Center for Nutrition Policy and Promotion, Washington D.C. . Retrieved from [https://fns-prod.azureedge.net/sites/default/files/crc2015\\_March2017\\_0.pdf](https://fns-prod.azureedge.net/sites/default/files/crc2015_March2017_0.pdf). A Florida study uses 2009-2015 data. See Norribin, Stefan C., et al. (Nov. 2017.) *Review and Update of Florida's Child Support Guidelines*. Retrieved from <https://www.courts.ca.gov/documents/lr-2018-JC-review-of-statewide-CS-guideline-2017-Fam-4054a.pdf>.

The most current Rothbarth estimates find that a married couple with one child devotes 24.9 of the family's total spending to the child. This appendix attempts to answer the question, how would the estimated percentage differ using a direct approach to estimating spending on children? We find the answer to depend upon how we allocate the family's largest component of their budget – housing. Prior to 2008, the USDA assumed that each family member equally shared in both the benefits and costs of acquiring housing. This assumption led them to allocate the family's housing on a per capita basis. If we adopt the same assumption, we estimate that 28.8% of the family's total spending is devoted to the children. After 2008, the USDA has changed how they allocate the family's housing outlays. Instead of allocating on an average cost basis (per capita allocation), the USDA has chosen to allocate housing outlays on a marginal cost basis -- how much more housing does the family obtain when they have the children. The USDA assumes that as the married couple has children, they will need to have more bedrooms. The cost of an additional bedroom will reflect what the couple has spent on housing for the child. This change in the allocation procedure leads to less housing being allocated to the children. We estimate that in a married couple with one child, 22.5% of the family's total spending is allocated to the child. Given the uncertainty over which allocation of housing is appropriate, we conclude that our Rothbarth estimates of spending on children is bracketed by the two variations of the direct methods implemented in this appendix. The variations differ in how they measure the child's housing expense: one relies on the pro capita approach and the other uses the cost of an additional bedroom.

All of the estimates indicate that as the family's total level of spending on the family increases, the level of spending on the children will also increase; that is, more dollars are spent on the child as the family's total spending increases. Besides the change in dollars expended, another way to look at child-rearing expenditures is as a percentage of total family expenditures. A percentage is more informative to comparisons to the California formula that also uses a percentage.<sup>3</sup>

Does spending on children as a percentage of the family's total spending change as total spending increases? Our most recent Rothbarth estimates suggest that the percentage of total spending devoted to the children rises slightly with the family's total spending. Our two direct estimates suggest a different trend. When we allocate housing spending on a per capita basis, the percentage of total spending devoted to the children is constant. When we allocate housing using an additional bedroom assumption, families with lower levels of total spending will devote a smaller percentage of their total spending to their children as they become wealthier. But when

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<sup>3</sup> Nonetheless, the comparability is limited. Estimates of child-rearing expenditures are typically expressed as a percentage of total household expenditures; whereas, the California guideline formula relates to the total net disposable income of both parents. Household expenditures will equal net disposable income only if the family spends exactly the same amount as their net disposable income. The data suggests that on average, higher income families do not because they save some of their after-tax income. The data suggests that on average, lower incomes families spend more their after-tax income. How low-income families are able to spend more has not been extensively researched. It is believed they tap into savings or loans.

their total spending becomes roughly three times the Federal Poverty Line (roughly \$63,000), families spend a constant percentage of their total spending on their children.

In the next section, we will elaborate upon the differences between a direct and indirect estimate of spending on children. The following section will describe in detail our implementation of a direct approach: how we choose to assign commodities to the three piles or groups and how we choose to allocate goods in the third group of commodities to the children.

The third section describes the data and sample we will utilize to provide direct estimates of parental spending on children. The fourth section presents our direct estimates of spending on one, two, and three children and examines the question of whether the percentage of total spending devoted to the children varies with the level of total spending – do wealthier families spend more, less, or the same as less wealthy families? We conclude with some observations.

### **Difference between Direct and Indirect Estimates of Spending on Children**

If you ask parents how much they spent on their children, they would probably reply ‘a lot’. But how would one determine how much they did spend? If the parents had kept records of their outlays during a year, they could place the receipts into three piles. One pile would be the receipts for purchases that were exclusively for the children. A second pile would be the receipts for purchases they made exclusively for themselves. A third pile would be for the receipts for purchases that benefited both the children and the parents. To determine how much the parents spent on the children, one would need to devise a procedure to allocate the receipts in the third pile to the children and then add this sum to the total value of receipts in the first pile. We denote this intuitive approach to determining how much the parents spent on the children as direct because this approach produces an estimate of how much each family spent on their children based upon information on the individual family’s spending patterns. This means even when the same allocation procedure is used for all families, there will be variation in the amount of child spending among identical parents. This variation can be used to analyze how other factors such as the number and ages of children or the amount of total family spending affect spending on the children. This is the approach that the USDA has adopted to estimate how much parents spend on their children.

While this approach to estimating how families allocate their family’s total spending to their children is very appealing, there are some practical concerns that must be confronted. The first concern is the relative size of the three piles. One would hope that the vast majority of the family’s total spending would be in the first two piles, so the amount of spending in the third pile would be relatively small, and hence any uncertainty in the allocation procedure would have a small effect on the estimate of child spending. The second concern would be whether there is agreement over what allocation procedure is appropriate to adopt in the allocation of the receipts in the third pile.

Unfortunately, there is reason to have concerns with this direct approach. As we will later demonstrate, the average family with children spends over 90% of the family's total spending on commodities in the third pile and over 40% of their budget on housing alone. If there was widespread agreement on how to allocate this spending, then the relative size of the third pile would be less of a concern, but there is substantial disagreement about how to allocate commodities that have what economists call public good characteristics. These are goods where one family member's consumption of the commodity has little or no effect on the ability of other family members to enjoy the good. There are some researchers that argue that spending on these goods should be allocated equally across all family members to reflect the assumption that all family member equally benefits from the provision of the commodity such as housing. There are others that argue the outlays on the good should be allocated on the basis of how much spending on the commodity increased due to their presence in the family. The difference between these perspectives leads to wide differences in the estimates of how much the parents devoted spending to their children.

Concerns with the direct approach have led researchers to explore other approaches to estimate spending on children. The Rothbarth approach is based upon the observation that parents, in order to make outlays on the children, will have to reduce spending on themselves. By examining how parents adjust their spending in the second pile, Rothbarth argued one can infer how much the parents spent on the children. We denote this approach as indirect because spending on children isn't directly observed in the data but inferred.<sup>4</sup>

To implement an indirect approach such as the Rothbarth methodology, data on the spending patterns of married couples without children is required in order to infer how the parents alter their spending on themselves when children are present in the family. While data on married couples without children could be used to develop the allocation procedures used in the direct approach, the USDA has preferred to develop allocation procedures that rely solely upon data on married couples with children.

As we have noted, the direct approach creates estimates of spending on children at the family level not just for the total level of spending on children but also by type of commodity. For example, the direct approach estimates how much do parents spend on babysitting and education for their children. The indirect approach provides much less information. Since it is based upon an inference, the indirect approaches provide only an estimate of the total level of spending on children. It will not estimate the composition of commodities that the parents have acquired for the children like the direct approach does.

A final difference between the two approaches can be described by considering a subsample of married couples that are identical in the sense they have the same number of children, and their

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<sup>4</sup> Another example of an indirect method is the Engel approach that base their estimates of spending on children on how families with and without children allocate their spending to food consumption.

total family spending is the same. However, the families can and will make different consumption choices reflecting their preferences. In the direct approach, each family's spending on children would be computed based upon their individual spending decisions. To the extent they make different consumption (for example, choose to spend more on food than other families) the estimate of spending on children will differ by family. But because the indirect approach is based upon an inference, the estimate of spending on the children would be the same for all of the families in this subsample even though their consumption decisions were different. In the indirect approach, all families who have the same number of children and have the same total spending for the family will be the same estimate of their spending on their children.

The indirect approach is not without its own set of concerns. In order to make the necessary inferences for the Rothbarth approach, assumptions have to be made about the adult's consumption preferences, and concerns can be raised about whether these assumptions are reasonable to make. Researchers also need to estimate how adults with and without children spend on themselves and how they would change these purchases if they had more to spend in general. To estimate these relationships, empirical assumptions such as the choice of functional form or who is in the analysis sample have to be made. Needless to say, one has to have concern about the indirect because of the difficulty of examining the sensitivity of estimates to the assumptions that have been made.

## **Implementing our Direct Estimation Strategy**

In this section, we will provide a detailed description of how we implemented our direct approach to estimating a family's spending on children.

### **Placing the Categories into Three Groups of Spending**

The data underlying all estimates of child-rearing expenditures from studies conducted in the last 35 years are from expenditure data collected by the U.S. Bureau of Labor Statistics (BLS) for the Consumer Expenditure Survey.<sup>5</sup> When the BLS interviews families, they inquire about the outlays they have made in the three months prior to the interview. Each outlay is coded as a type of consumption outlay corresponding to categories used in the BLS's Universal Classification Code (UCC) titles. To make the data more accessible to the public, the BLS aggregates these reports of outlays into fourteen broad categories of spending. These categories are

- Housing;
- Food;
- Alcohol;
- Apparel;
- Transportation;
- Medical Care (Out of pocket outlays for Health Care);
- Entertainment;
- Personal Care;

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<sup>5</sup> U.S. Bureau of Labor Statistics, *Consumer Expenditure Survey*. Retrieved from <https://www.bls.gov/cex/>.



- Reading;
- Education;
- Tobacco;
- Cash Contributions;
- Personal Insurance and Retirement Contributions; and
- Miscellaneous Outlays.

These categories are quite broad, although there are some components of these categories that are inappropriate for our study. In the ‘Personal Insurance and Retirement Contributions’ the family’s outlays for life insurance is included as well as their contributions to their retirement accounts and payments of Social Security payroll taxes. These last two outlays are considered savings and consequently were eliminated from our definition of the total family outlays for consumption purposes. In the category of ‘Cash Contributions’, the family’s payment of alimony and child support to individuals outside the family are included. These payments were excluded from our definition of ‘Cash Contributions’ because they are excluded from the determination of child support.

In the ‘Transportation’ category, one-time outlays for the purchase of vehicles (down payments and entire purchase price if the purchase is not financed) are included. To be consistent with our previous work, these outlays were excluded from the ‘Transportation’ category and hence also the overall measure of spending.

Examining these fourteen categories, the ‘Alcohol’ and ‘Tobacco’ categories of spending can clearly be placed in the second group of adult-only spending. All other categories appear to fall into the third group of spending, where we will have to allocate the outlays to children and the parents.

The ‘Apparel’ category is composed of five subcategories of men’s, women’s, and children's clothing, footwear and other apparel outlays. Using these subcategories, we could allocate children’s clothing to the first group and men's and women’s clothing to the second group of spending. The only problem with this allocation is that the BLS denotes children outlays for clothing only if the outlay was purchased for a family member who is 15 years old or younger. Clothing purchases for children who are 16 and 17 years old are grouped with clothing expenditures for adults. To address this problem, we attributed a per capita (the number of children 16 and 17 years divided by the number of adults plus the number of 16 and 17 year old) amount of spending for adult clothes to the children aged 16 and 17. This amount was added to children’s clothing and subtracted from adult clothing purchases. The amount of outlays on children’s footwear can be derived from the UCC data but it suffers from the same problem. To address this problem, we used the same correction as we did for clothing. The amount of children clothing and footwear were included in the first group (children only), adult clothing and footwear into the second group (adult only) and the outlays for other apparel purchases into the third group.

The ‘Housing’ category reflects four subcategories of spending: spending to acquire shelter, spending to provide utilities to the home, purchase of household furniture and equipment, and the outlays for domestic services (ranging from cleaners to babysitting). In this very broad category of housing, the use of the UCC codes allows us to identify outlays that can be attributed to children and adults separately. Outlays for infant furniture and equipment is associated with two UCC titles and hence are broken out of housing spending. Babysitting is a component of domestic services that also can be identified and hence placed into the first group. Finally, outlays for the care of adults can be identified by a UCC title and hence placed in the second group of spending. What remains is called net housing and is placed in the third spending group because it benefits both children and parents.

While education may be thought to be an expense incurred only for children, the ‘Education’ category also reflects spending for trade and vocational schools and college. We chose to allocate reported spending on pre-school, primary and secondary schools as child spending and the remainder as adult spending.

We followed the USDA’s judgement that expenditures under the subcategory label of Cash Contributions were not undertaken to promote the interests of the children. Consequently, cash contributions exclusive of payments of alimony and child support would be placed in the second group. Note that the payments of alimony and children were treated similarly as they are treated in child support guidelines – they are excluded from consideration.

Finally, the ‘Miscellaneous’ subcategory contains outlays for gambling and lotteries. These outlays can be identified from the UCC titles and attributed to the second group – adult-only spending. The remaining amount of miscellaneous spending is included in the third group.

The following exhibit reflects how we allocated the BLS spending categories to the three groups of spending in our direct methodology. The total outlays for the family would be the sum of these components.

## Exhibit B-1: Allocation of Total Spending to the Three Groups

### Group One: Child Only

Child Clothing and Footwear  
Babysitting  
Infant Furniture and Equipment  
Pre-School, Primary and Secondary Education; and  
Toys and Playground equipment

### Group Two: Adult Only

- Alcohol;
  - Tobacco;
  - Adult Clothing and Footwear;
  - Adult care;
  - Trade and Vocational Schools, and College Outlays;
- Adult Miscellaneous Outlays;
- Cash Contributions – Alimony and Child Support

### Group Three: Outlays that both Children and Parents Benefit

- Net Housing (Housing – Babysitting – Infant Furniture – Adult Care)
  - Food
  - Net Transportation (Transportation – Outlays for Purchase of Vehicles)
  - Out of Pocket Health Expenses
  - Net Entertainment (Entertainment – Toys and Playground Equipment)
  - Personal Care;
  - Reading;
  - Personal Insurance;
- Other Apparel; and
- Net Miscellaneous (Miscellaneous Outlays - Adult Miscellaneous Outlays).

## Allocation Procedures Commodities in the Third Spending Group

In this section, we will describe how we chose to allocate outlays by the family to the children for the various commodities found in the third group of family spending.

### Net Housing (Spending on Housing that Benefits both Children and Parents)

Prior to their 2008 report, the USDA allocated housing expenses on a per capita basis. A married couple with one child would be assumed to spend 33.3% of housing outlays on the child. If there were two children, then 50% was allocated, and if there were three children, then 60% of the housing outlays were allocated to the children. This approach was justified based upon the perspective that housing is a collectively consumed good where each member can equally benefit from the family's housing. It was believed that if the individual family members equally benefit, then the cost of obtaining that housing should be equally assigned to each family member.

This approach has been criticized because of a belief that the cost of housing should be attributed to family members not on an equal basis but in proportion to the additional housing costs that family members impose upon the family. For example, let us assume that a married couple without children would spend \$10,000 on housing. If they had a child then they would spend \$12,000. From this 'marginal cost' perspective, we would assign \$2,000 (\$12,000-\$10,000)

spending of housing outlays to the child or 16.7% ( $=\$2,000/\$12,000$ ) of the family’s housing expenses to the child. As long as the marginal cost of the child is less than per adult spending in the childless family ( $\$5,000 = \$10,000/2$ ), the marginal cost approach will lead to smaller amounts of housing being attributed to the children than under the per capita approach.<sup>6</sup>

The problem with this marginal cost approach is while we can observe the housing costs that a married couple with a child incurs, how does one obtain the amount that the couple would spend on housing if they were childless? Data on childless married couples would be needed to be ‘match’ to data on the spending on housing by similar childless couples -- they would be the same except they don’t have children. But the question then becomes how would this match be performed? It has been suggested that the match should be performed by taking characteristics of the parents and their income. A match would be a childless couple with the same characters and income. But are these childless couples sufficiently similar? While the childless couple may have the same income, they may be materially better off than the couple with a child. The difference in the housing outlays and total spending of a family with a child and the amount of spending if they didn’t have children would reflect two economic effects. One economic effect would be the impact of children on spending (this is what we want) but the difference will reflect what economists call the “real income” effect; that is, the matched childless couple spends more on housing simply because they don’t have a child. To this end, a simple comparison results in too small of an estimate of the marginal cost of the children.

The USDA has proposed and chose to implement an alternative approach based on the assumption that children are associated with obtaining more bedrooms for the family’s use. Without children, the couple would have a single bedroom. If one assumes that the marginal cost of a bedroom is a constant and we assume that children don’t share bedrooms then the marginal housing costs of the children in the family would be equal to the number of children times the marginal cost of a bedroom. If we denote NC as the number of children, MB the marginal cost of a bedroom and H1 the cost of a single bedroom housing unit then the proportion of housing costs allocated to the NC children would be equal to:

$$\frac{NC \times MB}{H1 + NC \times MB}$$

To obtain estimates of MB and H1, the net housing outlays (housing outlays minus babysitting, infant furniture and equipment, and care for adults) is regressed upon three categorical variables:

- Bed3 = 1 if the home has 3 bedrooms and 0 otherwise;
- Bed4 = 1 if the home has 4 bedrooms and 0 otherwise; and
- Bed5M = 1 if the home has 5 or more bedrooms and 0 otherwise.

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<sup>6</sup> This is the Comanor et al (2015) suggestion that comparison of married couples without and with children would used to allocate not only housing but all goods found in the third group. See *supra* note X.

The regression model is:

$$H_i = \alpha + \beta_3 Bed3_i + \beta_4 Bed4_i + \beta_5 Bed5M_i + \epsilon_i$$

where H is the net housing outlays of the family. The omitted variable is a home with two bedrooms. (Proper use of statistical methods require that models using categorical data do not include all options.)

The parameter  $\alpha$  reflects the average cost of a single and two bedroom housing unit,  $\beta_3$  reflects marginal increase in net housing outlays of adding a third bedroom to either a single or two bedroom unit. While  $\beta_4$  reflects the additional costs of adding two bedrooms to a single or two bedroom unit and hence the marginal cost of the fourth bedroom is equal to  $(\beta_4 - \beta_3)$ . The USDA estimates the value of MB as the average of the marginal cost of adding the third and fourth bedrooms in the housing unit:

$$MB = \frac{1}{2} (\beta_3 + (\beta_4 - \beta_3)) = \frac{\beta_4}{2}.$$

If the marginal cost of a bedroom (MB) is a constant and doesn't depend upon how many bedrooms are already present in the unit, then H1 would equal  $\alpha - MB$ . Hence the proportion of family's net housing outlays assigned to the children would equal:

$$\frac{NC \beta_4}{2 \alpha + (NC - 1) \beta_4}.$$

where NC is equal to the number of children. The sample of couples with children was divided into three equally sized samples based upon the family's before tax income. The regression model was fitted separately for each of the three income groups. While this allocation procedure is in the spirit of the USDA approach, we are not certain that we have implemented their allocation. In our approach, we allocate a proportion of the family's reported housing outlays to the children in the family. Those families with more children (a greater NC) and with more reported housing outlays will have a larger amount allocated to the children than families with less spending. It is not clear but the USDA may allocate a fixed amount – the expected cost of the number of bedrooms used by the children in the family ( $NC \beta_4/2$ ). All families with the same number of children will have the same amount of spending on net housing allocated to the children regardless of how much they spent on housing.

We will present two different allocations of net housing outlays. We will assume a per capita allocation (upper bound) and our interpretation of the USDA approach based upon the assumption of a constant cost of an additional bedroom (additional shelter, utilities, furniture and domestic services outlays) and where children don't share bedrooms but the parents occupy a single bedroom.

## Food

We have chosen to allocate food purchases in the same manner as does the USDA. Every year, the USDA publishes three official food plans to determine the cost of obtaining food. The three plans are denoted as the Low-Cost, Moderate-Cost and Liberal plans where each plan a more generous food budget. (The USDA food plans are used to determine benefit levels for the Supplemental Nutrition Assistance Program and military travel allowances.) In 2021, for a two adult family unit where both are 19 to 50 years old the weekly food budget would be \$122.30, \$151.30, and \$189.30 respectively.

To determine the cost of a food budget, the USDA provides an estimate of the needed amount of food for each family member based upon their age and gender. For children under 12 year old no distinction is made for the child's gender. For children over 11 years old and adults, there are different food requirements for each gender. To determine the family's food budget, the USDA has adopted a two-step procedure. First, for each family member, their needed food amounts are determined and then summed across all family members. The second step is to account for economies of scale in preparing and purchasing food. For families of one, the total food needs are increased by 20% (multiple by 1.20). As the number of families increases, the adjustment for the economies of scale decreases. For families of two the adjustment is 10%, for families of three the adjustment is 5%, and no adjustment is made for families of four. For family sizes of five and six, the sum of family needed consumption is reduced by 5% (multiplied by .95). For seven or more members, the sum of family needs is reduced by 10%.

To allocate food purchases to the children, the family's food requirements dictated by the plan are compared to what the parents would require if they didn't have children. In particular, the percent of the food purchased that is assumed to be spent on the children by a married couple is:

$$\frac{[(FC + FA)(1.1 - .05 NC) - FA(1.1)]}{(FC + FA)(1.1 - .05 NC)}$$

where NC is the number of children, FC is the food requirements of children, and FA is the food requirements of the adults. This formula applies only to married couples with three or fewer children.

The USDA divided their sample into three equally sized groups based upon the family's before tax income. For the bottom third of the sample, they used the Low-Cost food plan, the middle third the Moderate Cost plan and the top third they used the Liberal food plan.

The percentage of food purchases allocated to the children will vary depending upon the ages of the parents and their children, the number of children and the food plan. For example, let us assume that both parents are between 19 and 50 and they have a 6 year child. If we use the Low-Cost plan then the weekly food requirements of the child would be \$48.50 while the food needs of the parents would be \$111.20 (\$59.50 for the father and \$51.70 for the mother using the USDA amounts that differ by gender). The percentage of the food purchased then assigned to the

child would equal 27.1%. If the child is a 17 year old male instead then the percentage allocation would be 30.4%. But if child was a 17 year old female then the percent allocated to the child would be 28.0%.

If the child was 6 years old but we used the Liberal plan instead of the Low-Cost plan, the percentage allocated to the child would be 24.9% instead of 27.1%. In general, the more generous the food plan, the less is allocated to the child.

Now if there are two children, one is 6 and the other is 10 years old, the weekly food requirements of the children would be \$99.80 (\$48.50 and \$51.30). This would imply that 42.0 % of the food purchases would be allocated to the two children or on a per child basis, 21.0 % to each child separately. In general, more children in the family will lead to smaller percentage adjustment on a per child basis.

The use of the food plans to allocate food purchases to children will be less than what is implied from a per capita allocation where the number of children and adults are treated equally and no consideration of economies of scale is given.

### **Non-Work-Related Transportation Expenses**

We followed the USDA's method of allocating transportation expenses after deducting outlays for the purchase of vehicles. Based upon surveys from the U.S. Department of Transportation, the USDA assumed that 25% of all transportation expenses were for travel to work and not allocated to either children or the parents. The remaining amount of reported transportation expenses were allocated to children on a per capita basis. For example in families of a married couple with one child, 25% (75% times 1/3) of the net transportation expenses would be attributed to the child. If there were two children then 37.5% (75% times 2/4) of the transportation would be attributed to the two children.

The per capita allocation of the non-work-related expenses to the children can be justified due to the public good nature of transportation services. To undertake a marginal cost approach to allocating transportation costs would likely lead to a much smaller amount of transportation costs to the children but would run into the same difficulties that are faced when allocating housing.

### **Out-of-Pocket Health Expenses**

Out of pocket health expenses (health insurance premiums and the cost sharing payments) for hospital stays, doctor visits, prescription drugs, dental care and vision care are not recorded by who in the family has incurred these expenses. The USDA report states they have made tabulations of the Medical Expenditure Panel Survey (MEPS) to use in their allocation of health expenses to the children. Unfortunately, they don't specify the nature of these tabulations or how they were used in the allocation.

For that reason, we decided to create our own allocation procedure. In 2014 (the most recent year available), the National Health Expenditure Data (NHE) reports that per capita, out-of-pocket

medical spending for children was \$3,749.70. For adults aged 19 to 44, the per capita out-of-pocket spending was \$4,856 and for adults 45 to 64 the per capita, out-of-pocket spending was \$10,212. In terms of spending on health, every child would spend \$3,749/\$4,856 or .7720 of what would be spent for 18 to 44 year old. In terms of out-of-pocket health care spending, expenditures for a child are equivalent to 0.772 of what would be spent on an adult aged 19 to 44 years. Another consideration is that out-of-pocket health care spending varies by age of adult. Out-of-pocket health care spending for a 45 to 64 year old would be equivalent to 2.103 (\$10,212/\$4,856) of that of an adult aged 19 to 44 years. Using these equivalences, the percentage of health care expenses allocated to the children would equal:

$$\frac{.772 \text{ Number Less than 18}}{.772 \text{ Number Less than 18} + \text{Number Aged 18 to 44} + 2.103 \text{ Number Aged 45 to 64}}$$

For example, in a family where there is one child and both parents are 19 to 44 years old, 27.9% of the family's out of pocket medical spending would be attributed to the child. But if one of the parents were 45 to 64 years old, 19.9% of total out of pocket spending would be allocated to the child.

### **Remaining Outlays in the Third Group of Spending**

The remaining commodities in the third group of spending – net entertainment, personal care, reading, life insurance premiums, other apparel outlays, and net miscellaneous outlays – were allocated to the children on a per capita basis. A per capita estimated was used because of a lack of any additional evidence on how spending on these items varied across families with children.

### **Summary of Allocation Procedures for Specific Subcategories of Spending, Third Group**

Exhibit B-2 summarizes the average allocation percentage we used in our study for one, two and three children. The percentage in parenthesis reflect the variation in the allocation percentages. For example, the average food allocation for one child was 24 percent. Not all couples with one child had 24 percent of their food purchases allocated to the child. But as we discussed, the percent of food allocated to the children in the family depended upon the number of children, the age and gender composition of the family members, and family income. When we allocate housing using the additional bedroom assumption, the first row in Exhibit B-2 reflects the average percentage will allocate to the children but when we use the per capita allocation then the relevant row is the last one for per capita.<sup>8</sup>

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<sup>7</sup> Table 7 found at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Age-and-Gender>.

<sup>8</sup> The reason why there is variation in the per capita and transportation allocation procedures for three or more children is due to the fact this category has different number of children ranging from three to six children.



**Exhibit B-2: Average Allocation Percentage by Number of Children in Family**

	<b>1 Child</b>	<b>2 Children</b>	<b>3 and More Children</b>
<b>Net Housing</b> (Additional Bedroom Assumption)			
Average Allocation Percentage	18.3	30.7	40.2
Standard Deviation	(2.8)	(4.0)	(4.7)
<b>Food</b>			
Average Allocation Percentage	24.0	38.5	50.9
Standard Deviation	(5.8)	(5.8)	(6.8)
<b>Transportation</b>			
Average Allocation Percentage	25.0	37.5	46.8
Standard Deviation	(0.0)	(0.0)	(3.0)
<b>Medical Care</b>			
Average Allocation Percentage	23.8	39.5	53.2
Standard Deviation	(5.8)	(6.5)	(7.5)
<b>Per Capita</b>			
Average Allocation Percentage	33.3	50.0	62.4
Standard Deviation	(0.0)	(0.0)	(3.9)

Calculations made by author.

### **Source of the Data on Family Spending**

The CE survey is based upon quarterly interviews of roughly 7,000 consumer units (families). This data is used for the periodic revisions of the Consumer Price Index as well as other economic research and analysis of the spending patterns of American families. The CE is the only nationally representative sample of American families that collects detailed information on the spending habits of families. As such, it is the only available survey well suited for estimating parental spending patterns.

The primary purpose of this appendix is to compare direct estimates of parental spending on children to the Rothbarth estimates. To maximize the comparability of the two sets of estimates, the same data base is used. There is one significant difference in the samples used to produce the estimates. To produce the Rothbarth estimates it is a necessity to have data on spending from married couples with and without children. The direct estimates presented here require data only from families with children.

The data includes those families who were interviewed in the second quarter of 2013 through the first quarter of 2019. While the BLS treats each quarterly response as an independent observation, our analysis file is constructed to reflect a single annual observation for the family by taking the quarterly data and aggregating to reflect the family's annual expenditures and outlays. The choice of using an annual perspective differs from the USDA's methodology where they treat each quarterly interview as independent of the other interviews provided by the family.

To examine how the choice of annual versus quarterly analysis affects the estimates, we will report estimates using an annual perspective and then a quarterly perspective.

The following sample restrictions were made to form the baseline sample:

- The consumer unit contained a married couple with children between the ages of 18 and 60 years old;
- The consumer unit contained six or less children all who were children of the couple;
- The consumer unit did not have any other adults (individuals 18 years old or older) present in the unit even if these adults were the children of the couple; and
- The consumer unit didn't have a change in family size or composition over the period that the unit was interviewed.

These restrictions yielded a sample of 8,055 consumer units containing married couples with children. The sample had 2,777 observations with one child, 3,368 observations with two children; 1,342 observations with three children; 415 observations with four children; and 153 with five or six children. Given the small sample sizes for four and more children, most of the report's analysis will group three and more children families into a single category for presentation purposes. A more detailed description of the sample and the selection criteria can be found in the report documenting the most current Rothbarth estimates.<sup>9</sup>

Comparing the USDA sample to the sample used for this study, the sample selection criteria are very similar. Both studies focus upon families where there are no adult (18 or older) children of the parents residing in the unit. While other studies include these families in their samples, we have chosen not to include them. A difference between our and the USDA's implementation is that the USDA's analysis assumes that each quarterly interview of a consumer unit is an independent observation. The quarterly reports of purchases are multiplied by 4 to construct the outlay data for each interview. We have constructed our sample by taking the quarterly data that is available for a consumer unit to determine the annual spending for the consumer unit. If there is only one interview available then the quarterly data is multiplied by 4. If there are two available interviews then expenditure data is summed across the two interviews and then multiplied by 2. For units with three interviews, the expenditure data is summed across the available interviews and then multiplied by 4/3. For units with four interviews (the maximum), the annual expenditures are the sum of expenditures reported on the four interviews. Demographic and income data is obtained from the last available interview for the consumer unit.

### **Direct Estimates of Child-Rearing Expenditures**

We begin our discussion by examining the average budget share of different commodity groups since they will determine how much of the estimates are based upon reported outlays as opposed

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<sup>9</sup>Betson, David M. (2021). "Appendix A: Parental Expenditures on Children: Rothbarth Estimates." In Venohr, Jane & Matyasic, Savannah. (Feb. 23, 2021). *Review of the Arizona Child Support Guidelines: Findings from the Analysis of Case File Data and Updating the Child Support Schedule*. Report to the Arizona Supreme Court Administrative Office of the Courts. Retrieved from <https://www.azcourts.gov/Portals/74/FCIC-CSGR/SupplementalPacket-030121-FCIC-CSGRS.pdf?ver=2021-02-26-161844-187>.

to outlays that have been allocated to the children. We will then discuss the direct estimates for spending on one child; the additional spending if there are two or three children; and how the percentage of spending devoted to the children is related to the level of total spending on the children.

### Family Budget Shares

How much of the family's spending will be attributed to spending on children will depend upon the proportion of expenditures that placed into Group One (children only spending) and Group Three (outlays for both children and their parents) and how Group Three outlays are allocated to the children. Exhibit B-3 shows the average budget share for these three groups of expenditures for families in our sample by the number of children in the family.

**Exhibit B-3: Average Budget Shares by Number of Children in Family (percentage of column)**

	1 Child	2 Children	3 and More Children
<b>Group One: Children Only</b>	2.0	2.5	3.2
<b>Group Two: Adult Only</b>	5.9	5.0	5.3
<b>Group Three: Joint Consumption</b>	92.1	92.5	91.5
Net Housing	42.1	42.1	41.0
Food	18.6	19.6	21.1
Net Transportation	16.6	16.2	15.9
Medical Care	8.2	7.6	6.7
Other	6.6	7.0	6.8

Calculations made by author.

The budget share for Group One commodities is small in its magnitude. It is also small compared to the share of spending that can be attributed to adult only spending. With more than 90% of the budget being devoted to expenditures that benefit both the parents and the children, how much of the total budget that is estimated to be devoted to the children will depend upon how we allocate Group Three spending to the children. If a per capita allocation is viewed as the maximum allocation of Group Three spending, then for one child the maximum percent of the family's budget would be 32.7% ( $= 2\% + 92.1\%/3$ ). It should be noted the maximum percentage can exceed the per capita percentage if the budget share that is devoted to Group One spending is sufficiently large. For example, if the family spent 4.1% on Group One purchases and 90% on Group Three (the same percentage on Group Two commodities), the maximum percentage would be 34.1% ( $= 4.1\% + 90\%/3$ ).

As the number of children increases, the budget share of Group One commodities increases. If the parents are spending more exclusively on the children, spending on themselves or joint spending has to decline. Compared to families with one child, having two or three children is associated with less being spent on adult only goods but more on jointly consumed goods. If the comparison is made to the impact of an additional child, the pattern is different for third child

added to the family. The addition of a third child (compared to having two children) results in an increase of the parents spending on themselves and a decline in the percentage of the budget spent on jointly consumed goods.

The second panel of Exhibit B-3 reports upon the composition of the third group of commodities. The budget share for net housing is 42% for one and two children but modestly declines to 41% for three or more children. Housing is by far the largest component of spending for families and how we allocate this spending category has a significant impact on the estimates of parental spending on children. If we allocate all of what is in the third group on a per capita basis, the percentage of total family spending devoted to one child would be 32.7%. But if we allocated only 16% (roughly half) of net housing to the child then the percentage of total spending devoted to the child would decline to 25.4% ( $32.7\% - 42.1\% \times 1/3 + 42.1\% \times .16$ ).

The budget share of food is the second largest component of Group Three outlays. As the number of children increases, so too does its budget share. Spending on transportation and medical care are respectively the next two largest components. But as the number of children increases in the family, the budget shares of these commodities decline. The remaining component (net entertainment, personal care, reading, life insurance premiums, other apparel outlays, and net miscellaneous outlays) collectively represent the smallest category of commodities in Group Three and aren't systematically related to the number of children in the family.

### **Average Direct Estimates of Family Spending on One Child**

For each family in our sample, we directly computed the percentage of total spending devoted to the child(ren), where the total is the budget share for spending in Group One plus the sum of the product of the allocation percentage times the family's budget share for each of the five budget categories in Group Three (housing, food, transportation, medical care and other).<sup>10</sup> To highlight the importance of the allocation procedure used, we report the estimates using two alternative allocations for housing. The first is the per capita allocation and the second is a marginal cost allocation based upon the estimated cost of an additional bedroom. The average value of these estimates by the number of children are presented in the first two rows of Exhibit B-4.

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<sup>10</sup> This is equivalent to summing the dollars of spending allocated to the children then dividing by the family's total amount of outlays.

**Exhibit B-4: Estimates of the Allocation of Spending to Children (percentage of allocation)**

	1 Child	2 Children	3 and More Children
<b>Direct Estimates</b>			
Using 2013-2019 CE:			
Per Capita Allocation of Housing	28.8	43.7	54.8
Cost of Additional Bedroom	22.5	35.6	45.7
<b>Average</b>	<b>25.7</b>	<b>39.7</b>	<b>50.3</b>
USDA – 2011-2015 CE <sup>11</sup>	26.0	39.0	49.0
<b>Indirect Estimates (Rothbarth)</b>			
1980-1986 CE: <sup>12</sup>	24.2	34.2	39.2
1996-1998 CE: <sup>13</sup>	25.6	35.9	41.6
1998-2003 CE: <sup>14</sup>	25.2	36.8	43.8
2004-2009 CE: <sup>15</sup>	23.5	36.5	44.9
<b>Average (Older Rothbarth)</b>	<b>24.6</b>	<b>35.9</b>	<b>42.4</b>
2013-2019 CE: <sup>16</sup>	24.9	38.4	47.0

Our direct estimates of the average percentage of total spending that a married couple devotes to one child varies from 22.5% to 28.8% depending upon how we allocate housing to the children. These average estimates are for the average married couple with one child and as such reflect the average level of total spending. The wide range of estimates reflects two factors. First is the average budget share devoted to housing and the second is the difference in the percentage of housing allocated to the child. For one child, the budget share for housing is 42.1% while the average allocation percentage for housing is 18.3% if housing outlays (see Exhibit B-2) are allocated on an additional bedroom basis. But if we allocate housing outlays on a per capita

<sup>11</sup>Lino, Mark, Kevin Kuczynski, Nestor Rodriguez and Tusu Rebecca Schap (2017). *Expenditures on Children by Families, 2015 Annual Report*. Report No. 1528-2015. U.S. Department of Agriculture, Center for Nutrition Policy and Promotion, Washington D.C. . Retrieved from [https://fns-prod.azureedge.net/sites/default/files/crc2015\\_March2017\\_0.pdf](https://fns-prod.azureedge.net/sites/default/files/crc2015_March2017_0.pdf)

<sup>12</sup>Betson, David M. (1990). *Alternative Estimates of the Cost of Children from the 1980–86 Consumer Expenditure Survey*. Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. University of Wisconsin Institute for Research on Poverty, Madison, WI.

<sup>13</sup>Betson, David (2000) “Parental Spending on Children: A Preliminary Report.” Memo, University of Notre Dame. Funded by a grant from the Institute for Research on Poverty, Madison, Wisconsin.

<sup>14</sup>Betson, David M. (2006). “Appendix I: New Estimates of Child-Rearing Costs.” In *State of Oregon Child Support Guidelines Review: Updated Obligation Scales and Other Considerations*. Report to State of Oregon, Prepared by Policy Studies Inc., Denver, CO. Retrieved from <https://www.doj.state.or.us/child-support/calculators-laws/child-support-laws-and-rules/child-support-guidelines-archive/>.

<sup>15</sup>Betson, David M. (2010). “Appendix A: Parental Expenditures on Children.” In Judicial Council of California, *Review of Statewide Uniform Child Support Guideline*. San Francisco, California. Retrieved from <http://www.courts.ca.gov/partners/documents/2011SRL6aGuidelineReview.pdf>.

<sup>16</sup>Betson, David M. (2021). “Appendix A: Parental Expenditures on Children: Rothbarth Estimates.” In Venohr, Jane & Matyasic, Savannah. (Feb. 23, 2021). *Review of the Arizona Child Support Guidelines: Findings from the Analysis of Case File Data and Updating the Child Support Schedule*. Report to the Arizona Supreme Court Administrative Office of the Courts. Retrieved from <https://www.azcourts.gov/Portals/74/FCIC-CSGR/SupplementalPacket-030121-FCIC-CSGRS.pdf?ver=2021-02-26-161844-187>.

basis, 33% of housing would be allocated to the child. The difference in average percentage of housing allocated to the child accounts for the 6.3 percentage difference in the estimates. Given the rather wide range of estimates due to a change in just one assumption gives one pause in these direct estimates. While there are individuals who hold strong convictions about the appropriateness of one assumption over the other, it should be noted that others will hold the opposite view equally strongly. To recognize the uncertainty over which allocation is appropriate, we should consider the average of these two estimates, 25.7%, as our direct estimate.

To provide context for these estimates, Exhibit B-4 present estimates from other studies. The fourth row reflects the percentages the USDA report for their own estimates.<sup>17</sup> For one child, they report that 26% of the family's total level of spending is devoted to one child which is very similar to the average of our direct estimate of 25.7%. The only problem with this comparison is that the USDA didn't directly comment upon what definition of total spending they employed. If they used the BLS provided definition of total outlays then their level of total spending is on average larger than our definition because of the modifications we made (subtraction of retirement contributions and Social Security taxes, payment of alimony and child support, and the one time outlays for vehicle purchases). If this conjecture is correct then the use of our definition of total spending would result in even a larger percentage of total spending devoted to the child than the 26% they report.

The next four rows reflect the estimates from studies prior to the latest Rothbarth estimates. Each of these estimates uses data from different time periods from the CE but the implementation of the Rothbarth methodology is similar. The ninth row reports the average of these four studies. The last row reflects the latest Rothbarth estimates that uses the same data used in this study.

The Rothbarth estimates vary over time, which most likely reflect sampling variability (i.e., the estimated mean of a sample can vary between samples even if the true mean is the same, rather than indicate systematic differences in spending behavior over time.) Some of the earlier Rothbarth estimates are higher than the most current estimate of 24.9% and some are lower. On average, previous Rothbarth estimates were 24.6% which is very similar to our latest estimate of 24.9%. With regards to spending on one child, we find these estimates remarkably stable.

The recent Rothbarth estimate of the percentage of the family's total spending devoted to the child is bracketed by the two alternative direct estimates where the two alternatives vary in their allocation of housing to the child. Yet the average of the two direct estimates was very close to the most recent Rothbarth estimate that employed the same CE data in the estimation.

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<sup>17</sup>Lino, Mark, Kevin Kuczynski, Nestor Rodriguez and Tusu Rebecca Schap (2017). *Expenditures on Children by Families, 2015 Annual Report*. Report No. 1528-2015. U.S. Department of Agriculture, Center for Nutrition Policy and Promotion, Washington D.C. . Retrieved from [https://fnsp.prod.azureedge.net/sites/default/files/crc2015\\_March2017\\_0.pdf](https://fnsp.prod.azureedge.net/sites/default/files/crc2015_March2017_0.pdf).

As we have noted earlier and want to reemphasize now, we were unable to replicate the USDA's allocations procedures for housing and medical care and any differences in the implementation of the direct estimates could account for the lower direct spending especially compared to the Rothbarth. Since we don't know precisely the allocation procedures they used, we can't explain how these differences would systematically affect the estimates.

### **Spending on the Second and Third Child**

The estimates in Exhibit B-4 reflect that spending on children increases with the number of children but spending doesn't increase in proportion to the number of children in the family. In other words, spending per child declines as the number of children increases. Consider a married couple with one child spends 25% of their total spending on the child. If they had a second child we would expect their total spending on their children to increase but we wouldn't expect spending on children to double if they had two children or triple if there were three children. We would expect that spending per child would decline.

To construct a point of comparison for the estimates, let us assume a per capita allocation for all commodities. Given this assumption 33.3% would be devoted to one child, 50% of total family spending will be devoted to two children. Spending on two children relative to spending on one child is 1.50 or 50% more than what is spent on one child. On a per child basis, when the parents have one child they will be assumed to devote 33.3% of their total spending to the child but when they have two children the per child spending falls to 25%. If the parents had three children a per capita allocation implies that 60% of the family's total spending will be devoted to the children which is 1.80 times the amount of spending they would have devoted to children if they had only one child. On a per child basis, the parents would spend 20% of their total spending to each child when they have three children.

California's child support guideline determines the obligation for more than one child by first determining what the parent's obligations would be if they had one child and then multiplies this amount by a factor that depends upon the total number of children in the order. The multiplicative factor for two children is 1.60 and 2.00 for three children. California's assumed multiplicative factors are larger than what would be implied by the per capita allocation (1.50 and 1.80 respectively for two and three children).

The values for these multiplicative factors implied by the individual estimates can be computed by forming the ratio of the estimates of spending on two and three divided by the estimate of the spending for one child. The results of these calculations are presented in Exhibit B-5.

Our direct estimates of the ratio of the spending in families with two and three children relative to spending in a single child family are roughly equal to the multiplicative factors assumed in the California guidelines (1.60 and 2.00 respectively). The ratios based upon the Rothbarth estimates from our earlier studies have been increasing over time. The last two Rothbarth studies have produced estimates of the ratios that are similar to the direct estimates and the California assumptions. While the direct and most recent Rothbarth estimates are generally less than what

California assumes in their guidelines, the differences are small and don't call into question California's assumptions.

**Exhibit B-5: Ratio of Spending on Second and Third Child Relative to One Child**

	<b>Second Child</b>	<b>Third Child</b>
<b>Direct Estimates</b>		
Using 2013-2019 CE:		
Per Capita Allocation of Housing	1.52	1.90
Cost of Additional Bedroom	1.58	2.03
<b>Average</b>	<b>1.54</b>	<b>1.95</b>
USDA – 2011-2015 CE	1.50	1.88
<b>Indirect Estimates (Rothbarth)</b>		
1980-1986 CE:	1.41	1.62
1996-1998 CE:	1.40	1.63
1998-2003 CE:	1.46	1.70
2004-2009 CE:	1.55	1.91
<b>Average (Older Rothbarth)</b>	<b>1.46</b>	<b>1.70</b>
2013-2019 CE:	1.54	1.89

**Variation of Spending on Children by Total Spending of the Family**

It is expected that as a family's spending on children will increase when the family has more spending to allocate to all family members. But the more interesting question is whether the average percentage of total spending devoted to the children varies with the total level of spending in the family. We will restrict our analysis to families with one child. Exhibit B-6 presents for each family in our sample with one child their estimated spending on their child as a percentage of total spending as a function of the family's total spending (in \$10,000). The estimates in Exhibit B-6 reflect our direct estimates when housing is allocated using the cost of an additional bedroom. We have limited the exhibit to reflect only families with total spending under \$150,000 per year although the numerical analysis of this data uses the complete sample of all families with one child.

Given the considerable amount of variation in the estimates of child spending at the family level, determining whether wealthier parents allocate more, less, or the roughly the same as less wealthy parents is difficult to judge. One approach to answering this question would be to use an ordinary least square (OLS) regression model that would estimate the percentage of total spending devoted to the child conditional on the level of total spending. We found that this resulted in a significant downward trend when the child's housing costs were allocated using the additional bedroom assumption.

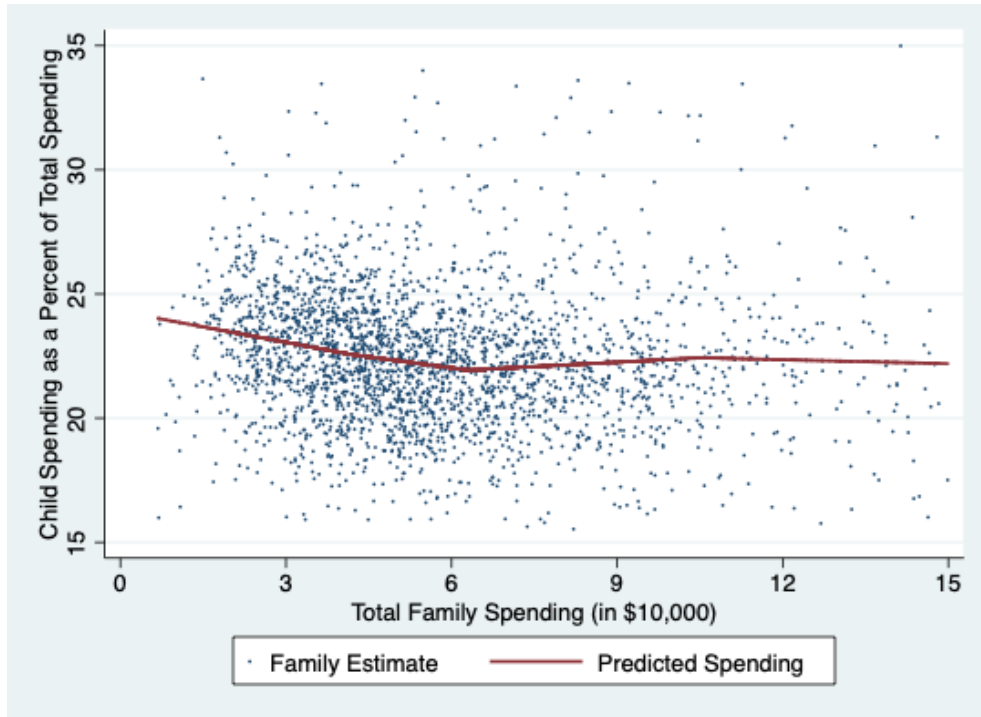
This OLS regression approach assumes that the impact of total spending is a constant for all values of total spending. An alternative to the OLS regression would be to model the impact of total spending on the spending of the child using a spline function to estimate the conditional expectation function. This allows the percentage of total spending to vary for different bands of



total spending (which are called “intervals” in this application). We chose three ‘knots’ to describe four total spending intervals where we would estimate slopes for each of the four intervals. The four intervals consider the ratio of spending to needs using the federal poverty level. The intervals were 0 to \$42,000; \$42,001 to \$63,000; \$63,001 to \$105,000; and \$105,001 and more. The intervals were chosen to reflect multiples of the Federal Poverty Level for a family of three in 2018. The first interval was less than twice the FPL, the second interval was two to three times the FPL. The third interval was 3 to 5 times the FPL and the final interval was total spending more than 5 times the FPL.

When we allocated housing using the baseline assumptions, the slope in the first interval was -.41 which was significantly different from zero at the 5% level. In the second interval, the slope was estimated to be -.30 which was significantly different from zero but not significantly different from the slope in the previous interval. In the third interval, the estimated slope was .12 which was not significantly different from zero but was significantly different from the slope in the previous interval. The slope in the fourth interval was -.05 which was not significantly different from zero or the slope in the previous interval. The solid maroon line in Exhibit B-6 depicts the predicted or average value of spending on the child as a percent of total family spending conditional on the level of total spending. We would summarize these findings as the following. For parents whose total spending is less than \$63,000 (which is roughly three times their needs) as the parents are able to spend more in total, the less they spend more on their child but the increases in spending on the child increases at a slower rate than rate their total family spending increases. For families above \$63,000, the spending on the child as a percentage of total family spending is a constant: that is, spending on the child increases at roughly the same rate as total spending increases.

**Exhibit B-6: Spending on Child as a Function of Total Spending (Housing Allocated Using Additional Bedroom Assumption)**



**Exhibit B-7: Spending on Child as a Function of Total Spending (Housing Allocated Using Per Capita Assumption)**

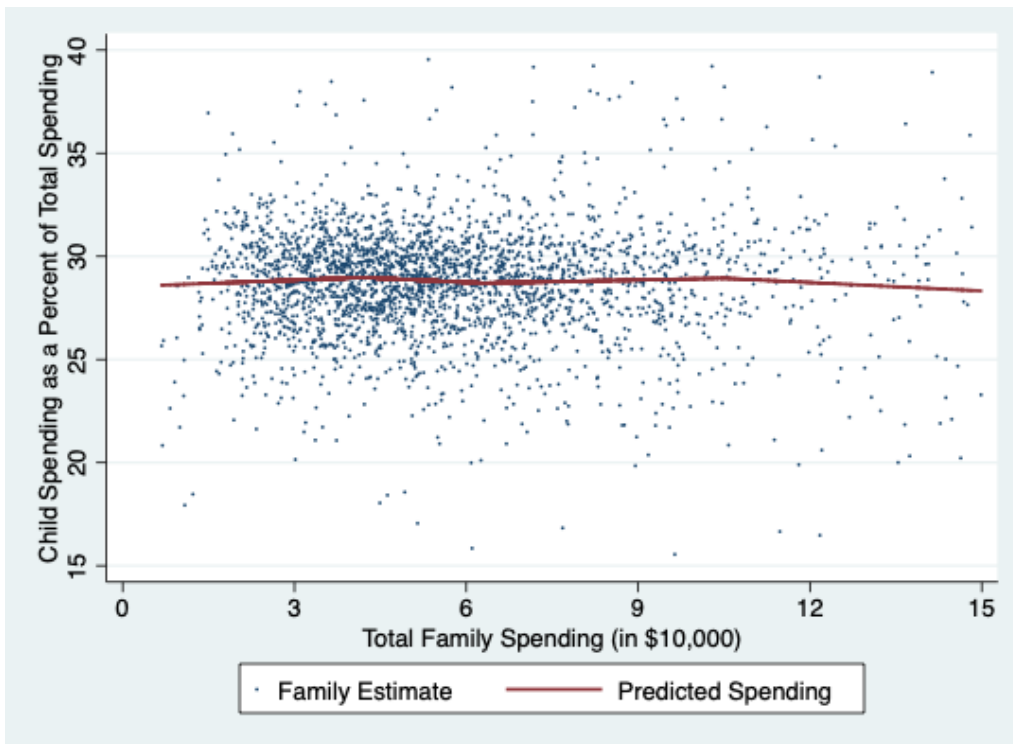


Exhibit B-7 provides the same information as Exhibit B-6 but is based upon estimates of child spending based upon allocating housing to children on a per capita basis. While the scatter plot of the estimates of child spending as a percentage of total spending for the individual families shifts upward, but the considerable amount of variation remains. When the spline regression is estimated, we find that the slope in the first interval is .11 but not significantly different from zero at the 5% level of confidence. The slope of the second interval is -.13 but is also not significantly different from zero or from the slope of the previous interval's slope. In the third interval, the slope changes sign and is estimated to be .06 which is not significantly different from zero or the previous interval's slope. Hence for families with less than \$105,000, spending on their child is on average a constant percent of their total spending. It is only in the fourth interval when the slope is -.13 that we find both a slope that is significantly less than zero and different from the previous interval's slope. Examining the predicted spending in Exhibit B-7, we conclude that while the slope is significantly less than zero in the fourth interval, the magnitude of the negative slope does not have a substantive impact on the predicted percentage of total spending devoted to the child.

These results suggest that the direct estimates of child spending are relatively constant with respect to the level of total spending in the family. Our Rothbarth estimates suggest the spending on children only modestly increases with total spending. Since we don't have standard errors available for Rothbarth estimates but the increases in the estimates with increases of total spending are so small we can't believe that the trend is significantly different from zero. Overall, the empirical evidence fails to reject the hypothesis that the average parent spends a constant percentage of their total family on their children regardless of their total spending on all goods and services. The policy implication is that it's the assumptions about total spending to after-tax income that cause child-rearing expenditures as a percentage of after-tax income to increase as spending increase, not that families with high levels of total expenditures devote more to child-rearing expenditures.

### **Annual versus Quarterly Data**

The data used in this study and our previous studies have reflected an annual perspective of the data. Since families can be interviewed up to four times, we have decided to use all the quarterly interviews from any given family to construct a single observation for the family. Other researchers have followed this decision except for the USDA who has decided to allow individuals to be reflected in the data as many times as they have been interviewed. This quarterly perspective on the data is consistent with BLS's recommendations to treat each interview given by a family as independent from other interviews given by the family. We have concerns with this recommendation given that we would expect the responses a family would be given in one interview to be highly correlated with the responses they give in other interviews.

In a previous Rothbarth study, we examined the impact of using the quarterly perspective adopted by the BLS and the USDA. We found that the estimate of child spending was 15% larger when quarterly data was used instead of the annual data we favor. For this study, we examined how the data constructed on a quarterly basis affect the direct estimates. When housing

was allocated to the children on a per capita basis we found that the use of quarterly data increased the estimate of child spending by 5.2%. If housing was allocated on an additional bedroom assumption, the use of quarterly data increased the estimate of child spending by 6.9%.

## **Conclusions**

In this study, we developed a methodology to provide direct estimates of how parents allocate family spending to their children. This approach attempts to assign to each family an estimate of their spending on their children by examining what the family purchases and then to assign these purchases to the children either by type of commodity purchased or by an allocation procedure. The average percent of family spending that can be identified as solely being for the children is very small. Roughly 2 to 3.5% of the family's budget can be directly attributed to the children. The vast majority of the family's budget (which is more than 90% of the average budget) is consumed for the benefit of both adults and children in the household. Due to this, it requires assumptions to be made in order to allocate spending to the children.

The direct approach has some clear benefits. While there may not be agreement with regards to the appropriate assumptions about the allocation of family spending to the children, the assumptions are transparent and potentially easier to understand than the indirect estimates such as the Rothbarth. Estimating of how much each family spent on their children offers more flexibility in investigating differences in spending decisions across families.

If we had agreement over what are reasonable assumptions to make with regards to allocating family spending to children then this direct approach would be a very reasonable approach to adopt. But agreement over what constitutes an appropriate allocation procedure is a major barrier. This is only made worse because different assumptions can lead to significant differences in the estimates of spending on children. Housing is the largest budget component and adopting alternative allocation procedures has a significant and substantial impact on the estimate of spending on children.

The primary purpose of this study was to compare these direct estimates to our Rothbarth estimates of child spending. Our latest set of Rothbarth estimates yielded an average estimate for one child of 24.9% of family outlays were devoted to the child. Our direct estimates using the same data as our Rothbarth estimates suggested a range from 22.5% when housing was assigned to the children on the basis of the cost of an additional bedroom to 28.8% when housing was allocated on a per capita basis (33.3% housing was attributed to the child).

While some may focus upon the difference between the Rothbarth estimate of 24.9% and the 22.5% direct estimate for one child and infer that this is evidence that the Rothbarth estimates are too high. It is not what we take away from this study. We have to remember that uncertainty with regards to what is an appropriate manner to allocate housing has led to a large range of estimates of child spending. To focus only upon the lower end of the range and to ignore the rest of the range is inappropriate. Given that the midpoint of the estimated range is 25.7% it is likely that

there may exist another allocation procedure that will lead to a direct estimate that exceeds the Rothbarth estimate. While the size of the range of possible direct estimates is somewhat disconcerting, the fact that the Rothbarth estimate lies in this range is encouraging. For many, the Rothbarth approach is a black box. This doesn't lend to its credibility. For the Rothbarth estimates to be in the ballpark of these direct estimates can only serve to increase the confidence placed in the Rothbarth approach.

When families have more than one child, total spending on the children increases but the level of spending per child declines. Hence total spending on children increases but doesn't increase proportionately with the number of children. When a family has two children, they don't spend twice what they would have spent if they had only one child. Our direct estimates suggest the increase in spending for two children compared to spending on one child to be more than 50% but less than 60% more assumed in the California guidelines. For three children, the estimated increased spending compared to one child is more than 80% but less than 100% assumed in the California guidelines. We also found that the Rothbarth estimates of increased spending from our later studies to be very similar to our direct estimates. This should give confidence to the assumptions made in the California guidelines.

The Rothbarth approach limited flexibility in allowing other factors such as the total level of family spending to affect the estimate of spending on children. Here the direct approach has a clear advantage over the indirect approaches. While the Rothbarth estimates suggest there is a modest increase in the percentage of family spending devoted to children with increases in the wealth of the family, the two direct estimates suggest that for most families the percentage of total spending devoted to the children remains constant as the families become wealthier. Only when we allocate housing spending via the additional bedroom approach do we see a significant and substantial decrease for low spending families in the percentage of spending on children if their total spending increases. Our overall observation is that these direct estimates provide evidence that parents spend a constant proportion of their total spending on their children.

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## Appendix C: Other Findings on the 20 Percent Threshold

Maryland, Pennsylvania, and Georgia also conducted limited investigations of the 20-percent threshold. All used simple statistical tests and did not control for other factors that affect payment. This appendix also uses data collected from case files to conduct a similar analysis.

### 2018 and 2020 Maryland Studies

Although University of Maryland researchers set out to analyze the impact of income imputation in a 2018 study, they also had some results informing the 20 percent threshold.<sup>18</sup> The research was based on a random sample of about 5,000 orders that were established or modified sometime between 2011 and 2014 were a part of the state child support program. The child support orders were matched to quarterly wage data from Maryland’s labor department. The researchers acknowledged that the use of quarterly wage data was limited because not all Maryland jobs are covered by unemployment insurance and some obligors may have out-of-state employment where the employer would not have to report quarterly wage data for the purposes of Maryland’s unemployment insurance program. The researchers noted that their findings aligned with the 20 percent threshold: they found that child support payments averaged 18.1 percent of quarterly wage earnings among obligors with imputed income and 19.1 percent among obligors without imputed income.<sup>19</sup> In contrast, the researchers found that most order amounts exceeded 25 percent of the quarterly wage income of the obligors.<sup>20</sup> However, Maryland’s most recent review, which considers orders established or modified in 2015 to 2018, found that the average order-to-income ratio among all orders examined was 20 percent.<sup>21</sup> In other words, the ratio decreased from 25 percent to 20 percent. The Maryland researchers did not investigate causes of the decline. It could be that orders were being set at lower levels, incomes increased, or both. Maryland did not change its guideline between the study years, so the reduction in the average order-to-income ratio is more likely to be attributed to wage growth including an increase to the state minimum wage since the first study; more thoughtful income imputation practices, partially due to increased awareness stemming from the 2016 federal changes; or a combination of these factors. Maryland did not investigate payments and compliance by order to income ratios for its most recent study.

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<sup>18</sup> Natalie Demyan & Letitia Logan Passarella. (2018). *Actual Earnings and Payment Outcomes Among Obligor with Imputed Income*, University of Maryland School of Social Work. Retrieved from [https://www.ssw.umaryland.edu/media/ssw/fwrtg/child-support-research/cs-guidelines/guidelines\\_imputedincome.pdf](https://www.ssw.umaryland.edu/media/ssw/fwrtg/child-support-research/cs-guidelines/guidelines_imputedincome.pdf).

<sup>19</sup> *Id.* at 12.

<sup>20</sup> *Id.* at 15.

<sup>21</sup> Natalie Demyan & Letitia Logan Passarella. (Nov. 2020). *Maryland Child Support Guidelines: 2015–2018 Case-level Review*. University of Maryland School of Social Work, at 24. Retrieved from <https://www.ssw.umaryland.edu/media/ssw/fwrtg/child-support-research/cs-guidelines/Maryland-Child-Support-Guidelines-Case-Level-Review-2015-to-2018-2.pdf>.

## 2016 and 2020 Pennsylvania Guideline Reviews

As part of its 2016 guideline review, Pennsylvania investigated the percentage of orders above and below the Orange County thresholds and payment differences between orders set above and below the thresholds.<sup>22</sup> The Pennsylvania researchers relied on case data from a random sample of about 5,000 orders from the state child support caseload that were established or modified in 2013 and 2014. Pennsylvania relied on the income amount used in the guideline calculation rather than quarterly wage data, which is what other studies use. Pennsylvania found that most (86 percent) of its one-child orders were below 20 percent of the obligor's gross income, and 84 percent of its orders for two or more children were below 28 percent of the obligor's gross income.<sup>23</sup> The payment compliance rate was 74 percent for one-child orders set below 20 percent of the obligor's gross income and 79 percent among one-child orders set at 20 percent of the obligor's gross income or above. This is the opposite direction of the 2011 Orange County study. In general, Pennsylvania found that orders where the obligor's income was equivalent to full-time, minimum wage earnings had the lowest average compliance rate and the fewest number of months with payments. In contrast, income ranges above and below full-time, minimum wage had higher average compliance rates and number of months with payments. The researchers speculated that the lower compliance rate at full-time, minimum wage may reflect cases in which income was imputed at full-time, minimum wage earnings, and that income imputation, which is also a proxy for disengagement or lack of involvement, was the root of the issue—that is, income is imputed when the parent does not supply income information, which may be an indication of disengagement or lack involvement. The researchers also examined the average dollar amount paid: it steadily increased with income. In short, the researchers found a slightly different relationship between income and payments than income and compliance.

As part of its 2020 guideline review, Pennsylvania updated the analysis using a random sample of about 20,000 orders from the state child support caseload that were established in 2017 and 2018.<sup>24</sup> The researchers found small increases to the percentages of orders under the 20 percent and 28 percent thresholds: the percentage of one-child orders under 20 percent of the obligor's gross income was 86 percent (compared to 84 percent for the previous review) and the percentage of orders for two or more children under the 28 percent of the obligor's gross income was 87 percent (compared to 84 percent for the previous review).<sup>25</sup> The average compliance rate did not vary among one-child orders set below or above 20 percent of the obligor's gross income: it was 78 percent for both groups. There was a small change among orders for two or more children: the average percentage paid was 83 percent among orders where the order was at least 28 percent of the obligor's gross income, and 78 percent among orders where the order was

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<sup>22</sup> Venohr, Jane. (Mar. 2016.) *2015–2016 Pennsylvania Child Support Guidelines Review; Economic Review and Analysis of Case File Data*. Retrieved from <https://www.humanservices.state.pa.us/cswws/forms/paguidelines.pdf>.

<sup>23</sup> *Id.* at 16–17.

<sup>24</sup> Venohr, Jane & Matyasic, Savahanna. (Sept. 2021.) *Review of the Pennsylvania Child Support Guidelines; Updated Schedule and Findings from the Analysis of Case file Data*. Retrieved from <https://www.pacourts.us/Storage/media/pdfs/20210916/184842-2019guidelinereviewreport.pdf>.

<sup>25</sup> *Id.* at 31–32.



less than 28 percent of the obligor's gross income. In short, the Pennsylvania results do not support the concept that one-child orders of 20 percent or more of an obligor's gross income and orders for two or more children of 28 percent or more of an obligor's gross income are thresholds for nonpayment.

For the 2020 review, the researchers found no exception at minimum wage income like they did for the previous review. Instead, the average compliance rate, amount paid, and number of months paid steadily increased with higher incomes. One possible explanation for this is the threshold may reflect orders with income imputation rather than the order amount as a percentage of gross income. Pennsylvania does not impute income frequently. Pennsylvania's income imputation rate (which is 11 percent) is low compared to other states.<sup>26</sup> (Pennsylvania does not make a distinction among income imputation, income presumption, and earnings potential.) Pennsylvania also has a court rule that authorizes the modification or termination of a child support order based on evidence that the obligor is unable to pay and has no known income or assets and there is no prospect of this changing in the foreseeable future.<sup>27</sup> The evidence can be from automated sources linked to the state child support system, and the action can be initiated by the child support agency. This policy may partially explain why Pennsylvania is able to keep its income imputation rate low. Another contributing factor is that Pennsylvania has linked employment opportunities from its state department labor to its child support dashboard to facilitate employment referrals when an obligor is unemployed or underemployed at the time of order establishment or another child support court action. In these situations, the court often continues the court hearing so the parent can follow up on the employment referral and find a job or better paying job before making a final ruling on the child support issue.

## **2018 Georgia Guideline Review**

Georgia's analysis of case file data found evidence that corroborates the 2011 Orange County findings.<sup>28</sup> The Georgia sample consisted of a random sample of 83 orders within the state child support caseload that were established or modified in October 2017. The Georgia researchers used information from the guideline calculation for the obligor's gross income and obtained payment data from the state child support agency. Most (72 percent) of one-child orders were less than 20 percent of the obligor's gross income, and 55 percent of orders for two or more children were less than 29 percent of the obligor's gross income.<sup>29</sup> The average amount paid among orders exceeding the Orange County thresholds was about half as much as the average amount paid on orders not exceeding the Orange County thresholds. In other words, the Georgia

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<sup>26</sup> *Id.* at 14.

<sup>27</sup> *Id.* at 10–11.

<sup>28</sup> Venohr, Jane. (2018). "Appendix C: Economic Study: Review of the Georgia Child Support Guidelines," in Georgia Commission on Child Support (2018.) *Final Report*. [GACommChildSupportRptFullPDF2018.pdf \(georgiacourts.gov\)](#), at 33–34.

<sup>29</sup> There appears to be some misinterpretation whether the 2011 Orange County threshold was 28 or 29 percent for two or more children.

results were consistent with the 2011 Orange County results. One limitation of the Georgia study was a small sample size.

## **Findings about 20-Percent Threshold from the Analysis of Case File Data**

Exhibit C-1 examines the proportion of LIA orders set above and below the 20 percent gross income threshold for one child and the 28 percent threshold for two or more children. Only orders that contained information from the guideline calculation, which is the source of the gross income data, are considered. Exhibit shows that most one-child orders were set below 20 percent of the obligor’s gross income (94 percent of IV-D orders sampled from court files and 93 percent of orders sampled from the DCSS case management system); however, just over half of LIA orders for two or more children were set below 28 percent of the obligor’s gross income (53 percent of IV-D orders sampled from court files and 56 percent of orders sampled from the DCSS case management system). As noted in Exhibit C-1, only five non-IV-D orders were adjusted using the LIA. This is too few to analyze statistically.

**Exhibit C-1: Proportion of LIA Orders above or below 20 and 28 Percent Thresholds (percentage of examined orders, n = number of orders examined)**

	Court File Sample			DCSS sample
	All	Non- IV-D orders	IV-D orders	
<b>One-child, LIA orders</b>	(n=95)	(n=5)	(n=90)	(n=17,332)
Below 20% of obligor’s gross income	93	60	94	93
20% or more of obligor’s gross income	7	40	6	7
<b>LIA orders for two or more children</b>	(n=62)	(n=5)	(n=57)	(n=8,290)
Below 28% of obligor’s gross income	56	80	53	56
28% or more of obligor’s gross income	45	20	47	44

The data from the case files are used to conduct a simple statistical comparison of means to determine if compliance and payments differ when the obligor’s gross income is below or above the thresholds identified in previous research. Unlike the 2011 Orange County and both Wisconsin studies, it does not control for other variables that may affect payments. Applying a more rigorous method is beyond the scope of this study.

Exhibit C-2 compares compliance rates and average amount paid for orders set above and below the threshold. The analysis is limited to cases where information about the obligor’s gross income was available, the LIA was applied, the order was a non-zero amount, and there was information about payments. Imposing these restrictions further limits the comparability to previous studies. Compliance considers the percentage of current support due that is paid.<sup>30</sup> The dollar amount is the average for the year following order entry. Payment information for the

<sup>30</sup> There are some nuances to how this is measured that are explained in Chapter 5.

court file sample were not available for this study.<sup>31</sup>

**Exhibit C-2: Average Compliance Rate and Dollars Paid in First Year after Order Establishment/Modification (n = number of examined orders)**

	<b>Average Compliance Rate</b>	<b>Average Dollars Paid in Year</b>
<b>LIA orders for one child</b>		
Below 20% of obligor's gross income	(n=15,264) 55*	(n=15,264) \$1,438*
20% or more of obligor's gross income	(n=1,083) 63*	(n=1,083) \$2,675*
<b>LIA orders for two or more children</b>		
Below 28% of obligor's gross income	(N=4,408) 61*	(n=4,408) \$1,966*
28% or more of obligor's gross income	(N=3,385) 39*	(n=3,385) \$2,446*

\*Statistically different,  $p > 0.05$ .

Exhibit C-2 shows that the compliance rate is higher among one-child orders above the threshold than below the threshold (i.e., 63 percent compared to 55 percent). Pennsylvania also found that compliance rates were sometimes better among those with orders exceeding the threshold. The 2018 Wisconsin study found that compliance was better when the order was more than 15 percent of the obligor's gross income. The compliance pattern was the opposite for orders covering two or more children: the compliance rate (61 percent) was more for those with orders below the threshold, and the compliance rate (39 percent) was less for those orders exceeding the threshold. Exhibit C-2 shows average payments were higher when the order was more regardless of the number of children. This is consistent with the 2020 Wisconsin study that found higher orders yield higher payments. In all, the analysis suggests that the order amount as a percentage of gross income matter more for two or more children than it does for orders covering one child.

<sup>31</sup> The task of matching court files to DCSS payments would be extremely onerous, and would only capture compliance rates for IV-D orders, but not non-IV-D orders. More data elements are tracked for IV-D orders. The data elements tracked for non-IV-D orders are not sufficient to determine compliance rates.

## Appendix D: Wages and Rents by County

The table below compares wages and rents at the county level. It shows both the 25<sup>th</sup> percentile wage and median wage for all workers. The table also includes the 25<sup>th</sup> percentile wage for food preparation workers because this is an occupation that most people are familiar with, it is typically an entry-level job that requires little work experience or educational attainment, and there are often many job openings.

County	2020 population	FFY 2022 FMR for efficiency apartment (\$ per month)	Hourly Wage (Quarter 1, 2021)		
			Food preparation workers	All workers	
			25th percentile	25th percentile	Median
Alameda	1,682,353	1,538	14.93	18.09	27.78
Alpine	N/A	725	**14.00	14.92	20.27
Amador	N/A	920	**14.00	14.92	20.27
Butte	211,632	826	**14.00	14.63	18.77
Calaveras	N/A	739	**14.00	14.92	20.27
Colusa	N/A	713	14.76	15.13	20.30
Contra Costa	1,165,927	1,538	14.93	18.09	27.78
Del Norte	N/A	651	14.00	14.83	19.40
El Dorado	191,185	1,108	14.00	15.57	23.72
Fresno	1,008,654	899	14.00	14.34	18.28
Glenn	N/A	627	14.76	15.13	20.30
Humboldt	136,463	741	14.00	14.83	19.40
Imperial	179,702	716	14.41	14.19	17.52
Inyo	N/A	754	**14.00	14.92	20.27
Kern	909,235	763	14.00	14.42	18.78
Kings	152,486	924	14.00	14.69	19.31
Lake	68,163	678	14.00	14.83	19.40
Lassen	N/A	623	14.76	15.13	20.30
Los Angeles	10,014,009	1,384	14.52	15.55	22.28
Madera	156,255	913	14.00	14.22	18.05
Marin	262,321	2,115	15.28	18.59	27.51
Mariposa	N/A	718	**14.00	14.92	20.27
Mendocino	91,601	945	14.00	14.83	19.40
Merced	281,202	766	14.00	14.25	17.79
Modoc	N/A	605	14.76	15.13	20.30
Mono	N/A	1,009	**14.00	14.92	20.27
Monterey	439,035	1,533	14.00	14.83	19.18
Napa	138,019	1,438	14.89	16.78	23.40

County	2020 population	FFY 2022 FMR for efficiency apartment (\$ per month)	Hourly Wage (Quarter 1, 2021)		
			Food preparation workers	All workers	
			25th percentile	25th percentile	Median
Nevada	102,241	921	14.76	15.13	20.30
Orange	3,186,989	1,716	14.52	15.61	23.01
Placer	404,739	1,108	14.00	15.57	23.72
Plumas	N/A	608	14.76	15.13	20.30
Riverside	2,418,185	1,062	14.00	14.77	19.55
Sacramento	1,585,055	1,108	14.00	15.57	23.72
San Benito	N/A	1,096	14.00	19.66	34.35
San Bernardino	2,181,654	1,062	14.00	14.77	19.55
San Diego	3,298,634	1,394	14.14	15.52	23.78
San Francisco	873,965	2,115	16.34	20.27	33.86
San Joaquin	779,233	891	14.00	14.82	19.51
San Luis Obispo	282,424	1,308	14.00	14.97	20.18
San Mateo	764,442	2,115	16.34	20.27	33.86
Santa Barbara	448,229	1,847	14.23	15.16	21.13
Santa Clara	1,936,259	2,145	14.00	19.66	34.35
Santa Cruz	270,861	2,085	14.02	15.64	22.36
Shasta	182,155	834	14.44	14.64	19.70
Sierra	N/A	754	14.76	15.13	20.30
Siskiyou	N/A	682	14.76	15.13	20.30
Solano	453,491	1,232	14.36	15.35	23.54
Sonoma	488,863	1,373	14.11	16.30	23.18
Stanislaus	552,878	936	14.00	14.64	19.34
Sutter	99,633	920	14.30	14.76	19.66
Tehama	65,829	682	14.76	15.13	20.30
Trinity	N/A	592	14.76	15.13	20.30
Tulare	473,117	746	14.00	14.00	16.70
Tuolumne	N/A	752	**14.00	14.92	20.27
Ventura	843,843	1,507	14.51	15.21	21.48
Yolo	216,403	1,212	14.00	15.57	23.72
Yuba	81,575	920	14.30	14.76	19.66
Subtotal of Reported Counties	39,078,939				
State of California	39,538,223		**14.00	15.56	23.34

\*\* State minimum wage of \$14.00 per hour applies.

Source: Populations are based on the 2020 U.S. Census American Community Survey and not available for every county. Retrieved from <https://www.census.gov/library/stories/state-by-state/california-population-change-between-census-decade.html>. Fair Market Rents (FMRs) are from the U.S. Department of Housing and Urban Development. Retrieved from [https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022\\_code/select\\_Geography.odn](https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022_code/select_Geography.odn). Wage data is from California Employment Development Department. Retrieved from <https://www.labormarketinfo.edd.ca.gov/data/oes-employment-and-wages.html>.

## Appendix E: Sampling for the Case File Review and the Data Collection Instrument

This appendix reviews the sample selection for the case files reviewed for previous California child support guidelines reviews and updates it for the 2021 review. Federal regulations at 45 C.F.R. § 302.56(h) require the review of case file data on deviations from the state’s child support guidelines as part of a state’s guidelines review and the analyses of rates of child support orders set by default judgments, income imputation,<sup>32</sup> the state’s low-income adjustment, and payments. The federal requirement to analyze guidelines deviations has been in place for several decades. The federal requirements to analyze defaults, income imputation, application of the low-income adjustment, and payments were issued in 2016,<sup>33</sup> but effectively give states the year after completing their quadrennial review commencing in 2017 or thereafter to fulfill them.<sup>34</sup>

### Sampling for Previous Reviews

Historically, California has met the federal requirement to review case file data from sampling court case files in several counties selected to represent the diverse size and demographics of California counties. For most of the reviews, the findings have included analyses of default judgment, income imputation, and the application of the low-income adjustments. Previous studies did not include analysis of payments. For the past three reviews (2018, 2011, and 2005),<sup>35</sup> the sample selection:

- Targeted a sample size of 1,000 cases (with 20% oversampling in 2018 and 2011);
- Sampled equally from IV-D and non-IV-D cases; and
- Sampled from the same 11 counties: Alameda, Amador, Fresno, Los Angeles, Santa Clara, San Diego, San Luis Obispo, Siskiyou, Solano, Tehama, and Tulare.

Although the 2001 and 1998 case file reviews also sampled equally from IV-D and non-IV-D cases, they differed slightly from recent reviews. The 2001 review targeted a sample size of 1,000 cases and considered all counties listed above except Amador and Tehama.<sup>36</sup> The 1998 review sampled from the same 11 counties but generated a larger sample size. The sample size was reduced for subsequent review because a smaller sample size was more than adequate to detect statistical differences from the previous case file review.<sup>37</sup>

The 2018 guidelines review recommended:

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<sup>32</sup> The term, “income imputation” is the federal term while California’s equivalent may also span attributed and presumed income. The data collection instrument considers the California terms.

<sup>33</sup> Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs (81 Fed. Reg. 93492–93569).

<sup>34</sup> 45 C.F.R. § 302.56(a).

<sup>35</sup> Judicial Council of Cal., Review of Statewide Uniform Child Support Guideline 2005 (March 2006, at 28–29; and Judicial Council of Cal., Review of Statewide Uniform Child Support Guideline 2017 (Jan. 2018), at 235.

<sup>36</sup> Judicial Council of Cal., Review of Statewide Uniform Child Support Guideline 2001, at 195.

<sup>37</sup> *Id.* at 25.

- Assessing the 11 study counties to determine if they still accurately represent the state as a whole with regard to county size, economics, and demographics; and
- Considering whether to continue to select samples of IV-D and non-IV-D cases in equal proportion for the guideline.<sup>38</sup>

## **Sampling Objectives for the 2021 Review and Limitations**

Not only does the 2021 sampling consider the 2018 recommendations, it also attempts to more efficiently collect court data through electronic records and e-filing. Many California courts have switched or are switching to e-filing. In all, the 2021 objectives are to:

- Sample and gather data to meet federal requirements;
- Sample from a range of counties and regions to reflect California as a whole; and
- Utilize electronic records to the extent possible while meeting the above criteria.

There are several major limitations to these objectives. In the ideal, the total number of child support orders established and modified using the California guidelines within a specific time period would be used to determine the sample size. That information is not available. However, to be clear and as discussed in more detail later, not knowing the total number of orders from which a sample is to be drawn does not preclude adequate sampling to determine a statistical difference in the guideline deviation rate over time.

Another limitation to data collection concerns courts separately filing IV-D and non-IV-D cases. This requires separate random samples for IV-D and non-IV-D cases. It also requires separate counts of IV-D and non-IV-D orders or the ratio of IV-D to non-IV-D orders. The IV-D count is readily available from California Department of Child Support Services (DCSS). Several factors obscure the non-IV-D count. The child support establishment or modification may be part of another legal proceeding, such as a divorce action. The court record may indicate a divorce action but may not indicate clearly that there was a child support order established or modified. In all, and as discussed in greater detail later, there is a definitive count of IV-D establishments and modifications, but not a definitive count of non-IV-D establishments and modifications.

Another major limitation is that it is not feasible to sample from all counties and regions within a reasonable amount of time and effort. Instead, a combination of cluster sampling, stratified sampling, and convenience sampling is used. Cluster sampling consists of sampling from some but not all counties. Stratified cluster sampling aims to sample from a range of counties that vary in size and region. The advantages of both cluster and stratified samplings are that each is generally more cost-efficient and convenient than sampling from the entire population of orders, and sampling can still be random, which is essentially the gold standard of sampling. The

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<sup>38</sup> Judicial Council of Cal., 2017, *supra* note 4, at 22.



disadvantages are there is some subjectivity in grouping counties by size and region of the state, and the probability of a sampling error increases because the counties and region may not be representative of the entire state.

The adaption and use of electronic records through e-management systems among counties provides an opportunity to collect data more efficiently. Data were collected onsite for previous reviews. Electronic records allow for the opportunity to transmit the data electronically to the data collectors. In turn, they can review the child support forms and documents filed for a case, find the pertinent information, and enter them into the database for the analysis. CFCC staff identified 27 counties that use e-filing. This represents just under half of all counties and regions. Further, CFCC found that the majority (70%) of courts with an e-filing system rely on a particular product, the Odyssey court software by Tyler Technologies. The consistency of e-records among the 19 courts relying on Tyler Odyssey avoids learning the nuances of various e-filing systems while simultaneously switching from manual to electronic collection. With time and as more counties switch to e-management systems and more experience with collecting electronic data is gained, it is anticipated that data can be accessed from other e-management systems and there will be more counties from which electronic files can be extracted.

### **Number of Total Orders and IV-D and Non-IV-D Orders to Sample**

As mentioned earlier, the last few reviews targeted a total sample size of 1,000 orders broken down into 500 IV-D orders and 500 non-IV-D orders. With 20 percent oversampling, this produces a sample target of 1,200 orders, of which 600 are IV-D orders and another 600 are non-IV-D orders. This is adequate for determining significant changes in the deviation rates between the 2018 and 2021 reviews. Specifically, the maximum expected error of the estimated deviation rate using a 95 percent confidence interval is 2.3 percent among all orders, 2.9 percent among IV-D orders, and 3.7 percent among non-IV-D orders. In other words, statistically, we can be 95 percent confident that the deviation rate measured from a sample of 1,000 orders is within 0.023 of the true rate of guidelines deviations. The maximum expected error is a function of both the sample size and the previous deviation rate. Generally, it increases with smaller sample sizes, but that is mitigated by the closer the previous deviation rate is to extreme values: zero or 100 percent. The 2018 deviation rates were 17.2 percent for all orders, 12.1 percent for IV-D orders, and 22.5 percent for non-IV-D orders.

The estimated 50–50 split between IV-D and non-IV-D dates to the first case file review conducted for the 1998 study and was based on a DCSS estimate.<sup>39</sup> Today, DCSS can provide accurate counts of IV-D order establishments and modifications over a specific time period through its automated system. However, no system perfectly tracks non-IV-D orders. CFCC and DCSS have explored and are exploring potential data sources for future reviews. CFCC has reviewed information tracked on the Judicial Branch Statistical Information System (JBSIS) and the Self-Help Tracking and Reporting Survey (STARS, which tracks usage of family law facilitators through Assembly Bill 1058). Both sources suggest close to a 50–50 split. Still,

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<sup>39</sup> Judicial Council of Cal., *Review of Statewide Uniform Child Support Guideline* 1998, at 6-1.

JBSIS is limited because, among other reasons, it does not detail whether a petition or disposed case also resulted in a child support order. The information from STARS is also limited because not all parties with child support orders being established or modified receive assistance from family law facilitators.

DCSS also has access to non-IV-D counts through its management of the state disbursement unit (SDU) and the state child support case registry, but both these sources likely undercount the number of non-IV-D orders. A non-IV-D case is only captured through the SDU if the obligor pays child support through the SDU; then the non-IV-D case becomes an IV-D case once payments come through the SDU. Although all orders are to be reported to the state case registry, they are only recorded if DCSS receives a particular child support case registry court form. The court forms are not always completed and received, particularly for non-IV-D orders. In all, this means the count of non-IV-D orders from the state case registry is understated.

## **County Selection and County Sample Size**

Six factors were considered when selecting counties for sampling:

- Number of orders established by county;
- Location of the county within the state;
- Consistencies with previously sampled counties;
- Whether the county uses Tyler Odyssey as its electronic case management system;
- Maintaining a similar number of counties for sampling; and
- A county's willingness to participate in the study.

The first two factors—number of orders and location—aim at state representation. As described, since there is not a definitive count of orders established and modified statewide, DCSS's counts of the orders that DCSS has established statewide and by county are the only reliable and available counts. Although other factors such as population and various demographic and economic factors could be considered, it is assumed that these factors also relate to the number of DCSS order establishments by county. For example, counties with larger populations establish a larger number of orders. The third factor addresses comparability to previous samples. The use of e-filing and e-records should increase the efficiency and accuracy of data collection. The use of the same electronic case management software should be more efficient than learning several electronic case management systems for data collection purposes and eases the transition from manual to electronic data collection. Finally, it is assumed that despite the change from manual to electronic data collection, maintaining about the same number of sampled counties should require about the same level of effort to coordinate and to collect and enter data in the database.

Exhibit E-1 groups counties by size and region of the state as well as notes whether a county uses electronic case management and, if so, whether it uses Tyler Odyssey software. It also notes whether the county was sampled in the 2018 review or whether it has been selected for the 2021 review. Appendix E- provides the same information but in a county-by-county format.

Exhibit E-1 can be used to identify several changes between the counties proposed for the 2021 sample and the 2018 sample:

- Several counties are in both the proposed 2021 sample and the 2018 sample (*i.e.*, Los Angeles, San Diego, Santa Clara, and Fresno, which are generally some of the larger counties in both samples).
- All counties proposed for the 2021 sample rely on the same software for electronic case management, while the counties removed from the 2021 sample do not.
- Orange County is added to the proposed 2021 sample to expand the diversity of the sample.
- About half of the very large, large, and middle-sized counties are proposed for the 2021 sample.
- In general, the number of middle-sized counties to be sampled is increased, and the specific middle-sized counties that are added were selected to be geographically diversified.
- There were several replacements to facilitate data collection from electronic files:
  - Stanislaus County replaces Alameda County as a large-sized county in the Bay area.
  - King County replaces Tulare County in the Central/Coastal area, although the two counties are in different size classifications.
  - Santa Cruz County replace Solano County to represent medium-sized counties in the Bay area.
  - Calaveras County replaces Amador, Siskiyou, and Tehama counties as small and very small counties in the Northern region.

**Exhibit E-2: Counties Grouped by Size and Region of State**

<b>Region Size</b>	<b>Bay Area</b>	<b>Central/Coastal</b>	<b>Northern/Capitol</b>	<b>Southern</b>	<b>Total</b>
<b>Very Large</b>			Sacramento	<b>Los Angeles**</b> <b>Orange**</b> Riverside* San Bernardino* <b>San Diego**</b>	6
<b>Large</b>	<i>Alameda</i> Contra Costa <b>Santa Clara**</b> San Joaquin* <b>Stanislaus**</b>	<b>Fresno**</b> Kern** <i>Tulare</i>		Ventura	9
<b>Medium</b>	Monterey** San Mateo** San Francisco* San Benito Solano* Sonoma**	<b>Kings**</b> <b>Merced<sup>R**</sup></b> Mariposa <sup>R</sup>	Butte** Placer* Shasta <b>Yolo**</b>	Santa Barbara** Imperial	15
<b>Small<sup>a</sup></b>	Marin Mendocino Napa** <b>Santa Cruz<sup>R**</sup></b>	Madera <i>San Luis</i> <i>Obispo*</i>	Alpine <sup>R</sup> Amador <sup>R</sup> <b>Calaveras<sup>R**</sup></b> El Dorado Humboldt <sup>R*</sup> Sutter** <i>Tehama</i> Trinity <sup>R</sup> Tuolumne <sup>R</sup> Yuba		16
<b>Very Small</b>			Colusa Del Norte Glenn Inyo <sup>R</sup> Lake Lassen Modoc <sup>R</sup> Mono <sup>R</sup> Nevada <sup>R</sup> Plumas Sierra <sup>R</sup> <i>Siskiyou<sup>R</sup></i>		12
<b>Total</b>	15	8	27	8	58

<sup>a</sup> DCSS classifies the regionalized local child support agency serving Santa Cruz County and Benito County as medium. For sampling purposes, Santa Cruz County is considered a lone county and is classified as a small county due to its size.

<sup>R</sup> County is combined with one or more counties to form a Regionalized Local Child Support Agency (LCSA). DCSS uses this organization, while the Judicial Council (JC) administers courts and organizes its data by county.

\* Court uses e-management system.

\*\* Court uses Tyler Odyssey software for electronic case management.

Counties in italicized font were sampled for the 2018 review.

Counties in bold font are proposed for the 2021 review.

Exhibit E-2 compares the number of counties sampled by county size and region. In other words, it summarizes some of the information in Exhibit E-1 by the numbers of total counties, 2018 sampled counties, and the 2021 proposed sampled counties by county size and region without naming each county. Overall, Exhibit E-2 shows little change in the number of counties sampled from large and very large counties between the two study years. Still, Exhibit E-2 shows an increase in the sampling of middle-sized counties and a decrease in the sampling of smaller counties. These changes were made to better reflect today’s demographics of California and to collect data more efficiently. Due to the low volume of orders in small and very small counties, previous attempts to sample from them have not always yielded the target sample size for that county. Exhibit E-2 also shows little change in the sampling counts by region of the state; in fact, there is never more than a one-county difference in the number of counties sampled by region between the two study years.

**Exhibit E-3: Total Number of Counties and the Number of 2018 and 2021 Sampled Counties by County Size and Region of the State**

<b>Region Size</b>	<b>Bay Area</b>	<b>Central/Coastal</b>	<b>Northern/Capitol</b>	<b>Southern</b>	<b>Total</b>
<b>Very Large</b>	Total: 0 2018: 0 2021: 0	Total: 0 2018: 0 2021: 0	Total: 1 2018: 0 2021: 0	Total: 5 2018: 2 2021: 3	Total: 6 2018: 2 2021: 3
<b>Large</b>	Total: 5 2018: 2 2021: 2	Total: 3 2018: 2 2021: 1	Total: 0 2018: 0 2021: 0	Total: 1 2018: 0 2021: 0	Total: 9 2018: 4 2021: 3
<b>Medium</b>	Total: 6 2018: 1 2021: 0	Total: 3 2018: 0 2021: 2	Total: 4 2018: 0 2021: 1	Total: 2 2018: 0 2021: 0	Total: 15 2018: 1 2021: 3
<b>Small</b>	Total: 4 2018: 0 2021: 1	Total: 2 2018: 1 2021: 0	Total: 10 2018: 2 2021: 1	Total: 0 2018: 0 2021: 0	Total: 16 2018: 3 2021: 2
<b>Very Small</b>	Total: 0 2018: 0 2021: 0	Total: 0 2018: 0 2021: 0	Total: 12 2018: 1 2021: 0	Total: 0 2018: 0 2021: 0	Total: 12 2018: 1 2021: 0
<b>Total</b>	Total: 15 2018: 3 2021: 3	Total: 8 2018: 3 2021: 3	Total: 27 2018: 3 2021: 2	Total: 8 2018: 2 2021: 3	Total: 58 2018: 11 2021: 11

**2021 Targeted Number of Orders to Be Sampled by County**

So far, the discussion has focused on identifying the counties to be sampled. The next step is to determine the number of orders from each county to be sampled. Exhibit E-3 shows the final targeted sample counts with and without oversampling for each county.

As done for previous reviews, each county’s targeted sample count is determined using a weighted sample based on three size categories: large and very large counties, medium counties, and small and very small counties. (Very large and very small are relatively new distinctions that have not been incorporated into sampling yet.) The proportion of orders by these three sizes considers the average number of orders DCSS established in FFY17, FFY18, and FFY19.<sup>40</sup> Taking the average over the last three years is consistent with the approach used for the 2018 review. Another option would be to take the most recent year or the year of the sampling, but these alternative approaches present other issues that make averaging the better option. Part of FFY19 occurred during the height of the COVID-19 pandemic, which altered court and DCSS operations as well as parents’ decisions to pursue child support. Court files are generally organized by calendar year rather than FFY, and sometimes it takes more than a year from when a complaint for child support was filed with a court and when a final order is disposed. This latter point makes averaging over multiple years a more desirable option.

**Exhibit E-4: 2021 Targeted Sample Size by County**

County	Size categorization	Average number of orders established FFY 2017, 2018 & 2019)	Percentage of all orders in state	Targeted sample size of 1,000 orders	Targeted + 20% oversampling
Los Angeles	Very Large	13,128	19.7	265	300
Orange	Very Large	3,718	5.6	157	176
San Diego	Very Large	3,345	5.0	141	158
Fresno	Large	4,076	6.1	172	193
Santa Clara	Large	1,928	2.9	81	91
Stanislaus	Large	1,291	1.9	54	61
Kings	Medium	663	1.0	41	46
Merced <sup>R</sup>	Medium	1,073	1.6	66	74
Yolo	Medium	383	<1.0	24	27
Calaveras <sup>R</sup>	Small	95	< 0.5	20	22
Santa Cruz <sup>R</sup>	Small	223	< 0.5	46	52
<b>Sample Total</b>		29,925	45.0%	1,068	1,200
<b>State Total</b>		66,543		1,068	1,200

<sup>R</sup> County is combined with one or more counties to form a Regionalized Local Child Support Agency (LCSA).

The first spreadsheet in Appendix E-1 lists each of California’s 58 counties, notes the size classification of the county (i.e., not its classification when it is part of a regionalized CSA), and shows the number of DCSS orders established in each of the three years examined and the average for those three years. The bottom of the spreadsheet shows that DCSS established

<sup>40</sup> Cal. Child Support Services. 2019. *Comparative Data for Managing Program Performance: Federal Fiscal Year 2019*.

66,542 orders per year on average during the three-year period examined. When divided into the three size categories, the average number of orders established was:

- 53,385 per year by large and very large counties (80.2 percent of the state total);
- 8,737 orders per year by medium counties (13.1 percent of the state total); and
- 4,420 per year by small and very small counties (6.6 percent of the state total).<sup>41</sup>

In turn, use of a simple weighting would mean that 80.2 percent of the orders would be sampled from large and very large counties, 13.1 percent would be sampled from medium counties, and 6.6 percent would be sampled small and very small counties. For example, since the targeted sample size is 1,000 orders, this means the targeted sample size from small and very small counties is 66 orders (i.e., 6.6% multiplied by 1,000 orders). As shown in Exhibit D-3, this is the sum of the number of orders targeted for Calaveras and Santa Cruz counties, which are categorized as small counties for sampling (i.e., 20 orders are targeted for the Calaveras County sample and 46 orders are targeted for the Santa Cruz County sample). The division of those 66 orders between Calaveras County and Santa Cruz County is based on each county's proportionate share of the average number of orders they established in the last three years. Specifically, Calaveras County and Santa Cruz County established an average of 95 and 223 orders per year, respectively, so Calaveras County's share is 29.9 percent (Calaveras County's average of 95 orders divided by the sum of 95 and 223 orders is 29.9 percent) and Santa Cruz County's share is 70.1 percent (Santa Cruz County's average of 233 orders divided by the sum of 95 and 223 orders). When each county's share is determined, it is multiplied by the targeted number of orders for counties of that size (e.g., the targeted sample size is 66 orders for small and very small counties). Continuing with the example, this would result in a targeted sample size of 20 orders for Calaveras County (29.9% multiplied by 66 orders) and 46 targeted orders for Santa Cruz County (70.1% multiplied by 66 orders). The Excel spreadsheet in Appendix D-1 shows this calculation.

This sample weighting strategy described above is also applied to medium counties. For large and extra-large counties, a small modification is made to avoid the sample being dominated by Los Angeles County orders. (Strict application of this sample weighting strategy would result in over 50% of sampled orders being from Los Angeles County due to Los Angeles County's large volume, which is twice as large as the next largest county.) Instead, Los Angeles County is treated separately and pulled out of the counts of orders established by large and very large counties. Once Los Angeles County is pulled out, this means the targeted percentage of sampled orders from large and very large counties is reduced to 60.5 percent instead of 80.2 percent.<sup>42</sup> The sample weighting strategy for all other large and very large counties is now the same as that for smaller counties, except now the overall weight is 60.5 percent instead of 80.2 percent. Los Angeles County's share of the targeted sample of 1,000 orders is determined by taking its share

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<sup>41</sup>The sum of these three subgroups is 66,542, which is one less than the total of 66,543. The difference is caused by round-off error when totally across the five size categories.

<sup>42</sup> Los Angeles County accounts for 19.7 percent of the average number of orders established by CSS in the last three years. This 19.7 percent is reflected by the difference between 80.2 and 60.5 percent.

of all orders in the sampled county (rather than all orders in sampled counties clustered by county size) multiplied by the 60.5 percent.

The final step is to provide for oversampling of 20 percent. Due to the adjustment made for Los Angeles County, there is already some oversampling built into sample weighting strategy described above. As shown, in the second spreadsheet in Appendix D-2, it produces a targeted sample size of 1,062 orders instead of targeted count of 1,000. In other words, only 138 additional orders are needed to reach the 1,200 count. Those 138 orders are distributed across sampled counties like the weighting described above with rounding down to whole numbers for larger counties and up for smaller counties. Exhibit E-4 shows the final targeted sample counts with and without oversampling for each county. Exhibit E-4 compares the county sample sizes proposed for the 2021 review with those of the 2018 review.



**Exhibit E-5: Comparison of the 2018 and 2021 Sample Size (with Oversampling) by County**

County	Target sample size with oversampling				
	2018 target	2018 actual collection		2021 target	
	Number	Number	County orders as % of total orders**	Number	County orders as % of total orders**
<b>Alameda</b>	116	125	2.9		
<b>Amador</b>	20	20	< 0.5		
<b>Calaveras**</b>				22	< 1.0
<b>Fresno**</b>	228	181	5.6	193	6.1
<b>Kings**</b>				46	1.0
<b>Los Angeles**</b>	344	348	18.8	300	19.7
<b>Mariposa**</b>					
<b>Merced**</b>				74	1.6
<b>Orange**</b>				176	5.6
<b>Santa Clara**</b>	102	108	2.5	91	2.9
<b>Santa Cruz</b>				52	< 1.0
<b>San Diego**</b>	200	200	4.9	158	5.0
<b>San Luis Obispo</b>	34	35	0.5		
<b>Siskiyou</b>	20	22	< 0.5		
<b>Solano</b>	50	51	1.2		
<b>Stanislaus**</b>				61	1.9
<b>Tehama</b>	24	51	< 1.0		
<b>Tulare</b>	62	62	1.5		
<b>Yolo**</b>				27	< 1.0
<b>Total Sample</b>	<b>1,200</b>	<b>1,203</b>		<b>1,200</b>	
<b>Total Orders***</b>		<b>83,506</b>	<b>38.6%</b>	<b>66,542</b>	<b>45.0</b>

\*\* Court uses Tyler-Odyssey for e-management system.

\*\*\* This is based on a three-year average of the number of CSS order establishments. For the 2018 sample, the average is based on FFY2015, 2016, and 2017. For the 2021 sample, it is based on FFY2017, 2018, and 2019.

## **Selection of Cases for Review**

The cases targeted for review include initial orders and modifications of child support orders in dissolutions, legal separations, paternity actions, and domestic violence prevention actions (restraining orders). The following case types should be excluded: interstate child support cases where the California guideline would not be applied, cases that had no order established at the time of the study period, and orders providing for family support since the amount for child support could not be separated from the amount for spousal support.

The sample year is from orders established or modified in calendar year 2018. This is consistent with how most court files are organized, and it allows for a year of payment records that would mostly be before the COVID-19 pandemic began. The 2018 study generally relied on orders established or modified between January 2015 and February 2016.<sup>43</sup>

## **Analysis of Payments**

DCSS provided payment data for IV-D orders with an establishment and modification action filed in calendar year 2018. Federal regulation now requires the analysis of payment data by various characteristics, including whether the order was entered by default, income was imputed, income was presumed, and the low-income adjustment was applied. DCSS has conducted data validity tests of these fields and provided a data extract of all orders meeting the same selection criteria.

## **Future Sampling Considerations**

As more data become available electronically and the increased usage of e-management systems by county and regions, there will be numerous opportunities to improve sampling. It is anticipated that for the next review, the knowledge gained from accessing pertinent data for the case file review using e-files from one system can be used to access the data from other e-management systems. As more counties and regions adapt to e-management systems, this will expand the number of counties and regions available for sampling. If all counties and regions adapt e-management systems, it will even be possible to sample from all counties and regions. In addition, other improvements to record-keeping may also produce more information to better inform the IV-D/non-IV-D split. As the pool of counties that could be sampled electronically increases, it may also be beneficial to sample a larger number of orders to reduce the error rate associated with sampling, particularly since the federal regulation requires the consideration of more factors besides guideline deviations. The sample size should also try to minimize the error rate on these analyzed factors as well.

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<sup>43</sup> Judicial Council of Cal. 2017, *supra* note 4, at 246.

## Summary

The proposed sampling is essentially a cluster, stratified, and convenience sample intended to be representative of the state. Random samples will be drawn from “clusters”—that is, 11 of California’s 58 counties. The last review, which began in 2017 and was published in 2018, sampled from 11 counties. For the purposes of sampling, counties have been stratified by size, region of the state, and IV-D status. The specific counties to sample have changed somewhat for two majors: to move from manual data collection to electronic data collection by sampling from counties using e-filing and to better represent the state distribution of counties by size and geographical region.

The sampling maintains a targeted sample size of 1,000 orders, which is sufficient to detect statistical differences in the deviation rate over time. As done for previous reviews, the targeted sample size has been increased by 20 percent to 1,200 orders for oversampling. Finally, there is no compelling data available to suggest that the 50–50 split in the number of IV-D orders and non-IV-D orders sampled, which is the split used for all case file reviews dating to 1998, should be changed.

As more experience is gained with reviewing orders electronically and as more counties adopt e-management systems, more counties could be included in samples for future child support guideline reviews and the sample size should be increased to reduce the sampling error rate.

## Appendix E-1

County	County size	Region of the state	Uses e-system	Orders established by CSS in FFY			
				2017	2018	2019	3-year average
<b>Alameda</b>	Large	Bay Area	No	2,193	1,932	2,125	2,083
<b>Alpine</b>	Small	Northern/Capitol	N/A	2	1	-	1
<b>Amador</b>	Small	Northern/Capitol	No	75	58	69	67
<b>Butte</b>	Medium	Northern/Capitol	Yes**	490	642	645	592
<b>Calaveras</b>	Small	Northern/Capitol	Yes**	98	105	83	95
<b>Colusa</b>	Very Small	Northern/Capitol	No	32	49	34	38
<b>Contra Costa</b>	Large	Bay Area	No	1,578	1,418	1,459	1,485
<b>Del Norte</b>	Very Small	Northern/Capitol	No	128	141	127	132
<b>El Dorado</b>	Small	Northern/Capitol	No	392	338	280	337
<b>Fresno</b>	Large	Central/Coastal	Yes**	4,504	4,058	3,666	4,076
<b>Glenn</b>	Very Small	Northern/Capitol	No	118	124	118	120
<b>Humboldt</b>	Small	Northern/Capitol	Yes	251	321	335	302
<b>Imperial</b>	Medium	Southern	No	869	781	656	769
<b>Inyo</b>	Very Small	Central/Coastal	No	36	35	39	37
<b>Kern</b>	Large	Central/Coastal	Yes**	3,680	3,102	2,969	3,250
<b>Kings</b>	Medium	Central/Coastal	Yes**	633	672	684	663
<b>Lake</b>	Very Small	Bay Area	No	178	217	163	186
<b>Lassen</b>	Very Small	Northern/Capitol	No	106	85	103	98
<b>Los Angeles</b>	Very Large	Southern	Yes**	14,673	12,364	12,348	13,128
<b>Madera</b>	Small	Central/Coastal	No	652	597	550	600
<b>Marin</b>	Small	Bay Area	No	130	134	117	127
<b>Mariposa</b>	Medium	Central/Coastal	No	38	41	39	39
<b>Mendocino</b>	Small	Bay Area	No	236	204	177	206
<b>Merced</b>	Medium	Central/Coastal	Yes**	993	1,137	1,089	1,073
<b>Modoc</b>	Very Small	Northern/Capitol	No	20	18	9	16
<b>Mono</b>	Very Small	Central/Coastal	No	11	21	13	15
<b>Monterey</b>	Medium	Bay Area	Yes**	1,053	1,061	906	1,007
<b>Napa</b>	Small	Bay Area	Yes**	212	205	228	215
<b>Nevada</b>	Very Small	Northern Capitol	No	170	180	141	164
<b>Orange</b>	Very Large	Southern	Yes**	4,412	3,539	3,204	3,718
<b>Placer</b>	Medium	Northern/Capitol	Yes	416	383	313	371
<b>Plumas</b>	Very Small	Northern/Capitol	No	54	46	33	44
<b>Riverside</b>	Very Large	Southern	Yes	5,716	5,563	4,902	5,394
<b>Sacramento</b>	Very Large	Northern/Capitol	No	3,717	3,426	3,720	3,621
<b>San Benito</b>	Medium	Bay Area	No	114	119	105	113

County	County size	Region of the state	Uses e-system	Orders established by CSS in FFY			
				2017	2018	2019	3-year average
<b>San Bernardino</b>	Very Large	Southern	Yes	7,813	6,085	5,609	6,502
<b>San Diego</b>	Very Large	Southern	Yes**	3,486	3,387	3,163	3,345
<b>San Francisco</b>	Medium	Bay Area	Yes	493	538	559	530
<b>San Joaquin</b>	Large	Bay Area	Yes	1,465	2,176	2,144	1,928
<b>San Luis Obispo</b>	Small	Central/Coastal	Yes	382	320	270	324
<b>San Mateo</b>	Medium	Bay Area	Yes**	484	336	298	373
<b>Santa Barbara</b>	Medium	Southern	Yes**	986	753	823	854
<b>Santa Clara</b>	Large	Bay Area	Yes**	2,123	1,286	1,382	1,597
<b>Santa Cruz</b>	Small	Bay Area	Yes**	281	187	202	223
<b>Shasta</b>	Medium	Northern/Capitol	No	561	460	454	492
<b>Sierra</b>	Very Small	Northern/Capitol	No	4	12	3	6
<b>Siskiyou</b>	Very Small	Northern/Capitol	No	129	135	129	131
<b>Solano</b>	Medium	Bay Area	Yes	873	919	843	878
<b>Sonoma</b>	Medium	Bay Area	Yes**	598	595	607	600
<b>Stanislaus</b>	Large	Northern/Capitol	Yes**	1,369	1,391	1,114	1,291
<b>Sutter</b>	Small	Northern/Capitol	Yes**	367	310	293	323
<b>Tehama</b>	Small	Northern/Capitol	No	247	217	242	235
<b>Trinity</b>	Small	Northern/Capitol	No	29	19	37	28
<b>Tulare</b>	Large	Central/Coastal	No	846	787	1,205	946
<b>Tuolumne</b>	Small	Northern/Capitol	No	153	145	116	138
<b>Ventura</b>	Large	Southern	No	1,061	1,010	986	1,019
<b>Yolo</b>	Medium	Northern/Capitol	Yes**	465	389	296	383
<b>Yuba</b>	Small	Northern/Capitol	No	230	219	183	211

\*\* Court uses Tyler Odyssey for e-filing.

	Orders established by CSS in FFY				Percentage of total
	2017	2018	2019	3-year average	
<b>Sum of Very Large Counties</b>	39,817	34,364	32,946	35,709	53.7
<b>Sum of Large Counties</b>	18,819	17,160	17,050	17,676	26.6
<b>Sum of Large and Very Large Counties</b>	58,636	51,524	49,996	53,385	80.2
<b>Sum of Very Large and Large (less Los Angeles County)</b>	43,963	39,160	37,648	40,257	60.5
<b>Sum of Medium Counties</b>	9,066	8,826	8,317	8,736	13.1
<b>Sum of Small and Very Small Counties</b>	4,723	4,443	4,094	4,420	6.6
<b>Sum of all counties</b>	72,425	64,793	62,407	66,542	100

## Appendix E-2

2021 Sample Size								
Col. A	Col. B	Col. C	Col. D	Col. E	Col. F	Col. G	Col. H	Col. I
	Size category as % of state total <sup>A</sup>	County	Average number of CSS orders established per year (FFY17, 18, & 19)	% of statewide total	% of sample total of a particular size category <sup>AA</sup>	Sample weight	Targeted sample size of 1,000	Targeted + 20% over-sampling
<b>Size Category</b>								
Very Large/Large*	60.5%	Los Angeles	13,128	19.7%	43.9%	26.5%	265	300
Very Large/Large*	60.5%	Orange	3,718	5.6%	25.9%	15.7%	157	176
Very Large/Large*	60.5%	San Diego	3,345	5.0%	23.3%	14.1%	141	158
Very Large/Large*	60.5%	Fresno	4,076	6.1%	28.4%	17.2%	172	193
Very Large/Large*	60.5%	Santa Clara	1,928	2.9%	13.4%	8.1%	81	91
Very Large/Large*	60.5%	Stanislaus	1,291	1.9%	9.0%	5.4%	54	61
Medium	13.1%	Kings	663	1.0%	31.3%	4.1%	41	46
Medium**	13.1%	Merced	1,073	1.6%	50.6%	6.6%	66	74
Medium	13.1%	Yolo	383	0.6%	18.1%	2.4%	24	27
Small/Very Small**	6.6%	Calaveras	95	0.1%	29.9%	2.0%	20	22
Small/Very Small**	6.6%	Santa Cruz	223	0.3%	70.1%	4.6%	46	52
<b>Sample Total</b>			29,925	45.0%	N/A	106.8%	1,068	1,200
<b>State Total</b>			<b>66,543</b>	<b>1.8%</b>	<b>N/A</b>	<b>N/A</b>	<b>1,068</b>	<b>1,200</b>

# The Data Collection Instrument

## CASE INFORMATION

\* Form completed by:

\* County

\* Filing Date

If there is no filing date, please use the date the order was signed by the judicial officer.

Date

\* Court Case Number

\* Type of Case

- IV-D Case  
 Non-IV-D Case

\* Modification or New Order?

- Modification  
 New Order

\* Order Type

- Default  
 Stipulated  
 Contested

\* Is the guideline calculator report attached to the order?

- Yes  
 No



\* Number of children subject to this order:

1

2

3

4

5

6

7

8

9

10

\* Average percentage of children's time with the Obligor:

*If there is only one child, please enter their percentage of time with the Obligor.*

\* Source of Obligor's income:

Actual

Imputed

Presumed (only for IV-D cases)

Not Specified

Other (please specify):

\* If the Obligor's income was imputed, did the Court state the findings for imputing income on the record?

Yes

No

N/A

\* Source of Obligee's income:

Actual

Imputed

Not Specified

Other (please specify):

\* If the Obligee's income was imputed, did the Court state the findings for imputing income on the record?

Yes

No

N/A

\* Obligor's GROSS Monthly Income

Income Not Listed

Obligor's GROSS Monthly Income

\* Obligor's NET Monthly Income

Income Not Listed

Obligor's NET Monthly Income

\* Obligee's GROSS Monthly Income

Income Not Listed

Obligee's GROSS Monthly Income

\* Obligee's NET Monthly Income

Income Not Listed

Obligee's Net Monthly Income

\* Was there a subtraction for court-ordered child support or court-ordered spousal support?

Yes

No

\* Was the Obligor's NET income less than the low-income adjustment threshold?

If the Obligor's net income is equal to the low-income adjustment threshold, indicate "No".

Type of Case	Date of Order	Low-Income Threshold
IV-D	1/1/18 - 6/30/18	\$1644
IV-D	7/1/18 - 12/31/18	\$1692
Non-IV-D	1/1/18 - 3/31/18	\$1644
Non-IV-D	4/1/18 - 12/31/18	\$1692

Yes

No

## 2021 Case File Review Data Collection Form

### Low-Income Adjustment

\* Was a low-income adjustment granted?

- Yes
- No
- Unknown

\* If a low-income adjustment was granted, was the minimum order granted?

- Yes
- No
- Low-income adjustment was NOT granted

\* If a low-income adjustment was not granted, did the court state its reasons for not granting the minimum order?

- Yes
- No
- Low-income adjustment WAS granted

If yes, please enter the reasons stated by the court:

## 2021 Case File Review Data Collection Form

### CASE INFORMATION

\* Does a hardship deduction apply for either parent?

Yes

No

## 2021 Case File Review Data Collection Form

### Hardship Deductions

For the following questions list the dollar amount as a number.

**NOTE: If no deduction was granted, enter "0"**

#### Deductions to Obligor

\* Obligor's deduction for "Other  
Minor Children":

\* Obligor's deduction for "Catastrophic Losses or Extraordinary Medical Expenses":

\* Obligor's deduction for "Other Reason":

#### Deductions to Obligee

\* Obligee's deduction for "Other  
Minor Children":

\* Obligee's deduction for "Catastrophic Losses or Extraordinary Medical Expenses":

\* Obligee's deduction for "Other Reason":

## 2021 Case File Review Data Collection Form

### CASE INFORMATION

\* Was an Income and Expense Declaration (FL-150) or Financial Statement (Simplified) (FL-155) filed with the court within three months of the hearing or order date?

	Yes	No
Obligor	<input type="radio"/>	<input type="radio"/>
Obligee	<input type="radio"/>	<input type="radio"/>

\* Did either of the parents have an attorney representing them in court?

	Yes	No
Obligor	<input type="radio"/>	<input type="radio"/>
Obligee	<input type="radio"/>	<input type="radio"/>

2021 Case File Review Data Collection Form

CHILD SUPPORT ORDER

\* Amount of monthly base child support ordered (not including add-ons):

\* Was child support reserved?

Yes

No

\* Was child support set at zero?

Yes

No

\* Was there another order in lieu of financial support?

Yes

No

If yes, please explain:

\* How does the amount of child support ordered relate to the guideline amount?

Guideline amount

Below guideline

Above guideline

Unknown

2021 Case File Review Data Collection Form

Child Support Order Deviates from Guideline

\* What is the guideline amount?

Unknown

Guideline amount:

\* What is the rebutting factor?

*(Check all that apply)*

Sale of family residence is deferred

Extraordinary high income

Parent not contributing commensurate to custodial time

Different time-sharing arrangements

Equal custody, unequal housing

Child has special needs

Stipulation

Unstated

Other:



## 2021 Case File Review Data Collection Form

### CASE INFORMATION

\* Was any additional child support ordered?

This includes: (1) Work or education-related child care costs; (2) Child's uninsured health case costs; (3) Child's education costs or special needs (4) Travel expenses for visitation; or (5) Other (will need to specify).

Yes

No

2021 Case File Review Data Collection Form

Additional Child Support

Enter the amount of additional child support for each parent using either the percentage of the monthly total OR the dollar amount. *Leave blank if not applicable.*

Child Care Costs Related to Work or Job Training

Amount Obligor is Ordered to Pay

Percentage

Dollar Amount

Amount Obligees is Ordered to Pay

Percentage

Dollar Amount

Uninsured Health Care Costs for Child

Amount Obligor is Ordered to Pay

Percentage

Dollar Amount

Amount Obligees is Ordered to Pay

Percentage

Dollar Amount

Child's Education Costs or Special Needs

Amount Obligor is Ordered to Pay

Percentage

Dollar Amount

Amount Obligees is Ordered to Pay

Percentage

Dollar Amount

Travel Expenses for Visitation

Amount Obligor is Ordered to Pay

Percentage

Dollar Amount

Amount Obligees is Ordered to Pay

Percentage

Dollar Amount

Other Additional Support Order

Amount Obligor is Ordered to Pay

Percentage

Dollar Amount

**Amount Obligee is Ordered to Pay**

Percentage

Dollar Amount

2021 Case File Review Data Collection Form

**Additional Comments**

Please provide any additional comments or remarks:

## Appendix F: Focus Group Plan

Public Knowledge® (PK) submits this focus group plan per Deliverable 6 of the California Uniform Child Support Guidelines Review 2021 project for input and approval by the Judicial Council of California (JCC).

The plan provides the:

- Purpose and objectives for the focus groups;
- Roles, responsibilities, task timeline;
- Outreach and invitation strategy;
- Facilitation details; and
- Description of the findings and analysis approach.

### **Purpose and Objectives**

The purpose of conducting focus groups is to gather input from several groups of stakeholders regarding the current California child support guideline. Focused discussion groups often provide insight and detailed information on topics beyond what can be gained by research and aggregate data analysis. Further, California Family Code 4054 and federal regulations at 45 CFR 302.56 recognize the importance of a meaningful opportunity for public input from a broad cross-section of groups.

PK will conduct four focused discussion groups as follows:

- Child Support Commissioners and Family Law Judges
- Staff from DCSS and local child support agencies
- Parents who are owed and who owe support
- Self-Help Center (SHC) and Family Law Facilitator (FLF) staff

PK will invite individuals to the focus groups with Child Support Commissioners and Family Law Judges and staff from DCSS and local child support agencies from the following counties selected for this project:

- Calaveras
- Fresno
- Kings
- Los Angeles
- Merced
- Orange
- San Diego
- Santa Clara
- Santa Cruz

- Stanislaus
- Yolo

PK will organize and facilitate the focus groups virtually on the Zoom platform when feasible. Each focus group session will be recorded. PK will provide the recording along with a summary of each focus group session that will be incorporated into the written report with our observations and findings from the groups.

## **Roles and Responsibilities**

In consultation with CPR, PK will lead focus group activities including developing the focus group questions, scheduling and setting up the focus group platform and facilitating each session. PK will use experienced facilitators to conduct each focus group. JCC will assist in identifying prospective focus group participants and sending out the flyer and survey for the parent group session.

*Note: The activities described below are not an exhaustive task list. The table represents major activities to be completed.*

**Exhibit F-1. Timeline of Activities by Entity**

<b>Entity</b>	<b>Activity</b>	<b>Timeframe</b>
CPR	Kick-off project meeting	June 20, 2021
PK	Meet with CPR and JCC to discuss focus groups	July 6, 2021
PK	Meet with CPR and JCC to share and discuss the drafted outline focus group plan	July 14, 2021
CPR PK	Meet with JCC to discuss parent focus group	July 26, 2021
JCC	Finalize which counties will participate in the study	August 2021
PK	Revise focus group plan based on feedback received	August 18, 2021
PK	Create Zoom links for each focus group audience (parents, judicial officers, DCSS, and family law facilitators)	August 18, 2021
PK	Draft parent focus group questions	September 13, 2021
PK	Submit to JCC and CPR draft language for “save the date” and invitation emails to parent and judicial partner focus groups	September 15, 2021
PK	Send focus group appointment email to parents Send focus group save the date email to commissioners	September 17, 2021
CPR PK	Discuss parent focus group plan and questions with JCC	September 20, 2021
PK	Submit revised focus group plan to JCC	September 21, 2021

<b>Entity</b>	<b>Activity</b>	<b>Timeframe</b>
CPR		
JCC	Review and provide feedback on the draft focus group plan.	September 21, 2021
PK	Finalize parent focus group questions	September 21, 2021
PK	Facilitate and record parent focus group discussion.	September 22, 2021, at Noon CT
PK CPR	Finalize questions for the DCSS focus group.	September 30, 2021
PK	Facilitate and record DCSS focus group discussion.	October 1, 2021, at Noon CT
PK CPR	Finalize questions for Judicial Officers focus group.	October 7, 2021
PK	Facilitate and record Judicial Officers' focus group discussion.	October 8, 2021, at Noon PT
PK CPR	Finalize questions for Family Law Facilitators focus group.	October 14, 2021
PK	Facilitate and record Family Law Facilitators focus group discussion.	October 15, 2021, at Noon PT
PK	Submit recordings and summaries of each focus group discussion.	Three business days after each focus group
PK	Submit a final focus group plan.	October 22, 2021
JCC	Approve the final focus group plan.	October 30, 2021
PK	Submit a draft written report.	November 1, 2021
CPR JCC	Review and provide feedback on the draft report.	November 4, 2021
PK	Submit a final written report.	November 9, 2021

## **Outreach and Invitation Strategy**

Input from stakeholders is a mandatory part of the quadrennial child support guideline review.<sup>44</sup> The strategies set forth below are designed to engage focus group participants who are familiar or have experience with the child support guidelines and may have input on how to improve them to better serve Californian children and families.

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<sup>44</sup> Fam. Code, § 4054(f)



## Identifying Prospective Parent Focus Group Participants

JCC will assist PK in identifying parents who may be owed or owe child support. To identify participants, JCC will create a flyer with a QR code that family law facilitators can display during their conversations with parents/caregivers. The QR code will take parents to an online site that asks inclusion criteria questions as well as contact information. This will allow PK to select individuals for the parent focus group who are representative of the child support program—with an emphasis on low-income parents.

### A sampling of the types of questions on the survey that parents and caregivers will be responding to are as follows:

1. Do you have a child support order?
  - a. Yes
  - b. No (end survey)
  - c. Don't know
2. For your child support order(s), are you supposed to:
  - a. PAY child support
  - b. RECEIVE child support
  - c. Both pay and receive because I have two or more different orders
  - d. Don't know or none of these (end survey)
3. What county do you live in? \_\_\_\_\_
4. When are you available on Wednesday, September 22, 2021, for the focus group?  
Please check all that apply.
  - a. 11:30 - 1pm
  - b. Noon – 1 pm
  - c. 3 pm – 4 pm
  - d. 3:30 – 5 pm
  - e. 4:30 – 6 pm
  - f. 5:30 – 7 pm
  - g. 6 pm – 7 pm
  - h. I am not available any of these times (end survey)
5. Do you have a computer or smartphone that you can use to access ZOOM?
  - a. Yes, and I have used ZOOM before
  - b. Yes, but I have never used ZOOM
  - c. No (end survey)
6. What is your income?
  - a. Less than \$20,000 per year
  - b. About \$20,001 - \$25,000 per year
  - c. About \$25,001 - \$30,000 per year
  - d. More than \$30,000 per year
  - e. Prefer not to answer
7. Please list your contact information so we can contact you with instructions about how to participate in the focus group. Your information will not be shared with anyone or used for any purpose other than the focus group.
  - a. First name \_\_\_\_\_
  - b. Last name \_\_\_\_\_

- c. Email address \_\_\_\_\_
- d. Mobile number for text updates (optional) \_\_\_\_\_
- e. I do not want to share my name or email address (end survey)

PK will work with CPR to select up to 25 individuals who will be invited to participate in the focus group. Although 25 individuals will be selected, our experience is that not all the individuals will show up for and participate in the focus group. If there are more than 15 participants on September 22nd, PK will be ready to divide the group into two breakout rooms to manage the questions, answers, and conversation.

**Figure 1. JCC-created recruitment flier**

**WE WANT TO HEAR FROM PARENTS!**

Selected participants will receive a **\$20** gift card!\*

California is reviewing the formula used to calculate how much child support a parent will pay. If you have a child support order you may be eligible to share your opinions in a focus group discussion.

The focus group will be held online on **Wednesday, September 22, 2021**. To participate, you'll need a computer or phone available to access ZOOM.

If interested, please fill out this short survey by scanning the QR code or going to [surveymonkey.com/r/CACS2021](https://surveymonkey.com/r/CACS2021)

**SCAN ME**  
WITH YOUR PHONE'S CAMERA

Under California law the Judicial Branch is required to gather input from parents involved in child support cases. \*Gift cards will be provided by a data partner of the Judicial Council of California.

### **Identifying and Inviting Judicial Officer Focus Group Participants**

Commissioners and family law judges from the counties sampled for the case file review will be prospective focus group participants. Commissioners will have unique insights into the findings from the case file analysis. For example, the Commissioners may be able to provide context on

reasons for deviation from the guidelines or the circumstances in cases where support is set based on imputed or presumed income to a parent.

JCC will invite Commissioners and family law judges from the project counties to participate in the focus group in October. PK will follow up with participants through email. Participants will be provided information about the purpose of the study and how their feedback will be used. This will help them understand and prepare for their contributions to the focus group discussion.

PK will provide invited participants as much advanced notice of a scheduled focus group as possible to maximize the likelihood they can attend and fully participate in the process. PK will provide logistics such as date, time, Zoom link and password, via email to the invited participants.

### **Identifying and Inviting DCSS Focus Group Participants**

The same process and methodology used for the Commissioner focus group participants will be used to identify and invite DCSS and local child support agencies to be focus group participants.

### **Identifying and Inviting Family Law Facilitator Focus Group Participants**

The goal of the Family Law Facilitator focus group is to hear from family law facilitators who assist families with child support issues. The JCC hosts informational sessions for Family Law Facilitator (FLF) and Self-Help Center staff every Friday to discuss a wide array of topics. JCC will ask the FLF group to reserve the final 50 minutes of their October 15, 2021 meeting for a focus group discussion. PK will work with CPR to prepare information about logistics, ground rules, and topics for discussion.

## **Focus Group Duration, Size, and Use of Video Conference Software**

Before each focus group, PK will provide an overview and goals of the session. The Commissioner, DCSS, and parent focus groups will each last about 75 minutes and have between 12 to 15 participants. The advocate focus group will last about 60 minutes and may have as many as 40 participants. The focus groups with the commissioners, DCSS and parent focus groups will be held virtually using Zoom as the video conferencing platform, because of its intuitive functionality, recording capability and breakout room features. The FLF and Self-Help Center focus group will use WebEx, which is the platform of their regular meetings.

## **Analysis and Reporting of Findings**

PK will conduct a thematic analysis of the focus group qualitative data. We will categorize responses based on similarities of viewpoint or perspective related to the questions posed. This will be done for each focus group. PK will interpret the information and develop summary statements describing key themes. We will identify any substantive differences within and across groups and may point out significant similarities between groups if any are observed. The final

report will also include any lessons learned and recommendations for future child support guideline study focus groups.

# Parent Focus Group Facilitator Guide

## Facilitator's Introduction

Welcome, we are so glad to have you here! My name is \_\_\_\_\_ and I am with Public Knowledge®. The Judicial Council of California is reviewing the formula used to calculate how much child support the parent living with the child or children should receive. They have asked us to help gather feedback directly from parents who are owed child support and parents who pay support.

For those completing the focus group, you will receive a \$20 gift certificate that will be e-mailed to the address you provided on the online survey. If you have questions about that gift certificate, please email: [nlugo@pubknow.com](mailto:nlugo@pubknow.com)

We want to hear what you think should be considered when child support is ordered for one parent to pay another parent. There are no right or wrong answers. You are our expert parents today.

We will spend the next hour to 75 minutes with you. While we will not take any formal breaks, you are more than welcome to take care of your needs, as necessary.

- We are recording this focus group today for research purposes only.
- If you do not agree to be recorded, please disconnect from Zoom.
- You may wish to contact your local child support agency if you are seeking help with a child support issue.

Before we get started, let us go over some ground rules for our discussion:

- Cameras should remain on unless you need to step away.
- We want to hear from everyone even if it is just to say, "I agree with what was said."
- If you disagree, please do so calmly and respectfully.
- We will be aware of each other's right to speak from our personal experience.

And one of the most important ground rules, privacy, and confidentiality.

- Protect your and others' privacy. Do not use private information like birth dates, last names, addresses, or other identifying information of real cases.
- We will be talking about three fictional child support cases.
- We will want your input about what should be considered in each of these cases.

Do we have an agreement on these rules? If anyone does not feel comfortable with these ground rules, we thank you for your time and ask that you exit the Zoom.

What questions do you have before we begin?

### **Questions for Parents: Main Zoom Room (Large Group Discussion)**

Again, we will be using made-up child support case scenarios. We recognize that no two families are exactly alike. Children may have multiple parents, more than one mom or dad, or maybe raised by a relative or foster parent.

But for these scenarios, we're going to assume that the case involves a mom named Kris and a dad named Alex.

Throughout this meeting, a pop-up window will appear with a question and multiple-choice answers for you to select from.

We invite you to respond to the pop-up question when it appears on your screen.

The backstory for question 1: Kris and Alex started a family. They used to live together. Alex moved out. Kris wants child support from Alex.

#### **Question 1: What things should we take into account as part of the “child support formula” when deciding how much monthly child support Alex should owe Kris?**

- a) Number of children
- b) Kris's income
- c) Alex's income
- d) Cost of raising children
- e) Other: Please type your response in the chat \_\_\_\_\_

#### **Note for facilitator**

Possible Other Themes that participants may provide:

- Child's time with each parent.
- Actual childcare expenses
- Actual health insurance expenses
- Whether the children have any special needs
- A parent's living expenses
- A parent's taxes
- Whether the parent has other children in the home to support
- Whether a parent or the children receive public assistance
- Whether a parent receives a tax credit for the child.
- Whether a parent is not working

*Some of these are outside the guideline review (e.g., parent's taxes) and we should not spend time discussing them.*

**1A. Number of children:** I see [all/many/some] of you said the number of children and [others] said the cost of raising children. Let's talk about how much the child support order should change when there are more children.

1A(i). Should the child support order for two children be more than for one child? For example, if the child support order is \$100 for one child should it be \$150 or \$160 for two children, or higher?

If you think the child support payment amount should be more for two children than for one, please type "yes" in the Zoom chatbox.

If you do not think it should be more, please type "no" in the Zoom chatbox.

It appears that [#] of you typed that you disagree.

Would you, [call a parent's name], like to tell us more about your answer?

Who else would like to give us their thoughts about their answer?

**1B. Income:** I see [many/some/a few] of you mentioned income and \_\_\_\_\_ (the parent's cost of living, whether the parent worked, and whether a parent or family receives assistance).

1B(i). If Alex is ordered to pay child support to Kris, should the monthly child support amount be higher the more that Alex earns? (In other words, the more income Alex has, the higher the monthly child support amount should be.)

If you think it should, please type "yes" in the Zoom chatbox.

If you think it should not be higher the more he earns, please type "no" in the Zoom chatbox.

It appears that [#] of you typed no.

Who would like to tell us more about their answer?

1B(ii). What if Kris, the mom in this scenario, has more income than Alex. Do you think her higher income should affect how much child support Alex is ordered to pay?

If you think Kris's income should affect how much Alex might be ordered to pay, please type "yes" in the Zoom chatbox.

If you think it should not affect Alex's order, please type "no" in the Zoom chatbox.

It appears that [#] of you typed no.

Who would like to tell us more about their answer?

**The backstory for question 2:** Moving to a different scenario, let's imagine that Alex does not earn much.

In the Zoom poll pop-up box that appears on your screen, please select from the responses provided.

**Question 2: What other things should be considered in deciding how much child support Alex should pay?**

- a) How much Alex might be able to earn.
- b) How much Kris might be able to earn.
- c) Alex's living expenses.
- d) Kris's living expenses.
- e) The cost of raising their child or children.
- f) Other \_\_\_\_\_

2a.(i) [Some/all] of you mentioned how much Kris earns.

If Kris earns a lot more than Alex, should Alex still have to pay child support?

If YES, please type "yes" in the Zoom chatbox.

If NO, please type "no" in the Zoom chatbox.

[Number] of you typed YES.

Tell us how much should Alex pay in this scenario?

[Number] of you typed NO.

Tell us how much income would Alex have to have before Kris should have to pay child support?

2A(ii). At what income level do you think the parent not living with the children (Alex, in this scenario) should NOT be ordered to pay child support? (In other words, is there ever a situation in which a parent should not have to pay their share of the costs of raising their child?)

If YES, please type "yes" in the Zoom chatbox.

If NO, please type "no" in the Zoom chatbox.

[Number] of you typed YES.

Give us an example or talk to us more about why you say yes?

2A(iii). What if both Kris and Alex are low-wage earners? Do you think that would influence how you answered the last question—the one where we ask if Alex shouldn't have to pay child support under certain situations?



If YES, please type “yes” in the Zoom chatbox.

If NO, please type “no” in the Zoom chatbox.

[Number] of you typed YES.

Give us an example or talk to us more about why you say yes?

[Number] of you typed NO.

Give us an example or talk to us more about why you say no?

**The backstory for question 3:** For our last scenario, let us imagine that Alex does not provide income information that can be used to calculate the child support amount. Kris does not know Alex’s employer and does not know if Alex is working. The Child Support Agency does not have any concrete evidence about Alex’s earnings. Alex does not show up to the court hearing.

In the Zoom poll pop-up box that appears on your screen, please select from the responses provided.

**Question 3: What should the child support agency or court do if Alex doesn’t come to his court hearing?**

- a) Reschedule the hearing so Alex has another chance to show up or provide income information.
- b) Assume Alex can earn income and calculate the child support order using minimum-wage earnings or another amount of income.
- c) Order Alex to pay \$50 a month or some other amount.
- d) Other \_\_\_\_\_

3a.(i) Most of you selected letter [\_\_\_].

If (a):

How many chances or hearings?

After those chances are given, what should be done?

If (b):

What income amount should be used? (e.g. minimum wage, median earnings, other)

If minimum wage:

Should it be a full-time job at minimum wage?

What if Alex had seasonal or temporary employment?

If (c):

Those of you who selected (c), tell us what dollar amount you think the monthly child support should be, and why.

Does anyone who selected (c), disagree with that amount? If so, what amount do you think it should be and why?

## Revisiting Question 1, response (b).

**1B. Child's Time with Each Parent:** When we started the scenarios, [many/some/a few] of you said that the amount of time the child spends with each parent should be considered when determining how much the child support order should be.

1B(i). If the child spends equal time with Kris and Alex, should the child support order be \$0? Why or why not?

What if the child does not spend any time with Alex, should that impact how much child support is ordered? Why or why not?

What if the child spends 4 nights a month with Alex? Do you think Alex's child support amount should be less because he has the child for 4 nights a month?

If you think it should be LESS, type "less" in the chatbox.

If you think it should be MORE, type "more" in the chatbox.

I see [several/some/few] of you typed "less," can we hear from one or two of you? Tell us more about why the amount should be less.

If the parent mentions a specific expense (e.g., food and housing), say:

You mentioned (food or \_\_\_\_ ) does that expense differ from other child-rearing expenses? If yes, how? If not, why?

Probe until you get a sense of whether participants believe some or all expenses should be considered at low levels of timesharing.

Does the higher-income parent always pay the lower-income parent? What if the income of the parents is equal?

## Additional Questions for Parents if Time Permits

1. If you were us, what would you recommend that California change how child support is calculated?
2. Is there anything you want to add to what we have discussed so far?

## Closing Out the Focus Group

We have no more questions. Do you have any questions for us? Thank you, again, for your time, insights, and great conversation. You will receive the \$20 gift card via the email address we have for you –the same email we sent this Zoom invitation to.

# **LCSA Focus Group Facilitator Guide**

## **Facilitator's Introduction**

**(10 mins: targeted end time 12:10 PT)**

Welcome, we are so glad to have you here! My name is \_\_\_\_\_ and I am with Public Knowledge®. As part of the Judicial Council of California's quadrennial child support guideline review, they have asked us to help gather information directly from child support professionals

Federal regulation requires the analysis of guidelines deviations, and rates of income imputation, default, and application of the low-income adjustment and payment data. We have preliminary findings from analyzing data collected from IV-D orders in your LCSAs and a DCSS extract, but no payment data yet. The data are from modifications and establishments filed in 2018 (pre-Covid-19 pandemic). Please keep the time period in mind when helping us understand our preliminary findings.

First and foremost, we thank your LCSA for participating in the random sample of case files.

Your feedback and insights over the next 90 minutes will add context to the findings from the case file data analysis. We will not be reporting findings individually by LCSA. The sample aims to be representative of the State so that is how we will report the data.

- We invite everyone to keep their cameras on unless you need to step away.
- We are recording this focus group today for research purposes only.
- The recording will not be disseminated and neither your name nor any other personally identifying information will be associated with the recording.

While we will not take any formal breaks, you are more than welcome to take care of your needs, as necessary.

What questions do you have before we begin?

## **Ice breaker** (5 minutes: targeted end time 12:15 PT)

Now that we've introduced ourselves, we ask that each of you

- Introduce which LCSA you are from,
- How long you've worked in child support and
- Whether you attend child support court:
  - Frequently
  - Occasionally
  - Rarely
  - Never

**Question 1: California's default rate appears to be decreasing over time. Why do you think that is so? (10 minutes: targeted end time 12:25 PT)**

*Prompts*

- Is the agency (DCSS) doing a better job at outreach? If so, how (e.g., text messaging reminders and offering settlement conferences before a court hearing)?
- Do parents understand the importance of attending the hearing more than in the past? If so, how has their understanding increased (e.g., word of mouth, DCSS public awareness campaigns, family law facilitators)?
- Are parents using family law facilitators more to navigate the process? If so, how do they help?
- Is it because defaults are not always recorded or evident in the data? What can be done to improve recording?
- As we mentioned earlier, we collected the data from 2018, do you think this trend will continue in the future?

**Question 2: In general, the rates of income presumption and income imputation to the parent who will be paying support are low compared to other states. The federal rule from 2016 was intended to reduce income presumption/imputation. What is California doing that may contribute to low rates of income presumption/imputation? (10 minutes: targeted end time 12:35 PT)**

*Prompts*

- Did income presumption go down because TANF cases have declined over time?
- Does California use income from automated sources frequently? If so, what types of income information (e.g., quarterly wage data, state tax franchise data)?
- Is it because, unlike some states, California will use income evidence even if it is less than full-time minimum wage earnings? In contrast, many states will impute at minimum wage if income is less than minimum wage.
- Is it because California has a high percentage of parents with \$0 income? If so, what evidence is being used to determine the obligated parent's income is \$0 (incarceration, receipt of public assistance, receipt of disability benefits).
- Is it because not all income imputations and presumption are noted in the court records?
- We also notice the rates of income presumption and income imputation are lower in default cases than what we see in other states. Do the same reasons explain the low rates of income presumption/imputation? How do they vary?
- Many states presume/impute income to both parties. They consider it equal treatment. Does California do that? Why or why not? In what circumstances will income be imputed/presumed to the other parent and in what circumstances will income be not imputed/presumed to the other parent?

- Again, we collected the data from 2018, do you think this trend will continue in the future?

**Question 3. Both the percentage of orders set at \$0 and the percentage of obligors with \$0 income have increased? What factors explain this? (10 minutes: targeted end time 12:45 pm PT)**

*Prompts*

- Are there more \$0 orders because there are more obligors with \$0 incomes or is there something different in the guidelines calculation (more equal custody)?
- What are common scenarios for \$0 income? What is the income evidence?
- Are there more \$0 income parents or is there better income evidence to confirm \$0 income or are commissioners more comfortable with using \$0 income?
- A national study finds that California has one the highest percentage of \$0 orders among states. (Exploring Trends in the Percent of Orders for Zero Dollars (hhs.gov).) The study did not explore why but suggested the following contributing factors: increases in medical support only orders; increased consideration of ability to pay; reduction in order amounts for incarcerated parents, increase in joint-custody orders; \$0 orders on arrears-only cases, unintended incentive to establish a \$0 order due to federal performance measures. Do any of these reasons resonate with you?
- Again, we collected the data from 2018, do you think patterns have changed, particularly due to the COVID-10 pandemic? If so, which do you think will continue if and when the pandemic ends?

**Question 4: The application of the low-income adjustment has increased. Why? (5 minutes: targeted end time 12:50 pm PT)**

*Prompts*

- Is it because the LIA income threshold increases every year with inflation, so parents are eligible over time? It didn't do that before.
- Is it because more parents have low income (at least in 2018 which is the sample year)?

**Question 5: The preliminary findings show that when the LIA is applied it often results in \$0 orders and the non-zero orders averaged just over \$300 in 2018. Does that seem right? Is it too much or too little? Why? (10 minutes: targeted end time 1:00 PT)**

*Prompts*

- Do you think the amount is more today than it was in 2018 when the data was collected? Why?
- Is it due to inflationary adjustments to the low-income adjustment?
- Is it due to increased minimum wage?

- Is the LIA generally adequate or inadequate today? Should it produce a lower or higher-order amount than what we observe in 2018 data?

**Question 6: The preliminary deviation rate is about the same as the last review (about 13% for IV-D). The most common reasons for IV-D orders are stipulation (49%) and unstated (20%). The percentage with unstated has increased. Can you help us understand what was the reason for the deviation in these cases and why they aren't being stated? (5 minutes: targeted end time 1:05 PT)**

*Prompts*

- Is the issue record keeping: judges and commissioners are just using 4057(b)(5) which allows for deviation when unjust or inappropriate, but not providing the detail?
- If so, should the deviation criteria be changed to capture the detail?
- Is the current deviation criteria appropriate? Does it need to be expanded or updated?
- Could some of the reasons for deviations be better handled in a provision (e.g., a few files noted the NCP was impoverished and that was the reason for the deviation, should that be a stated reason?)

**Question 7: Although documentation in court files have gotten better, several orders still are missing worksheets and income information? What can be done to improve the documentation? (5 minutes: targeted end time 1:10 PT)**

*Prompts*

- Judicial training? Periodic audits?
- What about \$0 orders? Most (70%) with missing worksheets are zero orders.

**Question 8: What provisions of California guidelines do not work well? How can they be improved? (5 minutes: targeted end time 1:15 PT)**

**Question 9: If you were us, what would you recommend that California change how child support is calculated? (5 minutes: targeted end time 1:20 PT)**

### **Closing Out the Focus Group**

Is there anything else you want to add to what we've discussed? Do you have any questions for us? Thank you, again, for your time, insights, and great conversation.

# **Commissioner and Judge Focus Group Facilitator Guide**

## **Facilitator's Introduction**

**(10 mins: targeted end time 12:10 PT)**

Welcome, we are so glad to have you here! My name is Diane Potts and I am with Public Knowledge®. As part of the Judicial Council of California's quadrennial child support guideline review, they have asked us to help gather information directly from child support subject matter experts who are in the best position to provide information about how the guidelines are working and being applied.

Federal regulation requires the analysis of guidelines deviations, and rates of income imputation, default, and application of the low-income adjustment and payment data. We have preliminary findings from analyzing case file data collected from 11 courts in both AB 1058 cases and family law cases. The data are from modifications and establishments filed in 2018 (pre-Covid-19 pandemic). Please keep the time period in mind when helping us understand our preliminary findings.

You were invited because you are from one of the courts where data were collected. First and foremost, we thank the courts for participating in the random sample of case files. Your feedback and insights over the next 90 minutes will add context to the findings from the case file data analysis. We will not be reporting findings individually by the court. The sample aims to be representative of the State so that is how we will report the data.

- We invite everyone to keep their cameras on unless you need to step away.
- We are recording this focus group today for research purposes only.
- The recording will not be disseminated and neither your name nor any other personally identifying information will be associated with the recording.

While we will not take any formal breaks, you are more than welcome to take care of your needs, as necessary.

What questions do you have before we begin?

## **Ice breaker (5 minutes: targeted end time 12:15 PT)**

Now that we've introduced ourselves, we ask each of you to introduce yourselves, and tell us:

- Which court you are from?
- How long have you been on the bench?
- How long you have been in family law or AB 1058 assignment?
- Do you hear AB1058, family law cases or both, and
- About how many child support establishments and modifications do you hear in a typical week?

**Question 1: California’s default rate appears to be decreasing over time. Why do you think that is so? (10 minutes: targeted end time 12:25 PT)**

*Prompts*

- Is the agency (DCSS) or private bar doing a better job at outreach to parents? If so, how (e.g., text messaging reminders and offering settlement conferences before a court hearing)?
- Do parents understand the importance of attending the hearing more than in the past? If so, how has their understanding increased (e.g., word of mouth, DCSS public awareness campaigns, family law facilitators)?
- Are parents using family law facilitators or self-help centers more to navigate the process? If so, how do they help?
- Is it because defaults are not always recorded or evident in the data? What can be done to improve recording?
- As we mentioned earlier, we collected the data from 2018, do you think this trend will continue in the future?

**Question 2: In general, the rates of income presumption and income imputation to the parent who will be paying support are low compared to other states. The federal rule from 2016 was intended to reduce income presumption/imputation. What is California doing that may contribute to low rates of income presumption/imputation? (10 minutes: targeted end time 12:35 PT)**

*Prompts*

- Did income presumption go down because [CalWORKs](#) cases have declined over time?
- Is income evidence from automated sources frequently used in California to establish earning capacity? If so, what types of income information (e.g., quarterly wage data, state tax franchise data)?
- Is it because, unlike some states, courts will make orders based on income evidence even if it is less than full-time minimum wage earnings? In contrast, courts in many states will impute minimum wage if income is less than minimum wage.
- Is it because California has a high percentage of parents with \$0 income? If so, what evidence is being used to determine the obligated parent’s income is \$0 (incarceration, receipt of public assistance, receipt of disability benefits).
- Is it because not all income imputations and presumptions are noted in the court records?
- We also notice the rates of income presumption and income imputation are lower in default cases than what we see in other states. Do the same reasons explain the low rates of income presumption/imputation? How do they vary?



- Many states impute income to both parties. They consider it equal treatment. Do California courts also make orders that impute income to both parties? Why or why not? In what circumstances will income be imputed to the other parent and in what circumstances will income be not imputed to the other parent?
- Again, we collected the data from 2018, do you think this trend will continue in the future?

**Question 3. Both the percentage of orders set at \$0 and the percentage of obligors with \$0 income have increased? What factors explain this? (10 minutes: targeted end time 12:45 pm PT)**

*Prompts*

- Are there more \$0 orders because there are more obligors with \$0 incomes or is there something different in the guideline calculation (more equal custody)?
- What are common scenarios for \$0 income? What is the income evidence?
- Are there more \$0 income parents or is there better income evidence to confirm \$0 income or are judges and commissioners more comfortable with using \$0 income?
- A national study finds that California has one the highest percentage of \$0 orders among states. (Exploring Trends in the Percent of Orders for Zero Dollars (hhs.gov).) The study did not explore why but suggested the following contributing factors:
  - increases in medical support only orders,
  - increased consideration of ability to pay,
  - reduction in order amounts for incarcerated parents,
  - increase in joint-custody orders,
  - \$0 orders on arrears-only cases, and
  - unintended incentive to establish a \$0 order due to federal performance measures.
- Do any of these reasons resonate with you?
- Again, we collected the data from 2018, do you think patterns have changed, particularly due to the COVID-10 pandemic? If so, which do you think will continue if and when the pandemic ends?

**Question 4: The application of the low-income adjustment has increased among AB1058 cases (IV-D cases). Why? (5 minutes: targeted end time 12:50 pm PT)**

*Prompts*

- Is it because the LIA income threshold increases every year with inflation, so parents are eligible over time? It didn't do that before.
- Is it because more parents have low income (at least in 2018 which is the sample year)?

**Question 5: The preliminary findings show that when the LIA is applied in AB1058 cases (IV-D cases) it often results in \$0 orders and the non-zero orders averaged just over \$300 in 2018. Does that seem right? Is it too much or too little? Why? (10 minutes: targeted end time 1:00 PT)**

*Prompts*

- Do you think the amount is more today than it was in 2018 when the data was collected? Why?
- Is it due to inflationary adjustments to the low-income adjustment?
- Is it due to increased minimum wage?
- Is the LIA generally adequate or inadequate today? Should it produce a lower or higher-order amount than what we observe in 2018 data?

**Question 6: The preliminary deviation rate is about one percentage point more than the deviation reason for the last review (about 14% for IV-D). The most common reasons are stipulation (49%) and unstated (20%). The percentage with unstated has increased. Can you help us understand what was the reason for the deviation in these cases and why they aren't being stated? (5 minutes: targeted end time 1:05 PT)**

*Prompts*

- Is the issue record keeping: judges and commissioners are just using 4057(b)(5) which allows for deviation when unjust or inappropriate, but not providing the detail?
- If so, should the deviation criteria be changed to capture the detail?
- Are the current deviation criteria appropriate? Does it need to be expanded or updated?
- Could some of the reasons for deviations be better handled in a provision (e.g., a few files noted the NCP was impoverished and that was the reason for the deviation, should that be a stated reason?)

**Question 7: Although documentation in court files have gotten better, several orders still are missing guideline calculations or the DCSS calculator and income information. What can be done to improve documentation and to ensure that guidelines are being determined even if a different order is made? (5 minutes: targeted end time 1:10 PT)**

*Prompts*

- Judicial and commissioner training? Periodic audits?
- What about \$0 orders? Most (70%) with missing worksheets are zero orders.

**Question 8: What provisions of California guidelines do not work well? How can they be improved? (5 minutes: targeted end time 1:15 PT)**

**Question 9: If you were us, what would you recommend that California change how child support is calculated? (5 minutes: targeted end time 1:20 PT)**

**Closing Out the Focus Group**

Is there anything else you want to add to what we've discussed?

Do you have any questions for us?

Thank you, again, for your time, insights, and a great conversation

## **Self-Help Center and Family Law Facilitators**

### **Facilitator's Introduction**

**(10 mins: targeted end time 12:10 PT)**

Welcome, we are so glad to have you here! My name is Kathy Sokolik and I am with Public Knowledge®. As part of the Judicial Council of California's quadrennial child support guideline review, they have asked us to help gather information directly from child support subject matter experts who are in the best position to provide information about how the guidelines are working and being applied.

Federal regulation requires the analysis of guidelines deviations, and rates of income imputation, default, and application of the low-income adjustment and payment data. We have preliminary findings from analyzing case file data collected from 11 courts in both AB 1058 cases and family law cases. We have reviewed the findings through focus groups with LCSA representatives, commissioners, and judges from the sampled counties as well as DCSS. The intent is to add context to the data findings. The federal regulation intends to minimize deviations, income imputation, and default, and encourage appropriate low-income adjustments.

We thank you for the opportunity to get insights from you, particularly from your experiences working with low-income families. We will be taking up the rest of your scheduled meeting to ask you questions.

- We invite everyone to keep their cameras on unless you need to step away.
- We are recording this focus group today for research purposes only.
- The recording will not be disseminated and neither your name nor any other personally identifying information will be associated with the recording.

While we will not take any formal breaks, you are more than welcome to take care of your needs, as necessary.

What questions do you have before we begin?

**Question 1: To begin, could you list the county where you work in the chat. (5 minutes: targeted end time 2:15 PT)**

**The topic for Question 2: Updating the Low-Income Adjustment (10-15 mins: targeted end time: 2:30 PT)**

Consider the existing low-income adjustment (LIA). Historically, the income threshold for applying the LIA is usually more than full-time earnings from the state minimum wage, so it applied to parents working full-time at the state minimum wage. Now that the state minimum wage is \$14 per hour, the LIA no longer applies to parents working full-time at the state

minimum wage. The state minimum wage will be \$15 per hour beginning in 2022, which is about \$30,000 per year in gross income.

**Question 2: Which one statement do you most agree with about improving the Low-Income Adjustment (LIA)?**

- a) The LIA income threshold should be increased so it always applies to a parent working full-time at the state minimum wage.
- b) The LIA income threshold should be increased, but the LIA should only apply to parents who can't earn full-time, minimum-wage earnings.
- c) The existing LIA should be replaced with an adjustment that considers California's housing costs.
- d) No changes to the current LIA are necessary.
- e) Other \_\_\_\_\_

*Prompts*

Follow-up based on the majority of votes

- If (a) receives the most votes, why? How and why is this the fair and equitable outcome to the receiving parent who may also have a very low income?
- If (b) receives the most votes, why did you choose this over (a)? Why is (b) more fair, appropriate, and equitable than (a)?
- If (c) receives the most votes, how can this be applied given regional differences in housing expenses? The receiving parent may also have higher housing costs. Should this also be considered? Why or why not? If so, how?
- If (d), please explain. Why is this more fair, appropriate, and equitable than the other options?

**The topic for Question 3: Other Guidelines Factors Affecting Order Amounts for Low-Income Parents (15 mins: target end time: 2:45 PT)**

Please think about how you have observed each of these factors being applied and whether it resulted in consistent and predictable order amounts among similarly situated cases. By “predictable,” we mean that the consideration of that factor is so consistent, you or a parent can predict how a change in one factor would affect the guideline-calculated order amount. Note by “sketchy,” we mean that the parent has more than one employer in the past year, has not worked every week in the past year, has inconsistent hours from week to week, or a similar situation that makes income evidence “sketchy.” About CalWORKs or CalFresh, data find that most children are enrolled for less than a year.

**Question 3: Based on your experiences, what other factors typically contribute to differences in order amounts among low-income families. (Check all that apply.)**

- a) The averaging of income when the obligor's current employment or earning history is sketchy
- b) Calculating the obligee's income when the children are on/off CalWORKs
- c) Deductions from income
- d) Use of parenting time percentages other than zero
- e) Deviation from the guidelines
- f) Don't have enough experience or knowledge to answer question
- g) Other \_\_\_\_\_

*Prompts*

Acknowledge which received the most votes. Regardless (and even if option (f) --don't know-- receives the majority of votes), go through each factor individually.

- Factor (a): What evidence of income is typically used? How is it typically averaged? What are the inconsistencies? What are some of the stories heard from parents about predictability?
- Factor (b): What income is typically used? What are the inconsistencies? What are some of the stories heard from parents about predictability?
- Factor (c): What are common income deductions? What are the inconsistencies? What are some of the stories heard from parents about predictability?
- Factor (d): When is parenting time set at 0 in the guideline calculation and when is it not zero? Is the application zero/non-zero consistent? For non-zero timesharing, what is used as evidence (e.g., verbal testimony from an obligated parent or receiving parent, the amount provided by an obligated parent or receiving parent, amount DCSS puts into the attached calculator)
- Factor (e): What sort of deviations have you observed for low-income cases? Think about other low-income cases that were similar. Did they also have deviations? Were the circumstances identical between the two cases or were there differences that explained the different applications?
- Factor (g): What were some of the reasons "other" were checked?

**Question 4 (optional, if running ahead of time): How would you explain the California guideline in one or two sentences to a parent? Please put your answer in the chat.**

**Question 5: What provisions of California guidelines do not work well? How can they be improved? (5 minutes: targeted end time 2:50 pm)**

**Question 6: If you were us, what would you recommend that California change how child support is calculated? (5 minutes: targeted end time 2:55 pm)**

### **Closing Out the Focus Group**

Is there anything else you want to add to what we've discussed? Do you have any questions for us? Thank you, again, for your time, insights, and great conversation.

## Glossary

basic subsistence needs	Federal regulation (45 C.F.R. § 302.56(c)(1)(ii)) requires the consideration of the “basic subsistence needs” of the noncustodial parent. The definition of “subsistence” is left to the discretion of the state but is commonly defined as the minimum necessary to support life, such as food and shelter.
California Department of Child Support Services	The state-level department created to administer California’s IV-D child support program, including all services necessary to locate parents; establish paternity; establish, enforce, and modify support orders; and collect and distribute support in California.
CalWORKs	California Work Opportunity and Responsibility to Kids program. This is California’s implementation of the federal TANF program (see TANF).
Child	A person, under the age of 18 or 19 if unmarried and still enrolled in high school full-time.
child support	Amounts required to be paid under a judgment, decree, or order, whether temporary, final, or subject to modification, for the support and maintenance of a child or children, which provides for any or all of the following: monetary support, health insurance coverage, arrearages, and may include interest on past-due child support obligations.
child support order	Any court or administrative order for the payment of a set or determinable amount of support of a child by a parent, or a court order requiring a parent to provide for health insurance coverage for a child, or a court order requiring a parent to make payment of arrearages. "Child support order" includes any court order for spousal support or for medical support to the extent these obligations are to be enforced by a single state agency for child support under Title IV-D of the federal Social Security Act (commencing with section 651 to Title 42 of the United States Code).
Code of Federal Regulations (CFR)	A codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the federal government.
Child Support Commissioner	A person appointed by the superior court to act as a temporary judge to hear all Title IV-D child support cases, unless an objection is made by a party.
Complaint	A formal written document filed in a court that sets forth the names of the parties, the allegations, and the request for relief sought. Sometimes also called the initial pleading or petition.
cost of living adjustment (COLA)	The U.S. Department of Commerce Bureau of Labor Statistics Consumer Price Index (CPI) produces monthly data on changes in the prices paid by urban customers for a representative look at the costs of goods and services. Cost of living adjustments, sometimes referred to as COLA, increase wages in a systematic manner to keep income in line as best as possible with the costs of living.
court case	A lawsuit or a complaint filed in court by a petitioner against a respondent requesting legal findings by the court (e.g., establishing parentage) or the performance of



	a legal duty (e.g., paying child support).
court case number	The number assigned by the court to a court action.
custodial party (CP)	The person having primary care, custody and control over the child(ren).
DCSS automated system	The California automated statewide system that is certified by the federal Office of Child Support Enforcement to track payments, establishment and enforcement actions, and other information necessary to manage the state's child support program.
DCSS case	A case in which California is providing child support services authorized by Title IV-D of the Social Security Act. Every DCSS case has a unique case identification number and includes names and identifying information about the parents and child, as well as wage data for the parents, court order details, and the obligor parent's payment history.
Default	The failure of a respondent to file an answer or appear in a civil case within the prescribed time after having been properly served with a summons and complaint.
Dependent	A child who is under the care of someone else. Most children who are eligible to receive child support must be a dependent. The child ceases to be a dependent when they reach the "age of emancipation" as determined by state law, but depending on the state's provisions, may remain eligible for child support for a period after they are emancipated.
Establishment	The process of legally determining parentage (i.e., paternity) and/or obtaining a court or administrative order to put a child support obligation in place.
Family Law Facilitator	A court employee who is an experienced family law attorney that, free of charge to the public, provides educational services concerning the process of establishing or modifying support orders, completing forms, preparing income and expense declarations, declarations of parentage, and support schedules based on statutory guidelines. The Family Law Facilitator does not represent any party, and there is no attorney-client relationship. Each Superior Court in California is required to maintain an Office of the Family Law Facilitator.
Filed	A legal document received and accepted by the clerk of the court, or other official authorized to receive the document.
file date	The date that a document is filed.
Guideline	A uniform statewide method for setting child support obligations based on the income of the person(s) and other factors determined by state law.
Hardship	Circumstances that create extreme financial hardship for which the court may allow an income deduction such as living expenses of other natural or adopted children who reside with the parent, extraordinary health expenses, or uninsured catastrophic losses.
Income	As defined by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), income is any periodic form of payment to an individual, regardless of source, including wages, salaries, commissions, bonuses, workers' compensation, disability, pension, or retirement program payments and interest. All income (except

	imputed income) is subject to withholding for child support, pursuant to a child support order, but is protected by Consumer Credit Protection Act limits, both state and federal.
income band	Range of combined net incomes for both parents as set forth in Cal. Fam. Code §4055(b)(3) used to determine the percentage of income to be used to calculate support.
imputed income	Income assigned based on the earning capacity of a parent in a child support case. "The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children." (Cal. Fam. Code § 4058(b).)
income and expense declaration	A Judicial Council form (FL-150) used in family law proceedings to set forth and determine a party's income and expenses, and is used by courts when calculating child support.
intact family	A family group consisting of two parents living in the home with dependent child(ren). The term is used when measuring child-rearing expenditures because historically they were measured from two-parent families. More recent studies also consider children that are raised by domestic partners and same-sex couples. To be clear, this definition refers to studies on child-rearing expenditures, not the guideline. The guideline applies to wide range of family types including those where the children have more than two parents.
IV-D case	A child support case where at least one of the parties, either the custodial party (CP) or the noncustodial parent (NCP), has requested or is receiving child support services from the state's IV-D agency. A IV-D case is composed of a custodial party, noncustodial parent or putative father, dependent child or children, and the local child support agency.
Judicial Council of California	The Judicial Council of California is the constitutionally mandated body responsible for improving the administration of justice in the state. The council is headed by the Chief Justice of the California Supreme Court and is made up of judges, court executives, attorneys, and legislators. It was established to standardize court administration, practice, and procedure by adopting and enforcing rules for the state's courts.
K-factor	A fraction in Cal. Fam. Code § 4055(b)(3) used to determine K (amount of both parent's combined net income allocated for child support)
Local Child Support Agency (LCSA)	The county/regional office or department that has entered into a cooperative agreement with the California Department of Child Support Services to establish parentage and child support and enforce child, companion spousal, and medical support orders in cases where public assistance is being provided or at the request of either parent.
low-income adjustment (LIA)	A rebuttably presumed adjustment provided in Cal. Fam. Code § 4055(b)(7) for low-income obligors to allow for meeting of basic subsistence needs.
Modification	A court-ordered change or alteration of a child support

	order based on a change of circumstances for one or both parents.
monthly support obligation	The amount of money an obligor is required to pay each month for support.
non-IV-D case	A child support case in which the custodial party is not receiving CalWORKS and neither parent is currently receiving Title IV-D services from a Local Child Support Agency. A non-IV-D case can be converted into an IV-D case when the appropriate application for IV-D services is made or if the children begin to receive public assistance. A IV-D case can be converted to a non-IV-D case when the local child support agency is no longer providing services.
noncustodial parent (NCP)	The parent who does not have primary care, custody or control of the child(ren), and who may have an obligation to pay child support.
Oblige	An individual, agency, or entity to whom support is owed.
Obligor	An individual, or the estate of a decedent, who is obligated to pay support.
Office of Child Support Enforcement (OCSE)	The federal agency responsible for the administration of the child support program nationally. Created by Title IV-D of the Social Security Act in 1975, OCSE is responsible for the development of child support policy; oversight; evaluation, and audits of state child support enforcement programs; and provides technical assistance and training to the state programs.
parenting time	Percentage of time each parent has primary physical responsibility for the children. Under California's guideline child support formula, parenting time equals H%, which is the approximate percentage of time that the high earner has or will have primary physical responsibility for the children compared to the other parent. Sometimes also referred to as time share.
Petition	A formal written request presented to the court requesting specific judicial action. Sometimes also called a complaint.
presumed income	A presumption of income based on California's full-time minimum wage that is used to calculate child support for parents whose income or income history is unknown at the time a child support order is being established in a Title IV-D case.
public assistance	Any amount paid under the TANF, CalWORKs program, as specified in California Code of Regulations, title 22, section 110112, or foster care for the benefit of any dependent child or the caretaker or child.
self-support reserve	An amount a state has set as the minimum amount that a parent paying support needs to support themselves, intended to ensure low-income parents can meet their own basic needs. While some states use a self-support reserve amount, California uses the guideline formula to adjust for low incomes by incorporating a low-income adjustment for obligors.
Stipulation	A written or verbal agreement between the parties that states certain facts are true and will not be contested for the purposes of a particular lawsuit, and can include agreements for child support.
summons and complaint	In Title IV-D cases, a mandatory Judicial Council form (FL-600) used to notify a respondent that a lawsuit has

	been filed against them, and that a judgment will be taken as requested by the petitioner if no answer is filed within the time allowed by law (30 days in California).
support calculation programs	Computer software programs certified by the Judicial Council designed to calculate the guideline amount of child support a parent will be obligated to pay based on both parents' incomes and expenses
TANF	Temporary Assistance for Needy Families, or TANF, also known as CalWORKs in California, is the program funded under Title IV-A of the Social Security Act that provides temporary public assistance to a needy family. TANF was formerly known as the Aid to Families with Dependent Children program that terminated October 1, 1996.
temporary support order	An interim order for the obligor to pay support while the court case is pending entry of a final judgment.
time share	Percentage of time each parent has primary physical responsibility for the children. Under California's guideline child support formula, parenting time equals H%, which is the approximate percentage of time that the high earner has or will have primary physical responsibility for the children compared to the other parent. Sometimes also referred to as parenting time.
total net disposable income	The combined net disposable incomes of both parties (Cal. Fam. Code § 4055(b)(1)(E)).
Tribunal	A court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.
voluntary unemployment	The party has the capacity to work but chooses not to. A party is involuntary unemployed when laid-off or is seeking employment and cannot find work. The U.S. Bureau of Labor Statistics definition of "unemployed" may be used to define involuntary unemployment.