

Review of Statewide Uniform Child Support Guideline 2010

A REPORT TO THE CALIFORNIA
LEGISLATURE

NOVEMBER 2010



ADMINISTRATIVE OFFICE
OF THE COURTS

CENTER FOR FAMILIES, CHILDREN
& THE COURTS

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Judicial Council of California
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Executive Summary

This report is prepared pursuant to California 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) also require that each state review its guideline at least every four years. The primary purpose of this review 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 January 2010, 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 of the California guideline formula;
- Examining other economic factors considered in the guideline formula (e.g., the adjustment for low-income obligors);
- Examining California's and other states' treatment of medical support in the context of new federal medical support requirements (including the requirements pertaining to reasonable cost of medical support and cash medical support), health reform, and California's health-care delivery system and health-care costs;
- 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 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 stakeholders about the comprehensiveness and fairness of the California guideline; and
- Comparing selected provisions of the California guideline and their application with those of other states' guidelines.

Background

California Guideline and Federal Regulations

The California Legislature adopted the Statewide Uniform Child Support Guideline (referred to generally throughout this report as the “guideline”) in 1992. Prior to that time, California had a statewide minimum amount guideline and several county guidelines that judges could apply. The statewide guideline was adopted to comply with federal regulations for child support guidelines (see Fam. Code, § 4050). Federal regulations (45 C.F.R. § 302.56(a)) require states to establish by law or by judicial or administrative action one set of guidelines for setting and modifying child support award amounts. According to 45 Code of Federal Regulations part 302.56(f), a state guideline must provide a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award that would result from the statewide uniform guideline is the correct amount of child support to be awarded.

Overview of the California Guideline Formula

The California guideline considers all earnings and income of both parents because its premise is that both parents are responsible for supporting their children (Fam. Code, § 4053(b)). The core, basic formula for determining the amount of the child support order under the California guideline is based on the following factors:

- Each parent’s net disposable income;
- The parents’ total 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 provides for other adjustments to income, such as child support being paid for other children and other children being supported in the home. The guideline provides for adjustments to the support order amount, including adjustments for additional support, in cases involving factors such as uninsured health-related expenses, low-income obligors, and work-related child-care expenses.

Proceedings for Establishing or Modifying Child Support Orders

California superior courts establish and modify child support orders. Certain child support orders—those established or modified pursuant to part D of Title IV of the Social Security Act (commonly referred to as the “IV-D program”)—are established within California’s child support commissioner system (Fam. Code, § 4250). Under Title IV-D, a local department of child support services (DCSS) can file petitions to establish parentage, obtain and collect child support, obtain and enforce health insurance coverage for the child, and modify an order. 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 \$25 fee.¹ The purpose of DCSS is to work with parents and guardians to ensure that

¹ Federal law (Deficit Reduction Act of 2005, Pub.L. No. 109-171 (Feb 8, 2006) 42 U.S.C. § 1305 et. seq.) requires states to impose a \$25 annual fee in non–public assistance cases.

children and families receive court-ordered financial and medical support. Through a network of 52 county and regional child support agencies DCSS serves approximately 1.8 million children. Services include locating a parent; establishing paternity; establishing, modifying, and enforcing a court order for child support; and establishing, modifying, and enforcing an order for health-care coverage. The federal government and, in part, states fund the IV-D program.

In California, the local DCSS 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 the custodial parent; instead, the custodial parent is named as a party to the order once the order is established. 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 paternity actions filed by the local DCSS. 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 or other family law issues in cases heard by commissioners. 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 facilitators and parents does not create an attorney-client relationship.²

“Non-IV-D cases” are those in which child support orders are established and modified outside the commissioner system. A number of large and medium-sized counties have dedicated family law courts to hear cases involving child support or other family law issues (e.g., custody, visitation, dissolution of marriage, and domestic violence). 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. Under Family Code section 4065, the parties to a child support order may stipulate to an amount of support, provided the court finds that the parties have been informed of their rights, that the parties were not coerced into agreeing to the stipulation, and that the agreement is in the best interest of the children.

Previous Reviews and Recommendations

The 2010 review is the fourth conducted by the Judicial Council.³ Prior reviews have been instrumental in helping effect changes in the statewide uniform guideline. Specifically, the most recent review, conducted in 2005, suggested continued monitoring and refinement of certain

² Fam. Code, § 10013.

³ See Judicial Council of Cal., *Review of Statewide Uniform Child Support Guideline* for 1998, 2001, and 2005. Available at www.courtinfo.ca.gov/programs/cfcc/resources/publications/articles.htm#childsupport.

adjustments, deductions, and additional support for other factors such as child care but no changes to the basic guideline formula.

The most recent significant changes affecting the guideline concerned changes to the low-income adjustment and presumption of income. In August 2003, the Legislature changed the low-income adjustment provision to make a rebuttable presumption that any obligor qualifying for the low-income adjustment should be granted the low-income adjustment (set out in Fam. Code, § 4055(b)(7) at net income below \$1,000 per month). Previously, the court had to justify granting the low-income adjustment by indicating in writing or on the record the reason for granting the adjustment. In August 2004, the Legislature changed the provision regarding the presumption of income (set out in Fam. Code, § 17400(d)(2)) to set presumed income at 40 hours per week at minimum wage.

Data and Analytical Methodology

Assessment of the Economic Cost of Child Rearing

The assessment of the economic cost of child rearing included a review of the principles underlying state guidelines, specifically the principle related to the cost of raising children; a literature review of the studies of child-rearing expenditures underlying state guidelines and the studies that contained more current estimates; and developing new estimates of child-rearing expenditures from the most current expenditure data available (i.e., up to the first quarter of 2009 in the Consumer Expenditures Survey conducted by the Bureau of Labor Statistics). This was deemed necessary because the extant studies did not include data for the years after the economic recession began in December 2007 or were known to overstate actual child-rearing expenditures. In all, eight studies of child-rearing expenditures were identified and then compared to elements of the California guideline formula (e.g., percentage of income allocated to child-rearing expenditures, multipliers for two or more children). Other factors that affect state guideline differences were identified through the focus groups and the literature reviewed and then were analyzed. The amounts under the California guideline were compared to those of other states to illustrate some points. All calculations were based on automated guideline calculators from a state agency or court Web site.

Case File Review

A random sample of 1,226 child support orders entered in 2008 was drawn to analyze how the guideline is being applied and to what extent and why deviations occur. The sample spanned the same 11 study counties as in the last review. The counties range in size and socioeconomic factors to reflect the diversity of California. The sample included almost equal shares of IV-D and non-IV-D cases. To aid our analysis, the preliminary findings were shared in two focus groups with representatives of advocacy groups and commissioners of the study counties.

Additional Analysis of Low-Income Families

The analysis consisted of a literature review of low-income noncustodial parents and a review of each state's guideline. The low-income adjustment, minimum order, self-support reserve, income

attribution provision, and other information were noted for each state guideline and later categorized to determine how many states used certain approaches. The reviews were supplemented with a comparison of state guideline amounts for four low-income case scenarios. When available, automated guideline calculators from a state agency or court Web site were used to make the calculations; otherwise, the calculations were performed manually.

Additional Analysis of Medical Support

Each state's guideline was reviewed to determine what changes were made, if any, to conform to the 2008 federal medical support requirements. We also reviewed recent information about health reform and health-care costs in California. Information from recent medical support demonstration grants, the federal Office of Child Support Enforcement, and conference presentations of professional child support organizations was also examined.

Focus Groups With Stakeholders

Three focus groups with stakeholders were conducted. The first two focus groups (one held in Northern California and the other in Southern California) gathered stakeholders' perspectives on the comprehensiveness and fairness of the guideline as well as recommended improvements. Stakeholders participating in the third focus group reviewed preliminary findings of the case file review and shared their insights to add context and interpretation to the analysis. In all, CPR identified 48 individuals representing various groups. Participants received e-mail invitations to attend the focus group taking place in their region, followed by faxed invitations and telephone calls to increase the number of invitees confirming attendance. Not more than 15 invitees showed up for any one focus group.

CPR developed interview guides for the focus groups. For some questions, a round-robin approach was used to engage all focus group participants. A short survey was also administered in the first two focus groups. The focus groups were audiotaped and transcribed. Meeting notes and transcriptions were used to identify common themes.

Conclusions

Conclusion 1: *The California guideline and 36 other state guidelines are based on a "continuity-of-expenditures model"—that is, the child support award should allow the children to benefit from the same level of expenditures that would have been provided had the children and both parents lived together. State guidelines based on this concept apply it equally to children of divorce and children of unmarried parents, regardless of whether the parents ever lived together, because most states believe that children should not be the economic victims of their parents' decisions to live apart. Most of these states, including California, base their guideline formulas on measurements of child-rearing expenditures in intact families and periodically assess their formulas against newer measurements to ensure that they produce an adequate amount.*

Conclusion 2: *The California guideline formula is generally within the range of measurements of child-rearing expenditures—but at the high end of the range of measurements of child-rearing expenditures.* This assessment is based on comparisons of the California guideline to eight measurements of child-rearing expenditures, including those that underlie other state guidelines and current measurements.

Conclusion 3: *Many other assumptions and factors besides measurements of child-rearing expenditures form a guideline formula.* These include how the guideline formula adjusts for higher income, obligee income, and shared physical responsibility, as well as the use of gross or net income as the guideline basis. California’s approach to some of these factors creates some anomalies and differences from other state guidelines in certain circumstances, but they are generally limited or inconsequential.

Conclusion 4: *The percentage of orders that deviated from the guideline has increased.* The 2010 study found guideline deviations in 15 percent of the cases reviewed. Commissioners and stakeholders attribute the increase to the economic recession and better-educated parents.

Conclusion 5: *Commissioners and advocates agreed that the current low-income adjustment is inadequate.* Fifteen percent of the obligors in the case file review had incomes below \$1,000 net per month and so were eligible for the low-income adjustment. Despite increases in the minimum wage, this is the same percentage of obligors who were eligible during the last review. It is indicative of the economic distress that many parents currently face as a result of high rates of under- and unemployment and the lack of even low-paying jobs.

Conclusion 6: *Many of the guideline factors designed to yield more responsive orders are being applied very infrequently.* A hardship deduction is being made to the incomes of only 4 percent of the parents. Orders for additional support also are infrequent. Orders for work-related child-care expenses are applied in 12 percent of the cases, and orders for uninsured health-care costs are applied in 18 percent of the cases. Other adjustments to income and orders for other additional support are applied even less frequently. Commissioners attribute these trends to the economic downturn, a higher rate of default orders, and a smaller proportion of modified orders in the sample.

Conclusion 7: *The percentage of orders entered through default, 46 percent, is back up. This is after a concerted effort several years ago to lower the number of orders entered by default in California.*⁴

Conclusion 8: *The percentage of orders involving presumed income has increased since the last guideline review. The percentage of orders with income imputation, however, has not increased.* State statute requires that income be presumed in IV-D cases when the obligor’s income or

⁴ As discussed in Chapter 4 of the report, default orders are correlated with nonpayment. The general premise is that payments will be higher when parents are engaged in the order establishment or modification process.

income history is unknown. State statute provides that income can be imputed in any child support case (regardless of IV-D status) based on the parent's earning potential.

Conclusion 9: *Health insurance is frequently ordered, and medical support is ordered in most IV-D cases.* The latter is important because of new federal medical support rules that became effective in 2008.

Conclusion 10: *Information is frequently missing from case files.* Critical information was missing in many child support cases reviewed for this study. Ten percent lacked documentation of the calendared child support court event; 19 percent did not contain information on the parents' income; 9 percent lacked information on the child support order; and 22 percent did not specify the guideline amount.

Conclusion 11: *Historically, many IV-D families and obligors have poverty or low incomes. The current high unemployment and underemployment rates likely contribute to even higher incidences of poverty and low income than were previously documented.* This review considers how other states address low-income parents and how poverty and low income create special circumstances that need to be addressed when determining appropriate child support amounts.

Conclusion 12: *When child support obligations are set too high for low-income obligors, they are unable to meet their own subsistence needs.* This leads to many severe consequences: a reduced incentive to work and to work in the mainstream economy; depressed child support payments; higher arrears balances; and attenuated parent-child relationships, which in turn, can adversely affect child outcomes.

Conclusion 13: *The California guideline amounts for low-income obligors are high relative to other states. The low-income adjustment under the California guideline is inadequate.* Unlike the low-income adjustment used in many state guidelines, it does not relate to the federal poverty guideline for one person. Its income threshold (i.e., the low-income adjustment applies when obligor net income is less than \$1,000 per month) has never been updated. The income threshold is too low to apply to typical low-income situations (i.e., obligors earning minimum wage); hence these low-income obligors are not eligible for the low-income adjustment, and payment of the unadjusted guideline amount leaves the obligor with insufficient income to live above poverty level.

Conclusion 14: *California's income presumption policy exacerbates the guideline problems for low-income parents; the obligor's income is often presumed to be more than it actually is or job opportunities available for obligors are presumed to pay more than they actually do.* Family Code section 17400(d)(2) provides that if a support obligation is being established by the local child support agency and the obligor's income or income history is not known, income is presumed at minimum wage for 40 hours per week. Presuming income above an obligor's actual income can produce a much higher order than the amount that would have resulted had the guidelines been applied to the parent's actual income.

Conclusion 15: *Although the 2008 federal medical support rules impose many new requirements on states—including state provisions for the establishment and modification of medical support—2010 health reform will likely change future federal medical support requirements.* The federal Office of Child Support Enforcement (OCSE) is currently assessing whether current federal medical support policies are congruent with 2010 health reform. They anticipate changes, but the scope of those changes is currently unknown.

Conclusion 16: *California statute already provides that either or both parents can be ordered to provide insurance coverage for the children and that orders allocate the child's uninsured health-care expenses between the parents.* The 2008 federal medical support rule that applies directly to state guidelines mandates that a state guideline provide for how the child's health-care needs will be addressed.⁵ This encompasses orders for one or both parents to carry insurance for the child, orders for how the child's uninsured health-care expenses will be allocated between the parents, and other types of medical support.

Conclusion 17: *California statute currently does not provide an income-based definition of "reasonable cost" but does address what is "accessible" health-care. Although not called "cash medical support" (and states are not required to use the federal term), California's provision of reasonable uninsured health-care expenses is a form of cash medical support.* To assist with the implementation of the 2008 federal medical support rule that requires IV-D agencies to petition for health insurance that is reasonable in cost and accessible to the child and/or "cash medical support," many states are including definitions of "reasonable cost," "accessible," and "cash medical support" in their guidelines. The 2008 federal rule provides for considerable state discretion in these definitions; however, the reasonable cost definition must be income based. (Note: Senate Bill 580 (Wright; Stats 2010, ch 103) was enacted and now implements the rule)

Conclusion 18: *The California guideline adjusts for the child's health insurance differently than most state guidelines. While most states prorate the child's share of the insurance premium between the parents, California subtracts the insurance premium from the parent's income.* Depending on which parent pays the premium, the support award is increased or decreased by the other parent's share. States that have recently replaced the subtraction method for the proration method find that the subtraction method was not a sufficient adjustment for skyrocketing premiums and that the proration method is easy and fair.

Conclusion 19: *Focus group discussions among advocates reveal that parents frequently fail to comprehend what goes into the guideline calculation and need more education to improve their understanding.* Advocates suggest that parents receive more education so that they better understand the factors that go into the guideline calculation. They believe that parents who do not understand the guideline sometimes distrust the calculation and/or resent the system.

⁵ 45 C.F.R. § 302.56(3).

Conclusion 20: *Advocates who attended the focus groups consistently believed that the guideline is unfair to low-income parents. Many advocates expressed concern about how the guideline treats low-income parents, and low-income noncustodial parents in particular.*

Conclusion 21: *Many of the advocates' issues concerned systematic issues involving the guideline or were beyond the scope of the guideline. Advocates participating in the focus groups saw the guideline as interrelated and inseparable from other family law issues, including custody and court and agency rules and procedures. In all, advocates believed these interrelated issues create parental conflict that is harmful to child well-being.*

Recommendations

Recommendation 1: *Update and/or modify the low-income adjustment in the guideline. The current guideline provides for a low-income adjustment when the obligor's net income is below \$1,000 per month. The \$1,000 threshold has never been updated and, unlike most low-income adjustments in other state guidelines, it does not relate to the federal poverty guidelines for one person or full-time minimum wage earnings. Moreover, it is inadequate, and research findings suggest that it inadvertently could reduce the obligor's incentive to work in the legitimate economy, pay support, and maintain contact with the child, potentially resulting in other adverse effects on child outcomes.*

Recommendation 2: *Evaluate the current income attribution policies as it applies to both parents. This includes codifying case law on income imputation and reviewing the existing income presumption provision to determine if it continues to be consistent with the legislative principles regarding child support.*

Recommendation 3: *Educate stakeholders and equip them with information so they can make the current system work better. In addition, develop strategies to engage stakeholders and encourage their active participation in the child support process. Involvement and education have ripple effects. When parents understand the guideline better, they are more engaged in the child support process, are more forthcoming with information, know when and how to seek modification, and can understand and use the guideline provisions for unique situations when appropriate.*

Recommendation 4: *Adopt any necessary conforming changes so that California can meet the 2008 federal medical support rules, but also recognize that 2010 national health reform may produce changes to the federal rules in the future as well as changes in how states approach medical support. For the most part, California has the statutory framework needed to meet the 2008 federal medical support rules. One possible exception is that California statute does not provide an income-based definition of reasonable cost of insurance.*

Recommendation 5: *Encourage better and more detailed information in the case file. Income information, order amounts, guideline amounts in orders with deviations, and some other*

pertinent information were missing in a notable number of case files. For some parents, this is the only record they have of the basis of the order. If a parent ends up needing a modification, it is important that the file contain a complete record of how the court arrived at the original order amount.

CHAPTER 7

Conclusions and Recommendations

This chapter presents conclusions and recommendations from the 2010 review of the California Uniform Guideline. The guideline has been reviewed in accordance with state and federal requirements (Fam. Code, § 4054(a); 45 C.F.R. § 302.56). The review fulfills the federal requirements to consider economic evidence on the costs of raising children and to analyze case file data to determine how the guideline is being applied and to ensure that deviations are limited. Pursuant to Family Code section 4054(f), representatives from a cross-section of groups were invited to participate in focus groups to share their perspectives and recommendations. In addition, pursuant to Family Code section 4054(d), the review considered two matters in depth: child support guidelines for low-income families and underlying factors affecting statutory provisions for establishing and modifying medical support orders.

The conclusions are organized by chapter. Recommendations follow the conclusions.

Basis of Child Support Guidelines and Studies of Child-Rearing Expenditures

The economic basis of the California guideline was reviewed and compared to those of other state guidelines. The California guideline was also compared to the most current economic evidence of child-rearing expenditures. In addition, other factors that affect state guideline formulas and schedules were explored.

Conclusion 1: The California guideline and 36 other state guidelines are based on a “continuity-of-expenditures model”—that is, the child support award should allow the children to benefit from the same level of expenditures that would have been provided had the children and both parents lived together. State guidelines based on this concept apply it equally to children of divorce and children of unmarried parents, regardless of whether the parents ever lived together, because most states believe that children should not be the economic victims of their parents’ decisions to live apart. Most of these states, including California, base their guideline formulas on measurements of child-rearing expenditures in intact families and periodically assess their formulas against newer measurements to ensure that they produce an adequate amount.

There are other data and premises that could be used to develop state guidelines or determine support for special populations. These include economic data such as child-rearing expenditures in single-parent families, foster care payments, and the self-sufficiency wage. Further, a child support guideline formula or parts of the guideline formula could be based on other factors besides child-rearing expenditures. For example, when both parents are impoverished, neither parent can afford what it actually costs to raise a child, so many states base the guideline amounts at very low income or token amounts or an amount that leaves the obligor with

sufficient income after paying child support for at least a subsistence level of living. Other alternatives could include consideration of the relative standard of living of the obligor's household and the household of the obligee and the children after payment or receipt of child support or recognition that one or both parents have children with multiple partners. With the exception of guidelines amounts for low-income parents, however, there is no to little experience with these alternatives.

Conclusion 2: The California guideline formula is generally within the range of measurements of child-rearing expenditures—but at the high end of the range of measurements of child-rearing expenditures. This assessment is based on comparisons of the California guideline to eight measurements of child-rearing expenditures, including those that underlie other state guidelines and current measurements.

The California guideline is assessed by comparing its parameters to eight estimates of child-rearing expenditures that either underlie other state guidelines or represent the most current estimates available.²⁰⁹ At the core of the California guideline formula is the *K*-fraction, which represents the percentage of net income devoted to child-rearing expenditures for one child. The *K*-fraction for parents whose combined income is between \$801 and \$6,666 net per month is 25 percent. The estimated percentage of total expenditures devoted to child rearing is 24 to 27 percent and could be as low as 18 percent when work-related child-care expenses and out-of-pocket medical expenses, which are additions to base support (i.e., the amount calculated from the *K*-fraction) under the California guideline, are excluded.

The California guideline multipliers for two and three children are 1.6 and 2.0, respectively. The multipliers calculated from the measurements of child-rearing expenditures ranged from 1.4 to 1.7 for two children and from 1.6 to 2.0 for three children. Most of the estimates of child-rearing expenditures do not extend to four or more children. Instead, the California multipliers are assessed by comparing them to those used in other states. We found that the California guideline formula for one, two, and three children is within the credible range of the estimates of child-rearing expenditures but on the high end of the range; and most of the California multipliers for four and more children are generally too high relative to those used in other states. The legislative intent, however, was that the California guideline should be higher than those of other states because of California's relatively high cost of living (Fam. Code, § 4053(1)).

Conclusion 3: Many other assumptions and factors besides measurements of child-rearing expenditures form a guideline formula. These include how the guideline formula adjusts for higher income, obligee income, and shared physical responsibility, as well as the use of gross or net income as the guideline basis. California's approach to some of these factors creates some

²⁰⁹ Various studies estimate child-rearing expenditures. They produce different results as a result of differences in study methodologies, assumptions, and data years. For this reason, state guidelines are typically assessed as appropriate if they are generally bracketed by the lower and upper bounds of credible estimates of child-rearing expenditures.

anomalies and differences from other state guidelines in certain circumstances, but they are generally limited or inconsequential.

The percentage of income devoted to child-rearing expenditures arguably decreases as income increases. As a consequence, most state guidelines, including California's, yield a smaller support award amount when the obligee has more income even though obligor income is unchanged. There are, however, some isolated anomalies under the California guideline resulting from the structure of the combined income bracket of \$801 to \$6,666 net per month.

Many state guidelines, including California's, yield a smaller amount when the obligor has more time with the child and all other circumstances of the cases are unchanged. The amounts calculated under the California guideline change with incremental changes in the timesharing arrangement (e.g., adding or subtracting one or two overnights per month) while some state guidelines do not always change because one or two overnights are added or subtracted.

Whether a state bases its guideline on gross or net income is a policy choice. Regardless of the basis, most states standardize the gross to after-tax income conversion. That is, they use actual tax code to convert gross income to net or back out net income to gross. The latter is necessary in gross-income guidelines because most measurements of child-rearing expenditures relate to after-tax income, not gross income.

Findings From a Review of Case Files

A random sample of 1,226 child support orders entered in 2008 was drawn to analyze how the guideline is being applied, the extent to which it is being deviated, and why the deviations occur. The sample spanned the same 11 study counties as in the last review and ranged in size and socioeconomic factors reflective of the diversity of California. The sample included almost equal shares of IV-D and non-IV-D cases. The preliminary findings were shared with representatives of advocacy groups and commissioners of the study counties in focus group settings to aid in the interpretation of the analysis.

Conclusion 4: The percentage of orders that deviated from the guideline has increased. The 2010 study found guideline deviations in 15 percent of the cases reviewed. Commissioners and stakeholders attribute the increase to the economic recession and better-educated parents.

The 2010 deviation rate is statistically greater than the deviation rates of earlier reviews (i.e., the deviation rate in 1998, 2001, and 2005 ranged from 9 to 10 percent). Most (60 percent) of the deviations result from a stipulation between the parents, and most (69 percent) are downward. In general, commissioners from the study counties believe that deviations increase when there is an economic downturn and parents have less income. For example, some commissioners acknowledged that they deviate in cases where the obligor has very low income and payment of the guideline amount would impoverish the obligor. The advocates also recognized that judges are examining cases individually to determine what parents can realistically pay. Additionally,

advocates suggested that parents are more educated about their potential eligibility for a deviation and are more proactive about requesting it.

Conclusion 5: Commissioners and advocates agreed that the current low-income adjustment is inadequate. Fifteen percent of the obligors in the case file review had incomes below \$1,000 net per month and so were eligible for the low-income adjustment. Despite increases in the minimum wage, this is the same percentage of obligors who were eligible during the last review. It is indicative of the economic distress that many parents currently face as a result of high rates of under- and unemployment and the lack of even low-paying jobs.

The percentage of obligors eligible for the low-income adjustment (15 percent) is the same as in the previous case file review even though the low-income threshold has not changed and the minimum wage has increased. This undoubtedly reflects the economic recession, which has resulted in job losses and reduced other jobs from full-time to part-time work. The adjustment is typically granted more often in IV-D cases than non-IV-D cases. Commissioners suggested that the low-income adjustment may not always be applied in default or stipulated orders. It is also not applied when the obligor's actual income is zero. The adjustment was applied in 59 percent of eligible cases. Commissioners and advocates agreed that the current low-income adjustment is inadequate.

Conclusion 6: Many of the guideline factors designed to yield more responsive orders are being applied very infrequently. A hardship deduction is being made to the incomes of only 4 percent of the parents. Orders for additional support are also infrequent. Orders for work-related child-care expenses are applied in 12 percent of the cases, and orders for uninsured health-care costs, are applied in 18 percent of the cases. Other adjustments to income and orders for other additional support are applied even less frequently. Commissioners attribute these trends to the economic downturn, a higher rate of default orders, and smaller proportion of modified orders in the sample.

In general, permissible subtractions from income (e.g., a hardship deduction because the parent has additional children from a previous or subsequent relationship living with him or her) and orders for additional support (e.g., work-related child care) are occurring less frequently than they did in the previous review. One reason is that parents who do not participate in the order establishment process (as is often the case in default orders) may not know about these adjustments. Other explanations for this pattern are the economic downturn and the types of cases drawn for this study. The commissioners believe that child-care expenses are being ordered less frequently because more parents are unemployed or using relative care. The commissioners also believe that the hardship deduction is applied more often in modified orders than new orders because parents seeking modified orders are more likely to have subsequent families and because the 2008 sample captured a disproportionate share of new orders.

*Conclusion 7: The percentage of orders entered through default, 46 percent, is back up. This is after a concerted effort several years ago to lower the number of orders entered by default in California.*²¹⁰

The percentage of orders entered through default decreased from 44 percent in 2001 to 29 percent in 2005 and then went back up in the 2010 review to 46 percent. Commissioners and advocates attribute the increase to several factors. When the last sample was pulled for the 2005 study, DCSS was engaged in a concerted effort to reduce the incidence of default. Recent cutbacks of DCSS staff, however, may have lessened efforts in this area. Commissioners believe that many defaulted orders are ones in which DCSS requested a relatively low order that the obligor did not contest. Advocates believe that the increase in defaults is due to the economic recession and may reflect the unaffordability of attorney representation for many parents.

Conclusion 8: The percentage of orders involving presumed income has increased since the last guideline review. The percentage of orders with income imputation, however, has not increased. State statute requires that income be presumed in IV-D cases when the obligor's income or income history is unknown. State statute provides that income can be imputed in any child support case (regardless of IV-D status) based on the parent's earning potential.

Income can be presumed for obligors in IV-D cases if there is no information about the parent's income or income history (Fam. Code, § 17400(d)(c)). Obligor's income was presumed in 15 percent of IV-D cases in the 2010 case file review. Income imputation is provided in the California guideline (Fam. Code, § 4058(b)). Income imputation, which is based on the parent's earning potential, decreased from 7 percent during the last guideline review to 3 percent in 2010. Commissioners suggest that the incidence of income imputation has gone down because it is more difficult to show that work is available.²¹¹

Conclusion 9: Health insurance is frequently ordered, and medical support is ordered in most IV-D cases. The latter is important because of new federal medical support rules that became effective in 2008.

An order for at least one parent to provide health-care insurance was made in 80 percent of the cases reviewed. The mother was ordered to provide insurance in 9 percent of these cases, the father in 48 percent, and both parents in 42 percent. The case file data indicate that 95 percent of IV-D cases contain an order for health insurance and/or uninsured health-care expenses.²¹² This is important to fulfill the 2008 federal medical support requirements that require medical support be ordered in most situations.

²¹⁰ As discussed in Chapter 3, default orders are correlated with nonpayment. The general premise is that payments will be higher when parents are engaged in the order establishment or modification process.

²¹¹ Case law (*In re Marriage of Regnery* (1989) 214 Cal.3d 1367) provides a court, when imputing income, should consider whether there is actual opportunity to work, exemplified by an actual employer willing to hire, and other factors.

²¹² As discussed in a Chapter 5, orders for health insurance and/or uninsured health-care expenses are medical support orders.

Conclusion 10: Information is frequently missing from case files. Critical information was missing in many child support cases reviewed for this study. Ten percent lacked documentation of the calendared child support court event; 19 percent did not contain information on the parents' income; 9 percent lacked information on the child support order; and 22 percent did not specify the guideline amount.

Low-Income Parents and Child Support Guidelines

This review considered how other state guidelines addressed low-income parents and why poverty and low-income create special circumstances that need to be addressed in the determination of appropriate guideline amounts.

Conclusion 11: Historically, many IV-D families and obligors have poverty or low incomes. The current high unemployment and underemployment rates likely contribute to even higher incidences of poverty and low income than were previously documented.

Although current California data are not available, national data from 2001 found that one-third of IV-D families had incomes below the poverty level and that about three-fifths had incomes below 200 percent of the poverty level. In 1999, more than 60 percent of California parents with child support arrears had net incomes below \$10,000 per year. The current situation in California is likely to be worse than in other states because of California's above-average unemployment rate (12.5 percent as of February 2010) and underemployment rate (20 percent as of January 2010).

Conclusion 12: When child support obligations are set too high for low-income obligors, they are unable to meet their own subsistence needs. This leads to many severe consequences: a reduced incentive to work and to work in the mainstream economy; depressed child support payments; higher arrears balances; and attenuated parent-child relationships, which in turn, can adversely affect child outcomes.

If an obligor works full-time at the state minimum wage, his or her after-tax income after paying the guideline amount for one child would be below the current federal poverty guideline for one person. In other words, the obligor would have insufficient income to live at least at subsistence level. Some research findings indicate that child support awards that are set too high for low-income obligors may be a disincentive to work and drive these obligors into the underground economy, where their earnings are not subject to immediate wage withholding to pay child support. Still another study finds that arrears accumulate when the obligor's order is more than 20 percent of his or her gross income, particularly at low incomes. As of 2008, almost \$20 billion in child support arrears was owed in California. A previous study of California arrears found that only a small proportion will ever be paid because many obligors have low incomes and because of other factors, such as California's assessment of interest (at a rate of 10 percent), which contributes to arrears growth outpacing payments.

Besides financial consequences, high child support orders for low-income parents adversely affect child outcomes. Most research finds a positive correlation between child support payments and father-child contact. Thus, crafting orders that low-income parents are able to pay is important because, as supported by the research, paternal involvement is significantly associated with reduced rates of out-of-wedlock childbearing, the high school dropout rate, substance abuse, and juvenile delinquency.

Conclusion 13: The California guideline amounts for low-income obligors are high relative to other states. The low-income adjustment under the California guideline is inadequate. Unlike the low-income adjustment used in many state guidelines, it does not relate to the federal poverty guideline for one person. Its income threshold (i.e., the low-income adjustment applies when obligor net income is less than \$1,000 per month) has never been updated. The income threshold is too low to apply to typical low-income situations (i.e., obligors earning minimum wage); hence these low-income obligors are not eligible for the low-income adjustment and payment of the unadjusted guideline amount leaves the obligor with insufficient income to live above poverty level.

In four different case scenarios that considered obligors with no reported income or minimum wage income and a varying number of children, the California guideline ranked 8th, 24th, 13th, and 5th highest among state guidelines. Other states that typically ranked higher than California presumed a higher income when the obligor's income was missing, had a higher state minimum wage, or did not provide a low-income adjustment. Most state guidelines base their low-income adjustment on the federal poverty level for one person or full-time, minimum wage earnings. Some state guidelines index their low-income adjustment to the federal poverty level, which is updated annually. The low-income adjustment under the California guideline does none of these things. It is applicable to net incomes below \$1,000 net. This is below what can be earned from full-time work at the state minimum wage (\$8 per hour; \$1,386 gross per month or \$1,200 net per month). The \$1,000 threshold has not changed since it was first adopted in the early 1990s.

Conclusion 14: California's income presumption policy exacerbates the guideline problems for low-income parents; the obligor's income is often presumed to be more than it actually is or job opportunities available for obligors are presumed to pay more than they actually do.

Family Code section 17400(d)(2) provides that if a support obligation is being established by the local child support agency and the obligor's income or income history is not known, income is presumed at minimum wage for 40 hours per week. Presuming income above an obligor's actual income can produce high percentage orders. (Some California data indicate orders that consume 44 percent of an obligor's net income.) This policy does not recognize that employment opportunities are limited. The statewide unemployment rate is 12.5 percent (as of February 2010) and the statewide underemployment rate, which includes those seeking full-time work who can find only part-time work is 20 percent (as of January 2010). Almost all other states have policies that consider the current job market or presume fewer work hours or that contain other, less-stringent, provisions.

Medical Support Provisions

Child medical support is an integral part of child support. Medical support orders can require insurance coverage for the child by one or both parents, specify how a child's uninsured health-care costs will be allocated between the parents, require payment that is distributed to the Medicaid (or similar agency) if the child is covered by Medicaid (or a similar public entity), or a combination of these types of orders. New federal medical support rules imposed in 2008 necessitate a closer look at state provisions for ordering and modifying medical support.

Conclusion 15: Although the 2008 federal medical support rules impose many new requirements on states—including state provisions for the establishment and modification of medical support—2010 health reform will likely change future federal medical support requirements.

The federal Office of Child Support Enforcement (OCSE) is currently assessing whether current federal medical support policies are congruent with 2010 health reform. They anticipate changes, but the scope of those changes is currently unknown. The 2008 federal medical support rules, however, are currently in effect. Many states, including California, are still adopting and developing changes to conform to the 2008 rules. Cognizant that the federal medical support rules may change in the future, however, many states are making only the minimum changes necessary to fulfill the 2008 requirements.

Conclusion 16: California statute already requires that either or both parents can be ordered to provide insurance coverage for the children and that orders allocate the child's uninsured health-care expenses between the parents. The 2008 federal medical support rule that applies directly to state guidelines mandates that a state guideline provide for how the child's health-care needs will be addressed.²¹³ This encompasses orders for one or both parents to carry insurance for the child, orders for how the child's uninsured health-care expenses will be allocated between the parents, and other types of medical support.

Essentially, the 2008 federal rules eliminate the longstanding presumption that the obligor has employer-sponsored insurance available for children and that it is the most appropriate coverage for the children. Instead, the 2008 rules encourage orders for health insurance from the most appropriate source. This could be the obligee or, at state discretion, a stepparent who has employer-sponsored insurance. The rules also recognize that some of the child's health-care expenses may not be covered by insurance, so an order addressing these expenses may be appropriate. In addition, it recognizes that in some cases neither parents may have employer-sponsored insurance and that the child will be covered through Medicaid (called Medi-Cal in California), SCHIP (called Healthy Families in California), or another public entity's program. California already provides that either or both parents shall carry insurance for the child when it is available at no cost or a reasonable cost to the parent (Fam. Code, § 3751(a)(2)). California

²¹³ 45 C.F.R. § 302.56(3).

also provides for reasonable uninsured health-care expenses in Family Code sections 4062(2) and 4063.

Conclusion 17: California statute currently does not provide an income-based definition of “reasonable cost” but does address what is “accessible” health care. Although not called “cash medical support” (and states are not required to use the federal term), California’s provision of reasonable uninsured health-care expenses is a form of cash medical support. To assist with the implementation of the 2008 federal medical support rule that requires IV-D agencies to petition for health insurance that is reasonable in cost and accessible to the child and/or “cash medical support,” many states are including definitions of “reasonable cost,” “accessible,” and “cash medical support” in their guidelines.

Federal regulation (45 C.F.R. § 303.31(1) & (2)) requires that the IV-D petition for child support include private insurance that is accessible to the child and reasonable in cost and/or cash medical support. Most states that have an income-based definition of reasonable cost are adapting a rate of 5 percent of the parent’s income as the threshold that the child’s premium costs cannot exceed to be deemed reasonable in cost. Although the federal rule is clear that states have the option to define another reasonable income-based standard, the federal rule does suggest 5 percent. Most states that have a definition of “accessible” insurance, like California, consider whether the insurance is geographically accessible to the child. “Cash medical support” can be one of three things, including orders for the child’s uninsured health-care expenses. Most states are fulfilling this requirement for medical support by ordering one or both parents to provide accessible health insurance for the child when it is available at a reasonable cost and including provisions for uninsured health-care expenses in the order (e.g., each parent is responsible for half of the child’s uninsured health-care expenses). (Note: subsequent to the drafting of this conclusion, the California legislature enacted Senate Bill 580 (Wright; Stats. 2010, ch.103) that implemented the federal regulations)

Conclusion 18: The California guideline adjusts for the child’s health insurance differently than do most state guidelines. While most states prorate the child’s share of the insurance premium between the parents, California subtracts the insurance premium from the parent’s income. Depending on which parent pays the premium, the support award is increased or decreased by the other parent’s share. States that have recently replaced the subtraction method for the proration method find that the subtraction method was not a sufficient adjustment for skyrocketing premiums and that the proration method is easy and fair.

The base formulas and schedules of most state guidelines do not include the cost of the child’s health insurance. Instead, most state guidelines consider the actual cost of the child’s health insurance elsewhere in the guideline calculation. It may be subtracted from income or be prorated between the parents. When it is prorated, if the obligor pays the premium, the obligee’s prorated share is subtracted from the base support award; and if the obligee pays the premium, the obligor’s prorated share is added to the base support award.

Input From Stakeholders

The review included three focus groups with stakeholders, mostly representative of custodial or noncustodial parents and/or children's interests. Two focus groups concentrated on stakeholders' perceptions of the guideline's comprehensiveness and fairness. The third focus group called for stakeholders' assistance in the interpretation of the preliminary findings from the case file review. The conclusions, below, are drawn from the first two focus groups.

Conclusion 19: Focus group discussions among advocates reveal that parents frequently fail to comprehend what goes into the guideline calculation and need more education to improve their understanding.

Advocates suggest that parents receive more education about how the guideline is calculated. They believe that when parents fail to understand the factors that go into the guideline calculation, they sometimes distrust the calculation and/or resent the system. They generally believe the calculation is too complex and should be made more transparent. Some advocates suggested methods of outlining the child support formula for parents to review, including a brochure at the court, posting information outside the courtroom, or straightforward information on the court Web site. While some believe that access to online calculators are helpful to the general public, others believe that they create confusion because there are multiple calculators available that can produce inconsistent results.

Conclusion 20: Advocates who attended the focus groups consistently believed that the guideline is unfair to low-income parents.

Many advocates expressed concern about how the guideline treats low-income parents, and low-income noncustodial parents in particular. One advocate summarized the collective opinion of most when he stated that the guideline is "patently hurting low-income people." Advocates support raising the low-income adjustment level. One advocate thought there should be an absolute income floor (irrespective of the poverty level) below which the noncustodial parent would owe no child support.

Conclusion 21: Many of the advocates' issues concerned systematic issues involving the guideline or were beyond the scope of the guideline.

Advocates participating in the focus groups saw the guideline as interrelated and inseparable from other family law issues including custody and court and agency rules and procedures. For example, some advocates believed strongly in presumptive equal custody and that the guideline should reflect that. Still other advocates told stories about problems that parents recently have encountered because they lost their jobs and/or were seeking a modification to their child support order. In all, advocates believed these interrelated issues create parental conflict that is harmful to child well-being. In addition, some advocates proposed to completely revamp the guideline and adopt a new model that did not consider the income of the parents.

Recommendations

Five major recommendations emerge from the research conducted for this guideline review.

Recommendation 1: Update and/or modify the low-income adjustment in the guideline.

The current guideline provides for a low-income adjustment when the obligor's net income is below \$1,000 per month. The \$1,000 threshold has never been updated and, unlike most low-income adjustments in other state guidelines, it does not relate to the federal poverty guidelines for one person or full-time minimum wage earnings. Moreover, it is inadequate, and research findings suggest that it inadvertently could reduce the obligor's incentive to work in the legitimate economy, pay support, and maintain contact with the child, potentially resulting in other adverse consequences to child outcomes.

The income threshold is too low to apply to common situations when payment of the existing guideline amount leaves the obligor with income below poverty level. For example, a minimum wage earner²¹⁴ would not be eligible for the current low-income adjustment. Payment of his or her support award, however (i.e., \$300 per month based on the guideline amount for one child),²¹⁵ would leave the obligor with below-poverty income. That is, his or her income after payment of child support and taxes would be \$900 per month, less than the current federal poverty level for one person. Most low-income adjustments in state guidelines do not have an income threshold for applying the adjustment. Rather, most state guidelines provide that the support award be based on the difference between the obligor's income and a self-support reserve (typically based on the federal poverty guideline for one person) if that amount is less than the standard guideline calculation. This protects the obligor from being impoverished as a result of paying child support. The adjustment is simple and is often incorporated into a state guideline table but is more transparent if it is included in the guideline worksheet.

Some state guidelines also provide that the self-support reserve be updated annually in accordance with annual updates to the federal poverty guidelines. The use of a self-support reserve test, however, necessitates a minimum order when the obligor's income is below the self-support level. For example, an obligor whose income is \$600 per month has income below the current federal poverty level for one person (\$902.50 per month). Some state guidelines provide a minimum order but also specify that an order can be zero in certain situations, such as when the obligor is incapacitated and has no income (e.g., the obligor is institutionalized).

An alternative to adopting the self-support test would be to expand the income threshold of the current low-income adjustment. Several focus group participants suggested expanding the

²¹⁴ Assuming a 40-hour work week and the state's minimum wage of \$8 per hour, this would yield \$1,386 per month in gross income and \$1,200 per month after taxes.

²¹⁵ Assuming the obligee has no income and there is no timesharing or adjustment for other factors.

threshold for its application to \$1,500 net per month. All of the focus group participants unanimously supported a change to the low-income adjustment.

Recommendation 2: Evaluate the current income attribution policies as to both parents This includes codifying case law on income imputation and reviewing the existing income presumption provision to determine if it continues to be consistent with the legislative principles regarding child support.

California's provision for income imputation is thin and lacking in detail relative to those of most state guidelines. However, California case law (*In re Marriage of Regnery* (1989) 214 Cal.3d 1367) spells out what should be considered when imputing income as thoroughly as any other state guideline provision for income imputation. Specifically, it provides a three-pronged test to determine whether a court should consider a parent's earning capacity in lieu of his or her actual income: (1) ability to work, including age, occupation, skills, education, health, background, work experience, and qualifications; (2) willingness to work, demonstrated by good faith efforts, due diligence, and actual meaningful attempts to secure employment; and (3) opportunity to work, exemplified by an actual employer willing to hire. It would benefit guideline users, particularly parents, if this case law were codified. It would improve the transparency of California's income imputation policy and make the guideline outcome more predictable for parents.

California's income presumption policy should be evaluated to determine if it is consistent with the legislative principles regarding child support (Fam. Code, § 4053). The current policy implicitly presumes that obligors in IV-D cases can and should find full-time work at minimum wage. While many states make similar presumptions when imputing income, most states also consider local employment opportunities as part of the process. In addition, if the legislature re-examines the approach to low-income obligors, as recommended in this study, they will need to determine if these changes should also apply to cases in which presumed income is used to determine the child support amount. Further, current law limits the circumstances when income can be imputed to the custodial parent.

Recommendation 3: Educate stakeholders and equip them with information so they can make the current system work better. In addition, develop strategies to engage stakeholders and encourage their active participation in the child support process.

One of the recurring themes of this study is the stress that the economic recession has put on families and obligors. Yet parents are not fully utilizing all of the guideline provisions that are intended to deal with each case's unique economic circumstances. The low-income adjustment is not applied in all cases in which the obligor is eligible. The percentage of parents with hardship deductions is down, even though it seems logical that more parents would need it during an economic recession. Fewer orders are being entered for the child's uninsured medical expenses although parents are losing their employee health benefits. Parents do not understand that their orders are not automatically modified when they lose their jobs. In addition, the findings from

the case file data indicate that fewer parents can learn how the guideline works. Fewer parents are represented by attorneys and more orders are being entered by default, which is an indication that the parent is not involved in the order establishment process. Parents who obtain orders by default typically lack contact with DCSS, family law facilitators, and judges or commissioners—the very people we rely on to educate parents about the guideline. Involvement and education have ripple effects. When parents better understand the guideline, they become engaged in the process, are more forthcoming with information (e.g., documentation of actual earnings or child-care expenses), know when and how to seek a modification, and can understand and use its provisions for unique situations when appropriate (e.g., the low-income adjustment when the obligor is eligible).

Recommendation 4: Adopt any necessary conforming changes so that California can meet the 2008 federal medical support rules that are currently in effect but also recognize that 2010 national health reform may produce changes to the federal rules in the future as well as changes in how states approach medical support.

For the most part, California has the statutory framework needed for California to meet the 2008 federal medical support rules. One possible exception is that California does not provide an income-based definition of “reasonable cost” of insurance in statute. Most states are defining a child’s share of the insurance premium to be reasonable in cost if it does not exceed 5 percent of the parent’s income. Some states recognizing the high cost of insurance set the threshold higher, thereby producing more orders for private health coverage. Still other states concerned about affordability issues set the threshold lower or exclude obligors with poverty or near-poverty income from being ordered to provide private health insurance.

Recommendation 5: Encourage better and more detailed information in the case file.

Income information, order amounts, guideline amounts in orders with deviations, and other pertinent information were missing in a notable number of case files. For some parents, this is the only record they have of the basis of the order. When a parent becomes unemployed or realizes a hardship or another situation that might warrant a modification, it is important that the file contain a complete record of how the court or DCSS arrived at the original order amount.