Review of the New York Child Support Guidelines:

Summary of Findings from Data Analysis

Submitted to:

New York State Office of Temporary and Disability Assistance
Division of Child Support Services

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CONTENTS

EXECUTIVE SUMMARY

This report summarizes the findings from the data analysis conducted for New York's 2022 child support guidelines review. Federal regulation (45 C.F.R. § 302.56) requires states to review their guidelines at least once every four years. As part of that review, states must consider economic data on the cost of raising children; examine case file data to analyze the application and deviation from the guidelines, payment data, and the rates of income imputation, default, and application of the low-income adjustment; consider labor market data; and fulfill other requirements.

The New York child support guidelines were promulgated by the Child Support Standards Act of 1989 and are codified in § 413 of the New York State Family Court Act and § 240 of the New York State Domestic Relations Law. At the core of the New York child support formula are child support percentages that vary by the number of children:

- 17% for one child;
- 25% for two children;
- 29% for three children;
- 31% for four children; and
- 35% for five or more children.

The New York percentages are applied presumptively up to a combined parental income amount that is adjusted every two years. In 2022, that threshold is $163,000 per year.[1] When income is above this threshold, the law permits, but does not require use of the percentages. The income base is gross income less FICA and New York City and Yonkers taxes. There is no deduction for federal and state income taxes.

The analysis of economic data on the cost of raising children is used to assess the adequacy and appropriateness of the guidelines percentages. The federal intent of analyzing guidelines deviations is for states to use the information to develop provisions that would keep deviations at a minimum.[2] In its 2016 rule changes, the federal Office of Child Support Enforcement (OCSE) expressed concerns with the overuse of income imputation and default in cases involving low-income paying-parents. As part of those rule changes, OCSE added a requirement of state guidelines to consider the subsistence needs of payer-parents through a low-income adjustment such as a self-support reserve (SSR). New York already provided a low-income adjustment that includes a SSR before the rule change. The federal intent of analyzing labor market data is to gather information about the employability of low-skilled workers within a state to help inform income imputation provisions and the low-income adjustment. In most states, many parents with government child support cases have barriers to employment and earnings including limited job skills, low educational attainment, history of incarceration, and other barriers.

[1] New York State Office of Temporary and Disability Assistance Division of Child Support Services. (Mar. 2022). *Child Support Standards Chart.* Retrieved from https://www.childsupport.ny.gov/dcse/pdfs/CSSA.pdf.
[2] 45 C.F.R. § 302.56(h)(2).

Report Organization

The report consists of four sections. The first section provides an introduction, the second section summarizes the findings from the analysis of case file data and labor market data, the third section summarizes the findings from the analysis of economic data on the cost of raising children and uses it to assess the New York percentages. The final section provides a summary and conclusions.

Findings from the Analysis of Case File Data and Labor Market Data

The Division of Child Support Services (DCSS) of the New York State Office of Temporary and Disability Assistance (OTDA) provided the researchers[3] with a data extract of 3,200 child support orders that were randomly selected from 16,901 cases with orders established in calendar year 2021. The DCSS automated system tracks cases that are part of a local child support office's caseload. It does not track cases that are not part of a local child support office's caseload. Based on findings from other states, government child support cases are more likely than non-government cases to include orders in which income is imputed, the order is set by default, and orders where the low-income adjustment is applied. Payment information is also only available for cases that are part of a local child support office's caseload. There is no one data source for non-government cases. Consequently, the sample is non-representative of non-government cases.

The analysis of the case file data found a guidelines deviation rate of 32%, and a default rate of 8%. The percentage of orders with income undetermined is used as a proxy for the income imputation rate: it was 15%. The percentage of orders adjusted for poverty income was 10%. The poverty adjustment is one component of New York's low-income adjustment. The other component consists of adjusting for a SSR. The rate that the SSR is applied cannot be determined from the data. Still, based on quarterly wage data for payer-parents with at least one quarter's worth of income, 20% of payer-parents were eligible for an SSR adjustment to the support order amount based on their annual income estimated from quarterly wage data. Most of these rates are in the range of those of Northeast and Mid-Atlantic states that publish their rates. The only exception is New York's guidelines deviation rate, which is the second highest among the states compared.

Payment data were also analyzed. Most (73%) of payer-parents made some child support payments. Payment outcomes were generally less in default and poverty-adjusted orders.

Findings from the Analysis of Labor Market Data

Labor market data reveals that many low-skilled and low-paying jobs do not offer a 40-hour workweek or an opportunity for paid work each week of the year. The average number of hours worked per week in 2021 in New York was 33.5 hours per week, though this varies by industry (e.g., the average hours worked is less in service sector industries, which have inordinate numbers of low-skilled, low-paying jobs and were some of the heaviest hit by job loss in the COVID-19 pandemic). Adding to this is a high turnover rate in some of these industries. High levels of turnover contribute to periods of non-work that can depress earnings.

[3] The researchers are part of the Center for Policy Research (CPR), a non-profit research organization based in Denver, Colorado. CPR has conducted similar analysis for over 30 states and was retained by DCSS.

Exacerbating the issue is that employment opportunities in New York have not kept up with New York's growth rate. New York's September 2022 unemployment rate is tied as the fifth highest in the nation at 4.3%. The unemployment rate in the United States as a whole was 3.5%.

Findings from the Analysis of Economic Data and Schedule Update

This report reviews the economic data on the cost of raising children. The New York guidelines percentages are based on a very old study, but the results of the formula are generally in line with more current economic data on the cost of raising children. Case scenarios were used to compare the New York guidelines to those of Connecticut, Massachusetts, New Jersey, Pennsylvania, and Vermont. In general, the New York guidelines yield amounts comparable to these states except for a few scenarios.

The unique income basis of the New York guidelines (gross income less FICA and New York and Yonkers income tax) and the original reductions that were made to the economic data require additional assumptions to make the guidelines percentages comparable to studies of child-rearing expenditures and other states' guidelines. These assumptions make the findings from the comparisons less exacting. The economic evidence on the cost of raising children does rely on this income definition. No other state defines income similarly. Instead, most states either rely on gross income or also exclude federal and state income taxes. Although it is known that reductions were made to the study of child-rearing expenditures underlying the New York percentages to account for three factors, the amount of the reduction is unknown. Those three factors are the potential additional earning capacity of the custodial parent, the noncustodial parent's visitation expenses, and what a noncustodial parent could reasonably pay but still be fair and adequate.

Conclusion

For this review, OTDA was able to improve its methodology for extracting the deviation data from its automated system. This may explain why the deviation rate is higher than its previous rate. New York should continuously strive for other data improvements for future reviews. This could range from obtaining the incomes used in the guidelines calculation to retrieving information about whether the SSR adjustment was applied. If feasible, obtaining and analyzing case file data from non-government cases would also be helpful to understanding guidelines deviations and how to limit them.

New York may want to revisit its income base and the three reduction factors during the next review. When reviewing its income base, New York should not only consider whether economic evidence on the cost of child-rearing relates to New York's unique definition of guidelines income, but also consider the consequences of changing the definition given decades of case law centered around that definition. The amount of the reduction or knowing the assumptions underlying the three factors (e.g., the nature of the visitation expense) would allow for more precise comparisons and could better inform the use of deviations.

SECTION 1: INTRODUCTION

This report summarizes the findings from the data analysis conducted for New York's 2022 child support guidelines review. Federal regulation (45 C.F.R. § 302.56) requires states to review their guidelines at least once every four years. As part of that review, states must consider economic data on the cost of raising children; examine case file data to analyze the application and deviation from the guidelines, and the rates of income imputation, default, and application of the low-income adjustment, and payment data; consider labor market data; and fulfill other requirements.

The New York child support guidelines were promulgated by the Child Support Standards Act of 1989 and are codified in § 413 of the New York State Family Court Act and § 240 of the New York State Domestic Relations Law. At the core of the New York child support formula are child support percentages that vary by the number of children:

- 17% for one child;
- 25% for two children;
- 29% for three children;
- 31% for four children; and
- 35% for five or more children.

The percentages apply to New York's definition of income available for child support, which is gross income less FICA and certain other deductions.

The analysis of economic data on the cost of raising children is used to assess the adequacy and appropriateness of these percentages. In all, this report documents New York's compliance with the federal data requirements. New York last reviewed its guidelines in 2018 and, as part of that review, also met federal requirements by analyzing case data and considering economic evidence on the cost of raising children.

NEW YORK CHILDREN AND CHILD SUPPORT

Child support is an important source of income for many New York children. Based on the U.S. Census American Community Survey, 4,084,753 children lived in New York in 2021.[4] The 2022 Kids Count reports several statistics that are relevant to child support.[5]

- The percentage of New York children living in poverty is 19%, while it is 17% nationally.[6]
- The percentage of children whose parents lack secure employment is 34% in New York and 29% nationally.
- The percentage of children living in single-parent families is 34% in New York and 34% nationally.

[4] U.S. Census American Community Survey 2019. Retrieved from https://data.census.gov.
[5] Most of the statistics are from 2021. Annie E. Casey Foundation. (2022). *2022 Kids Count Data Book: State Trends in Child Well-Being*. Retrieved from https://www.aecf.org/resources/2022-kids-count-data-book.
[6] This is from 2020 data rather than 2019.

- The percentage of New York female-headed families receiving child support is 19%, while it is 26% nationally.[7]

Still, many New York families benefit from child support. This is evident in federal data[8] reported about the New York IV-D child support program, where IV-D stands for Section IV-D of the Social Security Act that enables government child support programs. The New York IV-D program is a state-supervised and county-administered child support program where local offices provide and administer child support services. In federal fiscal year (FFY) 2021, the New York IV-D program served 720,153 cases, established 17,159 support orders, distributed over $1.8 billion in child support collections, and collected 78% of the current support due, which is more than the national average of 67%. Other than certain types of public assistance cases, the use of IV-D services is not mandated. The number of non-IV-D child support cases, and the collections on those cases are unknown. Studies from other states[9] and earlier New York studies[10] find that the characteristics of IV-D and non-IV-D child support cases differ vastly. In general, these statistics are lower than pre-pandemic amounts at both the state level and national level.

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.[11] Nonetheless, other national research finds that almost a quarter of nonresidential parents have no or limited reported earnings.[12] These statistics underscore the delicate balance at low incomes where child support can help lift families out of poverty, but must recognize that low-income parents who are not living with the child may have a limited ability to pay. This is one reason the New York child support guidelines includes a self-support reserve and a poverty level order for the obligated parent. Both are part of New York's low-income adjustment.

Federal Requirements

As shown in Exhibit 1, federal regulation imposes many requirements of state child support guidelines and state guidelines review processes. Federal regulation expanded state requirements in 2016 through the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs (FEM) rule.[13] The deadline for meeting these federal requirements depends on a state's guidelines review cycle. It

[7] For this particular data field, the data is from 2018–2020. Retrieved from https://datacenter.kidscount.org/data/tables/10453-female-headed-families-receiving-child-support?loc=52&loct=2#detailed/2/52/false/1985,1757,1687/any/20156,20157.
[8] Federal Office of Child Support Enforcement. (2022). *Office of Child Support Preliminary Report 2022*. Retrieved from https://www.acf.hhs.gov/css/policy-guidance/fy-2021-preliminary-data-report-and-tables.
[9] For example, see the most recent California child support guidelines review that analyzed both IV-D and non-IV-D case file data. Judicial Council of California, *Review of Statewide Uniform Child Support Guideline 2022*. San Francisco, CA. Retrieved from https://www.courts.ca.gov/documents/Review-of-Uniform-Child-Support-Guideline-2021.pdf
[10] For example, see New York's 2010 child support guidelines review. Jane Venohr and Carly Everett. (Nov. 2010). *2010 New York Child Support Guidelines Review.* Report to the New York State Office of Temporary and Disability Assistance
[11] 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.
[12] Sorensen, Elaine. (Feb. 7, 2014). Employment and Family Structure Changes: Implications for Child Support. Presentation to the National Child Support Enforcement Association, Washington, D.C.
[13] See Federal Office of Child Support Enforcement. (Dec. 20, 2016). Actional Transmittal (AT-16-06) *Final Rule: Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs*. Retrieved from https://www.acf.hhs.gov/css/policy-guidance/final-rule-flexibility-efficiency-and-modernization-child-support-enforcement.

typically spans two review cycles and longer for some states that were granted a pandemic-based extension from the federal Office of Child Support Enforcement. For example, some states have until 2025 to meet the federal requirements.

The FEM rule also expanded what data states must consider as part of their periodic guidelines review. Prior to FEM, states only needed to consider economic data on the cost of raising children and collect and analyze case file data on guidelines deviations. The intent was to use the economic data to update the child support schedule/formula if deemed appropriate by the state, and to use the deviation data to develop guidelines provisions that would keep deviations at a minimum.[14]

Besides economic data and deviation data, states are now also required to consider labor market data and use their case file data to analyze their payment data and rates of income imputation, defaults, and application of the low-income adjustment. New York met these expanded data requirements as part of its last review.

In general, the 2016 federal rule changes aim to increase regular, on-time payment to families, to increase the number of obligated parents working and supporting their children, and to reduce the accumulation of unpaid arrears.[15] The federal rule changes were particularly intent on improving child support policies among low-income cases. The expanded data requirements are intended to help arm states with data-based recommendations that will improve their guidelines. States must examine their income imputation rate because the final rule singled out income imputation as an overused approach to determining income among low-income obligated parents.[16]

The narrative surrounding the FEM rule also noted the correlation between income imputation and default orders, as well as the importance of engaging both parents in the order establishment process in order to produce more accurate order setting.[17] This also explains the addition of the federal requirement to consider the state's default rate. The proposed and final rule cited research finding support orders set beyond a low-income parent's ability to pay (particularly when income is imputed above the actual earnings of a low-income parent) go unpaid and result in uncollectible arrears balances.[18] This is the impetus for the federal requirement for state guidelines to consider the subsistence needs of the obligated parent (and the custodial parent at the state's discretion) and why federal regulation requires the consideration of the rate that the low-income adjustment is applied as part of a state's guidelines.

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[14] 45 C.F.R. § 302.56(h)(2).

[15] U.S. Department of Health and Human Services. (Nov. 17, 2014). "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs: Proposed Rulemaking" 79 *Federal Register*, p. 68548. Retrieved from https://www.govinfo.gov/content/pkg/FR-2014-11-17/pdf/2014-26822.pdf.

[16] U.S. Department of Health and Human Services. (Dec. 20, 2016). "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs: Final Rule." 81 *Federal Register*. 244, p. 93520. Retrieved from https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-29598.pdf.

[17] U.S. Department of Health and Human Services. (Nov. 17, 2014). p. 68554.

[18] *Ibid.* p. 68555.

Organization of Report

Section 2 summarizes the findings from the analysis of case file data and labor market data.

Section 3 reviews the economic data on the cost of raising children.

Section 4 provides conclusions.

Exhibit 1: Federal Regulations Pertaining to State Child Support Guidelines

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.

(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;

(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); and

(3) 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.

SECTION 2: FINDINGS FROM THE ANALYSIS OF CASE FILE DATA AND LABOR MARKET INFORMATION

This section documents the findings from the data analysis required by the federal regulation. The findings from the analysis are organized by data source:

- Findings from case file data; and
- Findings from labor market data and other data.

FINDINGS FROM THE ANALYSIS OF CASE FILE DATA

This subsection presents findings from an analysis of case file data for 3,200 cases with child support orders established in calendar year 2021. The cases, a random sample of the 16,091 cases with orders established in that year, were provided by the Division of Child Support Services (DCSS) of the New York State Office of Temporary and Disability Assistance (OTDA).[19]

This review fulfills a federal regulation that requires states to examine case file data to analyze the application of and deviation from the guidelines, consider labor market data, and consider other data—rates of orders entered by default, where income is imputed to the parent obligated to pay support, where the state's low-income adjustment is applied, and payment data.[20] In particular, this review achieves the following objectives:

- Reviews selected characteristics of the parents/parties and their child support orders;
- Examines the child support order levels compared to proportions in the New York Child Support Guidelines;
- Looks at adjustments and deviations to the child support orders and the reasons for them;
- Examines rates of default and orders where the payer-parent has undetermined income (which is a proxy for income imputation because income would need to be imputed in this situation);
- Compares orders to parents' income levels, most notably for parents with low income, to determine how frequently poverty level adjustments were applied; and
- Analyzes payment behavior in terms of child support due and paid and the proportion of payer-parents making payments.

Sampling Limitations and Data Analysis

New York has a state-supervised and county-administered child support program. Local offices provide and administer those services to custodians and payer-parents. DCSS links local offices and coordinates with the federal child support agency. Among other things, DCSS administers an automated child support system that is used by local offices. The sample comes from the DCSS automated system so is referred to as the "DCSS sample." The DCSS sample includes orders that were part of a local child support office's caseload. It does not include orders that were not part of a local child support office's

[19] The sample is of newly established child support orders only and thus excludes arrears only orders, modified orders, or changes to existing orders.
[20] 45 C.F.R. § 302.56(h)(2).

caseload. Based on findings from other states, government child support cases are more likely than non-government cases to include orders in which income is imputed, the order is set by default, and orders where the low-income adjustment is applied. Payment information is also only available for DCSS cases. There is no one data source for non-government cases.

The findings from the analysis of the 2021 sample are often compared to the findings from the analysis of the sample pulled for the last review. For the last review, orders established in calendar year 2015 were pulled. The sample size of each year was set at 20% of all newly established orders in the sample year. More orders were established in 2015 than in 2021. There may be multiple reasons for the decline including the COVID-19 pandemic that affected access to the courts and court operations.

Characteristics of Sampled Cases

Exhibit 2 displays the geographic distribution of the sampled cases by county for both the 2021 and 2015 guidelines reviews. The county with the largest proportion of cases in both reviews was New York City, with 14% of the cases in 2021 and 38% of the cases in the 2015 time period.[21] Although the distribution is by the county where the custodian lives, in most cases (92%) the custodian and the payer-parent live in the same county. This is almost identical to the comparable proportion in the 2015 sample of 90%.

Exhibit 2: Geographic Distribution of Child Support Orders[1]

	2021 Sample (n =3,200)	2015 Sample (n =9,000)
County[2]		
Erie	8%	6%
Monroe	7%	5%
Nassau	5%	3%
Oneida	3%	2%
Onondaga	4%	3%
Suffolk	9%	6%
Westchester	3%	3%
New York City	14%	38%
All other counties	48%	34%

[1] Only counties with at least 3% of the sample orders are listed individually.

[2] County where the client lives, although in most cases both parties live in the same county.

The data field indicating whether the order was entered by the Family Court or the Supreme Court is mostly empty; only 2% of cases have a designation. However, as noted in the previous review, the field is often left blank if the order was entered by the Family Court. Using that assumption, then the vast majority of cases (98%) are Family Court cases. Applying the same assumption to the 2015 sample, 90% of the cases were Family Court cases.

The data extract included only a limited amount of demographic information about the sampled cases. Some of this information is displayed in Exhibit 3 on the next page. Most cases (71%) had support orders

[21]The COVID-19 pandemic caused changes in caseload in several other jurisdictions across the nation. It is possible the pandemic could have contributed to this decline in New York City as well, however, there is insufficient information to definitely conclude that.

for one child, while about a fifth (21%) had orders for two children. The comparable proportions in the 2015 sample were very similar, with 73% of orders for one child and 20% of orders for two children.

Exhibit 3: Characteristics of Child Support Cases

	2021 Sample (n=3,200)	2015 Sample (n=9,000)
TANF/IV-E/Medical Assistance		
Never TANF	51%	25%
Active TANF/IV-E	22%	24%
Former TANF/IV-E	10%	14%
Medical Assistance (MA) only	6%	8%
Former Medical Assistance (MA) only	7%	22%
Safety Net Assistance (SNA) only	5%	7%
Family Violence Indicator[1]	3%	3%
Number of Children		
One	71%	73%
Two	21%	20%
Three	6%	5%
Four or more	2%	2%

[1] The Family Violence indicator can be checked on a case if either parent had a family violence concern.

Exhibit 43 considers enrollment in Temporary Assistance to Needy Families (TANF) or the federal foster care program (which is labeled "IV-E"), and Medical Assistance (MA). It shows that the percentage of never-TANF cases has about doubled from the last sample: 25% of sampled orders were never-TANF cases in 2015, and the percentage is 51% for the 2021 sample. This change may be attributed to an increase in the proportion of never-TANF cases, or to be even more precise, a decrease in current and former TANF cases established during the post-pandemic period studied. The only other significant change is that the percentage with former MA only has declined. This may reflect changes in the referral process between child support and MA agencies. MA-only cases must be referred to child support for medical child support, but financial child support would only be pursued at the request of a party. There was little change in the percentage of active TANF/IV-E and former TANF/IV-E between the two sample periods.

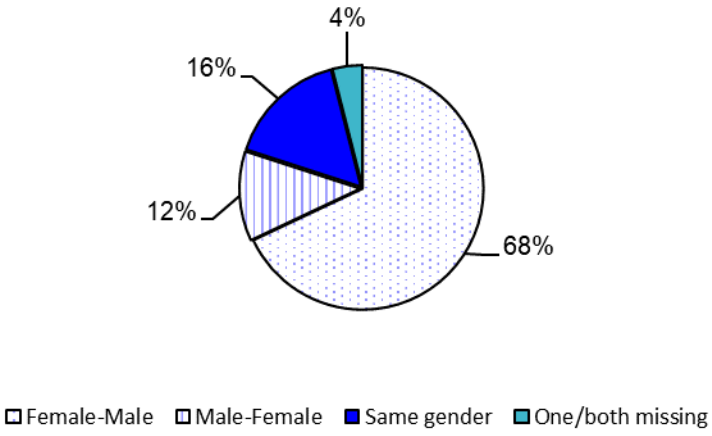
Exhibit 3 also shows that the family violence indicator (FVI) was checked in 3% of the sampled orders. The indicator notes the status of reporting the FVI to the Federal Case Registry (FCR). This is the same percentage checked in the 2015 sample.

Not shown is the proportion of payer-parents who were receiving some form of public assistance or social security benefit when the order was entered. Over a quarter (29%) received some form of assistance (e.g., TANF, Medical, SNA, Emergency Assistance) in the 2021 sample. A quarter (25%) of payer-parents received social security benefits. Among other things, social security benefits may include retirement, disability, or survivor's benefits.

Exhibit 4 shows that most cases (68%) involved a female custodian and a male payer-parent. The reverse — a male custodian and female payer-parent — was true for 12% of the cases and 16% of cases involved two parties of the same gender. This differs from the distribution of the 2015 sample. Generally, there

have been increases in cases where the payer-parent is female and the custodian is male, as well as cases where the parties are of the same gender. Gender information was missing or could not be determined in 4% of cases.

Exhibit 4: Gender of the Custodian (n=3,200)



Child Support Orders

The calculation of the basic child support obligation under the New York guidelines can be summarized by four general steps:

- Applying the guidelines percentage (e.g., 17% for one child) to the combined parental income;[22]
- Adding work-related[23] childcare expenses, future reasonable healthcare expenses of the child not covered by insurance, the cost of providing health insurance benefits if the custodial parent provides it, and court-ordered educational expenses, referred to as "add-ons";
- Calculating the payer-parent's prorated share of each of the above;[24] and
- Making any guidelines-provided adjustment for when the basic child support obligation would reduce the payer-parent's income below the poverty income guidelines amount or below the self-support reserve (SSR).[25]

The DCSS automated system separately tracks the components of the basic child support obligation.[26] The core of the economic review of the guidelines focuses on the guidelines percentages not the add-

[22] There are two sub-steps since the guidelines provides for the separation of the percentage applied to income up to the high-income threshold, and the percentage applied to any income above the high-income threshold.
[23] This may include childcare expenses incurred when seeking work.
[24] Childcare expenses and healthcare expenses are to be prorated. The guidelines do not specify that education expenses are to be prorated, although the courts do so. Rather the guidelines provide that the payer-parent "shall pay educational expenses, as awarded, in a manner determined by the court, including direct payment to the educational provider."
[25] The Federal Poverty Guidelines (FPG) annual income for a single person in 2020 was $12,490 and in 2021 was $12,760. The NY SSR is 135 percent of FPG, which would be $16,862 for 2020 and $17,726 for 2021.
[26] Due to this separate tracking, the researchers calculated the final order amount from the separate ledger codes that DCSS tracks. For the purpose of documenting how the guideline amount was determined and future research, there are five ledger

ons. This is because of the federal requirement to consider economic data on the cost of raising children. Most states relate their guidelines percentage/amounts to economic data on the cost.

Most cases (90%) in the sample had a guidelines percentage obligation only; 7% had both a guidelines percentage obligation and separately tracked add-on amounts for medical, childcare, and/or educational costs; 3% had only add-on amounts for medical, childcare, and/or educational costs without an active current guidelines percentage obligation.

Characteristics of Orders

Exhibit 5 shows the order amounts for the 3,108 orders with valid support amounts. The average monthly basic support obligation amounts were $415 per month for one child, $779 per month for two children, and $999 per month for three or more children. As shown in the first row of the exhibit, the median order amount generally skewed lower than the average due to a few outliers with extremely high order amounts. The amount of the order due ranged from $0 per month to $10,950 per month. The second row in Exhibit 5 shows the distribution of order amounts.

Exhibit 5: Characteristics of Orders[1]

Characteristic	All orders (n=3,108)	One child (n=2,206)	Two children (n=663)	Three or more children (n=239)
Basic Support Due (Overview)				
Mean	$535	$415	$779	$999
Median	$342	$291	$542	$558
Range	$0 – $10,950	$0 – $4,611	$0 – $10,950	$0 – $10,621
Basic Support Due[2]				
$0	9%	10%	7%	9%
$1 – $24	1%	2%	—	—
$25 – $50	17%	19%	13%	11%
$51 – $200	8%	9%	6%	8%
$201 – $350	10%	11%	8%	8%
$351 – $500	13%	14%	10%	6%
$501 – $700	11%	11%	14%	10%
$701 – $900	9%	8%	9%	10%
$901 – $1,200	8%	7%	9%	8%
> $1,200	13%	8%	23%	30%

[1] Proportions may exceed 100% because of rounding.

[2] Total monthly support due. All orders that were not entered as monthly (e.g., weekly, biweekly orders) were adjusted to monthly orders for comparison purposes.

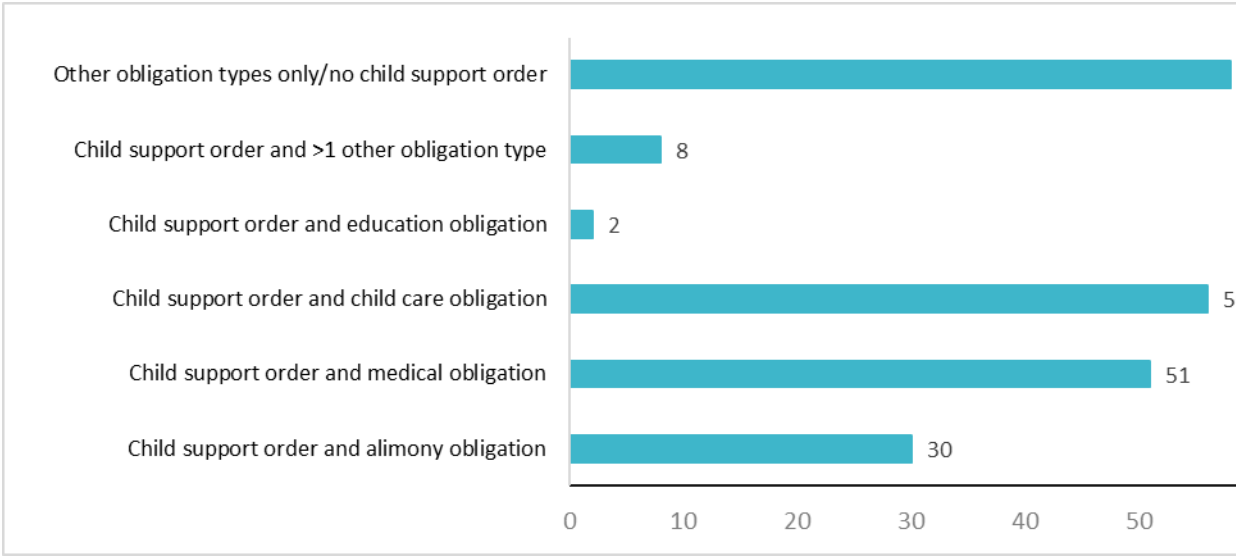
codes that reflect child support calculated from the guidelines percentages (i.e., 17% for one child, 25% for two children, 29% for three children, 31% for four children, and no less than 35% for five or more children): C — Foster Care; E — Title IV-E Foster Care; R — Home Relief; V — Child Support Out-of-Wedlock; and W — Child Support in Wedlock. Other ledgers that were in the extract and considered in the child support guidelines but are not calculated using the guidelines percentages included B — childcare expenses; M — medical expenses; U — future reasonable medical expenses; O —educational expenses; K — correctional school expenses; and T — training school expense. The basic child support obligation would include all of these ledgers identified so far. The data extract provided to the researchers also included ledger codes that that are not considered child support. In the future, DCSS may not want to exclude some of the extraneous data in the extract as well as calculate the final order amount. This requires some sorting because some codes (e.g., alimony) are not calculated using the guidelines, but can be collected with child support, so it may be of interest how many cases had child support orders as well as alimony. Non-child support ledger codes that appeared in the data extract included A — alimony and F — Emergency Assistance to Families (EAF) Foster Care. The calculation of these order amounts is not part of the child support guidelines.

Of greater interest about the basic child support obligation amounts is that somewhat more than a quarter of all orders (27%) are for $50 or less per month. Orders of $50 per month or less are likely to have been calculated using the poverty adjustment or SSR adjustment. If the basic child support obligation reduces the payer-parent's income below poverty, the guidelines provide for a $25 per month order. If the basic child support order reduces the payer-parent's income below the SSR, the guidelines provide for the greater of a $50 per order or the difference between the payer-parent's income and the SSR. In short, although orders of $50 per month or less are probably a better proxy of application of the low-income adjustment, it is still likely to understate the actual percentage of cases in which the low-income adjustment was applied because there will be some situations where the difference between the payer-parent's income and the SSR is more than $50 per month.

Orders of $50 or less include 31% of one child orders and 20% of both two and three or more child orders. At the highest end of order levels, 13% of all orders were greater than $1,200 a month, with the proportion increasing the greater the number of children on the order. Almost a third (30%) of order amounts for three or more children were above $1,200 per month.

Exhibit 6 shows the number of orders that include the following additional obligation types as part of the basic child support obligation: (1) medical support (i.e., pro-rata share for health insurance and unreimbursed medical expenses of the dependent children); (2) child care; (3) educational support when the court decides that ". . . post-secondary, private, special or enriched education for the child(ren) is appropriate" [NY Family Court § 413(1)(c)(7)]; and (4) other adjustments. Under federal and State law, the child support program can collect upon an alimony order when it is ordered in connection with a child support obligation. Alimony is included in Exhibit 6 because it was ordered in a notable number of cases (30 cases).

Exhibit 6: Number of Cases with Other Obligation Types Ordered (n=205)



Except for alimony, the adjustment amounts were either added or subtracted to the guidelines percentage amount, resulting in a total monthly child support order. Additions to the guidelines percentage amount were applied in 117 cases. A majority of the child support orders with adjustments only included a single adjustment, most often for childcare or medical support.

The data in Exhibit 6 also show that in 30 cases, there was an order for alimony in addition to the child support obligation, and 58 cases did not include a guidelines percentage amount. For these cases, the support order only included adjustments for extraordinary expenses such as childcare and medical expenses. In all, of the 3,108 cases with child support orders in the sample, 4.7% had some type of adjustment for another expense or order.

In terms of amounts for additional obligation types:

- **Alimony:** The mean monthly alimony obligation was $891, and the median was $579.
- **Medical support:** The mean monthly adjustment was $40, and the median was $9. Adjustments for future medical expenses averaged $114 per month, with the median being $53.
- **Childcare:** The mean monthly adjustment was $398, and the median was $260.

Analysis of Federally Required Fields

The analysis is limited to issues identified in federal regulation (C.F.R. § 302.56(h)(2)) — namely, rates of income imputation, default orders, deviations, and application of the low-income adjustment. Payment patterns for the sub-groups are also examined.

Default Orders, Orders Adjusted for Poverty, and Undetermined Income/Income Imputation

Information on default rates, income imputation, and application of the low-income adjustment comes from one data field extracted from the DCSS automated system that was labeled, "court order ind code."[27] The responses for this field were default order, poverty-level order, income undetermined, permanent order, and temporary order. A limitation to the data field was the codes were mutually exclusive, meaning that there were no orders that were both a default and temporary order or another combination of the dropdown fields. Nonetheless, the protocol for data entry would generally result in the code for default overriding other codes. Consequently, the default rate resulting from that data field is likely to be correct, and the other rates calculated from that data field are likely to understate the actual rate of occurrence if the order was also entered by default.

Exhibit 7 displays the frequencies of default, poverty-level orders, and orders for which income was undetermined for the 3,108 sample cases that had some support amount listed by the number of children on the order.

As shown, 8% of all orders were entered by default orders. The instructions used by workers populating the data field would result in default essentially overriding the other dropdown options. Poverty-level orders made up 10% of all orders. However, this may be understated if the order was also entered by default. The percentage of orders set at or below $50 per month are probably a better proxy for the

[27] The extracted data field appears to come from the "SA INDICATOR," which captures compliance with the Child Support Standards Act.

application of the low-income adjustment. As shown previously, 27% of orders were for $50 or less per month.

Income was undetermined for 15% of all orders. For these orders where income is undetermined, it is assumed that income was imputed in these cases. This is likely to understate the actual income imputation rate because income may also be imputed in other circumstances. For example, if the parent purposely took a lower-paying job, income may be imputed at the parent's earning potential. Income imputation is often correlated with defaults. If income was imputed because the order was entered by default, the default code would be entered instead of the income undetermined code.

Exhibit 7: Order Type by Number of Children[1]

Characteristic	All orders (n=3,108)	One child (n=2,206)	Two children (n=663)	Three or more children (n=239)
Order type				
Default order	8%	8%	7%	5%
Permanent order	31%	31%	33%	33%
Poverty level order	10%	11%	6%	7%
Temporary order	37%	36%	37%	39%
Income undetermined	15%	14%	17%	16%

[1] Proportions may exceed 100% because of rounding.

Many of the states neighboring New York are in the process of reviewing their guidelines or haven't published a study with findings from an analysis of case file data. Delaware reported a default rate of 13% and an income imputation rate of 20%.[28] The report documenting Massachusetts most recent guidelines review contains a combined rate for deviations, imputed or attributed income or order entry by default.[29] They report a combined rate of 10.6%. Maryland reported an income imputation rate of 23% among parents ordered to pay support.[30] Pennsylvania's income imputation rate was 11%.[31] Maryland and Pennsylvania did not report default rates. In summary, New York's rates differ little from those reported by Delaware, Massachusetts, Maryland, and Pennsylvania.

Deviations from Basic Support Orders

For this review, DCSS was able to extract the deviation reason, which is not only used to analyze reasons for deviations but also used to estimate the deviation rate.[32] For the previous review, this data field could not easily be extracted so the deviation rate was measured indirectly using other data fields.

[28] Family Court of the State of Delaware. (2018). The Family Court of the State of Delaware. Delaware Child Support Formula Evaluation and Update. Retrieved from https://courts.delaware.gov/forms/download.aspx?id=39228

[29] Sarro, M., Polek, C., & Sandy, S.. (2021). *Economic Review of the Massachusetts Child Support Guidelines, 2020-2021*. The Brattle Group. Retrieved from https://www.mass.gov/doc/economic-review-of-the-massachusetts-child-support-guidelines-2020-2021/download

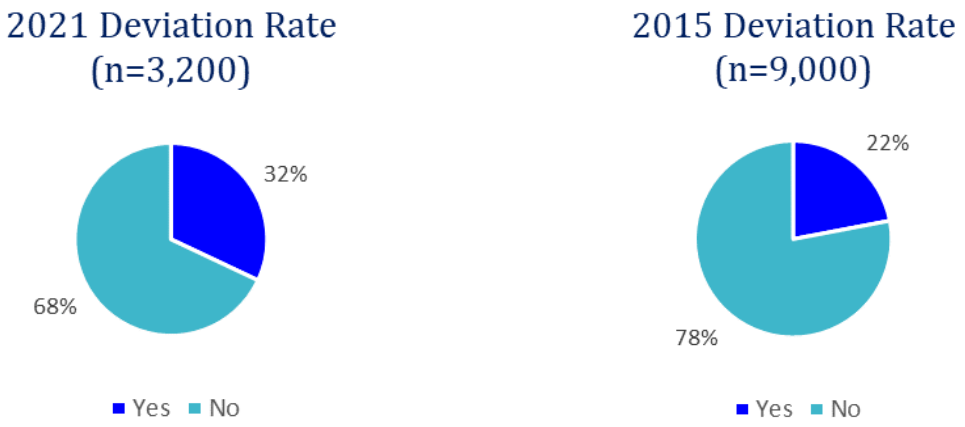
[30] Demyan, N., and Passarella, L.. (2020) *Maryland Child Support Guidelines: 2015-2018 Case-Level Revie*w. Public Policy Research. Retrieved from https://www.ssw.umaryland.edu/media/ssw/fwrtg/child-support-research/cs-guidelines/Maryland-Child-Support-Guidelines-Case-Level-Review-2015-to-2018-2.pdf

[31] Venohr, J., and Matyasic, S.. (2021) *Review of the Pennsylvania Child Support Guidelines: Updated Schedule and Preliminary Findings from Analysis of Case File Da*ta. Center for Policy Research. Retrieved from https://www.pacourts.us/storage/rules/Preliminary%20Report%20Jan%206%202021%20-%20011012.pdf

[32] That is, if a deviation code is present, it is assumed there is a deviation.

Consequently, the difference in the deviation rates over the two periods, as shown in Exhibit 8, may result from differences in measurement methodology from 2015 to 2022 rather than a change in the actual deviation rate over time. Exhibit 8 shows that the deviation rate increased significantly between the two time periods from 22% in 2015 to 32% in 2021.[33]

Exhibit 8: Deviation Rate



The reasons for and directions of the deviations, shown in Exhibit 9, indicate that for a simple majority of cases the deviation resulted in an increase in the guidelines percentage obligation. However, for over two-fifths of the deviations (43%), the impact of the deviation on the guidelines percentage obligation is unknown. Similarly, the specific reasons for the deviations are even less well documented. In fact, the case file review does not identify the specific deviation reason besides "other factors the court determines are relevant in each case" for most of the cases with deviations (97%).[34] Section 413 of the NYS Family Court Act allows for deviation from the noncustodial parent's pro-rata share based upon factors the court determines are relevant in each case.

Exhibit 9: Deviations: Reason and Direction (% of orders with deviations)

Deviation Reason	Upward	Downward	Unknown
Financial resources (NCP, CP, Child) (n=16)	81%	13%	6%
Child's standard of living in intact household (n=1)	100%	—	—
Non-monetary contributions toward child's well-being(n=3)	—	100%	—
Needs of the children for whom NCP is paying support (n=6)	—	83%	17%
Child is not on public assistance; extraordinary expenses of noncustodial parent (n=5)	—	20%	80%
Other reasons (n=973)	52%	4%	43%

[33] The higher deviation rate in 2021 is additionally striking because the review prior to 2015 showed a deviation rate of 23 percent.

[34] The absence of documentation of deviation reasons is not unusual. In other states we have studied (e.g., Georgia, Pennsylvania), the reasons for deviations are often listed as "other" without recording a specific reason.

Further analysis of the deviations based on the demographics of cases with deviations indicates that:

- **Gender:** the guidelines deviation rate was 18% when the respondent was female and 36% when the respondent was male. This difference is statistically significant.[35]
- **TANF status:** the deviation rate for TANF cases was 20%, non-TANF cases with arrears was 29%, and non-TANF cases without arrears was 35%. The differences between TANF cases and both groups of non-TANF cases are statistically significant.[36]
- **County:** the deviation rate for New York City was 92%, which is significantly higher than the rate for the rest of the state (22%).[37] New York City has the largest share of orders in the sample. The three highest deviation rates among counties were 99% in Suffolk County, 94% in Nassau County, and 60% in Onondaga County.

New York's deviation rate is close to Maryland's deviation rate of 35%.[38] Massachusetts' deviation rate was just 11% and Pennsylvania was 25%.[39,40] Delaware's 2018 report showed a deviation rate of 22%.[41] In short, New York's deviation rate is higher than Delaware, Pennsylvania, and Massachusetts, but not Maryland.

Wage Data and Low-Income Payer-Parents

The key to calculating child support orders is knowing income. The order amount in every state's guidelines is based on the incomes of one or both parents. The fact that many parents have no, very little, or low income is a limitation when trying to establish orders that are fair and equitable for the parents and the children needing support.

The guidelines percentage amount component of basic child support orders under the New York Child Support Guidelines are calculated based on the combined incomes of both parents: 17% for one child, 25% for two children, and up to a maximum of 35% for five or more children.[42] The data file for the 2021 review does not include the parents' incomes that were used to establish the basic child support order.[43] However, as a proxy for the payer-parent's income used to establish the basic child support

[35] The appropriate statistical test to determine significant difference for these proportions is known as the," student t-test." It was significant at the 95% confidence interval. This is written as "$p < 0.05$," where 0.05 is the error rate

[36] T-test, $p < 0.05$.

[37] T-test, $p < 0.05$.

[38] Demyan, N., and Passarella, L.. (2020) *Maryland Child Support Guidelines: 2015-2018 Case-Level Revie*w. Public Policy Research. 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

[39] Sarro, M., Polek, C., & Sandy, S.. (2021). *Economic Review of the Massachusetts Child Support Guidelines, 2020-2021*. The Brattle Group. Retrieved from https://www.mass.gov/doc/economic-review-of-the-massachusetts-child-support-guidelines-2020-2021/download

[40] Venohr, J., and Matyasic, S.. (2021) *Review of the Pennsylvania Child Support Guidelines: Updated Schedule and Preliminary Findings from Analysis of Case File Da*ta. Center for Policy Research. Retrieved from https://www.pacourts.us/storage/rules/Preliminary%20Report%20Jan%206%202021%20-%20011012.pdf

[41] Family Court of the State of Delaware. (2018). The Family Court of the State of Delaware. Delaware Child Support Formula Evaluation and Update. Retrieved from https://courts.delaware.gov/forms/download.aspx?id=39228

[42] Family Court Act § 413.1(b)(3)

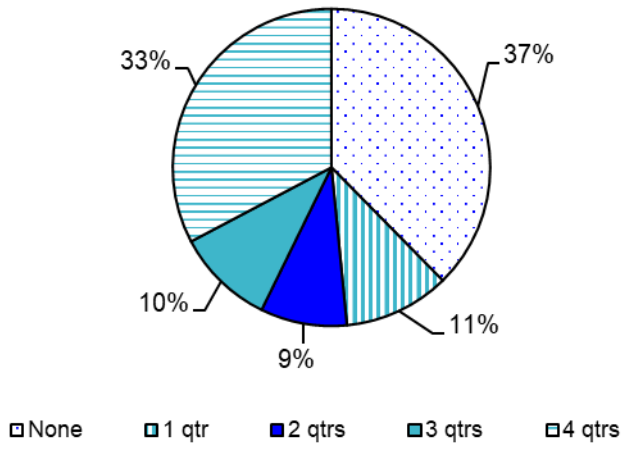
[43] Gathering that information — for example, through a hard copy case file review — would be prohibitively time-consuming and expensive. Since the actual wage data used to establish the basic child support order was not available, the data file captured whatever 2021 quarterly wage data was available. Payer-parents may have provided some of this 2021 information (e.g., through pay stubs) that child support staff used to verify income information for the purposes of setting a basic support order.

order, the data file does include quarterly wage data for calendar year 2021, if it was available. The root source of most quarterly wage data are employers reporting earnings for state programs such as unemployment or workers' compensation. It is typically collected by a state's department of labor; some state departments of labor share it directly with their state child support agency. Quarterly wage data can also come from the Federal Parent Locator Service (FPLS), which is a national computer matching system operated by the Federal Office of Child Support Enforcement.[44] The FPLS contains quarterly wage data from each state's labor department, state unemployment benefits and worker's compensation benefits, and other data; and can be used to access information from Social Security Administration (SSA) programs. The major point is that quarterly wage data is a limited data source for income information. It would not include income from employers who do not report earnings, self-employment, and other sources.

As shown in Exhibit 10, wage information — at least one quarter of data — was available for payer-parents in 62.4% of cases. Most of the cases in that group had all four quarters of data and small proportions had between one and three quarters available.

If at least one quarter of wage data was available, we estimated annual incomes for the payer-parents (Exhibit 10). For parents with all four quarters of wage data, we reviewed the average wages for each quarter to understand how stable income was across quarters. As shown in Exhibit 11, the estimated annual incomes are particularly low for those parents with one or two quarters of wage data.

Exhibit 10: 2021 Quarterly Wage Data Available for Payer-parent (n=3,200)



The Federal Poverty Guidelines (FPG) annual income for a single person in 2020 was $12,490 and in 2021 was $12,760. At 135% of FPG, the New York self-support reserve amounts are $16,862 and $17,726, respectively. The estimated annual income of parents with one or two quarters of wage data falls below 135% of FPG, which, according to the New York Child Support Guidelines, is the self-support

[44] More information about the FPLS can be found at https://www.acf.hhs.gov/css/training-technical-assistance/overview-federal-parent-locator-service.

reserve for one person. In comparison to the 2015 guidelines review, 135% of the FPG was $15,890. The annualized income for parents with one quarter of wage data at that time was $12,284, again below the poverty level established in the guidelines.

Exhibit 11: Payer-Parents' Quarterly Income

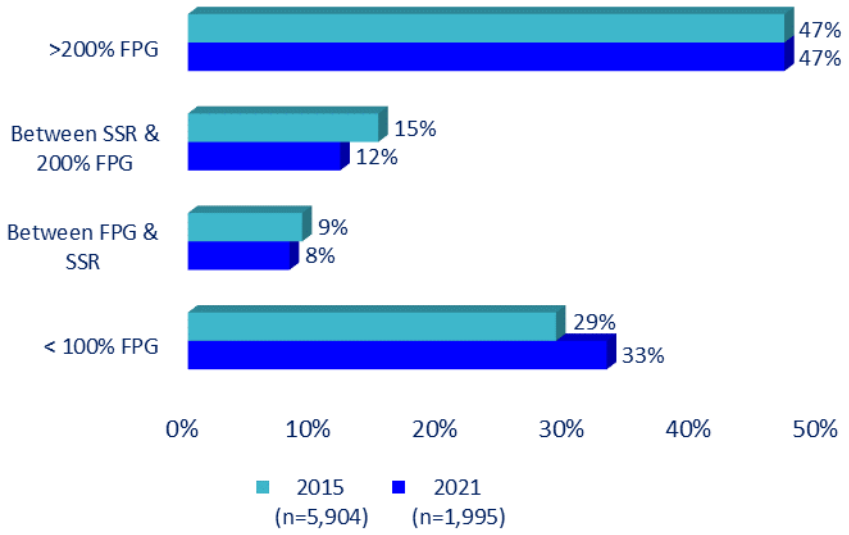
	2021 Sample	2015 Sample
Annualized Income (Quarters of available data)[1]	(n=2,286)	(n=5,904)
1 quarter	$15,127	$12,284
2 quarters	$13,544	$18,188
3 quarters	$21,199	$25,419
4 quarters	$32,790	$39,918
Average Quarterly Income (for parents with 4 quarters)	(n=1,198)	(n=3,154)
1st quarter	$7,196	$9,912
2nd quarter	$7,970	$9,849
3rd quarter	$8,250	$10,177
4th quarter	$9,374	$10,700

[1] Estimated annual income based on the number of income quarters available; thus, if only two quarters of income are available, we multiply the total amount for two quarters by two as a proxy for annual income.

Exhibit 11 also shows that estimated annual incomes increased progressively for parents with more quarters of wage information and that parents with all four quarters of wage information had progressively higher wages each quarter. Thus, the annualized income from one or two quarters of wage data may understate total income and therefore overstate the number of payer-parents who would qualify for a low-income adjustment to the basic child support order.

Further investigation into the payer-parent's income relative to the FPG is shown below in Exhibit 12 for both the 2021 and 2015 sample of cases. Quarterly wage indicates that one-third (33%) of payer-parents with quarterly wage data available had income below the FPG for one person. Another 20% of payer-parents were eligible for an SSR adjustment to the support order amount based on their low income. It was only about half (47%) of payer-parents whose estimated incomes were high enough for the New York guidelines percentages to apply. These proportions were comparable to the proportions identified in the 2015 guidelines review.

Exhibit 12: Annual Income Relative to the Federal Poverty Level (FPG) for One Person and the Self-Support Reserve (SSR)[1]



[1] For payer-parents with at least one quarter of wage data available. Self-support reserve is 135% of the FPG. FPG was set at $12,760 in annual income for a single person in 2021 and at $11,770 for a single person in 2015.

Payment Outcomes

Exhibit 13 provides an overall picture of payments among payer-parents in the 2021 sample. It shows that about a quarter (24.4%) of parents with some child support due paid nothing toward their obligation, while two-thirds (67%) paid something. It also shows that 9% of the sample owed nothing over the time period examined and paid nothing as well. This is consistent with a finding shown earlier: 9% of the orders are set at zero.

Exhibit 13: Child Support Due/Paid (n=3,200)

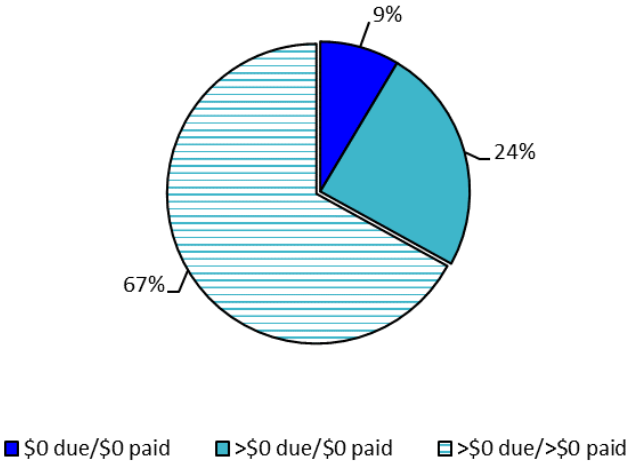
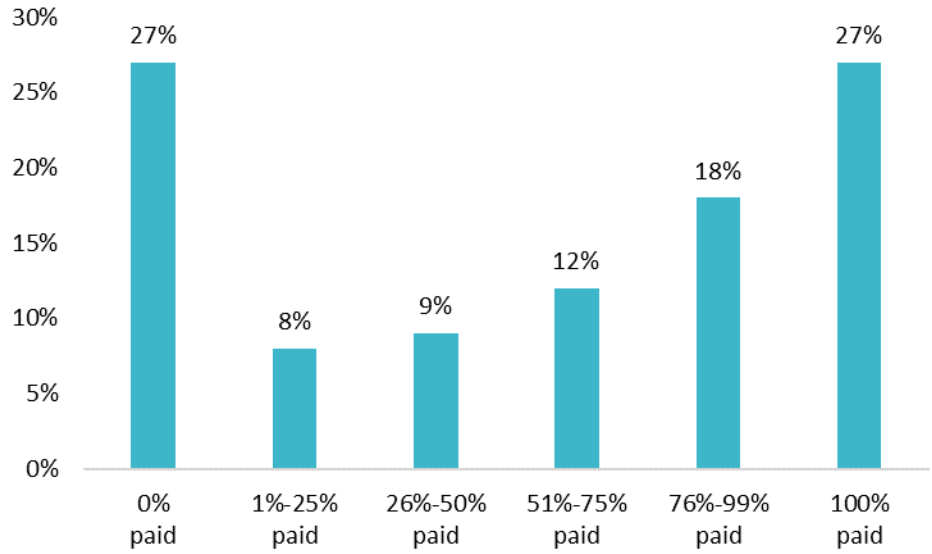


Exhibit 14 examines the percentage of due that was paid in greater detail, looking at the proportion of child support due that was paid. That comparison shows that

- 27% of payer-parents paid 100% of the amount they owed;
- 27% paid nothing;
- Another (30%) paid between 50% and 99% the due amount; and
- 17% paid between 1% and 50% of the amount due.

Exhibit 14: Percentage of Amount Due and Paid (n=2,925)



Another way to look at it is even among those who paid something, most did not pay the full amount. In other words, payment is not a dichotomous variable — that is, they do not either pay nothing or pay in full. Instead, there is a wide range in payment levels.

To explore the relationship between support and payment further, Exhibit 15 and Exhibit 16 explore the correlation between the order amount for current support as a percentage of the payer-parents' gross income and their payment patterns. Exhibit 15 shows this correlation as averages, while Exhibit 16 displays the medians. The average current support due skews higher than the medians, which raises the values for support as a percentage of income.

The data illustrates the challenges of payment compliance for parents whose incomes are below the FPG. For this group as a whole, the average current support is 168% of the payer-parents' annualized wages, and the average support due that is paid is 40%; expressed in medians, support is 54% of the payer-parent's annualized wages, and they pay 31% of the support due.

Exhibit 15: Payment Patterns by Quarterly Wage Income (Averages)

Income Range[1]	Monthly Current Support Due (average)[2]	Average Annual Income[1]	Current Support as % of Income (average)	Average Amount Due in Year	Average Amount Paid in Year	Average Percentage of Current Support Due that is Paid
No quarterly wage data (n=995)	$425	N/A	N/A	$2,802	$1,275	41%
Income less than poverty (n=421)	$413	$6,153	168%	$2,678	$1,144	40%
Income 100% to 135% of poverty (n=158)	$441	$15,134	35%	$2,564	$1,420	52%
Income 135% to 200% of poverty (n=261)	$531	$21,304	30%	$3,264	$2,231	63%
Income exceeds 200% of poverty (n=1,109)	$967	$59,182	20%	$6,054	$5,072	76%
All cases with income data (n=1,859)[3]	$735	$38,111	56%	$4,594	$3,473	64%

[1] Incomes are annualized based on quarterly wage data available (e.g., if one quarter available, annualized=multiplied by four).

[2] Retrieved from ledger.

[3] Restricted to support orders that met the following conditions: cases with income information, a monthly support obligation amount and payment information.

Exhibit 16: Payment Patterns by Quarterly Wage Income (Medians)

Income Range[1]	Monthly Current Support Due (Median)[2]	Median Annual Income[1]	Current Support as % of Income (Median)	Median Amount due in Year	Median Amount Paid in Year	Median Percentage of Current Support Due that is Paid
No quarterly wage data (n=995)	$195	N/A	N/A	$731	$75	20%
Income less than poverty (n=421)	$217	$5,960	54%	$947	$156	31%
Income 100% to 135% of poverty (n=158)	$325	$15,180	26%	$1,053	$381	57%
Income 135% to 200% of poverty (n=261)	$403	$21,389	22%	$1,980	$1,047	76%
Income exceeds 200% of poverty (n=1,109)	$732	$50,647	16%	$3,690	$2,880	96%
All cases with income data (n=1,859)[3]	$509	$29,162	20%	$2,454	$1,406	81%

[1] Incomes are annualized based on quarterly wage data available (e.g., if one quarter available, annualized=multiplied by four).

[2] Retrieved from ledger.

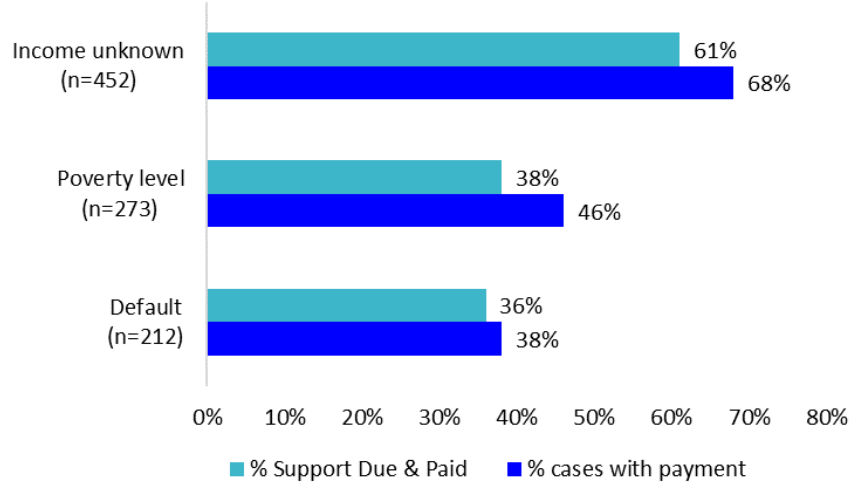
[3] Restricted to support orders that met the following conditions: cases with income information, a monthly support obligation amount and payment information.

As incomes rise, the support obligation as a proportion of income decreases, perhaps reflecting adjustments to income (e.g., FICA and city taxes in New York City and Yonkers) or to the support calculation (e.g., self-support reserve and an adjustment for the payer-parent's payment of a health insurance premium). Also as incomes rise, the percentage of support that was paid increases: 52% for parents within 135% of the FPG, 63% for parents with incomes 135 to 200% of the FPG, and 76% for parents with incomes greater than 200% of the FPG. The fact that the amount of current support due and percentage of current support paid are generally higher with higher incomes suggests that, not surprisingly, there is some correlation between income and payment compliance (the percentage of due that was paid).

To meet other recent additions to the federal requirements for quadrennial analysis of child support orders, Exhibit 17 specifically examines payments and payment compliance for cases with the following order types:

- Default orders: (8% of all orders)
- Poverty level order (10% of all orders)
- Orders where income was undetermined (15% of all orders)

Exhibit 17: Percent of Current Support Due that is Paid by Selected Order Types



The exhibit shows that the percentage of cases with payments and compliance was higher among payer-parents whose income was unknown when the child support order was established than orders set by default or orders in which a poverty adjustment was made. Among those with income unknown, 68% had one or more payments and together they paid 61% of the support that was due. The comparable proportions were 46% and 38%, respectively, for parents with poverty level orders and 38% and 36%, respectively, for parents whose support order was established by default. Parents with temporary or permanent orders were not appreciably more likely to pay or meet their total payment obligations.

Analysis of Labor Market Data and Other Data

Federal Regulation (45 C.F.R. § 302.56(h)(1)) requires the consideration of labor market data as part of a state's guidelines review. Labor market information, particularly for low-skilled workers, can be helpful

when reviewing income imputation provisions and the appropriateness of the low-income adjustment. This section fulfills the federal requirement.

All labor market data specific to New York that is presented in this section was collected from the New York Department of Labor (DOL).[45] Other data sources including the U.S. Bureau of Labor of Statistics, are appropriately referenced.

Unemployment, Employment, and Labor Force Participation

The official measurement of unemployment, known as U-3, includes "all jobless persons who are available to take a job and have actively sought work in the past four weeks."[46] It is measured as a percentage of those in the civilian labor force, which includes employed and unemployed individuals.[47] To be "employed," a person must have worked at least one hour as a paid employee or self-employed or been temporarily absent from their job or business or met other criteria. "Actively seeking work" means contacting an employer about a job opportunity, submitting a job application or resume, using an employment service, or a similar activity. Persons not in the labor force may not want a job, are not currently available for work, or available for work but have not looked in the last four weeks and may be "discouraged worker" (i.e., do not believe a job exists).

Unemployment

New York's unemployment rate (U-3 seasonally adjusted)[48] was 4.3% in September 2022, which is lower than its 4.7% in August 2022. New York's rate tied with Delaware for the fifth highest in the nation in September. The four states with higher unemployment rates were Alaska, Nevada, Illinois, and the District of Columbia (4.7%). In contrast, the United States unemployment rate decreased from 3.7% in August to 3.5% in September.[49]

Local unemployment rates are generally not seasonally adjusted when reported.[50] In September 2022, non-seasonally adjusted unemployment rates in New York localities ranged between 2.1% to 7.2%, with some of the highest being in the New York metropolitan area. In September 2022, the statewide non-seasonally adjusted unemployment rate was 3.9%.

When the COVID-19 pandemic started, unemployment increased across all states. In March 2020 (when COVID-19 cases began being detected in every state), New York's seasonally adjusted unemployment rate was 3.9%, and after the pandemic began, it peaked at 16.5% in May 2020.[51] Since then, the unemployment rate has been steadily declining, although it has yet to reach the pre-pandemic level.

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[45] New York State Department of Labor. (n.d.). *Labor Data Overview.* Retrieved from https://dol.ny.gov/labor-data.
[46] U.S. Bureau of Labor Statistics. *Alternative Measures of Labor Underutilization for States, 2021 Annual Averages.* Retrieved from https://www.bls.gov/lau/stalt.htm.
[47] U.S. Bureau of Labor Statistics. (Oct. 21, 2021). *Concepts and Definitions.* Retrieved from https://www.bls.gov/cps/definitions.htm#lfpr.
[48] Seasonal adjustment refers to a statistic that accounts for any seasonal influences on the economy, such as boosts in consumption or employment during holiday seasons. A non-seasonal adjustment does not account for seasonal influences.
[49] U.S. Bureau of Labor Statistics. (Oct. 2022.) *The Employment Situation- September 2022*. Retrieved from https://www.bls.gov/news.release/pdf/empsit.pdf.
[50] Due to preliminary circumstances of New York State's unemployment rate reports, seasonally adjusted regional unemployment rates were not available, so comparison with the non-seasonally adjusted state rate is better for comparison with regional unemployment.
[51] Federal Reserve of St. Louis. (Sept. 2022). *Unemployment Rate in New York, Percent, Seasonally Adjusted.* Retrieved from https://fred.stlouisfed.org/series/NYUR.

Likewise, the United States' unemployment rate has steadily declined since its peak rate of 14.7% in April 2020.

Employment

In September 2022, 8,061,500 workers were employed in New York, and 15,600 seasonally adjusted nonfarm jobs were added. Over the past year (September 2021–September 2022), 393,300 nonfarm jobs were added in New York.[52] In comparison, total nonfarm employment in the United States increased by 263,000 from August 2022 to September 2022. In September, New York employment accounted for 5% of total United States employment. In comparison, using 2021 Census Bureau data,[53] New York states' population of 19.84 million accounted for approximately 6% of the total United States population.

Over the year, New York's growth rate exceeded the national job growth. In September 2022, total nonfarm jobs grew by 4.1% compared to September 2021, and in the United States overall, 3.7%. The industry that increased the most over the year was leisure and hospitality, which gained 79,400 jobs over the course of the year (10.0%). The industry that followed was professional and business services, which gained 87,100 jobs (6.8%). The construction sector realized the lowest job growth: it gained 2,800 jobs, or less than 1%.

Labor Force and the Labor Force Participation Rate

In September 2022, the New York labor force lost 36,600 jobs from the month prior, although the seasonally adjusted labor force participation rate remained relatively stable (60.3% in September), decreasing by less than half a percentage point. New York's labor force participation rate was lower than the United States seasonally adjusted 62.3% rate in September. Both New York and the United States exceeded their seasonally adjusted labor force participation rates from the year prior (September 2021), which were 59.0% in New York[54] and 61.7% in the United States.[55] Both the United States and New York have yet to return to their pre-pandemic (February 2020) rates, which was 60.8% in New York and 63.4% in the United States, both seasonally adjusted.

The labor force participation rate for all states significantly dropped after the pandemic began. Many workers were unable to either maintain employment (due to their place of work being deemed non-essential, or to find employment), resulting in a massive wave of individuals leaving the labor force. The effects of the shutdown are still felt by workers in certain socioeconomic groups. For instance, as of September 2022, almost one million workers in the United States aged 25–54 years old were unable to work due to their employer closing or losing business due to COVID-19.[56] Non-essential industries with

[52] Bureau of Labor Statistics. (2022). *Table 3. Employees on Nonfarm Payrolls by State and Selected Industry Sector, Seasonally Adjusted.* Retrieved from https://www.bls.gov/news.release/laus.t03.htm.
[53] United States Census Bureau. (2021). *New York QuickFacts.* Retrieved from *https://www.census.gov/quickfacts/NY*.
[54] Federal Reserve: St Louis. (Sept. 2022). *Labor Force Participation Rate for New York, Percent, Seasonally Adjusted*. Retrieved from https://fred.stlouisfed.org/series/LBSSA36.
[55] U.S. Bureau of Labor Statistics. (2022). *Civilian Labor Force Participation Rate, Seasonally Adjusted.* Retrieved from https://www.bls.gov/charts/employment-situation/civilian-labor-force-participation-rate.htm.
[56] U.S. Bureau of Labor Statistics. Retrieved from https://www.bls.gov/cps/effects-of-the-coronavirus-covid-19-pandemic.htm.

lower wages, such as leisure and hospitality, experienced high layoff rates due to COVID-19, according to a Brookings report on the economic impact of COVID-19.[57]

Other Unemployment Measures

The U-3 is the standard measure of unemployment used in the United States by media outlets, politicians, and most economists. However, this measure of unemployment does not include underemployed and discouraged workers. Underemployment refers to the condition in which people in the labor force are employed at less than their abilities and economic needs. Discouraged workers are workers who want a job but have given up looking for one due to the belief that there are no jobs available.[58] The U.S. Bureau of Labor Statistics has alternative measures that better reflect all persons who are unemployed, including those not included in the U-3, also known as the U-6. The United States U-6 unemployment rate (seasonally adjusted) was 6.7% as of September 2022[59] and 9.1% in New York.[60]

Hours Worked and Income Imputation

Hours worked has been used to inform income imputation policies. For example, South Dakota used labor market data on hours worked to reduce its guidelines presumption of a 40-hour workweek when income imputation is authorized to 35 hours per week based on South Dakota labor market data that revealed that the average hours worked was 35 per week in the state.

Exhibit 18: Average Hours Worked in Selected New York Industries in September 2022

Industry	Hours Worked Per Week, Seasonally Adjusted
Construction	38.7
Manufacturing	39.7
Trade, Transport, and Utilities	32.9
Information	35.5
Financial Activities	37.0
Professional and Business Services	35.1
Education and Health Services	31.7
Leisure and Hospitality	26.9
Other Services	31.1

2021 New York labor market data finds that the average was 33.5 hours.[61] However, it varies by industry. **Error! Reference source not found.** shows the average hours worked for selected New York industries in September 2022. The statewide average was 33.3 in September 2022, not much different than its 2021 average.

[57] Klein, A., & Smith, E. (Mar. 2022). *Explaining the economic impact of covid-19: Core Industries and the Hispanic workforce*. Brookings. Retrieved October 28, 2022, from https://www.brookings.edu/research/explaining-the-economic-impact-of-covid-19-core-industries-and-the-hispanic-workforce/.

[58] Ravikumar, B., & Shao, L. (n.d.). *Discouraged workers: What do we know?* Economic Research - Federal Reserve Bank of St. Louis. Retrieved October 30, 2022, from https://research.stlouisfed.org/publications/economic-synopses/2014/03/14/discouraged-workers-what-do-we-know/.

[59] U.S. Bureau of Labor Statistics. (Oct. 2022). *Table A-15. alternative measures of labor underutilization - 2022 Q03 results*. U.S. Bureau of Labor Statistics. Retrieved October 28, 2022, from https://www.bls.gov/news.release/empsit.t15.htm.

[60] U.S. Bureau of Labor Statistics. *Alternative measures of labor underutilization for States*. U.S. Bureau of Labor Statistics. Retrieved October 28, 2022, from https://www.bls.gov/lau/stalt.htm.

[61] U.S. Bureau of Labor Statistics. (n.d.). Establishment Data: State Hours and Earnings: Annual Averages: Table 4: Average hours and earnings of all employees on private nonfarm payrolls, by State. 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.

Factors Affecting Full-Time, Year-Round Work among Low-Wage Earners

The New York minimum wage is $13.20 but will rise to $14.20 by 2023.[62] There are many factors that contribute to the lack of year-round, full-time work. Some pertain to the employability of a parent, and other factors pertain to the structure of low-wage employment. A national study found that the highest educational attainment of 60% of the low-income, nonresident parents was a high school degree or less.[63] Obligated parents also face other barriers to employment. A multisite national evaluation of obligated parents in a work demonstration program provides some insights on this.[64] It found that 64% 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%), criminal records (30%), and lack of a steady place to live (20%). 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 jobs do not always provide consistent hours week to week or an opportunity to work every week of the year. This causes unpredictable and erratic income, which can affect child support compliance. Over half (58%) of national workers are paid hourly.[65] As mentioned previously, the usual weekly hours are considerably less in some industries (e.g., leisure and hospitality). A Brookings Institute study defines vulnerable workers as those earning less than median earnings and having no healthcare benefits.[66] Most vulnerable workers are concentrated in the hospitality, retail, and healthcare sectors. There is considerable turnover in some of these industries. For example, the leisure and hospitality industry has an annual quit rate of 55.4% and a 21.5% annual rate of layoffs and discharges.[67] 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% among all civilian workers.[68] 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% have access, compared to 76% of all workers. Those with paid vacation time have an average of 11 days per year. Without paid sick time or vacation

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[62] NY Department of Labor. (2022). *New York Minimum Wage. https://dol.ny.gov/minimum-wage-0.*
[63] U.S. Congressional Research Service. (Oct. 2021). *Demographic and Socioeconomic Characteristics of Nonresident Parents*. Retrieved from https://crsreports.congress.gov/product/pdf/R/R46942.
[64] 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/wp-content/uploads/2019/05/CSPED-Final-Characteristics-of-Participants-Report-2019-Compliant.pdf.
[65] 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.
[66] 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/.
[67] 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.
[68] 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.

time, a worker may terminate employment voluntarily or be involuntary 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 the economic challenges of low-wage parents is the percentage of households that cannot cover a $400 emergency expense. A Federal Reserve survey finds that 36% of households could not cover a $400 emergency expense in 2020.[69] Although the Federal Reserve survey does not specifically address child support debt and considers all households and not just those where a household members owes child support, it is a salient finding when considering low-income obligated parents 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 some child support orders.

Factors that Influence Employment Rates and Compliance

Federal regulation requires the consideration of factors that influence employment rates and compliance. There is some older academic research that finds child support can affect employment among obligated parents.[70] Another study finds some weak association of changes in fathers' earnings with changes in orders among fathers in couples that had their first child support ordered in 2000.[71] There also are many anecdotes of obligated parents who quit working or turn to unreported employment (also called the underground economy) once wages are garnished for child support.

These studies are of limited value for this analysis because they are dated (hence do not consider today's labor market and child support enforcement practices) and not specific to New York. The impact of the pandemic on employment may also overshadow other factors. Another issue is that opportunities for income from unreported employment are rapidly changing and even more difficult to research. Before the pandemic, it was becoming more common to have multiple jobs where one may be unreported employment and the other may be reported employment. There is also evidence that self-employment has increased since the pandemic began. Modern employment with unreported income includes earnings from Uber and Doordash; streamer services such as Twitch, in which people who "stream" rely on viewer donations; and others. These types of jobs operate under what is considered a "gig economy," or labor markets that are known for their short-term contracts and freelance jobs in preference to permanent work. While more is being done to understand these gig economies, the earnings from unreported employment are often inconsistently identified in surveys, exacerbating any attempt to study them within a short period). All these dynamics limit the ability to isolate the impact that child support may be having at this time.

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[69] 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.

[70] Holzer, Harry J. Offner, Paul, & Sorensen, Elaine. (Mar. 2005). "Declining employment among young black less-educated men: The role of incarceration and child support." *Journal of Policy Analysis and Management*.

[71] Ha, Yoonsook, Cancian, Maria, & Meyer, Daniel, R. (Fall 2010). "Unchanging Child Support Orders in the Face of Unstable Earnings." 29 *Journal of Policy Analysis and Management* 4, pp. 799–820.

SECTION CONCLUSION

This section demonstrates that New York has indeed fulfilled the federal requirement to analyze case file data and labor market data. The analysis of the case file data found a guidelines deviation rate of 32%, and a default rate of 8%. The percentage of orders with income undetermined is used as a proxy for the income imputation rate: it was 15%. The percentage of orders adjusted for poverty income was 10%. The poverty adjustment is one component of New York's low-income adjustment. The other component consists of adjusting for a self-support reserve (SSR). The rate that the SSR is applied cannot be determined from the data. Payment data were also analyzed. Payment outcomes were generally less in default and poverty-adjusted orders. The analysis of labor market data revealed that many obligated parents are low-income, and many low-income jobs offer less than 40-hour workweeks and no paid time off. Consequentially, income imputation at full-time, year-round, minimum-wage employment may not be a reality.

For this review, New York was able to improve its methodology for extracting the deviation data from its automated system. New York should continuously strive for other data improvements for future reviews. This could range from obtaining the incomes used in the guidelines calculation to retrieving information about whether the SSR adjustment was applied.

SECTION 3: ECONOMIC DATA ON THE COST OF RAISING CHILDREN AND THE GUIDELINES STANDARD

At the core of the New York child support formula are child support percentages that vary by the number of children:

- 17% for one child;
- 25% for two children;
- 29% for three children;
- 31% for four children; and
- 35% for five or more children.

The New York percentages date back to a 1981 study of child-rearing expenditures.[72] Over a dozen of studies of child-rearing expenditures have been conducted since 1981. In fact, 11 different studies of child-rearing expenditures currently form the basis of state child support guidelines. The studies vary in data years and the methodology used to separate the child's share of expenditures from total household expenditures. In addition, there are a couple of studies conducted in the last five years that do not form the basis of any state guidelines but have been considered as part of a state's guidelines review.

States rarely adapt the study results verbatim. They often make adjustments to a study's estimate of child-rearing expenditures to exclude childcare expenses, adjust the amounts to align with a state's definition of income available for the guidelines calculation, adjust for another factor, or adjust for multiple factors. As an aside, they exclude childcare expenses from the base support percentages/table because most states (including New York) provide that the actual amount of childcare expense be considered on a case-by-case basis in that state's child support calculation.

The New York percentages are applied presumptively up to a combined parental income amount that is adjusted every two years. In 2022, that threshold is $163,000 per year.[73] When income is above this threshold, the law permits, but does not require, use of the percentages. The income base is gross income less FICA and New York City and Yonkers taxes. There is no deduction for federal and state income taxes. This definition of income is unique to the New York guidelines. Besides the percentages, there are many other factors considered in the determination of support under the New York guidelines. For example, the guidelines also consider the actual work-related childcare expenses and the child's healthcare expenses. For very low-income obligated parents, the order amount may be adjusted if the parent's basic obligation would reduce the obligated parent's income below a self-support reserve. In 2022, the New York self-support reserve was $18,347 per year.

This section first reviews studies of child-rearing expenditures. Comparing them to the New York percentages is more complicated. One reason is due to the income base of the New York formula. No

[72] van der Gaag, Jacques. (1981). *On Measuring the Cost of Children*. Discussion Paper 663-81. University of Wisconsin Institute for Research on Poverty, Madison, Wisconsin.
[73] New York State Office of Temporary and Disability Assistance Division of Child Support Services. (Mar. 2022). *Child Support Standards Chart.* Retrieved from https://www.childsupport.ny.gov/dcse/pdfs/CSSA.pdf.

study of child-rearing expenditures uses the income base of the New York formula. Another reason concerns the fact that New York reduced the van der Gaag percentages to account for three factors: the potential additional earning capacity of the custodial parent, the noncustodial parent's visitation expenses, and what a noncustodial parent could reasonably pay, but still be fair and adequate.[74] Replicating these reductions is not feasible. The actual earning capacity of custodial parents varies from case to case. It is not clear how visitation expenses were defined. For example, it may or may not have included the costs of transporting the child from one parent's home to other's home; it may have considered a certain level of timesharing, but that amount of timesharing is unknown; it may have only considered only the time-dependent expenses of the child (e.g., food and entertainment), or it may have considered housing and transportation expenses for the child as well.

To compensate for this, case scenarios are used to compare the New York guidelines to neighboring state guidelines including Pennsylvania, which is one of the states to use an economic study of child-rearing expenditures that was released in 2021. This is the most current study of child-rearing expenditures used by any state. In all, there are six states that use a 2021 study. No other state uses a study from a more recent year.

Studies of Child-Rearing Expenditures

Exhibit 19 compares the findings from studies of child-rearing expenditures that were conducted in the last five years and findings from studies underlying state guidelines. Most studies underlying state guidelines measure what is spent on children by intact families rather than measure the cost of the minimum or basic needs of children. Minimum/basic needs are not used because most states base their guidelines models on the premise that the children should share in the lifestyle afforded by their parents. Expenditures in single-parent families are not used for various reasons. One reason is most states (41 states, including New York) and the District of Columbia rely on the income shares model,[75] which presumes that the children are entitled to the same level of expenditures they would have had received had the children and both parents lived together and shared financial resources; each parent is responsible for their prorated share of those expenditures. Economic evidence finds that single-parent families and married-couple families spend about the same dollar amount on children, at least at low and middle incomes.[76] There also is an insufficient number of single-parent families with high income to produce reliable estimates for high-income families,[77] which is important to informing guidelines amounts at high income.

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[74] New York State Commission on Child Support and Association of the Bar of the City of New York, *What Are the Child Support Guidelines? The Child Support Standards Act*, presentation to the Association of the Bar of the City of New York on October 21, 1989, New York, New York, p. 5.

[75] National Conference of State Legislatures (Jul. 2020). *Child Support Guidelines Models.* Retrieved from https://www.ncsl.org/research/human-services/guideline-models-by-s.tate.aspx.

[76] For example, Lino et al. (2017) estimates child-rearing expenditures from ages zero to 17 years old among low-income families to be $174,690 among married-couple families and $172,200 among single-parent families. Source: Lino, Mark, et al. (2017). *Expenditures on Children by Families, 2015*. Misc. Pub. No. 1528-2015. U.S. Dept. of Agriculture, Center for Nutrition & Policy Promotion, Washington, D.C. Table 1, p 24 and Table 5, p. 28. Retrieved from https://www.fns.usda.gov/resource/2015-expenditures-children-families.

[77] Lino et al. (2017), *ibid*, p. 13.

Exhibit 19: Comparison of Findings from Recent Studies of Child-Rearing Expenditures and Studies Underlying State Guidelines[78]

Economic Methodology	Economist and Data Years	Average Child-Rearing Expenditures as a Percentage of Total Expenditures		
		1 Child	2 Children	3 Children
Point estimate from literature review	van der Gaag (no year specified)	25.0%	37.5%	50.0%
Rothbarth	Betson[79]			
	2013–2019	24.9%	38.4%	47.0%
	2004–2009	23.5%	36.5%	44.9%
	1998–2004	25.2%	36.8%	43.8%
	1996–1998	25.6%	35.9%	41.6%
	1980–1986	24.2%	34.2%	39.2%
	Rodgers/Replication of Betson[80]			
	2004–2009 CE	22.2%	34.8%	43.2%
	Rodgers[81]			
	2000–2015 CE	19.2%	24.1%	30.8%
	2004–2009 CE	21.5%	24.4%	33.4%
	2000–2011	21.0%	25.0%	31.0%
	Florida State University[82]			
	2009–2015 CE	24.9%	38.3%	46.9%
USDA	USDA[83]			
	2011–2015 CE	26.0%	39.0%	49.0%
Engel	Florida State University[84]			
	2009–2015 CE	20.3%	32.6%	41.4%
	Betson[85]			
	1996–1998 CE	32.0%	39.0%	49.0%
	1980–1986 CE	33.0%	46.0%	58.0%
	Espenshade[86]			
	1972–73 CE	24.0%	41.0%	51.0%

[78] Adapted from Judicial Council of California, *Review of Statewide Uniform Child Support Guideline 2022*. San Francisco, CA. Exhibit 9, p. 52. Retrieved from https://www.courts.ca.gov/documents/Review-of-Uniform-Child-Support-Guideline-2021.pdf.
[79] Betson, David M. (2021). "Appendix A: Parental Expenditures on Children: Rothbarth Estimates." *In* Venohr, Jane & Matyasic, Savahanna. (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.
[80] Rodgers, William M. (2017). "Comparative Economic Analysis of Current Economic Research on Child-Rearing Expenditures." *In* Judicial Council of California, *Review of Statewide Uniform Child Support Guideline 2017*. San Francisco, CA. Retrieved from http://www.courts.ca.gov/documents/lr-2018-JC-review-of-statewide-CS-guideline-2017-Fam-4054a.pdf.
[81] Rodgers (2017). *Ibid*.
[82] Norribin, Stefan C., et al. (Nov. 2021). Review and Update of Florida's Child Support Guidelines. Retrieved from http://edr.state.fl.us/Content/special-research-projects/child-support/ChildSupportGuidelinesFinalReport2021.pdf.
[83] Lino, Mark, et al. (2017). *Expenditures on Children by Families, 2015*. Misc. Pub. No. 1528-2015. U.S. Dept. of Agriculture, Center for Nutrition & Policy Promotion, Washington, D.C. Retrieved from https://cdn2.hubspot.net/hubfs/10700/blog-files/USDA_Expenditures%20on%20children%20by%20family.pdf?t=1520090048492.
[84] Norribin et al. (2021), *supra* note 82.
[85] Betson (2021), *supra* note 79.
[86] Espenshade, Thomas J. (1984). *Investing in Children: New Estimates of Parental Expenditures*. Urban Institute Press: Washington, D.C.

The results from each study examined in Exhibit 19 are shown as an average percentage of total expenditures, which is how most researchers report their findings. The difference between expenditures and gross income generally covers taxes, savings, and gifts and charitable contributions outside the home. A notable exception is the van der Gaag (1981) study,[87] where his estimates relate to income, but he does not specify whether income is gross or net (i.e., after-tax income).[88] The USDA study relates to gross income, but also reports its estimates as percentages of total expenditures in order to compare them to the results from other studies. Exhibit 19 shows the USDA results as percentages of total expenditures. The economic study underlying the Kansas child support guidelines[89] is not included in Exhibit 19 because it does not provide average percentages. Kansas is the only state to rely on that study.

Exhibit 19 shows the average percentages for one, two, and three children. Most economists limit their estimates to these family sizes because there are few families with four or more children in the Consumer Expenditure Survey (CE), which is the source of expenditures data for all of the studies shown in Exhibit 19 except the van der Gaag study.[90] As an aside, the analysis of New York case file data (which is discussed in more detail in Section 2) found that 71% of sampled orders were for one child, 21% were for two children, 6% for three children, and 2% for four or more children. How states extend the estimates for one, two, and three children is discussed later in this section.

The first column of Exhibit 19 shows the economic methodology used to estimate child-rearing expenditure. Overviews of economic methodologies and the underlying data (CE survey) are first provided before the individual discussions of various studies of child-rearing expenditures are provided.

Economic Basis of State Guidelines

Most states (33 states and the District of Columbia) rely on one of the Rothbarth studies as the basis of their child support guidelines.[91] Only a few states are known to still relate their guidelines formula to the van der Gaag study (i.e., California, Nevada, New York, and Wisconsin). The second most frequently used study is the Espenshade-Engel study, which was published in 1984. It was used to develop a prototype income shares table under the 1984–87 National Child Support Guidelines project.[92] Several states still rely on it or partially rely on it. Those states are Alaska, California,[93] Florida, Indiana, Michigan, Texas, and Washington. As an aside, New York did not adapt the prototype income shares model developed by the National Child Support Guidelines project. Federal regulation does not require states to adapt a particular guidelines model or format or use a specific economic study.[94]

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[87] van der Gaag (1981), *supra,* note 72, p. 21.
[88] Van der Gaag (1981), *ibid.*
[89] Terrell, W. T. & Pelkowski, J. M. (2010). XII. *Determining the 2010 Child Support Schedules*. Retrieved from www.kscourts.org/Rules-procedures-forms/Child-Support-Guidelines/PDF/Child%20Support%20Determination%20Economist%20FINAL%20REPORT.pdf.
[90] Since van der Gaag's study is a literature review rather than an empirical study, it cannot be attributed to a specific data set.
[91] Morgan, Laura. (Forthcoming). *Child Support Guidelines: Interpretation and Application*. Third Edition.
[92] 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.
[93] As noted in the California report, the California guidelines formula took in consideration both the van der Gaag (1981) and Espenshade (1984) studies of child-rearing expenditures (see Judicial Council of California, *supra* note 78).
[94] The federal requirements are provided in 45 C.F.R. § 302.56, which is shown in Section 1 of this report.

Minnesota relates its table amounts to the USDA study; Maryland relates part of its table amounts to the USDA study. Georgia relates its table to the average of Rothbarth and Engel estimates. Besides the most current Betson-Engel estimates used by Georgia, none of the other measurements of child-rearing expenditures shown form the basis of any state's guidelines. There are a few states (e.g., Massachusetts and North Dakota) that do not clearly relate their guidelines percentages/table to any study of child-rearing expenditures.

Economic Methodologies

An economic methodology is necessary because many expenditures (e.g., electricity for the home) are consumed by both the children and adults living in the same household; neither share is readily separable or observable. Both the Rothbarth and Engel methodologies are classified as marginal cost approach because they compare expenditures between two equally well-off families: (a) a married couple with children, and (b) 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 Rothbarth methodology relies on expenditures on adult goods.[95] The Engel methodology relies on food shares. Economists generally believe that the Rothbarth methodology understates actual child-rearing expenditures and that the Engel methodology overstates actual child-rearing expenditures.[96] The belief is rooted in the economic theory of substitution effects between two expenditures items, where substitution effects are a core concept in the economic theory of consumption behavior. The layperson explanation is that families devote a smaller budget share to adult goods (e.g., adult clothing) once they have children, so this drags the Rothbarth measurements down. The Engel overstatement can be proven with calculus. The layperson explanation is that children are food intensive so families with children must spend more on food, which drags the difference in expenditures between families with and without children up. Both the Rothbarth and Engel methodologies are named for the economists who developed them.[97]

The USDA methodology is considered a "direct" approach to measuring child-rearing expenditures, while both the Rothbarth and Engel methodologies are considered indirect approaches. Direct approaches attempt to enumerate expenditures for major categories of expenses (e.g., housing, food, transportation, clothing, healthcare, childcare and education, and miscellaneous expenses), then add them together to estimate the total cost of raising children. The major limitation to a direct approach is that there is still a need for a methodology to separate the child's share from the household total such as the situation for the child's housing expenses.

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[95] 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.

[96] A more technical explanation of the Rothbarth estimator is provided in Betson (2021), *supra* note 79. Additional analysis of both the Rothbarth and Engel estimators are also provided in Lewin-ICF (1990). *Estimates of Expenditures on Children and Child Support Guideline*s. Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. Fairfax, VA pp. 2-27–2-28.

[97] See Rothbarth, Erwin. (1943). "Note on a Method of Determining Equivalent Income for Families of Different Composition." In *War-Time Pattern of Saving and Spending* edited by Madge. Occasional Paper No. 4, Cambridge University Press, Cambridge, England; and, Engel, Ernst. (1895). "Die Lebenskosten Belgischer Arbeiter-Familien Früher and Jetzt." *International Statistical Bulletin.* Vol. 9, No. 1, pp. 1–124.

In all, economists do not agree on which methodology best measures actual child-rearing expenditures. Nonetheless, many economists and policy makers agree that any guidelines amount between the lowest and highest of credible measurements of child-rearing expenditures are appropriate guidelines amounts. Guidelines amounts below the lower bound are generally deemed to be inadequate for the support of children. Through a contract with the U.S. Department of Health and Human Services, Lewin/ICF (1990) developed this approach for assessing state guidelines.[98] Since then, several states have used it and continue to use it. It was used by New York to assess its percentages for its last two reviews.

The Consumer Expenditure (CE) Survey

All of the studies shown in Exhibit 19 (except van der Gaag because it is a literature review) rely on expenditure data collected from households participating in the Consumer Expenditure Survey (CE).[99] Conducted by the U.S. Bureau of Labor Statistics (BLS), the CE is the most comprehensive and detailed survey of household expenditures. The CE surveys households on hundreds of items. The CE surveys about 5,500 households per quarter on expenditures, income, and household characteristics (e.g., family size). Households remain in the survey for four consecutive quarters, with households rotating in and out each quarter.[100] Households are selected to represent the entire U.S. civilian noninstitutional population. Until recently, the CE surveys are designed to be nationally representative surveys with sufficient sampling to detect regional differences but not state differences. In 2017, the BLS began statewide sampling for five large states including New York. The New York CE survey is only available through 2019. Most economists estimating childrearing expenditures combine data for about five years to achieve a sufficient sample size. Most of these economists also 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 contribute to differences in study results over time. In 2004, BLS improved its income measurement to address a perceived anomaly occurring at low incomes where average expenditures exceeded average income. This improvement may have affected measurements of expenditures at low incomes for studies relying on data beginning in 2004. In 2010 and after, all economists used “outlays,” while older studies used “expenditures.” The BLS added outlays to its dataset at about this time. Both outlays and expenditures 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 data captures the full purchase price of any vehicle purchased

[98] Lewin/ICF. (1990). *Estimates of Expenditures on Children and Child Support Guidelines*. Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. Fairfax, VA.
[99] More information about the CE can be found at https://www.bls.gov/cex/.
[100] Until recently, households remained in the survey for five consecutive quarters, so some of the earlier studies benefited from more data.

during the survey period, whereas outlays consider only the monthly installment payments for vehicles that are financed during the survey period. 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 COVID-19 Pandemic and the CE Survey

The most current studies of child-rearing expenditures consider expenditure data from 2013–2019, which is before the COVID-19 pandemic began in 2020. The pandemic impacts the economy and expenditures in many ways. The ideal would be to have more current measurements of child-rearing expenditures, but there are several problems with that. One is that the economy and consumption are still changing. Another problem concerns the underlying data source, the Consumer Expenditure (CE) survey. The CE response rate in 2020, the year the pandemic began, declined.[101] The impact of this decline on survey results is still being assessed.

Using basic economic theory, almost every factor known to affect supply and demand level has changed significantly since the pandemic began, which, in turn, affect prices and the amount consumed. At the microeconomic level (which considers individual goods and services), these factors include changes in all the factors identified in classical economic theory that affect how much a household demands (or consumes) and how much firms supply. This includes price levels, income (including changes caused by government stimulus payments and the temporary increase in the child tax credit),[102] prices of related goods and services, and taste and preferences (e.g., increased demand for at-home entertainment at the beginning of the pandemic); consumers' expectations about the future; the number of buyers; changes in input prices (e.g., availability of semi-conductor chips) and technology (e.g., technology that affects ability to work remotely); suppliers' expectations about the future prices; and the number of sellers.

Another concern about using 2013–2019 CE data is inflation. From March 2020 through May 2022, prices increased by 14%.[103] In the last year, prices have increased 8.6% alone. Price changes have not been uniform across all goods and services. For example, although the all-items price index increased 8.6% in the last year, the food price index increased 10.1% and the energy price index rose 34.6% over the same time period.[104] Lower income families devote a higher percentage of their budget share to necessities (such as food) than higher-income families who can afford more luxury items. When prices increase, higher-income families can cut back on luxury items to offset the increased cost of necessities.

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[101] U.S. Bureau of Labor Statistics Office of Survey Methods Research. (n.d.). *Household and Establishment Survey Response Rates*. Retrieved from https://www.bls.gov/osmr/response-rates/.

[102] Both the Coronavirus Aid, Relief and Economic Security Act (CARES Act) of 2020 and the American Rescue Plan Act of 2021 affected consumer income.

[103] Calculated from the U.S. Bureau of Labor Statistics. (n.d). *Consumer Price Index Historical Tables for U.S. City Average*. Retrieved from https://www.bls.gov/regions/mid-atlantic/data/consumerpriceindexhistorical_us_table.htm.

[104] U.S. Bureau of Labor Statistics. (Jun. 10, 2022). *Consumer Price Index – May 2022*. Retrieved from https://www.bls.gov/news.release/pdf/cpi.pdf.

In all, the impact on child-rearing expenditures is unknown. It is anticipated the changes will not be uniform across all incomes and family sizes.

Summaries of Economic Studies of Child-Rearing Expenditures

This subsection summaries each of the economic studies shown in Exhibit 19. The summaries are organized by author since some authors used more than one methodology to estimate child-rearing expenditures. Considerable attention is paid to the van der Gaag (1981) study because it forms the basis of the New York percentages. The most current Rothbarth study is also discussed in more detail because it relies on the most current CE survey data and is already in use by six states. All of the other studies either rely on older data or are not used by any state as the basis of their guidelines percentages or table.

Van der Gaag (1981) Study and State Usage

The van der Gaag (1981) study was conducted through the University of Wisconsin–Madison Institute for Research on Poverty (IRP) to assist Wisconsin policymakers with the development of a statewide guidelines for Wisconsin. It consisted of a literature review of 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 11 reviewed studies. To narrow the range, however, van der Gaag estimated that the true cost of one child was between 20%–30% of a couple's income and thus suggested that 25% was an obvious point estimate.[105] 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.

The study also estimated that the second child costs about half as much as the first child, the third child costs about the same as the second child, and subsequent children cost about half as much as the second and third child. Converting this to the total amount needed for two children, three children, and so forth would suggest percentages of:

- 25.0% for one child;
- 37.5% for two children;
- 50.0% for three children;
- 56.0% for four children; and
- 62.5% for five children.

State Usage of van der Gaag

Wisconsin was the first state to adapt a state guideline formula based on van der Gaag. Subsequently, several states considered the van der Gaag study when developing their state child support guidelines. (Federal law required statewide guidelines by 1987.) Nevada just lowered its percentages in 2020.[106] The similarities among the Wisconsin, New York, and old Nevada guidelines percentages are evident in Exhibit 20 , which compares them. Both the Nevada existing and old percentages are shown. Exhibit 20

[105] van der Gaag (1981), *supra* note 72, p. 21.

[106] The lower amounts appear to be a policy decision. The Nevada study reviewing economic data on the cost of raising children prior to the change recommended decreasing the percentages at high incomes, but not lower incomes.

does not include California because it has a complicated formula that consists of a sliding scale percentage of net income and factors in the child's time with the obligated parent.

Wisconsin policymakers reduced the van der Gaag percentages to reflect a variety of factors, including the presumption that the obligated parent would incur the additional expense of the child's health insurance, the obligated parent would incur some costs of normal visitation with the child, and the obligated parent may not derive the same level of satisfaction (called "utility" in economics) from the child as the custodial parent, and what an obligated parent would reasonably pay in child support.[107] As mentioned earlier, New York also made reductions, but limited the reduction to account for three factors: the potential additional earning capacity of the custodial parent, the noncustodial parent's visitation expenses, and what a noncustodial parent could reasonably pay but still be fair and adequate.

Exhibit 20: Comparison of Core Guidelines Percentages among States Relying on van der Gaag (1981) Study

State	Guidelines Percentage				
	One Child	Two Children	Three Children	Four Children	Five Children
New York	17%	25%	29%	31%	35%
Wisconsin[108]	17%	25%	29%	31%	34%
Nevada (prior to 2020 changes)[109]	18%	25%	29%	31%	An additional 2% for each child
Current Nevada[110]	16%	22%	26%	28%	An additional 2% for each child

Despite the similarities in the guidelines percentages among the three states, there are many differences in their guidelines. The four most noteworthy differences are:

- The guidelines model used by the state;
- Income base;
- Treatment of high income; and
- Treatment of low income.

Some relate to or concern the economic evidence on child-rearing expenditures.

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[107] Rothe, Ingrid, Cassetty, Judith, & Boehnen, Elisabeth. (2001). *Estimates of Family Expenditures for Children: A Review of the Literature*, University of Wisconsin-Institute for Research on Poverty, Madison, Wisconsin. Retrieved from https://www.irp.wisc.edu/resource/estimates-of-family-expenditures-for-children-a-review-of-the-literature/.

[108] Wisconsin Department of Children and Families. (n.d.). *Setting Child Support Payment Amounts.* Retrieved from https://dcf.wisconsin.gov/cs/order/guidelines.

[109] Venohr, Jane. (2016). *Review of the Nevada Child Support Guidelines*. Report to Nevada Division of Welfare and Support Services Child Support Program by Center for Policy Research, Denver, CO. Retrieved from https://www.leg.state.nv.us/App/NELIS/REL/79th2017/ExhibitDocument/OpenExhibitDocument?exhibitId=34390&fileDownloadName=AB%20278_Review%20of%20the%20Nevada%20Child%20Support%20Guidelines.pdf.

[110] Nevada Department of Health and Human Services, Administrator of the Division of Welfare and Supportive Services. (n.d.). *Nevada Child Support Guidelines.* Retrieved from https://dwss.nv.gov/uploadedFiles/dwssnvgov/content/Support/cs_MASTER_DOCUMENT_final.pdf.

Guidelines Models of States Relying on the van der Gaag (1981) Study

New York identifies itself as an income shares model because it considers the combined income of the parents in the calculation of support. In contrast, the Wisconsin and Nevada guidelines are considered percentage-of-obligor income guidelines.[111] Exhibit 21 shows how New York considers the combined income of the parents. However, in situations where the parents' combined income does not exceed the high-income threshold ($163,000 per year in 2022) and there are no childcare expenses or healthcare expenses or other adjustments, the basic child support obligation under the New York guidelines can be calculated by just applying the child support percentage to the obligated parent's income available for support. This is important to understanding the special case of New York, which is the only state guidelines based on the income shares model that clearly relates to percentages used by states with a different guidelines model—namely, the Wisconsin and old Nevada guidelines, which both rely on a percentage-of-obligor income guidelines. In short, the New York percentages appear more like the Wisconsin and old Nevada guidelines than they do like any other income shares guidelines. In contrast, most income shares guidelines rely on a table of basic obligations (which is the amount owed by both parents) where the basic obligations reflect the dollar amount expended on children of that combined income and family size.

The similarity to Wisconsin and Nevada percentage-of-obligor guidelines is illustrated using the scenario in Exhibit 21 where the obligated parent's income available for support is $2,770.50 per month. When it is multiplied by 25%, which is the New York percentage for two children, it produces $692.63 per month, which is the same amount shown on Line 7 of Exhibit 21 when both parents incomes are considered. In other words, the custodial parent's income does not affect the order amount in this scenario; the calculation yields the same amount that a percentage-of-obligor income guidelines model would.

Exhibit 21: Illustration of Calculation of Support under the New York Guidelines Using Both Parents' Incomes

	Obligated Parent	Custodial Parent	Combined
1. Gross income	$3,000.00	$2,000.00	$5,000.00
2. Deductions (FICA)	$ 229.50	$ 153.00	$ 382.50
3. Parental income available for Support (Line 1 minus Line 2)	$2,770.50	$1,847.00	$4,617.50
4. Each parent's prorated share	60%	40%	100%
5. Child support percentage for two children			25%
6. Base child support obligation (Line 3 multiplied by Line 5)			$1,154.38
7. Base child support order (Line 4 multiplied by Line 6 for obligated parent	$692.63		

Income Base of State Guidelines Relying on van der Gaag (1981)

The New York guidelines exclude FICA and New York City and Yonkers taxes from income used to calculate the support order. In contrast, Wisconsin and Nevada do not exclude FICA and local taxes. Starting from the same gross income, consequentially, there would be less income to which the guidelines percentages would apply based on New York's definition of income than the income definitions of Wisconsin and Nevada. In turn, this results in a lower order amount under the New York

[111] National Center for State Legislatures (2020), *supra* note 75.

percentages than it would under the Wisconsin and old Nevada guidelines even when the same percentage applies (which is the situation for two, three, and four children).

No other state guidelines provide for a similar dichotomy in earnings-related taxes (i.e., exclude FICA and local taxes but not federal and state income tax). CPR's understanding of the basis of this unique definition of income (based on interviews conducted for the 2010 New York guidelines review) is that it was a compromise in the policy debate to use gross income or net income.[112] There is no rationale economic basis for this income base at this point of time; however, there is likely to be a substantial amount of case law built around the definition that would be lost if New York were to switch to a more rational economic definition.

Treatment of High Income in State Guidelines Relying on van der Gaag (1981)

Both Wisconsin and Nevada provide for lower percentages at higher incomes. Exhibit 22 shows the Wisconsin formula for high-income payers. One reason for assigning a lower percentage for higher incomes is because after-tax income as a percentage of gross income shrinks due to progressive federal income tax rates. Expenditures are based on spendable income, which is generally after-tax income. Based on the 2022 federal income withholding formula,[113] the federal income tax bracket for a single taxpayer with income below $7,000 per month would be 0%, 10%, 12%, or 22%, depending on their precise adjusted gross income. The federal income tax bracket for adjusted gross incomes between $7,000 and $12,500 per month would be 22% and 24%; the federal income tax bracket for adjusted gross incomes above $12,500 per month are 32%, 35%, and 37%, depending on their precise adjusted gross income.

Exhibit 22: Wisconsin Child Support Guidelines for High-Income Payers[114]

Paying Parent's Monthly Gross Income	Guidelines Percentage				
	1 Child	2 Children	3 Children	4 Children	5 Children
First $7,000 of income	17%	25%	29%	31%	35%
Income between $7,000 and $12,500	14%	20%	23%	25%	27%
Income above $12,500	10%	15%	17%	19%	20%

Exhibit 23 illustrates the consequence of the progressive federal income tax rate on a percentage-of-obligor guidelines model. For simplicity, it is assumed that the percentage for two children (i.e., 25%) applies to all income levels; there is no income cap; there are no deductions for FICA or state or local income taxes; and the federal tax is just based on the tax bracket percentage applied to gross income.

Exhibit 23 illustrates that a flat percentage of gross income produces an increasing percentage of after-tax income being required for child support. This is shown by Line 5 of Exhibit 23. The pattern would still hold true if FICA and state and local income taxes were considered. Most importantly, this increasing

[112] A good source of the history of the New York guidelines cited in the 2010 guidelines review is New York State Commission on Child Support and Association of the Bar of the City of New York, *What Are the Child Support Guidelines? The Child Support Standards Act*, presentation to the Association of the Bar of the City of New York on October 21, 1989, New York, New York. CPR does not have a copy of the presentation, but OTDA staff made CPR aware of it in 2010.

[113] *IRS Publication 15-T: Federal Income Tax Withholding Methods: 2022*. Retrieved from https://www.irs.gov/publications/p15t.

[114] Wisconsin Department of Children and Families. (n.d.). *Setting Child Support Payment Amounts for Special Circumstances: High-Income Payers.* Retrieved from https://dcf.wisconsin.gov/cs/order/guidelines.

percentage is not consistent with the economic evidence of child-rearing expenditures. The economic evidence of child-rearing expenditures does not find that families devote a higher share of their expenditures to children as their income increases. Again, the economic sciences tell us that consumption decisions are not made based on gross income; rather, they are made based on spendable (after-tax) incomes.

Exhibit 23: Illustration of the Impact of Progressive Federal Income Taxes on Simple Percentage-of-Obligor Income Guidelines

Monthly Gross Income of Obligated Parent	$1,000	$2,000	$5,000	$10,000	$20,000
Line 1 : 25% of gross income	$250	$500	$1,250	$2,500	$5,000
Line 2 : Federal income tax bracket	10%	12%	22%	24%	35%
Line 3 : Estimated federal tax	$100	$240	$1,100	$2,400	$7,000
Line 4: After-federal tax income	$900	$1,760	$3,900	$7,600	$13,000
Line 5 : Guidelines amount as percentage of after-federal tax income (Line 1 divided by Line 4)	27.8%	28.4%	32.1%	32.9%	38.5%

Prior to 2020 changes, Nevada was the only state to cap the amount of child support ordered. The cap varied by income and was periodically updated. As of June 2017, Nevada's presumptive maximum was $1,092 per child per month for the highest income bracket considered. An independent consultant recommended that Nevada eliminate the cap and adapt a sliding scale adjustment for high incomes. In turn, Nevada did eliminate the cap and adapted a sliding scale but at percentages lower than recommended. Exhibit 24 shows the current Nevada percentages.

Exhibit 24: Nevada Child Support Guidelines for High-Income Payers[115]

Paying Parent's Monthly Gross Income	Guidelines Percentage				
	1 Child	2 Children	3 Children	4 Children	5 Children
First $6,000 of income	16%	22%	26%	28%	An additional 2% for each child
Income between $6,001 and $10,000	8%	11%	13%	14%	An additional 1% for each child
Income above $10,000	4%	6%	6%	7%	An additional 0.5% for each child

Treatment of Low-Income in State Guidelines Relying on van der Gaag (1981)

Although all three states (i.e., New York, Wisconsin, and old Nevada) provide for similar guidelines percentages, none of these states apply the percentages to low incomes. Instead, each of these states has their own unique low-income income adjustment. Federal regulation requires state guidelines to consider the subsistence needs of the obligated parent through a low-income adjustment such as a self-support reserve.[116] Each of these states meet the federal requirement; each state meets it differently. Just as federal regulation gives states discretion in their core guidelines model and percentages or table amounts, federal regulation gives states discretion on their low-income adjustment. In fact, when drafting the federal requirement to consider the subsistence needs of the noncustodial parent, the

[115] Nevada Department of Health and Human Services, Administrator of the Division of Welfare and Supportive Services. (n.d.), *supra* note 110.

[116] See 45 C.F.R. § 302.56 (c)(ii), which is shown in Exhibit 1 in Section 1.

federal Office of Child Support Enforcement did not define subsistence but encouraged states to determine a level of subsistence appropriate for their state.[117]

Published Findings from Wisconsin's and Nevada's Assessment of Their Percentages

Both Wisconsin and Nevada post their findings from their latest review of the economic data on the cost of children. Based on the Wisconsin researcher's interpretation of the 2015 USDA report,[118] the researcher concluded that the Wisconsin percentages were an accurate reflection of child-rearing expenditures for one, two, and three children and too low for four or more children.[119] The Wisconsin researcher's interpretation resulted in the following percentages of income devoted to child-rearing expenditures:

- 17.1% for one child;
- 26.9% for two children;
- 30.7% for three children;
- 41.0% for four children; and
- 51.2% for five children.

The Wisconsin researcher notes that the USDA "multipliers," which are used to adjust for more than two children contribute to the large percentages for four and five children. The USDA multipliers for four and more children are higher than what is used by most states.

Nevada has substantially changed its percentage since the publication of its last guidelines review report.[120] It also now provides for a committee to review the guidelines once every four years, identifies the membership of the committee, and authorizes the guidelines to be set in administrative rule.[121] Prior to 2017 statutory changes, Nevada did not mention a committee and the guidelines were set in state statute. For each review, the committee makes its recommendation to the administrative agency. In turn, the agency considers the recommendations in light of federal statute and rules pertaining to child support guidelines.

Betson Studies Using the Rothbarth and Engel Methodologies

Most states base their guidelines on one of Dr. David Betson's estimates of child-rearing expenditures using the Rothbarth methodology to separate the child's share of expenditures from total expenditures. There have been five Betson studies of child-rearing expenditures. Each of the studies applies the Rothbarth methodology; some also apply other methodologies. The first study was commissioned by the U.S. Department of Health and Human Services to respond to a congressional request as part of the Family Support Act of 1988 to develop a report analyzing expenditures on children and explain how the

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[117] U.S. Department of Health and Human Services. (Nov. 17, 2014). "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs." 79 *Fed. Reg*. 221, p. 68555. Retrieved from https://www.gpo.gov/fdsys/pkg/FR-2014-11-17/pdf/2014-26822.pdf.

[118] Lino et *al*. (2017), *supra* note 83.

[119] Robb, Cliff. (Jun. 2019). *Cost of Raising Children and Expenditures on Children.* University of Wisconsin-Madison Institute for Research on Poverty, p. 5. Retrieved from https://www.irp.wisc.edu/wp/wp-content/uploads/2020/01/CS-2018-2020-T3.pdf

[120] Venohr (2016), *supra* note 109.

[121] See Nevada Revised Statute (NRS 425.610 and NRS 425.620).

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 Professor David Betson, University of Notre Dame.[122] Using five different economic methodologies to measure child-rearing expenditures, Betson concluded that the Rothbarth methodology was the most robust[123] and, hence, recommended that it be used for state guidelines. The second study resulting from the Congressional mandate was by Lewin/ICF.[124] It assessed the use of measurements of child-rearing expenditures, including the Betson measurements, for use by state child support guidelines. It deemed the Betson-Rothbarth (BR) estimates to be the lower bound of credible estimates of child-rearing expenditures when assessing the adequacy of state child support guidelines. In short, if a state's guidelines amount were below the BR estimates, the state guidelines amount may provide inadequate support for children.

The Betson (1990) study relied on 1980–1986 CE survey data. Each subsequent study relies on more current CE survey data. The second Betson study relied on the 1990–1996 CE survey data,[125] the third Betson study relied on 1996–1999 CE survey data;[126] the fourth Betson study relied on 2004–2009 CE survey data;[127] and the fifth Betson study relied on 2013–2019 CE survey data.[128] The most current Betson study using the Rothbarth methodology (which is called BR5, being the fifth set of Betson-Rothbarth estimates) was commissioned by Arizona for its child support guidelines and released in 2021. Several states (i.e., Arizona, Alabama, Iowa, Missouri, Pennsylvania, and South Dakota) have already adapted it as the basis of their state guidelines. The BR5 study and the Florida study are the most current regarding the CE data that was used. The Florida study uses the same CE survey data years as the BR5 study does.

For each study, Betson's baseline sample consists of married couples with and without children. For those with children, all are children of the couple who are under 18 years old. For his most recent study, Betson also explored three alternative samples of which two expanded the sample size by loosening the sample selection criteria. The first expanded sample also included married couples (husband and wife) with their own children who are at least 18 years old (i.e., they had older children). A second alternative included married, same-sex couples. The inclusion of adult children lowered the estimates of child-rearing expenditures (e.g., the estimates for one child was lowered from 24.9%–21.4% of total

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[122] 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, Wisconsin.

[123] In statistics, the term "robust" means the statistics yield good performance that are largely unaffected by outliers or sensitive to small changes to the assumptions.

[124] Lewin/ICF. (1990), *supra* note 98.

[125] Betson, David M. (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, WI.

[126] Betson, David M. (2006). "Appendix I: New Estimates of Child-Rearing Costs" in PSI, *State of Oregon Child Support Guidelines Review: Updated Obligation Scales and Other Considerations*, Report to State of Oregon, Policy Studies Inc., Denver, CO. Retrieved from https://justice.oregon.gov/child-support/pdf/psi_guidelines_review_2006.pdf.

[127] Betson, David M. (2010). "Appendix A: Parental Expenditures on Children." *In* Judicial Council of California, *Review of Statewide Uniform Child Support Guideline*. San Francisco, CA. Retrieved from http://www.courts.ca.gov/partners/documents/2011SRL6aGuidelineReview.pdf.

[128] Betson, David M. (2021). "Appendix A: Parental Expenditures on Children: Rothbarth Estimates." *In* Venohr, Jane & Matyasic, Savahanna. (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.

expenditures). The inclusion of same-sex couples increased the percentages from the baseline sample: the increase averaged about 2% but was never more than 4%. A third alternative sample analyzed the CE data on a quarterly basis (which is how the CE data is gathered), rather than on an annualized basis.

Comparisons of BR Measurements over Time

Exhibit 25 compares the percentage of total family expenditures devoted to child-rearing for the five BR studies where BR1 stands for the first study, BR2 stands for the second study, and so forth. Exhibit 25 shows the percentages for one, two, and three children. The sample size of families with four or more children is too small to produce measurements for larger families. Instead, as discussed later, equivalence scales (also called multipliers) are used to adjust the measurements for larger family sizes.

Exhibit 25: Comparisons of Betson-Rothbarth (BR) Measurements over Time

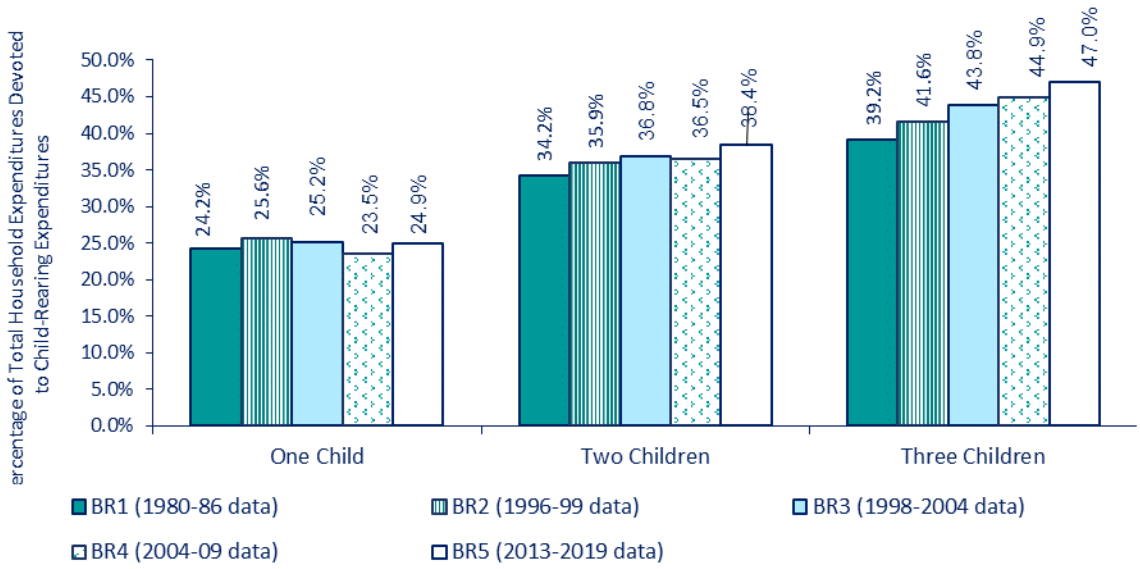

Exhibit 25 shows small variation in the percentage of total expenditures devoted to one child over time. The difference between the lowest and the highest estimate for one child is less than two percentage points. This is less than the standard deviation in the estimates due to sampling variation. To this end, the difference could be due to sampling differences rather than any true change in expenditures over time.

For two and three children, Exhibit 25 shows the percentage of total expenditures devoted to child-rearing expenditures appears to be increasing slightly over time. However, Betson suggests that expenditures for two and three children should be examined in context of marginal expenditures — that is, starting with expenditures for the first child, how much more was spent for the second child? If the same amount is spent, the marginal increase in expenditures is 100%. If the amount is less than 100%, there is some economies of scale to having more children. The BR studies find that the marginal increase in expenditures from one to two children is about 40%–55%, depending on the age of the study, and that the marginal increase in expenditures from two to three children is about 15%–23%, depending on the age of the study. Generally, the older studies have smaller marginal increases, while the more recent studies have larger marginal increases. This suggests that the economies of scale of having more

children is decreasing slightly. In turn, this suggests slightly larger increases to updated schedule amounts for more children.

Betson/Engel Studies

The first and second Betson studies also included Engel estimates. Georgia uses the average of the Betson-Rothbarth and Betson-Engel estimates from the second study as the basis of its guidelines. It is the only state to rely on a Betson-Engel estimate. Georgia is reviewing its guidelines in 2022. It has commissioned an updated Engel study. Coupled with the BR5, Georgia hopes to see what an updated average estimate based on the 2013–2019 CE survey data would look like.

Espenshade Study

Espenshade (1984) estimated child-rearing expenditures from 1972–1973 CE survey data using the Engel methodology. 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% for one child and 41% for two children. What Espenshade actually reported is a range of child-rearing expenditures for two-child families by socioeconomic class and other household characteristics.

Most of the states (i.e., Alaska, California, Florida, Indiana, New Hampshire, Michigan, Texas, and Washington) that continue to rely on the Espenshade measurements have not made substantial changes to their guidelines percentages or tables other than to add or update their low-income adjustment or tweak the high-income amounts. Michigan is the only state to continue to use Espenshade that periodically updates its table for changes in price levels.

USDA (Lino et al.) Study

The USDA first measures expenditures for seven different categories (i.e., housing, food, transportation, clothing, healthcare, childcare and education, and miscellaneous) and 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 reports its estimates on an annual basis for one child in a two-child household. The USDA provides measurements for the United States as a whole and as four regions: the South, Midwest, Mid-Atlantic, and West. The amount varies by age of the child and household income. The amounts are generally more for older children, with the notable exception of very young children due to childcare and education expenses. The USDA also produces measurements for rural areas and single-parent families. These measurements are for the nation as whole and not provided individually by region. The most recent USDA measurements are from expenditures data collected in 2011 through 2015. This is the same USDA study that was reviewed for New York's previous child support guidelines review. The USDA has not updated its study.

Exhibit 26 shows the USDA amounts for the urban Northeast (which includes New York according to the USDA) and converts them to percentages somewhat comparable to the New York percentages by excluding the child's healthcare expenses and childcare and education expenses (where the USDA reports childcare and education expenses within the same category). It suggests that the New York guidelines percentage for one child (17%) is about right for one child. The USDA percentage is 17.8%.

Exhibit 26 suggests the New York percentages for two and three children (25% and 29%, respectively) may be too low for middle incomes. The USDA percentages are 28.0% and 32.0%, respectively.

Exhibit 26: USDA Measurements Expressed as a Percentage of New York Guidelines Income

	2015 Average Expenditures per Year for One Child by Married-Couple Family with Two Children in Urban Northeast (average across all ages)[a]			USDA Estimate for Urban Northeast[a]			USDA-Comparable Percentage Using New York Guidelines Definition of Income[c]		
	Column A: Total	Column B: Health Care and Childcare and Education Expenses	Column C (Col. A minus Col. B) Total less Health Care and Childcare and Education Expenses	Column D: Average Income	Column E (Column D minus FICA): Average Income less FICA[b]	Column F: Percentage Devoted to 1 Child in 2-Child Family	1 Child	2 Children	3 Children
Low Income	$11,380	$2,695	$8,685	$36,000	$33,246	26.1%	33.2%	52.2%	59.6%
Middle Income	$14,672	$3,927	$10,745	$83,000	$76,650	14.0%	17.8%	28.0%	32.0%
High Income	$22,638	$6,968	$15,670	$191,500	$176,850	8.9%	11.3%	17.7%	20.2%

[a] Source: USDA (2017) Table 2.

[b] It is assumed there is no New York City or Yonkers income tax.

[c] The USDA multipliers for less and more children are used: for one child, the amount in Column F is multiplied by 1.27. For three or more children, the amount in Column F is multiplied by 0.76 for each child, then summed.

Minnesota relates its table amounts to the 2017 USDA study, and Maryland relates part of their table amounts to the 2017 USDA study. Both the Minnesota and Maryland guidelines consist of lookup tables of dollar amounts that vary by the combined gross income of the parents and the number of children. (If they were converted to a percentage of gross income, they would be a sliding scale percentage that decreases with more income.) Out of consideration of ability to pay, the task force reviewing the Minnesota guidelines recommended substantially lowering the USDA amounts for combined monthly incomes of $6,000 gross per month or less.[129] The Maryland table amounts at higher incomes relate to the USDA measurements, but the amounts at lower and middle incomes relate to Rothbarth measurements.

Rodgers Studies

Professor William Rodgers, Rutgers University, developed estimates of child-rearing expenditures for the 2017–2018 California guidelines review[130] and for the 2013 New Jersey child support guidelines

[129] Minnesota Department of Human Services. (Oct. 2019). *Legislative Report: 2019 Minnesota Child Support Task Force: Activities and Recommendations.* p. 21. Retrieved from https://edocs.dhs.state.mn.us/lfserver/Public/DHS-7661B-ENG.

[130] Rodgers (2017), *supra* note 80.

review.[131] His New Jersey study forms the basis of the New Jersey child support tables. He applied the Rothbarth methodology to expenditures data from the 2000–2011 CE survey and adjusted for New Jersey incomes, which are higher than the national average. This renders the findings from the New Jersey study inappropriate for usage by another state.

Besides New Jersey, no other states rely on the Rodgers estimates as the basis of their guidelines formula/table. For the California study, Rodgers relied on 2000–2015 CE survey data and did not adjust his results for any particular state. One reason he considered a larger time period was to average out the expenditure patterns since there were some anomalous patterns associated with the Great Recession of 2007–2009 and its aftermath. Rodgers concluded there were some actual dollar declines in outlays on children in recent years. In general, Rodgers found that the percentage of total household expenditures devoted to child-rearing expenditures was about three to four percentage points less than the BR4 studies. Some of the factors that may contribute to their differences is they differ in sample selection and functional forms of their estimating equations.[132] When Rodgers attempted to replicate Betson's sampling criteria he came within two percentage points of Betson's results, but he still used a different functional form than Betson.

Other Studies of Child-Rearing Expenditures

Florida State University researchers estimated child-rearing expenditures in 2021.[133] The Florida researchers applied both the Rothbarth and Engel approach to 2013–2019 CE expenditures data. The Florida researchers reported their estimates as a percentage of consumption (total household expenditures) for five quintiles of income. Using the Rothbarth methodology, they ranged from 21.0%–21.5% for one child, 32.9%–33.7% for two children, and 40.8%–41.7% for three children. Neither Florida nor any other state rely on these measurements as the basis of their guidelines table or formula.

Another older study that has been considered in several state guidelines reviews is a 2016 study by Professor Emeritus, William Comanor, University of California at Santa Barbara.[134] The study relied on 2004–2009 CE survey data. The Comanor study does not form the basis of any state guidelines and is criticized for yielding amounts near poverty for all income ranges.[135]

Multipliers to Adjust for More Children

Each of the discussions about the van der Gaag, Betson, and USDA studies address the issue of how the estimates are adjusted for more children. As shown in Exhibit 27, an implied multiplier (equivalence scale) for two children under the New York guidelines can be calculated by dividing the percentage for two children (25%) by the percentage for one child (17%). This yields a multiplier of 1.471 and is the

[131] New Jersey Child Support Institute. (Mar. 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.
[132] Betson (2021), *supra* note 79.
[133] Norribin, Stefan C., et al. (Nov. 2021). Review and Update of Florida's Child Support Guidelines. Retrieved from http://edr.state.fl.us/Content/special-research-projects/child-support/ChildSupportGuidelinesFinalReport2021.pdf.
[134] Comanor, William, Sarro, Mark, & Rogers, Mark. (2015). "The Monetary Cost of Raising Children." *In* (ed.) Economic and Legal Issues in Competition, Intellectual Property, Bankruptcy, and the Cost of Raising Children (*Research in Law and Economics*), Vol. 27. Emerald Group Publishing Limited, pp. 209–51.
[135] For example, see the California Judicial Council Report (2022), *supra* note 78.

amount shown in Exhibit 27 for New York. An implied multiplier (equivalence scale) for the three children under the New York guidelines would be 29% (percentage for three children) divided by 17% (the percentage for one child), which would be 1.706.

Exhibit 27: Comparison of Multipliers (Equivalence Scales) for More Children to Economic Evidence[136]

	2 Children	3 Children	4 Children	5 Children
Multiplier Implied by New York Percentages	1.471	1.706	1.824	2.059
U.S. Census Equivalence Scales	1.533	2.040	2.526	2.993
Findings from Economic Study				
van der Gaag (1981)[137]	1.563	1.953	2.075	2.205
Betson/Rothbarth				
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		
1980–1986 CE	1.413	1.620		
Rodgers/Rothbarth				
2000–2015 CE	1.225	1.604		
2004–2009 CE	1.135	1.553		
2000–2011[138]	1.190	1.476		
USDA				
2011–2015 CE	1.500	1.885		
2000–2005 CE	1.519	1.778		
1990–1992 CE	1.615	1.846		
Betson/Engel				
1996–1998 CE	1.219	1.531		
1980–1986 CE	1.394	1.758		
Espenshade/Engel				
1972–73 CE	1.708	2.125		

Implied multipliers are calculated for all economic studies. They only go up to three children because most economists only estimate child-rearing expenditures for one, two, and three children. Most states rely on an equivalence scale to increase the estimates for three children appropriately for four, five, and more children. Most states rely on an equivalence scale developed by the National Academy of Science[139] to convert the three-child amounts to amounts for four or more children. The National Academy of Science equivalence scale also is the source of the U.S. Census Equivalence Scales.

In general, the implied multipliers by the New York percentages for two and three children are in line with other studies. The implied multipliers for four and five children may be low relative to the economic evidence, but there may be other considerations such as keeping the guidelines amount below the maximum amount that can be withheld from a worker's disposable earnings for child support according to the Consumer Credit Protection Act (CCPA).[140] It makes no sense to provide a guidelines

[136] Adapted from Judicial Council of California, *Review of Statewide Uniform Child Support Guideline 2022*. San Francisco, CA. Exhibit 18, p. 49. Retrieved from https://www.courts.ca.gov/documents/Review-of-Uniform-Child-Support-Guideline-2021.pdf.
[137] Van der Gaag, *supra* note 72, at 25, Table 3.
[138] New Jersey Child Support Institute, *supra* note 131, p. 97.
[139] Citro, Constance F. & Robert T. Michael (eds.). (1995). *Measuring Poverty: A New Approach*. National Academy Press. Washington, D.C.
[140] U.S. Department of Labor Wage and Hour Division. (n.d.). Fact Sheet #30: The Federal Wage Garnishment Law, Consumer Credit Act's Title III (CCPA). Retrieved from https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs30.pdf.

amount beyond what can be legally withheld. Although not obvious, there is only a small gap between the New York percentages for four and five children and the maximum amount that can be withheld from a paycheck for child support. It is not obvious because the income basis differs between the two. The income base of the guidelines is gross income less FICA and New York and Yonkers income tax. The CCPA income base is disposable earnings, which is earning after payroll taxes and deductions for health insurance and other things.[141]

CASE COMPARISONS

This subsection uses case scenarios to compare the New York percentages to the guidelines amounts of neighboring states. Of particular interest is the comparison of the New York percentages to the Pennsylvania guidelines since Pennsylvania bases its schedule on the most current Betson-Rothbarth estimates; however, since they were crafted in 2020, they do not reflect recent inflation. All states (except Massachusetts[142]) that have recently changed their guidelines have adapted the most current Betson-Rothbarth estimates.

Exhibit 28 compares the guidelines basis and other socioeconomic characteristics of neighboring states: Connecticut,[143] Massachusetts,[144] New Jersey,[145] Pennsylvania,[146] and Vermont.[147] All of the compared states rely on the income shares model. All start the calculation from net (after-tax income) except for Massachusetts and Vermont. Connecticut and Vermont are based on the fourth Betson-Rothbarth study (BR4) and Pennsylvania is based on the BR5 study. New Jersey bases its guidelines percentage on the 2011 Rodgers-Rothbarth study. Massachusetts does not identify itself as being based on any one economic study.[148] Connecticut and New Jersey, states with above-average income, upward adjusted the economic evidence for their high incomes. Exhibit 28 also shows significant variation on how each state's guidelines treat substantial shared-parenting time.

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[141] For more detail on what is included in the CCPA income base, see 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.

[142] The Massachusetts schedule considers "a range of legal, policy and practical considerations" when recommending changes to its table. Source: Sarro, Mark, Polek, Christine, & Sandy, Shastri. (Jul. 23. 2021). *Economic Review of the Massachusetts Child Support Guidelines 2020–2021.* Prepared for Commonwealth of Massachusetts Executive Office of the Trial Court 2020–2021 Child Support Guidelines Task Force. Page 2. Retrieved from https://www.mass.gov/doc/economic-review-of-the-massachusetts-child-support-guidelines-2020-2021/download.

[143] State of Connecticut Commission for Child Support Guidelines. (Jul. 2015). *Child Support and Arrearage Guidelines.* Retrieved from https://www.jud.ct.gov/Publications/ChildSupport/CSguidelines.pdf.

[144] Massachusetts Trail Court Executive Office of the Trail Court. (Aug. 2021). *Child Support Guidelines.* Retrieved from https://www.mass.gov/doc/2021-child-support-guidelines/download.

[145] Rules Governing the Courts of the State of New Jersey: Part v: Rules Governing Practice in the Chancery Division, Family Part Chapter II. Specific Civil Actions. *Rule 5: 6A. Child Support Guidelines*. Retrieved from https://www.njcourts.gov/attorneys/assets/rules/r5-6a.pdf.

[146] Pennsylvania Codes (Rules and Regulation) Chapter 1910, Rule 16-1. Retrieved from http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/231/chapter1910/s1910.16-3.html&d=reduce.

[147] Vermont Child Support Guidelines. Retrieved from https://dcf.vermont.gov/sites/dcf/files/OCS/Docs/CS-Guidelines.pdf.

[148] Sarro, et al. (2021), *supra* note 142.

Exhibit 28: Comparison of Neighboring State Guidelines and Selected Socio-Economic Characteristics

	US	NY	CT	MA	NJ	PA	VT
Guidelines Model	N/A	Income shares	Income Shares	Income shares	Income shares	Income shares	Income shares
Guideline Format	N/A	Flat percentages	Lookup table of dollar amounts	Sliding scale percentages	Lookup table of dollar amounts	Lookup table of dollar amounts	Lookup table of dollar amounts
Base of Guideline Income	N/A	Gross monthly less FICA and New York City or Yonkers income tax	Net Weekly	Gross monthly	Gross to net income conversion table	Net monthly	Gross to net income conversion table
Underlying Economic Study	N/A	van der Gaag (1981)	Betson-Rothbarth (2010)	Unknown	Rodgers-Rothbarth (2012)	Betson-Rothbarth (2021)	Betson-Rothbarth (2010)
Adjusted for State Income or Prices	N/A	No	Yes	Unknown	Yes	No	No
Year of Price Levels Considered	N/A	Unknown	2012	Unknown	2011	2021	2013
Low-Income Adjustment	N/A	Self-support reserve (SSR) = 135% Fed. Poverty Guidelines (FPG) ($1,507 gross per month)	Sliding scale below about $1,200 net per month	Sliding scale minimum order for gross incomes below about $1,080 per month	SSR = 150% FPG ($1,700 net per month)	SSR = $1,063 net per month	SSR = $1,359 net per month
Treatment of Substantial Shared Parenting Time	N/A	Deviation	Deviation	Presume each parent spends at least 1/3 time with child	Adjustment when child is with each parent at least 28% of time	Adjustment when child is with each parent at least 40% of time	Adjustment when child is with each parent at least 30% of time
2020 Median Family Income of Married-Couple Families with Minor Children	$103,364	$114,701	$134,182	$145,730	$137,240	$107,671	$103,345
2020 Median Family Income of Female Householder with Minor Children	$ 30,681	$ 32,193	$ 34,291	$ 35,236	$ 35,205	$ 30,439	$ 32,489
2022 Minimum Hourly Wage	$7.25	$13.20	$14.00	$14.25	$13.00	$7.25	$12.55
2020 Price Parity	100.0	110.2	103.4	107.4	111.2	97.6	99.3

As shown in Exhibit 28, the states vary significantly in their low-income adjustments. New Jersey has the highest self-support reserve (i.e., 150% of the federal poverty guidelines-FPG, which would be $1,700 net per month using the 2022 FPG of $1,133 per month). The New Jersey SSR is applied to net income, while the New York's SSR (i.e., 135% of the FPG, which is $1,507 gross per month) applies to gross income. New Jersey limits the application of its SSR to situations where the custodial parent has incomes sufficiently above poverty.

Exhibit 28 also compares median family incomes,[149] the minimum wage in that state,[150] and the state's price parity.[151] A state's minimum wage is important to child support guidelines because it is often used for income imputation when a parent is employable, has no to little employment history, no to little skills, and has no educational attainment beyond a high school degree. Price parity measures how much more or less prices of a particular region are than the U.S. average. As shown in Exhibit 28, New York's statewide price parity is 110.2, which means that prices statewide are 10.2% more than the national average.

Case Scenarios

Exhibit 29 shows the five case scenarios that are analyzed. The median earnings of New York workers by highest educational attainment and gender are the basis of the case scenarios. Earnings are reported for five levels of educational attainment for New York by the U.S. Census 2020 American Community Survey.[152] Male median earnings are used as the incomes of the obligated parent in the scenarios and female median earnings are used for the receiving party's income.[153] There are no adjustments to base support or deductions from income for special factors such as childcare expenses or the cost of the children's health insurance.

When applying the New York guidelines, it is assumed there is no New York City and Yonkers income tax. To apply the Connecticut and Pennsylvania guidelines, which are based on after-tax income, the federal income withholding formulas for a single taxpayer are applied to the obligated parent and the formulas for a head-of-household with the number of children for whom support is being determined are applied to the receiving party. State tax is assumed to be 6%, which approximates New York's mid-range income tax rate, and applies to federal taxable income.[154] Both the Vermont and New Jersey guidelines provide gross-to-net income conversion tables that are used for their respective gross to net income conversions.

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[149] U.S. Census 2020 American Community Survey. (n.d.). *Table B19126: Median Family Income in the Past 12 Months.* Retrieved from https://data.census.gov.

[150] U.S. Bureau of labor (Jul. 2022). *State Minimum Wage Laws*. Retrieved from https://www.dol.gov/agencies/whd/minimum-wage/state.

[151] U.S. Bureau of Economic Analysis. (Dec. 2021). 2020 Regional Price Parities by State (US = 100). Retrieved from https://www.bea.gov/data/prices-inflation/regional-price-parities-state-and-metro-area.

[152] U.S. Census. (n.d.). Table B20004: Median Earnings in the Past 12 Months (in 2020 Inflation-adjusted Dollars) by Sex and Educational Attainment of Workers 25 years and over with earnings. https://www.census.gov/data/tables.html.

[153] According to national data, over 80 percent of custodial parents are females.

[154] See New York State Department of Taxation and Finance. (eff. Jan 1, 2022). *New York State Withholding Tax Tables and Methods:* Method II: Exact Calculation Method. p. 17. Retrieved from https://www.tax.ny.gov/pdf/publications/withholding/nys50_t_nys_122.pdf.

Exhibit 29: Summary of Case Scenarios Used for Comparisons

Case Scenario	Gross Monthly Income of Obligated Parent	Gross Monthly Income of Receiving Party
1. Parent's earnings are equivalent to median earnings of New York workers with less than a high school education	$2,373	$1,634
2. Parent's earnings are equivalent to median earnings of New York workers whose highest educational attainment is a high school degree or GED	$3,342	$2,229
3. Parent's earnings are equivalent to median earnings of New York workers whose highest educational attainment is some college or an associate's degree	$4,074	$2,916
4. Parent's earnings are equivalent to median earnings of New York workers whose highest educational attainment is a college degree	$6,049	$4,522
5. Parent's earnings are equivalent to median earnings of New York workers whose highest educational attainment is a graduate degree	$8,056	$5,955

Exhibit 30, Exhibit 31, and Exhibit 32 compare the case scenarios for one, two, and three children, respectively. A low-income adjustment is only applicable to Case 1 when the Vermont guidelines is applied to two and three children. Although New Jersey guidelines have a high self-support reserve, it does not apply because the custodial person's income is not sufficiently above poverty. The low-income adjustments of other states' guidelines are not applicable to any other scenario.

Exhibit 30: Comparisons of State Guidelines for Various Case Scenarios for One Child

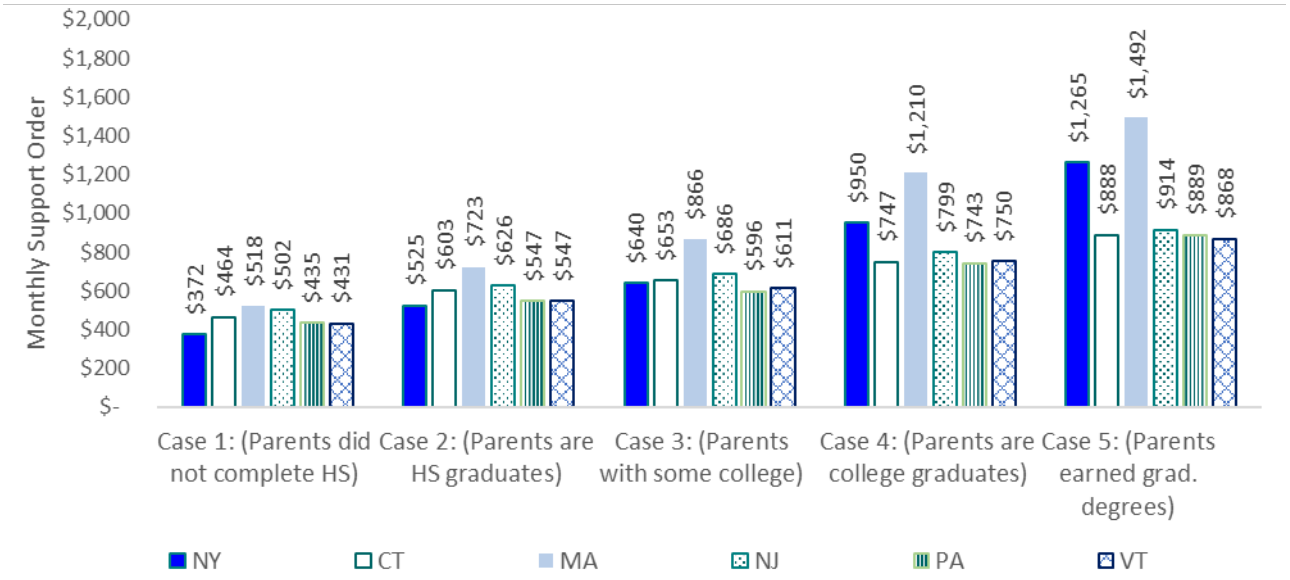


Exhibit 31: Comparisons of State Guidelines for Various Case Scenarios for Two Children

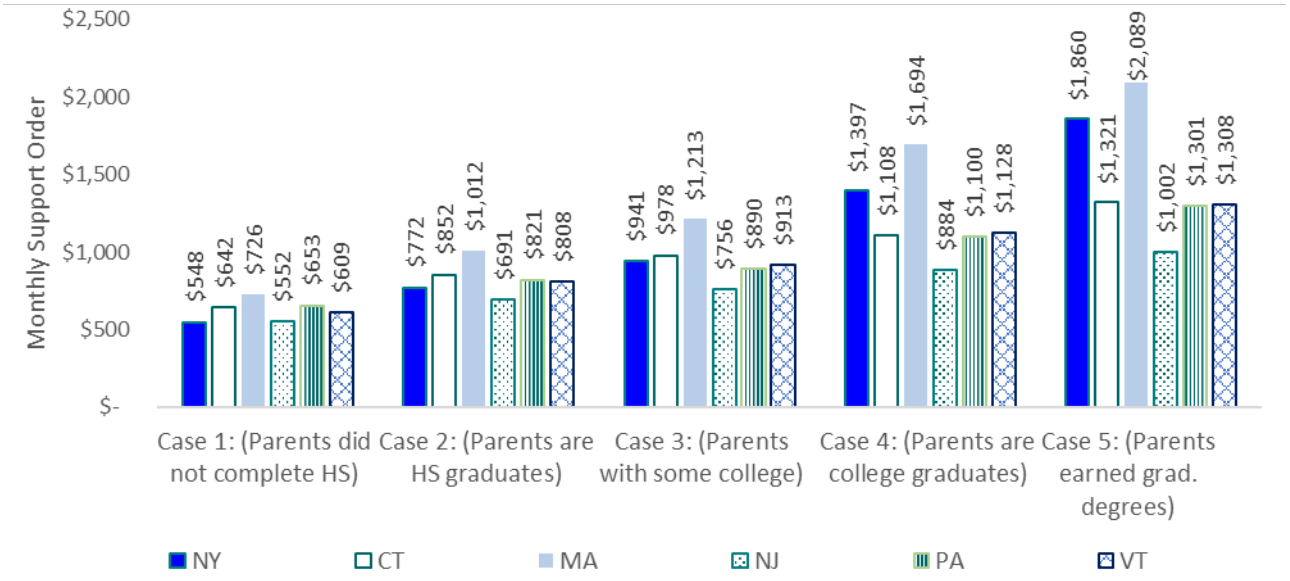
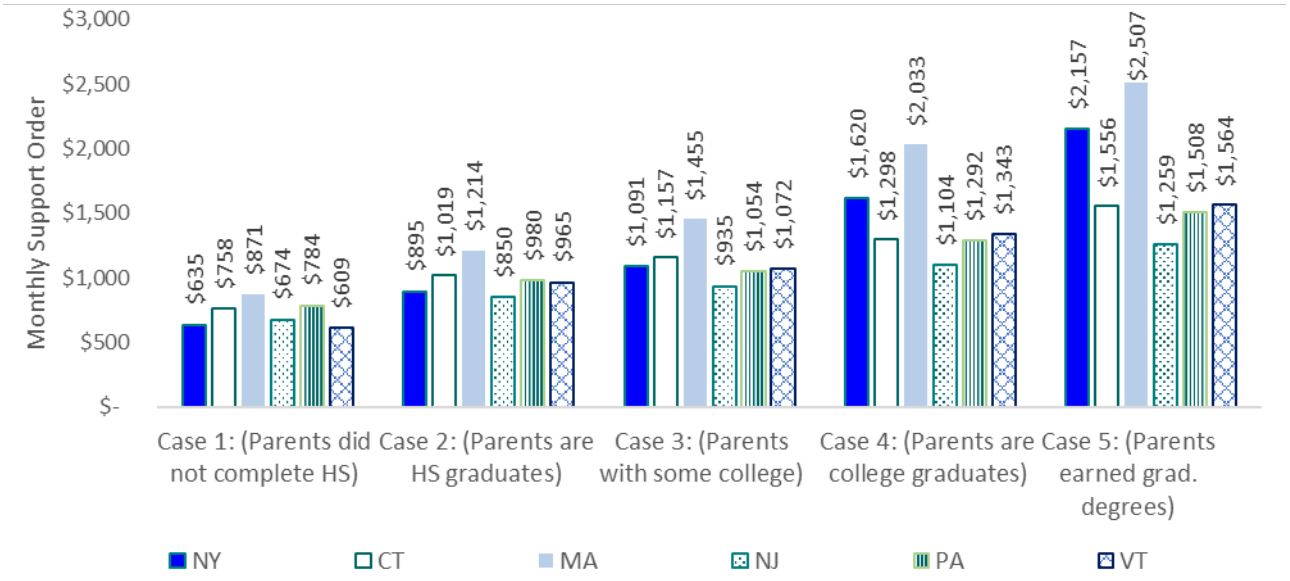


Exhibit 32: Comparisons of State Guidelines for Various Case Scenarios for Three Children



Summary of Findings from the Analysis of Case Scenarios

In general, the New York guidelines yield amounts comparable to those of the neighboring states except for a few scenarios.

- The New York guidelines produce the lowest amount among the states compared for Case 1 for one child, which is a low-income scenario. The New York guidelines, however, produce similar amounts to those of other states for two and three children under the same scenario.

- New York and Massachusetts guidelines produce higher amounts than the other states for Case 4 and Case 5. This is because of New York's flat percentage of income, whereas most other states apply decreasing percentages as income increases. Massachusetts is generally one of the higher guidelines in the nation.

Section Conclusion

This section demonstrates that New York has indeed fulfilled the federal requirement to consider the economic evidence on child-rearing costs as part of its review. The New York guidelines percentages are based on a very old study, but the results of the formula are generally in line with more current economic data on the cost of raising children.

The unique income basis of the New York guidelines (gross income less FICA and New York and Yonkers income tax) makes comparing the New York percentages to studies of child-rearing costs challenging. None of the neighboring states use a similar definition of income. Further, most current studies of child-rearing expenditures measure them as a percentage of total household expenditures; total household expenditures is more akin to after-tax income than gross income. Due to this, the comparisons require assumptions about expenditures and taxes. If the assumptions are wrong this can skew the comparisons.

Exacerbating the issue is that the precise assumptions underlying the reduction of the van der Gaag percentages when crafting the New York guidelines is unknown other than there were reductions for the potential additional earning capacity of the custodial parent, the noncustodial parent's visitation expenses, and what a noncustodial parent could reasonably pay but still be fair and adequate. Ideally, if the details of the assumptions underlying visitation expenses were known (e.g., how many overnights does the child spend with the obligated parent), a similar assumption could be incorporated into the case scenarios. Knowing the detailed assumptions about the potential earning capacity of the custodial parent and what can be reasonably paid while still being fair and adequate would also be important.

New York may want to revisit its income base and these assumptions during the next review. When reviewing its income base, New York should consider not only whether economic evidence on the cost of child-rearing relates to New York's unique definition of guidelines income, but also the consequences of changing the definition given decades of case law centered around that definition. Reviewing the other three assumptions may require developing a standardized assumption for each factor (e.g., the number of overnights considered, what types of child-rearing costs such as food and housing are considered, and whether transportation expenses are considered). In turn, these standardized assumptions could be factored into the comparisons of other states' guidelines and the economic evidence of the cost of child-rearing to create more meaningful comparisons.

Section 4: Summary and Conclusions

New York is reviewing its child support guidelines. This report fulfills federal data requirements of a state guidelines review. This includes the examination of case file data, labor market data, and economic data on the cost of raising children.

Findings From the Analysis of Case File Data and Labor Market Data

Case file data were analyzed to fulfill federal requirements, specifically the analysis of guidelines deviations; rates of income imputation, default, and application of the low-income adjustment; and child support payments. The Division of Child Support Services (DCSS) of the New York State Office of Temporary and Disability Assistance (OTDA) provided an extract of case files. The analysis of the case file data found a guidelines deviation rate of 32%, and a default rate of 8%. The percentage of orders with income undetermined is used as a proxy for the income imputation rate: it was 15%. The percentage of orders adjusted for poverty income was 10%. The poverty adjustment is one component of New York's low-income adjustment. The other component consists of adjusting for a self-support reserve (SSR). The rate that the SSR is applied cannot be determined from the data. Still, based on quarterly wage data for payer-parents with at least one quarter's worth of income, 20% of payer-parents were eligible for an SSR adjustment to the support order amount based on their annual income estimated from quarterly wage data. Payment data were also analyzed. Most (73%) of payer-parents made some child support payments. Payment outcomes were generally less in default and poverty-adjusted orders.

For this review, New York was able to improve its methodology for extracting the deviation data from its automated system. This may explain why the deviation rate is higher than its previous rate. New York should continuously strive for other data improvements for future reviews. This could range from obtaining the incomes used in the guidelines calculation to retrieve information about whether the SSR adjustment was applied. If feasible, data should be obtained from non-government cases as well, particularly to better understand their reasons for deviations. Other states find that deviation rates are generally higher among non-government cases than government cases and the reasons for deviation differ.

Findings from the Analysis of Labor Market Data

Federal regulation requires the analysis of labor market data. The intent is to gather information about the employability of low-skilled workers within a state to help inform income imputation provisions and the low-income adjustment. In most states, many parents with government child support cases have barriers to employment and earnings including limited job skills, low educational attainment, history of incarceration, and other barriers.

Labor market data reveals that many low-skilled and low-paying jobs do not offer a 40-hour workweek or an opportunity for paid work each week of the year. The average number of hours worked per week in 2021 in New York was 33.5 hours per week, though this varies by industry: the average hours worked is significantly less in the retail and leisure and hospitality industries, which have inordinate numbers of low-skilled, low-paying jobs and were some of the heaviest hit by job loss in the COVID-19 pandemic.

Adding to this is a high turnover rate in some of these industries. High levels of turnover contribute to periods of non-work that can depress earnings.

Exacerbating the issue is that employment opportunities in New York have not kept up with New York's growth rate. New York's September 2022 unemployment rate is tied with Delaware as the fifth highest in the nation at 4.3%. The unemployment rate in the United States as a whole was 3.5%.

Findings from the Analysis of Economic Data and Schedule Update

This report reviews the economic data on the cost of raising children. The New York guidelines percentages are based on a very old study, but the results of the formula are generally in line with more current economic data on the cost of raising children. Case scenarios were used to compare the New York guidelines to those of Connecticut, Massachusetts, New Jersey, Pennsylvania, and Vermont. In general, the New York guidelines yield amounts comparable to these states except for a few scenarios.

The unique income basis of the New York guidelines (gross income less FICA and New York and Yonkers income tax) requires additional assumptions to compare the New York percentages to studies of child-rearing costs and the guidelines of other states. These assumptions make the comparisons less exacting. Economic studies do not use the same income definition. No other state defines income similarly. Instead, most states either rely on gross income or also exclude federal and state income taxes. Exacerbating the issue is although it is known that reductions were made to the study of child-rearing expenditures underlying the New York percentages to account for three factors, the amount of the reduction is unknown. The amount of the reduction or knowing the assumptions underlying the three factors would allow for more precise comparisons.

Those three factors are the potential additional earning capacity of the custodial parent, the noncustodial parent's visitation expenses, and what a noncustodial parent could reasonably pay but still be fair and adequate. New York may want to revisit its income base and these factors during the next review. When reviewing its income base, New York should not only consider whether economic evidence on the cost of child-rearing relates to New York's unique definition of guidelines income, but also consider the consequences of changing the definition given decades of case law centered around that definition. Reviewing the other three factors may require developing a standardized assumption for each factor (e.g., the number of overnights considered, what types of child-rearing costs such as food and housing are shared between the parents, how does the earning capacity of the custodial parent influence these expenditures, and whether transportation expenses for the child between households are considered). Standardized assumptions about these factors could also benefit the appropriate use of deviations from the guidelines.