

# Review of the New York Child Support Guidelines



*Submitted to:*

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

*Submitted by:*



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Points of view expressed in this document are those of the author and do not necessarily represent the official position of OTDA. The author is responsible for any errors and omissions.

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# EXECUTIVE SUMMARY

## PURPOSE OF STUDY

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. New York is currently reviewing its child support guidelines. Federal regulation requires states to review their guidelines at least once every four years.<sup>1</sup> As part of that federal requirement currently in effect, states must consider economic evidence on the cost of raising children and analyze case data, on the application of, and deviations from, the guidelines. This report fulfills these current requirements. Beginning one year after completion of a state's next quadrennial review, a state's guidelines will be subject to additional federal requirements. The ability of New York to meet those future federal requirements are also assessed in this report.

## CONSIDERATION OF ECONOMIC EVIDENCE ON THE COST OF RAISING CHILDREN

Besides the economic study for which a state guidelines percentages or table is based, there are several other factors considered in the formulas and tables of state guidelines. Two major factors in determining base support are whether the guidelines consider one or both parent's incomes and the definition of income. Base support (the percentage calculation) under the New York guidelines can generally be determined using the obligated parent's income because of the way the formula works despite the fact the Child Support Standards Act does reference combined parental incomes. The New York guidelines do require that the custodial parent's income be used when determining add ins such as child care or health care expenses. In contrast, 40 states (including all states surrounding New York) are based on the income shares model that requires information about each parent's income to calculate base support.

The base of child support under the New York guidelines is the following percentages:

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

The New York guidelines provides for a unique income base for which these percentages are to be applied. Most other states rely on the parents' or parent's gross income or after-tax income. New York's guidelines income base is a compromise between gross and after-tax income. It excludes FICA and New York City and Yonkers income taxes from guidelines income, however it does not exclude federal and state income tax.

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<sup>1</sup> 45 CFR § 302.56.

Most states, including New York, relate their guidelines percentages or tables to older studies of child-rearing expenditures. There are nine studies of child-rearing expenditures that underlie state child support guidelines. They vary in the age of the expenditures data that was used and the methodology used to isolate child-rearing expenditures from total household expenditures. Over 30 states (including New York) base their guidelines on studies that are over a decade old. The New York guidelines percentages relate to a 1981 study of child-rearing expenditures.<sup>2</sup> The New York guidelines percentages were adjusted from the amounts of the 1981 study to consider the potential additional earning capacity of the custodial parent, the obligated parent's visitation expenses, and what an obligated parent could reasonably pay, but still be fair and adequate.

For the purposes of reviewing their adequacy and appropriateness, the New York guidelines percentages were compared to three current studies of child-rearing expenditures: the most current Betson-Rothbarth (BR) measurements available,<sup>3</sup> the most current USDA study,<sup>4</sup> and the New Jersey/Rothbarth measurements.<sup>5</sup> The three studies vary in the years of the expenditures data considered and the methodology used to separate the child's share of expenditures from total household expenditures. Most states rely on BR measurements as the basis of their guidelines, although the Rothbarth methodology is believed to understate actual child-rearing expenditures. Based on the comparisons, the New York percentages should be increased at low to middle incomes (*i.e.*, incomes below \$5,000 gross per month) and decreased at high incomes (*i.e.*, incomes above about \$9,000 gross per month).

Most studies of child-rearing expenditures find that the percentage of income devoted to child-rearing expenditures decrease as income increases. This is the pattern of the BR measurements, the USDA measurements, and New Jersey/Rothbarth measurements. In contrast, the New York guidelines percentages are a constant percentage that do not decrease as income increases. This is somewhat mitigated by a provision in the New York guidelines which requires the court to determine the child support obligation for income above an annually adjusted threshold (set at a combined parental income above \$143,000 per year in 2017) by considering the deviation factors and/or the child support percentages.

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<sup>2</sup> 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.

<sup>3</sup> Betson, David M. (2010). "Appendix A: Parental Expenditures on Children." *In* Judicial Council of California, *Review of Statewide Uniform Child Support Guideline*. San Francisco, California. Retrieved from <http://www.courts.ca.gov/partners/documents/2011SRL6aGuidelineReview.pdf>.

<sup>4</sup> Lino, Mark, et al. (2017). *Expenditures on Children by Families: 2015 Annual Report*. U.S. Department of Agriculture, Center for Nutrition and Policy Promotion. Miscellaneous Publication No. 1528-2015, Washington, D.C. Available at <http://www.cnpp.usda.gov/publications/crc/crc2015.pdf>.

<sup>5</sup> New Jersey Child Support Institute (March 2013). *Quadrennial Review: Final Report*, Institute for Families, Rutgers, the State University of New Jersey, New Brunswick, NJ. Retrieved from [http://www.judiciary.state.nj.us/reports2013/F0\\_NJ+QuadrennialReview-Final\\_3.22.13\\_complete.pdf](http://www.judiciary.state.nj.us/reports2013/F0_NJ+QuadrennialReview-Final_3.22.13_complete.pdf).

## FINDINGS FROM AN ANALYSIS OF A RANDOM SAMPLE OF CASE FILE DATA

A random sample of 9,000 cases in which a child support order was established in calendar year 2015 was analyzed for the case file review. Division of Child Support Services (DCSS) within the New York State Office of Temporary and Disability Assistance (OTDA) extracted the case file data from its automated system. The data included data fields indicating deviations from the guidelines, order amounts, the number of children covered by the order, payment information, the obligor's quarterly wage data, and other data fields. The limitation of the sample is that it is not representative of the entire child support case population in the State.

Based on the analysis of the random sample of 2015 New York orders from the DCSS automated system, the guidelines deviation rate is 22 percent.<sup>6</sup> This is within range of the guidelines deviation rates of large and neighboring states, which are also mostly in the 20 percent range.

There were also many other findings from the analysis of case file data. Over 90 percent of the orders were for one or two children. Almost half (43%) of the client and respondents were never-married and over one-third (35.1%) had no information recorded on the client and respondent's relationship. In most child support cases, the respondent (obligated parent) was male and the client (custodial parent) was female.

The availability of quarterly wage data was limited. About one-third (35%) of obligated parents had quarterly wage data available for all four quarters over a one-year period. About one-third of obligated parents with no or limited quarterly wage data were receiving public assistance or a public benefit (*i.e.*, TANF, MA, SNA, EA, Family Health Plus, SNAP, or HEAP) sometime in the same year. The average annualized reported income of obligated parents is between \$12,284 to \$39,918 per year. The lowest average is the annualized amount based on those with only one quarter of data and the highest average is the annualized amount based on those with four quarters of data. Almost a third (29.4%) of obligated parents with available income information had poverty incomes (*i.e.*, income below the federal poverty guidelines for one person).

Compliance rates are higher among obligated parents with higher reported incomes. For example, as shown in Exhibit 5.11 on page 80 (which summarizes findings from the analysis of case file data including data on the reported incomes of obligated parents), obligated parents with less than a poverty income had an average compliance rate of 33.5 percent while those with reported income more than 200 percent of the poverty level had an average compliance rate of 75.6 percent. On average, current support as a percentage of the obligated parent's gross reported income is less than 20 percent. This is true for all reported income levels except those with reported incomes less than poverty. The 20-percent threshold is pivotal because research studies find that compliance is lower when support is 20 percent or more of the obligated parent's income.

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<sup>6</sup> The sample, however, is not representative of the state because it does not include non-DCSS cases.



## CONSIDERATION OF OTHER FACTORS

This study considers other guidelines factors: child care costs; educational expenses; medical support obligations; adjustments for shared-parenting time; determinants of income; the treatment of high-income obligated parents; the treatment of low-income obligated parents, including the self-support reserve and treatment of re-entry populations; and reducing poverty and right-sizing orders. The adequacy of each factor was assessed by considering relevant economic data, and whether New York's current provision would meet future federal requirements, and then compared to how the factor is addressed in other states.

The New York Guidelines provisions for child care, medical child support, and low-income obligated parents are adequate. Specifically, New York's current provision for low-income obligated parents (which includes a self-support reserve) fulfills the new federal requirement to consider the subsistence needs of the obligated parent.

The New York Guidelines provisions for educational expenses and shared-parenting time would benefit from greater clarification. The existing educational provision does not separate out the types of educational expenses, and the appropriate treatment may vary by the type of educational expenses. For example, post-secondary educational expenses may depend on whether the child has the aptitude for college. This is different from a child who has not finished high school and is in need of special education. New York, unlike most states, does not provide a presumptive formula for shared-parenting time. An adjustment is appropriate when the child is in the care of the obligated parent for a significant amount of time.

The current definition of income under the New York Guidelines is generally adequate, but the provisions for income imputation will require changes to conform to the new federal regulations that require several considerations for the imputation of income including the limitation of the treatment of incarceration as involuntary employment.

## RECOMMENDATIONS

- *Extend the guidelines percentages to higher income, but provide lower percentages.* Extending the guidelines percentages to higher incomes would cover more families. The percentages at higher incomes also should be reduced to account for reduction in after-tax income available for child support,<sup>7</sup> and economic evidence shows a smaller percentage of income is devoted to child-rearing expenditures as income increases.<sup>8</sup> The economic evidence consists of recent studies of child-

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<sup>7</sup> Family expenditures are based on the amount of spendable income available. Spendable income is affected by income tax rates. The federal income rate increase as income increases (*i.e.*, the federal income tax is progressive). This leaves a smaller share of gross income available as income increases for spendable income.

<sup>8</sup> There is no reason to believe that the repeal of the deduction for alimony payment in the Tax Cuts and Jobs Act of 2017 (Pub. L. 115-97) would change this pattern significantly. Other states (*e.g.*, Arizona) have found that the percentage of child support cases in which a party's income have been adjusted for spousal maintenance is less than 10 percent. (Source: Venohr, Jane. August 2014. *Arizona Child Support Guidelines Review: Findings from Case File Data*, Report to the Arizona Supreme Court, Administrative Office of the Courts., Phoenix, Arizona.)

rearing expenditures that are discussed in Chapter 2. Further, the finding from these studies that a smaller percentage of income is devoted to child-rearing expenditures as income increases are shown and compared to the New York percentages in Exhibits 2.11 through 2.15.

- *Provide more specificity in the treatment of child care expenses.* Providing a definition of what is a reasonable cost of child care (such as the findings on market rates required for child care subsidy programs) and for how child care subsidies and the federal child care tax credit should be treated would provide greater consistency and predictability among cases with child care expenses.
- *Identify the types of educational expenses and how each type should be treated.* Separating out the types of educational expenses (*i.e.*, private, post-secondary, special and enhanced) and provide how each of these expenses should be treated and allocated between the parents would improve the appropriateness of these adjustments.
- *Define public health care coverage as health care coverage within the guidelines.* This ensures consistency with other federal medical support enforcement requirements (§ 303.31(a)(2)).
- *Adopt a presumptive formula for shared-parenting time.* Many obligated parents are involved with their children. A formula with criteria for its application (*e.g.*, say a timesharing threshold exceeding 30% and an order for shared custody or agreement between the parties) would provide consistent and predictable order amounts in shared-parenting situations.
- *Modify the income imputations provisions to conform to the new federal requirements.* This could be accomplished by codifying New York case law on income imputation that is generally consistent with the new federal requirements and making appropriate supplements or simply adopting the federal language as a few states (*i.e.*, Massachusetts and Rhode Island) have already done. The new federal requirement addressing income imputation among incarcerated parents should also be adopted.
- *Limit income imputation to parents recently released from prisons and provide for the restructuring of their payments.* Oregon and West Virginia provide for this. It recognizes the economic hardship of reintegration of those recently released from prison and alleviates some of the pressure that can contribute to recidivism.
- *For future reviews, collect the random sample of cases from the DCSS automated system but make improvements when possible.* The sample could be improved. One improvement would be to include the data field “Deviation Reason Indicator” because it enables the analysis of deviations by reason. Changes in automation may also provide opportunities for improvement in the future. For example, if guidelines users use an automated calculator, any data stored by the automated calculator may serve as a data source.

# CHAPTER 1: INTRODUCTION

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. New York is currently reviewing its child support guidelines. Federal regulation requires states to review their guidelines at least once every four years.<sup>9</sup> As part of that federal requirement currently in effect, states must consider economic evidence on the cost of raising children and analyze case data on the application of, and deviations from, the guidelines. This report fulfills these current requirements. Beginning one year after completion of a state's next quadrennial review, a state's guidelines will be subject to additional federal requirements. The ability of New York to meet those future federal requirements are also assessed in this report.

In addition to this introductory chapter, this report includes five other chapters. The second chapter considers the economic basis of the New York guidelines, the most current economic evidence of child-rearing expenditures, and compares the most current economic evidence to the existing New York guidelines percentages.

The third chapter examines other factors considered in the New York guidelines and other state guidelines. Specifically, these factors are child care costs, educational expenses, medical support obligations, adjustments for shared-parenting time, determinants of income, the treatment of high-income obligated parents, the treatment of low-income parents (including the self-support reserve and treatment of re-entry populations), and reducing poverty and right-sizing orders. Each of these factors is examined individually for current adequacy, compared to the typical treatment in other state guidelines, and is examined with regard to the future federal requirements, including whether current provisions meet future federal requirements when applicable.

The fourth chapter documents how case file data were collected from a random sample of New York child support cases, and analyzes the data to fulfill the federal requirement to analyze case data on deviations from the guidelines. It also documents the findings from the analysis, and compares New York's guidelines deviation rate to those of other states.

The fifth chapter summarizes additional findings from the analysis of case file data. This consists of statistical analysis of the characteristics of child support cases, orders and the parties from the same random sample used to determine the frequency of guidelines deviations. The analysis considers data on the incomes of obligated parents and payment levels.

The sixth and final chapter provides conclusions and recommendations.

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<sup>9</sup> 45 CFR § 302.56.

# CHAPTER 2: BASIS OF NEW YORK CHILD SUPPORT GUIDELINES

## 2.1 INTRODUCTION

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

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

These percentages are compared to current economic data on the cost of raising children in this report. The New York percentages date back to a 1981 study of child-rearing expenditures.<sup>10</sup> The percentages are applied presumptively up to a combined parental income amount that is adjusted every two years. In 2017, that threshold is \$143,000 per year. When income is above this threshold, the guidelines percentages may or may not be applied and deviations are permissible.

Besides the percentages, there are many other factors considered in the determination of support under the guidelines. For example, the guidelines also consider the actual work-related child care expenses and the child's health care 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.

### 2.1.1 ORGANIZATION OF CHAPTER

The chapter is organized into three sections. The first section provides an overview of economic studies underlying existing state child support guidelines, including the New York guidelines. More detail about the economic basis of the New York guideline is provided in this section.

The second section describes the most current economic evidence of child-rearing expenditures.

The third section compares the most current economic evidence to the existing New York guidelines percentages, and provides conclusions. The comparisons consider a range of incomes and case scenarios.

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<sup>10</sup> 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.

## 2.2 ECONOMIC BASIS OF STATE GUIDELINES

There are several studies measuring the cost of raising children. All studies underlying state guidelines measure child-rearing expenditures across a range of incomes rather than measure the cost of the minimum or basic needs of children. This is because most states base their guidelines models on the premise (which is tacit in some states) that the children should share in the lifestyle afforded by their parents.

### 2.2.1 GUIDELINES MODELS AND FORMAT

The most common principle used for state guidelines models is what University of Wisconsin researchers classify as “continuity of expenditures model”—that is, the child support award should allow the children to benefit from the same level of expenditures had the children and both parents lived together.<sup>11</sup> The consequence is that continuity-of-expenditures model states base their guidelines on measurements of child-rearing expenditures in intact families. State guidelines based on this principle essentially believe that the guidelines should apply equally to children of divorce and children of unmarried parents, regardless of whether the parents ever lived together, because most states believe that children should not be the economic victims of their parents’ decisions to live apart.

States rely on two variations of the continuity-of-expenditures model: the percentage-of-obligor income model and the income shares guidelines model. The distinction between the two models is that the percentage-of-obligor income model only requires the obligated parent’s income to determine the basic support, and the custodial parent’s income in the calculation of support has no bearing on the base support amount. In contrast, the income shares model requires information about each parent’s income to calculate base support. The distinction pertains base support for most income ranges. Some states that are classified as percentage-of-obligor guidelines model (*e.g.*, New York) actually consider the custodial parent’s income when determining the support amount for a child care order or to adjust for or considering special factors such as the child’s health care expenses or high-income cases.

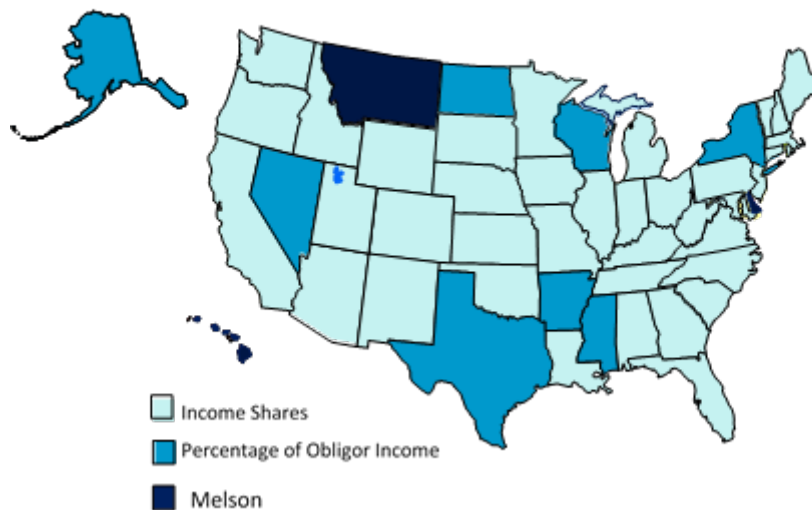
Exhibit 2.1 shows there are 48 states that are classified as using a continuity-of-expenditures model. The guidelines of eight states (including New York) are classified as percentage-of-obligor income model, and the guidelines of 40 states (including all states surrounding New York: Connecticut, New Jersey, Pennsylvania, Massachusetts, and Vermont) are classified as income shares model. Besides the percentage-of-obligor income model and income shares model, three states are categorized as relying on the “Melson” formula. The key difference between the percentage-of-obligor income model and the income shares model as well as the Melson formula is that the consideration of the custodial parent’s income affects the amount of the base support calculation in the income shares model and Melson formula, but not in the percentage-of-obligor income model. The premise of most states using the percentage-of-obligor income model is that the custodial parent contributes the same percentage of

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<sup>11</sup> Ingrid Rothe and Lawrence Berger. (Apr. 2007). “Estimating the Costs of Children: Theoretical Considerations Related to Transitions to Adulthood and the Valuation of Parental Time for Developing Child Support Guidelines.” *IRP Working Paper*, University of Wisconsin: Institute for Research on Poverty, Madison, Wisconsin. Retrieved from [http://www.irp.wisc.edu/research/childsup/cspolicy/pdfs/Rothe\\_Berger\\_Task6.pdf](http://www.irp.wisc.edu/research/childsup/cspolicy/pdfs/Rothe_Berger_Task6.pdf).

income or dollar amount to the children as the amount of the child support award owed by the obligated parent. Some, but not all, percentage-of-obligor income guidelines explicitly state that premise.

**Exhibit 2.1: Child Support Guidelines Used by States**



An excerpt from an income shares table (Pennsylvania's) is shown in Exhibit 2.2 to illustrate how most income shares guidelines calculate support. The exhibit is a lookup table of monthly basic obligations for a range of incomes and number of children. The basic obligations in the table reflect economic data on the costs of raising children. They relate to the combined income of the parents. For Pennsylvania, the table relates to the after-tax income of the parents; however, most income shares states rely on gross income. The support order is

Exhibit 2.2: Excerpt from Pennsylvania's Income Share Table						
Combined Adjusted Net Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
3000	704	1015	1189	1328	1461	1588
3050	716	1032	1209	1350	1485	1614
3100	727	1048	1228	1372	1509	1640
3150	738	1065	1247	1393	1532	1666
3200	747	1077	1261	1408	1549	1684
3250	756	1089	1274	1423	1565	1701
3300	765	1101	1287	1438	1582	1719
3350	774	1113	1300	1453	1598	1737
3400	783	1125	1314	1468	1614	1755
3450	792	1137	1327	1482	1631	1772

determined by prorating the obligated parent's share of the basic obligation. For example, if each parent's net income is \$1,500 per month, the combined net income would be \$3,000 per month and, using the schedule in Exhibit 2.2, the basic obligation for one child is \$704. The obligated parent's prorated amount in this example would be \$352. This is the basis of the support award amount,

although there may be other adjustments for other considerations such as the cost of the child's health insurance or substantial shared custody.

In contrast, under the New York guidelines, the income available for support would be adjusted for FICA and calculated as shown in Exhibit 2.3 or Exhibit 2.4. Exhibit 2.3 uses the obligated parent's income only. Exhibit 2.4 uses both parents' incomes (as described in the guidelines). Exhibit 2.3 and 2.4 consider the same case scenario: calculation of support for one child for an obligated parent with income of \$1,500 gross per month.

Both calculations produce an order amount of \$235.50 per month. In other words, the calculations produce the same amount. This will be the mathematical result of any state's child support guidelines based on a flat percentage of income. If the percentage is a sliding scale, it will not yield the same amount.

Exhibit 2.3: Calculation of Support under the New York Guidelines Using Only the Obligated Parent's Income	
	Obligated Parent
1. Gross income	\$1,500.00
2. Deductions (FICA)	\$ 114.75
3. Parental Income Available for Support (Line 1 minus Line 2)	\$1,385.25
4. Base Child Support Order for 1 Child	\$235.50

Exhibit 2.4: Calculation of Support under the New York Guidelines Using Both Parents' Incomes			
	Obligated Parent	Custodial Parent	Combined
1. Gross income	\$1,500.00	\$1,500.00	\$3,000.00
2. Deductions (FICA)	\$ 114.75	\$ 114.75	\$ 229.50
3. Parental Income Available for Support (Line 1 minus Line 2)	\$1,385.25	\$1,385.25	\$2,770.50
4. Each Parent's Prorated Share	50%	50%	
5. Child Support Percentage for One Child			17%
6. Base Child Support Obligation			\$471
7. Base Child Support Order (Line 4 multiplied by Line 6 for obligated parent)	\$235.50		

### 2.2.2 STUDIES UNDERLYING STATE GUIDELINES

There are nine studies of child-rearing expenditures that underlie state child support guidelines (see Exhibit 2.5). The studies vary in the age of the expenditures data that were used and the methodology used to isolate child-rearing expenditures from total household expenditures. Which study a state uses (and whether to use a study at all) is a policy decision to be made by a state. Many states, including New York, rely on studies over a decade old. In fact, the study underlying the New York percentages is about 35 years old. The next section discusses the most current studies in greater detail.

Exhibit 2.5: Studies of Child-Rearing Expenditures underlying State Guidelines

Study	States that Appear to Rely on Study	Comments on State Usage
<b>van der Gaag (1981)</b> <sup>12</sup> was with the Univ. of Wisc. and conducted a literature review of studies in which he could extrapolate an estimated cost of child rearing. He concluded that a couple who adds one child to their household needs 25% more income to maintain their standard of living, the 2nd child costs about half as much as the 1st child, and the 3rd child costs about the same as the 2nd child.	4 states (CA, NV, NY, WI)	WI was one of the first states to develop a statewide guideline. It used van der Gaag as its basis. Several states modified WI's guidelines.
<b>Espenshade (1984)</b> <sup>13</sup> relied on the "Engel" methodology, which is a marginal cost approach that is believed to overstate actual child-rearing expenditures. It was the first thorough study of child-rearing expenditures and formed the basis of many original state guidelines. Espenshade found that families spend about \$151,165 to \$359,669 (2016 dollars) to raise a child from birth through age 17 years.	9 states (AK, IL <sup>14</sup> IN, FL, KY, MI, NH, TX, WA)	Espenshade states have never updated their guidelines or only have updated for changes in the price level.
<b>Betson-Rothbarth—BR1 (1990)</b> <sup>15</sup> was commissioned by the U.S. Dept. of Health & Human Services to explicitly fulfill a Congressional mandate to provide information useful to the development and revision of state child support guidelines. Betson applied 5 different methodologies, including the Rothbarth methodology, to 1980–86 CES data. He concluded the Rothbarth methodology was the most robust and recommended it for guidelines usage. The average percentage of total household expenditures devoted to children in intact families under BR1 is 25% for 1 child, 35% for 2 children, and 40% for 3 children.	3 states (OH, OK, WV)	OH was the first state to consider the 1990 Betson study. At the time, OH was based on Espenshade-Engel. OH considered both BR1 and Betson-Engel measurements, then adopted BR1 because it had the least impact. Adoption of Betson-Engel would have produced significant increases. Betson-Engel is considerably more than Espenshade-Engel.
<b>Betson-Rothbarth—BR2 (2001)</b> <sup>16</sup> relies on 1996–99 CES. The average percentage of total household expenditures devoted to children in intact families under BR2 is 26% for 1 child, 36% for 2 children, and 42% for 3 children.	5 states (GA, GU, NE, SC, TN)	A few states are still based on BR2.
<b>Betson-Rothbarth—BR3 (2006)</b> <sup>17</sup> relies on 1998–2004 CES. The average percentage of total household expenditures devoted to children in intact families under BR3 is 25% for 1 child, 37% for 2 children, and 44% for 3 children.	13 states (AL, AR, AZ, IA, IN, LA, ME, MO, MD, NM, OR, PA, SD)	Indiana is mostly Espenshade except at higher incomes.
<b>Betson-Rothbarth—BR4 (2010)</b> <sup>18</sup> relies on 2004–09 CES and includes some data assumptions to the CES. The average percentage of total household expenditures devoted to children in intact	7 states	AZ, IA, and PA have considered BR4 but were concerned about proposed decreases. Instead, each of these

<sup>12</sup> 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.

<sup>13</sup> Espenshade, Thomas J. (1984). Investing in Children: New Estimates of Parental Expenditures. Urban Institute Press: Washington, D.C.

<sup>14</sup> Illinois passed legislation last year that will result in Illinois switching to an income shares table with Betson-Rothbarth measurements later this year.

<sup>15</sup> Betson, David M. (1990). *Alternative Estimates of the Cost of Children from the 1980–86 Consumer Expenditure Survey*. Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. University of Wisconsin Institute for Research on Poverty, Madison, Wisconsin.

<sup>16</sup> Betson, David M. (2001). "Chapter 5: Parental Expenditures on Children." In Judicial Council of California, Review of Statewide Uniform Child Support Guideline. San Francisco, California.

<sup>17</sup> Betson, David M. (2006). "Appendix I: New Estimates of Child-Rearing Costs." In State of Oregon Child Support Guidelines Review: Updated Obligation Scales and Other Considerations. Report to State of Oregon, Prepared by Policy Studies Inc., Denver Colorado.

<sup>18</sup> Betson, David M. (2010). "Appendix A: Parental Expenditures on Children." In Judicial Council of California, *Review of Statewide Uniform Child Support Guideline*. San Francisco, California. Retrieved from <http://www.courts.ca.gov/partners/documents/2011SRL6aGuidelineReview.pdf>.



families under BR4 is 24% for 1 child, 37% for 2 children, and 45% for 3 children.	(CT, CO, NC, RI, VA, VT, WY)	states updated BR3 for changes in the price level.
<b>Betson-Engel (2001)</b> <sup>19</sup> The average percentage of total household expenditures devoted to children in intact families is 32% for 1 child, 46% for 2 children, and 58% for 3 children.	1 state (GA)	GA actually uses the average of the BR2 and Betson-Engel.
<b>New Jersey-Rothbarth (2013)</b> <sup>20</sup> The average percentage of total household expenditures devoted to children in intact families is 20% for 1 child, 23% for 2 children, and 29% for 3 children.	1 state (NJ)	The NJ amounts are adjusted for NJ's above-average income.
<b>USDA (2001,<sup>21</sup> 2017<sup>22</sup>)</b> Child-rearing expenses are \$8,980 to \$25,280 per year for the youngest child in a two-child family.	1 state (MN)	States often use the USDA as the upper bound when assessing the appropriateness of their schedule/formula/amounts.
<b>Studies Not Based on Child-Rearing Expenditures</b> (≅ 4 states)		
Kansas <sup>23</sup> uses a per capita approach—that is, it measures the cost of a person in a household. The “per person” amount applies to both children and adults. The approach was developed in the late 1980s by Professor William Terrell, Wichita State University, and is periodically updated.		
Melson formula states (DE, HI, MT). The Melson formula is essentially a hybrid of the income shares approach and the percentage-of-obligor income model. Parents share in the financial responsibility of the child's basic needs. In addition, a percentage of the obligated parent's remaining after-tax income after subtraction of a self-support reserve and his or her prorated share of the child's basic needs is assigned to child support. The latter results in the child sharing the standard of living afforded by the obligated parent. Some Melson formulas relate the child's basic needs or the self-support reserve to the federal poverty level. <sup>24</sup>		
<b>Unclassified</b> (3 states)		
<b>Massachusetts.</b> <sup>25</sup> As stated in the 2008 Task Force report, Massachusetts decided not to rely on one study, and to recognize that the child's economic welfare is inextricably tied to the economic well-being of the child's caregivers. The Massachusetts schedule is generally higher than most states.		
<b>North Dakota and Utah.</b> Both of these states have changed their schedule in the last few years. The Center for Policy Research (CPR) has not investigated the economic basis of either state's updated amounts.		

All of the studies rely on data from the Consumer Expenditure Survey (CES.) The CES is a comprehensive, ongoing survey of household expenditures and is used by all economists measuring child-rearing expenditures.<sup>26</sup> It is designed to produce a nationally representative sample, but the sampling is not sufficient to develop individual state estimates. The time and resources needed to replicate the CES at a state-level would be prohibitive.

<sup>19</sup> Betson, David M. (2001). “Chapter 5: Parental Expenditures on Children.” In Judicial Council of California, *Review of Statewide Uniform Child Support Guideline*. San Francisco, California.

<sup>20</sup> New Jersey Child Support Institute. (March 2013). *Quadrennial Review: Final Report*. Institute for Families, Rutgers, the State University of New Jersey, New Brunswick, NJ. Available at [http://www.judiciary.state.nj.us/reports2013/F0\\_NJ+QuadrennialReview-Final\\_3.22.13\\_complete.pdf](http://www.judiciary.state.nj.us/reports2013/F0_NJ+QuadrennialReview-Final_3.22.13_complete.pdf).

<sup>21</sup> Minnesota is the only state that relies on the USDA measurement. It relies on the USDA's 2001 study.

<sup>22</sup> Lino, Mark, et al. (2017). *Expenditures on Children by Families: 2015 Annual Report*. U.S. Department of Agriculture, Center for Nutrition and Policy Promotion. Miscellaneous Publication No. 1528-2015, Washington, D.C. Available at <http://www.cnpp.usda.gov/publications/crc/crc2015.pdf>.

<sup>23</sup> More Information about the Kansas child support guidelines is available at <http://www.kscourts.org/rules-procedures-forms/child-support-guidelines/2016-guidelines.asp>.

<sup>24</sup> The federal poverty level is essentially thrice the Thrifty Food Budget, which is measured by the USDA and also used to set SNAP (formerly called Food Stamps) benefits. More information about the federal poverty level can be found at <https://aspe.hhs.gov/frequently-asked-questions-related-poverty-guidelines-and-poverty>.

<sup>25</sup> Massachusetts Child Support Guidelines Task Force, *Report of the Child Support Guidelines Task Force* (October 2008). Massachusetts Trial Court, Boston, Massachusetts.

<sup>26</sup> More information about the Consumer Expenditure Survey can be found at the U.S. Bureau of Labor Statistics website: <http://www.bls.gov/cex/>.

### 2.2.3 ECONOMIC BASIS OF NEW YORK PERCENTAGES

Although there are four states that relate their guidelines to the van der Gaag study, only the guidelines percentages of New York, Nevada and Wisconsin are similar. They are shown in Exhibit 2.6. The fourth van der Gaag state, California, has a complicated formula that factors in the child's time with the obligated parent.

Exhibit 2.6: Comparisons of Percentages by Number of Children in States Using Percentage-of-Obligor Gross Income Guidelines					
	1-Child Percentage	2-Children Percentage	3-Children Percentage	4-Children Percentage	5-Children Percentage or 5 or More Children
Nevada	18%	25%	29%	31%	2% more for each additional child
New York	17%	25%	29%	31%	35%
Wisconsin	17%	25%	29%	31%	34%

Wisconsin was the first of the states using van der Gaag to adopt a statewide guideline formula. In fact, the van der Gaag study, which was conducted through the University of Wisconsin–Institute for Research on Poverty (IRP) was conducted to assist Wisconsin policymakers with the development of a statewide guidelines for Wisconsin. The State of Wisconsin contracted with IRP in 1981 to determine the costs of raising a child in an intact family. As documented in the resulting publication,<sup>27</sup> IRP conducted a literature review of about a dozen studies and concluded that there was no consensus on the costs of a child. Obligated to develop a point estimate, however, IRP used the midpoint of the credible range detected from the literature review. Specifically, IRP estimated that a childless couple needs 25 percent more income to cover the costs of their first child, 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. Strict application of these findings to the guidelines would result in guidelines percentages of 25 percent for one child, 37.5 percent for two children, 50 percent for three children, 56 percent for four children, and 62.5 percent for five children.

Wisconsin policymakers reduced the IRP 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.<sup>28</sup> New York also made reductions, but limited the reduction to account for three factors: the potential

<sup>27</sup> 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.

<sup>28</sup> Rothe, Ingrid, Cassetty, Judith, and 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 <http://www.irp.wisc.edu/research/childsup/cspolicy/pdfs/famexp4kids.pdf>.

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.<sup>29</sup>

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### *Application of Percentages to Very High Incomes*

Wisconsin, New York, and Nevada vary in how high of an income that each state will apply the percentages shown in Exhibit 2.6. As mentioned earlier, New York provides that the percentages are to be applied presumptively to incomes below an annually adjusted threshold (set at a combined parental income above \$143,000 per year currently). Use of the percentages above that threshold is permitted but not required.

The original version of the Wisconsin guidelines presumptively applied the percentages to an infinite amount of income. Since then, Wisconsin lowered its percentages at higher incomes (*e.g.*, for one child, it now applies 17 percent to the first \$7,000 of gross monthly income, plus 14 percent of any gross income between \$7,000 and \$12,500 per month, plus 10 percent of any gross income above \$12,500 per month). Wisconsin lowered the percentage to reflect actual patterns of child-rearing expenditures. Families with higher incomes face higher tax rates, so they have less after-tax income to spend, as well as less after-tax income available for child-rearing expenditures. In other words, the percentage-of-gross income devoted to child-rearing expenditures declines as gross income increases. For similar reasons, Nevada provides an adjusted cap that is updated in July of each year.<sup>30</sup> Currently, the Nevada cap, called a "presumptive maximum" is a sliding scale. The highest amount is \$1,092 per child per month.

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### *Application of Percentages to Very Low Incomes*

As mentioned earlier, New York guidelines provides a self-support reserve that is applied at the end of the child support calculation, so it overrides the percentages and other guidelines factors in the determination of the support order. The intent of the self-support reserve is to leave the obligated parent with sufficient income after payment of the child support order to at least live at a subsistence level. The self-support reserve will be discussed in more detail in Chapter 3.

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### *Income Base*

The majority of state guidelines rely on the parents' or parent's gross income as the basis of the guidelines calculation. Most other state guidelines rely on net income (*i.e.*, after-tax income). Nevada and Wisconsin child support guidelines rely on gross income. New York's guidelines income base is a compromise between gross and net income. Specifically, the New York guidelines exclude FICA and New York City and Yonkers taxes from income. The New York guidelines, however, do not exclude federal and state income tax. No other state guidelines provide for a similar dichotomy in earnings-related taxes (*i.e.*, exclude FICA and New York City and Yonkers taxes but not federal and state income

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<sup>29</sup> 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, page 5.

<sup>30</sup> Willick, Marshall. (June 2007). "What Almost Happened in Nevada, and Why We Still Have to Fix It." *Nevada Lawyer*. Retrieved from: <http://willicklawgroup.com/wp-content/uploads/2012/04/What-Almost-Happened.pdf>.

tax). CPR's understanding of the basis of this unique definition of income (based on interviews conducted for the last guidelines review) is that it was a compromise in the debate to use gross income or net income.

## 2.3 METHODOLOGIES AND CURRENT ECONOMIC EVIDENCE

As mentioned earlier, there are nine different studies of child-rearing expenditures that form the basis of state guidelines. They vary by data years and methodologies used to separate the child's share of expenditures from total expenditures of a household. The oldest of these nine studies is the van der Gaag study. It essentially consists of a literature review of other studies and forms the basis of the New York guidelines.

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)<sup>31</sup> developed this approach for assessing state guidelines. 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 review.

### 2.3.1 MARGINAL COST APPROACH

The most common approach underlying state child support guidelines is the marginal cost methodology. It considers expenditures in two equally well-off families: one with children and one without children. The difference in expenditures between the two families is deemed to be child-rearing expenditures. There are two types of marginal cost methodologies used by states as the basis of their child support guidelines: the Rothbarth estimator and the Engel estimator. Each is named after the economist who developed the methodology. The Engel methodology relies on food shares to determine equally well-off families, and the Rothbarth methodology uses expenditures on adult goods. In the Rothbarth estimates underlying most state guidelines, which were developed by Dr. David Betson, expenditures of adult clothing are used as expenditures on adult goods. Previous studies have used expenditures on clothing, alcohol, and tobacco. Betson conducted sensitivity tests of the alternative specification and concluded that the overall results did not change depending on the specification of adult goods.

In the 1990 Lewin/ICF report, Engel measurements were used as the upper bound of credible measurements of child-rearing expenditures and Rothbarth measurements were used as the lower bound of credible measurements of child-rearing expenditures. The Engel estimator is believed to overstate actual child-rearing expenditures because of its use of food shares. A family with children requires relatively more food than a family without children so there is some substitution toward food; hence, expenditures on food shares are not a perfect indicator of equally-well off families.<sup>32</sup> The

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<sup>31</sup> 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, Virginia.

<sup>32</sup> See Lewin/ICF (1990) p. 2-28.

Rothbarth estimator is believed to understate actual child-rearing expenditures because expenditures on adult's goods are also not a perfect indicator of equally-well off families: there is a substitution effect between expenditures on adult items and those that jointly benefit both the adults and children in the household.<sup>33</sup>

No economist has produced measurements of child-rearing expenditures using the Engel methodology since 2001. In fact, the last Engel study appears in Betson's 2001 study that also includes Rothbarth measurements.<sup>34</sup> Due to this and other reasons, the United States Department of Agriculture (USDA) measurements are now often used as the upper bound of credible measurements of child-rearing expenditures when assessing state guidelines.

### 2.3.2 ROTHBARTH ESTIMATOR

There are five different Rothbarth studies that form the basis of state child support guidelines. Four of them were conducted by Dr. David Betson, University of Notre Dame,<sup>35</sup> and the fifth was specifically conducted for New Jersey<sup>36</sup> and is only used by New Jersey.

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#### BETSON-ROTHBARTH MEASUREMENTS

Over time, four sets of Betson-Rothbarth (BR) measurements have been produced. For Betson's first study,<sup>37</sup> he used 1980–1986 CES Data. For his second study,<sup>38</sup> he initially used 1996–1998 CES data, but later expanded it to encompass 1996–1999. For his third study<sup>39</sup> and fourth study,<sup>40</sup> respectively, he used data from the 1998–2004 and 2004–2009 CES. Exhibit 2.7 and Exhibit 2.8 illustrate the differences in BR over time for one child and two children, respectively. The percentages exclude child care, the

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<sup>33</sup> See Lewin/ICF (1990) p. 2-28.

<sup>34</sup> Georgia uses the average of the Betson-Rothbarth and Betson-Engel measurements from the Betson's 2001 study.

<sup>35</sup> David M. Betson. (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. Betson, David M. (2001). "Chapter 5: Parental Expenditures on Children." In *Judicial Council of California, Review of Statewide Uniform Child Support Guideline*. San Francisco, California. David M. Betson (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, Colorado. Betson, David M. (2010). "Appendix A: Parental Expenditures on Children." In *Judicial Council of California, Review of Statewide Uniform Child Support Guideline*. San Francisco, California. Retrieved from <http://www.courts.ca.gov/partners/documents/2011SRL6aGuidelineReview.pdf>.

<sup>36</sup> New Jersey Child Support Institute. (March 2013). *Quadrennial Review: Final Report*, Institute for Families, Rutgers, the State University of New Jersey, New Brunswick, NJ. Retrieved from [http://www.judiciary.state.nj.us/reports2013/F0\\_NJ+QuadrennialReview-Final\\_3.22.13\\_complete.pdf](http://www.judiciary.state.nj.us/reports2013/F0_NJ+QuadrennialReview-Final_3.22.13_complete.pdf).

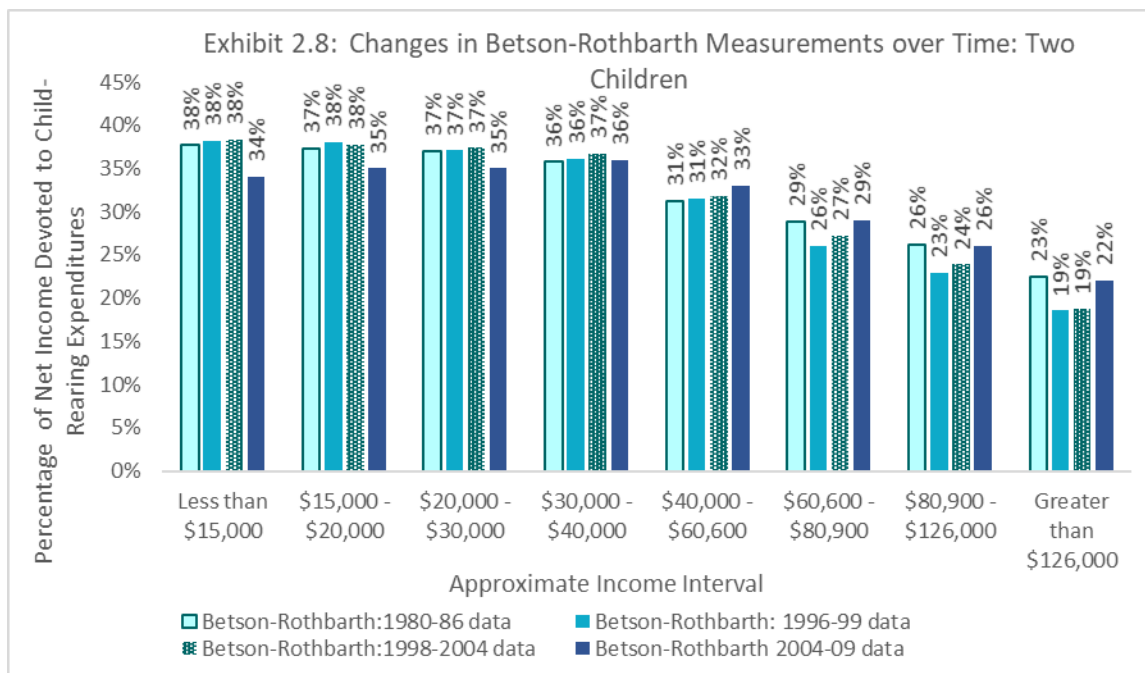
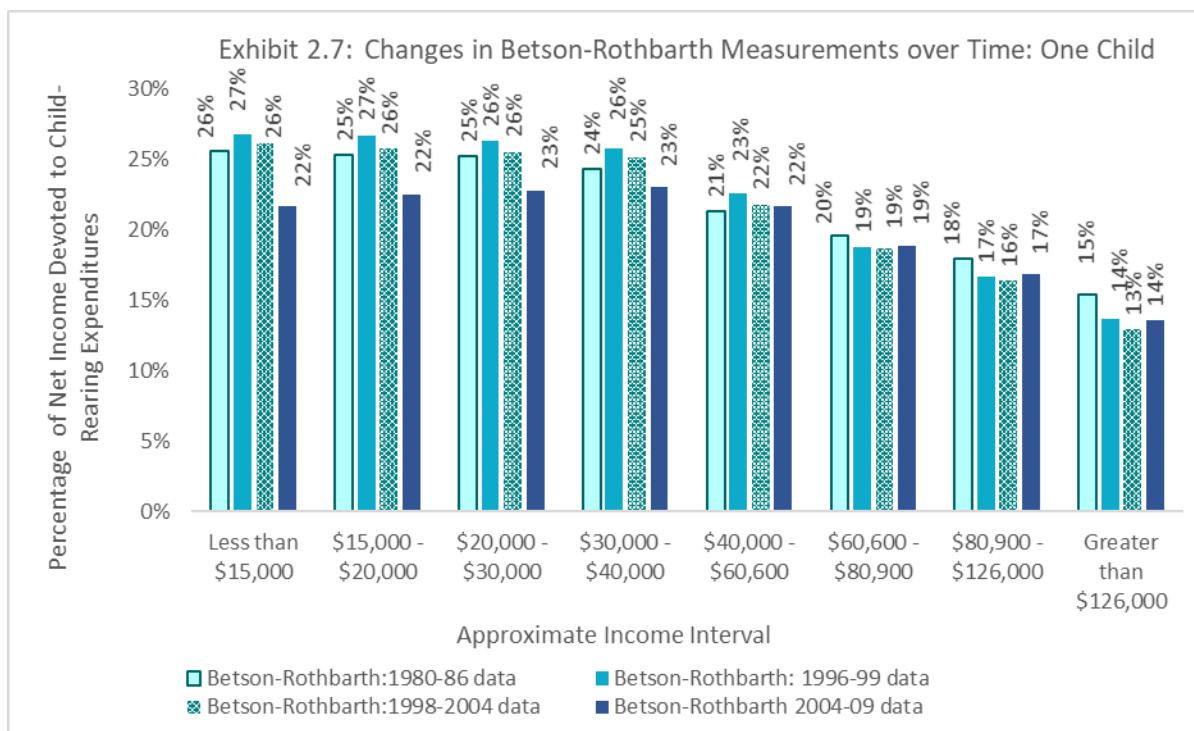
<sup>37</sup> Betson, David M. (1990). *Alternative Estimates of the Cost of Children from the 1980–86 Consumer Expenditure Survey*. Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. University of Wisconsin Institute for Research on Poverty, Madison, Wisconsin.

<sup>38</sup> Betson, David M. (2001). "Chapter 5: Parental Expenditures on Children." In *Judicial Council of California, Review of Statewide Uniform Child Support Guideline*. San Francisco, California.

<sup>39</sup> Betson, David M. (2006). "Appendix I: New Estimates of Child-Rearing Costs." In *State of Oregon Child Support Guidelines Review: Updated Obligation Scales and Other Considerations*. Report to State of Oregon, Prepared by Policy Studies Inc., Denver Colorado.

<sup>40</sup> Betson, David M. (2010). "Appendix A: Parental Expenditures on Children." In *Judicial Council of California, Review of Statewide Uniform Child Support Guideline*. San Francisco, California.

child's health insurance, and the child's extraordinary medical expenses and are converted from expenditures to after-tax income by using average expenditures to after-tax income ratios calculated from the same subset of data used to develop the BR measurements.





The first three sets of BR measurements (BR1, BR2, and BR3) rely on the same assumptions and methodologies, but different data years. The most recent BR measurements (BR4) included two changes in data assumptions. Earlier BR measurements consider “expenditures,” while BR4 considers “expenditures-outlays.” Expenditures include the purchase price (and sales tax) on any item purchased within the survey year regardless whether the item was purchased through installments. In contrast, outlays only capture what was actually paid toward that item during the survey period. So, if there were only four out of 20 installment payments made during the survey period, only those four payments are captured.

Unlike expenditures, outlays also capture mortgage principal payments, payments on second mortgages, and payments on home equity loans. Both expenditures and outlays capture interest on the first mortgage among homeowners and rent, utilities, and other housing expenses among renters. The merit of expenditures for use of state guidelines is that it excludes mortgage principal payments. This is consistent with property settlements that have historically addressed equity in the home as part of the divorce settlement. The merit of outlays for use in state guidelines is it is a better reflection of the monthly budget cycle—that is, household spending in consideration of monthly bills and expenses.

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### *New Jersey Rothbarth Measurements*

In 2013, New Jersey updated its guidelines using a study that was conducted by a Rutgers University professor applying the Rothbarth methodology.<sup>41</sup> However, its average results are much less than that of the BR studies. The New Jersey study found that the average percentage of total household expenditures devoted to children in intact families is 20 percent for one child, 23 percent for two children, and 29 percent for three children. In contrast, the average percentage of total household expenditures devoted to children in intact families under the BR measurements range from 24 to 26 percent for one child, 35 to 37 percent for two children, and 40 to 45 percent for three children. The Rutgers study considers expenditures data from a larger time period (2000 through 2011). The Rutgers study also considers single-parent families and families with more than two adults living in the household, while the BR studies consider dual-parent families only. Inclusion of single-parent families may explain some of the differences.

Despite the differing study results, when New Jersey developed a schedule, it adjusted its Rothbarth measurements for New Jersey’s above average income. This results in the New Jersey schedule amounts for one child being more than most BR-based schedules. However, the New Jersey schedule amounts are only more than BR-based schedules for one-child amounts, not for two or more children. This is because of an anomalous result of the Rutgers study: it found that two children do not cost much more than one child (*i.e.*, the amount allocated for two children is about 10 percent more than the amount allocated for one child). This finding eclipses any adjustment for New Jersey’s higher incomes for comparisons considering two or more children.

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<sup>41</sup> New Jersey Child Support Institute (March 2013). *Quadrennial Review: Final Report*, Institute for Families, Rutgers, the State University of New Jersey, New Brunswick, NJ. Retrieved from [http://www.judiciary.state.nj.us/reports2013/F0\\_NJ+QuadrennialReview-Final\\_3.22.13\\_complete.pdf](http://www.judiciary.state.nj.us/reports2013/F0_NJ+QuadrennialReview-Final_3.22.13_complete.pdf).

### 2.3.3 ALTERNATIVE APPROACHES

Currently, the major alternative approach is that of the United States Department of Agriculture (USDA). Basic needs are also discussed in this section, although most states take the position that the cost of the child's basic needs is only relevant to very low-income situations. Instead, most states take the position that if that the child should share in the lifestyle afforded by the obligated parent when the obligated parent can afford to live above subsistence.

A recent 2015 study<sup>42</sup> appears to challenge the USDA method, but a closer examination arguably reveals that the study results in amounts less than the child's basic needs. It is arguable because the authors believe that their methodology reflects child-rearing expenditures across all income ranges, however, because the results are near basic needs. For example, the study finds that the marginal cost of food for children is \$484 per year (*i.e.*, about \$40 per month, or just over a dollar per day). Advocacy groups in a few state have recently promoted this study for a state's child support guidelines review, but most committees that have examined the study dismiss it due to its near-poverty level results.

### 2.3.4 USDA

The USDA methodology uses different methodologies to measure child-rearing expenditures for seven expenditure categories (*e.g.*, housing, food, transportation, clothing, health care expenses, child care and education expenses, and miscellaneous expenses, which includes personal items and entertainment), then sums the amounts to arrive at a total measurement of child-rearing expenditures. The USDA measures expenditures on the child's clothing and miscellaneous expenses directly from the Consumer Expenditure Survey, which is the basis of most studies on child-rearing expenditures, including the USDA. A per capita approach is used for transportation (using only the non-work part of transportation expenses) and miscellaneous expenses. Information from the National Medical Expenditure Survey,<sup>43</sup> which captures medical expenditures at the individual level, is used to determine the child's share of health care expenses. Similarly, there is a survey on food consumption underlying the USDA food budgets that is used to determine the child's share of household food expenditures.<sup>44</sup> The child's housing expenditures are measured using the extra housing costs associated with an additional bedroom in a home for families with children.

The most recent USDA study is for 2015, and it found that average child-rearing expenses are \$10,850 to \$25,720 per year for the youngest child in a two-child family overall in the urban Northeast,<sup>45</sup> which

<sup>42</sup> Comanor, William S., Sarro, Mark, and Rogers, R. Mark. (2015). "The Monetary Cost of Raising Children." *Economic and Legal Issues in Competition*, in James Langenfeld (ed.) *Economic and Legal Issues in Competition, Intellectual Property, Bankruptcy, and the Cost of Raising Children (Research in Law and Economics, Volume 27)* Emerald Group Publishing Limited, pp.209 <http://www.emeraldinsight.com/doi/abs/10.1108/S0193-589520150000027008>.

<sup>43</sup> More information about U.S. Department of Health & Human Services Agency for Healthcare Research and Quality 2014 Medical Expenditure Panel Survey. [https://meps.ahrq.gov/mepsweb/data\\_stats/meps\\_query.jsp](https://meps.ahrq.gov/mepsweb/data_stats/meps_query.jsp).

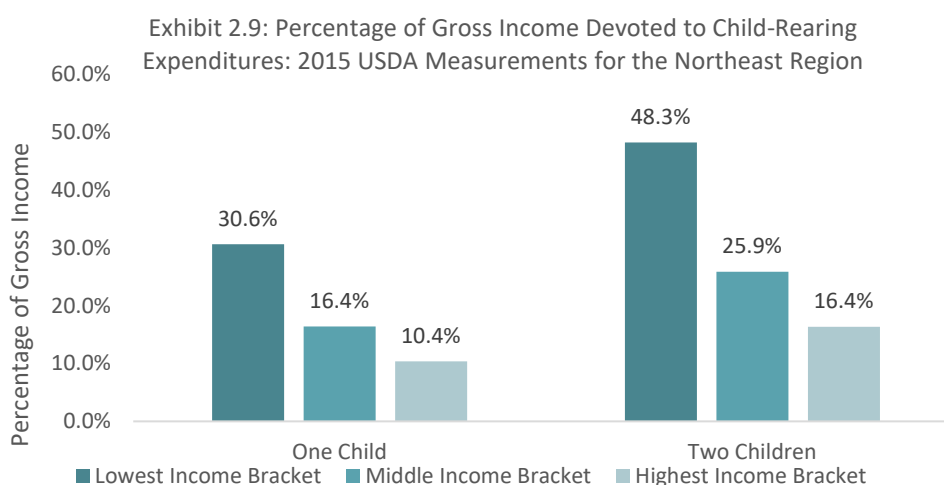
<sup>44</sup> For example, see U.S. Department of Agriculture. (March 2017). *Official USDA Food Plans: Cost of Food at Home at Four Levels, U.S. Average*. Retrieved from <https://www.cnpp.usda.gov/sites/default/files/CostofFoodFeb2017.pdf>.

<sup>45</sup> Lino, Mark, et al. (2017). *Expenditures on Children by Families: 2015 Annual Report*. U.S. Department of Agriculture, Center for Nutrition and Policy Promotion. Miscellaneous Publication No. 1528-2015, Washington, D.C. Available at [http://www.cnpp.usda.gov/sites/default/files/expenditures\\_on\\_children\\_by\\_families/crc2015.pdf](http://www.cnpp.usda.gov/sites/default/files/expenditures_on_children_by_families/crc2015.pdf).



includes New York. The comparable amount for a child in rural areas ranges from \$8,000 to \$17,000 per year, depending on family income and child age. The USDA finds that child-rearing expenditures are higher in high-income families and for older children.

The USDA estimates consider three income ranges for the urban Northeast. In 2015, they were before-tax income less than \$59,200 per year, with an average income of \$36,000; before-tax income of \$59,200 to \$107,400 per year, with an average of \$83,000 per year; and before-tax income more than \$107,400 per year, with an average of \$191,500 per year. Exhibit 2.9 compares the percentage of gross income devoted to child-rearing expenditures for each of these income ranges. Specifically, the percentage is calculated by dividing average expenditures (less the child's health care expenses and child care expenses) for each income range by average income of that range. This is done to make the USDA percentages comparable to the New York guidelines percentages. Most state guidelines exclude these expenses from their core formula or schedule because they use the actual amount expended on a case-by-case basis in the child support calculation.



### 2.3.5 BASIC NEEDS

No state bases its entire guidelines formula on the minimum needs of the child or how much is spent on children in single-parent families. The Melson formula comes the closest by providing a “primary support amount” for the child, but the Melson formula also provides that a percentage of the obligated parent’s income be assigned to support if the obligated parent has any income in surplus of what is needed for basic needs. For example, Delaware, which uses the Melson formula, adds 19 percent of the obligated parent’s remaining income to the obligated parent’s share of the primary support for one child to allow the child to share the standard of living afforded by the obligated parent.

Exhibit 2.10 shows that there are few studies that measure the cost of the child’s basic needs. The most commonly used measurement is the Federal Poverty Level (FPL).<sup>46</sup> Montana and Delaware consider it in

<sup>46</sup> U.S. Department of Health and Human Services. (January 31, 2017). “Annual Update of the HHS Poverty Guidelines.” *Federal Register*. Retrieved from <https://aspe.hhs.gov/poverty-guidelines>.

setting their primary support amounts. The FPL is updated annually. The FPL varies by household size, although it assumes that each additional person in a household requires the same dollar amount. Another federal measure is called the Supplemental Poverty Measure (SPM), but it is not a dollar threshold; rather, it measures the number of people living in poverty.<sup>47</sup> A third federal measurement, which was used in Michigan to consider whether the child support adjustment for shared parenting time was adequate, is the United States Department of Agriculture (USDA) thrifty food plan.<sup>48</sup> The USDA publishes the cost of four food plans for individuals by age range and gender. The thrifty food plan is used to determine SNAP (formerly called Food Stamps) benefits, and the liberal plan is used for military allowances. Another significance of the thrifty food plan is that the original threshold of poverty, which dates to English Poor Laws, consists of thrice what it costs for a subsistence diet.

Exhibit 2.10: Measurements and Indicators of the Child's Basic Needs	
Source	Findings
<b>2017 Federal Poverty Level</b>	One person: \$1,050 per month Each additional person: \$350 per month
<b>2017 Thrifty Food Budget (selected ages)</b>	Individual child (1 year old): \$94 per month Individual child (9–11 year old): \$154 per month Male, 14–18 years old: \$172 per month
<b>2012 Self-Sufficiency Standard (Queens, NYC)</b>	Implicit <sup>a</sup> amount for 1 child: \$1,429/month (2014\$)

<sup>a</sup> The amount is implicit because it is based on the difference needed for a household consisting of one adult and a household consisting of one adult and one child minus child care expenses and subsidies.

Another commonly used measure is the self-sufficiency standard. Developed by a scholar with the University of Washington Center for Women's Welfare with help from a Ford Foundation grant, it measures the earnings needed for a working family to adequately meet the family's basic needs.<sup>49</sup> The measures are typically at a county or city level and focus on the needs of a one-parent family with one or two children. Exhibit 2.10 shows the self-sufficiency standard from the borough of Queen in New York City, in which the self-sufficiency standard was last measured in 2014.<sup>50</sup> The amounts may be less for other parts of the state, but the most current study was limited to New York City.

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### *Expenditures on Children by Single Parents*

Over a decade ago, a few states proposed guidelines changes that would have related the guidelines amounts to expenditures in single-parent families. None of these proposals were legislated. One reason is that an inordinate percentage of single-parent families live in poverty, while most states

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<sup>47</sup> More information about the SPM can be found at the U.S. Census Bureau website:

<http://www.census.gov/hhes/povmeas/methodology/supplemental/overview.html>.

<sup>48</sup> U.S. Department of Agriculture. (March 2017). Official USDA Food Plans: Cost of Food at Home at Four Levels, U.S. Average. Retrieved from <https://www.cnpp.usda.gov/sites/default/files/CostofFoodFeb2017.pdf>.

<sup>49</sup> More information can be found at its website: <http://selfsufficiencystandard.org/>.

<sup>50</sup> Pearce, Diana. (December 2014). *Overlooked and Undercounted: The Struggle to Make Ends Meet in New York City*. Prepared for the Women's Center for Education and Career Advancement. [https://b3cdn.net/unwaynyc/d2ef3c2becabe1a6ea\\_7dm6igxy0.pdf](https://b3cdn.net/unwaynyc/d2ef3c2becabe1a6ea_7dm6igxy0.pdf).

believe that the children should share in the standard of living afforded by the obligated parent. In New York, the poverty rate is 12 percent among two-parent families with children, 45 percent among female-headed families with children, and 23 percent among male-headed families' children.<sup>51</sup> The median family income is \$96,952 among two-parent families with children, \$26,539 among female-headed families with children, and \$42,215 among male-headed families with children. Most lone-parent families with children are female-headed. The low median income of this group underscores why information about their income and expenditures is insufficient for informing guidelines amounts for high incomes.

## 2.4 COMPARISONS AND CONCLUSIONS

This section compares the existing New York percentages to the USDA measurements, the most current Betson-Rothbarth (BR) measurements (2010) and the New Jersey-Rothbarth measurements. The USDA and BR measurements are converted to 2017 price levels. The USDA and BR measurements exclude the child's health care and child care expenses. In examining the comparisons, it is helpful to know most New York child support orders are for one and two children. Based on New York's last child support guidelines review,<sup>52</sup> the frequency by number of children for each court type was as follows:

### Family Court cases

- One child: 77 percent;
- Two children: 19 percent; and
- Three children: 4 percent.

### Supreme Court cases

- One child: 44 percent;
- Two children: 38 percent;
- Three children: 13 percent; and
- Four or more children: 4 percent.

### 2.4.1 COMPARISONS BY NUMBER OF CHILDREN AND FOR A RANGE OF INCOMES

Exhibits 2.11 through 2.15 provide comparisons for one, two, three, four, and five or more children. The comparisons consider combined gross incomes of \$1,000 to \$12,000 per month. At the lower income, the self-support reserve would undoubtedly apply (because the 2017 federal poverty level—FPL— is \$1,050 per month and New York sets its self-support reserve at 135 percent of the FPL). The highest income approximates the current threshold for presumptive application of the New York guidelines percentages. The current measurements of child-rearing expenditures are not appropriate to apply to very high incomes because of the limited number of families in the CES with very high income. For example, it is inappropriate to assume a family with \$30,000 per month in income has the same

<sup>51</sup> 2015 American Community Survey. <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>.

<sup>52</sup> 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, page 19.

expenditures as a family with \$45,000 per month income because of the limited number of very high income families in the CES. The USDA measurements can be extended to gross incomes of about \$15,000 per month, the BR measurements to gross incomes of about \$25,000 per month, and the New Jersey schedule extends to net incomes of \$4,420 per week (about \$19,000 net per month). The New Jersey amounts are not shown in the four- and five-child comparisons.

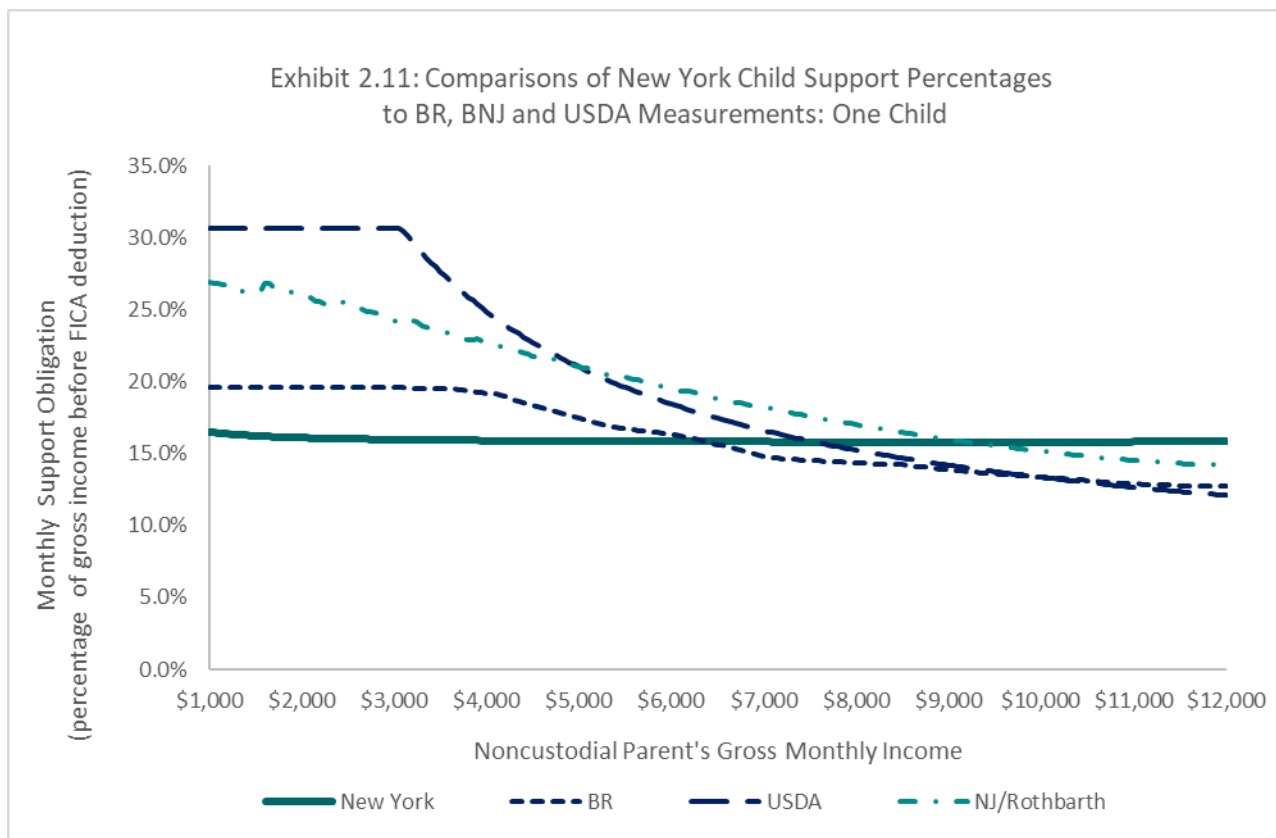


Exhibit 2.12: Comparisons of New York Child Support Percentages to BR, BNJ and USDA Measurements: Two Children

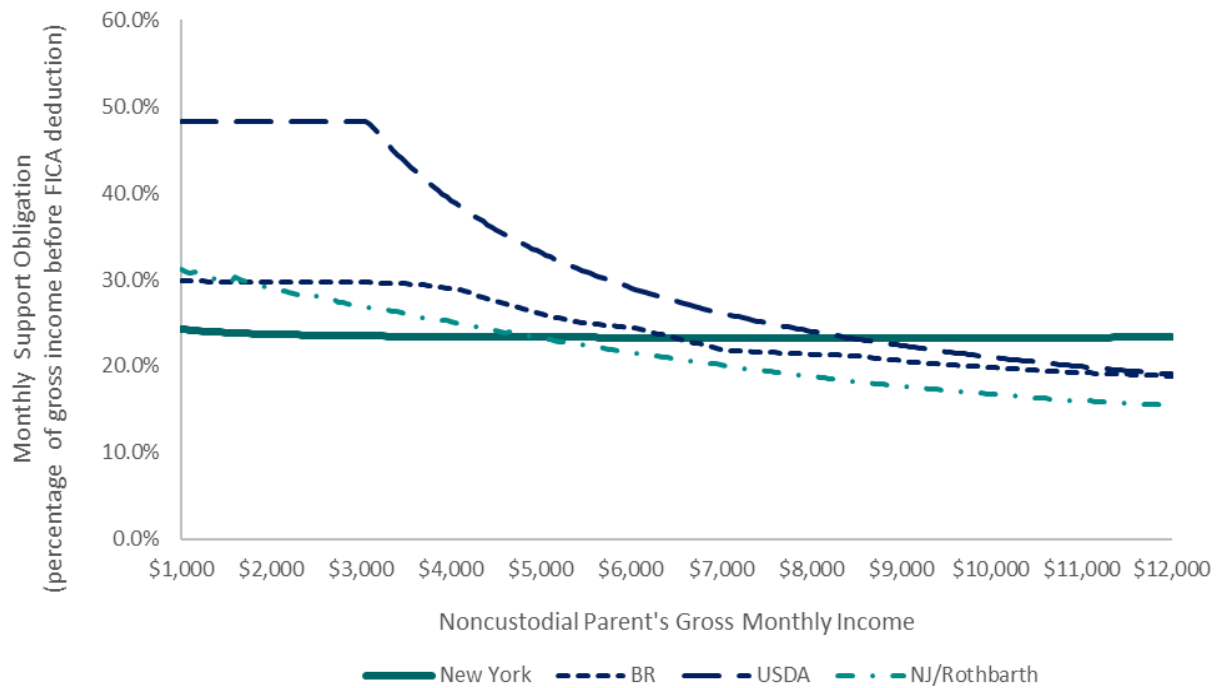


Exhibit 2.13: Comparisons of New York Child Support Percentages to BR, BNJ and USDA Measurements: Three Children

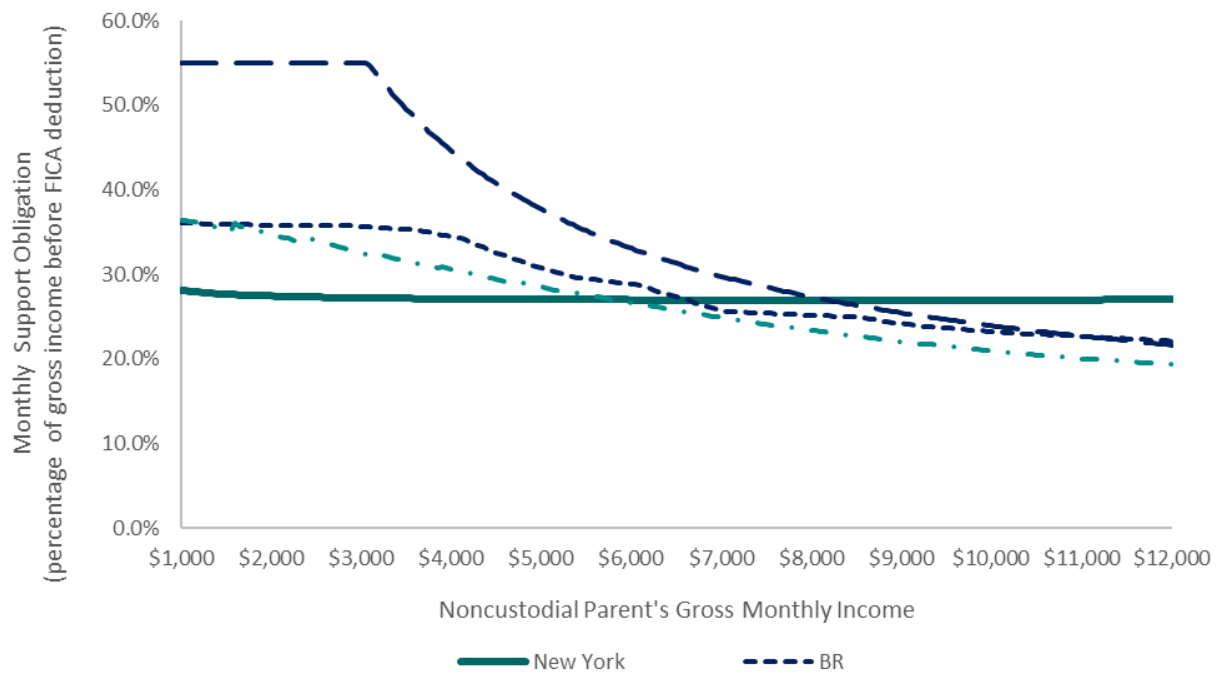


Exhibit 2.14: Comparisons of New York Child Support Percentages to BR, BNJ and USDA Measurements: Four Children

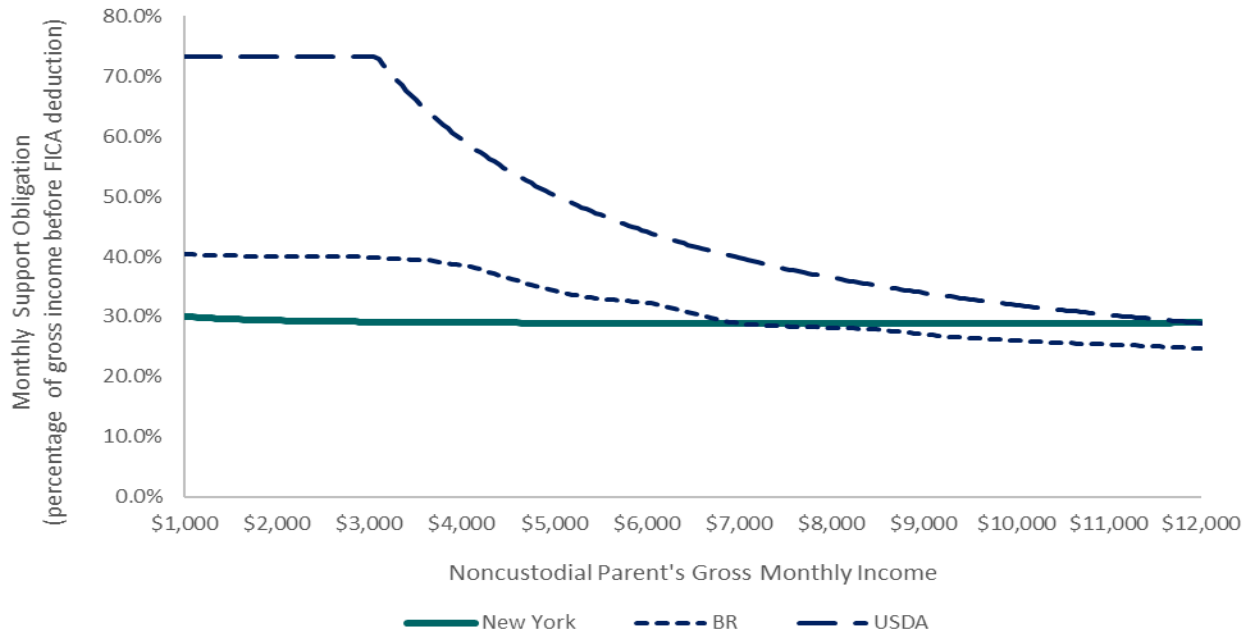
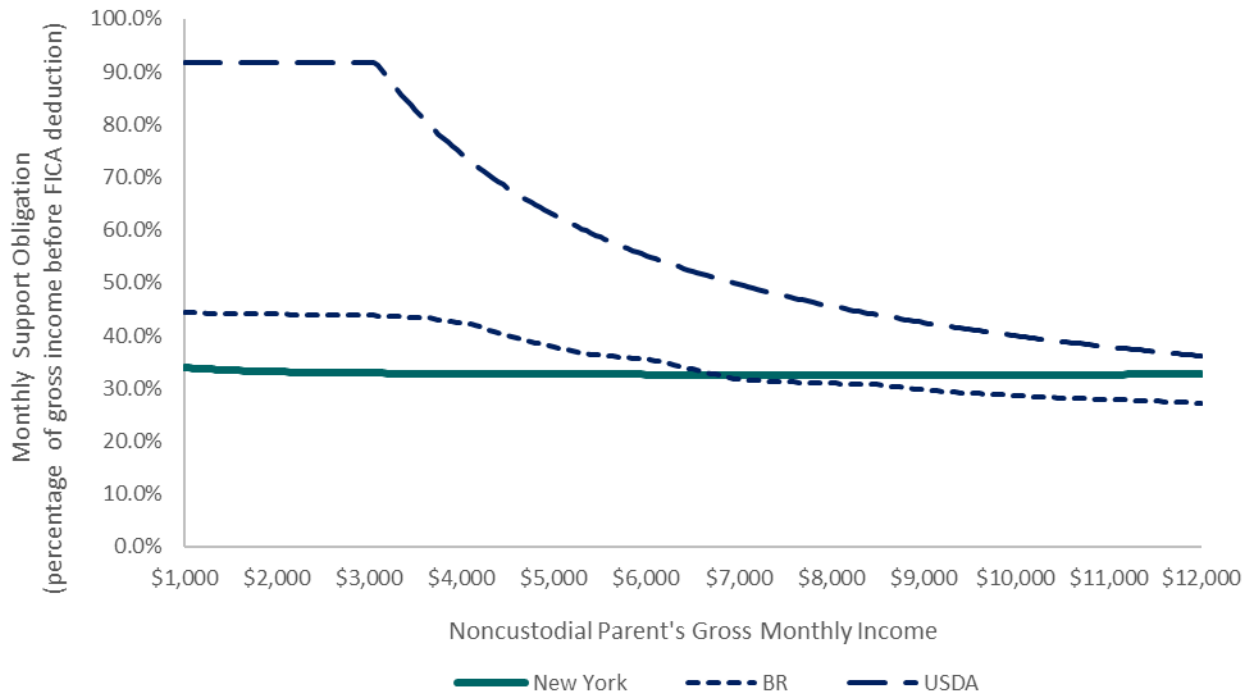


Exhibit 2.15: Comparisons of New York Child Support Percentages to BR, BNJ and USDA Measurements: Five Children



The general observations from the comparisons in Exhibits 2.11–2.15 are as follows.

- In general, the USDA is the upper bound of credible measurements and the Betson-Rothbarth measurements are the lower bound of credible measurements.
- The New Jersey amounts are higher than the Betson-Rothbarth measurements for one child, but are generally lower than the Betson-Rothbarth for two or more children. This is because New Jersey finds that expenditures on the second child are about 10 percent more than expenditures for one child. In contrast, other studies typically find that they are 40 to about 50 percent more.
- The New York percentages are generally too low—that is, below the Betson-Rothbarth measurements—at low incomes and too high—that is, above both the Betson-Rothbarth measurements and USDA measurements—at very high incomes. This suggests that the New York percentages should be increased at low to middle incomes (*i.e.*, incomes below \$5,000 gross per month) and decreased at high incomes (*i.e.*, incomes above about \$9,000 gross per month).<sup>53</sup>

#### 2.4.2 COMPARISONS USING CASE SCENARIOS

The remaining exhibits in this section use case scenarios to illustrate the differences among the existing schedule, the USDA and Betson-Rothbarth measurements and neighboring states. Connecticut and Vermont are based on the most current Betson-Rothbarth measurements. Pennsylvania is based on the third Betson-Rothbarth study. Massachusetts does not pinpoint its guidelines amount to any particular measurement of child-rearing expenditures.

The case examples consider median incomes by five different levels of educational attainment of New York workers. The data are from the 2015 U.S. Census American Community Survey.<sup>54</sup> Median earnings for five levels of educational attainment are:

- \$16,203 for females and \$23,981 for males with less than a high school degree;
- \$23,940 for females and \$35,668 for males with a high school degree or GED;
- \$31,321 for females and \$43,881 for males with some college or associate’s degree;
- \$49,180 for females and \$63,032 for males with a bachelor’s degree; and
- \$62,172 for females and \$86,817 for males with a graduate or professional degree.

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<sup>53</sup> There is no reason to believe that the repeal of the deduction for alimony payment in the Tax Cuts and Jobs Act of 2017 (Pub. L. 115-97) would change this pattern significantly. Other states (*e.g.*, Arizona) have found that the percentage of child support cases in which a party’s income have been adjusted for spousal maintenance is less than 10 percent. (Source: Venohr, Jane. August 2014. *Arizona Child Support Guidelines Review: Findings from Case File Data*, Report to the Arizona Supreme Court, Administrative Office of the Courts., Phoenix, Arizona.)

<sup>54</sup> U.S. Census American Community Survey. (2016). *Median Earnings by Highest Educational Attainment and Sex: 2015*. Retrieved from <http://census.gov>.

The case scenarios assume the median amount among males is the obligated parent's income and the median amount among females is the custodial parent's income. Statistically, the clear majority of obligated parents are male. Exhibits 2.16, 2.17, and 2.18, respectively, compare amounts for one, two, and three children. The calculations only consider base support. There are no adjustments for additional dependents, child care expenses, the cost of the child's health insurance, shared-parenting time, or other factors.

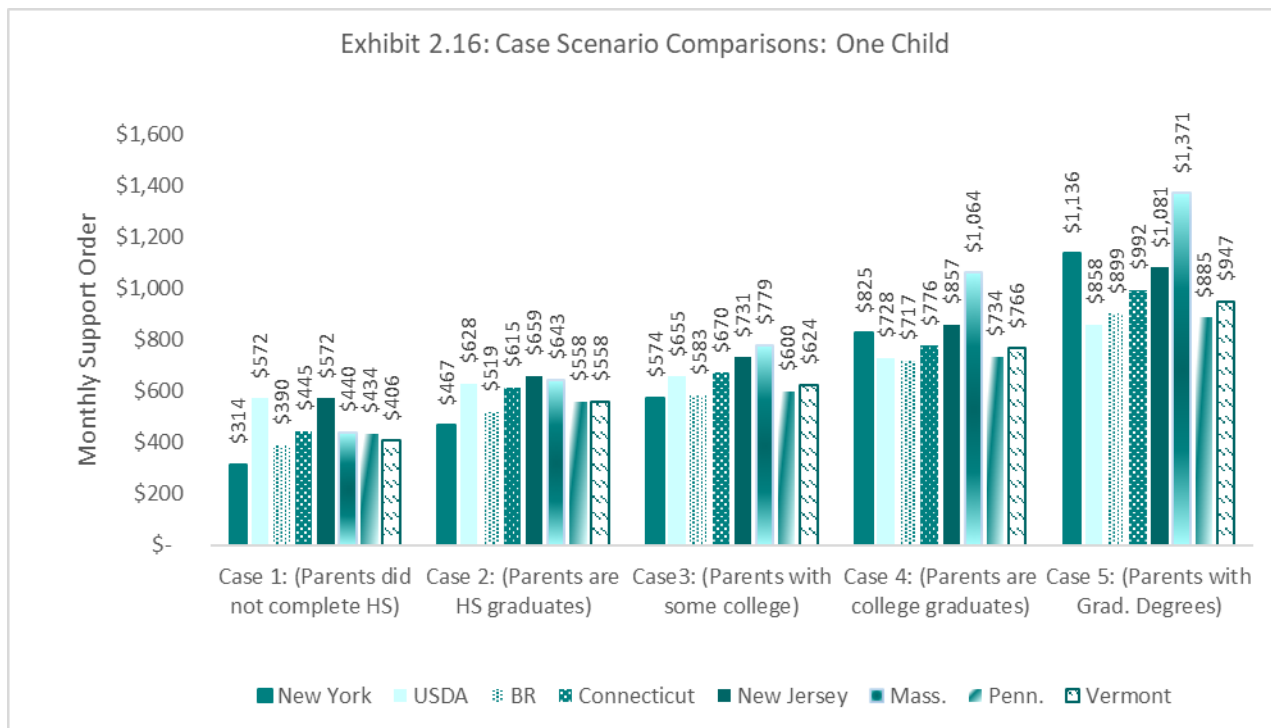




Exhibit 2.17: Case Scenario Comparisons: Two Children

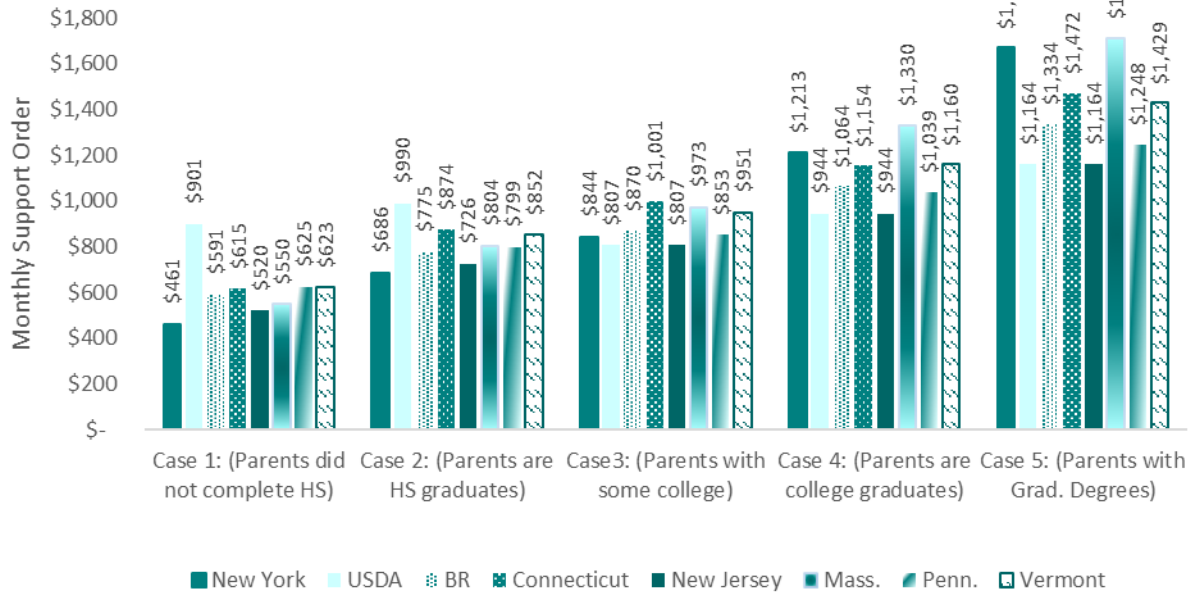
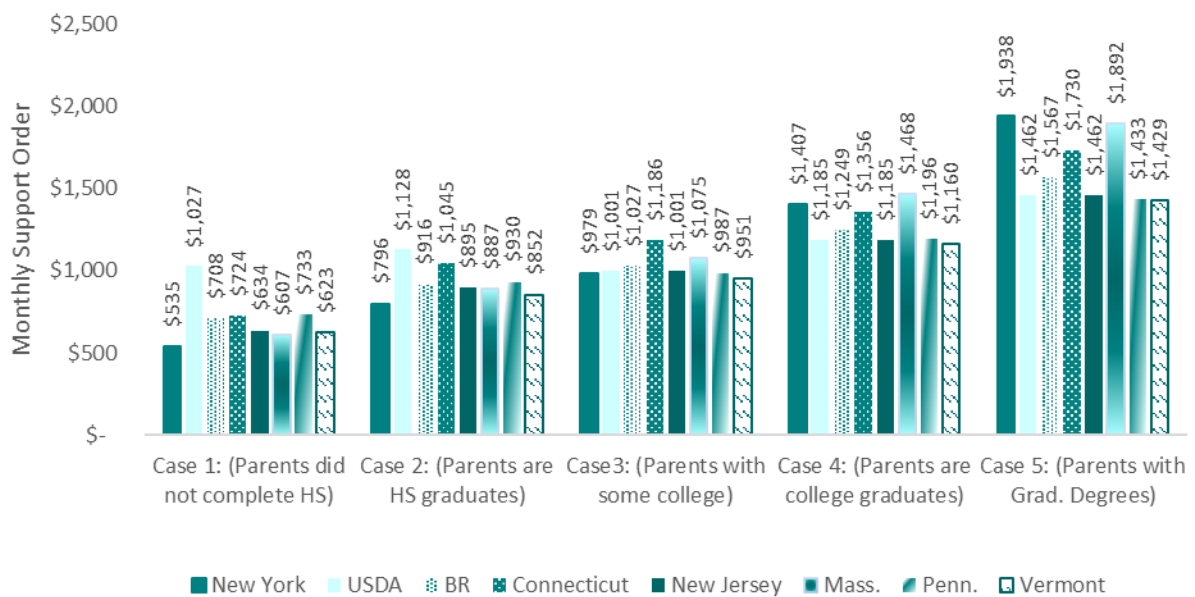


Exhibit 2.18: Case Scenario Comparisons: Three Children



The general observations from Exhibits 2.16, 2.17, and 2.18 are:

- The New York guidelines are relatively low for the two lowest income scenarios.
- The New York guidelines are in line with the measurements of child-rearing expenditures and other states at middle incomes.
- The New York guidelines are relatively high for the two highest income scenarios.

### 2.4.3 CHAPTER CONCLUSIONS

The New York percentages are based on very old economic data. They do not consider reduction in expenditures as families have more income. As income increases, so does the federal tax rate.<sup>55</sup> This reduces the percentage of income devoted to expenditures overall including those devoted to child rearing. Comparisons to the most current economic data suggests that the New York percentages should be increased at low to middle incomes (*i.e.*, incomes below \$5,000 gross per month) and decreased at high incomes (*i.e.*, incomes above about \$9,000 gross per month).

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<sup>55</sup> There is no reason to believe that the repeal of the deduction for alimony payment in the Tax Cuts and Jobs Act of 2017 (Pub. L. 115-97) would change this pattern significantly. Other states (*e.g.*, Arizona) have found that the percentage of child support cases in which a party's income have been adjusted for spousal maintenance is less than 10 percent. (Source: Venohr, Jane. August 2014. *Arizona Child Support Guidelines Review: Findings from Case File Data*, Report to the Arizona Supreme Court, Administrative Office of the Courts., Phoenix, Arizona.)

# CHAPTER 3: OTHER FACTORS

## 3.1 PURPOSE OF CHAPTER

This Chapter examines other factors considered in state child support guidelines. These factors include:

- Child care costs;
- Educational expenses;
- Medical support obligations;
- Adjustments for shared-parenting time;
- Determinants of income;
- The treatment of high-income obligated parents;
- The treatment of low-income obligated parents, including the self-support reserve and treatment of re-entry populations;<sup>56</sup> and
- Reducing poverty and right-sizing orders.

These are factors outside the base percentage amounts. Each factor is discussed individually. For each of these factors, this chapter:

- Addresses whether New York’s current treatment is adequate;
- Assesses whether the provision is subject to recent federal rule changes in determining adequacy;
- Discusses the economic data, if any, that informs the determination as to the adequacy the provision is addressed in the current New York guidelines;
- Compares New York’s provisions to that of other states; and
- Makes recommendations to improve the adequacy of the factor, if warranted.

The federal rule on state guidelines requirements is shown in Exhibit 3.1. In December 2016, the rule, expanded the requirements of state guidelines. The new rule is commonly called the Modernization Rule (MR). The new guidelines requirements in the MR will not become effective until a year after the next review (see § 302.56(a)). The New York guidelines are currently in compliance with the effective federal requirements (see top half of Exhibit 3.1.) This assessment addresses whether New York guidelines will be compliant with the MR.

### EXHIBIT 3.1: FEDERAL REQUIREMENTS PERTAINING TO CHILD SUPPORT GUIDELINES (§ 302.56)

#### RULE PRIOR TO DECEMBER 2016

- (a) Effective October 13, 1989, as a condition of approval of its State plan, the State shall establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State.
- (b) The State shall have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts.

<sup>56</sup> The two factors (*i.e.*, “poverty level and self-support reserve adjustments for low-income obligors” and “the treatment of low-income obligors, such as re-entry populations”) have been combined.

- (c) The guidelines established under paragraph (a) of this section must at a minimum:
  - (1) Take into consideration all earnings and income of the noncustodial parent;
- ...
- (d) The State must include a copy of the guidelines in its State plan.
- (e) The State must review, and revise, if appropriate, the 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 award amounts.
- (f) Effective October 13, 1989, the State must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.
- (g) A written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall 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 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 guidelines required under paragraph (e) of this section, a State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.

MR (GUIDELINES REQUIREMENTS ARE EFFECTIVE AFTER NEXT QUADRENNIAL REVIEW)<sup>57</sup>

- (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

<sup>57</sup> U.S. Department of Health and Human Services. (Dec. 20, 2016). "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs." *Federal Register*, Vol. 81, No. 244, p. 93562. <https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-29598.pdf>.

- (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.
- (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...
  - (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.

## 3.2 CHILD CARE EXPENSES

Child care can be a significant expense to a working parent depending on the age of the child, the parent's work schedule, the child's school schedule, and other factors. At the other extreme, some parents incur no child care expenses. Due to the wide range of circumstances, most state guidelines do not include child care expenses in their basic formula/schedule. Instead, the actual amount of work-related child care expense is considered typically on a case-by-case basis in the calculation of the support award. New York's provision is shown in Exhibit 3.2.

### Exhibit 3.2: New York's Provision for Child Care Expenses

*New York Family Court Act §413(1)(c)(6)*

(4) Where the custodial parent is working, or receiving elementary or secondary education, or higher education or vocational training which the court determines will lead to employment, and incurs child care expenses as a result thereof, the court shall determine reasonable child care expenses and such child care expenses, where incurred, shall be prorated in the same proportion as each parent's income is to the combined parental income. Each parent's pro rata share of the child care expenses shall be separately stated and added to the sum of subparagraphs two and three of this paragraph.

### 3.2.1 CHILD CARE EXPENSES: ADEQUACY BASED ON MR AND ECONOMIC DATA

There is no mention of child care expenses in the MR. There is no economic data that suggests the New York provision is inadequate. The adjustment is adequate because it considers the actual cost of child care in a case and whether it is reasonable.

### 3.2.2 APPROACHES IN OTHER STATES

Most states consider the actual cost of work-related child care expenses in the child support calculation, prorate it between the parents, and consider education or vocation training in their definition of eligible child care expenses like New York does. In addition, some states consider the following factors.

- *Some state guidelines define what is reasonable in child care costs.* Among other things, defining reasonableness in cost address the potential concern that the child care expense is more than the typical amount. One common benchmark for reasonableness is information from a state's child care assistance program. (See Exhibit 3.3 for Connecticut's provision, which is an example of a state that does this.) All state child care assistance programs that receive funding through the federal program are required to periodically conduct market surveys of child care expenses in their state.<sup>58</sup> New York's 2015 Child Care Market Rate survey is posted on a New York Office of Children and Families website.<sup>59</sup> Massachusetts provision has a similar effect, but takes a different approach: it caps the combined amount of child care and the child's health care expenses at 15 percent of the support order (see Exhibit 3.3).

The merits of defining reasonableness of child care expenses are it encourages the use of a consistent definition among judges and magistrates and lets parents and parties to child support actions know how the courts will determine whether the child care expense is reasonable. The limitations are that defining reasonableness lengthens and increases the complexity of the provision for a small proportion of cases. Although there are no statistics on how often reasonableness of cost is an issue, it is likely not all cases in which child care expenses were considered. According to the last New York case file review, 17 percent of orders established by the Family Court considered actual child care expenses and 27 percent of orders established by the Supreme Court considered actual child care expenses.<sup>60</sup>

- *Some states specifically address child care subsidies.* The states that do are mixed in their treatments. Some consider the cost of child care before the subsidy, while others exclude the subsidy (e.g., see Connecticut's provision in Exhibit 3.3). Specifying what to do when there is a child care subsidy provides clear direction and consistent and predictable treatment of the subsidy. The limitation is that it may be too much detail for too few cases. New York's low-income child care subsidy, through the federal Child Care Development Fund, served about 109,000 children in about 64,400 families in 2016.<sup>61</sup> Other sources report that there is a waitlist to receive the New York child care subsidy.<sup>62</sup> In other words, if the waitlist could be served, the number of children receiving a

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<sup>58</sup> 45 CFR 98.43(a).

<sup>59</sup> New York Office of Children and Family Services. *Child Care Market Rate Survey 2015*.

<http://ocfs.ny.gov/main/reports/Child%20Care%20Market%20Rate%20Survey%202015%20Report.pdf>.

<sup>60</sup> 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.

<sup>61</sup> U.S. Department of Health and Human Services, Office of Child Care. (2016). *FY 2015 CCDF Data Tables (Preliminary)*. [online.] Available from <http://www.acf.hhs.gov/programs/occ/resource/fy-2015-preliminary-data-table-1>.

<sup>62</sup> National Women's Law Center. (March 2016). *State Child Care Assistance Policies*: Nevada. Table 2. [online]. Available from: <https://nwlc.org/wp-content/uploads/2016/04/nevada-childcare-subsidy2015.pdf>.

child care subsidy would be higher. In turn, this could create a greater need to address child care subsidies within the guidelines.

- *Some states provide an adjustment for the federal child care tax credit.* Exhibit 3.3 shows New Jersey’s provision, which subtracts the federal child care tax credit from the child care expenses considered in the child support obligation. The merits of addressing the federal child care tax credit is it provides consistency and predictability. The limitation is that it may add confusion to guidelines users since the federal child care tax credit is complicated. In turn, guidelines users may spend more time figuring out the tax credit while the family is ineligible. Low-income families may have too little tax liability to be eligible for a tax credit. Some states (e.g., Arizona and North Carolina) have developed methods to simplify the tax credit, particularly for low-income families that are often ineligible because of their low tax liability.
- *Require repayment if child care does not occur.* Washington’s provision, which is shown in Exhibit 3.3, is unique because it requires that the primary custodial parent repay the obligated parent if the order factors in child care expenses but it does not occur. The merit of this approach is it provides a consequence and makes the consequence public. The limitation is it may not be easy to enforce.
- *Note that the adjustment may be applied to either parent.* For example, see Pennsylvania’s provision in Exhibit 3.3.

Exhibit 3.3: Provisions for Child Care Expenses in Selected States		
State	Significance	Excerpt from State’s Guidelines
CT	Addresses child care subsidies and defines “reasonable” cost of child care	<i>Connecticut Child Support and Arrears Guidelines Regulations §46b-215a-2(b)(g)</i> (5) Child care contribution (B) Qualifying costs The costs subject to noncustodial parent reimbursement must be reasonable and necessary for the custodial parent to maintain employment. Amounts that are reimbursed or subsidized are excluded, as are amounts that exceed the level required to provide quality care from a licensed source. The commission refers courts and other guidelines users to the charts on average Connecticut child care costs that appear on the 2-1-1 Child Care Infoline internet website for information on determining the reasonableness of any claimed child care costs.
MA	Provides a cap on child care cost	<i>The Commonwealth of Massachusetts Child Support Guidelines Section II. E.</i> Child Care Costs 1. Reasonable child care costs for the children covered by the child support order and due to gainful employment of either parent are to be deducted from the gross income of the parent who pays the cost. The guidelines worksheet makes an adjustment so that the parents share the burden of the cost proportionately. The adjustment involves a two-step calculation. First, a parent who is paying the child care deducts the out-of-pocket cost from his or her gross income. Second, the parties share the total child care costs for both parents in proportion to their income available for support. The combined adjustment for child care and health care costs is capped at fifteen percent of the child support order. 2. In appropriate circumstances, child care costs may include those due to training or education reasonably necessary to obtain gainful employment or enhance earning capacity. The Court may consider a deviation where the child care cost is disproportionate to income. See Section IV. B. 7.
NJ	Addresses federal child care tax credit	<i>Rule 5:6A of the Courts of the State of New Jersey: Child Support Guidelines Appendix IX-B</i> Line 9: Adding Net Work-Related Child Care Costs to the Basic Obligation 1. Qualified Child Care Expenses: Qualified child care expenses are those incurred to care for a dependent who is under the age of 13 or is physically or mentally handicapped. These expenses must be necessary for the employment or job search of the parent. Child care expenses should be reasonable and should not exceed the level required to provide quality care for the child(ren)



		from a licensed source. Only the net cost of child care (after the federal tax credit is deducted) is added to the basic award. It is assumed that the parent paying for child care will apply for and receive the federal child care tax credit at the end of the tax year.
PA	Adjustment can be made for either parent or party	<i>Pennsylvania Rules of Civil Procedure 1910.16-1</i> F. <i>Child Care Expenses</i> . Rule 1910.16-6(a) was amended in 2006 to provide that child care expenses incurred by both parties shall be apportioned between the parties in recognition of the fact that a non-custodial parent also may incur such expenses during his or her custodial periods with the children.
WA	Requires repayment	<i>Revised Code of Washington Title 26, Chapter 26.19 Section 26.19.090</i> (3) Day care and special child rearing expenses, such as tuition and long-distance transportation costs to and from the parents for visitation purposes, are not included in the economic table. These expenses shall be shared by the parents in the same proportion as the basic child support obligation. If an obligor pays court or administratively ordered day care or special child rearing expenses that are not actually incurred, the obligee must reimburse the obligor for the overpayment if the overpayment amounts to at least twenty percent of the obligor's annual day care or special child rearing expenses. The obligor may institute an action in the superior court or file an application for an adjudicative hearing with the department of social and health services for reimbursement of day care and special child rearing expense overpayments that amount to twenty percent or more of the obligor's annual day care and special child rearing expenses. Any ordered overpayment reimbursement shall be applied first as an offset to child support arrearages of the obligor. If the obligor does not have child support arrearages, the reimbursement may be in the form of a direct reimbursement by the obligee or a credit against the obligor's future support payments. If the reimbursement is in the form of a credit against the obligor's future child support payments, the credit shall be spread equally over a twelve-month period. Absent agreement of the obligee, nothing in this section entitles an obligor to pay more than his or her proportionate share of day care or other special child rearing expenses in advance and then deduct the overpayment from future support transfer payments.

### 3.2.3 RECOMMENDATION: CHILD CARE EXPENSES

The current provision addressing child care expenses is adequate. Including a definition of reasonable cost, and providing for how child care subsidies and the federal child care tax credit could increase consistency and predictability of the provision.

## 3.3 EDUCATIONAL EXPENSES

New York's provision for educational expenses, which is shown in Exhibit 3.4, essentially allows courts to use discretion in ordering educational expenses. It does not provide guidance as to how to allocate these expenses.

#### Exhibit 3.4: New York's Provision for Educational Expenses

*New York Family Court Act §413(1)(c)(7)*

Where the court determines, having regard for the circumstances of the case and of the respective parties and in the best interests of the child, and as justice requires, that the present or future provision of post-secondary, private, special, or enriched education for the child is appropriate, the court may award educational expenses. The non-custodial parent shall pay educational expenses, as awarded, in a manner determined by the court, including direct payment to the educational provider.



### 3.3.1 ADJUSTMENTS FOR EDUCATIONAL EXPENSES: ADEQUACY BASED ON MR AND ECONOMIC DATA

There is no mention of educational expenses in the MR. Economic measurements of child-rearing expenditures take into consideration the average educational expenditures on children ages zero through 18 for that income range. In other words, if a child of age 16 is in a private school or college and there are expenses for private school or college, they would be considered. However, because it is not common, the amount included is likely to be nominal. Other educational expenses (*e.g.*, fees for field trips) in public schools would be included in the economic data. To that end, it is appropriate for state guidelines to provide for educational expenses exceeding an average level, which is the situation for minor children attending private school or college. Based on the 2015 American Community Survey,<sup>63</sup> 10.2 percent of those enrolled from kindergarten through 12th grade nationally were in private schools, while the comparable percentage for New York was 13.3 percent.

Educational expenses appear to be frequently considered in Supreme Court cases. The last review found that additional support for the child's educational expenses was ordered for 2 percent of Family Court cases and 31 percent of Supreme Court cases. This review, which relied on a different methodology for collecting case file data, did not capture information on the educational expenses. It is not clear whether the educational expenses detected from the last review were for post-secondary education, private education, special education, or enriched education. The New York provision specifically mentions all four of these types of educational expenses.

### 3.3.2 APPROACHES IN OTHER STATES

Few states provide a lot of detail on how to address the child's educational expenses in their guidelines. Among those that do, there are a few sub-issues.

- *Discern between secondary educational expenses and post-secondary educational expenses and treat them differently.* New York bundles private, special and enriched education — that are presumed to be for secondary education— with post-secondary educational expenses. In contrast, most states that address both (*e.g.*, Indiana and Massachusetts, which are shown in Exhibit 3.5) clearly separate them, and recognize, among other things, that the child may have already been enrolled in private secondary school when the support order was established, while the child's aptitude for post-secondary education may still be uncertain, hence more discretionary.
- *Clarify the criteria for ordering the educational expense.* This may be different for secondary educational expenses and post-secondary education (*e.g.*, Indiana and Massachusetts, which are shown in Exhibit 3.5, provide different criteria.) Common criteria for secondary educational expenses are whether the child was enrolled in private secondary education when the parents and children lived together and whether the cost is affordable to the parents. Connecticut's provision

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<sup>63</sup> U.S. Census Bureau American FactFinder. Retrieved from [www.census.gov](http://www.census.gov).

(which is shown in Exhibit 3.5) is another example of court discretion in ordering a parent to pay for post-secondary education that is less complex than the Indiana and Massachusetts provisions.

- *Provide how the educational expense will be allocated among the parties and provide a cap.* For educational expenses that are not post-secondary, many state guidelines (e.g., the Pennsylvania guidelines, in which the provision is shown in Exhibit 3.5) prorate them between parents. Those states that provide allocation guidance typically prorate the cost between the two parents or split the cost of post-secondary education three ways (i.e., between the two parents and the child). Massachusetts (see Exhibit 3.5) caps the amount of post-secondary educational expenses that can be considered. The cap is based on the cost of attending a public university in the state.
- A few states (e.g., Connecticut and Massachusetts, which are shown in Exhibit 3.5) have added provisions for addressing post-secondary expenses in their guidelines in recent years.

Exhibit 3.5: Provision of Educational Expenses in Selected States		
State	Significance	Excerpt from State's Guidelines
CT	Court discretion to order post-secondary expenses	<i>Connecticut Child Support and Arrears Guidelines Regulations §46b-215a-2(b)(g)</i> (6) §46b-56c Educational Support Orders Pursuant to Conn. Gen. Stat. §46b-56c, a court may issue an Educational Support Order directed to either or both parents of a child to pay for educational costs for up to a total of four full academic years at a post-secondary institution of higher education or a private occupational school for the purpose of attaining a bachelor's or other undergraduate degree, or other appropriate vocational instruction. These Educational Support Orders are not orders for payment of private school for elementary through high school.
IN	Apportions post-secondary expenses (net grants and other financial assets) among the parents and the child	<i>Indiana Rules of Court Child Support Rules and Guidelines: Guideline 8 Extraordinary Educational Expenses.</i> The data upon which the Guideline schedules are based include a component for ordinary educational expenses. Any extraordinary educational expenses incurred on behalf of a child shall be considered apart from the total Basic Child Support Obligation. Extraordinary educational expenses may be for elementary, secondary or post-secondary education, and should be limited to reasonable and necessary expenses for attending private or special schools, institutions of higher learning, and trade, business or technical schools to meet the particular educational needs of the child. Commentary Parents should consider whether an educational support order is necessary or appropriate to address educational needs prior to the child reaching nineteen (19) years of age. a. Elementary and Secondary Education. If the expenses are related to elementary or secondary education, the court may want to consider whether the expense is the result of a personal preference of one parent or whether both parents concur; whether the parties would have incurred the expense while the family was intact; and whether or not education of the same or higher quality is available at less cost. b. Post-Secondary Education. The authority of the court to award post-secondary educational expenses is derived from IC 31-16-6-2. It is discretionary with the court to award post-secondary educational expenses and in what amount. In making such a decision, the court should consider post-secondary education to be a group effort, and weigh the ability of each parent to contribute to payment of the expense, as well as the ability of the student to pay a portion of the expense. When determining whether or not to award post-secondary educational expenses, the court should consider each parent's income, earning ability, financial assets and liabilities. If the expected parental contribution is zero under Free Application for Federal Student Aid (FAFSA), the court should not award post-secondary educational expenses. If the court determines an

		<p>award of post-secondary educational expenses would impose a substantial financial burden, an award should not be ordered.</p> <p>If the court determines that an award of post-secondary educational expenses is appropriate, it should apportion the expenses between the parents and the child, taking into consideration the incomes and overall financial condition of the parents and the child, education gifts, education trust funds, and any other education savings program. The court should also take into consideration scholarships, grants, student loans, summer and school year employment and other cost-reducing programs available to the student. These latter sources of assistance should be credited to the child's share of the educational expense unless the court determines that it should credit a portion of any scholarships, grants and loans to either or both parents' share(s) of the education expense.</p>
MA	<p>Addresses private secondary educational expenses and post-secondary educational expenses separately</p> <p>Caps amount parent can be ordered to pay for post-secondary</p>	<p><i>The Commonwealth of Massachusetts Child Support Guidelines Section II. G.</i></p> <p>G. Contribution to Post-secondary Educational Expenses 1. By statute, the Court has discretion either to order or to decline to order a parent to contribute to post-secondary educational expenses. Contribution to post-secondary educational expenses is not presumptive. 2. In determining whether to order contribution to post-secondary educational expenses, the Court shall consider the cost of the post-secondary education, the child's aptitudes, the child's living situation, the available resources of the parents and child, and the availability of financial aid. The Court may also consider any other relevant factors. 3. No parent shall be ordered to pay an amount in excess of fifty percent of the undergraduate, in-state resident costs of the University of Massachusetts-Amherst, unless the Court enters written findings that a parent has the ability to pay a higher amount. Costs for this purpose are defined as mandatory fees, tuition, and room and board for the University of Massachusetts-Amherst, as set out in the "Published Annual College Costs Before Financial Aid" in the College Board's Annual Survey of Colleges. This section applies to all orders requiring parental contribution to post-secondary educational expenses, regardless of where the child resides or attends school. 4. When exercising its discretion to order child support for a child over age 18 and contribution to the child's post-secondary educational expenses, the Court shall consider the combined amount of both orders.</p> <p><i>The Commonwealth of Massachusetts Child Support Guidelines Section II. M.</i></p> <p>Contribution to Other Child-Related Expenses. In cases where the Court makes a determination that there are additional child-related expenses such as extra-curricular activities, private school, or summer camps, which are in the best interest of the child and which are affordable by the parties, the Court may allocate costs to the parties on a case-by-case basis.</p>
PA	Prorates secondary educational expenses	<p><i>Pennsylvania Rules of Civil Procedure 1910.16-6</i></p> <p>(d) <i>Private School Tuition. Summer Camp. Other Needs.</i> The support schedule does not take into consideration expenditures for private school tuition or other needs of a child which are not specifically addressed by the guidelines. If the court determines that one or more such needs are reasonable, the expense thereof shall be allocated between the parties in proportion to their net incomes. The obligor's share may be added to his or her basic support obligation.</p>

### 3.3.3 RECOMMENDATION: EDUCATIONAL EXPENSES

The current provision addressing educational expenses could benefit from greater clarification. Separating out the type of educational expenses (*i.e.*, private, post-secondary, special and enhanced) would provide greater clarity and certainty to guidelines users. The level of need for post-secondary education differs from the level of need for special education. Adding how the expenses should be allocated between the parties could increase consistency and predictability of the adjustment.

## 3.4 MEDICAL CHILD SUPPORT

As shown in Exhibit 3.1, federal regulations require that a state's child support guidelines must "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." In 2008, the federal government finalized medical child support rule that introduced the concept of cash medical support as well as defined it. The medical child

support rule essentially prioritized private health insurance for children (if it was available at a reasonable cost to the parent), as well as helped families avoid Medicaid and offset state Medicaid costs.<sup>64</sup> New York is one of the few states that meets all of the 2008 requirements. New York was swift to adopt the necessary changes. In contrast, most states were slow to adopt the 2008 medical support rules. What most states did adopt is not as comprehensive or detailed as the New York medical support provisions. Few adopted and implemented a cash medical support order in Medicaid cases that would be distributed to the state Medicaid agency. As states were still trying to figure out how to implement the 2008 medical support rules and develop the framework for implementation, the Affordable Care Act (ACA) of 2010 was adopted. It created incongruences between medical child support and the ACA.<sup>65</sup> The federal Office of Child Support Enforcement's (OCSE's) response to the incongruences was to not enforce the medical support rules.<sup>66</sup> Essentially, this put many states in a holding pattern in making changes to comply with the medical support rules. For the next few years, OCSE analyzed the incongruences and tried to solve them. One of the solutions is to recognize public health care coverage (e.g., Medicaid and CHIP) as health care coverage for children. Recognizing public health care coverage can eliminate or alleviate the need to order private insurance or cash medical support, particularly if the cash medical support is to enable the custodial parent to obtain private health care coverage.

The MR essentially allows states to recognize public health care coverage as health care coverage for children. Exhibit 3.6 shows a strike-out version of the inclusion of public health care coverage that is pertinent to state child support guidelines as well as the MR provision that IV-D child support programs must follow in enforcing medical child support (§303.31). Some states (e.g., New York) include many of the requirements for enforcing medical support in their state guidelines. For example, there is no requirement to define the cost of reasonable cash medical support or health care coverage in the new or old guidelines rule (§303.56), but there is in the enforcement rule (§303.31). The consequence of this is not all of the medical support rules required of IV-D agencies need to be in a state's guidelines, since some of the medical support rules need not apply to non-IV-D cases.

Exhibit 3.6: Strike-out Version of the MR Pertaining to Medical Child Support in State Child Support Guidelines
<p><i>§ 302.56 Guidelines for setting child support awards.</i></p> <p><del>(2) Address how the parents will provide for the child(ren)'s child's health care needs through private or public health insurance care coverage and/or through cash medical support in accordance with § 303.31 of this chapter.</del></p> <p><i>§303.31 Securing and enforcing medical support obligations.</i></p> <p>(a) * * * (2) Health <u>insurance care coverage</u> includes fee for service, health maintenance organization, preferred provider organization, and other types of <u>private health insurance and public health care coverage</u> <del>which is available to either parent,</del> under which medical services could be provided to the dependent child(ren).</p> <p>(3) Cash medical support or the cost of <u>private health insurance</u> is considered reasonable in cost if the cost to the parent responsible for providing medical support does not exceed five percent of his or her gross income or, at State option, a reasonable alternative income-based numeric standard defined in State law, regulations or court rule having the force of law or State child support guidelines adopted in accordance with § 302.56(c) of this chapter. <del>In applying the five percent or</del></p>

<sup>64</sup> U.S. Department of Health and Human Services Administration for Children and Families (ACF), (2008), "Child Support Enforcement Program; Medical Support: Final Regulation." *Federal Register*, Vol. 73, No. 140 (July 21, 2008, pp. 42416-42442). Retrieved from <http://www.gpo.gov/fdsys/pkg/FR-2008-07-21/html/E8-15771.htm>

<sup>65</sup> Jane C. Venohr (2013.) "Medical Support in Today's Child Support Guidelines and the Affordable Care Act." *Communique*, National Child Support Enforcement Association, Washington, D.C. (Dec. 2013)

<sup>66</sup> *Ibid.*

~~alternative State standard for the cost of private health insurance, the cost is the cost of adding the child(ren) to the existing coverage or the difference between self-only and family coverage.~~

(b) \* \* \* (1) Petition the court or administrative authority to:

(i) Include ~~private health insurance care coverage~~ that is accessible to the child(ren), as defined by the State, and is available to the parent responsible for providing medical support and can be obtained for the child at reasonable cost, as defined under paragraph (a)(3) of this section, in new or modified court or administrative orders for support; and

(ii) Allocate the cost of coverage between the parents.

(2) If ~~private health insurance care coverage~~ described in paragraph (b)(1) of this section is not available at the time the order is entered or modified, petition to include cash medical support in new or modified orders until such time as health ~~insurance care coverage~~ that is accessible and reasonable in cost as defined under paragraph (a)(3) of this section, becomes available. In appropriate cases, as defined by the State, cash medical support may be sought in addition to health ~~insurance care coverage~~.

(3) Establish ~~written~~ criteria, which are reflected in a record, to identify orders that do not address the health care needs of children based on—

(i) Evidence that ~~private health insurance care coverage~~ may be available to either parent at reasonable cost, as defined under paragraph (a)(3) of this section; and \* \* \* \* \*

### 3.4.1 MEDICAL CHILD SUPPORT: ADEQUACY BASED ON MR AND ECONOMIC DATA

Exhibit 3.7 shows New York’s provisions for medical child support. New York Family Court §416(d)(3)(e) meets the federal requirement of guidelines (§ 302.56(c)(2)) to provide for the child’s health care needs either through private or public health care coverage and/or through cash medical support. What is ambiguous is whether states are required to define public health care coverage as a health care coverage within the guidelines.

There are no economic data to inform the provision for medical child support. It would appear that the reasonable in cost definition would have an economic base, but the federal regulation suggests a threshold of five percent of the parent’s income, and that is the threshold set by New York.

#### Exhibit 3.7: New York’s Provisions for Medical Child Support

New York Family Court Act §416

... .

(d) As used in this section, the following terms shall have the following meanings:

(1) “Health insurance benefits” means any medical, dental, optical and prescription drugs and health care services or other health care benefits that may be provided for a dependent through an employer or organization, including such employers or organizations which are self insured, or through other available health insurance or health care coverage plans.

(2) “Available health insurance benefits” means any health insurance benefits that are reasonable in cost and that are reasonably accessible to the person on whose behalf the petition is brought. Health insurance benefits that are not reasonable in cost or whose services are not reasonably accessible to such person shall be considered unavailable.

(3) When the person on whose behalf the petition is brought is a child in accordance with subdivision (e) of this section, health insurance benefits shall be considered “reasonable in cost” if the cost of health insurance benefits does not exceed five percent of the combined parental gross income. The cost of health insurance benefits shall refer to the cost of the premium and deductible attributable to adding the child or children to existing coverage or the difference between such costs for self-only and family coverage. Provided, however, the presumption that the health insurance benefits are reasonable in cost may be rebutted upon a finding that the cost is unjust or inappropriate which finding shall be based on the circumstances of the case, the cost and comprehensiveness of the health insurance benefits for which the child or children may otherwise be eligible, and the best interests of the child or children. In no instance shall health insurance benefits be considered “reasonable in cost” if a parent’s share of the cost of extending such coverage would reduce the income of that parent below the self-support reserve. Health insurance benefits are “reasonably accessible” if the child lives within the geographic area covered by the plan or lives within thirty minutes or thirty miles of travel time from the child’s residence to the services covered by the health insurance benefits or through benefits provided under a reciprocal agreement; provided, however, this presumption may be rebutted for good cause shown including, but not

limited to, the special health needs of the child. The court shall set forth such finding and the reasons therefor in the order of support.

(e) When the person on whose behalf the petition is brought is a child, the court shall consider the availability of health insurance benefits to all parties and shall take the following action to insure that health insurance benefits are provided for the benefit of the child:

(1) Where the child is presently covered by health insurance benefits, the court shall direct in the order of support that such coverage be maintained, unless either parent requests the court to make a direction for health insurance benefits coverage pursuant to paragraph two of this subdivision.

(2) Where the child is not presently covered by health insurance benefits, the court shall make its determination as follows:

(i) If only one parent has available health insurance benefits, the court shall direct in the order of support that such parent provide health insurance benefits.

(ii) If both parents have available health insurance benefits the court shall direct in the order of support that either parent or both parents provide such health insurance. The court shall make such determination based on the circumstances of the case, including, but not limited to, the cost and comprehensiveness of the respective health insurance benefits and the best interests of the child.

(iii) If neither parent has available health insurance benefits, the court shall direct in the order of support that the custodial parent apply for the state's child health insurance plan pursuant to title one-A of article twenty-five of the public health law and the medical assistance program established pursuant to title eleven of article five of the social services law. A direction issued under this subdivision shall not limit or alter either parent's obligation to obtain health insurance benefits at such time as they become available as required pursuant to subdivision (c) of this section. Nothing in this subdivision shall alter or limit the authority of the medical assistance program to determine when it is considered cost effective to require a custodial parent to enroll a child in an available group health insurance plan pursuant to paragraphs (b) and (c) of subdivision one of section three hundred sixty-seven-a of the social services law.

(f) The cost of providing health insurance benefits or benefits under the state's child health insurance plan or the medical assistance program, pursuant to subdivision (e) of this section, shall be deemed cash medical support, and the court shall determine the obligation of either or both parents to contribute to the cost thereof pursuant to subparagraph five of paragraph (c) of subdivision one of section four hundred thirteen of this part.

(g) The court shall provide in the order of support that the legally responsible relative immediately notify the other party, or the other party and the support collection unit when the order is issued on behalf of a child in receipt of public assistance and care or in receipt of services pursuant to section one hundred eleven-g of the social services law, of any change in health insurance benefits, including any termination of benefits, change in the health insurance benefit carrier, premium, or extent and availability of existing or new benefits.

(h) Where the court determines that health insurance benefits are available, the court shall provide in the order of support that the legally responsible relative immediately enroll the eligible dependents named in the order who are otherwise eligible for such benefits without regard to any seasonal enrollment restrictions. The support order shall further direct the legally responsible relative to maintain such benefits as long as they remain available to such relative. Such order shall further direct the legally responsible relative to assign all insurance reimbursement payments for health care expenses incurred for his or her eligible dependents to the provider of such services or the party actually having incurred and satisfied such expenses, as appropriate.

(i) When the court issues an order of child support or combined child and spousal support on behalf of persons in receipt of public assistance and care or in receipt of services pursuant to section one hundred eleven-g of the social services law, such order shall further direct that the provision of health care benefits shall be immediately enforced pursuant to section fifty-two hundred forty-one of the civil practice law and rules.

(j) When the court issues an order of child support or combined child and spousal support on behalf of persons other than those in receipt of public assistance and care or in receipt of services pursuant to section one hundred eleven-g of the social services law, the court shall also issue a separate order which shall include the necessary direction to ensure the order's characterization as a qualified medical child support order as defined by section six hundred nine of the employee retirement income security act of 1974 (29 USC 1169). Such order shall: (i) clearly state that it creates or recognizes the existence of the right of the named dependent to be enrolled and to receive benefits for which the legally responsible relative is eligible under the available group health plans, and shall clearly specify the name, social security number and mailing address of the legally responsible relative, and of each dependent to be covered by the order; (ii) provide a clear description of the type of coverage to be provided by the group health plan to each such dependent or the manner in which the type of coverage is to be determined; and (iii) specify the period of time to which the order applies. The court shall not require the group health plan to provide any type or form of benefit or option not otherwise provided under the group health plan except to the extent necessary to meet the requirements of a law relating to medical child support described in section one thousand three hundred and ninety-six g-1 of title forty-two of the United States code.



(k) Upon a finding that a legally responsible relative willfully failed to obtain health insurance benefits in violation of a court order, such relative will be presumptively liable for all health care expenses incurred on behalf of such dependents from the first date such dependents were eligible to be enrolled to receive health insurance benefits after the issuance of the order of support directing the acquisition of such coverage.

New York Family Court Act §413(1)(c)(5)

5) The court shall determine the parties' obligation to provide health insurance benefits pursuant to section four hundred sixteen of this part and to pay cash medical support as provided under this subparagraph.

(i) "Cash medical support" means an amount ordered to be paid toward the cost of health insurance provided by a public entity or by a parent through an employer or organization, including such employers or organizations which are self insured, or through other available health insurance or health care coverage plans, and/or for other health care expenses not covered by insurance.

(ii) Where health insurance benefits pursuant to paragraph one and subparagraphs (i) and (ii) of paragraph two of subdivision (e) of section four hundred sixteen of this part are determined by the court to be available, the cost of providing health insurance benefits shall be prorated between the parties in the same proportion as each parent's income is to the combined parental income. If the custodial parent is ordered to provide such benefits, the non-custodial parent's pro rata share of such costs shall be added to the basic support obligation. If the non-custodial parent is ordered to provide such benefits, the custodial parent's pro rata share of such costs shall be deducted from the basic support obligation.

(iii) Where health insurance benefits pursuant to paragraph one and subparagraphs (i) and (ii) of paragraph two of subdivision (e) of section four hundred sixteen of this part are determined by the court to be unavailable, if the child or children are determined eligible for coverage under the medical assistance program established pursuant to title eleven of article five of the social services law, the court shall order the non-custodial parent to pay cash medical support as follows:

(A) In the case of a child or children authorized for managed care coverage under the medical assistance program, the lesser of the amount that would be required as a family contribution under the state's child health insurance plan pursuant to title one-A of article twenty-five of the public health law for the child or children if they were in a two-parent household with income equal to the combined income of the non-custodial and custodial parents or the premium paid by the medical assistance program on behalf of the child or children to the managed care plan. The court shall separately state the non-custodial parent's monthly obligation. The non-custodial parent's cash medical support obligation under this clause shall not exceed five percent of his or her gross income, or the difference between the non-custodial parent's income and the self-support reserve, whichever is less.

(B) In the case of a child or children authorized for fee-for-service coverage under the medical assistance program other than a child or children described in item (A) of this clause, the court shall determine the non-custodial parent's maximum annual cash medical support obligation, which shall be equal to the lesser of the monthly amount that would be required as a family contribution under the state's child health insurance plan pursuant to title one-A of article twenty-five of the public health law for the child or children if they were in a two-parent household with income equal to the combined income of the non-custodial and custodial parents times twelve months or the number of months that the child or children are authorized for fee-for-service coverage during any year. The court shall separately state in the order the non-custodial parent's maximum annual cash medical support obligation and, upon proof to the court that the non-custodial parent, after notice of the amount due, has failed to pay the public entity for incurred health care expenses, the court shall order the non-custodial parent to pay such incurred health care expenses up to the maximum annual cash medical support obligation. Such amounts shall be support arrears/past due support and shall be subject to any remedies as provided by law for the enforcement of support arrears/past due support. The total annual amount that the non-custodial parent is ordered to pay under this clause shall not exceed five percent of his or her gross income or the difference between the non-custodial parent's income and the self-support reserve, whichever is less.

(C) The court shall order cash medical support to be paid by the non-custodial parent for health care expenses of the child or children paid by the medical assistance program prior to the issuance of the court's order. The amount of such support shall be calculated as provided under item (A) or (B) of this clause, provided that the amount that the non-custodial parent is ordered to pay under this item shall not exceed five percent of his or her gross income or the difference between the non-custodial parent's income and the self-support reserve, whichever is less, for the year when the expense was incurred. Such amounts shall be support arrears/past due support and shall be subject to any remedies as provided by law for the enforcement of support arrears/past due support.

(iv) Where health insurance benefits pursuant to paragraph one and subparagraphs (i) and (ii) of paragraph two of subdivision (e) of section four hundred sixteen of this part are determined by the court to be unavailable, and the child or children are determined eligible for coverage under the state's child health insurance plan pursuant to title one-A of

article twenty-five of the public health law, the court shall prorate each parent's share of the cost of the family contribution required under such child health insurance plan in the same proportion as each parent's income is to the combined parental income, and state the amount of the non-custodial parent's share in the order. The total amount of cash medical support that the non-custodial parent is ordered to pay under this clause shall not exceed five percent of his or her gross income, or the difference between the non-custodial parent's income and the self-support reserve, whichever is less.

(v) In addition to the amounts ordered under clause (ii), (iii), or (iv) of this subparagraph, the court shall pro rate each parent's share of reasonable health care expenses not reimbursed or paid by insurance, the medical assistance program established pursuant to title eleven of article five of the social services law, or the state's child health insurance plan pursuant to title one-A of article twenty-five of the public health law, in the same proportion as each parent's income is to the combined parental income, and state the non-custodial parent's share as a percentage in the order. The non-custodial parent's pro rata share of such health care expenses determined by the court to be due and owing shall be support arrears/past due support and shall be subject to any remedies provided by law for the enforcement of support arrears/past due support. In addition, the court may direct that the non-custodial parent's pro rata share of such health care expenses be paid in one sum or in periodic sums, including direct payment to the health care provider.

(vi) Upon proof by either party that cash medical support pursuant to clause (ii), (iii), (iv) or (v) of this subparagraph would be unjust or inappropriate pursuant to paragraph (f) of subdivision one of this section, the court shall:

(A) order the parties to pay cash medical support as the court finds just and appropriate, considering the best interests of the child; and

(B) set forth in the order the factors it considered, the amount calculated under this subparagraph, the reason or reasons the court did not order such amount, and the basis for the amount awarded.

### 3.4.2 APPROACHES IN OTHER STATES

As of 2013, all states provided for the child's health care needs within the guidelines and no state included public health care coverage in their definition of health care coverage.<sup>67</sup> States are just beginning to digest the MR and make appropriate changes. Some states (*e.g.*, Ohio) researched whether ordering cash medical support in Medicaid cases is still required now that public health care coverage fulfills the guidelines requirement to provide for the child's health care needs. Specifically, Ohio was interested in whether this would result in Ohio having to repeal its state statutes that require cash medical support orders in Medicaid cases in which collections were distributed to the state Medicaid agency. Ohio's interpretation was that it would not requiring a repeal, hence they would continue implementing what is in state statute. Ohio is one of the few states to routinely order cash medical support in Medicaid cases that, when collected, is distributed to the Medicaid agency. Texas is another state. Several other states (*e.g.*, Colorado and Pennsylvania) do not. In general, many states that routinely order cash medical support in Medicaid cases to be distributed to the Medicaid agency find it difficult to administer.

### 3.4.3 RECOMMENDATION: MEDICAL CHILD SUPPORT

The current provision addressing medical support in the guidelines is adequate. In other words, the current provision fulfills the MR requirement of state guidelines. There, however, may be other issues in fulfilling the requirements for securing and enforcing medical support orders that are outside the scope of the guidelines requirements. One improvement would be aligning the definition of health care coverage with that provided in medical support provisions of the MR (§ 303.31) including the addition of

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<sup>67</sup> *Ibid.*



public coverage as health care coverage. Some states (*e.g.*, Minnesota) interpret the MR as requiring them to make it clear in the guidelines that public coverage is health care coverage.

### 3.5 SHARED-PARENTING TIME

More states are adopting legislation to encourage or expand shared custody or the obligated parent's involvement with the child. Research generally shows that children do better when both parents are in their children's lives.<sup>68</sup> Father involvement can improve a child's academic success, reduce levels of delinquency, and promote the child's social and emotional well-being.<sup>69</sup> Based on U.S. Census national survey in 2013, 52 percent of the custodial parents who were supposed to receive child support reported that the other parent had visitation privileges and 31 percent reported that the other parent had joint custody, either legal or physical or both.<sup>70</sup> In all, 83 percent of the surveyed parents reported that the other parent had either visitation privileges or joint custody. Having visitation privileges or joint custody is only part of the picture. Another consideration is whether the other parent exercises visitation or physical custody. Most (73 percent) of the surveyed parents reported that the other parent had some contact with the child in the last year. Another national study finds that among fathers and children living separately, 22 percent have contact more than once a week, 29 percent have contact one to four times a month, 21 percent have contact several times a year, and 27 percent have no visits.<sup>71</sup>

New York-specific data on the proportion of child support cases in which the obligated parent has visitation privileges or joint custody are not available. Data on the incidence that a guidelines deviation was based on a shared-parenting time were not available from the data analyzed for this guidelines review. The last New York case file review indicated that many orders involved shared-parenting time.<sup>72</sup> For the last review, the guidelines deviation code, "expenses incurred by the non-custodial parent in extended visitation provided that the custodial parent's expenses are not substantially reduced as a result thereof" was used in 4 percent of the Family Court deviations and 1 percent of the Supreme Court deviations. In addition, joint/shared custody was specified as an "other" factor that the court determined relevant in 4 percent of the Family Court deviations and 8 percent of the Supreme Court deviations. It is also possible that more deviations were due to timesharing but not coded or specified. For example, some of the deviations due to consent, which was a common deviation reason, may have considered timesharing arrangements. When documented, the summed totals mean that at least 5 percent of the Family Court deviations were due to shared-parenting time and 9 percent of the Supreme Court deviations were due to shared-parenting time. The New York child support guidelines do not contain a specific formula for joint or shared custody cases.

<sup>68</sup> For example, see U.S. Department of Health and Human Services, Administration for Children and Families. (n.d) *Pathways to Fatherhood*. Retrieved from <http://www.acf.hhs.gov/programs/ofa/programs/healthy-marriage/responsible-fatherhood>.

<sup>69</sup> Osborne, Cynthia and Ankrum, Nora. (April 2015.) "Understanding Today's Changing Families." *Family Court Review*, Vol. 53, No. 2. pp 221-232.

<sup>70</sup> Grall, Timothy. (Jan. 2016). *Custodial Mothers and Fathers and Their Child Support: 2013*. Current Population Survey, Report P60-246. U.S. Census Bureau, Washington, D.C. p. 8. Retrieved from <http://www.census.gov/content/dam/Census/library/publications/2016/demo/P60-255.pdf>.

<sup>71</sup> Livingston, Gretchen, and Parker, Kim. (June 2011) *A Tale of Two Fathers: More Are Active, but More Are Absent*. Pew Social & Demographic Trends. Retrieved from <http://www.pewsocialtrends.org/files/2011/06/fathers-FINAL-report.pdf> /

<sup>72</sup> 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, p. 41.

### 3.5.1 SHARED-PARENTING TIME: ADEQUACY BASED ON MR AND ECONOMIC DATA

There is no mention of guidelines adjustments for shared-parenting time in the requirements of state child support guidelines in the MR. The economic data underlying most state child support guidelines assumes that the child is being raised in one household. The reality in shared-parenting cases, however, is that both parents incur some direct child-rearing expenses. There is no definitive economic data, however, at what point that the child-rearing expenses of the primary custodial parent are reduced because the child is in the physical care of the obligated parent, such as what would occur when the obligated parent exercises visitation privileges or shared custody. Such data could inform at what level of shared parenting-time an adjustment to the calculation is appropriate. Instead, states with a parenting-time adjustment in their child support guidelines make a policy decision on the parenting-time threshold at which the adjustment applies (*e.g.*, the adjustment applies if the obligated parent has the child at least four overnights per year or 83 overnights per year). The general belief is that it costs more to raise a child in two households than once household because of the duplicated expenses (*e.g.*, both parents must provide housing for their child).

### 3.5.2 APPROACHES IN OTHER STATES

Most (37) state guidelines provide a presumptive formula for parenting time or shared custody. The merit of a formula is that it improves consistency and predictability of order amounts in shared-parenting situations. The limitation is it reduces court discretion and the court's ability to examine the appropriateness to the case circumstances, particularly whether the adjustment is in the best interest of the child.

Most states impose two criteria before the adjustment can be applied:

- there must be court-ordered parenting time, a parenting plan, and/or agreement between the parties; and
- a timesharing threshold must be met.

The timesharing threshold ranges from one overnight (*e.g.*, Oregon) to essentially equal timesharing (*e.g.*, Kansas). The timesharing threshold for applying the formulaic adjustment is 20 percent or less in eight states (including the neighboring state of New Jersey); more than 20 percent timesharing but less than 35 percent timesharing in 20 states (including the neighboring states of Delaware, Maryland, and District of Columbia); and 35 percent or more in nine states (including the neighboring state of Pennsylvania). Several states (*e.g.*, Delaware, Massachusetts, and Nebraska) have lowered their timesharing threshold in recent years. Connecticut, another neighboring state, also treats shared-parenting time as a guidelines deviation, but added a formula to adjust for it during its last review.

Most states (21 of the 37 states with a formula) rely on the cross-credit formula that essentially calculates a child support order for each parent, weighs it by the amount of child's time with the other parent, and then offsets the difference where the parent owing the greater expense is the obligated parent. Most of the states relying on the cross-credit formula, however, include a multiplier to account

for the parents duplicating some of the expenses for the child (e.g., the child's housing expense). Wisconsin, a state with a very similar guidelines formula to New York provides a cross-credit formula. It is shown in Exhibit 3.8. Wisconsin and most cross-credit states use a multiplier of 50 percent. This implies that it costs about 50 percent more to raise a child in two households than it would cost to raise the child in one household. The 50 percent approximates the percentage of child-rearing expenditures devoted to housing and transportation that are likely to be duplicated by the parents.

Exhibit 3.8: Provisions for Shared-Parenting Expenses in Wisconsin (Wisconsin Administrative Code Department of Children and Families (DCF) Chapter DCF 150.04(2))		
Courts may use the shared-placement guidelines when a court gives each parent placement of the child for at least 25% of the time - at least 92 days/year.		
<ul style="list-style-type: none"> <li>The court will order each parent to assume the child's basic support costs in proportion to the time that the parent cares for the child. Basic support costs include food, shelter, clothing, transportation, and personal care.</li> <li>The court must also assign responsibility for payment of the child's variable costs in proportion to each parent's share of placement.</li> <li>Incomes of both parents are used to set the amount of support.</li> <li>The parent's share of placement determines that parent's share of support.</li> </ul>		
Example: Parents have 2 children, Parent A: Monthly gross income is \$2,000, Cares for both children 219 days a year (60% of the time), Parent B: Monthly gross income is \$3,000, Cares for both children 146 days a year (40% of the time)		
This chart does not include payments for the children's variable costs.	Parent A	Parent B
Monthly Income for Child Support	\$2,000	\$3,000
Multiply the Monthly Income by the Percentage Standard for 2 children (25%)	x 25%	x 25%
Line # 1	\$500	\$750
For each parent, multiply the amount in line #1 by 150%. The 150% accounts for the basic support costs paid by both parents (food, shelter, clothing, etc.)	x 150%	x 150%
Line # 2	\$750	\$1,125
Multiply the amount in line #2 by the percent of time the children spend with the other parent	x 40%	x 60%
Line #3	\$300	\$675
Offset – subtract the amount in line #3 for Parent A's (the parent with the lower amount) from the amount in line #3 for Parent B (parent with the higher amount). Parent B will pay \$375 (estimate).	\$675 - \$300 = \$375	

### 3.5.3 RECOMMENDATION: SHARED-PARENTING TIME

The recommendation is to adopt a presumptive formula for shared-parenting time. Many obligated parents are involved with their children. It is appropriate to provide a formula to adjust for the child's time with the child's obligated parent. A formula will provide consistent and predictable order amounts in these situations.

### 3.6 DETERMINANTS OF INCOME

Not only do state guidelines provide a definition of guidelines income and identify the determinants of income, but most state guidelines specify under what circumstances income will be imputed and how it will be imputed. This is important because the MR imposes stricter restrictions on income imputation in requirements of state guidelines. The new restrictions are shown in Exhibit 3.9, which also shows the companion provision of the MR that requires a factual basis for support obligations in the establishment of support obligations for IV-D cases. In other words, all of the provisions of the MR pertaining to income imputation need not go into a state's guidelines; rather, some of the provisions of the MR can be complied within IV-D agency rules.

#### EXHIBIT 3.9: RESTRICTION ON INCOME IMPUTATION IN MR REQUIREMENTS FOR STATE GUIDELINES

*§ 302.56 Guidelines for setting child support awards.*

(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.

*§ 303.4 Establishment of support obligations.*

- ~~\*\*\*\*\* (b) Utilize appropriate~~ Use appropriate State statutes, procedures, and legal processes in establishing the and modifying support obligations pursuant to in accordance with § 302.56 of this chapter, which must include, at a minimum:
- (1) Taking reasonable steps to develop a sufficient factual basis for the support obligation, through such means as investigations, case conferencing, interviews with both parties, appear and disclose procedures, parent questionnaires, testimony, and electronic data sources;
  - (2) Gathering information regarding the earnings and income of the noncustodial parent and, when earnings and income information is unavailable or insufficient in a case gathering available information about the specific circumstances of the noncustodial parent, including such factors as those listed under § 302.56(c)(1)(iii) of this chapter;
  - (3) Basing the support obligation or recommended support obligation amount on the earnings and income of the noncustodial parent whenever available. If evidence of earnings and income is unavailable or insufficient to use as the measure of the noncustodial parent's ability to pay, then the support obligation or recommended support obligation amount should be based on available information about the specific circumstances of the noncustodial parent, including such factors as those listed in § 302.56(c)(1)(iii) of this chapter.
  - (4) Documenting the factual basis for the support obligation or the recommended support obligation in the case record.

Exhibit 3.10 shows New York's definition of income.

#### Exhibit 3.10: New York's Definition of Income

*New York Family Court Act §413(1)(b)(5)*

'Income' shall mean, but shall not be limited to, the sum of the amounts determined by the application of clauses (i), (ii), (iii), (iv), (v) and (vi) of this subparagraph reduced by the amount determined by the application of clause (vii) of this subparagraph:

(i) gross (total) income as should have been or should be reported in the most recent federal income tax return. If an individual files his/her federal income tax return as a married person filing jointly, such person shall be required to prepare a form, sworn to under penalty of law, disclosing his/her gross income individually;

(ii) to the extent not already included in gross income in clause (i) of this subparagraph, investment income reduced by sums expended in connection with such investment;

(iii) to the extent not already included in gross income in clauses (i) and (ii) of this subparagraph, the amount of income or compensation voluntarily deferred and income received, if any, from the following sources:

- (A) workers' compensation,
- (B) disability benefits,
- (C) unemployment insurance benefits,
- (D) social security benefits,
- (E) veterans benefits,
- (F) pensions and retirement benefits,
- (G) fellowships and stipends,
- (H) annuity payments, and

(I) alimony or maintenance actually paid or to be paid to a spouse who is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, in which event the order or agreement shall provide for a specific adjustment, in accordance with this subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse; provided, however, that the specific adjustment in the amount of child support is without prejudice to either party's right to seek a modification in accordance with subdivision three of section four hundred fifty-one of this article. In an action or proceeding to modify an order of child support, including an order incorporating without merging an agreement, issued prior to the effective date of this subclause, the provisions of this subclause shall not, by themselves, constitute a substantial change of circumstances pursuant to paragraph (a) of subdivision three of section four hundred fifty-one of this article.

(iv) at the discretion of the court, the court may attribute or impute income from, such other resources as may be available to the parent, including, but not limited to:

- (A) non-income producing assets,
- (B) meals, lodging, memberships, automobiles or other perquisites that are provided as part of compensation for employment to the extent that such perquisites constitute expenditures for personal use, or which expenditures directly or indirectly confer personal economic benefits,
- (C) fringe benefits provided as part of compensation for employment, and
- (D) money, goods, or services provided by relatives and friends;

(v) an amount imputed as income based upon the parent's former resources or income, if the court determines that a parent has reduced resources or income in order to reduce or avoid the parent's obligation for child support;

(vi) to the extent not already included in gross income in clauses (i) and (ii) of this subparagraph, the following self-employment deductions attributable to self-employment carried on by the taxpayer:

- (A) any depreciation deduction greater than depreciation calculated on a straight-line basis for the purpose of determining business income or investment credits, and
- (B) entertainment and travel allowances deducted from business income to the extent said allowances reduce personal expenditures;

(vii) the following shall be deducted from income prior to applying the provisions of paragraph (c) of this subdivision:

- (A) unreimbursed employee business expenses except to the extent said expenses reduce personal expenditures,
- (B) alimony or maintenance actually paid to a spouse not a party to the instant action pursuant to court order or validly executed written agreement,
- (C) alimony or maintenance actually paid or to be paid to a spouse that is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, provided the order or agreement provides for a specific adjustment, in accordance with this subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse,
- (D) child support actually paid pursuant to court order or written agreement on behalf of any child for whom the parent has a legal duty of support and who is not subject to the instant action,
- (E) public assistance,
- (F) supplemental security income,
- (G) New York city or Yonkers income or earnings taxes actually paid, and
- (H) federal insurance contributions act (FICA) taxes actually paid.

(6) "Self-support reserve" shall mean one hundred thirty-five percent of the poverty income guidelines amount for a single person as reported by the federal department of health and human services. For the calendar year nineteen hundred eighty-nine, the self-support reserve shall be eight thousand sixty-five dollars. On March first of each year, the self-support reserve

shall be revised to reflect the annual updating of the poverty income guidelines as reported by the federal department of health and human services for a single person household.

*New York Family Court Act § 413(1)(e)*

Where a parent is or may be entitled to receive non-recurring payments from extraordinary sources not otherwise considered as income pursuant to this section, including but not limited to:

- (1) Life insurance policies;
- (2) Discharges of indebtedness;
- (3) Recovery of bad debts and delinquency amounts;
- (4) Gifts and inheritances; and
- (5) Lottery winnings,

the court, in accordance with paragraphs (c), (d) and (f) of this subdivision may allocate a proportion of the same to child support, and such amount shall be paid in a manner determined by the court.

### 3.6.1 DEFINITION OF INCOME: ADEQUACY BASED ON MR AND ECONOMIC DATA

The remaining discussion about income is divided into a discussion of determinants and income imputation. The new federal regulation effectively imposes no changes in the determinants of income, but does require states to consider more when imputing income.

With regards to the determinants of income, there are no incongruences between New York's definition of guidelines income and its guidelines percentages, that date back to interpretation of a 1981 economic study of child-rearing expenditures. If New York were to adopt guidelines percentages based on more current measurements of child-rearing expenditures, however, some of the definitions of income should be revisited, particularly the inclusion or exclusion of all income taxes (*i.e.*, FICA, federal and New York State [NYS] income tax, and city income tax), rather than include some of these income taxes but not others as NYS currently does.

### 3.6.2 APPROACHES IN OTHER STATES

This section considers New York's definition of income two ways: in general, and in the context of the provisions of the MR pertaining to income imputation.

### 3.6.3 GENERAL DEFINITION OF INCOME

The 2010 guidelines review provided an exhaustive review of how New York defines guidelines income compared to other states. There are several key differences.

- *Exclusion of FICA and New York City and Yonkers city tax, but not federal and NYS income tax in New York's definition of income is unique.* Most state guidelines either explicitly include or exclude FICA and federal, state, and local income taxes. Including all or excluding all is also consistent with using the USDA measurements of child-rearing expenditures or other more recent measurements. New

York appears to have arrived at this unique definition through a “process of negotiation.”<sup>73</sup> It appears that when the New York guidelines were developed, the architects of the guidelines considered gross income, adjusted gross income, and net income. The definition of income that was ultimately adopted was a compromise.

- *New York references the federal tax return for what sources of income are included and excluded for child support income.* In contrast, most state guidelines define income by spelling out the types of income (*e.g.*, income from salaries; wages; commissions; bonuses; partnership distributions; dividends; severance pay; pensions; interest; trust income; annuities, capital gains, and gifts; inheritance; prizes; and alimony or maintenance received from other marriages).<sup>74</sup> The specification is comprehensible, straightforward, and avoids guidelines users having to consult or understand another IRS code. Using the federal tax definition also includes all overtime and second job income, while several states exclude overtime and second-job income if they are not mandatory or were not realized when the parents were a couple. Excluding them provides an opportunity for the obligated parent to realize additional income to support a new family or improve the obligated parent’s standard of living post-separation. The merit of referring to the federal tax return is that it arguably provides a comprehensive and definitive reference for defining income.
- *New York does not provide a presumptive income deduction or credit for the parent’s additional children.*<sup>75</sup> New York, however, provides this as a guidelines deviation factor. Over two-thirds of states (37 states) provide an income deduction for additional dependents with no court order. Most of these states provide an income deduction equivalent to the amount of a theoretical order. For the adjustment to apply, most states also require that the parent have a financial responsibility to the child and the child lives in the home with the parent. There are some states (*e.g.*, Tennessee) that provide the adjustment even if the child does not live in the home (*e.g.*, child is in boarding school).

#### 3.6.4 INCOME IMPUTATION

The new federal regulations pertaining to income imputation require more careful consideration, and that the amount be evidence based. To be clear, it is aimed not only at imputed income, but potential income, presumed income, and attributed income, which are often defined differently in some states. The new federal regulation is not directed at attribution or imputation to resources (*e.g.*, non-income producing assets) that may not be accounted for on the tax returns, as provided for in New York Family Court Act § 413(1)(b)(5)(iv). Rather, it is directed at income imputation when a parent is involuntarily unemployed or underemployed, or when a parent does not provide income information or the income that is provided indicates involuntarily earnings less than full-time minimum wage. This is different from

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<sup>73</sup> 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.

<sup>74</sup>Arguably, New York case law details the sources of income.

<sup>75</sup>Related provisions such as New York Family Court Act § 413(1)(b)(5)(vii)(C) and § 413(1)(b)(5)(vii)(D) are ambiguous in addressing additional dependents who are not subject to a child support order.



voluntary unemployment or underemployment, specifically when a parent is voluntarily unemployed or underemployed because they are shirking their child support responsibility. New York Family Court Act § 413(1)(b)(5)(v) provides for income imputation if the parent has reduced income in order to reduce or avoid child support: “An amount imputed as income based upon the parent’s former resources or income, if the court determines that a parent has reduced resources or income in order to reduce or avoid the parent’s obligation for child support.”

New York’s existing provisions for income imputation does not spell out the considerations required in the MR, however, New York case law provides for many of the considerations (*e.g.*, there is case law that provides that the court may also impute income based on the party’s past income, education, or earning capacity).<sup>76</sup> In all, New York case law is congruent with evidence-based income imputation. The 2010 guidelines review report stated that,

In practice, the court makes written findings stating its basis for imputing income, and the sources and amounts of income imputed. There must be a sufficient factual basis in the trial record to support these findings.<sup>77</sup>

The 2010 report also suggests that the courts consider the party’s capacity to find employment and support, the indirect or circumstantial evidence including income or earnings from prior years; the parent’s expenses; the parent’s lifestyle; the parent’s education, experience, or training; and a host of other sources including evidence of assets or gifts from friends or relatives and statements of income for loan application.

In contrast, many states explicitly provide for similar considerations in their guidelines rather than in case law. Exhibit 3.11 shows Massachusetts and North Dakota’s provisions, which are two of the first states to respond to the MR’s income imputation requirements. Massachusetts discerns between income imputation and income attribution. Its provision for income attribution follows the new federal requirement for what must be considered. North Dakota’s proposed changes are in strikeout version. (North Dakota is still in the process of finalizing the proposed changes.) Exhibit 3.11 also shows the provision of Pennsylvania, which is a state noted for not ordering support when there is evidence of no income or nominal income, such is the situation when a parent is incarcerated, homeless, or receiving supplemental security income (*i.e.*, SSI).

Exhibit 3.11: Provisions for Imputed Income in Selected States		
State	Significance	Provision
MA	Considerations for attributing income match new federal requirements	<p><i>The Commonwealth of Massachusetts Child Support Guidelines</i>  <i>Section D. Imputation of Income</i></p> <p>1. When the Court finds that a parent has, in whole or in part, undocumented or unreported income, the Court may reasonably impute income to the parent based on all</p>

<sup>76</sup> See *Rocanello v. Rocanello*, 678 N.Y.S.2d 385 (N.Y. App. 2d 1998).

<sup>77</sup> 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, page 127.



		<p>the evidence submitted, including, but not limited to, evidence of the parent's ownership and maintenance of assets, and the parent's lifestyle, expenses and spending patterns.</p> <p>2. Expense reimbursements, in-kind payments or benefits received by a parent, personal use of business property, and payment of personal expenses by a business in the course of employment, self-employment, or operation of a business may be included as income if such payments are significant and reduce personal living expenses.</p> <p>3. In circumstances where the Court finds that a parent has unreported income, the Court may adjust the amount of income upward by a reasonable percentage to take into account the absence of income taxes that normally would be due and payable on the unreported income.</p> <p><i>E. Attribution of Income</i></p> <p>1. Income may be attributed where a finding has been made that either parent is capable of working and is unemployed or underemployed.</p> <p>2. If the Court makes a determination that either parent is earning less than he or she could earn through reasonable effort, the Court should consider potential earning capacity rather than actual earnings in making its child support order.</p> <p>3. The Court shall consider the age, number, needs and care of the children covered by the child support order. The Court shall also consider the specific circumstances of the parent, to the extent known and presented to the Court, including, but not limited to, the assets, residence, education, training, job skills, literacy, criminal record and other employment barriers, age, health, past employment and earnings history, as well as the parent's record of seeking work, and the availability of employment at the attributed income level, the availability of employers willing to hire the parent, and the relevant prevailing earnings level in the local community.</p>
ND	Proposed changes to conform to new federal requirements	<p><i>North Dakota Admin. Code Chapter 75-02-04.1-07. Imputing income based on earning capacity</i></p> <p>1. For purposes of this section:</p> <p>a. <del>"Earnings", "earnings"</del> includes in-kind income and amounts received in lieu of actual earnings, such as social security benefits, workers' compensation wage replacement benefits, unemployment insurance benefits, veterans' benefits, and earned income tax credits; <del>and</del></p> <p>b. <del>An obligor is "underemployed" if the obligor's gross income from earnings is significantly less than this state's statewide average earnings for persons with similar work history and occupational qualifications.</del></p> <p>2. An obligor is presumed to be underemployed if the obligor's gross income from earnings is less than <del>the greater of:</del></p> <p>a. Six-tenths of this state's statewide average earnings for persons with similar work history and occupational qualifications; or</p> <p>b. A monthly amount equal to one hundred sixty-seven times the federal hourly minimum wage.</p> <p>3. Except as provided in subsections 4, 5, 6, <del>and 7, 8, 9, 10, and 11</del>, gross income based on earning capacity equal to the greatest of subdivisions a through c, less actual gross earnings, must be imputed to an obligor who is unemployed or underemployed.</p> <p>a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage.</p> <p>b. An amount equal to six-tenths of this state's statewide average earnings for persons with similar work history and occupational qualifications.</p> <p>c. An amount equal to ninety percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months included in the current calendar year and the <del>two</del> previous calendar <del>years</del> year before commencement of the proceeding before the court, for which reliable evidence is provided.</p> <p>4. Monthly gross income based on earning capacity may <u>not</u> be imputed <del>in an amount less than would be imputed</del> under subsection 3 <del>if the obligor shows:</del></p> <p>a. The reasonable cost of child care equals or exceeds seventy percent of the income which would otherwise be imputed where the care is for the obligor's child:</p> <p>(1) For whom the obligor has primary residential responsibility;</p> <p>(2) Who is under the age of <del>fourteen</del> <u>thirteen</u>; and</p> <p>(3) For whom there is no other adult caretaker in the parent's obligor's home available to meet the child's needs during absence due to employment.</p>

		<p>b. <del>The</del>Current medical records confirm the obligor suffers from a disability sufficient in severity to reasonably preclude the obligor from gainful employment that produces average monthly gross earnings equal to <u>at least</u> one hundred sixty-seven times the hourly federal minimum wage <del>and subdivision b of subsection 7 does not apply.</del></p> <p>c. The unusual emotional or physical needs of a minor child of the obligor require the obligor's presence in the home for a proportion of the time so great as to preclude the obligor from gainful employment that produces average monthly gross earnings equal to one hundred sixty-seven times the hourly federal minimum wage.</p> <p>d. <u>The obligor has average monthly gross earnings equal to or greater than one hundred sixty-seven times the hourly federal minimum wage and is not underemployed.</u></p> <p>e. The obligor is under eighteen years of age or is under nineteen years of age and enrolled in <u>and attending high school.</u></p> <p>f. <u>The obligor is receiving:</u></p> <p style="padding-left: 20px;">(1) <u>Supplemental security income payments;</u></p> <p style="padding-left: 20px;">(2) <u>Social security disability payments;</u></p> <p style="padding-left: 20px;">(3) <u>Workers' compensation wage replacement benefits;</u></p> <p style="padding-left: 20px;">(4) <u>Total and permanent disability benefits paid by the railroad retirement board; or</u></p> <p style="padding-left: 20px;">(5) <u>Pension benefits paid by the veterans benefits administration.</u></p> <p>g. <u>It has been less than one hundred eighty days since the obligor was released from incarceration under a sentence of at least one hundred eighty days.</u></p> <p><del>5. Gross income based on earning capacity may not be imputed if the obligor shows that the obligor has average monthly gross earnings equal to or greater than one hundred sixty-seven times the hourly federal minimum wage and is not underemployed.</del></p> <p>...</p> <p>7. Notwithstanding subsections 4, 5, <u>and 6</u>, <del>and 7</del>, if an obligor makes a voluntary change in employment resulting in reduction of income, monthly gross income equal to one hundred percent of the obligor's greatest average monthly earnings, in any twelve consecutive months included in the current calendar year and the <del>two</del> previous calendar <del>years</del>year before commencement of the proceeding before the court, for which reliable evidence is provided, less actual monthly gross earnings, may be imputed without a showing that the obligor is unemployed or underemployed. For purposes of this subsection, a voluntary change in employment is a change made for the purpose of reducing the obligor's child support obligation and may include becoming unemployed, taking into consideration the obligor's <u>standard of living</u>, work history, education, literacy, health, age, <u>criminal record</u>, <u>barriers to employment</u>, <u>record of seeking employment</u>, stated reason for change in employment, likely employment status if the family before the court were intact, and any other relevant factors. The burden of proof is on the obligor to show that the change in employment was not made for the purpose of reducing the obligor's child support obligation.</p>
PA	In practice, limits income imputation when involuntarily unemployed or underemployed	<p><i>Pennsylvania Rules of Civil Procedure 1910.16-2</i></p> <p>d) Reduced or Fluctuating Income.</p> <p>(1) Voluntary Reduction of Income. When either party voluntarily assumes a lower paying job, quits a job, leaves employment, changes occupations or changes employment status to pursue an education, or is fired for cause, there generally will be no effect on the support obligation.</p> <p>(2) Involuntary Reduction of, and Fluctuations in, Income. No adjustments in support payments will be made for normal fluctuations in earnings. However, appropriate adjustments will be made for substantial continuing involuntary decreases in income, including but not limited to the result of illness, lay-off, termination, job elimination or some other employment situation over which the party has no control unless the trier of fact finds that such a reduction in income was willfully undertaken in an attempt to avoid or reduce the support obligation.</p> <p>...</p> <p>(4) Earning Capacity. If the trier of fact determines that a party to a support action has willfully failed to obtain or maintain appropriate employment, the trier of fact may impute to that party an income equal to the party's earning capacity. Age, education, training, health, work experience, earnings history and child care responsibilities are factors which shall be considered in determining earning capacity. In order for an earning capacity to be assessed, the trier of fact must state the reasons for the assessment in writing or on the</p>

		record. Generally, the trier of fact should not impute an earning capacity that is greater than the amount the party would earn from one full-time position. Determination of what constitutes a reasonable work regimen depends upon all relevant circumstances including the choice of jobs available within a particular occupation, working hours, working conditions and whether a party has exerted substantial good faith efforts to find employment.
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### 3.6.5 RECOMMENDATION: DEFINITION OF INCOME

Although the new federal requirements are not mandatory until a year after the next review, New York will have to change its provisions with regard to income imputation to comply. One of the easiest ways to do this is to codify some of New York case law on income imputation and then fill in any gaps so it complies with the new federal requirement. Still another option is to just insert the factors identified in the federal regulation to be considered in income imputation in New York's provision. This is essentially what Massachusetts and North Dakota did.

With regard to the overall determinants of guidelines income, if New York changes its economic basis for its percentages, it should adopt a definition of guidelines income that is congruent. Specifically, it should include or exclude FICA, federal and NYS income tax, and local income tax. Specifying an amount to be deducted from income for additional children (*e.g.*, a theoretical order for the additional children) would also produce greater consistency and predictability when there are additional dependents.

## 3.7 HIGH-INCOME OBLIGATED PARENTS

New York guidelines provide that the percentages (*i.e.*, 17 percent for one child, 25 percent for two children, 29 percent for three children, 31 percent for four children, and no less than 35 percent for five or more children) are presumptive when the combined parental income<sup>78</sup> does not exceed \$143,000 per year effective March 1, 2016. When income is above this threshold, the guidelines percentages *may* be applied. More precisely, the court shall determine the amount of child support for the amount of the combined parental income in excess of such dollar amount through consideration of the deviation factors and/or the guidelines percentages provided for in the guidelines.<sup>79</sup> Pursuant to state law,<sup>80</sup> the income threshold for applying the percentage presumptively is updated every two years.

As discussed in more detail later, most states limit the income to which the guidelines percentage or table is applied to reflect actual patterns of child-rearing expenditures. Families with higher incomes face higher tax rates, so they have less after-tax income to spend, as well as less after-tax income available for child-rearing expenditures. In other words, the percentage-of-gross income devoted to child-rearing expenditures declines as gross income increases.

<sup>78</sup>In which the New York's guidelines define "income" as gross income that excludes FICA and New York City or Yonkers taxes, if applicable, (but not federal and NYS income taxes), and other permissible adjustments.

<sup>79</sup> NY Family Court Act § 413(1)(c)(3).

<sup>80</sup> Social Services Law 111-i.

### 3.7.1 HIGH-INCOME OBLIGATED PARENTS: ADEQUACY BASED ON MR AND ECONOMIC DATA

There is no mention of special treatment of high-income obligated parents in the MR. Economic data shedding light on the issue is limited. There are two types of data: evidence of need; and, evidence that a smaller percentage should be applied to higher incomes. Based on the analysis of case file data for the last review, one percent of parents in Family Court cases had combined incomes of more than \$130,000 per year and 12 percent of parents in Supreme Court cases had combined incomes of more than \$130,000 per year.<sup>81</sup> The current case file review, which includes orders established in 2015 and relied on a different methodology to collect the data, contains few Supreme Court cases. The percentage of cases with combined incomes above \$143,000 per year is unknown because the custodial parent's income was not available in the case file data for this review. Among the Family Court cases, 0.5 percent of obligated parents had gross incomes over \$143,000 per year and 6 percent of obligated parents with Supreme Court cases had gross incomes over \$143,000 per year.

The evidence that a smaller proportion of gross income should be applied contains multi-faceted issues. The New York guidelines percentages are based on a 1981 study of child-rearing expenditures<sup>82</sup> that did not address the issue of high income or how high of an income the study considered. Nonetheless, the other two states that still rely on the 1981 study (*i.e.*, Nevada and Wisconsin) provide smaller percentages or a cap at high incomes (see Exhibit 3.12). Progressive federal income tax rates contribute to the declining proportion of gross income spent on child-rearing expenditures. The lowest federal income tax bracket is 10 percent, while the highest is 39.6 percent. The in-between percentages are 15 percent, 25 percent, 28 percent, 33 percent, and 35 percent. Effectively, this means that after payment of federal taxes (and ignoring FICA and state and any local income taxes), those at the lowest income bracket would have 90 percent of their gross income left to spend and those at the highest income bracket would have 60.4 percent of their gross income left to spend. The 17 percent of gross income required for one child under the guidelines would be 18.9 percent of after-federal tax income for the lowest income bracket and 28.1 percent of after-federal tax income for the highest income bracket. In other words, a flat percentage guideline produces progressive child support amounts. This creates an economic disincentive to earn more income.

Besides suggesting that the guidelines percentages should not be progressive with income, economic evidence on the cost of raising children is generally limited at high incomes. There is an insufficient number of very high-income families in the Consumer Expenditure Survey, the data set used to measure child-rearing expenditures, to produce statistically reliable measurements of child-rearing expenditures at very high incomes. Most states stop their child support guidelines schedule at the highest income for

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<sup>81</sup> 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, p. 106. At the time, the parental income cap was \$130,000 per year.

<sup>82</sup> 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.

which the measurements are statistically reliable (*i.e.*, about \$30,000 gross per month or \$25,000 net per month).

### 3.7.2 APPROACHES IN OTHER STATES

Most guidelines tables include obligations for combined gross and net incomes up to \$10,000 to \$30,000 per month. As mentioned above, most states stop their child support guidelines schedule at the highest income for which the measurements are reliable. Percentage-of-obligor income guidelines typically set the income for applying their percentages presumptively somewhat lower. This may be because income shares states tend to update their guidelines for more current economic evidence on child-rearing expenditures than states relying on the percentage-of-obligor income guidelines.

There are 12 states that provide a presumptive formula to an infinite amount of income. The percentages in these states range from 6 to 25 percent of gross or net income for one child, and from 7 to 33 percent of gross to net income for two children. The percentages tend to be higher among those states relying on the Melson formula (*i.e.*, Delaware, Hawaii, and Montana). For example, Delaware provides 19 percent for one child and 27 percent for two children. The percentages also tend to be lower in those states that essentially factor in the diminishing rate of expenditures at higher incomes; that is, as income rises, a smaller percentage of income is actually spent. For those states, the percentages range from 6 to about 10 percent for one child and 7 to 15 percent for two children at very high incomes. Pennsylvania's formula at high incomes is based on an extrapolation of the Betson-Rothbarth measurements, which is the most common economic basis of state guidelines. The Pennsylvania percentages at after-tax incomes above \$30,000 per month are 8.6 percent for one child and 11.8 percent for two children.

Most states guidelines do not provide a formula for incomes above the highest income considered in the table/schedule, but provide for court discretion above that income and that the court cannot use an amount lower than the highest amount from the table/schedule for that number of children (*e.g.*, see New Jersey in Exhibit 3.12).

There are obvious trade-offs in presumptive formulas for high incomes. A presumptive formula produces consistency and predictability in support award amounts. Nonetheless, because of data limitations it may not reflect what is actually spent on child-rearing at very high incomes. Further, it is difficult to provide a formula that addresses all ranges of high incomes. For example, child-rearing expenditures for a family with \$35,000 net income per month may spend a different percentage on child-rearing expenditures than a family with \$100,000 net income per month.

Exhibit 3.12: Provisions for High-Income Parents in Guidelines of Selected States			
State	Guidelines Model	Significance of Approach	Provision
NV	Percentage -of-Obligor Gross Income	Based on same economic study of child-rearing expenditure as	Supreme Court of Nevada Administrative Office of the Courts, <i>Memorandum to District Judges, Senior Judges, and District Court Administrators of County Clerks</i> . January 26, 2016.
			Presumptive Maximums (effective July 1, 2016 – June 30, 2017)

	based on van der Gaag (1981) study	the New York guidelines	Gross Income Is at Least...	But Less Than	Presumptive Maximum Amount
			\$0	\$4,235	\$681 per child
			\$4,235	\$6,351	\$749 per child
			\$6,351	\$8,467	\$820 per child
			\$8,467	\$10,585	\$886 per child
			\$10,585	\$12,701	\$955 per child
			\$12,701	\$14,816	\$1,022 per child
NJ	Income shares based on Rothbarth measurements of child-rearing expenditures applied to after tax income	Example of how highest amount in schedule is a floor and court discretion for a higher amount	<i>Rule 5:6A of the Courts of the State of New Jersey: Child Support Guidelines Appendix IX-a 20. Extreme Parental Income Situations</i> <i>a. Parents with a Combined Net Annual Income In Excess of \$187,200.</i> If the combined net income of the parents is more than \$187,200 per year, the court shall apply the guidelines up to \$187,200 and supplement the guidelines-based award with a discretionary amount based on the remaining family income (i.e., income in excess of \$187,200) and the factors specified in N.J.S.A. 2A:34-23. Thus, the maximum guidelines award in Appendix IX-F represents the minimum award for families with net incomes of more than \$187,200 per year. An award for a family with net income in excess of \$187,200 per year shall not be less than the amount for a family with a net income of \$187,200 per year. Because estimates on the marginal cost of children in intact families with net incomes of more than \$187,200 per year are either unreliable or unavailable, the court shall not extrapolate the Appendix IX-F schedules (statistically or by adding amounts from different income ranges) beyond that dollar limit.		
PA	Income shares based on Rothbarth measurements of child-rearing expenditures applied to after tax income	Example of a formula applied to infinite income base	<i>Pennsylvania Rules of Civil Procedure 1910.16-3.1</i> a) Child Support Formula. If the parties' combined monthly net income exceeds \$30,000, the following three-step process shall be applied to calculate the parties' respective child support obligations. The amount of support calculated pursuant to this three-step process shall not be less than the amount of support that would have been awarded if the parties' combined monthly net income was \$30,000. The calculated amount shall be the presumptive minimum amount of support. (1) First, the following formula shall be applied as a preliminary analysis in calculating the amount of basic child support to be apportioned between the parties according to their respective monthly net incomes: One child: \$2,839 + 8.6% of combined monthly net income above \$30,000. Two children: \$3,902 + 11.8% of combined monthly net income above \$30,000. Three children: \$4,365 + 12.9% of combined monthly net income above \$30,000. Four children: \$4,824 + 14.6% of combined monthly net income above \$30,000. Five children: \$5,306 + 16.1% of combined monthly net income above \$30,000. Six children: \$5,768 + 17.5% of combined monthly net income above \$30,000.		
WI	Percentage-of-Obligor Gross Income based on van der Gaag (1981) study	Adopted a sliding percentage scale about a decade ago	<b>Wisconsin Administrative Code Department of Children and Families (DCF) Chapter DCF 150.04(5))</b>		
			First \$7,000 of income	Portion of income between \$7,000 & \$12,000	Portion of income above \$12,500
			1 child: 17%	14%	10%
			2 children: 25%	20%	15%
			3 children: 29%	23%	17%
			4 children: 31%	25%	19%
			5 children: 34%	27%	20%

### 3.7.3 RECOMMENDATION: HIGH-INCOME OBLIGATED PARENTS

Extending the combined parental income amount beyond the \$143,000 per year of combined income would likely cover more families. However, the economic evidence suggests that percentages at higher incomes should be lower than the presumptive amounts of 17 percent for one child, 25 percent for two

children, 29 percent for three children, 31 percent for four children, and no less than 35 percent for five or more children.

### 3.8 LOW-INCOME: SELF-SUPPORT RESERVE AND REENTRY POPULATIONS

The self-support reserve and reentry populations are sub-issues in the treatment of low-income obligated parents in child support guidelines. The MR requires state guidelines to provide a self-support reserve or otherwise address the subsistence needs of the obligated parent. They also limit income imputation to incarcerated parents, however, they do not address reentry populations, which are typically low-income and face other issues with reintegration (*e.g.*, not all employment and housing opportunities are open to individuals convicted of a felony). Minimum orders are also an important issue to low-income obligated parents.

New York's low-income adjustment applies when application of the guidelines percentages does not leave the obligated parent enough remaining income to meet his or her subsistence needs (*i.e.*, a self-support reserve) after payment of the child support order. New York's self-support reserve is based on 135 percent of the federal poverty guideline (FPG) for one person.<sup>83</sup> In effect, New York's low-income adjustment is a three-step test with four possible outcomes:

- a \$25-per-month order if the difference between the guidelines-percentage amount and the obligated parent's income is less than the FPG and less than \$25,
- a \$50-per-month order if the above rule is not met and the difference between the guidelines-percentage amount and the self-support reserve is less than the self-support reserve and less than \$50,
- an order based on the difference between the obligated parent's income and the federal poverty income guideline for one person or the self-support reserve, or
- a zero-dollar order or another amount regardless of the three outcomes outlined above because the guidelines is rebuttable.<sup>84</sup>

The New York guidelines, like most states, do not directly address the special issues of obligated parents released from prison.

#### 3.8.1 LOW-INCOME OBLIGATED PARENTS: ADEQUACY BASED ON MR AND ECONOMIC DATA

New York fulfills the existing and new federal requirements with regard to low-income, obligated parents. The economic data informing this issue takes two forms: how much it costs to raise children at low incomes, and how much the obligated parent needs for subsistence. The economic evidence on child-rearing expenditures finds that very low-income families spend more than their income on

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<sup>83</sup> The federal poverty guideline is updated annually and available at <https://aspe.hhs.gov/poverty-guidelines>.

<sup>84</sup> The New York Court of Appeals' 1993 holding in *Rose v. Moody* supports this. The case involved an obligated parent receiving public assistance.



average. Transferring this concept to the amount the obligated parent should pay is unreasonable. It would leave the obligated parent insufficient income to live at a subsistence level. The most commonly used measure of income needed for subsistence is the federal poverty guidelines (FPG), which is the basis of the New York self-support reserve. There is no economic evidence to suggest that New York's self-support reserve is inadequate.

### 3.8.2 APPROACHES IN OTHER STATES

There are 37 state guidelines that provide a self-support reserve. Most states base their self-support reserve on FPG for one person from the year in which that state last updated its guidelines. Only a few states besides New York index it to the FPG, which is updated annually. In 2017, the FPL was \$1,005 per month for the first person and \$348 per month per additional person. Only a few states set their self-support reserve above the FPG (*e.g.*, Oregon sets it at 116.7% of the FPG and Minnesota sets it at 120% of FPG). One rationale for setting it above the FPG is the FPG is an after-tax amount, while New York's guidelines and the self-support reserve are gross-income amounts. States using less are typically low-income states or states that have not updated their guidelines for several years. In addition to New York, a handful of states (*e.g.*, Minnesota, New Jersey, Oregon, and Washington) index their self-support reserve so it is updated annually with annual changes in the FPG that are typically published by February of each year. The merit of this approach is that it keeps the self-support reserve up to date. A limitation is that guidelines users may not always be aware of the change or the amount of the change. In New York's situation, OTDA publishes the change on its child support website, revises the child support charts each year, sends a Dear Colleague Letter to notify guidelines users of the change, and has a conference call with the Office of Court Administration every other year when the combined parental income amount in which the change in the FPG is also identified.

Many state guidelines with a self-support reserve also provide a minimum order for incomes below the self-support reserve. The most typical minimum order amount used by states is \$50 per month. Most states do not have two minimum orders like New York does (*i.e.*, essentially \$25 per month for incomes below the FPG and \$50 per month for incomes below the self-support reserve). Some states set minimum orders lower or higher. One state that previously set its minimum order at \$10 per month raised it out of criticism that it was too low to justify the time and resources necessary to establish an order. In general, the amount of a state's minimum order and whether to have a minimum order are policy decisions. The advisory group to the 1984–87 National Child Support Guidelines Project recommended a token minimum order amount, rather than a zero order, to set the precedent for payment.<sup>85</sup> A few states (*e.g.*, Arizona and Pennsylvania) have no minimum order. (Pennsylvania's change from a \$50 per month minimum order to no minimum order was made about five years ago.) A merit to this approach is it provides for a zero order in some situations (*e.g.*, incarceration). However, because the federal requirement is for rebuttal presumptive guidelines, a minimum order could be rebutted anyway. Recently, more states are considering a minimum order of \$60 per month because it

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<sup>85</sup> National Center for State Courts. (1987). *Development of Guidelines for Child Support Orders*, Final Report. Report to U.S. Department of Health and Human Services, Office of Child Support Enforcement, Williamsburg, Virginia.



is the average paid in informal, in-kind child support.<sup>86</sup> A few states increase the minimum order for more children, but not usually by the same amount (*e.g.*, Colorado has a monthly minimum order of \$50 for one child, \$70 for two children, and \$90 for three children).

### 3.8.3 INCARCERATED PARENTS AND RECENTLY RELEASED PARENTS

About 25 states specifically mention the treatment of incarcerated parents in their child support guidelines. Most of these states provide that the incarcerated parent should not be ordered to pay support (*e.g.*, Pennsylvania) or that income should not be imputed to an incarcerated parent (*e.g.*, Colorado, Delaware, and Indiana). Only a few states (*i.e.*, North Dakota, Oregon and West Virginia) take it a step further and address the special needs of those who have been recently released from prison, hence likely to be facing the challenges of reintegration (*e.g.*, securing adequate housing and employment to pay for their living costs, child support, and most likely court fees and fines). The Oregon and West Virginia provisions are shown in Exhibit 3.13. North Dakota's provision is currently only a proposal but should be finalized soon based on state requirements. The North Dakota proposal (that was shown in Exhibit 3.11) would not allow income to be imputed at earning capacity for an obligated parent released from prison in the last 180 days. Oregon provides that the order cannot be modified for at least 60 days after the obligated parent's release from incarceration. West Virginia provides for a restructuring of payments upon release from custody so a working parent could pay his or her necessary living expenses.

Exhibit 3.13: Provisions for Parents Recently Released from Prison in Selected States	
State	Provision
OR	<p><i>Oregon Support Guidelines Rules 137-055-3300 Incarcerated Obligor</i></p> <p>(4) The incarcerated obligor's income and assets are presumed available to the obligor, unless such income or assets are specifically restricted, assigned, or otherwise inaccessible pursuant to state or federal laws or rules regarding the income and assets of incarcerated obligors.</p> <p>(5) If the incarcerated obligor has gross income less than \$200 per month, the administrator shall presume that the obligor has zero ability to pay support.</p> <p>(6) If the provisions of section (5) of this rule apply, the administrator will not initiate an action to establish a support obligation if the obligor is an incarcerated obligor, as defined in subsection (1)(b) of this rule, until 61 days after the obligor's release from incarceration.</p> <p>(7) Upon receipt of proof that an obligor is an "incarcerated obligor" as defined in subsection (1)(b) of this rule, the Administrator will initiate a modification of the support obligation.</p>
WV	<p><i>West Virginia Code §48-13-703</i></p> <p>Restructuring of payments upon release of inmate. Upon his or her release from the custody of the Division of Corrections or the United States Bureau of Prisons, a person who is gainfully employed and is subject to a child support obligation or obligations and from whose weekly disposable earnings an amount in excess of forty percent is being withheld for the child support obligation or obligations may, within eighteen months of his or her release, petition the court having jurisdiction over the case or cases to restructure the payments to an amount that allows the person to pay his or her necessary living expenses. In order to achieve consistency and fairness, one judge may assume jurisdiction over all the cases the person may have within that circuit of the court. In apportioning the available funds, the court shall give priority to the person's current child support obligations: Provided, that a minimum of \$50 per month shall be paid in each case.</p>

<sup>86</sup> See Rosen, Jill. (2015). "Many 'deadbeat dads' support children through gifts, not cash, study shows," John Hopkins University. <http://hub.jhu.edu/2015/06/15/how-low-income-dads-provide>. Also Kane, J., Nelson, T. and Edin, K. (2015). "How Much In-Kind Support Do Low-Income Nonresident Fathers Provide? A Mixed-Method Analysis." *Journal of Marriage and Family*, 77 (June 2015): 591-611.

### 3.8.4 RECOMMENDATION: LOW-INCOME OBLIGATED PARENTS

The self-support reserve and minimum order are the major components of the low-income adjustment in New York. There is no overwhelming evidence to make major changes to them. It would be helpful to adopt provisions like Oregon and West Virginia that limit income imputation to parents recently released from prisons and provide for the restructuring of payments.

## 3.9 REDUCING POVERTY AND RIGHT-SIZING ORDERS

“Reducing poverty” and “right-sizing orders” are concepts considered in the formation of guidelines. They are not factors considered in the actual guidelines calculation as discussed above. On the one hand, child support is an important source of income to low-income families. On the other hand, many parents obligated to pay child support are also poor. National data finds that child support income accounts for 70.3 percent of the mean annual personal income for custodial parents below poverty who received full child support in 2013.<sup>87</sup> Other research finds that 23 percent of obligated parents have no or limited reported earnings.<sup>88</sup> Poor or very low-income obligated parents often have limited or sporadic employment histories. Some of it relates to incarceration or prior incarceration. Although prisons may provide employment opportunities (*e.g.*, jobs making furniture), the pay is typically negligible. Year-round work is not an accurate assumption for parents who were in and out of jail, work temporary jobs, and do not transition well between jobs.<sup>89</sup> Many are not readily employable due to little or poor employment histories, low skills and educational attainment, prior felonies, alcohol or substance abuse issues, mental health issues, or other issues.

The ideal policy strives to address the subsistence needs of the obligated parent and provide for the child financially, while not adversely affecting the parent-child relationship, particularly since positive parent-child relationships are linked to positive child outcomes.<sup>90</sup>

### 3.9.1 RIGHT-SIZING ORDERS AND POVERTY: ADEQUACY BASED ON MR AND ECONOMIC DATA

The MR realizes the delicate balance of reducing poverty and right-sizing orders. Exhibit 3.14 shows the excerpts of the MR and the commentary on the MR that specifically mention poverty and right-sizing orders. (Most is in the MR commentary.) In summary, the MR aims to reduce imputed and default

<sup>87</sup> Grall, Timothy. (Jan. 2016). *Custodial Mothers and Fathers and Their Child Support: 2013*. Current Population Survey, Report P60-246. U.S. Census Bureau, Washington, D.C. Retrieved from

<http://www.census.gov/content/dam/Census/library/publications/2016/demo/P60-255.pdf>

<sup>88</sup> Sorensen, Elaine. (Feb. 2014). *Employment and Family Structure Changes: Implications for Child Support*. Presentation to the National Child Support Enforcement Association, Washington, D.C. February 7, 2014.

<sup>89</sup> Venohr, Jane. (Feb. 2015). “Income Available for Child Support: Fact and Fiction in State Child Support Guidelines.” *National Child Support Enforcement Association Communique*, Fairfax, Virginia.

<sup>90</sup> Some of the attributes of having both parents involved with their children are identified in U.S. Department of Health and Human Services, Administration for Children and Families. (n.d.) *Pathways to Fatherhood*. Retrieved from <http://www.acf.hhs.gov/programs/ofa/programs/healthy-marriage/responsible-fatherhood> and Osborne, C. and Ankrum, N. (Apr. 2015). “Understanding Today’s Changing Families.” *Family Court Review*, Vol. 53, No. 2. pp 221–232.

orders based on income imputation because imputation beyond an obligated parent’s ability to pay typically results in more unpaid support and other unintended consequences.

In all, the MR is evidence-based and encourage evidence-based guidelines. This is shown in the last row of Exhibit 3.14, which shows the requirement for states to expand the data and sources of information that they use in their guidelines reviews. The information should be used to help a state develop appropriate guidelines that also strike the right balance in reducing poverty and right-sizing orders.

Exhibit 3.14: Excerpts of Modernization Rule (MR) that Mention “Poverty” or “Right-Sizing”	
Topic	Provision
“Poverty”	<p>(p. 93493)</p> <p>The Child Support Enforcement program was established to hold noncustodial parents accountable for providing financial support for their children. Child support payments play an important role in reducing child <b>poverty</b>, lifting approximately one million people out of <b>poverty</b> each year. In 2014, the Child Support Enforcement program collected \$28.2 billion in child support payments for the families in State and Tribal caseloads. During this same period, 85 percent of the cases had child support orders, and nearly 71 percent of cases with support orders had at least some payments during the year. For current support, 64 percent of current collections are collected on time every month. This final rule makes changes to strengthen the Child Support Enforcement program and update current practices in order to increase regular, on-time payments to all families, increase the number of noncustodial parents working and supporting their children, and reduce the accumulation of unpaid child support arrears.</p>
“Right-Size”	<p>(p. 93516)</p> <p>Ability To Pay [§302.56(c)(1)]</p> <p>1. <i>Comment:</i> Many commenters agreed that guidelines should result in child support orders based on the noncustodial parent’s ability to pay. One commenter indicated that setting <b>right-sized</b> orders is as much an art as it is a science. Each State has its own set of constituencies and circumstances that influence how guidelines are set. The commenters also thought that the court should have the ability to look at all factors, including the lifestyle of the noncustodial parent, testimony provided in court, previous work history, education and training, and any information provided by the custodial parent. They thought the proposed regulation limited the discretion of the court, and could have a negative impact on the program. <i>Response:</i> The “ability to pay” standard for setting orders has been Federal policy for almost 25 years,<sup>17</sup> and many existing State guidelines explicitly incorporate the “ability to pay” standard. Consistent with comments, we have redrafted the rule to codify this standard. We also added language that States consider the noncustodial parent’s specific circumstances in making an ability to pay determination when evidence of income is limited, and added language more clearly articulating the basis upon which States may use imputed income to calculate an order. These revisions are discussed in more detail below. Over time, we have observed a trend among some States to reduce their case investigation efforts and to impose high standard minimum orders without developing any evidence or factual basis for the child support ordered amount. Our rule is designed to address the concern that in some jurisdictions, orders for the lowest income noncustodial parents are not set based upon a factual inquiry into the noncustodial parent’s income and ability to pay, but instead are routinely set based upon a standardized amount well above the means of those parents to pay it. The Federal child support guidelines statute requires guidelines that result in “appropriate child support award” and is based on the fundamental principle that each child support order should take into consideration the noncustodial parent’s ability to pay.<sup>18</sup> Therefore, we have codified this longstanding policy guidance as the leading guidelines principle in §302.56(c)(1). Research suggests that setting an accurate child support order based upon the noncustodial parent’s ability to pay improves the chances that the noncustodial parent will continue to pay over time.<sup>19</sup> Compliance with support orders is strongly linked to actual income and ability to pay.<sup>20</sup> Many low-income noncustodial parents do not meet their child support obligations because they do not earn enough to pay what is ordered.<sup>21</sup> Orders set beyond a noncustodial parents’ ability to pay can result in a number of deleterious effects, including unmanageable debt, reduced low-wage employment, increased underground activities, crime, incarceration, recidivism, and reduced contact with their children.<sup>22</sup> Research consistently finds that orders set too high are associated with less consistent payments, lower compliance, and increased child support debt.<sup>23</sup> In fact, studies find that orders set above 15 to 20 percent of a noncustodial parent’s income increases the likelihood that the noncustodial parent will pay less</p>

	<p>support and pay less consistently, resulting in increased arrears.<sup>24</sup> The conclusion from this research is that families do not benefit from orders that noncustodial parents cannot comply with because of their limited income. High orders do not translate to higher payments when the noncustodial parent has limited income.<sup>25</sup></p> <p>(p. 93520)</p> <p>Many commenters were concerned that the NPRM [Notice of Proposed Rule Making] curtailed the ability of States to impute income to ensure support for children. One commenter supported reducing the use of default orders; however, the commenter stated that default orders continue to be necessary when the noncustodial parent refuses to appear and participate, despite multiple opportunities provided by the court and the IV–D agency. Many commenters further indicated that while the NPRM did not expressly prohibit default orders, there appeared to be no ability within the framework of the rule to impute income based on other types of evidence—such as the noncustodial parent’s past income, employment history, and/or employment available in the local community. They also read then PRM [NPRM] to mean that if the IV–D agency could not obtain current income information or evidence of current lifestyle, then the NPRM would prohibit an entry of a support order altogether. These commenters stated that such a result could give parents with reported income an incentive to intentionally end employment after being notified of the support proceedings and refuse to appear in court in order to force a zero dollar order. They considered this a perverse incentive to avoid support that was not in the best interest of the child and the family. While many commenters were in favor of <b>right-sized</b> orders, they believed the proposed language was too limiting to allow setting a fair order in many circumstances. Response: As we have previously discussed in response to comments, it was not OCSE’s intention in the NPRM to limit imputation of income only to situations where there is evidence that the noncustodial parent’s standard of living is inconsistent with reported income. The State has the discretion to determine when it is appropriate to impute income consistent with guidelines requirements. Therefore, we revised the proposed language in §302.56(c)(1) to clearly indicate that a child support order must be based on the noncustodial parent’s ability to pay using evidence of the parent’s earnings, income, and other evidence of ability to pay whenever available. We have also added §302.56(c)(1)(iii) to indicate that if imputation is authorized in the State’s guidelines, the State’s guidelines must require the State to consider evidence of the noncustodial parent’s specific circumstances in determining the amount of income that may be imputed, including such factors as the noncustodial parent’s assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors.</p>
Imputed or default orders based on income imputation	<p>(p. 93521)</p> <p>Imputed or default orders based on income imputation are disfavored and should only occur on a limited basis. Imputation does not by any means ensure support payments for children. In fact, an order based upon imputed income that is beyond the noncustodial parent’s ability to pay typically results in more unpaid support and other unintended consequences that do not benefit children.<sup>32</sup> It is critical for the integrity of the order-setting process that IV–D agencies put resources into case- specific investigations and contacting both parents in order to gather information regarding earnings, income, or other specific circumstances of the noncustodial parent when evidence of earnings and income is nonexistent or insufficient.</p>
Requirement to expand data considered in guidelines review	<p>(p.93530)</p> <p>2. Comment: Many commenters suggested additional factors that the State must consider during its guideline review such as economic data on the marginal cost of raising children and an analysis of case data, by gender, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The commenters thought that an analysis of case data by gender must be used in the State’s review of the guidelines to ensure that gender bias is declining steadily, and that deviations from the guidelines are limited. Although not specifically related to this paragraph, throughout the comments to the proposed guideline regulation, commenters expressed concerns that: Guidelines needed to consider economic data on local job markets, guidelines did not take into consideration low-income noncustodial parents, and the rate of default orders were increasing inappropriately. Response: Considering all of the various concerns about how States were developing criteria for guidelines, we have revised proposed §302.56(i), which has been redesignated as §302.56(h), to add factors that the States must consider when reviewing their guidelines for the required quadrennial review. We added paragraph (h)(1) to require that the States consider economic data on the cost of raising children, labor market data</p>

(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 guideline 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 current child support orders. We also added paragraph (h)(2) to require the States to 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 orders and orders determined using the low-income adjustment required under paragraph (c)(1)(ii). 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 guidelines to ensure that deviations from the child support guidelines are limited and guideline amounts are appropriate based on criteria established by the State under paragraph (g).

### 3.9.2 APPROACHES IN OTHER STATES

Most states that are cognizant of the issues of poverty among children as well as low-income obligated parents and low-income custodial parents also struggle with the balance of reducing poverty and right-sizing orders. However, since these are concepts, not factors in the guidelines calculation, they are often discussed in the deliberation of guidelines changes, but not necessarily documented. The final result, however, is seen in a state's provisions for self-support reserves and other low-income adjustments and policies for the imputation of income.

States are still learning what is the right balance. Data and evidence-based research are helping. For example, for Pennsylvania's most recent case file review, it also analyzed payment patterns, which will become a federal requirement. Pennsylvania found that payment patterns are not consistent with the research about the 20-percent threshold, rather payments are the lowest in the minimum-wage income bracket, which suggests that low payments are associated with income imputation at minimum-wage (which may be an indication of a default order) than the percentage-order amount.<sup>91</sup> The Pennsylvania study also found that the number of months of payments also affect the percentage compliance rate. For example, payments may be close to full in some months, then there may be months with no payment, that drag the overall compliance rate over the year down.

### 3.9.3 RECOMMENDATION: RIGHT-SIZED ORDERS AND POVERTY

New York should deepen its research and data collected by automated methods for the case file review to strive for the best balance possible in combating poverty and right-sizing orders. This includes analyzing data from the sources identified in the MR.

<sup>91</sup> Venohr, Jane. (2016). *2015–2016 Pennsylvania Child Support Guidelines Review: Economic Review and Analysis of Case File Data*. Report to the Pennsylvania Department of Human Services. Harrisburg, PA. p. 16. Retrieved from [http://www.pacourts.us/assets/uploads/Resources/Documents/2015%202016%20Pennsylvania%20Child%20Support%20Guidelines%20Review%20Economic%20Review%20and%20Analysis%20of%20Case%20File%20Data%20-%202005119.pdf?cb=b3603\\_](http://www.pacourts.us/assets/uploads/Resources/Documents/2015%202016%20Pennsylvania%20Child%20Support%20Guidelines%20Review%20Economic%20Review%20and%20Analysis%20of%20Case%20File%20Data%20-%202005119.pdf?cb=b3603_)

# CHAPTER 4: ANALYSIS OF GUIDELINES DEVIATIONS

## 4.1 PURPOSE OF CHAPTER

This Chapter fulfills the federal requirement to analyze case data on deviations from a state's child support guidelines. The intent of the federal requirement is to identify areas of the guidelines that could improve appropriateness of the guidelines-determined order amount and provide more consistency and predictability of guidelines amounts. As shown in Exhibit 4.1, the federal requirement also encourages states to use the information to limit the number of deviations from the guidelines. For example, a finding that shared-parenting time is a frequent reason for a guidelines deviation suggests a presumptive formula for shared-parenting circumstances could reduce the number of guidelines deviations.

Exhibit 4.1 shows the federal requirement. In December 2016, the rule expanded the requirement, but it will not be effective until a year after the next review (see §302.56(a)).

### EXHIBIT 4.1: FEDERAL REQUIREMENTS PERTAINING TO CASE FILE REVIEW

#### RULE PRIOR TO DECEMBER 2016

(h) As part of the review of a State's guidelines required under paragraph (e) of this section, a State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.

#### DECEMBER 2016 RULE (GUIDELINES REQUIREMENTS ARE EFFECTIVE AFTER NEXT QUADRENNIAL REVIEW)<sup>92</sup>

§ 302.56 Guidelines for setting child support awards.

(b) 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.

...

(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.

...

(i) As part of the review of a State's child support guidelines required under paragraph (e) of this section, a State must:

(4) Consider economic data on the cost of raising children, labor market data...

(5) 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

<sup>92</sup> U.S. Department of Health and Human Services. (Dec. 20, 2016). "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs." *Federal Register*, Vol. 81, No. 244 p. 93562. <https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-29598.pdf>.



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 ... .

The analysis documented in this Chapter fulfills the analysis requirements under the federal rule prior to December 2016 (which is also shown in Exhibit 4.1). It also suggests a path for eventually fulfilling the new federal requirements.

#### 4.1.1 ORGANIZATION OF THE CHAPTER

This chapter is organized into five sections. The next section provides an overview of the data methodology. Section 3 provides the findings from the analysis. Section 4 compares the findings to those of other states. Section 5 provides conclusions and recommends next steps.

#### 4.2 METHODOLOGY FOR DATA COLLECTION AND ANALYSIS

This section summarizes the data collected for the case file review and the analysis of the data. Division of Child Support Services (DCSS) within the New York State Office of Temporary and Disability Assistance (OTDA) extracted case file data from its automated system. The extract consists of a randomly-selected sample of 9,000 cases in which a child support order was established in calendar year 2015. (The child support orders were established in local districts but entered into the state-maintained system.) In all, 45,311 cases tracked on the system maintained by DCSS (hereto after referred to as "CSS cases" because of the tracking) had an order established in calendar year 2015.

The automated system includes two data fields indicating deviations from the guidelines. One data field is the "Deviation Reason Indicator." It has a pulldown menu of codes including "No deviation" and each of the 10 deviation factors in New York Family Court Act § 413(1)(f).<sup>93</sup> The data field could not be extracted in an aggregate matter for this review, but it is anticipated that it will be for next review. The other data field could be extracted in an aggregate matter.

The other data field indicates whether the court ordered the presumptively correct amount under the guidelines or deviated from that amount. The field is generally referred to as the "SA Indicator," in which SA stands for "Standards Act" of the Child Support Standards Act of 1989, which promulgated the New York State child support guidelines (codified in §413 of the New York State Family Court Act and §

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<sup>93</sup> The deviations factors are the financial resources of the custodial and non-custodial parent, and those of the child; the physical and emotional health of the child and his/her special needs and aptitudes; the standard of living the child would have enjoyed had the marriage or household not been dissolved; the tax consequences to the parties; the non-monetary contributions that the parents will make toward the care and well-being of the child; the educational needs of either parent; a determination that the gross income of one parent is substantially less than the other parent's gross income; the needs of the children of the non-custodial parent for whom the non-custodial parent is providing support who are not subject to the instant action provided some conditions are met; the extraordinary expenses incurred by the non-custodial parent in exercising visitation or extended visitation provided some conditions are met; and any other factors the court determines are relevant in each case.

240 of the New York State Domestic Relations Law). The codes have three positions, where each position is essentially a sub-field.

The SA Indicator field used for the analysis was populated for 8,763 cases. It has several possible primary codes and several possible sub-codes for its sub-fields. One of the sub-fields is pertinent to identifying a deviation from the guidelines percentages. It has two options:

- Order greater than or equal to guidelines-calculated amount (hereto after referred to as “Equal or greater” code); and
- Order less than guidelines-calculated amount (hereto after referred to as “Less than code.”

Cases coded as less than guidelines-calculated amount are categorized as a guidelines deviation for the analysis. They also are categorized as downward deviations. There are only 81 cases coded as less than guidelines-calculated amount. Since the equal or greater code could be an upward deviation or the guidelines-calculated order, it is categorized as a deviation (as well as an upward deviation) only if the actual order is greater than a theoretical guidelines-calculated amount.

Simulation of the guidelines amount requires availability of income information and that an imputed income was not used instead of the actual income. The obligated parent’s income information was available from quarterly wage for 5,907 cases.<sup>94</sup> It was available for four quarters of 2015 for 3,154 cases. It was available and at least equal to 34-hours per week,<sup>95</sup> minimum wage earnings<sup>96</sup> (*i.e.*, \$15,470 per year) for 2,334 cases with four quarters of data in 2015. The threshold is important because it is common for guidelines users throughout the nation to impute income if actual income is below full-time, minimum wage earnings.<sup>97</sup> In other words, cases in which there was not four quarters of income information were excluded from the simulation as well as cases with four quarters of income information if the total income was less than \$15,470 per year. These were excluded because income is more likely to be imputed in these cases.

Among the 2,334 cases, the actual order was more than the simulated order in 483 cases with the equal or greater code. These 483 cases were deemed to be upward guidelines deviations. Among the 2,334 cases, 36 cases had a subfield indicating a downward deviation. In all, there were 519 cases with either an upward or downward deviation based on this categorization. They are used in the analysis.

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<sup>94</sup> Another income data field was available for fewer cases, 5,051 cases, and when available resulted in amounts almost identical to the quarterly wage data. It is not reported because it does not produce results significantly different from the quarterly wage data.

<sup>95</sup> Full-time is considered 34 per hours per week on average. It is based on the average hours worked among workers in the private sector according to the New York Department of Labor. (Retrieved from <https://labor.ny.gov/stats/ceshourearn2.asp>.)

<sup>96</sup> In 2015, the year of the case file review, New York set its minimum wage at \$8.75 per hour.

<sup>97</sup> Fleming, James. (April 2015). “Imputed Income and Default Practices: The State Directors’ Survey of State Practices Prior to the 2016 Final Rule.” *Child Support CommuniQue*, National Child Support Enforcement Association, McLean, VA.



#### 4.2.1 DATA LIMITATIONS

This approach contains several data limitations.

- It is limited to cases on the DCSS automated system, which does not include non-DCSS cases. DCSS cases are not representative of the entire child support case population in the State. Most cases on the DCSS automated system had support orders issued by the Family Court. The Supreme Court is the other court that commonly issues child support orders in New York. There is a data field on the DCSS automated system that indicates whether the order was established by the Supreme Court, but population of the field is not required. Only 90 cases of the sample of 9,000 cases indicated that the case had a Supreme Court order, but there may be more since population of the field is not required. Child support cases with government agencies (*e.g.*, local districts) typically have orders issued by the Family Court; whereas, non-DCSS child support cases (such as cases in which the parents were married and are also filing a petition for divorce) are usually issued by the Supreme Court. For the last review, there were more Supreme Court cases sampled than Family Court cases: 414 cases from the Supreme Court and 259 cases from the Family Court.<sup>98</sup> It appears that using the DCSS automated system results in more Family Court cases in the sample than Supreme Court cases in the sample. Other states (*e.g.*, Pennsylvania and Illinois) also use their automated system as a data source for the case file review and have similar findings about the sample.
- There is a significant reduction in the number of cases (9,000) selected for the sample and cases used for the analysis of guidelines deviations (2,334). (The sample size is still adequate for statistical analysis.) Moreover, and as an aside to the guidelines deviation issue, the reduction underscores the issue of income imputation that the new federal rule is trying to address.<sup>99</sup> The fact that income information is missing, not available for all quarters<sup>100</sup> or inconsistent between quarters,<sup>101</sup> and is often less than full-time minimum wage earnings underscores the rationale for the new rule. For example, the new rule requires the analysis of case file data by whether income was imputed (see C.F.R. § 302.56 (h) (2)).

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<sup>98</sup>*Ibid.*, p. 12.

<sup>99</sup> The new rule requires and encourages the use of actual income rather than imputed or presumed income. To accomplish this, it encourages the use of a wide range of sources for income information including party testimony, rather than income imputation at minimum wage when income information from an employer or quarterly wage is not available, limited, or indicates an income less than full-time minimum wage earnings. This is well documented in the proposed rule. U.S. Department of Health and Human Services. (Nov. 17, 2014). "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs." *Federal Register*, vol. 79, no. 221/ Retrieved from <http://www.acf.hhs.gov/programs/css/resource/nprm-flexibility-efficiency-and-modernization-in-child-support-enforcement-programs>.

<sup>100</sup> From the sample of 9,000 cases, income information was available for four quarters for 35 percent of the sample, three quarters for 12 percent of the sample, two quarters for 10 percent of the sample, one quarter for 8 percent for the sample, and no quarters for 34 percent. Among those categories, the percentage with income above 34-hour per week, minimum wage income (\$15,407 per year) is 81 percent among those with four quarters of income information, 45 percent among those with three quarters of income information, and 16 percent among those with two quarters of income information.

<sup>101</sup> For example, among cases with four quarters of data, the average difference between the lowest and highest quarter was \$4,950, which is over \$400 per month so it could have a significant impact on the final order amount (*e.g.*, 17 percent, which is the guidelines percentage for one child, of \$400 is \$68 per month).

- The analysis of guidelines deviations does not include analysis of whether the self-support reserve and minimum order were applied correctly. Theoretically, these adjustments would apply to very low-income cases. Although there are cases with four quarters of earnings data that appear to be eligible for a self-support reserve adjustment or the minimum order, most had inconsistent earnings from quarter to quarter. Due to this inconsistency and the lag in which quarterly wage data becomes available to the local district, it is not entirely clear if quarterly wage data was used during order establishment, and, if it was used, which quarter. In other words, there are too many factors in the simulation that could result in an over-estimation of deviations in low-income cases. Instead, the issue of low-income cases is addressed in the previous Chapter. As an aside, the same limitation is not inherent for cases in which quarterly wage data is above the self-support reserve threshold because there are fewer factors to consider (*i.e.*, the self-support reserve and the minimum order application).
- The data used for the analysis is over-representative of middle and higher income parents among cases on the DCSS automated system. This is due to the limitation pertaining to low-income cases described above.
- The data field used for the analysis, the SA Indicator, does not track the reason for the guidelines deviation, so analysis by reason is not possible in an automated fashion.

#### 4.2.2 OTHER METHODOLOGIES

States use several different types of data sources to collect case file data. The most common source is the automated system for the state child support program. The merit of this approach is the data can usually be extracted at little expense and combined with payment information, which will need to be considered under the new federal rule pertaining to guidelines review. To be federally certified, a state system must include a deviation field, albeit the federal requirements for that field are limited and it is not an auditable field so in many states, the field is not always populated. In addition, the state child support agency may not receive information back from the court indicating there was a deviation, so cannot note it on the state system. In turn, deviation information from a state automated system tends to understate the actual percentage of guidelines deviation rates.<sup>102</sup> Some states (*e.g.*, Missouri and Pennsylvania) also link an automated child support calculator to their automated system, this allows for an extract of all the parameters used in the guidelines calculation (*e.g.*, income of each party and the amount of child care expense). The automated child support calculator is typically used in settlement conferences in which court staff or child support staff meet with the parties and try to encourage the parties to agree to the child support order.

New York's last case file review was conducted by collecting data from paper copies of court records that were randomly selected using cluster sampling of New York courts. The merits of this approach are that it can include cases in government child support programs and cases that are not in a government

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<sup>102</sup>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.

child support program, and it better captures the information used by the court. For example, the court may have relied on verbal testimony as the source of income information instead of quarterly wage data. The major limitation is that collecting information from paper copies of court records can be time-consuming and costly. Differences in how courts organize their paper records can exacerbate the time needed and the cost. Electronic data imaging has eased this burden in some states. For example, Arizona switched from a manual collection of paper copies of court records to an electronic collection of files stored digitally due to adaption of data imaging by many Arizona courts. Specifically, Arizona courts store child support orders and the worksheet used to calculate the order electronically. A random sample of these images was used for Arizona’s last guidelines review.<sup>103</sup>

#### 4.3 FINDINGS FROM THE ANALYSIS OF CASE FILE DATA

Based on the 2015 data used for the analysis, New York’s child support guidelines deviation rate is 22 percent. Despite methodological differences, this is about the same as the deviation rate reported in New York’s last case file review (*i.e.*, 23 percent for the state as a whole, 20 percent for Family Court orders and 44 percent for Supreme Court orders).

The guidelines deviation rate is 22 percent.

##### 4.3.1 DIRECTION AND AMOUNT OF THE DEVIATION

Most of the deviations (93%) from the 2015 data were upward, while just over half of deviations in Family Court orders identified from the last review were downward. Most states find that more deviations are downward than upward. The contrast from the 2015 findings and these other studies suggests that workers are not always noting downward deviations on the DCSS automated system, which is how downward deviations are being identified in the 2015 data. Like other workers in other states, workers in local districts may not be getting information back from the court noting a deviation, hence not entering it.

Among those with upward deviations, the average difference between the actual order and the guidelines-determined amount is about \$166 per month or 30 percent of the guidelines-percentage calculation. Among those with downward deviations, the average difference between the actual order and the guidelines-percentage calculation was about \$300 per month. As stated in the Data Limitation section, no information could be pulled in the aggregate regarding the reasons for the deviation.

##### 4.3.2 DEVIATION RATES BY SELECTED FACTORS

Exhibit 4.2 shows the deviation rate by selected subgroups. The guidelines deviation rate in New York City (26.4%) is significantly more than the deviation rate for the rest of the state (19.7%). The deviation

<sup>103</sup> Venohr, Jane. (2014). *Arizona Child Support Guidelines Review: Findings from the Case File Data*. Report to Arizona Supreme Court Administrative Office of the Courts. Retrieved from <http://www.azcourts.gov/Portals/31/GuidelinesReview/AZChildSupportGuidelinesReviewFindingsfromCaseFileData082014RED.pdf>.

rate is not statistically different by gender of the obligated parent or the relationship between the obligated parent and custodial parent. The deviation rate among cases involving parents who were ever married is 25.9 percent and the deviation rate among cases involving unmarried parents is 22.3 percent. Although both these deviation rates are higher than other situations such as relative care, the difference is not statistically significant. Similarly, there are no statistical differences in the deviation rates for current Temporary Assistance for Needy Families (TANF) cases, former TANF cases, and never-TANF cases, although the deviation rate among the three groups is the highest for never-TANF cases (24.2%).

Exhibit 4.2: Deviation Rates by Selected Characteristics (cases with 4 quarters of wage data and income is at least minimum wage = 2,334)			
	Geographical Area		
	New York City		Rest of State
Deviation Rate	26.4%		19.7%
	Gender of Obligated Parent		
	Male	Female	Not Available
Deviation Rate	22.3%	17.7%	19.6%
	Custodial Parent Relationship to Obligated Parent		
	Ever Married	Never Married	Other
Deviation Rate	25.9%	22.3%	14.0%
	TANF Status		
	Current	Former	Never
Deviation Rate	17.9%	15.6%	24.2%

Exhibit 4.3 examines whether the average number of children, average order amount, average payment, or average income of the obligated parents vary among cases with guidelines deviations. Three groups are compared: cases with no deviations; cases with upward deviations; and cases with downward deviations. There are no statistical differences between the three deviation groups by number of children. There are significant statistical differences between the other amounts (*i.e.*, average order amount, average income and average compliance rate) between cases without a deviation and those with an upward deviation. The average order amount among upward deviations is almost twice as much as those with no deviation (*i.e.*, \$9,351 per year compared to \$5,101 per year), but the average payment among upward deviations is only about 20 percent more (*i.e.*, \$4,203 per year compared to \$3,468 per year). Essentially, this stretches the compliance rate for upward deviations such that it is lower than the compliance rate among cases with no deviations (*i.e.*, 78.3% compliance rate among those with no deviations compared to 69.3% compliance rate among those with upward deviations). The only statistical difference for cases with downward deviations is that the average order amount among downward deviations is statistically different than the average order amount for upward deviations.

**Exhibit 4.3: Selected Characteristics of Cases by Guidelines Deviation**  
(cases with 4 quarters of wage data and income is at least minimum wage = 2,334)

	No Deviation	Upward Deviation	Downward Deviation
<b>Average Number of Children</b>	1.4 children	1.5 children	1.4 children
<b>Average Order Amount (annual)</b>	\$5,101	\$9,351	\$4,376
<b>Average Amount Paid (annual)</b>	\$3,468	\$4,203	\$2,085
<b>Average Percent of Support Paid</b>	78.3%	69.3%	69.0%
<b>Average Income (annual)</b>	\$50,028	\$39,389	\$43,417

#### 4.4 GUIDELINES DEVIATION RATES IN OTHER STATES

Not all states routinely conduct case file reviews as part of their quadrennial review; hence, information is available for a limited number of states. This may change in the future, however, since the new federal rules expand and strengthen the requirement for consideration of case file data.

The following are highlights from deviation studies recently conducted in large or neighboring states.

- California, which is the most populated state in the U.S., is currently reviewing its guidelines. They plan to publish the report this year. California uses “commissioners” in its judicial system to hear contested and uncontested child support orders. California’s last guidelines review was conducted in 2010 from a review of court files that included orders established among cases in its state child support caseload and its non-state caseload.<sup>104</sup> It found a guidelines deviation rate of 15 percent. Other findings were: most deviations (69%) were downward, the most common reason for a guidelines deviation was stipulation between the parties (60%), and the deviation rate was higher among cases in the state child support program (26%) than cases not in the state child support program (9%).
- Georgia is included because it is a large state. Georgia ranks 8<sup>th</sup> among states in population size, while New York ranks 4<sup>th</sup>. Judges enter orders in Georgia, but the child support agencies encourage parents to come to the child support office prior to the court date to stipulate to an order. For its last review (2014), Georgia collected case file data from 12 counties by requiring each county to submit the orders they issued in the month of October as well as the supporting worksheet.<sup>105</sup>

<sup>104</sup> Judicial Council of California. (2010). *Review of Statewide Uniform Child Support Guideline*. San Francisco, California. Retrieved from <http://www.courts.ca.gov/partners/documents/2011SRL6aGuidelineReview.pdf>.

<sup>105</sup> Georgia Commission on Child Support. (2014). *Final Report*. Report to the Georgia General Assembly and the Governor. Georgia Administrative Office of the Courts. Retrieved from [http://csc.georgiacourts.gov/sites/default/files/csc/2014%20Report\\_Signed.pdf](http://csc.georgiacourts.gov/sites/default/files/csc/2014%20Report_Signed.pdf).

Georgia found a guidelines deviation rate of 26 percent. Most of the deviations were downward (77%).

- Illinois ranks 5<sup>th</sup> among states in population size. Illinois found a guidelines deviation rate of 2.5 percent in 2010.<sup>106</sup> Illinois used a data field from its automated system to detect deviations. Most of Illinois relies on a judicial process to establish child support orders, but recently some of its larger jurisdictions have adopted an administrative process.
- Maryland is included because it is also an Atlantic state that collects case file data from its automated system so its sampling of orders is limited to the caseload of a government child support agency. Maryland uses a judicial process to establish its orders. Maryland's most recent review (2016) found a guidelines deviation rate of 22.9 percent.<sup>107</sup> Most guidelines deviations were downward (87%).
- Ohio, which ranks 7<sup>th</sup> among states in population size, just completed its last guidelines review early in 2017. Ohio uses an administrative process to establish the majority of its orders. It collected case file data by asking counties to volunteer for a study. In turn, participating counties were asked to complete a questionnaire for every new or modified order over a two-week period. Ohio found a guidelines deviation rate of 22 percent.<sup>108</sup> Almost half of the deviations were due to extended parenting time or costs associated with parenting.
- Information from Pennsylvania is included because it is a neighboring state as well as a large state. (Pennsylvania ranks 6<sup>th</sup> in population size.) Pennsylvania collected its case file data from its guidelines calculator that is part of its automated system. It is used by court staff to calculate the order during a settlement conference between the parties and to prepare the case for court if there is no settlement. The last review was completed in 2016.<sup>109</sup> It found a guidelines deviation rate of 25 percent among newly established orders and a guidelines deviation rate of 22 percent among modified orders. Most Pennsylvania deviations were downward (89%). Agreement between the parties was the most frequently named deviation reason.

#### 4.5 CONCLUSIONS AND RECOMMENDED NEXT STEPS

This Chapter fulfills the federal requirement for an analysis of guidelines deviations. It finds that the guidelines deviation rate is 22 percent in New York. This is within the same range of deviation rates

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<sup>106</sup> Venohr, Jane and Everett, Carly. (2010). *Review of the Illinois Child Support Guidelines*. Report to the Illinois Child Support Commission, Chicago. IL.

<sup>107</sup> Hall, Lauren, Natalie Demyan, and Letitia Logan Passarella. (Nov. 2016). *Maryland Child Support Guidelines: 2011 – 2014 Case-Level Review*. University of Maryland School of Social Work, Baltimore, MD. Retrieved from <http://www.familywelfare.umaryland.edu/reports1/guidelines2016.pdf>.

<sup>108</sup> Ohio Department of Job and Family Services. (2017). *2017 Child Support Guidelines Review: Report to the General Assembly*. Retrieved from <http://jfs.ohio.gov/Ocs/pdf/2017CSGuidelinesRev.stm>.

<sup>109</sup> Venohr, Jane. (2016). *2015–2016 Pennsylvania Child Support Guidelines Review: Economic Review and Analysis of Case File Data*. Report to the Pennsylvania Department of Human Services. Harrisburg, PA. Retrieved from <http://www.pacourts.us/assets/uploads/Resources/Documents/2015%202016%20Pennsylvania%20Child%20Support%20Guidelines%20Review%20Economic%20Review%20and%20Analysis%20of%20Case%20File%20Data%20-%20005119.pdf?cb=b3603>

found in many states. The caveat to the finding is that it does not include an analysis of child support orders of cases that are not part of a government child support agency caseload, and deviations tend to be more frequent among non-government agency cases. (Several other states in addition to New York face this limitation.)

Obtaining the information from cases that are not part of a government agency caseload can be costly and time consuming because it typically requires manual extraction of information from court records. States where courts use electronic data imaging (*e.g.*, Arizona) can obtain the case file data more efficiently. If New York courts begin using electronic data imaging, it is recommended that New York explore whether case file data for the guidelines review can be captured from electronic court files, particularly among Supreme Court cases, which are under-represented in the current approach. If not, New York should explore other avenues for capturing case file data to analyze guidelines deviations and the application of the guidelines that is representative of the state (including both Supreme Court and Family Court cases). The methodology should also be efficient and sustainable. One avenue that could be explored is collecting the data from automated child support worksheets or calculators. A first step toward this would be identifying whether any courts or practitioners are currently using an automated calculator. If so, a second step would be identifying whether the calculator is used to determine the final order, what population is being served and how representative is that population of the state, whether information from the calculator can be saved, and whether information about deviations is entered and saved.

New York should also continue to use its DCSS automated system as a data source for child support orders established by government child support offices. Extraction of data from the DCSS automated system requires less effort and resources than obtaining data from other sources. The DCSS automated system is also the source of payment information. The new federal rule pertaining to a state's guidelines requires the analysis of payment data. If feasible given time and staff resources and competing priorities for the requisite staff resources, the data field "Deviation Reason Indicator" should also be extracted and used in the analysis. This would allow analysis of the reasons for the guidelines deviation. Another possible improvement is to review the extent that workers obtain the follow-up information from the court on whether there was a guidelines deviation and explore other barriers that may impede how often deviations are actually recorded on the DCSS automated system. If a significant issue or barrier is identified, possible solutions to it should also be identified (*e.g.*, improve the process for transferring guidelines deviation information from the court to the local district through training or a memorandum to remind local districts and the courts of the importance of obtaining accurate guidelines deviation information and accurately populating the data fields on the DCSS automated system).

# CHAPTER 5: OTHER FINDINGS FROM ANALYSIS OF CASE FILE DATA

## 5.1 INTRODUCTION

This Chapter summarizes the characteristics of child support cases, orders, and the parties from a random sample of New York child support cases. The same random sample to measure the child support guidelines deviation rate in New York is analyzed for this Chapter. This and the other briefing fulfill a federal requirement to analyze case data on the application of and deviations from the child support guidelines as part of the federal requirement to review a state's guidelines at least once every four years.

## 5.2 DATA

The data used for the analysis is a random sample of 9,000 cases tracked on the Division of Child Support Services (DCSS) automated system administered and managed by the New York State Office of Temporary and Disability Assistance (OTDA). The sample includes cases in which an order was established in calendar year 2015. In all, 45,311 cases tracked in the DCSS automated system (here after referred to as DCSS cases) had an order established in calendar year 2015. Cases with newly established orders were selected to determine the frequency of deviations from the guidelines since the guidelines would be applied during establishment.

The random sample is limited to DCSS cases and does not include non-DCSS cases. DCSS cases are more likely to involve current and former Temporary Assistance for Needy Families (TANF) cases or Medical Assistance (MA) cases than non-DCSS cases although parents with no public assistance history may apply for government child support services regardless if the parents are unmarried, divorced, separated or married but living apart.<sup>110</sup> Data are limited to what is recorded on the DCSS automated system and by what data fields are used and populated by staff posting information on DCSS automated system and what information is received from interfaces with automated court information. Child support staff throughout the nation tend to populate data fields critical to the process and subject to federal audits more so than data fields that are not.

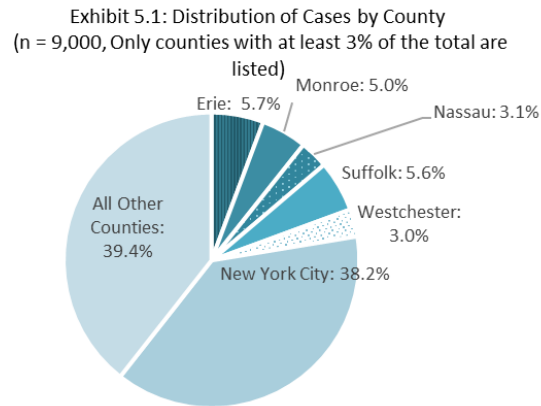
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<sup>110</sup> An annual service fee of \$25 per year may be assessed if the applicant has never received TANF benefits and has a case with more than \$500 in support collected during the federal fiscal year.



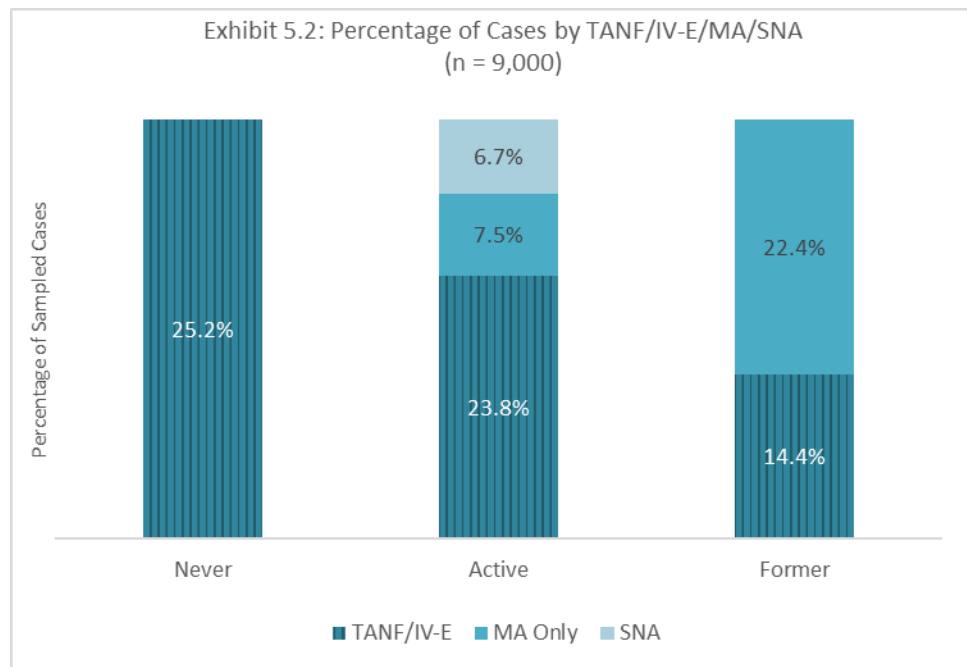
### 5.3 CHARACTERISTICS OF CASES

There is limited information about the case available on the DCSS automated system that is of interest to the guidelines calculation. Most (89.7%) of the cases involved a client and respondent in the same local court jurisdiction. Exhibit 5.1 shows the distribution of cases by county. Only those counties with at least 3 percent of the caseload are named in Exhibit 5.1. New York City has the largest share of DCSS cases (38.2%). Other counties with at least 3 percent of the caseload are Erie (5.7%), Monroe (5.0%), Nassau (3.1%), Suffolk (5.6%) and Westchester (3.0%).



Most cases appeared to be Family Court cases. A Supreme Court indicator on the DCSS automated system, which is a field that does not require population, was populated for only 10 percent of the cases. The field is often left blank if it is a Family Court case. Assuming that blanks are indeed Family Court cases, 90 percent of the cases are Family Court cases.

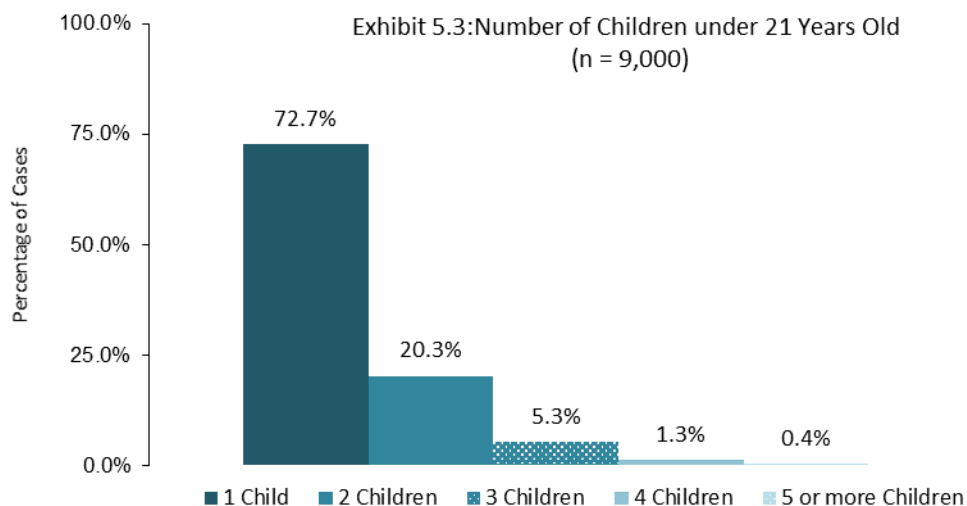
A public assistance code noting active or former receipt of Temporary Assistance to Needy Families (TANF), Safety Net Assistance (SNA), active or former Medical Assistance (MA) enrollment, or Foster Care (noted as IV-E for Title IV-E of the Social Security Act) was populated for 74.8 percent of the cases. Exhibit 5.2



shows the frequency of cases by never, active, and former. It shows that 25.2 percent of the cases were never TANF/IV-E; 38.0 percent of the cases are active TANF/IV-E, MA, or SNA; and 36.8 percent are former TANF/IV-E or MA.

A family violence indicator (FVI) was checked in 2.8 percent of the cases. The indicator notes the status of reporting the FVI to the Federal Case Registry (FCR). Once reported to the FCR, the FVI prevents information about the case from being released from the Federal Parent Locator Service (FPLS). Data were also collected about whether a party with a child support case threatened a case worker. A threat to the worker was noted in less than 1 percent of the cases.

One of the core factors in the child support calculation is the number of children. Exhibit 5.3 shows the frequency of number of children under 21 as of December 2015. It shows that the vast majority (72.7%) of orders are for one child. The average number of children per order is 1.4. This does not reflect the total number of children that a parent has. A parent may have children with more than one partner.



## 5.4 CHARACTERISTICS OF THE PARTIES

Exhibit 5.4 shows that client-respondent's relationship was either never married (43.1% of the cases) or not recorded (35.1% of the cases) for the majority of cases. "Other" (which is 4.4% of the cases) often refers to relative care (*e.g.*, the grandparent is the client and the mother is the respondent).

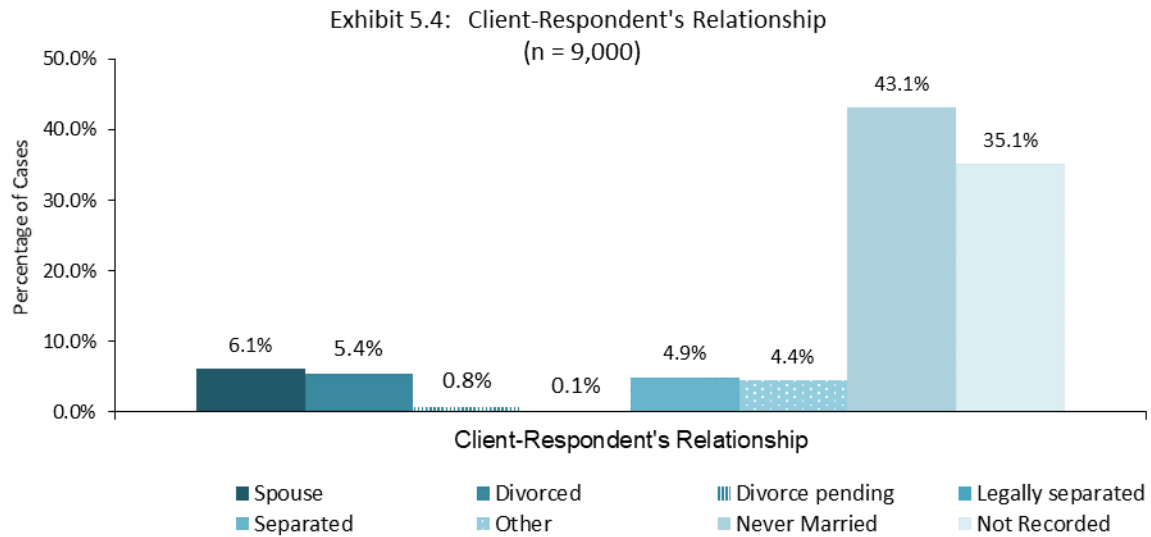


Exhibit 5.5 shows the genders of the respondent (*i.e.*, obligated parent) and client (*i.e.*, parent receiving support) by the client-respondent's relationship. Regardless of the client-respondent relationship, the circumstance among the majority of cases is that the respondent is male and the client is female. The reverse (*i.e.*, the obligated parent is female and the client is male) is more likely to be the circumstance when the client-respondent's relationship is "spouse" or "divorced." "Parties of the same gender" is most common when the relationship is categorized as "other" on the DCSS automated system. As noted earlier, "other" often refers to relative care cases (*e.g.*, the mother is the respondent and a grandmother is the client).

Exhibit 5.5: Gender of Each Party by Client-Respondent's Relationship (Percentage of Cases)				
Client-Respondent Relationship	Respondent is male, client is female	Respondent is female, client is male	Gender of at least one parent is not recorded	Parties are of the same gender
Spouse	86.1%	11.5%	1.3%	1.1%
Divorced	86.0%	12.3%	0.8%	0.8%
Divorced pending	90.0%	8.6%	1.4%	0.0%
Legally separated	81.8%	18.2%	0.0%	0.0%
Separated	88.9%	8.6%	0.7%	1.8%
Other	50.3%	9.8%	3.3%	36.8%
Never Married	81.1%	7.5%	1.4%	10.1%
Not Recorded	71.9%	7.4%	9.8%	10.8%
All Cases	77.5%	8.1%	4.4%	10.0%

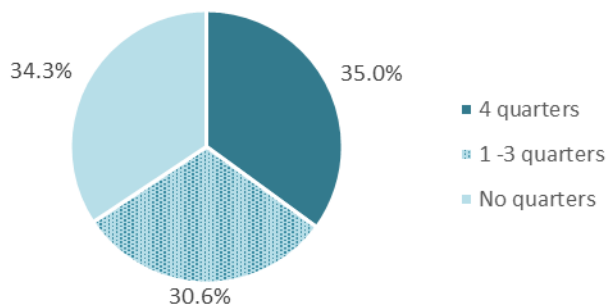
### 5.4.1 SPECIFIC CHARACTERISTICS OF OBLIGATED PARENTS

A small percentage (6.6%) of obligated parents received public assistance or public benefit (*i.e.*, TANF, MA, SNA, Emergency Assistance (EA), Family Health Plus, SNAP, or HEAP). A notable share (18.7%) of obligated parents are receiving some sort of benefit managed by the Social Security Administration (*e.g.*, social security due to retirement or disability), but the exact benefit is not known. Self-employment was noted for just 1 percent of obligated parents.

The obligated parent's income is a major component of the guidelines calculation. The obligated parent's income information from calendar year 2015 was obtained from quarterly wage data. Exhibit 5.6 shows the frequency that quarterly wage data was available. About one-third (34.3%) of obligated parents had no quarterly wage data, about another third (35.0%) had four quarters of quarterly wage data available, and still about another third (30.6%) had quarterly wage data available for one to three quarters.

Besides quarterly wage data, there are other sources or indicators of income that can be used for the guidelines calculation. For example, the parent may provide income evidence such as tax returns or paystubs, or income information may have been obtained from

Exhibit 5.6: Distribution of Cases by Number of Quarters of Income Information Available in 2015 for the Obligated Parent (n = 9,000)



the parent's employer. Still, an ongoing challenge is what to do if income evidence is not available, limited, or indicates an inconsistent amount. One suggestion is to use alternative sources even if they are just an indicator of whether the obligated parent has very low income.<sup>111</sup> For example, if the obligated parent is receiving SNAP, this is an indicator of low income. Similarly, if the obligated parent applied for a SSA benefit, could also serve as a lead. Based on the statistics gathered by the sample of DCSS cases, these alternative sources could be informative.

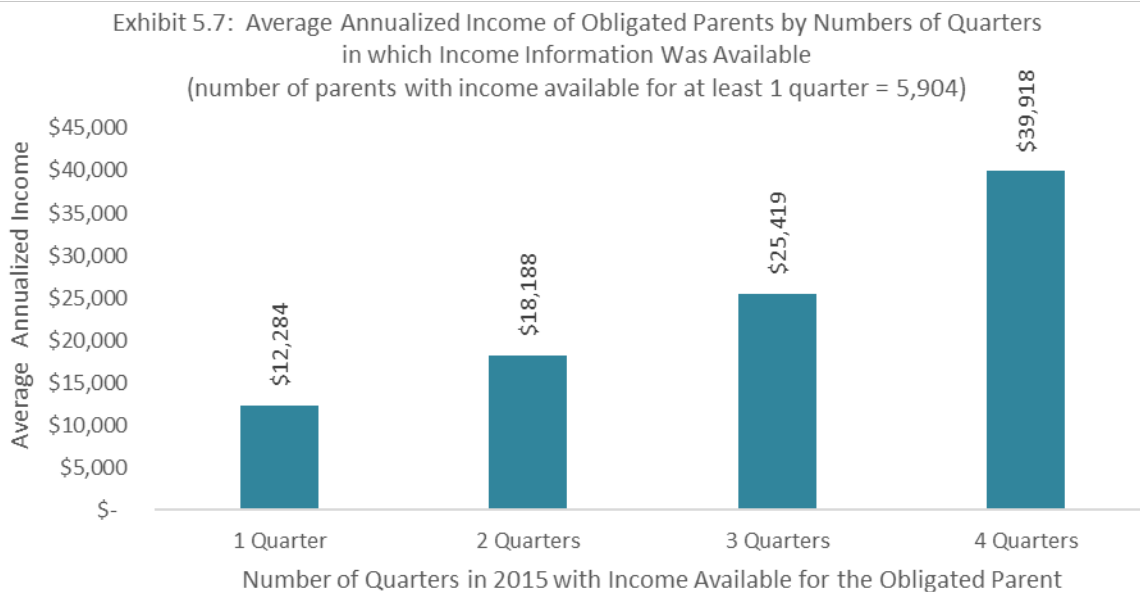
- One-third of obligated parents with no quarterly wage data or only one quarter of wage data during the entire year of 2015 were receiving public assistance (*i.e.*, TANF, MA, SNA, EA, Family Health Plus, SNAP, or HEAP). One third of the same subset of obligated parents were receiving or applying for a SSA benefit. The percentage with either (*i.e.*, received public assistance or were receiving or applying for SSA benefit) was 52 percent. In other words, alternative sources that offer some

<sup>111</sup> See Elaine Sorensen. (May 8, 2015). *Things to Consider when Moving Away from Income Imputation. Presentation to the National Council of Child Support Directors.* Seattle, WA.

indication of the obligated parent's income are available for just half of the cases in which there is no or one quarter of wage data.

- About one quarter of obligated parents with only two or three quarters of wage data during the entire year of 2015 were receiving public assistance (*i.e.*, TANF, MA, SNA, EA, Family Health Plus, SNAP, or HEAP). One quarter of the same subset of obligated parents were receiving or applying for a SSA benefit. The percentage with either (*i.e.*, received public assistance *or* were receiving or applying for SSA benefit) was 28 percent.

Exhibit 5.7 compares the income levels by the number of quarters of income information available. For comparison purposes, the income information is annualized (*i.e.*, the average quarter amount is multiplied by four, the median quarter amount is multiplied by four, and so forth).



To illustrate the inconsistency of income from quarter to quarter, the average quarterly income in each quarter among obligated parents with four quarters of information is shown in Exhibit 5.8.

Exhibit 5.8: Average Income in Each Quarter among Obligated Parents with 4 Quarters of Income Information  
(number of parents with income available for 4 quarters = 3,154)

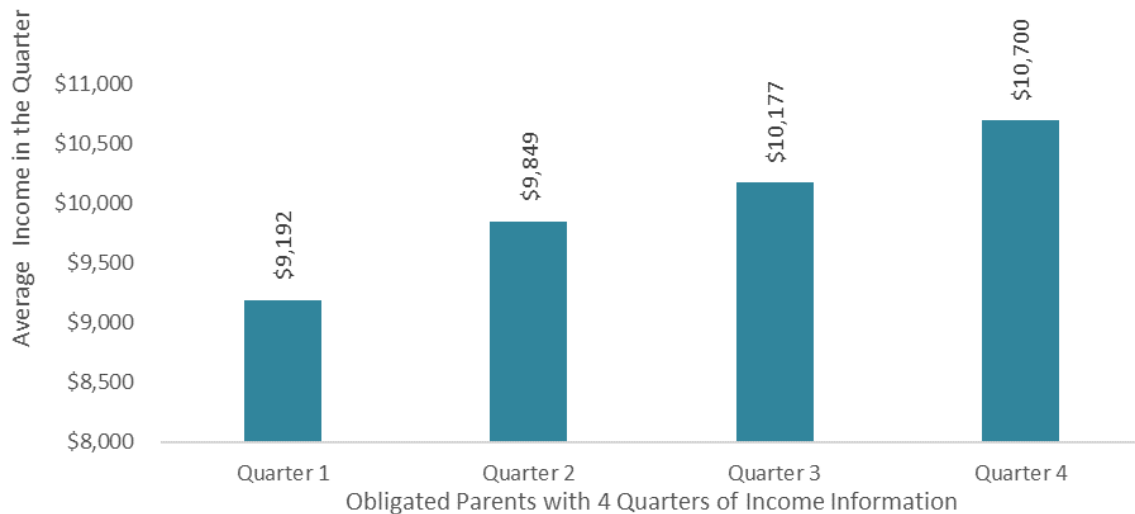


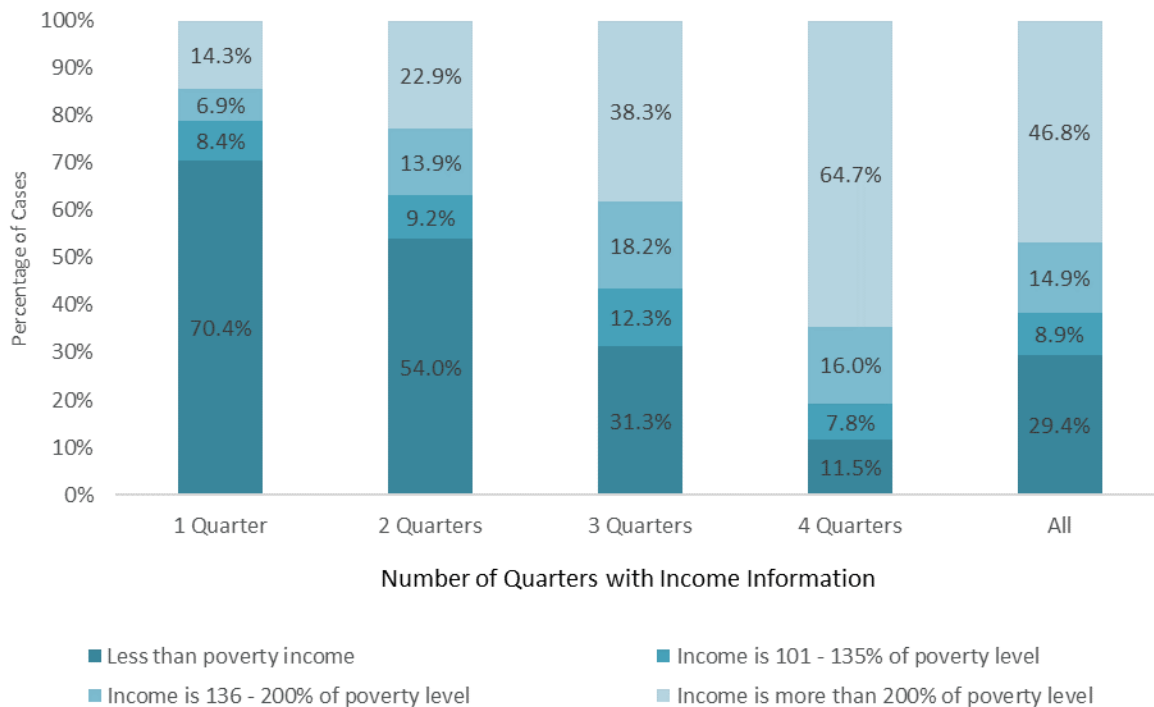
Exhibit 5.9 compares available income of the obligated parent to the 2015 federal poverty level (FPL) for one person, which was \$11,770 per year. (The 2017 FPL is \$12,060 per year.) The 2015 FPL is relevant because it would have been considered in the application of the low-income adjustment as provided for in New York Family Court Act § 413(1)(d). The test essentially allows a self-support reserve for low-income obligated parents so they have sufficient income after payment of child support to live at least at a subsistence level. The adjustment is essentially a three-step test with three possible outcomes: a \$25-per-month order, a \$50-per-month order, or an order based on the difference between the obligated parent's income and the self-support reserve (which is 135% of the FPL).<sup>112</sup>

Exhibit 5.9 shows that for all obligated parents with quarterly wage data greater than zero, 29.4 percent had incomes less than the 2015 FPL, 8.9 percent had incomes greater than the 2015 FPL but less than the 2015 self-support reserve, 14.9 percent had incomes just above the 2015 self-support reserve but less than 200 percent of the 2015 FPL, and 46.8 percent had incomes more than 200 percent of the 2015 FPL. In all, this suggests that many obligated parents are likely to live in poverty or have low incomes. As a comparison, only 14.0 percent of New York males lived in poverty in 2015.<sup>113</sup>

<sup>112</sup> The adjustment is also rebuttable. Case law (the New York Court of Appeals' 1993 holding in *Rose v. Moody*) creates another possible outcome: a court can order a support award of zero dollars, or some other amount less than \$25 per month, "when impoverished circumstances so dictate."

<sup>113</sup> U.S. Census American Community Survey. Retrieved from [www.census.gov](http://www.census.gov).

Exhibit 5.9: Obligated Parent's Income Relative to the Federal Poverty Level  
(number of parents with income available for at least 1 quarter = 5,904)



#### 5.4.2 SPECIFIC CHARACTERISTICS OF CUSTODIAL PARENTS

The DCSS automated system contains a limited amount of information about the custodial parent that may be of interest to the guidelines calculation. For example, it contains information about the public assistance status of the custodial parent, but it does not contain information about the income of the custodial parent,<sup>114</sup> which is directly relevant to the guidelines calculation. Some custodial parents (19.7%) received public assistance (*i.e.*, TANF, MA, SNA, or EA).<sup>115</sup>

A notable share of custodial parents had additional children besides the children for whom support was being determined (15.7%). Among those with additional children, 43.7 percent had more than one additional dependent (*e.g.*, they had one child for whom support was being determined and then two other children, so a total of three children). Many custodial parents with additional children received public assistance.

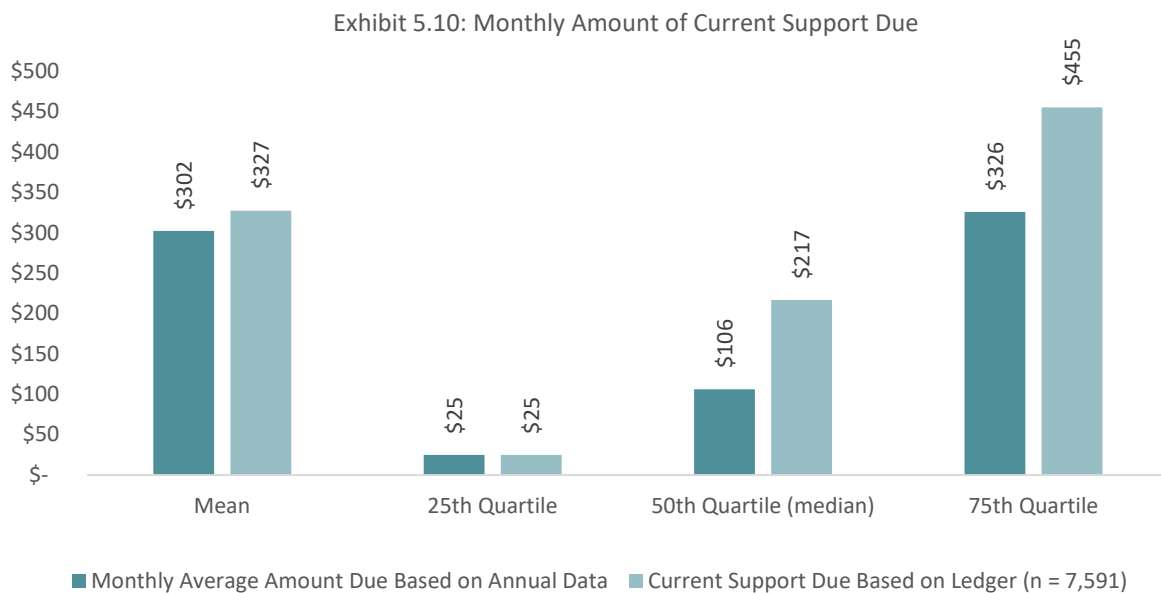
<sup>114</sup>The system is designed to collect more information through data entry or through an interface with the court system, but the population of those data fields is not required at the current time.

<sup>115</sup> This is based on the client's IV-A case type and status.

## 5.5 CHARACTERISTICS OF ORDERS

The monthly amount due for current support was calculated two ways: from the ledger and the annual amount due. The ledger amount should be more accurate unless \$0 orders are not noted on the ledger. The annual data are simply divided by 12 to arrive at a monthly amount. This does not account for any modifications or changes to the order amount within the year. The annual data indicated that 717 cases had no current support due in 2015. A current support order was detected from the ledgers for 7,591 of the 9,000 cases.<sup>116</sup> There may have been an order for childcare or arrears or another obligation for the remaining 1,409 orders.

Exhibit 5.10 explores whether the two methods for calculating monthly amount due for current support in this study produce different results. It shows little difference in the mean (*i.e.*, \$302 per month based on the annual amount due and \$327 based on the ledger) but the median and 75th quartile amounts are significantly different. If many of those 1,409 orders based on the ledger are indeed \$0 orders, however, the amounts would be closer. The inclusion of \$0 orders would drag the median and 75th quartile amounts down.



Another way that orders are being examined across the nation is as a percentage of the obligated parent's gross income. This is done because of the evidence-based research supporting the Federal Office of Child Support Enforcement (OCSE) rule changes that essentially require state child support guidelines to include a self-support reserve and limit the use of imputed income.<sup>117</sup> The underlying

<sup>116</sup>The extract included information from up to seven ledgers per case. (Not all cases had seven ledgers populated.) Each ledger could include current support or arrears on an obligation. In addition to child support, the obligation could have been to medical assistance, training schools, and about 10 other options. The ledger had to indicate current child support to be categorized as having a current support order in the analysis.

<sup>117</sup> The justification is documented in the proposed rules. Department of Health and Human Services. (Nov. 17, 2014). "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs." *Federal Register*, vol. 79, No. 221, p. 68580.



research finds that payment rates sharply decline when the order exceeds 20 percent of the gross income of the obligated parent for one child and 28 percent of the gross income of the obligated parent for two or more children.<sup>118</sup> Among those in the New York sample with quarterly wage data available, the majority (62.1%) have order amounts that are less than 20 percent of the obligated parent's gross income. Among orders for one child, 67 percent are less than 20 percent of the obligated parent's gross income. Among orders for two or more children, 69.8 percent are less than 28 percent of the obligated parent's gross income.

Exhibit 5.10 also shows at the 25th percentile the amount due was \$25 per month. This is the guidelines amount for incomes below the poverty level. In all, 7.3 percent of sampled cases had \$25 orders and another 6.5 percent of sampled cases had \$50 orders.

## 5.6 ANALYSIS OF PAYMENT PATTERNS

Exhibit 5.11 explores whether there is a correlation between the order amount for current support as a percentage of the obligated parent's gross income (PI) and compliance rates.<sup>119</sup> It shows that the average PI is nearly 100 percent for incomes below poverty, 17 percent for the next income bracket, and 14 percent for the highest income brackets. The decrease in the average PI from 17 percent to 13 percent suggests that other factors are in play in the guidelines calculation besides the percentage guidelines (*e.g.*, 17 percent for one child and 25 percent for two children). Among other things, the other factors could be adjustments to income including FICA and New York City Tax or City of Yonkers tax, adjustments for the self-support reserve, or adjustment because the obligated parent is paying for the child's health insurance premium.

Exhibit 5.11 also shows that the compliance rates are the lowest for those without quarterly wage data, and the second lowest for those with income information indicating that their income is less than the poverty level, and the highest for those with income more than 200 percent of the poverty level. The average dollar amount paid is also more at higher income ranges than lower income ranges. This suggests that income is a significant factor in explaining compliance rates with court order.

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Retrieved from <http://www.acf.hhs.gov/programs/css/resource/nprm-flexibility-efficiency-and-modernization-in-child-support-enforcement-programs>.

<sup>118</sup>For example, see Takayesu, Mark, A "Guideline" to Improving Collections, Presentation to the National Child Support Enforcement Association Policy Briefing on February 10, 2012, Washington, D.C.

<sup>119</sup> Quarterly wage data is used for the parent's gross income. The compliance rate is the ratio of the current amount paid to current amount due as recorded by the Support Collection Unit (SCU).

Exhibit 5.11: Payment and Current Support Due by Income					
Income Range <sup>120</sup>	Monthly Amount of Current Support Due (Average) <sup>121</sup>	Average Annual Income	Current Support as a Percentage of Income (Average)	Average Amount Paid (CY 2016)	Average Compliance Rate (CY 2016)
No quarterly wage data (n = 3,096)	\$233	Missing	missing	\$3,150	36.6%
Less than Poverty Income (n = 1,926)	\$178	\$3,514	97.5%	\$456	33.5%
Income Is 100% to 135% of Poverty (n = 471)	\$203	\$9,762	17.0%	\$748	51.7%
Income Is 136 to 200% of Poverty (n = 863)	\$226	\$13,165	13.0%	\$1,124	63.0%
Income is More than 200% of Poverty (n = 2,644)	\$569	\$37,959	13.0%	\$3,843	75.6%
All Cases with Income Information (n = 9,000)	\$327	\$13,882	39.1%	\$1,625	51.6%

<sup>120</sup> Incomes are annualized based on quarterly wage data available (e.g., if one quarter of information, the information is multiplied by four).

<sup>121</sup> Retrieved from ledger.

# CHAPTER 6: CONCLUSIONS AND RECOMMENDATIONS

This report documents that New York has fulfilled federal requirements currently in effect to review its guidelines by considering economic evidence on the cost of raising children and analyzing case data on the application of, and deviations from, the guidelines.<sup>122</sup> In addition, this report assesses whether the current New York guidelines can adequately meet expanded federal requirements of state guidelines that will become effective beginning one year after completion of the state's next quadrennial review of its child support guidelines commencing after December, 2017.

The major findings are that the New York guidelines are generally adequate and deviations from the guidelines have remained consistent with the rate of deviations found in the last quadrennial review for the cases receiving child support services. More detail about these and other findings are discussed below.

## 6.1: MAJOR CONCLUSIONS

Major conclusions from each chapter are summarized below.

### 6.1.1: Summary of Findings from Chapter 2 on the Basis of New York Guidelines

- *The format of the New York guidelines is unique compared to guidelines in other states.* Base support under the New York guidelines can generally be determined using only the obligated parent's income, albeit the New York guidelines provide that the custodial parent's income is also considered when determining the support amount for a child care order or to adjust for or consider special factors such as the child's health care expense or high-income cases. In contrast, 40 states (including all states surrounding New York) are based on the income shares model that requires information about each parent's income to calculate base support.
- *The income base of the New York guidelines is not used by any other state in its guidelines.* Most other states rely on the gross income or after-tax income of one or both parents. New York's guidelines income base is a compromise between gross and after-tax income. It excludes FICA and New York City and Yonkers income taxes from guidelines income, however it does not exclude federal and state income tax.
- *The New York guidelines percentages relate to a 1981 study of child-rearing expenditures.* Three other states (*i.e.*, California, Nevada, and Wisconsin) relate their guidelines percentages to the 1981 study. The New York guidelines percentages were adjusted from the study to consider the potential additional earning capacity of the custodial parent, the obligated parent's visitation expenses, and what an obligated parent could reasonably pay, but still be fair and adequate.

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<sup>122</sup> 45 CFR § 302.56.

- *Most other states relate their guidelines to older studies of child-rearing expenditures.* There are nine studies of child-rearing expenditures that underlie state child support guidelines. They vary in the age of the expenditures data that were used and the methodology used to isolate child-rearing expenditures from total household expenditures. Over 30 states (including New York) base their guidelines on a study that is over a decade old.
- *Comparisons between the New York guidelines percentages and current economic data on child-rearing expenditures suggest that the New York percentages should be increased at low to middle incomes (i.e., incomes below \$5,000 gross per month) and decreased at high incomes (i.e., incomes above about \$9,000 gross per month).*<sup>123</sup> This is based on comparisons to three studies of child-rearing expenditures: the most current Betson-Rothbarth (BR) measurements available,<sup>124</sup> the most current USDA study,<sup>125</sup> and the New Jersey/Rothbarth (NJR) measurements.<sup>126</sup> The three studies vary in the years of the expenditures data considered and the methodology used to separate the child's share of expenditures from total household expenditures. Most states rely on BR measurements as the basis of their guidelines, although the Rothbarth methodology is believed to understate actual child-rearing expenditures. This is true of both the BR and NJR measurements since they both rely on the Rothbarth methodology.
- *Most studies of child-rearing expenditures find that the percentage of income devoted to child-rearing expenditures decrease as income increases.* This is the pattern of the BR measurements, the USDA measurements, and NJR measurements. In contrast, the New York guidelines percentages are a constant percentage that do not decrease as income increases. The patterns of the three studies and their differences from the New York guidelines percentages are illustrated in the graphical comparisons in Chapter 2 (i.e., Exhibits 2.11 through 2.15).
- *Most states, like New York, do not provide a presumptive formula for very high incomes.* One reason for this is because the evidence on child-rearing expenditures is limited by the data. There are few families in the data set typically used to measure child-rearing expenditures (i.e., the Consumer Expenditure Survey conducted by the U.S. Bureau of Labor Statistics) to reliably measure child-rearing expenditures among families with extraordinarily high incomes.

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<sup>123</sup> This bullet purposely does not address the application of the New York guidelines percentages to very low incomes because the self-support reserve is likely to apply.

<sup>124</sup> Betson, David M. (2010). "Appendix A: Parental Expenditures on Children." In Judicial Council of California, *Review of Statewide Uniform Child Support Guideline*. San Francisco, California. Retrieved from <http://www.courts.ca.gov/partners/documents/2011SRL6aGuidelineReview.pdf>.

<sup>125</sup> Lino, Mark, et al. (2017). *Expenditures on Children by Families: 2015 Annual Report*. U.S. Department of Agriculture, Center for Nutrition and Policy Promotion. Miscellaneous Publication No. 1528-2015, Washington, D.C. Available at <http://www.cnpp.usda.gov/publications/crc/crc2015.pdf>.

<sup>126</sup> New Jersey Child Support Institute (March 2013). *Quadrennial Review: Final Report*, Institute for Families, Rutgers, the State University of New Jersey, New Brunswick, NJ. Retrieved from [http://www.judiciary.state.nj.us/reports2013/F0\\_NJ+QuadrennialReview-Final\\_3.22.13\\_complete.pdf](http://www.judiciary.state.nj.us/reports2013/F0_NJ+QuadrennialReview-Final_3.22.13_complete.pdf).

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### 6.1.2: Summary of Findings from Chapter 3 on the Analysis of Other Factors

- *The New York Guidelines provisions for child care, medical child support, and low-income obligated parents are adequate.* The adequacy was assessed by considering relevant economic data, and whether New York's current provision would meet future federal requirements, then compared to how the factor is addressed in other states. Specifically, New York's current provision for low-income obligated parents (which includes a self-support reserve) fulfills the new federal requirement to consider the subsistence needs of the obligated parent.
- *The New York Guidelines provisions for educational expenses and shared-parenting time could benefit from greater clarification.* The existing educational provision does not separate out the types of educational expenses, and the appropriate treatment may vary by the type of educational expenses. For example, post-secondary educational expenses may depend on whether the child has the aptitude for college and this is different from a child who has not finished high school and is in need of special education.

New York, unlike most states, does not provide a presumptive formula for shared-parenting time. An adjustment is appropriate when the child is in the care of the obligated parent for a significant amount of time.

- *The current definition of income under the New York Guidelines is generally adequate, but the provisions for income imputation will require changes to conform to the new federal rules.* The new federal regulation requires several considerations in the imputation of income. Although these considerations are generally consistent with New York case law, they are not explicit in the current guidelines.

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### 6.1.3: Summary of Findings from Chapter 4 on the Analysis of Guidelines Deviations

- *A random sample of New York cases was analyzed.* The random sample consisted of 9,000 cases in which a child support order was established in calendar year 2015. The Division of Child Support Services within the New York State Office of Temporary and Disability Assistance extracted the case file data from the automated system that it maintains on behalf of the local districts. The data included data fields indicating deviations from the guidelines. The limitation of the data is that it is not representative of all child support orders within the State.
- *Based on the analysis of the random sample of 2015 New York orders, the guidelines deviation rate is 22 percent.* The analysis did not reveal any significant differences in deviation rates among sub-populations or differences in characteristics among cases with and without deviations. Although the 2010 review found a deviation rate of 23 percent statewide (20% in Family Court and 41% Supreme Court cases sampled), due to differences in sampling methods between the two studies, they should not be compared.

- *New York's guidelines deviation rate is within range of those of large and neighboring states.* Most of the other states for which guidelines deviation rate information was available had guidelines deviation rates in the 20 percent range.

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#### *6.1.4: Summary of Findings from Chapter 5 on the Analysis of Case File Data*

- *New York City has a large share of cases.* Over a third (38.2%) of the cases analyzed for this study are from New York City.
- *Most of the cases are active or former TANF/IV-E, MA or SNA.* Over a third (38.0%) are active TANF/IV-E/MA or SNA. Over another third (36.8%) are former TANF/IV-E or MA. About a quarter (25.2%) were never TANF/IV-E).
- *Most orders are for one or two children.* The majority (73.7%) of the cases analyzed for this study include orders for one child. Orders for two children comprise 20.4 percent of the cases analyzed for this study.
- *A significant share of clients and respondents were never-married.* Almost half (43.1%) were noted as never married. Almost one-third (35.1%) had no information recorded on the client and respondent's relationship.
- *In most cases, the respondent was male and the client was female.* Consequently, the obligated parent is typically male.
- *Availability of quarterly wage data was limited.* About one-third (35%) of obligated parents had quarterly wage data available for all four quarters over a one-year period. A significant share of obligated parents with no or limited quarterly wage data were receiving public assistance or a public benefit (*i.e.*, TANF, MA, SNA, EA, Family Health Plus, SNAP, or HEAP) sometime in the same year.
- *Average annualized income of obligated parents is between \$12,284 to \$39,918 per year.* The lowest average is the annualized amount based on those with only one quarter of data and the highest average is the annualized amount based on those with four quarters of data.
- *Almost a third of obligated parents (with available income information) had poverty incomes.* Their incomes were less than the federal poverty guidelines for one person among 29.4 percent of the obligated parents with at least one quarter of income information.
- *The median order amount is just over \$300 per month.* A quarter of cases had an order of \$25 per month or less. This is a minimum-order amount although an order amount less than \$25 per month can be entered.

- *Compliance rates are higher among obligated parents with higher incomes.* For example, obligated parents whose total quarterly wage data from 2015 was less than the 2015 federal poverty guideline for one person had an average compliance rate of 33.5 percent while those whose total quarterly wage data from 2015 was more than 200 percent of the 2015 federal poverty guideline for one person had an average compliance rate of 75.6 percent.
- *On average, current support as a percentage of the obligated parent's gross income is less than 20 percent of their total quarterly wage data from 2015.* This is true for all income levels except those with incomes less than poverty. The 20-percent threshold is pivotal because research studies find that payments decrease when support is 20 percent or more of the obligated parent's income.

## 6.2 RECOMMENDATIONS

- *Extend the guidelines percentages to higher income, but provide lower percentages.* Extending the guidelines percentages to higher incomes would cover more families. The percentages at higher incomes also should be reduced to account for reduction in after-tax income available for child support, and economic evidence that shows a smaller percentage of income is devoted to child-rearing expenditures as income increases. The economic evidence consists of recent studies of child-rearing expenditures that are discussed in Chapter 2. Further, the finding from these studies that a smaller percentage of income is devoted to child-rearing expenditures as income increases are shown and compared to the New York percentages in Exhibits 2.11 through 2.15.
- *Provide more specificity in the treatment of child care expenses.* Providing a definition of what is a reasonable cost of child care (such as the findings on market rates required for child care subsidy programs) and for how child care subsidies and the federal child care tax credit should be treated would provide greater consistency and predictability among cases with child care expenses.
- *Identify the types of educational expenses and how each type should be treated.* Separating out the types of educational expenses (*i.e.*, private, post-secondary, special and enhanced) and providing how each of these expenses should be treated and allocated between the parents could provide greater consistency and predictability of the treatment of a particular education expense.
- *Define public health care coverage as health care coverage within the guidelines.* This ensures consistency with other federal medical support enforcement requirements (§ 303.31(a)(2)).
- *Adopt a presumptive formula for shared-parenting time.* Many obligated parents are involved with their children. A formula with criteria for its application (*e.g.*, say a timesharing threshold exceeding 30% and an order for shared custody or agreement between the parties) would provide consistent and predictable order amounts in shared-parenting situations.

- *Modify the income imputations provisions to conform to the new federal requirements.* This could be accomplished by codifying New York case law on income imputation that is generally consistent with the new federal requirements and making appropriate supplements or simply adopting the federal language as a few states (*i.e.*, Massachusetts and Rhode Island) have already done. The new federal requirement addressing income imputation among incarcerated parents should also be adopted.
- *Limit income imputation to parents recently released from prisons and provide for the restructuring of their payments.* Oregon and West Virginia provide for this. It recognizes the economic hardship of reintegration of those recently released from prison and alleviates some of the pressure that can contribute to recidivism.
- *For future reviews, collect the random sample of cases from the DCSS automated system but make improvements when possible.* Sampling from the DCSS automated system has several advantages. It is more cost effective and less time consuming than manual extraction from court records. It can include payment information; hence, it would fulfill the new federal rule that requires analysis of payment data.

The sample, however, could be improved. One improvement would be to include the data field “Deviation Reason Indicator” because it enables the analysis of deviations by reason. Another possible improvement is to identify barriers that impede how often deviations are actually recorded on the DCSS automated system and develop strategies to rectify identified barriers. For example, if one barrier is the transfer of guidelines deviation reason from the court to staff entering it on the DCSS automated system, a reminder memorandum emphasizing the importance and use of the data may encourage better transfer of the information. Changes in automation may also provide opportunities for improvement. For example, if guidelines users use an automated calculator, any data stored by the automated calculator may serve as a data source. Still another example is if New York courts begin using electronic data imaging, this may provide an opportunity to sample from more Supreme Court cases, which are under-represented in the DCSS automated system, assuming the electronic data imaging lends itself to sampling.