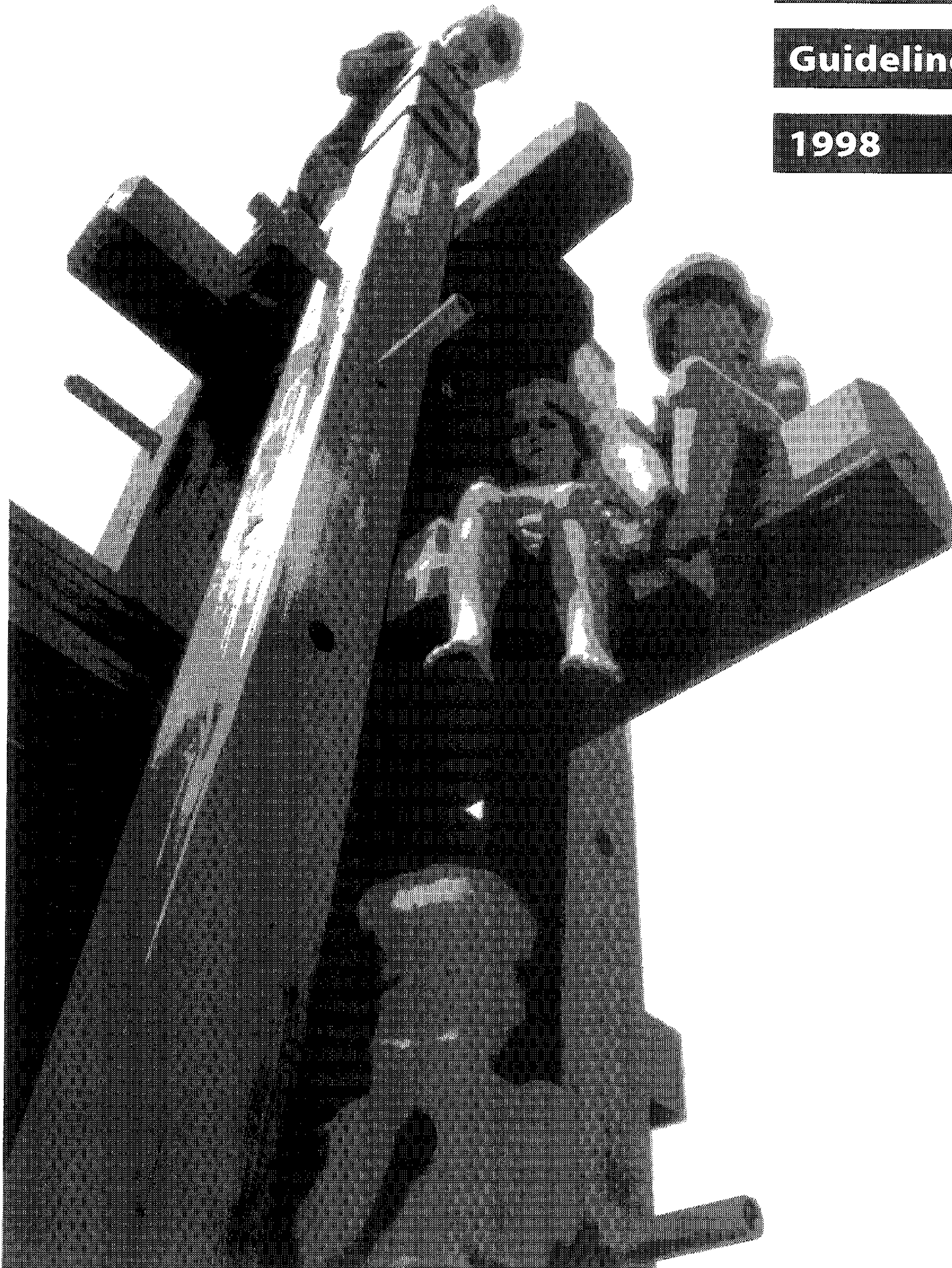
Judicial Council of California

Review of Statewide Uniform Child Support Guideline 1998



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EXECUTIVE SUMMARY

Federal law requires that each state establish a uniform guideline to determine child support orders. The guideline must create a rebuttable presumption that the amount of support calculated under the guideline is the correct amount of support. The guideline must be applied in all cases in which child support is ordered. California has adopted a child support guideline in compliance with federal law. California's guideline is found at Family Code sections 4050–4076.

Federal law also requires that each state review its child support guideline every four years to ensure that application of the guideline results in the determination of appropriate child support awards. In California, the Legislature has directed the Judicial Council to conduct this review.

This report is the second review of California's child support guideline prepared by the Judicial Council. The first report was released in December 1993, shortly after the Legislature had adopted a major portion of the guideline now in effect. Although a limited case study was conducted and presented in the first report, the current guideline had not been in effect long enough for the study to indicate anything more than some preliminary results.

In addition to summarizing a comprehensive study of child support orders that examines how the guideline is being applied by the courts, this report discusses the history of the development of the uniform child support guideline in California, analyzes how the guideline works, and provides a summary of case law that interprets various statutory provisions of the guideline. A section is devoted to reviewing the Judicial Council forms that have been adopted to implement the guideline in the courts. Selected provisions of California's guideline are compared to similar provisions that have been implemented in other states. The various analyses of studies on the cost of raising children are examined, and, finally, recent studies concerning child support guidelines are reviewed.

Description of California's Child Support Guideline

The child support guideline is set out in Family Code section 4055. It provides a formula for determining child support based on the combined net income of the parents and the amount of time each parent has responsibility for taking care of the children. The net income of each parent is determined after taxes, medical insurance, mandatory retirement contributions and other job-related expenses are deducted from gross income. Certain other expenses, such as costs for a parent's other child or children, extraordinary medical expenses, and catastrophic losses,

can be considered as hardship deductions from income in appropriate situations. Once the amount of support is determined under the formula, it is multiplied by a percentage based upon the number of children involved. For example, support for two children is determined by multiplying the amount determined by the guideline formula for one child by a factor of 1.6. If the paying parent has a net income of less than $1,000 per month, the court may, in its discretion, reduce the guideline amount of support under a formula specified by statute.

The amount of support determined under the guideline formula is presumed to be the correct amount of support to be ordered by the court. It is a rebuttable presumption affecting the burden of proof. The presumption may be rebutted only if the court finds by a preponderance of the evidence that the application of the guideline would be unjust and inappropriate in a particular case because one of a list of factors specified in the statute are applicable. See Section 3 of this report for a detailed explanation of the operation of the child support guideline.

Case Study

Section 6 of this report presents the results of a comprehensive study undertaken by the Judicial Council to determine how the California guideline is actually being applied by the courts in individual child support cases. The objective of the study was to determine to what extent courts follow the child support guideline and to identify the number of, and reasons for, court orders that deviate from the guideline.

The study consisted of a sampling of child support orders from support actions filed between July 1, 1995, and June 30, 1996, in 11 California counties. A team of seven attorneys and eight paralegals with experience in family law and child support reviewed and collected data from more than 3,000 court files that contained child support orders. Of the cases reviewed, 2,987 had sufficient information to be included in the case analysis. Cases were selected using a methodology designed to ensure that all child support orders filed in the 11 counties during the period of the study had an equal chance of being included in the study. A complete description of the methodology used in the study is presented in Section 6 and Appendix B to this report.

Results of the Study

The most significant findings from the study include the following:

Most cases follow the child support guideline.

- The results of the study indicate that 90.1 percent of the orders in the cases reviewed followed the child support guideline. In 9.9 percent of the cases, the guideline figure was rebutted. Orders established or modified by the district attorney's office were more likely to follow the guideline than those established or modified in private cases. In district attorney cases 98.2 percent were based on the guideline. In private cases 81.5 percent of the cases conformed to the guideline.

The most common reason for not following the guideline was that the parents agreed not to follow it.

- Of the 297 orders that deviated from the guideline, the majority, 78 percent, were cases in which the rebuttal to the guideline was based on an agreement between the parties. The next largest category, 18.9 percent, comprised cases in which the rebuttal factor was not stated in the court file. In 3 percent, the rebuttal was due to different time-share arrangements for different children subject to the order. Other orders deviating from the guideline were based on rebuttal factors that were found in only one or two cases in the sample.

In cases in which the order was not set at the guideline amount, orders were somewhat more likely to be lower than the guideline amount than higher than the guideline amount.

- In most cases in which the parents agreed to an order that differed from the guideline, the amount that should have been ordered under the guideline was not stated in the court file. However, in the 65 cases in which the parties stipulated to deviate from the guideline where the presumptive guideline amount was stated, 35.4 percent of the deviations were above the guideline amount and 64.6 percent were below the guideline amount.

The income reported for most parents was less than $2,000 per month.

- Although court files often did not record the parties' gross income, the income that was reported was generally quite low. Parents who were reported to have the children with them more than 50 percent of the time for the purposes of calculating child support tended to have a significantly lower income than those who were reported to have their children with them less than 50 percent of the time.

- For those parents for whom timeshare was calculated as 50 percent or more, 70.5 percent had gross monthly incomes less than $1,000 per month, and 16.2 percent had gross incomes between $1,000 and $2,000 per month. For those parents whose time share was calculated at 50 percent or less, 23.9 percent had gross incomes of less than $1,000 per month, and 35 percent had gross incomes between $1,000 and $2,000 per month

If the payor's income was unknown, courts often based an order on that parent's ability to earn the minimum wage.

- In 1,420 cases in the sample, the income of the payor was unknown. In 60 percent of those cases, the court imputed income to a parent and based its order on earning capacity. Income was most often imputed in default cases. Orders established by the district attorney were much more likely to be based on income imputed to the payor than those established in private cases. Income was imputed to the person receiving child support in only 5.1 percent of the cases in which income was imputed.

- The average amount of income imputed to payors was $897 per month. The amount most frequently imputed was $737 per month, which was the approximate amount that a party would make if earning minimum wage during the period of the survey. Minimum wage was imputed in 72.9 percent of all orders in which income was imputed to fathers, and 70.6 percent of all cases in which income was imputed to mothers. The average award based upon this imputed income was $154 per month for one child and $247 per month for two children.

The low-income adjustment, which lowers the amount of support due for payors who earn less than $1,000 per month net income, was granted in approximately 10 percent of the cases examined.

- There were 1,117 payors in the survey whose net income was less than $1,000 per month, and who were thus eligible to utilize the low-income adjustment in the child support formula. Low-income adjustments were granted in 11 percent of the cases that qualified.

In most of the cases examined, the support order was obtained by default.

- More than 50 percent of the orders studied were obtained by default—that is, the person from whom support was requested did not file any court papers. Stipulations account for 39 percent of the matters. Only 9.1 percent were

resolved through contested hearings. Actions in which the district attorney was involved were much more likely to proceed by default than private family law actions. Nearly 75 percent of district attorney cases proceeded by default. Contested hearings were conducted in only 4.3 percent of district attorney cases, and 21 percent were resolved by stipulation. In private cases, 28.1 percent of the cases proceeded by default, 57.7 percent were resolved by stipulation, and 14.2 percent were the result of a contested hearing.

Most support orders covered only one child.

- In 60 percent of the orders studied, only one child was subject to the order. Two children were subject to the order in 28 percent of the cases; three children were covered in 9 percent of the cases. Four or more children were covered in 3 percent of the cases.

Hardship deductions from income were granted in only 7 percent of the cases. The deductions were mostly for children of another relationship.

- Under the child support guideline, if a parent is experiencing extreme financial hardship based on responsibility for expenses for another child, extraordinary medical expenses, or uninsured catastrophic losses, those costs can be deducted from the parent's income in determining support. The study found that hardship deductions were granted in only 6.8 percent of all cases. In 97 percent of those cases in which hardship deductions were granted, the deduction reflected the costs of children of another relationship. A hardship deduction was granted for extraordinary medical expenses in eight cases and for catastrophic losses in only two cases.

Most parents did not have attorneys representing them in their child support cases.

- The study found that a large group of parents are not represented by lawyers in court proceedings regarding child support. Both parties were unrepresented in 63.4 percent of the cases overall. Only one party was represented in 20.7 percent of the cases. Both parties had attorneys in only 15.9 percent of the cases studied.

- There was a significant difference in the level of attorney representation in district attorney cases as compared to private family law cases. In private family law cases, neither parent was represented in nearly 47 percent of the

cases. Only one parent was represented in nearly 24 percent of the cases, and both parents were represented in only 30 percent of the cases.

- In district attorney cases, neither parent was represented by an attorney in 79 percent of the cases. One parent was represented in 18 percent of the cases, and both parents had attorneys in just 2.7 percent of the cases. It should be noted that the district attorney does not represent either parent under Welfare and Institutions Code section 11478.2.

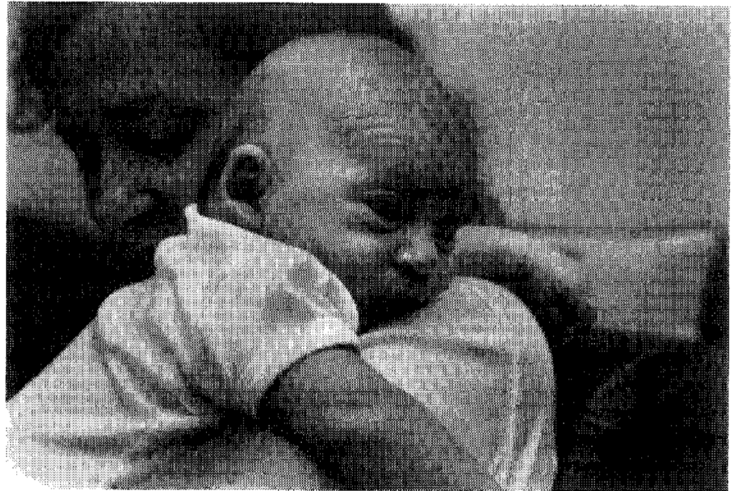
Conclusion

Family Code Section 4054(c) specifies that any recommendations for revisions to the child support guideline made by the Judicial Council ensure: (1) that the guideline result in appropriate support orders; (2) that the number of orders that deviate from the guideline is limited; and (3) that the guideline complies with federal law.

Since California's child support guideline complies with federal law and the study results show that the vast majority of support orders made by the courts are appropriate under the guideline, no recommendations for revisions to the guideline are made.

Although no recommendations are made, a number of issues raised by the study results deserve further investigation. Individuals and organizations are encouraged to review the full report and provide comments to the Judicial Council.

1 Introduction



1.1 Authority for This Report

This report is prepared pursuant to the requirements of Family Code section 4054(a), which provides:

> The Judicial Council shall periodically review the statewide uniform guideline to recommend to the Legislature appropriate revisions.

1.2 Background

Federal law requires states to have a child support enforcement program as one of the conditions for receipt of welfare block grants.[1] The child support enforcement program is known as the Title IV-D program; Title IV-D is the part of the Social Security Act where the child support provisions are found. In California, the Title IV-D program is administered at the state level by the California Department of Social Services and at the local level by the district attorney. The Title IV-D program assists both welfare and non-welfare parents with establishing, modifying, and collecting child support orders.

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[1] 42 U.S.C. section 602(a)(2).

One of the federal requirements concerning child support is that each state establish a uniform state guideline to determine child support orders. The guideline must create a rebuttable presumption that the amount of support calculated under the guideline is correct in any particular case. The guideline must be applied in all cases where child support is ordered, not just Title IV-D cases.

California has adopted a child support guideline in compliance with federal law. California's guideline is found at Family Code sections 4050–4076.

Federal law also requires that child support guidelines be reviewed by the state every four years to "ensure that their application results in the determination of appropriate child support awards."[2] In California, the Legislature has delegated the responsibility for review of the guideline to the Judicial Council.

1.3 Scope of This Report

Family Code section 4054(b) specifies:

> The review shall include economic data on the cost of raising children[3] and analysis of case data gathered through sampling or other methods, on the actual application of the guideline after the guideline's operative date.[4] The review shall also include analysis of guidelines and studies from other states,[5] and other research and studies available to or undertaken by the Judicial Council.[6]

Family Code section 4054(d) provides that the Judicial Council may also review and report on other matters, including but not limited to the following:

1. The treatment of the income of a subsequent spouse or nonmarital partner;
2. The treatment of children from prior or subsequent relationships;
3. The application of the guideline in a case where a payor parent has extraordinarily low or extraordinarily high income, or where each parent has primary physical custody of one or more of the children of the marriage;
4. The benefits and limitations of a uniform statewide spousal support guideline and the interrelationship of that guideline with the state child support guideline;
5. Whether the use of gross or net income in the guideline is preferable;
6. Whether the guideline affects child custody litigation or the efficiency of the judicial process; and

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[2] 42 U.S.C. section 667(a).
[3] See Section 8 of this report.
[4] See Section 6 of this report.
[5] See Section 7 of this report.
[6] See Section 9 of this report.

7. Whether the various assumptions used in computer software relied on by some courts to calculate child support comport with state law and should be made available to parties and counsel.

Family Code section 4054(c) requires that any recommendations for revisions to the guidelines made by the Judicial Council ensure that the guideline results in appropriate support orders and complies with federal law. If recommendations are made, the Judicial Council is mandated under subsection (f) to consult with a broad cross section of groups involved in child support issues, including but not limited to the following:

1. Custodial and noncustodial parents;
2. Representatives of established women's rights and father's rights groups;
3. Representatives of established organizations that advocate for the economic well-being of children;
4. Members of the judiciary, district attorney's offices, the Attorney General's office, and the Department of Social Services;
5. Certified family law specialists;
6. Academicians specializing in family law;
7. Persons representing low-income parents; and
8. Persons representing recipients of assistance under the Aid to Families with Dependent Children (AFDC) program seeking child support services.

The Legislature further provided in section (g) that "[i]n developing its recommendations, the Judicial Council shall seek public comment and shall be guided by the legislative intent that children share in the standard of living of both of their parents."

Section 2 of this report reviews the history of child support guidelines in California. This section reviews the development of child support guidelines in various counties before the adoption of the Agnos Act, California's first statewide guideline.. The federal requirements and the subsequent legislative history of the current guideline are discussed.

Section 3 provides a detailed look at the operation of California's child support guideline. This section presents an overview of the income shares model adopted by California's Legislature. Other models that the states have used in developing their guidelines are also reviewed. The operation and implementation of the California guideline is described in detail.

Section 4 summarizes the case law interpreting various aspects of the guideline. The appellate courts have resolved a number of issues that have arisen as trial courts have implemented the guideline.

Section 5 discusses the forms that have been adopted by the Judicial Council to implement the guideline in California. Mandatory forms have become an essential part of the practice of family law in the courts. The forms adopted to implement the guidelines are designed to provide the courts with the information they need to make the guideline calculation in individual cases.

Section 6 presents the results of a study conducted by the Judicial Council to determine how the courts are actually applying the guideline in individual cases. The objective of the study was to determine to what extent the guidelines are being followed by the courts and to identify the number of, and reasons for, court orders that deviate from the guidelines. More than 3,000 child support cases were reviewed and analyzed.

Section 7 compares various guideline provisions in California to those in other states. This section is intended to provide an overview of the approach other states have taken on issues such as the treatment of low and high income, the use of gross or net income in determining the amount of support, and the treatment of prior and subsequent families.

Section 8 reviews the available information on the cost of raising children. This section of the report summarizes various studies on the spending patterns of families with children, as well as the theories that have been developed to analyze the studies. One of the primary determining factors in all child support guidelines is the percentage of income that is designated for child support.

Section 9 reviews various reports and studies on child support guidelines that have been published since the last Judicial Council report to the Legislature on child support guidelines, in December 1993.

Although many of the issues described in Family Code section 4054(d) are discussed in various sections of this report, the intention here is not to provide a detailed analysis of any of these issues. Several of these issues, such as new mate income and the use of computer programs to calculate support under the guideline, have been addressed by the Legislature in subsequent legislation. The other issues are complex, and a comprehensive analysis would have required greater resources than the Judicial Council was provided for this report.

The results of the case sampling described in Section 6 reveal that the vast majority of child support orders made during the period of the study conform to the presumptive amount of the guideline. Cases in which the presumptive amount was rebutted and a different amount was ordered appear to have been based on the statutory rebuttal factors. Since the federal guideline requirements have not changed, and the vast majority of support orders made by the courts appear to be appropriate under the statutory guidelines, this report does not contain any recommendations for revisions. However, this report is

being disseminated to the individuals and groups set forth in Family Code section 4054 for their information and comment.

1.4 Procedure Used

This report was prepared under the guidance of the Judicial Council Family and Juvenile Law Advisory Committee. The scope of that committee's work includes the following:[7]

> The Family and Juvenile Law Standing Advisory Committee shall identify issues and concerns confronting the judiciary regarding procedure, practice, and case management for any type of case involving marriage, family, and children and suggest appropriate solutions and responses.

The main focus of this report is the case sampling described in Section 6. A scientific sampling of cases from 11 counties was designed by Judicial Council staff. Attorneys and paralegals with experience in family law and child support reviewed in excess of 3,000 court files that contained child support orders. For a complete explanation of the sampling methodology and the results of that study, see the discussion in Section 6.

Since the statutory guideline has been in effect, many members of the public have written letters expressing their support of or opposition to the guideline. Many of these letters stated in specific terms problems the writers had with the guideline or with other aspects of the child support system as applied in their own individual cases. Some of the letters stated that the support orders that result from the guideline are too high. Other letters stated that the support orders are too low. A few letters contained specific details concerning structural problems with the guideline. The committee is appreciative of the concern shown by the public in this area.

It is not surprising that custodial and noncustodial parents would have differing views concerning the adequacy of support awards under the guideline. It is also not surprising that individuals might be dissatisfied with the results in their individual cases. Given the complex problems facing separated families today, it is impossible for one uniform statewide guideline for child support to create results that satisfy everyone involved with the process.

Nevertheless, the Family and Juvenile Law Advisory Committee continues to study the child support system with a focus on what is best for California's families and children. The committee will consider problems raised in letters and comments on an ongoing basis.

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[7] California Rules of Court, rule 1024.

2 History of the Guideline

2.1 Origin of California Guidelines

2.1.1 The Earliest Guidelines: Marin

What is generally considered the first formal child support guideline in California was developed in the mid-1960s in Marin County under the initiative of Ann Diamond, a Marin family law practitioner who learned about the use of guidelines to set child support on a trip to Hungary. The guideline was developed "to promote uniformity of results and predictability for lawyers and clients."[1] The guideline, which covered both child and spousal support, was developed by a committee of lawyers and judges in Marin and was based on their notions of typical orders as well as a sense of fairness.

For several years, use of the guideline spread throughout the Bay Area on an informal basis. In 1977, it was adopted, with minor changes, as the guideline in the Uniform Domestic Relations Rules for the Bay Area Superior Courts, under the leadership of then San Francisco Superior Court Judge (now retired Justice) Donald King. This schedule was also used in Los Angeles County.

[1] Norton, *Explaining and Comparing the California Child and Spousal Support Schedules* (Aug. 1987), 4 Family Law Monthly 1.

2.1.2 Santa Clara Charts Its Own Path

In 1978, Santa Clara County adopted a guideline that was different from the Marin/Bay Area guideline.[2] According to one of the leading figures in the development of guidelines both statewide and in Santa Clara County, the Santa Clara decision was based on a feeling "that the older Bay Area schedule worked fairly well when support for both the spouse and children was ordered, but fell far short of setting realistic child support levels."[3] The feeling was that the Santa Clara guideline, being based on "empirical data on the cost of raising children . . . more accurately reflected actual costs of raising children."[4]

The first Santa Clara schedule was designed by Karl Nigg, a Santa Clara family law attorney. The guideline did not make its support calculation in the same manner as most of its successor schedules. It first calculated child support based on the noncustodial parent's income, and then applied a reduction based on 18 percent of the total estimated cost of raising children.[5] This reduction was based on the view that under a "standard visitation order,"[6] the children spend 18 percent of their time with the noncustodial parent. The resultant percentage of income of the noncustodial parent used for support determination was as follows:

1 child	18%	4 children	42%
2 children	27%	5 children	48%
3 children	35%		

The Santa Clara schedule then subtracted an amount based on one-third of the income of the custodial parent. This approach is conceptually different from the income shares approach used in the current version of the guideline. It should be noted, though, that the result is often the same under both approaches.

2.1.3 Santa Clara Tries Again

After some experience with the guideline in Santa Clara County, the family law section of the Santa Clara County Bar Association established a subcommittee to develop some changes to the child and spousal support guideline. The stimulus for this effort was the need for an appropriate method of handling the income of a new partner of either parent. The result, while not solving this problem, established the framework for the current child

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[2] For a number of reasons, Santa Clara County had not adopted the family law rules and guidelines that had been adopted by other Bay Area courts.

[3] Norton, p. 4.

[4] *Ibid.*

[5] The first Santa Clara guideline was based, in large part, on empirical data on the costs of raising children that was available from Fresno County.

[6] A standard visitation order was defined as alternate weekends and one-half of all holidays.

support guideline.[7] According to an article written by the leader of that subcommittee,[8] the Santa Clara group reached four conclusions regarding the basic conceptual framework for child support guidelines:

1. The schedule should be based on the best available data on the cost of raising children;[9]

2. Each parent should have responsibility for supporting his or her children according to the parent's financial circumstances;

3. Income of both parents available for child support should be allocated to each parent commensurate with the time that parent spends with the children; and

4. A decreasing percentage of income is required for children as the parents' total income available for child support increases.[10]

The mathematical development of the Santa Clara guideline, based on these principles, was undertaken by Santa Clara family law attorney George Norton. The percentages were derived from a study by Jaques Van der Gaag for the Child Support Project at the University of Wisconsin. Van der Gaag examined data derived from U.S. Department of Agriculture studies and found a correlation between the cost of raising children and parental income. Norton derived the following percentages of income used for children:[11]

1 child	26%	4 children	52%
2 children	39%	5 children	55.25%
3 children	45.5%		

The importance of the guideline adopted by Santa Clara County can be seen by its subsequent history. The guideline was adopted, in slightly modified form, by the Judicial Council as its discretionary guideline mandated by the Agnos Child Support Standards Act.[12] The Council's discretionary guideline served as the framework for rule 1274, the first mandatory statewide guideline. Senate Bills 370 and 1614 made adjustments to rule 1274, but the basic framework established by the second Santa Clara guideline exists to this day.

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[7] This issue was one of the major issues concerning guidelines during the 1992–1993 legislative session. See discussion in Section 2.6.1.1.

[8] Norton, p. 4.

[9] The topic of available data on the cost of raising children is not without its own controversy. See discussion in Section 8 of this report.

[10] Norton, p. 7.

[11] These figures are not directly comparable to those used in the first Santa Clara County guideline.

[12] See discussion in section 2.2.2.

2.2 The First Legislative Guideline

2.2.1 The Agnos Child Support Standards Act

In 1984, the Legislature became actively involved in child support guidelines by passing the Agnos Child Support Standards Act of 1984.[13] This measure was critical of the widespread variation among child support orders in the state[14] and set up a minimum child support amount based on the AFDC standard of monthly need.[15]

Figuring the minimum child support order under the Agnos Child Support Standards Act involved the following steps:[16]

1. Multiply the total family income by the percentage factor for the number of children.[17]

2. Compare this amount to the AFDC need standard for the appropriate number of children to be supported by the order.

3. Take the lower of these two figures and apportion it among the parents according to their income. The noncustodial parent pays his or her share of the total amount to the custodial parent.

The minimum child support order provided only basic food, clothing, and shelter, and the courts were encouraged to make an additional order.[18] Courts were required to order greater than minimum child support amounts in appropriate cases.[19] They were to use either their own guideline if "not in conflict with the mandatory minimum award established by this chapter, and the legislative intent that children share in their parents' standard of living as set forth in this chapter,"[20] or a child support schedule developed by the Judicial Council.[21]

Under the Agnos Act, the court was authorized to "take into consideration expenses incurred and savings resulting from shared physical custody arrangements in determining the pro rata share of the mandatory minimum child support award to be allocated to each parent" except where the children were receiving AFDC.[22]

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[13] Former Civil Code sections 4720–4732 as added by Stats. 1984, ch. 1605, operative July 1, 1985.
[14] Former Civil Code section 4720(b).
[15] Former Civil Code section 4720(d).
[16] Former Civil Code section 4722.
[17] This factor was 18 percent for one child, 27 percent for two children, 36 percent for three children, and 4 percent more for each additional child up to 10 children. Former Civil Code section 4722(b)(1).
[18] Former Civil Code section 4723.
[19] Former Civil Code section 4724.
[20] Former Civil Code section 4724(a).
[21] Former Civil Code section 4724(b).
[22] Former Civil Code section 4727. Shared physical custody was defined as "an arrangement in which the parents share physical

2.2.2 The Judicial Council Guideline

Pursuant to the requirement of former Civil Code section 4724(b) that the Judicial Council adopt a discretionary child support schedule for use in those courts that did not have their own schedule, the Council solicited comment on what factors should be considered in developing a guideline. The Council considered the comments received, reviewed the existing schedules in use in California and in other states, examined the factors considered by various schedules, and adopted a schedule based mainly on the Santa Clara schedule. A full report on the considerations leading to the Judicial Council discretionary schedule, and a copy of that schedule, appear in the 1987 Judicial Council Annual Report.[23]

The guideline adopted by the Judicial Council effective July 1, 1986, contained one provision that was not found in the Santa Clara schedule. The Judicial Council guideline allowed for a 15 percent deviation, up or down, from the scheduled amount. The guideline did not set out criteria for the application of this discretionary modification.

Following the adoption of the Judicial Council guideline, various counties either enacted their own guideline schedules or followed the Council's guideline. At least six discretionary schedules were in effect:[24]

- The Santa Clara County schedule (called "new Santa Clara"), expressly or implicitly followed in many other counties;
- The Judicial Council schedule, based on the Santa Clara County schedule but permitting a deviation of 15 percent from the schedule amount;
- The Los Angeles County schedule, based on the Santa Clara County schedule but permitting a deviation of 20 percent from the schedule amount;
- The Kern County schedule, based on the Santa Clara County schedule but at a level 29 percent below that amount;
- The Sacramento County schedule, used in several neighboring counties as well, which was a modified extension of the Agnos formula; and
- The old Santa Clara County schedule, used for a while in San Francisco and several Central Valley counties.

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custody so that both have custody of the child or children more than 30 percent of a 365-day period."

[23] 1987 Judicial Council Annual Report at pp. 23–30.

[24] Norton, p.7.

2.3 The Federal Government Acts

2.3.1 Federal Requirements

The federal government first became actively involved in child support enforcement in 1975 with legislation that added Title IV-D to the Social Security Act.[25] Title IV-D strongly encouraged the establishment of a child support enforcement program in each state by the following means:

- Federal reimbursement of 75 percent of the administrative costs of the child support program;[26]
- State recovery of its portion of AFDC costs on the amount of support collected;
- Incentive payments of additional money for meeting certain performance standards; and
- A 5 percent reduction in AFDC funding for a state that did not develop a program.[27]

A congressional report on the effect of the 1975 act noted that although the procedures available for child support enforcement improved, the adequacy of the amount of support was not addressed.[28] The report further noted that states that had implemented child support guidelines demonstrated considerable success in increasing the amount of support going to children. As a consequence, Congress passed the Child Support Enforcement Amendments of 1984.[29] One of the amendments required all states to develop child support guidelines as part of their enforcement plan.[30] The guidelines were discretionary, not mandatory.

Congress evidently believing that results under discretionary guidelines were not adequate, passed the Family Support Act of 1988. One of the provisions required guidelines that create a rebuttable presumption that the amount of support established by the guideline is the correct amount of support. Section 667 of Title 42 of the United States Code provides:

> (a) Each State, as a condition for having its State plan[31] approved under this part, must establish guidelines for child support award amounts within the State. The

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[25] Social Security Act Amendments of 1975, sections 451–460. For a history of this involvement see Goldberg, *Child Support Enforcement: Balancing Increased Federal Involvement with Procedural Due Process*, 19 Suffolk U.L. Rev. 687, 689–692 (1985).

[26] Social Security Act Amendments of 1975 at sections 455 and 458.

[27] Social Security Act Amendments of 1975 at section 460(c)(6)(A).

[28] Sen. Rep. No. 98-378, 2d Sess., p. 40 (1984).

[29] Pub. L. No. 98-378 (1984) sections 1–23, 98 Stats. 1305–1330.

[30] Child Support Enforcement Amendments of 1984, section 18.

[31] The plan referred to is the state's child support enforcement plan under Title IV-D of the Social Security Act. The

guidelines may be established by law or by judicial or administrative action, and shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts.

(b)(1) The guidelines established pursuant to subsection (a) shall be made available to all judges and other officials who have the power to determine child support awards within such State.

(2) 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 such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case.[32]

The regulations adopted by the Director of Health and Human Services implementing the federal statute provide the following:

- There must be one set of guidelines in each state.[33]
- The guidelines must (1) take into consideration all income of the noncustodial parent; (2) be based on descriptive and numeric criteria resulting in a computed support amount; and (3) provide for health care needs.[34]
- States are required to review and revise, if appropriate, the guidelines at least every four years,[35] with the review considering economic data on the cost of raising children and analyzing case data. The purpose of the review is to ensure that deviations from the guideline are limited.[36]

2.3.2 Problems with the California System

The California system, at the time of the adoption of the 1988 amendments, appeared to have several problems:

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consequences of not having a state plan are discussed above.

[32] 42 U.S.C. section 667.
[33] 45 C.F.R. section 302.56(a).
[34] 45 C.F.R. section 302.56(c).
[35] 45 C.F.R. section 302.56(e).
[36] 45 C.F.R. section 302.56(h).

- There was a single statewide guideline providing for a minimum child support amount (the Agnos formula), but there were multiple discretionary guidelines. It was therefore, doubtful whether the California system would meet the new federal single guideline test.

- The Agnos amount was denominated a mandatory figure, not a rebuttably presumed one. It was doubtful whether the guideline would meet the new rebuttable presumption test.

- There was no provision for periodic review and revision of the guideline.

2.3.3 Assembly Bill 3974 (1990)

In response to the problems with the federal guideline requirement and to bring about a better, more unified system of child support, the Legislature in 1990 enacted Assembly Bill 3974,[37] which required that the Judicial Council develop a temporary guideline, to be adopted by court rule, and recommend a permanent guideline to the Legislature. The temporary guideline to be adopted by the council was to be based on its previously adopted discretionary guideline. The provisions of the discretionary guideline could be amended to take into account certain additional factors:

> Except as necessary to meet new federal regulations or to address the findings of the study on guidelines commissioned by the Judicial Council in 1989,[38] the initial guidelines to be established shall be those promulgated by the Judicial Council pursuant to subdivision (b) of Section 4724. Except as necessary to meet new federal regulations or to address the findings of the study on guidelines commissioned by the Judicial Council in 1989, the initial guidelines shall retain the intent of Sections 4721, 4723, 4727, 4728, and 4728.5. . . . Any guidelines proposed or adopted by the Judicial Council shall not result in child support awards less than the current mandatory minimum child support awards as established by the Agnos Child Support Standards Act of 1984.[39]

2.4 The Council Responds to the Legislature

2.4.1 Rule 1274

In response to the legislative requirement, the Judicial Council adopted California Rules of Court, rule 1274. The first version of this guideline was adopted in November 1990 and

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[37] Stats. 1990, ch. 1493.
[38] Williams, Analysis of Child Support Guidelines, Judicial Council of California (1989).
[39] Former Civil Code section 4720.1(a)(1).

was largely based on the previous discretionary Judicial Council guideline. The changes made to the discretionary guideline included the following:

- The adjustment of the guideline based on shared custody of the child was restricted to cases in which each parent had the child at least 30 percent of the time;
- The discretion to deviate by 15 percent from the guideline amount was removed;
- The guideline was expressly made a rebuttable assumption;[40] and
- Specific factors in rebuttal to the guideline amount were included.[41]

2.4.2 Rule 1274 Revised

Almost immediately upon its adoption, a controversy arose as to whether rule 1274 appropriately treated the shared custody adjustment. As a result, and to permit full consideration of the opposing arguments, the Judicial Council postponed the effective date of rule 1274 from January 1, 1991, to March 1, 1991.

Those who favored the original version of rule 1274 argued that the 30 percent threshold before joint custody could be considered was required by the provision in Civil Code section 4720.1 mandating that the guideline be consistent with the intent of then Civil Code section 4727. This section required that shared custody may be considered as an adjustment to support only when both parents have custody of the children for more than 30 percent of a 365-day period. Those opposed to the provision noted that the Legislature did not expressly state that rule 1274 impose a 30 percent threshold for consideration of shared custody and predicted that it would create a flood of custody and visitation litigation by parents seeking either to achieve 30 percent visitation or to prevent the other parent from achieving 30 percent visitation.

After consideration of the various arguments, in January 1991 the Judicial Council, amended rule 1274 by removing the threshold requirement preventing the consideration of shared custody unless each parent has custody of the children 30 percent of the time. The council also made several other changes to rule 1274 at that time:

- It added a provision that if the amount of shared custody is at least 10 percent it would be treated as 20 percent.[42]

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[40] Former California Rules of Court, rule 1274(d).
[41] Former California Rules of Court, rule 1274(e). These factors included: stipulated amount (rule 1274(e)(1)), hardship (rule 1274(e)(2)), use of family residence (rule 1274(e)(3)), income of subsequent spouse or partner (rule 1274(e)(4)), extraordinarily high income (rule 1274(e)(5)), and other special circumstances.
[42] Former California Rules of Court, rule 1274(b)(6).

- It provided that if shared custody exceeded 30 percent, the court could adjust the guideline amount "to reflect . . . substantial expenses by the noncustodial parent or substantial savings by the custodial parent resulting from the shared custody arrangement."[43] It should be noted that this provision was not an adjustment to the formula but a factor in rebuttal to the presumptive guideline amount. Nonetheless, there is evidence that many courts, in applying the guideline, merely presumed the amount of shared custody to be 20 percent except where a parent proved either more than 30 percent or less than 10 percent shared custody, in which case the court applied that percentage figure to the formula.

2.5 The Legislative Response to Rule 1274

2.5.1 Senate Bill 101 (1991)

Shortly after the revised version of rule 1274 was adopted, a bill was introduced in the Legislature seeking to overturn the council's interpretation of the legislative intent in AB 3974. This measure, Senate Bill 101 (Hart), was amended several times and ultimately adopted.[44] But the measure was adopted with a delayed effective date of July 1, 1992. As a result of the delayed effective date and the adoption by the Legislature of Senate Bill 370, this measure never took effect.

SB 101 repealed the authority of the Judicial Council to adopt a guideline and thus, effective July 1, 1992, invalidated rule 1274. In its place it established a new legislative child support guideline, Civil Code section 4720.2. The significant changes to rule 1274 included the following:

- A new formula that eliminated any consideration of shared custody. Indeed, the new formula was nearly a "payor only" formula in which the amount of child support was defined as a percentage of the noncustodial parent's net income.[45] The only consideration given to the custodial parent's income was in the determination of the actual percentage figure used in the calculation – the higher the combined net income, the lower the actual percentage figure.[46]

- A new rebuttal factor was added if the custodial parent had a higher income than the noncustodial parent.[47]

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[43] Former California Rules of Court, rule 1274(e)(7).
[44] Stats. 1991, ch. 110, effective July 1, 1992.
[45] Former Civil Code section 4720.2(a).
[46] Former Civil Code section 4720.2(b)(3).
[47] Former Civil Code section 4720.2(e)(4).

- The rebuttal factor of rule 1274 that permitted a reduction in support where the noncustodial parent has substantial custody time that results in either substantial expenses to the noncustodial parent or substantial savings to the custodial parent[48] was changed to require both substantial expenses to the noncustodial parent and substantial savings to the custodial parent.[49]

- The income adjustment for additional support[50] under rule 1274 provided for subtraction of both spousal support and child support from the payor's income and the inclusion of both in the payee's income.[51] Under SB 101, child support would be subtracted from the payor's income but not added into the payee's income.[52] The result, under SB 101, would have been that the payor parent paid a greater portion of the add-on expenses.

2.5.2 Senate Bill 370 (1992)

In the 1992 legislative session, as a result of discussions among various groups involved in child support issues, a compromise measure was adopted that was a middle ground between the provisions of rule 1274 (revised) and SB 101. This measure was Senate Bill 370, and it became law as an urgency measure when signed by the Governor on May 8, 1992.[53]

The changes made by SB 370 resulted, for the most part, in the current guideline (discussed in Section 3 of this report). A number of minor changes to the guideline were made by subsequent legislation.

2.5.3 Senate Bill 1614 (1992)

Senate Bill 1614 became law on September 22, 1992, when signed by the Governor as an urgency measure.[54] This measure made a number of minor changes to the guideline adopted under SB 370, including the following:

- The legislative intent that the court depart from the guideline only in stated circumstances was changed. The earlier measure provided that the circumstances had to be "exceptional," whereas the new measure provided that the circumstances had to be "special."[55]

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[48] Former rule 1274(e)(7).
[49] Former Civil Code section 4720.2(e)(5).
[50] Section 3.8 of this report.
[51] Rule 1274 (I)(1).
[52] Former Civil Code section 4720.2(i)(1).
[53] Stats. 1992, ch. 46.
[54] Stats. 1992, ch. 848.
[55] See Family Code section 4052.

- The treatment of the adjustment for the amount of time each parent had the children was changed from one of "physical custody" to one of "primary physical responsibility" and the figure was denominated an "approximate" feature.[56]

- The requirement that the court state the information used in determining the guideline amount was changed from being mandatory in all circumstances to being required only when requested by a party.[57]

- An additional required finding when the court departs from the guideline was added – namely, "that application of the formula would be unjust or inappropriate in the particular case."[58]

- The allocation of additional child support amounts was changed so that, absent a request of either party, one-half of the expenses would be allocated to each parent.[59]

- The previous formula approach to calculation of a hardship deduction for additional children in the household of the parent, which had first appeared under the Agnos Child Support Standards Act,[60] was removed in favor of the remaining statement that the amount deducted for the hardship children not exceed, on a per child basis, the amount of the child support order in the present case.[61]

2.6 Legislative Refinement of the Guideline

2.6.1 1993 Legislation

2.6.1.1 New Mate Income (Senate Bill 145)

Statutes of 1993, chapter 935 (Senate Bill 145 (Calderon)), deleted the rebuttal factor that previously existed for income of a subsequent spouse or nonmarital partner. Previous Family Code section 4057(b)(3) included the following in its list of factors that could rebut the amount of child support established by the guideline formula:

> A parent's subsequent spouse or nonmarital partner has income that helps meet that parent's basic living expenses, thus increasing the parent's disposable income available to spend on the children.

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[56] See Family Code section 4055(b)(1)(D).
[57] See Family Code section 4056.
[58] See Family Code section 4057(B).
[59] See Family Code section 4061.
[60] Former Civil Code section 4722.
[61] Family Code section 4071.

To clarify further the legislative intent concerning consideration of such income, the bill also added section 4057.5 to the Family Code to state:

> The income of [a] . . . parent's subsequent spouse or nonmarital partner shall not be considered when determining or modifying child support, except in an extraordinary case where excluding that income would lead to extreme and severe hardship to any child subject to the child support award, in which case the court shall also consider whether including that income would lead to extreme and severe hardship to any child supported by the [parent] . . . or by the [parent's] . . . subsequent spouse or nonmarital partner.[62]

Section 4057.5 states that an extraordinary case may include voluntarily quitting work or reducing income.[63] SB 145 also made similar changes to the law concerning consideration of new mate income in regard to spousal support.[64] In circumstances where new mate income is considered, the courts must allow hardship deductions for any stepchildren of the parent.[65]

2.6.1.2 Miscellaneous Guideline Revisions (Senate Bill 541)

Statutes of 1993, chapter 1156 (Senate Bill 541 (Hart)), made a number of changes to the child support guideline. Among the changes was a revision to the percentage of income allocated to children (the "K" factor); this technical change was made to smooth out the reduction in child support amounts as income rises.[66] SB 541 also removed the requirement that no shared visitation could be considered when the children are receiving Aid to Families with Dependent Children.[67]

This bill also amended Family Code section 4056 to require a statement, in writing or on the record, of certain information whenever the court orders a child support amount that

[62] This provision is found in Family Code section 4057.5(a)(1) as to the obligor parent and in section 4057.5(a)(2) as to the obligee parent. See discussion in Section 4.2.7 concerning consideration of new mate income for the limited purpose of determining child support obligor's actual tax liability in calculating net income under the guideline formula.

[63] Family Code section 4057.5(b).

[64] Family Code section 4323.

[65] Family Code section 4057.5(d).

[66] Family Code section 4055(b)(3). The old and new provisions are as follows:

New K Factor		Old K Factor	
$0–800	0.20 + TN/16,000	$0–800	0.20 + TN/16,000
$801–6,666	0.25	$801–7,000	0.25
$6,667–10,000	0.10 + 1000/TN	$7,001–10,000	0.20 + 350/TN
Over $10,000	0.12 + 800/TN	$10,001–20,000	0.16 + 400/TN
		Over $20,000	0.12 + 800/TN

[67] Former Family Code section 4055(b)(6) provided: "If the children who are subject of the child support order are receiving assistance under the Aid to Families with Dependent Children (AFDC) program, H% shall be set at zero in the formula."

differs from the guideline.[68] Previously, the information required, and certain other information, was to be stated only if a party requested. This change was made "to comply with federal law."

When the court deviates from the guideline it must state in writing or on the record:

- "The amount of support that would have been ordered under the guideline formula";[69]
- "The reasons the amount of support ordered differs from the guideline formula amount";[70] and
- "The reasons the amount of support ordered is consistent with the best interests of the children."[71]

The provision concerning stipulated agreements for child support was modified to require specified declarations only where the amount of support agreed to is below the guideline formula amount.[72] The establishment of the guideline was declared to be a change of circumstances in all cases,[73] and the court was given discretion to permit a phase-in of an increase in child support in specified circumstances.[74]

The court may grant a two-step phase-in of a support order only in the following cases:

- The court is modifying a child support order issued prior to July 1, 1992, for the purpose of conforming to the guideline;
- The new order amount is the guideline amount without any rebuttal factor;[75]
- The obligor has not unreasonably increased his or her financial obligations following notice of the motion;[76]
- The obligor has no child support arrearages owing;[77] and

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[68] Family Code section 4056. The previous provision was made subdivision (b). A conforming change was made to Family Code section 4057(b).
[69] Family Code section 4056(a)(1). The prior language was, "The amount of support that would have been received under the formula."
[70] Family Code section 4056(a)(2). The prior language was, "Any rebuttal factors found under subdivision (b) of Section 4057."
[71] Family Code section 4056(a)(3). The prior language was, "A finding that the revised amount is in the best interests of the children."
[72] Family Code section 4065.
[73] Family Code section 4069. The previous provision provided that the establishment of the guideline was only a change of circumstances "for the purpose of any modification of child support order entered before the guideline's operative date."
[74] Family Code section 4076.
[75] Family Code section 4076(a).
[76] Family Code section 4076(a)(3).
[77] Family Code section 4076(a)(3).

- The obligor has a history of good faith compliance with prior support orders.[78]

The phase-in can occur in two steps,[79] with at least 30 percent of the increase occurring as part of the first phase,[80] and the full support order must be payable no later than one year after it is made.[81]

2.6.2 1994 Legislation

2.6.2.1 Low-Income Adjustment (Assembly Bill 923)

Assembly Bill 923[82] amended Family Code section 4055(b)(7) to change the child support guideline as it applies to low-income payors. The statute authorizes the court to reduce the child support award when the payor's monthly net disposable income is less than $1,000. The court may adjust the order only after first considering the impact of the adjustment on the parties' respective net incomes and the principles underlying the guideline.[83] Once the court decides to grant the adjustment, the amount of the reduction may not exceed that which is available under the statutory formula. The amount of the reduction is determined by multiplying the basic child support award by a fraction, the numerator of which is $1,000 less the obligor's monthly net disposable income, and the denominator of which is $1,000.

The bill also required that the computer program used by the trial court to calculate child support provide the user the option of applying the low-income adjustment.[84] Where the payor's net monthly disposable income is less than $1,000, the computer program should compute the adjustment range permitted under the statute rather than simply defaulting to a low-income adjustment.

Where the court adjusts the amount of support, it must state in writing or on the record the reasons for that decision and document the amount of the adjustment. It should be noted that the decision to grant the low-income adjustment is discretionary. Once the court decides to grant a low-income adjustment, the amount of the adjustment may be less than, but may not exceed, the maximum amount available under the reduction formula.

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[78] Family Code section 4076(a)(3).
[79] Family Code section 4076(a).
[80] Family Code section 4076(a)(2).
[81] Family Code section 4076(b)(2).
[82] Stats. 1993, ch. 906, effective January 1, 1994.
[83] Family Code section 4053.
[84] Family Code section 4055(c).

2.6.2.2 Simplified Income and Expense Declarations (Assembly Bill 2142)

Assembly Bill 2142[85] authorized the Judicial Council to develop a model child support worksheet and a simplified income and expense form.[86] The bill also required that the Judicial Council consult with various legislative committees and representatives of parents' and attorneys' groups in order to determine when to use the simplified income and expense form.[87]

2.6.2.3 Miscellaneous Provisions (Assembly Bill 2208)

When the Legislature enacted the Family Code in 1992, it repealed many sections of the Civil Code.[88] Civil Code section 4722.5, which provided for computation of child support when AFDC is being paid, was the only remaining Family Law Act provision that was not repealed. Accordingly, Assembly Bill 2208[89] repealed Civil Code section 4722.5.

AB 2208 repealed Family Code section 3686, which required courts to consider the Judicial Council's age-increase factor when modifying a child support order. AB 2208 also amended Family Code section 3753, which makes the provision of health insurance applicable in all cases in which child support is ordered. The language now reads that the cost of health insurance for a supported child is in addition to any mandatory child support award, and the court shall give "due consideration" to the actual cost of insurance when determining the deductions from gross disposable income per Family Code section 4059(d).

Subdivisions (a) and (b) of Family Code section 4056, require the court to make findings when deviating from the guideline and, at a party's request, state the gross income, deductions, tax information, and time-share percentages used in making its order. AB 2208 added Family Code section 4005 requiring the court, upon request of either party, to make "appropriate" findings regarding the circumstances on which it based its child support order.

Existing Family Code section 4057.5 prohibited the court from considering the income of a party's new mate for the purpose of calculating guideline support. The section excepts extraordinary cases, such as those in which a parent voluntarily or intentionally quits work or reduces his or her income. This bill added that another extraordinary case is one in

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[85] Stats. 1994, ch. 953.
[86] Family Code section 4068.
[87] See Judicial Council Form No. 1285.52 attached at Appendix A 5.2.12 and discussed in Section 5.2.12.
[88] Civil Code section 4000 et seq.
[89] Stats. 1994, ch. 1269.

which a parent intentionally remains unemployed or underemployed and relies on the subsequent spouse's income.[90]

The bill added Welfare and Institutions Code section 903.41, which expresses the legislative intent that the courts exchange documents in order to ensure that California complies with federal child support guidelines. If paternity is at issue in a juvenile court action pursuant to Welfare and Institutions Code section 300 (jurisdiction for dependent children), section 601 (jurisdiction for wards of court), or section 602 (jurisdiction for juvenile offenders), the court clerk must notify the district attorney's office to request an investigation into an existing paternity action. If the district attorney finds no other paternity judgment, the juvenile court must decide the paternity question.[91] If the child is receiving or likely to receive AFDC, the court must direct the clerk to notify the family support division of the district attorney's office.[92]

2.6.2.4 Hardship Deductions (Assembly Bill 3258)

Family Code section 4071(a)(2) provides for a hardship deduction for the minimum basic living expenses of either parent's children of other relationships who reside with the parent, but provides no method for calculating hardship deductions. Assembly Bill 3258[93] amended Family Code section 4059(g) to require that the Judicial Council develop a formula for calculating the maximum allowable hardship deduction and to submit the formula to the Legislature on or before July 1, 1995.

2.6.2.5 Hardship Deductions (Assembly Bill 3601)

Assembly Bill 3601[94] added Family Code section 4071.5, which prohibits the court from granting hardship deductions when the parent seeking the deduction has children who receive AFDC (now TANF) benefits. A hardship cannot be granted even if the aid payments are received by the other parent and not the parent seeking the hardship deduction.

2.6.2.6 Uninsured Medical Costs for Children (Senate Bill 1807)

Senate Bill 1807[95] amended Family Code section 4062 to provide that when the court orders payment of the reasonable uninsured medical costs for a child as additional child support, it must do so in compliance with section 4063. SB 1807 added Family Code

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[90] Family Code section 4057.5(b).
[91] Welfare and Institutions Code section 903.41(b)(d).
[92] Welfare and Institutions Code section 903.41(d).
[93] Stats. 1994, ch. 1056.
[94] Stats. 1994, ch. 146.
[95] Stats. 1994, ch. 466.

section 4063, which establishes a procedure for a parent to seek reimbursement from the other parent for the costs of uninsured health care.

2.6.3 1996 Legislation

2.6.3.1 Miscellaneous Provisions (Assembly Bill 1058)

Assembly Bill 1058[96] implemented most of the recommendations of the Governor's Child Support Court Task Force Report.

Only a few sections of AB 1058 have bearing on the guideline. The most significant sections are the amendments to Welfare and Institutions Code section 11475.1 to establish a uniform amount of presumed income in child support cases filed by the district attorney. The complaint filed by the district attorney must provide the defendant with notice of the child support amount sought pursuant to the guidelines, based upon the income or income history that is known to the district attorney. If the district attorney does not know the defendant's income or income history, the complaint must inform the defendant that the income will be presumed at an amount that results in a court order equal to the "minimum basic standard of adequate care" as provided in sections 11452 and 11452.018 of the Welfare and Institutions Code.

AB 1058 also provides for a longer period for a defendant to set aside a child support order based upon presumed income. A motion to set aside a support order based upon presumed income may be filed within 90 days of the first collection of money by the district attorney or the support obligee. The court may set aside the order if the defendant's income during the period for which support was ordered was substantially different from the income defendant was presumed to have. If the court does set the order aside, the court is required to issue a new order based upon the guideline with the same commencement date as the order set aside.[97]

AB 1058 also added Family Code sections 10000–10012, requiring that the superior courts maintain family law facilitators to assist parties in child support matters at no cost. The legislation was based on findings that the family courts are unduly burdened with heavy caseloads, and child support orders are frequently delayed as parents litigate custody and visitation.[98] It was also noted that the pilot projects involving family law facilitators in the superior courts of Santa Clara and San Mateo Counties have been successful in obtaining court orders concerning child support, spousal support, and health insurance for unrepresented parties.[99]

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[96] Stats. 1996, ch. 957.
[97] Welfare and Institutions Code section 11356(c).
[98] Family Code section 10001.
[99] *Id.*

The family law facilitator's mandatory duties include (1) providing educational materials to parents concerning the process for establishing, modifying, and enforcing support; (2) distributing necessary court forms for support actions; (3) providing assistance in completing the forms; (4) preparing support schedules based upon the parties' circumstances and the child support guidelines; and (5) providing referrals to the district attorney, family court services, and other appropriate agencies. The court may assign additional duties to the facilitator by local rule.[100]

[100] Family Code section 10005.

3 Description of the Guideline

3.1 The Income Shares Approach and Other Models for Determining Child Support

The California guideline uses what is commonly called an income shares approach to the determination of child support. Guidelines that follow the income shares approach allocate money to children based on a share of the income of both parents. Although this concept is simple to state, its implementation is anything but simple.

In a study published in 1994, Robert G. Williams of Policy Studies Inc. noted that the states have tended to adopt one of three models in implementing child support guidelines.[1] There are variations within each model. Each model has its adherents and its critics. The income shares model has been adopted by a majority of states. (See Table 3-1.)

3.1.1 The Income Shares Model

The income shares model "is based on the concept that the child should receive the same proportion of parental income he or she would have received if the parents lived together. Under this model, a basic child support obligation is computed based on the combined

[1] Haynes, Child Support Guidelines: The Next Generation, U.S. Dept. of Health and Human Services, Administration for Children and Families (April 1994).

income of the parents (replicating total income in an intact household). This basic obligation is then prorated in proportion to each parent's income."[2]

The income shares model incorporates an underlying economic assumption that as income increases, the proportion of income spent on child support decreases. Thus, as the combined income of the parents reaches a certain level, the percentage of income designated for child support decreases.[3]

Williams who is a leading proponent of the income shares model notes that it can also make adjustments for the ages of children, shared custody, split custody, health care, child care, and prior and subsequent dependents. Building these factors into the income shares formula creates fewer reasons to deviate from the formula, which allows states to meet the federal requirement that deviations from the guideline be limited.

The income shares method, while widely adopted, is not without its severe critics. The most common criticism is that the same flexibility that allows for adjustments in the formula to accommodate the variety of issues involved creates a formula that is far too complex. Critics note that the formula is hard for parents to understand. Attorneys and judges who are not familiar with computers or the software used to calculate the guideline have difficulty using the formula to arrive at the presumptive amount of support. The complexity of the guideline has led one appellate court to observe: "Even Lewis Carroll when writing *Alice in Wonderland* could not have contemplated such a bizarre situation."[4]

The underlying assumptions of the income shares model have also been questioned. One critic noted that Robert Williams's strong advocacy of the income shares approach in his report for the Office of Child Support Enforcement has led many states to adopt an income shares approach despite the "fragility of his analysis." This same critic asserted that the report contains many policy judgments that are not clearly stated.[5]

3.1.2 The Delaware-Melson Formula

The Melson formula, named after Judge Elwood F. Melson of the Delaware Family Court, has been described as follows:

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[2] Williams, Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report (Sept. 1987) at p. vi.

[3] This assumption is based on the findings of Van der Gaag and Espenshade that while the amount spent on children increases as total income increases, the percentage of income spent on children decreases. See discussion in Section 8.

[4] *Marriage of Carter* (1994) 26 Cal.App.4th 1024, 1028. *See also* the discussion on the child support guideline in *Marriage of Fini* (1994) 26 Cal.App.4th 1033, 1040.

[5] Polikoff, Looking for the Policy Choices Within an Economic Methodology: A Critique of the Income Shares Model, in Essentials of Child Support Guidelines Development: Economic Issues and Policy Considerations, (Proceedings of the Women's Legal Defense Fund's National Conference on the Development of Child Support Guidelines) (Sept. 1986) at p. 28.

The Melson formula is based on the following principles. First, after determining net income, a self-support reserve is subtracted from each parent's income. This self-support reserve is usually set at $450 per month, or less if living with others. Only income above this reserve is deemed available for child support under the formula (although a minimum order is set).

Second, above the self-support reserve, all parental income is next allocated to the primary support needs of the children. In most cases this is set at $180 per month for the first child, $135 per month for each of the second and third, and $90 per month for each of the fourth, fifth, and sixth. Added to primary support needs are actual child-care and extraordinary medical expenses. These primary support needs are prorated between the parents based on their available income (after deduction of the self-support reserve).

Third, after deduction of the self-support reserve and payment of the pro-rata share of children's primary support needs, 15 percent of each parent's remaining income is allocated to additional child support for the first child, 10 percent more for each of the second and third, and 5 percent more for each of the fourth, fifth, and sixth.[6]

The Melson formula is the most comprehensive model in the number of factors it addresses. It recognizes that the support of children is impossible until the parent's basic needs are met. But it also recognizes that the parents' economic status should not be enhanced until the parents, in proportion to their incomes, meet the basic needs of their children. Once the basic needs of the children are met, parents who have additional income must share that income with their children. The Melson formula can be adjusted for split and shared custody and for obligations for prior or subsequent children. The main criticism of the Melson formula is that it is too complex.

3.1.3 The Percentage of Income Model

The percentage of income model is the simplest approach to calculating child support. It resembles a tax in that support is based on a percentage of the noncustodial parent's income. Some states use gross income. Other states use net income. This model does not consider the custodial parent's income, but assumes that the custodial parent uses his or her income directly for the support needs of the children.

There are two main variations on the percentage of income model. Some states apply a fixed percentage that is allocated to child support. The percentage is based on the number of children, but it remains constant at all income levels. Other states use a varying percentage that changes as the income level of the noncustodial parent changes. The varying percentage model is similar to the income shares model in that the support

[6] Williams, Development of Guidelines, *supra*, at p. vii.

award as a percentage of income decreases as income increases. The varying percentage is also determined by the number of children to be supported.

The most appealing feature of the percentage of income model is its simplicity. It is easier to explain to parents. In most cases it can be easily calculated without the need for a computer. The model simplifies the process of establishing a child support order. However, critics argue that the percentage of income model is inherently unfair in that it does not factor in the custodial parent's income when determining the presumptive amount of support. Critics also note that most states that have adopted the percentage of income model do not consider self-support, child-care, uncovered medical expenses, shared or split custody, or prior or subsequent children.

Massachusetts is considered to follow the percentage of income approach. The Massachusetts model calculates the child support amount based on the percentage of obligor income attributed to the child-rearing costs of an intact household, as well as providing a supplement to that formula intended to ensure that the children's standard of living is not disproportionate to that of the noncustodial parent. Reductions in the base percentage are provided for time-sharing arrangements: as the obligor spends more time with the children, the base percentage is reduced.

In its draft report *Principles of the Law of Family Dissolution*, written by Grace Blumberg, the American Law Institute has adopted the Massachusetts model for the reason that it emphasizes the adequacy of the support award for the child.[7] The report advocates that any child support guideline should provide that the brunt of the decreased standard of living should be borne by the noncustodial parent.

Table 3-1
Guideline Approach Used by States[8]

Income Shares	Fixed Percent	Varying Percent	Delaware-Melson
33 states	7 states	7 states	4 states

This summary of child support guideline models is not meant to be exhaustive. It is included in the event that the Legislature may wish to give further consideration to the overall approach to child support guidelines or to request that the Judicial Council give this issue further consideration.

[7] See discussion in Section 9.8 of this report.
[8] This table is adapted from Morgan, Child Support Guidelines: Interpretation and Application, 1997 Supplement and includes the District of Columbia as a "state." Morgan lists California both as an income shares and as a varying percent state. The guideline has, since its inception, been based on the Santa Clara II guideline, which is an income shares approach. Table 3-1 places California as an income shares state.

3.2 Description of the Formula

Family Code section 4055(a) provides: "The statewide uniform guideline for determining child support orders is as follows: CS = K[HN-(H%) (TN)]."

The items in this formula are defined as follows:

CS is the child support amount to be determined by the formula. CS is the amount payable for one child; for more than one child, CS is multiplied by an incremental variable.

K is the percentage of total net income allocated to child support. This number is loosely based on the findings of Thomas Espenshade concerning the amounts intact families traditionally spend on children. Espenshade studied the cost of raising children using data derived from the 1970–1972 Consumer Expenditure Survey.[9] This K factor, though, has been modified over the years and thus no longer completely reflects these findings. In any event, it should be noted that Espenshade's findings have themselves been subject to some criticism from people on both sides of the issue, with some claiming that they establish an amount for child support that is too low and others claiming that the amount is too high. In addition, the data used are now more than 20 years old. Additional reports have been issued since then, most notably the United States Department of Agriculture's 1997 annual report on expenditures on children, which relied upon data from the 1990–1992 Consumer Expenditure Surveys.[10]

The percentage of total net income allocated for one child is 25 percent in most cases – that is, when the parents' combined net disposable income is between $801 and $6,666 per month. In cases of very low income, the amount allocated to a child falls to 20 percent for income at or below $800 per month, with a fraction added to that percentage (.20 + TN/16,000). **TN** is the total net disposable income of the parties. In the low-income case, the parties' total net disposable income divided by 16,000 is added to the 20 percent figure. For amounts between $6,667 and $10,000 per month, the percentage drops to 10 percent and is added to the sum of 1,000 divided by the total net disposable income (.10 + 1,000/TN). For amounts over $10,000, the amount allocated to the child is 12 percent and the sum of 800 divided by the total net disposable income (.12 + 800/TN).

The **K** factor is then adjusted according to the amount of shared custody. The more time that the child spends with the noncustodial parent, the higher the percentage of total family income allocated to child support. This result is based on the legislative determination that greater amounts of shared custody result in higher child-rearing costs. It should be noted that this determination does not imply that it is undesirable to have greater amounts of shared custody, but only that more shared custody is more costly.

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[9] Espenshade, Investing in Children: New Estimates of Parental Expenditures–Urban Institute Press (1984).
[10] See discussion in Section 8 of this report.

HN is the net income of the high earner of the two parents.

H% is the amount of time the high earner has primary physical responsibility for the children compared to the amount of time the other parent has this responsibility. Historically this part of the formula has been one of the more bitterly contested provisions.[11]

The effect of the formula is to (1) first compute the total amount that will be allocated to children according to the K and H% factors; (2) allocate the amount payable by each parent; and (3) for each parent, determine how much he or she pays to the other parent for the amount of shared custody. Thus, in a case where the total net income is $5,000 ($4,000 for the high earner and $1,000 for the low earner), and the amount of time the high earner has the children is 20 percent, the calculation would be as follows:

1. The total amount allocated to child support is $5,000 (total net income) × .25 (K factor) × 1.20 (1+ H%), or $1,500.

2. The amount payable by each parent is proportional to their incomes, so the high earner will pay 4,000/5,000 × $1,500, or $1,200, and the low earner will pay 1,000/5,000 × $1,500, or $300.

3. Of the amount allocated to the high earner, the formula assumes that 20 percent will be spent on the child when the child is in the high earner's custody, resulting in a payment of 80 percent to the low earner: $1,200 × .8 is $960. Of the amount allocated to the low earner, 20 percent will be spent on the child when the child is in the custody of the high earner, so the low earner should pay $300 × .20, or $60, to the high earner. Balancing these cross-payments results in $960 - 60, or $900, being paid to the low earner by the high earner.

3.3 Low-Income Adjustment

The child support formula allows a low-income adjustment for obligors whose monthly net disposable income is less than $1,000.[12] When the obligor's net disposable income is less than $1,000 per month, the court must issue a ruling on whether to grant the low-income adjustment. The court may exercise discretion in its decision based on facts presented in the case and in light of the general principles underlying the guidelines and the impact of the adjustment on the parties' incomes. If the court rules in favor of the adjustment, a formula for calculating the amount of the low-income adjustment must be used. The amount of the reduction is determined by multiplying the basic child support award by a fraction, the numerator of which is $1,000 less the obligor's net disposable

[11] See discussion in Sections 2.5.1 and 2.5.2 of this report.
[12] Family Code section 4055(b)(7).

income per month, and the denominator of which is \$1,000 (CS × \$1,000 - obligor's net income/\$1,000). The amount of the reduction may be less than, but may not exceed, the amount available under this formula.

For example, if the obligor's net monthly income is \$500 and presumed child support under the guideline is \$150 per month, the maximum low income adjustment would be (150) × (1,000 – 700)/1,000 = \$45

The court would have the discretion to order the obligor to pay as little as \$150 – \$45 = \$105 or as much as \$150 or any amount between \$105 and \$150.

3.4 Determination of Income

Family Code section 4053(d) provides: "Each parent should pay for the support of the children according to his or her ability." Probably the most important determinant of a parent's ability to pay child support is the amount of income earned by that parent.

California is one of the states that use net income to determine child support (see the discussion of this issue in section 7.3). The term *net income*, though, could be misleading. Net income in this case is not the same as taxable income or available income. The technical term is *net disposable income* and it is strictly defined by statute.

Family Code section 4058 defines the gross income of each parent. It is a very broad definition of "income from whatever source derived," with stated exceptions. It includes "commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, social security benefits, and spousal support actually received from a person not a party to the order."[13] It also includes "gross receipts from the business reduced by expenditures required for the operation of the business."[14] Appropriate expenditures are determined by the court. The court may, in appropriate circumstances, also include as income employee benefits or self-employment benefits.[15]

The court may also use the earning capacity of a parent in lieu of income to the extent that to do so is consistent with the best interests of the child.[16] California's guideline has one of the shorter provisions concerning the circumstances in which the court may consider earning capacity.[17] Many other states provide lists of factors as an aid to courts in making the determination, including such factors as voluntary unemployment or

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[13] Family Code section 4058(a)(1).
[14] Family Code section 4058(a)(2).
[15] Family Code section 4058(a)(3) ("taking into consideration the benefit to the employee, any corresponding reduction in living expenses, and other relevant facts").
[16] Family Code section 4058(b).
[17] But see Section 4.2.3 for discussion of case law regarding this issue.

underemployment. Another aspect of the earning capacity issue is whether and under what circumstances overtime pay should be considered as part of income.[18]

Certain items are also excluded from income as a matter of policy. These are child support payments and need-based public assistance.[19]

In determining gross income, the code requires the calculation of annual figures. The use of annual figures is a legacy of the Agnos Child Support Standards Act. An annualized figure better reflects a parent's true financial situation by minimizing month-to-month variations in income that some parents may experience. The code also allows an adjustment to the child support amount to accommodate the seasonal or fluctuating income of a parent.[20]

Once gross annual income is determined, certain deductions are required by the guideline. These include the following:[21]

- State and federal income taxes;[22]
- Social security contributions;
- Mandatory union dues;
- Mandatory retirement benefits contributions;
- Health-insurance and health-plan premiums for the parent and any children the parent has an obligation to support;
- State disability insurance premiums;
- Child or spousal support being paid, pursuant to court order,[23] to others not in the present proceeding;

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[18] See *In re Marriage of Simpson* (1992) 4 Cal.App.4th 225, in which the Supreme Court held that a parent who worked significant amounts of overtime during the marriage would not necessarily be locked into the same work habit once the marriage had ended. The court noted that the support order "generally should not penalize for his or her efforts a supporting spouse who voluntarily had undertaken an extraordinarily rigorous work regimen during the marriage, by locking that spouse into an excessively onerous work schedule." But see *County of Placer v. Andrade* (1997) 55 Cal.App.4th 1393, in which the Third District held that bonuses and overtime should be considered in gross income to the extent such payments are likely to reoccur.

[19] Family Code section 4058(c).

[20] Family Code section 4064.

[21] Family Code section 4059.

[22] The state and federal taxes shall be those actually payable (not necessarily current withholding) after considering appropriate filing status, all available exclusions, deductions and credits. Family Code section 4059(a).

[23] In the case of child support, actual child support, not to exceed the guideline amount, may be deducted in lieu of court-ordered child support.

Additional deductions are allowed at the discretion of the court for:

- Job-related expenses;[24] and
- Hardship deductions (see section 3.5).

Following the determination of annual net disposable income, the guideline then divides that amount by 12 to calculate the average monthly net disposable income. In an effort to arrive at a figure that is as representative as possible, the guideline further provides:

> If the monthly net disposable income figure does not accurately reflect the actual or prospective earnings of the parties at the time the determination of support is made, the court may adjust the amount appropriately.[25]

3.5 The Concept of Hardship

The concept of *hardship* as a factor in a child support guideline was first introduced in the Agnos Child Support Standards Act. That act provided:

> [I]n the event that a parent is experiencing extreme financial hardship due to justifiable expenses resulting from the circumstances enumerated in this section, upon the request of a party, the court may allow such income deductions as may be necessary to accommodate those circumstances . . . .[26]

When a court determined that a hardship existed, it did not deduct the amount of hardship from the child support order but from the income of the party with the hardship. This provision diluted the effect of the hardship on the actual order and reflected the reality that a hardship should affect the entire living standard of the party and not just the amount received by the child. This manner of addressing hardships continues under the present guideline.

Family Code section 4070 incorporates the Agnos concept of hardship by enabling the court discretion to grant hardship deductions for "the circumstances enumerated in Section 4071." Section 4071 lists three specific cases of hardship:

- Extraordinary health expenses;
- Uninsured catastrophic loss; and

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[24] The court is supposed to consider the necessity of the expenses, whether they benefit the employee, and other relevant facts.
[25] Family Code section 4060.
[26] Former Civil Code section 4725, added by Stats. 1984, ch. 1605.

- A natural or adopted child's residence with the parent.

A hardship deduction is not permitted if TANF (formerly AFDC) benefits are being provided to a child of the parent seeking a hardship deduction. A deduction is not permitted even if the aid payments are being received by the other parent.[27]

The court has discretion to allow the deductions under these provisions. There was some concern initially about whether items in the statute were the exclusive cases of hardship that could be considered. But the case law is now clear that the list of hardship items is strictly limited to those mentioned in the statute.[28]

One problem with the hardship deduction for children residing with the parent claiming the hardship is the limitation found in Family Code section 4071(b), which appears simply to state that the deduction must not exceed the per child support amount established in the present proceeding.[29] The actual calculation, though, is not so easy.

Under the provision, a court wishing to allow the maximum hardship deduction would first allocate an amount based on the actual expenses shown. This amount would be used as a deduction from income, and the child support for the present case would be preliminarily calculated. If the child support in the present case is less than the deducted amount, the amount of the deduction would have to be adjusted down and the child support recalculated. Further adjustments, up or down as appropriate, would continue to be made until the amount of the deduction equaled the amount of the child support order (on a per-child comparison).

It should be noted that this type of calculation is easy to make if a properly programmed computer is available. But it is difficult to calculate this hardship deduction without the use of a computer.[30]

At first glance, it would appear that an alternative approach to a hardship deduction would provide for calculation of a guideline figure for all the children in the present case plus all the hardship children residing with the payor. But this approach would prevent the consideration of the true guideline figure for these other children because of differences in amount of custody time and the income of all other parents. Any attempt

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[27] Family Code section 4071.5.

[28] *County of San Diego v. Sierra* (1990) 217 Cal.App.3d 126; *Marriage of Norvall* (1987) 192 Cal.App.3d 1047. Both of these cases interpreted the hardship provisions of the Agnos Child Support Standards Act. Family Code section 4059(g) permits a deduction for hardship "as defined by Sections 4070 to 4073, inclusive, and *applicable published appellate court decisions*." (Emphasis added.) See also *Haggard v. Haggard* (1995) 38 Cal.App.4th 1566, 1571; *Marriage of Butler and Gill* (1997) 53 Cal.App.4th 462, 465.

[29] "The maximum hardship deduction . . . for each child who resides with the parent may be equal to, but shall not exceed, the support awarded each child subject to the order." (Family Code section 4071(b).)

[30] It would be possible, as a matter of mathematical formulas, to state the deduction as a set of complex formulas or instructions, possibly as simultaneous equations. However, it is doubtful that this statement would make the guideline more accessible to those using it. The solving of simultaneous equations or other complex formulas is not a simple matter for the vast majority of the population.

to include these variations in the calculation would further complicate the process.

The consideration given to children of other relationships presents a number of difficult issues which deserve further study. The Advisory Panel on Child Support Guidelines made recommendations regarding how to address multiple support responsibility. The principles developed by that panel are as follows:[31]

> Where a parent has multiple child support responsibilities, each child entitled to support from that parent should share equally in that parent's resources, subject to the variations required by the needs of the individual child and the amount of support due that child from the child's other parent.[32]
>
> Whenever possible, a support award should consider all support responsibilities of a parent when support is set for any child of that parent.
>
> When a parent is under an order to provide support for children whose support is not subject to modification in the instant proceeding, funds the obligated parent is required by law to provide for those children, and actually pays, should be considered unavailable for calculating support in the instant proceeding.[33]

The Advisory Panel further noted:

> Considerations raised by multiple families pose difficult issues for states implementing guidelines. Further analysis and modeling of situations involving multiple support responsibilities are needed to assist a state in designing guidelines which yield the most equitable results for the child involved and their parents.[34]

3.6 Factors in Rebuttal

The guideline provides that the amount resulting from the calculation is "presumed to be the correct amount of child support to be ordered."[35] This presumption is defined as a rebuttable presumption affecting the burden of proof.[36] The presumption may be rebutted by one of a list of factors, found to be applicable by a preponderance of the evidence. Before the court applies a rebutting factor and orders support in an amount different from

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[31] Williams, Development of Guidelines, *supra*, at p. I-19.
[32] This principle forms part of the basis for Family Code section 4071.
[33] This principle forms part of the basis for Family Code section 4059(e).
[34] Williams, Development of Guidelines, *supra*, at p. I-24.
[35] Family Code section 4057(a).
[36] Evidence Code section 605 provides, in part, "[a] presumption affecting the burden of proof is a presumption established to implement some public policy other than to facilitate the determination of the particular action in which the presumption is applied." In the case of the child support guideline, the establishment of a guideline that is presumptively correct is required by federal law. (See discussion in Section 2.4.1.) The use of a presumption affecting the burden of proof implements the public policy, determined by the federal government, that enforcement of child support is furthered by the use of guidelines that are presumed to yield correct amounts of support.

the guideline amount, the court must find that application of the formula would be unjust or inappropriate.[37] The court must also state in writing or on the record:

- The amount of support that would have been ordered under the guideline formula;
- The reasons the amount of support ordered differs from the guideline formula amount; and
- The reasons the amount of support is consistent with the best interests of the children.

The guideline lists five factors in rebuttal:[38]

- Agreement between the parties;[39]
- Deferred sale of the family residence;[40]
- Extraordinarily high income;
- Party not contributing to the needs of the children commensurate with that party's custodial time; and
- Unjust or inappropriate amount due to special circumstances.

3.7 Judicial Determination of Facts

When a court order deviates from the child support guidelines, federal regulations provide as follows:

> 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

[37] Family Code section 4057(b).
[38] Family Code section 4057(b)(1)–(5).
[39] Family Code section 4065 lists the requirements for an agreement.
[40] See *In re Marriage of Duke* (1980) 101 Cal.App.3d 152.

order varies from the guidelines.[41]

The origin of these requirements can be found in the report by the Advisory Panel on Child Support Guidelines, established by the Office of Child Support Enforcement in 1984. The recommendations, published in 1987, included a recommendation that guidelines be rebuttable presumptions. As part of the discussion of this recommendation, the panel stated that findings on the record should be required for the following reasons:

- To preserve the integrity of the guidelines;
- To document patterns to justify revisions of the guideline;
- To facilitate equitable determinations in modification hearings; and
- To ensure an adequate record for appellate review.[42]

It appears that the first two reasons are designed for the protection of the system and the last two reasons are designed for the protection of the parties to a support proceeding.

Under California law, the phrase *findings of fact* has had a specific meaning defined by both statute and case law.[43] The term *findings* was not used in the guideline to avoid the formal burden of the accumulated case and statutory law attached to that concept. Yet to permit compliance with the federal requirements, the Legislature, and prior to that the Judicial Council, required that statements of facts found by the courts become part of the record.

Implementation of the federal fact determination requirement is found in Family Code sections 4056(a) and 4057(b). These provisions require a statement of certain specified items in writing or on the record:

- A finding that application of the guideline formula would be unjust or inappropriate;
- The presumptive guideline amount of support;
- The rebuttal factors found; and
- A finding that the actual child support amount ordered is in the best interests of the

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[41] 45 C.F.R. section 302.56(g).

[42] Williams, Development of Guidelines, *supra*, at p. I-7.

[43] The requirements of findings of fact (and conclusions of law) were largely repealed in 1981 and a new procedure, requiring a "statement of decision," was adopted in its place. Stats. 1981, ch. 900. But the former law still has significance. See Witkin, California Procedure, Trial, section 368(d). For a general discussion of findings and the statement of decision, see sections 368–404.

child.

California law has other provisions requiring a statement of determination of facts in the child support guideline. Section 4056(b) requires the court to state the following information in writing or on the record at the request of any party:

- The net income of each parent;
- The tax filing status of each parent;
- Deductions from the gross income of each parent; and
- The approximate percentage of time that each parent has primary physical responsibility for the children.

Section 4072(a) requires the following in cases of a deduction for hardship expenses:

- A statement of "the reasons supporting the deduction in writing or on the record"; and
- A documentation of the amount of the hardship deduction and the "underlying facts and circumstances."

Section 4055(b)(7) requires the court to state the following information in writing or on the record when a low income adjustment is granted:

- The reasons supporting the low-income adjustment; and
- The amount of the adjustment and the underlying facts and circumstances.

One of the reasons for requiring that certain information be in writing or on the record is to assist in determining whether revisions are needed to the guideline. Family Code section 4054(b) requires that the Judicial Council's review and report to the Legislature (of which this is the second) "shall include . . . analysis of case data, gathered through sampling or other methods, on the actual application of the guideline after the guideline's operative date." The analysis required by Section 4054(b) cannot be easily performed without documentation in the case file.

Family Code section 4068(b) authorizes the Judicial Council to develop "[a] form to assist the courts in making the findings and orders required by this article." As discussed in section 5 of this report, the Judicial Council has adopted a number of forms to help in this process.

3.8 Additional Child Support Amounts

The Advisory Panel on Child Support Guidelines recommended that under any guideline,

> actual child care and extraordinary medical expenses are added to a basic child support obligation and prorated between the parents based on their respective incomes. Under [some] . . . approaches, no special consideration is given to these costs. Failure to give these costs special treatment places a disproportionate burden on the custodial parent. If child care costs are not treated separately, there can also be a disincentive for the custodial parent to work. If medical costs are not covered separately, a child's extraordinary medical needs may be unmet if the custodial parent has inadequate income.[44]

Family Code section 4062 provides two categories of "add-ons" to the amount of child support computed by the formula. Items that must be added to the basic obligation include child-care costs for work or education for work[45] and reasonable uninsured health care costs.[46] Items that may be added to the basic obligation, in the court's discretion, include educational or other special needs of the children and travel expenses for visitation.[47]

The recommendation from the federal Advisory Panel included the advice that these additional amounts be prorated in accordance with the parents' income. Under California law, there is a presumption for equal division of these additional costs,[48] although there can be prorated division "[i]f requested by either parent, and the court determines it is appropriate . . . ."[49] If the court determines that a prorated division of costs is appropriate, the net income of each parent is adjusted before determining the ratio of incomes.[50] Adjustments include the following:

- Subtracting child support and spousal support from the income of the payor parent; and

- Adding spousal support (but not child support) to the income of the recipient parent.

3.9 Health Insurance

California law, in compliance with federal law, provides that the court shall require

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[44] Williams, Development of Guidelines, *supra*, at p. I-17.
[45] Family Code section 4062(a)(1).
[46] Family Code section 4062(a)(2). Family Code section 4063(d) provides, "[t]here is a rebuttable presumption that costs actually paid for the uninsured health care needs of the children are reasonable."
[47] Family Code section 4062(b).
[48] Family Code section 4061(a).
[49] Family Code section 4061(b).
[50] Family Code section 4061(c), (d).

health insurance coverage for a child subject to a support order from either or both parents "if that insurance is available at no cost or at reasonable cost to the parent."[51] In determining the amount of income a parent has, the court deducts the amount of any health coverage premium for both the parent and any children the parent has an obligation to support.[52] Any health-care costs for the child that are not reimbursed by insurance generally are to be shared by the parents if they are reasonable.[53]

This treatment of health-care premiums is consistent with the recommendation of the Advisory Panel on Child Support Guidelines. That panel recommended that

> guidelines include a provision specifying parental responsibility for the child's health insurance coverage. In applying a guideline to determine the level of child support, financial credit should be given to the parent that is carrying the insurance policy.[54]

The Advisory Panel noted that further analysis should be made of the health-care cost issue:

> There is a complex relationship between the various components of health care costs (health insurance premiums, routine medical expenses, and extraordinary medical expenses) and the monetary child support obligation computed using a guideline. The great variation in health insurance policies and cost-sharing arrangements between employers and employees makes it difficult to develop a uniform and equitable rule. Further research could help clarify whether other ways of treating health care costs would be more consistent and practical than the approaches currently being used.[55]

3.10 Effect of Spousal Support

Among the principles of the child support guideline are that the first and principal obligation of a parent is to support his or her children,[56] and the interests of the children are the "state's top priority."[57] Accordingly, the guideline requires that child support be calculated, for the most part, without regard to spousal support. There are, however, several exceptions to this general rule:

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[51] Family Code section 3751(a). The code notes that health insurance is reasonable in cost "if it is employment-related group health insurance or other group health insurance, regardless of the service delivery mechanism."
[52] Family Code section 4059(d).
[53] Family Code sections 4061(a) and 4062(a)(2). There is a rebuttable presumption that costs actually paid are reasonable.
[54] Williams, Development of Guidelines, *supra*, at p. I-18.
[55] *Id.* at p. I-23.
[56] Family Code section 4053(a).
[57] Family Code section 4053(e).

- Spousal support received from a prior marriage is included in gross income;[58]
- The tax effects of spousal support are not considered in determining net income "[u]nless the parties stipulate otherwise";[59]
- Spousal support for another relationship, actually being paid pursuant to a court order, is deductible from gross income;[60] and
- In apportioning "add-ons" in a percentage other than one-half to each parent, the spousal support paid in the relationship before the court is subtracted from the income of the payor and added to the income of the recipient.[61]

3.11 Legislative Policy: Implementation of the Guideline

In various Family Code sections, the Legislature has expressed state policy for the courts to follow in applying the child support guideline. These provisions are in addition to the policy objectives that can be inferred from specific provisions of the guideline. The major policy statements about child support and the guideline that have been expressly set forth by the Legislature are as follows:

- Family Code section 3900 sets an equal responsibility for parents to support their children "in the manner suitable to the child's circumstances."
- Family Code section 4050 sets a state policy of remaining "in compliance with federal regulations for child support guidelines."
- Family Code section 4053 sets forth the following 12 principles for the courts to follow in implementing the child support guideline:

    1. A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life;
    2. Both parents are mutually responsible for the support of their children;
    3. Each parent's actual income and level of responsibility for the children is taken into account;

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[58] Family Code section 4058(a)(1). Note, however, that child support received from another relationship is not considered part of income (Family Code section 4058(c)), presumably because that is money for the child or children and not for the parent.
[59] Family Code section 4059(a).
[60] Family Code section 4059(e).
[61] Family Code section 4061(c).

4. Each parent should pay for the support of the children according to his or her ability;

5. Protecting the interests of children is the state's top priority;

6. Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children;

7. Child support orders in cases in which both parents have high levels of responsibility for the children should reflect the increased costs of raising the children in two homes and should minimize significant disparities in the children's living standards in the two homes;

8. The financial needs of the children should be met through private financial resources to the extent possible;

9. It is presumed that a parent having primary physical responsibility for the children contributes a significant portion of available resources for the support of the children;

10. Fair and efficient settlement of conflicts between parents and reduction of litigation are encouraged;

11. Child support orders pursuant to the guideline are intended to be presumptively correct in all cases, and only under special circumstances should child support orders fall below the child support mandated by the guideline formula; and

12. Child support orders must ensure that children actually receive fair, timely, and sufficient support reflecting the state's high standard of living and high costs of raising children compared to other states.

- Family Code section 4054(c) seeks to ensure that the guideline results in appropriate child support orders and that deviations from the guideline are limited.

- Family Code section 4054(g) establishes a "legislative intent that children share in the standard of living of both of their parents."

- Family Code section 4067 states a legislative intent that "application [of the guideline] results in the determination of appropriate child support amounts."

3.12 The Requirement of Periodic Reports

Family Code section 4054 provides, in part:

(a) The Judicial Council shall periodically review the statewide uniform guideline to recommend to the Legislature appropriate revisions.

(b) The review shall include economic data on the cost of raising children[62] and analysis of case data, gathered through sampling or other methods, on the actual application of the guideline after the guideline's operative date.[63] The review shall also include analysis of guidelines and studies from other states,[64] and other research and studies available to or undertaken by the Judicial Council.[65]

The initial review was required by December 31, 1993, and subsequent reviews are required every four years "unless federal law requires a different interval."[66] This report is being submitted pursuant to that requirement. This report presents an overview of California guidelines with numerous areas highlighted for the Legislature's consideration.

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[62] See Section 8 of this report.
[63] See Section 6 of this report.
[64] See Section 7 of this report.
[65] See Section 9 of this report.
[66] Family Code section 4054(e). 45 C.F.R. section 302.56(e) requires each state to "review, and revise, if appropriate, the guidelines established . . . at least once every four years to ensure that their application results in the determination of appropriate child support award amounts." The regulation further requires that the review "consider economic data on the cost of raising children and the cost of raising children and analyze case data, gathered through samplings 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." 45 C.F.R. section 302.56(h).

4 Summary of Recent Case Law

4.1 Introduction

There has not been a great deal of legislation regarding California's child support guideline in the last four years, but the appellate courts have provided guidance in interpreting the guideline. The courts have addressed a number of issues relating to the actual application of the guideline by the trial courts. The following discussion summarizes the relevant case law.

4.2 Determination of Income

Once the amount of each parent's income and the time share with the children are established, computation of the support amount under the guideline formula is largely mechanical. Therefore, it is not surprising that the major area of contention in child support disputes is the determination of what constitutes income. A number of appellate court decisions have been issued concerning the types of income that can be attributed to parents for the purpose of determining child support under the guideline.

4.2.1 Income from Overtime and Bonuses

In *County of Placer v. Andrade* (1997) 55 Cal.App.4th 1393, 1397, the Third Appellate District held that bonuses and overtime wages should be included as gross income for purposes of calculating guideline support if these payments are likely to reoccur. The trial court relied on *Marriage of Simpson* (1992) 4 Cal.App.4th 225, which held that the support payor's ability to earn must be measured by a reasonable work regimen, not by excessive overtime. (See discussion of *Simpson* in Section 4.2.3.) The Court of Appeal reversed the trial court's decision to exclude the obligor's overtime and bonus pay because the trial court did not examine whether the obligor was likely to continue receiving such income in the future. The obligor had been receiving bonuses and working overtime for two and a half years prior to the date of the determination. The panel stated that sporadic bonuses and overtime should be considered to the extent such payments were likely to reoccur. Accordingly, the appellate court remanded the case for the trial court to make a determination that accurately reflected the obligor's prospective earnings.

4.2.2 Income from Spousal Support

Family Code section 4058(a)(1) specifically includes spousal support received from a person not a party to the child support proceeding as gross income for purposes of the guideline. However, spousal support received from a spouse who is a party to the child support proceeding must be excluded in determining the recipient-spouse's gross income for guideline calculations. (*Marriage of Corman* (1997) 59 Cal.App.4th 1492, 1500.)

4.2.3 Imputed Income: Ability to Earn

Family Code section 4058(b) states that the court "may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interest of the children." Historically, there has been a split of authority among the appellate courts on the issue of whether a showing of bad faith is required before a court can impute income. A number of courts have followed the *Philbin* rule. In *Philbin v. Philbin* (1971) 19 Cal.App.3d 115, the court held that income could not be imputed to a parent for the purpose of setting support unless the parent was deliberately avoiding his or her family financial responsibilities.

Several cases subsequently followed the *Philbin* rule.[1] The most recent case to follow *Philbin* was *County of Yolo v. Garcia* (1993) 20 Cal.App.4th 1771, which held that income could not be imputed to a recipient of AFDC who had a young child at home. In

[1] See *Marriage of Williams* (1984) 155 Cal.App.3d 57; *Marriage of Catalano* (1988) 204 Cal.App.3d 543; *Marriage of Meegan* (1992) 11 Cal.App.4th 156.

Garcia the district attorney sought a reimbursement order for AFDC foster care payments for Ms. Garcia's son, who did not reside with her. Ms. Garcia's only income was AFDC for a young child who resided with her. The trial court found that Ms. Garcia had the ability to earn minimum wage and entered a reimbursement order based on her earning capacity. The Third District reversed the trial court on two grounds. First, the court held that the *Philbin* rule was still good law even after enactment of former Civil Code section 4721 and stated that there was no evidence in the record that Ms. Garcia had failed to make a reasonable effort to obtain employment. (*Id.* at p. 1782.) Second, the court held that the legislative policy underlying former Welfare and Institutions Code section 11310 (exemption for AFDC recipients with children under the age of three years from job-training requirements) was stronger than the underlying public policy for the collection of support reimbursement by the county.

Since the *County of Yolo v. Garcia* decision, all of the published appellate court decisions have abandoned the *Philbin* rule and instead have followed the statutory provisions of Family Code section 4058(b). In *Marriage of Hinman (Hinman II)* (1997) 55 Cal.App.4th 988, the First District held that the trial court did not err in imputing income to the noncustodial parent, who had demonstrated an earning capacity but had chosen not to work in order to care for three children of a subsequent marriage. The court after a thorough review of the case law since *Philbin* noted that there was an emerging consensus among the appellate courts that the *Philbin* rule was no longer applicable.[2] The court held that under the plain language of Family Code section 4058(b), the only test for applying earning capacity in a given case is whether the obligor has the ability and the opportunity to work and whether considering earning capacity would be in the best interest of the children. The noncustodial parent argued that imputing income to her would not be in the best interest of her three children of the subsequent marriage. The panel, though, asserted that the interests relevant to this determination are those of the children subject to the support proceedings, not those of the children of the subsequent marriage. (*Id.* at p. 1001.)

In *Marriage of LaBass and Munsee* (1997) 56 Cal.App.4th 1331, 1339, the Third District held that the courts may impute income to either parent and that the trial court did not err in imputing income to the custodial parent who was working part-time instead of full-time in order to attend school and care for the minor children. The custodial parent already had a master's degree in English literature and was taking classes toward a master's degree in fine arts. The noncustodial parent presented evidence that the custodial parent had an emergency teaching credential that enabled her to teach at any school in the Los Angeles School District. In affirming the trial court decision, the

[2] See *Marriage of Nolte* (1987) 191 Cal.App.3d 966; *Marriage of Regnery* (1989) 214 Cal.App.3d 1367; *Marriage of Everett* (1990) 220 Cal.App.3d 846; *Marriage of Ilas* (1993) 12 Cal.App.4th 1630; *Marriage of Padilla* (1995) 38 Cal.App.4th 1212.

appellate court noted that the only qualification for imputing income is that it be in the best interest of the child of the marriage. The panel chose not to create an exception for "caregiver" parents that "would be inharmonious with the language and policy goals articulated by the Legislature." (*Id.* at p. 1340.)

In *Marriage of Paulin* (1996) 46 Cal.App.4th 1378, 1384, the First District also affirmed a trial court decision that imputed income to the custodial parent based on her failure to document efforts at finding employment in order to rebut the other party's contention that employment opportunities were available.

In *Stewart v. Gomez* (1996) 47 Cal.App.4th 1748, 1752, the Fourth District held that the court may impute income as well as consider actual earnings. The court affirmed the decision of the trial court, which had combined both the obligor's income from permanent disability payments and his ability to earn minimum wage in calculating the obligor's gross income. The issue turned on the language of Family Code section 4058(b), which provides that courts may consider the parent's earning capacity "in lieu of" the parent's income. It was noted that "in lieu of" is usually understood as meaning "instead of" or "in place of." Nevertheless, the panel found that the ability to earn minimum wage was not inconsistent with the receipt of disability payments, since the obligor's disability plan allowed him to continue receiving payments even if he were employed. (*Ibid.*)

In *Marriage of Simpson* (1992) 4 Cal.App.4th 225, 235, the Supreme Court held that earning capacity for imputation purposes should be measured by an "objectively reasonable work regimen." In that case, the trial court imputed income to the noncustodial parent based on his history of working two or three jobs each day as well as nights and weekends. In reversing the award, the Supreme Court contended that setting support at an extraordinary work regimen, such as "excessive hours or continuous, substantial overtime," would be contrary to the legislative intent underlying Family Code section 4720.

4.2.4 Fair Market Value of Benefit Not Related to Employment

The fair market value of free housing that was not received as an employment benefit may constitute income for guideline purposes. In *Stewart v. Gomez, supra,* 47 Cal.App.4th 1748, 1754, the Fourth District affirmed the trial court's decision to consider the fair market value of the obligor's rent-free housing on a Native American reservation when calculating child support. At the trial level, the district attorney argued that calculation of the obligor's income should take account of his ability to earn the minimum wage (in addition to his monthly permanent disability payments) and should include $150 per month, the fair market value of free housing that he received on the reservation. As for the housing credit, the panel found authority for the district attorney's contention in

provisions of the Family Code defining gross income. First, Family Code section 4058 makes clear that the items of income allowable for purposes of calculating support are not limited to the inclusions listed under the statute. For instance, section 4058(a) provides that the gross income of the parent "includes, but is not limited to" those enumerated items. Second, section 4058(a)(3) authorizes the courts to consider the value of employment benefits that diminish the parent's living expenses. Therefore, the court reasoned that the obligor's free housing was comparable to the employment-related housing under section 4058(a)(3) and should not be excluded merely because it was not provided incidental to his employment. (*Ibid.*)

4.2.5 Income from Tribal Property

Income from exempt tribal property may also be considered in awarding child support once the obligor receives payment. In *Marriage of Purnel* (1997) 52 Cal.App.4th 527, 541, the Fourth District held that the obligor, whose primary source of income was from leases of tribal land, was not excused from paying child support. The obligor received rental income from her allotted shares of tribal land, and she deposited these funds into a personal bank account outside of the Native American reservation. The panel found that the money lost its identity as "immune Indian property" and thus became available to the obligor for the payment of child support. (*Ibid.*)

4.2.6 Voluntary Debt Reduction Paid to Third Party

In a case that interpreted the Agnos guidelines, *Marriage of Kirk* (1990) 217 Cal.App.3d 597, the Fourth District held that a trial court abused its discretion by failing to include, for support purposes, income that a parent voluntarily diverted from his income to pay a debt. The court based its decision on then current Civil Code section 4721(c), which provided that gross income was income from whatever source derived. This language has been carried over into the present guideline in Family Code section 4058. The court reasoned that the legislative determination contained in Civil Code section 4700(a)(1) (now Family Code section 4011) that child support must be paid before other debts led to the conclusion that a voluntary debt reduction from salary or wages should be included in gross income.

4.2.7 New Mate Income

Family Code section 4057.5 generally prohibits consideration of new mate income for purposes of the guideline. An exception is made only in an "extraordinary" case where excluding the income would lead to "extreme and severe" hardship to the child to be supported.[3] In *Marriage of Wood* (1995) 37 Cal.App.4th 1059, the father filed an order to

[3] Family Code section 4057.5(a)(2).

show cause to reduce his child support obligation based on "special circumstances" related to the mother having married "a very wealthy man." The trial court considered the new mate income insofar as it enhanced the mother's lifestyle.

The Court of Appeal held that the trial court abused its discretion by looking at the impact of this new spouse's income on the mother's lifestyle. (*Id.* at pp. 1067–68.) Examining the statutory provisions on new mate income, it reasoned that the trial court should consider new mate income only if the child suffers extreme and severe hardship because the parent voluntarily or intentionally quits work or remains unemployed or underemployed. First, the Court of Appeal noted that under Family Code section 4057.5(a)(2), which provides an exception to the prohibition of new mate income, the focus is on the needs of the child. Second, Family Code section 4057.5(b) states that the court may consider new mate income where either parent voluntarily or intentionally quits work, reduces income, or remains unemployed or underemployed, and relies on the new mate's income.

Nevertheless, the Fifth District held that trial court may consider income of the obligor's new spouse in establishing or modifying child support for the limited purpose of determining the obligor's actual tax liability. (*County of Tulare v. Campbell* (1996) 50 Cal.App.4th 847.) Even though Family Code section 4057.5 precludes the trial court from attributing a new mate's income to a party in a child support proceeding, the inclusion of new mate income is appropriate for the determination of the payor's actual tax liability. (*Ibid.*) (See also *Marriage of Carlsen* (1996) 50 Cal.App.4th 212 [considering new mate income for the purpose of determining the parent's actual tax burden did not violate the policy concerns underlying the prohibition of new mate income].)

4.3 Hardship Deductions

The Legislature has limited hardships to three very restricted categories: (1) extraordinary health-care costs; (2) uninsured catastrophic losses; and (3) minimum basic living expenses for children of other relationships living with either parent.[4]

The appellate courts have limited the provision of hardship deductions to those circumstances enumerated under the statute. The Second District, in *Haggard v. Haggard* (1995) 38 Cal.App.4th 1566, 1571, denied the hardship deductions for a party's stepchildren. The appellate court held that the father's support of his stepchildren did not qualify as a hardship deduction for purposes of applying the guideline. The panel noted that published appellate decisions had thus far limited hardship deductions to those

[4] Family Code section 4071.

enumerated under the statute.[5] It refused to read stepchildren into the statute and therefore affirmed the trial court's decision not to allow the father a hardship deduction.

Other members of the family aside from the parent's biological children are similarly excluded from consideration for the purposes of hardship deductions. (*Marriage of Butler and Gill* (1997) 53 Cal.App.4th 462, 465 [allowing a hardship deduction for the financial assistance given to obligor's mother was abuse of discretion].)[6]

The decision to grant a hardship deduction that is specified in the statute is within the court's discretion. In *Marriage of Paulin, supra*, 46 Cal.App.4th 1378, 1382, the First District held that that the trial court did not err in granting the father a hardship deduction for the birth of twins from a subsequent relationship where there existed evidence of extreme financial hardship. Although the panel contended that hardship deductions should not be a "foregone conclusion" on the birth of new children, it found sufficient evidence that the father incurred financial hardship from the twins' birth. (*Ibid.*) The father's income and expense declaration and the trial court findings represented that he would incur expenses associated with the care of the twins that were in excess of the allowable hardship deduction. The panel affirmed the trial court's decision to grant the father one-half of the hardship deduction to reflect the shared responsibility he and his new wife had for supporting the twins.

4.4 Findings of Facts

As discussed in Section 3, several provisions in the guideline require that the court provide a statement of facts in writing or on the record. For example, Family Code section 4072 states that if a hardship deduction is allowed the court must (1) state the reasons that support the deduction on the record; (2) document the amount of the deduction on the record; and (3) specify the duration of the hardship whenever possible. In *Marriage of Carlsen* (1996) 50 Cal.App.4th 212, 217, the Third District held that the trial court erred in awarding the mother a hardship deduction for children of a subsequent marriage without stating the reasons or documenting facts justifying that decision. The court order did not provide any findings regarding the hardship deduction, other than attaching a DissoMaster calculation that contained a hardship entry. The appellate court held that the support calculation could not substitute for the judicial findings required under Family Code section 4072.

In *Rojas v. Mitchell* (1996) 50 Cal.App.4th 1445, 1450, the First District reversed a trial court support order that deviated from the guidelines because the court failed to make to make the findings required by Family Code section 4056(a). The case was remanded to

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[5] *Marriage of Kepley* (1987) 193 Cal.App.3d 946; *Marriage of Norvall* (1987) 192 Cal.App.3d 1047.

[6] See also *County of San Diego v. Sierra* (1990) 217 Cal.App.3d 126.

the trial court to give its reasons for the deviation on the record.[7] The appellate court, however, may treat the trial court's failure to make findings on this issue as harmless error if "the missing finding may reasonably be found to be implicit in other findings"or the finding would have been adverse to the appellant. (*Ibid.*)

In *Marriage of Gigliotti* (1995) 33 Cal.App.4th 518, the Second District held that the trial court had not complied with Family Code section 4056(a) because it failed to state a reason for deviating from the guideline when the court reduced the amount of guideline support by the visitation expenses incurred by the payor parent.

4.5 Circumstances for Deviating from the State Guideline

Family Code section 4057 provides that the amount of support established by the guideline is presumed to be the correct amount of support. This is a rebuttable presumption that affects the burden of proof. The presumption may be rebutted by admissible evidence showing that the amount of support determined by the guideline would be unjust or inappropriate because of one or more factors listed in the statute.

4.5.1 Extraordinarily High-Income Cases

The guideline support amount may be rebutted by evidence that the obligor has an extraordinarily high income and the amount available under the formula would exceed the children's needs.[8] The appellate courts have required specific findings when trial courts deviate from the presumptive support amount because of the obligor's extraordinarily high income. In *McKinley v. Herman* (1996) 50 Cal.App.4th 936, 944, the Second District held that in rebutting the guideline the trial court must "at least approximate at what point the support amount calculated under the formula would exceed the children's needs, and therefore at what point the income of the party paying support becomes extraordinarily high." (Accord, *Marriage of Chandler* (1997) 60 Cal.App.4th 124, 129 [requiring that the trial court determine the child's actual needs and expenses in excess of the basics].) In *McKinley*, the trial court had awarded support based on what it thought was usual in high-earner cases. The panel found that in deviating from the guideline the trial court erred by failing to state its reasons for finding that the support amount met the child's needs.

The Second District held that the obligor, who stipulated that he earned at least $1.4 million per year and could pay any reasonable amount of child support, was not obligated to produce financial information detailing his lifestyle. (*Estevez v. Superior Court* (1994)

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[7] See also *Marriage of Rhine* (1993) 18 Cal.App.4th 953, 959 (reversing the trial court's child support award based on its failure to make the mandatory findings required by former rule 1274).

[8] Family Code section 4057(b)(3).

22 Cal.App.4th 423, 430.) The *Estevez* court found that if the obligor failed to produce financial information, the trial court could still meet the statutory requirements for calculating the presumptive support amount by making "such assumptions concerning his or her net income, federal income tax filing status, and deductions from gross income as are least beneficial to the extraordinarily high earner." (*Id.* at p. 431.)

4.5.2 Special Circumstances

The support amount established by the guideline may be rebutted by evidence showing that application of the guideline would be inappropriate due to special circumstances.[9] In *Marriage of Carter* (1994) 26 Cal.App.4th 1024, 1028, the First District held that the trial court lacked discretion to deviate from the guideline absent special circumstances. The trial court simply misunderstood the DissoMaster printout, and as a result ordered the low earner rather than the high earner to pay child support. The panel was especially critical of the guideline formula for requiring the use of computer software programs when, as it contended, judges may not have computers available at trials or hearings and may lack the necessary computer literacy. (*Id.* at p. 1029 n. 5.)

The case law has limited the trial court's discretion to deviate from the guideline on the basis of "special circumstances." In *Marriage of Denise and Kevin C.*, (1997) 57 Cal.App.4th 1100, 1106, the Second Appellate District held that a reduction in the obligor's discretionary spending did not constitute "special circumstances" that would justify ordering support below the guideline. The trial court calculated child support at a 20 percent time share, when the obligor actually exercised a 1 percent time share, so that the guideline amount would be reduced. The trial court reasoned that to order child support at the actual time share would have a disproportionate impact on the obligor. The panel reversed the decision on the grounds that "a modest reduction" in the obligor's standard of living is not a circumstance warranting a departure from the guideline. (*Id.* at p. 1107.)

In *County of Stanislaus v. Gibbs* (1997) 59 Cal.App.4th 1417, 1428, the Fifth District held that the trial court erred in awarding less than the guideline when the child was receiving AFDC benefits and there was no evidence that the father would be unable to meet the guideline amount despite having consumer debts. The trial court ordered support at an amount below the guideline because the obligor had consumer debts and children from another relationship. The trial court relied on *County of Lake v. Antoni*

[9] Family Code section 4057(b)(5) states: "Application of the formula would be unjust or inappropriate due to special circumstances in the particular case. These special circumstances include, but are not limited to, the following: (A) Cases in which the parents have different time-sharing arrangements for different children. (B) Cases in which both parents have substantially equal time-sharing of the children and one parent has a much lower or higher percentage of income used for housing than the other parent. (C) Cases in which the children have special medical or other needs that could require child support that would be greater than the formula amount."

(1993) 18 Cal.App.4th 1102, for the proposition that consumer debts constitute special circumstances for deviating from the presumptive amount. In *Antoni*, the court reduced the child support award based on the father raising two children in his household and having debts of $41,444 that were apparently incurred to cover "living needs." The panel distinguished the *Gibbs* case from the *Antoni* case on two grounds. First, since *Antoni* was decided, the Legislature had enacted Family Code section 4071.5, which prohibits the entry of a hardship deduction when the children are receiving welfare benefits. Second, in contrast to *Antoni*, here the father did not offer evidence of the consumer debts being used for his living expenses or that he was unable to pay the debts based on his spouse contributing about $50,000 a year to the household.

In *Marriage of Corman* (1997) 59 Cal.App.4th 1492, the Second District held that the trial court erred in considering spousal support as "special circumstances" for deviating from the guideline. The trial court departed from the guideline because the noncustodial parent was receiving spousal support from the other party to the child support proceedings. The panel asserted that the Legislature has mandated that spousal support received from a party to the proceedings be excluded from income, and the trial court could not circumvent this statutory prohibition by characterizing it as "special circumstances." (*Id.* at p. 1501.)

In *County of San Diego v. Guy C.* (1994) 30 Cal.App.4th 1325, the Fourth District held that the adoptive child's family history and behavioral problems were not "special circumstances" warranting a departure from the guideline. The case was decided under now repealed rule 1274(e)(8), which contained no definition of "special circumstances." Nevertheless, the panel maintained that the adoptive parents owed a duty to support the child who was the subject of dependency proceedings, even though the child's behavioral and health problems were not made clear to them at the time of adoption.

However, in one instance, the First District affirmed a zero support order pending a review hearing to be held two months later. In *City and County of San Francisco v. Miller* (1996) 49 Cal.App.4th 866, the Court of Appeal held that the Family Code gives the trial court discretion to order child support in an amount below the low-income adjustment when the guideline amount would be unjust and improper. The obligor's only income was disability payments of $832 per month, and even after the low-income adjustment, he would be left with $14 a month for food and other expenses after paying child support and rent. Accordingly, the trial court entered a zero support order, advised the obligor to find a roommate, and calendared a review hearing in two months. The appellate court found that the trial court did not abuse its discretion, in particular because the obligor would have had almost no money left after the wage garnishment and would have been unable to feed his children during his visitation. (*Id.* at pp. 888–89.)

4.6 Mandatory and Discretionary Add-Ons to Guideline Child Support

Pursuant to Family Code section 4061, the court may apportion additional support (add-ons) equally between the parties, or in the alternative, in proportion to the parties' incomes. In *Marriage of Fini* (1994) 26 Cal.App.4th 1024, the First District held that trial court may exercise discretion in allocating mandatory child support add-ons where the parent's incomes are not disparate. In that case, the custodial parent sought to modify child support and obtain a pro rata apportionment of child-care and uninsured medical costs. The trial court found that the child-care expenses of both parties were "a wash" and declined to rule on the uninsured medical expenses. The appellate court contended that the trial court's refusal to modify the existing arrangement, in which the parties equally shared uninsured health-care costs, was within its discretion because there was only a "modest difference" in income between the parties. Furthermore, given that both parents had child-care arrangements and there was little difference between their net incomes, the panel similarly affirmed the trial court's ruling on child-care expenses.[10]

In *Marriage of Gigliotti, supra,* 33 Cal.App.4th at p. 530, the Second District held that the trial court erred in failing to consider the parents' travel expenses for visitation as discretionary add-ons to the child support award. In the dissolution proceedings, the mother was given permission to move with the minor child to another state. The court ordered a visitation arrangement in which the father would visit the child several times a year out of state and, on other occasions, the mother would bring the child to Los Angeles for visitation with the father. The child support order also provided that a portion of the award would be deposited into a travel trust to fund the father's visitation. The mother later sought to modify child support order and request credits for her own travel expenses. At the modification proceeding, the trial court declined to issue a ruling on the mother's request for a travel expense add-on and left the travel trust for the father's visitation in effect. The panel asserted that the trial court should have exercised its discretion under Family Code section 4062 regarding the additional support for both the mother and father's travel expenses incurred so that the father could exercise visitation with the child. (*Id.* at p. 529.) Furthermore, it found that the trial court lacked discretion to reduce the guideline amount of support in order to fund the father's travel expenses.

In *Boutte v. Nears* (1996) 50 Cal.App.4th 162, the Third District reversed the trial court's order to grant "additional child support" to cover the mother's attorney fees. The trial court apparently allocated these fees at the mother's request because the father had declared bankruptcy and listed her attorney fees as a debt for discharge. The panel held that the court has no discretion to create its own add-on absent statutory authority and

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[10] See also *Marriage of Lusby* (June 4, 1998, D024029) ______ Cal.App.4th ______ (court has discretion to allocate mandatory child support add-ons based on parties' income at the time when the expenses were incurred).

thus the trial court erred in granting an award of attorney fees as a form of supplemental child support. (*Id.* at p. 166.)

However, in *Marriage of O'Connell* (1992) 8 Cal.App.4th 565, 576, the Sixth District held that the trial court may order as additional child and spousal support that the obligor designate the mother and child as beneficiaries of life insurance. Following the father's death, the mother sought enforcement of a life insurance order that was made in child and spousal support modification proceedings. The appellate court asserted when an obligor moves to reduce support, "it is reasonable to expect that the court will consider available support alternatives including modification of life insurance." (*Ibid.*)

4.7 Applying the Child Support Guideline in Disabled Adult and Juvenile Court Cases

In *County of Los Angeles v. Ralph V.* (1996) 48 Cal.App.4th 1840, the Second District affirmed the trial court's reimbursement order for the cost of confining the minor child in a facility for juvenile offenders. The parents argued that the reimbursement order was unconstitutional and improper without proof of the county's actual expenses. The panel found that the courts may use the state guideline for calculating the parents' support but must limit the charges to reasonable amounts. It specified that the court would still need to make a full accounting of the cost of supporting the child and refund any excess if the judgment exceeded that amount. (*Id.* at p. 1849.)

In *Marriage of Drake* (1997) 53 Cal.App.4th 1139, the Second District held that the child support guideline applied to a disabled adult child but that the court could deviate from the guideline amount due to the child's outside income. The mother filed an order to show cause to modify child support but died before the matter was heard. The panel found that the order to show cause was not abated by the mother's death and affirmed the trial court's determination of child support. It asserted, however, that the child's trust funds inherited from his mother could be either treated as special circumstances justifying deviation from the guideline, or attributed to the mother, thereby reducing the father's child support obligation. (*Id.* at p. 1158.)

5 Forms Implementing the Guideline

5.1 Introduction: The Council's Role in Form Production

When the Family Law Act of 1969 was adopted, some provisions permitted pleadings "in form and content approved by the Judicial Council."[1] These provisions, together with the Judicial Council's authority to adopt practice and procedure rules for family law,[2] were the basis for the creation of mandatory Judicial Council forms for use in family law proceedings.[3]

The Judicial Council has also adopted forms for statewide use by district attorneys who are establishing, modifying, or enforcing child support orders under Welfare and Institutions Code sections 11350 et seq. Each of these forms has been adopted as a rule of court.

Judicial Council forms have become an integral part of family law and governmental child support practice. Thus, any review of the child support guideline in California necessarily includes a discussion of the Judicial Council forms involving child support. These forms are discussed in this section of the report.

The forms must be updated periodically to reflect changes in the law or suggestions of

[1] Former Civil Code section 4503, now Family Code section 2331.
[2] Family Code section 211.
[3] Hogoboom and King, California Practice Guide, Family Law (1998) section 3:201 at p. 3–55.

practitioners and the courts. The Judicial Council has proposed changes to a number of the forms discussed in this section. Those changes are currently being circulated for comment. A new version of these forms, noted with an asterisk here, may be adopted effective January 1, 1999.

5.2 Discussion of Forms

5.2.1 Form 1281: Petition

The petition[4] is the document that commences a family law action for dissolution of marriage, nullity, or legal separation. These actions constitute a major component of the actions involving child support.[5] The petition form requests basic information regarding any minor children of the marriage (paragraph 3.b.). The form does not expressly request child support but, rather, notes in paragraph 8 that "[i]f there are minor children of this marriage, the court will make orders for the support of the children without further notice to either party. A wage assignment will be issued."

This provision was inserted in the petition to conform to case law requirements that a defaulting respondent must be given notice, through the petition, that child support is one of the issues in the proceeding. A general prayer for relief is not considered adequate.[6] This paragraph also provides notice that the court will issue a wage assignment pursuant to Family Code section 5230, which requires that a wage assignment be issued in all cases involving support.

5.2.2 Form 1285.20: Application for Order and Supporting Declaration

Paragraph 3 of this form,[7] which is attached to Form 1285 Order to Show Cause* or Form 1285.10 Notice of Motion,* is used for formally requesting the child support order. It indicates whether there is an existing order for which modification is sought (paragraph 3.c.). If the party seeking child support seeks to have the guideline amount used, no amount of child support sought need be stated. This provision conforms with Family Code section 4057(a), which states that the guideline amount of child support is the presumptively correct amount of support. This type of request for child support set at the guideline amount is found on all forms in cases involving minor children where support is requested.[8]

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[4] A copy is attached at Appendix A 5.2.1.

[5] Other actions involving child support include Domestic Violence Prevention Act proceedings, paternity actions, Uniform Interstate Family Support Act proceedings (UIFSA), and TANF reimbursement actions. The federal government forms for UIFSA have been expressly approved for use in California Rules of Court, rule 1276.

[6] *In re Marriage of Lippel* (1990) 51 Cal.3d 1160. The changes to the petition to conform to the *Lippel* holding are generally viewed as making it "clear that if there are minor children of the marriage, child support is *automatically put in issue* by the filing and service of a CRC 1281 petition." Hogoboom and King, Family Law 1, *supra*, at section 3:269, at p. 3–72.

[7] A copy is attached at Appendix A 5.2.2.

[8] These forms include Form 1285.40 Responsive Declaration to Order to Show Cause or Notice of Motion,* Form 1296 Application and Order for Temporary Restraining Order,* the current Form 1296.60 Complaint to Establish Parental Relationship* (the proposed amended form follows the model of the petition for dissolution wherein a request for child support is presumed); the current Form 1296.65 Answer to Complaint to Establish Parental Relationship* (which is proposed to

5.2.3 Form 1285.27: Stipulation to Establish or Modify Child Support and Order

This form[9] provides a mechanism by which parties can indicate their agreement on the amount of child support. One of the principles of the guideline is "to encourage fair and efficient settlements of conflicts between parents."[10] The guideline recognizes that an agreed amount of child support is a factor rebutting the presumption of the guideline amount.[11] The form provides the necessary recitations or findings for a stipulation,[12] which are as follows:

- The parties are fully informed of their rights concerning child support;
- The order is being agreed to without coercion or duress;
- The agreement is in the best interests of the children involved;
- The needs of the children will be adequately met by the stipulated amount; and
- There has been no assignment of the right to support or the district attorney has joined in the agreement.

If the agreed amount is below the guideline amount, a motion to change support can be brought without showing a change in circumstances.[13]

The stipulation form provides for all the information the court will need in acting on an agreed amount of support either in the present or in the future, including the following:

- The income of the parents (paragraph 1);[14]
- The amount of time each parent has the children (paragraph 2);[15]
- Any hardship deductions (paragraph 3);[16]
- The amount of support (paragraph 4), and whether it reflects the guideline (paragraph 5) or a rebuttal (paragraph 6);[17]

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mirror the changes to the complaint).

9 A copy is attached at Appendix A 5.2.3.

10 Family Code section 4053(j).

11 Family Code section 4057(b)(1).

12 Family Code section 4065(a).

13 Family Code section 4065(c).

14 Family Code section 4055(b)(1)(C) and (E).

15 Family Code section 4055(b)(1)(D).

16 Family Code sections 4059(g), 4070–4072 inclusive.

17 Family Code sections 4056, 4057.

- The delineation of the amount of support ordered for each child and any additional child support (paragraph 7);[18]
- Health-insurance coverage (paragraph 8);[19]
- Wage and earnings assignment provisions (paragraph 9);[20]
- Travel expenses for visitation (paragraph 10);[21] and
- The necessary recitations for a proper agreement (paragraphs 13–15).[22]

The court then makes a specific finding if the guideline support is rebutted[23] and orders the support to be changed until further order of court for the duration of the support order (paragraph 16).[24]

5.2.4 Form 1285.30: Notice of Motion and Motion for Simplified Modification of Order for Child, Spousal, or Family Support

This form[25] was developed in response to the direction by the Legislature that the Judicial Council develop forms for a simplified method to modify support orders. This simplified method is designed to be used by parents who are not represented by counsel.[26] This form provides a series of boxes for unrepresented parents to put the issue of child, spousal, or family support before the court. It further enables a parent to request an order that the other parent provide health-insurance coverage for the children as provided by law. Parents must inform the court if the children are receiving public assistance or whether an application for public assistance is pending. The form further provides a proof of service on the reverse side of the Notice of Motion.

5.2.5 Form 1285.31: Information Sheet — Simplified Way to Change Child, Spousal, or Family Support

This information sheet[27] is designed for parents without attorneys to use in order to complete the Notice of Motion and Motion for Simplified Modification of Order for Child, Spousal, or Family Support. The sheet explains how to ask for a change, noting what forms are required, where the forms can be obtained, how many copies are required, how to file the forms, and what forms are required for service. The information sheet describes

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[18] Family Code sections 4055(b)(8), 4062.
[19] Family Code section 3751.
[20] Family Code section 5230.
[21] Family Code section 4062(b)(2).
[22] Family Code section 4065.
[23] Family Code section 4057.
[24] Family Code section 3901.
[25] A copy is attached at Appendix A 5.2.4.
[26] Family Code section 3680.
[27] A copy is attached at Appendix A 5.2.5.

how to agree to support before the hearing, what papers are required for the hearing, and what forms are necessary to obtain a court order.

5.2.6 Form 1285.32: Responsive Declaration to Motion for Simplified Modification of Order for Child, Spousal, or Family Support

This form[28] enables the responding party either to consent to the child support order requested, or to object using checkboxes to indicate the presence of any of the following factors:

- The respondent's income is incorrectly stated;
- The other parent's income is incorrectly stated;
- The respondent is entitled to a hardship deduction;
- The other parent is not entitled to hardship deductions as claimed;
- The amount of support is not computed correctly; or
- Other (specify).

This form directs the parties to bring copies of proof of income to the hearing. It also provides a proof of service on the reverse.

5.2.7 Form 1285.33: Information Sheet — How to Oppose a Request to Change Child, Spousal, or Family Support

This information sheet[29] provides direction to the responding party on what actions to take to agree with or contest the Notice of Motion and Motion for Simplified Modification of Order for Child, Spousal, or Family Support. The information sheet alerts the other party that the current support order remains in effect until modified and that payments must be made on that order.

5.2.8 Form 1285.50: Income and Expense Declaration

The Income and Expense Declaration[30] and its attachments — Income Information, Expense Information, and Child Support Information forms — are the centerpiece of any child support proceeding, as they contain the information the court needs to apply the guideline. The Income and Expense Declaration itself functions as a cover sheet, indicating what additional forms are attached and summarizing some of the information on those forms. The declaration provides information to the court about whether the party is receiving welfare (line 1) so that the district attorney is necessarily involved in the matter.[31] The form provides background information on the parent and his or her earning capacity, including age, education, occupation, duration of current employment, and past

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[28] A copy is attached at Appendix A 5.2.6.
[29] A copy is attached at Appendix A 5.2.7.
[30] A copy is attached at Appendix A 5.2.8.
[31] Family Code section 4200.

employment. Finally, the form provides the court with the party's estimate of the other parent's income, which is critical if the case proceeds by default.

5.2.9 Form 1285.50a: Income Information

The Income Information[32] form provides information about a party's income and the deductions from that income. The guideline requires the determination of the parent's "annualized" income. The income form interprets this requirement as referring to the last 12 months. In addition, since the guideline permits the court to adjust the income figure to "reflect the actual or prospective earnings of the parties at the time the determination of support is made,"[33] there are two columns of figures, one for "annualized" income (called "Average last 12 months") and one for the last month's income.

Items 5–14 of the form implement the statutory deductions from income as shown in Table 5-1.

Table 5-1
Summary of Deductions on Income Information Form

Item of Deduction	Line No.	Family Code Section
State income tax	5	4059(a)
Federal income tax	6	4059(a)
FICA and Medicare	7	4059(b)
Health insurance	8	4059(d)
State Disability Insurance	9	4059(d)
Mandatory union dues	10	4059(c)
Mandatory retirement and pension fund contributions	11	4059(c)
Child and spousal support for another relationship	12	4059(e)
Job-related expenses	13	4059(f)
Hardship deduction	4	4059(g)

[32] A copy is attached at Appendix A 5.2.9.
[33] Family Code section 4060.

The form also includes, on lines 17–21, additional information that may be of assistance to the court in making a decision concerning child support, including whether the parent is receiving income from welfare, spousal support from the other parent, or child support from other relationships. These types of income are not included in determining the party's income.[34] The form requests information regarding the party's assets, which is critical for determining the issue of attorney fees and is often helpful in establishing whether there are additional sources of income for child support. Finally, the form requests the party's three most recent pay stubs as verification of the income reported.

5.2.10 Form 1285.50b: Expense Information

The Expense Information[35] form is used to show the expenses of a parent. Preliminarily, it should be noted that, with few exceptions, the guideline does not take account of a party's expenses in making a child support determination. The expense declaration consists of five parts:

Part 1 is used to list the identities and income of all persons in the household. This information is useful for three reasons.

- If the party is claiming significant housing or other expenses, it is helpful to the court to determine what other parties contribute to these expenses and what income they have.

- If the party is claiming a hardship for other children living in the home, this section supplies the court with the basic information needed to evaluate the claim. The section also might raise the question whether a party who should be claiming a hardship deduction is not, perhaps out of ignorance or inadvertence.

- If the court is to consider the income of a subsequent spouse or nonmarital partner, as in an "exceptional" case,[36] this section provides the information needed. This also provides the basis for determining whether the tax consequences of a new spouses' income should affect the party's net income.[37]

Part 2 lists expenses required in all cases. The purposes of these questions are set out in Table 5-2.

[34] Family Code section 4058(c).
[35] A copy is attached at Appendix A 5.2.10.
[36] See Family Code section 4057.5.
[37] See *Marriage of Carlsen* (1996) 50 Cal.App.4th 212, 57 Cal.Rptr.2d 630. Accord, *County of Tulare v. Campbell* (1996) 50 Cal.App.4th 847, 57 Cal.Rptr.2d 902.

Table 5-2
Purposes of Expense Information

Item Requested	Purpose For Which Requested	Line No.	Family Code Section
Residence payments	Percentages of income used for housing	2.a.	4057(b)(5)(B)
Uninsured medical and dental benefits	Hardship deduction	2.b.	4071(a)(1)
Child care	Additional child support	2.c.	4062(a)(1)
Children's education	Additional child support	2.d.	4062(b)(1)

Part 2.e–p lists expenses required for determining either spousal support or special needs. Part 3 allows for the itemization of installment debts. This part of the form is not normally considered in child support hearings, except for determinations that "application of the formula would be unjust or inappropriate due to special circumstances in the particular case."[38]

Part 4 lists attorney fees and costs. It is considered for determining which party should pay attorney fees and how much. It is not used in child support determinations except to the extent that there is a request for attorney fees as part of a child support hearing.

5.2.11 Form 1285.50c: Child Support Information

This form[39] provides various information for the court when child support is at issue. See Table 5-3.

[38] Family Code section 4057(b)(5).
[39] A copy is attached at Appendix A 5.2.11.

Table 5-3
Purposes of Child Support Information

Item Requested	Purpose For Which Requested	Line No.	Family Code Section
Health-insurance availability	Ordering health-insurance coverage	1	3751
Percentage of time each parent has responsibility for the children	Computing guideline amount with formula (H%)	2	4055(b)(1)(D)
Child-care costs	Additional child support	3.a.	4062(a)(1)
Uninsured health-care costs	Additional child support	3.b.	4062(a)(2)
Educational or other special needs of the children	Additional child support	3.c.	4062(b)(1)
Travel expenses for visitation	Additional child support	3.d.	4062(b)(2)
Hardship costs	Hardship deduction	4.a–c.	4071

5.2.12 Form 1285.52: Financial Statement (Simplified)

This form[40] was designed at the direction of the Legislature for parents who are unrepresented by lawyers for use in child support proceedings. This form does not obtain information regarding the parent's expenses, except for those directly related to the additional costs for child support and hardship costs for other children. The form is designed for persons who are wage earners or receive a set amount from retirement or government programs. It is not appropriate for self-employed persons or those seeking spousal or family support. This form is also not appropriate when attorney fees are requested. See Table 5-4.

[40] A copy is attached at Appendix A 5.2.12.

Table 5-4
Purposes of Information on Financial Statement

Item Requested	Purpose For Which Requested	Line No.	Family Code Section
Welfare status	Determination of income, hardship	1	4055(b)(1)(E), 4071.5
Number of children of this relationship	Determination of amount of support	2	4055(b)(4)
Percentage of time with the children	Computing amount with formula (H%)	3	4055(b)(1)(D)
Tax filing status	Determination of net income	4	4059
Gross income, including source	Determination of income for guidelines	5	4055(b)(1)(C) and (E) 4058(a)(1)
Day-care costs	Additional child support	6.a.	4062(a)(1)
Uninsured health-care costs	Additional child support	6.b.	4062(a)(2)
Educational or other special needs of the children	Additional child support	6.c.	4062(b)(1)
Travel expenses for visitation	Additional child support	6.d.	4062(b)(2)
Costs of other minor children residing with parent	Hardship deduction	7	4071(a)(2)
Job-related expenses	Determination of net income	8.a.	4059(f)
Required union dues	Determination of net income	8b	4059(c)
Required retirement payments	Determination of net income	8c	4059(c)
Health-insurance costs	Determination of net income, ordering health insurance coverage	8d	4059(d) and 3751
Child support being paid pursuant to court order	Determination of net income	8e	4059(e)
Spousal support being paid pursuant to court order	Determination of net income	8f	4059(f)
Monthly housing costs	Percentages of income used for housing	8g	4057(b)(5)(B)

The form asks the parent to provide information regarding his or her current or most recent employment, to estimate the other parent's income, and to list "[o]ther information I want the court to know concerning child support in my case."

The instructions for the form provide a checklist for use in determining whether the form is appropriate for the litigant; request that the litigant provide verification of income, including pay stubs and tax returns; and explain filing procedures.

5.2.13 Form 1285.75: Application and Order for Health Insurance Coverage Form 1285.76: Employer's Health Insurance Return

The guideline, pursuant to federal requirements, requires either parent to provide health-insurance coverage for a minor child if the coverage is available at little or no cost.[41] The first of these forms[42] is provided for a party to request a court order directing the employer, or other person providing health-insurance coverage for the parent, to enroll the children under the parent's health-insurance policy. The second form provides a means for an employer to return information to the court regarding the health-insurance coverage.[43]

5.2.14 Form 1285.78: Notice of Rights and Responsibilities – Health Care Costs and Reimbursement Procedures

This information sheet[44] explains how to request payment from the other parent for health-care costs which are not covered by insurance when those costs are ordered pursuant to Family Code section 4062. The directions follow Family Code section 4063 which provides that when a parent requests payment for unreimbursed medical expenses, that parent must furnish an itemized statement of the charges within a reasonable time not to exceed 30 days. The procedure for partial and full payment as well as disputed charges is set out. The form also sets forth the requirements for adequacy of health insurance coverage.

5.2.15 Form 1296.31: Findings and Order After Hearing*[45]

The Judicial Council has a form for optional use by the courts to make its formal written decision after a hearing: Form 1296.31, Findings and Order After Hearing.[46] It is used following a hearing on (1) child support, (2) custody and visitation, (3) spousal or family support, (4) various property orders, (5) attorney fees, or (6) domestic violence.

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[41] See Family Code section 3751.
[42] A copy is attached at Appendix A 5.2.13(a),(b).
[43] A copy is attached at Appendix A 5.2.13(c).
[44] A copy is attached at Appendix A 5.2.14
[45] All forms with an asterisk have changes proposed which may be adopted January 1, 1999.
[46] A copy is attached at Appendix A 5.2.15

5.2.16 Form 1296.31B: Child Support Information and Order Attachment*

The most common findings and orders in a child support hearing are contained in the Child Support Information and Order Attachment.[47] Designed to be a one-page order regarding child support, the form contains a series of checkboxes so that the parties can indicate an agreement on one or more issues before the court. The amount of support owed per month is set forth in a box at the bottom of the form.

The parties' net income, number of children, and time share are set out. If the parties have agreed upon support, there is a finding that the stipulated support is in the best interests of the child and that the application of the formula would be unjust or inappropriate in this case pursuant to Family Code section 4065(a).

The court orders that a Wage and Earnings Assignment Order for child support shall issue pursuant to Family Code section 5230 and sets forth who is the payor, the amount of support, the duration of support, and the amount of additional child support expenses pursuant to Family Code section 4062. This form also provides the warning required by Code of Civil Procedure section 695.211 that interest on arrearages accrues at the legal rate (currently 10 percent). If additional information or further orders are required, the following two forms may be attached.

5.2.17 Form 1296.31B(1): Child Support Extended Information Attachment*

If extended findings are required by the parties or made by the court, the Child Support Extended Information Attachment[48] can be used. It is also a one-page form, designed in the same format as the Child Support Information and Order Attachment. This form sets out the gross income, deductions from gross income as provided in Family Code sections 4059(a)–(f), hardship deductions as set forth in Family Code section 4059(g), federal income filing tax status, and number of federal tax exemptions claimed.

The form notes the guideline amount of support and, if the presumption that the guideline amount is appropriate is to be rebutted, sets out the factors rebutting the support as set forth in Family Code section 4057.

5.2.18 Form 1296.31B(2): Child Support Extended Order Attachment*

The Child Support Extended Order Attachment[49] is used when orders are made regarding reasonable uninsured health-care costs for the children, costs related to educational or other special needs of the children, and travel expenses for visitation as provided in Family Code section 4062.

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[47] A copy is attached at Appendix A 5.2.16.
[48] A copy is attached at Appendix A 5.2.17.
[49] A copy is attached at Appendix A 5.2.18.

5.2.19 Form 1296.31C: Spousal or Family Support Order Attachment*

This form applies to an award for the support of children, including those awards designated as "family support," that contain provisions for the support of children as well as for the support of the spouse.

Internal Revenue Code section 71(c)(1) provides generally that child support is nontaxable to the recipient parent and nondeductible by the payor parent if "the terms of the divorce or separation instrument fix (in terms of an amount of money or a part of the payment) a sum which is payable for the support of children of the payor spouse." This means that any amount of support that is unequivocally allocated to children[50] is considered nondeductible by the payor. But if the amount is part of a total unallocated sum, and it passes the other tests of deductibility and includability,[51] the amount paid will be deductible from the payor's income and includable in the recipient's income. Where the recipient is in a lower income tax bracket than the payor, this provision can result in tax savings, which can be allocated between the parties.

The Spousal or Family Support Order Attachment[52] is used to reflect the order in these cases. It should be noted that the amount of actual child support in these cases is not precisely determinable since, if it were, it would render the amount nondeductible and nonincludable.

5.2.20 Form 1297: Application for Expedited Child Support Order

The Legislature adopted a procedure to assist persons needing a rapid child support order to obtain one without the necessity of a court hearing. The application[53] requires the parent also to provide an income and expense declaration for both parents, completed by the applicant; a worksheet setting forth the basis for the support requested; and a proposed expedited child support order.[54] If the income of the other parent is unknown, the court may order the minimum basic standard of adequate care.[55] The application is filed and served on the obligated parent. Unless there is a response to the application for an expedited support order, the order shall be effective on the obligated parent without further action by the court. The application further provides warnings and information for the parent from whom support is requested.

5.2.21 Form 1297.10: Response to Application for Expedited Child Support Order and Notice of Hearing

If the parent from whom support is requested disputes the proposed expedited child

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[50] *Sperling v. Commissioner* (2d Cir. 1984) 726 F.2d 948.
[51] See the discussion in King and Hogoboom, Family Law, *supra*, at sections 10:120–10:137.
[52] A copy is attached at Appendix A 5.2.19.
[53] A copy is attached at Appendix A 5.2.20.
[54] See Family Code sections 3620–3624.
[55] As set forth in Welfare and Institutions Code section 11452.

support order, he or she must file this response[56] within 30 days. The form sets forth potential objections. These include not being the parent of the child in question and those set out in Form 1285.32, the Responsive Declaration to Motion for Simplified Modification of Order for Child, Spousal, or Family Support (discussed earlier in Section 5.2.6), which focuses on incorrect information used to obtain a formula guideline calculation. The parent is required to provide an Income and Expense Declaration and instructed to bring copies of his or her most recent state income tax return to the hearing on the matter. A hearing is then set so that the court may determine the appropriate amount of support.

5.3 Development of Forms for Use in Governmental Child Support Action

Over the past five years, the Judicial Council has worked in collaboration with the forms committee of the California Family Support Council to develop statewide Judicial Council forms for use in actions in which the services of the district attorney have been requested to establish, modify, or collect child support under Welfare and Institutions Code sections 11350 et seq. Each of these forms has been adopted as a rule of court.

Each of the forms designed to be used by either the district attorney or a parent in the action has been developed with specific instructions on how to prepare, file, serve and respond to the forms.

5.3.1 Form 1299.01: Summons and Complaint or Supplemental Complaint Regarding Parental Obligations

This form is the initial filing prepared by the district attorney's office when moving to establish a child support award.[57] The caption on this and all forms developed to implement the changes established by Assembly Bill 1058 (Stats. 1996, ch. 957) is different from that on a family law form. It lists three parties to the action: plaintiff, defendant, and "other parent." The plaintiff is generally the county that has jurisdiction over the issue. The defendant is generally the parent from whom support is sought. The "other parent" is generally the parent who is receiving the services of the district attorney's office. That parent becomes a party to the action after the first support order is made.[58] Another major change in this form from its predecessors is that it combines the summons and complaint into one document. The form lists the names and birthdates of the children and indicates whether parentage is being established, support is being requested, or an order is being modified.

On the second page the form sets forth the district attorney's request that child support be ordered according to the uniform state guideline. The amount of income on which the request is based is listed. If at the point of filing the summons, complaint, and proposed

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[56] A copy is attached at Appendix A 5.2.21.
[57] A copy is attached at Appendix A 5.3.1.
[58] Welfare and Institutions Code section 11350.1(e).

judgment, the district attorney does not have sufficient information concerning the obligor's income history to allow calculation of a child support obligation, the district attorney is directed by statute[59] to presume income in an amount that results in a court order equal to the minimum basic standard of adequate care (MBSAC).[60] If the support order is to be based on presumed income, both the complaint and the proposed judgment must so inform the defendant.[61] This form provides that notice at 6(b).

The request includes provisions for health insurance and additional child support, such as day-care expenses; a request for wage assignment; and notices regarding rights and responsibilities. The form is accompanied by two pages of information explaining the form's legal ramifications and provides direction and information regarding legal resources.

5.3.2 Form 1299.04: Answer to Complaint or Supplemental Complaint Regarding Parental Obligations

The respondent files this form[62] to indicate that he or she disputes the proposed amount of child support or any other part of the judgment, or contests paternity. An instruction sheet is attached describing how to complete and serve the answer.

5.3.3 Form 1299.07: Stipulation for Judgment or Supplemental Judgment Regarding Parental Obligations and Judgment

If the responding parent responds and provides additional or different information regarding income, deductions from income, hardships, and other factors that would affect the guideline amount, this form[63] enables all parties to reach an agreement regarding the appropriate amount of support. It contains the requisite findings[64] if the parties agree to stipulate to an amount other than guideline support. It also includes an Advisement and Waiver of Rights for Stipulation, to ensure that the parent understands the rights that he or she may be giving up and the responsibilities of child support.

5.3.4 Form 1299.13: Judgment Regarding Parental Obligations

The summons and complaint is served with a proposed judgment of parental obligations,[65] which sets forth the support amount being requested in order to provide full notice for the defendant. If the party does not respond to action, this judgment will be submitted to the court for approval. It enables the court to make specific findings in the case such as

[59] Welfare and Institutions Code section 11475.1(c)(2).
[60] Welfare and Institutions Code sections 11452 and 11452.018. As of March 1, 1998, the MBSAC was $370 per month for one child and $607 per month for two children.
[61] Welfare and Institutions Code section 11355.
[62] A copy is attached at Appendix A 5.3.2.
[63] A copy is attached at Appendix A 5.3.3.
[64] See Family Code section 4065.
[65] A copy is attached at Appendix A 5.3.4.

whether a low-income adjustment is appropriate,[66] and provides notice if the order is based upon presumed income.

5.3.5 Form 1299.19: Notice and Motion to Cancel (Set Aside) Support Order Based on Presumed Income and Proposed Answer

If support is based on the MBSAC, and the obligor believes that the amount of support is inappropriate, the obligor must file this form[67] to set aside the order within 90 days of the date the first collection of support was made. The obligor also must provide an Income and Expense Declaration or a Simplified Financial Statement and tax returns for each year in which the obligor's income was different from the amount used to calculate the support order. If the court determines that the original order should be set aside, the court is required to enter a new order based on the guideline, which is effective as of the date of the original order.

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[66] See Family Code section 4055(b)(7).

[67] A copy is attached at Appendix A 5.3.5.

6 Operation of the Guideline Review of Court Files

6.1 Introduction

To determine how the courts in California are implementing the child support guideline, the Judicial Council undertook a comprehensive study. The study was designed to collect data on a full range of child support cases in which an order was entered. These cases included private family law actions as well as those established or modified by the family support division of the district attorney's offices in their capacity as the Title IV-D agency for California.

A team of seven attorneys and eight paralegals collected data from more than 3,000 case files containing child support orders. The cases reviewed contained orders filed between July 1, 1995, and December 31, 1997. Of the cases reviewed, 2,987 had sufficient information to be included in this analysis. Cases were selected using a methodology designed to ensure that all eligible child support cases had an equal chance of being included in the survey.

Cases reviewed included initial orders as well as modifications of child support orders in dissolutions, legal separations, paternity actions, and domestic violence prevention act (restraining order) cases, as well as cases brought by the district attorney's office under Welfare and Institutions Code section 11350.1. The

following cases were excluded: (1) interstate child support cases, as those orders were established outside of California and did not use California guidelines; (2) cases in which no orders had been established at the time of the study; (3) cases in which orders and supporting documentation were so incomplete that they lacked minimum data needed for evaluation; and (4) orders providing for family support, as the amount established for child support could not be separated from the amount for spousal support.

The courts are not required to keep statistics on child support orders. As a result, the total number of private child support cases during the time period of the study had to be estimated. Since the California Department of Social Services estimates that one-half of the child support orders in California are established by the Title IV-D agency and one-half are independently established, half the sample was derived from general family law cases and half from IV-D cases. Since the written documentation in the IV-D files tended to be more complete, a slightly larger number of IV-D cases than non IV-D cases are reported here.

Eleven counties participated in the study: Alameda, Amador, Fresno, Los Angeles, San Diego, San Luis Obispo, Santa Clara, Siskiyou, Solano, Tehama, and Tulare. These counties were chosen to represent a cross section of sociodemographic factors that reflect underlying family conditions in California. These factors included the county's population, regional density (rural, suburban, urban), geographic location, relative wealth, and total number of child support cases. The actual number of cases examined in each county was proportional to the number of child support orders reported to be filed by the Title IV-D agency. For example, if County A had twice the number of orders as County B, then twice as many cases were examined in County A as in County B. (See Table 6-1.)

Table 6-1
County's Contribution to the Study Sample

County	Number of Orders Examined	Percent of Total
Alameda	190	6.4%
Amador	8	0.3%
Fresno	468	15.7%
Los Angeles	835	27.9%
San Diego	453	15.2%
San Luis Obispo	60	2.0%
Santa Clara	369	12.3%
Siskiyou	55	1.8%
Solano	133	4.5%
Tehama	26	0.9%
Tulare	390	13.0%
Total	**2987**	**100.0%**

Further discussion of the methodology for selection of the represented counties and the sampling criteria, as well as the research instrument, can be found in Appendix B.

6.2 Research Questions

The researchers reviewed each of the files to obtain the following information:

1. The amount of the support ordered;
2. When support was not ordered according to the guideline formula, the basis for rebutting (not following) the guideline;
3. The amount of support that would have been ordered if the guideline formula was applied;
4. The reported gross and net income of both parties;
5. How many payors appeared to be eligible for a low-income adjustment, and if qualified, how many adjustments were granted;
6. The time share figure used to determine support;
7. Whether the order was reached by stipulation (written agreement between the parties), by default, or after a contested hearing;
8. The number of children subject to the order;
9. Whether any hardship deductions were granted, and if so, which;
10. Whether the parties were ordered to pay additional expenses for the children, and if so, what expenses;
11. Whether the litigants were represented by counsel.

6.3 Preliminary Comments Regarding the Data

The primary concern with the data is that the written record contained in the reviewed files was often incomplete. No mandatory form is used by all litigants in entering a child support order. The majority of cases were resolved by default and tended to have very little information regarding the defaulting party. The next largest group of cases was resolved by stipulation; many litigants chose not to provide much information to the court in their stipulation. Finally, there were few contested hearings. Although more information probably was provided on the record than appears in the court file, not all counties maintain tapes or have court reporters. It was not feasible to order and review transcripts from those courts where they might have been available.

In testing the survey instrument, it became clear that it would be important that the researchers be experienced in reviewing child support files, as court files varied considerably in the amount of information provided regarding the basis for the child support order and the documents containing that information. In most files, researchers had to review many documents to obtain the information needed for the study.

6.4 Results of the Study

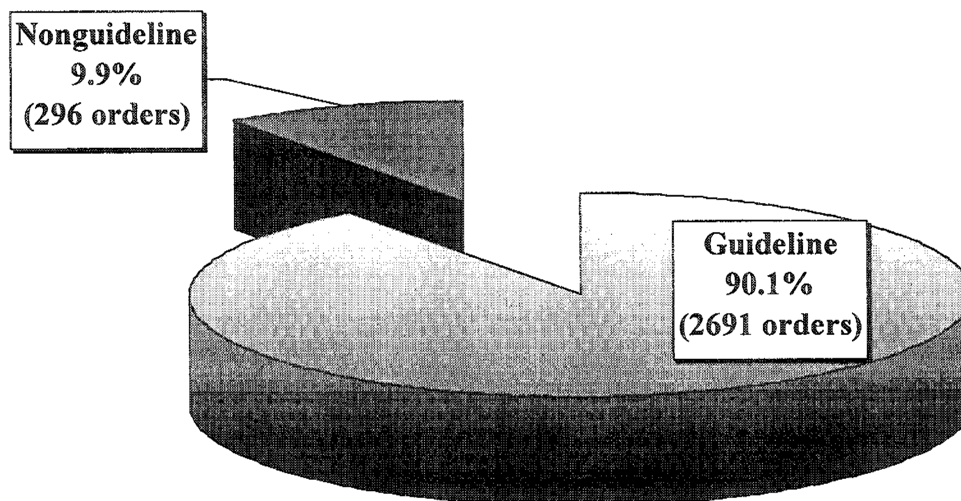
The findings reported below are statistically significant to a 95 percent confidence level (α=.05) unless otherwise noted in specific results.

6.4.1 How Often Did the Orders Meet the Child Support Guideline Formula?

Family Code section 4057 provides that the amount of child support established by the formula set forth in section 4055 (the guideline) is presumed to be the correct amount of child support to be ordered. In the absence of any information suggesting that an order did not meet the standards of the guideline, it was assumed that the amount of support ordered met the guideline. The results of the study indicate that 90.1 percent of the orders in the cases reviewed met the child support guideline. In 9.9 percent of the cases, the presumed order under the guideline was rebutted. (See Chart 6-1.)

Chart 6-1

Guideline Versus Nonguideline Orders



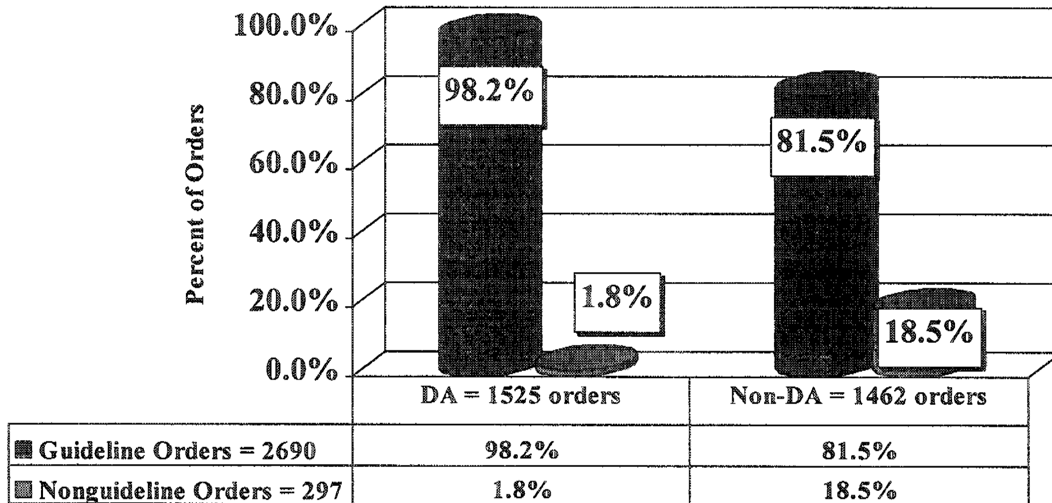
Sample of 2987 child support orders.
Of the guideline orders, 14.7% (395 orders) were reserved or zero.

Of the orders that met the child support guideline, 14.7 percent were zero or reserved orders. Orders for zero and reservations of support appeared to arise when the income of the parties either was known to be zero or was unknown, and insufficient evidence was presented to the judicial officer to enable him or her to impute an earning capacity to the party.

Private family law cases were more likely to have reserved orders than district attorney cases. Private family law cases had a reserved order in 17.9 percent of the cases, and support was reserved in 7.7 percent of district attorney cases.

Orders established or modified by the district attorney's office were more likely to follow the guideline than those established or modified in private cases: 98.2 percent of the cases involving the district attorney met the guideline, compared to only 81.5 percent of the private cases. (See Chart 6-2.)

Chart 6-2
Guideline and Nonguideline Orders by Type of Case



	DA = 1525 orders	Non-DA = 1462 orders
Guideline Orders = 2690	98.2%	81.5%
Nonguideline Orders = 297	1.8%	18.5%

Sample of 2987 child support orders.

6.4.2 Rebuttal Factors Used to Deviate from the Guideline Formula

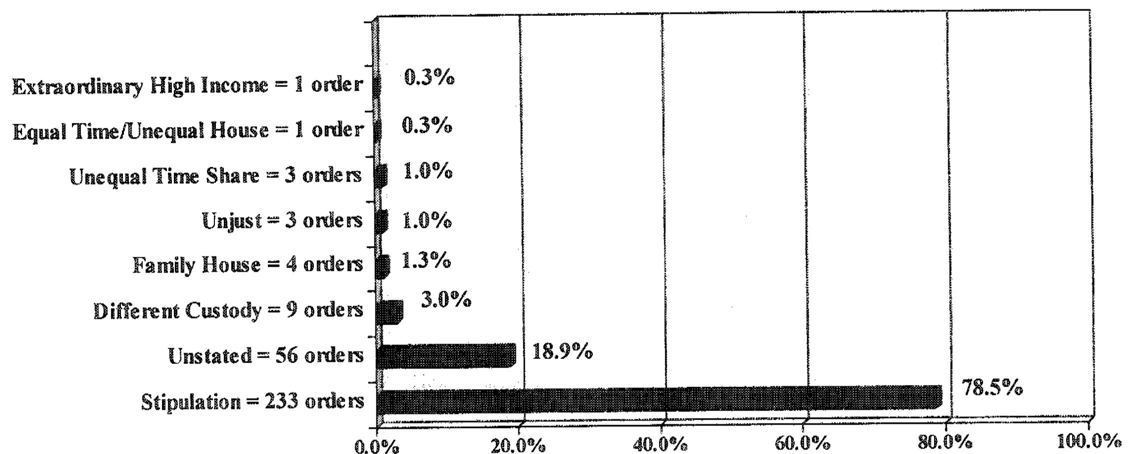
Family Code section 4057(b) provides the reasons that can be used to rebut the presumption that the amount determined by the formula in Family Code section 4055 is the correct amount of support. In order to rebut the presumption, the court must find that "application of the formula would be unjust or inappropriate in the particular case" due to one of the following factors:

1. The parties have stipulated to a different amount of child support.
2. The sale of the family residence is deferred and the rental value of the family residence in which the children reside exceeds the mortgage payments, homeowner's insurance, and property taxes.

3. The parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children.
4. A party is not contributing to the needs of the children at a level commensurate with that party's custodial time.
5. Application of the formula would be unjust or inappropriate due to special circumstances in the particular case. These special circumstances include, but are not limited to, the following:
   a. Cases in which the parents have different time-sharing arrangements for different children.
   b. Cases in which both parents have substantially equal time-sharing of the children and one parent has a much lower or higher percentage of income used for housing than the other parent.
   c. Cases in which the children have special medical or other needs that could require child support that would be greater than the formula amount.

Chart 6-3

Reasons for Rebuttals



Sample of 297 orders with rebutting factors.
Multiple rebuttals are possible in an order.

In the study sample, 296 orders deviated from the guideline. The vast majority of these orders, 78.5 percent, were rebutted because of a stipulation between the

parties. The next largest category, 18.9 percent, consisted of orders in which the rebuttal factors were not stated in the file. The remainder of reasons for rebuttal were used in very few cases. (See Chart 6-3.) These data document only the number of times the rebuttal factors were applied, not the number of cases in which rebuttals were requested and not granted. In a number of cases, more than one rebuttal factor was noted.

6.4.3 Did Nonguideline Orders Tend to Be Above or Below the Formula Amount?

Family Code section 4056 requires that "the amount of support that would have been ordered under the guideline formula" be provided in writing or on the record if support is not ordered per the guideline formula.

Unfortunately, such written information was not contained in the majority of files examined. Out of the 296 orders that deviated from the guideline, only 77 cases stated the guideline amount, of which 35 percent were above the guideline amount and 65 percent were below the guideline amount. The ratio of the order to the guideline amount in almost all orders was between 52 percent of the guideline and 199 percent of the guideline. The difference in the dollar amount between the order and the presumed guideline ranged from $518 per month less than guideline to $753 per month more than guideline.

The number of orders that reported a guideline amount among rebuttal categories other than "Stipulations" and "Unstated" is too small to provide any noteworthy information that can be generalized to the entire sample. However, the orders in these other categories were equally split between orders that were higher and those that were lower than guideline. (See Table 6-2.) As noted, this is an extremely small subsample of orders that deviate from the guideline. In 72 percent of the stipulations, the court did not receive information from the parties regarding the amount of support that would have been ordered under the guideline formula.

Table 6-2
Effect of the Rebuttal to the Presumption on Child Support Amount Ordered When Guideline Amounts Were Available

Reasons	Percentage of Orders Where Rebuttal *Decreased* the Amount Ordered Below Guideline	Percentage of Orders Where Rebuttal *Increased* the Amount Ordered Above Guideline
Stipulations (65 orders)	64.6%	35.4%
Unstated (25 orders)	55.6%	44.4%
Family House (3 orders*)	33.3%	66.7%
Different Custody Arrangements (3 orders*)	66.7%	33.3%
Not Equal in Time Share (2 orders*)	0.0%	100.0%
Extraordinary High Income (1 order*)	0.0%	100.0%
Unjust (1 order*)	100.0%	0.0%
Special Child Needs (1 order*)	100.0%	0.0%
Equal Time, Unequal Housing (0 order*)	N/A	N/A

Sample of 296 rebuttals; of those, 77 orders noted guideline amounts. * Number of orders is too small to be confident of the general direction of deviation.

6.4.4 What Were the Parents' Reported Gross Monthly Incomes?

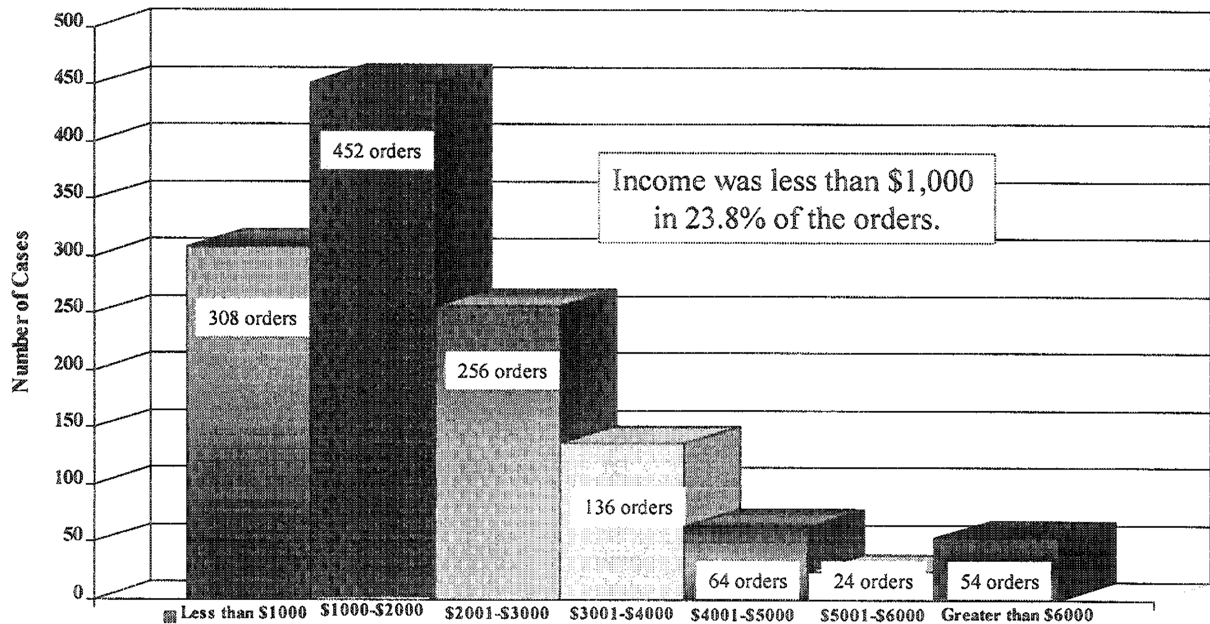
Often, the court file did not contain the gross income of the parents. For example, the income of parents whose time share was stated in the order to be *less* than 50 percent was known in only 45.0 percent of the cases. (In 109 orders parents had equal time share and are not included in these gross income charts.)

Parents who were reported to have the children with them more than 50 percent of the time for the purposes of calculating child support tended to have a significantly lower income than those who were reported to have their children with them less than 50 percent of the time. (See Charts 6-4 and 6-5.)

Chart 6-4 shows that 23.8 percent (308 out of 1294 orders) of those parents for whom time share was calculated at less than 50 percent had gross incomes of less than $1,000 per month; 34.9 percent of these parents had gross incomes between $1,000 and $2,000 per month; 19.8 percent had gross incomes between $2,001 and $3,000 per month; 10.5 percent had gross incomes between $3,001 and $4,000 per month; and 11.0 percent had gross incomes higher than $4,000 per month.

Chart 6-4

Parents' Gross Monthly Income When Child Is with Parent Less Than Half the Time

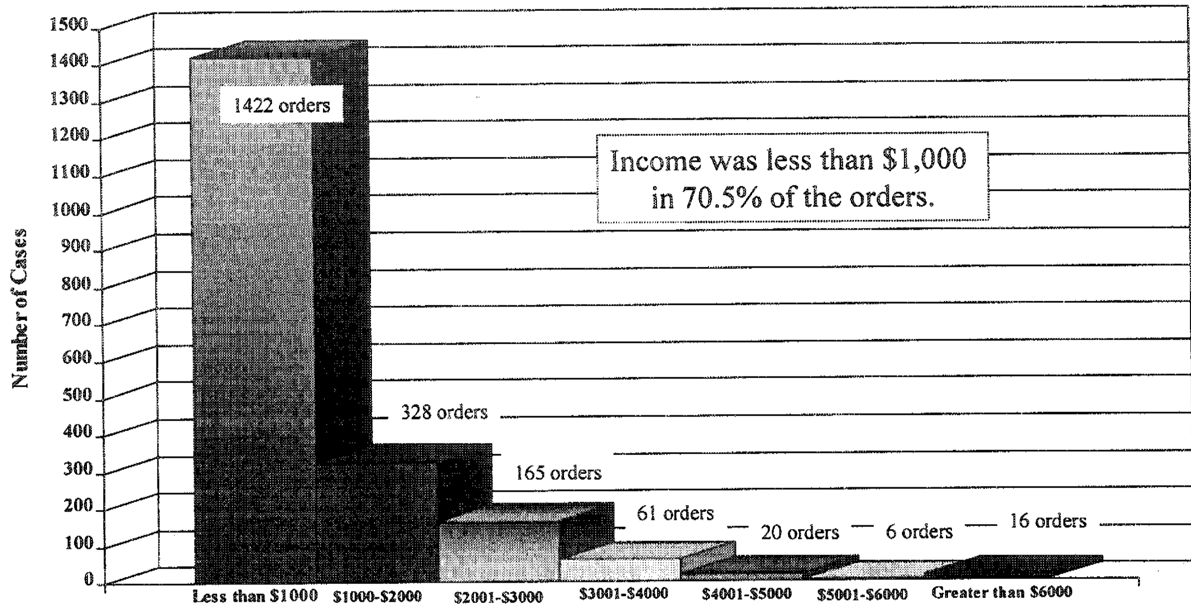


Sample size of 2987. Of those, in 1294 orders gross income was known for parents with less than half time share.

Of those parents for whom time share was calculated at more than 50 percent, Chart 6-5 shows that 70.5 percent (1,422 out of 2,018 orders) had gross monthly incomes less than $1,000 per month; 16.2 percent had gross incomes between $1,000 and $2,000 per month; 8.2 percent had incomes between $2,001 and $3,000 per month. Three percent had gross incomes between $3,001 and $4,000 per month; 2.1 percent had gross incomes higher than $4,000 per month.

Chart 6-5

Parents' Gross Monthly Income When Child Is with Parent More Than Half the Time



Sample size of 2987. Of those, in 2018 orders gross income was known for parents with more than half time share.

The disparity in the income reported for parents is detailed further in Table 6-3, which compares income ranges of the parents. For example, when a parent with a calculated time share of more than 50 percent has less than $1,000 per month gross income, the other parent makes an average of $1,804 per month. When that parent with more than 50 percent time share makes between $1,000 and $2,000 per month, the average income of the other parent is $2,523 per month.

The court files of cases in which stipulations were reached tended to contain very limited income information. It further appears that people with higher incomes tended to have attorneys and reach stipulations; thus, there may be more people with higher incomes than appears from this study.

Table 6-3
Range of Income Disparity

Gross Monthly Income of Parents with Time Share Greater Than 50%	Gross Monthly Income of Parents with Time Share Less Than 50%			
	Average Gross Income	Lowest Gross Income	Highest Gross Income	Spread of Income (Standard Deviation)
$1,000 or Less	$1,804 (660 orders)	$0	$25,000	$1,749
$1,001-$2,000	$2,523 (287 orders)	$0	$17,000	$1,992
$2,001-$3,000	$2,613 (148 orders)	$0	$11,000	$1,815
$3,001-$4,000	$2,900 (56 orders)	$0	$9,583	$1,807
$4,001-$5,000	$3,096 (20 orders)	$0	$7,029	$1,780
$5,001-$6,000	$2,282* (6 orders)	$467	$4,241	$1,774
$6,001 or More	$3,034 (14 orders)	$0	$9,434	$2,767

Sample of 1191 orders where income was known and one parent had a time share greater than 50 percent. In 103 orders income was unknown.
*Number of orders may be too small to make any generalizations for gross income of the parent with time share less than 50 percent, given gross income of the other parent.

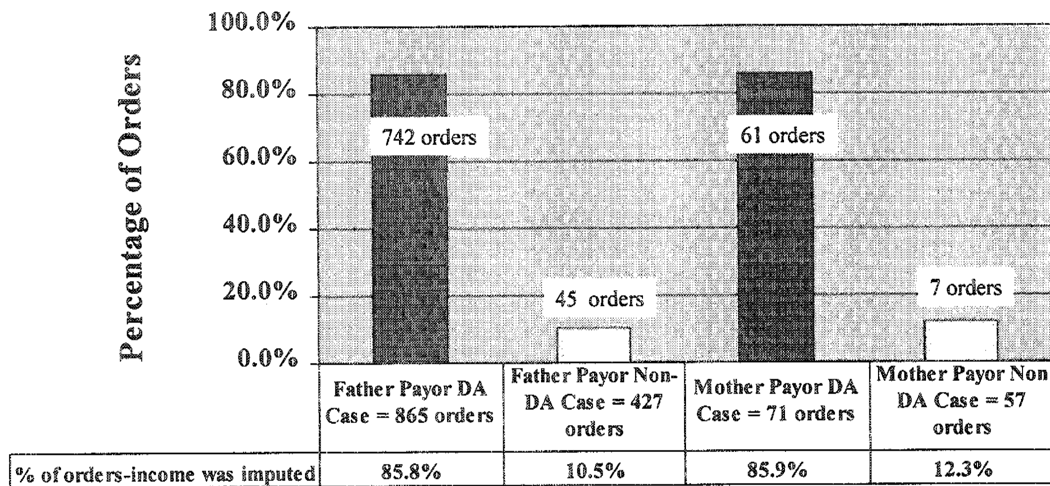
6.4.5 How Often Did the Court Base Its Order on Earning Capacity of the Parents?

In the 1,420 cases in this sample in which the payor's income was unknown, income was imputed to the payor 60.2 percent of the time. Income was most often imputed in default cases. Orders established or modified by the district attorney were much more likely to be based upon income imputed to the payor than those established in private cases. There were 1,292 orders in which the father's income was unknown. Of these, 865 orders were district attorney cases. The district attorney obtained an order imputing income in 85.8 percent of those cases. There were 71 district attorney cases in which the mother was the payor and the income was unknown. Income was imputed to her in 85.9 percent of those cases. Income was much less likely to be imputed in private family law cases regardless of which

parent was payor. Out of the 427 cases where the father's income was unknown in private cases, income was imputed only 10.5 percent of the time. Income was imputed in 12.3 percent of the private cases involving mothers as payors. For both district attorney and private cases, the difference in the percentage of cases where income was imputed to a father payor compared to a mother payor was insignificant at the 95 percent confidence level. (See Chart 6-6.) Income was imputed to the payee in 5.1 percent of the cases examined.

Chart 6-6

Imputation of Income When Unknown, by Case Type and Payor



	Father Payor DA Case = 865 orders	Father Payor Non-DA Case = 427 orders	Mother Payor DA Case = 71 orders	Mother Payor Non DA Case = 57 orders
% of orders-income was imputed	85.8%	10.5%	85.9%	12.3%

Sample of 1292 orders where father was payor and gross income was unknnown.
128 orders where mother was payor and gross income was unknown.

The average amount of income imputed to payors was $897 per month. The minimum monthly imputed income was $608; the maximum was $5,000. The amount most frequently imputed was $737 per month, which was approximately what a party would make if earning minimum wage during the time of the survey. This amount was imputed in 72.9 percent of all orders in which income was imputed to fathers and 70.6 percent of all cases in which income was imputed to mothers. The average award based upon this imputed income was $154 per month for one child and $247 for two children, and because there was generally no time share information, time share was set at zero.

It is anticipated that the amount of child support orders in district attorney cases will be significantly higher at the time of the next survey due to the application of Welfare and Institutions Code section 11475.1(c)(2). This statute requires that when the payor's income or income history is unknown to the district attorney, the

child support order shall be based on the minimum basic standards of adequate care provided in Welfare and Institution Code section 11452. This amount changes annually based upon the cost of living. An initial child support order that is established under this section in 1998 for one child would be $370 per month; for two children the order would be $607 per month. No orders in this survey included this presumed income because all cases in the sample were filed before the effective date of Welfare and Institutions Code section 11475.1(c)(2).

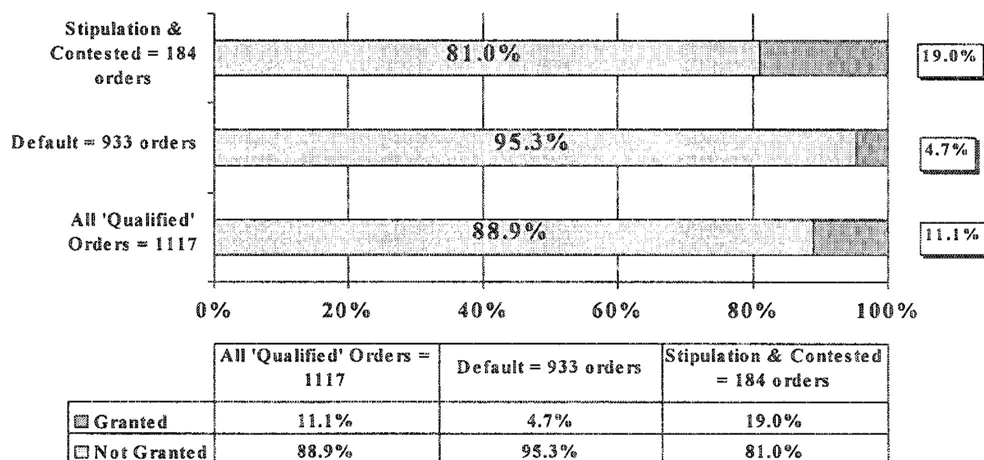
6.4.6 How Often Were Payors Eligible for and Granted a Low-Income Adjustment?

Family Code section 4055(b)(7) provides that "[i]n all cases in which the net disposable income per month of the obligor is less than one thousand dollars ($1,000), the court shall rule on whether a low-income adjustment shall be made."

There were 1,117 payors in the sample who qualified for the low-income adjustment. Of these parents, 809 had imputed income. Low-income adjustments were granted in 11.1 percent of the cases that qualified. In default cases, the low-income adjustment was granted in only 4.7 percent of the cases that qualified. In stipulated and contested cases, the low-income adjustment was granted in 19.0 percent of the cases that qualified. (See Chart 6-7.) As shown in Chart 6-4, there were 308 cases in which the gross income of the payor was known to be less than $1,000 per month. Of those, the low-income adjustment was granted in 32 cases, or 10.4 percent.

Chart 6-7

Low-Income Adjustments



	All 'Qualified' Orders = 1117	Default = 933 orders	Stipulation & Contested = 184 orders
Granted	11.1%	4.7%	19.0%
Not Granted	88.9%	95.3%	81.0%

Total sample of 1117 orders qualified for low-income adjustment. Of those, 124 were granted.

6.4.7 What Time Share Figure Was Used to Determine Support?

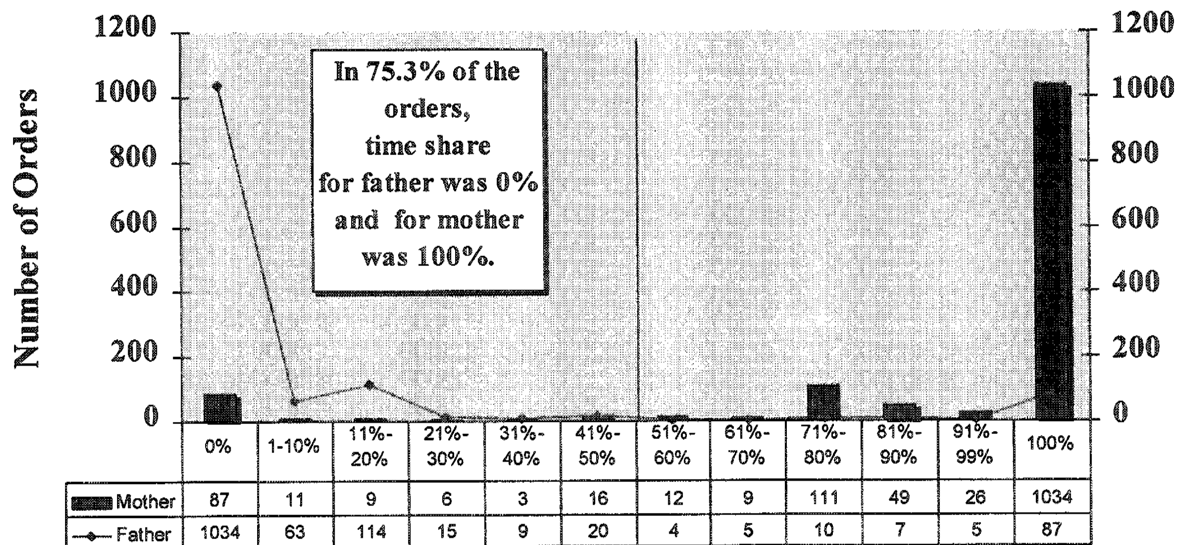
One of the significant factors affecting the amount of child support ordered in a particular case is the amount of time the child spends with each parent. The orders surveyed showed a range of visitation, as shown in Charts 6-8 and 6-9.

These charts show what information the court was given to determine the amount of time share to be used for the child support formula. The charts do not reflect what any custody or visitation order specifies about the time share. Many of the files contained no information about whether there was an actual order for custody and what that order stated. There is no way to know whether the time share the court used in applying the formula actually reflected the amount of time the parents spent with the children.

Family Code section 4055(b)(6) provides that in any default proceeding, when no evidence is presented demonstrating the percentage of time that the noncustodial parent has primary physical responsibility for the children, the time share shall be set at zero if the noncustodial parent is the higher earner, or at 100 percent if the custodial parent is the higher earner. In 75.3 percent of the cases surveyed in which actions proceeded by default, the father's time share was set at 0 percent. (See Chart 6-8.)

Chart 6-8

Time Share Noted in Child Support Order
When Resolution Was by Default



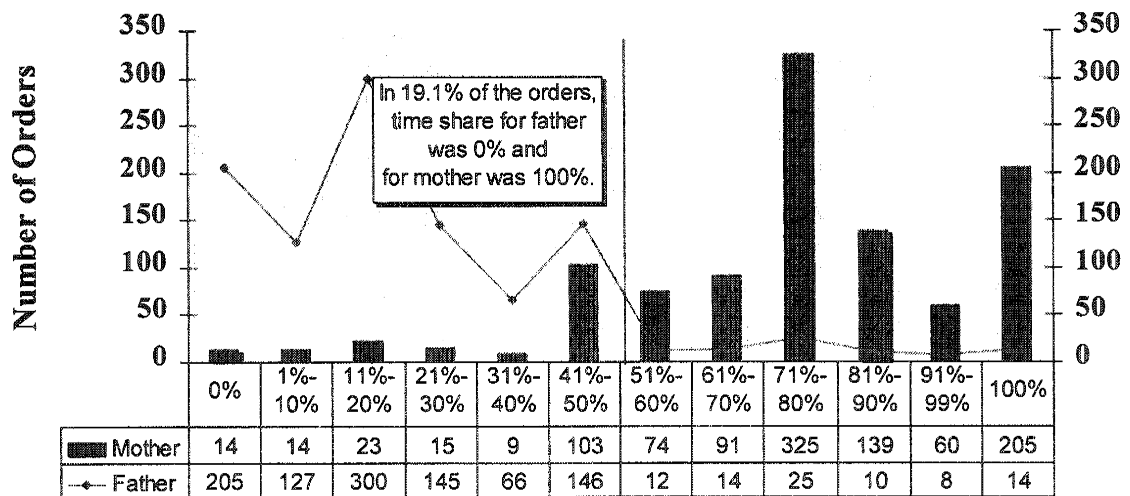
	0%	1-10%	11%-20%	21%-30%	31%-40%	41%-50%	51%-60%	61%-70%	71%-80%	81%-90%	91%-99%	100%
Mother	87	11	9	6	3	16	12	9	111	49	26	1034
Father	1034	63	114	15	9	20	4	5	10	7	5	87

Sample of 1373 cases. Of the 1550 default resolution orders, time share was unknown in 175 orders, and in 2 orders neither parent had any time share.

In stipulations and contested cases (see Chart 6-9), where both parties participated in the action and information was generally presented to the court regarding time share, only 19.1 percent of the cases involved a 0 percent time share for the father, as compared with 75.3 percent in default cases. In 28.0 percent of the nondefault cases, the father's time share was between 11 percent and 20 percent. The majority of those time shares are listed at the 20 percent figure, which has been a "standard" time share in many orders. In 13.6 percent of the cases, the time share for fathers was between 41 percent and 50 percent. In 109 of these cases (10.2 percent), the orders stated that both the mother and the father had time share of 50 percent. In 13.5 percent of these cases, fathers showed a time share of between 21 percent and 30 percent. In general, as shown in Chart 6-9, the time share for fathers in stipulated and contested cases was much higher than time share reported in default cases.

Chart 6-9

Time Share Noted in Child Support Order When Resolution Was Stipulated or Contested



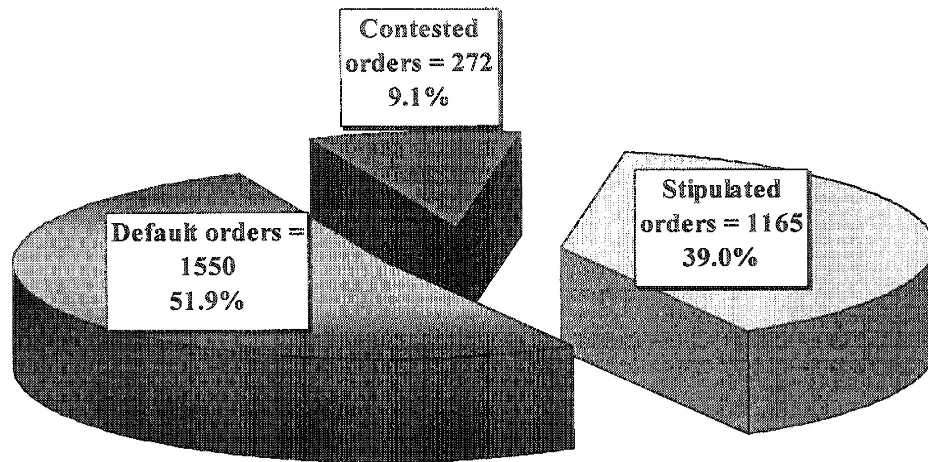
	0%	1%-10%	11%-20%	21%-30%	31%-40%	41%-50%	51%-60%	61%-70%	71%-80%	81%-90%	91%-99%	100%
Mother	14	14	23	15	9	103	74	91	325	139	60	205
Father	205	127	300	145	66	146	12	14	25	10	8	14

1072 shown of the 1437 stipulated or contested resolution orders.
In 365 orders time share was unknown.

6.4.8 Was the Order Reached by Default, by Stipulation, or After a Contested Hearing?

More than 50 percent of the orders reviewed were obtained by default. Stipulations accounted for 39 percent of the matters. Only 9.1 percent were resolved through contested hearings. (See Chart 6-10.)

Chart 6-10
Method of Resolution



Sample of 2987 child support orders.

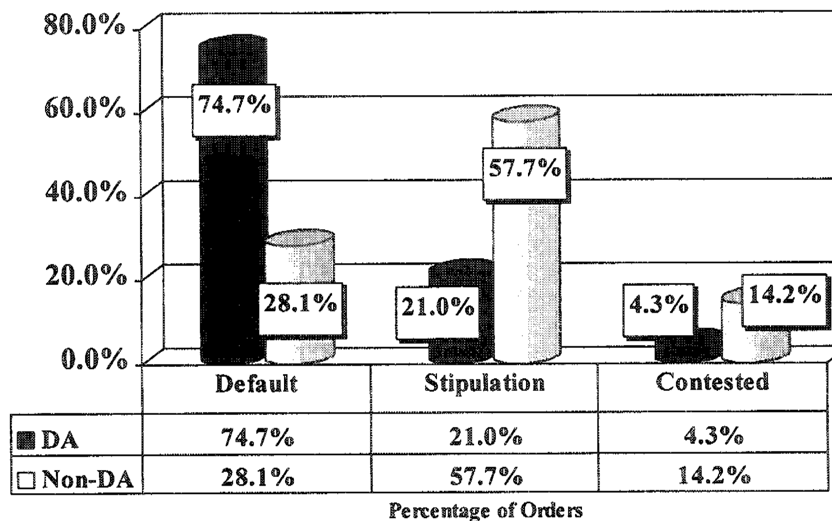
Actions in which the district attorney is involved are much more likely to proceed by default than are private family law cases. Nearly 75 percent of district attorney cases proceeded by default. Contested hearings were conducted in only 4.3 percent of district attorney cases. (See Chart 6-11.)

Cases in which neither party had an attorney were most likely to result in a default judgment (67.7 percent of cases). The unrepresented parties reached stipulations in 26.5 percent of cases and proceeded to contested hearings in 5.8 percent of cases.

When both parties had an attorney, they were most likely to resolve the matter by stipulation (72.0 percent of cases). Defaults were taken in 6.3 percent of the cases, and contested hearings were conducted in 21.7 percent of the cases.

When one party had an attorney and the other did not, stipulations were reached in 51.7 percent of cases. Defaults were taken in 38.6 percent of the cases, and contested hearings were conducted in 9.7 percent of the cases.

Chart 6-11
Resolution by Type of Case, DA Versus Non-DA



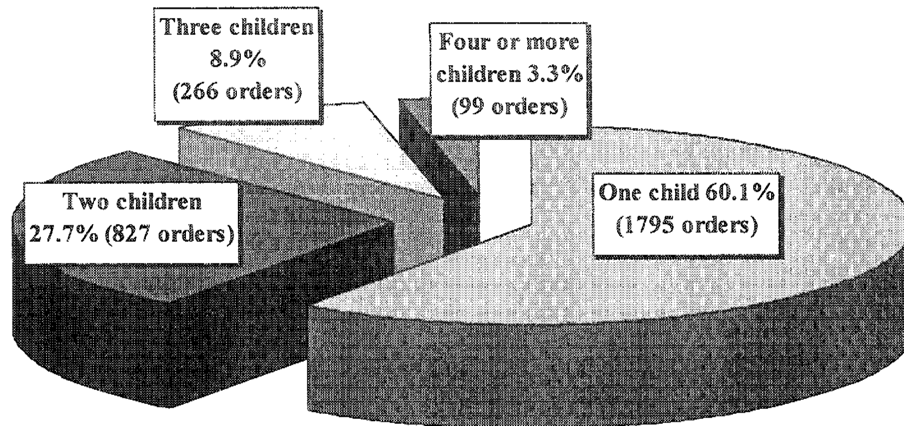
	Default	Stipulation	Contested
■ DA	74.7%	21.0%	4.3%
□ Non-DA	28.1%	57.7%	14.2%

Sample of 2987 orders. Of those, 1525 were DA orders and 1462 were non-DA orders.

6.4.9 How Many Children Were Covered by the Order?

Data were collected concerning the number of children subject to each order. An overwhelming majority of cases involved fewer than four children. (See Chart 6-12.) The research revealed that in 60.1 percent of the cases, only one child was subject to the order. In 27.7 percent of the cases, two children were subject to the order. In 8.9 percent of the cases, three children were subject to the order, and four or more children were subject to the order in only 3.3 percent of the cases.

Chart 6-12
Children Subject to the Order



Sample of 2987 child support orders.

6.4.10 How Often Were Hardship Deductions Granted? Which Deductions Were Granted?

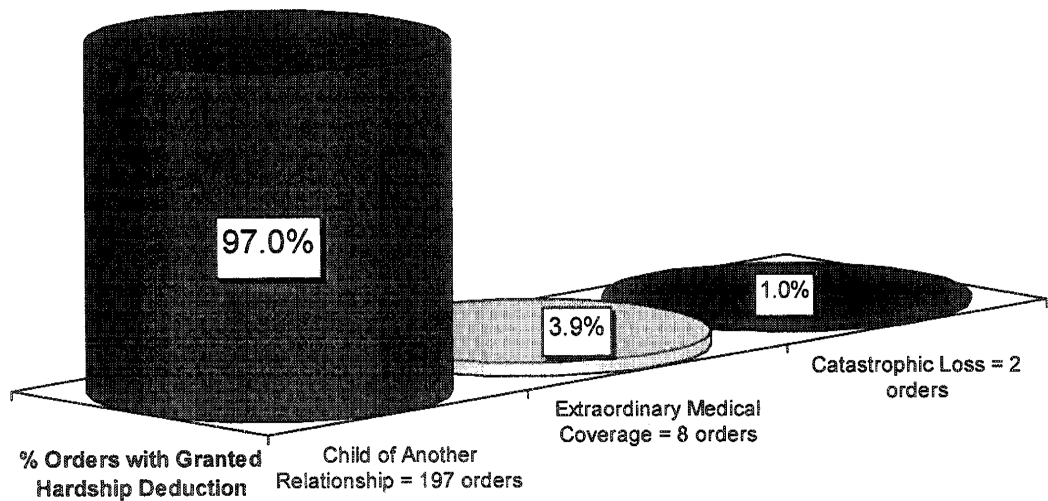
Family Code sections 4070 and 4071 provide that if a parent is experiencing extreme financial hardship due to justifiable expenses resulting from specific circumstances, the court may allow a deduction from that party's income. Those justifiable expenses are extraordinary health expenses for which the parent is financially responsible and uninsured catastrophic losses. The only other hardship that can be granted is for the minimum basic living expenses of either parent's natural or adopted children whom the parent has the obligation to support from other marriages or relationships and who reside with the parent. The maximum deduction for each child who resides with the parent may be equal to, but shall not exceed, the support allocated to each child subject to the order.

This study did not review how many times hardship deductions were requested and in what percentage of cases those requests were granted. It did examine the number of orders that granted hardship deductions and the basis for those hardships. We found that hardship deductions were granted in only 6.8 percent of the total cases. In 97 percent (197 orders) of those cases in which hardships were granted, the deduction was granted to reflect the costs of children of another relationship. A hardship deduction was granted for extraordinary medical expenses in eight cases, and for catastrophic losses in two cases. Multiple hardships were granted in a few orders. (See Chart 6-13.) Hardships

cannot be granted in cases which public assistance payments are paid for the minor children. Thus in approximately 51.2 percent of cases in which welfare was received by the children, hardship deductions could not be granted.

The number of hardships granted for children of other relationships should not be used to estimate how many cases involved children of other relationships. In default cases, there is little way for the court to know whether there are children of another relationship to be considered for purposes of hardship deductions. In addition, because the existence of a hardship is a discretionary finding by the court, hardships may have been requested that were not granted.

Chart 6-13
Hardship Deductions



Sample of 2987 orders, of which 203 orders had hardship deductions granted.
Percentages add up to more than 100, as multiple hardships are possible in an order.

6.4.11 How Many Parents Were Ordered to Pay Additional Child Support, and for What Purpose?

Family Code section 4062 provides that:

(a) [t]he court shall order the following as additional child support:
  (1) Childcare costs related to employment or to reasonably necessary education or training for employment skills.
  (2) The reasonable uninsured health care costs for the children. . . .

(b) The court may order the following as additional child support:
  (1) Costs related to the educational or special needs of the children.
  (2) Travel expenses for children.

Such additional expenses were ordered in 39.2 percent of *all* cases. Many orders contained multiple types of additional expenses. Uninsured medical expenses were ordered in 35.2 percent of the cases. Child-care costs were ordered in 11.2 percent of cases. Costs related to educational needs of children were ordered in 2.1 percent of cases. Travel expenses were ordered in less than 0.9 percent of cases. Other types of additional child support for the special needs of the children were ordered in 6.6 percent of cases. Other types of additional child support included such items as life insurance, counseling, and extracurricular activities. (See Table 6-4.)

Pursuant to Family Code section 4061, the orders that provided for additional expenses generally mandated that the costs be split equally between the parties. In those cases where the actual amount ordered for child-care was stated in the order (rather than expressed as a percentage of the total), the amounts ranged between $30 and $542 per month and averaged $174 per month.

Table 6-4

Percentage of Cases with Additional Child Support Ordered

Categories	Percentage of Sample (2987 Orders)
Uncovered Medical Expenses (1051 orders)	35.2%
Child care (335 orders)	11.2%
Special Needs (e.g. life insurance & counseling) (197 orders)	6.6%
Education (62 orders)	2.1%
Travel Expenses for Visitation (26 orders)	0.9%

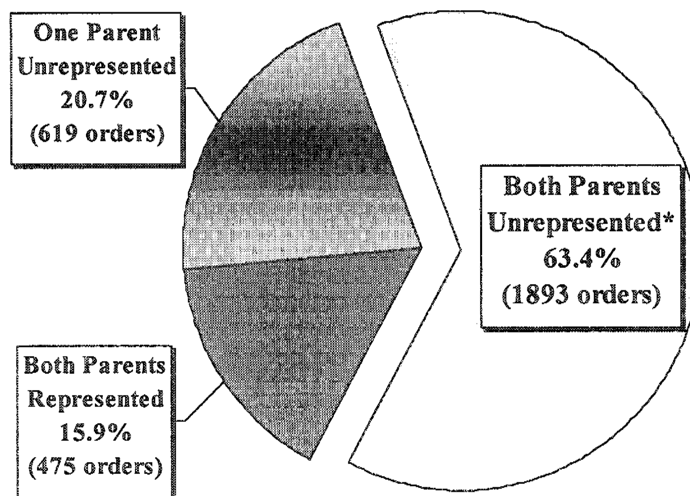
6.4.12 How Many Parents Were Not Represented by an Attorney?

Courts have been reporting a growing number of unrepresented litigants in family law matters. However, few statewide studies of this trend have been conducted to date. In order to assess the number of unrepresented litigants and whether representation appears to have any effect on how the guideline is applied, each file was reviewed to determine whether counsel represented either parent. This analysis, by definition, does not include all family matters, as it concerns only cases involving children in which support is at issue. Thus, the analysis does not include many domestic violence actions, dissolutions that do not involve children, and other similar actions, all of which may involve higher numbers of unrepresented litigants.

The study found that both parties were unrepresented in 63.4 percent of all cases. Only one parent was represented in 20.7 percent of the cases, and both parties had attorneys in only 15.9 percent of the cases studied. (See Chart 6-14.)

Chart 6-14

Parents with Attorneys



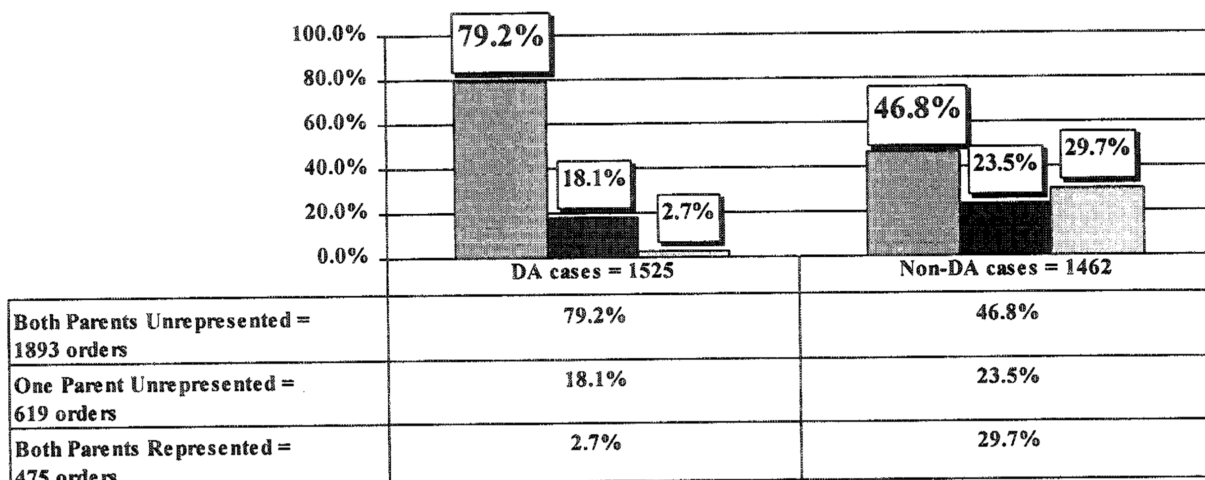
Sample of 2987 orders.
*Includes DA cases.

There was a significant difference in the level of representation between cases involving the district attorney and other family law cases. In cases involving the district attorney, parties were much less likely to have attorneys. Neither parent was represented in 79.2 percent of those cases. One parent had an attorney in 18.1 percent of the cases, and both parents had attorneys in just 2.7 percent of the cases. (See Chart 6-15.) Given that the

district attorney's office does not represent either parent, according to Welfare and Institutions Code section 11478.2(a), that office was not considered to represent either parent.

In family law cases not involving the district attorney, neither party was represented in 46.8 percent of the cases. Only one parent was represented in 23.5 percent of the cases, and both parents were represented in 29.7 percent of the cases. (See Chart 6-15.)

Chart 6-15
Parents' Representation by Case Type



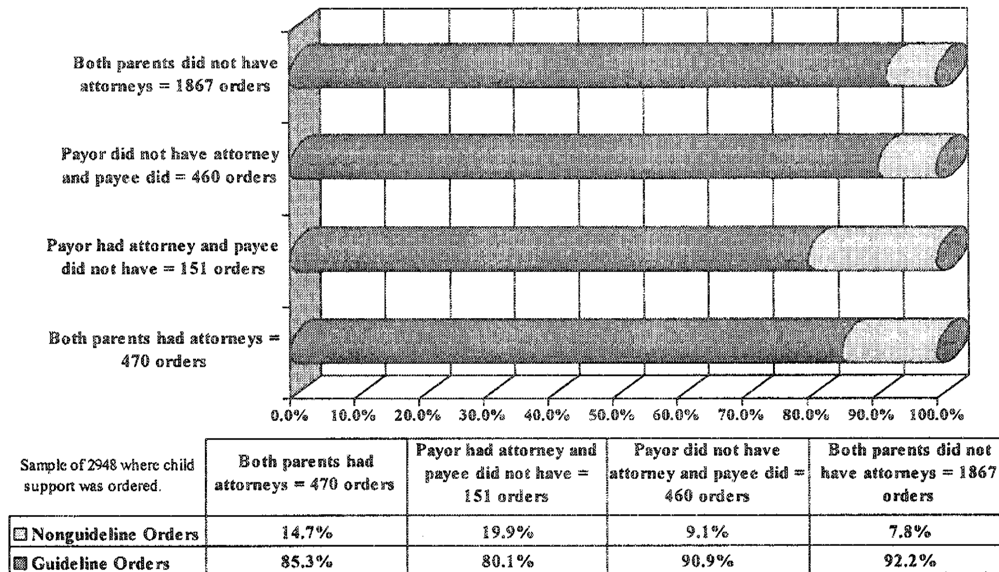
	DA cases = 1525	Non-DA cases = 1462
Both Parents Unrepresented = 1893 orders	79.2%	46.8%
One Parent Unrepresented = 619 orders	18.1%	23.5%
Both Parents Represented = 475 orders	2.7%	29.7%

Sample of 2987 orders.

It appears that parents represented by counsel were more likely to obtain orders that deviated from the child support guideline. When both parties had attorneys, the order deviated from the guideline in 14.7 percent of the cases. If the payor had an attorney and the payee did not have an attorney, the order deviated in 19.9 percent of the cases. If the payor did not have an attorney and the payee did, the order deviated in 9.1 percent of the cases. When neither party had an attorney, the order deviated from guideline in only 7.8 percent of the cases. (See Chart 6-16.) The sample specified in this chart excludes 39 orders where neither parent was named as payor.

Chart 6-16

Guideline Versus Nonguideline Orders,
by Type of Representation



Sample of 2948 where child support was ordered.	Both parents had attorneys = 470 orders	Payor had attorney and payee did not have = 151 orders	Payor did not have attorney and payee did = 460 orders	Both parents did not have attorneys = 1867 orders
Nonguideline Orders	14.7%	19.9%	9.1%	7.8%
Guideline Orders	85.3%	80.1%	90.9%	92.2%

6.4.13 What Was the Range of Child Support Ordered?

Although the variety of factors in the guideline formula make any charts regarding the "average" amount of child support potentially misleading, the following tables are provided to give some broad-brush indication of the range of support orders using the guideline. Table 6-5 does not take into consideration time share or any other factors other than number of children and combined gross income. Hardship deductions, taxes, and other deductions to income are not considered. For example, 43.0 percent (531 orders) of parents in the sample had one child and a combined gross monthly income of less than $1,000. The average child support award was $150 per month in those cases. If the parents with a combined gross monthly income of less than $1,000 had two children, the average monthly support awarded was $261. For parents whose combined gross income was $1,001 to $2,000 per month, the average support award for one child was $401 per month; 15.6 percent (87 orders) of the sample were in this category.

In order to determine the effect of time share on the formula for child support in the cases reviewed, the time share figures were charted against the percentage of gross income in Table 6-6. This table should not be directly compared to the guideline formula, which

uses net rather than gross income. Figures for gross income were used because relatively few net income figures were available in the sample.

Table 6-5

Average Total Amount of Child Support Ordered

Combined Monthly Gross Income of Both Parents	*Average* Child Support Ordered Given Number of Children Subject to the Order			
	1	2	3	4 or More
Less than $1,000	$150 (531 orders)	$261 (169 orders)	$315 (71 orders)	$337 (29 orders)
$1,001–$2,000	$246 (223 orders)	$401 (87 orders)	$427 (25 orders)	$509 (12 orders)
$2,001–$3,000	$290 (156 orders)	$475 (54 orders)	$564 (22 orders)	$870 (6 orders)
$3,001–$4,000	$314 (122 orders)	$459 (64 orders)	$580 (22 orders)	$622* (6 orders)
$4,001–$5,000	$362 (78 orders)	$550 (75 orders)	$622 (17 orders)	$1,652* (2 orders)
$5,001–$6,000	$469 (47 orders)	$682 (31 orders)	$787 (10 orders)	$1,397* (2 orders)
$6,001–$7,000	$497 (33 orders)	$755 (31 orders)	$936 (9 orders)	$1,327* (3 orders)
$7,001–$8,000	$578 (16 orders)	$933 (14 orders)	$413* (2 orders)	$224* (1 order)
$8,001–$9,000	$713* (5 orders)	$1,097 (14 orders)	$1,047* (2 orders)	$998* (1 order)
$9,001–$10,000	$696 (8 orders)	$1,007* (6 orders)	(0 orders)	(0 orders)
$10,001–$11,000	$883 (7 orders)	$1,227* (5 orders)	(0 orders)	(0 orders)
$11,001–$12, 000	$1,025* (2 orders)	$1,500* (1 orders)	(0 orders)	(0 orders)
$12,001–$13,000	$1,154* (4 orders)	$2,517* (3 orders)	$2,386* (1 order)	$3,000* (1 order)
$13,001–$14,000	(0 orders)	$1,250* (1 order)	(0 orders)	(0 orders)
$14,001–$15,000	$1,642* (1 order)	(0 orders)	(0 orders)	(0 orders)
$15,001–$16,000	(0 orders)	$372* (2 orders)	(0 orders)	(0 orders)
Greater than $16,000	$1,253* (3 orders)	$1,450* (2 orders)	$2,200* (1 order)	(0 orders)

* Number of orders is too small to make any generalization of child support amounts given combined gross income and number of children.

Sample of 2,040 orders of incomes for both parents, including zero and imputed incomes when incomes were unknown.

Reserved orders are excluded in calculating this table.

Of the 2,040 orders, there were 1236 orders with a payor involving one child, 559 orders with a payor involving two children, 182 orders with a payor involving three children, and 63 orders with a payor involving four or more children.

Table 6-6

Percentage of Gross Monthly Income Ordered for Parents with Time Share *Less* Than 50 Percent*

	Average Percentage of Income Paid by Number of Children Subject to the Order			
Time Share Used to Calculate Child Support Order	**1 Child**	**2 Children**	**3 Children**	**4 or More Children**
0%	18.8% (281 orders)	29.4% (101 orders)	36.7% (36 orders)	46.6% (11 orders)
1%–10%	17.4% (87 orders)	24.7% (50 orders)	29.9% (13 orders)	30.9% (7 orders)
11%–20%	16.3% (164 orders)	25.3% (103 orders)	27.1% (23 orders)	33.6% (13 orders)
21%–30%	16.1% (73 orders)	19.0% (48 orders)	28.2% (21 orders)	38.9%** (1 orders)
31%–40%	12.3% (33 orders)	17.8% (22 orders)	20.4%** (8 orders)	34.6%** (2 orders)
41%–50%	10.5% (28 orders)	15.8% (14 orders)	42.0%** (5 orders)	(0 orders)

* Sample includes all orders with guideline and nonguideline amounts where time share was known.

** Sample of orders may be too small to make any generalizations about the percentage of income compared to the child support ordered, given the specific time share and number of children.

7 Comparison of Selected Guideline Provisions with Provisions in Other States

7.1 Introduction

This section of the report compares child support guideline provisions from the other 49 states and the District of Columbia.[1] All of these jurisdictions are subject to the requirements of Title IV-D of the Social Security Act (child support enforcement, including guidelines) and the applicable regulations. This section uses the term *states* to refer to all these jurisdictions, even though the District of Columbia is not a state.

The information in this section is based on the treatise *Child Support Guidelines: Interpretation and Application,* by Laura W. Morgan.[2] The 1997 supplement to this publication provides a comprehensive summary and comparison of state child support guidelines.

7.2 Low-Income Cases

The application of support guidelines to low-income cases is a difficult question that has resulted in numerous approaches. California's guideline makes two allowances for low-

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[1] Guam, Puerto Rico, American Samoa, and the U.S. Virgin Islands were not included in the state comparison.
[2] Laura W. Morgan, Child Support Guidelines: Interpretation and Application (Aspen Law & Business) (1997 Supp.).

income cases. In very low-income cases (where the combined net income of both parents is $800 or less), the K factor (percentage of the combined income that is allocated to child support) in the guideline formula is reduced. (See Section 3.2.) California's guideline also provides for a low-income adjustment for obligors whose monthly net disposable income is less than $1,000.[3] The decision to grant this low-income adjustment is discretionary, but in determining the amount of the child support reduction, the decisionmaker must adhere to a set formula.[4]

Treatment of this issue by the various states is diverse. Under one approach, where the obligor's income is extremely low (e.g., below the poverty threshold), the guideline will presume a minimum monthly amount of $50 per child. Another approach is to apply a mandatory minimum award, which is usually $20 or $50 per child. Unlike the first approach, the provision of a mandatory minimum award prevents the obligor from seeking a downward deviation from this amount. One potential problem with this method is that the courts may find it preempted by federal law. The Family Support Act of 1988 as amended (42 U.S.C. section 666), requires state guidelines to provide a rebuttable presumption that the support amount established by the guidelines is correct.[5] Under a third approach, the amount of child support in low-income cases is left to the discretion of the judge, with no presumptive amount stated.

In most states, the guideline specifies that there should be a minimum order of $50 per month per child (based on a former provision of Title IV-D of the Social Security Act, which provided that the first $50 of any amount collected per month on a child support obligation for a recipient of AFDC goes to the recipient, with the rest being used to repay the amounts paid by the AFDC program).[6] The states' treatment of low-income cases is shown in Table 7-1. It should be noted that most states recognize the concept of a self-support reserve, an amount that is subtracted from the payor's income before figuring child support.[7]

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[3] Family Code section 4055(b)(7).

[4] Family Code section 4055(b)(7) provides, in pertinent part: "Where the court has ruled that a low-income adjustment shall be made, the child support amount otherwise determined under this section shall be reduced by an amount that is no greater than the amount calculated by multiplying the child support amount otherwise determined under this section by a fraction, the numerator of which is $1,000 minus the obligor's net disposable income per month, and the denominator of which is $1,000."

[5] 42 U.S.C. section 666. See also *Rose ex rel. Clancy v. Mood* (1993) 83 N.Y.2d 65 [607 N.Y.S.2d 906], cert. denied, (1994) 511 U.S. 1084 [114 S.Ct. 1837].

[6] This provision has since been repealed by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. (42 U.S.C. section 657.)

[7] These are the states adopting the Melson formula, including Delaware, Hawaii, Montana, and West Virginia, as well as other states using the other models, such as Washington and Minnesota.

Table 7-1
State Approaches to Low-Income Cases

Presumptive Award of $50	Mandatory Minimum Award	Award In Court's Discretion
Alaska	Colorado	Alabama
Delaware	D.C.	Arizona
Florida	Indiana	Arkansas
Idaho	Iowa	Connecticut
Illinois	Maryland	Georgia
Kansas	Massachusetts	Hawaii
Maine	Michigan	Kentucky
Montana	New Jersey	Louisiana
Nebraska	New Mexico	Minnesota
Nevada	New York	Mississippi
New Hampshire	Rhode Island	Missouri
North Carolina	South Carolina	North Dakota
Oregon	Utah	Ohio
South Dakota	Vermont	Oklahoma
Tennessee	Washington	Pennsylvania
Texas	Wyoming	West Virginia
Virginia		
Wisconsin		

7.3 High-Income Cases

The California guideline contains a provision allowing for deviation from the guideline amount if "[t]he parent being ordered to pay support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children."[8] What constitutes extraordinarily high income is not defined.

Other states have various provisions concerning the application of the guideline in high-income cases. Some states provide a formula that is the same as is used in all child support cases or is specific to cases of high-income parents. Other states do not apply a formula to high-income cases; instead, a presumption is created that the highest amount available under the guideline is the correct amount. However, after the court presumptively determines child support, it may then deviate from this amount based on the needs of the child and the predivorce standard of living. Other states disregard guidelines altogether in cases of high income and determine the support award by examining the needs of the children and the ability of the parents to provide support. These provisions are specified in Table 7-2.

[8] Family Code section 4057(b)(3).

Table 7-2
State Approaches to High-Income Cases

Provide Formula To Apply To Income	Use Guideline's Highest Amount	Disregard Guidelines
Arkansas	Alaska	Alabama
Delaware	Connecticut	Arizona
Florida	D.C.	Colorado
Georgia	Iowa	Idaho
Hawaii	Louisiana	Kansas
Illinois	Maine	Kentucky
Indiana	Massachusetts	Maryland
Michigan	Minnesota	Mississippi
Nevada	Missouri	Pennsylvania
New Hampshire	Montana	Rhode Island
Ohio	Nebraska	South Carolina
Tennessee	New Jersey	South Dakota
Texas	New Mexico	Vermont
Virginia	New York	West Virginia
Wisconsin	North Carolina	
Wyoming	North Dakota	
	Oklahoma	
	Oregon	
	Utah	
	Washington	

7.4 Use of Gross or Net Income

The California guideline bases the amount of the support order on the parties' net income.[9] The states are roughly equally split in their use of gross versus net income. Net income is what is left after federal, state, and local taxes, and other mandatory deductions such as retirement contributions and union dues, are taken out. States vary widely in the other types of income deductions allowed. Gross income is all income without deductions. Table 7-3 summarizes the form of income that states use in determining child support under their guidelines.

[9] Family Code section 4055.

Table 7-3
State Use of Gross or Net Income

Net Income		Gross Income	
Alaska	Arkansas	Alabama	Arizona
Connecticut	Delaware	Colorado	D.C.
Florida	Hawaii	Georgia	Idaho
Illinois	Iowa	Indiana	Kansas
Michigan	Minnesota	Kentucky	Louisiana
Mississippi	Montana	Maine	Maryland
Nebraska	New Hampshire	Massachusetts	Missouri
New Jersey	New York	Nevada	New Mexico
North Dakota	Ohio	North Carolina	Oklahoma
Pennsylvania	South Dakota	Oregon	Rhode Island
Tennessee	Texas	South Carolina	Utah
Vermont	Washington	Virginia	Wisconsin
West Virginia	Wyoming		

7.5 Treatment of Shared Custody Arrangements

The California guideline contains a provision allowing for deviation from the guideline amount if "both parents have substantially equal time-sharing of the children and one parent has a much lower or higher percentage of income used for housing than the other parent."[10] In addition, the California guideline formula adjusts the support amount according to the percentage of visitation being exercised by the noncustodial parent.[11] Most states allow a support adjustment in cases where the parents have shared custody. Some states provide that, when the child spends a substantially equal amount of time with each parent, the guideline amount is calculated differently from nonshared custody arrangements.[12] Other states use a sliding scale to reflect the amount of time the children spend with the noncustodial parent. In particular, once a threshold amount of visitation in excess of the usual 20 percent is met, the support is adjusted on a sliding scale. Many states treat shared custody as a deviation factor – that is, the courts in these jurisdictions will determine the presumptive amount based on sole custody and then deviate from that amount. The states' treatment of shared custody arrangements is summarized in Table 7-4.

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[10] Family Code section 4057(b)(5)(B). The California guideline permits deviation in certain limited circumstances where the parents equally share child custody and their incomes are disparate.

[11] Family Code section 4055.

[12] In "equal time" states, such as Hawaii, Kansas, and New Mexico, an adjustment is allowed for visitation in excess of 30 percent, but less than 50 percent.

Table 7-4

State-by-State Treatment of Shared Custody

New Formula For Equal Custody	Sliding Scale Based on % Time Share	Deviation Factor
Delaware	Alaska	Alabama
Hawaii	Colorado	Arizona
Idaho	D.C.	Arkansas
Kansas	Maryland	Connecticut
New Mexico	Michigan	Florida
Oklahoma	Minnesota	Georgia
West Virginia	Nebraska	Illinois
	North Carolina	Indiana
	Oregon	Iowa
	Utah	Kentucky
	Vermont	Louisiana
	Virginia	Maine
	Wisconsin	Massachusetts
	Wyoming	Mississippi
		Missouri
		Montana
		Nevada
		New Hampshire
		New Jersey
		New York
		North Dakota
		Ohio
		Pennsylvania
		Rhode Island
		South Carolina
		South Dakota
		Tennessee
		Texas
		Washington

7.6 Income of a Subsequent Spouse or Nonmarital Partner

The use of income of a subsequent spouse or nonmarital partner has been a controversial issue in California. The most recent legislation prohibits the consideration of so-called new mate income except in extraordinary circumstances.[13] Similarly, several other states allow the courts to consider new mate income only in well-defined circumstances.[14] Other states provide that the income of a subsequent spouse or nonmarital partner should

[13] Family Code section 4057.5.

[14] Florida, New Hampshire, and Louisiana, in part.

not be imputed to the parent.[15] In those states lacking statutory provisions relating to new mate income, the courts generally do not consider new mate income as the parent's income unless it is used to reduce that parent's expenses.[16]

7.7 Children from Prior or Subsequent Relationships

In California, a parent is entitled to a deduction from gross income for payments made pursuant to a court order, or other amounts paid to the extent of the guideline amount, for children not residing in that parent's home.[17] In addition, a parent is entitled to a hardship deduction, not to exceed the amount per child ordered in the present case, for the cost of raising children in the parent's home. The hardship deduction is a discretionary, not mandatory, adjustment.[18]

Obligations toward and payments to children from prior relationships of either parent are treated in a variety of ways by the states. The vast majority of states defer to prior child support orders by permitting the courts to deduct other support payments from the parent's gross income. Many states also allow parents to deduct from their income support of prior children that is not provided pursuant to a court order, as for example when these children reside in the parent's household. In a minority of states, prior support obligations, regardless of whether they are related to support orders, are treated as deviation factors. Finally, in Texas, the support obligation allows for a credit toward refiguring the amount of the child support obligation within a "multiple family formula."

The treatment of children from subsequent relationships, however, has been more varied throughout the states. The fact that states may employ a different approach for subsequent children is related to public policy that discourages parents from taking on an additional support obligation to the detriment of the child already in need of support.[19] The states have not reached a consensus on the treatment of support for subsequent children. State guidelines have adopted the following approaches: (1) courts must deduct support for subsequent children from gross income; (2) courts may deduct support for subsequent children from gross income if the circumstances so warrant; (3) courts may deviate from the presumptive award if the circumstances so warrant; or (4) no provision for subsequent children is made whatsoever. In contrast, the California guideline does not distinguish between prior and subsequent children in authorizing income deductions for support actually paid for other children or for children residing in a parent's household. State treatment of subsequent children is summarized in Table 7-5.

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[15] Arizona, Idaho, Connecticut, Minnesota, New Mexico, North Dakota, Utah, and Washington, in part.

[16] Colorado, Indiana, Missouri, Nevada, New Jersey, New York, Oregon, Pennsylvania, and Wisconsin, in part.

[17] Family Code section 4059(e).

[18] Family Code sections 4059(g), 4071(a)(2), 4071(b).

[19] The disparate treatment of the obligations for prior and subsequent children may, however, raise equal protection problems.

Table 7-5
State-by-State Treatment of Support for Subsequent Children

Must Deduct From Income	**May Deduct From Income**	**Deviation Factor**	**No Provision**
Colorado	Arizona	Alabama	Illinois
Idaho	Mississippi	Alaska	Minnesota
Indiana	South Carolina	Arkansas	Montana
Iowa		Connecticut	Rhode Island
Maine		Delaware	
Michigan		D.C.	
Missouri		Florida	
New Jersey		Georgia	
North Carolina		Hawaii	
North Dakota		Kansas	
Ohio		Kentucky	
Oregon		Louisiana	
Texas		Maryland	
Vermont		Massachusetts	
Wisconsin		Nebraska	
		Nevada	
		New Hampshire	
		New Mexico	
		New York	
		Oklahoma	
		Pennsylvania	
		South Dakota	
		Tennessee	
		Utah	
		Virginia	
		Washington	
		West Virginia	
		Wyoming	

7.8 Health Insurance Premiums and Uninsured Medical Expenses

Federal law requires that state child support guidelines provide for the child's health insurance coverage.[20] The California guideline treats the payment of health insurance premiums for the children as a deduction from that parent's gross income.[21] Twenty other states similarly allow the parent paying the premiums to deduct the amount from his or her gross income. Twenty-eight other states add the cost of the health insurance to the basic child support award and apportion the cost between both parents. Georgia and

[20] 42 U.S.C. section 666(a)(19).
[21] Family Code section 4059(d).

Nevada use the cost of health insurance as a reason for deviating from the basic child support award.
Child support guidelines also generally account for the payment of uninsured and extraordinary medical expenses. In California, the courts are required to allocate reasonable uninsured medical costs equally between the parents in addition to the basic child support amount. Either parent, though, may request that the court order payment in proportion to the parents' net disposable income, based on evidence that this different apportionment would be appropriate.[22] Most other states also treat uninsured medical expenses as add-ons to the basic child support amount. Some states treat these expenses as a deviation factor.

7.9 Child-Care Costs

The California guideline provides a mandatory add-on for child-care costs "related to [the parent's] employment or to reasonably necessary education or training for employment skills."[23] As with uninsured medical costs, child-care costs are either divided equally or apportioned according to the net income of both parents.[24] Most states (30) treat child-care expenses as mandatory add-ons, while others (14) consider them as a deviation factor. The 6 remaining states allow the party paying for child-care to deduct the expenses from gross income.

7.10 Children's Educational Expenses

In California, the courts exercise discretion in ordering educational expenses as additional child support.[25] As with child-care and uninsured medical costs, educational expenses are either divided equally between the parents or allocated in proportion to their net incomes. Most other states (31) consider the children's educational expenses as a basis for deviating from the presumptive award. Other states (8) consider the costs as add-ons to the basic child support award, while some states (11) make no provision for educational expenses.

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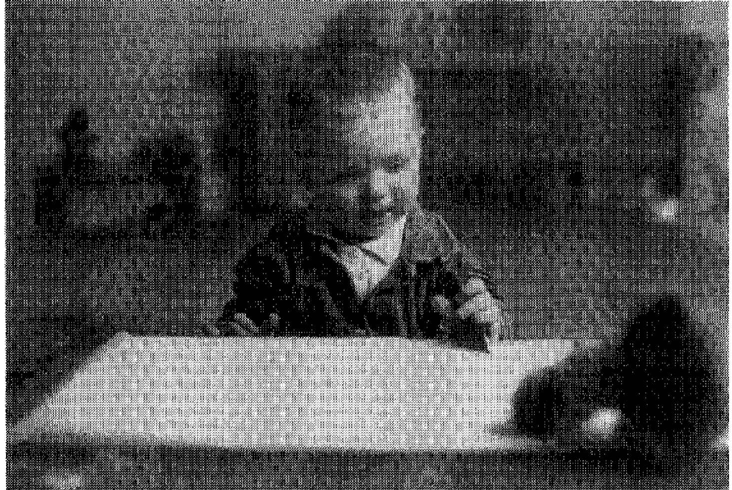
[22] Family Code sections 4061(a), 4061(b).
[23] Family Code section 4062(a)(1).
[24] Family Code section 4061.
[25] Family Code sections 4062(b) and 4061.

8 Studies on Spending Patterns Relating to Children



8. 1 The Meaning of the "Cost of Raising Children"

Family Code section 4054(b) requires that the Judicial Council review of the California guideline include economic data on the cost of raising children.[1] It appears, though, that the phrase "cost of raising children" may be equated with "estimates about patterns of spending on children." Indeed, the relevant publication issued by the Department of Health and Human Services is entitled *Estimates of Expenditures on Children and Child Support Guidelines.*

Developing estimates of expenditure patterns, rather than data on the cost of raising children, means more than just changing the wording. To some people, the phrase "cost of raising children" means that there is one basic amount that it costs to raise a child, with certain differences depending on a child's special medical or education needs, and a savings when certain costs can be spread over two or more children. The Agnos Child Support Standards Act, in establishing a minimum amount of child support based on the AFDC needs standard for a child, could be interpreted as reflecting that view. But that act also recognized:

[1] This provision is based on 45 C.F.R. section 302.56(h), which requires the state's review of its guideline to "consider economic data on the cost of raising children . . . ."

> The mandatory minimum child support award established pursuant to this chapter is intended to assure adequate basic living expenses, including food, shelter, and clothing, for the supported children. The court shall not assume that any other costs related to the rearing of children are provided within the mandatory minimum award.[2]

The Agnos Act further noted that when a court sets a higher level of child support it "shall be guided by . . . the legislative intent that children share in their parents' standard of living."[3]

Under the Family Code, the Legislature directed that the courts adhere to certain principles in applying the statewide guideline. Among those principles are two provisions of Family Code 4053. Section 4053(a) seeks to ensure that "[a] parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life." Section 4053(f) states that "[c]hildren should share in the standard of living of both parents." Child support may therefore appropriately improve the standard of living of the custodial household to improve the children's lives. Accordingly, this report reviews studies on spending patterns related to children rather than the more narrow issue of the cost of raising children.

8.2 Studies on Spending Patterns

8.2.1 Introduction

Section 128 of the Family Support Act required the Secretary of Health and Human Services to contract for a study of expenditures on children and submit a report on the results of the study. The study was conducted by Professor David Betson of the University of Notre Dame, based on analysis of the 1980–1986 Consumer Expenditure Survey (CEX), and is known as the "Notre Dame study."

The Notre Dame study analyzed patterns of expenditures on children in two-parent and single-parent families. The expenditure data were drawn from the CEX for 1980–1986. The CEX is designed to be a nationally representative sample of the civilian noninstitutional population; data on expenditures are collected from approximately 5,000 families per quarter. Approximately 90 to 95 percent of all family expenditures are covered, including large expenditures (cars or major appliances), expenses incurred on a regular basis (rent), and estimates of average expenditures on food and other items.

In 1990, the Department of Health and Human Services released a report discussing the Notre Dame study, which is known as the "Lewin report."[4] The Lewin report also

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[2] Former Civil Code section 4723.
[3] Former Civil Code section 4724(a).
[4] Lewin/ICF, Estimates of Expenditures on Children and Child Support Guidelines, U.S. Dept. Health and Human

compared the findings from the 1980–1986 CEX to those from earlier CEX data, and reviewed the results of other relevant studies. Finally, the report discussed the limitations and implications of these data for development of child support guidelines.

This part summarizes the information in the Lewin report. The various estimators of expenditures discussed in the report are briefly explained, and their strengths and weaknesses are summarized. Certain tables from the report are reproduced. Comparisons between the Notre Dame study and other studies are discussed. Other studies summarized in the report are also mentioned.

8.2.2 Expenditures on Children

8.2.2.1 The Concept Being Measured

The data from the Lewin report are stated as the percentage of family expenditures attributable to children. Expenditures on children are a proportion of total family expenditures (the family budget). The budget consists of the remaining available funds after taxes and savings are subtracted from income. It should be noted that child support orders are normally based on family income rather than family expenditures. Net income includes savings, whereas the family budget (expenditures) does not.

8.2.2.2 Data from the Notre Dame Study

The Notre Dame study considered the effect of family size, ages of the children, available budget, and different estimation techniques on the percentage of family expenditures attributable to children. These data are summarized in Tables C-1 and C-2.[5] The table footnotes indicate which factors are considered in each estimate.

The Notre Dame study evaluated five different methods of estimation, which are summarized and discussed below in the order in which they appear in the tables. The models are the Engel, Iso-prop, Rothbarth, and Barten-Gorman estimators and the per capita method. The Engel, Iso-prop, Rothbarth, and Barten-Gorman estimators are examples of marginal cost approaches. They measure expenditures on children as the difference in family expenses between two-parent households with children and equivalent childless couples.[6] The per capita method, however, estimates child-rearing costs by allocating the expenditures of households with children in equal proportions among household members.[7] The models are discussed in more depth in the following sections.

Services, Office of the Assistant Secretary for Planning and Evaluation (Oct. 1990).

[5] Attached at Appendix C. (Lewin/ICF, pp. 4-7, 4-11.)

[6] Expenditures on Children by Families, 1997 Annual Report, U.S.D.A. Center for Nutrition Policy and Promotion (1997) at p. 13.

[7] *Ibid.*

8.2.2.2.1 Engel Estimator

The Engel estimator uses the percentage of expenditures devoted to food as the indication of family well-being. (One version of the estimator uses only food at home, and the other considers total food.) If the percentages of expenditures devoted to food are equal in two families, then the families are considered equally well-off. Expenditures for children are estimated by comparing families with and without children that devote the same percentage of expenditures to food. Expenditures on a single child are the difference between total expenditures for the one-child couple and the childless couple.

This method of measurement assumes that consumption decisions are "independent" — that is, the decision to purchase one commodity would not affect the consumer's propensity to purchase other commodities. For example, if consumption decisions were independent, buying a house would not affect a family's propensity to eat out on Friday nights. This assumption may be problematic, as it is easy to see why buying a house may cause some families to eat inexpensive meals at home rather than going out to eat.

8.2.2.2.2 The Iso-Prop Estimator

The Iso-prop estimator operates in the same manner as the Engel estimator but uses other commodities in addition to food, or a combination of commodities, as the comparison point. (*Iso-prop* is short for *isoproportional*, meaning characterized by equal proportions.) The Iso-prop estimator considers expenditures on shelter, clothing, food (at home and away), transportation, and medical expenses.

8.2.2.2.3 The Rothbarth Estimator

The Rothbarth method measures expenditures on children by assessing the impact of children on their parents' consumption. This method is similar to the Engel estimator except that it measures expenditures on observable adult goods, such as alcohol, tobacco, and adult clothing. The Rothbarth method also assumes independence in the consumption decision-making process.

8.2.2.2.4 The Barten-Gorman Estimator

The Barten-Gorman estimator is an example of a utility maximization measure. This method does not assume independence of consumption decisions, thus allowing for the possibility that adults substitute different goods in response to the presence of children in the household. For example, after they have children, adults may rent home videos as a substitute for going to the movies. As a result, one problem with this estimator is how to measure the substitution behavior of adults when estimating expenditures.

8.2.2.2.5 The Per Capita Estimator

With this estimator, per capita expenditures on children are presented for comparison. This measure is calculated by dividing total family expenditures by the number of family members, and attributing an equal proportion of expenditures to each family member.

8.2.3 Findings from the Lewin Report

8.2.3.1 Upper and Lower Bounds of Estimates

The Engel estimator, used by Thomas Espenshade in his pioneering study *Investing in Children*, tends to overestimate expenditures. This method assumes that children consume nonfood and food commodities in equal proportions. For example, if children account for one-third of the expenditures on food, they would also account for one-third of expenditures on nonfood commodities. Expenditures for children, however, probably are food-intensive; that is, the percentage of food items consumed by children exceeds the percentage of nonfood items they consume. If this is true, then the Engel estimator overestimates expenditures on children because estimates are based on consumption of food.

The Rothbarth estimator, on the other hand, tends to underestimate expenditures. Adult goods in the CEX are defined narrowly (e.g., tobacco and alcohol), and expenditure on adult goods may not be responsive to the presence of children. Other "shared" goods (e.g., entertainment) not accounted for by the Rothbarth estimator, however, may be affected by the presence of children. If expenditures on "adult goods" remain stable while expenditures on other goods adjust for the presence of children, these estimators will indicate that relatively low levels of additional income are needed to restore the level of adult expenditures prior to the presence of children. As a result, this method will conclude that children are relatively inexpensive. Expenditures on adult goods are unresponsive to the presence of children, however, not because children are inexpensive, but because substitution behavior keeps expenditures on adult goods at similar levels for families with and without children. The Lewin report concluded that the Engel estimator is likely to overestimate expenditures on children and the Rothbarth estimator is likely to underestimate such expenditures.

Based on the studies' findings on child-rearing expenditures, the Lewin report highlighted several consistent patterns, which are discussed below.[8]

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[8] Lewin/ICF, Estimates of Expenditures, *supra,* at p. 4-25.

8.2.3.2 Effect of the Number of Children

Expenditures per child do not increase in proportion to their numbers. Expenditures on two children are estimated to be between 1.40 and 1.73 times as much as expenditures for one child; expenditures on three children are estimated to be between 1.56 and 2.24 times as much as expenditures for one child. The greater the number of children, however, the greater the percentage of expenditures are attributable to the children.

8.2.3.3 Effect of the Age of the Child

The percentage of the budget spent on a child increases with the age of the child. Expenditures on older children are estimated to be greater than expenditures on younger children, for both one- and two-parent families.

8.2.3.4 Effect of One-Parent Households

Children in one-parent families account for a higher percentage of total expenditures than children in similar two-parent families. Two children in a two-parent family account for 27 to 50 percent of total expenditures, whereas two children in a one-parent family account for 52 to 78 percent of total family expenditures. Although the percentage of expenditures on children may be higher in one-parent families, the actual level of expenditures is probably lower than in two-parent families, because the single-parent household on average has a smaller budget.

8.2.3.5 Effect of the Budget Level

Expenditures on children vary with the level of total family expenditures (the budget). Among two-parent families, low-budget (low-income) families spend a greater percentage of their total budget on children than do families with larger budgets. For the most part, a similar pattern emerges for one-parent families.

8.2.3.6 Limitations of the Consumer Expenditure Survey (CEX) Study

The CEX data have several limitations:

- The sample sizes were small. Although the survey itself was large, the subgroups of interest (e.g., single parents with children in their household) were considerably smaller. The estimates were less precise for smaller samples.

- Limited information was collected on child-care expenses. The information collected did not distinguish between necessary and discretionary child care.

- No information was collected about what proportion of the family's expenditures on health care is attributable to children.

8.2.3.7 Limitations of the Notre Dame Study

- The data combined single-parent families where the custodial parent was divorced, separated, or never married.

- Data on expenditures were collected by household. Therefore, the estimates for one-parent families considered the custodial parent's household only, disregarding expenditures of the noncustodial parent. The only expenditure of the noncustodial parent considered was child support, to the extent support payments were received and expended by the custodial parent.

- The study did not address the opportunity costs associated with children (e.g., one parent stays home to care for the children). Women may be more likely to absorb these costs than men, both before and after divorce. Before divorce, women are more likely than men to be the parent to stay home and care for the children. After divorce, although many women enter the paid workforce or increase their working hours, those women may absorb the increased cost of child care, a situation not reflected in the Notre Dame expenditure estimates.

8.2.4 Comparison with Other Studies

Several studies released prior to the Betson study used the methods discussed above as well as additional methods to estimate expenditures on children. The Prais-Houthakker and utility maximization estimators were based on the 1972–1973 Consumer Expenditure Survey (CEX). In addition, the Family Economics Research Group of the U.S. Department of Agriculture (FERG) produced biannual estimates of expenditures on children. The FERG estimates discussed below are based on the 1987 CEX. Comparisons of the Notre Dame data and studies using the 1972–1973 CEX are summarized in Tables C-3 and C-4.[9] Descriptions of the additional estimators follow. Both the tables and the descriptions are taken from the report but have been updated to include the Center for Nutrition Policy and Promotion report, which was published thereafter.

8.2.4.1 The Family Economics Research Group (FERG) Estimator

The FERG estimator considers the major categories of expenses that most families incur and attributes some of these expenses to children and adults on a per capita basis and

[9] Attached at Appendix C. (Lewin/ICF, pp. 4-15, 4-19.)

others on a marginal cost basis.[10] Per capita expenses are assigned equally to each family member. Marginal cost assignment of expenses attempts to determine the incremental expenditures families make on behalf of their children. For example, a single child in a couple's home does not account for one-third of the family's food consumption (per capita allocation). Marginal cost measures estimate the incremental cost of adding a child to the household.

Per capita expenses include housing and transportation. Expenditures on children's clothing, education, and child care are assigned on an equal basis to each child in the household. Food and health-care expenses are allocated based on individual member shares using findings from the National Food Consumption Survey, conducted by the U.S. Department of Agriculture, and the National Medical Care Utilization and Expenditure Survey, conducted by the U.S. Department of Health and Human Services.

8.2.4.2 The Prais-Houthakker Estimator

The Prais-Houthakker estimator assumes that the percentage of expenditures attributable to a particular family member is not constant across broad categories of goods.[11] This estimator uses a per capita measure of family spending on each major commodity group, adjusted using a relative expenditure scale. The relative expenditure scale recognizes that a given family member does not consume the same proportion of each type of good. For example, expenditures for a teenage boy may be food-intensive, whereas for a teenage girl expenditures may be clothing-intensive. The relative expenditure scale itself, however, must be estimated.

For most types of expenses, the addition of a child will reduce the adjusted per capita expenditures made on behalf of the other family members. Expenditures on the new child are then determined by adding up all of these reductions in the per capita expenditures of the other family members. Because there is not enough information to make reliable estimates of both the relative expenditure scales and expenditures on children, this technique is unreliable.

8.2.4.3 Utility Maximization Estimators

Utility maximization estimators assume a particular mathematical relationship between expenditures on each category of goods and the level of well-being within the family.[12] Once this mathematical relationship is specified, it is possible to determine how much expenditures would have to increase to hold well-being constant after the addition of a child.

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[10] *Id.* at p. 2-12.
[11] *Id.* at p. 2-19.
[12] *Id.* at p. 2-22.

Problems with the measure include accounting for nonlinear relationships between expenditures and well-being, and choosing the method for estimating relative expenditure levels by the age and gender composition of the family.

Appendix C, Descriptions 1 and 2[13] summarizes estimation techniques and comments on their limitations.

8.2.5 Other Studies Released Since the Lewin Report

8.2.5.1 Center for Nutrition Policy and Promotion (CNPP) 1997 Annual Report

The Center for Nutrition Policy and Promotion (CNPP) produced the U.S. Department of Agriculture's 1997 annual report on expenditures on children. The expense estimates in the 1997 report derive from the 1990–1992 Consumer Expenditure Survey (CEX) and were updated to 1997 dollars using the Consumer Price Index. The 1990–1992 CEX involved interviews with about 5,000 households each quarter that provided information on household income and expenditures on a national scale. The CNPP report considered those expenditures on children made by husband-wife and single parent families with two children. Categories of expenditures include housing, food, transportation, clothing, health care and education, and miscellaneous goods and services.

To account for geographic price differentials and varying spending patterns, the estimates for husband-wife families include four urban regions (West, Northeast, South, and Midwest) and rural regions generally. Furthermore, the estimates of child-rearing expenses in husband-wife and single-parent households were based on the expenditures of the younger child. To adjust this figure to estimate the older child's expenses, the same method was repeated on a smaller sample of husband-wife households with the focus on the older child.

The report analyzed expenditures from three income groups on a per capita basis, allocating expenses among household members in equal proportions. It declined to adopt marginal cost approaches, which measure expenditures on children as the difference between the expenses of couples with children and equivalent childless couples. The marginal cost approaches do not consider substitution effects; that is, they assume that parents do not alter their expenditures on themselves after a child is added to a household. The report recognized, though, a major limitation of the per capita method in that the expense for an additional child may be less than average expenditures.

The report made several findings on patterns of child-rearing expenditures in husband-wife and single-parent households. First, it found that for all income groups the expenditures on children are lower in the younger categories and higher in the older age

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[13] Attached at Appendix C. (Lewin *id.*, ICF pp. 2-33, updated.)

categories. Moreover, the overall child-rearing expenses are higher for families in the urban West. The data for husband-wife families for the urban West and overall United States are summarized in Tables C-5 and C-6.[14] For children in single-parent households, the child-rearing expense patterns are similar to those of husband-wife households. The data for single-parent families are summarized in Table C-7.[15] The primary difference between these households is that the majority of single-parent households are in the lower-income group. Lastly, it was noted that housing represents the largest individual child-rearing expenditure, comprising 33 to 37 percent of the total expenses, with food as the second largest average expense.

The major shortcoming of this study is that the average income for the three income categories tends not to represent the typical household income level in the United States. For instance, the average income for husband-wife families in the overall United States is represented as either $22,100; $47,200; or $89,300, when the average U.S. household income is actually somewhere between the first and second tiers. Because the income level influences the percentage of income dedicated to child-rearing expenditures, the selection of income levels for the purpose of presenting the findings is significant. The selection of income levels frustrates a comparison with other estimators that assume an average household income around $30,000.

8.2.5.2 State Studies Based on National CEX Data

Various states have estimated the cost of raising children using national data available from the 1980–1986 Consumer Expenditure Surveys (CEX). Few attempts have been made to develop data similar to that of the Consumer Expenditure Surveys on a state level. New Jersey has adopted the Rothbarth methodology for estimating the cost of raising children based on the sampling of two-parent households from the 1980–1986 CEX. The expenditures of two-parent households were considered because the New Jersey guideline is based on the income shares model, which apportions to the child the amount that the parents would have spent on raising the children had the household remained intact. The New Jersey study contended that it was necessary to include both the custodial and the noncustodial parent's child-rearing expenditures so as to reflect the noncustodial parent's ability to pay child support and the higher standard of living that the children would have experienced had the household remained intact.

Similarly, Arizona adopted the Rothbarth methodology based on the 1980–1986 CEX for the same reason as New Jersey. Pennsylvania and South Carolina also employed the Rothbarth methodology to estimate child-rearing costs and specifically rejected the average cost approach of the CNPP methodology. Both states preferred the marginal cost approach because of a concern that the per capita method assumes the costs of children to

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[14] Attached at Appendix C.
[15] Attached at Appendix C.

proportionally equal those of the parents. It should be noted, however, that the final report of the Pennsylvania study has yet to be issued.

8.2.6 Information from Studies Not Using the CEX

8.2.6.1 Economies of Scale in the Official Poverty Threshold

One reason for the decline in the economic well-being of dissolving families is the loss of economies of scale when one household splits into two. Economies of scale are reflected in the official poverty threshold. In 1997, maintaining two adults and two children at the poverty level required $1,251 more per person per year when they made up two families rather than one.

1997 Poverty Thresholds[16]

Two adults, two children	$16,276	
One adult, two children:		$12,931
One adult:		$ 8,350
Total:	$16,276	$21,281

Loss of economies of scale = $5,005 or $1,251 per person

8.2.6.2 The Survey of Income and Program Participation

The Survey of Income and Program Participation (SIPP) is a longitudinal study on the demographic and economic characteristics of individuals and households in the United States. Based on a nationally representative sample of households, SIPP monitors groups (or panels) of individuals and their households for about two and one-half years. In *Family Disruption and Economic Hardship: The Short-Run Picture for Children*, Suzanne Bianchi and Edith McArthur analyzed the economic effect of family dissolution on the households comprising the 1984 SIPP panel. In particular, the authors emphasized the economic effect of parental departure from the household on the children's well-being.

The analysis indicated that over time the immediate effects of parental departure on children who remained with their mother after their father departed were reductions in family income, per capita income, and income in relation to needs. In addition, it was more common for mothers who remained single throughout the sample period to receive food stamps and AFDC payments than mothers who married, remarried, or reconciled with the father.

Children who made the transition into single-parent households were less well-off than children in stable two-parent families. Children living in families in which the father

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[16] U.S. Census Bureau, 1997 Poverty Thresholds.

entered or left the household during the sample period experienced the greatest relative increase or decrease in their economic well-being. But even before the departure of the fathers, families in which the father was present at the beginning of the sample period and subsequently departed were worse off than stable two-parent families. These findings indicate that economic hardship for children whose fathers leave the household is due to two factors: first, the loss of income earned by the absent parent; and second, the relative poverty of these families compared to stable two-parent families, even before the father left the household.

8.2.6.3 The Panel Study of Income Dynamics

The Panel Study of Income Dynamics (PSID) is a large-scale longitudinal survey specifically developed to examine the factors contributing to changes in the economic well-being of families over time.[17] The PSID is a nationally representative sample survey of approximately 5,000 American families who were initially studied in 1968 and reinterviewed every year subsequently. A number of researchers have used this data, as described below.

8.2.6.3.1 The Weiss Study

In his analysis of PSID data, Robert Weiss found that while women with the highest predivorce income levels continued to have higher income than other postdivorce women, divorce was a "leveling experience" among women, diminishing the income gap between those in the highest and lowest postdivorce income categories.

After monitoring women's income for five years after their divorce, Weiss noted that women who did not remarry rarely recovered from the initial postdivorce reduction in income. He concluded that the critical difference between the married and single poor was that on average, the married poor were able to improve their economic situation, whereas the single poor remained in poverty.

Weiss found that mothers in single-parent families were much more likely to have earnings than married mothers. Almost two-thirds of low-income and more than 90 percent of high-income divorced or separated mothers had earnings, whereas only one-half of married mothers in each of the three income groups had earnings. As for divorced and separated mothers, their earnings comprised almost two-thirds of total household income for the low-income group, three-quarters for the middle-income group, and about two-thirds for the high-income group.

Child support and alimony were received by just over one-third of the low-income group, about one-half of the middle-income group, and almost three-quarters of the high-income

[17] *Id.* at p. 5-22.

group of women in the first year after marital disruption. In households receiving child support or alimony payments, these transfers were between 20 and 40 percent of their total household income (the lowest proportion for the lowest-income group and the highest proportion for the highest-income group). Over a five-year period following marital disruption, child support and alimony declined as a proportion of total income for the middle- and higher-income groups, but remained the same proportion of income for the lowest-income group.

8.2.6.3.2 The Duncan and Hoffman Study

Greg Duncan and Saul Hoffman used the PSID data to consider the economic effects of marital dissolution, taking into account the impact of remarriage.[18] They found that long-term divorce or separation diminished the economic well-being of women. For those women who did not remarry, family income initially fell to approximately 70 percent of its predivorce level and remained low for the six-year observation period. When women who remarried were pooled with those who did not, however, family income rose to 81 percent of the predivorce level, and economic well-being improved over the observation period.

The authors found that divorce was associated with an increase in poverty among women and a reduction of poverty among men. The majority of women received no spousal or child support, and among those who did, the amount and incidence of these payments declined over time.

8.2.6.3.3 The Stirling Study

Kate Stirling used the PSID data to analyze the "longer-term" effects of divorce.[19] She analyzed only those women who had been married at least three years and tracked them for at least five years after divorce. For these families, average family income fell by 46 percent during the first two years after divorce. During the next three years, family income generally remained unchanged. Stirling also found that over time the proportion of family income attained from women's own earnings increased. Transfer income, however, still contributed 16 percent of the total family income after five years.

8.2.6.3.4 The Weitzman Study: The Divorce Revolution

In her book *The Divorce Revolution*, Lenore Weitzman made controversial findings on the economic consequences of divorce.[20] Most notably, she reported that after divorce the average standard of living for women declined by 73 percent, whereas men's standard of

[18] *Id.* at p. 5-28.
[19] *Id.* at p. 5-34.
[20] Weitzman, The Divorce Revolution: Unexpected Social and Economic Consequences for Women and Children in America (The Free Press, 1985).

living improved by 42 percent. Since its publication in 1985, the book has received considerable attention in legal and popular publications, and has been frequently cited in state appellate and Supreme Court decisions. The study involved interviewing 228 couples, whose identities were drawn from the court docket of divorces recorded in Los Angeles County between May and July 1978. Only one member of each couple was selected for interviewing; respondents were asked to report their own and their ex-spouse's incomes in the year before separation and at the time of the interview.

In recent years, however, the Weitzman findings have been discredited by criticism of the study's methodology;[21] even the author has conceded that there were errors in the study's computations.[22] Social scientist Richard Peterson reanalyzed the raw data and computer files available from the Weitzman study to find that the percentage change of each spouse's standard of living after divorce was significantly less than Weitzman reported. Peterson duplicated Weitzman's analysis based on the raw data (paper records) and made some adjustments to the data, such as including new mate income and updating predivorce income from various years to the same level. The computer files were not used for the main analysis because certain data were inaccurately transcribed.

Peterson concluded that the Weitzman findings were substantially in error and provided his own alternative results based on the corrected raw data, uncorrected raw data, and the uncorrected computer file. Analyzing the corrected raw data, Peterson found that after divorce women's incomes on average decreased by 27 percent, whereas men's incomes increased by 10 percent. He further noted that the results from the uncorrected raw data and uncorrected computer data were not substantially different. In response to Peterson's article, Weitzman admitted that the figures that she previously published might, in fact, be inaccurate due to programming errors in the computer system file and possible sample weighting error. Nevertheless, both Weitzman and Peterson concurred that even Peterson's findings of a lower percentage change were significant insofar as highlighting the gender gap in economic outcomes after divorce.

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[21] Peterson, *A Re-evaluation of the Economic Consequences of Divorce* (1996) 61 Am.Sociol.Rev. 528–36.
[22] Weitzman, The Divorce Revolution, *supra.*

9 Other Studies on Child Support Guidelines

9.1 Scope of Review

Family Code section 4054(b) requires that the Judicial Council review of the guideline include analysis of guidelines and studies from other states and other research and studies available to or undertaken by the Judicial Council. The following is a review of these studies and analyses that have been conducted since the time of the Judicial Council's December 1993 Review of Statewide Uniform Child Support Guideline. Persons who wish to consider earlier studies on the development of the guideline are encouraged to review that report.

9.2 The U.S. Department of Health and Human Services Report on Child Support Guidelines

In 1994, the U.S. Department of Health and Human Services presented a compilation of various authors' views on child support.[1] The report was edited by Margaret Campbell Haynes of the American Bar Association's Center for Children and the Law. The report dedicated each chapter to a specific topic relating to child support so as to highlight issues

[1] Haynes, Child Support Guidelines: The Next Generation, U.S. Dept. of Health and Human Services, Administration for Children and Families (April 1994).

relevant to the development of a state guideline model.[2] Many of the authors whose work was considered in earlier reports contributed to this compilation, and it considers many of the critical issues facing decision-makers regarding child support guidelines. Thus, the various chapters of the report will be discussed in some detail.

9.2.1 An Overview of Child Support Guidelines

In Chapter 1 of the report, "An Overview of Child Support Guidelines in the United States," Robert G. Williams discussed the federal requirements for child support guidelines and the implementation of state guidelines. First, Williams articulated the federal requirements for child support guidelines (i.e., that states adopt one single, statewide guideline creating a rebuttable presumption about the amount of support and that states mandate specific findings when the actual support award deviates from the guideline). Second, Williams stated that, in implementing guidelines, states have tended to adopt one of three general models: the percentage of obligor income model, the income shares model, or the Delaware-Melson formula. The trend has been toward using the income shares model, which is perceived as more fair because it is based on the income of both parents. This model computes child support based on the child-rearing costs proportioned between the parents according to their relative income, whereas the percentage of income model is simply based on the obligor's income and the number of children without regard to the other parent's income.

Williams found the income shares model more appealing because it emphasizes tangible indicators of child-rearing expenditures and considers a broader range of factors, such as child-care expenses and extraordinary medical costs. He noted, though, that the percentage of income model has the advantage of being much simpler than the income shares model in that it is easier to calculate and explain to the public. Williams suggested that significant increases in the amount of child support awards in recent years may be attributed to the implementation of these state guidelines.

9.2.2 The Determination of Income

In the chapter "Determination of Income," Lynn Gold-Bikin and Linda Ann Hammond reviewed how income is characterized for the purpose of applying state guidelines. The general consensus among states is that commissions, royalties, bonuses, and severance pay should be listed as income in guideline calculations. Further, overtime or part-time income that occurs regularly is usually included in the income calculation, but there is no consensus on how to treat such income when it is sporadic. The authors noted that

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[2] The chapter entitled "Economic Studies of Expenditures on Children and Their Relationship to Child Support Guidelines" by Burt S. Barnow is not included in this section, but considered in Section 7. The chapter, "Children's Standards of Living Under Child Support Guidelines: Women's Legal Defense Fund Report Card on State Child Support Guidelines Executive Summary" by G. Diane Dodson is discussed separately in Section 9.3 below.

California allows for an adjustment of child support to accommodate the parent's fluctuating income, meaning either that income could be averaged or the monthly support amount could change during the year. The argument in favor of including sporadic overtime or part-time work is that all financial resources that the parents attain should be shared with the children. On the other hand, the argument for excluding this sporadic income is that to do otherwise would penalize parents for trying to compensate for the income being paid for child support by working overtime or taking a second job.

As for the distinction between gross and net income, the study stated that most states use gross income in applying their guidelines, while a significant minority consider net income. Although the use of gross income is simpler, and therefore less likely to be misstated in guideline calculations, net income more accurately reflects the amount of income available to obligors for payment of child support obligations. If the guideline model allows for income deductions, the authors argued that these deductions should be available to both parents (e.g., nonworking parents would be provided an equivalent deduction to the mandatory retirement deduction available to working parents). The authors further discussed the issue of imputed and new mate income. They observed that states require varying thresholds, such as bad faith or the shirking of parental responsibility, for imputing income to a voluntarily unemployed or underemployed parent. On this point, the authors specifically recommended that state guidelines provide "a clear policy" on the imputation of income to ensure that the approach is reasonable.

Finally, the authors discussed the justifications for including new mate income in calculating the parent's base income. One justification for inclusion is that the income can be considered as the obligor's community property interest or as reducing the obligor's expenses. Nevertheless, the justification for noninclusion is that including new mate income would create a disincentive for remarriage and would make the guideline formula too complex. In conclusion, the authors urged the states to clarify the types of income that are considered and the deductions available in applying guidelines.

9.2.3 Multiple-Family Considerations

In the chapter "Addressing Subsequent Families in Child Support Guidelines," Marianne Takas analyzed methods for considering responsibilities to subsequent families within child support guidelines. In particular, Takas offered Montana's method—the essential household needs reserve—to replace the self-support reserve employed generally under the Melson formula, and discussed how this method may be adapted to other child support models. Melson's self-support reserve sets aside an amount of the parent's income sufficient to ensure his or her living standard at poverty level. Only the parent's income exceeding this reserve amount is relevant in determining the parent's ability to pay child support. Unlike the self-support reserve, the essential household needs reserve

sets aside an amount that constitutes the minimum poverty level of the household (rather than just that of the one parent). This method considers a subsequent child or employed partner as part of the household; the reserve is then determined by assessing the U.S. poverty-level figure for a family of this size.

Takas argued that the essential household needs reserve can be applied to the Melson formula by deducting this household reserve before assessing the parent's ability to pay. The income shares model would have to be modified to allow for the deduction of this household reserve in the same manner as the Melson formula. Under the percentage of income model, though, the use of the household reserve for only the noncustodial parent could impair the custodial parent; that is, this model considers only the obligor's income multiplied by a fixed percentage in determining the support obligation and thus would not afford a similar reserve to the custodial parent.

Takas addressed criticism that the essential household needs reserve places the needs of the subsequent family members above those of the children whose support is at issue. First, the author asserted that the reserve is allocated not necessarily to favor the noncustodial parent over the children but to allow an offset for that parent when his or her funds are insufficient to meet poverty levels for the children. Second, Takas offered two possible remedies for the noncustodial parent being allowed a poverty-level standard that is not similarly available to the children (who may be receiving welfare). The court could either mandate a minimum mandatory support amount, such as $50, or base the essential household needs reserve on the amount of the state welfare grant.

The author also compared the essential household needs reserve method to the credit for subsequent children method used in several states, including Colorado and New Jersey. The latter method simply allocates a credit for the support of subsequent children, which is deducted from the parent's income before assessing support for the children in the case at hand. Takas noted two problems with this method. First, under this method, the credit does not equally apply to the subsequent children of the custodial parent. Second, the allocation of this credit may allow more support to the subsequent child than to the child in the instant case. Lastly, the author criticized this method for not considering the relative actual hardship to families before allowing the credit (e.g., if the new mate is unemployed). In conclusion, the author advanced the essential household needs reserve method for the reason that it accounts for enough variations to reflect the parent's actual need.

9.2.4 Child Visitation and Custody

In the chapter "Child Support, Visitation, Shared Custody and Split Custody," Karen Czapanskiy analyzed the interconnection between child custody and visitation, and the

issue of child support. The author noted that the amount of visitation exercised by the noncustodial parent influences the amount of the support award, and that in many states the support obligation is adjusted when the parents share physical custody of the child. On the first point, the calculation of the child support award is contingent on the amount of time the parents spend with the child. Nonetheless, most child support guidelines assume that the noncustodial parent spends some period of time with the child, when in fact that parent may not actually exercise visitation rights. On the second point, some states provide a downward adjustment of child support when the parents share physical custody of the minor child. Each state has defined its own threshold for finding shared custody, such as that the child spends 65 percent of the time with one parent and 35 percent of the time with the other.

There are several justifications for adjusting child support when the parents share physical custody of the child. The author asserted that a major argument in favor of an adjustment for shared custody arrangements is that it promotes the child's close relationship with both parents. Czapanskiy further argued that, in sharing custody, the expenses of the primary custodial household are less and the expenses of the secondary custodial household are greater than in the traditional sole custody arrangement. Many states have chosen not to provide for child support adjustments in the case of shared custody because they do not want to encourage the creation of two households for the child. This decision is founded partly on concerns that the parents will not be able to afford two households with their economic resources and that the noncustodial parent will seek shared custody with the sole motivation of lowering the child support award.

The author outlined several approaches for considering the shared custody adjustment when applying the support guidelines. First, the states may use a simple formula in which the amount of the child support obligation is allocated in proportion to the time each parent spends with the child. Second, some states multiply the support obligation by 50 percent when the parents share custody in order to account for the increased costs of maintaining two households. The total amount of the obligation is then allocated to both parents in proportion to their time share with the child. Third, several alternatives exist that reflect that shared custody arrangements may change over time. States could allow a downward adjustment only upon evidence of the shared custody arrangement being firmly established, or when one parent requests a change in support within a short period following the court's granting the child support award because the parties do not maintain the shared custody arrangement. The author further briefly discussed split custody arrangements, where at least one child resides with one parent and another child lives with the other parent. State guidelines either consider these arrangements as part of the formula or leave them subject to the discretion of the decision-maker.

9.2.5 Health-Care Costs

In the chapter "State Child Support Guideline Treatment of Children's Health Care Needs," Susan A. Notar and Nicole C. Schmidt discussed several obstacles to the provision of health-care coverage for children and the treatment of health care under state guidelines. First, the authors observed that a primary obstacle to mandating health-insurance coverage for children is that the Employment Retirement Income Security Act (ERISA) broadly preempts state laws regulating health-care plans. The federal statute exempts self-funded employers from state laws, a provision that effectively has enabled these employers to define the terms of their health plans independently of state regulation. Further, some employers engage in discriminatory practices that result in children being excluded under the terms of the health plan. Nonetheless, the recent amendments to Title XIX of the Social Security Act have addressed these discriminatory practices by, in part, prohibiting health-insurance plans from denying enrollment to minor children on the basis that the child does not reside with the parent or was born out of wedlock.

The authors also noted various methods for considering health-insurance premiums for the children within the state guidelines: deduct the premiums from the obligor's income before determining the net income; reduce the amount of the support obligation by the cost of the health insurance; require that the parents pay the premium proportionately as an add-on to the basic support amount, or that the obligor exclusively pay the premium as an add-on; and consider the cost of health insurance as grounds for deviating from the guideline support amount. The authors emphasized the importance of including the children's health-care needs within the state guidelines. Specifically, they recommended that in taking into account the cost of health insurance, state guidelines should allocate the cost in proportion to the parents' incomes so as to achieve the most equitable result.

9.2.6 Additional Factors Relevant to Child Support

In the chapter "Adding to the Basic Support Obligation," Linda Henry Elrod addressed various issues that require special consideration within state support guidelines, such as health insurance, child care, and extraordinary medical expenses. As in the previous chapter by Notar and Schmidt, Elrod discussed the various state methods for considering the children's health-insurance premium in guideline calculations. In particular, Elrod recommended that states treat this premium as an add-on to the basic child support amount, as a deduction from the parent's income, or as a credit toward the support obligation. As for uninsured medical expenses, the author contended that allocating these expenses in proportion to income would achieve the most equitable result. Furthermore, the author noted that states usually consider extraordinary medical expenses as either add-ons to the basic guideline amount or as a basis for deviating from the guideline amount.

Elrod also stated that most states employing the income shares model or the percentage of income model treat child-care costs as add-ons to the basic support amount. Other states, however, deduct child-care expenses from the income of the parent incurring the expenses or treat them as a deviation from the state guideline. Many states require that these child-care costs be work-related and reasonable (e.g., not to exceed a certain maximum threshold). Once again, in the context of allocating child-care costs, the author advocated dividing the costs in proportion to income. As for educational expenses, Elrod remarked that states usually leave these costs to the decision-maker's discretion as a basis for deviating from the guideline amount or providing for an additional award. Finally, the author addressed the question of mandating parental contributions toward the child's college education. Most states do not require postmajority support for children, but will enforce an agreement between the parents to continue some form of support beyond the age of majority. The author argued that if states are to allow postmajority support, they should allow the decision-maker discretion to award support based on the family's lifestyle and standard of living had the family remained intact.

9.2.7 Child Support Modifications

In the chapter "Guidelines and Periodic Review and Adjustment," Marilyn Ray Smith discussed the impact of federal law on the traditional framework for modifying child support. States have traditionally required a substantial change of circumstances in order to modify child support orders. Federal regulations, though, have impacted this modification standard in Title IV-D cases by requiring an adequate basis for petitioning for an adjustment of support. Most states have adopted modification provisions that reflect in some form the traditional substantial change in circumstance standard. The federal regulations allow states discretion in assessing the percentage or dollar amount constituting the threshold necessary to review and adjust child support. For instance, some states require a threshold difference between the prior order and the current situation of anywhere from 10 to 30 percent. As for cases not involving Title IV-D that are not explicitly addressed by the regulations, once the matter is addressed in court, the rebuttable presumption required in setting support applies. The author also discussed the appropriate review of initial support orders that were established under separation agreements. Parties wishing to deviate from the guideline amount must establish the amount of child support available under the state guideline and the findings of fact supporting the rebuttal of the guideline. If the initial support order is based on the rebuttal of the guideline presumption, the petitioner for modification would have to show a change of circumstances.

9.3 The Women's Legal Defense Fund Report

One often cited study on child support guidelines was produced by the Women's Legal Defense Fund in 1994.[3] The study was based on computations of child support following the state guidelines in effect in September 1989. The states were comparison-ranked based on the support that would be awarded under each state's guidelines in 12 hypothetical cases. Based on the discretionary county guidelines in effect at that time, California ranked 43-44 in a tie with North Dakota out of the 50 states and the District of Columbia.

The co-author of the report, Diane Dodson, has since reported to the California Legislature that California's guideline, which was adopted in mid-1993 (Sen. Bills 370 and 1614), would have placed the state in fourth place nationally, after Massachusetts, the District of Columbia, and Connecticut.[4] The ranking is based on the recalculation of the 12 original hypotheticals under the new guideline.

9.4 The Child Support Court Task Force Report

In 1993, the California Department of Social Services created the Child Support Court Task Force for the purpose of studying and making recommendations concerning child support.[5] Various individuals and organizations representing diverse concerns with child support were invited to appoint representatives to the task force. Based on information presented to the task force on how the establishment and enforcement of child support works in California, the task force made recommendations regarding district attorney and private cases. At the outset, the task force excluded consideration of the guidelines from the scope of its study and recommendations.

The task force recommended establishing an expedited process for district attorney child support cases in which cases would be heard by commissioners in the courts rather than by an administrative law judge in an administrative process; automation would be used to ensure improved processing of child support cases and parental access to the courts; and legal procedures for creating, modifying, and enforcing child support orders would be simplified and made uniform throughout the state. It was recommended that the Judicial Council coordinate and administer the child support commissioner system, which would be eligible for Title IV-D federal funding.

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[3] Dodson et al., Report Card on State Child Support Guidelines, Women's Legal Defense Fund (1994).

[4] Letter from Diane Dodson of the Women's Legal Defense Fund to Senator Gary Hart (June 10, 1993).

[5] The report stated that "[i]ts mission is to study the process of establishing and enforcing child support orders in California's courts, and to make recommendations concerning the creation of an efficient, humane and effective process for the expedited handling of child support cases as required by federal law." (Child Support Court Task Force Report, p. 1.)

The only task force recommendation that had any bearing on the guideline was a recommendation that there be a uniform statewide amount of presumed income to be used for calculating support in default cases when the income of the defendant is unknown to the district attorney and the court. It was recommended that the complaint for support filed by the district attorney provide notice to the defendant of the amount of support being sought. A default order based on presumed income, however, would be subject to a longer set-aside period than the six months provided for other civil cases. The defendant would have 90 days after the first collection of support to set aside or vacate an order on the ground that the presumed income was higher than his or her actual income.

As for private cases involving child support, the task force recommended the simplification and streamlining of child support forms and procedures, and the establishment of a child support information and assistance office. Recognizing that many child support orders are established in private family law actions in which the parents are unrepresented, the task force advocated actions to simplify child support procedures. Moreover, assistance would be available to parents in completing necessary forms for establishing, modifying, or enforcing child support orders.

9.5 Institute for Family and Social Responsibility Paper

In 1998, the Institute for Family and Social Responsibility disseminated a draft paper on national trends in child support orders from 1988 through 1997.[6] The authors, Maureen A. Pirog, Marilyn Klotz, and Katharine V. Byers, computed child support from every state and the District of Columbia based upon four scenarios presented in a previous report by the National Center for State Courts (NCSC) and an additional very low-income scenario.[7] The five scenarios and income levels are as follows:

Mother and father are divorced. Father lives alone. Mother and the two children, ages 7 and 13, live together. Father pays union dues of $30 per month and the health insurance for the two children at $25 per month. Mother incurs monthly employment-related child-care expenses of $150. There are no extenuating factors to be added or considered for this unit. The gross combined monthly income for each scenario is as follows:

Case A - Combined income: $830
Father: $530 Mother: $300
Case B - Combined income: $1,200
Father: $720 Mother: $480
Case C - Combined income: $2,500

[6] Pirog et al., Interstate Comparisons of Child Support Orders Using State Guidelines, Institute for Family and Social Responsibility (Draft 1998).

[7] Munsterman, A Guide to the Guidelines, National Center for State Courts (1990).

Father: $1,500 Mother: $1,000
Case D - Combined income: $4,400
Father: $2,640 Mother: $1,760
Case E - Combined income: $10,500
Father: $6,300 Mother: $4,200

For the purpose of calculation, a time share of 10 percent was assumed. The authors produced tables that illustrated child support orders under the five scenarios for each jurisdiction during the last ten years.[8] The results for California are summarized below in Table 9-1. Changes in the last two years are due to changes in tax law, rather than changes in the guideline itself.

Table 9-1
Child Support Orders for California

Scenario	1988	1991	1993	1995	1997
Case A	n/a	n/a	n/a	n/a	236
Case B	145	241	261	281	278
Case C	301	395	467	485	478
Case D	305	594	740	758	770
Case E	300	1069	1517	1467	1457

The authors found that on a national scale the mean and average orders for the low- and high-income scenarios decreased significantly over the last ten years. This decrease may be attributed to the debate over the amount of support appropriate for low- and high-income households. However, the two moderate-income scenarios (Cases B and C) showed slight increases in child support orders.

The paper also analyzed whether the child support orders accurately reflected typical expenditures on children, as estimated by the Center for Nutrition Policy and Promotion (CNPP) (U.S. Department of Agriculture) and the Betson study.[9] The authors found that in taking the lowest estimate from the two studies, most states had support orders below the estimate of child-rearing expenditures. It should be noted, however, that the study computed child support orders assuming that the father had a time share of 10 percent, whereas the CNPP and Betson studies simply estimated the child-rearing expenditures of an intact household without regard to the issue of visitation. When the hypothetical child support orders for 1997 are calculated based on the father's time share of 0 percent, the orders are significantly higher: $255 for Case A, $308 for Case B, $536 for Case C, $852

[8] The additional scenario, Case A, is available only for 1997.
[9] See discussion in Section 8 of this report.

for Case D, and $1,608 for Case E. Each support order, once recalculated, exceeds the lowest of the two estimates of the father's share of expenditures.

Finally, the authors also observed that child support awards have in fact decreased in amount over time when the amount is adjusted for inflation. Comparing the purchasing power of median child support orders nationally between 1988 and 1997, they found that the percentage decrease was 30.8 percent for Case B, 18.1 percent for Case C, 24.7 percent for Case D, and 28.8 percent for Case E. Since the order is based upon a percentage of both parents' combined income, if the parents' income has not increased since 1988, the standard of living of the family has decreased.

9.6 U.S. Department of Health and Human Services Report: Evaluation of Child Support Guidelines

The U.S. Department of Health and Human Services evaluated child support guidelines in a comprehensive report issued in March 1996.[10] The study was designed to investigate the application of state child support guidelines in actual cases, the extent and cause of deviation from state guideline formulas, and the role of special circumstances in the determination of child support awards. The sources of information were child support case records from various counties in 11 states (those states choosing to participate in the study); interviews with parents and others involved in the matter of child support, such as IV-D caseworkers and judges; and analyses of state guideline review studies and Current Population Survey (CPS) data. CPS is an in-person or telephone survey by the US. Bureau of the Census that provides demographic, economic, employment, and child support information. Finally, the authors of the study assembled a panel of experts to advise them on the interpretation of findings and preparation of the final report.

First, the study evaluated whether the child support orders obtained from the county case records complied with state guidelines. It was found that decision-makers followed state guidelines in establishing orders in 83 percent of cases. The main difficulty with assessing the rate of compliance was that support orders usually failed to state that they were made in accordance with the guideline. When the order was silent on whether it followed the guideline, the study treated that case as complying with the state guideline by default.

The study noted that in many circumstances decision-makers deviated from the state guideline in an exercise of discretion. The most frequent reasons for the deviations documented in the case records are as follows, in descending order: (1) agreements between the parties (e.g., support stipulations), (2) second households or extraordinary

[10] Evaluation of Child Support Guidelines, Office of Child Support Enforcement, U.S. Dept. Health and Human Services (March 1996).

custody and visitation expenses, and (3) findings that the guideline amount would be unjust or inappropriate. In discrepancy cases, the support order does not conform with the calculated guideline amount for reasons that may be inferred from the case documentation. Some of the factors explaining these discrepancies are arithmetic error, transcription error, insufficient or incomplete documentation, and inconsistent policy within the courts and agencies. The study concluded that states should consider adopting more standard case documentation, such as support worksheets that contain the data upon which the support award was derived. In addressing the random and systematic inconsistencies in the guideline application, the study specifically recommended providing better training and assistance to fact finders and decision-makers in completing support worksheets, and establishing coordinated, consistent policies within agencies and courts on the documentation of support awards.

The study further discussed the impact of multiple families, definition of income, health-care costs, child-care costs, postsecondary education, tax considerations, and custody and visitation on the issue of child support. State guidelines may address these factors in three ways: (1) direct the decision-maker to treat these factors as mandatory numerical adjustments, (2) direct that these factors be treated as discretionary adjustments or deviations; or (3) choose not to consider these factors at all.

As for the issue of multiple families, the majority of states that participated in the study opted to subtract any existing court-ordered child support obligation from the obligor's income for the purpose of determining guideline support. It was found that in states allowing discretionary adjustments for prior support orders, these orders were documented as affecting the child support amount in the case at bar significantly less than in states providing for mandatory adjustments.

As for the issue of new mate income, the state review teams that participated in the study were of the opinion that income from a new spouse or partner should be excluded from support calculations. The case study did not examine this issue of new mate income, but it observed that only two states from the sample found that such income was relevant to child support cases. The study concluded that if states are to consider multiple family issues, such as prior orders or new mate income, their guidelines should contain mandatory provisions for considering these issues.

The study also addressed the type of income used in applying the guideline. Most of the states used gross income for the payor parent or both of the parents, but some used net income after allowing adjustments for taxes, prior support, mandatory retirement contributions, mandatory union dues, and health-insurance premiums paid for minor children. The report noted that states commonly impute income for unemployed or underemployed parents, or for parents who do not submit evidence of their earnings. It

was urged that states delineate the types of cases appropriate for income imputation and make that decision discretionary. The greatest concern here was that the case files lacked sufficient documentation of income; accordingly, it was recommended that state guidelines establish income verification requirements and ensure compliance with them.

The states also have different approaches for considering health-insurance premiums paid for the benefit of the child. Some states treat the premium as a mandatory numerical add-on to the basic child support amount, whereas others treat it as a deduction from the parent's income before calculating guideline support. The study found that decision-makers mandated the provision of health insurance in 82.7 percent of all collected cases. Yet, two-thirds of cases that ordered provision of health care by one or both of the parents did not include the cost in the support order, probably because the cost of medical coverage was not known at the time the calculations were performed. In the states employing a mandatory adjustment for health-care costs, decision-makers tended to grant this adjustment in calculating guideline support when the costs were known. The study further observed that, overall, about 75 percent of the cases ordered that parents pay for the extraordinary health-care costs of the children in some manner (e.g., 50/50 or split based on proportional shares of the combined income of the parents).

As for the issue of child care, it was noted that in most states employing the percentage of income and income shares guideline models, the work-related child-care expenses were treated as an add-on to the guideline support amount. In the counties from the study that provided mandatory adjustments for child-care costs, more than one-half of the cases documenting child-care costs contained support awards treating were affected by these costs. Furthermore, the report recommended that postsecondary education as a discretionary factor in the award of support in states that consider this factor. It recognized the need for educational assistance for children after age 18 so that they can attend college. The most common method for allocating postsecondary education costs is by splitting the sum equally between the parents.

In discussing tax considerations, the study noted that the assignment of dependents may affect the support obligation, especially in states that base the guideline amount on the parents' net (rather than gross) income. The treatment of taxes in the determination of child support has shown the greatest impact on middle to high incomes.

As for child custody and visitation, the study acknowledged the growth of joint (shared) custody arrangements, which affect the manner in which support is calculated. Most states treat joint custody as a reason for deviating from guideline support; in particular, some have adopted various methods for computing support in these circumstances. The study recommended that states develop clear definitions of joint custody and ensure that the basis for support is equitable.

In conclusion, the study found from the analysis of the above-mentioned factors impacting guideline support that mandatory adjustments to the guideline were usually made where applicable, whereas discretionary adjustments were made in considerably fewer cases. One final observation was that the lack of documentation in case files substantially hindered the study's ability to evaluate guideline deviations.

9.7 Judicial Council Report on Gender Bias in the Courts

As part of its July 1996 report, the Judicial Council Advisory Committee on Gender Bias in the Courts identified child support as an issue that disparately impacts women.[11] The committee specifically noted that women tend to be the primary caretakers of children and to earn lower wages than men. It also made several findings on the problems that women and children have with state child support guidelines. The source of information for this report was testimony from expert witnesses and members of the public, a written survey of judges, and extensive literature.

A primary criticism was that child support awards are usually too low to provide children with an adequate standard of living. In California, child support guidelines are based upon the child-rearing costs of an intact family, rather than those of a single-parent family. The committee cited the remarks of retired Justice Donald B. King, a renowned family law expert, for the proposition that in relying on the costs of raising children in intact families, state guidelines fail to recognize the additional costs of nonintact families, such as a second housing cost.[12] Moreover, guideline amounts are calculated based on the court's findings regarding the parents' custody and visitation arrangements, but realistically the noncustodial parent may eventually spend less than the anticipated percentage of visitation with the children. The committee also expressed concern that the courts may routinely apply the guideline amount as a ceiling rather than as a minimum, and not allow litigants the opportunity to rebut the guideline presumption that an award of guideline support is adequate.

The committee discussed the practice of using the issue of custody as a bargaining chip to lower a child support award; that is, the noncustodial parent may seek to increase visitation simply to reduce child support payments. The committee therefore, recommended that the statute linking support and custody be modified or repealed. Furthermore, the committee recognized that custodial parents may have difficulty collecting child support either because they often cannot afford legal representation or the district attorney's office fails to obtain payment on their behalf. The committee thus recommended a system of informal assistance for unrepresented parties in collecting child

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[11] Achieving Equal Justice for Women and Men in the California Courts, Judicial Council of California Advisory Comm. on Gender Bias in the Courts (July 1996).

[12] *Id.* at p. 129.

support. Finally, the committee advocated extending the duration of the child support obligation until the child reaches age 21, to ensure the provision of funds for college education.

9.8 Hanson Paper: Trends in Child Support Outcomes

In the paper "Trends in Child Support Outcomes," written by Thomas L. Hanson, Irwin Garfinkel, Sara S. McLanahan, and Cynthia K. Miller and published in the journal *Demography,* the authors examined patterns during the 1980s in child support award rates, award amounts, and receipts.[13] The study relied on data from the Child Support Supplements to the 1977–1990 Current Population Survey (CPS-CSS), a sampling of the national population used for developing estimates of labor force activity. The authors acknowledged that the CPS-CSS Survey has some limitations in that several subgroups were not sampled, such as mothers under age 18, married mothers who had children with someone other than their present husbands, and custodial fathers. The study measured the parents' economic resources based on their incomes at the time of divorce (or birth of the youngest child for unmarried mothers) and incomes in the year preceding the survey. Only the mothers' current incomes were known from the CPS-CSS sample; therefore, the study had to develop estimates for the remaining incomes. For instance, the study predicted the fathers' incomes based on the characteristics of the custodial mothers.

The study found a downward trend in child support award rates, award amounts, and receipts during the 1980s resulting from the following factors: (1) demographic changes in families eligible for child support, (2) increases in mothers' incomes, (3) decreases in fathers' incomes, and (4) inflation. From 1978–1989, the proportion of families with child support awards fell by 12 percent, and award amounts fell by 21 percent. The receipt of child support amounts experienced a similar decrease.

First, an increase in the proportion of never-married women eligible for child support was a primary reason for the decline in award rates. For instance, it is more difficult to establish a legal connection to the child's father when the parents were never married. The decrease in fathers' incomes, and the proportional increase in minority families (in which the fathers tend to earn less) becoming eligible for child support, have also negatively affected award rates. Second, a decline in award amounts is explained mostly by the dramatic increase in inflation during the 1980s. Other factors are trends in male and female incomes and demographic changes in families eligible for child support. Never-married women, an increasing percentage of the population eligible for child support, experience much lower award amounts than married women. Third, the primary cause for the decline in child support receipts is the decrease in award amounts. It was found that each additional dollar to the child support award increases the receipts by

[13] Hanson et al., *Trends in Child Support Outcomes* (Nov. 1996) 33 Demography No. 4, pp. 483–496.

about 80 cents. Finally, the authors surmised that this downward trend in child support would have been even worse absent the state and federal child support reforms of the 1970s and 1980s.

9.9 The American Law Institute Principles

The American Law Institute (ALI) has promulgated principles governing the issue of child support.[14] The most recent draft of the ALI principles, reported by Grace Blumberg and tentatively approved by the ALI membership, used the enhanced marginal expenditure model.[15] The enhanced marginal expenditure model is derived from the Massachusetts model and tends to award higher support orders than other models because it considers not only the cost of raising children but also the children's living standards in relation to the living standards of the noncustodial parent. Other child support models, such as the income shares model, consider the percentage of the preseparation income of a two-parent household that is devoted to child-rearing expenditures. The support obligation under the income shares model is simply the percentage of parental income that would have been contributed in the intact family.

The report contends that the income shares model falls short of sustaining the children's same standard of living after the parents' separation since, once two households are established, the children invariably require a higher percentage of parental income due to the increase in household expenses. Unlike the income shares model, the ALI model establishes a baseline measure of support that is the percentage of the obligor's income necessary to ensure that, assuming the parents have equal incomes, the custodial and noncustodial households maintain the same standard of living. The ALI proposed the use of household equivalence tables that estimate the percentages of total parental income required to maintain households of different sizes at the same standard of living. The ALI, though, noted that its definition of base percentage is substantially similar to the marginal expenditure principle adopted in income shares states and thus offers estimates of marginal expenditures on children as an equivalent source for base percentages. As previously discussed in Section 3 of this report, the marginal expenditure is the percentage of parental income attributed to raising children in two-parent households.

The principles also provide a reduction of the base percentage to account for the noncustodial parent's expenditures on the child. For instance, the ALI grants a 10 percent reduction of the base percentage when the obligor exercises visitation at a time share between 15 and 20 percent. The noncustodial parent is perceived as contributing an

[14] American Law Institute, Principles of the Law of Family Dissolution: Analysis and Recommendations, (Council Draft, March 1998).

[15] The majority of the child support principles were tentatively approved with some sections reserved for presentation at a future ALI meeting.

additional 10 percent to the expenditures on the child and therefore is compensated for those expenses incidental to the exercise of visitation.

Once the base percentage is determined, the enhanced marginal expenditure model allows for a supplement, an additional percentage of the obligor's income, intended to achieve two objectives: (1) a minimum decent standard of living in the residential household, and (2) a standard of living for the child that is not grossly disproportionate to that of the higher-income noncustodial parent. The model assumes that the custodial parent should be gainfully employed or actively seeking gainful employment to the extent reasonable under the circumstances to be eligible for the supplement. The ALI formula adds supplements of 14 percent for one child, 10 percent for two children, and 7 percent for three or more children, but emphasizes that these amounts are merely illustrations of means for achieving the objectives.

Hence, to arrive at a preliminary assessment of child support, the base and supplemental percentages are combined and multiplied by the obligor's income. For instance, assume that the mother, the custodial parent, and the father, the noncustodial parent, have one child together. The mother earns $1,500 per month and the father earns $2,000 per month. If the jurisdiction adopts the FERG (Family Economics Research Group) estimator of the cost for a two-parent household to raise the child (22 percent for one child), the father's child support obligation before consideration of the supplement is $440 (22 percent of $2,000). But because of the disparity between the living standards between the two households, the formula may include a supplement of, for example, 14 percent. Therefore, the preliminary assessment is $720 (36 percent of $2,000).

The model also allows for a reduction formula when the income of the custodial parent exceeds the custodial parent's income exemption. The ALI characterized the income exemption as "the amount necessary to provide the residential parent alone with a minimum decent standard of living."[16] The reduction formula uses a fraction in which the custodial parent's excess income above the income exemption is the numerator, and the denominator is the sum of the custodial parent's excess income and the noncustodial parent's total income. This fraction is multiplied by the preliminary assessment in order to calculate the amount to be reduced from the net obligation. The ALI has proposed an exemption for the first $1,000 of the custodial parent's net monthly income, based on the presumption that this sum approximates the poverty threshold for one adult–one child and one adult–two child households in 1996. Therefore, in the example above, the resultant fraction is 1/7 ($500 over $3,500). The resultant fraction is multiplied by the preliminary assessment to yield a reduction of $97 and thus a net child support obligation of $623 ($720 less $97).

[16] American Law Institute at p. 32.

In sum, these support awards tend to be higher than under other models because a supplementary amount is included in the preliminary assessment. Yet, if the custodial parent's income exceeds the income exemption, the formula provides a reduction to the preliminary assessment of support. The ALI highlighted various examples that show the standards of living of the custodial and noncustodial households being equalized by these higher support awards. The ALI model strives to redress the disproportionate standards of living between the two households after separation. The most severe impact of this formula, however, on noncustodial parents occurs when both parents are low-income, because the custodial parent's income is too low to invoke the reduction formula, resulting in the amount of support attributed to this low earner being rather significant.

As for child-care costs, the ALI formula allows these expenditures to be apportioned between the parents according to their relative incomes, provided that the custodial parent's income is in excess of the income exemption. Further, medical and dental costs are considered payable in addition to child support according to the parties' relative incomes. Other expenditures not included in the child support formula and thus treated as add-ons are costs relating to the children's special needs and education, and travel costs incidental to the exercise of visitation. The ALI model also provides a different formula for determining child support in dual-residence cases, where the child generally spends a minimum of 35 percent of the time in the house of the parent exercising a lesser degree of visitation. In this situation, total child expenditures (i.e., the cost of raising children) are apportioned according to the custody time share and the parents' respective incomes. Greater child support obligations are placed on noncustodial parents based on what is characterized as the American ethic—in particular, the belief that the primary guarantors of children's well-being should be the parents rather than the state. Without substantial public benefits available to minimize the economic hardship that the custodial parent and children tend to endure after the parents separate, the model relies mainly on the noncustodial parent's ability to provide for the children in setting the support award. This report asserts that the child's interests are safeguarded by "impos[ing] all the economic costs of family dissolution on the nonresidential parent."[17]

[17] *Id.* at p. 8.

10 Conclusion

10.1 Scope of Recommendations

The Legislature has provided the Judicial Council with the following direction concerning recommendations for revisions to the child support guidelines:

> Any recommendations for revisions to the guidelines shall be made to ensure that the guideline results in appropriate child support orders, to limit deviations from the guideline, or otherwise to help ensure that the guideline is in compliance with federal law.[1]

10.2 Key Findings

- California's child support guideline is in compliance with federal law.
- Court orders for child support are based upon the guideline in 90 percent of the cases reviewed by the Judicial Council.

[1] Family Code section 4054(c).

- The most common reason for not following the guideline was that the parents agreed to not follow it.

10.3 No Recommendations for Revisions

The results of the case study reveal that the vast majority of child support orders made during the period of the study conform to the presumptive amount of the guideline. Cases in which the presumptive amount of support was rebutted and a different amount was ordered were limited to less than 10 percent. The majority of these deviations were based on an agreement between the parents that support in an amount other than the guideline amount was in the best interests of their children. Since the California guideline complies with federal requirements, and the vast majority of support orders made by the courts are appropriate under the statutory guideline, no recommendations for revisions are made. However, this report is being disseminated to the individuals and groups set forth in Family Code section 4054 for their information and comment.

10.4 Comments

Although no recommendations for revisions are made at this time, the following findings from the case review raise issues that warrant further study.

10.4.1 Lack of Documentation in the Court Files

As indicated in Section 6 of this report, the collection of data was hampered somewhat by the lack of appropriate documentation of factual determinations required by statute in the court files. In some contested cases, the requisite data may have been placed on the record of the proceeding and thereafter, not reduced to writing. The researchers did not attempt to obtain transcripts of the contested proceedings. However, the vast majority of cases were resolved by default or by stipulation.

More than 50 percent of all cases were resolved by default. In most default cases, no income information concerning the defaulting parent was filed with the court. In many of these cases the court imputed income to the defaulting parent. In other cases, the court entered either a zero or reserved order due to the lack of evidence concerning the defaulting parent's income. Zero or reserved orders were found in 13.2 percent of all orders surveyed. Income was imputed to the payor parent in 28.5 percent of all cases. The lack of income information in default cases is not surprising. However, it must be recognized that default cases cause particular problems for the court in determining an appropriate support amount under the guideline because the court does not have the requisite information to make the necessary determination of support under the formula.

In order to ensure appropriate support orders, more parents need to be encouraged to participate in the process and provide their income information to the courts. The Legislature may wish to consider whether the wrong message is sent to parents who do not participate in the process when the support order that is entered as a result of a default is zero, reserved, or based on minimum wage. Assembly Bill 1058[2] amended Welfare and Institutions Code section 11475.1 to provide for a standard presumed income in district attorney child support cases when the defendant's income or income history is unknown. The presumed income is based on the minimum basic standard of adequate care for children as determined by the Legislature in Welfare and Institutions Code section 11452. Further study is needed to determine whether a standard imputed income should be used in private cases in which the respondent fails to file an answer and provide income information.

Nearly 40 percent of cases were resolved by stipulation. Unfortunately, many litigants who resolved their private cases by stipulation failed to provide much information about their income or the requisite recitals as specified by statute. Part of the problem may be related to the large number of litigants attempting to obtain support orders without the assistance of counsel. Support orders may be made in many different types of underlying actions, and there is no mandatory form for child support stipulations.

In deciding whether to approve a stipulation, the courts are faced with a dilemma if the basis of the order is not specified in an income and expense declaration or other documentation. At the risk of a substantial delay in the entry of an order, the court may reject a stipulation and insist on all requisite information being provided. In some cases, the parties may never return with the requisite documentation and support may never be ordered. The need for documentation must be balanced against the need to ensure that child support orders are put in place quickly so that children receive support in a timely manner.

Thorough reviews of all stipulations also have resource implications for the courts. Many courts do not have sufficient personnel to provide detailed reviews of every stipulation. The Family and Juvenile Law Advisory Committee will continue to review this issue to determine whether the adoption of a mandatory form for use in all child support stipulations is an appropriate solution to the problems created by incomplete documentation in the court files.

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[2] Stats. 1996, ch. 957. The case study was for cases filed between July 1, 1995 and June 30, 1996. AB 1058 was effective January 1, 1997.

10.4.2 Low-Income Adjustment

Family Code section 4055(b)(7) gives the court discretion to grant a low-income adjustment to the guideline support amount if the payor's net income is less than $1,000 per month. The study results indicate that a low-income adjustment was granted in only 11 percent of the cases in which the payor qualified. One possible explanation appears to be that the courts did not apply the low-income adjustment in default cases where the defaulting parent's income was imputed at minimum wage. However, of the 308 cases in which the net income of the payor was known to be less than $1,000, the low-income adjustment was still granted in only 10.4 percent of the cases.

It is not known why the low-income adjustment was granted in so few cases that qualified for the adjustment. Further study of this issue is needed.

10.4.3 Lack of Orders for Mandatory Additional Support

Family Code section 4062 states that the court shall order amounts for child-care costs related to employment or training for employment and for uninsured health-care costs of the child, in addition to the guideline support amount. Additional support for uninsured medical expenses was ordered in only 35 percent of the cases reviewed. Additional support for child-care costs was ordered in only 11 percent of the cases reviewed. While the percentage of cases in which one of the parents incurred child-care costs is not known, 11 percent of the cases appears to be low. In addition, all support orders should contain a provision for uninsured health-care costs. Additional education regarding the mandatory nature of these items of additional support and revised forms would appear to be appropriate.

10.4.4 Consideration of Prior or Subsequent Families

The consideration given to children of other relationships presents a number of difficult issues. Under current law, consideration of additional children occurs in two ways. Child support actually paid to children, other than the children subject to the proceeding, is deducted from gross income in determining the net disposable income available for support. In addition, courts have discretion to grant a hardship deduction for children of other relationships who reside with the parent.

The study found that hardship deductions were granted in only 6.8 percent of the cases. All but a handful of the hardship deductions granted were for children of other relationships who reside with the parent. The study did not determine how many hardships for other children were requested and denied. It should be noted that Family Code section 4071.5 prohibits a hardship deduction for any child of the parent seeking the

deduction if the child is receiving welfare regardless of which parent actually receives the welfare benefits. It is also not known how many litigants had children of other relationships but failed to request hardship deductions. Therefore, the results from the survey should not be interpreted to mean that multiple-family issues are involved in only 6.8 percent of the cases.

As the discussion in Section 3 indicates, the actual calculation of the hardship deduction for children of other relationships residing with a parent is awkward at best. While the legislative policy of seeking equity between competing support obligations as reflected in Family Code sections 4059 and 4071 is sound, the actual application can be quite difficult for litigants, attorneys, and courts especially in cases where there are different time-share arrangements for different children.

In many cases, especially cases resolved by default, the court is not aware of whether the parents have children from other relationships. In those cases in which the court is aware that a parent has children from other relationships, there are often procedural obstacles to modifying orders in multiple cases at the same time which frustrates the legislative policy of seeking equity in competing orders. The multiple cases may not be in the same counties or even in the same state.

There have not been many good solutions to the problems created by multiple families. However, there is a recent development that may allow for some solutions that have not been available in the past. Federal and state law requires the California Department of Social Services to build a registry for all child support orders established or modified after October 1, 1998. Once the registry is operational, the courts, for the first time, will have the ability to determine the existence of support orders from other courts to which a parent may be subject. Further study is needed to determine whether the development of the child support order registry will enable the Legislature to fashion better solutions to problems created by multiple-family situations.

10.4.5 The Number of Parents Without Attorney Representation in Child Support Cases

The case study indicates that in nearly 64 percent of the child support cases studied an attorney represented neither parent. Although the district attorney does not represent either parent,[3] the district attorney does assist in the presentation of cases to the court. However, when the district attorney cases are excluded from the sample, the number of cases in which both parents were represented was still only 47 percent, and there were an additional 23 percent in which only one party had an attorney.

[3] Welfare and Institutions Code section 11478.2.

The lack of attorney representation in child support cases raises a number of issues that deserve further study. It provides a partial explanation for the high rate of default resolutions and the lack of documentation in many of the cases. It raises concerns about the complexity of the procedures for obtaining child support in the courts, the complexity of the guideline calculation, and, ultimately, parents' access to the courts to have the critical issue of child support heard and determined.

The Legislature recently established the Family Law Facilitator program. All superior courts are required to have attorneys available to provide information and assistance to parents with child support issues. The program was implemented in the courts in 1997, after the period of the case study. Further study is needed on whether the Family Law Facilitator program provides unrepresented parents with better access to the courts in child support cases.

The Family and Juvenile Law Advisory Committee has begun to review the Judicial Council forms for child support to determine if the forms can be made simpler and easier to use by unrepresented parents. The committee is dedicated to continuing to study the issues raised by the increasing number of litigants without lawyers in family law matters in the courts.

10.4.6 The Need for Resources for Further Study

The purpose of this report is to provide information to the Legislature and the California Department of Social Services concerning the implementation and operation of the child support guideline in the courts. Although the case study results presented in this report provide information that was previously not available, the case study was necessarily limited by the amount of resources that were made available to the Judicial Council for this report.

A number of issues surrounding the child support guideline are complicated. Good studies of complicated issues are resource intensive. For example, a study of whether the guideline affects child custody litigation or the efficiency of the judicial process would require more than a sampling of orders. Litigants, attorneys, bench officers and other court staff would all have to be interviewed, and the information obtained from the interviews would have to be analyzed.

This report identifies a number of issues that deserve further study. To the extent that resources are made available, the Family and Juvenile Law Advisory Committee will continue to study these issues and other issues raised by individuals and organizations that provide comment on this report.