



JUDICIAL COUNCIL OF CALIFORNIA

POLICY COORDINATION
AND LIAISON COMMITTEE

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POLICY COORDINATION AND LIAISON COMMITTEE

MINUTES OF OPEN MEETING

October 5, 2017

4:30 p.m.

Teleconference

Advisory Body Hon. Kenneth K. So, Chair; Hon. Gary Nadler, Vice-Chair; Hon. Kevin C. Brazile;
Members Present: Hon. Samuel K. Feng; Hon. Harold W. Hopp; Hon. Harry E. Hull, Jr.; Hon. Scott
M. Gordon; Mr. Patrick M. Kelly; and, Mr. Michael M. Roddy.

Advisory Body Hon. C. Todd Bottke and Ms. Gretchen Nelson.
Members Absent:

Others Present: **Judicial Council Staff:** Ms. Audrey Fancy; **Committee staff:** Mr. Cory
Jasperson, Mr. Alan Herzfeld, Ms. Monica LeBlond, Ms. Yvette Casillas-Sarcos
and Ms. Tayryn Edwards.

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 4:31 p.m., and took roll call. No written comments were received.

Approval of Minutes

The advisory body reviewed and approved the minutes of the September 13, 2017, Policy Coordination and Liaison Committee meeting.

CONSENT ACTION ITEMS

Item 1

a) **Judicial Council Legislative Policy Summary: 2017**

Reflects actions through the 2017 legislative year.

Presenter: Mr. Cory T. Jasperson

Action: Approved for submission to the Judicial Council.

b) Dual Status Youth Legislative Report

Report of stakeholder group convened to make recommendations to improve outcome tracking for youth involved in both dependency and delinquency systems.

Presenter: Mr. Alan Herzfeld

Action: Approved for submission to the Judicial Council.

DISCUSSION ACTION ITEM

Item 1

a) Judicial Council: 2017 Legislative Priorities

Each year, the Judicial Council authorizes sponsorship of legislation to further key council objectives and establishes priorities for the upcoming legislative year.

Presenters: Mr. Cory Jaspersen

Action: Recommend Judicial Council sponsorship.

ADJOURNMENT

There being no further business, the meeting was adjourned at 4:41 p.m.

Approved by the advisory body on [enter date].



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

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MEMORANDUM

Date	Action Requested
November 6, 2017	Recommend for Judicial Council Sponsorship
To	Deadline
Members of the Policy Coordination and Liaison Committee	N/A
From	Contact
Language Access Plan Implementation Task Force	Douglas G. Denton, 415-865-7870 douglas.denton@jud.ca.gov
Hon. Mariano-Florentino Cuéllar, Chair	Anne Ronan, 415-865-8933 anne.ronan@jud.ca.gov
Civil and Small Claims Advisory Committee	Elizabeth Tam-Helmuth, 415-865-4604 elizabeth.tam@jud.ca.gov
Hon. Ann I. Jones, Chair	Andi Liebenbaum, 916-323-3121 andi.liebenbaum@jud.ca.gov
Subject	
Proposal for Judicial Council–Sponsored Legislation: Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550	

Executive Summary

The Language Access Plan Implementation Task Force and Civil and Small Claims Advisory Committee recommend that the Judicial Council sponsor legislation to: (1) amend Government Code section 68560.5(a) to delete an exception stating that interpreters are not required in small claims proceedings; and (2) amend Code of Civil Procedure section 116.550 to authorize courts to appoint certified and registered interpreters in small claims proceedings. The latter amendment also provides judicial officers with discretion to appoint a temporary interpreter to assist a court user during a small claims hearing if an attempt to secure a certified/registered or provisionally qualified interpreter was not successful either: (1) after the matter was continued to allow for a further search; or (2) at the first hearing if the judicial officer determines that appointment of a temporary interpreter is appropriate without a further postponement, depending on the

complexity of the case. The amendments support Recommendations 71 and 72 in the *Strategic Plan for Language Access in the California Courts*, adopted by the council in January 2015.

Recommendation

In order to complete the systematic expansion of language access services, including the provision of court interpreters in small claims actions when court resources allow, the Language Access Plan Implementation Task Force (Task Force) and Civil and Small Claims Advisory Committee recommend that the Judicial Council sponsor legislation to:

1. Amend Government Code section 68560.5(a) to delete an exception stating that interpreters are not required in small claims proceedings; and
2. Amend Code of Civil Procedure section 116.550 to authorize courts to appoint certified and registered interpreters in small claims proceedings. The revised statute makes clear that courts should follow the provisional qualification process if a certified or registered interpreter is not available. The statutory amendment also provides judicial officers with discretion to appoint a temporary interpreter to assist a court user during a small claims hearing if an attempt to secure a certified/registered or provisionally qualified interpreter was not successful either: (1) after the matter was continued to allow for a further search; or (2) at the first hearing if the judicial officer determines that appointment of a temporary interpreter is appropriate without a further postponement, depending on the complexity of the case.

The text of the new statutes is attached at pages 8–9.

Previous Council Action

In January 2015, the Judicial Council adopted the *Strategic Plan for Language Access for the California Courts*. The Language Access Plan (LAP) includes comprehensive recommendations to serve as the foundation for a branch-wide approach to providing language access services to court users throughout the state. The recommendations also accommodate individual courts' need for flexibility in implementing the plan. Under the plan's goals, by 2017 it will be the state's policy — to be implemented as soon as resources permit — to provide qualified interpreters in the California courts to limited English proficient (LEP) court users in all courtroom proceedings and in all court-ordered, court-operated events by 2020.

The LAP states that legislative action to amend, delete, or add statutory language, and Judicial Council action to create or revise court forms or rules of court will be necessary to fully and effectively implement the recommendations contained in this Language Access Plan. Such actions should include the need for clarification of existing statutes. . .” (LAP, p. 78). Two specific LAP recommendations describe legislation to ensure qualified interpreters, subject to court resources, are provided in small claims actions:

LAP Recommendation #71. The Judicial Council should sponsor legislation to amend Government Code section 68560.5(a) to include small claims proceedings in the definition of court proceedings for which qualified interpreters must be provided.

LAP Recommendation #72. The Judicial Council should sponsor legislation to amend Code of Civil Procedure section 116.550 dealing with small claims actions to reflect that interpreters in small claims cases should, as with other matters, be certified or registered, or provisionally qualified where a credentialed interpreter is not available.

Rationale for Recommendation

Effective January 1, 2015, Evidence Code section 756 provides that qualified interpreters should be provided to LEP court users in all court proceedings, including small claims proceedings, at no cost to the parties, regardless of the income of the parties. If sufficient funding is not available to provide interpreters in all civil matters, the statute sets forth an order of priority for courts to follow in deploying interpreters. Small claims matters are in priority group 8, “all other civil matters,” the lowest of the priority groups (Assembly Bill 1657, Stats. 2014, ch. 721). Separate statutes currently exempt small claims cases from the definition of court proceedings in which qualified interpreters must be appointed, and specifically authorize a court to permit an individual (other than an attorney) to assist an LEP party in small claims proceedings (Government Code section 68560.5(a) and Civil Code of Procedure section 116.550).

LAP Recommendations 71 and 72 recommend amendments to both of these statutes to ensure that, as resources permit, court interpreters are provided to LEP court users in small claims matters. The Task Force approved a proposal in 2016 to PCLC for legislation to be introduced in 2017. However, the Civil and Small Claims Advisory Committee subsequently requested that the Task Force proposal be delayed until the Task Force and the Civil and Small Claims Advisory Committee developed compromise language regarding proposed amendments to Code of Civil Procedure section 116.550. (When proposed changes to Government Code section 68560.5(a) circulated previously, no objections/negative comments were received.)

A joint working group comprised of three Task Force members and three Civil and Small Claims Advisory Committee members developed compromise language for Code of Civil Procedure section 116.550 to address the advisory committee’s concerns that, as proposed, the amended statutes would adversely impact access to justice for parties in small claims cases. Recommended changes were approved by the Task Force on August 9, 2017, and by the Civil and Small Claims Advisory Committee on August 16, 2017, to circulate for an abbreviated comment period of 30 days (September 15 through October 13, 2017).

The recommended changes to the statutes also conform to recent changes, as recommended by the Court Interpreters Advisory Panel, to California Rules of Court, Rule 2.893, regarding the appointment of noncertified interpreters in court proceedings, including civil matters. That rule change is anticipated to go into effect on January 1, 2018. Assuming the proposed changes to

Code of Civil Procedure section 116.550 go into effect, there may be minor additional changes that need to be made to Rule 2.893 to ensure that the rule conforms to the amended statute.

After reviewing the comments received during the second circulation, the two advisory bodies reviewed and approved this revised proposal. The measure was passed by the Task Force via an Action by E-mail conducted November 2–3, 2017 with a 17–7 vote, and one (1) abstention. The Civil and Small Claims Advisory Committee approved the joint proposal during a meeting on November 1, 2017, by a unanimous vote. The two advisory bodies recommend that the council approve the two proposed statutory amendments for inclusion in council-sponsored legislation (to be effective January 1, 2019).

Comments, Alternatives Considered, and Policy Implications

Comments

The proposal received eleven (11) comments during its recent circulation. Commenters included the California Commission on Access to Justice, State Bar of California; Superior Court of California, County of Los Angeles; Superior Court of California, County of San Diego; California Federation of Interpreters; Interpreters Guild of America, Public Counsel; various California-based, IOLTA-Funded Disability Advocacy organizations; legal services providers (comment signed by various legal services organizations); an individual court interpreter; a California superior court judge; and, a California court commissioner.¹ Six (6) commenters agreed with the proposal (both statutory amendments). One (1) commenter agreed with the proposal with a slight modification. Four (4) commenters disagreed with the proposed revision to Code of Civil Procedure 116.550.

The commenters that opposed the proposed amendments to Code of Civil Procedure section 116.550 (the groups of legal services organizations and the California Federation of Interpreters) indicated that they preferred the prior proposal that was circulated in 2016 by the Task Force, which mandated that courts appoint interpreters in small claims proceedings, and did not provide for what would happen if such interpreters were not available. In response, the advisory bodies determined that the previously proposed language, especially the inclusion of the phrase “shall appoint,” could prove unduly burdensome on trial courts at this point in time, since it would require courts to provide registered or certified court interpreter in all small claims matters, irrespective of the availability of a certified or registered interpreter. Such a mandate would likely result in numerous continuances of small claims matters, and thus result in small claims parties being denied access to the court system.

The advisory bodies concluded that some of the concerns raised by the commenters who disagreed with the proposed revision were either already addressed in the proposed revisions to Code of Civil Procedure 116.550, or would be best served by securing approval for the revised proposal as an important first step in ensuring needed language assistance for LEP litigants. The

¹ The identity of all commenters, the text of the comments, and the advisory bodies responses are in the attached comments chart.

revised provisions make clear that the optimal situation is for courts to use official qualified interpreters. Only when an attempt to secure a certified/registered or provisionally qualified interpreter is not successful will judicial officers have the discretion to appoint a temporary interpreter to assist a court user during a small claims hearing, either: (1) after the matter was continued to allow for a further search; or (2) at the first hearing, if the judge determines that appointment of a temporary interpreter is appropriate without a further postponement, depending on the complexity of the case.² This further provision is essential since there are not currently enough interpreters in all languages to assist court users in small claims. At present, requiring that a certified/registered or provisional interpreter be used in all cases would result in many small claims hearings being continued one or more times. The advisory bodies concluded that in small claims court, where the amounts are smaller and where all parties are self-represented litigants often missing work or incurring child-care and transportation costs for each court appearance such continuances would often mean the end to the party's efforts to access the courts. The amended statute will allow judicial officers the discretion to ensure that LEP court user needs are met even if a certified or registered court interpreter is not available.³ In the future, the branch could consider further revisions and policy changes to expand the appointment of interpreters in small claims proceedings.

Alternatives considered

The Task Force and Civil and Small Claims Advisory Committee did not consider the option of not recommending any changes to these statutes. Failure to amend the above-referenced statutes will result in confusion and is contrary to provisions in both the LAP and the provisions of Evidence Code section 756, which provides that qualified interpreters should be provided to LEP court users in all court proceedings, subject to available resources, including small claims proceedings.

As noted above, the advisory bodies did consider mandating the use of certified/registered or provisional interpreters in all cases involving LEP parties, even if that required multiple continuances, but concluded that such a plan would be too burdensome on the parties.

Policy implications

The LAP set forth a goal that by 2017, and beginning immediately where resources permit, qualified interpreters will be provided in the California courts to limited English proficient (LEP) court users in all courtroom proceedings and in all court-ordered, court-operated events by 2020. Legislative amendments to Government Code section 68560.5(a) and Civil Code of Procedure section 116.550 will make clear that courts are to provide qualified interpreters, subject to available court resources, in small claims actions. If this legislation is sponsored by the Judicial

² The advisory bodies accepted the proposed modification from the Superior Court of San Diego County to clarify this provision.

³ Minor amendments to Rule 2.893 may be required following council approval of these statutory changes, to clarify that it may apply in small claims matters. That rule requires findings on the record, including a finding of the unavailability of a certified/registered or provisional interpreter, prior to any use of a temporary interpreter.

Council, and enacted into law, it will take another year for the new statutes to take effect on January 1, 2019.

Implementation Requirements, Costs, and Operational Impacts

The proposed amendments continue the expansion of language services in the courts, including the provision of court interpreters in small claims actions when court resources allow. This will require that more qualified interpreters in more languages be made available for parties and witnesses. The Governor's budget for fiscal year 2016–2017 appropriated an additional \$7 million, ongoing, for the expansion of court interpreter services in civil proceedings. An additional ongoing amount of \$4 million for continued expansion was requested by the Judicial Council for fiscal year 2018–2019. If approved, trial courts throughout the state should have funding available to address and meet increased costs necessary to provide interpreter services. To the extent funding is not yet sufficient to provide interpreters in all civil matters, courts may not be able to provide interpreters immediately in small claims matters, which are included within the lowest priority group.

Several commenters provided suggestions on the operational changes, training and outreach that may be necessary for implementation, including:

- Revisions may be necessary to fee waiver forms and rules, and Small Claims forms to address the new provisions.
- The revision to Rule 2.893, effective January 1, 2018, will clarify the requirements and limitations for temporary use of an interpreter.
- Training will be required for judicial officers and court staff.
- Local policies and procedures, and any local rules and forms regarding interpreters in small claims court, may need to be revised.
- New codes may need to be added to case management systems, to create/modify tracking methods relating to interpreter needs in small claims cases.
- Internal and external webpages may need to be updated to reflect the changes.
- As appropriate, the Judicial Council and courts should publicize the changes to other relevant groups such as bar associations, including use of a news release, and inform self-help centers, other legal organizations, and other justice partners.

Judicial Council staff will be working over the next year to develop and provide courts with tools regarding notice, training, and outreach to justice partners and LEP communities.

Relevant Strategic Plan Goals and Operational Plan Objectives

The Language Access Plan recommendations furthered by this proposal support Goal I of the Judicial Council's 2006–2016 strategic plan—Access, Fairness, and Diversity—which sets forth that:

- All persons will have equal access to the courts, and court proceedings and programs;
- Court procedures will be fair and understandable to court users; and
- Members of the judicial branch community will strive to understand and be responsive to the needs of court users from diverse cultural backgrounds.

The LAP also aligns with the 2008–2011 operational plan for the judicial branch, which identifies additional objectives, including that the branch:

- Increase qualified interpreter services in mandated court proceedings and seek to expand services to additional court venues; and
- Increase the availability of language access services to all court users.

Finally, the LAP also aligns with the Chief Justice’s Access 3D framework and enhances equal access to justice for court users with limited English proficiency.

Attachments

1. Government Code section 68560.5(a) and Code of Civil Procedure section 116.550, at pages 8–9
2. Chart of comments, at pages 10–35

Government Code section 68560.5(a) would be amended, effective January 1, 2019, to read:

1 **§ 68560.5(a)**

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3 (a) “Court proceeding” means a civil, criminal, or juvenile proceeding, or a deposition in a
4 civil case filed in a court of record. ~~However, “court proceeding” does not include a small~~
5 ~~claims proceeding.~~

Code of Civil Procedure section 116.550 would be amended, effective January 1, 2019, to read:

1 **§ 116.550**

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(a) If the court determines that a party does not speak or understand English sufficiently to comprehend the proceedings or give testimony, and needs assistance in so doing, the court may *appoint an interpreter* ~~permit another individual (other than an attorney) to assist to interpret~~ for that party. *The requirements of Government Code section 68561 apply to the appointment of interpreters in small claims matters.*

~~(b) Each small claims court shall make a reasonable effort to maintain and make available to the parties a list of interpreters who are able and willing to aid parties in small claims actions either for no fee, or for a fee which is reasonable considering the nature and complexity of the claims. The list shall include interpreters for all languages that require interpretation before the court, as determined by the court in its discretion and in view of the court's experience.~~

~~(c) Failure to maintain a list of interpreters, or failure to include an interpreter for a particular language, shall not invalidate any proceedings before the court.~~

~~(d) If a court interpreter or other competent interpreter is not available to aid a party in a small claims action, at the first hearing of the case the court shall postpone the hearing one time only to allow the party the opportunity to obtain another individual (other than an attorney) to assist that party. Any additional continuances shall be at the discretion of the court.~~

~~(d)(b) Notwithstanding the provisions of Government Code section 68561, if a court makes a finding that a certified or registered court interpreter or an interpreter provisionally qualified under the Rules of Court is not available to aid a party in a small claims action, at the first hearing of the case the court should consider postponing the hearing, depending on the complexity of the matter, in order to attempt to obtain a certified or registered court interpreter, an interpreter that has been provisionally qualified, or the court may allow use of an individual as a "temporary interpreter" under the provisions of the Rules of Court to assist as an interpreter during the hearing. Any other continuances shall be at the discretion of the court.~~

(c) The Judicial Council shall adopt Rules of Court to implement this statute.

LEG17-07

Language Access: Interpreters in Small Claims – Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	California Commission on Access to Justice, State Bar of California by Hon. Mark A. Juhas, Chair	A	<p>We support LEG17-07 in its entirety as proposed by the Language Access Implementation Task Force and the Civil and Small Claims Advisory Committee to amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550. By providing qualified court interpreters in small claims proceedings when court resources allow, and by clarifying that courts should follow the provisional qualification process if a certified or registered interpreter is not available, this legislative proposal will help ensure that limited English proficient (LEP) Californians have access to small claims court without having to rely on untrained individuals such as family members or friends to interpret, which can result in misunderstandings and jeopardized legal rights and remedies.</p> <p>Regarding operational changes that may be necessary for the courts to make if the proposal becomes law, the Commission recommends the training of court staff at all points of access, including but not limited to, judicial officers, individual court clerks, clerk’s offices, self-help centers and family law facilitator’s offices, to help ensure that implementation is uniform and consistent. The Commission also recommends that information about the availability of interpreters in small claims matters should be posted in all courthouses, on individual court websites, and the Judicial Council’s website.</p>	<p>The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions.</p> <p>The advisory bodies appreciate the commenter’s suggestions on the operational changes, including training and outreach, that will be needed to support and communicate these statutory amendments. In addition, the Language Access Plan Implementation Task Force (LAPITF) is directing Judicial Council staff to develop and provide courts with tools regarding notice, training and outreach to justice partners and LEP communities.</p>

LEG17-07

Language Access: Interpreters in Small Claims – Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550

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	Commenter	Position	Comment	Committee Response
			<p>Some recommended steps to help inform attorneys, judicial officers, court staff, and/or court interpreters if changes are made to the California Code include posting information on the State Bar’s website; notifying nonprofit legal services organizations funded by the Legal Services Trust Fund Program, State Bar certified Lawyer Referral Services, and local bar associations throughout the state; and reaching out to Commission members to share information with their respective appointing entity, such as the Legal Aid Association of California, California Judges Association, and Council of California County Law Librarians. The State Bar Office of Legal Services staff is able to assist with these outreach efforts.</p>	
2.	<p>California Federation of Interpreters by Mary Lou Aranguren, CFI Legislative Director</p>	N	<p>The current proposal for legislation on the provision of interpreters in small claims proceedings is a step backward. Changes from the prior proposal (LEG 16-07) are inconsistent with recommendations in the statewide Language Access Plan (recommendations #71 and #72) and contrary to the goal of providing full and consistent language access in our trial courts.</p> <p>CFI opposes the proposed amendments because they would continue the historical practice of allowing the use of a “temporary” interpreter – read an unqualified layperson—</p>	<p>The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions. The advisory bodies reviewed the comments, but disagree with the commenter’s conclusion.</p> <p>The advisory bodies elected to make certain minor revisions to Code of Civil Procedure 116.550, but concluded that most of the concerns raised by the commenters who disagreed with the proposed revision were either already addressed in the proposal, and/or would be best served by securing approval for the revised proposal as an important incremental step. The advisory bodies agree that the use of a certified/registered or</p>

Language Access: Interpreters in Small Claims – Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550

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	Commenter	Position	Comment	Committee Response
			<p>“if a certified or registered or provisionally qualified interpreter not available.” The LAP task force has recognized the dangers of using friends and family or other volunteer “interpreters” in court proceedings and has received ample public testimony on this subject. The risks to the overall integrity of the proceedings extend to all participants and impact the judge’s ability to make a fair and impartial decision based on reliable testimony.</p> <p>Discretion to appoint interpreters who are not qualified, who often have a conflict of interest, and who do not have the knowledge or skills to provide a complete and accurate interpretation would essentially continue the status quo by providing an exception for small claims proceedings to the requirement to provide fully competent and certified or registered interpreters in court proceedings.</p> <p>The proposed amendments will result in unnecessary confusion for court staff and litigants by maintaining two different standards and by making the use of court provided interpreters of known qualifications permissive rather than required. This is contrary to provisions in both the LAP and the newly enacted provisions of Evidence Code section 756, which provides that qualified interpreters should be provided to LEP court users in all</p>	<p>provisionally qualified interpreter is the optimal result. The revised statute makes clear that courts may appoint a temporary interpreter to assist a court user during a small claims hearing only if an attempt to secure a certified/registered or provisionally qualified interpreter was not successful, and may do so either (1) after the matter was continued to allow for a further search; or (2) at the first hearing if the judge determines that appointment of a temporary interpreter is appropriate without a further postponement, depending on the complexity of the case. This compromise language was essential since there are not currently enough interpreters in all languages to assist court users in small claims. The amendment will allow judicial officers the discretion to ensure that LEP court user needs are met if a certified or registered court interpreter is not available to assist small claims parties who might otherwise be denied a day in court because that may not be able to afford to come back for a second or third hearing date.</p>

LEG17-07

Language Access: Interpreters in Small Claims – Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>court proceedings, subject to available resources, including small claims proceedings.</p> <p>This exception is not appropriate or necessary for the following reasons:</p> <ul style="list-style-type: none">• Small claims proceedings are just as difficult to interpret as any other court proceeding.• Subjects in small claims proceedings are varied and can often be technical in nature.• The nature of the proceedings is inherently complex as testimony is taken from opposing parties and court procedures are explained to pro per litigants.• The stakes, up to \$10,000, are high for court users of limited means who are often the plaintiffs.• A perceived lack of fairness that is likely to result if fully competent and impartial interpreters are not used in these proceedings will affect the public's confidence in the integrity of the justice system.• Allow for the use of unqualified interpreters is not a reasonable or appropriate solution to the perceived shortage of certified and registered interpreters.• The shortage of certified and registered interpreters is overstated.• A commitment to the requirement to provide competent interpreters will ensure that courts do what is necessary to overcome recruitment problems.	

LEG17-07

Language Access: Interpreters in Small Claims – Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Completing the expansion of interpreter services to all court proceedings is well within reach. In our experience those courts that fully commit to providing interpreters in all court proceedings are able to do so in a large majority of cases with a combination of staff and contract interpreters.</p> <p>The proposed amendments will be counter-productive to the successful expansion of services, and will explicitly allow some courts to continue doing what they have done for decades--“making do” with non-interpreters and poor language access services because they do not take the need for competent interpreters seriously and fail to commit the necessary effort and resources to ensuring that competent interpreters are available.</p> <p>The right approach was the first one already approved by the LAP task force and previously circulated for comment before the intervention of the Civil and Small Claims advisory committee. CFI strongly supports that proposal (LEG16-07) for revising California Code of Civil Procedure §116.550:</p> <p>Previously circulated proposal (LEG16-07): (a) If the court determines that a party does not speak or understand English sufficiently to comprehend the proceedings or give testimony, and needs assistance in so doing, the court may</p>	

LEG17-07

Language Access: Interpreters in Small Claims – Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>shall appoint an interpreter permit another individual (other than an attorney) to assist interpret for that party. The requirements of Government Code section 68561 apply to the appointment of interpreters in small claims matters.</p> <p>(b) Each small claims court shall make a reasonable effort to maintain and make available to the parties a list of interpreters who are able and willing to aid parties in small claims actions either for no fee, or for a fee which is reasonable considering the nature and complexity of the claims. The list shall include interpreters for all languages that require interpretation before the court, as determined by the court in its discretion and in view of the court's experience.</p> <p>(c) Failure to maintain a list of interpreters, or failure to include an interpreter for a particular language, shall not invalidate any proceedings before the court.</p> <p>(d) If a court interpreter or other competent interpreter is not available to aid a party in a small claims action, at the first hearing of the case the court shall postpone the hearing one time only to allow the party the opportunity to obtain another individual (other than an attorney) to assist that party. Any additional continuances shall be at the discretion of the court.</p> <p>Achieving the goals of the statewide LAP</p>	

Language Access: Interpreters in Small Claims – Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>requires a firm commitment to the core principles and accountability. Court administrators and judicial officers must be <i>required</i> to take responsibility for ensuring that LEP court users have full and meaningful access to the proceedings and that judges and other parties can rely on the integrity of the proceedings. Allowing for the use of family, friends, audience members and others without appropriate qualifications is antithetical to the core principles and explicit recommendations of the LAP.</p>	
3.	Commissioner Christine Copeland	A	<p>My comments are mine and not my Court's. I agree with the proposed removal and support providing qualified interpreters in small claims actions. It is unfortunate that this progress comes at a time when courts are suffering from years-long underfunding, but that does not diminish the great need for small claims litigants to be assisted by court interpreters. And there should be a demonstrated efficiency in not having to continue matters so litigants can search for and bring their own interpreters. That system inconvenienced the parties, witnesses, the volunteer interpreters and the court.</p> <p>You may want to amend the Fee Waiver Order form FW-003, item 4(a) - it references waiving the court fee for an interpreter in small claims actions. Government Code sections 68630-68640 do not seem to reference waiving fees for</p>	<p>The Language Access Plan Implementation Task Force (Task Force) and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions.</p> <p>The Civil and Small Claims Advisory Committee will work on revising these forms, and the rule of court regarding this provision, as time and resources allow.</p>

Language Access: Interpreters in Small Claims – Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550

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	Commenter	Position	Comment	Committee Response
			<p>interpreters, but that Order form mentions such (and in the past, common practice was to deny court interpreters unless a small claims litigant successfully applied for a fee waiver).</p>	
4.	Mr. Sal Gallegos, Court Interpreter	A	<p>For far too long, limited English language parties to small claims actions have been at a disadvantage during proceedings for lack of a proper and certified interpreter at their side. If justice is blind, then without a voice, justice has also been mute to these individuals.</p> <p>Without this recourse many individuals with legitimate grievances against other parties have had to suffer unjust treatment or withheld from filing for reparations because they knew they would not be able to communicate their grievance to a judge or magistrate because of their language barrier.</p> <p>Language should not be a barrier to justice, especially if this State has a system in place to administrate and certify interpreters. To expect these parties to hire interpreters privately is in fact a prohibitive action for limited English parties to file for small claims and a denial of justice that society deems appropriate.</p> <p>When parties realize that interpretation is a service that will be provided then language is not a barrier to access justice but rather language become an enabler to equality. Let's</p>	<p>The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions.</p>

Language Access: Interpreters in Small Claims – Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>not forget that parties to small claims actions are in some sense victims to wrongdoings that although are not criminal, they can be considered negligent or abusive.</p> <p>For these reasons I advocate and agree with the proposed changes.</p>	
5.	Interpreters Guild of America by Rene Garcia, Chair	N	<p>As the chair of IGA: Interpreters Guild of America, I would like to voice our strong opposition to any regulation that would fast track provisional certification for interpreters appearing in any judicial proceeding, including small claims.</p> <p>California Courts have a well-earned reputation for high standards and have a dedicated and ample certified judicial workforce, especially in Spanish. It would be more in keeping with the high value our state places on language access to continue to consider temporary provisional certification as a measure of last resort and only for languages of lesser diffusion other than Spanish.</p> <p>Making it easier for the courts to hire certified freelancers and easier to share existing interpreting resources within the courts system is a more common sense and efficient approach to addressing interpreter availability concerns.</p> <p>Resolving existing limitations on hiring certified freelance interpreters must always be</p>	<p>The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions. The advisory bodies reviewed the comments, but disagree with the commenter’s conclusion.</p> <p>The advisory bodies elected to make certain minor revisions to Code of Civil Procedure 116.550, but concluded that most of the concerns raised by the commenters who disagreed with the proposed revision were either already addressed in the proposal, and/or would be best served by securing approval for the revised proposal as an important incremental step. The advisory bodies agree that the use of a certified/registered or provisionally qualified interpreter is the optimal result. The revised statute makes clear that courts may appoint a temporary interpreter to assist a court user during a small claims hearing only if an attempt to secure a certified/registered or provisionally qualified interpreter was not successful either (1) after the matter was continued to allow for a further search; or (2) at the first hearing if the judge determines that appointment of a temporary interpreter is</p>

Language Access: Interpreters in Small Claims – Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550

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	Commenter	Position	Comment	Committee Response
			<p>preferable to facilitating the provisional certification of bilingual family members or parties who happen to be near at hand.</p> <p>We strongly suggest changing current court policies that limit the hiring of freelancers to a fixed number of days per calendar year. We also suggest improving the sharing existing interpreting resources. The focus should be on addressing problems that stand in the way of the courts being able to use certified interpreters, rather than formalizing the inadequacies inherent in the ‘only as a last resort’ methodology that is provisional certification.</p>	<p>appropriate without a further postponement, depending on the complexity of the case. This compromise language was essential since there are not currently enough interpreters in all languages to assist court users in small claims. The amendment will allow judicial officers the discretion to ensure that LEP court user needs are met if a certified or registered court interpreter is not available to assist small claims parties who might otherwise be denied a day in court because that may not be able to afford to come back for a second or third hearing date. Minor amendments to Rule 2.893 may be required following council approval of these statutory changes.</p> <p>Provisions of the Interpreter Act (for example, Government Code section § 71802(c)(2), commonly known as the “100 day rule”) are not a part of this proposal. As a separate project, the LAPITF has recently started an evaluation of the Trial Court Interpreter Employment Labor Relations Act, under LAP Recommendation 74, which will include a review of any negative impacts of the Act’s 100-day rule that limits the hiring of independent contractors beyond a specified number of days.</p>
6.	Hon. Lynn Loschin	A	I have been sitting as a temporary judge in Orange County for several years, including in small claims court. In my view, adding certified interpreters to small claims cases would be a welcome improvement.	The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions.

Language Access: Interpreters in Small Claims – Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550

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			<p>On various occasions, I have been informed by third parties who speak the language being interpreted that the friend or relative brought into court by the litigant to act as interpreter is not accurately interpreting what the litigant said. I have also run into situations where both sides are using such interpreters, and dispute that the other interpreter is accurately interpreting. Using certified interpreters would eliminate this disquieting uncertainty.</p> <p>To address the request for specific comments, it is my experience, based on what litigants have said in court, that most turn to two sources for information about small claims procedures: 1) the court's web site, and 2) the court's self-help center. Adding information about the availability of interpreters to these two sources, as well as available printed resources, would assist litigants in learning about this change.</p> <p>Perhaps a question asking if the plaintiff needs an interpreter could be added to the printed and online versions of SC-100, and relevant information about requesting an interpreter could be added to the notice to defendant.</p>	<p>The advisory bodies appreciate the commenter’s suggestions on the operational changes, including training and outreach, that will be needed to support and communicate these statutory amendments. In addition, the Language Access Plan Implementation Task Force (LAPITF) is directing Judicial Council staff to develop and provide courts with tools regarding notice, training and outreach to justice partners and LEP communities.</p> <p>Suggestions for new rules and forms within the purview of the council will be referred to the appropriate advisory committees to work on. Civil and Small Claims Advisory Committee will be working on revising the SC-100 and notices to defendants as time and resources allow.</p>

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			<p>In terms of informing relevant non-litigants, it seems advising the court self-help centers, any non-profits that assist litigants, and local bars would help get the word out.</p> <p>I would add one caveat to this subject based on my small claims experience. Even if an interpreter is available in the courtroom to interpret testimony, sometimes small claims cases turn on documents that are not in English. Not every interpreter can translate a written document on the fly, and it's not really something that is fair to ask of them. Litigants should be advised that either certified or mutually stipulated translations of any critical documents should be obtained before they come to court.</p> <p>I further believe that how to effectively preside over cases where litigants use interpreters (including how to interact with an interpreter, what to do and what not to do) would be a useful addition to the required Bench Demeanor course that temporary judges take every three years.</p>	<p>See comment above regarding notice.</p> <p>The advisory bodies agree with this suggestion to inform parties regarding the need to obtain professional translations of documents. Government Code §27293 permits California county clerks to certify documents translated into English only if the document has been translated by American Translators Association certified translators, California Certified Court Interpreters, or California Registered Interpreters. California Certified Court or Registered Interpreters are authorized in a judicial proceeding to interpret orally the verbal content of documents, but the Judicial Council does not otherwise test or certify an interpreter's written translation skills.</p> <p>The advisory bodies appreciate this suggestion and LAPITF staff will make sure that staff to the Center for Judicial Education Center for Judicial Education and Research (CJER) are informed of the suggestion.</p>
7.	Public Counsel by Magdalena Bordeaux, Supervising Senior Staff Attorney	A	We strongly support the position of the Language Access Plan Implementation Task Force and Civil and Small Claims Advisory	The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions.

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			<p>Committee (“Task Force and Committee”) in amending the Code Sections.</p> <p>If the Code Sections are amended, we recommend the following to ensure greater access to all litigants in small claims court proceedings:</p> <ol style="list-style-type: none"> 1. Update court websites to reflect languages available for interpretation; 2. Train all court staff on how to assist LEP litigants in need of an interpreter; 3. Make announcements at small claims proceedings regarding the availability of interpreters; 4. Post signage in courts indicating the availability of court interpreters; 5. Make interpreters available to LEP litigants at any point of a small claims proceeding; and 6. Provide notices to bar associations, pro bono organizations, self-help centers, and other legal organizations regarding the availability of interpreters at small claims proceedings. 	<p>The advisory bodies appreciate the commenter’s suggestions on the operational changes, including training and outreach, that will be needed to support and communicate these statutory amendments. In addition, LAPITF is directing Judicial Council staff to develop and provide courts with tools regarding notice, training and outreach to justice partners and LEP communities.</p> <p>Court interpreter availability is subject to the resources of individual courts.</p>
8.	Superior Court of California, County of Los Angeles	A	This proposal is supported by the Language Access Plan Implementation Task Force and by the [Civil and Small Claims Advisory Committee]. It conforms the treatment of limited English proficient litigants in small claims cases to that of limited English proficient litigants in other case types. The proposed legislation is carefully balanced	The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions.

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			<p>between the access to justice concerns of the litigants and the real world limitations on the pool of available interpreters.</p> <p>LASC currently provides Spanish interpreters in all small claims courtrooms and other than Spanish interpreters as requested. However, this language provides judges with discretion to appoint a <i>temporary</i> interpreter to assist a court user during a small claims hearing if a certified/registered or provisionally qualified interpreter is not available even after a continuance, or at the first hearing if the judge makes a similar determination of unavailability, depending on the complexity of the case. It is imperative the Court distinguish between “provisionally qualified” and “temporary use” on the record. Pending revisions in Rules of Court will clarify the requirements and limitations for the temporary use of an interpreter.</p>	<p>The advisory bodies appreciate the commenter’s suggestions on the operational changes, including training and outreach, that will be needed to support and communicate these statutory amendments.</p>
9.	Superior Court of California, County of San Diego by Michael Roddy, Executive Officer	AM	<p>General Comments:</p> <p>Propose that Code of Civil Procedure section 116.500(b) be amended as follows for clarity:</p> <p><i>“...at the first hearing of the case the court should consider postponing the hearing, depending on the complexity of the matter, in order to attempt to obtain a certified or registered court interpreter, or an interpreter</i></p>	<p>The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions.</p> <p>Both advisory bodies agreed with commenter’s proposed modification to CCP 116.550, and these changes are reflected in the revised proposal.</p>

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			<p><i>that has been provisionally qualified, or the court may allow use of an individual as a “temporary interpreter” under the provisions of the Rules of Court to assist as an interpreter during the hearing. If at the next court hearing the court makes a similar finding of unavailability, or upon such a finding at the original hearing if it is not continued, the court may allow use of an individual as a “temporary interpreter” under the provisions of the Rules of Court to assist as an interpreter during the hearing Any other continuances shall be at the discretion of the court”</i></p> <p>Some courts are now providing interpreters in all case types, including small claims. This amendment will not require operational changes for these courts. For courts who have not yet expanded the use of interpreters, the following may be necessary should the provision of interpreters in small claims matters become law:</p> <ul style="list-style-type: none"> • Update training materials and internal policies/procedures • Update local rules • Notify judicial officers, court staff (including interpreters) • Update local forms 	<p>The advisory bodies appreciate the commenter’s suggestions on the operational changes, including training and outreach, that will be needed to support and communicate these statutory amendments. Suggestions for new rules and forms within the purview of the council will be referred to the appropriate advisory committees to work on as time and resources allow. In addition, LAPITF is directing Judicial Council staff to develop and provide courts with tools regarding notice, training and outreach to justice partners and LEP communities.</p>

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			<ul style="list-style-type: none"> • Add new codes to case management systems • Create/modify tracking methods • Update internal web page • Expand telephonic/video remote interpreting service <p>Some courts are now providing interpreters in all case types, including small claims. Notifying relevant groups by way of news releases, updating external/internal web pages and internally notifying judicial officer and court staff of policy/procedural changes has taken place. For courts who have not yet expanded interpreter use, the following are recommendations to notify relevant groups:</p> <ul style="list-style-type: none"> • News release • Update external/internal web pages • Internally notify judicial officers and court staff (including interpreters) of policies/procedures 	
10.	Various Disability Rights Advocacy Organizations: - Stuart Seaborn, for Disability Rights California (DRC) - Linda D. Kilb, for Disability	N	On behalf of the undersigned California-based, IOLTA-funded non-profit disability rights advocacy organizations, we commend the Judicial Council’s ongoing recognition of the importance of communication access	The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions. The advisory bodies considered the comments, but disagree with the conclusion reached by the commenter.

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	Commenter	Position	Comment	Committee Response
	<p>Rights Education & Defense Fund (DREDF)</p> <ul style="list-style-type: none"> - Elizabeth F. Eubanks, for Disability Rights Legal Center (DRLC) - Jinny Kim, for Legal Aid at Work 		<p>throughout the California court system. Specific to this letter, we appreciate the Council’s focus on the issue of interpreter availability in small claims court, building on issues addressed in the 2015 Strategic Plan for Language Access (“the LAP”) in the California Courts.</p> <p>Signatories here are either significantly or solely devoted to advancing and protecting the civil rights of people with disabilities. All signatories have an extensive presence in California, and are nationally recognized for their decades-long experience with and expertise in both federal and California disability civil rights law analysis.</p> <p>We are aware of the simultaneously submitted public comments being offered by advocates working closely with limited-English proficient (LEP) communities. Those commenters have many years of experience working with legal services-eligible clients throughout the state, and we urge the Council’s close attention to the analysis and concerns offered in their submissions. We write separately here to highlight the related disability access issues within the scope of our specific expertise.</p> <p>While the origins of the LEP and disability rights legal mandate are distinct, they are grounded in the same general full and equal access principles. [*FN] As with other</p>	<p>The advisory committees elected to make certain minor revisions to Code of Civil Procedure 116.550, but concluded that most of the concerns raised by the commenters who disagreed with the proposed revision were either already addressed in the proposal, and/or would be best served by securing approval for the revised proposal as an important incremental step. The advisory bodies agree that the use of a certified/registered or provisionally qualified interpreter is the optimal result. The revised statute makes clear that courts may appoint a temporary interpreter to assist a court user during a small claims hearing only if an attempt to secure a certified/registered or provisionally qualified interpreter was not successful either (1) after the matter was continued to allow for a further search; or (2) at the first hearing if the judge determines that appointment of a temporary interpreter is appropriate without a further postponement, depending on the complexity of the case. This compromise language was essential since there are not currently enough interpreters in all languages to assist court users in small claims. The amendment will allow judicial officers the discretion to ensure that LEP court user needs are met if a certified or registered court interpreter is not available to assist small claims parties who might otherwise be denied a day in court because that may not be able to afford to come back for a second or third hearing date. Minor amendments to Rule 2.893 may be</p>

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			<p>commenters, we note that small claims court is an important venue for ensuring access to justice, particularly for communities with limited resources and limited access to counsel. While the monetary amounts at issue are by design limited, such “modest” amounts are often extremely significant to low-income litigants. Because small claims litigants are by design self-represented, the absence of counsel makes communication access particularly salient. Thus, it is imperative to ensure that small claims courts offer the same level and quality of interpreters as offered in other venues. There is no justification for culling small claims out for differential or subpar treatment.</p> <p>Federal disability rights laws confirm that the California court system has an obligation to ensure communication access in all its venues. [*FN] The federal mandate has been expressly adopted into state law as a floor of protection. [*FN] Additional, California has strong and independent state law protections for disability rights, which have been repeatedly emphasized and confirmed by the California Legislature. [*FN]</p> <p>To facilitate practical administration of these disability rights mandates, the Judicial Council has promulgated California Rule of Court (CRC) 1-100.5 Insofar as they affect disability-</p>	<p>required following council approval of these statutory changes.</p>

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			<p>related communication access, any actions taken to further or implement the LAP should thus be coordinated and aligned with Rule 1.100.</p> <p>Similarly, it may be useful for the Council to consider coordinating and aligning LEP communication access protocols with existing mechanisms implementing disability rights mandates, including Rule 1.100. There are practical similarities as far as implementation. For example, there is comparable need to maintain up-to-date interpreter lists, and to have effective protocols for timely processing of interpreter requests. Consequently, there are efficiencies that come from considering LEP and disability communication access in tandem.</p> <p>Again, we commend the Council for its attention to communication access in the state court system. We appreciate the specific attention being given to the small claims venues that are a critical part of ensuring justice for all those seeking audience with our courts.</p>	
11.	<p>Various Legal Services & Community Organizations:</p> <ul style="list-style-type: none"> - American Civil Liberties Union of California - Asian Americans Advancing 	N	<p>[* Excerpt provided below]</p> <p>To ensure compliance with legal mandates, proper implementation of the LAP must include qualified interpreters for <i>all</i> litigants in <i>all</i> proceedings. The LAP specifically states at</p>	<p>The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions. The advisory bodies considered the comment, but disagree with the commenter’s conclusion.</p>

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	<p>Justice – Asian Law Caucus</p> <ul style="list-style-type: none"> - Asian Americans Advancing Justice – Los Angeles - Bet Tzedek - Korean Resource Center - Legal Aid at Work - Legal Aid Foundation of Los Angeles - Legal Services of Northern California - Neighborhood Legal Services of Los Angeles County - Thai Community Development Center 		<p>recommendation #72, that “[t]he Judicial Council should sponsor legislation to amend Code of Civil Procedure section 116.550 dealing with small claims actions to reflect that interpreters in small claims cases should, as with other matters, be certified or registered, or provisionally qualified where a credentialed interpreter is not available.” All LEP litigants should expect to receive consistent language access services, and no proceeding should be allowed a lesser standard.</p> <p><u>Proposed Amendment of Government Code section 68560.5(a)</u> We have no objections to the proposed changes to Government Code Section 68560.5(a).</p> <p><u>Recommendations on Proposed Amendment to Code of Civil Procedure section 116.550</u> We would like to offer the comments and recommendations below regarding the proposed amendment to Code of Civil Procedure section 116.550, which we believe will greatly enhance language access and justice for small claims litigants.</p> <p>1. Small Claims Proceedings Require Qualified Interpreters In any court proceeding, a qualified interpreter is essential to ensure that an LEP litigant's language access rights are protected. In small</p>	<p>The advisory bodies elected to make certain minor revisions to Code of Civil Procedure 116.550, but concluded that most of the concerns raised by the commenters who disagreed with the proposed revision were either already addressed in the proposal, and/or would be best served by securing approval for the revised proposal as an important incremental step. The advisory bodies agree that the use of a certified/registered or provisionally qualified interpreter is the optimal result. The revised statute makes clear that courts may appoint a temporary interpreter to assist a court user during a small claims hearing only if an attempt to secure a certified/registered or provisionally qualified interpreter was not successful either (1) after the matter was continued to allow for a further search; or (2) at the first hearing if the judge determines that appointment of a temporary interpreter is appropriate without a further postponement, depending on the complexity of the case. This compromise language was essential since there are not currently enough interpreters in all languages to assist court users in small claims. The amendment will allow judicial officers the discretion to ensure that LEP court user needs are met if a certified or registered court interpreter is not available to assist small claims parties who might otherwise be denied a day in court because that may not be able to afford to come back for a second or third hearing date.</p>

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			<p>claims proceedings, that protection is even more critical as litigants cannot have attorney representation in court. Small claim litigants are left to navigate court rules and procedures while asserting their claims and defenses on their own. They also may be seeking resolution in a wide variety of case types, including contractual disputes, consumer fraud, personal injury, and others, likely involving complex issues, and frequently involving an opposing party with far greater English proficiency. In addition, each party in a small claims proceeding may only be allowed several minutes to present their case, and if the judicial officer issues a judgment for the defendant, the plaintiff has no right of appeal. All of these factors underscore the necessity of having qualified interpreters in all small claims proceedings, just as with other court proceedings.</p> <p>2. The Amendment Should Follow the Prior Proposed Revision from April 2016</p> <p>In April 2016, the Language Access Plan Implementation Task Force approved the following revision as proposed by Judicial Council staff to part (a) of Code of Civil Procedure section 116.550:</p> <p>(a) If the court determines that a party does not speak or understand English sufficiently to comprehend the proceedings or give testimony,</p>	<p>Minor amendments to Rule 2.893 may be required following council approval of these statutory changes.</p>

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			<p>and needs assistance in so doing, the court may shall appoint an interpreter permit another individual (other than an attorney) to assist interpret for that party. The requirements of Government Code section 68561 apply to the appointment of interpreters in small claims matters.</p> <p>The proposed April 2016 language should be restored. Changing “shall” to “may” makes appointment of an interpreter in small claims action completely discretionary with the judicial officer. This violates both the letter and the intent of the LAP and can leave small claims litigants completely without interpreters if a judicial officer so chooses. Only the mandatory “shall” is consistent with state and federal civil rights law and will ensure that interpreters are provided in small claims actions.</p> <p>In addition, proposed subdivision (b) of Code of Civil Procedure section 116.550 should be removed in its entirety because it appears to more broadly authorize the use of temporary interpreters in small claims cases than in other civil proceedings. This subdivision conflicts with the protocols and safeguards laid out in Government Code section 68561. It also conflicts with the LAP, which makes clear in recommendation #72 that interpreters in small claims matters should be provided “as with</p>	<p>The advisory bodies determined that the prior proposal, especially the inclusion of the phrase “shall appoint,” would be unduly burdensome on courts, since it would require courts to provide registered or certified court interpreter in all small claims matters, regardless of the availability of a certified or registered interpreter. Such a mandate would be likely, at this point in time, to result in numerous continuances of small claims matters, and so could result in small claims parties being denied access to the court system.</p>

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			<p>other matters” and be certified, registered or provisionally qualified. Recommendation #72 requires that small claims proceedings receive the same language access and quality of interpreters that other matters receive.</p> <p>Moreover, subdivision (b) appears to be at odds with California Rule of Court 2.893, as adopted by the Judicial Council in September 2017 to go into effect in January 2018. Under this new rule, courts can authorize the temporary use of an individual who is not certified, registered, or provisionally qualified if certain conditions are met. The new rule only allows a temporary interpreter for a “single brief, routine matter” [*FN] and not for extended or ongoing interpretation. [*FN] Considerations include not only the complexity of the matter at issue, but also the “likelihood of potential impacts on the LEP person’s substantive rights, keeping in mind the consequences that could flow from inaccurate or incomplete interpretation of the proceedings.” [*FN] Subdivision (b) appears to permit the appointment of a temporary interpreter more broadly in small claims proceedings, including those where a judicial officer hears substantive testimony and renders judgment. These types of proceedings would not be characterized as “brief, routine matter[s]” under the new Rule 2.893. The new rule should apply in all proceedings, including small claims proceedings, as it limits potential</p>	<p>The advisory bodies agree that rule 2.893 will need to be amended if this legislative proposal is enacted. They note, however, that the court’s discretion to appoint a temporary interpreter under the proposal is to be exercised after considering the complexity of the matter at issue.</p>

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			<p>harm to the substantive rights of LEP court users.</p> <p>3. Current Statutes Provide Guidance to Address Concerns</p> <p>The present Invitation to Comment Memorandum discusses the prior April 2016 circulation, indicating that the Civil and Small Claims Advisory Committee raised “concerns about whether sufficient interpreter resources would be available” to comply with the proposed legislation and requirements of Government Code section 68561. [*FN] The appropriate response to these concerns is not to create a lesser standard for interpreters in small claims proceedings, but to look to Government Code 68092.1 and Evidence Code 756. As the memorandum itself describes, [*FN] these statutes created a prioritization of case types in the event that “sufficient funds are not appropriated to provide an interpreter to every party.” Small claims proceedings are in the last category, “(8) All other civil actions or proceedings.” [*FN] Many courts have adapted and designed protocols to provide qualified interpreters for their proceedings, and small claims courts must do the same as resources become available. Where certified or registered interpreters are unavailable, Government Code section 68561 and proposed California Rule of Court 2.893 lay out a process for providing</p>	

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			<p>provisional qualification and temporary interpreters. Together, these statutes provide roadmaps and safeguards to allow courts to prioritize and provide qualified interpreters according to available resources. There is no justification for undermining these provisions and creating a substandard level of interpreter quality for small claims proceedings.</p> <p>With small claims proceedings falling within the last category of prioritization, courts have had ample time and experience to examine and develop appropriate systems to ensure the provision of qualified interpreters as resources become available. It has been almost three years since the LAP has been adopted and over a year since the initial small claims amendments were circulated. Small claims proceedings should not be exempted from the same standards of providing meaningful language access to all litigants.</p>	

PCLC ACTION REQUEST FORM

PCLC Meeting: November 16, 2017

Title: Judicial Council Report to the Legislature: Review of Statewide Uniform Child Support Guideline 2017	Code Section(s): None
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Advisory Committee or other entity submitting the proposal: Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair	Advisory Committee Staff: Ana L. Maves, Supervising Attorney
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OGA Staff Recommendation: Report be referred to full Judicial Council	OGA Staff: Andi Liebenbaum
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Additional Information for PCLC: The Family and Juvenile Law Advisory Committee has recommended approval of the report, and staff concurs.
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JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on November 16–17, 2017

Title	Agenda Item Type
Judicial Council Report to the Legislature: <i>Review of Statewide Uniform Child Support Guideline 2017</i>	Action Requested
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	None
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	October 25, 2017
Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair	Contact Anna L. Maves, Supervising Attorney 916-263-8624 anna.maves@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council receive and accept the report entitled *Review of Statewide Uniform Child Support Guideline 2017* and the report cover letter, which includes suggested modifications to the report's observations, and direct staff to forward them to the Legislature. The review of California's statewide uniform child support guideline is legislatively mandated. Family Code section 4054 states that any recommendations for revision to the guideline must be made to ensure that the guideline results in appropriate child support orders, limits deviations from the guideline, or otherwise helps to ensure that the guideline is in compliance with federal law. The review provides a basis for the Legislature to periodically reassess California's child support guideline and evaluate its impact on children and families.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council receive and accept the following and direct staff to forward them to the Legislature:

1. The report entitled *Review of Statewide Uniform Child Support Guideline 2017*; and
2. The report cover letter, which includes suggested modifications to the report's observations.

Previous Council Action

The 2017 review is the fifth review conducted by the Judicial Council. Previous reviews examined the most current economic evidence on child-rearing expenditures and analyzed case file data to determine how the guideline was being applied and the extent of deviation from the guideline. The economic evidence examined in these earlier reviews suggested that the California guideline formula resulted in appropriate amounts of child support. The analyses of case file data in these earlier reviews found that the guideline was, in general, being applied and that few orders deviated from the guideline.

Prior reviews and recommendations have been instrumental in helping effect changes to the statewide guideline. The 2010 review recommendations focused on the need to update or modify the low-income adjustment threshold, to evaluate income attribution policies, to adopt changes required by the 2008 federal medical support rules, and to improve the education of stakeholders and the tracking of case file information:

- Update or modify the low-income adjustment in the guideline.
- Evaluate current income attribution policies as they apply to both parents, including the codification of case law on income imputation and the review of the existing income presumption provision to determine if it continues to be consistent with the legislative principles regarding child support.
- Educate stakeholders and equip them with information so that they can make the current system work better and develop strategies to engage stakeholders and encourage their active participation in the child support process.
- Adopt any necessary conforming changes so that California can meet the 2008 federal medical support rules but also recognize that the 2010 national health reform may produce future changes to the federal rules as well as changes in how states approach medical support.
- Encourage better and more detailed information in the case file.

The 2005 review recommendations focused on continued monitoring and refinement of certain adjustments, deductions, and additional support but no changes in the basic guideline formula:

- Make no changes in the basic California child support guideline formula.
- Research the impact of support orders on low-income families in concert with efforts by the courts, the California Department of Child Support Services (DCSS), and other state entities to help low-income families.
- Increase or index the income threshold for applying the low-income adjustment.
- Address a child's share of the health insurance premium similarly to the way child care expenses are treated.

- Clarify the appropriate application of hardship deductions for additional children not of the relationship before the court.
- Encourage better and more detailed information in the case file.

The 2001 review recommendations focused on changes needed regarding the treatment of low-income obligors, the use of gross income versus net income as a base in calculating child support, and the treatment of additional dependents:

- The Legislature should review the adequacy of the low-income adjustment provided by Family Code section 4055 in light of the treatment of low-income obligors in other states.
- The California child support guideline should continue to rely on disposable net income as the base used to compute child support obligations.
- The existing California child support guideline’s approach to balancing the needs of additional dependents with the needs of the children subject to the support order before the court adequately addressed those issues.

The 1998 review made no recommendations for revision of the statewide child support guideline, concluding that the California guideline complied with federal requirements and that the vast majority of support orders issued were appropriate under statutory guidelines. Despite the absence of specific recommendations, however, a number of significant issues were raised in the review that warranted further study, including

- A lack of thorough documentation in court files to substantiate the factual determinations underlying child support orders;
- The low-income adjustment allowed by Family Code section 4055(b)(7) being granted in only 11 percent of the cases in which the obligor qualified;
- More study needed of the consideration given to prior or subsequent families in setting child support orders; and
- More study needed to explain the lack of orders for mandatory additional support.

Rationale for Recommendation

The child support guideline review contains the legislatively required areas of study: a review of case files to analyze the application of the guideline to particular cases, an analysis and comparison of selected special factors that are considered by other states’ guidelines, and available economic data on the cost of raising children. As a result of the study, the review makes the following nine observations for consideration for possible action by the Judicial Council, the DCSS and local child support agencies, and the Legislature.

The Family and Juvenile Law Advisory Committee supports the review’s observations, with two suggested modifications as noted under Observations 3 and 4 below. The committee recommends that these suggested modifications be contained in the cover letter to the guideline review.

Observation 1

The Legislature should review, analyze, and implement any statutory changes it deems appropriate and necessary to ensure California's compliance with the new federal child support regulations.

Pursuant to the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs final rule¹ (the final rule) published on December 20, 2016, by the federal Office of Child Support Enforcement (OCSE), all states must comply with the dictates of the new regulations within one year of the completion of the guideline study following the final rule's enactment. While California is not required to comply with the new federal regulations before completion of its next guideline study, implementing statutory changes before then would provide sufficient lead time for government entities to revise their policies and procedures, provide training to staff on the changes, make changes to governmental automated systems, and amend and revise related California Rules of Court and Judicial Council forms. Moreover, while many statutory changes may prove uncontroversial, others might generate substantial interest from stakeholders, thereby requiring additional time to allow for their input.

Observation 2

The local child support agencies (LCSAs) should seek to identify and distinguish nonparticipatory default judgments from default judgments where the terms result from the involvement and agreement of noncustodial parents and LCSAs.

An examination of the data resulting from case file reviews demonstrates that a significant percentage of cases, primarily IV-D cases, result in default judgments. This suggests widespread lack of participation and cooperation by noncustodial parents in the court order establishment process. Discussions with the Department of Child Support Services and local child support agency representatives, however, suggest that the terms of many default judgments may actually be resolved through mutual agreement between LCSAs and noncustodial parents. This happens where LCSAs engaging in outreach and in-office discussion after a noncustodial parent has been served with a summons and complaint but before a default judgment has been entered by the court. In these cases, the judgment is entered by default as a matter of law. Even so, orders arrived at under these circumstances are more closely akin to stipulated judgments than true default judgments in which a noncustodial parent fails to participate in the legal process altogether. Equating these two types of defaults not only provides a misleading impression of the way in which support cases are resolved but also suggests that the problem of noncustodial parent participation is greater than it is.

Observation 3

Legislative changes and educational efforts should be considered to improve the application of the low-income adjustment (LIA) to low-income obligors.

¹ 45 C.F.R. § 302.56.

Reviews of case files and discussions with focus group participants reveal that there are widely varying approaches to whether and how the LIA is applied. Notably, the LIA is applied far less often in family law cases than in title IV-D cases; and even though the LIA is routinely used in setting support in title IV-D cases, the value of the LIA may vary significantly even in similar factual circumstances. Reasons for the variations in application of the LIA include the exercise of individual discretion by bench officers; the fact that application of the LIA produces a range of monetary values that may be applied in the particular case; and the presence or absence of an automatic LIA calculation feature, depending on which certified child support calculator is used. Whatever the reasons, the variability in how and when the LIA is applied undercuts the uniform application of a uniform statewide child support guideline.

Moreover, the federal Office of Child Support Enforcement's final rule stresses the need for state guidelines to take into account the subsistence needs of noncustodial parents when determining ability to pay. Importantly, the final rule requires that states' guideline reviews consider how the guideline policies and amounts impact custodial and noncustodial parents who have family incomes below 200 percent of the federal poverty level. Additionally, the rule requires that states' guideline reviews consider factors that influence compliance with child support orders. For California's purposes, the provisions of the final rule do not apply to the current review underway. Nevertheless, it is not too soon to begin laying the groundwork for the next quadrennial review, which must address those provisions.

Specific considerations highlighted in the guideline study to improve the application of the LIA are the following:

- a. The Judicial Council should undertake statewide educational efforts for bench officers to ensure a common understanding of the purpose and application of the LIA.
- b. The Legislature should consider amending Family Code section 4055(c) to mandate that all commercial support calculators automatically generate LIA information when income circumstances warrant, rather than provide users with an option to generate the information.
- c. The Legislature should consider amending Family Code section 4055(c) so that when the LIA is calculated, it generates a singular, presumptive result, rather than a range of possible results.
- d. DCSS and/or the Judicial Council should undertake a study to determine whether and to what extent the LIA provides for the subsistence needs of noncustodial parents.

The committee's alternative recommendation to Observation 3

The committee does not support the recommendation in item c above. Rather than modifying Family Code section 4055(c) to generate a singular, presumptive result when the LIA is calculated, the committee recommends that Family Code section 4055(c) be modified to require that the computer programs certified by the Judicial Council to calculate guideline child support generate both the range of results when the LIA is applicable, which are currently generated by guideline calculators per existing law, in addition to the presumptive result, which would be the

amount at the low end of that range. The committee reasoned that having the guideline calculator generate both a range and the presumptive amount would underscore the discretion permitted by judicial officers to order any amount on the range based on the circumstances of a case, while still highlighting that the low end of the range presumptively is the correct amount to order.

Observation 4

Legislative changes and additional training of LCSAs, the private bar, judicial officers, and court staff should be considered to increase parents' understanding of child support orders.

California has one of the most complex guidelines in the nation, making it difficult for parents to understand how aspects of their financial situation and other related life circumstances translate into a dollar amount for a child support obligation. While several court forms provide notice to parties regarding what information was used to calculate their child support order, as discovered in this guideline study's case file review, in many cases these existing forms are not being completed and attached to the child support orders. Further, when the mandatory statutory findings are made on the record regarding a judicial officer's decision to deviate from the guideline child support amount, but not in writing, parties are unable to later refer to and understand the specific findings made in their cases. Lastly, when orders are obtained by stipulation pursuant to Family Code section 4065, while the Family Code requires all non-guideline orders (including those obtained by stipulation) make findings required by federal law (as mandated by Family Code section 4056), the failure of section 4065 to reference section 4056 or to include the specific federally required findings may lead to some confusion, resulting in some stipulated orders neglecting to include the required findings.

To address these concerns:

- a. Additional training should be provided to LCSA staff, the private bar, judicial officers, and court staff on the importance and mandatory nature of child support order attachment forms.
- b. The Legislature should consider amending Family Code section 4056(a) to require the court to state *in writing* the federally mandated findings for orders that deviate from the guideline amount.
- c. The Legislature should consider amending Family Code section 4065 to add the federally required language regarding non-guideline child support orders currently contained in Family Code section 4056 or, alternatively, amending section 4065 to clarify that the requirements of section 4056 apply to all non-guideline orders made pursuant to a stipulation.

The committee's alternative recommendation to Observation 4

The committee does not support the recommendation in item b above. As the AB 1058 program² has been flat-funded since 2008, many courts have been unable to provide court reporters for title

² The Child Support Commissioner and Family Law Facilitator Program (Fam. Code, §§ 4250–4253, 10000–10015).

IV-D child support proceedings, resulting in transcripts not being available for later review by litigants so that they can understand the basis of their orders. The recommendation in item b seeks to remedy that problem by statutorily requiring that the federally mandated findings for orders that deviate from the guideline amount be in writing, whether in a formal order or in the court's minutes. The majority of committee members expressed concern that requiring the federally mandated findings to be in writing would add substantial workload to court staff and that the problem that item b was seeking to address was not significant enough to justify this added workload. Current law requires that when an order is made that deviates from the guideline amount the required findings be made on the record or in writing. Members suggested that, rather than require all such findings to be made in writing, bench officers and court staff should be educated that when the orders are made on the record, if there is no court reporter to capture the findings in a transcript, they should be contained in the court's minutes of the proceeding or in more robust court forms. This practice would preserve the record for later review, both by parties to the case and by the Judicial Council for subsequent guideline reviews.

Observation 5

The Legislature should consider an adjustment to the K factor in the guideline formula.

California's current child support formula is the same as that enacted in 1993. Even in 1993 there was concern about the K factor, which is the amount of combined income allocated for child support. In its 1993 report, the Judicial Council noted that the K factor was loosely based on the findings of economist Jacques van der Gaag and sociologist Thomas Espenshade on the amounts intact families spend on their children; however, the Judicial Council further noted that not only had their findings been subject to criticism, but the data was over 20 years old. The K factor is important because it represents parental expenditures on children; one of the required guideline review elements is economic data on the cost of raising children. Yet in the nearly 25 additional intervening years, there have been no changes to the income intervals, the K factor, or the multiplier for additional children. It is pertinent to consider whether the current guideline formula calculates appropriate child support obligations, given current studies on the cost of raising children and the deviation findings from the 2017 California case data review.

Observation 6

DCSS and/or the Judicial Council should explore where and how to obtain the additional economic data required by the final rule.

The final rule makes a number of changes regarding the quadrennial review that states must include when reviewing their child support guidelines. In addition to considering economic data on the cost of raising children, a state must consider

labor market data (such as unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level for the State and local job markets, the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level, and

factors that influence employment rates among noncustodial parents and compliance with child support orders.³

The case data analysis is expanded to include information not only on the application of and deviations from the child support guidelines, but also the rates of default and imputed child support orders and orders determined using the low-income adjustment. Finally, the final rule requires that case data analysis include “a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment.”⁴

The case data review undertaken for this quadrennial review revealed that both IV-D and non-IV-D orders lack critical information that will be necessary to meet the expanded federal data collection requirements applicable to California’s next quadrennial review. To comply with these expanded requirements, DCSS and/or the Judicial Council should begin work now to assess the availability of data and determine what steps should be taken to begin the collection of data currently unavailable so that it is available by the next quadrennial review.

Observation 7

DCSS should consider clarifying policies regarding when it is appropriate for an LCSA to seek entry of a zero-dollar order, consistent with the federal directives to investigate the individual circumstances of each case.

A zero-dollar order is one where the noncustodial parent does not have an ongoing monthly obligation for child support. A standard minimum order is one where regardless of what the guideline order amount is (e.g., \$50) the noncustodial parent—like other noncustodial parents in similar situations—would be subject to a standard minimum order amount, such as \$50, regardless of ability to pay. The new federal regulations require child support agencies to investigate the individual circumstances of each case to ensure that orders are based on the obligor’s ability to pay, not on a standard order unrelated to the specific facts of a case. To ensure compliance with the federal regulations, DCSS should consider issuing policies regarding the appropriate use of zero-dollar or standard minimum orders and regarding the requirement to investigate the individual circumstances of each case.

Observation 8

DCSS and the Judicial Council should increase guidance, outreach, and training to commissioners, family law courts, the private bar, and local child support agency staff with regard to applying the LIA and deviating from the guideline formula amount and with regard to any changes to the guideline formula, if the Legislature elects to make changes.

³ 45 C.F.R. § 302.56(h)(1).

⁴ *Id.*, § 302.56(h)(2).

The discussions during the focus groups as well as the data review made clear the lack of consistency among judicial officers regarding the application of the low-income adjustment (LIA) and the determination of appropriate circumstances for deviations from the guideline. According to some focus group participants, this variety may be owed in part to varying practices of LCSAs and to the family law judges being unaware of circumstances in which deviations are appropriate. To achieve greater consistency, it is recommended that DCSS and the Judicial Council provide training to stakeholders. Moreover, if the guideline formula is changed by the Legislature, it is recommended to provide training to all stakeholders, including parents, regarding the effect of these changes on child support orders.

Observation 9

The Judicial Council should assess the 11 study counties to determine if they continue to accurately represent the state as a whole with regard to county size, economics, and demographics. The Judicial Council also should consider whether to continue to select samples of IV-D and non-IV-D cases in equal proportion for the guideline review.

For the 2017 case review, sample cases were pulled from the same 11 counties as used in the 2005 and 2010 case reviews. Using the same counties for each study enables stronger comparisons from one study to the next, as the variable of the sources of sample data does not change. However, the characteristics of these counties have changed over the years, calling into question their representation of the entire state. Having a representative sample is essential for collecting data since the analysis and findings can impact policy and practice statewide. Additionally, to ensure an accurate representation of the overall number of child support cases statewide, the Judicial Council should assess whether it should continue to sample IV-D and non-IV-D cases in equal proportions or instead in proportion to their actual share of the total statewide child support caseload.

Comments, Alternatives Considered, and Policy Implications

Family Code section 4054 lists forth groups who should be consulted during the guideline study process. In developing its recommendations, the Judicial Council must consult with a broad cross-section of groups involved in child support issues, including, but not limited to, the following:

- Custodial and noncustodial parents;
- Representatives of established women's rights and fathers' rights groups;
- Representatives of established organizations that advocate for the economic well-being of children;
- Members of the judiciary, district attorneys' offices, the Office of the Attorney General, and the Department of Child Support Services;
- Certified family law specialists;
- Academics specializing in family law;
- Persons representing low-income parents; and
- Persons representing recipients of CalWorks benefits seeking child support services.

The code does not specify the mechanisms to be used to achieve this outreach to interested stakeholders. The approach used here involved contact with DCSS during the planning stage of the study for input on the research questions to be focused on in this review. DCSS provided advance input that represented input from additional stakeholders, including LCSAs and advocacy representatives who meet periodically with DCSS. In addition, as part of the study itself, the research consultants conducted several focus groups that included various advocacy groups, child support commissioners, local child support agency representatives, and DCSS.

The public comment period also afforded remaining stakeholders an opportunity to provide direct input for the study and its recommendations. The draft report was circulated for comment from August 15 to September 22, 2017. A total of seven comments were received. The comments have been included as an attachment to the study to make them available for consideration by the Legislature.

The committee considered modifying the guideline review itself to incorporate its suggested modifications as noted under Observations 3 and 4 above. However, to preserve the integrity of the independent work of the research consultant that conducted the review, the committee felt it appropriate to leave the review unchanged and instead to include the committee's suggested modifications in the cover letter to be forwarded to the Legislature along with the guideline review.

Implementation Requirements, Costs, and Operational Impacts

There are no costs associated with implementing this study other than the one-time cost of conducting and printing the study. The cost of conducting the study included the cost of conducting a request for proposal to obtain an independent research consultant, the cost of the research consultant's contract, and the cost of conducting the court case file review. The cost of the study was covered by federal funds plus a 34 percent state match. The cost of implementing any of the general recommendations in this study would depend on the specific remedy chosen. Should the Legislature take action to implement any or all of these recommendations, the cost of such action would be evaluated as part of the standard legislative process.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommendations of the *Review of Statewide Uniform Child Support Guideline 2017* address the following judicial branch strategic plan goals: Goal I, Access, Fairness and Diversity; and Goal IV, Quality of Justice and Service to the Public. These goals are addressed by all of the recommendations in this study as the recommendations will promote fair and just treatment of all litigants involved in these proceedings. Further, the recommendations promote making court procedures more understandable by the public and provide them with access to a better record of the proceedings in which they may be involved.

Attachments and Links

1. *Review of Statewide Uniform Child Support Guideline 2017*

DRAFT



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October 25, 2017

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Mr. Daniel Alvarez
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California State Senate
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Chief Clerk of the Assembly
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Re: *Review of Statewide Uniform Child Support Guideline 2017*, as
required under Family Code section 4054(a)

Dear Ms. Boyer-Vine, Mr. Alvarez, and Mr. Wilson:

Attached is the Judicial Council report under Family Code section 4054(a) which requires that, at least every four years, the Judicial Council review the statewide uniform child support guideline to recommend to the Legislature appropriate revisions. Federal regulations (45 C.F.R. § 302.56) also require that each state review its guideline at least every four years. The primary purpose of this review requirement is to ensure that the guideline results in the determination of appropriate child support award amounts. Federal and state requirements additionally specify that the review must include an assessment of the economic data on child-rearing costs and a review of case data to analyze the application of the guideline and to ensure that deviations from the guideline are limited.

Ms. Diane F. Boyer-Vine

Mr. Daniel Alvarez

Mr. E. Dotson Wilson

October 25, 2017

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Moreover, the issuance of the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs final rule (the final rule) published on December 20, 2016, by the federal Office of Child Support Enforcement requires all states to comply with the dictates of the new regulations within one year of the completion of the guideline study following the final rule's enactment. The attached report includes recommended actions by the Legislature to ensure California's next child support guideline review complies with the final rule.

The attached report was prepared with the assistance of an outside consultant, the Center for the Support of Families. While the Judicial Council concurs with the majority of options and observations contained within the report, it does not support two suggested options and observations. The suggested observations are discussed below for consideration by the Legislature:

- Under Observation 3, it was recommended that Family Code section 4055(c) be modified to require child support guideline calculators, when the low-income adjustment (LIA) is applied, to generate a singular, presumptive result. Current law requires guideline calculators to generate a range of amounts when the LIA is applied, with the low end of the range presumptively being the correct amount to order. Rather than modifying the code to require guideline calculators to generate a single result, the Judicial Council recommends that section 4055(c) be modified to require that the computer programs certified by the Judicial Council to calculate guideline child support generate both the range of results when the LIA is applicable in addition to the presumptive result. The Judicial Council reasoned that having the guideline calculator generate both a range and the presumptive amount would underscore the discretion permitted by judicial officers to order any amount on the range based on the circumstances of a case, while still highlighting that the low end of the range presumptively is the correct amount to order.
- Under Observation 4, it was recommended that Family Code section 4056(a) be modified to require the court to state in writing the federally mandated findings for orders that deviate from the guideline amount. Current law allows the court to make these findings in writing or on the record. As the AB 1058 program has been flat-funded since 2008, many courts have been unable to provide court reporters for title IV-D child support proceedings, resulting in transcripts not being available for later review by litigants so that they can understand the basis of their orders. The recommendation sought to remedy that problem by statutorily requiring that the federally mandated findings for orders that deviate from the guideline amount be in writing, whether in a formal order or in the court's minutes. The Judicial Council expressed concern that requiring the federally mandated findings to be in writing would add substantial workload to court staff and that the problem the recommendation was

Ms. Diane F. Boyer-Vine
Mr. Daniel Alvarez
Mr. E. Dotson Wilson
October 25, 2017
Page 3

seeking to address was not significant enough to justify this added workload. The Judicial Council suggests that, rather than requiring all such findings to be made in writing, bench officers and court staff should be educated that when the orders are made on the record, if there is no court reporter to capture the findings in a transcript, the findings should be contained in the court's minutes of the proceeding or in more robust court forms. This practice would preserve the record for later review, both by parties to the case and by the Judicial Council for the analysis of deviations as required by the final rule in subsequent guideline reviews.

If you have any questions related to this report, please contact Anna L. Maves, Supervising Attorney and Program Manager for the Judicial Council's AB 1058 Program, at 916-263-8624.

Sincerely,

Martin Hoshino
Administrative Director
Judicial Council

MH/XX/xx

Attachments

cc: Jessica Devencenzi, Policy Consultant, Office of Senate President pro Tempore Kevin de León
Alf Brandt, Senior Counsel, Office of Speaker Anthony Rendon
Anita Lee, Senior Fiscal and Policy Analyst, Legislative Analyst's Office
Tina McGee, Executive Secretary, Legislative Analyst's Office
Margie Estrada, Chief Counsel, Senate Judiciary Committee
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Administrative Director,
Judicial Council

Report title: *Review of Statewide Uniform Child Support Guideline 2017*

Code section: Family Code section 4054(a)

Date of report: October 25, 2017

The Judicial Council has submitted a report to the Legislature in accordance with Family Code section 4054(a).

The following summary of the report is provided under the requirements of Government Code section 9795.

The review of California's statewide uniform child support guideline is legislatively mandated. Family Code section 4054 states that any recommendations for revision to the guideline must be made to ensure that the guideline results in appropriate child support orders, limits deviations from the guideline, or otherwise helps to ensure that the guideline is in compliance with federal law. The review provides a basis for the Legislature to periodically reassess California's child support guidelines and evaluate its impact on children and families.

The full report can be accessed here: www.courts.ca.gov/7466.htm

A printed copy of the report may be obtained by calling Anna L. Maves, Supervising Attorney and Program Manager for the Judicial Council's AB 1058 Program, at 916-263-8624.

Review of Statewide Uniform Child Support Guideline 2017

A REPORT TO THE CALIFORNIA
LEGISLATURE

OCTOBER 25, 2017



JUDICIAL COUNCIL
OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION
CENTER FOR FAMILIES, CHILDREN & THE COURTS

JUDICIAL COUNCIL OF CALIFORNIA

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Review of Statewide Uniform Child Support Guideline 2017

A REPORT TO
THE CALIFORNIA LEGISLATURE

OCTOBER 25, 2017

Submitted by

Center for the Support of Families
Silver Spring, Maryland
June 26, 2017



JUDICIAL COUNCIL
OF CALIFORNIA

Judicial Council of California
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Chapter A. Executive Summary

California Family Code section 4054(a) requires that the Judicial Council of California (Judicial Council) review the statewide uniform child support guideline at least every four years. This is consistent with federal regulations, which also require states to review their child support guideline at least every four years. These reviews are mandated so that states can determine whether the application of the guideline results in appropriate child support orders. Additional federal and state requirements include an analysis of economic data on the costs of raising children and a review of cases to collect and analyze data on guideline application and deviations.

In January 2017, the Judicial Council contracted with the Center for the Support of Families (CSF) to complete various activities supporting the quadrennial review of California's child support guideline.

This report presents the outcomes from the analysis of the cost of raising children and the sample case review, along with a review of relevant literature and the findings from focus groups convened to gather stakeholder input. A glossary is appended to this Executive Summary that includes common child support terminology used in this report, intended to assist the reader who may be unfamiliar with the child support program.

Observations and Options for Consideration

Chapter B, Observations and Options for Consideration, outlines the most important discussions, observations, and options for consideration from our investigations into the current guideline. It includes a wide range of topics, from potential changes to the guideline formula and K factor, to improved methods of capturing information in default judgments, to the provision of outreach and training on topics such as the low-income adjustment and deviations. Additional findings that focus on more specific issues can be found in other chapters of this report.

The Cost of Raising Children

An economic analysis of the cost of raising children is the focus of Chapter C, Research on the Cost of Raising Children. Erwin Rothbarth, an economist and statistician, believed that the best way to measure expenditures on children was to assess children's impact on their parents' consumption of adult goods. The Rothbarth indirect methodology is the basis for the majority of state child support guidelines. Dr. Betson prepared updated Rothbart estimates for California in 2010 using Consumer Expenditure Survey data from 2004 to 2009. However, this update was not

subsequently incorporated into the California guidelines. For this guideline review, CSF reviewed three more recent studies of child-rearing expenditures and constructed updated Rothbarth estimates of child-related expenditures using Consumer Expenditure Survey data from 2000 to 2015. To our knowledge, this is the first time such expanded data has been used to construct updated Rothbarth estimates. We found that adding more recent years clearly indicates that there has been a downward shift in expenditures on children at all ages. We also examined alternative methodologies for updating California's guideline.

Based on these analyses, we conclude that the most accurate reflection of child-rearing expenditures is based on use of Consumer Expenditure Survey data from 2000 to 2015, with the sample limited to low- and middle-income families (incomes not exceeding \$75,000) best reflecting the California K factors (the percentage of income allocated to children) that are part of the current guideline formula.

California's guideline formula is expressed as

$$\text{Child Support (CS)} = K[\text{HN} - \text{XX}(\text{H}\%)(\text{TN})],$$

where HN represents the higher wage earner's net income; H% represents the higher wage earner's parenting time percentage; and TN represents the total net income of both parents. K, or "the K factor," represents the percentage of income allocated to children. The K factor is intended to reflect the amount intact families spend on their children. It is determined based on both parents' combined monthly total net income, striated into income intervals.

The child support formula used today in California is the same as that enacted in 1993. In the nearly 25 intervening years, there have been no changes to the income intervals, the amount of combined income allocated for child support (the K factor), or the multiplier for additional children. It is appropriate to consider whether the current guideline formula calculates appropriate child support obligations, given current studies on the cost of raising children and deviation findings from the 2017 California case data review.

We recommend that California continue to use Betson-Rothbarth estimates of child-rearing expenditures (see Section 4.3 of Chapter D), with two potential modifications. First, California may want to consider adjusting the Betson estimation technique by estimating the model in linear form and only include low- and moderate-income households. Second, California may want to look at expanding the use of pooled Consumer Expenditure Survey data to include data from 2000 to 2015 to better reflect macroeconomic changes. We also think a reevaluation of the K factor is warranted, since the variables have not been updated since the formula's codification in 1993.

Literature Review

In Chapter D, Literature Review on Special Topics, we present the findings of the literature review. The chapter begins with an overview of the three main guideline models, including a summary of their strengths and limitations. This is followed by a discussion of the policy implications of new or revised requirements for state child support guidelines in the final rule from the federal Office of Child Support Enforcement (OCSE)—Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, issued on December 20, 2016 (81 Fed. Reg. 93492–93569), available at www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-29598.pdf.

The new rule makes significant additions to the minimum elements that must be considered in the guidelines and the data that states must collect and consider during quadrennial reviews. While California is not required to meet the new federal requirements in this quadrennial review since it occurs earlier than “[one] year after publication of [this] final rule” (81 Fed. Reg. 93492, 93516), our literature review addresses policy issues raised by the Judicial Council and the Department of Child Support Services (DCSS) based, in part, on earlier quadrennial reviews and, also, in response to the Notice of Proposed Rulemaking (NPRM) that preceded the final rule.

The focus of the literature review then shifts to examine policies other states have adopted to address adjustments for low-income families and details how states apply the most widely used low-income adjustments (LIA): self-support reserves; thresholds; minimum orders; and zero orders. A self-support reserve is an amount based on research regarding the costs of living that parents are assumed to need in order to meet their most basic needs before calculating the child support obligation; the amount and application of a self-support reserve varies significantly among states, even when using the same guideline model. “Threshold,” the second category of LIA, simply means the level of income at which a state’s low-income adjustment comes into play. The third category of LIA is minimum orders. State guidelines generally take one of three approaches: presumptive minimum amount, mandatory minimum amount, or a minimum order set in the court’s discretion based on a case-by-case inquiry of the obligor’s ability to pay. Zero orders are the fourth category of LIA that are most frequently used. Nationally, their use is most often tied to specific circumstances, such as disability or incarceration.

The final topic of the literature review is state policy models and practice on use of presumed/imputed income.

Support Order Data Analysis

Chapter E, Data, documents the sampling, collection, and analysis of data from orders to determine how California’s child support guideline is actually being applied when establishing

child support obligations. The minimum targeted sample size was 1,000 cases, the same as targeted in the 2011 case data review. In order to ensure 1,000 usable cases, counties were asked to provide a total of 1,200 cases (1,000 case sample, with 20 percent oversampling) and to sample equally from IV-D (i.e., part D of Title IV of the Social Security Act) and non-IV-D child support cases. Data was actually collected from a sample of 1,203 cases, with orders established or modified in 2015 in the same counties used in the 2011 study.

Our analysis concludes that the IV-D courts and their family law counterparts exercise their judicial discretion fairly frequently in deviating from the guideline formula amount. Between the 2011 and 2017 studies, the data shows an increase in the number of orders that were not based on the guideline support amount from 14.6 percent to 17.2 percent. Given the number of deviations from the guideline, one could conclude that the existing guideline no longer works as designed. It is important to note, however, that insight into courts' adherence to the guideline is incomplete since our analysis reveals that 33 percent of the orders reviewed did not specify whether the order amount was the guideline amount. Also, we found that the LIA is not necessarily granted consistently, especially in non-IV-D cases.

The 2017 case data review also found that in the majority of cases in the sample, the data gatherers were unable to locate income information for one or both of the parents. Thirty-nine percent of all orders in the sample were established without obligor income information, and nearly 51 percent lacked obligee income information. This lack of data also contributes to difficulty in knowing whether obligations were set according to the guideline.

Focus Groups

The input received from three focus groups is the subject of Chapter F, Focus Groups. Between March 29 and May 10, 2017, we conducted focus groups with DCSS staff and representatives of the 11 study-county local child support agencies, child support commissioners from the 11 study counties, and advocates and interested parties.

Not surprisingly, the participants' views on issues varied widely, both within and across the three groups. There was general agreement, however, that if a zero-dollar order was appropriate, it should be time-limited, and tied to a plan for the noncustodial parent to improve his or her circumstances. That plan should be customized based on the noncustodial parent's needs, and address the specific barriers that prevent the noncustodial parent from being able to pay child support.

There is a perception among some focus group participants that California's guideline is not uniformly applied, and many support orders reflect significant deviations from the guideline. On

the other hand, commissioners appreciate their ability to deviate from the guideline so they can set support orders that they consider to be fairer than the guideline amount would dictate. Finally, participants identified a number of factors that they believe contribute to the difficulty of attributing income appropriately. The commissioners, for example, underscored that there is a requirement to have evidence of the ability to earn money yet sometimes no evidence is presented. Nevertheless, courts often impute minimum-wage income, either full time or part time, based on little evidence. Other participants stressed that the ability to earn money is not enough, as the opportunity to earn is necessary as well.

Project Management

Project activities began in January 2017 and conclude with this report. In addition to communicating via e-mail, the Center for the Support of Families provided written project reports at regular intervals. The center also convened an in-person “Envision Workshop,” where project staff met to review the individual chapters that comprise this report and to discuss conclusions and considerations based on the work completed under this project.

Glossary of Terms

What follows is a glossary of common child support terms used in this report. It was adapted from the California Department of Child Support Services (DCSS) Child Support Glossary, which can be found in its entirety at www.childsup.ca.gov/resources/glossary.aspx.

assistance	Cash payments (CalWORKs) or medical services paid to a custodial party. Welfare. The amount of the grant is based on need and the number of children in the family.
California Child Support Automation System	The California automated single statewide system for the child support program. It consists of two components: the Child Support Enforcement (CSE) system and the State Disbursement Unit (SDU). CSE provides the central database for child support cases and the associated functionality to support enforcement activities in all LCSAs. SDU provides a centralized processing of child support collections and disbursements, including non IV-D payments that are paid by wage withholding.
California Code of Regulations	The California Code of Regulations contains the text of the regulations that have been formally adopted by state agencies, reviewed and approved by the Office of Administrative Law, and filed with the Secretary of State.

California Department of Child Support Services	That department created within the California Health and Human Services Agency, to administer all services and perform all functions necessary to locate parents; establish paternity; establish, enforce, and modify support orders; and collect and distribute support in California.
case	A noncustodial parent, whether mother, father, or alleged father, a custodial party, and a dependent child or children. The custodial party may be one of the child's parents, or other relative or caretaker including a foster parent. If both parents are absent and liable or potentially liable for the support of the child(ren), each parent is considered a separate case.
child	A son or daughter of human parents, under the age of 18 or 19 if still enrolled in high school.
child support	Amounts required to be paid under a judgment, decree, or order, whether temporary, final, or subject to modification, for the support and maintenance of a child or children, which provides for any or all of the following: monetary support, health insurance coverage, arrearages, and may include interest on delinquent child support obligations.
child support order	Any court or administrative order for the payment of a set or determinable amount of support of a child by a parent, or a court order requiring a parent to provide for health insurance coverage for a child, or a court order requiring a parent to make payment of arrearages. "Child support order" includes any court order for spousal support or for medical support to the extent these obligations are to be enforced by a single state agency for child support under Title IV-D of the federal Social Security Act (commencing with section 651 to Title 42 of the United States Code).
Code of Federal Regulations (CFR)	A codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the federal government.
commissioner	A person appointed by the superior court to act as a temporary judge to hear all Title IV-D child support cases, unless an objection is made by a party.
contempt	A willful disobedience of a valid court order.
continuance	A postponement of a court hearing from one date to another.
cost of living adjustment (COLA)	The U.S. Department of Labor's Bureau of Vital Statistics Consumer Price Index (CPI) produces monthly data on changes in the prices paid by urban customers for a representative look at goods and services. Cost of living adjustments, sometimes referred to as COLA, increased wages in a systematic manner to keep income in line as best as possible with the costs of living.
court case number	The number assigned by the court to a court action.
court order	A legally binding edict issued by a court of law. Issued by a magistrate, judge, or properly empowered administrative officer. A court order related to child support can dictate how often, how much, what kind of support a noncustodial parent is to pay, how long he or she is to pay it, and whether an employer must withhold support from their wages.

custodial party	The person having primary care, custody and control over the child(ren) and who is/are receiving or has applied to receive services under Title IV-D of the federal Social Security Act (commencing with Section 651 of Title 42 of the United States Code et seq.).
default	The failure of a defendant to file an answer or appear in a civil case within the prescribed time after having been properly served with a summons and complaint.
defendant	The person against whom a civil or criminal proceeding is begun.
dependent	A child who is under the care of someone else. Most children who are eligible to receive child support must be a dependent. The child ceases to be a dependent when they reach the “age of emancipation” as determined by state law, but depending on the state’s provisions, may remain eligible for child support for a period after they are emancipated.
enforcement	Actions taken to obtain payment of a child, family, medical, or spousal support obligation contained in a child support order.
entry of judgment	The formal entry of judgment on the rolls or records of the court, which is necessary before bringing an appeal or an action on the judgment. The entering of a judgment is a ministerial act performed by the clerk of the court by means of which permanent evidence of judicial act in rendering judgment is made a record of the court.
establishment	The process of legally determining paternity and/or obtaining a court or administrative order to put a child support obligation in place.
Family Law Facilitator	An adjunct to the court who is an attorney that provides educational services concerning the process of establishing or modifying support orders, completing forms, preparing income and expense forms, declarations of paternity, and support schedules based on statutory guidelines. There are Family Law Facilitators in each California county.
family support	An agreement between the parents, or a court order, or judgment that combines child support and spousal support without designating the specific amount to be paid for each.
filed	A legal document received and accepted by the clerk of the court, or other official authorized to receive the document.
filed date	The date that a document is filed.
guidelines	A standard method for setting child support obligations based on the income of the person(s) and other factors determined by State law.
hardship	Circumstances that create extreme financial hardship for which the court may allow an income deduction such as extraordinary health expenses, uninsured catastrophic losses and living expenses of other natural or adopted children who reside with the parent.
imputed income	1. Fringe benefits provided to employees that may be taxable but which cannot be counted as additional disposable income that is subject to child support obligations.

	2. Income assigned based on the earning capacity of a parent in a child support case. “The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent’s income, consistent with the best interests of the children.” (Cal. Fam. Code § 4058(b).)
income	As defined by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), income is any periodic form of payment to an individual, regardless of source, including wages, salaries, commissions, bonuses, workers’ compensation, disability, pension, or retirement program payments and interest. All income (except imputed income) is subject to withholding for child support, pursuant to a child support order, but is protected by Consumer Credit Protection Act limits, both state and federal.
income and expense declaration	A Judicial Council form used in family law proceedings to set forth and calculate a party’s income and expenses.
indigent	Generally, this term defines a person who is poor, needy, and has no one to look to for support
intact family	A family group consisting of both parents living in the home with dependent child(ren).
IV-A case	A child support case in which a custodial parent and child(ren) is receiving public assistance benefits under the state’s IV-A program, which is funded under Title IV-A of the Social Security Act. Applicants for assistance from IV-A programs are automatically referred to their state IV-D agency in order to identify and locate the noncustodial parent, establish paternity and/or a child support order and/or obtain child support payments.
IV-D case	A child support case where at least one of the parties, either custodial party (CP) or the noncustodial parent (NCP), has requested or received IV-D services from the state’s IV-D agency. A IV-D case is composed of a custodial party, noncustodial parent or putative father, and dependent(s).
IV-E case	A child support case in which the state is providing benefits or services under Title IV-E of the Social Security Act to a person, family, or institution that is raising a child or children that are not their own.
judgment	The final decision of the court resolving the dispute and determining the rights and obligations of the parties.
Judicial Council of California (Judicial Council)	The Judicial Council of California is the constitutionally mandated body responsible for improving the administration of justice in the state. The council is headed by the Chief Justice of the California Supreme Court and is made up of judges, court executives, attorneys, and legislators. It was established to standardize court administration, practice, and procedure by adopting and enforcing rules for the state’s courts.
jurisdiction	The legal authority which a court or administrative agency has over particular persons and over certain types of cases, usually in a defined geographical area.

local child support agency (LCSA)	The county office or department that has entered into a cooperative agreement with the California Department of Child Support Services to secure child, spousal, and medical support, and determine paternity.
medical support	The court-ordered requirement that one or both parents provide health, vision, and dental coverage for a dependent child.
modification	A court-ordered change or alteration of a child support order.
monthly support obligation	The amount of money an obligor is required to pay each month for support.
noncustodial parent	The parent of the child(ren) that may be or is obligated to pay child support.
non-IV-D orders	A support order in which the custodial party is not receiving or has not received TANF/CalWORKS and is not receiving or has not received Title IV-D services from a child support enforcement agency. A non-IV-D order can be converted into a IV-D case when the appropriate application for IV-D services is made or when the custodial party begins receiving Title IV-A services for benefit of the child(ren) or the child(ren) is placed in foster care and Title IV-E payments are made on behalf of the child(ren).
obligation	Amount of money to be paid by an obligor as ordered by a court or administrative agency; financial support such as, child support, family support, spousal support, or medical support. An obligation is a recurring, ongoing obligation, not a onetime debt such as an assessment.
obligee	An individual, agency, or entity to whom a duty of support is owed.
obligor	An individual, or the estate of a decedent, who owes a duty of support.
Office of Child Support Enforcement (OCSE)	The federal agency responsible for the administration of the child support program nationally. Created by Title IV-D of the Social Security Act in 1975, OCSE is responsible for the development of child support policy; oversight; evaluation, and audits of state child support enforcement programs; and provides technical assistance and training to the state programs. OCSE operates the Federal Parent Locator Service, which includes the National Directory of New Hires (NDNH) and the Federal Case Registry (FCR). OCSE is part of the Administration for Children and Families (ACF), which is within the Department of Health and Human Services (DHHS).
payee	Person or organization in whose name child support money is paid.
payer	Person who makes a payment.
petition	A formal written request presented to the court requesting specific judicial action.
petitioner	One who signs and/or files a petition.
plaintiff	A person who brings an action; the party who complains or sues in a civil case.
pleadings	Statements or allegations, presented in logical and legal form, which constitute a plaintiff's cause of action or a defendant's grounds of defense.

presumed income	Presumed income is used to calculate child support for those absent parents for whom we are unable to locate any income information. Presumed income is based on California's minimum wage.
public assistance	Any amount paid under the TANF, CalWORKS program, as specified in Section 110098, or foster care, or any Medi-Cal benefit, for the benefit of any dependent child or the caretaker or child.
respondent	The party answering a petition or motion.
review and adjustment	Process in which current financial information is obtained from both parties in a child support case and evaluated to decide if a support order needs to be adjusted.
stipulation	A written agreement between the parties that certain facts are true and will not be contested for the purposes of a particular lawsuit.
summons and complaint	A mandatory Judicial Council form used to notify a defendant that a lawsuit has been filed against him or her, and that a judgment will be taken against the defendant as requested by the plaintiff if no answer is filed and the defendant fails to appear within the time allowed by law (generally 30 days in California).
support	An amount owing for the maintenance of a person or persons. Support includes child support, as defined in section 110129; family support, as defined in section 119037; medical support, as defined in section 110431; and spousal support as defined in section 110609. "Support" may also mean child care costs, uninsured health care costs, educational costs, or travel expenses for visitation pursuant to section 4062 of the Family Code.
support calculation programs	Computer software programs designed to calculate the guideline amount of child support a noncustodial parent will be obligated to pay based on both parents' income and expense information.
support order	A judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of a competent jurisdiction, for the support and maintenance of a child. This includes a child who has attained the age of majority under the law of the issuing State, or of the parent with whom the child is living. Support orders can incorporate the provision of monetary support, health care, payment of arrearages, or reimbursement of costs and fees, interest and penalties, and other forms of relief.
TANF	Temporary Assistance to Needy Families, or TANF, also known as CalWORKS, means the program funded under Title IV-A of the Social Security Act that provides temporary public assistance to a needy family, that was formerly known as the Aid to Families with Dependent Children program that terminated October 1, 1996.
temporary support order	An interim order for the obligor to pay support while the court case is pending entry of a final judgment.

Title IV-A	“Title IV-A” means Title IV of the federal Social Security Act, Part A, Block Grants to States for Temporary Assistance for Needy Families, codified at 42 U.S.C. section 601 et seq.
Title IV-D	“Title IV-D” means Title IV of the federal Social Security Act, Part D, Child Support and Establishment of Paternity, codified at 42 U.S.C. § 651 et seq.
Title IV-E	“Title IV-E” means Title IV of the federal Social Security Act, Part E, Federal Payments for Foster Care and Adoption Assistance, codified at 42 U.S.C. § 670 et seq.
tribunal	A court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.
visitation	The right of a noncustodial parent to visit and/or spend time with his or her children following the parents’ separation or dissolution of marriage.

Chapter B. Observations and Options for Consideration

This chapter presents the most important discussions, conclusions, and options for consideration from our investigations into the current guideline. In this chapter, we present a series of topics. Each topic includes our observations as well as options for future consideration. The following chart provides a guide to the topic discussions. Additional findings that focus on more specific issues can be found in other chapters of this report.

Topic	Considerations
1. Legislative Changes Needed to Comply With New Federal Final Rule	Review, analyze, and implement any statutory changes the state legislature deems appropriate and necessary to ensure California's compliance with the new federal regulations pursuant to the federal Office of Child Support Enforcement's (OCSE's) final rule ¹ (i.e., the final rule). While the required timeline for compliance with the final rule is one year from the next California guideline study, earlier statutory changes would provide sufficient time for governmental entities to revise their policies and procedures, provide training to staff on the changes, make changes to governmental automated systems, and amend and revise related California Rules of Court and Judicial Council forms.
2. Default Orders	Identify and distinguish nonparticipatory default judgments from default judgments where the terms result from the involvement and agreement of noncustodial parents and local child support agencies (LCSAs).
3. The Low-Income Adjustment (LIA)	<p>Undertake statewide educational efforts for bench officers to ensure a common understanding of the purpose and application of the low-income adjustment (LIA).</p> <p>Consider requiring commercial support calculators to automatically generate LIA information when circumstances warrant, rather than require users to generate the information.</p> <p>Explore changing the LIA process such that when the LIA is calculated, it generates a single, presumptive result, rather than a range of possible results.</p> <p>Undertake a study to determine whether and to what extent the LIA provides for the subsistence needs of noncustodial parents.</p>

¹ Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, 81 Fed. Reg. 93492 (Dec. 20, 2016).

4. Understanding Child Support Orders	Provide additional training of LCSA staff and the private bar on the importance and mandatory nature of child support order attachment forms. Provide additional training of court staff and judicial officers on the federal and state mandates to provide this information to parties and on the need for increased review and enforcement by courts to ensure that child support orders submitted to the court are in compliance before the orders are signed.
	Amend Family Code section 4056(a) require the court to state <i>in writing</i> the following information whenever the court is ordering a support amount that differs from the statewide uniform guideline formula amount: 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 ordered is consistent with the best interests of the children.
	Amend Family Code section 4065 to add the federally-required language regarding non-guideline child support orders currently contained in Family Code section 4056 or, alternatively, amend Family Code section 4065 to clarify that the requirements of Family Code section 4056 apply to all non-guideline orders made pursuant to a stipulation.
5. The K Factor	Consider an adjustment of the K factor, and change anchor from 0.25 to 0.21.
	Consider adjusting the income intervals to reflect inflation.
	This data suggests that additional study is warranted with regard to appropriate child support orders for children whose parents are poor.
6. Data for Next Guideline Review	Explore where and how to obtain the additional economic data required by the final rule.
	Analyze payments on orders that have been segregated by characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment.
7. Zero-Dollar and Minimum Orders	The state child support agency should consider clarifying policies regarding when it is appropriate for a local child support agency to seek entry of a zero-dollar order.

8. Outreach And Training	Increase guidance, outreach, and training to commissioners, family law courts, the private bar, and local child support agency staff with regard to applying the LIA and deviating from the guideline formula amount.
	Communicate any changes to the guideline formula to all stakeholders in a clear and understandable way, including the reason the change was made and its likely effect on child support orders.
9. Support Order Data Sampling	Assess the 11 study counties to determine if they continue to accurately represent the state as a whole with regard to county size, economics, and demographics.
	Consider whether to continue to select samples of IV-D and non-IV-D cases in equal proportion for the guideline review.

Topic 1: Legislative Changes Needed to Comply With New Federal Final Rule

Observation

Pursuant to the federal Office of Child Support Enforcement's (OCSE) final rule, all states must comply with the dictates of the new regulations within one year of the completion of the guideline study following the final rule's enactment. While California is not required to comply with the new federal regulations before the completion of its next guideline study, implementing statutory changes prior to the next study would provide sufficient lead time for government entities to revise their policies and procedures, provide training to staff on the changes, make changes to governmental automated systems, and amend and revise related California Rules of Court and Judicial Council forms. Moreover, while many statutory changes may prove uncontroversial, others might generate substantial interest from stakeholders thereby requiring additional time to allow for their input.

Options

The state legislature should review, analyze, and implement any statutory changes it deems appropriate and necessary to ensure California's compliance with the new federal child support regulations, including, but not limited to, amendment of the following code sections:

- Family Code section 4007.5 (court-ordered child support) to delete subdivision (a)(2) in its entirety as it violates the current federal rule at 45 CFR § 302.56(c)(3) on treating incarceration as voluntary unemployment for child support purposes. Subdivision (a)(2) makes an exception to granting relief to incarcerated obligors who are "incarcerated or voluntarily institutionalized for an offense constituting domestic violence ... against the supported party or supported child, or for an offense that could be enjoined by a protective order ... or as a result of his or her failure to comply with a court order to pay child support."
- Family Code section 4055 et seq. to affirmatively include the language in 45 CFR § 302.56(c)(3) that "provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders."
- Family Code section 4054 to add language for the additional requirements in 45 CFR § 302.56(h) to be included in each state's periodic child support guideline review.
- Family Code section 4058(b) on considering a parent's earning capacity versus actual income to specify or give examples of the circumstances where earning capacity may be used to better conform to the federal commentary to the new federal rules on using earning capacity.
- Family Code section 17400(d)(2) currently provides that the local child support agency may use presumed income of 40 hours per week at minimum wage when the child

support obligor's income or income history is unknown. Statutory language may need to be amended to more closely align with the federal rule's concerns on using "standard presumed amounts without looking at or investigating individual circumstances."

Topic 2: Default Orders

Observation

An examination of the data resulting from case file reviews demonstrates that a significant percentage of cases, primarily IV-D cases, result in default judgments. This suggests widespread lack of participation and cooperation by noncustodial parents in the court order establishment process. Discussions with the Department of Child Support Services (DCSS) and local child support agency (LCSA) staff, however, suggest that the terms of many default judgments are actually resolved through mutual agreement between LCSAs and noncustodial parents. This happens as a result of LCSAs engaging in extensive outreach and in-office collaboration efforts after a noncustodial parent has failed to timely answer a complaint seeking support but before the court enters judgment. In these cases, the noncustodial parent remains in default as a matter of law. Even so, orders arrived at under these circumstances are more closely akin to stipulated judgments than true default judgments in which a noncustodial parent fails to participate in the legal process altogether. Equating these two types of defaults not only provides a misleading impression of the way in which support cases are resolved but also suggests that the problem of noncustodial parent participation is greater than it is.

Options

The LCSAs should seek to identify and distinguish non participatory default judgments from default judgments where the terms result from the involvement and agreement of noncustodial parents and LCSAs.

Topic 3: The Low-Income Adjustment

Observation A

Reviews of case files and discussions with focus group participants reveal that there are widely varying approaches to whether and how the guideline low-income adjustment (LIA) is applied. Notably, the LIA is applied far less often in family law cases than in IV-D cases; and even though the LIA is routinely used in setting support in IV-D cases, the value of the LIA may vary significantly even in similar factual circumstances.

Reasons for the variations in application of the LIA include the exercise of individual discretion by bench officers; a lack of familiarity and understanding on the part of some bench officers with

respect to the LIA; the fact that application of the LIA produces a range of monetary values that may be applied in the particular case; and the presence or absence of an automatic LIA calculation feature, depending on whether the state-developed calculator or a commercial support calculator is used. Whatever the reasons, the wide variability in how and when the LIA is applied undercuts the ideal notion of a support guideline that is uniform and statewide.

Options

The exercise of discretion is an inevitable, even desirable, component of the judicial process. It will necessarily act to limit the extent to which the LIA can be applied in a wholly consistent manner from court to court throughout California. Nevertheless, there are steps that can be taken to achieve greater uniformity in the courts' approach to the LIA. To address the disparities seen in application of the LIA between IV-D and family law courts, the Judicial Council may want to undertake statewide educational efforts for bench officers to ensure a common understanding of the purpose and application of the LIA. Similarly, the Legislature may want to consider amending Family Code section 4055(c) to mandate that all commercial support calculators automatically generate LIA information when income circumstances warrant, rather than provide users with an option to generate the information. We also suggest that the Legislature consider amending Family Code section 4055(c) so that when the LIA is calculated, it generates a singular, presumptive result, rather than a range of possible results. While bench officers can be free to deviate from the presumptive amount when appropriate, having a fixed presumptive amount is likely to result in fewer deviations.

Observation B

In each of the focus groups, a significant portion of the discussion focused on the treatment of low-income cases. These discussions touched on a variety of issues, including differences and disparities in the application of the LIA as well as questions about participant support for adoption of a self-support reserve model (see discussion in Chapter D, Part 1, of self-support reserve models as applied in other states). While there was a notable lack of interest in a change from the LIA to the self-support reserve approach, it was nevertheless clear from many participants' comments that effectively addressing the challenges of securing appropriately sized support orders in low-income noncustodial parent cases is a topic of significant, continuing concern for DCSS, LCSAs, commissioners, and stakeholders alike.

The federal Office of Child Support Enforcement's (OCSE's) final rule stresses the need for state guidelines to take into account the subsistence needs of noncustodial parents (and, optionally, custodial parties when determining ability to pay. Importantly, the final rule requires that states' guideline reviews consider how the guideline policies and amounts impact custodial and noncustodial parents who have family incomes below 200 percent of the federal poverty level. Additionally, the rule requires that states' guideline reviews consider factors that influence compliance with child support orders. For California's purposes, the provisions of the final rule

do not apply to the current review underway. Nevertheless, it is not too soon to begin laying the groundwork for the next quadrennial review, which must address those provisions.

Options

We suggest DCSS and/or the Judicial Council undertake a study to determine whether and to what extent the LIA provides for the subsistence needs of noncustodial parents. These efforts could also assess the relationship of the LIA to the federal poverty level and cost of living scales. Additionally, such a study could examine how application of the LIA impacts the household economics of supported parents and children. In this regard, it will be important to assess whether noncustodial parents who qualify for the LIA pay at higher, lower, or similar rates as compared to noncustodial parents generally. The study may need to consider how hardships and deviations from the guideline affect payment compliance.

Topic 4: Understanding Child Support Orders

Observation A

California has one of the most complex guidelines in the nation, making it difficult for parents to understand how aspects of their financial situation and other related life circumstances translate into a dollar amount for a child support obligation. Given the complexity of the guideline formula, there are things that could be done to improve parents' understanding of the process and outcomes when orders are established or modified.

Options

Several Judicial Council forms exist which provide notice to parties regarding what information was used to calculate their child support order. See, for example, *Child Support Information and Order Attachment* (form FL-342), *Non-Guideline Support Findings Attachment* (form FL-342(A)), *Minutes and Order or Judgment (Governmental)* (form FL-692), and *Guideline Findings Attachment (Governmental)* (form FL-693). However, as discovered in this guideline study's case file review, in many cases these existing forms are not being completed and attached to the child support orders.

We propose additional training of LCSA staff and the private bar on the importance and mandatory nature of completing and attaching these forms to child support orders. Further, we propose additional training of court staff and judicial officers on the federal and state mandates to provide this information to parties and on the need for increased review and enforcement by courts to ensure that child support orders submitted to the court are in compliance before the orders are signed.

Consistent with this recommendation is the proposal below for the court to include certain information in writing, rather than on the record.

Observation B

Federal regulations at 45 C.F.R. § 302.56 require a state to establish a statewide uniform child support guideline and to provide that there is a rebuttable presumption that the guideline amount is the correct amount of child support to be ordered. If a court deviates from the guideline amount, there must be a written finding or specific finding on the record of the amount that would have been required under the guideline, a finding that the application of the child support guideline would be unjust or inappropriate in the particular case, and a justification for why the order varies from the guideline. According to 45 C.F.R. § 301.1, “record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

California Family Code section 4056(a) requires the court, to comply with federal law, to state in writing or on the record, the following information whenever the court is ordering an amount for support that differs from the statewide uniform guideline formula amount:

- (1) The amount of support that would have been ordered under the guideline formula.
- (2) The reasons the amount of support ordered differs from the guideline formula amount.
- (3) The reasons the amount of support ordered is consistent with the best interests of the children.

Federal regulations also require a state, as part of its guideline review, to analyze case data on the application of and deviation from the state’s child support guideline. The analysis of the data must be used to ensure that deviations from the guideline are limited and guideline amounts are appropriate based on deviation criteria established by the state.

The 2017 California case sampling included 1,203 child support cases in 11 study counties, drawn from January 2015 through February 2016. The data collection tool asked the question, “Was the amount of the base support the guideline amount?” In 206 of the 1,203 cases, the answer was “No.” In 600 cases the response was “Yes.” However, in 332 of the cases, the answer was “Not specified,” and there were 65 blank responses. Non-IV-D orders were more likely than IV-D orders to lack information about whether the support amount was the guideline amount; of the 332 cases where such information was missing, 107 cases (32 percent) were non-IV-D cases. This was especially true for Los Angeles County, where 84 percent of the non-IV-D cases were missing information about whether the support amount was the guideline amount.

Also noteworthy is the large percentage of cases (14.9 percent) where the data gatherers noted a deviation, but the basis for the deviation was not known.

In responding to the data collection tool questions, data collectors relied on information in the order or case file. They did not have access to information that may have been “on the record.”

In requiring information “in writing or on the record,” the California statute complies with federal law. However, it is difficult to get an accurate assessment of the number of deviations from the statewide uniform support guideline when so many orders lack written information about whether the support amount is the guideline amount. Nor is it possible to fully determine the extent to which certain factors result in deviation when, again, such information may be on the record rather than in writing. The lack of information in writing, as part of the order, means it is difficult to ensure the parties know what the guideline amount was. It is also difficult for a court to later determine whether there is a change in circumstances justifying a modification, or whether proof of such a change is even necessary.²

Options

We suggest that the Legislature consider amending Family Code section 4056(a) to require the court to state *in writing* the following information whenever the court is ordering an amount for support that differs from the statewide uniform guideline formula amount:

1. The amount of support that would have been ordered under the guideline formula.
2. The reasons the amount of support ordered differs from the guideline formula amount.
3. The reasons the amount of support ordered is consistent with the best interests of the children.

Observation C

Factors that may be a basis for deviation from the guideline amount are listed in California Family Code section 4057. One of those factors is that the parties have stipulated to a different amount of child support under subdivision (a) of section 4065.

Pursuant to California Family Code section 4065:

(a) Unless prohibited by applicable federal law, the parties may stipulate to a child support amount subject to approval of the court. However, the court shall not approve a stipulated agreement for child support below the guideline formula amount unless the parties declare all of the following:

- (1) They are fully informed of their rights concerning child support.
- (2) The order is being agreed to without coercion or duress.

² If the parties stipulate to a child support order below the amount established by the statewide uniform guideline, it is not necessary to prove a change of circumstances in order to obtain a modification of the child support order to the applicable guideline level or above.

- (3) The agreement is in the best interests of the children involved.
- (4) The needs of the children will be adequately met by the stipulated amount.
- (5) The right to support has not been assigned to the county pursuant to Section 11477 of the Welfare and Institutions Code and no public assistance application is pending.

When the data gatherers reviewed the orders used in this case data study, they identified the reasons the courts had listed as the basis for any deviation from the guideline amount. The vast majority (55.9 percent) were deviations due to stipulation by the parents. The percentage of deviations resulting from a stipulation between the parties was high, regardless of IV-D status. However non-IV-D orders were the most likely to result in deviations from the guideline amount due to stipulated orders.

As noted earlier, federal law requires the court to make a written finding or specific finding on the record about the guideline amount and the basis for any deviation. This requirement also applies to stipulated orders:

6. *Comment:* A number of commenters were concerned that the requirements for findings of rebuttal would create major problems in cases where both parties reach a stipulated agreement and currently there is no hearing or finding made on the record. [¶] Commenters asked if the requirements in § 302.56(f) and (g), with respect to using guidelines as a rebuttable presumption in any judicial or administrative proceeding for the award of child support and findings justifying deviation from the guidelines, apply to orders reached through stipulated agreement. These commenters maintained that requiring judges or administrative hearing officers to detail a rebuttal of the guidelines in these instances, where both parties agree beforehand, would significantly increase the amount of time spent on such cases, to the detriment of other, more complex cases. The commenters suggested that we add clarifying language that limits application of paragraphs (f) and (g) to matters in which there is a dispute. [¶] ... [¶]

Response: Under paragraph (f), the State must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the State's guidelines is the correct amount of child support to be awarded. Paragraph (g) requires a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case. That finding must state the amount of support that would have been required under the guidelines and must include a justification of why the order varies from the guidelines. *We do not believe that support orders entered as a result of stipulated agreements are, or should be, excluded from the*

requirements of paragraphs (f) and (g). The State's guidelines must be a rebuttable presumption in any award of child support in the State. That includes support obligations ordered by the court or administrative authority as a result of stipulated agreements reached by the parties. Once the court or administrative entity empowered to set support orders enters an enforceable support order, all requirements under § 302.56 apply, regardless of whether or not the amount ordered was reached through stipulated agreement. [¶] We disagree, however, that this should be a burden on the courts. Since the amount indicated under the guidelines must be a rebuttable presumption in any child support order, most obligations reached through stipulated agreements should be in the amount specified under the guidelines. In those instances that they are not, States could require the parties or their representatives to indicate in the agreement the amount that would have been required under the guidelines and a justification of why the amount agreed upon varies from the guidelines. Entering the order and including the rationale for deviation provided by the parties in the record would meet the requirements under paragraphs (f) and (g). In this way, the court or administrative authority's role is limited to a decision, based on the submitted rationale, that the deviation is warranted and that the child's needs will be met. [¶] ... In addition, a statement by the parties that they were fully informed of their rights, that they were not coerced into the agreement, or that the children's needs will be adequately met does not satisfy the statutory requirement that guidelines must apply to all orders entered in the State and that the amount indicated by the guidelines must be a rebuttable presumption in ordering support.³

Options

Looking at Family Code section 4065 alongside Family Code section 4056, California is in compliance with federal law. Family Code section 4056, as noted in Observation B above, includes the specific federal requirements for non-guideline child support orders. It applies to any child support order, including orders obtained by stipulation, “whenever the court is ordering an amount for support that differs from the statewide uniform guideline formula amount.”

However, given Family Code section 4065 does not include the specific federal requirements, despite being bound by these requirements pursuant to Family Code section 4056, its silence on this issue may lead to confusion. To remedy this situation, the Legislature may consider amending Family Code section 4065 to require that a stipulated agreement include information about the guideline amount and a justification about why the agreed upon amount varies from the guideline amount, as well as a declaration by the parties that they have been informed of the guideline amount and agree to the justification for a deviation from the guideline amount.

³ See 56 Fed Reg. 22335, 22347–22348 (May 15, 1991), italics added.

Alternatively, the Legislature may consider adding language in Family Code section 4065 to clarify that Family Code section 4056 applies to non-guideline orders made pursuant to a stipulation.

Topic 5: The K Factor

Observations

The child support formula used today in California is the same as that enacted in 1993. Even in 1993 there was concern about the K factor, which is the amount of combined income allocated for child support. In its 1993 report, the Judicial Council noted that the K factor was loosely based on the findings of van der Gaag and Espenshade (see Section 4.3 of Chapter D) on the amounts intact families spend on their children; however, the Judicial Council further noted that not only had their findings been subject to criticism, but the data was over 20 years old. The K factor is important because it represents parental expenditures on children; one of the required guideline review elements is economic data on the cost of raising children. Yet in the nearly 25 additional intervening years, there have been no changes to the income intervals, the K factor, or the multiplier for additional children. It is appropriate to consider whether the current guideline formula calculates appropriate child support obligations, given current studies on the cost of raising children and deviation findings from the 2017 California case data review.

Options

We suggest that California consider an adjustment of the K factor. The current guideline formula uses a 0.25 K factor “anchor.” From \$0 to \$800 income, the K factor used in support calculations is between 0.20 and 0.25. At an income of \$801, the K factor rises to 0.25, where it plateaus until net income reaches \$6,666. However, in looking at the percentage of disposable net income spent on raising children, as derived from Betson-Rothbarth parameters from 2000 to 2015, for all households, with the exception of the very lowest income earners, the percentage of income expended on raising children is below the 0.25 K factor. The Betson-Rothbarth model suggests that a 0.21 K factor anchor (rather than the current 0.25 anchor) more accurately reflects the percentage of income parents spend on their children. Using 0.21 as an anchor would mean shifting the low-income K factor to approximately 0.17, reflecting the four percentage-point difference in the shift between 0.25 and 0.21.

The chart below illustrates the change from a 0.25 to a 0.21 K factor anchor.

Total Net Income Per Month (TN)—1993 dollars	K factor
\$0–\$800	$0.17 + \text{TN}/16,000$
\$801–\$6,666	0.21
\$6,667–\$10,000	$0.10 + 725/\text{TN}$
Over \$10,000	$0.12 + 525/\text{TN}$

We also suggest that California consider adjusting the income intervals to reflect inflation. Between 1993 and 2016, the Consumer Price Index (CPI) has increased an average of 2.8 percent per year. Eight hundred dollars in 1993 dollars equates to approximately \$1,300 in today’s dollars.

The chart below illustrates a change in the current K factor income bands, with income adjusted for inflation.

Total Net Income Per Month (TN)—2017 dollars	K factor
\$0–\$1,300	$0.20 + TN/16,000$
\$1,301–\$11,000	0.25
\$11,001–\$14,000	$0.10 + 1000/TN$
Over \$14,000	$0.12 + 800/TN$

The chart below illustrates both a change to the K factor, using an anchor of 21 percent rather than 25 percent, as well as income bands adjusted for inflation.

Total Net Income Per Month (TN)—2017 dollars	K factor
\$0–\$1,300	$0.17 + TN/16,000$
\$1,301–\$11,000	0.21
\$11,001–\$14,000	$0.10 + 725/TN$
Over \$14,000	$0.12 + 525/TN$

Whether California adopts a 0.21 K factor or continues to use 0.25 as the anchor, there is a large gap between what a low-income household spends on raising children as a percentage of its income, versus the K factor used to calculate the child support obligation. This data suggests that additional study is warranted with regard to appropriate child support orders for children whose parents are poor.

Topic 6: Data for Next Review

Observation

The final rule at 45 C.F.R. § 302.56 makes a number of changes regarding the quadrennial review that states must conduct of their child support guidelines.

In addition to considering economic data on the cost of raising children, a state must consider “labor market data (such as unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level for the State and local job markets, the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200

percent of the Federal poverty level, and factors that influence employment rates among noncustodial parents and compliance with child support orders.” (45 C.F.R. § 302.56(h)(1).)

The case data analysis is expanded to include information not only on the application of and deviations from the child support guidelines, but also the rates of default and imputed child support orders and orders determined using the low-income adjustment.

Finally, 45 C.F.R. § 302.56(h)(2) requires that case data analysis include “a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment.”

The case data review undertaken for this quadrennial review revealed that both IV-D and non-IV-D orders lack critical information that will be necessary to meet the expanded federal data collection requirements applicable to California’s next quadrennial review.

Options

DCSS and/or the Judicial Council should explore where and how to obtain the additional economic data required by the final rule.

Several earlier suggestions address the need for accurate and complete orders, including adopting procedures that identify “agreed to” defaults; ensuring that stipulated orders include the amount determined under the guideline formula and, if the amount agreed upon varies from the guideline amount, the justification for the deviation; and revising written information in orders to include elements now frequently missing—income details, basis of imputed/presumed income, and application of the LIA.

All changes to law and practice necessitate training the bench, bar, LCSAs, DCSS, and court staff. These changes should be undertaken with the federal deadlines in mind, ensuring full implementation no later than two years before the next quadrennial review. Additionally, random reviews of both IV-D and non-IV-D orders and files may be beneficial to ascertain if the needed information is indeed present. In conjunction with these changes, we believe appropriate revisions to the data collection instrument should be made.

We also recommend that the period between formal guideline reviews be used to test whether information is available and accessible to analyze payments on orders that have been segregated by characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment.

Finally, we recommend that the Legislature review the federal requirements for child support guideline studies per 45 CFR 302.56 and make the necessary statutory amendments to Family

Code section 4054, which sets forth the state requirements for California’s child support guideline study, to ensure compliance with federal law.

Topic 7: Zero-Dollar and Minimum Orders

Observation

In both the literature review and focus groups, we examined the use of zero-dollar orders and standard minimum orders. A zero-dollar order is one where the noncustodial parent does not have an ongoing monthly obligation for child support. A standard minimum order is one where regardless of what the guideline order amount is (e.g., \$10) the noncustodial parent—like other noncustodial parents in similar situations—would be subject to a standard minimum order amount, such as \$50, regardless of ability to pay.

The first focus group (composed of DCSS and LCSA child support staff) discussed both zero-dollar orders and minimum orders and addressed the situations group members felt were appropriate for each of these. The group felt that zero orders were appropriate for noncustodial parents who are homeless, have addiction issues, and/or have no consistent work history or are temporarily out of a job. The group felt that such orders should be time-limited and monitored, and there should be an expectation that the noncustodial parent would take specific actions to improve his or her circumstances in order to support the children in the future.

However, many participants in this group also thought a minimum order (rather than a zero order) would promote involvement of noncustodial parents with their children. They also thought that entering a minimum order would allow the automated system to continue to look for address and employment records and would auto-initiate wage withholding.

The commissioners also discussed zero orders, but did not focus on using an alternative minimum order in low-income situations. They stated they most often use zero-dollar orders when the noncustodial parent is incarcerated, receiving aid, or receiving disability Supplemental Security Income (SSI); when no evidence is presented regarding the noncustodial parent’s income; or when there is a stipulated agreement.

When promulgating the final rule, the federal Office of Child Support Enforcement (OCSE) responded to comments regarding ability to pay and the establishment of a minimum support order:

Over time, we have observed a trend among some States to reduce their case investigation efforts and to impose high standard minimum orders without developing any evidence or factual basis for the child support ordered amount.

Our rule is designed to address the concern that in some jurisdictions, orders for the lowest income noncustodial parents are not set based upon a factual inquiry into the noncustodial parent's income and ability to pay [¶] ... [¶] To be clear, the guidelines must provide that orders must be based upon evidence of the noncustodial parent's earnings and income and other evidence of ability to pay in the specific case. ... The expectation is that in IV-D cases, the IV-D agency will investigate each case sufficiently to base orders on evidence of the noncustodial parent's ability to pay.

(81 Fed. Reg. 93516–93517.)

Given the expectation that orders reflect the noncustodial parent's true circumstances, a standard minimum order (such as \$50 per month) unconnected to the parent's circumstances appears to conflict with current guidance from OCSE.

Options

The state child support agency may want to issue policy clarifying when it is appropriate for an LCSA to seek entry of a zero-dollar order, consistent with the federal dictates to investigate the individual circumstances of each case.

We do not recommend that California establish a standard minimum order in those cases where a zero-dollar order is appropriate.

Topic 8: Outreach and Training

Observation A

While conducting the focus groups as well as conducting the data review, we found wide variety regarding the low-income adjustment (LIA) and appropriate circumstances for deviations from the guideline.

The LIA is applied much less frequently and consistently in non-IV-D cases than it is in IV-D cases. Some participants in the first focus group (LCSA and DCSS staff) believe that family law judges do not understand the LIA as well as their counterparts in the IV-D courts do, leading to its irregular use in non-IV-D cases.

There is a lack of consistency, as well, in deviations from the guideline. For example, several commissioners pointed to differences among LCSAs in their policies related to deviating from the guideline. According to one commissioner in the focus group, the family law judges may not

understand when they can—or should—deviate from the guideline. Further, the commissioners in the focus group discussed a wide variety of scenarios under which they deviate from the guidelines as allowed under Family Code section 4057. While deviations are based on specific case by case findings, those scenarios discussed were not consistent among the commissioners.

Options

Regardless of whether the guideline is changed, we believe increased outreach to, and training and guidance of commissioners, family law courts, the private bar, and local child support agency staff with regard to applying the LIA and deviating from the guideline formula amount is warranted. Increased guidance, outreach, and training on these issues might address some of the perceived unfairness regarding the application of the guideline. If possible, any training provided should be continuing legal education-eligible and free to participants, to encourage maximum participation.

Observation B

During the focus group discussions, there was a general sense that the current guideline formula produces support order amounts that are “too high.” Of note, California’s guideline has not changed since 1993.

Options

If California changes any of the factors in its guideline formula, we recommend that such change be communicated to all stakeholders in a clear and understandable way, including the reason the change was made and its likely effect on child support orders. Guidance and training should be provided for the different audiences who will deal with the changes, from the courts and commissioners to the counties and parents. We recommend specific and targeted outreach to the family law courts and the private bar. As in the previous consideration, if possible, the training should be CLE-eligible and free to participants to encourage maximum participation.

Topic 9: Support Order Data Sampling

Observation

For the 2017 case review, sample cases were pulled from the same 11 counties as used in the 2005 and 2010 case reviews. Using the same counties for each study enables stronger comparisons from one study to the next, as the variable of the sources of sample data does not change. However, the characteristics of these counties have changed over the years, calling into question their representation of the entire state. In this study, we noted that Solano County had grown from being characterized as a medium-sized county to a large one. San Francisco is now medium-sized, after being a large county in the previous report; and while San Luis Obispo was classified as a medium-sized county in the prior report, it has always been considered small in

the DCSS Comparative Data Report. Having a representative sample is essential for collecting data since the analysis and findings can impact policy and practice statewide.

Options

For future guideline reviews, the 11 study counties should be assessed to determine if they continue to accurately represent the state as a whole with regard to county size. A related suggestion is to examine whether or not to continue to select samples of IV-D and non-IV-D cases in equal proportion for the guideline review. According to DCSS records, an estimated 24,499 non-IV-D orders were established in 2015, compared with an estimated 86,936 IV-D orders, raising the issue of whether including equal numbers of IV-D and non-IV-D orders is an accurate representation of the overall number of child support cases.

Summary

This chapter includes a wide range of discussions, observations, and options for consideration regarding California's child support guideline. More information about each topic can be found in the other chapters in this report.

The quadrennial review provides California decision makers the opportunity to examine the policy choices associated with how child support obligations are calculated. Beyond this review, with the passage of the OCSE's final rule—Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs (81 Fed. Reg. 93492–93569)—in December 2016, California will need to change several of its processes and policies regarding the child support guideline before the next quadrennial review. California DCSS and the Judicial Council, as well as LCSA staff, and parents and their representatives, should continue to engage in the conversations and research needed to look for ways to ensure California's guideline remains accurate, is understandable, and reflects the needs of California's children and families.

Chapter C. Research on the Cost of Raising Children

This report required that we prepare an updated review and analysis of current and historical economic research on child-rearing expenditures, including a critical analysis of how such data is used to construct child support guidelines. In our analysis, we have included the most recent Consumer Expenditure Survey (CEX) micro data published by the Bureau of Labor Statistics. To our knowledge, we are the first study to use 2010 to 2015 data. We analyzed the data from these post-recession years against the full spectrum of micro data from 2000 to 2015 to ensure the most accurate capturing of child-related expenditures given the substantial fluctuations of the economy. Using established methodologies to study the data, our conclusions provide California with an extensive current child-related expenditure analysis to inform discussion of any potential K factor guideline changes. To support the full review and analysis, we have documented the history of the K factor, and have also provided an in-depth discussion regarding the K factor's impact on the child support guideline.

We recognize, however, that a child support guideline is more than a numerical formula. It reflects policy decisions regarding multiple issues related to child-rearing expenditures and parental income, all of which have real-life consequences for families of every income level.

Executive Summary

Federal law requires a state to consider economic data on the cost of raising children as part of the quadrennial review of its child support guideline. The purpose is to ensure that the application of the guideline results in appropriate support awards. There is not one set of data on which states rely. States use different economic studies of child-rearing expenditures or apply different years of CEX data as the basis for their schedules.

California uses an Income Shares formula that assumes the amount ordered in child support, combined with the resident parent's expenditures on the child, approximates the total amount of expenditures had the parents lived together with the child. The formula is written as follows:
$$CS = K[HN - (H\%)(TN)],$$

where CS denotes the child support amount for one child and K denotes the amount of both parents' net income to be allocated for child support calculated using a series of steps. The guideline is based on Rothbarth estimates of child-rearing expenditures, which is the estimator used by the majority of child support guidelines. After reviewing four recent studies on child-rearing expenditures, including one conducted by Dr. Betson specifically for the 2010 guideline review, the 2010 California guideline report concluded that the California guideline formula was within the range of measurements of child-rearing expenditures, although at the high end of the range. California's current child support guideline is based on the updated Rothbarth estimates that Dr. Betson prepared for California in 2010 using CEX data from 2004 to 2009

For purposes of this 2017 guideline review, the Center for the Support of Families reviewed three more recent studies of child-rearing expenditures: Rodgers (2013) (see Section 5.1); Comanor et al. (2015) (see Section 5.2); and the U.S. Department of Agriculture (Lino 2017) (see Section 5.3). In addition, economist William Rodgers constructed updated Rothbarth estimates of child-related expenditures using CEX data from 2000 to 2015. To our knowledge, it is the first study to use such expanded CEX data. The pooling of the 15 years essentially averages out the extreme variation in macroeconomic activity that has occurred in recent U.S. history. Dr. Rodgers found that adding more recent years clearly indicates that there has been a downward shift in expenditures on children at all ages.

For this review of child-rearing estimates, Dr. Rodgers also examined alternative methodologies for updating California's guideline. For one approach he constructed child-rearing expenditures estimates using Lazear's and Michael's approach to Rothbarth estimates (see Section 6.3). For the other approach, he continued to use the Betson-Rothbarth estimates but with expanded CEX data. Dr. Rodgers constructed estimates from a number of years and concluded that the most accurate reflection of child-rearing expenditures was based on use of CEX data from 2000 to 2015. He also concluded that the Betson estimation using the CEX data years 2000 to 2015 with the sample limited to low- and middle-income families best reflects the California K factors. The 2017 study's "low and middle" income estimates are derived from a sample of households where the income does not exceed \$75,000. Dr. Rodgers used this threshold because the California K factors are based on families with yearly incomes of less than \$79,932.⁴

The 2017 report recommends that California continue to use Betson-Rothbarth estimates of child-rearing expenditures but with two modifications. First, modify the Betson estimation technique by estimating the model in linear form and only include low- and moderate-income households. Second, expand the use of pooled CEX data to data from 2000 to 2015 to better reflect macroeconomic changes. The report also recommends a reevaluation of the K fraction, net disposable income ranges, and multipliers for two or more children, because these variables, which are key components of the state's formula, have not been updated since the formula's codification in 1993.

1. Federal Law and Regulations

In an attempt to increase the use of objective criteria in the establishment of child support orders, the Child Support Enforcement Amendments of 1984⁵ required states, as a condition of receiving federal funds, to develop mathematical calculations to determine appropriate child support

⁴ The K factor is based on families with monthly income ranging from \$801 to \$6,661 per month.

⁵ Pub. L. No. 98-378, 98 Stat. 1305.

awards.⁶ Initially advisory, the Family Support Act of 1988⁷ required that the guideline calculation must create a rebuttable presumption that it is the appropriate amount of support. If the tribunal deviates from the guideline amount, it must make a written finding or specific finding on the record that the application of the guideline would be unjust or inappropriate.⁸

The implementing federal regulations at 45 C.F.R. § 302.56 required a state to consider economic data on the cost of raising children when reviewing its support guidelines “to ensure that their application results in the determination of appropriate child support order amounts.” Although all state guideline reviews must consider economic data on the cost of raising children, state guidelines vary because states use different economic studies of child-rearing expenditures or apply different years of CEX data as the basis for their schedules—as discussed in this section.

After California began its current quadrennial review, the federal Office of Child Support Enforcement (OCSE) issued its final rule, Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs.⁹ The final rule contains a number of amendments to 45 C.F.R. § 302.56. California is not required to implement the new rule in its current quadrennial review and the economic study herein does not include the additional considerations. However, for continuity among guideline reviews and to the extent relevant, it is important to consider that the new rule will require future California guidelines to take into consideration the basic subsistence needs of parents with limited ability to pay. As part of a state’s quadrennial guideline review, the state must consider not only economic data on the cost of raising children, but also

labor market data (such as unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level for the State and local job markets, the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level, and factors that influence employment rates among noncustodial parents and compliance with child support orders.¹⁰

A state must comply with this new federal requirement within one year after completion of the state’s next quadrennial review of its child support guideline that commences more than one year after the publication of the final rule, that is, December 20, 2016. That means it will be

⁶ 45 C.F.R. § 302.56(c)(2).

⁷ Pub. L. No. 100-485 § 103, 102 Stat. 2343, 2346.

⁸ 42 U.S.C. § 667(b)(2) (2012).

⁹ 81 Fed. Reg. 93492 (Dec. 20, 2016).

¹⁰ 45 C.F.R. § 302.56(h).

more than five years before California must comply with the requirement, but the state may want to consider the future regulatory construct in making decisions during this quadrennial review.

2. Current California Guideline Methodology

The child support guideline in California, as in most states, relies on a “continuity of expenditure” approach that assumes the amount ordered in child support combined with the resident parent’s expenditures on the child approximate the total amount of expenditures had the parents lived together with the child. California uses an income-shares formula of the continuity-of-expenditure approach where each parent shares the total expenditures. California Family Code section 4053 lists 12 principles on which the guideline rests. Among those principles are the following:

- 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.
- Both parents are mutually responsible for the support of their children.
- The guideline takes into account each parent’s actual income and level of responsibility for the children.
- Each parent should pay for the support of the children according to his or her ability.
- Children should share in the standard of living of both parents.
- It is presumed that a parent having primary physical responsibility for the children contributes a significant portion of his or her available resources for the support of the children.

The basic formula for determining the child support order amount under the California guideline is based on the following factors:

- Each parent’s net disposable income, with one parent designated the “high earner” (HN);
- The parents’ total net disposable income (TN);
- The number of children; and
- The percentage of time that each parent has primary physical responsibility for the children, with the high earner’s percentage of time designated as (H%).¹¹

California’s uniform guideline for determining child support obligations is a formula and is written as follows:

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

¹¹ The code states that in situations where parents have different time-sharing arrangements for different children, the term H% is the average of the approximate percentages of time the high-earner parent spends with each child.

where CS denotes the child support amount for one child and K denotes the amount of both parents' net income to be allocated for child support calculated using these steps:

- If H% is less than or equal to 50%, then K is calculated by adding 1 to the H% ($1 + H\%$) and then multiplying it by the relevant K fraction from the box below.
- If H% is greater than 50%, K equals 2 minus H% ($2 - H\%$) multiplied by the pertinent K fraction that corresponds to the household's total net disposable income.

Total Net Disposable Income Per Month (TN)	Amount of Both Parents' Income Allocated for Child Support (K fraction)
\$0 to 800	$0.20 + TN/16,000$
\$801 to 6,666	0.25
\$6,667 to 10,000	$0.10 + 1,000/TN$
Over \$10,000	$0.12 + 800/TN$

Below are two examples of California's formula calculation for one child.

Example A

Higher earner spends 20% of time with Child ($H\% = 20\%$)

Net Disposable Income per month: High Earner (HN): \$3,000; Low Earner: \$2,000;

Total (TN = \$5,000)

K fraction: 0.25 (because TN is between \$801–\$6,666)

$K = k \text{ fraction} \times (1 + H\%)$ since H% is less than 50%

$K = 0.30 [0.25 \times (1 + 0.20)]$

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

$(CS) = 0.30 [3,000 - (0.20)(5,000)]$

CS = \$600 $[0.30 \times 2,000]$

Since this value is positive, the "high earning" parent would pay \$600 per month in child support.

Example B

Higher earner spends 100% of time with Child ($H\% = 100\%$, or just 1.0)

Net Disposable Income per month: High Earner (HN): \$3,000; Low Earner: \$2,000; Total (TN = 5,000)

$K = k \text{ fraction} \times (2 - H\%)$ since H% is greater than 50%

$K = 0.25 [0.25 \times (2 - 1)]$

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

$(CS) = 0.25 [3,000 - (1)(5,000)]$

CS = -\$500 $[0.25 \times -2,000]$

Now, since this value is negative, the "higher" earning parent would receive \$500 per month in child support.

If there is more than one child, the child support award (CS) is multiplied by:

- 1.6 for two children;
- 2.0 for three children;

- 2.3 for four children;
- 2.5 for five children; and
- 2.625 for six children.¹²

The California guideline provides for other adjustments to income, such as child support being paid for other children and other children being supported in the home. The guideline also provides for adjustments to the support order amount in cases involving factors such as uninsured health-related expenses, low-income obligors, and work-related child care expenses.

3. Findings from 2010 Guideline Review

The Judicial Council of California's 2010 report on its review of the California uniform child support guideline notes that the K fraction, net disposable income ranges, and multipliers for two or more children had not been updated since the formula's creation. As part of that review, the Judicial Council examined three newer studies of child-rearing expenditures: measurements developed by David M. Betson, an associate professor of public policy and economics at the University of Notre Dame, for the State of Oregon in 2006; measurements developed by Thomas McCaleb, David Macpherson, and Stefan Norrbin of Florida State University for the State of Florida in 2008; and measurements developed in 2009 by Mark Lino, an economist with the U.S. Department of Agriculture (USDA). A fourth study was also conducted for the review, consisting of new Rothbarth measurements, which are considered the lower bound of child-rearing expenditures, based on CEX data from families surveyed in 2004 through 2009.

The 2010 report concluded that the California guideline formula was within the range of measurements of child-rearing expenditures, although at the high end of the range. This finding is consistent with the acknowledgment in California's guideline principles that support orders must ensure that children receive sufficient support "reflecting the state's high standard of living and high costs of raising children compared to other states."¹³

The 2010 report found that the percentage of orders that deviated from the guideline had increased to 15 percent (in comparison to 9.1 percent in the 2005 review) of the cases reviewed. Further, the 2010 report found that the percentage of orders entered by default was 46 percent (up from 29 percent in 2005) of the cases reviewed, and the percentage of orders involving presumed income also had increased since the last guideline review. Finally, the last guideline review detailed specific issues of concern related to low-income obligors, including the inadequacy of the current low-income adjustment, the inability of low-income obligors to meet

¹² The multipliers for 7 or more children are as follows: 2.75 for 7 children, 2.813 for 8 children, 2.844 for 9 children, and 2.86 for 10 children.

¹³ Cal. Fam. Code § 4053(l).

their own subsistence needs, and presumption of income policies exacerbating guideline orders for low-income obligors.

4. Historical Economic Research on Child-Rearing Expenditures

Federal regulations require that state child support guidelines be based on economic data on the cost of raising children. Although the regulations focus on cost, in actuality states look at measurements on expenditures, which allow guideline awards to reflect the increased amounts parents spend on children as their incomes increase. Most states, including California, have developed child support guidelines based on the policy choice that children should benefit from the same level of expenditures that the parents would have made if the parents and children were living together. These states have chosen guidelines based on the “continuity-of-expenditures” concept.¹⁴ As noted earlier, the Income Shares model, which is the model that most state guidelines follow, is a type of “continuity-of-expenditures” model. The result is that most states—including California—base their support guidelines on measurements of child-rearing expenditures of intact families.

Child support guidelines are based on one of three approaches to measuring child-rearing expenditures. Two of the approaches—Engel and Rothbarth—use an indirect approach whereby one infers how much money families spend on their children based on other data. The third approach, formulated by the U.S. Department of Agriculture, estimates child-rearing expenditures by considering directly the expenditures made by families in various categories. There is no consensus on which approach is the best methodology for measuring child-rearing expenditures.

4.1 Estimating Expenditures on Children

Early research on consumer expenditures examined how consumption varies with income. There are two popular techniques for measuring a household’s well-being: the Engel estimator and the Rothbarth estimator.

Engel estimator

Ernst Engel was a German statistician. In 1857, he used budget surveys to conclude that as a family’s size increased (assuming constant family income), the percentage of the family’s expenditures devoted to food increased. He also documented that as a family’s income increased

¹⁴ Marsha Garrison, a professor of law at Brooklyn Law School, first used the descriptive term “continuity of expenditures.” See Marsha Garrison, “The Goals and Limits of Child Support Policy,” in J. Thomas Oldham and Marygold S. Melli, eds., *Child Support: The Next Frontier* (University of Michigan Press, 2000).

(holding family size constant), the percentage of the family's expenditures devoted to food decreased, even though total expenditures on food increased. Engel concluded that the percentage of a family's total expenditures that was devoted to food was a good criterion for evaluating well-being.¹⁵

In order to use the Engel estimation procedure to determine expenditures on children, one must examine expenditure patterns of families without children to determine how spending on food (as a percentage of total expenditures) varies with a family's socio-demographic characteristics. Food expenditure patterns in families with one child are then examined to determine how they compare with similar families without children. Expenditures on a single child are then computed as the difference between total consumption expenditures for the one-child family and total consumption expenditures for a childless couple with the same level of well-being (as measured by the proportion of its total budget spend on food). Similarly, by examining how expenditure patterns vary between families with different numbers of children, it is possible to estimate the expenditures on additional children.¹⁶ Implicit in the Engel estimator is the assumption that the percentage of a family's expenditures on non-food items that is attributable to children is the same as the percentage of the family's food expenditures attributable to the family's children. Less than ten states use some variation of the Engel estimation method.

Rothbarth estimator

An alternative estimator is that proposed in the 1940s by Erwin Rothbarth, a German economist and statistician.¹⁷ Rothbarth believed that the best way to measure expenditures on children was to assess children's impact on their parents' consumption. He assumed that the well-being of parents could be determined by the level of "excess income" available to them once necessary expenditures on all family members had been made. Rothbarth defined excess income to include luxuries such as alcohol, tobacco, entertainment, and savings.¹⁸ The Rothbarth approach assumes that families that spend the same amount on "adult goods," generally interpreted as adult

¹⁵ Ernst Engel, "Consumption and Production in the Kingdom of Saxony," *Journal of the Statistical Bureau of the Ministry of the Interior* (1857).

¹⁶ Burt S. Barnow, "Economic Studies of Expenditures on Children and Their Relationship to Child Support Guidelines," in Margaret C. Haynes, ed. *Child Support Guidelines: The Next Generation* (U.S. Department of Health and Human Services, 1994).

¹⁷ See Erwin Rothbarth, "Notes on a method of determining equivalent income for families of different composition," in C. Madge, ed., *War-Time Pattern of Spending and Saving* (Cambridge University Press, 1943).

¹⁸ Barnow, *supra* note 16.

clothing, alcohol, and tobacco, are equally well off.¹⁹ More than half the states use some variation of the Rothbarth estimation method.

The assumptions underlying both of these commonly used techniques have led economists to the conclusion that the Engel estimator likely overestimates the true expenditures on children, while the Rothbarth estimator is likely to underestimate expenditures on children. More detailed information about all these estimates of child-rearing expenditures is provided in the Lewin-ICF, Inc. report.²⁰

U.S. Department of Agriculture (USDA) estimator

Another estimator is that produced by the USDA. The USDA's Center for Nutrition Policy and Promotion (CNPP) develops economic estimates for the major categories of child-rearing expenditures (i.e., housing, food, transportation, clothing, health care, child care and education, and miscellaneous child-rearing expenditures). After identifying the major categories of expenses that most families incur, it then allocates the expenses. Unlike the Rothbarth and Engel estimates, for most categories of expenses the CNPP does not use a marginal cost method that measures child-rearing expenditures as the difference in expense between equivalent couples with and without children. Rather it examines direct parental expenses on children through age 17. It allocates child-specific expenses (such as clothing, education, and child care) directly to children. Food and health care expenses are allocated to children based on findings from federal surveys on a child's budget shares.²¹ Family-related transportation expenses and miscellaneous expenses are allocated using a per capita method. However, beginning in 2008, USDA estimates housing expenses on a child based on the average cost of an additional bedroom.

Estimates are provided for major components of the budget by age of child, family income, and region of residence. Multivariate analyses are used to control for income level, family size, and age of the younger child so that estimates can be made for families with these varying characteristics. The estimation model is conducted separately for husband-wife and single-parent households. Minnesota is the only state that uses a variation of the USDA estimates as the basis for its guideline. In both 2005 and 2009, the Ohio Child Support Guidelines Advisory Council

¹⁹ Strictly speaking, the Rothbarth estimates produced by Betson estimate the income required to compensate parents for the presence of the children, but these figures are generally interpreted as the "cost" of children.

²⁰ See Laurie J. Bassi, Burt S. Barnow, Laudan Y. Aron & Abhay Pande, *Estimates of Expenditures on Children and Child Support Guidelines*, submitted by Lewin-ICF, Inc. to the Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services (Oct. 1990).

²¹ See the Nationwide 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.

recommended use of the USDA approach, but the Ohio legislature has never approved the recommendation.²²

4.2 Household Expenditure Data

Once a technique is chosen for estimating child-rearing expenditures, the household expenditure data to which it is applied must be selected. Typically economists use data from the CEX (Consumer Expenditure Survey).²³ The CEX is a detailed source of national data on household expenditures and how they vary by family composition, size, geographic location, and socio-economic characteristics. The information is collected through personal interviews of a national sample of households as well as through expenditure diary methods. The U.S. Census Bureau collects the survey data for the Bureau of Labor Statistics. CEX results are published annually.

4.3 Application to Child Support Guidelines

This section summarizes estimates of child-rearing expenditures, as used in child support guidelines. Within each approach, the oldest study is listed first.

van der Gaag (1981)

In 1981, the economist Jacques van der Gaag wrote a discussion paper on measuring the cost of children.²⁴ His research was part of the Child Support Project of the University of Wisconsin Institute for Research on Poverty. In the paper he discussed at length the Engel work on household consumption patterns. He also reviewed the approach of economist Bernard van Praag (1968) and the methodologies and findings of a number of other major studies of parental expenditures for children, including a 1973 study by Thomas M. Espenshade. Focusing on those studies he believed were most methodologically sound, van der Gaag found that the range of estimates of the proportion of income that parents spend on their first child varied from 20 to 30 percent. He concluded that 25 percent was the best estimate. He also determined expenditures for additional children. Finally, van der Gaag found that expenditures for children were approximately a constant proportion of household income throughout the income ranges used in the studies he reviewed.²⁵ Unlike other estimates of child-rearing expenditures, the estimates of

²² State of Washington, Joint Legislative Audit & Review Committee, *Review of Child Support Guidelines*, Report 10-1, p. 11 (Jan. 2010).

²³ For a discussion of the properties of the CEX, see Bassi et al., *supra* note 20, chapter 3. See also David M. Betson, *Alternative Estimates of the Cost of Children from the 1980–86 Consumer Expenditure Survey*, report to the U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, published as Special Report 51, University of Wisconsin Institute for Research on Poverty (1990).

²⁴ Jacques van der Gaag, *On Measuring the Cost of Children*, University of Wisconsin Institute for Research on Poverty: Discussion Papers (DP No. 663-81, 1981).

²⁵ Ingrid Rothe, Judith Cassetty & Elisabeth Boehnen, *Estimates of Family Expenditures for Children: A Review of the Literature*, University of Wisconsin Institute for Research on Poverty (Apr. 2001).

van der Gaag are not measured from the CEX. Much of his work has informed the Percentage-of-Income model, which is used in nine states. Van der Gaag's work loosely formed the basis for the K factor (the percent of income allocated to children) currently used in California's child support formula.

Engel methodology

Espenshade (1984)

In 1984, Thomas M. Espenshade wrote *Investing in Children: New Estimates of Parental Expenditure*.²⁶ He used the Engel methodology to estimate child-rearing expenditures, based on 1972 to 1973 CEX. The federal 1984 to 1987 National Child Support Guidelines Project used Espenshade's estimates to develop the Income Shares model.²⁷ As summarized in the 2010 California guideline report:

Espenshade did not provide point estimates of child-rearing expenditures as a percentage of income or total family expenditures in his study, but other researchers have calculated them from Espenshade's research. They find that the percentage of total family expenditures devoted to child rearing are 24 percent for one child and 41 percent for two children. What Espenshade actually reported is a range of child-rearing expenditures for two-child families by socioeconomic class and other household characteristics.²⁸

The Espenshade estimates still form the basis of some state child support guidelines and were considered in the development of the current California support guidelines.

McCaleb, Macpherson, and Norrbin (2008)

In 2008, Thomas McCaleb and two other professors at Florida State University's Department of Economics developed a revised schedule for consideration by the Florida legislature.²⁹ The schedule continued to use the Income Shares model, but was based on the Engel methodology rather than Rothbarth for calculating child-rearing expenditures. McCaleb used CEX data from 2004 to 2006. The study noted that the estimates were considerably lower than prior estimates by

²⁶ Thomas M. Espenshade, *Investing in Children: New Estimates of Parental Expenditures* (Urban Institute Press, 1984).

²⁷ National Center for State Courts, *Development of Guidelines for Child Support Orders, Final Report*, report to the U.S. Department of Health and Human Services, Office of Child Support Enforcement (1987).

²⁸ Judicial Council of Cal., *Review of Statewide Uniform Child Support Guideline 2010* (June 2011), p. 16, fns. omitted.

²⁹ Thomas S. McCaleb, David A. Macpherson & Stefan C. Norrbin, Florida State University, *Review and Update of Florida's Child Support Guidelines*, report to the Florida Legislature (Nov. 2008).

Espenshade and Betson using the Engel approach. Ultimately, the Florida legislature did not adopt McCaleb's child-rearing estimates.

Rothbarth methodology

Betson (1990)

As states have reviewed and updated their guidelines, many have used the more recent research of David M. Betson of the University of Notre Dame. In September 1990, Dr. Betson published child-rearing estimates based on his analysis of pooled CEX data from 1980 through the first quarter of 1987, using a variety of estimation techniques, and alternative definitions of the standard of well-being.³⁰ He concluded that the Rothbarth method produced the best set of estimates on the marginal costs of children. Dr. Betson then provided estimates of the percentage of total expenditures spent on children for one- and two-parent families with one, two, and three children. The percentages for two-parent families were 25 percent for one child, 35 percent for two children, and 40 percent for three children.³¹ His estimates for two-parent families can be used to develop child support guidelines by converting from expenditures to income and incorporating any other refinements desired by states. As noted below, Dr. Betson has updated his 1990 study several times using more recent CEX data.

Lazear and Michael (1988)

In 1988, professors Edward P. Lazear and Robert T. Michael³² developed a new economic model of income distribution within the family, examining which family characteristics affect spending patterns. They based their work on an analysis of 1972 to 1973 CEX data. Employing the Rothbarth approach of examining expenditures on adult goods in order to indirectly determine the costs of children, they found that the average household spent \$38 per child for every \$100 spent per adult, and that the level of relative and absolute expenditure on the child rises with the level of education of the head of the household. Their estimates of child-rearing expenditures were considerably lower than the Espenshade estimates, which had used the same CEX data,

³⁰ David M. Betson, *Alternative Estimates of the Cost of Children from the 1980–86 Consumer Expenditure Survey*, report to the U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, published as Special Report 51, University of Wisconsin Institute for Research on Poverty (1990).

³¹ *Id.* at p. 57.

³² Edward P. Lazear & Robert T. Michael, "Chapter 5: The Division of Income Between Adults and Children: Evidence from the 1972–73 Consumer Expenditure Survey," in *Allocation of Income Within the Household* (University of Chicago Press, 1988).

implying more economies of scale in consumption.³³ The work of Lazear and Michael form the basis for the most recent revision to the New Jersey child support guideline.

Betson (2001)

At the request of California and Michigan, Dr. Betson updated his 1990 study in 2001 using more recent CEX data from 1996 to 1999. A number of states base their support guidelines on this data. The 2001 Betson-Rothbarth estimates of the percentage of family expenditures devoted to children were 25 percent for one child, 35 percent for two children, and 41 percent for three children.³⁴

Betson (2006)

At the request of Oregon, Dr. Betson updated his Rothbarth estimates again in 2006. Using 1998 to 2003 CEX data, he estimated the percentage of family expenditures devoted to children was 25 percent for one child, 37 percent for two children, and 44 percent for three children.³⁵

Betson (2010)³⁶

For the purpose of the 2010 California guideline review, Dr. Betson updated his Rothbarth estimates to include the more recent 2004 to 2009 CEX data. This allowed consideration of the 2007 recession and its impact on family income and expenditures. There were two changes in the CEX data that Betson used to derive his estimates. First, he used an income series newly created by the Bureau of Labor Statistics (BLS) to correct for the problem of income nonreporting, especially at low incomes. Expenditures among those surveyed consistently exceed income for low-income households. Such households may be underreporting their income or making purchases beyond their income by borrowing money or using credit cards. The CEX corrected for this by imputing income to lower income brackets. Second, he switched from using CEX data on household “expenditures” to using “outlays,” which include finance charges, mortgage principal payments, and payments on home equity loans, while “expenditures” do not.³⁷ These Betson-Rothbarth estimates indicated that the percentage of family expenditures devoted to

³³ See David M. Betson, “Appendix A: Parental Expenditures for Children,” in Judicial Council of Cal., *Review of Statewide Uniform Child Support Guideline 2010* (June 2011), www.courts.ca.gov/partners/documents/2011SRL6aGuidelineReview.pdf (as of July 31, 2017).

³⁴ David M. Betson, “Chapter 5: Parental Expenditures on Children,” in Judicial Council of Cal., *Review of Statewide Uniform Child Support Guideline 2001*, www.courts.ca.gov/documents/ChildSupport-2001UniformChildSupportGuideline.pdf (as of July 31, 2017).

³⁵ David M. Betson, “Appendix I: New Estimates of Child-Rearing Expenditures (1998–2004 Data),” in Policy Studies Inc. report to Oregon Dept. of Justice, *State of Oregon Child Support Guidelines Review: Updated Obligation Scales and Other Considerations* (June 26, 2006), www.doj.state.or.us/wp-content/uploads/2017/06/psi_guidelines_review_2006.pdf (as of July 31, 2017).

³⁶ Betson, *supra* note 33.

³⁷ *Id.*

children was 24 percent for one child, 37 percent for two children, and 45 percent for three children. The 2010 Betson-Rothbarth measurements are the basis for several state guidelines. Betson did not apply the Engel approach at all in the 2010 study, and in fact called into question its validity.

Center for Nutrition Policy and Promotion (CNPP)

As noted earlier, the CNPP releases child-rearing estimates each year, using updated CEX data.

USDA (Lino 2002)

The 2002 USDA estimates were the economic basis for the 2007 Minnesota child support guideline.³⁸ The 2002 USDA estimates reflected child-rearing expenditures in 2001, using 1990 to 1992 CEX.³⁹ Those estimates indicated that the average percentage of family expenditures devoted to child-rearing in 2001 were 26 percent for one child, 42 percent for two children, and 48 percent for three children.

5. Current Research on Child-Rearing Expenditures

Since the 2010 California guideline review, there have been three new studies of child-rearing expenditures.

5.1 Rodgers (2013)

New Jersey's current child support obligation schedules are based on Rutgers University economist William Rodgers's 2013 analysis of child-rearing expenditures.⁴⁰ The schedule is based on the Income Shares model and estimated using the CEX data from 2000 to 2011. Prior to this update, the New Jersey schedule was based on CEX data from 1996 to 1999.

Rodgers determined that the pooling of that 12-year period "averaged" out the extreme variation in macroeconomic activity that occurred from 2000 to 2011. In preparing his estimates, Rodgers excluded from the 2000 to 2003 CEX data families with incomplete family income records; for those years the BLS (Bureau of Labor Statistics) provides no imputation value. Rodgers did not exclude all families for 2000 to 2003; due to the severe macroeconomic fluctuations from 2004 to 2011, he felt the cost of excluding these more "normal" years outweighed the cost of only excluding families with incomplete income. For CEX data from 2004 to 2011, he included

³⁸ See Jane Venohr & Policy Studies Inc., Report to State of Minnesota, *Evaluation of the New (2007) Minnesota Child Support Guideline Basic Support Schedule* (Dec. 2005).

³⁹ Mark Lino, *Expenditures on Children by Families: 2001 Annual Report* (U.S. Department of Agriculture, Center for Nutrition and Policy Promotion, Misc. Publ. No. 1528-2001, 2003).

⁴⁰ New Jersey Child Support Institute, Institute for Families, *Quadrennial Review: Final Report* (Rutgers University, Mar. 2013).

families with imputed income, but used the average of five predicted incomes that BLS constructs. Rodgers placed the schedule in 2011 price levels, and adjusted the schedule for income differences between New Jersey and the U.S. average.

The schedule was based on Rodgers's estimates of child-rearing expenditures using Lazear's and Michael's (LM's) "indirect" approach to estimating Rothbarth estimates. Rodgers switched from Betson's approach to LM's approach because the latter's exposition was clearer and contains an explicit function for child expenditures. Similar to Betson's approach, the analysis switches from using total family expenditures as the base to total family outlays. The benefit to using total family outlays is that principal payments on all debt (e.g., mortgage principal payments) are captured in the CEX data. The switch to outlays is also consistent with the data used in the construction of recent estimates of child-related expenditures (e.g., Betson, 2010). This switch has the potential of generating different Rothbarth estimates if the relationship between adult clothing and total outlays differs from the relationship between adult clothing and total expenditures.

Some analysts have not included the Rodgers study in their comparisons of guideline award levels because the LM approach uses single-parent households in the analysis and the method generates Rothbarth estimates that are lower than Betson's estimates. Although single-parent households are included, the identification of the LM Rothbarth parameters is not based on comparing the expenditures of single parents on adult clothing with different numbers of children. Further, even though the LM Rothbarth estimates are smaller than those found in the literature, the resulting child support obligation schedules are still similar to the schedules that they replaced.

5.2 Comanor et al. (2015)

William S. Comanor, a professor at the University of California, and others recently completed a study on the monetary cost of raising children.⁴¹ They review and reject current methods for determining costs, using CEX data to estimate much lower monetary costs for rearing children. There are a number of limitations to the study. It examines expenditures on children using a marginal cost approach without a set equivalence scale. Because it is based on direct expenditures, it makes assumptions in deciding how to allocate shared expenditures such as housing, transportation, and food, to children. The Comanor et al. results do not include health care expenses. However, even with subtracting health care expenses from prior Betson-Rothbarth and USDA studies, "the child-rearing expense estimates of the Comanor et al. study are much lower than those of USDA and the various Engel and Rothbarth approaches. In fact,

⁴¹ William S. Comanor, Mark Sarro & R. Mark Rogers, "The Monetary Cost of Raising Children," in James Langenfeld, ed., *Economic and Legal Issues in Competition, Intellectual Property, Bankruptcy, and the Cost of Raising Children* (Research in Law and Economics, Vol. 27), pp. 209–251 (Emerald Group Publ. Ltd., 2015).

the Comanor et al. study found that ‘except for low-income married households ... adding a single child to the household does not substantially increase average food costs.’⁴² Although Comanor presents the study as employing a marginal cost model, that assertion is questionable; the study compares a family with no children to a family with one child when ideally the study should be observing how families change expenditures on children as the family grows in size.

No state has adopted this guideline approach.

5.3 USDA (Lino 2017)

As noted earlier, each year the USDA publishes estimates reflecting child-rearing expenditures using CEX data. States that have conducted guideline reviews since California’s 2010 study have considered this data. However, none has decided to adjust its guidelines to reflect such estimates. The most recently USDA published figures are based on data from the 2011 to 2015 CEX, updated to 2015 dollars using the Consumer Price Index–All Urban Consumers (CPI-U).⁴³ Beginning with this report, the series intends to use the five most current years of the CEX, adjusted for inflation using the CPI-U. The previous six reports used base data from 2005 to 2006 and were updated with the CPI-U through 2013. With the annual use of the most recent data, the authors believe the series will fully reflect changes in expenditure patterns with each subsequent release:

The previous reports did not fully capture changes in expenditure patterns over time. It should be noted that the data presented in the current report reflect spending patterns that occurred after the Recession of 2007–09. For these reasons, the latest child-rearing expense estimates are not directly comparable to the last published estimates from USDA pertaining to 2013. A more direct comparison would be between the present estimates using the 2011–15 CE (in 2015 dollars) to estimates derived using the same methodology for the 2010–14 CE (in 2014 dollars).⁴⁴

In its 2017 report, the USDA includes the table⁴⁵ depicted below, which presents its estimates as a proportion of total household expenditures for married couple families and compares them to amounts derived using various Engel and Rothbarth approaches undertaken since 2000. Lino did

⁴² Mark Lino, Kevin Kuczynski, Nestor Rodriguez & TusaRebecca Schap, *Expenditures on Children by Families, 2015*, p. 17 (citing Comanor et al., p. 229) (U.S. Department of Agriculture, Center for Nutrition and Policy Promotion, Misc. Report No. 1528-2015, 2017).

⁴³ *Ibid.*

⁴⁴ *Id.* at p. 1.

⁴⁵ *Id.* at p. 18, Table 9.

not include Rodgers’s measures that were used to update New Jersey’s support guidelines because it included single-parent as well as husband-wife families.

Average Percent of Household Expenditures Attributable to Children in Married Couple Families, by Estimator and Number of Children

Number of Children	One	Two	Three
<i>Percent</i>			
Estimator			
Engel (2001) ¹	30	44	52
Rothbarth (2001) ¹	26	36	42
Rothbarth (2006) ²	25	37	44
Engel (2008) ³	21	31	38
Rothbarth (2008) ³	32	47	57
Rothbarth (2011) ⁴	24	37	45
Average of Above	26	39	46
USDA/CNPP (2016)	26	39	49

¹ From Judicial Council of California (2001); ² from Policy Studies Inc. (2006); ³ from McCaleb, Macpherson & Norrbin (2008); ⁴ from Judicial Council of California (2011).

As noted in the table, the various methodologies result in a great deal of variance in the average percent of family expenditures devoted to expenditures for one, two, and three children. Focusing on the various studies implementing the Rothbarth and Engel approaches, the estimates for one child range between 21 to 32 percent of household expenditures being spent on the child; for two children, 31 to 47 percent; and for three children, 38 to 57 percent (almost a 20 percentage-point difference).

6. Comparative Economic Analysis of Current Economic Research on Child-Rearing Expenditures

William M. Rodgers, III, a professor at the Edward J. Bloustein School of Planning and Public Policy, Rutgers University, conducted an updated review and analysis of current and historical economic research on the cost of raising children, including a critical analysis of the economic methodology used to construct child support guidelines. Dr. Rodgers also examined the alternative methodologies to Betson-Rothbarth for creating a child support schedule. His findings on current child-rearing expenditures are captured in Table 4 at the conclusion of this section, and Dr. Rodgers’s full report and tables are contained in the chapter Appendix.⁴⁶

Dr. Betson provided an update on economic estimates of child-rearing expenditures as a proportion of household spending using CEX data from 2004 to 2009. For this guideline review,

⁴⁶ Note that tables within this section are numbered consecutively and therefore do not match the table numbers in the Appendix. Where necessary, clarifying cross-references are noted.

Dr. Rodgers used recent CEX data from 2000 to 2015 to construct updated Rothbarth estimates of child-related expenditures. To our knowledge, it is the first study to use such expanded CEX data.

Dr. Rodgers decided to use all of the years from 2000 to 2015 based on a detailed comparison of this 15-year period to a variety of key macroeconomic sub-periods on which many states base their current child support obligations. The pooling of the 15 years essentially averages out the extreme variation in macroeconomic activity that has occurred in recent U.S. history: the peak of the 1990s boom; a mild recession and jobless recovery from 2000 to 2003; the dramatic increase in personal consumption and household debt that occurred from 2004 to 2007; the Great Recession that lasted from 2007 to 2009; and the modest recovery from 2010 to 2015.

Dr. Rodgers's analysis of the data from the post-recession years of 2010 to 2015, which other state guidelines have not considered, against the full spectrum of data from 2000 to 2015, ensures the most accurate capturing of child-related expenditures given the substantial fluctuations of the economy.

Dr. Rodgers's economic analysis used total family outlays instead of expenditures. The benefit to using total family outlays is that principal payments on all debt, such as mortgage principal payments, are captured in the data. The switch to outlays is also consistent with the data used in the construction of recent estimates of child-related expenditures (e.g., Betson, 2010).⁴⁷ However, because this switch has the potential of generating different Rothbarth estimates, Dr. Rodgers also has created Rothbarth estimates based on total family expenditures.

The estimates in this study were constructed from two subsamples. The first includes families from 2004 to 2015 with imputed income. Economist David Macpherson and others have shown that the inclusion of families with imputed income can bias the parameter estimates and thus the obligation levels, and Dr. Macpherson recommends that these families be excluded.⁴⁸ However, when all of these families were excluded, Dr. Rodgers found that the proposed estimates fell to unreasonable levels. As a compromise, the estimates do include the 2004 to 2015 families with imputed income but attribute to the families their average of five predicted incomes constructed by the Bureau of Labor Statistics.

The second subsample for the estimates excluded families from 2000 to 2003 with incomplete family income records. For families with incomplete records in the 2000 to 2003 samples, the BLS does not provide an imputed value and, as a result, required these families to be excluded from the analysis. While Dr. Rodgers considered excluding all of the families for 2000 to 2003 for consistency, due to the severe macroeconomic fluctuations from 2004 to 2011, he concluded

⁴⁷ See Betson, *supra* note 33, for a discussion of the difference between total expenditures and outlays, and a comparison of the variables.

⁴⁸ New Jersey Child Support Institute, *supra* note 40, p. 4.

that the cost of excluding these more “normal” years outweighed the cost of only excluding families with incomplete income records in order to provide the most accurate estimates of child-related expenditures today.

Dr. Rodgers’s sample observations are categorized into two groups: (1) all of the families in the sample, and (2) low- and middle-income families. The low- and middle-income families are those with households with incomes less than \$75,000. This corresponds to the upper bound of the California K factor, which is based on families with incomes ranging from \$801 to \$6,661 per month. Both groups meet the sample criteria laid out in Betson.

6.1. Rothbarth Estimation Methods

The first step in Dr. Rodgers’s study was to estimate the Rothbarth parameters that measure the proportion of a family’s total expenditures devoted to children based on the most recent CEX data. As noted earlier, this is more recent data than reflected in California’s existing guideline, which use the Rothbarth estimates constructed with CEX data from 2004 to 2009.

Dr. Rodgers used two “indirect” methods to estimate the Rothbarth parameters: Betson (2010) and Lazear and Michael (1988). In both approaches, adult clothing expenditures are the dependent variable in the regression analysis. However, the Lazear and Michael methodology has an advantage because it provides a clearer exposition of the approach: Lazear and Michael build their model from the family’s budget constraint, the available consumption based on the family’s income and the prices of the goods consumed. Similar to Lazear’s and Michael’s original estimates, the estimates of child-rearing expenditures presented in this report are smaller than what Betson and others have typically found.

6.1.1. Betson Approach

For adult goods to be a proxy for the family’s well-being, increases in total spending should be positively related to expenditures on adult goods. As more children are added to the family, holding spending constant, adult spending (well-being) should fall.⁴⁹ To estimate the adult expenditure equation, Dr. Rodgers used the same sample restrictions, variables, and definitions as Betson used in his 2010 California analysis. The variables are constructed using the CEX data from first-quarter 2000 and ending with first-quarter 2016.

Expenditures on the following detailed items⁵⁰ were also analyzed:

- Food: Food prepared and consumed at home, food purchased and consumed away from home.

⁴⁹ For a detailed discussion of the model, see Betson, *supra* note 33.

⁵⁰ Income, outlays, and expenditures are all adjusted for inflation using the annual average of the CPI-U and are reported in 2016 dollars.

- Housing: Mortgage interest paid, property taxes, maintenance and repair, rent paid, home insurance, utilities, personal services including child care, housekeeping supplies, household furnishings and equipment.
- Apparel: Clothing, footwear, cleaning services, and supplies.
- Transportation: Net outlays for the purchases of vehicles, vehicle finance charges, leases, gas and oil, maintenance and repair, insurance, licenses and other charges, and public transportation.
- Entertainment: Fees and admission, entertainment equipment, toys, and pets.
- Health care: Health insurance, nonreimbursed expenses for medical services, drugs, and supplies.
- Tobacco and alcohol.
- Personal care, reading, and education.
- Cash contributions to individuals outside the consumer unit.
- Personal insurance: Life and other personal insurance premiums.
- Miscellaneous: Funeral expenses and plots, checking charges, legal and accounting fees, interest paid on lines of credit, home equity loans, and credit cards.

In the Betson approach, the consumer unit contains a married couple between the ages of 18 and 60 years old, and has six or fewer children. The family unit does not include any other adults (individuals 18 years old or older) present, even if these adults were the children of the couple. The family unit does not have a change in family size or composition over the period in which the unit was interviewed; and only consumer units with at least three completed interviews are included in the final analysis sample. Dr. Rodgers applied these same sample restrictions to his study. The sample sizes and details are set forth in this chapter's appendix; see A.1. Betson Approach in Appendix A and Table 1 in Appendix D. However, since California's K factor is based on a sample of low- and middle-income families, Rodgers constructed two samples using the noted restrictions—one composed of all families and one of families with yearly incomes less than \$75,000, which corresponds to the upper bound of the K factor.

For the Rodgers samples, the inflation-adjusted average family income, total outlays, and total expenditures by family size are reported in Appendix D, Table 2. When the recent CEX survey data from 2010 to 2015 is added to the 2004 to 2009 CEX data, the outlays and expenditures show a decrease, which is consistent with general patterns that the Great Recession and weak recovery have added to the structural decline in the real income of American families. For example, the expenditures for the All Families sample with one child were \$81,847 using the 2004 to 2009 data, and only \$74,889 using the 2004 to 2015 data. For the Low- and Middle-Income Families sample with one child, the expenditures were \$52,971 using the 2004 to 2009 data, and \$49,135 using the 2004 to 2015 data. Adding years prior to 2004 generates slightly higher average income, outlays, and expenditures. In the example above, for the All Families sample, expenditures were \$78,614 using the 2000 to 2015 data, and for the Low- and Middle-

Income Families sample, expenditures were \$53,029 using the 2000 to 2015 data. Dr. Rodgers’s study found that analyzing all of the years from 2000 to 2015 suggests that income and expenditures from 2004 to 2009 are an outlier, and that the 15-year or long-run averages from 2000 to 2015 are lower than the averages for the 2004 to 2009 sample.

Appendix D, Table 3 shows the distribution of inflation-adjusted total outlays by family size. Adding more recent years to the All Families sample results in a decline in outlays at all points. This uniform decline does not depend on the presence and number of children. Instead, this uniform decline persists across time from 2000 to 2009, and across the full period from 2000 to 2015. The uniform decline in outlays is less prevalent in the Low- and Middle-Income Families sample.

Dr. Rodgers’s study also looked at how our two sample families (All Families and Low- and Middle-Income Families) spent their incomes on average. Table 1⁵¹ below illustrates the breakdown of expenditures into selected major components such as housing, food, transportation, and health costs. Panel A reports the expenditures for the 2004 to 2009 sample. The expenditures listed are similar to Betson’s 2010 estimates for California. Panels C and D report the percentages for 2004 to 2015, and for 2000 to 2015. The important point here is that even though real outlays and income have fallen, the spending proportions on these various goods seem to be remarkably stable across time. There is very little shift when years prior to 2004 and years after 2009 are added and included in the sample.

Table 1: Selected Average Spending Categories by Family Composition

Panel A: 2004 to 2009	All Families (%)				Low- and Middle-Income Families (%)			
	No Children	1 Child	2 Children	3 Children	No Children	1 Child	2 Children	3 Children
Housing	29	33	33	33	31	33	33	33
Shelter	19	21	20	20	18	21	21	20
Utilities	7	7	7	8	9	8	9	9
Operations	1	1	1	1	1	1	1	1
Equipment	3	3	3	3	3	3	3	3
Transportation	18	18	17	19	20	20	19	20
Food	13	14	14	15	15	16	17	19
Entertainment	5	5	6	6	5	5	5	5
Health	6	5	5	5	7	6	6	5
Apparel	3	3	4	4	3	4	4	5
Tobacco and Alcohol	2	2	1	2	4	3	2	3

⁵¹ For a full discussion of Table 1, see Appendix A. Estimation Method, A.1. Betson Approach, and Appendix D, Table 4.

Education and Reading	8	4	3	3	7	3	2	2
Personal Care	1	1	1	1	1	1	1	1

Notes: Author's calculations from selected years of the Consumer Expenditure Survey.

Panel B: 2004 to 2015	All Families (%)				Low- and Middle-Income Families (%)			
	No Children	1 Child	2 Children	3 Children	No Children	1 Child	2 Children	3 Children
Housing	30	33	33	33	31	34	34	34
Shelter	17	19	19	19	17	20	20	19
Utilities	7	7	7	8	9	8	9	9
Operations	1	1	1	1	1	1	1	1
Equipment	3	3	3	3	3	3	3	3
Transportation	16	16	16	16	18	18	18	17
Food	14	14	15	16	16	16	18	19
Entertainment	5	5	5	5	5	4	5	4
Health	6	5	5	5	7	6	6	5
Apparel	3	3	3	4	3	3	4	4
Tobacco and Alcohol	2	2	1	1	3	3	2	2
Education and Reading	8	4	3	3	7	4	2	2
Personal Care	1	1	1	1	1	1	1	1

Notes: Author's calculations from selected years of the Consumer Expenditure Survey.

Panel C: 2000 to 2009	All Families (%)				Low- and Middle-Income Families (%)			
	No Children	1 Child	2 Children	3 Children	No Children	1 Child	2 Children	3 Children
Housing	30	33	33	32	31	33	33	33
Shelter	18	20	20	20	18	21	20	20
Utilities	7	7	7	7	9	8	8	9
Operations	1	1	1	1	1	1	1	1
Equipment	4	3	3	3	3	3	3	3
Transportation	19	19	19	18	21	21	21	19
Food	13	14	14	16	15	16	17	19
Entertainment	5	5	6	6	5	5	5	5
Health	6	5	5	5	7	6	6	5
Apparel	3	4	4	4	3	4	4	5
Tobacco and Alcohol	2	2	2	2	3	3	2	3
Education and Reading	7	4	2	2	6	3	2	2
Personal Care	1	1	1	1	1	1	1	1

Notes: Author's calculations from selected years of the Consumer Expenditure Survey.

Panel D: 2000 to 2015	All Families (%)				Low- and Middle-Income Families (%)			
Variable	No Children	1 Child	2 Children	3 Children	No Children	1 Child	2 Children	3 Children
Housing	30	33	33	33	31	34	34	33
Shelter	18	20	19	19	18	20	20	19
Utilities	7	7	7	7	9	8	9	9
Operations	1	1	1	1	1	1	1	1
Equipment	3	3	3	3	3	3	3	3
Transportation	18	18	17	17	20	20	19	18
Food	13	14	15	16	16	16	17	19
Entertainment	5	5	5	6	5	5	5	5
Health	6	5	5	5	7	6	6	5
Apparel	3	4	4	4	3	4	4	5
Tobacco and Alcohol	2	2	2	2	3	3	2	2
Education and Reading	7	4	3	3	7	4	2	2
Personal Care	1	1	1	1	1	1	1	1

Notes: Author's calculations from selected years of the Consumer Expenditure Survey.

Appendix D, Table 5 presents Dr. Rodgers's replication of Betson's Rothbarth 2004 to 2009 estimates, and Appendix D, Table 5A contains the full regressions. The most important finding here is that as more years are added—years post-2009, as well as years prior to 2004—the estimated coefficients for family size and outlays decline, indicating that a one dollar increase in outlays is associated with a smaller increase in outlays for adult clothing. The impact of family size also diminishes over time. Adding a child is associated with a smaller increase in outlays on adult clothing.

By using the data in Appendix D, Table 5, we can estimate child-rearing expenditures. The estimates are presented in Table 2⁵² here. As a point of comparison, we included Betson's 2004 to 2009 estimates and the California K factor in Panel A of Table 2.

Table 2: Replication and Update of Betson-Rothbarth Estimates of Outlays on Children

Panel A: Previous Estimates	1 Child (%)	2 Children (%)	3 Children (%)	1 Child (%)	2 Children (%)	3 Children (%)
California Guideline K Fraction	-	-	-	25.0	40.0	50.0
Betson Rothbarth (2004 to 2009)	23.5	36.5	44.9	-	-	-

⁵² For a full discussion of Table 2, see Appendix A. Estimation Method, A.1. Betson Approach, and Appendix D, Table 6.

Panel B: 2004 as start year	All Families			Low and Moderate Income Families		
2004 to 2009	22.2	34.8	43.2	24.6	38.3	47.2
2004 to 2010	22.5	35.4	43.8	25.1	39.0	48.0
2004 to 2011	22.2	34.9	43.2	24.4	37.9	46.8
2004 to 2012	21.8	34.4	42.7	23.7	37.0	45.7
2004 to 2013	21.6	34.0	42.2	23.4	36.6	45.2
2004 to 2014	21.3	33.6	41.8	22.9	35.9	44.4
2004 to 2015	21.2	33.4	41.6	23.0	36.0	44.6
Panel C: 2000 as start year	1 Child (%)	2 Children (%)	3 Children (%)	1 Child (%)	2 Children (%)	3 Children (%)
2000 to 2009	20.7	32.8	40.8	21.5	33.9	42.2
2000 to 2010	21.0	33.2	41.4	22.0	34.7	43.0
2000 to 2011	20.9	33.1	41.2	21.8	34.3	42.7
2000 to 2012	20.8	32.8	40.9	21.5	33.9	42.1
2000 to 2013	20.6	32.6	40.7	21.4	33.7	41.9
2000 to 2014	20.5	32.4	40.4	21.1	33.3	41.5
2000 to 2015	20.4	32.3	40.3	21.2	33.4	41.6

Notes: See chapter text for detailed description of the estimation procedure.

Betson’s Rothbarth estimates are for a family with \$55,000 of family income, and the percentage devoted to children outlays are 23.5 percent for one child, 36.5 percent for two children, and 44.9 percent for three children. The California K factor is slightly higher at 25 percent for one child, 40 percent for two children, and 50 percent for three children.

In Panel B of Table 2, Rodgers’s effort to replicate Betson’s 2004 to 2009 Rothbarth estimates yields smaller estimates. For example, the Rothbarth estimate for the All Families sample that Rodgers obtains for one child is 22.2 percent compared to Betson’s 23.5 percent. Rodgers’s estimate might be lower because it is evaluated at average family outlays of \$79,000, a full \$20,000 higher than Betson’s point estimate of \$55,000. It is well known that as family outlays and income rise, the share spent on children declines. To make Rodgers’s estimate closer to Betson’s and the California K factor, Rodgers limits his other sample—Low- and Middle-Income Families—to families with incomes less than \$75,000. This corresponds to the upper bound on family income that was used when the K factor was constructed. This simple restriction yields estimates for low- and middle-income families that exceed Betson’s estimates and are much closer to the current K factor.

As shown in Panel B, our child-outlay percentage estimates are 24.6 percent for one child (compared to California: 25 percent; Betson: 23.5 percent), 38.3 percent for two children (California: 40 percent; Betson: 36.5 percent), and 47.2 percent for three children (California: 50 percent; Betson: 44.9 percent). An important lesson here is that we can still generate reliable

estimates of the share of expenditures on children with a specification that has an explicit function and does not need to be evaluated at a particular level of outlays or income.

The important question is whether these estimates have changed since 2009. Dr. Rodgers found that adding more recent years clearly indicates that there has been a downward shift in expenditures on children at all ages—as demonstrated in Table 2, Panel B, as years since 2009 are added. For example, low- and middle-income families with one child spent on average 24.6 percent on that child from 2004 to 2009. When the data from 2010 to 2015 is added, the average spent on that child dropped to 23.0 percent. The data shows similar results for families with two children (38.3 percent to 36 percent with recent data) and three children (47.2 percent to 44.6 percent).

As Table 2 demonstrates, the highest child-outlay estimates stem from the 2004 to 2009 data. When adding 2000 to 2003 to the 2004 to 2009 data, the estimates show a uniform drop in the percentage spent on children—from 24.6 percent for one child to 21.5 percent; from 38.3 percent for two children to 33.9 percent; and from 47.2 percent for three children to 42.2 percent.

To summarize, average inflation-adjusted family income and outlays have fallen since 2009, most likely due to the continued structural decline in income, plus the Great Recession and any scarring effects that it may have had on family consumption. Consistent with that result is a decline in the share of outlays spent on children. As Dr. Rodgers’s study demonstrates, using data prior to 2004 uniformly shows lower expenditures on children. Relying on Rothbarth estimates that are derived from 2004 to 2009 may overestimate the typical or average expenditures on children. Further, evaluating the Rothbarth estimate at a particular income level may not accurately describe expenditures on children by low- and middle-income families. Limiting the sample to low- and middle-income families does a better job.⁵³ The question is how much this translates into actual dollar declines in outlays on children.

6.1.2. Lazear and Michael Approach

As an alternative methodology to Betson, Lazear and Michael (LM) define the family’s budget constraint as the sum of expenditures on adults and children, where adult (children) expenditures equal the number of adults (children) multiplied by the average expenditures on an adult (children). The estimation problem is that average expenditures on children and adults are not easily apportioned for general household bills such as the mortgage or grocery bill.

To get over this hurdle, LM makes two assumptions. First, they assume that the ratio of average child expenditures and average adult expenditures depend on a set of demographic and economic

⁵³ One of the costs of Betson’s using a quadratic in family outlays is that his expression for child expenditures depends on income. Thus, in order for Betson to calculate child expenditure estimates, he must assume values for these variables.

family characteristics (e.g., family size, number and ages of the children). If this ratio equals one, then the average family treats expenditures on children and adults equally. If the ratio exceeds one, then the family favors children relative to the adults, and if the ratio is less than one, the family favors the adults.

Second, LM create two additional ratios: total expenditures on adults (children) relative to the observed expenditures on adults (children). These two ratios express the relationship between total and observed expenditures found in the CEX data. For example, we directly observe adult clothing expenditures. We also directly observe mortgage, food, and other shared family expenditures; however, the consensus among researchers to date is that the assumptions needed to allocate shared expenditures between children and adults yield estimates of child-related expenditures that are either too big or too small.

To summarize, the three ratios used by LM to estimate child-related expenditures are the (1) ratio of average child and adult expenditures, where the ratio can be predicted by a set of demographic characteristics; (2) ratio of expenditures on adults and the observed expenditures on adults; and (3) ratio of expenditures on children and the observed expenditures on children.

These three ratios are used to write adult expenditures such that they only depend on ratio (2), the number of adults, and actual expenditures on adult clothing. These three ratios enable us to write child-related expenditures as a function of the three ratios, expenditures on adult clothing, the number of children, and the number of adults.⁵⁴

The estimation of child-related expenditures proceeds in two steps. First, Dr. Rodgers predicts the ratio of expenditures on adults and observed expenditures on adults with demographic characteristics of the family. To do this, Dr. Rodgers limits his sample to families without children and estimates the regression of total family expenditures on a family's expenditures on adult clothing, plus a variety of demographic features of the family. Using the coefficients from this regression, Dr. Rodgers constructs an estimate of the family's ratio of expenditures on adults to the observed expenditures on adults.

Next, Dr. Rodgers performs the common practice of subtracting out the share of total expenditures on child and medical care, using the same approach as Betson and others. The reason for treating child care as an "add on" is that child care expenses are zero for many families. For those with children, these expenses vary across households and can be quite significant, especially for households with preschool children. Medical care expenditures or extraordinary medical expenses are classified as the amount of expenditures that exceed \$250 per family member. There are two rationales for adjusting the Rothbarth parameters for medical care

⁵⁴ Details on those ratios are set forth in Appendix A. Estimation Method, A.2. Lazear and Michael Approach.

expenditures. First, federal regulations require state child support programs to establish and enforce medical support orders.⁵⁵ Second, medical expenses that are not covered by or exceed reimbursement levels vary a great deal across households. They, too, can comprise a large percentage of child-related expenditures.

The data for the LM analysis comes from the interview component of the CEX survey beginning in the first quarter of 2000 through the first quarter of 2016. To be included in the LM samples, the family's adults must be less than 60 years of age. Unlike Betson's approach, the Lazear and Michael approach does not limit the sample to dual-household parents. The family can have no more than six children, and the family must have participated in three or four interviews during the year. Annual averages are developed for variables that vary across the quarterly interviews (e.g., family income, adult expenditures, and outlays). Families must have positive values for their total and adult clothing expenditures and total outlays to be in the sample. There were no restrictions on imputed family income or incomplete family income records.

The summary statistics for LM samples (Panel A having no children; Panel B having children) are contained in Appendix D, Table 7. The data shows the means for inflation-adjusted (2016 dollars) adult clothing expenditures, inflation-adjusted total family outlays and after-tax family income, and the means for a variety of family demographic characteristics: number of adults, educational attainment of each spouse, race and ethnicity, labor force attachment of the spouses, region of residence, and the number of children. In comparing Panel A to Panel B, the data shows that families without children tend to have higher levels of educational attainment and stronger labor force attachments. They have higher real income and higher expenditures on adult clothing, but their outlays are lower than families with children.

In addition to the full 15-year sample from 2000 to 2015, Appendix D, Table 7 reports summary statistics based on samples for the following years: 2004 to 2009, 2004 to 2010, 2004 to 2011, 2000 to 2009, 2000 to 2010, and 2000 to 2011. The purpose of reporting these additional estimates is to assess our preferred sample's sensitivity to the addition of 2010 to 2015 CEX data. To our knowledge this is the first study to incorporate 2010 to 2015 CEX data into Rothbarth estimates of child-related expenditures. Another purpose of these comparisons is to assess the sensitivity of the samples and results to the mild recession and jobless recovery (2000 to 2003), the dramatic increase in personal consumption (2004 to 2007), the Great Recession (2007 to 2009), and the weak expansion (2010 to 2015).

The main conclusion from this comparison and the subsequent analysis is that the Rothbarth estimates should be constructed from the 15 cross sections of data from 2000 to 2015, and not from a subset of cross sections that start in 2004. Combining these four distinct periods of

⁵⁵ 45 C.F.R. § 303.31(b)(1)(i).

macroeconomic activity serve to average each other out, and thus reflect the typical or long-run relationship between family income and child-related expenditures.

Appendix D, Table 7 indicates that the demographic characteristics possess a remarkable stability across samples. The average number of adults and their educational attainment remains constant. African Americans comprise 7 to 8 percent of the samples. The table does reveal a slightly lower level of family income and outlays when the sample starts in 2000 as opposed to 2004. This is because the 2000 to 2003 survey years contain a mild recession and weak recovery. For example, after the National Bureau of Economic Research declared that the eight-month recession that ran from March 2001 to November 2001 was over, it took well over 30 months before payroll employment growth became positive. Inflation-adjusted expenditures on adult clothing are slightly higher (\$50) in samples when 2000 to 2003 are included, which implies that child-related expenditures will be slightly lower in these samples.

6.2. Estimation of Child Expenditures

Based on Dr. Rodgers's regression estimates in Appendix D, Table 8 and the estimated coefficients and estimates of the ratio of average child and adult expenditures for the various samples presented in Appendix D, Table 9, Dr. Rodgers's study indicates that the average family spent 52.7 percent to 68.2 percent as much on a child as on an adult, or \$53 to \$68 per child for every \$100 per adult. The percentage falls as the number of children increases.

Dr. Rodgers generated estimates of the ratio of average child and adult expenditures for 2000 to 2009, 2000 to 2011, 2004 to 2009, 2004 to 2011, and 2000 to 2015. The primary goal of these models is to identify whether the model estimates are sensitive to the variety of macroeconomic conditions that occurred from 2000 to 2015. Dr. Rodgers focused his attention on the recovery from the Great Recession. He discovered mixed results when more recent years are added to the sample with no consistent pattern of increase or decrease. However, going from 2010 to 2015, the percentages spent on children actually fell. These two findings are independent of whether 2000 or 2004 is used as the initial year of the sample.

Dr. Rodgers also analyzed the impact on the ratio of average child and adult expenditure estimates if the samples start in 2004. If the years of the mild recession and "jobless" recovery (2000 to 2003) are dropped, there is an increased expenditure estimate. This finding makes sense because the 2000 to 2003 survey covers a period of slower economic growth and thus lower expenditures and outlays.

This means that families with a child who have one additional child have a ratio of per-child expenditure to per-adult expenditure that is lower by 0.111. From 2000 to 2011, the additional child is associated with an \$11.10 decrease in child expenditures per existing \$100 of adult expenditure. The decline per child is less than the increased expenditure on the additional child. Using more recent data lowers this amount to \$4.30 (2000 to 2015).

Appendix D, Table 9 reports the estimated coefficients for the number of children for the five different samples. Including the recovery years (2011 to 2015) reveals that as the number of children increases, smaller declines in child expenditures per existing \$100 of adult expenditure are observed. The estimated coefficients are -0.081 and -0.043 , compared to the -0.105 that was estimated in the 2004 to 2009 sample. This evidence indicates that the weak recovery explains some of the drop in child-related spending associated with having more children.

6.3. LM-Rothbarth Estimators

With estimates of child-related expenditures, Rodgers then builds the Rothbarth estimators, child-related expenditures as a proportion of net family income. Rodgers defines the following terms:

EC/C = Expenditures on children as a proportion of consumption expenditures

CC/C = Child care expenditures as a proportion of consumption expenditures

M/C = Medical expenditures as a proportion of consumption expenditures

C/NI = Consumption expenditures as a function of net income

EC^*/NI = Adjusted expenditures on children as a proportion of net income

$EC^*/NI = (EC/C - CC/C - M/C) \times C/NI$

The task is to build estimates of these six measures. The estimates of child care (CC) and medical expenditures (M) deserve some attention.

As explained earlier, child care expenditures are treated as an “add-on” to the child-related expenditures because there is significant variation among households and zero cost for a subset of households. In households with child care costs, such costs typically represent a significant share of total child expenditures, especially for preschool children. Further, excluding child care costs maximizes the custodial parent’s (CP’s) marginal benefits of employment.

Medical expenses also are treated as an “add-on” to the child-related expenditures for two reasons. First, state child support programs must establish and enforce medical support orders. Second, medical expenses that are not covered by, or that exceed, insurance reimbursement can vary a great deal across households and can comprise a large percentage of child-related expenditures.

To determine child expenditures for the purpose of developing an appropriate base child support guideline amount, both child care and medical expenditures are deducted (because they are later added to the guideline amount) from total expenditures on children as proportions of consumption expenditures. The child expenditure proportion of consumption is then compared to the consumption proportion of net income to arrive at the percentage of net income for child

expenditures, as demonstrated in Appendix D, Table 11A for different income intervals, CEX data years, and one to three children.

Table 3⁵⁶ compares this study’s estimates of child-related expenditures as a percentage of net income to those found in previous reports, literature, and the replicated and updated Rothbarth estimates.

Table 3: Summary of Estimates of Child-Related Expenditures

Study Name	1 Child (%)	2 Children (%)	3 Children (%)
CA K Factor for Low and Moderate Income	25.0	40.0	50.0
Percent of Total Expenditures			
Lazear and Michael (1972 to 73)	19	31	39
Betson-Rothbarth (1980 to 86)	25	37	44
Betson-Rothbarth (1996 to 98)	26	36	42
Betson-Rothbarth (1996 to 99)	25	35	41
Betson-Rothbarth (1998 to 2003)	26	37	44
2004 to 2009 Percent of Total Outlays			
California Betson-Rothbarth	24	37	45
All Families—Rodgers-Betson-Rothbarth	22	35	43
All Families—Rodgers-LM-Rothbarth	22	24	33
Low and Moderate Income—Rodgers-Betson-Rothbarth	25	38	47
Low and Moderate Income—Rodgers-LM-Rothbarth	24	27	37
<i>Notes: See text for description of how the Rodgers estimates are constructed.</i>			

The key takeaway from the table is that “low and moderate” income Betson-Rothbarth estimates come the closest to California’s K factors, and they do a better job than Betson’s prediction method where he sets the family’s income to \$55,000. This is because this study’s “low and middle” income estimates are derived from a sample of households where the income does not exceed \$75,000. Dr. Rodgers used this threshold because the California K factors are based on families with yearly incomes of less than \$79,932.⁵⁷ Revised estimates will limit the sample to families with incomes greater than \$9,612 and less than \$75,000.

⁵⁶ For a full discussion of Table 3, see Appendix C. LM-Rothbarth Estimators, and Appendix D, Table 10.

⁵⁷ The K factor is based on families with monthly income ranging from \$801 to \$6,661 per month.

Table 4⁵⁸ demonstrates the impact to the estimates of adding more recent years of CEX data, as well as adding years prior to 2004.

Table 4: Summary of Rodgers Rothbarth Estimates of Child-Related Expenditures, 2000 to 2015

Panel A: All Families	Betson-Rothbarth (%)			Lazear-Michael-Rothbarth (%)		
2004 to Present	1 Child	2 Children	3 Children	1 Child	2 Children	3 Children
2004 to 2009	22.2	34.8	43.2	21.6	24.4	33.4
2004 to 2010	22.5	35.4	43.8	20.8	25.0	33.1
2004 to 2011	22.2	34.9	43.2	21.1	26.1	35.5
2004 to 2012	21.8	34.4	42.7	18.6	24.9	31.2
2004 to 2013	21.6	34.0	42.2	19.1	24.0	32.5
2004 to 2014	21.3	33.6	41.8	19.7	24.9	33.6
2004 to 2015	21.2	33.4	41.6	19.1	24.5	32.8
2000 to Present						
2000 to 2009	20.7	32.8	40.8	22.0	24.4	28.9
2000 to 2010	21.0	33.2	41.4	21.1	23.2	29.5
2000 to 2011	20.9	33.1	41.2	21.5	23.5	31.0
2000 to 2012	20.8	32.8	40.9	18.6	24.3	28.5
2000 to 2013	20.6	32.6	40.7	18.8	23.8	31.5
2000 to 2014	20.5	32.4	40.4	19.2	24.1	32.6
2000 to 2015	20.4	32.3	40.3	19.2	24.1	30.8
<i>Notes: See end of table.</i>						

This report’s estimates using both Betson-Rothbarth and LM-Rothbarth suggest that the Great Recession and weak expansion had an impact on child-related expenditures as a function of total outlays for both the All Families and Low- and Middle-Income Families samples. All of the estimates derived from samples that start in 2004 fall when the 2010 to 2015 data are included. Appendix D, Table 11B shows that the shifts are distributed across all 22 income intervals. Expenditures uniformly shift downward when the recession years are added to the model, shift upward when the first recovery year is added, and shift downward when 2011 is added. The slight downward trend in the estimates even exist when the sample is limited to “low and middle” income families. The only time the downward trend does not exist is when years prior to 2004 are added to the analysis.

In summary, the Betson estimation using the CEX data years 2000 to 2015 with the sample limited to low and middle-income families best reflects the California K factors and describe

⁵⁸ For a full discussion of Table 4, see Appendix C. LM-Rothbarth Estimators, and Appendix D, Tables 11, 11A, and 11B.

long-run average family expenditures on children. Today's economy is healthy but late in its current business cycle and a recession may be on the horizon, which would mean lower child-related expenditures.

To further explore using the LM-Rothbarth estimates, Dr. Rodgers recommends using the CEX data from 2000 to 2015 and limiting the sample to low- and middle-income families. Although the estimates generated by that approach are lower than the California K factors, a nice feature of the LM-Rothbarth estimates is that they are much more stable over time than the Rothbarth estimates. They do not trend downward. Since they are lower than the Betson-Rothbarth parameters, it would be important to conduct simulations and measure the obligation differences between the two approaches.

7. Justification for Additional Original Research

Additional original research would further inform a recommended revision to the California statewide uniform child support guideline. Such research could address the following areas.

1. It may be appropriate to update the California K factor. Much has changed about the U.S. economy, as well as the California economy, and how families allocate resources on their children. Additional research would provide information about whether the current California K factor is based on appropriate income levels given California's economy and patterns of expenditures over time.
2. Because the LM-Rothbarth estimates based on the CEX years from 2000 to 2015 are lower than the Betson-Rothbarth parameters, it would be important to conduct simulations and measure the obligation differences between the two approaches, to further evaluate using the LM-Rothbarth estimates.
3. We need to continually refine our recommended measures based on the results of the case data sampling, focus groups, and envisioning workshop.
4. Our literature reviews will inform a discussion of a low-income adjustment, self-support reserve, and the impact of zero dollar orders in some cases, which should be considered along with the economic estimates in this report.
5. There are new statistical tools such as nonparametric models that could be used to address some of the statistical and econometric limitations.

6. This report only examines expenditures on children. The California formula contains other variables that may have changed over time, such as the income intervals. They have not been changed since the development of the formula.
7. This report complies with federal regulations that currently apply to states. However, the new final rule requires states, within one year after completion of the state's next quadrennial review that commences more than one year after December 20, 2016, to consider not only economic data on child-rearing expenditures but also a number of other factors.

8. Research Limitations and Challenges

There is no perfect model or specification for estimating child-rearing expenditures. Each has its strengths and weaknesses. Further, as Lino (2017) concludes, “Expenses vary considerably by household income level, region, and composition, emphasizing that a single estimate may not be applicable to all families.”⁵⁹

One challenge is whether to use a “direct” or “indirect” approach toward determining child-rearing expenditures. In each case, assumptions have to be made and, as a result, there are limitations. The two indirect approaches that child support guidelines rely on are Engel and Rothbarth.

Because it uses an indirect approach, the Engel methodology uses adult expenditures to infer expenses on children. A major limitation of the Engel methodology is that it uses food as a proxy for a family's standard of living. This is problematic because relative to adults, expenditures on food for children are proportionately larger than those for adults. As a result, its estimates of child-rearing expenditures are biased upward. More recently, some economists have concluded, as a result of further study, that the Engel methodology has no theoretical basis for measuring the cost of children.⁶⁰

The Rothbarth estimator also has limitations because of its indirect approach. For example, a major limitation of the Rothbarth estimator is that the CEX definition of adult clothing actually captures clothing purchases for older children as well. This is problematic because the household budget share devoted to adult clothing is used as a proxy to identify whether households with and without children are equally well off.

⁵⁹ Lino, *supra* note 42, p. 22.

⁶⁰ See Betson, *supra* note 33, pp. 151–152.

A limitation of both the Engel and Rothbarth estimators, as noted by Lino, is that they are not true marginal cost approaches:

A true marginal cost approach examines additional expenditures a family makes because of the presence of a child in the household—how much more the family spends on housing, food, and other items because of the child. A true marginal cost approach would track the same sample of families over time. Marginal cost approaches, as implemented, do not do this. They examine two different sets of families, those with children and those without children, at one point in time. Hence, the term “marginal cost” approach is somewhat of a misnomer.⁶¹

This is more a data problem than a problem with the theory behind the Rothbarth estimates. Unfortunately, there are no good longitudinal data sets that track expenditures of the same sample of families over time.

In contrast to Engel and Rothbarth, the USDA uses a direct approach of calculating child-rearing expenditures. A major limitation of the USDA methodology is that it must make assumptions about how to allocate “shared” expenditures on items such as housing, food, transportation, health care, and miscellaneous goods and services. The USDA either assumes a per capita distribution of expenditures across children, or relies on “findings from authoritative research (food and health care)”⁶² to base allocation decisions. Most economists agree the per capita approach overstates actual child costs. Recently the USDA modified that per capita approach when calculating the child’s share of total family housing costs. There are also a number of issues related to the USDA’s use of a Tobit model.⁶³

A second challenge is deciding on the appropriate CEX survey years to use. The macro economy has behaved wildly since the late 1990s: major economic expansion, weak recession, jobless recovery, the Great Recession, another jobless recovery, and now a very modest economic expansion. Which period best reflects the typical and current expenditure patterns on children?

⁶¹ Lino, *supra* note 42, p. 17.

⁶² *Id.* at p. 16.

⁶³ The researchers use a Tobit specification to model the presence of families with zero expenditures. The Tobit model requires normality and homoscedasticity assumptions. If either are violated, the estimates are biased. There are now well-developed nonparametric models (e.g., median regression) that require weaker assumptions that yield unbiased estimates. Second, the Tobit model is best used when the dependent variable takes on values close to the limit, which is typically assumed to be zero. But in the context of family expenditures, Lino’s designation is not appropriate. For most types of family expenditures such as child care, it is not possible to have an expenditure that is close to zero. It is true that 50 percent of Lino’s sample reports no child care expenditures; however, the “true” limit is not zero child care expenses. The limit is probably at some base level that is determined by the market or government subsidy. As a result, Lino’s Tobit models estimates are potentially biased.

A third challenge is the uniqueness of the California economy as compared to the U.S. economy in general. Within the state, there is a tremendous amount of diversity. How do we develop estimates of child expenditures that best reflect the typical experience of California families?

Because there is so much heterogeneity in expenditures on children, another challenge is keeping “politics” out of the choice of estimates.

The ultimate challenge is to find the best economic rationales and methodological and statistical approaches that collectively create fair and reasonable estimates of child-rearing expenditures.

9. The K Factor

In 1984, federal law required states to establish guidelines for setting child support awards. The guidelines had to be based on specific descriptive and numeric criteria and had to be available to all judges who determined child support awards.⁶⁴ However, at that time, the guidelines were discretionary, not binding. In compliance with federal law, California enacted the Agnos Child Support Standards Act of 1984.⁶⁵ It created a mandatory minimum award. The Agnos Child Support Standards required the court to multiply the total family income by certain percentages that varied based on the number of children in the case. The resulting amount was compared to the public assistance amount of an AFDC (Aid to Families with Dependent Children) grant for the same number of children. The minimum order amount was the lower of the two amounts, apportioned between the parents based on their incomes.

The minimum support order provided for only basic needs, and courts were required to order a higher amount in appropriate cases. For that higher amount, they were to use either their own discretionary guideline or one developed by the Judicial Council.⁶⁶

In 1986, the Judicial Council adopted a formula for setting a discretionary child support award above the mandatory minimum of the Agnos Child Support Standard. It was based primarily on the Santa Clara schedule. The Judicial Council formula was the same formula used today in California: $CS = K[HN - (H\%)(TN)]$. The K factor changed as combined income increased:

⁶⁴ Child Support Enforcement Amendments of 1984 (Pub. L. No. 98-378, 98 Stat. 1305).

⁶⁵ Former Cal. Civ. Code §§ 4720–4732 (added by Stats. 1984, ch. 1605, operative July 1, 1985).

⁶⁶ Former Cal. Civ. Code § 4724.

Total Net Income per Month	K (Amount of Combined Income Allocated for Child Support)
\$0–\$1,667	$K = 0.26$
\$1,668–\$4,999	$K = 0.20 + 100/TN$
\$5,000–\$10,000	$K = 0.16 + 300/TN$
Over \$10,000	$K = 0.12 + 700/TN$

In 1988, Congress enacted the Family Support Act of 1988. It required states to establish a statewide uniform support guideline. States had to provide that there was a rebuttable presumption that application of the guidelines resulted in the appropriate support award. In order to comply with the federal requirements, the Judicial Council, at the direction of the state legislature, adopted California Rules of Court, rule 1274. It was based largely on the prior discretionary guideline with modifications.⁶⁷ Because of controversy over the shared custody provisions in rule 1274, the state legislature ultimately enacted a compromise statute in 1992.⁶⁸ In 1993, the legislature made a number of changes to the child support guideline, including changes to the percentage of income allocated to children (the K factor).⁶⁹ According to the 1993 Judicial Council *Review of Statewide Uniform Child Support Guideline*, this technical change was made to smooth out the reduction in child support as income rises.⁷⁰ The chart below reflects the old and new provisions at the time of the 1993 changes.

Total Net Income Per Month	Old K factor		Total Net Income Per Month	New K factor in 1993
\$0–\$800	$0.20 + TN/16,000$		\$0–\$800	$0.20 + TN/16,000$
\$801–\$7,000	0.25		\$801–\$6,666	0.25
\$7,001–\$10,000	$0.20 + 350/TN$		\$6,667–\$10,000	$0.10 + 1000/TN$
\$10,001–\$20,000	$0.16 + 400/TN$		Over \$10,000	$0.12 + 800/TN$
Over \$20,000	$0.12 + 800/TN$			

The 1993 report notes the following about the K factor:

K is the percent of income allocated for child support. This number is loosely based on the findings of van der Gaag and Espenshade on the amounts intact families spend on children. This K factor, though, has been modified over the years and thus no longer completely reflects those findings. However, it should be noted that the determinations made by van der Gaag and Espenshade have themselves have been

⁶⁷ Judicial Council of Cal., *Review of Statewide Uniform Child Support Guideline* (Dec. 1993), p. 14.

⁶⁸ Stats. 1992, ch. 46.

⁶⁹ See Stats. 1993, ch. 1156 (Sen. Bill 541).

⁷⁰ Judicial Council of Cal., *Review of Statewide Uniform Child Support Guideline* (Dec. 1993), p. 21.

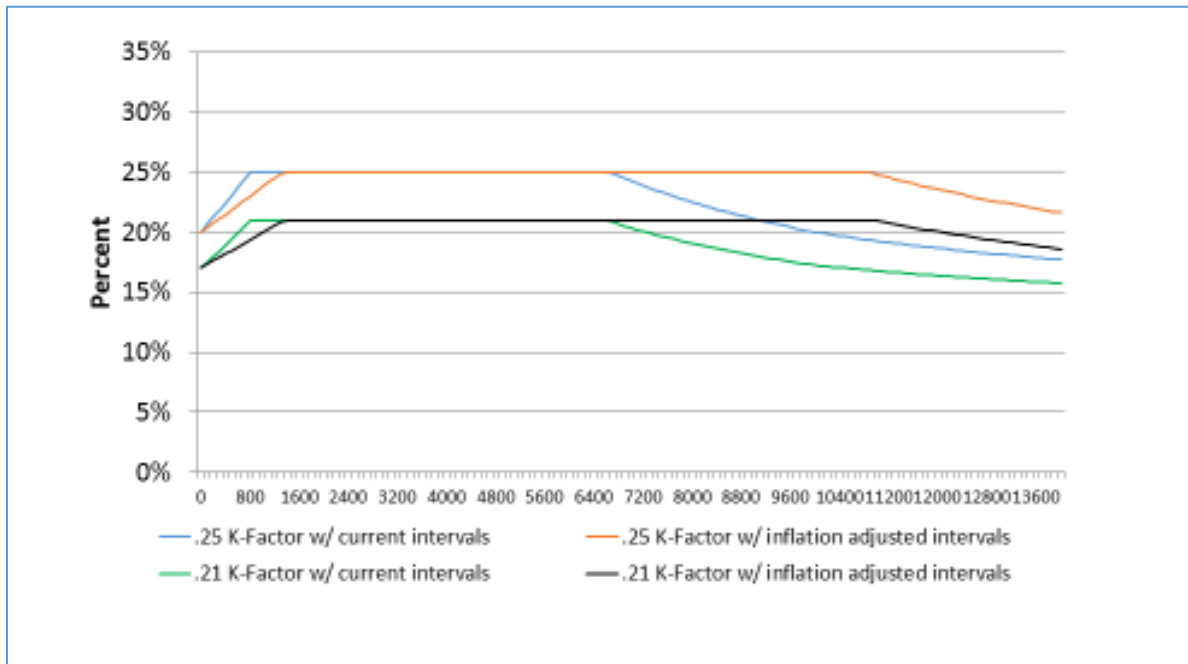
subject to criticism from some people on both sides of the issue. ... In addition, the data used are now over 20 years old.⁷¹

The child support formula used today in California is the same as that enacted in 1993. In the nearly 25 intervening years, there have been no changes to the income intervals, the amount of combined income allocated for child support (the K factor), or the multiplier for additional children. It is appropriate to consider whether the current guideline formula calculates appropriate child support obligations, given current studies on the cost of raising children and deviation findings from the 2017 California case data review.

9.1 The Impact of the K Factor

To further assess California’s current guideline, we investigated the impact of various potential modifications to the existing K factor. We first examined the impact of modifying the K factor to 0.21 from the current 0.25 and then calculated inflation-adjusted intervals. The results of these modifications are shown below in Exhibit 1.

Exhibit 1: K Factor Based on Current Formula and Betson-Rothbarth Cost of One Child Estimates by Cost of Living Adjustment



The blue line on the graph represents the current K factor, with the 0.25 K factor “anchor.” It shows that from \$0 to \$800 income, the K factor used in support calculations is between 0.20 and 0.25. At an income of \$801, the K factor rises to 0.25, where it plateaus until net income

⁷¹ *Id.* at p. 31.

reaches \$6,666. At \$6,667, the K factor—and the percentage of an individual’s net income that is used to calculate child support—begins to decline. At approximately \$10,000 monthly income, the percentage declines below the percentages used to calculate the lowest income earners’ child support obligations.

The red line on the graph represents the current K factor with income adjusted for inflation. Between 1993 and 2016, the Consumer Price Index (CPI) has increased an average of 2.8 percent per year. Eight hundred dollars in 1993 dollars equates to approximately \$1,300 in today’s dollars. When an adjustment for inflation is factored in, more low-wage earners have a K factor between 0.20 and 0.25. However, the 0.25 K factor plateau is larger; the decrease in the percentage does not begin until earnings reach over \$11,000 monthly. That means far more high-wage earners—those with incomes between \$6,667 and approximately \$11,000—would have their child support obligation calculated using 0.25 as the K factor, and would potentially have higher child support awards. At the other end of the earnings scale, lower-income obligors would pay a slightly smaller fraction of their net disposable income, as the inflation adjustment extends the fractions lower than 25 percent to an income level approaching \$1,300 per month. The percentage of net disposable income that higher-wage earners would pay remains above the level paid by the lowest income earners.

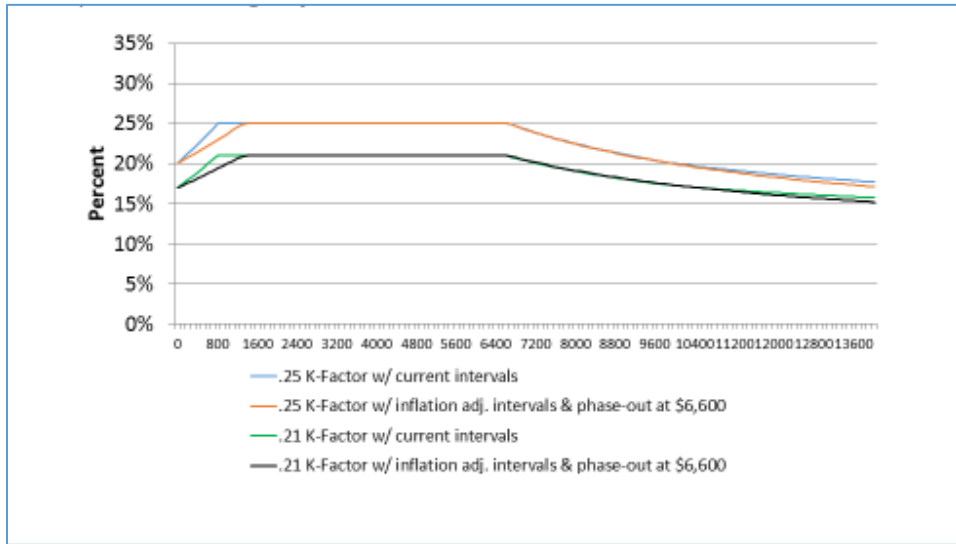
The Betson-Rothbarth model suggests that a 0.21 K factor anchor (rather than the current 0.25 anchor) more accurately reflects the percentage of income parents spend on their children. As such, we have recalculated K factor at various income levels, using 0.21 as an anchor. Accordingly, we have shifted the low-income K factor to approximately 0.17, reflecting the four percentage-point difference in the shift between 0.25 and 0.21. The green line represents the K factor at 0.21 using the current income bands (\$0 to \$800, \$801 to \$6,666, and so on). The black line in the graph is a 0.21 K factor with the same aforementioned adjustment for inflation.

With a 0.21 K factor, an adjustment for inflation would subject obligors with monthly earnings between \$6,667 and approximately \$9,200 to higher proportions of their net disposable income going toward child support (from the point where the blue and black lines intersect). However, the income range subject to the 0.21 K factor combined with an adjustment for inflation (\$6,667 to \$9,200) is less than what it would be using the 0.25 K factor combined with the inflation adjustment (\$6,667 to \$11,000). Additionally, the 0.21 K factor for the highest income earners never decreases to a level lower than the proportion of income that the lowest level earners would pay.

One way to avoid having a high number of cases subject to an increase in their obligations due to an inflation adjustment is to retain the current phase-out, which starts at \$6,667 per month. Exhibit 2 below graphically presents the impact of this change. The phasing out of the plateau beginning at \$6,667 a month eliminates the difference between the current 0.25 K factor (blue

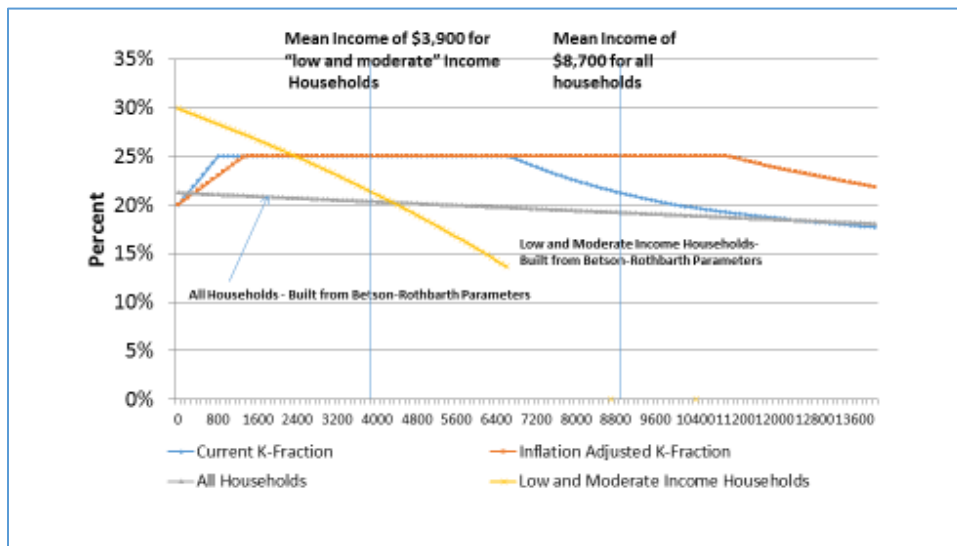
line) and the 0.25 K factor adjusted for inflation (red line) at all but the very lowest and very highest income levels. The same result is achieved when considering a 0.21 K factor (green line) and a 0.21 K factor adjusted for inflation (black line).

Exhibit 2: K Factor Based on Current Formula and Betson-Rothbarth Cost of One Child Estimates With Phase-Out at \$6,667 by Cost of Living Adjustment



In Exhibit 3, below, we contrast the current 0.25 K factor and the 0.25 K factor with an adjustment for inflation with the proportion of total net disposable income used per month to raise one child. The blue line in the graph and the red line in the graph represent the current 0.25 K factor and the 0.25 K factor with an inflation adjustment, respectively. The green line represents the percentage of disposable net income spent on raising children for all households, as derived from Betson-Rothbarth parameters from 2000 to 2015. Finally, the purple line represents the percentage of net disposable income expended by low- and moderate-income households (up to \$75,000 annually) on raising children.

Exhibit 3: 0.25 K Factor and Costs of Raising Children by Total Net Disposable Income Per Month



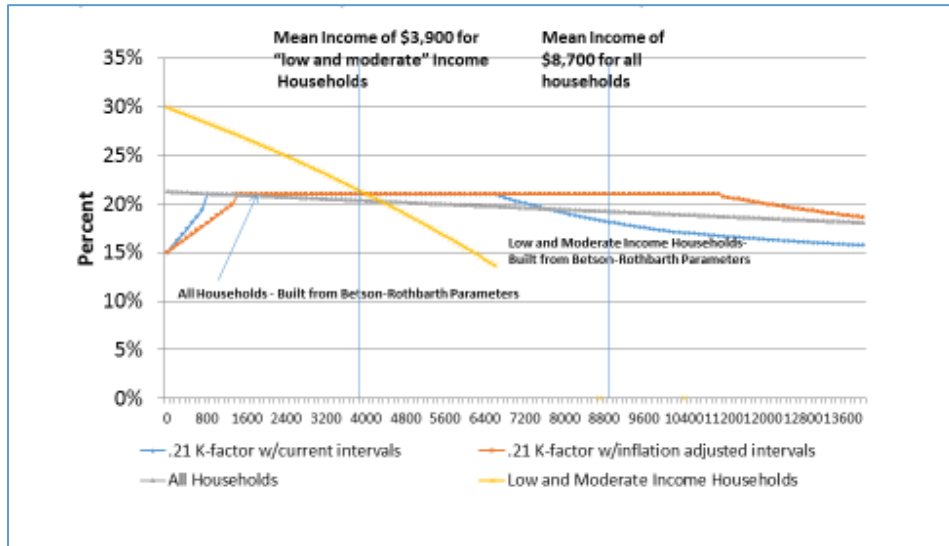
For all households (green line), with the exception of the very lowest income earners, the percentage of income expended on raising children is below the 0.25 K factor. The difference gradually increases until income levels reach \$7,000 per month, then decreases until the K factor and actual expenditures are equal at around \$12,400 monthly. The K factor remains slightly higher than the actual expenditures at \$8,700 per month, the mean income for all households. Comparing all households with the current K factor adjusted for inflation (red line), a similar relationship exists as with the current K factor, with the main difference being that the percentage of income expended by all households remains below the K factor for all but the lowest incomes. Even at the \$14,000 per month income level, the average expenditure is three percentage points lower than the K factor adjusted for inflation.

If we look at just low- and moderate-income households, the lowest-level earners in this group are spending a much higher percentage of their income to raise children than most other households, at 30 percent. However, this level of expenditure decreases at a much more rapid rate than for all households, moving below the 0.25 K factor at an income of \$2,800 a month. Low- and moderate-income households spend considerably less than the 0.25 K factor at the upper limits of their income range, with the difference approaching 10 percentage points at \$7,000 per month. At the mean income for low- and moderate-income households, \$3,900 per month, the expenditures among this income group are a few percentage points below the K factor.

Comparing expenditures for raising children against a 0.21 K factor, as shown in Exhibit 4 below, we see that the expenditures by all households (green line) remain below the K factor, with the exception of the lowest earning levels, until a monthly income of \$7,700 to \$1,000 per

month less than the mean income for all households is attained. From this income level upward, the K factor amount is less than household expenditures. The difference increases as income levels increase. The 0.21 K factor with the inflation adjustment remains slightly higher than actual household expenditures for all but the lowest income levels.

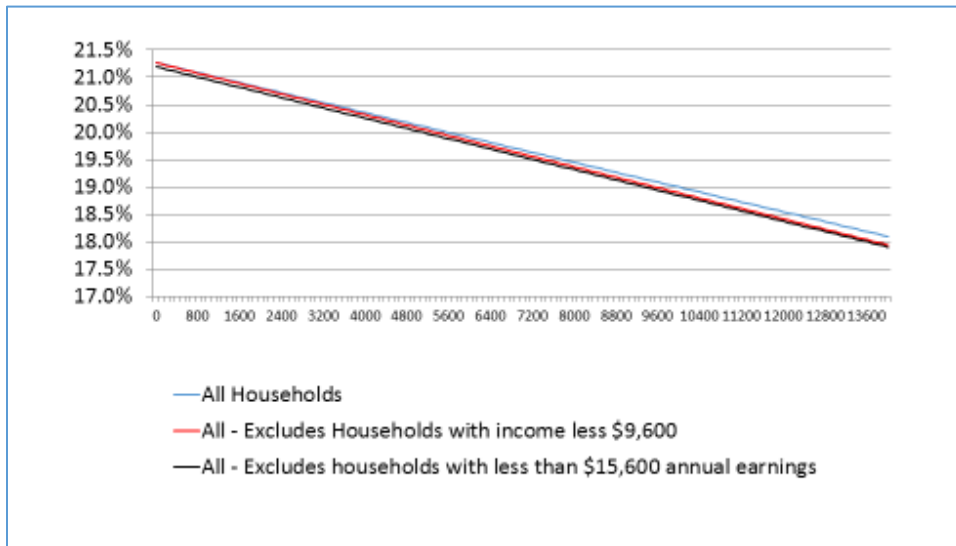
Exhibit 4: 0.21 K Factor and Costs of Raising Children by Total Net Disposable Income Per Month



Given the large differences in the child-rearing expenditures between people at low- and moderate-income levels and all others, our focus shifted to examining the predicted costs of raising one child for all income levels, and then excluding those households with incomes of less than \$9,600 annually (\$800 per month) and those households with incomes of less than \$15,600 annually (\$1,300 per month, representing \$800 per month adjusted for inflation).

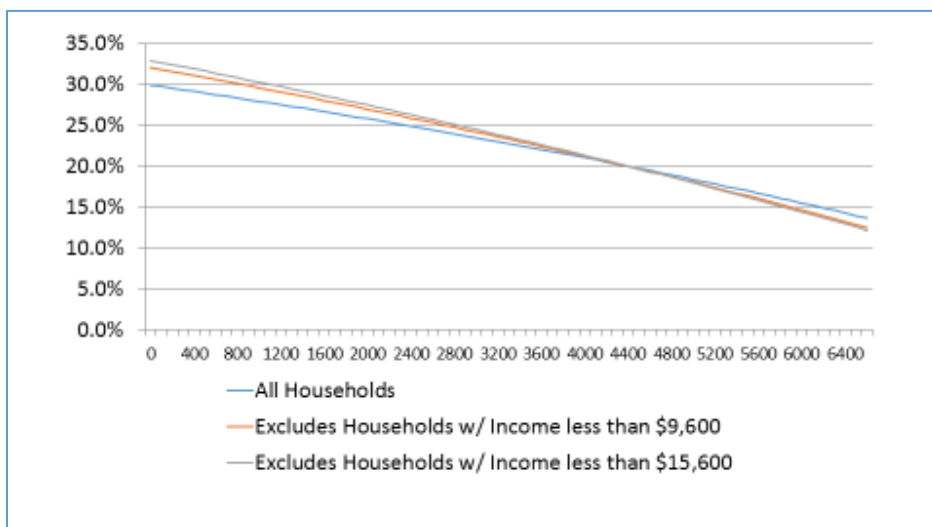
Exhibit 5 below shows the results of these predicted costs, based on Betson-Rothbarth parameters for 2000 to 2015. The blue line represents all households. The red line shows expenditures for all households, but excludes those households earning less than \$9,600 annually, \$800 monthly. The black line excludes the households with annual earnings of less than \$15,600. The table clearly indicates that the average predicted expenditures for one child stay almost the same regardless of whether that average includes the lowest income earners, and the average proportion of household income expended for raising one child at its highest is less than the current K factor of 0.25. These data may support moving to a 0.21 K factor to more closely align household costs on child rearing with child support obligations.

Exhibit 5: Predicted Costs of One Child Based on Betson-Rothbarth Parameters for 2000 to 2015



However, given the large number of low- and moderate-income households in the IV-D child support caseload, it is important to examine the predicted costs of raising one child for this population using the same Betson-Rothbarth parameters. As Exhibit 6 below shows, the child-rearing expenditure levels for the low- and moderate-income population are very different from those of all income levels.

Exhibit 6: Predicted Costs of One Child Based on “Low and Moderate” Income Households and the Betson-Rothbarth Parameters for 2000 to 2015



The graph in Exhibit 6 shows that low- and moderate-income households spend much more than the current 0.25 K factor, especially at the lowest income levels. It is not until household

incomes reach approximately \$2,800 per month that the expenditures equal the 0.25 K factor. Only at a household expenditure level of \$4,500 would costs equal a 0.21 K factor. Whether California adopts a 0.21 K factor or continues to use 0.25 as the anchor, there is a large gap between what a low-income household spends on raising children as a percentage of their income, versus the K factor used to calculate the child support obligation. This data suggests that additional study is warranted with regard to appropriate child support orders for children whose parents are poor.

As noted earlier, guideline support is calculated using the following formula:

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

where

CS = Child support order

K = K factor as determined by the chart below

If H% is less than or equal to 50%, then K is calculated by adding 1 to the H% (1 + H%) and then multiplying it by the relevant K fraction from the box below.

If H% is greater than 50%, K equals 2 minus H% (2 - H%) multiplied by the pertinent K fraction that corresponds to the household's total net disposable income.

HN = Higher wage earner's net income

H% = The higher wage earner's timeshare

TN = Both parents' total net incomes combined

Total Net Income Per Month (TN)—1993 dollars	K factor
\$0–\$800	0.20 + TN/16,000
\$801–\$6,666	0.25
\$6,667–\$10,000	0.10 + 1000/TN
Over \$10,000	0.12 + 800/TN

As noted earlier in this chapter, the incomes associated with calculating the K factor have not been updated since 1993. The chart below illustrates a change in K factor income bands, with income adjusted for inflation.

Total Net Income Per Month (TN)—2017 dollars	K factor
\$0–\$1,300	0.20 + TN/16,000
\$1,301–\$11,000	0.25
\$11,001–\$14,000	0.10 + 1000/TN
Over \$14,000	0.12 + 800/TN

This review also suggests that the “anchor” K factor of 0.25 may be too high, and that a K factor of 0.21 more accurately represents the percentage of income a parent spends on his or her children. The chart below illustrates the change from a 0.25 to a 0.21 anchor K factor.

Total Net Income Per Month (TN)—1993 dollars	K factor
\$0–\$800	$0.17 + TN/16,000$
\$801–\$6,666	0.21
\$6,667–\$10,000	$0.10 + 725/TN$
Over \$10,000	$0.12 + 525/TN$

And finally, the chart below represents the anchor 0.21 K factor, with income bands adjusted for inflation.

Total Net Income Per Month (TN)—2017 dollars	K factor
\$0–\$1,300	$0.17 + TN/16,000$
\$1,301–\$11,000	0.21
\$11,001–\$14,000	$0.10 + 725/TN$
Over \$14,000	$0.12 + 525/TN$

To illustrate how the K factor affects the guideline support amount, we have crafted four basic child support scenarios. Each scenario is followed by a chart. The first column specifies the K factor used. The second column specifies the calculated child support. The third column displays the increase or the decrease (shown in parentheses) of the calculated child support amount using an alternative method, as compared to the amount calculated using the current K factor.

For a full description of the alternatives considered in the scenarios below, see Exhibit 1 at the beginning of this section.

Scenario 1

One dependent

Noncustodial parent is the higher wage earner with a net monthly income of \$900

Custodial parent has zero net income

Noncustodial parent has timeshare of 25%, or 0.25

K factor calculation used	K factor ⁷²	Calculated support	Difference
Current model	0.313	\$210.94	–
0.25 anchor; income adjusted for inflation = $0.20 + TN/16,000$	0.320	\$216.21	\$5.27
Anchor at 0.21	0.263	\$177.19	(\$33.75)

⁷² $K = k \text{ fraction} \times (1 + H\%)$ since $H\% < 50\%$

0.21 anchor; income adjusted for inflation = 0.17 + TN/16,000	0.283	\$191.03	(\$19.91)
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Scenario 2

One dependent

Noncustodial parent is the higher wage earner with a net monthly income of \$7,000

Custodial parent earns monthly net income of \$1,000

Noncustodial parent has timeshare of 25%, or 0.25

K factor calculation used	K factor	Calculated support	Difference
Current model: K = 0.10 + 1000/8000	0.281	\$1,406.25	–
0.25 anchor; income adjusted for inflation	0.313	\$1,562.50	\$156.25
Anchor at 0.21	0.238	\$1,191.41	(\$214.84)
0.21 anchor; income adjusted for inflation	0.263	\$1,312.50	(\$93.75)

Scenario 3

One dependent

Noncustodial parent is the higher wage earner with a net monthly income of \$8,000

Custodial parent earns \$3,000 net monthly income

Noncustodial parent has timeshare of 25%, or 0.25

K factor calculation used	K factor	Calculated support	Difference
Current model = 0.12 + 800/TN	0.241	\$1,264.77	–
0.25 anchor; income adjusted for inflation	0.3125	\$1,640.63	\$375.86
Anchor at 0.21	0.210	\$1,100.71	(\$164.06)
0.21 anchor; income adjusted for inflation	0.207	\$1,088.78	(\$175.99)

Scenario 4

One dependent

Noncustodial parent is the higher wage earner with a net monthly income of \$8,500

Custodial parent earns \$3,500 net monthly income

Noncustodial parent has time share of 25%, or 0.25

K factor calculation used	K factor	Calculated support	Difference
Current model = 0.12 + 800/TN	0.233	\$1,283.33	–

0.25 anchor; adjusted for inflation = $0.10 + 1000/TN$	0.229	\$1,259.50	(\$23.83)
Anchor at 0.21	0.205	\$1,125.78	(\$157.55)
0.21 anchor; income adjusted for inflation = $0.10 + 725/TN$	0.201	\$1,102.86	(\$180.47)

Note: The numbers in the charts above are approximate. Calculators produce slightly different results, including the DCSS Guideline calculator, depending on how they handle rounding of percentages.

These scenarios don't necessarily reflect the complexities in most child support orders. The calculators also do not reflect the nuances associated with determining the low-income adjustment, or any hardships or add-ons (such as child care costs) that are frequently accounted for in child support orders. However, they do illustrate the interaction between the K factor anchor, and different income bands, which determines the amount of the child support obligation.

10. Conclusion

Most state child support guidelines, including California's, are based on the concept that the amount ordered for child support, combined with the resident parent's expenditures on the child, should approximate the total amount of expenditures for the child that the parents would have made if they had lived together with the child. Therefore, most states, including California, use estimates on child-rearing expenditures of intact families as the basis for their support guidelines.

This report examines the historical economic research on child-rearing expenditures. California's guidelines are based on Rothbarth estimates, which is the estimator used by the majority of child support guidelines. This report also examines more recent economic research on child-rearing expenditures.

For this review's child-rearing estimates, Dr. Rodgers examined alternative methodologies for updating California's guideline. For one approach, he used the Betson-Rothbarth estimates but updated them to include CEX data from a much more expansive period. He constructed estimates from a number of years and concluded that the most accurate reflection of child-rearing expenditures was based on use of CEX data from 2000 to 2015. The pooling of the 15 years more accurately captures the substantial fluctuations of the U.S. economy. It essentially averages out the extreme variation in macroeconomic activity that has occurred in recent U.S. history: the peak of the 1990s boom, a mild recession and jobless recovery from 2000 to 2003, the dramatic increase in personal consumption and household debt that occurred from 2004 to 2007, the Great

Recession that lasted from 2007 to 2009, and the modest recovery from 2010 to 2015. Because California's K factor is based on a sample of low- and middle-income families, Rodgers constructed two samples—one composed of all families and one composed of families with yearly incomes less than \$75,000, which corresponds to the upper bound of the K factor.

Dr. Rodgers also constructed child-rearing expenditure estimates using Lazear's and Michael's approach to Rothbarth estimates.

Dr. Rodgers concluded that the Betson estimation using the CEX data years 2000 to 2015 with the sample limited to low- and middle-income families, best reflects the California K factors and describe long-run average family expenditures on children.

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Chapter C

Appendix: Comparative Economic Analysis of Rothbarth Estimates

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This report chapter presents updated Rothbarth estimates of child-rearing expenditures. The estimates are derived from Consumer Expenditure Survey (CEX) micro data from 2000 to 2015. To my knowledge, this is the first study that includes CEX micro data from 2010 to 2015 to construct Rothbarth estimates of child-related expenditures.

The decision to use all of the years from 2000 to 2015 is based on a detailed comparison of the 15-year period to a variety of sub-periods (e.g., 2004 to 2009) on which several other states base their current child support obligations. The pooling of the 15 years “averages” out the extreme variation in macroeconomic activity that occurred from 2000 to 2015: the peak in 2000 of the economic expansion that lasted from March 1991 to March 2001, a mild recession and jobless recovery from 2000 to 2003,⁷³ the dramatic increase in personal consumption and household debt that occurred from 2004 to 2007, the Great Recession that lasted from 2007 to 2009, and the 2010 to 2015 tepid expansion.

The current analysis switches from using total family expenditures as the base to total family outlays. The benefit to using total family outlays is that principal payments on all debt (e.g., mortgage principal payments) are captured in the data. The switch to outlays is also consistent with the data used in the construction of recent estimates of child-related expenditures (e.g., Betson, 2010).⁷⁴ This switch has the potential of generating different Rothbarth estimates if the relationship between adult clothing and total outlays differs from the relationship between adult clothing and total expenditures.

The estimates are constructed from two sub-samples. The first, from 2004 to 2015 includes families with imputed income. The second, from 2000 to 2003 excludes families with incomplete family income records. Economist David Macpherson and others have shown that the inclusion of families with imputed income can bias the parameter estimates and thus the obligation levels. Macpherson recommends that these families be excluded.⁷⁵ However, I found that when all of these families were excluded, the proposed estimates fell to unreasonable levels. As a compromise, the estimates include the 2004 to 2015 families with imputed income, but gives each of these family’s their average of five predicted incomes that the Bureau of Labor Statistics (BLS) constructs. For families with incomplete records in the 2000 to 2003 samples, BLS does not provide an imputed value. As a result, these families are excluded from the analysis. Some

⁷³ The recession ran from March 2001 to November 2001. A jobless recovery is a period when gross domestic product (GDP) expands but is not large enough to create jobs. Employers rely on employees’ ability to work longer hours rather than adding additional employees.

⁷⁴ See David M. Betson, “Appendix A: Parental Expenditures on Children,” in Judicial Council of Cal., *Review of Statewide Uniform Child Support Guideline 2010*, for a discussion of the difference between total expenditures and outlays, and a comparison of the variables.

⁷⁵ New Jersey Child Support Institute, Institute for Families, *Quadrennial Review: Final Report* (Rutgers University, Mar. 2013), p. 4.

might argue that to maintain consistency, all of the families for 2000 to 2003 should be excluded. Due to the severe macroeconomic fluctuations from 2004 to 2011, I feel the cost of excluding these more “normal” years outweighs the cost of only excluding families with incomplete income.

The next two sections discuss the estimation methods and data. First, I describe the Betson approach used in California’s last review, and then the method of Lazear and Michael (LM) (1988) to estimate two sets of Rothbarth parameters.⁷⁶ Second, I describe the construction of the CEX micro data samples used in each econometric analysis, and then present and compare the Rothbarth estimates from each approach. These two indirect methods (e.g., expenditures on adult clothing) yield similar estimates, with LM being slightly lower. Both indicate that the estimated parameters have trended downward since 2004 and, when survey years prior to 2004 are included in the analysis, the Rothbarth estimates are uniformly lower than those generated from the 2004 to 2009 CEX survey data. My preferred estimator comes from the CEX survey that uses the data from 2004 to 2015, but limits the sample to low and moderate income families. If one thinks that the Rothbarth estimators developed from the 2004 to 2009 survey are too high, then the estimates from CEX surveys 2000 to 2015 are probably the best choice.

Appendix A. Estimation Method

The first step to creating an updated formula of California obligations is to estimate Rothbarth parameters based on the most recent CEX micro data. These parameters measure the proportion of a family’s total expenditures that are devoted to children.

This report also uses two “indirect” methods to estimate the Rothbarth parameters: Betson (2010) and Lazear and Michael (1988). In both approaches, adult clothing expenditures are the dependent variable in the regression analysis; however, the Lazear and Michael “indirect” method could be preferred to Betson’s method because the former provides a clearer exposition of their approach. Betson models his relationship between adult clothing expenditures and outlays as a quadratic function. This is typically not a problem but in doing so, Betson does not get an explicit function for child expenditures. It depends on outlays, income, and the characteristics of the family. He does not show this expression in his reports. To address this limitation, I estimate a log-log specification which has an explicit function and I also limit the sample to lower and middle-income families. The latter assumption removes the need for modelling expenditures as a quadratic function. These modifications yield Betson-Rothbarth parameters that are closer to the current California K fractions.

Lazear and Michael build their model from the family’s budget constraint. It is a much clearer exposition, and explicit functions are available for the parameters. Further, I use a “local”

⁷⁶ Edward P. Lazear & Robert T. Michael, “Chapter 5: The Division of Income Between Adults and Children: Evidence from the 1972–73 Consumer Expenditure Survey,” in *Allocation of Income Within the Family* (University of Chicago Press, 1988).

averaging approach such that I can generate estimates for low and moderate income families, which is closer to the sample used in creating the California K fraction.

A.1. Betson Approach

A family's spending patterns on adult clothing can be written as follows:

$$\ln A = \alpha + \beta \ln FS + \gamma \ln TS + \ln [H(Z, \varepsilon)],$$

where $\ln A$ denotes the natural logarithm of dollar expenditures on adult clothing, $\ln FS$ denotes the logarithm of the family size, $\ln TS$ denotes the logarithm of the family's total outlays. The additional term contains demographic characteristics of the family (e.g., region of residence, labor force attachment of the parents).

Assuming the log-log functional form of adult expenditures on family size and total outlays yields CS, expenditures on children:

$$CS = 1 - \left(\frac{2}{2+K}\right)^{\frac{\beta}{\gamma}}$$

where K denotes the number of children, β denotes the estimated coefficient on the logarithm of family size, and γ denotes the estimated coefficient on the logarithm of outlays per capita.

For adult goods to be a proxy for the family's well-being, increases in total spending should be positively related to expenditures on adult goods. As more children are added to the family, holding spending constant, adult spending (well-being) should fall. For a detailed discussion of the model, see Betson (2010).

To estimate the adult expenditure equation, I have used the same sample restrictions, variables, and definitions as Betson uses in his 2010 California analysis. The variables are constructed using the CEX administered from first-quarter 2000 and ending with first-quarter 2016.

Expenditures on the following detailed items⁷⁷ are also analyzed:

- Food: Food prepared and consumed at home, food purchased and consumed away from home.
- Housing: Mortgage interest paid, property taxes, maintenance and repair, rent paid, home insurance, utilities, personal services including child care, housekeeping supplies, household furnishings and equipment.
- Apparel: Clothing, footwear, cleaning services and supplies.

⁷⁷ Income, outlays and expenditures are all adjusted for inflation using the annual average of the CPI-U and are reported in 2016 dollars.

- Transportation: Net outlays for the purchases of vehicles, vehicle finance charges, leases, gas and oil, maintenance and repair, insurance, licenses and other charges, and public transportation.
- Entertainment: Fees and admission, entertainment equipment, toys, and pets.
- Health care: Health insurance, nonreimbursed expenses for medical services, drugs and supplies.
- Tobacco and alcohol.
- Personal care, reading, and education.
- Cash contributions to individuals outside the consumer unit.
- Personal insurance: Life and other personal insurance premiums.
- Miscellaneous: Funeral expenses and plots, checking charges, legal and accounting fees, interest paid on lines of credit, home equity loans, and credit cards.

In the Betson model, the consumer unit contains a *married* couple between the ages of 18 and 60 years old. The family unit contains six or fewer children. The family unit does not include any other adults (individuals 18 years old or older) present, even if these adults were the children of the couple. The family unit does not have a change in family size or composition over the period in which the unit was interviewed; and only consumer units with at least three completed interviews are included in the final analysis sample.

The Betson model includes the additional demographic characteristics: the logarithm of the number of family members, race, education of the spouses, labor force attachment, region of residence, year dummy variables, and dummy variables that capture the household number of interviews during the year. My model also includes dummy variables for month of interview.

Table 1 reports the sample sizes for Betson's 2004 to 2009 sample, and for 2004 to 2015, 2000 to 2009, and 2000 to 2015. My samples differ slightly from Betson's sample used in California, but have similar proportions. Since Dr. Betson's work on the 2010 California guideline study is based on a sample of low- and moderate-income families, I also report the sample sizes when I limit the households to those that have income less than \$75,000. This threshold corresponds to the upper bound of the K factors.

By adding more recent years (e.g., 2005 to 2015), the sample sizes increase by 2,500 to 6,000. The samples are 2,000 to 6,000 larger when the surveys prior to 2004 are included. They are 5,000 to 12,000 larger when all of the surveys from 2000 to 2015 are included.

Table 2 reports the inflation-adjusted average family income, total outlays, and total expenditures by family size. Adding the recent surveys yield income, outlays, and expenditures that are

similar or lower to the values in the 2004 to 2009 sample. This is consistent with general patterns that the Great Recession and weak recovery have added to the structural decline in the real income of American families. Adding years prior to 2004 generates slightly higher average income, outlays and expenditures. Finally, using all of the years from 2000 to 2015 suggest that income and expenditures from 2004 to 2009 are an outlier. The 15-year or long-run averages from 2000 to 2015 are lower than the averages for the 2004 to 2009 sample.

Table 3 reports the distribution of inflation-adjusted total outlays by family size. For samples that include all families and the addition of more recent years, the decline in outlays is at all points of the outlay distribution. This uniform decline does not depend on the presence and number of children. This uniform decline persists across time from 2000 to 2009 and across the full period from 2000 to 2015. The table shows that this uniform decline in outlays is less prevalent in the samples of low and moderate income families.

Table 4 breaks expenditures into selected major components (e.g., housing and food). Panel A reports the expenditures for the 2004 to 2009 sample. The expenditures listed are similar to Betson's estimates for California. Panels C and D report the percentages for 2004 to 2015, and for 2000 to 2015. The important point here is that even though real outlays and income have fallen, the spending proportions on these various goods seems to be remarkably stable across time. There is very little shift when years after 2009 are added and years prior to 2004 are included in the sample.

Table 5 presents my attempt to replicate Betson's Rothbarth 2004 to 2009 estimates using his log-log functional forms that include and do not include a quadratic in total outlays. Table 5A contains the full regressions. The estimated coefficients for family size and outlays possess the same sign as in Betson (2010). The family size coefficients are quite similar to Betson's estimates; however the outlay coefficients differ. The quadratic term is estimated with precision; however, it is not clear that the models are significantly different. The revised manuscript will perform an F-test. At the end of the day, the issue will be how much the estimates differ. The models may be statistically different, but the economic interpretation—the estimated Rothbarth parameters—may not differ by much.

The most important takeaway from Table 5 is that as more recent years are added and years prior to the 2004 are added, the estimated coefficients for family size and outlays decline, indicating that a one dollar increase in outlays is associated with a smaller increase in adult clothing. For example, the coefficient for log outlays (excluding the quadratic) falls from an elasticity of 0.93 in 2004 to 2009 to 0.913 in 2000 to 2015.

The impact of family size also diminishes over time. Adding an additional child to a family is associated with a smaller increase in outlays on adult clothing. In the 2004 to 2009 sample for all

families, the estimated elasticities range from 0.567 to 0.577. They range from 0.506 to 0.514 when all years are used.

By using the estimated coefficients in Table 5 that exclude the quadratic in total outlays, I can estimate child-rearing expenditure. The estimates are presented in Table 6. As a point of comparison, I also include Betson's 2004 to 2009 estimates and the California K factors. Betson's Rothbarth estimates are predicted for a family with \$55,000 of family income. They are 23.5 percent (1 child), 36.5 percent (2 children), and 44.9 percent (3 children). The California K factors are slightly higher, ranging from 25 to 50 percent.

Betson's estimates for 2004 to 2009 are bounded by my estimates. Reported in Panel B, when I include all families, the estimates are slightly higher than Betson's predicted Rothbarth estimates because my sample's average income is higher than where Betson evaluates his Rothbarth estimates. The "Low- and Moderate-" income estimates, which are developed by limiting the sample to families with no more than \$75,000 in income, are higher than Betson because the average income of families in these samples are below his average income of \$55,000. In fact, my estimates for low- and moderate-income families are closer to the existing California K factors than Betson's estimates. They are 24.6 percent for one child, 38.3 percent for two children, and 47.2 percent for three children.

What has happened since 2009? Adding more recent years clearly indicates that there has been a downward shift in expenditures on children at all ages. For example, a low- and moderate-income family with one child spent on average 24.6 percent of household expenditures on that child from 2004 to 2009. Including the survey data from 2010 to 2015 generates an estimate of 23 percent. The largest decline occurs among low- and moderate-income families with two children. When including years prior to 2004, there results a uniformly lower share spent on children. It is interesting to observe that now the decline in the share spent on children is not as large.

To summarize, average inflation-adjusted family income and outlays have fallen since 2009, most likely due to the continued structural decline in income, plus the Great Recession and any scaring effects that it may have had on family consumption. Consistent with that result is a decline in the share of outlays spent on children. Finally, using data prior to 2004 uniformly lowers expenditures on children. Relying on Rothbarth estimates that are derived from 2004 to 2009 may overestimate the typical or average expenditures on children. Further, evaluating the Rothbarth estimate at a particular income level does not adequately describe expenditures on children by low- and moderate-income families. To be consistent with the current California K factor, limiting the sample to low- and moderate-income families is the preferred option. The question is how much this translates into actual dollar declines in outlays on children.

A.2. *Lazear and Michael Approach*

Before providing a detailed description of the estimation of child-related expenditures using the Lazear and Michael (LM) approach, the following provides a less technical description. I do this because readers may not be as familiar with the LM approach. LM defines the family's budget constraint as the sum of expenditures on adults and children, where adult (children) expenditures equal the number of adults (children) multiplied by the average expenditures on an adult (children).

The estimation problem is that average expenditures on children and adults are not easily measured. For example, how do families apportion the mortgage or grocery bill between adults and children? To get over this hurdle, LM makes two assumptions. First, they assume that the ratio of average child expenditures and average adult expenditures depend on a set of demographic and economic family characteristics (e.g., family size, number, and ages of the children). If this ratio equals one, then the average family treats expenditures on children and adults equally. If the ratio exceeds 1, then the family favors children relative to the adults, and if the ratio is less than 1, the family favors the adults. Second, they create two ratios: total expenditures on adults (children) relative to the observed expenditures on adults (children). These two ratios express the relationship between total and observed expenditures found in the CEX data. For example, we directly observe adult clothing expenditures. We also directly observe mortgage, food, and other shared family expenditures; however, the consensus among researchers to date is that the assumptions needed to allocate shared expenditures between children and adults, yield estimates of child-related expenditures that are either too big or too small.

To summarize, the three ratios needed to estimate child-related expenditures are the:

1. Ratio of average child and adult expenditures, where the ratio can be predicted by a set of demographic characteristics;
2. Ratio of expenditures on adults and the observed expenditures on adults; and
3. Ratio of expenditures on children and the observed expenditures on children.

These three ratios are used to write adult expenditures such that they only depend on ratio number 2 above, the number of adults, and actual expenditures on adult clothing. These three ratios enable us to write child-related expenditures as a function of the three ratios, expenditures on adult clothing, the number of children, and the number of adults.

The estimation of child-related expenditures proceeds in two steps. First, we predict the ratio of expenditures on adults and observed expenditures on adults with demographic characteristics of the family. To do this, we limit our sample to families *without* children and estimate the regression of total family expenditures on a family's expenditures on adult clothing, plus a variety of demographic features of the family. Using the coefficients from this regression, we

construct an estimate of the family's ratio of expenditures on adults to the observed expenditures on adults.

By constructing the estimates for families *with* children, the child expenditures portion of the budget constraint now only requires obtaining an estimate of the ratio of expenditures on children and adults. This is done by estimating the regression of total expenditures on adult clothing expenditures, demographic and economic variables. The coefficients from this regression are used to estimate the ratio of average child and adult expenditures. LM define this ratio as ϕ . It is combined with a family's number of adults, number of children, and total expenditures to construct an estimate of child-related expenditures:

$$C_K = \frac{\phi T}{A + \phi K}$$

where C_K denotes child-related expenditures, T denotes total expenditures, A denotes the number of adults, and K denotes the number of children. Dividing the estimate of C_K by total family expenditures generates the Rothbarth estimate of child-related or child-rearing expenditures. Formally, the goal of the estimation procedure is to divide the family's total expenditures into the average expenditures on an adult and a child. The family's budget constraint can be written as:

$$T = AC_A + KC_K,$$

where T denotes a family's total expenditures, A denotes the number of adults, K denotes the number of children, C_A and C_K denote the average expenditures on an adult and child, respectively. The terms T , A , and K are observed in the CEX data, but the per capita expenditures are not. We define $A\tilde{C}_A$ as the observed adult expenditure on clothing and λ_A and λ_K the ratios of total expenditures on adults (children) to observed expenditures on adults (children).⁷⁸ The budget constraint can be rewritten as:

$$(T) = \lambda_A(A\tilde{C}_A) + \phi(X)\lambda_A A\tilde{C}_A\left(\frac{K}{A}\right),$$

where the variables in parenthesis are observable for each family. Once we have estimates of $\lambda_A\left(\frac{C_A}{\tilde{C}_A}\right)$ and $\phi\left(\frac{C_K}{\tilde{C}_A}\right)$, we can calculate the expenditures on a child, C_K . Expenditures on a child are obtained by substituting for C_A in the initial budget constraint, yielding:

$$T = AC_A + KC_K = A\left(\frac{C_K}{\phi}\right) + KC_K,$$

Solving for C_K yields:

⁷⁸ Other expenditures that are exclusive to adults and sometimes included are alcohol and tobacco.

$$C_K = \frac{\phi T}{A + \phi K}.$$

Dividing the estimate of C_K by total family expenditures generates the Rothbarth estimate of child-related or child-rearing expenditures.

It is important to note that as a family's number of children increases, there are two (through K and ϕ) effects on the level of child-related expenditures. Because of this, the value of C_K must be adjusted by the following derivative:

$$\frac{\partial C_K}{\partial K} = \frac{TA}{(A + \phi K)^2} \frac{\partial \phi}{\partial K} - \frac{\phi^2 T}{(A + \phi K)^2}.$$

The sign on the derivative is negative because the partial derivative $(\frac{\partial \phi}{\partial K})$ in the first term is typically negative, while the second term is positive. Thus, a negative minus a positive term will yield an overall negative impact of an increase in the number of children on child-related expenditures. The intuition for this result is that there are economies of scale.

The estimation of the unknowns (λ and ϕ) is performed in two steps. First, CEX data from families *without* children are used to estimate:

$$T = \lambda_0(A\tilde{C}_A) + \lambda_1(A\tilde{C}_AZ_1) + \lambda_2(A\tilde{C}_AZ_2) + \dots + \lambda_k(A\tilde{C}_AZ_k),$$

where $A\tilde{C}_A$ denotes the observed adult expenditure on clothing and the Z 's capture demographic information on the household.⁷⁹ By limiting the sample to families without children, λ is identified. We are solely looking at the budget constraints of families without children. Thus, expenditures on children in the second portion of the budget constraint are zero. The estimates of the k , λ 's are used to predict an overall λ for the j th family *with* children:

$$\hat{\lambda}_{Aj} = \hat{\lambda}_0 + \hat{\lambda}_1 Z_{1j} + \dots + \hat{\lambda}_k Z_{kj}.$$

The second step is to obtain an estimate of $\phi(X)$. This can now be done because the budget constraint for families with children has one unknown and thus is identified. To construct a prediction for ϕ , we estimate the following equations for the j families *with* children.

$$(T_j) = (D_{0j}) + \phi_0(D_{1j}) + \phi_1(D_{1j}X_{1j}) + \dots + \phi_k(D_{1j}X_{kj}),$$

where, $D_{0j} = \hat{\lambda}_{Aj}A\tilde{C}_{Aj}$, and $D_{1j} = D_{0j}(\frac{K_j}{A_j})$. This model provides estimates of the components of ϕ , which enables us to construct an estimate of the ratio of child-to-adult expenditures for each family.

⁷⁹ The regression is estimated without a true intercept/constant. Robust standard errors are estimated.

$$\frac{C_{kj}}{C_{Aj}} = \phi(X_i) = \phi_0 + \phi_1(X_{1j}) + \dots + \phi_k(X_{kj}).$$

In the first-stage regression, Z consists of educational attainment and work status for each adult, family income, the race and ethnicity of the parents, the family's region of residence, month and year of interview, and the number of interviews during the year. In the second-stage regression, X consists of the list of Z , plus information on the number of children in the family. Now that we have an estimate of φ_j for each family, sample estimates of C_K can be developed in two ways:

$$\underline{C}_K = \frac{\underline{\varphi T}}{A + \underline{\varphi K}},$$

$$\underline{C}_K = \frac{1}{J} \sum_{j=1}^J (\varphi_j T_j) / (A + \varphi_j K).$$

The first sample average uses the sample mean of total family expenditures, T for families with children. The second mean constructs a C_K for each family (j) by using their own value for T . After C_K is constructed for each family with children, the sample average is calculated.

To construct C_K at each of the 22 income intervals (e.g., \$25,000 to \$30,000), we evaluate the second expression only for families in a given income interval.⁸⁰ To construct an estimate of the percentage of total outlays that go to child-related expenditures at a given income interval (local averaging), we divide our conditional estimate of child-related outlays by the average total outlays at that income interval. This is the Rothbarth estimate evaluated for a given family income.

Next, we perform the common practice of subtracting out the share of total expenditures on child and medical care. I use the same approach as Betson and others. There are several reasons for treating child care and a portion of medical expenditures as an "add on." Child care expenses are zero for many families. For those with children, they vary across households and can be quite significant, especially for households with pre-school children.

Medical care expenditures or extraordinary medical expenses are classified as the amount of expenditures that exceed \$250 per family member. There are two rationales for adjusting the Rothbarth parameters for medical care expenditures. First, federal regulations require state child support programs to establish and enforce medical support orders.⁸¹ Second, medical expenses

⁸⁰ Most studies use 13 income intervals. Earlier versions of this report also used 13 intervals. However, I found that expanding the number of intervals at the lower and middle incomes provided a more accurate relationship between expenditures on children and net income.

⁸¹ 45 C.F.R. § 303.31(b)(1)(i).

that are not covered by or exceed reimbursement levels vary a great deal across households. They too, can comprise a large percentage of child-related expenditures.

The advantage to the “local” averaging approach is that it allows for a nonlinear relationship between expenditures (outlays) on children and income. The potential drawback is that the precision of estimates at lower and higher family incomes may be weak. Small samples at the lower and upper income levels, a common concern with the CEX micro data, will allow outliers to potentially weaken the quality of the estimates of C_k . Because of that possibility, we utilize median regression and regress the 22 conditional or “local average” estimates on a trend, the square of the trend, and the cubic of the trend.⁸² The coefficients are used to predict the Rothbarth proportions at a given income interval. These Rothbarth predictions are then used to construct the table of supports or, in California’s case, they would be compared to the existing K factors.

The data for the LM analysis come from the interview component of the CEX Survey beginning in the first quarter of 2000 through the first quarter of 2016. To be included in the LM samples, the family’s adults must be less than 60 years of age. Unlike Betson’s approach, the Lazear and Michael approach does not limit the sample to dual-household parents. The family can have no more than six children. The family must have participated in three or four interviews during the year. Annual averages are developed for variables that vary across the quarterly interviews (e.g., family income, adult expenditures, and outlays). Families must have positive values for their total and adult clothing expenditures and total outlays to be in the sample. These sample restrictions are identical to the 2010 California study.

Table 7 contains means for inflation-adjusted (2016 dollars) adult clothing expenditures, inflation-adjusted total family outlays and after-tax family income, and the means for a variety of family demographic characteristics: number of adults, educational attainment of each spouse, race and ethnicity, labor force attachment of the spouses, region of residence, and the number of children. All of the demographic variables except family income and the number of adults are entered as dummy variables. The excluded groups for the dummy variables are respondents with high school diplomas, non-African Americans, northern census residents, and respondents that work less than 30 hours per week.⁸³

⁸² The loss function in median regression is to minimize the least absolute deviation as opposed to minimizing the least squares of the difference. Because of this, the former, an order statistic will not be influenced by outliers.

⁸³ Betson’s California “core” sample which uses CEX data from January 2004 to March 2009 contains 2,937 husband and wife households without children and 4,909 husband-wife households with children. The alternative sample is 2,566 and 4,217, respectively.

The variables that comprise the Z vector used to estimate the λ 's are the number of adults, educational attainment, family income, labor force attachment, race, and region of residence. These variables plus the number of children and adults in the family comprise the vector of information in X used to estimate ϕ .

The means in Table 7 compare families with and without children. Families without children tend to have higher levels of educational attainment and stronger labor force attachments. They have higher real income and higher expenditures on adult clothing, but their outlays are lower than families with children.

In addition to the full 15-year sample from 2000 to 2015, Table 7 reports summary statistics based on samples for the following years: 2004 to 2009, 2004 to 2010, 2004 to 2011, 2000 to 2009, 2000 to 2010, and 2000 to 2011. The purpose of reporting these additional estimates is to assess our preferred sample's sensitivity to the addition of 2010 to 2015 CEX data. To my knowledge this is the first study to incorporate 2010 to 2015 CEX data into Rothbarth estimates of child-related expenditures. Another purpose of these comparisons is to assess the sensitivity of the samples and results to the mild recession and jobless recovery (2000 to 2003), the dramatic increase in personal consumption (2004 to 2007), the Great Recession (2007 to 2009), and the weak expansion (2010 to 2015).

The main conclusion from this comparison and the subsequent analysis is that the Rothbarth estimates should be constructed from the 15 cross sections of data from 2000 to 2015, and not from a subset of cross sections that start in 2004. Combining these four distinct periods of macroeconomic activity serve to "average" each other out, and thus reflect the "typical" or long-run relationship between family income and child-related expenditures.

Table 7 indicates that the demographic characteristics possess a remarkable stability across samples. The average number of adults and their educational attainment remains constant. African Americans comprise 7 to 8 percent of the samples. The table does reveal a slightly lower level of family income and outlays when the sample starts in 2000 as opposed to 2004. This is because the 2000 to 2003 survey years contain a mild recession and weak recovery. For example, after the National Bureau of Economic Research declared that the eight-month recession that ran from March 2001 to November 2001 was over, it took well over 30 months before payroll employment growth became positive. Inflation-adjusted expenditures on adult clothing are slightly higher (\$50) in samples when 2000 to 2003 are included, which implies that child-related expenditures will be slightly lower in these samples.

While not shown in the tables, I also estimated summary statistics for 2000 to 2007. The purpose was to assess the Great Recession's impact on expenditures by comparing the period prior to the recession (2000 to 2007) to the period that includes the recession (2000 to 2009). In particular,

did the recession lead to a drop in income and outlays? Inflation-adjusted after-tax family income and inflation-adjusted total family outlays held steady across the two years. The addition of the two years does not seem to “weight” down family income and outlays that grew during the economic expansion years from 2004 to 2007.⁸⁴ Although modest, there is some evidence of a decline in inflation-adjusted adult clothing expenditures. The demographics (e.g., race and educational attainment) of the families also show stability across the two years. The changes in the macro-economy do not seem to alter the samples’ composition.

Appendix B. Estimation of λ and φ

The regression estimates as well as estimates of λ for the various samples are reported in Table 8. The sample of families without children is used to estimate the model. Dummy variables for year of interview, month of interview, region of residence, and the number of interviews are included. The estimated coefficients for these variables are available upon request. The constant term is the coefficient on real adult clothing expenditures ($A\tilde{C}_A$). All other coefficients are the variable’s coefficient multiplied by $A\tilde{C}_A$. The model is estimated without a formal constant.

The estimated λ ’s can be interpreted as follows. Each coefficient is the derivative of the ratio (C_A/\tilde{C}_A) with respect to a variable contained in Z. For example, the coefficients on “spouse having less than a high school degree” imply that families with a less-educated spouse have a higher ratio of total expenditures to expenditures on adult clothing than a family with a highly educated spouse.

The estimated λ ’s enable us to estimate the expenditure on adults in families with children. Table 8 reports estimates of λ for families with and without children. Using the mean values for families with and without children in the 2000 to 2011 sample, the estimated λ ’s equal 89.2 and 90.1. The inverse of these λ ’s indicate that 1.1 percent of the family’s adult expenditures go to clothing.

Table 8 also reports estimates of λ and its inverse for the following samples: 2000 to 2009, 2004 to 2009, 2004 to 2011, and 2000 to 2015. Similar to the summary statistics, the estimates for λ indicate a remarkable stability across the samples, ranging from 1.1 to 1.8 percent. The samples that start in 2000 provide the best estimates of λ . They are virtually identical to the sample average of family adult expenditures on clothing.

Given that we have an estimate of λ_j for each family, we can now identify φ . By construction, the equation’s first term should equal 1. However, I estimate the models without imposing this

⁸⁴ The 2000 to 2004 samples are from a period in which a mild recession occurred, but was followed by what economists call a “jobless recovery.” Real GDP grew, but it was not at large enough pace to generate job growth.

constraint. Dummy variables for year, month, region of residence, and the number of interviews are included. The constant term is the coefficient on λ multiplied by real adult clothing expenditures, $\lambda A\tilde{C}_A$. All other coefficients are the coefficients of the variable multiplied by $\lambda A\tilde{C}_A$. The model is estimated without a formal constant. The ϕ 's were estimated for each family using their values for X and Z .

The estimated coefficients and estimates of ϕ for the various samples presented in Table 9 indicate that the average family spent 52.7 percent to 68.2 percent as much on a child as on an adult, or \$53 to \$68 per child for every \$100 per adult. The percentage falls as the number of children increases.

I generated estimates of ϕ for 2000 to 2009, 2000 to 2011, 2004 to 2009, 2004 to 2011, and 2000 to 2015. The primary goal of these models is to identify whether the model estimates are sensitive to the variety of macroeconomic conditions that occurred from 2000 to 2015. Focusing our attention on the recovery from the Great Recession, Table 9 reveals that estimates of ϕ , the percentage spent on a child are mixed when more recent years are added to the sample. There is no consistent pattern of increase or decrease. However, going from 2010 to 2015, the percentage spent on children actually fell. These two findings are independent of whether 2000 or 2004 is used as the initial year of the sample.

What is the impact on estimates of ϕ if the samples start in 2004? Dropping the years of the mild recession and “jobless” recovery (2000 to 2003) generates ϕ 's that exceed the ϕ 's when these years are included. This finding makes sense because the 2000 to 2003 surveys cover a period of slower economic growth and thus lower expenditures and outlays.

The estimated coefficients in Table 9 can also be used to calculate an “indirect” estimate of the average per capita expenditures on a child, C_K . Earlier from the budget constraint and the definition of ϕ , we were able to write the average per capita expenditure on a child as:

$$C_K = \frac{\phi(X)T}{A + \phi(X)K}.$$

Note that the amount spent on children depends on K and ϕ . Thus, to calculate child-related expenditures, we need to estimate how C_K changes with respect to an increase in the number of children. This is the derivative that was shown earlier:

$$\frac{\partial C_K}{\partial K} = \frac{TA}{(A + \phi K)^2} \frac{\partial \phi}{\partial K} - \frac{\phi^2 T}{(A + \phi K)^2}.$$

The approach that I use is to compute family specific estimates of both terms and then construct their sample averages. These expressions are as follows:

$$C_K = \frac{1}{J} \sum_{j=1}^J (\varphi_j T_j) / (A + \varphi_j K).$$

$$\frac{\partial C_K}{\partial K} = \frac{1}{J} \sum_{j=1}^J \frac{T_j A_j}{(A_j + \varphi_j K_j)^2} \left(\frac{\partial \varphi}{\partial K} \right)_j - \frac{\varphi_j^2 T_j}{(A_j + \varphi_j K_j)^2}.$$

For our purposes, A_j equals two in every family. The values of T are computed for each family. The term φ is constructed from the coefficients in Table 9 and each family's information in X . The derivative is just the estimated coefficient for the number of children, which in the 2000 to 2011 sample equals -0.111 . An additional child lowers φ by 0.111. This means that families with one additional child have a ratio of per-child expenditure to per-adult expenditure that is lower by 0.111. The additional child is associated with an \$11.10 decrease in child expenditures per existing \$100 of adult expenditure. The decline per child is less than the increased expenditure on the additional child. Using more recent data lowers this amount to \$4.30.

Table 9 reports the estimated coefficients for the number of children for the five different samples. Including the recovery years (2011 to 2015), reveals that as the number of children increases, smaller declines in child expenditures per existing \$100 of adult expenditure are observed. The estimated coefficients are -0.081 and -0.043 , compared to the -0.105 that was estimated in the 2004 to 2009 sample. This evidence indicates that the weak recovery explains some of the drop in child-related spending associated with having more children.

Appendix C. LM Rothbarth Estimators

With estimates of child-related expenditures, we are now ready to build the Rothbarth estimators, child-related expenditures as a proportion of net family income. We define the following terms:

EC/C = Expenditures on children as a proportion of consumption expenditures

CC/C = Child care expenditures as a proportion of consumption expenditures

M/C = Medical expenditures as a proportion of consumption expenditures

C/NI = Consumption expenditures as a function of net income

EC*/NI = Adjusted expenditures on children as a proportion of net income

EC*/NI = (EC/C – CC/C – M/C) x C/NI

The task is to build estimates of these six measures. The estimates of child care (CC) and medical expenditures (M) deserve some attention. Both are treated as an “add on” to the obligation.

As noted earlier, there are three reasons for treating child care as an “add-on.” Child care expenses constitute expenditures with significant variation and are zero for a subset of households. In households with child care costs, such costs typically represent a significant share of total child expenditures, especially for preschool children. Excluding child care costs maximizes the custodial parent’s marginal benefits of employment.

To estimate medical care support percentages, extraordinary medical expenses are classified as the amount of expenditures that exceed \$250 per family member. To construct the estimate, I subtract this amount, which is in 2016 dollars from the CEX household’s reported costs of unreimbursed medical expenses. There are two rationales for adjusting the Rothbarth parameters for medical care expenditures. First, federal regulations require state child support programs to establish and enforce medical support orders.⁸⁵ Second, medical expenses that are not covered by or exceed reimbursement levels vary a great deal across households. They too, can comprise a large percentage of child-related expenditures.

Table 11A reports the estimates for a variety of years, number of children, and income intervals. We use the “local” averaging approach described earlier to compute these six terms. The last term, EC*/NI, corresponds to the Rothbarth estimate.

Table 10 compares this study’s estimates to those found in the literature, previous reports, plus the replicated and updated Rothbarth estimates from the first part of this report. To my knowledge, this study is the first to incorporate the 2010 to 2015 CEX data. The key takeaway from the table is that “low and moderate” income Betson-Rothbarth estimates come the closest to California’s K factors. They do a better job than Betson’s prediction method where he sets the family’s income to \$55,000. My “low and moderate” income estimates are derived from a sample of households where the income does not exceed \$75,000. I arrive at this threshold because the California K factors are based on families with monthly income ranging from \$801 to \$6,661 per month. This translates to an upper bound of \$79,932 ($\$6,661 \times 12$). Revised estimates will limit the sample to families with incomes greater than \$9,612 and less than \$75,000.

Table 11 shows the impact of adding more recent years and adding years prior to 2004. The Betson-Rothbarth estimates suggest that the Great Recession and weak expansion had an impact on child-related expenditures as a function of total outlays. The Betson and LM Rothbarth estimates derived from samples that start in 2004 both fall when the 2010 to 2015 data are included. Table 11B shows that the shifts are distributed across the 22 income intervals. Expenditures uniformly shift downward when the recession years are added to the model, shift upward when the first recovery year is added, and shift downward when 2011 is added. Table

⁸⁵ 45 C.F.R. § 303.31(b)(1)(i).

11B reports the estimates across the 22 income intervals. The slight downward trend in the estimates even exist when the sample is limited to “low and moderate” income families. The only time the downward trend does not exist is when I add years prior to 2004 to the analysis.

In summary, at this stage my preferred Betson specification is the log-log used in conjunction with the sample limited to “low and moderate” income families. I also prefer that all years from 2000 to 2015 are used in the analysis. They best reflect the California K factors and describe long-run average family expenditures. Further, today’s economy is healthy but late in its current business cycle. Thus, a recession could be on the horizon, which means lower expenditures.

To further explore using the LM-Rothbarth estimates, I recommend using the CEX data from 2000 to 2015 and limiting the sample to low and moderate income families. Although the estimates generated by that approach are lower than the California K factors, a nice feature of the LM Rothbarth estimates is that they are much more stable over time than the Rothbarth estimates. They do not trend downward. Since they are lower than the Betson-Rothbarth parameters, it would be important to conduct simulations and measure the obligation differences between the two approaches.

Appendix D. Tables

Table 1: Sample Observations for Betson-Rothbarth Replication and Updates

Category	2004-2009		2004-2015		2000-2009		2000-2015	
	All Families	< \$75,000	All Families	< \$75,000	All Families	< \$75,000	All Families	< \$75,000
No Children	3,454	1,342	5,991	2,329	5,854	2,363	8,391	3,350
1 Child	1,580	639	2,812	1,139	2,756	1,185	3,988	1,685
2 Children	2,126	804	3,699	1,414	3,755	1,465	5,328	2,075
3 Children	761	314	1,332	583	1,323	596	1,894	865
4 Children	216	126	364	201	345	194	493	269
5 or 6 Children	54	34	96	58	88	54	130	78
Total	8,191	3,259	14,294	5,724	14,121	5,857	20,224	8,322

Notes: See text for description of the sample restrictions. "All families" have the Betson restrictions applied to them. The header "< \$75,000" indicates the additional restriction added is that the sample is limited to families with less than \$75,000 in household income.

Table 2: Inflation-Adjusted Average Family Income, Total Outlays, and Total Expenditures by Family Composition

	All Families				Low- and Middle-Income Families			
2004 to 2009	No Children	1 Child	2 Children	3 Children	No Children	1 Child	2 Children	3 Children
Post-Tax Family Income	108,048	104,378	110,908	108,588	49,066	48,053	49,527	45,118
Outlays	76,107	78,773	84,453	84,870	47,177	50,368	53,105	49,826
Total Expenditures	80,046	81,847	86,540	89,835	49,760	52,971	56,594	54,143
Sample Size	3,454	1,580	2,126	761	1,342	639	804	314
2004 to 2015								
Post-Tax Family Income	108,970	105,279	113,232	106,431	48,372	47,807	48,056	44,488
Outlays	74,680	77,016	83,268	81,715	46,604	49,665	50,926	49,554
Total Expenditures	73,825	74,889	80,213	80,355	45,926	49,135	51,232	49,867
Sample Size	5,991	2,812	3,699	1,332	2,329	1,139	1,414	583
2000 to 2009								
Post-Tax Family Income	103,839	98,254	105,477	101,448	47,809	46,586	48,347	45,359
Outlays	74,690	76,018	81,834	82,376	47,684	49,929	53,047	51,609
Total Expenditures	84,250	84,268	90,593	92,017	54,516	56,740	60,910	59,225
Sample Size	5,854	2,756	3,755	1,323	2,363	1,185	1,465	596
2000 to 2015								
Post-Tax Family Income	105,770	100,781	108,694	102,083	47,696	46,856	47,692	44,860
Outlays	74,100	75,630	81,784	80,910	47,136	49,584	51,579	50,871
Total Expenditures	78,537	78,614	85,004	84,692	50,450	53,029	55,987	54,763
Sample Size	8,391	3,988	5,328	1,894	3,350	1,685	2,075	865
<i>Notes: Author's calculations. See text for detailed description of the samples. Estimates are in 2016 dollars.</i>								

Table 3: Distribution of Inflation-Adjusted Total Outlays by Family Composition

	All Families				Low and Middle Income			
Panel A: 2004 to 2009	No Children	1 Child	2 Children	3 Children	No Children	1 Child	2 Children	3 Children
5%	26,041	28,583	31,302	29,213	20,992	21,457	25,423	22,645
25%	46,123	48,825	53,796	51,458	32,853	35,049	38,667	35,561
50%	64,152	69,127	74,594	73,999	44,311	46,389	50,191	47,733
75%	93,746	94,833	101,015	102,449	56,111	60,299	62,725	60,534
95%	161,683	164,382	174,781	184,261	87,677	88,246	88,450	81,214
Panel B: 2004 to 2015								
5%	25,694	28,672	29,903	28,365	20,405	22,807	23,898	22,902
25%	45,117	48,073	52,029	48,029	32,074	34,983	36,874	34,908
50%	63,507	67,818	73,354	70,658	42,894	46,082	48,200	45,795
75%	91,231	92,975	101,015	100,393	55,531	59,646	60,897	60,561
95%	158,585	157,464	171,545	171,805	83,782	86,739	86,834	82,989
Panel C: 2000 to 2009								
5%	25,960	27,655	30,973	27,753	20,992	22,231	24,382	22,902
25%	45,840	47,429	52,297	50,370	33,057	35,049	37,850	36,030
50%	63,966	67,375	73,005	71,578	44,629	46,306	49,916	49,489
75%	91,280	92,687	99,145	99,405	57,031	59,420	62,843	62,850
90%	127,344	125,816	133,746	142,034	73,629	75,303	77,436	78,273
95%	155,657	156,070	162,784	182,551	87,275	89,650	90,710	87,130
Panel D: 2000 to 2015								
5%	25,829	28,221	30,074	27,753	20,674	22,873	23,576	22,937
10%	31,816	33,770	36,907	34,193	24,313	26,901	28,276	26,770
25%	45,167	47,301	51,652	48,699	32,516	35,006	36,907	35,467
50%	63,553	67,037	72,679	70,376	43,588	46,033	48,556	47,791
75%	90,311	92,229	99,635	98,283	56,483	59,332	61,520	62,267
90%	126,247	124,543	134,974	139,212	71,729	73,783	75,339	77,997
95%	155,449	153,011	163,727	172,029	84,391	87,448	88,283	87,130
<i>Source: Calculations by author (all dollar amounts are in 2016 dollars).</i>								

Table 4: Selected Average Spending Categories by Family Composition

Panel A: 2004 to 2009	All Families (%)				Low- and Middle-Income Families (%)			
Category	No Children	1 Child	2 Children	3 Children	No Children	1 Child	2 Children	3 Children
Housing	29	33	33	33	31	33	33	33
Shelter	19	21	20	20	18	21	21	20
Utilities	7	7	7	8	9	8	9	9
Operations	1	1	1	1	1	1	1	1
Equipment	3	3	3	3	3	3	3	3
Transportation	18	18	17	19	20	20	19	20
Food	13	14	14	15	15	16	17	19
Entertainment	5	5	6	6	5	5	5	5
Health	6	5	5	5	7	6	6	5
Apparel	3	3	4	4	3	4	4	5
Tobacco and Alcohol	2	2	1	2	4	3	2	3
Education and Reading	8	4	3	3	7	3	2	2
Personal Care	1	1	1	1	1	1	1	1

Notes: Author's calculations from selected years of the Consumer Expenditure Survey.

Table 4 cont.: Average Spending by Family Composition

Panel B: 2004 to 2015	All Families (%)				Low- and Middle-Income Families (%)			
Variable	No Children	1 Child	2 Children	3 Children	No Children	1 Child	2 Children	3 Children
Housing	30	33	33	33	31	34	34	34
Shelter	17	19	19	19	17	20	20	19
Utilities	7	7	7	8	9	8	9	9
Operations	1	1	1	1	1	1	1	1
Equipment	3	3	3	3	3	3	3	3
Transportation	16	16	16	16	18	18	18	17
Food	14	14	15	16	16	16	18	19
Entertainment	5	5	5	5	5	4	5	4
Health	6	5	5	5	7	6	6	5
Apparel	3	3	3	4	3	3	4	4
Tobacco and Alcohol	2	2	1	1	3	3	2	2
Education and Reading	8	4	3	3	7	4	2	2
Personal Care	1	1	1	1	1	1	1	1

Notes: Author's calculations from selected years of the Consumer Expenditure Survey.

Table 4 cont.: Average Spending by Family Composition

Panel C: 2000 to 2009	All Families (%)				Low- and Middle-Income Families (%)			
Variable	No Children	1 Child	2 Children	3 Children	No Children	1 Child	2 Children	3 Children
Housing	30	33	33	32	31	33	33	33
Shelter	18	20	20	20	18	21	20	20
Utilities	7	7	7	7	9	8	8	9
Operations	1	1	1	1	1	1	1	1
Equipment	4	3	3	3	3	3	3	3
Transportation	19	19	19	18	21	21	21	19
Food	13	14	14	16	15	16	17	19
Entertainment	5	5	6	6	5	5	5	5
Health	6	5	5	5	7	6	6	5
Apparel	3	4	4	4	3	4	4	5
Tobacco and Alcohol	2	2	2	2	3	3	2	3
Education and Reading	7	4	2	2	6	3	2	2
Personal Care	1	1	1	1	1	1	1	1

Notes: Author's calculations from selected years of the Consumer Expenditure Survey.

Table 4 cont.: Average Spending by Family Composition

Panel D: 2000 to 2015	All Families (%)				Low- and Middle-Income Families (%)			
Variable	No Children	1 Child	2 Children	3 Children	No Children	1 Child	2 Children	3 Children
Housing	30	33	33	33	31	34	34	33
Shelter	18	20	19	19	18	20	20	19
Utilities	7	7	7	7	9	8	9	9
Operations	1	1	1	1	1	1	1	1
Equipment	3	3	3	3	3	3	3	3
Transportation	18	18	17	17	20	20	19	18
Food	13	14	15	16	16	16	17	19
Entertainment	5	5	5	6	5	5	5	5
Health	6	5	5	5	7	6	6	5
Apparel	3	4	4	4	3	4	4	5
Tobacco and Alcohol	2	2	2	2	3	3	2	2
Education and Reading	7	4	3	3	7	4	2	2
Personal Care	1	1	1	1	1	1	1	1

Notes: Author's calculations from selected years of the Consumer Expenditure Survey.

Table 5: Rothbarth Model Results

Dependent Variable: log(Adult Clothing)	All Families				Low- and Middle-Income Families			
	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.
2004 to 2009								
Log(Family Size)	0.567	0.030	0.577	0.030	0.574	0.054	0.578	0.054
Log(Outlays)	0.481	0.121	0.933	0.020	0.520	0.214	0.828	0.041
Log(Outlays) ²	0.070	0.019			0.056	0.038		
2004 to 2015								
Log(Family Size)	0.519	0.023	0.530	0.023	0.498	0.040	0.501	0.040
Log(Outlays)	0.406	0.090	0.904	0.015	0.564	0.156	0.777	0.030
Log(Outlays) ²	0.078	0.014			0.039	0.028		
2000 to 2009								
Log(Family Size)	0.529	0.024	0.535	0.024	0.504	0.042	0.506	0.042
Log(Outlays)	0.589	0.090	0.935	0.016	0.630	0.157	0.847	0.032
Log(Outlays) ²	0.054	0.014			0.040	0.028		
2000 to 2015								
Log(Family Size)	0.506	0.020	0.514	0.020	0.472	0.035	0.473	0.035
Log(Outlays)	0.506	0.075	0.913	0.013	0.622	0.129	0.806	0.026
Log(Outlays) ²	0.064	0.012			0.034	0.023		
<i>Notes: Author's calculations from selected years of the Consumer Expenditure Survey. Detailed regression results are presented in Table 5A.</i>								

Table 5A: Betson-Rothbarth Model Results

Dependent Variable: log(Adult Clothing)	All Families				Low- and Middle-Income Families			
	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.
2004 to 2009								
Log(Family Size)	0.567	0.030	0.577	0.030	0.574	0.054	0.578	0.054
Log(Outlays)	0.481	0.121	0.933	0.020	0.520	0.214	0.828	0.041
Log(Outlays) ²	0.070	0.019			0.056	0.038		
Husband Less Educated = 1	0.018	0.046	0.034	0.046	0.025	0.055	0.030	0.055
Husband College Grad = 1	0.079	0.025	0.078	0.025	0.043	0.036	0.045	0.036
Wife Less Educated = 1	0.037	0.044	0.056	0.044	0.027	0.054	0.032	0.054
Wife College Grad = 1	0.026	0.024	0.025	0.024	0.004	0.035	0.003	0.035
African American = 1	0.130	0.045	0.130	0.045	0.204	0.063	0.202	0.063
Both Work = 1	0.008	0.028	-0.002	0.028	0.015	0.041	0.009	0.041
Wife's weeks worked	-0.023	0.032	-0.025	0.032	-0.021	0.046	-0.021	0.046
Wife works full time = 1	-0.020	0.031	-0.024	0.031	-0.001	0.049	-0.002	0.049
Northeast = 1	-0.068	0.028	-0.070	0.028	-0.101	0.052	-0.100	0.052
South = 1	-0.035	0.027	-0.035	0.027	0.001	0.050	0.001	0.050
West = 1	-0.092	0.029	-0.090	0.029	-0.026	0.052	-0.025	0.052
Constant	2.450	0.211	1.755	0.105	2.444	0.332	2.039	0.185
<i>Notes: Author's calculations from selected years of the Consumer Expenditure Survey.</i>								

Table 5A cont.: Betson-Rothbarth Model Results

Dependent Variable: log(Adult Clothing)	All Families				Low- and Middle-Income Families			
	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.
2004 to 2015								
Log(Family Size)	0.519	0.023	0.530	0.023	0.498	0.040	0.501	0.040
Log(Outlays)	0.406	0.090	0.904	0.015	0.564	0.156	0.777	0.030
Log(Outlays) ²	0.078	0.014			0.039	0.028		
Husband Less Educated = 1	0.029	0.036	0.048	0.036	0.045	0.042	0.048	0.042
Husband College Grad = 1	0.075	0.020	0.074	0.020	0.047	0.028	0.047	0.028
Wife Less Educated = 1	0.062	0.034	0.082	0.034	0.041	0.040	0.044	0.040
Wife College Grad = 1	0.043	0.018	0.042	0.018	0.024	0.027	0.024	0.027
African American = 1	0.096	0.033	0.098	0.033	0.134	0.047	0.133	0.047
Both Work = 1	0.031	0.021	0.020	0.021	0.029	0.030	0.025	0.030
Wife's weeks worked	-0.048	0.024	-0.052	0.024	-0.049	0.033	-0.049	0.033
Wife works full time = 1	0.009	0.023	0.006	0.024	0.013	0.037	0.013	0.037
Northeast = 1	-0.069	0.021	-0.070	0.021	-0.129	0.038	-0.129	0.038
South = 1	-0.041	0.021	-0.042	0.021	-0.036	0.036	-0.037	0.036
West = 1	-0.077	0.022	-0.075	0.022	-0.045	0.038	-0.044	0.038
Constant	2.267	0.157	1.510	0.081	2.201	0.248	1.922	0.143

Notes: Author's calculations from selected years of the Consumer Expenditure Survey.

Table 5A cont.: Betson-Rothbarth Model Results

Dependent Variable: log(Adult Clothing)	All Families				Low- and Middle-Income Families			
	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.
2000 to 2009								
Log(Family Size)	0.529	0.024	0.535	0.024	0.504	0.042	0.506	0.042
Log(Outlays)	0.589	0.090	0.935	0.016	0.630	0.157	0.847	0.032
Log(Outlays) ²	0.054	0.014			0.040	0.028		
Husband Less Educated = 1	0.061	0.036	0.074	0.036	0.074	0.043	0.077	0.043
Husband College Grad = 1	0.082	0.020	0.080	0.020	0.050	0.029	0.051	0.029
Wife Less Educated = 1	0.010	0.035	0.024	0.035	0.008	0.042	0.011	0.042
Wife College Grad = 1	0.016	0.019	0.015	0.019	0.002	0.028	0.001	0.028
African American = 1	0.167	0.036	0.168	0.036	0.215	0.050	0.214	0.050
Both Work = 1	0.003	0.023	-0.004	0.023	0.031	0.033	0.028	0.033
Wife's weeks worked	-0.035	0.026	-0.037	0.026	-0.035	0.036	-0.035	0.036
Wife works full time = 1	0.018	0.024	0.016	0.024	0.055	0.037	0.054	0.037
Northeast = 1	-0.088	0.023	-0.089	0.023	-0.139	0.040	-0.139	0.040
South = 1	-0.036	0.022	-0.035	0.022	-0.032	0.038	-0.032	0.038
West = 1	-0.082	0.023	-0.080	0.023	-0.056	0.040	-0.055	0.039
Constant	2.296	0.160	1.771	0.084	2.513	0.245	2.231	0.144
<i>Notes: Author's calculations from selected years of the Consumer Expenditure Survey.</i>								

Table 5A cont.: Betson-Rothbarth Model Results

Dependent Variable: log(Adult Clothing)	All Families				Low- and Middle-Income Families				
	2000-2015	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.
Log(Family Size)		0.506	0.020	0.514	0.020	0.472	0.035	0.473	0.035
Log(Outlays)		0.506	0.075	0.913	0.013	0.622	0.129	0.806	0.026
Log(Outlays) ²		0.064	0.012			0.034	0.023		
Husband Less Educated = 1		0.060	0.031	0.076	0.031	0.077	0.036	0.080	0.036
Husband College Grad =1		0.079	0.017	0.078	0.017	0.052	0.024	0.052	0.024
Wife Less Educated = 1		0.034	0.029	0.050	0.029	0.021	0.035	0.023	0.034
Wife College Grad =1		0.031	0.016	0.030	0.016	0.016	0.023	0.016	0.023
African American = 1		0.132	0.029	0.134	0.029	0.165	0.041	0.164	0.041
Both Work = 1		0.021	0.019	0.013	0.019	0.036	0.027	0.033	0.026
Wife's weeks worked		-0.049	0.021	-0.053	0.021	-0.049	0.029	-0.049	0.029
Wife works full time = 1		0.027	0.020	0.025	0.020	0.048	0.031	0.047	0.031
Northeast = 1		-0.082	0.019	-0.084	0.019	-0.146	0.033	-0.146	0.033
South = 1		-0.040	0.018	-0.040	0.018	-0.047	0.031	-0.047	0.031
West = 1		-0.076	0.019	-0.073	0.019	-0.060	0.032	-0.058	0.032
Constant		2.082	0.134	1.466	0.073	2.039	0.204	1.800	0.121
<i>Notes: Author's calculations from selected years of the Consumer Expenditure Survey.</i>									

Table 6: Replication and Update of Betson-Rothbarth Estimates of Outlays on Children

Panel A: Previous Estimates	1 Child (%)	2 Children (%)	3 Children (%)	1 Child (%)	2 Children (%)	3 Children (%)
California Guideline K Fraction	-	-	-	25.0	40.0	50.0
Betson Rothbarth (2004 to 2009)	23.5	36.5	44.9	-	-	-
Panel B: 2004 as start year	All Families			Low and Moderate Income Families		
2004 to 2009	22.2	34.8	43.2	24.6	38.3	47.2
2004 to 2010	22.5	35.4	43.8	25.1	39.0	48.0
2004 to 2011	22.2	34.9	43.2	24.4	37.9	46.8
2004 to 2012	21.8	34.4	42.7	23.7	37.0	45.7
2004 to 2013	21.6	34.0	42.2	23.4	36.6	45.2
2004 to 2014	21.3	33.6	41.8	22.9	35.9	44.4
2004 to 2015	21.2	33.4	41.6	23.0	36.0	44.6
Panel C: 2000 as start year						
2000 to 2009	20.7	32.8	40.8	21.5	33.9	42.2
2000 to 2010	21.0	33.2	41.4	22.0	34.7	43.0
2000 to 2011	20.9	33.1	41.2	21.8	34.3	42.7
2000 to 2012	20.8	32.8	40.9	21.5	33.9	42.1
2000 to 2013	20.6	32.6	40.7	21.4	33.7	41.9
2000 to 2014	20.5	32.4	40.4	21.1	33.3	41.5
2000 to 2015	20.4	32.3	40.3	21.2	33.4	41.6
<i>Notes: See text for detailed description of the estimation procedure.</i>						

Table 7: Summary Statistics for Lazear and Michael Samples
(No Restrictions on Imputed Family Income and Incomplete Family Income)

Panel A: No Kids	Consumer Expenditure Survey Samples						
Variable	2004 to 2009	2004 to 2010	2004 to 2011	2000 to 2009	2000 to 2010	2000 to 2011	2000 to 2015
Number of Adults	2.354	2.354	2.354	2.339	2.340	2.341	2.354
Household Head Less than HS Degree = 1	0.088	0.090	0.090	0.093	0.094	0.093	0.087
Household Head College Degree = 1	0.684	0.692	0.693	0.676	0.682	0.683	0.697
Spouse Less than HS Degree = 1	0.090	0.092	0.094	0.090	0.091	0.092	0.088
Spouse College Degree = 1	0.655	0.657	0.654	0.652	0.654	0.652	0.657
Real After Tax Family Income (2015\$)	109,505	109,621	108,946	103,432	103,948	103,855	107,387
African American = 1	0.078	0.078	0.078	0.074	0.074	0.075	0.071
Both Spouses Work = 1	0.732	0.729	0.722	0.737	0.734	0.729	0.723
Fraction of Year Work	0.765	0.764	0.760	0.763	0.763	0.760	0.764
Spouse Full-Time Work = 1	0.889	0.891	0.894	0.881	0.883	0.885	0.895
Midwest = 1	0.202	0.204	0.204	0.197	0.199	0.199	0.199
South = 1	0.371	0.370	0.369	0.347	0.348	0.349	0.350
West = 1	0.267	0.264	0.264	0.296	0.293	0.291	0.285
3 interviews = 1, 4 interviews = 0	0.421	0.422	0.423	0.418	0.419	0.420	0.410
Real Total Family Outlays (2015\$)	76,897	76,864	76,528	74,805	74,933	74,826	75,383
Real Adult Clothing Expenditures (2015\$)	472	468	454	530	523	509	445
Number of Children	-	-	-	-	-	-	-
Sample Size	2,985	3,336	3,689	4,523	4,874	5,227	7,201

Notes: The data come from selected years of the 2000 to 2015 Consumer Expenditure Survey micro data. To be included in a given sample, the family's parents must be less than 60 years of age. There can be no more than 6 children. The family must have participated in 3 or 4 interviews during the year. Annual averages are developed for variables that vary across the quarterly interviews (e.g., income, adult clothing expenditures, and outlays). The excluded groups for the dummy variables are respondents with high school diplomas, non-African Americans, and northern census residents, work less than 30 hours per work.

Table 7 cont.: Summary Statistics for Lazear and Michael Samples
(No Restrictions on Imputed Family Income and Incomplete Family Income)

Panel B: Any Kids Variable	Consumer Expenditure Survey Samples						
	2004 to 2009	2004 to 2010	2004 to 2011	2000 to 2009	2000 to 2010	2000 to 2011	2000 to 2015
Number of Adults	2.557	2.566	2.569	2.531	2.539	2.543	2.554
Household Head Less than HS Degree = 1	0.127	0.124	0.124	0.133	0.131	0.130	0.126
Household Head College Degree = 1	0.646	0.648	0.650	0.625	0.628	0.630	0.652
Spouse Less than HS Degree = 1	0.132	0.129	0.130	0.135	0.133	0.133	0.131
Spouse College Degree = 1	0.598	0.603	0.606	0.588	0.592	0.595	0.615
Real After Tax Family Income (2015\$)	106,132	105,768	105,743	99,976	100,192	100,550	103,550
African American = 1	0.082	0.083	0.084	0.083	0.083	0.084	0.083
Both Spouses Work = 1	0.676	0.670	0.669	0.690	0.685	0.683	0.679
Fraction of Year Work	0.760	0.759	0.758	0.746	0.747	0.747	0.747
Spouse Full-Time Work = 1	0.894	0.895	0.895	0.887	0.888	0.889	0.891
Midwest = 1	0.193	0.194	0.192	0.194	0.194	0.193	0.194
South = 1	0.343	0.347	0.352	0.334	0.338	0.342	0.343
West = 1	0.300	0.292	0.288	0.314	0.307	0.303	0.299
3 interviews = 1, 4 interviews = 0	0.402	0.401	0.400	0.402	0.401	0.400	0.403
Real Total Family Outlays (2015\$)	81,192	80,559	80,338	79,399	79,101	79,044	79,522
Real Adult Clothing Expenditures (2015\$)	439	429	418	486	475	465	410
Number of Children	1.947	1.944	1.947	1.944	1.942	1.945	1.943
Sample Size	4,486	5,042	5,576	6,813	7,369	7,903	10,642

Notes: The data come from selected years of the 2000 to 2015 Consumer Expenditure Survey micro data. To be included in a given sample, the family's parents must be less than 60 years of age. There can be no more than 6 children. The family must have participated in 3 or 4 interviews during the year. Annual averages are developed for variables that vary across the quarterly interviews (e.g., income, adult clothing expenditures, and outlays). The excluded groups for the dummy variables are respondents with high school diplomas, non-African Americans, and northern census residents, work less than 30 hours per work.

Table 8: Estimates Used to Create λ , Selected Years
(No Restrictions on Imputed Family Income and Incomplete Family Income)

Dep. Variable: Total Outlays	2000 to 2009		2000 to 2011		2004 to 2009		2004 to 2011		2000 to 2015	
	Coef.	SE	Coef.	SE	Coef.	SE	Coef.	SE	Coef.	SE
Number of Adults	2.161	2.710	3.144	2.773	12.883	3.933	14.883	3.810	3.713	2.855
Household Head < HS Degree = 1	13.348	6.610	15.658	6.629	7.439	10.905	13.394	10.398	11.701	6.353
Household Head College Degree = 1	4.098	4.879	8.806	4.871	9.300	6.288	13.957	6.769	6.185	4.825
Spouse Less than HS Degree = 1	-1.654	7.076	-7.738	7.764	-18.021	10.146	-28.123	10.708	-1.066	7.565
Spouse College Degree = 1	2.175	4.749	1.937	4.799	-5.056	7.102	-8.340	6.800	1.752	5.106
Real After Tax Family Inc. (1,000s)	0.026	0.019	-0.005	0.020	0.017	0.028	-0.019	0.025	-0.005	0.019
African American = 1	-27.031	4.744	-22.745	4.872	-15.374	7.270	-14.401	6.824	-19.186	4.902
Both Spouses Work = 1	-4.824	5.522	-9.795	5.571	-7.405	7.312	-15.065	6.825	-3.576	6.096
Weeks Work	2.472	6.184	3.948	6.166	2.247	7.806	5.642	7.454	10.250	6.488
Full-Time Work = 1	8.552	7.781	4.889	7.702	17.704	10.659	10.070	10.612	2.404	7.883
Real Adult Clothing Expenditures	86.279	15.499	106.360	19.443	-		-		148.063	26.745
Estimated $\lambda_{\text{No Children}}$	81.022		89.235		69.719		72.402		54.612	
$(1/\lambda)_{\text{No Children}}$	1.234		1.121		1.434		1.381		1.831	
Estimated $\lambda_{\text{Children}}$	81.989		90.104		72.086		75.256		56.513	
$(1/\lambda)_{\text{Children}}$	1.220		1.110		1.387		1.329		1.770	
R ²	0.571		0.556		0.586		0.567		0.536	
Sample Size	4,523		5,227		2,985		3,689		7,201	

Notes: Dummy variables for year, month, region of residence, and the number of interviews are included. The constant term is the coefficient on Real Adult Clothing Expenditures ($A\tilde{C}_A$). All other coefficients are the coefficients of the variable multiplied by $A\tilde{C}_A$. The model is estimated without a formal constant. To be included in the sample, the family must have two adults and no children. The parents must be less than 60 years of age. There can be up to 6 children in the family. Families must have positive values for their total and adult clothing expenditures and total outlays. The λ 's were estimated using the means values for families with and without children. The inverse of the estimated λ 's indicate that 1.2% to 14% of the family's adult expenditures go to clothing in the samples that start in 2000, and 0.89% to 0.97% when the samples start in 2004. An "a" denotes significance at the 1% level. A "b" denotes significance at the 5% level, and a "c" denotes significance at the 10% level.

Table 9: Estimation of ϕ , Selected Years
(No Restrictions on Imputed Family Income and Incomplete Family Income)

Dep. Var.: Total Outlays	2000 to 2009		2000 to 2011		2004 to 2009		2004 to 2011		2000 to 2015	
	Coef.	SE	Coef.	SE	Coef.	SE	Coef.	SE	Coef.	SE
$\lambda A\tilde{C}_A$	0.580	0.116	0.592	0.108	0.486	0.131	0.511	0.119	0.750	0.105
$\lambda A\tilde{C}_A(\frac{K}{A})$ Head < HS Degree = 1	-0.356	0.085	-0.391	0.085	-0.471	0.128	-0.529	0.114	-0.298	0.075
$\lambda A\tilde{C}_A(\frac{K}{A})$ Head College Degree = 1	0.137	0.082	0.082	0.078	-0.081	0.098	-0.090	0.087	0.141	0.075
$\lambda A\tilde{C}_A(\frac{K}{A})$ Spouse < HS Degree = 1	0.039	0.095	0.093	0.093	0.335	0.125	0.390	0.113	-0.052	0.091
$\lambda A\tilde{C}_A(\frac{K}{A})$ Spouse College Degree = 1	-0.164	0.071	-0.153	0.068	0.080	0.088	0.069	0.079	-0.140	0.074
$\lambda A\tilde{C}_A(\frac{K}{A})$ After Tax Fam. Inc.	0.00017	0.00031	0.00031	0.00035	0.00048	0.00034	0.00054	0.00040	-0.00043	0.00030
$\lambda A\tilde{C}_A(\frac{K}{A})$ African American = 1	-0.065	0.119	-0.073	0.104	-0.231	0.124	-0.193	0.117	-0.204	0.103
$\lambda A\tilde{C}_A(\frac{K}{A})$ Both Spouses Work = 1	-0.083	0.079	-0.027	0.082	-0.144	0.088	-0.040	0.087	-0.009	0.081
$\lambda A\tilde{C}_A(\frac{K}{A})$ Weeks Worked	0.126	0.084	0.112	0.082	0.189	0.098	0.139	0.089	0.040	0.088
$\lambda A\tilde{C}_A(\frac{K}{A})$ Full-time Work = 1	-0.059	0.093	-0.030	0.091	-0.425	0.143	-0.344	0.122	0.336	0.089
$\lambda A\tilde{C}_A(\frac{K}{A})$ Number of Children	-0.120	0.048	-0.111	0.046	-0.105	0.059	-0.081	0.054	-0.043	0.045
$\lambda A\tilde{C}_A(\frac{K}{A})$ Number of Adults	-0.020	0.052	-0.041	0.052	-0.085	0.054	-0.126	0.053	-0.155	0.050
$\lambda A\tilde{C}_A(\frac{K}{A})$	1.391	0.284	-		-		1.495	0.387	1.349	0.400
Estimated ϕ_1 Child	0.668		0.667		0.682		0.671		0.527	
Estimated ϕ_2 Children	0.597		0.599		0.636		0.637		0.510	
Estimated ϕ_3 Children	0.513		0.514		0.574		0.581		0.475	
R ²	0.5622		0.5559		0.5862		0.576		0.5413	
Sample Size	6,813		7,903		4,486		5,576		10,642	

Notes: Dummy variables for year, month, region of residence, and the number of interviews are included. The constant term is the coefficient on λ multiplied by Real Adult Clothing Expenditures, $\lambda A\tilde{C}_A$. All other coefficients are the coefficients of the variable multiplied by $\lambda A\tilde{C}_A$. The model is estimated without a formal constant. To be included in the sample, the family's parents must be less than 60 years of age. There can be up to 6 children in the family. Families must have positive values for their total and adult clothing expenditures and total outlays.

Table 10: Summary of Estimates of Child-Related Expenditures

Study Name	One Child (%)	Two Children (%)	Three Children (%)
CA K Factor for Low and Moderate Income	25.0	40.0	50.0
Percent of Total Expenditures			
Lazear and Michael (1972 to 73)	19	31	39
Betson-Rothbarth (1980 to 86)	25	37	44
Betson-Rothbarth (1996 to 98)	26	36	42
Betson-Rothbarth (1996 to 99)	25	35	41
Betson-Rothbarth (1998 to 2003)	26	37	44
2004 to 2009—Percent of Total Outlays			
California Betson-Rothbarth	24	37	45
All Families—Rodgers-Betson-Rothbarth	22	35	43
All Families—Rodgers-LM-Rothbarth	22	24	33
Low and Moderate Income—Rodgers-Betson-Rothbarth	25	38	47
Low and Moderate Income—Rodgers-LM-Rothbarth	24	27	37
<i>Notes: See text for description of how the Rodgers estimates are constructed.</i>			

Table 11: Summary of Rodgers Rothbarth Estimates of Child-Related Expenditures, 2000 to 2015

Panel A: All Families	Betson-Rothbarth			Lazear-Michael-Rothbarth		
	1 Child (%)	2 Children (%)	3 Children (%)	1 Child (%)	2 Children (%)	3 Children (%)
2004 to Present						
2004 to 2009	22.2	34.8	43.2	21.6	24.4	33.4
2004 to 2010	22.5	35.4	43.8	20.8	25.0	33.1
2004 to 2011	22.2	34.9	43.2	21.1	26.1	35.5
2004 to 2012	21.8	34.4	42.7	18.6	24.9	31.2
2004 to 2013	21.6	34.0	42.2	19.1	24.0	32.5
2004 to 2014	21.3	33.6	41.8	19.7	24.9	33.6
2004 to 2015	21.2	33.4	41.6	19.1	24.5	32.8
2000 to Present						
2000 to 2009	20.7	32.8	40.8	22.0	24.4	28.9
2000 to 2010	21.0	33.2	41.4	21.1	23.2	29.5
2000 to 2011	20.9	33.1	41.2	21.5	23.5	31.0
2000 to 2012	20.8	32.8	40.9	18.6	24.3	28.5
2000 to 2013	20.6	32.6	40.7	18.8	23.8	31.5
2000 to 2014	20.5	32.4	40.4	19.2	24.1	32.6
2000 to 2015	20.4	32.3	40.3	19.2	24.1	30.8
<i>Notes: See end of table.</i>						

Table 11 cont.: Summary of Rodgers Rothbarth Estimates of Child-Related Expenditures, 2000 to 2015

Panel B: Low and Moderate Income	Betson-Rothbarth (%)			Lazear-Michael-Rothbarth (%)		
2004 to Present	1 Child	2 Children	3 Children	1 Child	2 Children	3 Children
2004 to 2009	24.6	38.3	47.2	23.8	26.9	37.0
2004 to 2010	25.1	39.0	48.0	22.8	27.6	36.5
2004 to 2011	24.4	37.9	46.8	23.2	28.9	39.6
2004 to 2012	23.7	37.0	45.7	20.5	27.5	34.1
2004 to 2013	23.4	36.6	45.2	21.3	26.6	35.8
2004 to 2014	22.9	35.9	44.4	22.1	27.5	37.2
2004 to 2015	23.0	36.0	44.6	21.5	27.0	36.3
2000 to Present						
2000 to 2009	21.5	33.9	42.2	24.3	27.0	31.5
2000 to 2010	22.0	34.7	43.0	23.1	25.5	32.1
2000 to 2011	21.8	34.3	42.7	23.6	25.8	34.3
2000 to 2012	21.5	33.9	42.1	20.4	26.9	31.1
2000 to 2013	21.4	33.7	41.9	20.9	26.3	35.0
2000 to 2014	21.1	33.3	41.5	21.5	26.5	36.1
2000 to 2015	21.2	33.4	41.6	21.4	26.6	33.8

Notes: See text for detailed description of how the estimates were constructed.

Table 11A: Parental Expenditures on Children for Selected Years

Panel A: 1 Child Income Interval	2000 to 2015				2004 to 2009			
	Consumption as a % of Income	Child Care \$ as a % of Consumption	Medical \$ as a % of Consumption	Exp. on Children as a % of Cons. Exp.	Consumption as a % of Income	Child Care \$ as a % of Consumption	Medical \$ as a % of Consumption	Exp. on Children as a % of Cons. Exp.
Less than 15,000*	-	0.005	0.007	0.185	-	0.007	0.010	0.232
15,000 to 19,999	1.830	0.005	0.005	0.202	1.788	0.000	0.005	0.244
20,000 to 22,499	1.585	0.010	0.005	0.195	1.376	0.000	0.005	0.244
22,500 to 24,999	1.596	0.012	0.006	0.174	1.554	0.013	0.008	0.218
25,000 to 27,499	1.401	0.007	0.006	0.179	1.376	0.016	0.005	0.238
27,500 to 29,999	1.512	0.008	0.005	0.170	1.455	0.008	0.006	0.202
30,000 to 32,499	1.220	0.007	0.008	0.184	1.295	0.009	0.008	0.204
32,500 to 34,999	1.249	0.005	0.005	0.182	1.250	0.006	0.006	0.209
35,000 to 39,999	1.284	0.007	0.006	0.176	1.287	0.009	0.005	0.215
40,000 to 44,999	1.035	0.015	0.007	0.179	0.964	0.009	0.008	0.202
45,000 to 49,999	1.055	0.008	0.011	0.179	1.098	0.008	0.011	0.220
50,000 to 52,499	1.007	0.008	0.009	0.181	1.029	0.009	0.010	0.241
52,500 to 54,999	0.972	0.006	0.011	0.163	0.988	0.007	0.013	0.225
55,000 to 59,999	0.953	0.012	0.008	0.181	0.979	0.012	0.010	0.214
60,000 to 64,999	0.921	0.011	0.008	0.182	0.918	0.010	0.008	0.216
65,000 to 69,999	0.930	0.012	0.010	0.193	0.943	0.013	0.010	0.241
70,000 to 74,999	0.861	0.019	0.009	0.181	0.834	0.021	0.008	0.228
75,000 to 87,499	0.836	0.013	0.009	0.174	0.805	0.012	0.009	0.205
87,500 to 99,999	0.784	0.020	0.010	0.184	0.765	0.018	0.010	0.212
100,000 to 124,999	0.763	0.020	0.008	0.188	0.780	0.020	0.008	0.211
125,000 to 149,999	0.697	0.015	0.008	0.171	0.705	0.011	0.008	0.205
More than 150,000	0.605	0.015	0.006	0.164	0.623	0.011	0.006	0.217

* Estimates of consumption as a percentage of income at this interval are not plausible because families at this income level spend more than they take in.

Table 11A cont.: Parental Expenditures on Children for Selected Years
(No Restrictions on Imputed Family Income and Incomplete Family Income)

Panel B: 2 Children Income Interval	2000 to 2015				2004 to 2009			
	Consumption as a % of Income	Child Care \$ as a % of Consumption	Medical \$ as a % of Consumption	Exp. on Children as a % of Total Cons. Exp.	Consumption as a % of Income	Child Care \$ as a % of Consumption	Medical \$ as a % of Consumption	Exp. on Children as a % of Total Cons. Exp.
Less than 15,000	-	0.004	0.011	0.227	-	0.001	0.011	0.230
15,000 to 19,999	2.180	0.004	0.007	0.223	2.319	0.005	0.004	0.223
20,000 to 22,499	1.803	0.005	0.008	0.204	1.486	0.007	0.008	0.213
22,500 to 24,999	1.830	0.014	0.007	0.187	1.574	0.000	0.004	0.234
25,000 to 27,499	1.494	0.003	0.010	0.204	1.381	0.003	0.010	0.173
27,500 to 29,999	1.361	0.007	0.013	0.222	1.509	0.002	0.025	0.242
30,000 to 32,499	1.277	0.007	0.008	0.235	1.351	0.007	0.004	0.258
32,500 to 34,999	1.242	0.007	0.012	0.228	1.279	0.001	0.015	0.252
35,000 to 39,999	1.173	0.005	0.011	0.202	1.230	0.004	0.013	0.248
40,000 to 44,999	1.214	0.020	0.010	0.212	1.111	0.021	0.011	0.241
45,000 to 49,999	1.165	0.009	0.015	0.232	1.187	0.013	0.014	0.233
50,000 to 52,499	1.156	0.011	0.014	0.226	1.240	0.016	0.014	0.200
52,500 to 54,999	1.019	0.008	0.013	0.246	0.932	0.012	0.017	0.234
55,000 to 59,999	0.986	0.011	0.014	0.213	0.910	0.013	0.014	0.225
60,000 to 64,999	0.971	0.016	0.014	0.238	0.942	0.018	0.013	0.242
65,000 to 69,999	0.966	0.010	0.013	0.227	0.943	0.013	0.014	0.253
70,000 to 74,999	0.899	0.016	0.015	0.230	0.888	0.013	0.017	0.243
75,000 to 87,499	0.871	0.020	0.015	0.230	0.885	0.019	0.015	0.238
87,500 to 99,999	0.833	0.022	0.015	0.239	0.856	0.018	0.016	0.243
100,000 to 124,999	0.787	0.020	0.013	0.238	0.793	0.019	0.013	0.245
125,000 to 149,999	0.733	0.026	0.014	0.232	0.720	0.019	0.012	0.250
Greater than 150,000	0.610	0.029	0.012	0.236	0.623	0.028	0.011	0.258

Table 11A cont.: Parental Expenditures on Children for Selected Years
(No Restrictions on Imputed Family Income and Incomplete Family Income)

Panel C: 3 Children Income Interval	2000 to 2015				2004 to 2009			
	Consumption as a % of Income	Child Care \$ as a % of Consumption	Medical \$ as a % of Consumption	Exp. on Children as a % of Total Con. Exp.	Consumption as a % of Income	Child Care \$ as a % of Consumption	Medical \$ as a % of Consumption	Exp. on Children as a % of Total Con. Exp.
Less than 15,000	-	0.006	0.005	0.226	-	0.006	-0.013	0.269
15,000 to 19,999	1.950	0.009	0.013	0.263	1.968	0.002	0.014	0.308
20,000 to 22,499	1.665	0.000	0.002	0.288	1.505	0.003	0.008	0.072
22,500 to 24,999	1.542	0.000	0.012	0.257	1.825	0.000	0.012	0.303
25,000 to 27,499	1.735	0.009	0.011	0.296	1.442	0.000	0.007	0.319
27,500 to 29,999	1.532	0.000	0.010	0.303	1.364	0.000	0.007	0.324
30,000 to 32,499	1.151	0.001	0.011	0.251	1.028	0.000	0.013	0.274
32,500 to 34,999	1.310	0.014	0.015	0.258	1.146	0.011	0.018	0.271
35,000 to 39,999	1.277	0.005	0.014	0.291	1.264	0.005	0.013	0.316
40,000 to 44,999	1.020	0.010	0.009	0.268	1.003	0.010	0.009	0.273
45,000 to 49,999	1.171	0.009	0.015	0.332	1.253	0.013	0.014	0.314
50,000 to 52,499	1.136	0.008	0.014	0.229	1.111	0.005	0.016	0.288
52,500 to 54,999	1.171	0.007	0.016	0.303	1.192	0.007	0.022	0.271
55,000 to 59,999	0.987	0.006	0.021	0.298	1.003	0.005	0.017	0.265
60,000 to 64,999	1.004	0.011	0.013	0.321	0.978	0.014	0.012	0.339
65,000 to 69,999	0.916	0.008	0.014	0.300	0.815	0.009	0.011	0.291
70,000 to 74,999	1.086	0.011	0.019	0.292	1.011	0.007	0.017	0.302
75,000 to 87,499	0.894	0.013	0.021	0.304	0.905	0.008	0.018	0.306
87,500 to 99,999	0.807	0.016	0.021	0.301	0.833	0.020	0.020	0.292
100,000 to 124,999	0.782	0.017	0.017	0.291	0.818	0.013	0.018	0.307
125,000 to 149,999	0.755	0.015	0.015	0.275	0.744	0.015	0.018	0.290
Greater than 150,000	0.608	0.022	0.014	0.297	0.622	0.026	0.017	0.323

**Table 11B: Rothbarth Estimates (% of Total Outlays) by Number of Children and Selected Years
(No Restrictions on Imputed Family Income and Incomplete Family Income)**

Panel A: 1 Child	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Income Interval	2004 to 2009	2004 to 2010	2004 to 2011	2004 to 2012	2004 to 2013	2004 to 2014	2004 to 2015	2000 to 2009	2000 to 2010	2000 to 2011	2000 to 2012	2000 to 2013	2000 to 2014	2000 to 2015
Less than 15,000	31	29	30	26	29	30	29	32	29	31	26	28	29	29
15,000 to 19,999	30	28	29	26	28	29	28	31	29	30	26	27	28	28
20,000 to 22,499	29	28	28	25	27	28	27	30	28	29	25	26	27	27
22,500 to 24,999	28	27	27	24	26	27	26	29	27	28	24	25	26	26
25,000 to 27,499	27	26	26	23	25	26	25	28	26	27	23	24	25	25
27,500 to 29,999	26	25	26	23	24	25	24	27	25	26	23	23	24	24
30,000 to 32,499	26	24	25	22	23	24	23	26	25	25	22	23	23	23
32,500 to 34,999	25	24	24	21	22	23	22	25	24	25	21	22	22	22
35,000 to 39,999	24	23	23	20	21	22	22	24	23	24	20	21	22	21
40,000 to 44,999	23	22	22	20	20	21	21	23	22	23	20	20	21	21
45,000 to 49,999	22	21	21	19	20	20	20	22	21	22	19	19	20	20
50,000 to 52,499	21	20	21	18	19	19	19	22	21	21	18	18	19	19
52,500 to 54,999	20	20	20	18	18	18	18	21	20	20	17	18	18	18
55,000 to 59,999	19	19	19	17	17	17	17	20	19	19	17	17	17	17
60,000 to 64,999	19	18	18	16	16	16	16	19	18	18	16	16	16	16
65,000 to 69,999	18	17	17	15	15	15	15	18	17	18	15	15	15	15
70,000 to 74,999	17	16	17	15	14	14	14	17	17	17	15	14	14	14
75,000 to 87,499	16	16	16	14	13	13	13	16	16	16	14	13	13	13
87,500 to 99,999	15	15	15	13	12	12	12	15	15	15	13	12	12	12
100,000 to 124,999	14	14	14	12	11	12	11	14	14	14	12	12	11	12
125,000 to 149,999	13	13	13	12	10	11	10	13	13	13	12	11	10	11
Greater than 150,000	12	12	12	11	10	10	9	12	13	12	11	10	9	10
Median	22	21	21	19	19	20	19	22	21	21	19	19	19	19

**Table 11B cont.: Rothbarth Estimates (% of Total Outlays) by Number of Children and Selected Years
(No Restrictions on Imputed Family Income and Incomplete Family Income)**

Panel B: 2 Children	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Income Interval	2004 to 2009	2004 to 2010	2004 to 2011	2004 to 2012	2004 to 2013	2004 to 2014	2004 to 2015	2000 to 2009	2000 to 2010	2000 to 2011	2000 to 2012	2000 to 2013	2000 to 2014	2000 to 2015
Less than 15,000	35	36	38	36	35	36	35	35	33	33	35	34	34	35
15,000 to 19,999	34	35	37	35	34	35	34	34	32	32	34	33	33	34
20,000 to 22,499	33	34	36	34	33	34	33	33	31	31	33	32	32	33
22,500 to 24,999	32	33	34	33	32	33	32	32	30	30	32	31	31	32
25,000 to 27,499	31	32	33	32	31	32	31	31	29	30	31	30	30	31
27,500 to 29,999	30	31	32	31	30	31	30	30	28	29	30	29	29	30
30,000 to 32,499	29	30	31	30	29	30	29	29	27	28	29	28	28	29
32,500 to 34,999	28	29	30	28	28	29	28	28	26	27	28	27	28	28
35,000 to 39,999	27	28	29	27	27	28	27	27	25	26	27	26	27	27
40,000 to 44,999	26	27	28	26	26	26	26	26	25	25	26	25	26	26
45,000 to 49,999	25	26	27	25	25	25	25	25	24	24	25	24	25	25
50,000 to 52,499	24	25	26	24	23	24	24	24	23	23	24	23	24	24
52,500 to 54,999	23	24	24	23	22	23	23	23	22	22	23	22	23	23
55,000 to 59,999	22	23	23	22	21	22	22	22	21	21	22	21	22	22
60,000 to 64,999	21	22	22	21	20	21	21	21	20	20	21	20	21	21
65,000 to 69,999	20	21	21	20	19	20	20	20	19	19	19	19	20	20
70,000 to 74,999	19	19	20	19	18	19	19	19	18	18	18	18	19	19
75,000 to 87,499	18	18	19	18	17	18	18	18	17	17	17	17	18	18
87,500 to 99,999	17	17	18	17	16	17	17	16	16	17	16	16	17	17
100,000 to 124,999	16	16	17	16	15	16	16	15	15	16	15	15	16	16
125,000 to 149,999	15	15	16	15	14	15	15	14	14	15	14	14	15	15
Greater than 150,000	14	14	14	14	13	14	14	13	14	14	13	13	14	14
Median	24	25	26	25	24	25	25	24	23	24	24	24	24	24

**Table 11B cont.: Rothbarth Estimates (% of Total Outlays) by Number of Children and Selected Years
(No Restrictions on Imputed Family Income and Incomplete Family Income)**

Panel C: 3 Children	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Income Interval	2004 to 2009	2004 to 2010	2004 to 2011	2004 to 2012	2004 to 2013	2004 to 2014	2004 to 2015	2000 to 2009	2000 to 2010	2000 to 2011	2000 to 2012	2000 to 2013	2000 to 2014	2000 to 2015
Less than 15,000	49	47	52	44	46	49	48	40	40	45	40	46	48	43
15,000 to 19,999	47	46	51	42	45	47	46	39	39	43	39	45	46	42
20,000 to 22,499	46	45	49	41	44	46	45	38	38	42	37	43	45	41
22,500 to 24,999	44	43	48	40	42	45	43	37	37	41	36	42	43	40
25,000 to 27,499	43	42	46	39	41	43	42	36	36	39	35	41	42	39
27,500 to 29,999	41	40	44	38	40	42	41	35	35	38	34	39	40	37
30,000 to 32,499	40	39	43	36	38	40	39	34	34	37	33	38	39	36
32,500 to 34,999	38	38	41	35	37	39	38	33	33	36	32	36	38	35
35,000 to 39,999	37	36	40	34	36	37	36	32	32	34	31	35	36	34
40,000 to 44,999	36	35	38	33	34	36	35	30	31	33	30	34	35	33
45,000 to 49,999	34	34	36	32	33	34	33	29	30	32	29	32	33	31
50,000 to 52,499	33	32	35	31	32	33	32	28	29	30	28	31	32	30
52,500 to 54,999	31	31	33	29	31	31	31	27	28	29	27	29	30	29
55,000 to 59,999	30	30	32	28	29	30	29	26	27	28	26	28	29	28
60,000 to 64,999	28	28	30	27	28	28	28	25	26	26	25	27	28	27
65,000 to 69,999	27	27	28	26	27	27	26	24	25	25	24	25	26	25
70,000 to 74,999	25	26	27	25	25	26	25	23	24	24	23	24	25	24
75,000 to 87,499	24	24	25	24	24	24	24	22	23	23	22	22	23	23
87,500 to 99,999	22	23	23	22	23	23	22	21	22	21	21	21	22	22
100,000 to 124,999	21	22	22	21	21	21	21	20	21	20	19	20	20	21
125,000 to 149,999	20	20	20	20	20	20	19	19	20	19	18	18	19	19
Greater than 150,000	18	19	19	19	19	18	18	18	19	17	17	17	18	18
Median	33	33	36	31	33	34	33	29	30	31	28	32	33	31

Chapter D. Literature Review on Special Topics

State child support guidelines must be reviewed and, if appropriate, revised at least once every four years. This report provides both the Judicial Council of California (Judicial Council) and the California Department of Child Support Services (DCSS) with the information they need to make appropriate policy decisions regarding how child support obligations are calculated. The federal Office of Child Support Enforcement (OCSE) released its final rule, Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, on December 20, 2016.⁸⁶ The new rule makes significant additions to 45 C.F.R. § 302.56, the federal child support guidelines regulation. While California is not required to meet the new federal requirements in this quadrennial review (as it is occurring earlier than “[one] year after publication of [this] final rule”),⁸⁷ this report addresses policy issues based, in part, on earlier quadrennial reviews and, in part, in response to the Notice of Proposed Rulemaking (NPRM).

This report starts with a brief overview of the main guidelines models, including a summary of their strengths and limitations (Section 1). Section 2 discusses policy implications of new or revised requirements for state child support guidelines in the new regulation: consideration of the substantive needs of the noncustodial parent who has limited ability to pay by incorporating a low-income adjustment or, at state election, applying such a low-income adjustment to both parents; and clarification that support orders, while considering all of the noncustodial parent’s (NCP’s) earnings and income, also must be based on evidence of the obligor’s ability to pay in the specific case. Although changes in parenting time provisions in the NPRM were not included in the final rule, Section 2 also addresses how state models accommodate shared parenting. A review of policies other states have adopted to address adjustments for low-income families (Section 3) is followed by a companion review of state policy models and practice on use of presumed/imputed income (Section 4). The report ends with summary conclusions.

⁸⁶ 81 Fed. Reg. 93492 (Dec. 20, 2016), www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-29598.pdf. The Trump Administration has authority to reverse any final rules released during the closing days of the Obama Administration but has not done so as of this writing.

⁸⁷ 45 C.F.R. § 302.56(a).

Executive Summary

Federal law requires each state to adopt one set of child support guidelines that presumptively establish the correct amount of child support to be awarded in every child support case, irrespective of whether the case is heard in a judicial or administrative proceeding, is privately litigated, or is a IV-D case.⁸⁸ The presumption is rebuttable.

States are free to select any approach, provided they meet the minimum federal requirements, are universally applicable to all child support cases within the state, and deviations are properly documented. State child support guidelines must be reviewed, and if appropriate, revised at least once every four years.

This chapter starts with a brief overview of the three main guideline models (Income Shares, Percentage of Income, and Melson formula) including a summary of their strengths and limitations (Section 1).

Section 2 discusses policy implications of new or revised requirements for state child support guidelines in the final rule. The final rule clarifies that guidelines must direct that support orders be based on evidence of ability to pay *in the specific case*. Imputed or presumed income must reflect the specific circumstances of the NCP to the extent known; guidelines may not substitute a standard amount (e.g., minimum wage for a 40-hour work week) in lieu of fact-gathering in the specific case. The rule also requires child support guidelines to consider the substantive needs of the obligor “who has a limited ability to pay” through a self-support reserve or other low-income adjustment (LIA). As now, states have discretion to impute the custodial party’s (CP’s) income, applying the same requirements. Finally, federal regulations require that incarceration may not be considered voluntary unemployment when establishing or modifying a child support order.

Although changes in parenting time provisions were not included in the final rule, Section 2.1.5 discusses how state models accommodate shared parenting. Details on the additional data collection requirements for the next quadrennial review required as part of OCSE’s final rule, Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, are contained in Section 2.1.7 of this chapter.⁸⁹ Section 2.2 details the impact the new rule will have on the next review of California’s guidelines.

⁸⁸ 42 U.S.C. § 667(b); Family Support Act of 1988 (Pub. L. No. 100-485). Congress previously had mandated that all states establish numeric guidelines for determining appropriate child support awards; however the child support guidelines were advisory. Child Support Enforcement Amendments of 1984 (Pub. L. No. 98-378).

⁸⁹ The final rule requires states to consider a far greater range of economic data, including “labor market data (such as unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level for the State and local job markets” as well as “the impact of guidelines policies and amounts on custodial and noncustodial parents” including, specifically, application of guidelines on those whose

Section 3 reviews policies other states have adopted to address adjustments for low-income families and details how states apply the most widely used LIAs: *self-support reserves*, *thresholds*, *minimum orders*, and *zero orders*. Section 3.2 discusses the self-support reserve, an amount based on research regarding the costs of living that parents are assumed to need in order to meet their most basic needs before calculating the child support obligation. The amount and application of a self-support reserve vary significantly among states, even when using the same guideline model, and they are often are coupled with minimum orders.

Section 3.3 discusses the use of thresholds as a LIA. In essence, “threshold” means the level of income at which a state’s low-income adjustment comes into play.

Minimum orders, the third general category of LIA are considered in Section 3.4. State guidelines generally take one of three approaches: presumptive minimum amount; mandatory minimum amount; or a minimum order set in the court’s discretion based on a case-by-case inquiry of the NCP’s ability to pay. Regardless of approach, minimum support orders generally range from \$50 to \$100 per month. Historically, the amount was tied not to ability to pay but to the amount of money that a state disregarded (or passed through) to the CP.

Zero orders are the fourth category of LIA most frequently used. Nationally, their use is most often tied to specific circumstances, such as disability or incarceration.

Section 4 lays out state policy models and practice on use of presumed/imputed income. The appendix includes details on the policies and practices of all states. The report ends with summary conclusions.

incomes are below 200 percent of the Federal poverty level and “factors that influence employment rates among noncustodial parents and compliance with child support orders.” The required case review is broadened to include “the rates of default and imputed child support orders and orders determined using the low-income adjustment.” Further, [t]he analysis of the data must be used in the State’s review of the child support guidelines to ensure that deviations from the guidelines are limited and guideline amounts are appropriate based on criteria established by the State.” 45 C.F.R. § 302.56(h).

1. Review of Other States' Guidelines

Every state has implemented child support guidelines—through statute, court rule, or administrative regulation. Most guidelines can be grouped into one of three models: the Income Shares model, the Percentage of Income model, or the Melson formula. An explanation of each, as well as associated strengths and limitations follows.

1.1 Income Shares Model

Income Shares continues to be the most popular model; it is currently used by 39 states, including California.⁹⁰ The model was developed under an OCSE grant to the National Center for State Courts (NCSC)⁹¹ and incorporates many of the recommendations made by the national Advisory Panel on Child Support Guidelines.⁹² The model assumes the child is entitled to support at the level the child would have enjoyed if the parents lived together. The income of both parents is calculated and combined. (States vary on whether gross or net income is used.) Then, using a schedule developed based on economic estimates of child-rearing expenditures in an intact household, the decision maker determines the total basic child support obligation.⁹³ California uses an income shares model with a formula, not a schedule. That obligation is divided between the parents in proportion to their incomes. Some income shares guidelines have additional add-ons or adjustments. Health insurance premiums and child care expenses frequently are treated as add-ons. The person with custody of the child is presumed to be contributing his or her proportionate share of the total support obligation directly. The NCP is ordered to pay his or her proportionate share of the support obligation.

⁹⁰ Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 1.08, Table 1-3 (Wolters Kluwer, updated Nov. 20, 2016); published online at Cheetah, www.wkcheetah.com/, the publisher's legal research portal (as of Feb. 12, 2017). The states include Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming.

OCSE's *Intergovernmental Reference Guide* provides each state's child support model in Program Category F1, www.acf.hhs.gov/css/irg-state-map (as of Mar. 10, 2017).

⁹¹ Grant No. 18-P-20003; *Development of Guidelines for Child Support Orders, Final Report* (U.S. Dept. of Health and Human Services, 1987).

⁹² As requested in 1983 by the House Ways and Means Committee, the Advisory Panel on Child Support Guidelines was appointed in early 1984.

⁹³ Robert Williams, Ph.D., "An Overview of Child Support Guidelines in the United States," in Margaret C. Haynes, ed., *Child Support Guidelines: The Next Generation* (U.S. Dept. of Health and Human Services, 1994).

Strengths	Limitations
<ul style="list-style-type: none"> ● Perceived as fair because the income of both parents is considered. ● The table reflects economic assumptions applicable to each state. ● The model accommodates add-ons and deductions for factors such as shared custody, health care needs, age of children, and child care expenses. The result is less need for deviation from the presumptive guideline. Therefore there is more consistency and predictability. 	<ul style="list-style-type: none"> ● Transparency is a concern as individuals may not understand the assumptions and principles used to develop the table. Add-ons to consider common factors make the model more complex. ● Updating the table every four years may not accommodate economic issues that occur between quadrennial reviews. ● Some critics argue that the underlying economic assumption (that as income increases, the proportion of income spent on child support decreases) is faulty; the data fails to reflect upper income non-consumer expenditures such as principal on home, savings, and trusts for the children.

1.2 Percentage of Income Model

The Percentage of Income model is used in seven states.⁹⁴ Under this model, the decision maker looks at the income of the noncustodial parent only. Some Percentage of Income guidelines use gross income; others use net income after taxes. Under the Flat Percentage model, the percentage of income devoted to child support remains constant at all income levels. Under the Varying Percentage model, the percentage of income devoted to child support varies depending on the income level; there is a decrease in the percentage of income as the income level increases.

Under both versions of the Percentage of Income model, the decision maker establishes the support order based on the noncustodial parent's income and the number of children involved in the case. For example, under the Wisconsin Percentage of Income Standard, the noncustodial parent pays 17 percent of income for one child, 25 percent for two children, 29 percent for three children, 31 percent for four children, and 34 percent for five or more children. Some Percentage of Income states have adjustments for certain circumstances like parenting time arrangements; most do not. Although this model is based only on the NCP's income, it assumes that the CP is spending his or her proportionate share of income directly on the child.

⁹⁴ Alaska, Arkansas, Mississippi, Nevada, North Dakota, Texas, and Wisconsin. Morgan, *supra* note 90.

Strengths	Limitations
<ul style="list-style-type: none"> ● It is easy to automate and use. It is less prone to error. ● The model accommodates two approaches with different economic principles. The Flat Percentage model applies the same percentage at all income levels, while the Varying Percentage of Income model is based on the economic assumption that, as income increases, the percentage of income devoted to child rearing decreases. ● Both parents contribute to the upbringing in the same proportion as the obligor. This accomplishes income sharing without additional complexities. It also limits the need for calculation of the custodial parent's income. 	<ul style="list-style-type: none"> ● It is perceived as unfair because the formula does not account for the custodial parent's income. ● It may be complex to explain the economic assumptions underlying this approach, including how the percentages are derived and the use of flat versus varying percentages. ● Some Flat Percentage states set a cap on child support at the highest income levels, limiting child support ● It often does not provide for add-ons and deductions for common situations such as shared parenting time or child care expenses, resulting in deviations where such factors are present. Increased deviations mean less predictability or consistency.

1.3 Melson Formula

The Melson formula is named after the late Delaware Family Court Judge Elwood F. Melson, Jr., who developed the formula for his use in his child support hearings when he realized he was not treating similarly situated families the same. In 1979, Judge Melson's approach was formalized and adopted by the Delaware Family Court as Delaware's presumptive child support guidelines. The Melson formula is used in three states.⁹⁵

As with the income shares model, the net income of both parents is calculated. The decision maker then deducts from each parent's net income a self-support allowance, originally described as "[w]hat a reasonable prudent, responsible and caring person in the parent's position might be expected to spend in self-support in light of his or her obligation to meet the needs of his or her child." *I.B. v. R.S.W.B.* (Del. Fam. Ct., Nov. 11, 1977) No. A-3000, Melson, J. (unreported op.). Next, the child's primary support allowance is calculated. As with the parents' self-support reserve, the formula establishes a minimum amount required to meet the child's primary support needs, to which work-related child care costs and extraordinary medical expenses are added. The child's basic need is divided between the parents in proportion to their income. Finally, the

⁹⁵ Delaware, Hawaii, and Montana. Morgan, *supra* note 90.

decision maker determines the standard of living allowance (SOLA) support. To the extent that the parents have income remaining after providing for their own and the child’s subsistence needs, the parents contribute an additional percentage of income towards child support. The person with custody of the child(ren) is presumed to be contributing his or her proportionate share of the total support obligation directly to the child. The noncustodial parent is ordered to pay his or her proportionate share of the support obligation. In the almost 40 years since its adoption in Delaware, the Melson formula has developed policies and adjustments to accommodate increasingly common but complex situations, such as support obligations to dependents or other children, or parenting time adjustments when the parties share physical custody.

Strengths	Limitations
<ul style="list-style-type: none"> ● It is perceived as the fairest model because it is internally consistent and has from its inception included a self-support provision which recognized the parents’ most basic needs must be met before calculating child support. ● The model addresses child care expenses, health care needs, shared custody or extended visitation, multiple family obligations, and other commonly reoccurring situations. ● SOLA ensures that the child shares in the standard of living of the parents. 	<ul style="list-style-type: none"> ● Its reputation is that it is more complicated than other guidelines models, although this is primarily facial complexity. ● With low-income parties, the self-support allowance may result in orders where there is insufficient income to meet the child’s basic support need. ● There is a conundrum in the quadrennial review that increasing the parents’ self-support reserve shifts more orders for low-income families to minimum orders.

2. Policy Implications of Final Rule

Notice of Proposed Rulemaking

On November 17, 2014, a Notice of Proposed Rulemaking (NPRM) was published by the Department of Health and Human Services, Administration for Children and Families (ACF) (79 Fed. Reg. 68548–68587).

The subject of the NPRM was Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs. Among a host of proposals affecting operation of the child support enforcement program, the NPRM addressed several significant issues related to requirements for state child support guidelines, including:

- Basing orders on noncustodial parents' *actual* ability to pay;
- Accounting for the subsistence needs of noncustodial parents;
- Limiting the imputation of income to specific circumstances; and
- Incorporating consideration of mutually agreed parenting time provisions.

Briefly summarized, the primary goal ACF aimed to achieve through inclusion of the above items in the 2014 NPRM, was ensuring that support orders are predicated on the actual financial circumstances of NCPs. The goal derives from research and program experience demonstrating that NCPs are more likely to pay support, and pay consistently, if their support orders are realistically related to their true earnings and income.

The NPRM proposed the addition of a new requirement that state guidelines take into consideration the noncustodial parent's subsistence needs. As discussed in ACF's comments to the NPRM, the proposal was predicated on the rationale that NCPs should have sufficient income to maintain living at a subsistence level and at the same time have an incentive to work so that child support could be paid. The NPRM referenced as examples self-support reserves incorporated by states in their guidelines as means to recognize a NCP's subsistence needs.

The NPRM recognized that the process of imputing income is, as a practical matter, largely based on speculative evidence and/or presumptions—for example, the presumption that a noncustodial parent has the ability to earn at least a minimum wage and work 40 hours each week. Since, by definition, an order based on imputed income rarely reflects a NCP's actual financial situation, the NPRM included provisions governing the circumstances in which a state could impute income. Specifically, the NPRM provided for income imputation only in circumstances where the NCP's lifestyle is inconsistent with earnings or income, or where there is evidence of additional income or assets beyond those identified. The NPRM also made allowance for circumstances where an NCP with a good educational background and marketable skills simply refused to work.

The NPRM proposed what it described as “a minor change” to existing regulations to allow a court or child support agency to include a parenting time agreement into the child support order when both parents have agreed to the parenting time provisions. While recognizing that parenting time and child support obligations are legally separate and distinct rights, the NPRM noted that practically speaking, parenting time is an important corollary to child support establishment because the child support agency, or finder of fact, needs information about the parenting time arrangements in order for the guidelines amount to be effectively calculated.

A final proposed substantive change regarding the guidelines provisions of the NPRM revision addressed circumstances under which deviations from guidelines may be permitted. Specifically,

the NPRM proposed the addition of language that would permit the state to identify factors which would serve as grounds for deviating from a presumptive order, in the best interests of the child, such as extraordinary medical expenses or educational costs of additional dependents.

On a procedural issue, the NPRM noted that ACF sought public comment on the amount of time a state would require to implement the proposed guidelines provisions. Specifically, the NPRM asked for input on the proposal that a state meet the guidelines requirements within one year after completion of the state's next quadrennial review of its guidelines.

Final Rule

On December 20, 2016, eleven months following the close of the NPRM comment period, ACF published its final rule, Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs (81 Fed. Reg. 93492–93569). Taking into consideration more than 2,000 comments received, ACF made a number of revisions to the guidelines proposals contained in the NPRM, accompanied by extensive discussion around commenters' input and ACF's determination to retain or alter the NPRM's proposals in the final rule.

The final rule language, including changes to the corresponding provisions in the NPRM, are discussed below, including reference to input from commenters and the responses from ACF. Implications for California's implementation of the final rule are also addressed.

2.1 Significant Requirements Affecting State Child Support Guidelines

The NPRM proposed amending 45 C.F.R. § 302.56(c)(1) to require guidelines to take into consideration a noncustodial parent's "actual earnings and income." (79 Fed. Reg. 68548, 68580.) The NPRM's approach was explicitly predicated on the underlying notion that "basic fairness requires that child support obligations reflect an obligor's actual ability to pay them." (*Id.* at p. 68553.) ACF's comments to the NPRM indicated its intent to foster changes to state child support guidelines that "ensure that parents meet their child support obligations." (*Ibid.*) The NPRM also noted, "Consistent child support payments can help custodial families achieve economic stability." (*Ibid.*) ACF's commentary referenced research showing that when orders are set too high, compliance declines and that excessive orders result in less, not more, support being paid.

2.1.1 Noncustodial Parent Ability to Pay

On the topic of ability to pay, commenters to the NPRM were in general agreement with the proposition that support orders ought to be based on evidence of an obligor's ability to pay. ACF's comments to the final rule point out that it has been federal policy for more than a quarter century that support orders should be based on a noncustodial parent's ability to pay (citing OCSE AT-93-04 and PIQ-00-03) and that many state guidelines reference the standard as well.

In the final rule, ACF has included “ability to pay” in section 302.56(c)(1) as the overarching standard for states to follow in their guidelines for setting support. The ACF commentary provides the following concern and justification for this change:

Over time, we have observed a trend among some States to reduce their case investigation efforts and to impose high standard minimum orders without developing any evidence or factual basis for the child support ordered amount. Our rule is designed to address the concern that in some jurisdictions, orders for the lowest income noncustodial parents are not set based upon a factual inquiry into the noncustodial parent’s income and ability to pay, but instead are routinely set based upon a standardized amount well above the means of those parents to pay it. The Federal child support guidelines statute requires guidelines that result in “appropriate child support award” and is based on the fundamental principle that each child support order should take into consideration the noncustodial parent’s ability to pay. Therefore, we have codified this longstanding policy guidance as the leading guidelines principle in § 302.56(c)(1).

Research suggests that setting an accurate child support order based upon the noncustodial parent’s ability to pay improves the chances that the noncustodial parent will continue to pay over time. Compliance with support orders is strongly linked to actual income and ability to pay. Many low-income noncustodial parents do not meet their child support obligations because they do not earn enough to pay what is ordered. Orders set beyond a noncustodial parents’ ability to pay can result in a number of deleterious effects, including unmanageable debt, reduced low-wage employment, increased underground activities, crime, incarceration, recidivism, and reduced contact with their children. Research consistently finds that orders set too high are associated with less consistent payments, lower compliance, and increased child support debt. In fact, studies find that orders set above 15 to 20 percent of a noncustodial parent’s income increases the likelihood that the noncustodial parent will pay less support and pay less consistently, resulting in increased arrears. The conclusion from this research is that families do not benefit from orders that noncustodial parents cannot comply with because of their limited income. High orders do not translate to higher payments when the noncustodial parent has limited income.

(81 Fed. Reg. 93492, 93516–93517, fns. omitted.)

As will be seen in the following subsections, there was more discussion from the NPRM commenters about the details related to defining what constitutes an NCP’s ability to pay and what evidence and methods may and may not be used to arrive at a support order based on that general standard.

2.1.2 “Actual Earnings and Income” vs. “All Earnings and Income”

In the NPRM, proposed section 302.56(c)(1) reads as follows:

(c) The guidelines established under paragraph (a) of this section must at a minimum:

(1) Take into consideration *actual earnings and income* of the noncustodial parent.

(79 Fed. Reg. 68580, italics added.)

A number of commenters argued that the underlined language was more restrictive than the prevailing standard of “all earnings and income.” As an example, one commenter questioned whether the change meant that depreciation could no longer be used to adjust an obligor’s income. Similarly, other commenters requested clarification on several topics:

- What constitutes “actual” income?
- Might a noncustodial parent minimize “actual” income by allocating a greater percent of earnings to a deferred compensation plan?
- Should ACF define income for guidelines purposes as the Federal Adjusted Gross Income?
- Should guidelines no longer permit Smith/Ostler orders? Or, if they are permitted, should they better reflect the tax consequences to the paying parent?
- Should ability to pay be calculated only after mandatory deductions, such as taxes?

For reasons such as these, commenters expressed concern that the change from “all” to “actual” would alter long-standing state practices in ways not intended or contemplated. They raised a number of concerns about the proposed change, saying it would:

- Introduce uncertainty in existing state law definitions of income;
- Make it difficult to determine the income of contractors and the self-employed;
- Mean that a state could never impute income; and
- Negate the use of evidence showing ability to pay.

Ultimately, in response to commenters’ concerns, ACF opted *not* to change the language from “all earnings and income” to “actual earnings and income” in a redesignated section 302.56(c)(1)(i) in the final rule:

We have decided to retain the former language in the rule that “all” earnings and income be taken into consideration in § 302.56(c)(1)(i). This language has been

extensively interpreted and applied in every State for over two decades. Retaining the term “all income” allows States to consider depreciation, deferred income, or other financial mechanisms used by self-employed noncustodial parents to adjust their actual income.

(81 Fed. Reg. 93492, 93518.)

Having made this determination, however, ACF’s response nevertheless underscored its expectations for states in formulating future guidelines:

To be clear, the guidelines must provide that orders must be based upon evidence of the noncustodial parent’s earnings and income and other evidence of ability to pay in the specific case. In addition, the guidelines must provide that if income is imputed, the amount must reflect the specific circumstances of the noncustodial parent to the extent known, and may not order a standard amount imposed in lieu of fact-gathering in the specific case. The expectation is that in IV-D cases, the IV-D agency will investigate each case sufficiently to base orders on evidence of the noncustodial parent’s ability to pay. Orders issued in IV-D cases should not reflect a lower threshold of evidence than applied in private cases represented by legal counsel.

(81 Fed. Reg. 93517.)

In response to those commenters urging that the federal government provide more specificity on questions of what constitutes income and earnings, ACF responded thus:

We are establishing only minimum components for child support guidelines. States have the discretion and responsibility to define earnings and income ... since they are in a better position to evaluate the economic factors within their States and have broad discretion to set guidelines policies.

(81 Fed. Reg. 93517.)

Many commenters to the NPRM had suggested that the income and earnings of both parents be considered in state guidelines. While expressing general agreement that both noncustodial and custodial parents have responsibility to support their children, ACF pointed out that the NPRM did not address this aspect of the guidelines. ACF noted that such a change as suggested would have an impact on the guidelines model adopted by a state. Since the NPRM did not address guidelines models, which model a state chooses to follow is a matter of state discretion. That said, ACF pointed out that in the final rule, section 302.56(c)(1)(i), there is added parenthetical language following the requirement that states’ guidelines must take into consideration all

earnings and income of the noncustodial parent: “(and at the State’s discretion, the custodial parent).”

2.1.3 *Subsistence Needs of Noncustodial Parents*

In the NPRM, proposed section 302.56(c)(4) provided that state guidelines

[t]ake into consideration the noncustodial parent’s subsistence needs and provide that any amount ordered for support be based upon available data related to the parent’s actual earnings, income, assets, or other evidence of ability to pay, such as testimony that income or assets are not consistent with a noncustodial parent’s current standard of living.

(79 Fed. Reg. 68580.)

The proposal to incorporate language regarding subsistence needs of the noncustodial parent resulted in much input from commenters. There were requests for operational guidance or an “operational definition” of the term. There were requests for guidance on what to do in situations where the NCP made less than the CP. Some commenters suggested that states “need discretion to carefully weigh and balance the considerations of low-income obligors and the needs of the children and the custodial parents’ households.” There were suggestions that subsistence needs of CPs also be considered.

In light of comments, ACF revised the NPRM language and redesignated it as section 302.56(c)(1)(ii), requiring that evidence of ability to pay

[t]akes into consideration the basic subsistence needs of the noncustodial parent (and at the State’s discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method determined by the State.

(81 Fed. Reg. 93562.)

In discussing the change from the NPRM language to that of the final rule, ACF set forth its definition of the term “low-income adjustment,” describing it as

the amount of money a parent owing support needs to support him or herself at a minimum level. It is intended to ensure that a low-income parent can meet his or her own basic needs as well as permit continued employment. A low-income adjustment is a generic term. A self-support reserve is an example of a low-income adjustment that is commonly used by the States.

(81 Fed. Reg. 93518.)

As part of its discussion on this topic, ACF indicated that section 302.56(c)(1)(ii) allows states to exercise flexibility in fashioning the best approach to taking a low-income NCP's basic subsistence needs. ACF explained its rationale for addressing the NCP's subsistence needs as follows:

Our goal is to establish and enforce orders that actually produce payments for children. Both parents are expected to put their children first and to take the necessary steps to support them. However, if the noncustodial parent cannot support his or her own basic subsistence needs, it is highly unlikely that an order that ignores the need for basic self-support will actually result in sustainable payments.

(81 Fed. Reg. 93519.)

Based on its further discussion, a matter of significance to ACF is that failure to account for the subsistence needs of noncustodial parents will lead to “unintended, but pernicious consequences.” (81 Fed. Reg. 93519.) Specifically, ACF cites concern that some noncustodial parents will “exit low-wage employment either to avoid the system entirely or turn to the drug trade or other illegal activities to pay support obligations.” (*Id.* at p. 93519.)

2.1.4 Imputing Noncustodial Parent Income

A few commenters indicated that state laws must have flexibility to distinguish between noncustodial parents who are low-income and those who are creative in avoiding their responsibility. ACF expressed agreement with these concerns, acknowledging that states must meet the challenge in distinguishing between the two types of situations. ACF described how states should undertake to accomplish this:

More contact with both parents and investigation into the facts will help the child support agency learn more about the noncustodial parent's specific circumstances. Custodial parents can be a particularly good source of information. Imputation should not serve as a substitute for fact-gathering.

(81 Fed. Reg. 93519.)

The theme of “investigation into the facts” is one that underlies much of what ACF stresses in terms of establishing an NCP's ability to pay. The reference in the quote above applies equally to determining a noncustodial parent's subsistence needs as it does to defining circumstances in which it is appropriate to impute income to an NCP whose income and earnings are not readily determined.

The “actual income and earnings” language in proposed section 302.56(c)(1) of the NPRM prompted concerns from many commenters that ACF was eliminating the practice of imputing income. In response, ACF pointed to language in proposed section 302.56(c)(4) that permits ability to pay be established by “other evidence of ability to pay, such as testimony that income or assets are not consistent with a noncustodial parent’s current standard of living.” In addition, ACF pointed to the following language in the NPRM preamble to discussion of ability to pay:

The proposed regulation in § 302.56(c)(4) allows a state to impute income where the noncustodial parent’s lifestyle is inconsistent with earnings or income and where there is evidence of income or assets beyond those identified. We recognize, however, that some noncustodial parents may not make support payments because they are unwilling to do so. An example of this would be a noncustodial parent who, despite good educational credentials and marketable job skills, simply refuses to work. In this situation the court may deviate from the guidelines.

(79 Fed. Reg. 68555.)

Commenters who were concerned about the possible limitation on imputing income cited three circumstances in which they believed imputation is appropriate and based on case law:

(1) When a parent is voluntarily unemployed, (2) when there is a discrepancy between reported earnings and standard of living, and (3) when the noncustodial parent defaults, refusing to show up or provide financial information to the child support agency.

(81 Fed. Reg. 93519.)

Other commenters thought that courts should be given discretion to evaluate the circumstances in cases where imputation of income is considered.

Regarding commenters’ concerns over perceived elimination of or limitations on the use of imputing income in arriving at support orders, ACF responded that there was considerable misunderstanding concerning “the scope and intent” of the NPRM:

Our intent was to require a stronger focus on fact-gathering and setting orders based on evidence of the noncustodial parent’s actual income and ability to pay, rather than based on standard imputed (presumed) amounts applied across the board. However, we also intended to recognize certain established grounds for imputation when evidentiary gaps exist, including voluntary unemployment and discrepancies between reported income and standard of living.

(81 Fed. Reg. 93519, fn. omitted.)

In the final rule, imputed income is addressed in new section 302.56(c)(1)(iii). In the context of determining ability to pay, the section reads:

If imputation of income is authorized, takes into consideration the specific circumstances of the noncustodial parent (and at the State's discretion, the custodial parent) to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.

(81 Fed. Reg. 93519.)

In its explanatory comments about the above section, ACF makes a point of the need for state guidelines to provide for the "specific circumstances" of the NCP that would allow for use of imputed income. ACF points out that in some states' guidelines, income can be imputed without evidence that an NCP has earned or is able to earn an income of standard amount.

Building on earlier expressed themes regarding its intent to focus more attention by states on fact-gathering and setting orders on actual evidence of ability to pay, ACF's commentary notes,

[a]lthough the original use of imputation was to fill specific evidentiary gaps in a particular case, over time we have observed a trend among some States of reducing their case investigation efforts and imposing high standard minimum child support orders across-the-board in low-income IV-D cases, setting orders without any evidence of ability to pay.

(81 Fed. Reg. 93519, fn. omitted.)

ACF notes that many states do attempt to determine an evidentiary basis for setting orders and use imputed income to fill evidentiary gaps. Nevertheless, ACF notes that other states set high minimum orders in whole categories of low-income NCPs without respect to available evidence concerning the NCP's specific circumstances. ACF pointedly notes that some states impute income even in circumstances where available evidence indicates involuntary unemployment, part-time employment, and low earnings.

The consequences of imputing income without reference to the actual circumstances of a noncustodial parent are manifold, according to ACF:

Overuse of imputed income frequently results in IV-D orders that are not based on a realistic or fair determination of ability to pay, leading to unpaid support, uncollectible debt, reduced work effort, and underground employment. Because such orders are not based on the noncustodial parent's ability to pay, as required by Federal guidelines law, they typically do not yield consistent payments to children.

(81 Fed. Reg. 93520.)

ACF's commentary notes that section 467 of the Social Security Act provides for a rebuttable presumption that the amount of a support award resulting from the application of state guidelines is correct. It also provides that the presumption may be rebutted by a specific finding on the record the application of the guidelines would be "unjust or inappropriate in a particular case."

One aspect of limiting imputation of income that concerned some commenters was the effect on securing default orders for support in circumstances where the NCP refuses to appear and participate in the order-setting process, even after multiple opportunities afforded by the court or IV-D agency. Other commenters expressed concern that the rule provided no basis for evidence such as past income, employment history, and employment available in the local community. They interpreted the NPRM to prohibit the entry of an order of support without evidence of current income or current lifestyle.

These commenters feared that this would provide an incentive to earners with income to leave employment and refuse to participate in the order setting process in order to compel entry of an order for zero dollars.

Responding to these concerns, ACF emphasized that it was not its intention to limit imputation of income only to circumstances where an NCP's standard of living is inconsistent with reported income. ACF pointed out that pursuant to the provisions of section 302.56(c)(1)(iii), if a state's guidelines authorize imputation, then the guidelines must require consideration of the noncustodial parent's specific circumstances, including assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other barriers to employment. Other factors that may be considered are record of seeking work, the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other background factors.

Concern was expressed that the NPRM proposal, incorporated as section 302.56(c)(1)(iii) in the final rule, would apply to both IV-D and non-IV-D cases and that the requirements would reduce

or limit the flexibility of attorneys, parties, and the judicial authority in non-IV-D matters. In response, ACF noted the authority of the federal government to regulate the field of support guidelines:

State child support guidelines were adopted pursuant to a title IV-D State plan requirement and a condition of Federal funding, and specific guidelines requirements derive from Federal law. Our rule is modeled on the best practices currently implemented in a number of States to improve order accuracy and basic fairness, and is based on OCSE's authority to set standards to establish requirements for effective program operation under section 452(a)(1) and State plan provision that the State will comply with such requirements and standards under section 454(13) of the Act.

(81 Fed. Reg. 93521.)

ACF's commentary went on to reiterate concern that in some states, orders are arrived at not predicated on a particular noncustodial parent's ability to pay, but instead, they are based on standardized amounts and often affect the unrepresented and the indigent. ACF describes imputed income as "fictional income" and indicates that orders made without an evidentiary "cannot be considered fair and accurate." (81 Fed. Reg. 93521.)

Of note, ACF's comments also briefly discussed its view of the process of imputing income in non-IV-D cases compared to IV-D cases:

Private cases are more likely to involve legal counsel, and result in child support orders based on actual income. When imputed income is used in private cases, it typically is used in the way originally intended—to fill evidentiary gaps in specific cases to support a reasonable inference of the noncustodial parent's ability to pay in situations of voluntary unemployment or discrepancies in reported income and standard of living. We point out that private litigants are expected to support their position with evidence.

(81 Fed. Reg. 93521.)

2.1.5 Parenting Time

The NPRM proposed the addition of section 302.56(h), regarding consideration of parenting time in the setting of orders:

Child support awards established under paragraph (a) of this section may recognize parenting time provisions pursuant to State child support guidelines or when both parents have agreed to the parenting time provisions. Child support awards established under paragraph (a) of this section may recognize parenting

time provisions pursuant to State child support guidelines or when both parents have agreed to the parenting time provisions.

(79 Fed. Reg. 68580.)

Neither this provision nor a variation of it appears in the final rule. While noting that a majority of comments to this proposed section were favorable and supportive of the addition, ACF's response indicated that other commenters expressed concerns about the intended scope of the provision and raised a number of implementation questions. These included questions about how much federal financial participation (FFP) would be available for parenting time activities; cost allocation; the child support program's role in creating, monitoring, and enforcing a parenting time order; and the legal relationship between child support payments and parenting time. Other commenters raised concerns over the lack of experience in child support agencies for handling complex family issues.

Commenters also asked for clarification about the interaction of child support and custody or visitation processes and expectations for monitoring compliance with parenting time orders.

Addressing the decision not to include a parenting time provision in the final rule, ACF provided the initial rationale underlying the NPRM proposal:

Our intention in proposing § 302.56(h) was not to open up child support funding for a new set of parenting time activities, which Congress must authorize, or to collapse separate child support and parenting time legal rights. Our intention was to acknowledge existing policies and practices in many States, and to provide a technical clarification that addressed audit and cost allocation questions arising from current practices in a number of States [¶] In light of the comments received on the proposed parenting time provisions and the unintended confusion regarding these proposals, OCSE determined that new rules are not necessary. Therefore, we deleted the proposed paragraph (h).

(81 Fed. Reg. 93529.)

Although section 302.56(h) is not included in the final rule, ACF nevertheless recognized and applauded the fact that 36 states have guidelines recognizing parenting time arrangements in establishing child support orders. ACF pointed out that as a practical matter, effective calculation of guidelines amounts requires information about parenting time arrangements. In addition, ACF indicated that including parenting time in support order calculations is an efficient approach that means parents do not have to be involved in multiple administrative or judicial processes. Doing so carries no cost to the child support program. In summarizing its approach to the issue of

parenting time outside the parameters of the final rule, ACF concluded its commentary as follows:

We encourage States to continue to take steps to recognize parenting time provisions in child support orders when both parents have agreed to the parenting time provision or in accordance with the State guidelines when the costs are incidental to the child support proceeding and there is no cost to the child support program.

(81 Fed. Reg. 93530.)

2.1.6 Prohibition Against Treating Incarceration as Voluntary Unemployment

The NPRM addressed the issue of treatment of incarceration with a proposed new provision denominated as section 302.56(c)(5), requiring that state guidelines

[p]rovide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders.

(79 Fed. Reg. 68580.)

The final rule incorporates an identical provision in redesignated section 302.56(c)(3).

ACF's commentary in the NPRM regarding the proposal noted that the practice of treating incarceration as voluntary unemployment was once common, but at present fewer than a dozen states still maintain such policies. Treating incarceration as voluntary results in imputing income when establishing orders and preventing modification of support. As a result, many incarcerated parents leave prison with an average of \$15,000 to \$30,000 in unpaid support. Unrealistically high support orders undermine stable employment and family relationships, as well as lead to involvement in the underground economy and increased recidivism.

In its final rule response to commenters, ACF noted that more than 600 of those favored the new language, while only a very few opposed it. Those not in favor of the language thought that exceptions to the requirement ought to be made in situations where the crime involved is intentional failure to pay child support or is a violent crime committed against the supported child or the CP. ACF opted not to make the suggested changes. It pointed out that the setting or continuation of support orders in circumstances of incarceration would, in its view, serve as additional punishment for the NCP, which is outside the purpose of the guidelines process.

Other commenters asserted that the question of how to treat incarcerated obligors should be left to the states and not governed by federal mandate. They argued that the question involves a

significant public policy issue for which there is significant body of case law in many states and that ACF should not override such state policies through regulation.

In its response, ACF noted that all but one quarter of the states have updated their laws and policies to eliminate treatment of incarceration as voluntary unemployment. Further, ACF argued for the notion that the approach to support order setting should be universal in application:

The rule does not provide special treatment for incarcerated parents. Rather, it requires application of Federal review and adjustment requirements, including that orders be reviewed and adjusted upward or downward in *all* cases upon a showing of any substantial change in circumstances, including a substantial change in circumstances due to unemployment or incarceration. Implementation of § 302.56(c)(3) will ensure that States consider incarceration as a substantial change of circumstances that warrants the child support order to be reviewed and, if appropriate, adjusted based on the noncustodial parent's ability to pay. If an incarcerated parent has income or assets, these can be taken into consideration in reviewing the order. However, States should not assume an ability to earn based on pre-imprisonment wages, particularly since incarceration typically results in a dramatic drop in income and ability to get a job upon release.

(81 Fed. Reg. 93527.)

Summarizing its decision to retain the provision in the final rule, ACF stated,

The child support system is not meant to serve a punitive purpose. Rather, the system is an economic one, designed to measure the relative contribution each parent should make—and is capable of making—to share fairly in the economic burdens of child rearing. Considering the existing evidence, imposing high support payments on incarcerated parents serves as a punitive measure, becomes an additional collateral consequence of incarceration, and does not serve the best interests of the child by damaging the parent-child relationship and the prospect for consistent child support payments in the future.

(81 Fed. Reg. 93527, fns. omitted.)

2.1.7 Data Required for State Quadrennial Reviews of Guidelines

In the NPRM, the economic data that states must review as part of the quadrennial guidelines review process were set forth in section 302.56(i), as follows:

As part of the review of a State's guidelines required under paragraph (e) of this section, a State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application

of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited. Deviation from the presumptive child support amount may be based on factors established by the State.

(79 Fed. Reg. 68580.)

In stark contrast, the final rule requires states to consider a far greater range of economic data and to examine data regarding the application of guidelines in more detail. In the final rule, the requirements are expanded and redesignated as section 302.56(h), which states in relevant part:

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

(1) Consider economic data on the cost of raising children, labor market data (such as unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level for the State and local job markets, the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level, and factors that influence employment rates among noncustodial parents and compliance with child support orders;

(2) Analyze case data, gathered through sampling or other methods, on the application of and deviations from the child support guidelines, as well as the rates of default and imputed child support orders and orders determined using the low-income adjustment required under paragraph (c)(1)(ii) of this section. The analysis must also include a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment required under paragraph (c)(1)(ii). The analysis of the data must be used in the State's review of the child support guidelines to ensure that deviations from the guidelines are limited and guideline amounts are appropriate based on criteria established by the State under paragraph (g).

(81 Fed. Reg. 93530.)

In its discussion of the expanded data gathering and analysis required by section 302.56(h), ACF noted "all of the various concerns about how States were developing criteria for guidelines." (81 Fed. Reg. 93530.) ACF did not enumerate these concerns or discuss them in detail in reference to section 302.56(h). ACF has expressed a clear intent elsewhere in the final rule to ensure that support orders are based, to the extent possible, on actual information and evidence of noncustodial ability to pay, not on standardized presumptions regarding income that have no

bearing to a specific noncustodial parent's circumstances. In addition, ACF's comments, throughout the discussion of changes to application of guidelines, demonstrate an intent to ensure that in instances where noncustodial income is imputed, it is done with as much reference to the actual circumstances of the noncustodial parent as possible, and not on across-the-board rules applicable to all. Given these clear policy preferences, it is a fair assessment that in formulating the components of section 302.56(h), ACF wants states to develop guidelines whose application is closely tied to current economic reality.

As extensive as these expanded data requirements are that must be reviewed, ACF did note in its discussion that many commenters suggested even more factors that states should also be required to consider as part of guidelines reviews. One suggestion was analysis of economic data on the marginal cost of raising children. Another suggestion called for analysis of case data by gender regarding the application of, and deviation from, guidelines. The latter suggestion was made so that states could ensure that gender bias is declining steadily and deviations from guidelines are limited. Beyond mentioning them, ACF did not address them. Although they were not adopted in the final rule, states are presumably free to add such considerations to the required data gathering and analysis required by section 302.56(h) if they deem them of significant relevance.

2.1.8 Compliance Date for Implementation of the Final Rule

Proposed section 302.56(a) would have set the deadline for adoption of state support guidelines that conform with new requirements as follows:

Within one year after completion of the State's next quadrennial review of its guidelines, pursuant to § 302.56(e), as a condition of approval of its State plan, the State must establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State that meet the requirements in this section.

(79 Fed. Reg. 68580.)

As a result of comments, ACF acknowledged that the proposed time for implementation posed a challenge for states whose quadrennial reviews start shortly after the date of the final rule. It recognized that states will need additional time to perform research and prepare for the quadrennial review based on the new requirements. As result, section 302.56(a) in the final rule reads as follows:

Within 1 year after completion of the State's next quadrennial review of its child support guidelines, that commences more than 1 year after publication of the final rule, in accordance with § 302.56(e), as a condition of approval of its State plan, the State must establish one set of child support guidelines by law or by judicial

or administrative action for setting and modifying child support order amounts within the State that meet the requirements in this section.

(81 Fed. Reg. 93562.)

2.2 Implications for California’s Review of Child Support Guidelines Under the Final Rule

The final rule—Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs—was published by the Department of Health and Human Services, Administration for Families and Children (ACF), on December 20, 2016, and became effective January 19, 2017. As discussed in the preceding sections, the final rule mandates changes that states must implement in reviewing and adopting future versions of their uniform child support guidelines.

Prior to the effective date of the final rule, the Center for Families, Children & the Courts (CFCC) of the Judicial Council of California undertook the current quadrennial review of California’s statewide uniform guideline (Cal. Fam. Code §§ 4050–4076). Periodic review of the guideline in order to recommend appropriate changes to the state legislature is authorized by California Family Code section 4054(a).

2.3 Issues of Particular Policy Interest

When the current quadrennial review process began, the final rule was not yet published. The 2014 NPRM was the only extant document that provided states, the child support community, and the public with guidance about the direction ACF envisioned for changes to requirements for statewide child support guidelines. As a result, this report considers the policy implications of the NPRM, especially in relation to parenting time, the use of actual income, and noncustodial parent subsistence needs. Analysis of these issues must now be made in light of the final rule and changes made by it to the provisions of the NPRM.

2.3.1 Parenting Time

The NPRM proposed a new criterion, as section 302.56(h), to allow states to recognize parenting time provisions when both parents have agreed to the parenting time provisions or in keeping with a state’s guidelines. The language of proposed section 302.56(h) in the NPRM read as follows:

Child support awards established under paragraph (a) of this section may recognize parenting time provisions pursuant to State child support guidelines or when both parents have agreed to the parenting time provisions. Child support awards established under paragraph (a) of this section may recognize parenting time provisions pursuant to State child support guidelines or when both parents have agreed to the parenting time provisions.

(79 Fed. Reg. 68580.)

In the final rule, this language was deleted. ACF noted that while the majority of comments on this proposal were supportive of the concept, it nevertheless created confusion for many commenters who questioned the intended scope of the proposal, or who misunderstood the extent of availability of FFP to fund IV-D agency activities or raised questions about cost allocation. Other comments questioned the role of the child support program in creating, monitoring, and enforcing parenting time orders, the legal relationship between child support payments and parenting time, and the lack of experience of child support agencies in handling complex family law issues.

ACF's response made clear that it did not mean to create a basis for funding new child support activities.

Our intention in proposing § 302.56(h) was not to open up child support funding for a new set of parenting time activities, which Congress must authorize, or to collapse separate child support and parenting time legal rights. Our intention was to acknowledge existing policies and practices in many States, and to provide a technical clarification that addressed audit and cost allocation questions arising from current practices in a number of States.

IV-D program costs related to parenting time arrangements must continue to be minimal and incidental to IV-D child support order establishment activities and not have any impact on the Federal budget.

(81 Fed. Reg. 93529, italics added.)

Although the language of proposed section 302.56(h) was deleted in the final rule, ACF nevertheless recognized value in including mutually agreed upon parenting time orders in the process of setting support orders:

OCSE recognizes that the inclusion of an uncontested and agreed upon parenting time provision incidental to the establishment of a child support order aligns with Pub. L. 113-183, "*Preventing Sex Trafficking and Strengthening Families Act.*" ... Section 303 of this recent law indicated that it is the sense of the Congress that "(1) establishing parenting time arrangements when obtaining child support orders is an important goal which should be accompanied by strong family violence safeguards; and (2) States should use existing funding sources to support the establishment of parenting time arrangements, including child support incentives, Access and Visitation Grants, and Healthy Marriage Promotion and Responsible Fatherhood Grants." Any new costs related to parenting time provisions would require the State to identify and dedicate funds separate and apart from IV-D allowable expenditures

(81 Fed. Reg. 93529.)

California is among the 36 states acknowledged by ACF to have adopted guidelines that recognize parenting time arrangements in establishing support orders. As part of the statewide uniform guideline, Family Code section 4055(b)(1)(D) defines parenting time as one element of the formula used to determine the amount of child support to be paid:

H% = approximate percentage of time that the high earner has or will have primary physical responsibility for the children compared to the other parent. In cases in which parents have different time-sharing arrangements for different children, H% equals the average of the approximate percentages of time the high earner parent spends with each child.

With the deletion of the language of proposed section 302.56(h) in the final rule, nothing in that rule speaks to the issue of recognizing mutually agreed parenting time orders when establishing order for support. Importantly, based on ACF's discussion on the issue and its reasons for deleting proposed section 302.56(h), it is clear that should California choose to pursue implementation of a policy along the lines of that proposal, any new costs that might be imposed on the administration and operation of the child support program by the California Department of Child Support Services would not be eligible for FFP. The state would have to identify separate funding sources apart from IV-D allowable expenditures.

2.3.2 Use of Actual Earnings and Income in Calculating Noncustodial Parent Ability to Pay

As noted earlier in this section, establishing an NCP's true ability to pay lies at the core of much of ACF's approach to mandated changes in future state support guidelines. It was on this basis that the NPRM proposed inserting language in section 302.56(c)(1) requiring consideration of an NCP's "actual earnings and income." This phrase prompted many comments evidencing confusion over its meaning and concerns that traditional state definitions and considerations used to assess income and ability to pay would be prohibited. In response, in the final rule the proposed language reverted to "all income and earnings of the noncustodial parent" and left it to state discretion whether to apply the same standard to custodial parents.

Use of the word "actual" in relation to income is already part of California's guideline statute. Family Code section 4053 recites the principles to which courts must adhere in implementing the statewide uniform guideline. Section 4053(c) reads: "The guideline takes into account each parent's actual income and level of responsibility for the children."

(Note that the language quoted above indicates that California has already exercised the discretionary determination referenced in final rule section 302.56(c)(1) by applying the principle to assessing the income of both parents.) Given the preference for determining a parent's real (as opposed to imputed or presumed) income, the use of the word "actual" in

Family Code section 4053(c) is in keeping with the intent underlying both the NPRM and now the final rule.

While Family Code section 4053(c) does not use the word “earnings” in conjunction with “income,” the definition of income found in Family Code section 4058 is greatly expansive, if not exhaustive. In relevant part it reads:

(a) The annual gross income of each parent means income from whatever source derived, except as specified in subdivision (c) and includes, but is not limited to, the following:

(1) Income such as commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, workers’ compensation benefits, unemployment insurance benefits, disability insurance benefits, social security benefits, and spousal support actually received from a person not a party to the proceeding to establish a child support order under this article.

(2) Income from the proprietorship of a business, such as gross receipts from the business reduced by expenditures required for the operation of the business.

(3) In the discretion of the court, employee benefits or self-employment benefits, taking into consideration the benefit to the employee, any corresponding reduction in living expenses, and other relevant facts.

In the context of the final rule, California’s definition of “income” appears fully broad enough to cover the intended purpose behind “all income and earnings” in section 302.56(c)(1). This language has been the governing federal standard even before California’s adoption of the current statewide uniform guideline.

Beyond consideration of defining what constitutes potential sources of an NCP’s income and earnings is the question of how earning and income information is used—or not used—in specific cases. It is evident from the extensive discussion of comments to the NPRM that ACF’s experience and research has led to the conclusion that too many support orders are insufficiently related to a noncustodial parent’s actual circumstances or ability to pay. Instead, orders are frequently based on presumed or imputed income that is not realistically related to the case at hand.

That ACF disfavors orders that are based on presumed or imputed income is clear from the addition of section 302.56(c)(1)(iii), which is intended to place limitations on making support orders without relation to the overall factual circumstances of an NCP. The regulation requires for a state’s guideline:

If imputation of income is authorized, takes into consideration the specific circumstances of the noncustodial parent (and at the State's discretion, the custodial parent) to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.

(81 Fed. Reg. 93562.)

California's statewide uniform guideline contains a provision allowing courts to make orders for support based on a noncustodial parent's earning capacity, instead of income. Family Code section 4058(b) provides: "The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children." The statute is silent regarding what circumstances are appropriate for a court to exercise discretion and, additionally, what factors should be considered in defining a parent's earnings capacity. While the statute is silent, there is substantial and long-standing case law that interprets and places limits on the court's discretion to consider earning capacity in lieu of income.⁹⁶ These cases hold that a specific earning capacity cannot be attributed to a specific obligor in lieu of actual income unless the court finds that the obligor has both the ability to work and an opportunity to work at a given income level based upon evidence presented in the particular case. These appellate cases set out various factors the court should look at in determining earning capacity and opportunity to work.

In addition to the court's ability to impute income under current California statute and case law, the local child support agency is authorized to "presume" an obligor's income under specified circumstances. Family Code section 17400(d)(2) provides:

The simplified complaint form shall provide notice of the amount of child support that is sought pursuant to the guidelines set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 based upon the income or income history of the support obligor as known to the local child support agency. If the support obligor's income or income history is unknown to the local child support agency, the complaint shall inform the support obligor that income shall be presumed to be the amount of the minimum wage, at 40 hours per week, established by the Industrial Welfare Commission pursuant to Section 1182.11 of the Labor Code unless information concerning the support obligor's income is provided to the court.

⁹⁶ *In re Marriage of Regnery* (1989) 214 Cal.App.3d 1367.

This statute does not define when “the income or income history is unknown” and may be open to interpretation by local child support agency staff. Also, this statute applies a standard presumption of full-time minimum wage income across the board. Given the large number of Title IV-D cases set by default in California, consideration may need to be given to this statute in light of the guidance provided in the final rule.

If not in this review, then no later than the next review of the statewide uniform guidelines, consideration should be given to setting out specific parameters in the guideline statutes related to the circumstances in which a court is authorized to exercise its discretion in determining a parent’s earning capacity and the factors that must be looked to in defining the nature and extent of that capacity. The Legislature could consider the factors set forth in existing case law. Similarly, the Legislature may want to consider reviewing the existing presumed income statute in light of the guidance provided in the final rule.

2.3.3 *Noncustodial Parent Subsistence Needs*

The NPRM proposed the addition of section 302.56(c)(4) to add a new criterion on the issue of ability to pay. The proposal required that state guidelines

[t]ake into consideration the noncustodial parent’s subsistence needs and provide that any amount ordered for support be based upon available data related to the parent’s actual earnings, income, assets, or other evidence of ability to pay, such as testimony that income or assets are not consistent with a noncustodial parent’s current standard of living.

(79 Fed. Reg. 68580.)

In its discussion of the proposed addition, ACF pointed out that a number of states have adopted a self-support reserve into their guidelines to recognize noncustodial parent subsistence needs. Depending on the state, the reserve amount is either disregarded as income or is used to adjust the child support award so that the parent is able to meet basic needs.

The proposed language above was substantially modified in the final rule and redesignated as section 302.56(c)(1)(ii), requiring that a state guideline

[t]akes into consideration the basic subsistence needs of the noncustodial parent (and at the State’s discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method determined by the State.

(81 Fed. Reg. 93562.)

In its discussion of the new guidelines requirement, ACF reiterated that its goal is to ensure that when orders are established they result in payments:

Both parents are expected to put their children first and to take the necessary steps to support them. However, if the noncustodial parent cannot support his or her own basic subsistence needs, it is highly unlikely that an order that ignores the need for basic self-support will actually result in sustainable payments.

(81 Fed. Reg. 93519.)

ACF points out that the new requirement does not dictate the policy approach a state must use in implementing the rule. It is left to each state's discretion to determine how best to modify its guidelines, where necessary, to account for the subsistence needs of low-income NCPs. Further, ACF urges states to use the quadrennial review process to examine their policies affecting low-income parents to assure that the policies are working as intended.

In California, the issue of low-income adjustments is currently addressed in Family Code section 4055(b)(7):

In all cases in which the net disposable income per month of the obligor is less than one thousand five hundred dollars (\$1,500), adjusted annually for cost-of-living increases, there shall be a rebuttable presumption that the obligor is entitled to a low-income adjustment. On March 1, 2013, and annually thereafter, the Judicial Council shall determine the amount of the net disposable income adjustment based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the California Department of Industrial Relations, Division of Labor Statistics and Research. The presumption may be rebutted by evidence showing that the application of the low-income adjustment would be unjust and inappropriate in the particular case. In determining whether the presumption is rebutted, the court shall consider the principles provided in Section 4053, and the impact of the contemplated adjustment on the respective net incomes of the obligor and the obligee. The low-income adjustment shall reduce the child support amount otherwise determined under this section by an amount that is no greater than the amount calculated by multiplying the child support amount otherwise determined under this section by a fraction, the numerator of which is 1,500 minus the obligor's net disposable income per month, and the denominator of which is 1,500.

The above statutory language is operative through the remainder of calendar year 2017, and was subsequently extended through calendar year 2020. Effective January 1, 2021, it is repealed and replaced as follows:

In all cases in which the net disposable income per month of the obligor is less than one thousand dollars (\$1,000), there shall be a rebuttable presumption that the obligor is entitled to a low-income adjustment. The presumption may be rebutted by evidence showing that the application of the low-income adjustment would be unjust and inappropriate in the particular case. In determining whether the presumption is rebutted, the court shall consider the principles provided in Section 4053, and the impact of the contemplated adjustment on the respective net incomes of the obligor and the obligee. The low-income adjustment shall reduce the child support amount otherwise determined under this section by an amount that is no greater than the amount calculated by multiplying the child support amount otherwise determined under this section by a fraction, the numerator of which is 1,000 minus the obligor's net disposable income per month, and the denominator of which is 1,000.

The statewide uniform guideline addresses the circumstances of low-income NCPs by means of a low-income adjustment that lowers a child support award arrived at through application of the guidelines formula. The rebuttable presumption is triggered under current law for any NCP whose net disposable monthly income is less than \$1,500; beginning in 2021, the rebuttable presumption will be invoked when the net monthly disposable income is less than \$1,000.

In California, an NCP derives a calculable benefit in the form of a lower support order that results from application of the low-income adjustment. What is not readily calculable without extensive data analysis is the impact of the low-income adjustment on an NCP's ability to maintain a subsistence-level lifestyle. Is the adjustment sufficient, for example, to ensure that the parent can get by on what remains after support is paid? Does the formula that may result in the same support order adjustment for noncustodial parents with identical incomes, but significantly different personal circumstances, suitably address their individual subsistence needs? Also, what effect does receiving a low-income adjustment have on subsequent payment rates of recipients?

Section 302.56(c)(1)(ii) provides states with flexibility in addressing the subsistence needs of low-income NCPs. Whether the present low-income adjustment in California's statewide uniform guideline is an appropriate means by which to do so is a question that will be explored throughout this quadrennial review. However, additional research into the impact of the low-income adjustment on parents and program outcomes may be warranted.

2.3.4 Prohibition Against Treating Incarceration as Voluntary Unemployment

With respect to another matter bearing on ability to pay, the final rule added section 302.56(c)(3) to the list of requirements for state guidelines. The section mandates that guidelines must “[p]rovide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders.” (81 Fed. Reg. 93562.)

Currently, there is no statutory provision contained in California’s statewide uniform guideline statute that specifically addresses treatment of incarceration when setting support; however, another statute contained in the Family Code does temporarily address this issue, though it is set to sunset on January 1, 2020.⁹⁷ This statute does not allow an incarcerated obligor relief from the child support obligation under this statute if the incarceration is the result of domestic violence against the other parent or child or is based upon violation of an order for child support. This part of the existing statute would appear to be in violation of the final rule.

While California guideline statutes do not specifically address treatment of incarceration when setting support, there is substantial long-standing case law interpreting Family Code section 4058(b) court discretion to consider earning capacity in lieu of the parent’s actual income. These cases have specifically found that earning capacity may not be attributed to an incarcerated obligor absent other actual earnings or assets available to pay support. These cases follow the legal theory that earning capacity cannot be attributed to any obligor unless the court finds that the obligor has both the ability to work and an opportunity to work based upon evidence presented in the particular case.⁹⁸

As part of the current quadrennial review or the next, Family Code section 4007.5 should be amended and statutory language should be added to the statewide uniform guideline to reflect the prohibition in section 302.56(c)(3).

2.4 Summary

The changes to the provisions affecting state child support guidelines requirements that ACF proposed in the 2014 NPRM (79 Fed. Reg. 68548) and finalized in the 2016 final rule, Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs (81 Fed. Reg. 93492), were strongly focused around one theme. That theme is ensuring that state guidelines and state order-setting practices are geared toward arriving at orders that are predicated as far as possible on the actual financial circumstances of NCPs. The thrust of ACF’s approach might best be summarized in this statement found in the NPRM: “[B]asic fairness requires that child support obligations reflect an obligor’s actual ability to pay them.” (79 Fed. Reg. 68553.)

Throughout its discussion of the several guidelines provisions affected by the final rule, ACF expressed concern that too often states do not expend effort to investigate the earnings and ability of noncustodial parents. As a consequence, orders are made based on long-standing legal precedents and judicial and/or administrative practices and policies that presume or impute

⁹⁷ Cal. Fam. Code § 4007.5; see Section 3.5 of this chapter.

⁹⁸ *In re Marriage of Regnery* (1989) 214 Cal.App.3d 1367; *State of Oregon v. Vargas* (1999) 70 Cal.App.4th 1123; *In re Marriage of Smith* (2001) 90 Cal.App.4th 74.

income to parents without basis in reality. Too often these orders are beyond the ability of the noncustodial parent to comply.

In addition to fairness considerations, outcomes depend on orders that match a parent's ability to pay. ACF emphasized research showing that compliance with court obligations declines when orders are set above 15 to 20 percent of a parent's income, regardless of the parent's income level. Even more, excessive orders result in lower—not higher—support payments.

The final rule changes require that guidelines ensure that courts and administrative bodies look at circumstances in specific cases. Orders must be based on evidence of the noncustodial parent's earnings and income and other evidence of ability to pay in the specific case. While circumstances allowing imputation of income should be limited, if income is imputed, the amount must reflect the known circumstances of the NCP. States are encouraged to engage in investigative practices, including interviews with the other parent, to develop evidence of earnings and ability.

California's current quadrennial review commenced prior to the publication date of the final rule. As a result, the requirements set forth in the rule are not required to be addressed until the next quadrennial review, which should take place in 2021. Changes to the Statewide Uniform Guideline must be enacted within one year thereafter, in 2022.

Nevertheless, the state may consider that it need not wait four more years to begin considering and developing approaches to meeting the final rule requirements. As one example, Family Code section 4054(b) addresses the current requirement for data gathering in quadrennial reviews:

The review shall include economic data on the cost of raising children and analysis of case data, gathered through sampling or other methods, on the actual application of the guideline after the guideline's operative date.

Compare that straightforward direction to the detailed economic and case data required to be examined pursuant to new section 302.56(h) in the final rule:

- (1) Consider economic data on the cost of raising children, labor market data (such as unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level for the State and local job markets, the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level, and factors that influence employment rates among noncustodial parents and compliance with child support orders;
- (2) Analyze case data, gathered through sampling or other methods, on the application of and deviations from the child support guidelines, as well as the

rates of default and imputed child support orders and orders determined using the low-income adjustment required under paragraph (c)(1)(ii) of this section. The analysis must also include a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment required under paragraph (c)(1)(ii). The analysis of the data must be used in the State's review of the child support guidelines to ensure that deviations from the guidelines are limited and guideline amounts are appropriate based on criteria established by the State under paragraph (g).

(81 Fed. Reg. 93530.)

Other issues may also be ripe for analysis in advance of the next quadrennial review, if not as a part of the current process. These might include addressing treatment of noncustodial parent subsistence needs and defining the circumstances and factors to be taken into account by a court in exercising discretion to impute income.

Certainly the publication of the final rule contemporaneously with the current quadrennial guidelines review provides California with significant lead time to consider thoroughly the issues and intricacies involved in the policy decisions that will be required to implement the rule.

3. Review of Other States' Policy Models on Low-Income Adjustments

When parents are low-income, it creates challenges in setting a fair and appropriate child support amount. The goal of most child support guidelines, and particularly the goal of the Income Shares model, is to attempt to ensure that children receive the same proportion of parental income that they would have received had their parents stayed together. Historically, guidelines have focused largely on economic data on the cost of rearing children in intact families. The Bureau of Labor Statistics has found that expenditures reported by low-income households in the Consumer Expenditure Survey, which is used by the leading guidelines methodologies to calculate child-rearing expenditures, exceeds the reported income of these households.⁹⁹

States have increasingly realized, however, that in some cases parents may be so impoverished that they have difficulty meeting their own subsistence needs, much less paying a child support order.

⁹⁹ Ohio Department of Job and Family Services, *2013 Child Support Guidelines Review: Report to the General Assembly*, p. 12, <http://jfs.ohio.gov/Ocs/pdf/2013CSGuidelinesAdvCouncilReport.stm> (as of Mar. 3, 2017).

Recognizing that, states are increasingly deciding there should be adjustments in cases involving impoverished parents who cannot meet their own subsistence needs. They are also informed by research indicating that compliance is affected when the order amount exceeds a certain percentage of the obligor's income.

OCSE has stressed the importance for states to establish realistic support orders based on a noncustodial parent's actual ability to pay. In 2007, OCSE began a national initiative called Project to Avoid Increasing Delinquencies (PAID). The goal was to develop tools to help states increase collections and prevent or reduce arrears. One of PAID's recommendations to ensure appropriate support orders was to include provisions within the state guidelines for low-income noncustodial parents, "such as a maximum percentage of income or a self-support reserve, to accommodate" the noncustodial parent's basic needs.¹⁰⁰

On December 20, 2016, the federal Office of Child Support Enforcement issued a final rule to "make Child Support Enforcement program operations and enforcement procedures more flexible, more effective, and more efficient."¹⁰¹ (See Section 2 of this chapter for a full discussion of the final rule.) Among the desired outcomes were an increase in regular, on-time payments to all families; an increase in the number of NCPs working and supporting their children; and a reduction in the accumulation of unpaid child support arrears.¹⁰² The final rule contains a number of amendments to 45 C.F.R. § 302.56, which is the federal regulation governing guidelines for setting child support orders.

As discussed above, among the most significant changes that impact low-income families is the requirement that support guidelines must take "into consideration the basic subsistence needs of the noncustodial parent (and at the State's discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve." Amended 45 C.F.R. § 302.56(c)(1) requires that the child support order be based on the NCP's earnings, income, and other evidence of ability to pay that "(ii) [t]akes into consideration the basic subsistence needs of the noncustodial parent (and at the State's discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method determined by the State."¹⁰³

¹⁰⁰ Office of Child Support Enforcement, U.S. Dept. of Health and Human Services, *PAID Practices Guide: Version 2.0* (July 2008) p. 2, www.acf.hhs.gov/sites/default/files/ocse/dcl_07_17a.pdf (as of July 19, 2017).

¹⁰¹ 81 Fed. Reg. 93492 (Dec. 20, 2016).

¹⁰² *Id.* at p. 93493.

¹⁰³ 45 C.F.R. § 302.56(c)(1).

In requiring that guidelines address the basic subsistence needs of the NCP, OCSE’s stated goal is “to establish and enforce orders that actually produce payments for children. Both parents are expected to put their children first and to take the necessary steps to support them. However, if the noncustodial parent cannot support his or her own basic subsistence needs, it is highly unlikely that an order that ignores the need for basic self-support will actually result in sustainable payments.”¹⁰⁴

Almost every state has a form of low-income adjustment; nevertheless, the challenge frequently identified by researchers and scholars is how to achieve a “balance between an adequate and appropriate amount of support for the children and setting an amount that is collectible from or will be voluntarily paid by low-income nonresidential parents.”¹⁰⁵

Policies addressing low-income families are variously denominated as: low-income adjustments, self-support reserves, threshold orders, minimum orders, and zero orders. This section highlights policies and practices of other states in these areas, with emphasis on more recent changes to policy.

3.1 Low-Income Adjustments

A low-income adjustment is the amount of money a parent owing support needs to support him or herself at a minimum level. It is intended to ensure that a low-income parent can meet his or her own basic needs as well as permit continued employment. A low-income adjustment is a generic term. A self-support reserve is an example of a low-income adjustment that is commonly used by the states.¹⁰⁶

State guidelines generally incorporate more than one low-income adjustment. For example, states that use a self-support reserve, frequently *also* set a minimum support obligation which, of necessity, is funded out of the NCP’s self-support reserve. The result is that child support guidelines include two dissonant policies: setting the minimal amount the obligor needs to subsist (and maintain employment); and disallowing the full amount by use of a minimum support order.

¹⁰⁴ 81 Fed. Reg. 93519 (response to a comment) (Dec. 20, 2016).

¹⁰⁵ Jane C. Venohr, Ph.D, “Child Support Guidelines and Guidelines Reviews: State Differences and Common Issues,” 47 *Family Law Quarterly* 327, 340 (Fall 2013).

¹⁰⁶ 81 Fed. Reg. 93519 (response to a comment) (Dec. 20, 2016).

3.1.1 California's Low-Income Adjustment

In 2011, the Judicial Council completed a comprehensive review of California's child support guidelines.¹⁰⁷ The review included an assessment of the economic data on child-rearing costs as well as a review of case data to analyze the application of the guidelines. One of the major areas of focus was application of the guidelines to low-income obligors. The Judicial Council concluded that California's guidelines were unique in several ways. The guidelines set a threshold at which the low-income adjustment applied and did not vary the threshold for the number of children. The result was that there was no protection for obligors with incomes just above the threshold. The Judicial Council also noted that unlike most state self-support reserves, the California low-income adjustment did not consider how much income the obligor needed to live above a subsistence level. It was simply a percentage reduction to the regular guidelines amount.¹⁰⁸

A random sample of 1,226 child support orders entered in 2008 was drawn to analyze application of the guidelines and any deviations. The sample included 11 California counties that ranged in size and socioeconomic factors. It also included equal percentages of IV-D and non-IV-D cases.¹⁰⁹ At the time of the review, the law provided that there was a rebuttable presumption that any obligor qualifying for a low-income adjustment (net income below \$1,644 per month) should be granted the adjustment. The guidelines also presumed income at 40 hours per week at minimum wage.¹¹⁰ The Judicial Council concluded that the then-current low-income adjustment was inadequate. A monthly net income of \$1,000 was below what could be earned from full-time work at the state minimum wage of eight dollars per hour.¹¹¹ It also concluded that California's income imputation and presumption policies only exacerbated the issue of establishing appropriate guidelines amounts for low-income obligors.¹¹²

The review of cases revealed that the low-income adjustment (LIA) was rarely applied in non-IV-D cases where the obligor was eligible: in IV-D cases, it was applied in 65 percent of the

¹⁰⁷ Judicial Council of Cal., *Review of Statewide Uniform Child Support Guideline 2010* (June 2011), www.courts.ca.gov/partners/documents/2011SRL6aGuidelineReview.pdf (as of July 17, 2017).

¹⁰⁸ *Id.* at pp. 81–82.

¹⁰⁹ *Id.* at p. iv.

¹¹⁰ *Ibid.*

¹¹¹ *Id.* at p. 127.

¹¹² *Id.* at p. 85: “While this presumption is questionable in the best of economic circumstances, there is absolutely no basis for it in a time when employment in California has dropped for 40 consecutive months, unemployment stands at 12.5 percent, and underemployment has reached 20 percent. The barriers to full-time employment are even worse for the high proportions of Hispanic and African-American noncustodial parents in the IV-D system, whose national unemployment rates are 12.6 and 16.5 percent respectively.”

cases where the obligor was eligible but it was granted in only six percent of the non-IV-D cases where the obligor was eligible. When asked why the LIA would not be applied in eligible IV-D cases, California commissioners noted that the adjustment was not consistently applied in defaults and stipulations. In fact, the case file review data found that over 90 percent of the IV-D cases where the obligor was eligible for the LIA, but it was not granted, were entered through either default or stipulation.¹¹³ In non-IV-D cases, the commissioners believed that the automated guidelines calculator was a factor:

When an obligor in a IV-D case is eligible for the LIA, it is very clear in the computer system and it is usually automatically applied (except in the cases entered through default or stipulation). In non-IV-D cases, a judge has to check to see if the obligor is eligible for the LIA and manually apply it.¹¹⁴

As a result of its review, the Judicial Council recommended that the LIA be updated or modified. The state legislature subsequently modified the guideline. The law increased the threshold to \$1,500 (as of 2013) and requires that the amount be updated annually, based on changes in the annual California Consumer Price Index for All Urban Consumers.¹¹⁵ In determining whether to apply the adjustment, the court must consider the impact of the contemplated adjustment on the respective net incomes of the obligor and obligee.¹¹⁶ There is a limit on the reduction in support that is permissible when the presumption of the low-income adjustment is rebutted. The low-income adjustment reduces the child support amount otherwise determined under the statute by an amount that is no greater than the amount calculated by multiplying the child support amount otherwise determined under the statute by a fraction, the numerator of which is 1,500 minus the obligor's net disposable income per month, and the denominator of which is 1,500.¹¹⁷

The following sections explore approaches to low-income adjustments taken by other states.

¹¹³ *Id.* at p. 46.

¹¹⁴ *Ibid.*

¹¹⁵ The low-income adjustment has a sunset date of January 1, 2021. Effective January 1, 2021, the qualifying net disposable income per month that qualifies for a low-income adjustment returns to \$1,000. Cal. Fam. Code § 4055(b)(7).

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

3.2 Self-Support Reserve

A self-support reserve¹¹⁸ is an amount based on research regarding the costs of living—generally specific to the state in question—that a parent is assumed to need in order to meet his or her needs at a subsistence level. States including a self-support reserve in their child support guidelines have differing ways of establishing the self-support reserve amount. Since a self-support reserve is typically an amount that a parent is assumed to need in order to live at a subsistence level, many states define their self-support reserve in terms of the federal poverty level guideline. The federal poverty guideline for a family of one person¹¹⁹ is used for guidelines purposes, representing one parent.

With some exceptions,¹²⁰ the self-support reserve is only applicable to the obligor. Twelve Income Shares states currently use 100 percent of the federal poverty guideline as the self-support reserve that a noncustodial parent retains before the child support order amount is determined.¹²¹ For various reasons, 10 other states use a percentage of the federal poverty guideline that is between 101 percent and 150 percent.¹²² An inflated federal poverty guideline may account for taxes, because the federal poverty guidelines are after-tax amounts and the state

¹¹⁸ The chart *Treatment of Low-Income Families in Child Support Guidelines*, provided in the Appendix in Section 7, uses the acronyms SSR for “self-support reserve” and FPL for “federal poverty level guideline.”

¹¹⁹ The federal poverty level guideline is based on the number of people in a family or household—between one and eight.

¹²⁰ From its inception more than 40 years ago, the Melson formula incorporated a “self-support allowance” for both parents. In Delaware, originator of the formula, this amount has been variously described as:

- “What a reasonable prudent, responsible and caring person in the parent’s position might be expected to spend in self-support in light of his or her obligation to meet the needs of his or her child.” *I.B. v. R.S.W.B.* (Del. Fam. Ct., Nov. 11, 1977) No. A-3000, Melson, J. (unreported op.);
- “An absolute minimum that an individual would need to fulfill the basic requirements of life.” *Delaware Child Support Formula: Study and Evaluation, Report to the 132nd General Assembly* (1984);
- “Parents are entitled to keep sufficient income to meet their most basic needs in order to encourage continued employment.” *Dalton v. Clanton* (Del. 1989) 559 A.2d 1197, 1203; and
- “The minimum amount of net income necessary for a parent to remain productive in a workplace.” Delaware Family Court Civil Rule 502(d).

¹²¹ Income Shares states using 100 percent of the federal poverty guideline for their self-support reserve are Alabama, Arizona, Florida, Iowa, Maryland, Michigan, Missouri, North Carolina, Pennsylvania, South Carolina, Tennessee, and West Virginia.

¹²² Oregon uses a formula that corresponds to 100 percent of the federal poverty guideline times 1.167; New Jersey uses 105 percent; New Hampshire uses 115 percent; Ohio uses 116 percent; Colorado, Minnesota, and Vermont use 120 percent; Washington State uses 125 percent; the District of Columbia uses 133 percent; New York uses 135 percent; and Virginia uses 150 percent.

support guidelines may be based on gross income. Also, income eligibility thresholds for certain public assistance programs are higher than 100 percent of the federal poverty guideline. In most cases, the federal poverty guideline is expressed in the support guidelines as either an annual or monthly amount. It should be noted that the final federal rule governing child support guidelines requires that, as part of the state's quadrennial guidelines review, a state must consider "the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level."¹²³

Most states that base their self-support reserve on the federal poverty guideline use the federal poverty guideline for one person from the year in which that state last updated its guideline schedules. The result can be a self-support reserve that is "locked in" for a number of years. A few states routinely update their self-support reserve to reflect changes in the federal poverty guidelines, which are updated annually. For example, Delaware and the District of Columbia require an adjustment every two years. New York requires a revision of its self-support reserve on March 1 of each year. Indexing the self-support reserve to annual changes in the federal poverty guideline ensures that it is based on current federal poverty guideline levels. On the other hand, changes in the federal poverty guideline may be minimal and may not significantly affect support amounts. Yearly changes to the self-support reserve also may require changes to any automated guidelines calculator and, if the self-support reserve is incorporated into the guidelines tables, may require updating the tables as well.

States that use a self-support reserve nevertheless apply it in various ways, as discussed below.

3.2.1 Deduction from Noncustodial Parent's Income: Minnesota, West Virginia, and New York

Some states subtract a self-support reserve directly from an NCP's net or gross annual or monthly income, before determining the guidelines amount of support to be paid. In Minnesota, for example, the tribunal is required to calculate the obligor's income available for support by subtracting a monthly self-support reserve equal to 120 percent of the federal poverty guidelines for one person from the obligor's gross income.¹²⁴ West Virginia's low-income adjustment applies to obligors whose adjusted gross income is less than \$1,550, which is the lowest income level on its guidelines schedule. For such obligors, the tribunal must calculate 80 percent of the parent's adjusted gross income and then deduct a self-support reserve of \$500. The resulting sum is the available income for support and the basis for an adjusted support order.¹²⁵ New York's guidelines worksheet also contains a step for low-income obligors, in which the self-support

¹²³ 45 C.F.R. § 302.56(h)(1), italics added.

¹²⁴ Minn. Stat. Ann. § 518A.42(b) (2015).

¹²⁵ W. Va. Code § 48-13-403.

reserve is deducted from the obligor's adjusted income in order to determine the amount of basic child support.¹²⁶

3.2.2 Deduction from Both Noncustodial Parent's and Custodial Parent's Incomes: Arizona, New Jersey and Delaware

Some states look at the self-support capability of the CP as well as the NCP. For example, Arizona's guidelines require that a child support order first be calculated using the regular guidelines tables. Then, a "Self-Support Reserve Test" is applied by subtracting the self-support reserve amount of \$1,115 from the adjusted monthly gross income of the obligor. The court may also deduct any court-ordered arrearage payment on child support for children of other relationships or on spousal maintenance if they are actually paid. If the resulting amount is less than the order amount, the tribunal may reduce the obligor's current support amount to the lower amount. However, before making any reduction, the tribunal must examine the self-support capability of the CP using the same self-support reserve test for the custodial parent. If the resulting amount is less than the CP's proportionate share of the total child support obligation, it means that both parents have insufficient income to be self-supporting. In that situation, the tribunal has discretion to determine whether, and in what amount, the child support order (the amount the noncustodial parent must pay) may be reduced.¹²⁷

New Jersey also applies the self-support reserve to the income of both parents. A child support award is adjusted to reflect the self-support reserve only if payment of the child support award would reduce the obligor's net income below the reserve and the CP's (or the Parent of the Primary Residence's) net income minus the CP's share of the child support award is greater than 105 percent of the poverty guideline. According to the guideline, the latter condition is necessary to ensure that custodial parents can meet their basic needs so that they can care for the children.¹²⁸

As discussed earlier, states using the Melson formula deduct a self-support allowance from both parents' net income before the child's primary support need (a research-based amount to which actual child care "expenses incurred for the care and supervision of the children of this union by either parent required for the parent to work"¹²⁹ and health insurance premiums are added) is

¹²⁶ See New York's guidelines calculation worksheet, www.nycourts.gov/divorce/forms_instructions/ud-8.pdf (as of July 19, 2017).

¹²⁷ Ariz. S. Ct. Admin. Order 2015-6 (2015).

¹²⁸ N.J. Rules of Court, Appendix IX-A (2016), p. 7.

¹²⁹ Family Court of the State of Delaware, *Delaware Child Support Formula Evaluation and Update*, Report of the Family Court Judiciary (Nov. 19, 2014).

allocated between the parents based on each's proportion of their combined income.¹³⁰ In 2014, the last statewide review of Delaware's child support guidelines, the self-support allowance was reduced (from \$1,100 to \$1,000) and the primary support need for children was adjusted.¹³¹

3.2.3 Hybrid Approach: New Hampshire and New York

Some states require a different type of two-step approach. For example, in New Hampshire, if the obligor's gross income is less than the self-support reserve,¹³² the tribunal must enter a \$50 minimum support order. If the obligor's income is more than the self-support reserve, but payment of the support as calculated using the schedule would put the obligor's income below the self-support reserve, the guidelines provide that the tribunal should order the difference between the self-support reserve and the obligor's adjusted gross income, but not less than \$50 per month.¹³³

Similarly, New York has a multi-step low-income adjustment, including a self-support reserve in its guidelines based on 135 percent of the federal poverty level, indexed to the federal poverty level set on April of each year. A "preliminary" child support order is determined based on the noncustodial parent's adjusted gross income (gross less FICA, NYC taxes, and a few other permitted deductions—neither federal nor state taxes are deducted). Support amount is calculated by multiplying this income by the percentage for the number of children subject of the support order. The "Self-Support Reserve Test" compares the standard support amount against the amount the obligor would owe if the income available for child support was reduced by 135 percent of the federal poverty level. The lower amount is ordered. Like New Hampshire, the New York guidelines also establish a minimum support order discussed below.

3.2.4 Discretionary Use of Self-Support Reserve by Tribunal: Indiana and the District of Columbia

In some states, if the combined incomes are below a certain threshold or the obligor's income is below a set amount, the tribunal has discretion in setting an amount of support. For example, under the Indiana support guidelines, if the combined weekly adjusted gross incomes are less than \$100, the court must set support so that the obligor is not denied a means of self-support at a

¹³⁰ The Delaware Child Support (Melson) formula also "dilutes" each parent's net income in recognition of a duty to support other dependents. Delaware Family Court Rule 502(e).

¹³¹ The primary support allowance remained \$500 for one child, decreased slightly to \$800 for two children; and increased by \$20 for three children to \$1,100. The support allowance also increased to \$300 for each additional child (from \$250). As the children's primary support allowance is set as a percentage of the self-support allowance, these amounts should adjust biannually with the primary support allowance. Delaware Family Court Rule 503(b)(1).

¹³² In 2013, 115 percent of the federal poverty guideline for a single person was \$1,101.

¹³³ N.H. Rev. Stat. Ann. § 458-C:1 IV(b).

subsistence level.¹³⁴ Other jurisdictions provide the tribunal discretion in such a circumstance but also set a rebuttable presumption of a minimum support order. For example, the support guidelines for the District of Columbia provide that if the obligor's adjusted gross income is less than 133 percent of the federal poverty level for one person, the court has discretion in setting a support amount that the court determines the obligor is able to pay while meeting his or her subsistence needs. There is a rebuttable presumption that the obligor can pay \$50 per month while meeting personal subsistence needs. The presumption may be rebutted down to \$0 or increased above \$50 based on evidence regarding the obligor's ability to pay support, including the obligor's age, employability, disability, homelessness, incarceration, in-patient substance abuse treatment, and other in-patient treatment.¹³⁵

3.2.5 Self-Support Reserve Built into Calculation Tables: Pennsylvania, Alabama, and Maine

The most common methodology, particularly in states that use the Income Shares model, is to build the self-support reserve into the child support guidelines tables. The self-support reserve that states use varies. The Pennsylvania support schedule incorporates a self-support reserve of \$931 per month (the amount of the 2012 federal poverty level for one person).¹³⁶ Alabama's self-support reserve that is built into the basic schedule is based on the 2007 federal poverty guideline for one person (\$851 per month). States that incorporate a self-support reserve into their guidelines table typically phase out the self-support reserve when the monthly income is above a certain amount depending on the number of children. For example, Maine's self-support reserve is built in for obligors with an annual gross income below \$22,800.¹³⁷

3.2.6 Hybrid Approach Where Self-Support Reserve is Incorporated into Schedule: South Carolina, Connecticut, Iowa, and Pennsylvania

Another interesting application of a self-support reserve occurs when an Income Shares state, which normally would use the incomes of both the obligee and obligor in its child support calculation, uses only the obligor's income to calculate support if the obligor's income is below the self-support reserve level.

¹³⁴ Ind. Child Support Guidelines; Ind. Sup. Ct. Rules of Court.

¹³⁵ D.C. Code Ann. § 16-916.01.

¹³⁶ 231 Pa. Code § 1910.16-1, Explanatory Comment 2013.

¹³⁷ In Maine, if the obligor's annual gross income is within the self-support reserve for the number of children supported, the support is the amount of the self-support reserve, multiplied by the number of children, regardless of the parties' combined annual gross income. The obligor's proportional share of child care, health insurance premiums and extraordinary medical expenses are added to this basic support obligation. Me. Rev. Stat. Ann. tit. 19-A, § 2006(5)(C) (2015).

For example, the South Carolina guidelines incorporate a self-support reserve of \$748 per month. In order to safeguard the self-support reserve in cases where the income of the parent with the obligation to pay support and corresponding number of children fall within the shaded area of the Schedule of Basic Child Support Obligations, the guidelines require that the support obligation be calculated using the obligor's income only. "To include the income of the parent to whom support is owed in the calculation of such cases, or include any adjustments like medical insurance or day care expense, would reduce the net income of the parent with the legal duty to pay support to an amount below the self-support reserve."¹³⁸

Connecticut and Iowa use a similar approach. The Connecticut schedule has a low-income area that is depicted in a darker shade than the rest of the schedule (see figure that follows). If the obligor's income falls within that area, the support obligation is calculated using the obligor's income only. The net income at which the low-income designation ceases to apply is approximately \$290 per week.¹³⁹ To determine the support obligation, one first finds the block in the schedule that corresponds to the income of the noncustodial parent and the number of children being supported. If the block is in the darker shaded area of the schedule, the noncustodial parent is a low-income obligor and the dollar amount shown in the block is the parent's basic child support obligation. If the block is not in the darker shaded area of the schedule, the noncustodial parent is not a low-income obligor and support is calculated using the combined net weekly income of the parents, finding the appropriate block in the schedule, and then prorating the dollar amount in that block according to the parents' incomes.¹⁴⁰

¹³⁸ South Carolina Guidelines (3)(A)(11) (2014).

¹³⁹ State of Connecticut, Commission for Child Support Guidelines, *Child Support and Arrearage Guidelines* (eff. July 1, 2015), p. ix, www.jud.ct.gov/Publications/ChildSupport/CSguidelines.pdf.

¹⁴⁰ *Id.* at p. 6.

Exhibit 8
Proposed Updated Schedule of Basic Support Obligations

(shading indicates where self-support reserve applies)

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
750.00	100	100	100	100	100	100
800.00	117	117	117	117	117	117
850.00	133	133	133	133	133	133
900.00	150	150	150	150	150	150
950.00	182	184	186	188	190	192
1000.00	227	229	232	234	237	239
1050.00	241	275	278	281	284	287
1100.00	252	320	324	327	331	334
1150.00	263	366	370	374	378	382
1200.00	273	399	416	420	425	429
1250.00	282	412	462	467	472	477
1300.00	291	425	503	513	519	524
1350.00	300	437	518	560	566	572
1400.00	309	450	532	595	613	619
1450.00	318	463	547	611	660	667
1500.00	327	475	561	627	689	714
1550.00	335	487	575	642	706	762
1600.00	343	498	588	657	723	786
1650.00	352	510	602	672	740	804
1700.00	360	522	616	688	756	822
1750.00	369	534	630	704	774	841
1800.00	377	547	645	720	792	861
1850.00	386	560	660	737	811	881
1900.00	395	572	675	753	829	901
1950.00	403	585	689	770	847	921
2000.00	412	598	704	787	865	941
2050.00	421	610	719	803	884	960
2100.00	429	623	734	820	902	980
2150.00	438	635	749	837	920	1000
2200.00	447	648	764	853	938	1020
2250.00	455	661	778	869	956	1040
2300.00	464	673	793	886	974	1059
2350.00	473	685	807	902	992	1078
2400.00	481	697	822	918	1010	1098
2450.00	489	710	836	934	1027	1117

In Iowa, the basic support obligation amounts have been adjusted in the shaded area of the schedule for low-income obligors. According to Rule 9.3, the “adjustment is based on the following: (1) requiring a support order no matter how little the obligated parent’s income is, (2) increasing the support amount for more children, (3) maintaining an incentive to work for the obligated parent, and (4) gradually phasing out the adjustment with increased income.” For incomes less than \$1,151 in Area A of the shaded area of the schedule, only the obligor’s adjusted net income is used. When the obligor’s adjusted net income is \$1,151 or more but is in Area B of the shaded area of the schedule, the guidelines amount of support is the lesser of the support calculated using only the obligor’s adjusted net income as compared to the support calculated using the combined adjusted net incomes of both parents. The combined adjusted net incomes of both parents are used in the remaining nonshaded Area C of the schedule.¹⁴¹

¹⁴¹ Iowa Court Rule 9.3 (2013).

Pennsylvania also uses a two-step approach. For low-income cases where the obligor's monthly net income and corresponding number of children fall into the shaded area of the schedule set forth in 231 Pa. Code § 1910.16-3, the basic child support obligation must first be calculated using the obligor's income only. For example, where the obligor has monthly net income of \$1,100, the presumptive amount of support for three children is \$156 per month. This amount is determined directly from the schedule in 231 Pa. Code § 1910.16-3. The obligor's child support obligation is next calculated as in any other case, using both parties' monthly net incomes. The lower of the two calculations is the obligor's basic child support obligation. The guidelines also provides that when the obligor's monthly net income is \$931 or less, the court may award support only after consideration of the parties' actual financial resources and living expenses.¹⁴² The explanation that Pennsylvania provides for this two-step calculation and the use of only the obligor's income in some cases, is that it is intended to address those cases where the obligor has "minimal income and the obligee's income is substantially greater."¹⁴³ In that case, use of both incomes to calculate child support will often result in a higher order than the obligor is able to pay.

3.2.7 Special Table for Low-Income Obligor: Wisconsin

Wisconsin, which uses the Percentage of Income guidelines model, has created a special table for low-income obligors. For obligors with incomes between 75 percent and 150 percent of the federal poverty guidelines for one person, the tribunal applies a special table found at Appendix C to the Wisconsin guideline. This table sets support awards at different levels than those used for incomes above 150 percent of the federal poverty guidelines. For 2016, Appendix C sets support awards in low-income cases, starting at an obligor level of \$743 per month, from 11.22 percent of the noncustodial parent's income for one child to 22.44 percent for five children, whereas the percentages for incomes more than 150 percent of the federal poverty guidelines are between 17 percent for one child and 34 percent for five children.¹⁴⁴ If the noncustodial parent's income is below 75 percent of the federal poverty guideline for one person, the court may set an order appropriate to the payor's total economic circumstances.

3.3 Threshold Orders: Pennsylvania, Michigan, Virginia, and West Virginia

In essence, as used in child support guidelines, "threshold" means the level of income at which a state's low-income adjustment comes into play. As discussed earlier, California's LIA applies only to incomes below \$1,644 per month. The threshold does not vary; the number of children for whom support is being calculated is irrelevant.

¹⁴² 231 Pa. Code § 1910.16.2.

¹⁴³ 231 Pa. Code § 1910.16-2(e)(1), Explanatory Comment 2013.

¹⁴⁴ Wis. Admin. Code DCF § 150.03(1) (2016); *Child Support Obligation of Low-Income Payers at 75% to 150% of the 2016 Federal Poverty Guidelines*, Wis. Admin. Code ch. DCF 150, Appendix C (2016).

Other states have adopted thresholds that vary with the number of children for whom support is being determined. For example, the way in which the self-support reserve is incorporated into the Pennsylvania guidelines schedule means that it applies to net incomes up to \$1,300 per month if support is being determined for one child. The comparable net income thresholds are up to \$1,550 per month for two children, \$1,700 per month for three children, \$1,850 per month for four children, \$2,050 per month for five children, and \$2,150 per month for six children. In its last review (2015 to 2016) Pennsylvania determined that 36 percent of new orders and 35 percent of modified orders involve noncustodial parents whose incomes were below those thresholds for the respective number of children. The average order for noncustodial parents eligible for the self-support reserve was \$157 per month, while the average order for noncustodial parents not eligible for the self-support reserve was \$577 per month.¹⁴⁵

Another example is the Michigan guidelines. Section 2.09(B) of the Michigan Child Support Formula Manual states that “When one parent’s net income does not exceed the Low Income Threshold, do not include that parent’s income in the monthly net family income used to calculate the other parent’s general care support obligation.” The low-income threshold, as stated in section 2.01(A) of the Michigan Child Support Formula Supplement for 2013, is \$931, representing the 2012 federal poverty guideline level for one person.¹⁴⁶ The low-income threshold is applied to either parent.

Virginia still uses an obligor income threshold of 150 percent of the federal poverty guideline, but instead of building that into the calculation, the current law allows the court to set an order below the statutory minimum order if the obligor’s income is below the threshold.¹⁴⁷ The statutory minimum order is equal to the child support amounts on the schedule for the lowest income level of \$550 combined adjusted gross monthly income. These minimum amounts range from a low of \$107 per month for one child, to \$263 per month for six children. The elimination of this self-support reserve caused some increases in support orders at the very low end of the schedule.¹⁴⁸

¹⁴⁵ Jane C. Venohr, Ph.D., Center for Policy Research, *2015–2016 Pennsylvania Child Support Guidelines Review: Economic Review and Analysis of Case File Data*, p. 14 (Mar. 31, 2016).

¹⁴⁶ State Court Administrative Office, *Michigan Child Support Formula Manual and Michigan Child Support Formula Supplement* (Jan. 2013).

¹⁴⁷ Va. Code Ann. § 20-108.2(B).

¹⁴⁸ Virginia Child Support Guidelines Review Panel, *Review of Virginia’s Child Support Guidelines*, p. 6 and Appendix C-1 (Dec. 2013), www.dss.virginia.gov/files/division/dcse/guideline_review_panel/reports/2013_Guideline_Review_Panel_Report.pdf (as of Mar. 2, 2017).

West Virginia applies a low-income adjustment if the payor parent's adjusted monthly gross income is less than \$1,550, that is, the threshold for use of the standard guidelines. In such a circumstance, Part II Ability to Pay Calculation of the guidelines worksheet must be completed. First, one must calculate 80 percent of the payor parent's adjusted gross monthly income. Then a \$500 self-support reserve is deducted. The balance is the income available for support; if the balance is less than \$50, the worksheet still requires entry of \$50. The adjusted child support order is the lesser of the recommended child support order under the schedule using combined parental incomes and the payor parent's income available for support calculated under Part II.¹⁴⁹

3.4 Minimum Support Orders: New Hampshire, New York, Colorado, and Connecticut

Federal law requires that state child support guidelines must apply to all cases, regardless of income.¹⁵⁰ The conundrum is how parental responsibility to support their children may best be established and maintained when the obligor—and generally also the obligee—are low-income.

State guidelines generally take one of three approaches: presumptive minimum amount; mandatory minimum amount; order amount set in the court's discretion based on a case by case inquiry of the parent's ability to pay. The majority of states fall in the first category, with guidelines that provide a presumed minimum support order that may be rebutted. Section 7, the Appendix at the end of this document, displays a chart depicting the breakdown from Laura W. Morgan's publication, *Child Support Guidelines: Interpretation and Application*.¹⁵¹

Regardless of whether the parents are low-income, the majority of state guidelines establish a minimum support order that must be entered. The minimum order amount is often \$50 or \$100.¹⁵² The application of a self-support reserve or a low-income adjustment generally is tied into a minimum support order. For example, under the New Hampshire guidelines, if the obligor's gross income is less than the self-support reserve amount of 115 percent of the federal poverty guideline, and the court has determined that the obligor is not voluntarily unemployed or underemployed, the court must issue a minimum order of \$50 per month. If the obligor's gross income is higher than the self-support reserve, but payment of the parental support obligation as

¹⁴⁹ W. Va. Code § 48-13-403.

¹⁵⁰ 42 U.S.C. § 667; 45 C.F.R. § 302.56

¹⁵¹ Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 8.08, Table 8-7 (Wolters Kluwer, updated Nov. 20, 2016); published online at Cheetah, www.wkcheetah.com/, the publisher's legal research portal (as of Feb. 12, 2017).

¹⁵² *Ibid.* Income Shares states with \$50 minimum orders include Alabama, Idaho, Nebraska, North Carolina, Ohio, Rhode Island, West Virginia, and Wyoming. Income Shares states that require \$100 minimum orders include Georgia (adds \$50 per month for each additional child), Louisiana, Oregon, South Carolina, and Tennessee. Massachusetts sets a minimum order at \$18.46 per week. Minnesota guidelines require a minimum order of \$50, \$75, or \$100 per month, depending on the number of children.

calculated under the schedule would reduce the obligor's adjusted gross income below the self-support reserve, then the tribunal must issue a support order that is the difference between the self-support reserve and the obligor's adjusted gross income, but no less than \$50 per month.¹⁵³ Without a minimum order, it is possible for application of the self-support reserve to result in a negative order amount. New York is unique in providing for two minimum support amounts. If the difference between the noncustodial parent's income and the basic child support obligation (called "the remainder") is less than the federal poverty level for a single person, the court can set a \$25 per month minimum order. If the remainder is greater than the federal poverty level, but less than the self-support reserve of 135 percent of the federal poverty level, the court can set a \$50 per month minimum order.

Rather than setting a precise amount, other state guidelines provide that in no case will a support order be more than a certain percentage of the obligor's income.¹⁵⁴ Several state guidelines require the setting of a minimum order when an obligor's income is below the self-support reserve amount, but leave the amount to the court's discretion.¹⁵⁵

Colorado's statute provides that if the combined monthly adjusted gross incomes of the parties is below \$1,100, then the minimum support order is between \$50 and \$150 per month, depending on the number of children.¹⁵⁶ According to a 2011 Commission report, the increase in the minimum order was purely a policy decision and did not relate to the economic data on the cost of child rearing.¹⁵⁷ Colorado also considers when the income of the obligor alone is below \$1,100. The statute provides that if the obligor's monthly adjusted gross income is less than \$1,100, regardless of the monthly adjusted gross income of the obligee, the obligor shall be ordered to pay the minimum monthly order amount in child support based on the number of children due support. The minimum order amount is \$50 for one child, \$70 for two children, \$90 for three children, \$110 for four children, \$130 for five children, and \$150 for six or more children. The minimum order amount does not apply in certain parenting arrangement situations.

¹⁵³ N.H. Rev. Stat. Ann. § 458-C:3, IV(a) & (b).

¹⁵⁴ In Maine, the guideline states that an order cannot be more than 10 percent of an obligor's weekly net income, if the annual gross income of the obligor is less than the self-support reserve. Delaware's formula includes a "Self-support Protection" applicable to both parents. While originally used to address cases where the obligor had multiple families, effective January 1, 2015, the protection was extended to all parents (whether or not they have other children). It limits the final support obligation to 60 percent of net available income (Del. Family Court Rule 506(b)).

¹⁵⁵ Connecticut guidelines use a 55 percent of obligor net income standard. New Mexico presumes a deviation when the guideline support amount is more than 40 percent of an obligor's gross income. In Utah, support cannot be more than 50 percent of an obligor's adjusted gross income.

¹⁵⁶ Colo. Rev. Stat. § 14-10-115(7)(II)(B) & (C).

¹⁵⁷ State of Colorado, *Child Support Commission: Final Report (July 2011)*.

Guidelines commissions that have recommended imposition of a minimum order of support, even when parents' incomes are at poverty levels, do so because of a public policy that parents should be responsible for the support of their children. As noted by the Connecticut Guidelines Commission, "The imposition of an order of a specific amount of child support, no matter how minimal, in almost every case is intended to convey the important message to both parents that an obligation to support exists even where the ability to pay is limited."¹⁵⁸ Connecticut makes an exception if the obligor earns less than \$50 net per week: "Parents with such extremely low income are in truly desperate circumstances, and their first concern, even before the payment of a child support obligation, understandably is their own economic survival."¹⁵⁹

A state's use of minimum support orders needs to be reevaluated in the context of the final federal rule governing child support guidelines and the establishment of a child support order.¹⁶⁰ 45 C.F.R. § 302.56 addresses imputation of income. If state law authorizes imputation of income, the guidelines must take into consideration:

The specific circumstances of the noncustodial parent (and at the State's discretion, the custodial parent) to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earning history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.

In responding to comments regarding the proposed rule on imputation of income, OCSE stated that imputed or default orders based on income imputation "are disfavored and should only occur on a limited basis."¹⁶¹ It continued:

In promulgating these rules, our primary concern is that in some jurisdictions, orders are not based on a factual determination of a particular noncustodial parent's ability to pay, but instead are based upon on standardized amounts that are routinely imputed to indigent, typically unrepresented, noncustodial parents.

¹⁵⁸ State of Connecticut, Commission for Child Support Guidelines, *Child Support and Arrearage Guidelines* (eff. July 1, 2015), p. viii, www.jud.ct.gov/Publications/ChildSupport/CSguidelines.pdf.

¹⁵⁹ *Ibid.*

¹⁶⁰ A state must comply with the new federal requirements within one year after completion of the state's next quadrennial review of its child support guidelines that commences more than one year after the publication of the final rule, that is, December 20, 2016.

¹⁶¹ 81 Fed. Reg. 93482, 93521 (Dec. 20, 2016).

Imputed income is fictional income, and without an evidentiary foundation of ability to pay, orders cannot be considered fair and accurate.¹⁶²

One commenter specifically asked if a person should be ordered to pay a minimum amount of support, regardless of his or her circumstances, to recognize the person's responsibility for the child's support. The OCSE response was: "High minimum orders that are issued across-the-board without regard to the noncustodial parent's ability to pay the amount do not comply with these regulations."¹⁶³

3.5 Zero Orders

The use of minimum orders has been criticized by some researchers. They note that such orders often result in child support amounts that are an extremely high percentage of income for very low-income obligors; often the percentage is higher than the percentages of income for orders from parents with moderate incomes. The reason for this is that minimum orders are usually set at a flat amount, without adjustments for actual levels of earnings.¹⁶⁴

One alternative to a minimum order is to set an obligation at \$0, or to suspend an existing order for support when a noncustodial parent has very minimal income, or no ability to earn income, such as in cases where the parent is incarcerated, involuntarily institutionalized, or disabled. A number of states have instituted policies allowing for such a deviation in particular circumstances.

California is one such state. In 2011, the state enacted legislation requiring the suspension of child support obligations when a parent is incarcerated or involuntarily institutionalized for a period of more than 90 consecutive days.¹⁶⁵ The suspension takes effect by operation of law and does not require the parent to take any action to modify the existing order. The obligation resumes the first full month after the parent is released. (As noted earlier, this provision will sunset January 1, 2020.)

In Connecticut, child support obligations are eliminated for noncustodial parents earning less than \$50 per week net income. "Parents with such extremely low income are in truly desperate

¹⁶² *Ibid.*

¹⁶³ *Id.* at p. 93525.

¹⁶⁴ See Maria Cancian, Daniel R. Meyer & Eunhee Han, "Child Support: Responsible Fatherhood and the Quid Pro Quo," 635 *Annals* 140 (May 2011). See also Tonya L. Brito, "Fathers Behind Bars: Rethinking Child Support Policy Toward Low-Income Noncustodial Fathers and Their Families," 15 *Iowa Journal of Gender, Race & Justice* 417 (2012).

¹⁶⁵ Cal. Fam. Code § 4007.5.

circumstances, and their first concern, even before the payment of a child support obligation, understandably is their own economic survival.”¹⁶⁶

In Illinois, the state legislature passed a new law (to take effect July 1, 2017) that says in part “[f]or parents with no gross income, including those who receive only means-tested assistance or who cannot work due to a medically proven disability, incarceration, or institutionalization, there is a rebuttable presumption that the \$40 per month minimum support order is inappropriate and a zero dollar order shall be entered.”¹⁶⁷

4. Review of Other States’ Policy Models on Presumed/Imputed Income Practices

Irrespective of the guidelines model or the economic evidence of child-rearing costs, the first and most critical decision in *every* child support case is determining the income available to meet the child’s needs. Whether the guidelines use gross or net income, consider the income of both parents or only the obligor’s, establishing the starting point for a child support calculation is not only required—it is frequently the tribunal’s most challenging task. Federal requirements, state statutes and policies, and state case law impact whether this initial step is effectively and equitably accomplished.

The definition of income is expansive¹⁶⁸ and state IV-D agencies may (or indeed, must) search federal and state resources for evidence of income available to the parents to meet their child’s support obligation. The challenge for courts and IV-D agencies alike is whether and how to ascribe income when a parent is un- or underemployed, or when there is no “paper trail” in searchable databases from which to determine the income of an absent party. To do otherwise would improperly reward a party who failed to appear or provide credible information.

While child support guidelines and orders should reflect the actual income of the parents, “[e]very child support guideline has a provision that allows the court to consider the ‘earning capacity’ of a party where that party is voluntarily underemployed or unemployed.”¹⁶⁹ However,

¹⁶⁶ State of Connecticut, Commission for Child Support Guidelines, *Child Support and Arrearage Guidelines* (eff. July 1, 2015), www.jud.ct.gov/Publications/ChildSupport/CSguidelines.pdf.

¹⁶⁷ 750 Ill. Comp. Stat. 5/505(a)3.3 (eff. July 1, 2017).

¹⁶⁸ As noted above, California has a broad definition of earnings to be considered when calculating child support, including disability insurance, Social Security payments, and workers’ compensation. Cal. Fam. Code § 4058(c).

¹⁶⁹ Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 5.01 and fn. 2 (Wolters Kluwer, updated Nov. 20, 2016); published online at Cheetah, www.wkcheetah.com/, the publisher’s legal research portal (as of Feb. 12, 2017).

imputing income¹⁷⁰ involves gathering and analyzing individualized evidence on the nonappearing party and weighing multiple factors.

Generally, the first test is whether the party's employment situation is voluntary or involuntary. Morgan notes some states add a "good faith/bad faith" test.¹⁷¹ California joins nine other states—Alaska, Florida, Idaho, Louisiana, Massachusetts, Missouri, Nebraska, Vermont, and Wisconsin—with conflicting appellate decisions on whether bad faith must also be shown before imputing income.

OCSE's Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs final rule adds a new restriction when applying this first test; it amends 45 C.F.R. § 302.56(c)(3) by requiring that state guidelines must "[p]rovide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders." OCSE's argument for the fairness

See, for example, Ala. R. Jud. Admin. Rule 32(B)(1) (income means ability to earn if unemployed or underemployed); Alaska Civ. R. 90.3, Commentary III(C) (court may calculate child support based on determination of potential income); Ariz. Child Support Guideline 5(e) (court may attribute income to parent whose earnings are reduced as a matter of choice and not for reasonable cause); Cal. Fam. Code § 4057(g)(2) (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); Colo. Rev. Stat. § 14-10-15(A)(4) (if parent is voluntarily unemployed or underemployed, child support shall be calculated on a determination of potential income); Del. Fam. Court Rule 501(d) (every parent will be presumed to have a minimum monthly gross earning capacity of not less than \$8.25 an hour, 40 hours a week, adjusted biannually in direct proportion to the Self-Support Allowance as defined in Rule 502(d); but never be less than the greater of the federal or state statutory minimum wage); Fla. Stat. Ann. § 61.30 (income shall be imputed to an unemployed or underemployed parent when it is voluntary); La. Rev. Stat. Ann. § 9:315(6)(b) (income means potential income if party is voluntarily unemployed or underemployed); Md. Code Ann., Fam. Law § 12-201(b)(2) (income includes potential income if parent is voluntarily impoverished); Mass. Child Support Guideline II(H) (court may consider potential earning capacity); N.J. Rules, Appendix IX (one of the factors to be considered in determining child support is the earning ability of each parent); N.Y. Dom. Rel. Law § 240(1-b) (court shall consider an amount imputed as income based on the parent's former resources or income, if the court determines that a parent has reduced resources or income in order to reduce or avoid the parent's obligation for child support); Ohio Rev. Code Ann. § 3113.215(A)(1)(b) (income means for a parent who is unemployed or underemployed that which he or she could be earning at full capacity); Pa. R. Civ. Pro. 1910.16-5(c)(1) (where a party voluntarily assumes a lower paying job, there will be no modification of support); Va. Code Ann. § 20-108.1(B)(3) (court shall consider: "imputed income" to a party who is voluntarily unemployed or voluntarily underemployed; provided that income may not be imputed to the custodial parent when a child is not in school, child care services are not available, and the cost of such child care services is not included in the computation).

¹⁷⁰ "OCSE views presumed income and imputed income similarly since they are both based on fictional income. Therefore, we use these terms interchangeably." 81 Fed. Reg. 93492, 93519 (Dec. 20, 2016).

¹⁷¹ Morgan, *supra* note 169, at Table 5-1, lists the following states as using the "good faith/bad faith" as an additional threshold for imputing income: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, South Dakota, Texas, Vermont, and Wisconsin.

of the new rule notes, “Three-quarters of States have eliminated treatment of incarceration as voluntary unemployment in recent years.”¹⁷² OCSE received comments on this new requirement in the NPRM that asserted that “how to treat incarceration was at the core of judicial decision making, as reflected in the State’s case law that almost uniformly affirms lower court rulings denying relief to the incarcerated obligor.”¹⁷³ The response in the final rule points out that as of 2012, only 14 states continue to treat incarceration as voluntary unemployment.¹⁷⁴

In *Lambert v. Lambert* [(Ind. 2007) 861 N.E.2d 1176], the Indiana Supreme Court found that “incarceration does not relieve parents of their child support obligations. On the other hand, in determining support orders, courts should not impute potential income to an imprisoned parent based on pre-incarceration wages or other employment related to income, but should rather calculate support based on the actual income and assets available to the parent.”[Fn. omitted.] While some States have prior case law finding that incarceration should be considered voluntary unemployment, *most* States have updated case law, guidelines and court rules to allow for review of the specific facts of the case, and, if appropriate, adjustment of the order. [¶] The rule does not provide special treatment for incarcerated parents. [¶] ... [¶] To the extent that an order fails to take into account the real financial capacity of a jailed parent, the system fails the child by making it more likely that the child will be deprived of adequate support over the long term. [¶] The child support system is not meant to serve a punitive purpose. Rather, the system is an economic one, designed to measure the relative contribution each parent should make—and is capable of making—to share fairly in the economic burdens of child rearing.¹⁷⁵

¹⁷² 81 Fed. Reg. 93492, 93526, response to comment 1, Incarceration as Voluntary Unemployment § 302.56(c)(3).

¹⁷³ *Id.* at p. 93527, comment 2.

¹⁷⁴ *Id.* at p. 93537, citing to “ ‘Voluntary Unemployment,’ Imputed Income, and Modification Laws and Policies for Incarcerated Noncustodial Parents,” *Project to Avoid Increasing Delinquencies (PAID) Fact Sheet No. 4* (companion piece) (July 2012), www.acf.hhs.gov/sites/default/files/programs/css/paid_no_4_companion.pdf (as of July 19, 2017).

Both Maine and Colorado recently changed policy, now excluding imputation of income when the obligor is incarcerated.

¹⁷⁵ *Id.* at p. 93527, citing to Ann Cammett, “Expanding Collateral Sanctions: The Hidden Costs of Aggressive Child Support Enforcement Against Incarcerated Parents,” *Georgetown Journal on Poverty Law & Policy*, 13:2, 312–339 (Summer 2006), www.academia.edu/2582076/Expanding_Collateral_Sanctions_The_Hidden_Costs_of_Aggressive_Child_Support_Enforcement_Against_Incarcerated_Parents.

Alternatively, consider cases which view incarceration as the result of a voluntary criminal act and not a basis to avoid child support; see, for example, *Staffon v. Staffon* (Ga. 2003) 587 S.E.2d 630; *Gisi v. Gisi* (S.D. 2007) 731 N.W.2d 223.

Once the “voluntary/involuntary” threshold has been crossed (and assuming there is no secondary “good faith/bad faith” fact finding required by state law), the issue for the tribunal is determining the individual’s earning capacity. Where the obligor has past employment, the court generally considers the parent’s work history and earnings, as well as the viability of obtaining equivalent employment.¹⁷⁶ Non-income producing financial resources should be included. Education and occupational qualifications are similarly relevant, as are the steps the obligor has taken to mitigate loss of a job or diminished income.

Historically in low-income cases, assuming no more specified evidence is available, most states presume the obligor’s earning capacity is the state’s minimum wage at a 40-hour per week job¹⁷⁷ when income is unknown. Twenty-three state guidelines specify the state’s minimum wage as the minimum attribution. A few other states use: federal minimum wage as a standard (150 percent times the federal minimum wage in Minnesota); state’s median wage (Tennessee); average state wage (Vermont uses 150 percent of this standard); and almost half the states designate use of local employment and/or local prevailing wages in order to particularize the obligor’s earning capacity in the community where he/she resides.¹⁷⁸

During its 2014 guideline review, Delaware changed its rule for imputing income under its guidelines (Melson formula), moving from imputing at least 50 percent of the state’s median wage to minimum wage for full-time employment. The report states:

Minimum income attribution: Over the years, the Court has attempted to keep the Formula at pace with rising wages by imputing every parent the ability to earn at least one-half of the State wide median wage. Currently, the presumptive minimum is \$8.70 per hour or \$1508 per month. However, over the last four years, use of the presumption has become more and more common, with a

¹⁷⁶ “Most States allow a decision-maker to impute income when there is a finding that a parent is voluntarily unemployed or underemployed. It is generally permissible to attribute income at the level that the parent would have earned if fully employed—that is, at the parent’s earning potential or capacity. Judges or administrative decision-makers determine earning capacity by looking at the party’s work history, age, educational background, and skills. It may also be appropriate to examine location-specific issues.” National Council of Juvenile and Family Court Judges, *A Practice Guide: Making Child Support Orders Realistic and Enforceable*, bench card on “Child Support Guidelines—Determining Income” developed under a Special Improvement Project (SIP) grant funded by HHS/ACF/OCSE (Feb. 2008).

¹⁷⁷ “Respondents indicated that the primary source of information on which they base imputation is the non-custodial parent’s most recent work history. When a work history is unavailable, several States base earnings capacity on the non-custodial parent’s skills and education. In the absence of any information, most States base imputed income on minimum wage earnings for a 40 hour work week.” Office of Inspector General, U.S. Department of Health and Human Services, *The Establishment of Child Support Orders for Low Income Non-custodial Parents* (OEI-05-99-00390, July 2000), p. 18, <http://oig.hhs.gov/oei/reports/oei-05-99-00390.pdf> (as of Feb. 28, 2017).

¹⁷⁸ Jane Venohr & Carly Everett, Center for Policy Research, *2010 Review of the New York Child Support Guidelines*, p. 127 (Nov. 9, 2010).

significant proportion of litigants earning less than the presumption. [The case review] shows that since 2008, for the bottom 30% of workers, wages have remained flat in comparison to the upper 70% whose earnings have generally kept pace with inflation. This gap calls into question the appropriateness of attributing one-half of median wages to many parents who cannot, in fact, earn at that level in the existing economy, no matter how hard they try.

This year, the State of Delaware enacted a new minimum wage of \$8.25 per hour. The Court interprets this as a legislative finding with regard to current labor conditions and concludes Rule 501(d) should be rewritten as follows:

Rule 501(d)

Effective January 1, 2015 every parent will be presumed to have a minimum monthly gross earning capacity of not less than \$8.25 per hour, 40 hours per week (\$1430 per month). That amount will be adjusted biannually in direct proportion to the Self-support Allowance as defined in Rule 502(d). However, the rate shall never be less than the greater of the Federal or State statutory minimum wage.¹⁷⁹

While states categorize this policy as a presumption that may be rebuttable under state law, the grounds for doing so are often limited: a proven physical or mental disability;¹⁸⁰ caring for a young or physically or mentally disabled child; receiving a means-tested public assistance benefit.¹⁸¹ As with precluding treating incarceration as “voluntary unemployment,” the final rule directly impacts how a parent’s child support is calculated.

OCSE states that “the goal of the revisions is to increase reliable child support for children by setting child support based on the noncustodial parent’s earnings, income, or other evidence of ability pay.”¹⁸² Rather than a broad standard such as minimum wage for full-time employment or the median state wage, 45 C.F.R. § 302.56(c)(iii) directs that “[i]f imputation of income is permitted under a state’s child support guidelines, then child-support guidelines must take into consideration the specific circumstances of the noncustodial parent to the extent known when determining the amount of imputed income, and may not use a standard amount in lieu of fact-

¹⁷⁹ Family Court of the State of Delaware, *Delaware Child Support Formula Evaluation and Update*, Report to the Family Court Judiciary, pp. 11–12 (Nov. 19, 2014).

¹⁸⁰ “Twenty-four state guidelines provide that income should not be imputed where the obligated parent has a mental or physical disability.” Venohr, *supra* note 178, p. 129.

¹⁸¹ Alabama Child-Support Guidelines, Rule 32(B)(5); D.C. Code § 16-916.01(d)(10). An exception to attributing income frequently exists for a parent who is not employed due to the care needs of a very young child. The age of the child varies, for example: Maine (child under 3); Maryland (child under 2) and/or the trier of fact is given discretion on whether or not to impute income when older children are involved. *Id.* at pp. 128–130.

¹⁸² Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, 81 Fed. Reg. 93492 (Dec. 20, 2016).

gathering in a specific case.”¹⁸³ In states using an income shares or Melson formula model, this same “specific circumstances” would apply when the tribunal determines the custodial parent’s income.

5. Summary/Conclusions

All state child support guidelines, including California’s, reflect and incorporate policy choices on a wide range of issues. Chapter C, Research on the Cost of Raising Children, examined alternative methodologies for updating California’s guidelines and recommended a new approach in defining the cost of child-rearing and other economic considerations addressed by child support guidelines. This report discusses the complexities of applying child support guidelines in an equitable and efficient manner, particularly where low-income families are involved.

Often the bright-line rules laid out in state guidelines are not so clear when considering the circumstances of real families. This document informs the reader about practices in other states and lays the groundwork for comprehensive discussions that are necessary during California’s quadrennial review. For example, a number of the low-income adjustments considered above in Section 3, and imputed income policies discussed in Section 4, appear to conflict: Under what circumstances is even a token support order inappropriate? How are custodial families protected when an obligor has no employment, limited education or job skills, and no assets? How best are these policies articulated to insure consistency in application while focusing on the individualized circumstances of both parents?

It is anticipated that the approaches articulated in this report will inform subsequent project tasks (such as case reviews and focus group discussions), and combine for appropriate and equitable revisions to California child support guidelines.

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231 Pa. Code §§ 1910.16-1 (Explanatory Comment 2013) and 1910.16-2
South Carolina Guidelines (3)(A)(11) (2014)
Va. Code Ann. § 20-108.2(B)
W. Va. Code § 48-13-403

Cases

Dalton v. Clanton (Del. 1989) 559 A.2d 1197
Gisi v. Gisi (S.D. 2007) 731 N.W.2d 223
I.B. v. R.S.W.B. (Del. Fam. Ct., Nov. 11, 1977) No. A-3000, Melson, J. (unreported op.)
In re Marriage of Regnery (1989) 214 Cal.App.3d 1367
In re Marriage of Smith (2001) 90 Cal.App.4th 74
Lambert v. Lambert (Ind. 2007) 861 N.E.2d 1176
Staffon v. Staffon (Ga. 2003) 587 S.E.2d 630
State of Oregon v. Vargas (1999) 70 Cal.App.4th 1123

7. Appendix

State-by-State Treatment of the Low-Income Parent

State	Presumptive Award of \$50	Mandatory Minimum Award	Award in Court's Discretion
Alabama			x
Alaska	x		
Arizona			x
Arkansas			x
California			x
Colorado		x	
Connecticut			x
Delaware	x		
D.C.		x	
Florida	x		
Georgia			x
Hawaii			x
Idaho	x		
Illinois	x		
Indiana		x	
Iowa		x	
Kansas	x		
Kentucky			x
Louisiana			x
Maine	x		
Maryland		x	
Massachusetts		x	
Michigan		x	
Minnesota			x
Mississippi			x
Missouri			x
Montana	x		
Nebraska	x		
Nevada	x		

State	Presumptive Award of \$50	Mandatory Minimum Award	Award in Court's Discretion
New Hampshire [fn omitted]	x		
New Jersey		x	
New Mexico		x	
New York	x		
North Carolina	x		
North Dakota		x	
Ohio			x
Oklahoma			x
Oregon	x		
Pennsylvania			x
Rhode Island		x	
South Carolina		x	
South Dakota	x		
Tennessee	x		
Texas	x		
Utah		x	
Vermont		x	
Virginia	x		
Washington	x		
West Virginia			x
Wisconsin	x		
Wyoming		x	

Source: Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 8.08, Table 8-7.

State-by-State Treatment of Imputed Income

	Good Faith Irrelevant (Voluntary/Involuntary Test)	Motives for Change Examined (Good Faith/Bad Faith Test)
Alabama	X (Coleman)	
Alaska	X (Beard)	X (Kowalski)
Arizona		X (Shaughnessy)
Arkansas		X (Grady)
California	X (Ilas)	X (Meegan)
Colorado		X (Seanor)
Connecticut		X (Mohammedu)
Delaware	X (R.T.)	
D.C.	X (Lewis)	
Florida	X (Thilem)	X (Ledbetter)
Georgia		X (Duncan)
Hawaii	X (Cleveland)	
Idaho	X (Atkinson)	X (Nab)
Illinois		X (Schuster)
Indiana	X (Billings)	
Iowa		X
Kansas	X (McNeely)	
Kentucky		X (Keplinger)
Louisiana	X (Massingil)	X (Richardson)
Maine		X (Harvey)
Maryland	X (Wills)	
Massachusetts	X (Bassette)	X (Schuler)
Michigan	X (Rutledge)	
Minnesota		X (Nazar)
Mississippi	X (Caldwell)	
Missouri	X (Luker)	X (JPS)
Montana	X (Chiovaro)	
Nebraska	X (Sabatka)	X (Wagner)
Nevada		X (Minnear)
New Hampshire	X (Doubleday)	
New Jersey		X (Deegan)
New Mexico		X (Wolcott)
New York	X (Yourman)	
North Carolina		X (Kennedy)

	Good Faith Irrelevant (Voluntary/Involuntary Test)	Motives for Change Examined (Good Faith/Bad Faith Test)
North Dakota		X (Olson)
Ohio	X (Rock)	
Oklahoma	X (Snellings)	
Oregon	X (Harper)	
Pennsylvania	X (Atkinson)	
Rhode Island	X (Guidelines ¶4(B)(1))	
South Carolina	X (Fisher)	
South Dakota		X (Wilcox)
Tennessee	X (Guidelines §-.03(3)(d))	
Texas		X (Stack)
Utah	X (Hall)	
Vermont	X (Gil)	X (Clayton)
Virginia	X (Antonelli) [1]	
Washington	X (Shellenberger)	
West Virginia	X (Taylor)	
Wisconsin	X (Smith)	X (Sellers)
Wyoming	X (Manners)	

Source: Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 8.08, Table 5-1.

Treatment of Low-Income Families in Child Support Guidelines

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
ALABAMA	Income Shares	Ala. R. Jud. Admin. 32 (2015). See also Comments to amendments.	Yes	\$851 (based on FPL for one person in 2007 but also aligned to consider Alabama incomes)	No	Schedule of basic child-support obligations incorporates SSR of \$851 per month. Based on 2007 federal poverty guidelines for one person but is also realigned to consider Alabama incomes in same manner as revised schedule. Adjustment is incorporated into schedule for combined gross incomes based on number of children.			Adjustment is incorporated into schedule for combined gross incomes below \$1,100 for one child, \$1,350 for two children, \$1,550 for three children, \$1,700 for four children, \$1,900 for five children, and \$2,100 for six children.	Yes. Schedule sets \$50 p/m for combined adjusted gross income of \$0--\$800. Court discretion where combined adjusted gross income is below the lowermost level on Schedule.		
ALASKA	Percentage of Obligor Income	Alaska Civ. R. 90.3 (2016-2017 edition)	Silent						Not used for shared or split custody.	Yes; \$50 p/m applies for all children. If calculation results in support of less than \$50, the \$50 p/m minimum must be set.	Guideline amount may be varied for good cause. Court may set an order under \$50 p/m for extended visitation.	

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
ARIZONA	Income Shares	Ariz. Child Support Guidelines (S. Ct. Admin. Order 2015-6), Ariz. Rev. Stat. Ann. § 25.320	Yes	100% of federal poverty level for one person. \$1,115 in 2014.		Self-Support Reserve Test is performed after determining the child support order. Deduct \$1,115 from obligor's adjusted gross income. For purposes of the SSR only, court may also deduct court ordered arrears if actually paid. If the resulting amount is less than order amount, court may reduce the current support order to the resulting amount. Before reducing the amount, the court also must perform calculation for obligee's income. If both are less, court may use discretion to reduce order.				No		
ARKANSAS	Percentage of Obligor Income	In re: Administrative Order No. 10, Ark. Child Support Guidelines (2015)	Silent							No mention of a minimum order.		

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
CALIFORNIA	Income Shares	Cal. Fam. Code §§ 4050-4076 (Section 4055 amended 2012)	Yes	\$1,500 net disposable monthly income, adjusted annually for California CPI-U.		A low-income adjustment is rebuttably presumed if the obligor's net disposable monthly income is below \$1,500.		\$1,500 net disposable monthly income for obligor.	Reduction in cs can't be less than certain amount (multiply cs by fraction of which numerator is \$1,500 minus obligor net disposable monthly income and denominator is \$1,500).	No	A court may adjust an order due to extreme financial hardship of a party due to extreme circumstances. In court's discretion. The reduction is made by reducing the income of the party to whom it applies; not by reducing the support order directly.	The low-income adjustment is adjusted annually for cost of living increases on March 1, 2013, and annually thereafter, based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the California Department of Industrial Relations, Division of Labor Statistics and Research.

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
COLORADO	Income Shares	Colo. Rev. Stat. §§ 14-10-115 (7)(a)((II)(B) and (C) (2016)	Yes	\$1,100 (Note this was 120% of the FPL in 2010 for one person, rounded up from \$1,083 to \$1,100).	No	Application of low-income adjustment is the lesser of two calculations. First, calculate child support using the regular formula. Next calculate the difference between the obligor's gross income and \$1,100 p/m plus the minimum order (\$50-150 based on no. of children). The low-income adjustment also applies where obligor's adjusted monthly gross income is between \$1,000 and \$1,900 p/m.			Minimum does not apply if each party has children more than 92 nights p/y.	Yes. If combined monthly adjusted gross income is less than \$1,100, then minimum order is \$50 for one child, \$70 for two, \$90 for three, \$110 for four, \$130 for five, and \$150 for six or more children. Exception based on parenting time arrangement.	Yes. When combined minimum monthly gross is below \$1,100.	Language regarding the self-support reserve is in the Colorado Child Support Commission Final Report, July 2011.

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
CONNECTICUT	Income Shares	Conn. Child Support and Arrearage Guidelines, Conn. Gen. Stat. §§ 46b-215a-1 to -5 (2015)	Yes	Adjustment is built into the schedule for low-income obligors at incomes under \$290 per week.	No	Schedule has a low-income area that is depicted in darker shade than rest of schedule. If obligor's income falls within that area, the support obligation is calculated using obligor's income only. The net income at which the low-income designation ceases to apply is approximately \$290 per week.	Deviation factor for "special circumstances." Deviation downward is possible for any component except current support.	Less than \$290 per week is "low income" for calculation and order purposes. Income above \$290 p/wk is not considered "low income."	No more than 55% of an obligor's net income may be taken for child support and arrears payment. Weekly arrears payment for low-income obligors is greater of \$1 p/wk or 10% of weekly current order. No obligation if obligor earns less than \$50 p/wk net. For low-income obligor whose income is in shaded lower end of schedule, obligation is determined by using only the obligor's income. Low-income obligors have no requirement to contribute cash medical. There is a requirement for unreimbursed medical however.	No		

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
DELAWARE	Melson	13 Del. Code § 514 (2014)	Yes	\$1,000 for 2015 and automatically revised every 2 years to stay at 100% of Federal Poverty Limit for one person.	No	The SSR of \$1,000 is deducted from the monthly gross income of each parent, along with taxes and other deductions, to obtain the monthly net income for each parent.			No parent shall pay more than 60% of net available income. The SSR applies to all parents, regardless of whether they have other children.	No parent shall pay more than 60% of net available income. Not less than \$100 for one child, and \$160 for 2 or more children, or 20% of the children's primary support allowance.		Each parent is presumed to have an earning capacity of \$1,430 p/m. The SSR amount is adjusted every two years to 100% of the FPL for one person.
DISTRICT OF COLUMBIA	Income Shares	D.C. Code Ann. § 16-916.01 (2016)	Yes	133% of federal poverty guideline for one person. \$14,404 P/Y as of 2009.	No	If obligor's adjusted gross income is below SSR, court can make support order on a case by case basis			Minimum support order presumption may be rebutted down to \$0 or up above \$50 based on evidence of obligor's ability to pay, including a number of factors.	If obligor's income is below the SSR, rebuttable presumption is a \$50 p/m minimum.	Minimum orders are in discretion of the court. Must be written findings.	This SSR is to be updated every 2 years by the mayor, published in the District of Columbia Register, effective April 1st. The current guidelines however, list the SSR amount from 2009.
FLORIDA	Income Shares	Fla. Stat. Ann § 61.30 (2016)	Yes	Federal poverty level for one person.	Yes - Case by case.	If combined monthly net income is less than guidelines schedule, (\$800) child support payment shall be the lesser of the obligor's actual support amount under the schedule, or 90% of the difference between the obligor's monthly net income and Federal Poverty guideline.	Deviation may be based on obligee's low income and ability to maintain basic necessities of the home.	Below combined monthly net of \$800.		Yes. Determined on a case by case basis. If obligor's mo. net income is less than schedule floor (\$800/mo.), obligation is lesser of obligor's share of schedule amt or 90% of difference between obligor's mo. net income and FPL.		

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
GEORGIA	Income Shares	Ga. Code Ann. § 19-6-15 (2016)	No SSR. Low income is a deviation factor				Low-income deviation if obligor can prove no earning capacity or presumptive child support creates extreme hardship. If income is SSI, deemed no earning capacity. Additional amounts can be ordered for arrears.			Minimum order is \$100 p/m plus \$50 p/m for each additional child.		In considering a request for a low-income deviation, court or jury must consider the relative hardship that a reduction in the amount of child support paid to the custodial parent would have on the custodial parent's household, the needs of each parent, the needs of the child for whom child support is being determined, and the ability of the noncustodial parent to pay support.
HAWAII	Melson	Hawaii C.S.G. Hawaii Rev. Stat. 576D-7 (2014)	Yes	The SSR is \$840 for 2013.	No	SSR is subtracted from monthly gross income of each parent in addition to taxes, to arrive at monthly net income. Built into the Table of Incomes.		Gross income minus \$1,102 - based on 2013 federal poverty guidelines.		\$77 p/m p/ch.		Child's need is \$385 based on child's Federal Poverty guideline.

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
IDAHO	Income Shares	Idaho R. Civ. Pro. 6(c)(6) (2012)	Yes	Court discretion if paying parent's income is below \$800 p/m. Court determines support w/o denying parent self-support at reasonable subsistence level.	Yes					\$50 p/m minimum order.		
ILLINOIS	Percentage of Obligor Income	750 I.L.C.S. 5/505 (2016)	Silent				Deviation is possible based on "the financial resources and needs of the parents."					

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
INDIANA	Income Shares	Ind. Child Support Guidelines, Ind. Sup. Ct., Rules of Court (2016)	Yes	Amount is discretionary.		Where combined weekly adjusted incomes are less than \$100, court must ensure obligor has a means of self-support at a subsistence level.				If combined weekly adjusted gross is less than \$100, support is determined on a case by case basis. The court may consider \$12.00, but 0 is sometimes appropriate. Goal is not to deny the obligor a means of self-support at a subsistence level.	Combined weekly adjusted gross of less than \$100.	
IOWA	Income Shares	Iowa Court Rule 9, Child Support Guidelines, Iowa Code § 598.21B (2013)	Yes	Low-income adjustments for cases where obligated parent's adjusted net income is below \$1,151 per month. The low-income adjustment section of the schedule reflects the 2012 FPL of \$931 net income for one person.	No	Low-income adjustment is built into the schedule where obligor's income is below an adjusted net income of \$1,151. If obligor's income is in area B of the table (incomes between \$1,151 and \$2,650 p/m) the support amount is the lesser of support calculated using only the obligor's income, or the regular calculation.		\$1,151 adjusted net income.	If obligor's income is less than \$1,151, only the obligor's income is used to calculate the order. The low-income adjustment is not used in joint custody situations, and cash medical is not ordered. Also no health insurance premium is added.	No		The adjustment is based on: (1) requiring a support order no matter how little the obligated parent's income is, (2) increasing the support amount for more children, (3) maintaining an incentive to work for the obligated parent, and (4) gradually phasing out the adjustment with increased income.

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
KANSAS	Income Shares	Kan. Child Support Guidelines (Sup. Ct. Order No. 284) (2016)	Silent		Yes		If requested by a party, a court has discretion to adjust support up or down, based on factors such as special needs or overall financial condition of party.			No mention of a minimum order.		
KENTUCKY	Income Shares	Ky. Rev. Stat. Ann. §§ 403-210 to -213 (2017)	Silent							\$60 per month.		

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
LOUISIANA	Income Shares	La. Rev. Stat. Ann. §§ 9:315.1 to 9:315.15 (2016)	Yes			The schedule uses economic data adjusted for LA being a low-income state, and to incorporate a self-sufficiency reserve for low-income obligors as part of the basic child support obligation.	Court may set a support order based on the facts of the case, but not below the minimum order, except in disability, if the combined adjusted gross income is less than the lowest amount on the schedule.		Minimum support not used for cases of shared or split custody.	\$100	Less can be ordered if obligor has a medically documented disability that limits the ability to pay. If the combined adjusted gross income is below the lowest amount on the table, the court shall issue orders on a case by case basis, but not less than minimum.	

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
MAINE	Income Shares	Me. Rev. Stat. Ann. tit. 19-A, §§ 2001-2010 (2015)	Yes.	Table has a built-in self-support reserve for obligors earning \$22,800 gross p/y or less for 2012.	No	If within a child's age category, obligor's annual gross income without adjustment is within the SSR for the total no. children supported, support amount is SSR multiplied by the no. of children in that age category. Added to basic amt is parent's proportional share of child care, health insurance premiums, and extraordinary medical.		\$22,800 or less	If the annual gross income of the nonprimary care provider is less than the federal poverty guideline, the nonprimary care provider's weekly parental support obligation may not exceed 10% of the nonprimary care provider's weekly gross income.	No mention of a minimum order.		
MARYLAND	Income Shares	Md. Fam. Law Code Ann. §§ 12-201 <i>et seq</i> (2016)	Yes	\$867 (which was FPL in 2008. State has not adjusted the FPL as recommended in 2012 guideline review). Built into the schedule.	Yes, for combined monthly adjusted actual incomes of \$100 to \$120 p/m.	If the combined adjusted actual income is \$100 to \$1,200 p/m, the support is set between \$20 and \$150, depending on the number of children and the resources and living expenses of the obligor.				No		

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
MASSACHUSETTS	Income Shares	Mass. Child Support Guidelines, Admin Office of the Trial Court (2013)	Yes.		Yes		Deviation factor if application of the guidelines would leave a party w/o the ability to self-support.		Protection for incomes of \$150 per week or less. Minimum order of \$80 p/m or \$18.46 p/w.	\$18.46 p/w in discretion of the court.	Basic Principle-- to protect a subsistence level of income for both parents.	

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
MICHIGAN	Income Shares	Mich. Child Support Formula (2013)	Yes	Low-Income Threshold is \$931 (amount is the 2012 FPL for one person, which was the year the guideline was last updated).	No	If the following equation's result is lower than amount calculated using General Care Equation, a parent's base support obligation is amount determined by applying this equation. $(H \times 10\%) + [(I - H) \times P] = T$ H = Low Income Threshold (§ 2.09(A)) 10% = Percentage for Income below the threshold (§ 3.02(C)(1)) I = Parent's Monthly Net Income P = Percentage Multiplier for the appropriate number of children from the Transition Adjustment table T = Base Support obligation using the Low Income Transition Equation			If one parent's income is below threshold, do not include that parent's income in the family income used to calculate the other parent's general care support obligation.	No. Removed in 2013		

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
MINNESOTA	Income Shares	Minn. Stat. Ann. §§ 518A.35 <i>et seq.</i> (2015)	Yes	120% of federal poverty level for one person. \$1,083 for 2010.	No	120% of Federal Poverty Guideline for one person. Subtract SSR from obligor's gross income. If obligor's income is less than 120% of the federal poverty guideline or the obligor's income is less than or equal to the minimum support amount, use the minimum support amount.				\$50, \$75, or \$100 p/m, depending on the number of children.	If minimum support applies, the obligor is presumed unable to pay child care or medical support. If the obligor completely lacks earning ability, the minimum does not apply.	
MISSISSIPPI	Percentage of Obligor Income	Miss. Code Ann. §§ 43-19-101 to -103 (2016)	Silent			N/A	Yes. If the adjusted gross income of obligor is under \$10,000, the court may deviate and must make a written finding on whether or not the application of the guidelines is reasonable			No mention of a minimum order.		

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
MISSOURI	Income Shares	Mo. Rev. Stat. § 452.340 (2016); Mo. Court R. of Civ. Proc. 88; Civ. Proc. Form No. 14	Yes	2008 FPL for one person.	No	Schedule incorporates the federal poverty guideline for 2008.				No mention of a minimum order.		
MONTANA	Melson	Admin. Rules of Mont., Tit. 37.Chapter 62.Sub chapter 1 (2012)	Yes	Federal poverty guideline for one person multiplied by 1.3.	No	Personal Allowance is 1.3 multiplied by the federal poverty guideline for one person. This amount is subtracted from each parent's income when determining child support.				Yes	If income is less or equal to a parent's personal allowance or a child support obligation is less than 12% of parent's income. The exact minimum amount is determined by a formula.	
NEBRASKA	Income Shares	Neb. Court Rules, Chap. 4, Art. 2, §§ 4-201 to 4-220 (2016)	Yes	\$990 net monthly for one person or the poverty guidelines updated annually by HHS in the Federal Register	No	Self-support level is built into the schedule and includes a minimum amount of \$50 p/m for incomes at \$990 or below. Parent's support shall not reduce his or her income below the amount.				\$50 or 10% of net income, whichever is greater - by court recommendation.	Yes	SSR is updated annually based on FPL for one person
NEVADA	Percentage of Obligor Income	Nev. Rev. Stat. Ann. §§ 125B.070 to .080 (2013)	Silent							\$100 p/m p/ch unless court determines it can't be paid.		

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
NEW HAMPSHIRE	Income Shares	N.H. Rev. Stat. Ann. §§ 458-C:1 to :7 (2013)	Yes	115% of the poverty level standard of need for single individual living alone. \$1,101 for 2013.	No	If the obligor's gross income is less than the SSR, court shall order \$50 minimum. If income is more than SSR, but calculated support subtraction puts it below the SSR, payment is difference between SSR and adjusted gross, but not less than \$50.	The court may also deviate for low incomes of one or both parents.			\$50	If income is less than the SSR, \$50 minimum. If income is more than SSR, but calculated support subtraction puts it below the SSR, payment is difference between SSR and adjusted gross, but not less than \$50.	

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
NEW JERSEY	Income Shares	N.J. Rules of Court Appendix IX (2016)	Yes	105% of Federal Poverty Level for one person or \$240 per week.		Adjust the support order to reflect SSR only if payment of the child support award would reduce the parent's income below the self-support reserve amount AND the CP's net income minus the CP's share of the support award is greater than the self-support reserve amount. This assures that CPs can meet basic needs so they can take care of the children. If the obligees income minus the obligee's share of the support obligation is less than the SSR (105% of FPL), then NO SSR adjustment will be made.	If the obligor's net income is below the SSR, the court shall carefully review income and expenses to determine the support.			In all cases a minimum order of between \$5.00 p/wk and support amount at \$180 combined net weekly income is ordered depending on the number of children.		

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
NEW MEXICO	Income Shares	N.M. Stat. Ann. §§ 40-4-11.1 to -4-11.6 (2010)	No SSR. Low income is basis for deviation				If an obligor is required to pay more than 40% of his or her gross income for a single support obligation, there is a presumption of substantial hardship justifying a deviation.		If an obligor is required to pay more than 40% of his or her gross income for a single support obligation, there is a presumption of substantial hardship justifying a deviation.	No	If income history is below minimum wage, the agency will seek to impute income as appropriate.	

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
NEW YORK	Income Shares (No guideline table. Multiply combined parental income by appropriate percentage and then prorate in same proportion as each parent's income is to combined parental income)	N.Y. Dom. Rel. Law § 240(1-b) (2016)	Yes	135% of poverty guidelines for one person. Shall be revised March 1st of each year (was \$16,038 yearly income for 2016)	No				Where the annual amount of the basic child support obligation would reduce the amount of obligor's income below the poverty level, then the support is \$25 p/m unless the court finds it inappropriate. If the obligor's income would be more than poverty level, but less than SSR (which is 13% of FPL), then \$50 p/m or difference between income and SSR, whichever is greater.	Yes		The SSR based on the Federal poverty guideline for one person must be revised on March 1 of each year to reflect the annual updating by HHS.

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
NORTH CAROLINA	Income Shares	N.C. Child Support Guidelines, N.C. Gen. Stat. § 50-13.4 (2015)	Yes	SSR based on the 2014 federal poverty level for one person (\$973 p/m)	No	Built into Schedule. Obligor's with adjusted gross income of less than \$1,097 p/m, guidelines require a minimum order of \$50 p/m.	The court may deviate below the minimum \$50 order, or to order child or health care payment.		If obligor's adjusted gross income is in shaded area (lower) only the obligor's income is used. Child care and health care expenses are not used in the calculation. This approach prevents disproportionate increases in the child support obligation with moderate increases in income and protects the integrity of the self-support reserve.	\$50		
NORTH DAKOTA	Percentage of Obligor Income	N.D. Admin. Code §§ 75-02-04.1 to -04.10 (2015)	Silent				Deviation may be requested based on "the subsistence needs of the obligor." Rebuttal of presumed amount is by preponderance of evidence.		General statement reflecting the policy of always ordering child support.	No set minimum amount but general policy of order in every case.	The schedule starts at monthly net income of "\$100 or less."	

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
OHIO	Income Shares	Ohio Rev. Code §§ 3119.01 <i>et seq</i> (some sections amended 2012)	Yes	116% of federal poverty level for one person. Built into schedule	No	Built into guidelines tables.				\$50 p/m, or less in court's discretion. If combined gross income of parents is less than \$6,600 p/year, court or CSEA will determine support on a case by case, without denying the obligor the means for self-support at a minimum subsistence level.		In proposed new guidelines, only 30% of an obligor's income is tied to child support, creating an incentive to work. Some statutes, such as those containing the schedules, (ORC§ 3119.021) have not been amended since 2001. Other sections, such as ORC §3119.01, were amended in 2012.
OKLAHOMA	Income Shares	Okla. Stat. Ann. tit. 43, §§ 118 to 120 (2009)	Silent				Deviation may be considered in cases of "extreme economic hardship" if it is not detrimental to best interests of the child.			No mention of a minimum order.		

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
OREGON	Income Shares	Or. Admin. Reg. 137-50-320 to -490 (2016)	Yes	\$1,145. The amount of the SSR is based on the Federal poverty guideline in 2016 for one person multiplied by 1.167 to account for estimated taxes and rounded to nearest dollar.	No	Deduct SSR amount from the obligated parent's adjusted income.			Parent's total obligation including support, child care, cash, medical and insurance can't exceed parent's available income. Does not apply when obligor is incarcerated w/o ability to pay, gets disability benefits or gets public assistance.	\$100		This rule will be reviewed and updated annually to reflect changes in the federal poverty guideline.
PENNSYLVANIA	Income Shares	231 Pa. Code §§ 1910.16-1 to -5, 1910.19 (2016)	Yes	\$931 p/m, which was the FPL for one person in 2012.	No	Built into schedule and adjusts the obligor's income so it will not fall below \$931 p/m. in low-income cases, first calculate support using obligor's income only. Then calculate as usual. Use lower calculation.			If obligor's monthly net income is \$931 or less, court may order support only after considering actual resources and living expenses.			Pennsylvania updates its SSR regularly but the rules do not require automatic updates.
RHODE ISLAND	Income Shares	R.I. Child Support Guidelines (Fam. Ct. Admin. Order 2012-05) (2012)	Yes, but not labeled as an SSR.		No	Minimum support order is built into the table for combined monthly incomes from \$800 to \$1,050.				\$50 p/m built into table.		

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
SOUTH CAROLINA	Income Shares	S.C. Soc. Serv. Reg. 114-4710 to -4750, S.C. Code Ann. § 20-7-852 and § 43-5-580(b) (2014)	Yes	\$748 p/m incorporated into 2014 guideline table.	No	The SSR is built into the tables If obligor's income is within shaded area (SSR applies), use only obligor's income to calculate support. To use the obligee's income, or include adjustments like insurance or day care, would reduce the net income of the parent paying to below the self-support reserve.			If obligor's income is within shaded area (SSR applies), use only obligor's income to calculate support.	\$100 p/m.	Use minimum order where combined monthly gross income is less than \$750 p/m. Orders are determined on a case by case basis, but will ordinarily not go below \$100 p/m.	
SOUTH DAKOTA	Income Shares	S.D. Codified Laws Ann. §§ 25-7-6.1 to -6.17 (2009)	Yes, but not labeled as an SSR.	Not stated in guidelines.	No	Built into child support schedule. Called the "low-income obligation area." Calculate support for low incomes using obligor's income only, then using both incomes. Lower amount is support. Used for incomes between \$0 and \$2,100 for 6 children, where it phases out.				No mention of a minimum order.		If income is insufficient to pay support, an obligor's savings, and other assets as well as ability to borrow, may be considered

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
TENNESSEE	Income Shares	Tenn. Comp. R. & Regs. Dep't Human Services § 1240-2-4 (2008)	Yes, but not labeled as an SSR.	The federal poverty level of \$10,400 gross p/y for one person for 2006 defines a low-income person.	Yes	A low-income person is either parent with an annual gross income at or below the federal poverty guideline. Low-income deviations may be requested.	Low-income deviation may be considered by the court if either party's income is at or below the federal poverty guideline.		No adjustment shall be made in the calculation of an obligation which seriously impairs the obligor's ability to provide minimally adequate housing, food, clothing for the children or provide other basic necessities as determined by the court.	\$100 p/m.	The court may deviate below this minimum in appropriate situations.	
TEXAS	Percentage of Obligor Income	Tex. Fam. Code Ann. §§ 154.001 <i>et seq.</i> , 154.125, 154.126 (2016)	Silent		Deviation factor allowing the court to consider the "ability of the parents to contribute to the support of the child."	Guidelines apply when an obligor's monthly net monthly resources are not greater than \$7,500 or the adjusted amount determined under subsection (a-1), whichever is greater. Subsection (a-1) provides that the dollar amount in subsection (a) is adjusted every six years as necessary to reflect inflation.				No		

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
UTAH	Income Shares	Utah Code Ann. §§ 78B-12 <i>et seq.</i> (2008)	Yes, but not labeled as an SSR.		No	Low-income table is used for combined adjusted gross incomes of 0 through \$1,050. Uses obligor's income only.	If total cs amount exceeds 50% of obligor's adjusted gross income (including medical and child care, the presumption to include child care is rebutted).		Support can't exceed 50% of obligor's adjusted gross income. Where monthly adjusted gross is between \$650 and \$1,050 support is lesser of calculated regular amount or calculated amount using the low-income tables. If income of either parent is less than \$649; support on case by case but not less than \$30.	\$30 p/m.		
VERMONT	Income Shares	Vt. Stat. 15: 653-657 and Civ R. 13-161 (2016)	Yes	120% of the federal poverty guideline for one person, adjusted annually.	If the obligor's available income is less than the SSR, or less than the lowest amount on the schedule, the court shall use discretion to enter a nominal amount.	Low-income adjustment is built into the schedule where obligor's incomes is below an adjusted net income of \$1,151. If obligor's income is in area B of the table (incomes between \$1,151 and \$2,650 p/m) the support amount is the lesser of the two.			No arrears payment is ordered where income is below the SSR.	Payment of nominal amount		

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
VIRGINIA	Income Shares	Va. Code Ann. §§ 20-108.1, -108.2 (2016)	SSR removed during last guideline review and replaced with language related to statutory minimum payment when obligor's income is below 150% FPL for one person.	.					If the sole custody obligation is less than the statutory minimum p/m, presumption of the statutory minimum child support obligation is exempted. Reasons are that the obligor lacks assets, is institutionalized, imprisoned for life w/o parole, is medically verified totally and permanently disabled, on SSI, or otherwise is involuntarily unable to produce income.	Yes. If obligor's gross income is equal to or less than 150% of the FPL, there is a presumptive minimum statutory payment of amount at the lowest income on worksheet (\$550 income level). Obligation varies based on number of children. Court may issue an order lower than statutory minimum as long as support order does not seriously impair obligee's ability to maintain minimum adequate housing and provide other basic needs for the family.		

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
WASHINGTON	Income Shares	Wash. Rev. Code Ann. §§ 26.19.001 <i>et seq.</i> (2015)	Yes	125% of federal poverty guidelines for one person (was \$1,238 based on 2015 recommendations)	No	Neither parent's total monthly obligation may exceed 45% of net income. The basic support obligation of the obligor shall not reduce the obligor's income below the SSR except for the \$50 p/m. p/ch or if it would be unjust (deviation).				For combined monthly net income of below \$1,000, the obligation is based on resources and living expenses of each household, but not less than \$50 p/m per child.	When parent's mo. net income is below 125% of federal poverty guideline, minimum support order of at least \$50 pm per child unless obligor establishes would be unjust. Court must also consider best interests of child and circumstances of each parent, incl. leaving insufficient funds in CP's household to meet basic needs of child, comparative hardship to households, assets or liabilities, and earning capacity.	

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
WEST VIRGINIA	Income Shares	W. Va. Code §§ 48-13-101 to -804 (2016)	Yes	\$500	No	If obligor's adjusted monthly income is less than \$1,550, there is a worksheet formula that applies. Formula includes deduction of a SSR of \$500.				\$50 p/m or a discretionary amount set by the court.	If combined adjusted gross income is below \$550 p/m, minimum amount applies	
WISCONSIN	Percentage of Obligor Income	Wis. Stat. Ann. § 767.511, DCF 150 (2016)	Yes	For incomes between 75% and 150% of the federal poverty guideline for one person, percentage in Appendix C is used. If the income is below 75% of the federal poverty guideline for one person, the court may set an order appropriate to the payor's total economic circumstances.	No	If either parent's income is below \$1,485 p/m, use low-income payor guidelines in Appendix C of DCF 150.				No mention of a minimum order.		

State	Guideline Model	Guidelines Citation	SSR/Low-Income Adjustment	Amount of SSR/Low-Income Adjustment	Application Discretionary?	Application of SSR/Low-Income Adjustment	Deviation Criteria?	Threshold Income	Limitations and Obligor Protections	Minimum Child Support Amount?	Limitations on Minimum Support Order	Notes
WYOMING	Income Shares	Wyo. Stat. §§ 20-2-301 to -307 (2016)	Yes, but not labeled as an SSR.	When the combined net monthly income of the parties is less than \$846, the obligor's support will be 22% of the obligor's net income for one child or 25% for two, but no less than \$50 p/m.	No					In no case will the support be less than \$50 p/m.		

Source: This table was compiled by the Center for the Support of Families as part of the Child Support Guidelines and Self-Support Reserve Draft Final Report for the State of New Jersey, January 2017.

Chapter E. Data

1. Executive Summary

One of the central efforts for this quadrennial review of California's uniform child support guideline entailed gathering, reviewing, and analyzing data from a sample of IV-D and non-IV-D support orders. The intent of this data analysis effort is similar to the previous guideline review: to consider how California's child support guideline is actually being applied when establishing child support obligations.

In order to complete this analysis, it was necessary to determine the parameters for the data sample, including the timeframe during which orders would be sampled, the counties from which cases would be sampled, the number of cases to be sampled from each county, and others. The minimum targeted sample size was 1,000 cases, the same as targeted in the 2011 case data review. In order to ensure 1,000 usable cases, counties were asked to provide a total of 1,200 cases (1,000 case sample, with 20 percent oversampling) and to sample equally from IV-D and non-IV-D cases. Data was actually collected from a sample of 1,203 cases, with orders established or modified in 2015 in the same counties used in the 2011 review: Alameda, Amador, Fresno, Los Angeles, Santa Clara, San Diego, San Luis Obispo, Siskiyou, Solano, Tehama and Tulare. In addition, this chapter presents information on how the data were collected as well as our analysis.

Based on our analysis, we have concluded that the IV-D courts and their Family Law counterparts exercise their judicial discretion fairly frequently in deviating from the guideline formula amount. Between the 2011 and 2017 reviews, the data shows the number of orders that were not based on the guideline support amount increased from 14.6 percent to 17.2 percent. Given the number of deviations from the guideline, one could conclude that the existing guideline no longer works as designed. It is important to note, however, that insight into courts' adherence to the guideline is incomplete. The data collectors tracked the number of orders they reviewed that did *not* specify whether the order was established based on the statewide support guidelines. Our analysis reveals that 33 percent of the orders reviewed did not specify whether the order amount was the guideline amount. Additionally, approximately 85 percent of the orders lacked information about the amount that resulted from application of guideline formula. It is not known to what extent such information may have been available on the record, as opposed to in writing. As long as state law permits the court to provide information about the guideline amount and the reason for any deviation on the record, it is likely that missing information will continue to be a data limitation. This study does suggest that the Legislature may want to consider amending Family Code section 4056 to require that this information be provided in writing. Judicial Council forms that are required for child support orders do currently include sections to provide the child support guideline amount and reasons for deviation. Based on this, the Judicial Council of California (Judicial Council) and/or the Department of Child Support Services (DCSS) may determine that additional training and outreach is needed to ensure that orders

include information about the amount of support that would have been ordered under the guideline formula and the reasons for any deviation from the guideline formula amount.

Of particular interest is the appropriateness of the guideline amount in child support cases where the obligor is low-income. Our analysis also focused on the use and application of the low income adjustment (LIA). We found that the LIA is not granted consistently—especially in non-IV-D cases. The extension of the sunset date for the LIA to 2021 creates the opportunity to provide private bar and family law courts more information and guidance regarding the application of the LIA.

At the other end of the income spectrum are Smith/Ostler (aka Ostler-Smith) orders. These orders recognize that some parents have fluctuating incomes due to bonuses, commissions, overtime, and other income. Smith/Ostler orders contain additional order terms, specifying an additional support amount tied to the paying parent’s additional income. Our data analysis included a review of the 36 Smith/Ostler orders in the sample. During our review, we learned that DCSS is working with the local child support agencies (LCSAs) to standardize establishing, enforcing, and tracking payments for these orders. This effort should set the IV-D program on a good path with regard to the higher wage-earners in its caseload.

Of particular note is the increase from the 2011 review in the number of orders where it is unclear what income was used to establish the order. This is particularly true for the non-IV-D orders: 45 percent of the orders reviewed lacked income information for the obligor, and nearly 55 percent lacked income information for the obligee. As such, it is difficult to know whether the orders were set based on the guideline amount.

For the next quadrennial review, we have several suggestions to improve the data gathering and analysis efforts. At a high level, those suggestions include:

- Evaluate the use of the same 11 study counties.
- Revisit the relative proportion of IV-D and non-IV-D orders to be reviewed.
- Further refine the data gathering instrument.

Finally, this may be an opportune time to consider conducting a robust longitudinal guideline *and* compliance study. DCSS now has 10 years of IV-D data to draw from, which could deepen the collective understanding of the link between guideline factors and obligors’ compliance with the terms of their support orders. This could help California further refine its child support guidelines in such a way as to standardize its use and application in the establishment of new and modified support orders, and hopefully to produce more consistent child support payments to families.

The reader will see various dates in this report. The previous report is referenced as the 2011 review, and was based on 2008 data—census, caseload, and court order data. This current report

is referenced as the 2017 review, and is based on census, caseload, and court order data from 2015.

2. Sample Formulation

One of the first steps of the quadrennial review was to update statewide and study county sample size calculation from the 2011 review, for the case file review. To ensure study-to-study consistency and fidelity, we sampled data from the 11 counties used in the previous guideline studies. Each county court selected study cases based on a randomized sample from those cases where an order that included child support terms was filed during the 2015 calendar year. This included new orders and modifications that resulted in new order terms.

2.1 Our Process for Determining Sample Size

The process for formulating the sample for the 2017 guideline review was very similar to the methodology used in 2011. The minimum targeted sample size was 1,000 cases. The 1,000 case sample size is adequate to measure deviation rate, changes in deviation rate, and changes in deviation rate by various subgroups. In order to ensure 1,000 usable cases, counties were asked to provide a total of 1,200 cases (1,000 case sample, with 20 percent oversampling).

The methodology used for the 2011 review was to weight the sample across the counties to create a proportional representation using the percentage of statewide orders established in the prior federal fiscal year as the basis for the weighting. For example, Los Angeles County was separated from the very large counties because of its inordinate share of cases, 38 percent of all cases in large counties. Rather than use the 38 percent in a proportional sample, a figure of 21 percent was used since Los Angeles accounts for 21 percent of statewide child support order establishments.

For other counties, the cases sampled represented the county's proportion among the other counties of similar size in the state. For example, 55 percent of all establishments occurred in large counties. Since Alameda, a large county, consisted of 15 percent of establishments among sampled counties, the weight for Alameda County was 8 percent (55 percent multiplied by 15 percent) of all targeted cases. All counties were asked to sample equally from IV-D and non-IV-D cases.

For this guideline review, there were initially two modifications to the methodology used in 2011. First, the weighting to create the proportional representation was the average of the past three federal fiscal years' (2014 to 2016) percentage of statewide orders established. This modification addressed the potential for unusual county performance in establishing orders during the past federal fiscal year to have an inordinate impact on sampling, as three years of performance are factored into the sample.

Second, we decided there should be a minimum of 20 cases per county in the sample. The rationale for establishing this minimum number of cases per county was to reduce the likelihood of having too few cases from any county to conduct meaningful analysis.

Our process for developing the sample began with extracting the support order performance data for the past three federal fiscal years from the FFY 2014, 2015, and 2016 Comparative Data for Managing Program Performance annual reports on the state's child support website (www.childsup.ca.gov/reports.aspx). Since there are no publically accessible county court databases that provide specific data regarding the number of orders established or modified, either IV-D or non-IV-D, we used the statistics from the state child support program as proxy data for estimating the number of orders established per county.

We placed these data into a spreadsheet and calculated the averages for the three-year period. Next, we calculated the percentage of statewide support orders established for the three-year average for each county included in the sample. This percentage was applied to the 1,200 targeted case sample size to determine the number of cases to be sampled in each county.

During our review of the 2011 state guideline report, we noticed that the number of cases sampled from Los Angeles County was reduced from its statistical proportion. We understood that, at the time, there was concern the number of orders from Los Angeles County would potentially skew the outcomes of the study. As such, our first calculations replicated the methodology used in the earlier study, where Los Angeles's orders were removed from the initial calculations, sample sizes were determined for each of the remaining 10 counties, and then Los Angeles was added back into the calculations.

We reviewed our methodology and outcomes with project staff, and made two additional adjustments to our original methodology.

1. Rather than taking Los Angeles out of the calculations and considering its sample size separately from the other 10 jurisdictions, we included it in all calculations. This resulted in a sample size of 344 for Los Angeles, which is more representative of its size relative to Fresno and San Diego counties.
2. We rounded up where needed, to arrive at an even number (228 versus 227, for example) of orders to be sampled so the samples could be evenly split between IV-D and non-IV-D orders for data collection and analysis.

2.2 Sample Specifications by County

The chart below includes the sample numbers used for the 2011 review, along with the sample sizes for the current review. As in previous studies, the sample used for the 2017 review was

split between IV-D and non-IV-D support orders. The recommended sample sizes, by county, are listed in Table 2-1, below. The actual sample sizes are presented in Exhibit 2-1.

Table 2-1: 2011 IV-D Case Data by County and 2016 Recommended Sample Size

County	2011 IV-D Cases Usable Data	2011 Non-IV-D Cases Usable Data	2016 Recommended Sample Size
Alameda	48	48	116
Amador	11	9	5* (20)
Fresno	119	117	228
Los Angeles	129	132	344
Santa Clara	83	81	102
San Diego	92	88	200
San Luis Obispo	28	23	34
Siskiyou	16	0	12* (20)
Solano	28	26	50
Tehama	33	15	24
Tulare	47	50	62
Total	634	589	1,200

* We sampled a minimum of 20 cases from those counties where the proportional share of cases is fewer than 20 cases.

2.3 Smith/Ostler Orders

The sampled orders did not yield enough support orders with Smith/Ostler terms to enable us to complete a robust analysis. However, we did reach out to the director of the Contra Costa LCSA, Melinda Self, to gather data on the processes used in that county for calculating the additional support due in Smith/Ostler cases. Contra Costa County LCSA developed a process for actively tracking and enforcing Smith/Ostler orders, beginning in 2012. The data on cases in the sample with Smith/Ostler orders and the information gathered from Contra Costa County on calculating additional support in Smith/Ostler orders is presented in Section 4.9.

2.4 Description of How Figures Were Derived

A spreadsheet is attached as Appendix C containing five tabs that include the calculations made to arrive at the sample sizes. The following describes these worksheets.

Tab 1: Support Orders

The first spreadsheet reports, for all California counties, the support orders established during reporting periods FY08, FY14, FY15, and FY16.

The first important observation is the decrease in the number of orders established across all LCSAs from FY08 to present. In large part, this is due to California’s declining IV-D caseload. The chart below illustrates this decline. With the exception of Fresno, all of the study counties’ caseloads steadily decreased between 2008 and 2016. Although also experiencing a decline between 2008 and 2016, Fresno LCSA’s caseload has increased each year since 2014.

Table 2-2: California Support Orders Established During Reporting Periods FY08, FY14, FY15, and FY16 by County

	2008	2014	2015	2016	Caseload Decline (2008 to 2016)
Statewide	1,628,235	1,257,376	1,237,737	1,214,712	413,523
Los Angeles	445,708	284,614	276,777	267,764	177,944
San Diego	93,667	72,919	71,251	65,684	27,983
Fresno	68,224	56,103	58,134	58,894	9,330
Santa Clara	50,942	37,909	36,643	34,936	16,006
Alameda	37,540	31,917	31,825	30,982	6,558
Tulare	34,960	25,844	24,758	24,165	10,795
Solano	23,430	17,214	16,712	16,241	7,189
San Luis Obispo	6,046	3,814	3,839	3,912	2,134
Tehama	4,862	4,222	4,038	3,873	989
Amador	1,689	1,255	1,212	1,214	475
Siskiyou	3,759	2,977	2,606	2,571	1,188

It is also important to note that county LCSA size designations changed over time.

- Solano moved from “medium” to “large.”
- San Francisco moved from “large” to “medium.”
- San Luis Obispo is designated as “medium” in the 2011 Guideline Report, but has always been designated as “small” in the DCSS Comparative Data reports.

Tab 2: Replication

The second tab in the spreadsheet replicates the sample size analysis that was developed in the previous report. Several points are worth mentioning because they were unclear in the previous report’s exposition.

- The 54.5 percent, which represents the percentage of all establishments among sampled county LCSAs that are “large” and “very large” areas, excludes Los Angeles.

- With respect to the share of orders based on sampled areas, Los Angeles’s share of 51.2 percent is obtained by dividing the number of orders established by Los Angeles—20,823—by the total number of orders established by the 11 study counties—40,695.
- The share of orders based on sampled counties for the 10 additional study counties are relative to their subgroup total (e.g., Alameda established 2,106 of the total orders established by large and very large counties, less Los Angeles).

Tab 3: Update

Using the previous report’s methods, this tab reports the sample size distributions for approximately 1,000 and 1,200 cases. We used the 11 study counties used in previous guideline studies. The samples are based on the FY16 size designation. It is important to observe that there are no “medium” size LCSAs represented in the sample. For the counties designated as “medium” in the 2011 study, San Luis Obispo is designated as “small” and Solano and Tulare are designated as “large.” In fact, the orders among these 11 counties have become skewed toward large and very large areas.

- Sample sizes have increased for Alameda, Los Angeles, and San Diego, with corresponding decreases in Tulare, Tehama, and San Luis Obispo.
- Two of the four small counties’ samples fall below 20 cases, even when oversampled (Amador and Siskiyou). Tehama’s sample size is nearly 50 percent smaller than in the 2011 study; Tulare’s has decreased by a third.

Tab 4: Initial Results

The fourth tab provides a direct comparison of the sample sizes based on the previous report’s 2008 data and size designations with 2015 data and size designations.

The key takeaway is that based on caseload sizes, the sample skews toward including more cases from Los Angeles and other large counties. This raises the question as to whether the same 11 counties used in the current guideline analysis should serve as the sampled areas in future case review studies.

Tab 5: Revised Recommendations

Tab 5 provides the detailed calculations related to the chart on page 287. It should be noted that the counties’ sizes do not mirror the grouping in the 2011 Guideline Review. Instead, they reflect the county grouping currently in use by California DCSS. The two “very small” LCSAs, Amador and Siskiyou, are part of regionalized LCSAs. For weighting purposes, they are considered “small” in determining the sample sizes for this review.

- The Statewide Total column shows the percentage of orders established by a given LCSA relative to all of California.
- The % Sampled column shows the percentage of orders established by a given LCSA relative to all LCSAs of the same size.
- The % in Group column shows the percentage of statewide orders by LCSA size.
- The Weight column represents the percentage sampled, multiplied by the percentage for the LCSA's size group, used to determine the LCSA's percentage share of the orders to be sampled for this study.
- The Weighted Sample column shows a given county's share of the 1,000 cases needed for a valid analysis.
- The 20% Increase column represents a 20 percent oversampling, to ensure we have valid data from a sufficient number of orders for analysis.
- The Adjusted column represents the final number of orders to be sampled by county, as explained in Table 2-1 of this chapter.

The goal of calculating sample size was twofold. First, we wanted to ensure we had sufficient order data to analyze, such that our conclusions would be based on statistically significant findings. Second, the county courts needed the sample size information in order to pull and track the court files required for data gathering activities. We believe this methodology for determining sample sizes met both goals.

3. Data Collection Methodology and Modifications

After determining the specifications for sample size and distribution, data were collected and analyzed. The process is described in this section.

3.1 Determining the Universe of Cases

Once the sample sizes for each of the counties included in the data collection plan were finalized per the specifications presented above, the Center for the Support of Families coordinated efforts with the California Department of Child Support Services (DCSS) to extract IV-D cases with orders established during calendar year 2015.

We received the IV-D order list from DCSS. DCSS confirmed that they had appropriately excluded some order types from the data extraction, specifically Registrations of Foreign Orders, paternity-only orders, and Orders to Show Cause for failure to pay. Their data extraction files included only new or modified orders with child support terms.

The data were “cleaned” by taking steps such as eliminating duplicate records and deleting order numbers that appeared to be erroneous. Our initial review of the data revealed that there were discrepancies between the number of orders extracted from California’s statewide automated system, CSE, and the number of orders established as reported to the federal Office of Child Support Enforcement (OCSE) for 2015. DCSS clarified that the CSE extraction included all orders established, while the report to OCSE only counted the number of IV-D cases where an order was established during 2015. Therefore, if a IV-D case had two orders established in 2015—such as a default order followed by a modification—the CSE data extraction included both orders, while the report to OCSE reported it as a IV-D case with an order established in 2015.

We used Microsoft Excel to randomize the DCSS IV-D order data to create the lists of cases to be reviewed by the data gatherers.

For the non-IV-D orders, the county courts devised their own methods of random sampling after we provided them with the number of orders they were to review for their sample. As noted below, obtaining an adequate sample of non-IV-D orders proved problematic. This difficulty was also noted in the 2011 case data review.

3.2 Data Collection

Attorneys in various locations were engaged to gather data from both IV-D and non-IV-D orders. Those hired had experience in family law; many had worked as IV-D attorneys or commissioners. The data gatherers used an electronic data collection instrument to record the data from each support order reviewed. A copy of that instrument can be found in Appendix A in Section 7.

Early on, Tulare County reported a problem, as court staff reported they were able to distinguish the IV-D from non-IV-D orders, but they did not have an easy way to distinguish which non-IV-D orders included child support terms. After discussion, we agreed to have Tulare County randomly pull 50 non-IV-D orders that were likely to include child support terms. Data gatherers in Tulare County selected the first 31 of those orders for their data gathering effort.

Subsequently, Tulare County reported that it did not have 31 valid non-IV-D orders established in 2015—it had only 15. We consulted with our data analyst, who recommended that Tulare County pull the remaining 16 non-IV-D orders from those established in 2014. Amador County courts then advised the project that they were in a similar situation. They were also advised to pull the balance needed for their sample from orders established in 2014. Both counties were able to identify a sufficient number of orders by expanding the date range.

Later, several of the larger courts—Alameda, Los Angeles, and Fresno—also reported not being able to easily identify non-IV-D orders established or modified in 2015 that included child

support terms. The courts in the 11 study counties had been able to identify approximately 300 non-IV-D orders—about half the targeted sample size. We considered a variety of options, and determined that having DCSS identify appropriate non-IV-D cases through its automated system was probably the best option.

We do not know what percent of all non-IV-D orders were represented in the DCSS non-IV-D data. There is no statewide database of all court orders filed. Courts are required to forward the FL-191 and FL-192 forms to DCSS. DCSS uses these forms to create non-IV-D cases for inclusion in the State and Federal Case Registries. The State Disbursement Unit (SDU) also uses them to facilitate processing wage withholding payments that the SDU receives on behalf of non-IV-D cases. However, it is unknown whether the courts consistently forward all FL-191s and FL-192s to DCSS; it is possible that DCSS’s database of non-IV-D cases represents fewer than the actual number of non-IV-D child support orders established in a given year.

To gain additional insight into California’s non-IV-D cases, we requested that DCSS run a query in the CSE system to identify all non-IV-D orders established in 2015. According to DCSS records, an estimated 24,499 non-IV-D orders were established in 2015, compared to an estimated 86,936 IV-D orders in the same time period. Such disparity suggests it may be more appropriate to include more IV-D than non-IV-D orders in the case data sample in future reviews. For the next quadrennial review, the DCSS report could again be used to determine a proportional breakdown between IV-D and non-IV-D orders for the case sample.

One of the Los Angeles County data gatherers, a former IV-D commissioner, volunteered to review a small sample of the DCSS data to ensure that the query had identified appropriate non-IV-D orders. The commissioner reported success. The Center for the Support of Families randomized the data for Alameda, Los Angeles, and Fresno counties, and created new lists to support the completion of the non-IV-D data gathering effort.

The following chart provides information regarding the targeted sample sizes and the actual sample sizes for this study.

Exhibit 3-1: Sample Size

County	2016 Recommended Sample Size	2016 Actual Sample Size		
		IV-D Orders	Non-IV-D Orders	Total Sample Size
Alameda	116	76	49	125
Amador	5* (20)	10	10	20

Fresno	228	117	64	181 ¹⁸⁴
Los Angeles	344	114	234	348
Santa Clara	102	51	57	108 ¹⁸⁵
San Diego	200	97	103	200
San Luis Obispo	34	33	2	35
Siskiyou	12* (20)	10	12	22
Solano	50	26	25	51
Tehama	24	26	25	51
Tulare	62	52	10	62
Total	1,200	612	591	1,203
* For each county, we sampled a minimum of 20 cases. That means we requested a sampling of 20 cases from the counties of Amador and Siskiyou, although their proportional share of cases was fewer than 20 cases.				

Additional comparative data regarding the 11 study counties can be found in Appendix B in Section 8.

3.3 Anomalies in Data Collection

In addition to the adjustments in the case sampling approach detailed above, there were a few other variations from the planned approach worth noting.

- In the counties of Tulare and San Luis Obispo, most of their non-IV-D orders established in 2015 had subsequently converted to IV-D cases.
- San Diego County initially incorrectly pulled only those cases where a judgment had been entered. The reviewer had collected data from approximately 30 orders before the error was noted. San Diego corrected its approach.
- Alameda County over-sampled IV-D cases because of problems identifying non-IV-D orders with child support terms.
- Los Angeles County over-sampled non-IV-D orders to make up for a lack of non-IV-D orders in other jurisdictions.
- San Luis Obispo County was able to identify three of the 17 non-IV-D orders necessary to compose half of the county's entire sample, so IV-D cases were reviewed to make up the 34 orders specified.

¹⁸⁴ The original sample from Fresno County contained 182 cases; one was removed because it could not be determined if the case was a IV-D or non-IV-D case.

¹⁸⁵ The original sample from Santa Clara County contained 110 cases; two were removed because it could not be determined if the cases were IV-D or non-IV-D cases.

- Data from three records was excluded because the files did not indicate whether they were IV-D or non-IV-D orders.

We do not believe any of the adjustments invalidate the data analysis reflected in the balance of this document. The changes do not favor IV-D over non-IV-D orders, or low-income over high-income families in the overall sample.

3.4 Additional Data

In addition to the case file reviews, California DCSS extracted additional data from its statewide database of IV-D orders established in 2015 for the 11 study counties. The additional data elements extracted from these orders included additional information about parents' income, charging instructions in CSE, and collections data on the obligations.

Much of the data will be very useful in a collectability study, which is beyond the scope of this project. However, we have used some of this data to inform and validate our analysis of the support order data collected from the county court records.

3.5 Recommendations

For future quadrennial case data studies, we have several recommendations related to the case data sample and data collection methodology.

- Compare the data characteristics of the non-IV-D orders the counties identified themselves (from San Diego County, for example) with those DCSS identifies through its query in the SDU, to determine whether there are any statistically significant differences.
- (Example: does the San Diego County sample provide more or fewer orders that deviated from the guideline than the DCSS-identified non-IV-D orders do?) If it appears there is a negligible difference between the non-IV-D orders identified by the courts, and the non-IV-D orders in the DCSS data base, we would recommend DCSS again generate the non-IV-D order list for sampling purposes. (This assumes the California court systems are still unable to easily identify non-IV-D orders with child support terms.)
- Assess whether the next case data sampling should continue to include an equal number of IV-D and non-IV-D orders. According to DCSS records, an estimated 24,499 non-IV-D orders were established in 2015, compared with an estimated 86,936 IV-D orders. Such disparity suggests it may be more appropriate to include more IV-D than non-IV-D orders in the case data sample.
- Once the study counties have been identified, assess the physical layout of their court files, and strive to align the data-gathering instrument questions with the physical court file layout. This will speed up the review process for the data gatherers.

- Prepare written instructions for the data gatherers to better ensure consistency in how data is collected and interpreted. Instructions about case data interpretation will also assist the case data analyst.
- Further refine the data collection tool. The 2017 electronic data gathering form standardized the data collection and expedited the aggregation of the results. However, we recommend further refinement of the tool for the next review. We suggest making it more responsive. For example, for the question “Does the obligor qualify for a low-income adjustment?,” a “Yes” answer should prompt the user to enter additional information to subsequent fields, such as “Was the low-income adjustment applied? If so, in what amount?” A “No” answer should automatically leapfrog users to the next relevant question, rather than advising them to manually skip ahead. We found some data that appeared to be erroneous, the result of a mismatch when the reviewer selected “no” but still completed the sub-questions associated with a “Yes” answer.

4. Findings from Data Collection

This section begins with a summary of the sampling and data collection conducted for this study. It also describes the extent to which deviations from the California uniform child support guideline occurred in the cases that were analyzed, and discusses the major reasons courts identified for the deviations. The section concludes with a description of the cases included in the case file review.

The data collection instrument used in the study (included as Appendix A in Section 7) contains a few changes from the instrument used in previous studies. Perhaps the biggest change is that the data collection was completed electronically, eliminating the need for manual data entry and the related potential for data entry errors. The new electronic form also included the ability to document circumstances when there was a third parent involved, expanded the information to be collected related to the low-income adjustment, and included a question about additional child support being ordered as a result of a bonus, overtime, or commission income. In contrast to the 2011 review, the data collection instrument used in the 2017 review did not ask for the gender of the parties. As a consequence, findings refer to the obligee and obligor as compared to the references to mother and father, respectively, in the 2011 review.

4.1 Sampling Timeframe

The study included 1,203 child support cases with orders established (new orders and modified orders) between January 2015 and February 2016, with the exceptions noted earlier.

4.2 Sampled Counties

The sampled cases used in this 2017 case data review came from the same 11 counties that were used in the 2011 and 2005 case data reviews. As noted in Exhibit 4-1, those 11 counties comprised almost 50 percent of the state's population in both 2008 and 2015, the case file years used for the 2011 and 2017 case data reviews, respectively. The percentage of a county's population compared to the total state population remained relatively the same in 2008 and 2015.

For most counties in the sample, if their population percentage increased from 2008 to 2015, their percentage of the sample size also increased. Los Angeles County is a notable exception. In 2015, Los Angeles County comprised a smaller share of the state's population than in 2008; however, its percentage of sampled cases from 2015 did not decrease. While 25.8 percent of California residents lived in Los Angeles County in 2015, almost 29 percent of the 1,203 case samples from 2015 were from Los Angeles County. This reflects a higher percentage than the percentage of the case samples from 2008. In part, the higher percentage for Los Angeles County represents an oversampling of non-IV-D orders, which was necessary because of the underrepresentation of non-IV-D orders in other county samples.

Other exceptions are the counties of Fresno, San Luis Obispo, Santa Clara, and Tulare. Although those counties' percentages of state population remained relatively the same in 2015 compared to 2008, their percentages of the case sample decreased. There is an increase in the percentage of the case sample for the counties of San Diego and Alameda. The shift toward these counties is due to a decline in cases in Fresno, San Luis Obispo, Santa Clara, and Tulare.

Exhibit 4-1: Study of Counties by Percent of State Population and Percent of Sample

County	Percent of State Population		Percent of Sample	
	2008	2015	2008	2015
Alameda	4.1%	4.2%	7.9%	10.4%
Amador	0.1%	0.1%	1.7%	1.7%
Fresno	2.4%	2.5%	19.7%	15.1%
Los Angeles	27.2%	25.8%	20.9%	28.9%
San Diego	8.3%	8.5%	14.7%	16.6%
San Luis Obispo	0.7%	0.7%	3.2%	2.9%
Santa Clara	4.8%	4.9%	12.1%	9.1%
Siskiyou	0.1%	0.1%	2.6%	1.8%
Solano	1.1%	1.1%	4.4%	4.2%
Tehama	0.2%	0.2%	5.5%	4.2%
Tulare	1.1%	1.2%	7.3%	5.1%
Total	49.5%	49.3%	100.0%	100.0%

Note: The sampling for the 2017 case data review included orders issued primarily during 2015. The sampling for the 2011 case data review included orders issued during 2008.

4.3 Guideline Deviations

Federal regulations require a state, as part of its guideline review, to analyze case data on the application of and deviation from the state's child support guidelines. The analysis of the data must be used in the state's review to ensure that deviations from the guidelines are limited and guideline amounts are appropriate based on deviation criteria established by the state. According to California Family Code section 4057, the amount of support, as determined by the guideline calculation, is presumed to be the correct amount, unless the preponderance of evidence demonstrates one or more of the following factors:

- (1) The parties have stipulated to a different amount of child support under subdivision (a) of Section 4065.75
- (2) The sale of the family residence is deferred pursuant to Chapter 8 (commencing with Section 3800) of Part 1 and the rental value of the family residence in which the children reside exceeds the mortgage payments,

homeowners insurance, and property taxes. The amount of any adjustment pursuant to this paragraph shall not be greater than the excess amount.

(3) The parent 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.

Exhibit 4-2 reports the percentages of orders with a deviation for the five most recent case data reviews. The exhibit shows that the rate of deviation has continued to increase. In the 2011 review, 14.6 percent of the cases showed deviations from the uniform statewide guideline, which was an increase from prior years. The 2017 review reveals the percentage of deviations has increased again; 17.2 percent of the cases sampled had a deviation from the guideline amount. The actual number is likely higher because a large percentage of orders did not include information about whether the support amount was the guideline amount.¹⁸⁶

Non-IV-D orders were more likely than IV-D orders to lack information about whether the support amount was the guideline amount; of the 332 cases where such information was missing, 224 cases (67 percent) were non-IV-D cases. This was especially true for Los Angeles County, where 84 percent of the non-IV-D cases were missing information about whether the support amount was the guideline amount.

¹⁸⁶ The data collection tool used in 2017 asked the question, "Was the amount of the base support the guideline amount?" In 206 of the 1,203 cases, the answer was "No." In 600 cases the response was "Yes." However, in 332 of the cases, the answer was "Not specified," and there were 65 blank responses.

Exhibit 4-2: Percentages of Orders with a Deviation in the 2017, 2011, 2005, 2001, and 1998 Reviews

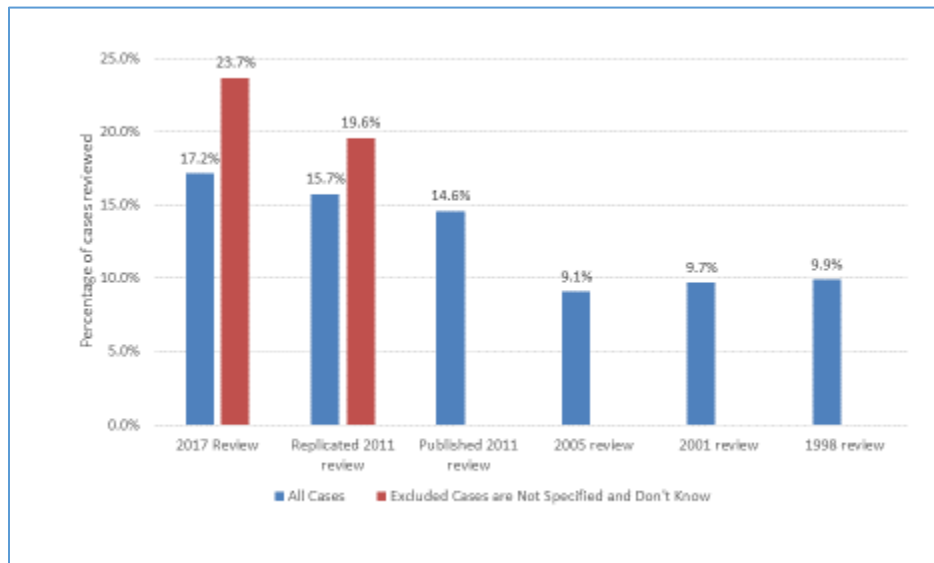


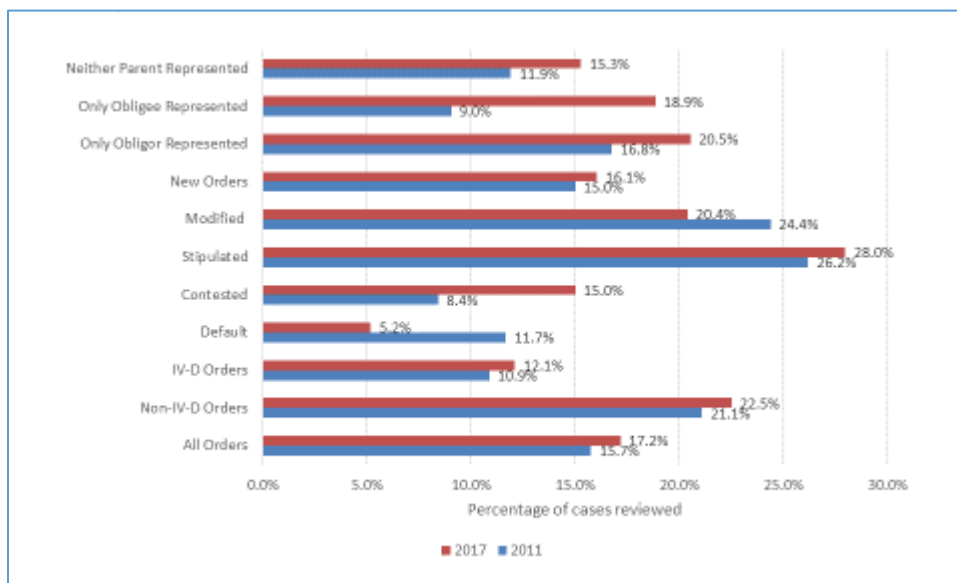
Exhibit 4-3 shows the percentage of orders with a deviation, based on various factors: IV-D status, method of order establishment, new establishments versus modifications, and legal representation of the parents. Similar to the 2011 case data review, there are three categories within “method of order establishment”:

- Default: The respondent/defendant did not file responsive papers and did not appear at the hearing, and there was no written stipulation or stipulation on the record.
- Contested: The respondent/defendant filed responsive papers or appeared at the hearing, and there was no written stipulation.
- Stipulation: There was a written stipulation or stipulation on the record.

Two factors resulted in substantial changes from the results of the 2011 review. Those factors are legal representation of the parents and method of order establishment. In the 2017 review, 18.9 percent of the cases in which only the obligee had legal representation resulted in a deviation, compared to 9 percent in the 2011 review. In the 2017 review, 15 percent of contested cases resulted in a deviation compared to 8.4 percent in the 2011 review. In contrast, the deviation rate in default orders decreased; in the 2017 review, only 5.2 percent of default orders had support amounts that were deviations from the guideline amount compared to 11.7 percent in the 2011 review.

The data also reveals that a deviation from the guideline amount was more likely to occur in stipulated orders than in contested or default orders. Consistent with that finding is that deviations were more likely to occur in non-IV-D orders than in IV-D orders; non-IV-D orders were also more likely to result in stipulated orders than IV-D orders.

Exhibit 4-3: Percentages of Orders with a Deviation, by Selected Factors, in the 2011 and 2017 Reviews



4.3.1 Reasons for the Deviations

California Family Code section 4056(a) requires the court, in order to comply with federal law, to state, in writing or on the record, the following information whenever the court is ordering an amount for support that differs from the statewide uniform guideline formula amount:

- (1) The amount of support that would have been ordered under the guideline formula.
- (2) The reasons the amount of support ordered differs from the guideline formula amount.
- (3) The reasons the amount of support ordered is consistent with the best interests of the children.

The list of factors that may be a basis for deviation from the guideline amount are listed in California Family Code section 4057. When the data gatherers reviewed the 2015 orders used in this case data study, they identified the reasons the courts had listed as the basis for any deviation from the guideline amount.

Exhibit 4-4: Reasons for Deviations from the Guideline by IV-D Status in the 2017 Review

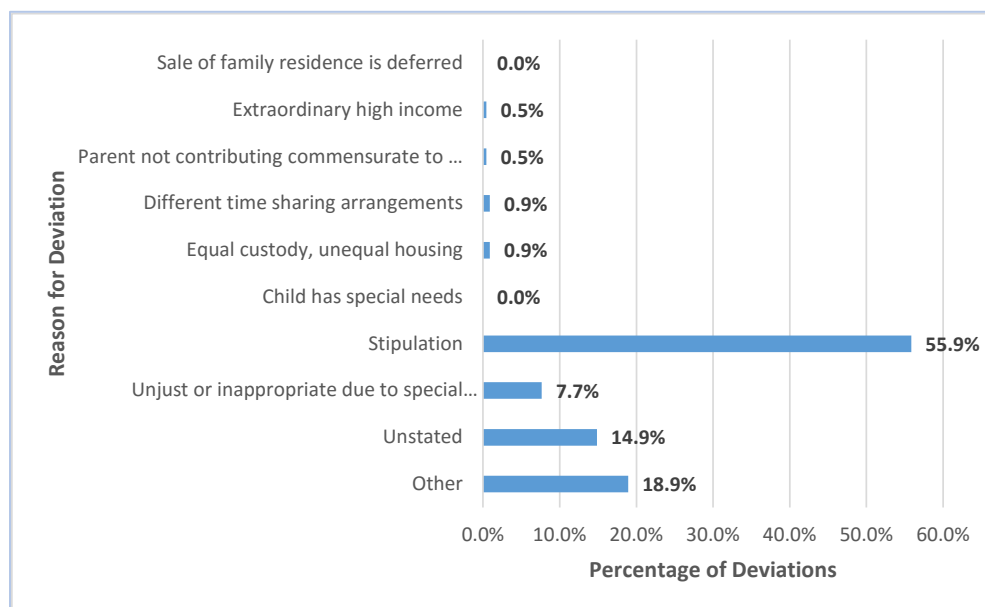


Exhibit 4-4 above reflects those reasons. The vast majority were deviations due to stipulation by the parents. Sometimes the data gatherers noted as the deviation reason “stipulation” and “other.” Such a finding is appropriate, since even in stipulated orders there should be a finding about the guideline amount and the basis for a deviation.¹⁸⁷ In approximately 19 percent of the orders with a deviation, the data gatherers indicated the reason as “other.” In most, but not all, orders where the data gatherer selected “Other,” the data gatherer included a comment. The common explanations for “Other” (aside from stipulation) included:

- Child’s needs being met.
- Obligor wanted to pay more.
- Timeshare.
- Extraordinary medical expenses.
- Judicial discretion.
- Low-income noncustodial parent, where obligor was at or below federal poverty level.
- Obligor incarcerated.
- Obligor on Supplemental Security Income (SSI).
- Custodial parent aided and low income noncustodial parent.
- Intact family, or a change in custody.

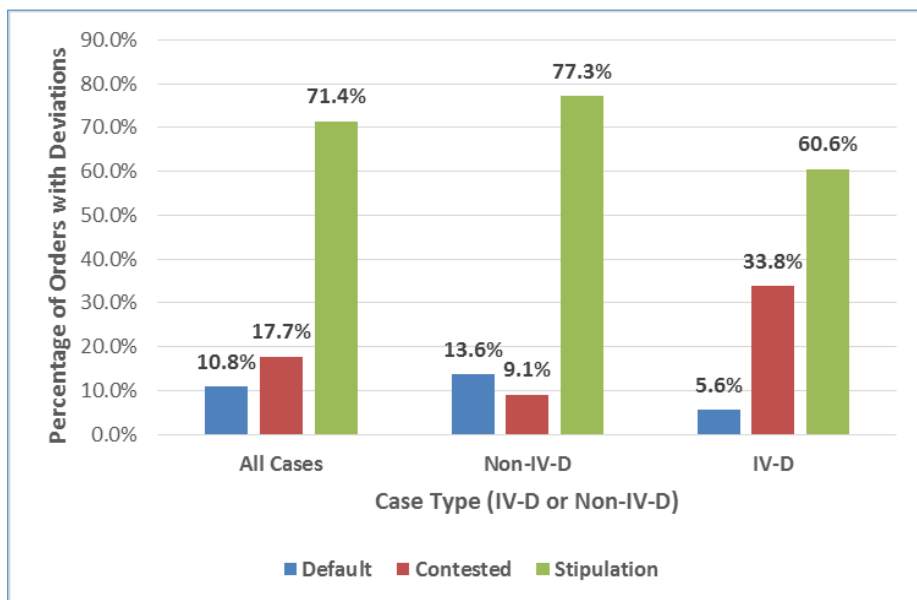
¹⁸⁷ See 56 Fed Reg. 22,347 (May 15, 1991).

What is noteworthy is the large percentage of cases where the data gatherers noted a deviation, but the order did not specify the reason. As noted earlier, California law requires that whenever the court orders a support amount that differs from the statewide uniform guideline formula amount, there be information—in writing or on the record—regarding the guideline amount, the reasons the amount of support ordered differs from the guideline amount, and the reasons the amount of support ordered is consistent with the best interests of the children. This finding warrants additional research, including to what extent courts are providing such information on the record rather than in writing.

4.3.2 Order Entry Method

Focusing on orders in which there was a deviation, Exhibit 4-5 depicts the percentage of deviation orders based on whether the order was issued by default, in a contested proceeding, or by stipulation between the parties. The exhibit also shows the IV-D status. As shown below, the percentage of deviations resulting from a stipulation between the parties was high, regardless of IV-D status. However non-IV-D orders were the most likely to result in deviations from the guideline amount due to stipulated orders. Non-IV-D orders resulting from contested or default methods of order establishment were far less likely to contain support amounts based on a deviation from the guideline. The impact of the order entry method is discussed in more detail in Section 3.4.

Exhibit 4-5: Percentage of Deviations Based on Order Entry Method and IV-D Status in the 2017 Review



4.3.3 Direction of the Deviations

Exhibit 4-6 compares the direction of the deviations in the 2017 and 2011 case data reviews. As shown in the exhibit, the vast majority of deviations in both study years were downward

adjustments from the guideline amount. However, the 2017 review indicates there was an increase in the percentage of downward deviations from the 2011 review. Although upward deviations remain less frequent than downward deviations, there was an increase in the percentage of upward deviations from the 2011 review to the 2017 review. Data available in the court files on the direction of deviations increased noticeably from the 2011 review to the 2017 review. In 2011, 17% of cases with a deviation had an “unstated” direction while only 2% was unstated in the 2017 review.

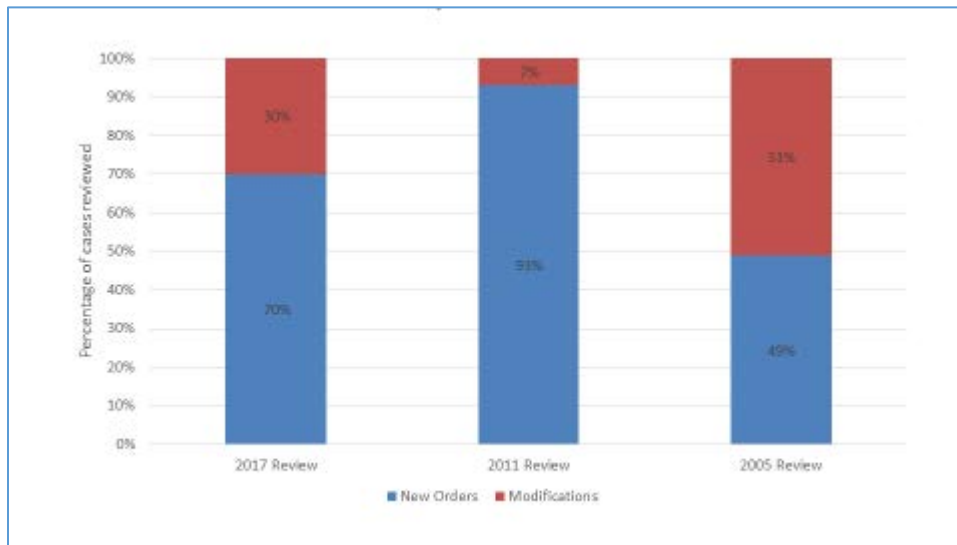
Exhibit 4-6: Direction of Deviations from the Guideline in the 2017 and 2011 Case Data Reviews (Percentages of Cases)

	2017 Review	2011 Review
Percentage of Cases with a Deviation	17.2%	14.6%
Upward	22%	14%
Downward	76%	59%
Unstated	2%	17%

4.4 *New vs. Modified Orders*

New orders accounted for 70 percent of the sample in the 2017 case data review, as compared to 93 percent of the sample in the 2011 review and 49 percent of the sample in the 2005 review.

Exhibit 4-7: Newly Established and Modified Orders in the 2017, 2011, and 2005 Reviews



4.5 **Order Entry Method**

As noted earlier, the three categories used to classify how an order was entered were:

- Default. The respondent/defendant did not file responsive papers, did not appear at the hearing, and there was no written stipulation or stipulation taken on record.

- Contested. The respondent/defendant filed responsive papers or appeared at the hearing, and there was no written stipulation.
- Stipulation. There was a written stipulation or oral stipulation taken on the record.

Classifying orders strictly by these categories can be a little misleading. There are nuances that change the strict definitions. For example, the implication of a default is that the respondent/defendant failed to appear in response to a notice. However, notes added by the person conducting the case file review often presented a more nuanced perspective. Some default orders were uncontested orders where parties may have decided not to appear because they knew and agreed with the order terms. Defaults also included instances where the obligor was incarcerated and the order was being reduced to zero; in those cases, the obligor did not have the opportunity to participate in the hearing process.

The order entry method for cases in the 2017 and 2011 reviews are presented below in Exhibit 4-8. Contested orders are down three percentage points, from 23 percent in 2011 to 20 percent in 2017, and the default rate is down 10 percentage points from 46 percent in 2011 to 36 percent in 2017. The percentage of orders entered by stipulation increased by 12 percentage points between 2011 and 2017, from 32 to 44 percent. This is a change in direction from what was noted in the 2011 review; the 2011 review saw a statistically significant decrease from 2005 to 2011 in stipulations.

Exhibit 4-8: Order Entry Method for Cases in 2017 and 2011 Reviews

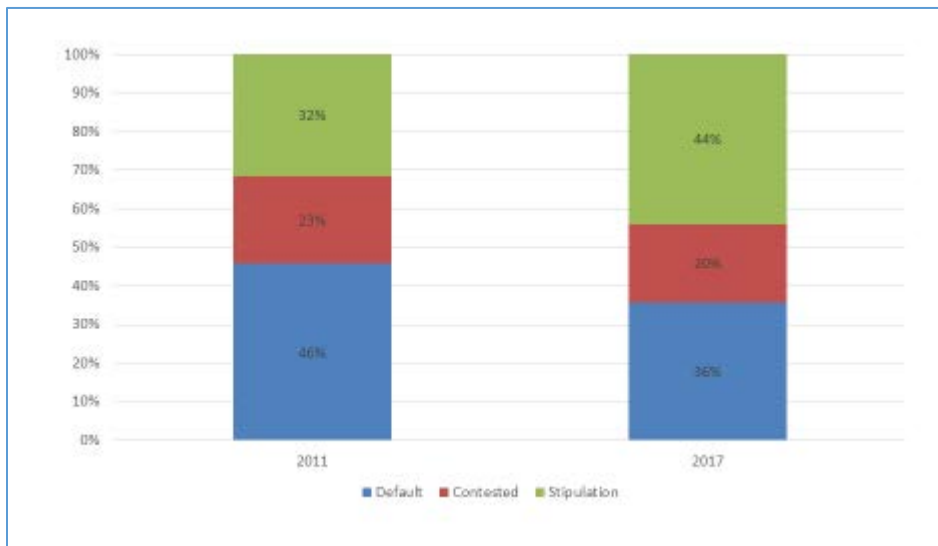
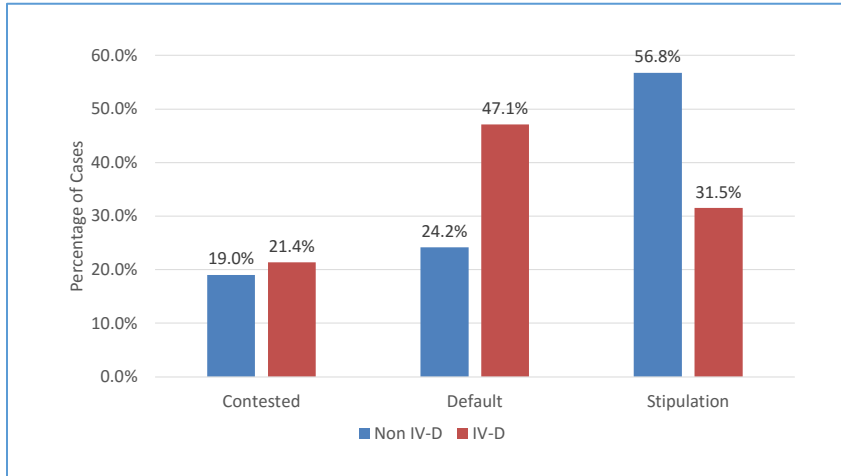


Exhibit 4-9 shows the breakdown of order entry methods by IV-D status. Among non-IV-D cases, over half, 56.8 percent, were established by stipulation, with defaults second at 24.2 percent and contested cases at 19 percent. For IV-D cases, default continues to be the most frequent means of order establishment, at 47.1 percent. However, that is greatly reduced from the

68 percent in 2011. Stipulations among IV-D cases were next at 31.5 percent, and 21.4 percent of IV-D cases were contested.

Exhibit 4-9: Order Entry Method in IV-D and Non-IV-D Cases in 2017 Review



4.6 Application of Other Guideline Factors

The guideline provides for several adjustments to the base amount of support. This section focuses on the hardship deduction, the low-income adjustment, and orders for additional support.

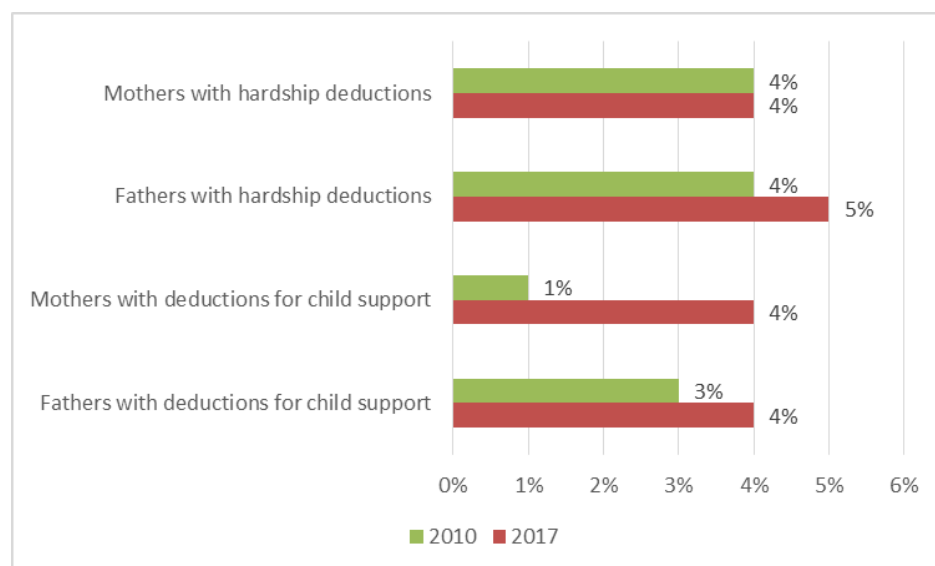
4.6.1 Hardship Deductions

Upon the request of a party, California Family Code section 4070 allows the court to grant a parent a financial hardship deduction in circumstances outlined in section 4071. The circumstances evidencing hardship include:

- Extraordinary health expenses for which the parent is financially responsible, and uninsured catastrophic losses.
- The minimum basic living expense of either parent's natural or adopted children for whom the parent has the obligation to support from other marriages or relationships who reside with the parent (i.e., additional children).

Hardship deductions in the 2017 case data review are presented in Exhibit 4-10. Deductions for child support continue to be the most common across all types of orders. There are more hardship deductions granted to obligors than to obligees; this contrasts with the 2011 case data review, which found that the allowance of a hardship deduction was approximately the same for fathers and mothers.

Exhibit 4-10: Hardship Deductions in the 2011 and 2017 Reviews



4.6.2 Low-Income Adjustments (LIA)

Family Code section 4055(b)(7) states: “In all cases in which the net disposable income per month of the obligor is less than one thousand five hundred dollars (\$1,500), adjusted annually for cost-of-living increases, there shall be a rebuttable presumption that the obligor is entitled to a low-income adjustment.” With the annual cost-of-living adjustments, the threshold for the low-income adjustment in 2015, the timeframe for our case sample, was \$1,584. Exhibit 4-11 presents data on the eligibility and application of the low-income adjustment in the 2017 review.

In the great majority of cases in the sample, the obligor was not eligible for the low-income adjustment, approximately 81 percent. This is a slightly lower percentage than noted in the 2011 review, 86 percent. In the 2017 review, 92 percent of obligors in non-IV-D cases did not qualify for the low-income adjustment compared to approximately 71 percent of obligors in IV-D cases.

For the remaining cases where the obligor did qualify for the low-income adjustment, it was granted in 59.7 percent of cases. The low-income adjustment was not granted in 17.5 percent of the cases where the obligor was qualified. In the remaining 19.4 percent of cases, it was impossible to ascertain whether or not the adjustment was granted. There are large differences between the IV-D and non-IV-D cases on application of the low-income adjustment. For IV-D cases, 73.9 percent of obligors were granted the low-income adjustment when eligible, while only 8.9 percent of non-IV-D eligible obligors received the low-income adjustment when eligible. It was not granted in 15.5 percent of IV-D cases and 24.4 percent of non-IV-D cases when obligors were eligible. However, it should also be noted that the outcome of the application of the low-income adjustment is unknown for two-thirds of the eligible non-IV-D population.

**Exhibit 4-11: Eligibility for and Application of the Low-Income Adjustment in 2017
(Percentages of Cases)**

	All	Non-IV-D	IV-D
Percentage of obligors not eligible for the LIA	81.18	91.88	70.75
Percentage of obligors eligible for the LIA	18.82	8.12	29.25
Of those eligible for the LIA:			
LIA Applied	59.7	8.9%	73.9%
LIA Not Applied	17.5	24.4%	15.5%
Unknown	19.4	66.7%	6.2%
Missing value	3.4	0.0%	4.3%
Total	100.0	100.0%	100.0%

Exhibit 4-11a provides more detail on the application of the low-income adjustment when factoring in the number of children on the order. The data shows that even when the low-income adjustment was applied, on average, the support amount ordered still reflected a deviation from the guideline amount. In orders where the LIA had been applied, the difference was small, from \$8 to \$18 per month reduction in support in cases with one to three children. When considering the orders where the LIA was not applied, the difference between guideline support and the support ordered was much more marked, from \$40 to \$210 per month reduction in support for one to three children. The larger the family, the larger the reduction in support—whether or not the LIA was applied. This could be a function of the small number of orders in the sample with four children, where a single extraordinary order or two could impact the average.

Exhibit 4-11a: Support and Guideline Amounts by Low-Income Adjustment and Number of Children in the 2017 Review (Average of Cases)

Number of Children	Low Income Adjustment Applied			Low Income Adjustment Not Applied		
	Support Amount Ordered	Guideline Amount	Support Ordered as % of Guideline	Support Amount Ordered	Guideline Amount	Support Ordered as % of Guideline
1	148	156	94.9%	554	594	93.3%
2	201	219	91.8%	798	935	85.3%
3	195	212	92%	843	1,053	80.1%
4	206	257	80.2%	605	1,098	55.1%

One explanation for the difference in application of the low-income adjustment in IV-D and non-IV-D cases is attributable to the guideline calculators themselves. In IV-D cases, the IV-D guideline calculator automatically applies the low-income adjustment when the obligor's net income is below the LIA threshold. With other commercial guideline calculators, such as

DissoMaster, the party calculating support must manually enter the low-income adjustment, which could account for its less frequent application in non-IV-D cases.

Exhibit 4-11b: 2017 Use of Child Support Calculator by IV-D Status

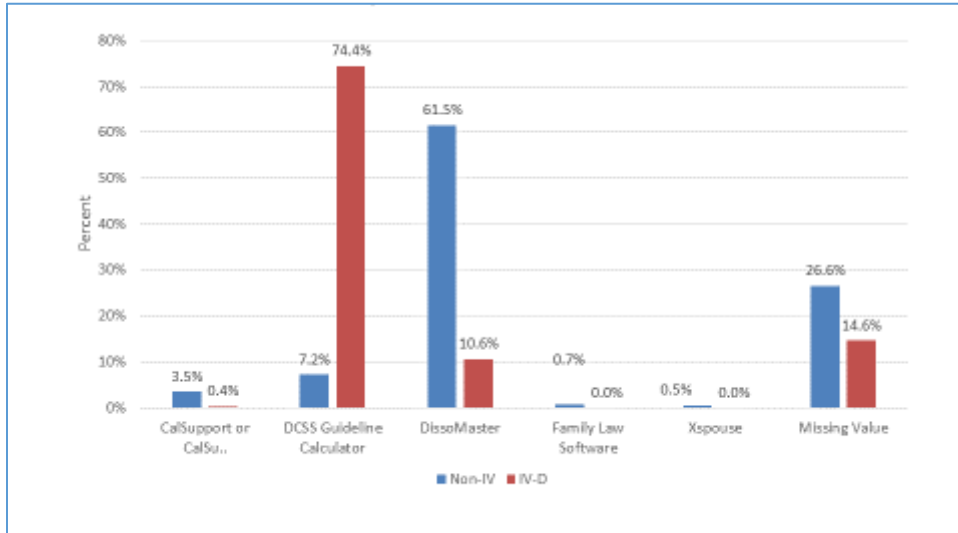


Exhibit 4-11b provides details regarding which guideline calculator was used to calculate support, in the orders reviewed for this report. Not surprisingly, in the majority of IV-D orders—74.4 percent—child support was calculated using the DCSS guideline calculator; 10.6 percent of IV-D orders were established using DissoMaster. The results for non-IV-D orders are nearly a mirror image of the IV-D orders: 61.5 percent of non-IV-D support obligations were established using DissoMaster and just 7.2 percent were established using the DCSS guideline calculator.

Exhibit 4-11c: 2017 LIA Eligibility Status Given Type of Child Support Calculator Used (Obligor)

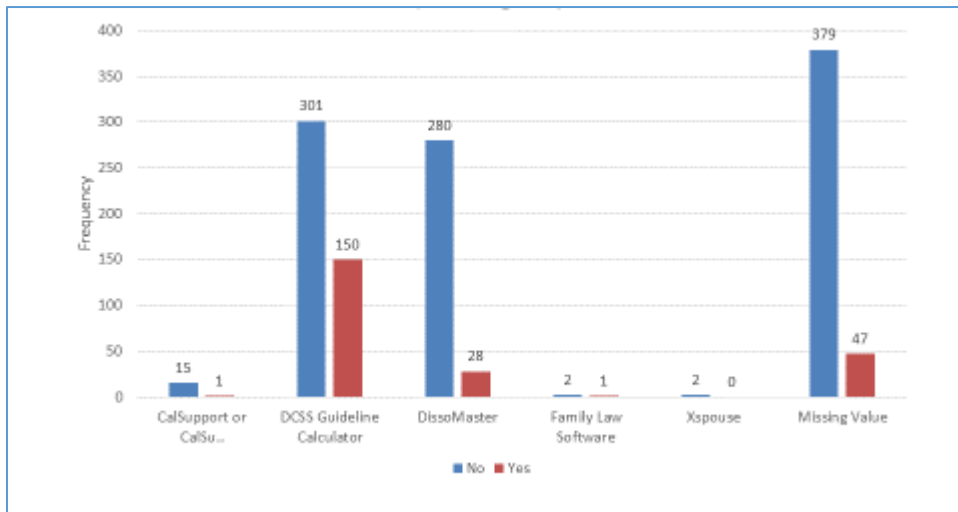


Exhibit 4-11c details provides insight into how the guideline calculator used impacts whether the Low Income Adjustment (LIA) was applied to the order. Of the 451 orders established using the DCSS guideline calculator, 150—or 33.26 percent—of those orders had the LIA applied. Of the 308 orders established using DissoMaster, just 9.09 percent had a LIA applied.

It is important to note that generally, parents in non-IV-D cases are less likely to be eligible for a low-income adjustment (see Exhibit 4-11). However, given the number of instances in non-IV-D cases where it was unclear whether the LIA had been applied (66.7 percent) and the number of orders where the type of guideline calculator used was not specified (426 orders or 35.32 percent), this is an area that warrants additional study to fully understand the connection between the guideline calculator used and the application of the LIA.

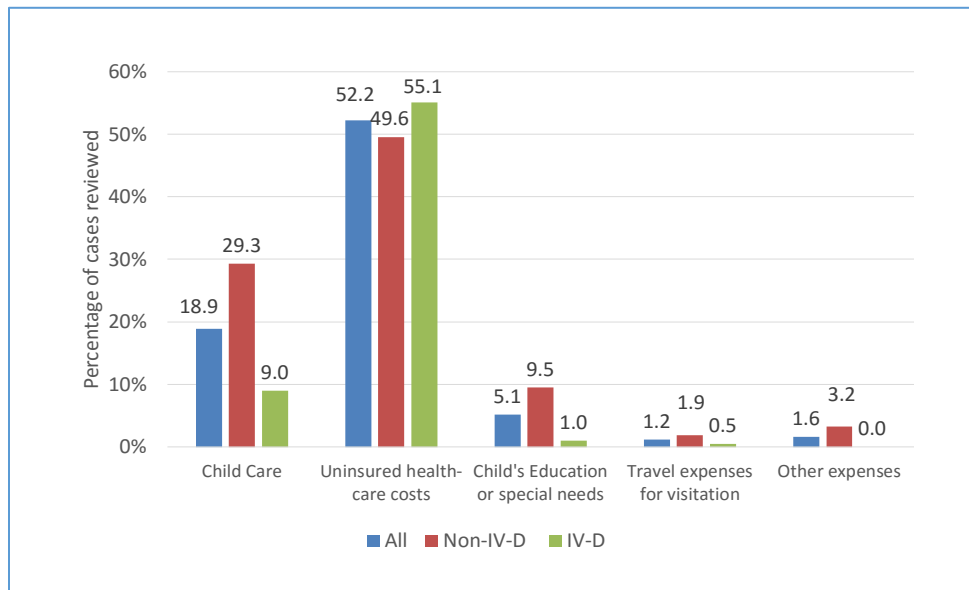
4.6.3 Orders for Additional Support

Under California Family Code section 4062, courts can order additional child support to help pay for child care costs related to employment or education, education costs or costs for other special needs of the child, uninsured health care expenses, and travel expenses for visitation. In the 2017 review, the main reasons for additional child support were to pay for child care and uninsured health care expenses. As indicated in Exhibit 4-12, non-IV-D cases were more likely than IV-D cases to have an order for additional support to cover child care (29 percent in non-IV-D cases and 9 percent in IV-D cases). This is a statistically significant difference; the difference of 20 percentage points is statistically different at the 1 percent level of significance.

More IV-D cases included uninsured health-care expenses than non-IV-D cases (55 percent in IV-D cases and 50 percent in non-IV-D cases), although this difference is not statistically significant. The five-point difference is significant at the 10 percent level, but just fails the five percent level of significance. With regard to healthcare, the difference between IV-D and non-IV-D orders may be explained by regulations that require the IV-D agency to specify in the support order how dependents' health care needs will be met.

The 2017 review also revealed some changes from the 2011 review. Overall the percentage of orders with additional child care expenses in the 2017 review (18.9 percent) was higher than the percentage reported in the 2011 review (12 percent). The difference is statistically significant at the 1 percent level. There was also a dramatic increase in the percentage of orders with additional support for uninsured health care costs. That rose from 18 percent as reported in the 2011 review to 52.2 percent in the 2017 review. The 34-point jump is measured with precision, passing the 1 percent level of significance.

Exhibit 4-12: Orders for Additional Support in the 2017 Review



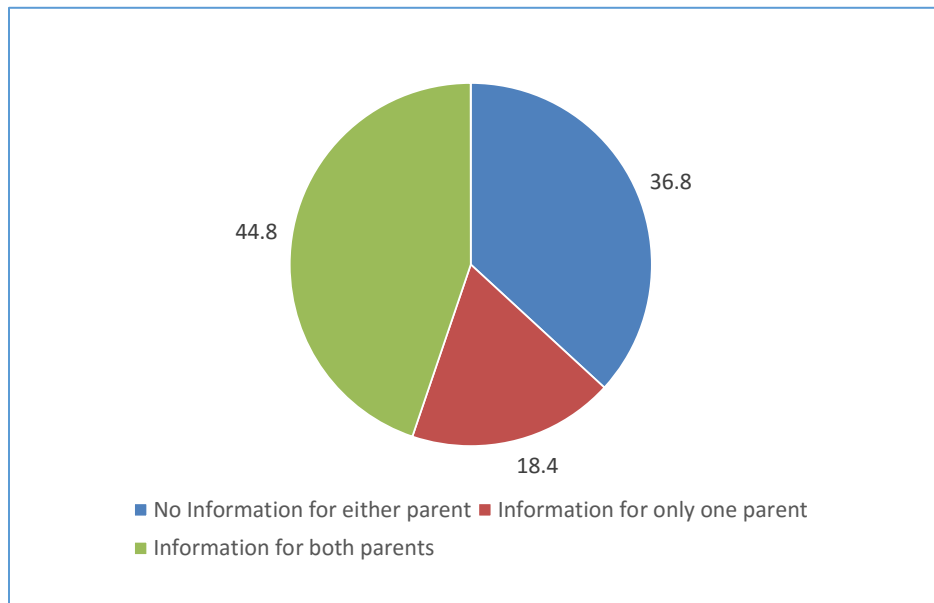
4.7 Income of the Parents and Other Case Circumstances

This section considers parental incomes and attributed income.

4.7.1 Parental Incomes

Parents' income information is a critical part of calculating the guideline amount. Unfortunately, in a majority of the cases in the sample, the data gatherer was not able to locate income information for one or both parents. As Exhibit 4-13 shows, there was no income information available for either parent in 36.8 percent of the cases sampled, and income information was available for only one parent in 18.4 percent of cases, leaving less than half, or 44.8 percent, of the cases with income information available for both parents. This reflects a large increase from the percentages reported in the 2011 review. In that review, there was no income information available for either parent in 19 percent of the cases sampled, and income information was available for only one parent in 5 percent of the cases. The reason for such a large increase in the percentage of cases without income information warrants additional research.

Exhibit 4-13: Parents' Income Information Available in 2017 Review



When examining the availability of income data between obligors and obligees, as presented in the first table depicted below in Exhibit 4-14, the fact that obligees were more likely than obligors to have missing income information stands out, and it holds true for both non-IV-D and IV-D cases. Fifty-one percent of all obligees and 39 percent of all obligors in the 2017 review had missing information when the order was established.

These figures are somewhat inflated because of the large proportion of cases with missing values. For obligees, this occurred in 24 percent of the cases and for obligors in 14 percent of the cases, as seen in the second table. Even when eliminating these missing values, income information was unknown for 27 percent of obligees and 24 percent of obligors. This is somewhat surprising, especially in the IV-D population, as obligees usually have more contact with child support agencies than obligors and, as a result, should have received more instruction on what income information they need to provide to the IV-D agency.

One of the positive aspects of the data is that there appear to be very few orders being established based on imputed or presumed income. These values were 5 percent or less when income information was missing for either obligees or obligors across both IV-D and non-IV-D cases.

Exhibit 4-14: Cases With Missing Income Information, by Obligor/Obligee and IV-D Status in the 2017 Review

	Obligors			Obligees		
Source	All Cases	Non-IV-D	IV-D	All Cases	Non-IV-D	IV-D
Missing	39%	45%	33%	51%	54%	49%
Actual, Imputed, or Presumed	61%	55%	67%	49%	46%	51%
Total	100%	100%	100%	100%	100%	100%

	Obligor			Obligee		
Source	All Cases	Non-IV-D	IV-D	All Cases	Non-IV-D	IV-D
Actual	56%	53%	59%	47%	45%	48%
Imputed	2%	1%	4%	2%	1%	3%
Presumed	3%	1%	5%	0%	0%	0%
Unknown	25%	29%	21%	27%	30%	25%
Missing Value	14%	16%	11%	24%	25%	24%
Total	100%	100%	100%	100%	100%	100%

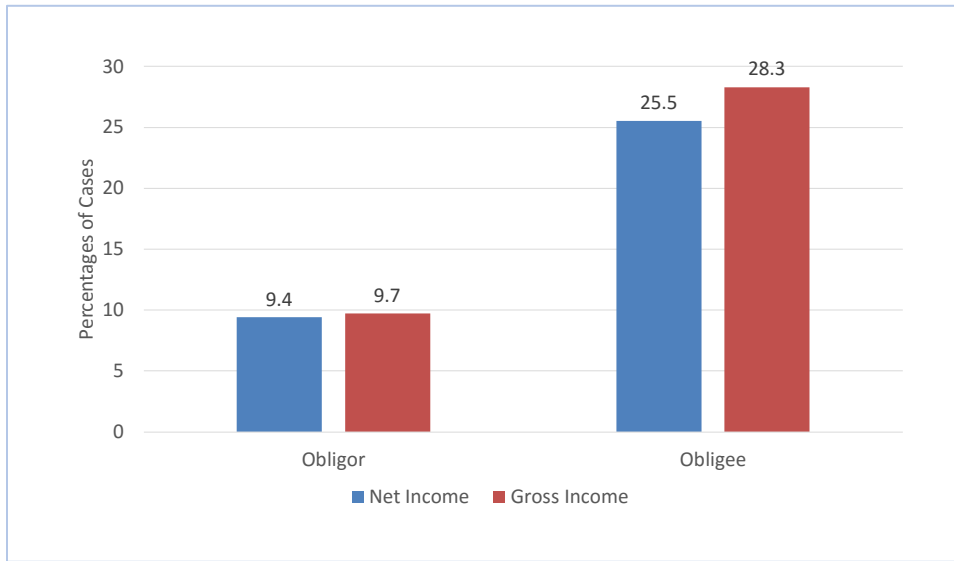
4.7.2 Gross Income in the Guideline Calculation

Exhibit 4-15 shows the percentages of obligors and obligees who have monthly gross and net incomes of \$0. The overall percentage of parents with monthly incomes of \$0 has greatly decreased from the 2011 review to the 2017 review. Of all parents in the 2011 review, 61 percent showed no gross monthly earnings and 59 percent showed no net monthly earnings. In the 2017 review, 38 percent showed no gross monthly earnings and nearly 35 percent showed no net monthly earnings.

Contributing to that overall decrease is that fact that the proportion of obligees with incomes of \$0 has decreased from the 2011 case data review. In 2011, the percentage of mothers with a net income of \$0 was 46 percent and those with a gross income of \$0 was 42 percent. In contrast, the respective percentages in the 2017 case data review were 26 and 28 percent.

There is one caveat to these figures. In 2011, the calculations were made based on the gender of the parent and in 2017 they were based on obligor versus obligee. As such, we are unable to compare the two years' data with precision. However, since the vast majority of obligees are mothers, the comparison is still noteworthy. Even when taking into consideration the relatively small potential number of obligees who are fathers, the comparisons would not drastically change. (The 2017 data collection instrument did not include a data element for gender of parents.)

Exhibit 4-15: Parents with Net and Gross Incomes of \$0 in the 2017 Review



Exhibits 4-16 and 4-17 provide details on monthly obligor and obligee net and gross incomes for all cases as well as separately for non-IV-D and IV-D cases. In all case categories, the average obligor income was greater than obligee income. Overall, obligees earned 86 percent of the obligor's median net income.

The average income differences between obligors and obligees was greatest among non-IV-D cases, where obligees' median net income was only 56 percent of obligors' median income. This is contrasted by obligees earning 80 percent of the median net income of obligors in IV-D cases. Finally, it should be noted that the difference between gross income and net income is much higher among obligors than it is for obligees. Net income among non-IV-D obligors is 70 percent of gross income, on average. Among IV-D obligors, it is 82 percent.

Exhibit 4-16: Average Monthly Net and Gross Incomes in the 2017 Review (Excludes Imputed and Presumed Income Cases)

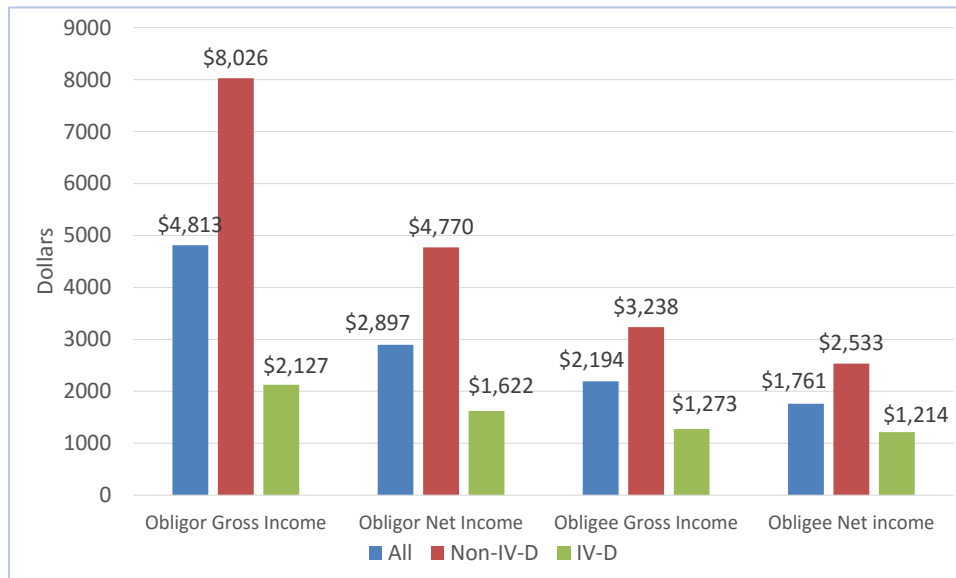
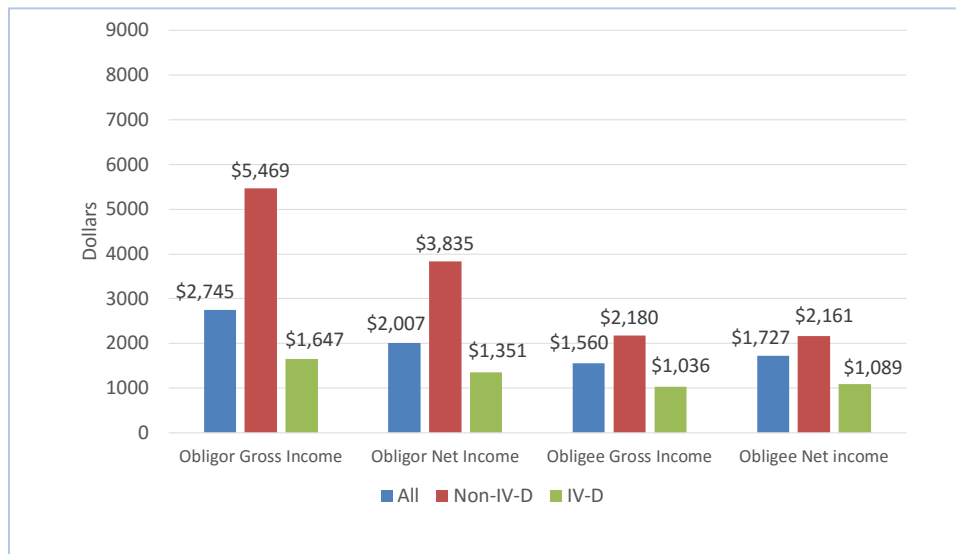


Exhibit 4-17 presents similar income comparisons using median earnings.

Exhibit 4-17 Median Monthly Net and Gross Incomes in the 2017 Review (Excludes Imputed and Presumed Income Cases)



4.7.3 Relative Income of the Parents

Exhibit 4-18 compares cases with income information for both parents. It shows that obligees are almost four times as likely as obligors to show no monthly earnings, while obligors are more than twice as likely as obligees to have monthly earnings above \$4,000.

Exhibit 4-18: Comparison of Parents' Monthly Incomes in Cases With Income Information for Both Parents in the 2017 Review (Percentage of Cases)

Income Interval	Obligor	Obligee
\$0	7.69	27.65
\$1 to \$1000	6.24	9.36
\$1,001 to \$2,000	21.62	22.04
\$2,001 to \$3,000	14.76	16.42
\$3,001 to \$4,000	9.98	9.15
\$4,001 or more	39.71	15.38
Total	100	100
Sample Size	481	481

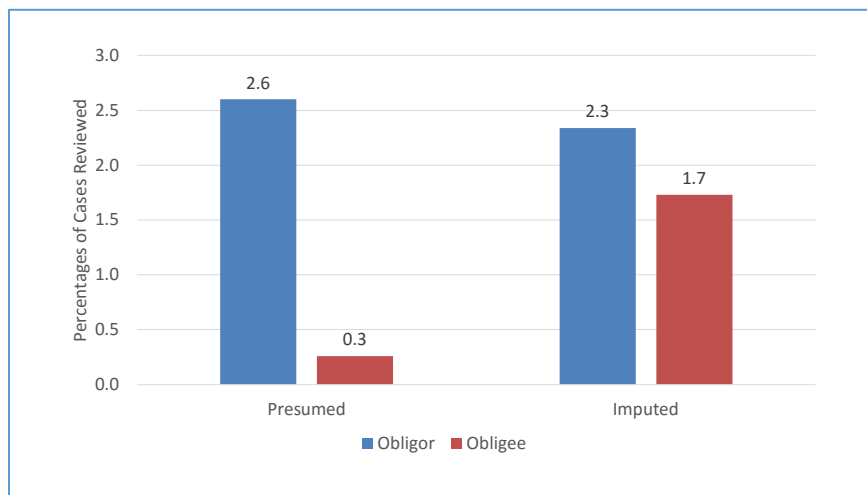
4.7.4 Attributed Income

In California, income can be imputed or presumed for a parent. Imputing income occurs when the court does not have access to actual income information. California Family Code section 4058(b) allows the court, in its discretion, to consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children. Typically in these cases, the court will impute income based on a parent's prior work history or evidence of the parent's lifestyle. California Family Code section 17400 allows the child support agency to file a simplified complaint form providing notice of the guideline amount based on the income or income history of the obligor. Under section 17400(d)(2), if the obligor's income or income history is not known to the child support agency, the complaint must inform the obligor that income will be presumed at minimum wage for 40 hours per week, established by the Industrial Welfare Commission, unless actual income information is provided to the court. The state minimum wage in 2015, the timeframe for the 2017 case sampling, was \$9 per hour, or \$1,560 per month.

In the 2017 case data review, income was imputed for 2.3 percent of obligors and 1.7 percent of obligees, as presented in Exhibit 4-19. Obligor income was presumed in 2.6 percent of all cases. These figures represent a continuation of the trend noted in the 2011 review in the reduction in the percentage of cases where income was imputed or presumed. In the 2011 review, income was imputed for 3 percent of the obligors and 3 percent of the obligees, and income was presumed for 5 percent of the obligors.

It is worth noting that this downward trend in presuming and/or imputing income is in keeping with the federal OCSE's guidance in the new child support rule issued in December 2016.

Exhibit 4-19: Presumed and Imputed Income in the 2017 Review



4.8 Other Case Characteristics

This section discusses attorney representation; number of children covered by the order; order amounts, including child support levels as a percentage of obligor income; zero-dollar and reserved orders; and timesharing arrangements.

4.8.1 Attorney Representation

Because the child support agency does not represent either parent, for purposes of this review attorney representation is defined as private counsel retained by a parent. This is the same definition used in the 2011 review. Compared to the 2011 review, the 2017 review demonstrates a slight decrease in the percentage of cases in which neither parent or both parents has attorney representation, as seen in Exhibit 4-20. In 2017, neither parent had representation in 77 percent of the cases, down three percentage points from 2011, while both had representation in 10 percent of the cases, slightly down from 12 percent in 2011. An opposite trend is observed when looking at cases in which only one parent had an attorney. Obligees only were represented in 8 percent of cases in the 2017 review, up from 6 percent in 2011, and obligors only were represented in 5 percent of the cases in the 2017 review, up from 3 percent in 2011.

Exhibit 4-20: Attorney Representation in the 2017 Reviews

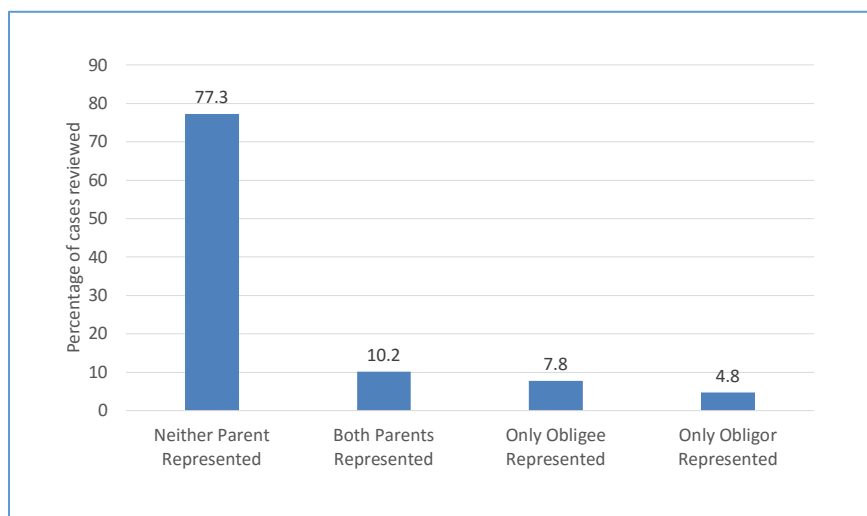


Exhibit 4-21 presents the findings on legal representation among IV-D and non-IV-D cases. Among IV-D cases, the proportion of cases with neither parent having legal representation decreased from 96 percent in the 2011 review to 94 percent in the 2017 review. Among non-IV-D cases, neither parent had representation in 62 percent of the cases in both the 2011 and 2017 reviews. Both parties were represented in 1 percent of IV-D cases in the 2017 review, a decrease from 3 percent in the 2011 review; and both parents were represented in 19 percent of non-IV-D cases in the 2017 review, down from 22 percent in the 2011 review. In 3 percent of IV-D cases in the 2017 review, only one party was represented (for both the obligor and the obligee), an increase of two percentage points from the 2011 review. In non-IV-D cases, only the obligee was represented in 13 percent of the cases in the 2017 review, while only the obligor was represented in 7 percent of the cases. There was not a comparable finding in the 2011 review.

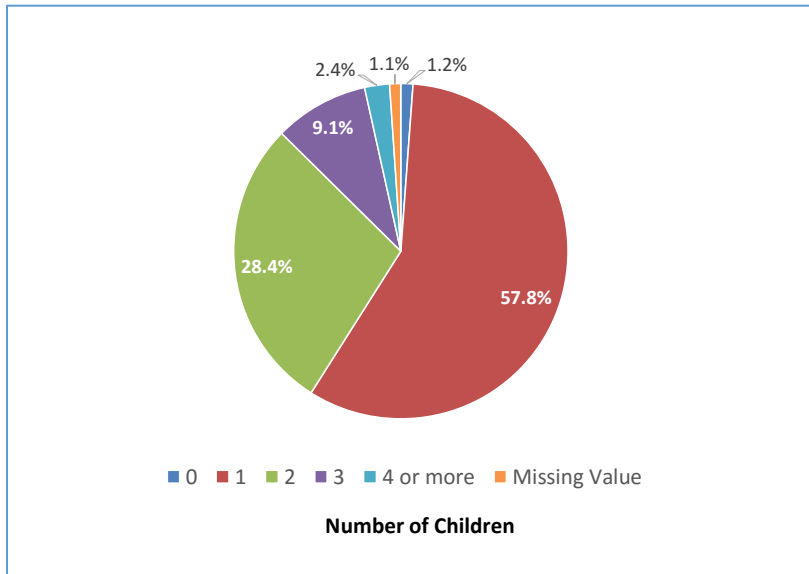
Exhibit 4-21: Attorney Representation by Case Type in the 2017 Review (Percentages of Cases)

Category	Non-IV-D	IV-D
Neither Parent Represented	62%	94%
Both Parents Represented	19%	1%
Only Obligee Represented	13%	3%
Only Obligor Represented	7%	3%
Total	100%	100%
Sample Size	489	389

4.8.2 Number of Children Covered by the Orders

As presented in Exhibit 4-22, of the cases in the 2017 review, nearly 60 percent had one child on the order. Twenty-eight percent of the orders had two children, 9 percent had three children, and 3 percent had four or more children on the order. The percentage of cases with one or two children (86 percent) is similar to the percentage in the 2011 review (91 percent).

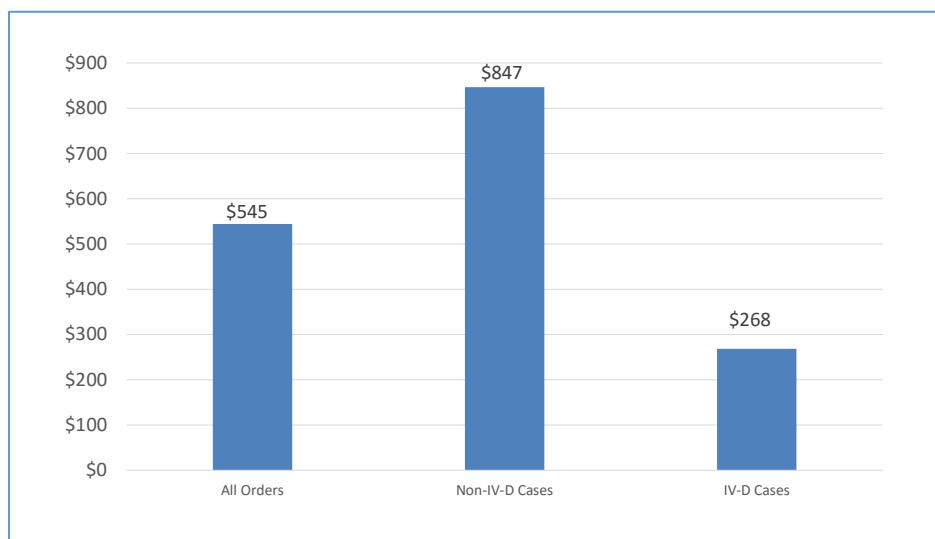
Exhibit 4-22: Number of Children Covered by the Orders in the 2017 Review



4.8.3 Amount of the Child Support Order

Exhibit 4-23 shows the average monthly child support order in the 2017 review for all orders, and for IV-D and non-IV-D cases. The average order amount for all orders increased by \$75 per month from the 2011 review to the 2017 review, going from \$470 in 2011 to \$545 in 2017. This increase stopped the downward trend noted in the 2011 report. The increase was largely due to the increase in the average order amount among non-IV-D cases, where the average increase was \$162 monthly, from \$685 in the 2011 review to \$847 in the 2017 review. In contrast, the average order amount among IV-D cases decreased from \$286 per month in the 2011 review to \$268 in the 2017 review. The average order amount in IV-D cases in the 2011 review was a decrease from that in the 2005 review, resulting in the average order amount in IV-D cases declining from \$341 in the 2005 review to \$268 in the 2017 review.

Exhibit 4-23: Average Monthly Child Support Order Amounts in the 2017 Review



For cases with one child on the order, the overall average monthly support amount was \$371, somewhat higher than the 2011 figure of \$347 per month. Among IV-D cases, the average amount was \$250, only three dollars more than the 2011 average. For non-IV-D cases, the 2017 average of \$560 per month was \$43 higher than the 2011 average.

The overall average obligation for orders with two children was \$751 in the 2017 review, an increase of \$99 over the support amount in the 2011 review. This increase is largely attributable to the increase in the average order amount for non-IV-D cases, which went from \$805 in the 2011 review to \$1,039 in the 2017 review. IV-D cases saw a decrease, from \$365 in 2011 to \$310 in 2017.

For three children, the overall average support amount in the 2017 review was \$975, or \$106 per month more than in the 2011 review. Again, this was driven by the increase in the average support amount for non-IV-D cases, which grew from \$1,080 in the 2011 review to \$1,404 in the 2017. The average support amount for these families in IV-D cases decreased sharply, from \$570 in the 2011 review to \$320 in the 2017 review. Average order amounts in this review are included as Exhibit 4-24.

Exhibit 4-24: Average Order Amounts by Case Type in the 2017 Review

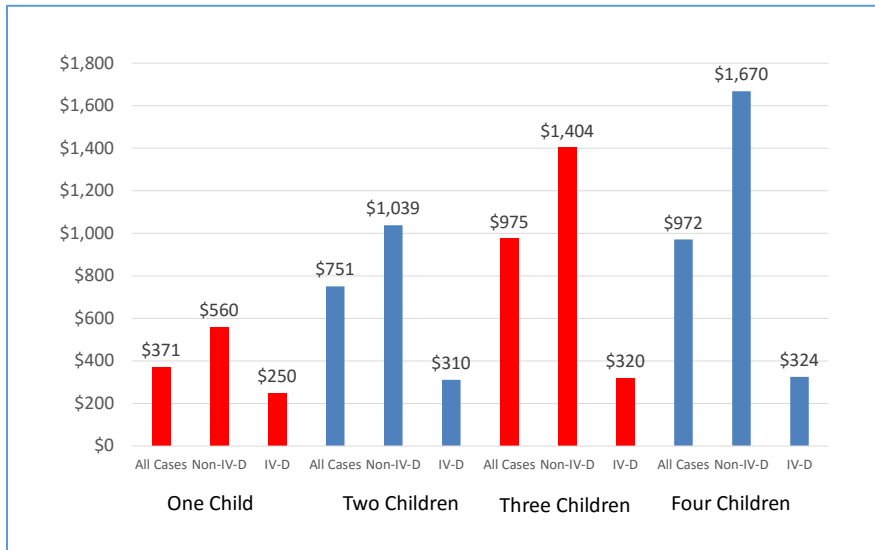
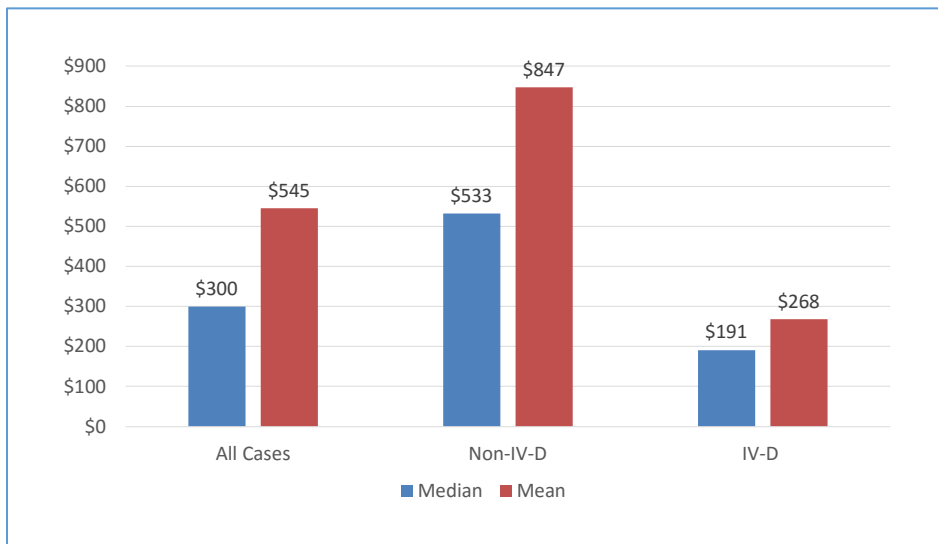


Exhibit 4-25 presents information on the median and mean monthly child support order amounts for all cases, all IV-D cases, and all non-IV-D cases.

Exhibit 4-25: Median and Mean Monthly Child Support Order Amounts in the 2017 Review



There were also some differences in mean monthly child support order levels depending on whether the order was established by default or stipulation or through a contested hearing. As presented in Exhibit 4-26, in the 2017 review, the child support order amount for all default orders averaged \$340, while those set in a contested hearing averaged \$707 and stipulations averaged \$630. All of these average child support amounts are an increase from the findings in the 2011 review: default orders averaged \$302, orders established through a contested hearing

averaged \$610, and stipulated orders averaged \$599. Of course, income and family size are also factors in all orders, regardless of how the order was obtained.

Exhibit 4-26: Mean Monthly Child Support Order Amounts by Type of Order in the 2017 Review



Exhibit 4-27 shows statistically significant differences at the one percent level between orders based on actual versus attributed (i.e., presumed or imputed) incomes. Overall, obligors with actual earnings had orders averaging \$617 per month, while obligors with attributed incomes had orders averaging \$287 per month. The largest difference is found in non-IV-D cases, where orders based on actual income are \$538 higher than those with attributed income.

Exhibit 4-27: Average Order Levels for Obligor Having Orders Established With Attributed and Actual Earnings in the 2017 Review

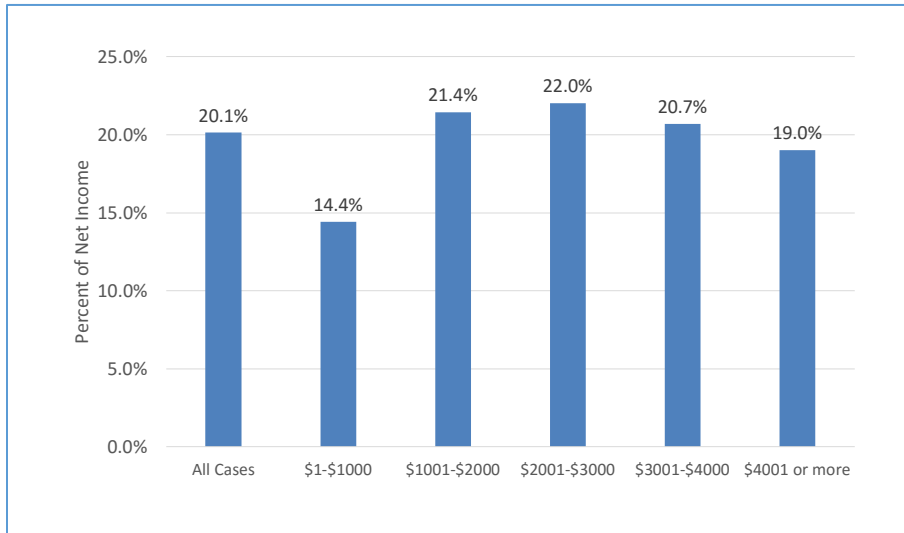
IV-D Status	Actual	Attributed	Unknown	Missing
All Cases	\$617	\$287	\$365	\$666
Non-IV-D	\$930	\$392	\$577	\$1,155
IV-D	\$349	\$271	\$82	\$146
Note: Attributed cases are "presumed" or "imputed."				

4.8.4 Child Support Order Levels as a Percentage of Obligor Income

Exhibit 4-28 shows the monthly child support amount as a percentage of obligor monthly net income. The analysis is limited to only those cases with known incomes. Cases where income is imputed or presumed are excluded. The item that stands out in the exhibit is the lower percentage of net income paid by obligors with \$1 to \$1,000 monthly compared with the other income intervals. We do not have sufficient data to provide an explanation for this finding.

The exhibit also shows that obligors with monthly net earnings between \$1,001 and \$4,000 pay approximately the same percentage of their incomes in child support (i.e., between 21 and 22 percent) and that obligors with more than monthly net earnings of \$4,000 pay 19 percent of their income. This is consistent with the guideline formula, which results in a declining percentage of income as income increases.

Exhibit 4-28: Child Support Obligation as Percent of Obligor’s Net Income, All Cases with Known Income in the 2017 Review

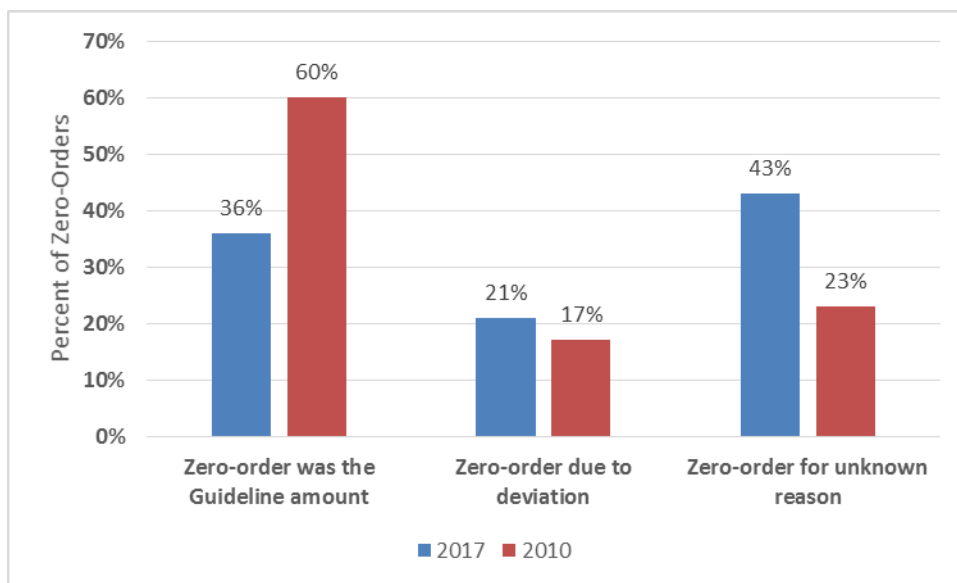


4.8.5 Zero-Dollar and Reserved Orders

The California guideline results in a zero-dollar order if the obligor’s income is \$0 per month. Frequently, zero-dollar orders are entered in IV-D cases where LCSA staff know the obligor will be incarcerated for an extended period of time. In this instance, most orders are reduced to \$0 for the period of incarceration. Another situation where a zero-dollar order may be entered is when the parents have equal (or close to equal) incomes and timeshare. In these cases, the orders may come out to \$0, or the order is so small that the parents deviate to a zero-dollar order.

In the 2017 review, 25 percent of the monthly child support orders are zero-dollar orders, as presented in Exhibit 4-29. This represents an increase of 11 percentage points from the 2011 review. There were fewer zero-dollar orders in the 2017 review (36 percent) in cases where the guideline resulted in a zero-dollar order than in the 2011 review, where 60 percent of the zero-dollar orders were a guideline result. Slightly more zero-dollar orders in the 2017 review were the result of a deviation (21 percent) than in the 2011 review (17 percent).

Exhibit 4-29: Reasons for Zero Orders in the 2011 and 2017 Reviews



In the 2017 review, 12 percent of the orders were listed as “reserved.” The definition of the term “reserved” is not uniform. In some cases, reserved orders may be entered when it appears that an obligor’s income will change or become known in the near future. In this type of situation, courts specify an order amount, but reserve jurisdiction to review and, if appropriate, modify the order when the new or complete information becomes available. Courts often specify a time for the review (e.g., in 60 days).

4.8.6 Child Support Order Levels in Relation to Parenting Time

The responsibility for physically caring for children is an important factor in the California guideline. Referred to in the formula as H%, California Family Code section 4055(b)(1)(D) defines the factor as the “approximate percentage of time that the high earner has or will have primary physical responsibility for the children compared to the other parent.”

Exhibit 4-30 gives information on the percentage of time that child(ren) spend with obligors in IV-D and non-IV-D cases. As shown in the exhibit, obligors in the IV-D caseload tend to have less custodial time with their children than those in the non-IV-D caseload. The largest difference between the two groups is seen in obligors with zero primary physical responsibility for the child. Twenty percent of the non-IV-D obligors fell into this category, compared to 64 percent of the IV-D obligors.

Exhibit 4-30: Percentage of Time the Child Spends With the Obligor by IV-D Status in the 2017 Review (Percentage of Cases)

Category	All Cases	Non-IV-D	IV-D
0 Percent	43%	64%	20%
1 to 20 Percent	27%	19%	35%
21 to 40 Percent	12%	8%	18%
41 Percent or Higher	18%	9%	27%
Sample Size	949	498	451

4.9 Smith/Ostler Orders

Smith/Ostler (aka Ostler-Smith) orders recognize that some parents have fluctuating incomes due to bonuses, commissions, overtime, and other income. Generally, a base order is established, providing for a set ongoing monthly child support amount based on the parent’s predictable monthly income. Smith/Ostler cases contain additional order terms, specifying an additional support amount tied to the paying parent’s additional income.

The staff who captured data from court files were asked to collect data elements indicating a Smith/Ostler order was present. Question 19 asked, “Was the order made for an increase or decrease in support for any bonus, overtime, or commission income received by one or more of the parties?” If the answer was “Yes,” the data collector was tasked with capturing additional information about those specific terms in the order.

Exhibit 4-31 shows that of the 1,207 orders reviewed, 36 orders—approximately three percent of the sample—reflected a “Yes” response to Question 19. All 36 orders were in non-IV-D cases and were concentrated in five of the 11 study counties. Santa Clara County had the highest number and proportion of Smith/Ostler orders.

Exhibit 4-31: Percentage of Smith/Ostler Orders by County in the 2017 Review

County	Number of Smith/Ostler Orders	Percentage of Smith/Ostler Orders in Group	Percentage of Total Orders Sampled for the County	Percentage of Non-IV-D Orders Sampled
Alameda	2	5.6%	1.6%	4.1%
Fresno	1	2.8%	0.6%	1.6%
Los Angeles	11	30.6%	3.2%	4.7%
Santa Clara	16	44.4%	14.8%	28.1%
San Diego	6	16.7%	3.0%	5.8%

Monthly gross income was available in the case files for all but three of the obligors in these Smith/Ostler orders. Their average monthly gross income was \$12,835. The range was from a low of \$3,633 to a high of \$28,254.

Monthly net income was captured for 27 of the obligors. The remaining nine records indicated “N/A”—not available. Average monthly net income was \$8,745. The lowest recorded was \$1,712, and the highest was \$19,849.

Income for the obligee was recorded less consistently than for the obligor. Monthly gross income was recorded in 19 cases; net monthly income was reported in just 15 of the 36 cases. The average monthly gross income recorded for the obligees in the 19 cases was \$4,432, with a range of \$656 to \$9,333. The average monthly net income recorded for the 15 obligees was \$3,664. The lowest reported was -\$233 (negative); the highest was \$7,631.

There were seven orders indicating the obligee’s income was \$0, but it is unclear from the data whether that truly meant \$0, or that no data were captured. Nine records reflected no (blank) data; one indicated N/A.

Of the 36 orders, 24 orders (66.7 percent) were recorded as being guideline orders. Nine did not specify whether they were guideline orders; three indicated they were not guideline orders.

The average monthly support order for the 36 orders was \$2,024. The range was from \$409 to \$6,053 monthly support obligation. The median was \$1,538.50. This compares to an average order amount of \$772.98 and a median order of \$468.50 in the entire case sample studied. See Exhibit 4-32 below.

Exhibit 4-32: Average, Median, Lowest and Highest Order Amounts for Complete Sample Compared with Smith/Ostler Sample (in the 2017 Review)

	Complete Sample*	Smith/Ostler Sample
Average Order Amount	\$772.98	\$2,024.00
Median Order Amount	\$468.50	\$1,538.50
Lowest Order Amount	\$5.00	\$409.00
Highest Order Amount	\$14,300.00	\$6,053.00
* In the complete sample, there were 299 zero-dollar (\$0) orders. Additionally, there were three negative-value orders. These were not included when calculating the average and median order amount for this table.		

As noted earlier, all 36 orders reviewed were non-IV-D orders. Accounting for fluctuations in obligation amounts required by Smith/Ostler orders is problematic for the local child support

agencies (LCSAs). As a consequence, most have avoided establishing them and declined to enforce them unless modified to a sum certain obligation amount. We reached out to Melinda Self, director of the Contra Costa County LCSA. Contra Costa County LCSA developed a process for actively tracking and enforcing Smith/Ostler orders, beginning in 2012. They are in the process of improving their tracking mechanism for Smith/Ostler orders, converting to an SQL database. Once that is done (estimated by the end of May 2017), it will be available for sharing with other counties. The capability provided by the new database will likely encourage other LCSAs to begin enforcing Smith/Ostler orders.

Ms. Self estimated that Contra Costa County had established approximately 55 new Smith/Ostler orders in 2015. This is a rough estimate, and it represents approximately 0.21 percent of their 26,000 IV-D cases. Nevertheless, as a result of its increased expertise and experience in this area, Contra Costa County has succeeded in securing greater numbers of Smith/Ostler orders through its IV-D court.

According to Ms. Self, there are three basic methods being used for calculating the additional support amount in these cases.

The first is a straight percentage method (the monthly guideline divided by obligor's gross income used in the guideline calculation, and then the decimal point moved two numbers to the right). This approach yields a percentage based on the guideline.

The second is frequently referenced as the "Santa Clara" method. It was derived from a 1999 memo written by a Santa Clara County commissioner, and is being used in several counties. It is also based on the existing guideline calculation, with the obligor's gross income incrementally increased to take into account the "K" in the algebraic formula.

The third method is used by support calculator programs like DissoMaster. The calculator re-runs the guideline in the background for each additional income increment. This results in a "bonus" table reflecting support percentages, based on income.

In the sample of 36 orders, 13 used a bonus table and 21 used a percentage method. One order did not indicate what method was used, and one order indicated an alternative method was used, specifically "Salary adjustments over 7 percent and bonus over \$1,500 triggers a review and adjustment of child support."

Ms. Self is working closely with the state DCSS to more fully analyze the Smith/Ostler orders in the IV-D caseload. Early analysis suggests that DCSS may want to arrive at a uniform method for calculating the additional child support that should be ordered in Smith/Ostler cases.

5. Limitations of the Data and Analysis

As in previous reviews, the case file data were limited in several ways. The major limitation, as noted in the 2011 review, was missing information. Information missing from the case files is presented in Exhibit 5-1, below.

Exhibit 5-1: Information Missing From the Case Files (Percentage of Cases)

	2017 Review (<i>n</i> = 1203)
Guideline calculator report not attached to order	35%
Source of income not reported for obligor	15%
Source of income not reported for obligee	25%
Income amount missing for obligor	24%
Income amount missing for obligee	33%
No information regarding whether or not LIA granted	44%
Amount of child support not specified	4%
Whether or not support is guideline amount not specified	33%
Guideline amount marked as NA, not stated, unknown	68%
Guideline amount blank	17%

The most important finding is the high percentage of orders where the guideline amount was not specified or missing from the order—85 percent of all orders in the sample. It is not known to what extent such information may have been available in the court’s oral ruling, as opposed to in writing. The other major finding is the percentage of orders where it is not known whether the support amount is the guideline amount or a deviation. As long as state law permits the court to provide information about the guideline amount and the reason for any deviation on the record, it is likely that missing information about the guideline amount will continue to be a data limitation.

In addition to missing information about the fundamental question of whether the ordered support was the guideline amount or a deviation, a large percentage of the cases also lacked financial information about the parties. Less than half the cases had income information available for both parents. This is an increase from the percentages reported in the 2011 review.

6. Summary/Conclusions

In completing our analysis for this report, we relied primarily on the data collection efforts of the court case file reviewers. By and large, findings noted in the 2011 review were similar to findings noted in this review. There are some differences of note:

- The percentage of deviations has continued to rise. The number of orders that deviated from guidelines increased from 14.6 percent in the 2011 review to 17.2 percent in the 2017 review.
- There was an increase in orders attained through stipulation, from 32 percent in the 2011 review to 44 percent in the 2017 review.
- There was a decrease in orders obtained through default, from 46 percent in the 2011 review to 36 percent in the 2017 review.
- There was a dramatic increase in the percentage of orders with additional support for uninsured health care costs. That rose from 18 percent as reported in the 2011 review to 52.2 percent in the 2017 review.
- There was a large decrease in the overall percentage of parents with a monthly income of \$0. Of all parents in the 2011 review, 61 percent showed no gross monthly earnings and 59 percent showed no net monthly earnings. In the 2017 review, 38 percent showed no gross monthly earnings and nearly 35 percent showed no net monthly earnings.

In 2011, the California IV-D program was continuing to adapt to the 2008 implementation of the statewide automated system, CSE. Given the passage of almost 10 years and the availability of almost 10 years' worth of data in CSE, it may be an opportune time to undertake a longitudinal—rather than “snapshot”—study of order establishment, the child support guideline, and compliance patterns. Such a study could help determine the optimal order amount for families in various economic and familial circumstances, and help recraft a guideline that reflects California's diverse families and economy.

7. Appendix A: Data Collection Instrument

Case File Review Form



Case File Review Form (rev022217)

Form Completed by:

Section I: Case Information (Q1-Q6 please select from the drop down menu options)

Q1. County: Q2. Order Date: Q3. Court Case Number:

Q4. Type of Case: Q5. Modification or New Order?: Q6. Order Type:

Q7. Please select the guideline calculator report attached to the Order: (If no guideline calculator report was attached, please leave blank)

Section II: Parent Information

Q8. Number of Children Subject to this Order:

Q8.1. Please identify which parent(s) is the obligor(s)

- Parent 1
- Parent 2
- Parent 3

Q8.2. For this section—Answer the following for each parent considered in the order calculation: Approximate % of child's time with each parent.

Parent 1 -- Child 1 % of Child's Time	Parent 2 -- Child 1 % of Child's Time	Parent 3 -- Child 1 % of Child's Time
<input type="text"/>	<input type="text"/>	<input type="text"/>
Parent 1 -- Child 2 % of Child's Time	Parent 2 -- Child 2 % of Child's Time	Parent 3 -- Child 2 % of Child's Time
<input type="text"/>	<input type="text"/>	<input type="text"/>
Parent 1 -- Child 3 % of Child's Time	Parent 2 -- Child 3 % of Child's Time	Parent 3 -- Child 3 % of Child's Time
<input type="text"/>	<input type="text"/>	<input type="text"/>
Parent 1 -- Child 4 % of Child's Time	Parent 2 -- Child 4 % of Child's Time	Parent 3 -- Child 4 % of Child's Time
<input type="text"/>	<input type="text"/>	<input type="text"/>

Q9. Source of Income: Imputed, Presumed, Actual or Unknown? (If no income is noted, leave the blank option. If there is no indication or it is unclear in the file re: source of income - select unknown.)

Parent 1 Parent 2 Parent 3

Q10. Enter Monthly Gross and Net Income

Gross Income	Parent 1 Enter Amount	Parent 2 Enter Amount	Parent 3 Enter Amount
	<input type="text"/>	<input type="text"/>	<input type="text"/>
Net Income	Parent 1 Enter Amount	Parent 2 Enter Amount	Parent 3 Enter Amount
	<input type="text"/>	<input type="text"/>	<input type="text"/>

Q11. If a hardship deduction applies, ENTER the deduction amount for each corresponding parent:

Note: please enter an actual dollar amount and not a hardship factor (e.g., entering 1 or .5).

Reason:	Parent 1	Parent 2	Parent 3
Other Minor Children	Deduction Amount	Deduction Amount	Deduction Amount
	<input type="text"/>	<input type="text"/>	<input type="text"/>
Reason:	Parent 1	Parent 2	Parent 3
Catastrophic Losses, Extraordinary Medical Expenses	Deduction Amount	Deduction Amount	Deduction Amount
	<input type="text"/>	<input type="text"/>	<input type="text"/>
Reason:	Parent 1	Parent 2	Parent 3
Other	Deduction Amount	Deduction Amount	Deduction Amount
	<input type="text"/>	<input type="text"/>	<input type="text"/>

Q12. In arriving at Net Income:

Was there a subtraction for court-ordered child support, court-ordered spousal support, or voluntarily paid child support that was not part of a hardship deduction?

Q13. Low Income Adjustment: Does the Obligor qualify for a low income adjustment? Yes/No (If NO - skip to Q14)
(Note: Complete for Obligor(s) ONLY. Obligor qualifies if net income is less than \$1684.)

Q13.1. Was a low income adjustment granted by the court? (If NO or Unknown - skip to Q14)

Q13.2. What was the minimum order that could be granted per the low income adjustment range?

Q13.3. Was the minimum order granted? (If YES - skip to Q14)

Q13.4. If the minimum order was NOT granted, did the Court state its reasons for not granting the minimum order?

Q14. Was there an Income and Expense Declaration, or Simplified Financial Statement filed with the court within 3 months of the hearing or order date? (Indicate for each applicable parent.)

For Parent 1	For Parent 2	For Parent 3
<input type="text"/>	<input type="text"/>	<input type="text"/>

Q15. Does Obligor(s) have Attorney Representation?

Parent 1	Parent 2	Parent 3
<input type="text"/>	<input type="text"/>	<input type="text"/>

Section III: Child Support Order

Q15. Amount of Base Support Ordered (not including add-ons)

Per month

Was child support reserved?

Q16. Referring to Q15 -- Is the amount per month the guideline amount?

If NO—What is the Guideline Amount

Q17. If NO to Q16, What is the rebutting factor? (check all that applies)

- 1. sale of family residence is deferred
- 2. extraordinary high income
- 3. parent not contributing commensurate to custodial time
- 4i. different time sharing arrangements
- 4ii. equal custody, unequal housing
- 4iii. child has special needs
- stipulation
- unjust or inappropriate due to special circumstances
- UNSTATED
- Other (specify)

Q18. Additional Child Support (Enter Amount OR Percentage):

1. Work or Education-related Child Care Costs: (Check either amount or percentage and enter value)

Parent 1

Parent 2

Parent 3

Amount (\$\$)

Amount (\$\$)

Amount (\$\$)

Percentage (%)

Percentage (%)

Percentage (%)

Enter value here

Enter value here

Enter value here

2. Child's Uninsured Health Care Costs:(Check either amount or percentage and enter value)

Parent 1

Parent 2

Parent 3

Amount (\$\$)

Amount (\$\$)

Amount (\$\$)

Percentage (%)

Percentage (%)

Percentage (%)

Enter value here

Enter value here

Enter value here

3. Child's Education Costs or Special Needs:(Check either amount or percentage and enter value)

Parent 1

Parent 2

Parent 3

Amount (\$\$)

Amount (\$\$)

Amount (\$\$)

Percentage (%)

Percentage (%)

Percentage (%)

Enter value here

Enter value here

Enter value here

4. Travel Expenses for Visitation:(Check either amount or percentage and enter value)

Parent 1

Parent 2

Parent 3

Amount (\$\$)

Amount (\$\$)

Amount (\$\$)

Percentage (%)

Percentage (%)

Percentage (%)

Enter value here

Enter value here

Enter value here

5. Other:

Parent 1

Parent 2

Parent 3

Amount (\$\$)

Amount (\$\$)

Amount (\$\$)

Percentage (%)

Percentage (%)

Percentage (%)

Enter value here

Enter value here

Enter value here

Q19. Was an order made for an increase or decrease in support for any bonus, overtime, or commission income received by one or more of the parties? Yes/No (if NO - skip to section IV)

Q19-1. If YES, was the order:

Based on a "bonus table" (e.g., a recalculation of guideline support at various amounts of additional income in set intervals per an attached bonus, overtime, or commission income table)

A fixed percentage of any additional income (e.g., Smith/Ostler)

Other, please specify

Q19-2. If the order was not based on a "bonus table," did the Court state its reasons for why it deviated from guideline support? Yes/No (if the order was based on a "bonus table" - leave blank)

Section IV: Missing Information

Missing Information: (check all that apply)

No Guideline Calculation to the Order

Parent's Income Not Specified

Guideline Amount Not Specified

Amount of Child Support Not Specified

Above or Below Guideline Not Specified

Additional Comments/Remarks:

8. Appendix B: County Data

The following charts provide insight into the differences in economics, population, and IV-D caseload size among the 11 study counties.

Sampled Counties

In the case sampling timeframe of 2015, California's statewide unemployment rate was 6.2 percent. Average weekly pay was \$1,178; annualized at \$61,256. Six of the study counties had unemployment rates greater than the statewide average; five counties had unemployment rates below the statewide average. Only two of the 11 counties had annual wages higher than the statewide average—with Santa Clara County exceeding the average by \$55,952. The remaining nine fell below the statewide average, by as much as \$28,080 (Tulare County). Statewide, Imperial County topped California's unemployment number among all counties, with a 24 percent unemployment rate. San Mateo County's unemployment rate was lowest, at 3.4 percent.¹⁸⁸

Average Weekly Pay—CAUTION! Average pay is affected by the ratio of full-time to part-time workers; the number of workers who worked for the full year; and the number of individuals in high-paying and low-paying occupations. When comparing average pay levels between geographic areas and industries, these factors should be taken into consideration. For example, industries characterized by high proportions of part-time workers will show average wage levels appreciably less than the pay levels of regular full-time employees in these industries. The opposite effect characterizes industries with low proportions of part-time workers, or industries that typically schedule heavy weekend and overtime work. Average wage data also may be influenced by work stoppages, labor turnover, retroactive payments, seasonal factors, bonus payments, and so on.¹⁸⁹

¹⁸⁸ Referenced paragraph and data in the State Pay Data by County table above, columns 2 and 3, are from the California Employment Development Department, *Quarterly Census of Employment and Wages* (QCEW), www.labormarketinfo.edd.ca.gov/qcew/CEW-Major_NAICS.asp#footnotes (as of Apr. 27, 2017).

¹⁸⁹ Columns 4, 5, 6, and 7 in the State Pay Data by County table above are from *The Self-Sufficiency Standard for California 2014* (most current information available), http://selfsufficiencystandard.org/sites/default/files/selfsuff/docs/CA2014_methodology.pdf, authored by Diana M. Pearce, Ph.D., Center for Women's Welfare, University of Washington School of Social Work, and prepared for the Insight Center for Community Economic Development.

State Pay Data by County

County	Unemployment Rate (2015)	2015 Average Annual Wage	Hourly Self-Sufficiency Standard (One Adult)	Annual Self-Sufficiency Standard (One Adult)	Hourly Self-Sufficiency Standard (One Adult + Preschooler)	Annual Self-Sufficiency Standard (One Adult + Preschooler)
Alameda	4.7%	\$68,068	\$13.25	\$27,994	\$26.38	\$55,725
Amador	6.6%	\$36,868	\$11.21	\$23,678	\$22.51	\$47,531
Fresno	10.2%	\$38,428	\$9.80	\$20,695	\$18.22	\$38,481
Los Angeles	6.7%	\$57,356	\$13.81	\$29,167	\$26.42	\$55,801
San Diego	5.2%	\$56,836	\$13.09	27,655	\$25.37	\$53,580
San Luis Obispo	4.6%	\$40,456	\$11.98	\$25,305	\$24.43	\$51,601
Santa Clara	4.2%	\$117,208	\$15.68	\$33,111	\$29.55	\$62,416
Siskiyou	9.4%	\$33,956	\$9.60	\$20,267	\$18.91	\$39,948
Solano	6.1%	\$52,364	\$12.24	\$25,859	\$23.45	\$49,530
Tehama	8.0%	\$38,584	\$9.69	\$20,472	\$19.12	\$40,391
Tulare	11.7%	\$33,176	\$8.97	\$18,945	\$16.31	\$34,451

California IV-D Caseloads for Reporting Periods FY08 and FY15 by County¹⁹⁰

	IV-D Caseload 2008	IV-D Caseload 2015	Caseload Decline (2008 to 2015)	Number of Orders Established (2008)	Percentage of Orders Established Statewide (2008)	Number of Orders Established (2015)	Percentage of Orders Established Statewide (2015)
Statewide	1,628,235	1,237,737	390,498	99,773		86,936	
Los Angeles	445,708	276,777	168,931	20,823	20.9%	17,932	18.8%
San Diego	93,667	71,251	22,416	3,918	3.9%	4,182	4.9%
Fresno	68,224	58,134	10,090	5,246	5.3%	4,703	5.6%
Santa Clara	50,942	36,643	14,299	3,234	3.2%	2,284	2.5%
Alameda	37,540	31,825	5,715	2,106	2.1%	2,477	2.9%
Tulare	34,960	24,758	10,202	2,211	2.2%	1,414	1.5%
Solano	23,430	16,712	6,718	1,319	1.3%	979	1.2%
San Luis Obispo	6,046	3,839	2,207	959	1.0%	438	0.5%
Tehama	4,862	4,038	824	495	0.5%	298	0.4%
Amador	1,689	1,212	477	149	0.1%	65	0.1%
Siskiyou	3,759	2,892	867	235	0.2%	172	0.2%
Total Orders Established in Study Counties				40,695	40.78%	34,944	40.2%
Total Orders Established in Non-Study Counties				59,078	59.21%	51,992	59.8%

¹⁹⁰ California Department of Child Support Services, *Comparative Data for Managing Program Performance: December 2015* (Feb. 2016).

California IV-D Caseloads for Reporting Periods FY08 and FY15 by County¹⁹¹

Across all 11 study counties, the IV-D program has seen a significant decline in caseloads. This does not completely align with changes in county populations: eight of the study counties saw an increase in overall population between 2008 and 2015, while three showed a decline. Los Angeles County's population declined by 60,323; Amador County's by 328; and Siskiyou County's by 986.

¹⁹¹ *Ibid.*

County Population and Orders Established Relative to State Totals¹⁹²

County	Percentage of Statewide Population 2008	Population (2015 Estimate)	Percentage of Statewide Population 2015	Percentage of 2011 Support Order Sample	Percentage of 2015 Support Order Sample
Los Angeles	27.2%	10,241,335	26.1%	21.4%	28.9%
San Diego	8.3%	3,288,612	8.4%	14.7%	16.6%
Fresno	2.4%	984,541	2.5%	19.3%	15%
Santa Clara	4.8%	1,927,888	4.9%	13.4%	9%
Alameda	4.1%	1,627,865	4.1%	7.9%	10.4%
Tulare	1.1%	466,339	1.2%	7.9%	5.2%
Solano	1.1%	431,498	1.1%	4.4%	4.2%
San Luis Obispo	0.7%	277,977	0.71%	4.1%	2.9%
Tehama	0.2%	63,934	0.16%	3.9%	4.2%
Amador	0.1%	37,707	0.09%	1.6%	1.6%
Siskiyou	0.1%	44,739	0.11%	1.3%	1.8%
Total	50.2%		49.37%		

This table details the shift in population among the 11 study counties. It also details the difference in sample sizes from the previous guideline review to this current review, with regard to the relationship between the county population size and the percentage of the support orders reviewed for this project.

9. Appendix C: Spreadsheet Tabs

The five spreadsheet tabs, which include the calculations made to arrive at sample sizes, are reproduced on the following pages.

¹⁹² Data from California Department of Finance, *New State Population Report: California Grew by 348,000 Residents in 2015* (May 2, 2016), www.dof.ca.gov/Forecasting/Demographics/Estimates/E-1/documents/E-1_2016PressRelease.pdf.

Tab 1: Support Orders Established During Report Period for FY14, FY15, and FY16

		Based on FY16 Categories											
F08 Categories	Size	Area	FY08	Group Share	Share of Total	VL & L Share of Group	FY14	FY15	FY16	Average	Group Share	Share of Total	VL & L Share of Group
VL	Very Large	Los Angeles	20,823	42.8	20.9	27.6%	10,622	17,932	18,437	15,664	52.8	23.1	29.7%
VL	Very Large	San Bernardino	5,811	12.0	5.8	7.7%	9,763	9,033	8,445	9,080	30.6	13.4	17.2%
VL	Very Large	Riverside	6,068	12.5	6.1	8.0%	6,831	6,674	6,139	6,548	22.1	9.7	12.4%
VL	Very Large	San Diego	3,918	8.1	3.9	5.2%	4,423	4,182	3,751	4,119	13.9	6.1	7.8%
VL	Very Large	Sacramento	6,417	13.2	6.4	8.5%	5,738	5,620	5,019	5,459	18.4	8.0	10.4%
VL	Very Large	Orange	5,571	11.5	5.6	7.4%	3,910	5,030	4,460	4,467	15.1	6.6	8.5%
	Very Large Total (less LA)		48,608	100.0	48.7	64.4%	30,665	30,539	27,814	29,673	100.0	43.7	56.3%
L	Large	Fresno	5,246	19.5	5.3	7.0%	3,960	4,703	5,373	4,679	20.3	6.9	8.9%
L	Large	Kern	3,095	11.5	3.1	4.1%	3,302	2,524	3,528	3,118	13.6	4.6	5.9%
L	Large	Santa Clara	3,234	12.0	3.2	4.3%	2,351	2,284	1,643	2,093	9.1	3.1	4.0%
L	Large	Alameda	2,106	7.8	2.1	2.8%	2,421	2,477	2,257	2,385	10.4	3.5	4.5%
L	Large	San Joaquin	2,851	10.6	2.9	3.8%	3,511	2,896	2,468	2,958	12.9	4.4	5.6%
L	Large	Stanislaus	1,814	6.8	1.8	2.4%	1,892	1,761	1,527	1,727	7.5	2.5	3.3%
L	Large	Contra Costa	3,061	11.4	3.1	4.1%	2,726	2,386	1,881	2,331	10.1	3.4	4.4%
L	Large	Tulare	2,211	8.2	2.2	2.9%	1,248	1,414	1,137	1,266	5.5	1.9	2.4%
L	Large	Ventura	1,923	7.2	1.9	2.5%	1,264	1,733	1,216	1,404	6.1	2.1	2.7%
M	Large	Solano	1,319	4.9	1.3	1.7%	1,195	979	917	1,030	4.5	1.5	2.0%
	Large Total		26,860	100.0	26.9	35.6%	23,870	23,157	21,947	22,991	100.0	33.9	43.7%
	Very Large and Large Total (Less LA)		75,468		75.7	100.0%	54,535	53,696	49,761	52,664		77.6	100.0%
M	Medium	Merced	2,205	14.9	2.2		1,255	1,409	1,227	1,297	13.0	1.9	
M	Medium	Monterey	1,551	10.5	1.6		1,375	1,286	1,166	1,276	12.8	1.9	
L	Medium	San Francisco	1,002	6.8	1.0		837	708	530	692	6.9	1.0	
M	Medium	Santa Barbara	1,366	9.2	1.4		944	833	931	903	9.0	1.3	
M	Medium	Sonoma	1,315	8.9	1.3		790	785	696	757	7.6	1.1	
M	Medium	Shasta	936	6.3	0.9		918	708	715	780	7.8	1.2	
M	Medium	Imperial	895	6.1	0.9		976	970	761	902	9.0	1.3	
M	Medium	Butte	1,035	7.0	1.0		700	736	569	668	6.7	1.0	
M	Medium	San Mateo	1,067	7.2	1.1		645	573	565	594	5.9	0.9	
M	Medium	Kings	1,144	7.7	1.1		681	706	683	690	6.9	1.0	
M	Medium	Placer	653	4.4	0.7		598	503	435	512	5.1	0.8	
M	Medium	Santa Cruz/San Benito	757	5.1	0.8		540	455	384	460	4.6	0.7	
M	Medium	Yolo	854	5.8	0.9		481	437	500	473	4.7	0.7	
	Medium Total		14,780	100.0	14.8		10,740	10,109	9,162	10,004	100.0	14.7	

F08+A5:O5 Cate	Size	Area	FY08	Group Share	Share of Total	VL & L Share of Group	FY14	FY15	FY16	Average	Group Share	Share of Total	VL & L Share of Group
S	Small	Humboldt	949	12.4	1.0		426	356	286	356	8.8	0.5	
S	Small	El Dorado	1,143	15.0	1.1		401	412	272	362	8.9	0.5	
VS	Small	Ama/Alp/Cala/Tuol	604	7.9	0.6		370	332	321	341	8.4	0.5	
S	Small	Madera	584	7.7	0.6		698	681	675	685	16.9	1.0	
S	Small	Sutter	674	8.8	0.7		371	318	396	362	8.9	0.5	
S	Small	Mendocino	466	6.1	0.5		298	263	260	274	6.8	0.4	
S	Small	San Luis Obispo	959	12.6	1.0		420	438	428	429	10.6	0.6	
S	Small	Yuba	360	4.7	0.4		270	249	239	253	6.3	0.4	
S	Small	Tehama	495	6.5	0.5		376	298	284	319	7.9	0.5	
S	Small	Napa	569	7.5	0.6		312	277	264	284	7.0	0.4	
S	Small	Sierra/Nevada	533	7.0	0.5		211	178	198	196	4.8	0.3	
S	Small	Siskiyou/Modoc	296	3.9	0.3		180	205	164	183	4.5	0.3	
	Small Total		7,632	100.0	7.7		4,333	4,007	3,787	4,042	100.0	6.0	
VS	Very Small	Marin	180	9.7	0.2		187	171	92	150	13.3	0.2	
S	Very Small	Lake	274	14.8	0.3		196	249	271	239	21.1	0.4	
VS	Very Small	Del Norte	316	17.1	0.3		179	232	180	197	17.4	0.3	
VS	Very Small	Glenn	251	13.5	0.3		163	132	117	137	12.1	0.2	
VS	Very Small	Lassen	268	14.5	0.3		161	161	113	145	12.8	0.2	
VS	Very Small	Inyo/Mono	198	10.7	0.2		89	68	70	76	6.7	0.1	
VS	Very Small	Plumas	169	9.1	0.2		69	70	35	58	5.1	0.1	
VS	Very Small	Colusa	89	4.8	0.1		60	41	32	44	3.9	0.1	
VS	Very Small	Trinity	22	1.2	0.0		47	30	42	40	3.5	0.1	
VS	Very Small	Mariposa	86	4.6	0.1		53	38	48	46	4.1	0.1	
	Very Small Total		1,853	100.0	1.9		1,204	1,192	1,000	1,132	100.0	1.7	
	Grand Total (less LA)	All Areas	99,733		100.0		70,812	69,004	63,710	67,842		100.0	
R	Regionalized LCSAs	Alpine	6		0.0		1	2	1	1			
R	Regionalized LCSAs	Amador	149		0.1		80	65	66	70			
R	Regionalized LCSAs	Calaveras	216		0.2		124	107	101	111			
R	Regionalized LCSAs	Inyo	141		0.1		66	57	61	61			
R	Regionalized LCSAs	Modoc	61		0.1		20	33	22	25			
R	Regionalized LCSAs	Mono	57		0.1		23	11	9	14			
R	Regionalized LCSAs	Nevada	510		0.5		202	173	193	189			
R	Regionalized LCSAs	San Benito	244		0.2		194	176	144	171			
R	Regionalized LCSAs	Santa Cruz	513		0.5		346	279	240	288			
R	Regionalized LCSAs	Sierra	23		0.0		9	5	5	6			
R	Regionalized LCSAs	Siskiyou	235		0.2		160	172	142	158			
VS	Regionalized LCSAs	Tuolumne	233		0.2		165	158	153	159			

Tab 2: Replication

FY16 Categories	Area	FY08	Orders by County Size Category					WEIGHTED		Targeted Sample	
			Statewide Total	USING FY08	PREV. REPORT	SAMPLED	%sampled	SAMPLE	20% Oversample		
Very Large	Los Angeles	20,823	20.9%	27.7%	28.5%	20,823	51.2%	overall	209	42	251
Very Large	San Bernardino	5,811	5.8%	7.7%	8.0%						
Very Large	Riverside	6,068	6.1%	8.1%	8.3%						
Very Large	San Diego	3,918	3.9%	5.2%	5.4%	3,918	27.0%	among I and VI	147	29	177
Very Large	Sacramento	6,417	6.4%	8.5%	8.8%						
Very Large	Orange	5,571	5.6%	7.4%	7.6%						
Very Large Total		48,608	48.7%	64.7%	66.6%						
Large	Fresno	5,246	5.3%	7.0%	7.2%	5,246	36.2%	among I and VI	197	39	236
Large	Kern	3,095	3.1%	4.1%	4.2%						
Large	Santa Clara	3,234	3.2%	4.3%	4.4%	3,234	22.3%	among I and VI	121	24	146
Large	Alameda	2,106	2.1%	2.8%	2.9%	2,106	14.5%	among I and VI	79	16	95
Large	San Joaquin	2,851	2.9%	3.8%	3.9%						
Large	Stanislaus	1,814	1.8%	2.4%	2.5%						
Large	Contra Costa	3,061	3.1%	4.1%	4.2%						
Large	Tulare	2,211	2.2%	2.9%	3.0%	2,211	49.3%	among m	75	15	89
Large	Ventura	1,923	1.9%	2.6%	2.6%						
Medium	San Francisco	1,002	1.0%	1.3%	1.4%						
L TOTAL		26,543	26.6%	35.3%	36.4%						
VL & L TOTAL		75,151	75.4%	100.0%							
VL & L TOTAL LESS TULARE		72,940	73.1%		100.0%						
VL & L TOTAL LESS LA		54,328	54.5%								
Large	Solano	1,319	1.3%	8.7%		1,319	29.4%	among m	44	9	53
Medium	Merced	2,205	2.2%	14.6%							
Medium	Monterey	1,551	1.6%	10.3%							
Medium	Santa Barbara	1,366	1.4%	9.0%							
Medium	Sonoma	1,315	1.3%	8.7%							
Medium	Shasta	936	0.9%	6.2%							
Medium	Imperial	895	0.9%	5.9%							
Medium	Butte	1,035	1.0%	6.9%							
Medium	San Mateo	1,067	1.1%	7.1%							
Medium	Kings	1,144	1.1%	7.6%							
Medium	Placer	653	0.7%	4.3%							
Medium	Santa Cruz/San Benito	757	0.8%	5.0%							
Medium	Yolo	854	0.9%	5.7%							
Medium Total		15,097	15.1%	100.0%							

FY16 Categories	Area	FY08	Statewide Total	Orders by County Size Category				WEIGHTED			
				USING FY08	PREV. REPORT	SAMPLED	%sampled	SAMPLE	20% Oversample	Targeted Sample	
Small	Humboldt	949	1.0%	10.0%							
Small	El Dorado	1,143	1.1%	12.1%							
Very Small	Lake	274	0.3%	2.9%							
Small	Madera	584	0.6%	6.2%							
Small	Sutter	674	0.7%	7.1%							
Small	Mendocino	466	0.5%	4.9%							
Small	San Luis Obispo	959	1.0%	10.1%		959	21.4%	among m	32	6	39
Small	Yuba	360	0.4%	3.8%							
Small	Tehama	495	0.5%	5.2%		495	56.3%	among s and vs	54	11	64
Small	Napa	569	0.6%	6.0%							
Small	Sierra/Nevada	533	0.5%	5.6%							
Small	Siskiyou/Modoc	296	0.3%	3.1%							
Small Total		7,302	7.3%	77.0%							
Small	Ama/Alp/Cala/Tuol	604	0.6%	6.4%							
Very Small	Marin	180	0.2%	1.9%							
Very Small	Del Norte	316	0.3%	3.3%							
Very Small	Glenn	251	0.3%	2.6%							
Very Small	Lassen	268	0.3%	2.8%							
Very Small	Inyo/Mono	198	0.2%	2.1%							
Very Small	Plumas	169	0.2%	1.8%							
Very Small	Colusa	89	0.1%	0.9%							
Very Small	Trinity	22	0.0%	0.2%							
Very Small	Mariposa	86	0.1%	0.9%							
Very Small Total		2,183	2.2%	23.0%							
S & VS TOTAL		9,485	9.5%	100.0%							
Grand Total	All Areas	99,733	100.0%								

FY16 Categories	Area	FY08	Statewide Total	Orders by County Size Category				WEIGHTED			
				USING FY08	PREV. REPORT	SAMPLED	%sampled	SAMPLE	20% Oversample	Targeted Sample	
Regionalized LCSAs	Alpine	6	0.0%								
Regionalized LCSAs	Amador	149	0.1%			149	17.0%	among s and vs	16	3	19
Regionalized LCSAs	Calaveras	216	0.2%								
Regionalized LCSAs	Inyo	141	0.1%								
Regionalized LCSAs	Modoc	61	0.1%								
Regionalized LCSAs	Mono	57	0.1%								
Regionalized LCSAs	Nevada	510	0.5%								
Regionalized LCSAs	San Benito	244	0.2%								
Regionalized LCSAs	Santa Cruz	513	0.5%								
Regionalized LCSAs	Sierra	23	0.0%								
Regionalized LCSAs	Siskiyou	235	0.2%			235	26.7%	among s and vs	25	5	31
Regionalized LCSAs	Tuolumne	233	0.2%								
						40,695	100.0%		1000	200	1200
Statewide Total											
	54.5%										
	15.1%										
	9.5%										

FY16 Categories	Area	FY08	Statewide Total	Orders by County Size Category				%sampled		WEIGHTED		
				USING FY08	PREV. REPORT	SAMPLED				SAMPLE	20% Oversample	Targeted Sample
Very Large	Los Angeles	20823	20.9%	27.7%	28.5%	20823	51.2%	overall	209	42	251	
Very Large	San Diego	3918	3.9%	5.2%	5.4%	3918	27.0%	among l and VI	147	29	177	
Large	Fresno	5246	5.3%	7.0%	7.2%	5246	36.2%	among l and VI	197	39	236	
Large	Santa Clara	3234	3.2%	4.3%	4.4%	3234	22.3%	among l and VI	121	24	146	
Large	Alameda	2106	2.1%	2.8%	2.9%	2106	14.5%	among l and VI	79	16	95	
Large	Tulare	2211	2.2%	2.9%	3.0%	2211	49.3%	among m	75	15	89	
VL & L TOTAL LESS LA		54328	54.5%									
Large	Solano	1319	1.3%	8.7%		1319	29.4%	among m	44	9	53	
Medium Total		15097	15.1%	100.0%								
Small	San Luis Obispo	959	1.0%	10.1%		959	21.4%	among m	32	6	39	
Small	Tehama	495	0.5%	5.2%		495	56.3%	among s and vs	54	11	64	
Small Total		7302	7.3%	77.0%								
S & VS TOTAL		9485	9.5%	100.0%								
Grand Total	All Areas	99733	100.0%									
Regionalized LCSAs	Amador	149	0.1%			149	17.0%	among s and vs	16	3	19	
Regionalized LCSAs	Siskiyou	235	0.2%			235	26.7%	among s and vs	25	5	31	
									1000	200	1200	

Tab 3: Update

Based on FY16 Categories						Orders by County Size Category			
Size	Area	FY14	FY15	FY16	Average	Statewide Total	USING FY16	SAMPLED	% SAMPLED
Very Large	Los Angeles	10,622	17,932	18,437	15,664	18.8%	22.9%	15,664	48.6%
Very Large	San Bernardino	9,763	9,033	8,445	9,080	10.9%	13.3%		
Very Large	Riverside	6,831	6,674	6,139	6,548	7.8%	9.6%		
Very Large	San Diego	4,423	4,182	3,751	4,119	4.9%	6.0%	4,119	26.4%
Very Large	Sacramento	5,738	5,620	5,019	5,459	6.5%	8.0%		
Very Large	Orange	3,910	5,030	4,460	4,467	5.3%	6.5%		
Very Large Total		41,287	48,471	46,251	45,336	54.3%	66.4%		
Large	Fresno	3,960	4,703	5,373	4,679	5.6%	6.8%	4,679	30.0%
Large	Kern	3,302	2,524	3,528	3,118	3.7%	4.6%		
Large	Santa Clara	2,351	2,284	1,643	2,093	2.5%	3.1%	2,093	13.4%
Large	Alameda	2,421	2,477	2,257	2,385	2.9%	3.5%	2,385	15.3%
Large	San Joaquin	3,511	2,896	2,468	2,958	3.5%	4.3%		
Large	Stanislaus	1,892	1,761	1,527	1,727	2.1%	2.5%		
Large	Contra Costa	2,726	2,386	1,881	2,331	2.8%	3.4%		
Large	Tulare	1,248	1,414	1,137	1,266	1.5%	1.9%	1,266	8.1%
Large	Ventura	1,264	1,733	1,216	1,404	1.7%	2.1%		
Large	Solano	1,195	979	917	1,030	1.2%	1.5%	1,030	6.6%
Large Total		23,870	23,157	21,947	22,991	27.5%	33.6%		
Very Large and Large Total		65,157	71,628	68,198	68,328	81.8%	100.0%		
VL & L TOTAL LESS LA					52,664	63.1%			
Medium	Merced	1,255	1,409	1,227	1,297	1.6%	13.0%		
Medium	Monterey	1,375	1,286	1,166	1,276	1.5%	12.8%		
Medium	San Francisco	837	708	530	692	0.8%	6.9%		
Medium	Santa Barbara	944	833	931	903	1.1%	9.0%		
Medium	Sonoma	790	785	696	757	0.9%	7.6%		
Medium	Shasta	918	708	715	780	0.9%	7.8%		
Medium	Imperial	976	970	761	902	1.1%	9.0%		
Medium	Butte	700	736	569	668	0.8%	6.7%		
Medium	San Mateo	645	573	565	594	0.7%	5.9%		
Medium	Kings	681	706	683	690	0.8%	6.9%		
Medium	Placer	598	503	435	512	0.6%	5.1%		
Medium	Santa Cruz/San Benito	540	455	384	460	0.6%	4.6%		
Medium	Yolo	481	437	500	473	0.6%	4.7%		
Medium Total		10,740	10,109	9,162	10,004	12.0%	100.0%		

Based on FY16 Categories							Orders by County Size Category		
Size	Area	FY14	FY15	FY16	Average	Statewide Total	USING FY16	SAMPLED	% SAMPLED
Small	Humboldt	426	356	286	356	0.4%	6.9%		
Small	El Dorado	401	412	272	362	0.4%	7.0%		
Small	Ama/Alp/Cala/Tuol	370	332	321	341	0.4%	6.6%		
Small	Madera	698	681	675	685	0.8%	13.2%		
Small	Sutter	371	318	396	362	0.4%	7.0%		
Small	Mendocino	298	263	260	274	0.3%	5.3%		
Small	San Luis Obispo	420	438	428	429	0.5%	8.3%	429	43.9%
Small	Yuba	270	249	239	253	0.3%	4.9%		
Small	Tehama	376	298	284	319	0.4%	6.2%	319	32.7%
Small	Napa	312	277	264	284	0.3%	5.5%		
Small	Sierra/Nevada	211	178	198	196	0.2%	3.8%		
Small	Siskiyou/Modoc	180	205	164	183	0.2%	3.5%		
Small Total		4,333	4,007	3,787	4,042	4.8%	78.1%		
Very Small	Marin	187	171	92	150	0.2%	2.9%		
Very Small	Lake	196	249	271	239	0.3%	4.6%		
Very Small	Del Norte	179	232	180	197	0.2%	3.8%		
Very Small	Glenn	163	132	117	137	0.2%	2.7%		
Very Small	Lassen	161	161	113	145	0.2%	2.8%		
Very Small	Inyo/Mono	89	68	70	76	0.1%	1.5%		
Very Small	Plumas	69	70	35	58	0.1%	1.1%		
Very Small	Colusa	60	41	32	44	0.1%	0.9%		
Very Small	Trinity	47	30	42	40	0.0%	0.8%		
Very Small	Mariposa	53	38	48	46	0.1%	0.9%		
Very Small Total		1,204	1,192	1,000	1,132	1.4%	21.9%		
S & VS TOTAL					5,174	6.2%	100.0%		
Grand Total	All Areas	81,434	86,936	82,147	83,506	100.0%			
Regionalized LCSAs	Alpine	1	2	1	1	0.0%			
Regionalized LCSAs	Amador	80	65	66	70	0.1%	1.4%	70	7.2%
Regionalized LCSAs	Calaveras	124	107	101	111	0.1%			
Regionalized LCSAs	Inyo	66	57	61	61	0.1%			
Regionalized LCSAs	Modoc	20	33	22	25	0.0%			
Regionalized LCSAs	Mono	23	11	9	14	0.0%			
Regionalized LCSAs	Nevada	202	173	193	189	0.2%			
Regionalized LCSAs	San Benito	194	176	144	171	0.2%			
Regionalized LCSAs	Santa Cruz	346	279	240	288	0.3%			
Regionalized LCSAs	Sierra	9	5	5	6	0.0%			
Regionalized LCSAs	Siskiyou	160	172	142	158	0.2%		158	16.2%
Regionalized LCSAs	Tuolumne	165	158	153	159	0.2%			
								32,212	

Based on FY16 Categories		Orders by County Size Category								Desired sample Size = 1000		Desired Sample Size = 1200	
Size	Area	FY14	FY15	FY16	Average	Statewide Total	% SAMPLED	% IN GROUP	WEIGHT	WEIGHTED SAMPLE	Targest Sample	WEIGHTED SAMPLE	Targest Sample
Very Large	Los Angeles	10,622	17,932	18,437	15,664	18.8%	48.6%			188	225	225	270
Very Large	San Diego	4,423	4,182	3,751	4,119	4.9%	26.4%	63.1%	16.7%	167	200	200	240
Large	Fresno	3,960	4,703	5,373	4,679	5.6%	30.0%	63.1%	18.9%	189	227	227	273
Large	Santa Clara	2,351	2,284	1,643	2,093	2.5%	13.4%	63.1%	8.5%	85	102	102	122
Large	Alameda	2,421	2,477	2,257	2,385	2.9%	15.3%	63.1%	9.7%	97	116	116	139
Large	Tulare	1,248	1,414	1,137	1,266	1.5%	8.1%	63.1%	5.1%	51	62	62	74
Large	Solano	1,195	979	917	1,030	1.2%	6.6%	63.1%	4.2%	42	50	50	60
Small	San Luis Obispo	420	438	428	429	0.5%	43.9%	6.2%	2.7%	27	33	33	39
Small	Tehama	376	298	284	319	0.4%	32.7%	6.2%	2.0%	20	24	24	29
Regionalized LCSAs	Amador	80	65	66	70	0.1%	7.2%	6.2%	0.4%	4	5	5	6
Regionalized LCSAs	Siskiyou	160	172	142	158	0.2%	16.2%	6.2%	1.0%	10	12	12	14
										880	1056	1056	1267
Based on FY16 Categories										weighted sample + 20% of weighted sample			
Size	Average	Statewide Total											
VL & L TOTAL LESS LA	52,664	63.1%											
Medium Total	10,004	12.0%											
S & VS TOTAL	5,174	6.2%											

Tab 4: Initial Results

Table 1: FY08 Weighted Sampling of Cases by County													
FY16 Categories	Area	FY08	Statewide Total	Orders by County Size Category				Percent Sampled		WEIGHTED	Targeted Sample		
				USING FY08	PREV. REPORT	SAMPLED				SAMPLE	20% Oversample	Frequency	% of Total
Very Large	Los Angeles	20,823	20.9%	27.7%	28.5%	20,823	51.2%	overall	209	42	251	20.9%	
Very Large	San Diego	3,918	3.9%	5.2%	5.4%	3,918	27.0%	among I and VI	147	29	177	14.7%	
Large	Fresno	5,246	5.3%	7.0%	7.2%	5,246	36.2%	among I and VI	197	39	236	19.7%	
Large	Santa Clara	3,234	3.2%	4.3%	4.4%	3,234	22.3%	among I and VI	121	24	146	12.1%	
Large	Alameda	2,106	2.1%	2.8%	2.9%	2,106	14.5%	among I and VI	79	16	95	7.9%	
Large	Tulare	2,211	2.2%	2.9%	3.0%	2,211	49.3%	among m	75	15	89	7.5%	
Large	Solano	1,319	1.3%	8.7%		1,319	29.4%	among m	44	9	53	4.4%	
Small	San Luis Obispo	959	1.0%	10.1%		959	21.4%	among m	32	6	39	3.2%	
Small	Tehama	495	0.5%	5.2%		495	56.3%	among s and vs	54	11	64	5.4%	
Regionalized LCSAs	Amador	149	0.1%			149	17.0%	among s and vs	16	3	19	1.6%	
Regionalized LCSAs	Siskiyou	235	0.2%			235	26.7%	among s and vs	25	5	31	2.5%	
									1,000	200	1,200	100.0%	
VL & L TOTAL LESS LA	54,328	54.5%											
Medium Total	15,097	15.1%											
S & VS TOTAL	9,485	9.5%											
Grand Total	99,733	100.0%											

Table 2: 2016 Weighted Sampling of Cases by County							Sample Size = 1000			Sample Size = 1200					
Based on FY16 Categories							Orders by County Size Category			Targeted Sample					
Size	Area	FY14	FY15	FY16	Average	Statewide	% SAMPLED	% IN GROUP	WEIGHT	WEIGHTED SAMPLE	Frequency	% of Total	WEIGHTED SAMPLE	Frequency	% of Total
Very Large	Los Angeles	10,622	17,932	18,437	15,664	18.8%	48.6%			188	225	21.3%	225	270	21.3%
Very Large	San Diego	4,423	4,182	3,751	4,119	4.9%	26.4%	63.1%	16.7%	167	200	19.0%	200	240	19.0%
Large	Fresno	3,960	4,703	5,373	4,679	5.6%	30.0%	63.1%	18.9%	189	227	21.5%	227	273	21.5%
Large	Santa Clara	2,351	2,284	1,643	2,093	2.5%	13.4%	63.1%	8.5%	85	102	9.6%	102	122	9.6%
Large	Alameda	2,421	2,477	2,257	2,385	2.9%	15.3%	63.1%	9.7%	97	116	11.0%	116	139	11.0%
Large	Tulare	1,248	1,414	1,137	1,266	1.5%	8.1%	63.1%	5.1%	51	62	5.8%	62	74	5.8%
Large	Solano	1,195	979	917	1,030	1.2%	6.6%	63.1%	4.2%	42	50	4.7%	50	60	4.7%
Small	San Luis Obispo	420	438	428	429	0.5%	43.9%	6.2%	2.7%	27	33	3.1%	33	39	3.1%
Small	Tehama	376	298	284	319	0.4%	32.7%	6.2%	2.0%	20	24	2.3%	24	29	2.3%
Regionalized LCSAs	Amador	80	65	66	70	0.1%	7.2%	6.2%	0.4%	4	5	0.5%	5	6	0.5%
Regionalized LCSAs	Siskiyou	160	172	142	158	0.2%	16.2%	6.2%	1.0%	10	12	1.1%	12	14	1.1%
										880	1,056	100.0%	1056	1267	100.0%
Based on FY16 Categories															
Size	Average	Statewide Total													
VL & L TOTAL LESS LA	52,664	63.1%													
Medium Total	10,004	12.0%													
S & VS TOTAL	5,174	6.2%													
copied from update															

Tab 5: Revised Recommendation

Based on FY16 Categories						Orders by County Size Category						
Size	Area	FY14	FY15	FY16	Average	Statewide Total	% SAMPLED	% IN GROUP	WEIGHT	WEIGHTED SAMPLE	20% Increase	Adjusted
Very Large	Los Angeles	10,622	17,932	18,437	15,664	18.80%	48.60%	63.10%	30.67%	307	368	344
Very Large	San Diego	4,423	4,182	3,751	4,119	4.90%	26.40%	63.10%	16.68%	167	200	200
Large	Fresno	3,960	4,703	5,373	4,679	5.60%	30.00%	63.10%	18.95%	189	227	228
Large	Santa Clara	2,351	2,284	1,643	2,093	2.50%	13.40%	63.10%	8.48%	85	102	102
Large	Alameda	2,421	2,477	2,257	2,385	2.90%	15.30%	63.10%	9.66%	97	116	116
Large	Tulare	1,248	1,414	1,137	1,266	1.50%	8.10%	63.10%	5.13%	51	62	62
Large	Solano	1,195	979	917	1,030	1.20%	6.60%	63.10%	4.17%	42	50	50
Small	San Luis Obispo	420	438	428	429	0.50%	43.90%	6.20%	2.72%	27	33	34
Small	Tehama	376	298	284	319	0.40%	32.70%	6.20%	2.03%	20	24	24
Regionalized LCSAs	Amador	80	65	66	70	0.10%	7.20%	6.20%	0.45%	4	5	20
Regionalized LCSAs	Siskiyou	160	172	142	158	0.20%	16.20%	6.20%	1.00%	10	12	20
		27,256	34,944	34,435	32,212	39%	249%	466%	100%	999	1,199	1,200

Chapter F. Focus Groups

1. Executive Summary

Between March 29 and May 10, 2017, we conducted three focused discussion groups, each with a different audience of child support stakeholders: first with Department of Child Support Services (DCSS) staff and representatives of the 11 study-county local child support agencies (LCSAs), then with child support commissioners from those study counties, and finally with advocates and interested parties.

We structured each of these discussions in a similar format. The sessions lasted for two hours. Two facilitators attended each session to lead participants through a series of prepared questions, allowing time for clarification, amplification, and follow-up as needed. We asked participants to abide by a set of ground rules, such as respecting each other's opinions, avoiding side conversations, respecting confidentiality, and the like. A professional transcription company, Neal R. Gross & Co., Inc., recorded each session, though we assured participants that the transcripts would be used only to ensure accuracy and that their views would remain confidential unless they specifically requested otherwise.

We developed a list of participants to invite to these sessions. When possible, we scheduled these sessions around previously planned meetings to increase the likelihood of invitees' participation and to minimize travel costs.

The questions in each session focused on a limited number of topics: the use of zero and minimum orders; the frequency of and most common reasons for guideline deviations; imputation of income; hardship deductions, self-support reserves, and low-income adjustments; and whether the guideline calculation should account for the differences in cost of living in different geographic areas of the state. We also asked an open-ended question to elicit advice about how child support is calculated.

Not surprisingly, the participants' views on these issues varied widely, both within and across the three groups.

- There was general agreement that if a zero-dollar order was appropriate, it should be time-limited, and tied to a plan for the noncustodial parent (NCP) to improve his or her circumstances. That plan should be customized based on the NCP's needs, and address the specific barriers that prevent the NCP from being able to pay child support. Some prefer minimum orders to zero orders, even for extremely low-income individuals.
- There is a perception that California's guidelines are not uniformly applied, and many support orders reflect significant deviations from the guideline. On the other hand,

commissioners appreciate their ability to deviate from the guideline so they can set support orders that they would consider to be fairer than the guideline amount would dictate.

- There are a number of factors that contribute to the difficulty of attributing income appropriately. The commissioners, for example, underscored that there is a requirement to have evidence of the ability to earn money and sometimes no evidence is presented. Still, courts often impute minimum-wage income, either full time or part time, often based on little evidence. Also, participants argue that ability to earn money is not enough; opportunity to earn is necessary as well.

More detail on each of these topics follows in the sections below.

After each discussion group, we sent a follow-up survey to participants to ask about their views of how the session went and whether they had any other advice to offer regarding the discussion group or the guideline. In general, participants were pleased to be part of the discussions and some wished that more time had been allotted for discussion. The survey results are summarized below and included in Appendix D in Section 10.

2. Focus Group 1: LCSA and DCSS Representatives

The first focus group held for the 2017 California guideline review was with representatives from the 11 study-county LCSAs, along with representatives from California DCSS. The goal of this focus group was to gather insights and input regarding the current California guideline, to get a sense of how frequent users felt about the calculator. The focus group was held on Wednesday, March 29, from 1 to 3 p.m., in Fairfield (Solano County). We selected the date and location because Solano was hosting a regional attorneys' forum starting March 30, and we hoped this would lessen travel time and cost for those participants who would be participating in both the attorney forum and the focus group.

2.1 Identifying the Participants

For a successful focus group, we asked that participants be familiar with the California guideline and calculator, as well as have an understanding of some of the policy implications behind how the child support guideline works.

We determined that the best way to solicit LCSA representatives from the 11 study counties was to simply reach out to the LCSA directors, explain the project and the specific intent of the focus group, and ask each to designate a representative from their organization to participate. We composed an e-mail to go out under Department of Child Support Services Director Alisha Griffin's signature. The response was very positive; each of the 11 LCSAs sent at least one

representative, and San Diego County sent two. A total of 12 LCSA representatives participated in the focus group.

In addition to the LCSA representatives, seven DCSS staff participated. Attendees represented a broad spectrum of DCSS staff, including members from their policy, legal, and technical teams.

One observer attended on behalf of the Judicial Council.

2.2 Preparing for the Focus Group

We sent several e-mails to the LCSA directors and the LCSA representatives in advance of the focus group. Some of the e-mails provided logistics such as date, time, location, hotels in the area, etc. Other e-mails included more information about the project itself and how the focus group input would fit into the larger guideline review project. We also encouraged participants to talk to others in their offices about the guideline study and to gather input, and to gather data they may maintain locally regarding things like how often their courts deviate from the guideline. The first e-mail went out approximately two and a half weeks before the focus group. We sent a final reminder on March 27.

The focus group proceedings were recorded, which was done to ensure this report accurately reflects the focus group discussion. We engaged the services of Neal R. Gross & Co., Inc., to record the proceedings. They produced both an electronic record and a transcription of the meeting. Those files have been provided to the Judicial Council separately from this document.

2.3 The Focus Group

As participants arrived, we asked them to sign in, and then to respond to a written survey. We used the survey as a means to help the participants start thinking about California's child support guideline. The results of that survey are included in Appendix B in Section 7. Responses to some of the questions reflected fairly uniform opinions within the group. For example, all 18 respondents either strongly agreed or agreed with the first statement (statement 1.a.): "The guideline assumes parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life." Other questions produced less consistent responses. Statement 1.h. posited: "The guideline considers that the financial needs of the children should be met through private financial resources as much as possible." Eight respondents agreed or agreed strongly, five were undecided, and four disagreed or disagreed strongly. Regarding statement 1.j., "The guideline seeks to encourage fair and efficient settlements of conflicts between parents and seeks to minimize the need for litigation," only four respondents agreed or strongly agreed, while 12 disagreed or strongly disagreed. Many of the themes reflected in the survey responses also featured in the group's discussion.

Once the group had assembled, we began with introductions. We provided a project background and reviewed the meeting ground rules. We emphasized that we neither needed nor intended for

the group to arrive at consensus; what we did need was sharing all opinions, experience, and input for the meeting to be successful. As part of the introduction, we asked participants to let the group know how long they had been in the child support program. The group reported 365 years of total experience in the IV-D program.

As an icebreaker, and to get a sense of opinions from the group, we asked participants to come up with one word that they thought characterized California's current child support guideline. The responses were related to four broad themes: the guidelines are burdensome and don't work for everyone; they are complex and difficult to understand; the guidelines can be perceived as unrealistic and unfair; but the guidelines do provide a standard with generally predictable outcomes, though those outcomes depend on how the guideline is being applied. Those themes were iterated in different ways throughout the balance of the focus group meeting.

We had prepared a list of questions we would use to guide the focus group discussion (see Appendix C in Section 9). We assumed, however, that we probably wouldn't have time to get through all of the questions during the meeting. We also assumed that through discussion, we would elicit most of the information regardless of whether we actually asked the questions as planned. Both assumptions were correct. We also didn't want to be so wedded to our questions that we missed important input from the child support professionals in the room; we wanted to hear from the participants what their concerns and challenges were with regard to the California child support guidelines. The group was very forthcoming and participated openly and freely.

2.3.1 Low-Income Obligors

Two major topics of interest for the group were zero orders and minimum orders. The overarching questions were: Were there times when a zero-dollar order was appropriate? And conversely: Should an NCP be ordered to pay some minimal amount of support, regardless of his or her circumstances?

Current California statutes provide for zero-dollar orders in various circumstances, including long-term incarceration, permanent disability, involuntary commitment to certain treatment programs, and so on. Focus group participants were asked to think about other NCP circumstances that might warrant a zero-dollar order. There were varying opinions, but most agreed that a zero-dollar order should be time limited, and there should be some expectation that the NCP would take specific actions to improve his or her circumstances so that the NCP could support his or her children in the future. Participants also generally agreed that there needs to be a case-by-case determination regarding whether a zero-dollar order is truly appropriate.

Specific ideas regarding when an NCP should be granted a zero-dollar order are detailed below.

- ***The NCP is homeless, has addiction issues, and no consistent work history.*** Cases where we are never going to get a payment from the NCP. The NCP is in and out of jail,

won't go to rehab, and will probably never have a job. These are uncollectible cases. However, there was also the sentiment that we may not want to "give up on people" completely. Someone who we see as having few, if any, prospects for the future may have an epiphany and want to become engaged with his or her children. The challenge is figuring out what that hook is to get them engaged, how long to wait for them to get engaged, and at what point we cut our losses and close the case. Are there cases where we will truly have no expectation of ever getting a dollar order? If there are, maybe we close the case rather than setting a zero-dollar order.

- ***Family reunification services are being provided through juvenile court.*** Establishing and collecting a child support order while the family is working toward reunification is often seen as a barrier to those efforts, taking money out of a household where those funds could be used instead to support activities under a reunification plan. However, one participant indicated that juvenile court judges sometimes look favorably on parents paying support for their children during reunification efforts. It was seen as positive evidence that the family or parent is committed to their children. And the child support money can be funneled back to the family upon reunification, rather than retained for recoupment of foster care or juvenile court expenditures.
- ***An NCP who has entered voluntary (as opposed to just involuntary) treatment for an addiction or other health issue.*** One participant mentioned an NCP who quit a high-paying job to check into the Betty Ford Clinic for marijuana addiction. Upon completing treatment, he couldn't find work in his previous career, so the children still are not receiving support.
- ***An NCP who is working toward a GED or high school diploma.*** Child support should not be a barrier for someone trying to finish school. An NCP shouldn't have to find a job to pay support instead of finishing high school or obtaining a GED. There was some concern expressed regarding how the custodial party (CP) might react: "He gets a chance to get his GED and doesn't have to pay support? I work two minimum wage jobs, but he gets a zero order."
- ***Cases where the NCP has zero income.*** The child support worker needs to verify that the NCP truly has no income. Words of caution were offered about looking only at officially reported income. There are many people who work in the underground economy and do have the means to support themselves and their children, even if only nominally.
- ***Cases where a low-income NCP usually works, but is temporarily out of a job,*** has no source of income (like unemployment benefits), and is trying to get back on his or her feet.
- ***Cases where this is a large disparity between the NCP and CP's income or wealth.*** There are instances where the CP out-earns the NCP significantly, and the NCP may even be struggling to meet his or her own subsistence needs. This may be an instance where a

zero-dollar order is warranted. Sometimes in these circumstances, because of timeshare, the CP may actually be the obligor. This may be another instance where a zero-dollar order is warranted, depending on all of the factors in the case.

As mentioned earlier, there was general agreement that if a zero-dollar order was appropriate, it should be time-limited, and tied to a plan for the NCP to improve his or her circumstances. That plan should be customized based on the NCP's needs, and address the specific barriers that prevent the NCP from being able to pay child support. Zero-dollar orders need to be monitored, they felt, and there should be a mechanism so that the order can "spring back" to a dollar order when the NCP's circumstances change.

There were several issues raised for consideration. Under current statute, the child support program is precluded from ordering the NCP to participate in activities like a "seek work" unless there is child support owed. So if the first order obtained is a zero-dollar order, there currently is no way legally to require the NCP to take any action. The statutes should be reviewed and possibly changed, to accommodate this vision of a time-limited, conditional zero-dollar order.

There is also a need to assess community resources that would be available to support a customized plan for an NCP. If there are no appropriate job training opportunities where the NCP lives, for example, including job training in an NCP's plan would be futile. The group also thought that if the agency's approach to zero orders was going to change and expand, there would be a need for outreach and education for CPs regarding when and why zero-dollar orders would be warranted.

The group also considered whether a minimum-dollar order was a better option than a zero-dollar order. The current California child support guideline does not provide for a standard minimum order amount—such as \$25 a month—basing support instead on both parents' income, as well as parenting time. Most of the participants thought there may be a place for both zero-dollar orders and minimum orders.

- Some felt a minimum order was symbolic, and supported the agency's belief that both parents should contribute to a child's support. Others thought a minimum order was more than symbolic. A minimum order would be positive because it could get the NCP involved in the child support program, and with his or her children. One participant believed that sometimes we discount the fact that there are people who want to be involved and contribute what they can, to show the other parent and their children that they are participating, even though they can't do a lot.
- There are instances where the NCP is working under the table, or may be undocumented and thus disconnected from the formal labor market. The agency may not be able to get more from the NCP than a minimum amount, but even that is still getting something to the children, and keeps the NCP connected to the program and the children.

- There was discussion regarding the new federal rule, and the need to consider the NCP's subsistence needs when establishing an order. One person thought New York's model might be worth considering. In New York, if the NCP's income is below the state's subsistence level (approximately \$1,600 as of this writing) the agency establishes an order for \$25 monthly child support. This is rebuttable, with the opportunity for the court to deviate depending on the circumstances. If the NCP's income is above the subsistence level, but below the federal poverty level (FPL), the agency establishes a \$50 order—again, rebuttable. If the NCP's income is above the FPL, the agency seeks a guideline order.
- Some thought a minimum order was better than a zero order because of the various interfaces and triggers in the automated system. With a minimum order, the system will continue to look for address and employment records, and could auto-initiate wage withholding. This would alert the child support worker to review the case and take appropriate actions. Child support workers have to be more proactive in monitoring zero-dollar orders.
- The group was also interested in knowing to what extent NCPs complied with minimum orders. Participants thought that there needed to be a robust, rigorous collectability study done both for California and at the national level. To paraphrase one participant, if the collection rate is low on minimum orders, however much we may want to be the moral police with regard to the obligation people should have to their families, it matters what we can collect. The orders need to be right-sized.

2.3.2 Deviations from Guidelines

There is a fairly common perception that California's guideline is not uniformly applied, and many support orders reflect significant deviations from the guideline. We asked the group to talk about their experience working with the IV-D commissioners, and how often and under what circumstances the courts deviate from guideline support. There was a range of scenarios offered as common reasons for deviations.

- Some deviations were tied to low-income parents. One LCSA representative explained that their commissioner deviates in instances where the support amount reduces the NCP's income to below the FPL. Another indicated that their commissioner deviates when he or she sees that even the lowest end of the low-income range is going to be too high, or in instances where the NCP is supporting children from multiple relationships. Another participant indicated that their commissioner adheres to the guideline amount unless he sees it would result in a financial hardship.
- Several participants indicated that their commissioner deviates based on what feels to them like a "whim"—in both high-income and low-income cases, the commissioner usually deviates, and is unpredictable in terms of the reason for deviating.

- Participants also noted that a commissioner can get creative in the data input into the calculator. For example, applying hardship deductions (including granting half- and quarter-hardships) or adjusting the timeshare percentages are ways the guideline child support amount can be affected without technically deviating from a guideline order. One participant believed that if there was no timeshare, the commissioner should not be allowed to deviate from the guideline. Another participant suggested that some of the creative use of the calculator is because the guideline is rigid, and the commissioners can't necessarily find a reason for deviating in the best interest of the child.
- Several participants indicated their commissioners deviated from guideline based on the CP's circumstances. If the CP is a caretaker/relative, their income is not considered in the calculation, so the commissioner sometimes deviates based on the household's circumstances. Another common reason for deviation is when the CP is receiving a variety of benefits, such as SSI for a child. If the NCP is low income, the commissioner will frequently deviate in this scenario. Additionally, sometimes the CP is aided and the NCP is low income such that child support would not be sufficient for the CP to become ineligible for TANF benefits. In these instances, the commissioner deviates to a \$50 order, the amount that will be passed through to the TANF family.
- There was wide agreement that there are parts of California with extraordinarily high costs of living. The group didn't think the guideline calculation accounted for the fact that paying basic rent could reduce an NCP to poverty. They indicated their commissioners would sometimes use the cost of living as a reason to deviate from guidelines—to enable the NCP to afford a basic lifestyle such that he or she could remain involved in the child's life.
- Some in the group believed that there should be regional guidelines, to account for the disparate costs of living in California. They acknowledged that it becomes complicated when the CP and NCP live in different areas of California, or move between areas frequently. Some expressed concern about unintended consequences, and wondered if individuals would relocate to take advantage of more favorable guideline calculations, based on their circumstances.
- One participant acknowledged the need for weighing both income and expenses, but thought there need to be standards to ensure the child is supported.
- One individual indicated that their commissioner does not show the CP and NCP what the guideline support amount was. Instead, the commissioner asks the parties how much a reasonable support amount would be, given their incomes and living situations. The parties frequently come to agreement on the amount, which usually represents a deviation from guidelines. The commissioner deviates in these cases based on the best interests of the child, as determined by the CP and NCP.

- There was some concern expressed that the adherence to and deviation from the guideline is commissioner-driven: “You might have a reasonable commissioner this year, but who knows what will happen when a new commissioner is hired?”

2.3.3 *The Low-Income Adjustment (LIA)*

California’s guideline includes a low-income adjustment (LIA), intended to recognize the NCP’s need to meet his or her own living expenses. The LIA was originally set at \$1,000. It was later increased to \$1,500 and then adjusted annually based on cost of living data. At the time of the focus group discussion, the increased LIA is set to sunset at the end of 2017 and revert to \$1,000. Subsequently, the sunset date was extended to December 2021.

The DCSS guideline calculator (as opposed to the public calculator) automatically calculates and applies the LIA in appropriate cases. This is also the case when the child support worker presumes income at full-time, minimum wage. Users of alternative calculators, such as DissoMaster, must understand the LIA and manually include it in the calculation. Family Code section 4055(c) currently provides that the child support calculator shall not default affirmatively or negatively on whether a low income adjustment is to be applied. Historically, the LIA is applied less often in non-IV-D cases than it is in IV-D cases. Participants believe that the family law judges do not understand the LIA as well as their counterparts in the IV-D courts do, leading to its irregular use in non-IV-D cases. None of the participants expressed support for the LIA reverting to \$1,000. They came up with factors they believe should be considered in terms of resetting the LIA.

- In light of the new federal regulations, California needs to define what subsistence is. There has been no in-depth analysis done to determine whether the LIA as it is applied covers an NCP’s basic needs.
- Regional differences in cost of living could be addressed through a defined subsistence need. The subsistence level could be determined by region and applied based on where the NCP lives.
- The number of children an NCP has in his or her household should be considered somewhere in the subsistence calculation.
- There was a general sentiment that somewhere in the guideline calculation—whether through a deviation or the LIA—the guideline needs to account for reasonable, actual living expenses, and provide more guidance to the courts to help them make reasonable determinations.
- One participant stated that identifying the “floor” for subsistence needs to be done with consideration. To paraphrase the participant, the average rents are irrelevant to poor people. Average rents are paid by higher-income people. Low-income people have to rent rooms, or double up, or continue to live with their parents. He believed that “subsistence

needs” may need to be flexible, tied to an individual’s actual living arrangements and circumstances.

2.3.4 Income

California’s guideline relies heavily on entering accurate income for both parents. The calculator uses net income in the calculation, thus, as one participant estimated, about 80 percent of the data needed by the guideline calculator is net disposable income. The group talked about income and made the following observations.

- Individuals’ incomes seem to fluctuate a lot more than in the past. Unless someone is a government worker, hours fluctuate widely: “We generally try to take a full year of wages into consideration, but we are always playing catch-up. There will be cases that charge too much and have arrears, and cases that are charging too little, and the kids miss out.”
- One person suggested basing support on a percentage of income rather than a sum certain monthly amount. Income varies month to month so it would be good to base child support on actual income. Though the group agreed it would be a good approach, they thought enforcement and accounting functions would quickly become complicated and unwieldy.
- The group agreed that income from self-employment is the most difficult to calculate. Many who are self-employed are “handyman” types who don’t keep records and can only estimate their income. And for the majority of them, their income fluctuates widely, month to month. Other self-employed appear to have little to no income on paper—according to their tax returns, for example; yet they manage to keep current on their mortgage and car payments. The group noted that there was a need for investigators to “really dig into” self-employment income, especially for those who appear to be living above their documented means.
- There has been an increase in terms of people working multiple jobs with fluctuating hours. There are also many people working under multiple Social Security numbers. This makes it difficult to calculate actual income.

The group also discussed the imputation of income. Based on their informal polling, participants believed that about 90 percent of the time, the courts use imputation for minimum wage cases—for both the CP and NCP—rather than using imputation for high-wage earners. One participant indicated their court imputes at half-time minimum wage, if the individual is physically and mentally able to work but isn’t working. Another stated that their commissioner generally imputes income at between 20 and 32 hours a week at minimum wage, depending on the individual’s skill level, how long he or she has been unemployed, and other relevant factors. Some courts were reported to use imputation as a threat: “If you don’t find work by this date, or

if you don't actively seek work, I'll impute income at [some level]." Generally, it was also reported as rare for there to be a "bad faith" ruling before the commissioner imputes income.

2.3.5 The Guideline Calculator and Calculations

We asked the group to reflect on the guideline calculation, and the calculator: How easy was it to explain guideline results to parents?

There was a shared opinion that it takes time to explain the calculator, even in the easiest cases. It is complex. If a child support worker takes the opportunity to explain the inputs and to walk clients through the screens and fields, it helps clients' perceptions about the fairness of the calculator.

Several focus group participants were DCSS employees charged with updating the calculator when changes were needed. They would like to see the calculator simplified, stating they spent an inordinate amount of time on maintenance tasks: "California's obsession with taxes does us in," shared one. The guideline calculation uses very intricate, interrelated data to calculate net disposable income. That data, such as the federal and state tax tables, constantly changes. A simplified calculator would be easier to maintain.

There was also a general sense from the group that the issue isn't explaining the calculator and the inputs, but instead that the calculation results are the issue. To paraphrase one participant, the reality is when NCPs see the numbers, there is a gut-churning reaction. How are they going to live after the support is taken out of their paychecks? Some likened it to sticker shock, and that NCPs generally perceive the support amount as too high.

There was also some concern that the calculator was unfair in terms of how the income bands are used. Higher-income parents pay a lower percentage of their income as support than do lower-income parents. They questioned whether it was fair that child support is calculated at 12 percent of a low-income obligor's income, but at 9 percent or 10 percent for a higher-wage earner.

In closing, one participant said, "There are times when we run the calculator absolutely correctly, but we know they can't afford it."

2.4 Focus Group Evaluation

Approximately a week after the focus group convened, we sent a survey to all 20 DCSS/LCSA participants. A copy of our survey questions and the survey results is provided in Appendix D in Section 10. We also sent out periodic reminders. In the end, 15 of the 20 participants completed the survey. In general, the group thought it was a good meeting; 14 indicated they believed this focus group should be included in future reviews. The majority thought the meeting should have been longer; two hours was not enough time. Many respondents indicated they would have liked more information in advance, including more data from the case review. (We were unable to

provide the group with a robust set of data at the meeting because of delays in the data collection effort.) This was the first time the guideline review included a DCSS/LCSA focus group. We asked the group to provide input regarding the meeting, and several participants included ways to improve the process in future studies. Many LCSA and DCSS staff are guideline “super users” with many years of deep and varied experience working with the guideline. In future studies, it might be good to identify a core group of DCSS and LCSA representatives as consultants to the guideline review project. This group could assist with crafting the focus group structure, or providing deeper insight into the data, for example.

3. Focus Group 2: IV-D Commissioners

The second focus group for the 2017 guideline review was with superior court commissioners from the study counties. Again, the intent was to gather their insights into how the current guideline users felt about the calculator and to learn about the issues they confronted as they applied the guideline to the cases with which they dealt. The focus group was held on Wednesday, April 5, 2017, from 1 to 3 p.m., at the Sheraton Gateway Hotel in Los Angeles. We selected this date, time, and location because many of the commissioners would be there attending the AB 1058 Child Support Commissioners’ Roundtable, held in conjunction with the 2017 Family Law Education Programs sponsored by the Judicial Council’s Center for Children, Families & the Courts. We hoped this would increase the probability that they could attend the discussion, while minimizing the cost and inconvenience of their attending.

3.1 Identifying the Participants

As a first step, Judicial Council staff sent an e-mail to a select group of commissioners on March 17, 2017, advising them that we would like to meet with them on April 5 in Los Angeles. We sent a follow-up invitation, signed by members of the Center for the Support of Families team, which included more information about the guideline review project activities in general as well as more information about the issues we wanted the commissioners to think about prior to the discussion.

Initially, we got very few responses to our invitations. Several of the commissioners were either leaving their positions, were new to their positions, or were unavailable. In the end, eight commissioners attended. In addition, three people observed the meeting on behalf of the Judicial Council.

3.2 Preparing for the Focus Group

For this group, we did not ask participants to do a lot of thinking about the guideline in advance. Our communications with them were generally about logistics for the meeting, including a slight change in the time of the session to accommodate one of the commissioners who needed to leave early.

The focus group proceedings were recorded to ensure that this report accurately reflects the discussion. We again engaged Neal R. Gross & Co., Inc. to record the proceedings and they have produced both an electronic record and a transcription of the meeting that have been provided to the Judicial Council separately.

3.3 The Focus Group

As the participants arrived, we asked them to sign in, but we did not ask them to respond to the written survey we used in the previous focus group. We sent those questions after the session, as discussed below. (The results of their post-session survey are included in Appendix B in Section 7.)

Once the group assembled, we began with introductions and then asked each of them to choose one word to describe the current California guideline. These words ranged from “predictable” to “random,” as well as “inflexible,” “scary,” “unfair,” “oppressive,” and “garbage-in, garbage-out.” The next two hours of discussion shed light on why they characterized the guideline in those ways.

3.3.1 Zero Orders

We began by asking the commissioners to discuss the circumstance under which they most frequently granted zero orders. According to this group, those happen most often under the following circumstances:

- Custody is shared equally and income is similar for both parties, so the parties agree that neither owes money to the other.
- The NCP is incarcerated.
- The NCP is receiving aid or disability Supplemental Security Income (SSI).
- Stipulations.
- The parties have made “side agreements” that they are happy with and don’t want altered. (However, they noted that sometimes these side agreements do not work out and they see the couple back in court. And not all such side agreements are for zero orders.)
- The NCP doesn’t appear in court and there is no evidence presented regarding the income of the NCP. Rather than imputing income, a zero order is entered because there is no evidence to establish more.
- Sometimes the father is the CP and doesn’t want to take money from the children’s mother.

The commissioners underscored that there is a requirement to have evidence of the ability to earn money and sometimes no evidence is presented. One participant stated, “The law is you have got to present the evidence of the ability to earn. You can’t just pull it out of a hat.”

The commissioners talked at some length about the difference between a zero order and a reserved order. A zero order explicitly provides that the obligor shall pay nothing for support. A reserved order is silent with respect to a support amount, but provides that the court maintains (or reserves) jurisdiction over the issue of support and authority to enter an order at a future time, sometimes retroactive to the date the reserved order is made (for example, when evidence of earnings may turn up and is presented to the court). Reserved orders are not recognized as established support orders for federal performance measurement purposes. For this reason, some commissioners noted that their LCSAs press for the entry of a zero order rather than a reserved order. However, depending on circumstances (for example, a belief that the NCP has ability that simply has not been proven with evidence at the time of hearing), the commissioners want to reserve the right to make an order in the future, but for the present will not set one.

3.3.2 Imputing Income

We talked about the circumstances under which the commissioners might impute income for an NCP. For example, sometimes there is a work history but the NCP recently quit his or her job. In this case, they might impute the amount of income the NCP earned previously. Other times, especially for low-income NCPs, they might agree to an imputed minimum-wage income rather than having to come back to court regularly to demonstrate income. However, as one commissioner pointed out, just because the NCP was making a certain amount in the past, that might not mean there is an opportunity to make that amount now. Commissioners consider opportunity to earn as well. For example, if someone has been incarcerated, that would affect an ability to earn the same income as before incarceration.

3.3.3 Deviations from the Guideline

The group spent a lot of time discussing the circumstances under which the commissioners felt comfortable deviating from the guideline amounts in circumstances when applying the guideline resulted in outcomes they perceived as unfair or unduly burdensome to one parent or the other. The most common reason given for deviating from the guideline was to avoid situations where paying the guideline amount would cause the NCP to fall below the poverty level. The commissioners reported looking at both gross and net income and, if child support would cause an NCP to fall below the poverty level in either circumstance, they will likely deviate from the guideline amount in setting the order.

In other cases, when the NCP is the low earner and the CP is the higher earner, commissioners may be reluctant to require the low earner (who has little time with the child) to pay the CP the guideline amount because they don’t feel that the NCP can handle the amount, even if the NCP is still above the poverty line. This is especially true in high cost-of-living areas.

One commissioner noted the two most common occurrences in her courtroom that call for deviations from the guideline. The first involves situations in which application of the guideline would result in the NCP falling “significantly below poverty.” The other involves circumstances where application of the guideline leaves both parents below poverty level (as another commissioner suggested, “equally suffering”). In these situations, the commissioner deviates by balancing the poverty levels to keep each parent more or less at parity below poverty level. The commissioner referenced keeping a list of federal poverty levels for various household sizes to guide in figuring how much to deviate.

Another commissioner noted a typical situation calling for deviation that occurs almost weekly in his courtroom. The situation involves high-earner NCPs who also have high timeshare percentages. By contrast, the CP is often receiving cash aid, with the result that the guideline would call for a “really high” support amount. In these instances, the commissioner deviates using a section of the guideline that allows a deviation to lower support amounts for a high-earning, high-timeshare NCP.

When another bench officer questioned whether deviating from the guideline in these situations keeps CPs dependent on public assistance, the commissioner responded that CPs are usually able to leave aid notwithstanding the deviation. The commissioner’s rationale for according high earner NCPs a financial break is that their obligations would otherwise be even higher only because the aided CP’s income is considered as zero in the guideline calculation.

One commissioner addressed how he deals with deviations in cases of high-income earners with high timeshare percentages. He evaluates the testimony to determine which of the parents is expending funds for children’s clothing, school supplies, field trips, and the like. He described those cases where the CP is aided and the NCP’s obligation is applied to reimburse public welfare expenditures rather than directly to the needs of the children as “a real easy one for me.” He expressed a preference in such cases “to keep more money within the households for the kids by deviating and having a lower support order so that the [higher earner/high timeshare NCP’s] money can be utilized for the support of the kids within the household, where they spend half the time or 40 percent of the time.”

The commissioner whose one-word description of the guideline had been “unfair” expanded on that point this way:

If you are a low-wage earner and you have three kids, you get hit hard. If you are a high-wage earner and you have got one kid, you get hit hard. And if you are a middle-wage earner and the other side has no income, you get hit hard. So, the way the guideline is set up is to increase the lifestyle in the custodial home and

that is a good policy. . . . But I think the guideline doesn't take into account the need to be a surviving working person in California.

This thought was amplified by another commissioner, who added, "And motivated to work." Still another commissioner added, "And motivated to work and motivated to pay."

On top of supporting the policy of increasing the lifestyle in the custodial home, the first commissioner went on to say that she is also interested in ensuring that the children get what they need, including the opportunity to spend time with the NCP. If that means that the support order needs to be lower to ensure the NCP can afford to exercise visitation, the commissioner indicated that she would be open to deviating from the guideline. Another commissioner echoed the point that deviating from the guideline can be important in preserving "quality of life" circumstances for NCPs and their children.

Sometimes deviations from the guideline occur when there is a stipulation between the parents. Couples agree to a number that is different than it would have been under the guideline calculation. They prefer having that flexibility. When one parent needs something from the other parent, the parent would rather ask for it then.

Several commissioners pointed to differences among LCSAs when it comes to their policies related to deviating from the guideline when a CP is aided. Some LCSAs oppose deviating and will "fight to the tooth," in one commissioner's words, to resist court attempts to deviate. This is so even when both parents are agreeable. These LCSAs point to the fact that aided CPs have assigned their rights to support to the state and so have no standing in court to stipulate to the court's deviating. Other LCSAs, by contrast, are not so adamant, if at all, in opposing deviation: "They have different methods of basically saying go ahead and do something because we don't care."

A commissioner who had experience hearing cases in both an AB 1058 court and in a regular family law court noted that deviation occurred more frequently in the former than in the latter. She attributed this to the fact that in LCSA cases the parties are likelier to be close to the poverty level. "I was more comfortable deviating in 1058 cases because you have more information about the circumstances . . . when you have two middle class people, it's harder to deviate." She attributed this is in part to LCSAs having access to reliable information about both parents' financial circumstances that unrepresented family law litigants generally do not have. She acknowledged that in a family law courtroom she is more likely to deviate from guidelines when both parties are represented by counsel.

This commissioner also observed that the "family law bench [*sic*] frequently don't even know that they can deviate, that it is within their discretion to deviate So, I think there is a lack of

knowledge out there in family law. They have been taught you adopt the guidelines and you have nothing else.”

One commissioner said, “I think we don’t often deviate because the whole idea around guidelines is to have certainty. But on the other hand, we are human and we have to deviate from time to time. I don’t do it that often but when I do, I feel really good about it. I don’t know why.”

Another commissioner described the following approach to deviating from the guideline:

I always look at the income available after support and then I look at the income and expense declarations and I see their expenses and I say, are these reasonable expenses? And I look at the income after support and ... there is no way they are going to be able to meet their needs with what’s left on either. And then I look at both sides and try to figure out where I have some wiggle room and then make a determination whether or not I need to deviate.

3.3.4 *Low-Income Adjustment vs. Self-Support Reserve*

The question was posed whether, in place of the low-income adjustment, the guideline should provide for a self-support reserve—that is, a minimum income that an NCP should be allowed to keep without having to pay support. Only one member of the group was vocal in favoring this concept. One commissioner highlighted the dilemma this would pose in cases involving low-income families:

[L]et’s say the minimum is set at ... \$1,000 a month. So, you have the noncustodial parent making \$1,000 a month. You have the custodial parent making \$800 a month. Then what do you do? They are both under that number and you have said to the noncustodial parent well you haven’t been over that minimum so you are not going to be required to provide these children who are living even farther below the standard So that is why my preference tends to be for a low-income adjustment, not just an absolute elimination.

3.3.5 *Other Considerations to Include*

The group discussed things that might be added into a guideline formula for further consideration and/or things that might be changed. Among the items mentioned by these commissioners were transportation costs (for commuting to work), utility costs (everyone has them), child care expenses, and using net income instead of gross as the starting point for calculations.

One commissioner expressed a strong preference for different treatment of mandatory add-ons, such as child care expenses. Under the current guideline, once determined, the add-ons are presumed under the guideline to be shared equally between the parties. While the court does have authority to allocate the add-on in a way that differs from the presumption, this

commissioner would prefer that the allocation of add-ons be presumed proportional to the incomes of the parties. The commissioner cited this example to explain the point:

When you have a custodial parent earning \$6,000 a month and the child goes into child care for \$1,500 a month, and the noncustodial parent is earning \$1,300 a month, allocating that child care 50-50 is the presumption. Yes, we have the ability to do otherwise. But why is it not looking at the income of the parties and allocating it based on that?

One commissioner voiced a preference for changing the guideline to ensure that poor NCPs are left with a subsistence-level income to avoid creating an extreme financial burden on low-income parties.

Two commissioners expressed favor for eliminating the hardship deduction for children of other relationships. Their rationale was both philosophical and practical. Philosophically, they disagree with the notion that children should be described as and considered “hardships.” From a practical perspective, they believe that it would be preferable to deal with children of other relationships as factors in determining an NCP’s support obligation.

3.4 Focus Group Evaluation

Approximately one week after the focus group convened, we sent a survey to the eight commissioners. A copy of our survey questions and the survey results is provided in Appendix B in Section 7. We sent out periodic reminders. In the end, six of the eight participants completed the survey. For this group, rather than asking participants to fill out the general survey as they were waiting for the session to begin, we included it afterward as part of the follow-up survey. The results of both types of questions are discussed below.

In general, the commissioners thought it was a good meeting and that holding a focus group specifically for commissioners was a good idea. Most thought that the session could have been longer and would have benefited from sending more information in advance so that they would have been better prepared to participate. There were a few comments about the intrusiveness of the court reporter as well as about the room setup, but these were minor.

All those who answered the extended questionnaire agreed or strongly agreed that the guideline assumes 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 and most agreed or strongly agreed that the guideline seeks to place the interests of the children as the state’s top priority.

Most disagreed or strongly disagreed that the guideline identifies the special circumstances in which child support orders should fall below the child support amount mandated by the guideline formula.

The six who answered the survey were divided in their opinions on the remaining questions. These answers are detailed in Appendix D in Section 10.

4. Focus Group 3: Stakeholders (Parents and Children's Representatives)

The third focus group for the 2017 guideline review was originally designed to involve representatives of advocacy groups from around the state. As was the case with the two previous focus groups, the goal was to explore their views about the application of the current guideline and to discuss any issues or concerns they might have stemming from their work with client cases, as well as suggestions for improving the guideline. The focus group was scheduled to be held in the afternoon of May 10, 2017, from 1 to 3 p.m., at the Judicial Council headquarters offices at 455 Golden Gate Avenue in San Francisco.

4.1 Identifying and Recruiting Participants

Outreach efforts to recruit participants were targeted at advocacy and interest groups that have been active in family law and child support issues in the past. Laura Racine from DCSS provided an initial list of groups that had been compiled by the DCSS legislative office as well as groups that local child support agencies had worked with recently. A complete list of the individuals and groups invited to participate in the focus group is included in Appendix A in Section 6. We contacted this group's participants initially on March 20, 2017, to assess their interest in attending a focus group either near Sacramento on March 30 or in Los Angeles on April 5. Unfortunately, we only received two responses of interest to this invitation, one in the north and one in the south. Therefore, we decided to wait, reschedule, and broaden our reach.

Despite the failure to secure advocate participation, the Center for the Support of Families and Judicial Council staff members agreed that it would nevertheless be useful to conduct the third focus group with other stakeholders invited to participate. Two potential groups identified for this purpose were superior court family law facilitators and lawyers whose practice involves family law. We sent an invitation to the facilitators' statewide organization describing the project and asking to coordinate a solicitation of interest in the focus group. Similarly, we contacted the chair of the State Bar Family Law Executive Committee (FLEXCOM) and he agreed to circulate an e-mail to all members of the State Bar Family Law Section via FLEXCOM's listserv. Although no one from the family law facilitators responded to the invitation, some family lawyers did express interest. Ultimately, six family lawyers from the Bay Area responded indicating that they would attend.

Two stakeholders from southern California expressed interest in participating in the focus group, but indicated that they would be unable to fly to San Francisco to participate in person. To facilitate their participation, and to open the session to others unable to attend in person, a conference call-in line was established to provide an audio connection for those participating remotely. Notification of the available conference call-in line was also shared with the family law facilitators' organization and FLEXCOM, with the proviso that focus group participation was limited to no more than 20 persons so call-ins would be taken on a first-come, first-served basis. No one other than the two southern California participants responded affirmatively to the call-in availability.

On the scheduled day and time for the focus group, only two attorneys attended from among the six who indicated they would attend. Only one of the two potential callers from southern California signed in by phone. Two people observed the session on behalf of the Judicial Council.

4.2 Preparing for the Focus Group

As noted, we sent invitations to join in the focus group to a wide variety of potential participants, first to advocates and later to family law facilitators and members of the State Bar Family Law Section. The invitations identified the members of the Center for the Support of Families team and included information about the guideline review project activities, as well as the logistics of time and place for the meeting.

We again engaged Neal R. Gross & Co. to record the focus group meeting and to produce both an electronic record and transcription of the proceedings to ensure that this report accurately reflects the discussion. The electronic record and a transcription of the meeting will be provided to the Judicial Council separately from this report.

4.3 The Focus Group

When the two in-person participants arrived, we provided them the same written survey given to those attending the previous two focus groups. They completed the survey forms and returned them to the facilitators. Following the conclusion of the focus group, we e-mailed a copy of the survey to the phone-in participant, who completed it and returned it by e-mail. A compilation of the survey responses is included in Appendix B in Section 7. Topics for discussion and the agenda were chosen from those used in the previous two focus groups (see Appendix C in Section 9).

We began with introductions and a brief overview of the project. A representative of the Judicial Council also provided a description of the process that would ensue once the project was completed, including issuance of a draft report, opportunity for public comment, final consideration, and formal recommendations by the Judicial Council, and, ultimately, action by the state legislature.

As in the two previous sessions, we asked the participants to think about and choose one word to describe the current California guideline. Their individual responses were “draconian,” “confusing,” and “blind.” That led to follow-up questions exploring the reasons behind the selection of those particular terms.

When asked why the word “draconian” came to mind, the participant who offered it focused on the difficulties parents face in complying with guideline support amounts, especially in the economic climate of the Bay Area, where both incomes and the cost of living are very high. The participant noted that an income that to some observers might be considered significant is only sufficient to manage a modest standard of living, given the high cost of housing, food, and the like.

The participant whose one word choice was “confusing” explained that for unrepresented individuals involved in child support matters there are a lot of myths around the guideline, such as mistaken notions about what circumstances will dictate whether they do or don’t have to pay. As an example, the participant offered the belief by some that a 50-50 shared custody arrangement means that neither parent has an obligation to pay the other. Another example of confusion exists around the notion that support can be imputed based solely on a parent’s ability to pay (for example, based on past work history and income), when the true test is not only ability but also opportunity to earn. It cannot be assumed that because a parent once earned a certain wage in a certain job that the opportunity to do always exists.

Regarding the use of “blind” as the adjective to apply to the guideline, the participant who offered that word choice indicated that the guideline fails to adequately account for situations where one or both parents have irregular incomes that fluctuate from month to month. The participant went further to discuss the principle in California Family Code section 4053(f), which provides that children should share in the standard of living of both parents. Specifically, the participant pointed out that the guideline provides that a legitimate purpose of child support is to improve the lives of children. The participant suggested agreement with this as a general proposition, but added that the guideline fails to account for the impact that such support orders may have on paying parents.

4.3.1 Variations in the Guideline Based on Geography and/or Economy

The mention of the high cost of living in the Bay Area led to a discussion about whether the guideline ought to somehow take into account the wide variations in income and living expenses from one part of California to another. We asked the participants whether it might make sense for there to be different guidelines depending on whether parents live in high-income areas or in economically challenged locales. Initially, one participant seemed to be somewhat supportive of this notion. The participant pointed out, for example, that recent news reports noted that a family of four with an annual income of \$90,000 living in a particular Bay Area county would qualify for federally assisted low-income housing. Ultimately, though, there was no agreement in the

group for the idea of different guidelines for different parts of the state. One participant, thinking about housing costs, wondered, “What are child support payments supposed to cover?” This participant acknowledged that, as a practical matter, a guideline that varied from place to place would be “tough to manage.” Even so, the participant suggested that there ought to be a mechanism for taking housing costs into account, perhaps treating them as deductible. One participant stated that setting up different guidelines for different parts of the state would be “unworkable.”

4.3.2 Differences in Application of the Guideline from Court to Court

Participants responded affirmatively when asked whether, in their experience, there were variations in outcomes from court to court when presented with the same or similar factual circumstances.

Two of the participants agreed that the treatment of hardships is an area where courts can vary widely. They both noted a recent trend in some courts to grant “half hardships”—an idea that one described as “confusing,” because it is not based anywhere in the guideline.

According to one participant, another area of variability from court to court is the treatment of rental income. One court may consider gross rent receipts when calculating a parent’s income, while another may calculate only net rental income.

One participant reported that another area where courts make distinctions is in their treatment of welfare versus nonwelfare cases. Specifically, the participant noted that some courts deviate from the guideline less often in welfare cases compared to nonwelfare cases.

4.3.3 Self-Support Reserve

We asked participants about the concept of adding a self-support reserve to the guideline. One participant allowed that this was a new concept that the participant had not previously heard about. Notwithstanding this initial lack of awareness, as the group’s conversation developed, the participant concluded that implementation might be extremely burdensome on the court system, since it might require regular reassessments of the parent’s income status.

Another participant expressed concern that this might give rise to animosity between parents. Harking back to the earlier discussion about having more than one guideline in the state, this participant wondered if the self-support reserve might be variable from one county to another, given the already noted wide disparities in income and expense levels across the state.

One participant thought the notion of a self-support reserve presented a tough question. This participant was inclined against setting up situations where a parent with some income, however minimal, might not be required to provide support. Rather than a self-support reserve, this participant preferred substantially increasing the low-income adjustment, perhaps to account for

housing costs. Addressing the notion that the self-support reserve might function to provide an obligor parent with incentive to work and contribute support, the participant expressed a strong belief that support orders do not act as disincentives regarding obligated parents pursuing employment. In the participant's view, this notion is a myth. Obligated parents are either motivated to pursue work and improve themselves or they are not. The existence of a support order does not change this dynamic.

4.3.4 Imputing Income

We asked participants about the practice of imputing income and how, in their experience, courts approached the matter. Two of the participants agreed that the courts are generally reluctant to impute income unless efforts have been made to find and prove income and/or lifestyle information that demonstrates there is a source of income that is not readily apparent. One participant shared that in handling past cases she made a point of proving the availability of work by bringing pages of current classified employment adds for jobs that obligated parents were qualified to fill.

One participant questioned whether courts should always consider past earnings history as a basis for making support orders. The participant offered the example of a parent who took a cut in pay to avoid the stresses of a higher compensated former assignment. In such a case, the participant thought that basing an order on current income, not past earnings, would be the appropriate approach.

During this discussion, the point was made that in some counties, child support agencies argue for the imputation of income based on a parent's presumed ability to work and earn at least the minimum wage. Some courts are agreeable to this approach, although they may vary in whether they base calculations on a full-time, 40-hour work week or on some lesser standard, such as a 30-hour part-time schedule.

When asked whether this was an appropriate approach, one participant indicated that this might be supportable in cases where parents have no history of work, or a felony conviction that precludes earning at a higher-paying job (even in cases where they may have held such a job prior to conviction). As in an earlier discussion, the participant stressed that a prerequisite to imputing income is a showing of the opportunity to work (i.e., the availability of jobs) in addition to the parent's ability to work.

One participant pointed out that in so many family law cases, the challenge boils down to "splitting poverty." This includes cases where one parent is aided and the other is a low earner, as well as cases where both parents are low earners. Still, the participant held to the general proposition that parents need to share in contributing to their children's support as much as possible.

4.3.5 Potential Changes to the Guideline

As a concluding question for the focus group, we asked participants what changes they would like to see in the current guideline, if any. One participant felt strongly that allowing for broader consideration of what constitutes a hardship was in order. The participant offered two proposals. The first involved giving hardship consideration to a parent's student loan burden. The participant pointed out that this is a special challenge for fellow millennials, who incurred large loans to support themselves through college and graduate school. The participant noted that the payback on student loans is highly burdensome—so much so that it poses difficulties for former students who are working to make their loan payments and still live at a modest level. This is especially the case in the Bay Area where, as indicated earlier, the cost of living is extraordinarily high, even for persons earning what might be considered substantial incomes. At a minimum, the participant stated, if student loan payments are not counted as a hardship, courts ought to have leeway to take the debt into consideration when ordering support.

The participant's second proposal was to include housing costs as a hardship factor. Again, the high cost of rents and mortgage payments in the Bay Area was the immediate reference point, but the participant noted that there are many areas in the state where housing costs are at a premium, and these costs are burdensome to parents at all income levels.

Another participant suggested that the timeshare formula provisions in the guidelines should be revisited. The current approach prompts parents to battle over timeshares as a means to secure a more favorable support order amount. Too often this leads to abuses by parents who don't subsequently honor the timeshare provisions after securing such a favorable support order.

4.9 Concluding Thoughts

Asked if they had any final thoughts, two of the participants were vocal in supporting the idea of making child support a pre-tax deduction.

Another suggested that the family law courts should do more to encourage mediation or arbitration between parents to arrive at solutions that are understood and acceptable to both whenever possible. The participant expressed concern that the court process can be so confrontational that the interests of the children "get pushed to the background." Less attention should be paid to the guidelines themselves and more focus placed on taking into account the individual circumstances of the family.

There was a brief discussion about the approach that bench officers take in handling explanations of the guideline to case participants in their courts. One of the practitioners felt that commissioners and judges in the courts where she has appeared did attempt to explain how the support amount is calculated under the guideline. Even so, for most of the unrepresented parents who appear in court, trying to understand the guideline is akin to trying to understand the tax

code. It is too complex. The other practitioner felt that too often judges and commissioners are “not terribly thoughtful” about discussing guideline calculations, especially with unrepresented parties. She stated that parties who are represented come away with a better understanding of the results than those who are unrepresented. The participant whose own case has been in the courts noted his agreement with this last remark.

We sent the survey to the three participants in this final focus group about 10 days after they met in San Francisco. The results of that survey are found in Appendix D in Section 10. Generally, the group members were glad to have attended the session and thought that the length of the discussion was just right and the facilitators did an excellent job. They would have liked to have received more information ahead of time about specifics that would be discussed at the session. They were sorry that attendance wasn’t better. One participant suggested that holding the session on a weekend would be easier for parents. One participant suggested that we should have cast a “wider” net to get more participants, without knowing that we had contacted numerous groups and received very few responses. We do not know why there was so little interest in attending this focus group. It may indicate a lack of specific guideline issues that were concerning to advocates and stakeholders. One participant recommended sending surveys to stakeholders who were unable to attend the meeting, but there were very few people who responded that they were interested but unable to attend.

5. Summary

Holding three focused discussion groups with three very different audiences gave us a wide range of feedback and reactions to the current guidelines. While most participants were generally critical of the current guideline formula, we heard various ways (especially from the commissioners) that orders could be set to account for individual circumstances in a fairer manner. Though there was not consensus regarding changes that need to be made to the guideline formula, there was general if not unanimous agreement that the current formula is often unfair, complicated to explain and administer, and not uniformly applied. It was clear most participants appreciated the opportunity to be heard, but we were struck by the lack of participation of those in the advocacy community. For the next review, beginning outreach earlier, offering a focus group in the north and another in the south, and/or providing more remote-participation options (i.e., webinar participation) may increase the number of participants from the public and organizations representing children and family concerns.

6. Appendix A: Invited Focus Group Participants

Individuals and Organizations Representing Children and Families

Groups solicited for their interest in attending a focus group and later invited to San Francisco:

9to5, National Association of Working Women
Academy of California Adoption Lawyers (ACAL)
ACT for Women and Girls
Alliance of Californians for Community Empowerment (ACCE)
American Coalition of Fathers and Children
Black Women for Wellness
California Alliance of Child and Family Services (CACFS)
California Family Law Facilitators Association
California WIC (Women, Infants & Children) Association
Center for Children's Law and Policy
Children Now
Children's Law Center of California
Children's Rights Council
Coalition of California Welfare Rights Organizations, Inc.
Consortium for Children
Consumer Attorneys of California
Fathers 4 Justice
Having Our Say (HOS)
Hunger Advocacy Network/San Diego Hunger Coalition
League of Women Voters of California
National Association of Social Workers—California Chapter (NASWCA)
National Coalition for Men (NCFM)
National Parents Organization
National Responsible Fatherhood Clearinghouse
Office of Family Assistance (OFA) (U.S. Dept. of Health & Human Services)
National Women's Law Center
Partnership for Dads
State Bar of California, Family Law Section
Strong Hearted Native Women's Coalition, Inc.

Western Center on Law and Poverty
Women's Foundation of California

Others:

Renato Izquieta, Directing Attorney, Legal Aid Society of Orange County
Leigh E. Ferrin, Directing Attorney & Pro Bono Director, Public Law Center (Orange County)
Barry S. Michaelson, Commissioner, Superior Court of Orange County
Public Policy Institute of California (PPIC)
PPIC Sacramento Center
Gary V. Thompson, M.A., Family Health Services Coordinator; Manager, FHS Fatherhood Initiative; Family Health Services Division, Alameda County Public Health Department
William S. Comanor, Professor of Health Policy and Management, University of California, Los Angeles
Chris Aumann, noncustodial parent
David M. Lederman, Chair, Family Law Section Executive Committee (FLEXCOM) of the State Bar of California
Dorie A. Rogers, Legislation Chair, FLEXCOM

7. Appendix B: Focus Group Survey Results

Results of the survey that participants were asked to complete upon sign-in are included in this appendix on the following pages, by focus group.

Focus Group 1 (DCSS and LCSA Representatives)

Focus Group Participant Survey (All responses are confidential)

1. Below are several statements about the California Statewide Uniform Guideline. Please tell us how much you agree or disagree with each statement.					
	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
a. The guideline assumes parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life.	6	12	■	■	■
b. The guideline assumes both parents are mutually responsible for the support of their children.	7	7	1	3	■
c. The guideline takes into account each parent's actual income and level of responsibility for the children.	3	10	2	3	■
d. The guideline reflects that each parent should pay for the support of the children according to his or her ability.	2	5	2	7	1
e. The guideline seeks to place the interests of children as the state's top priority.	4	8	5	1	■
f. The guideline reflects that children should share in the standard of living of both parents.	4	9	1	2	1
g. When both parents have high levels of responsibility for the children, the guideline minimizes significant disparities in the children's living standard in the two homes.	2	9	3	3	■
h. The guideline considers that the financial needs of the children should be met through private financial resources as much as possible.	2	6	5	3	1
i. The guideline presumes that a parent having primary physical responsibility for the children contributes a significant portion of available resources for support of the children.	3	11	2	2	■
j. The guideline seeks to encourage fair and efficient settlements of conflicts between parents and seeks to minimize the need for litigation.	1	3	2	10	2
k. The guideline identifies the special circumstances in which child support orders should fall below the child support amount mandated by the guideline formula.	1	6	6	5	■
l. The guideline limits the number of special circumstances in which support orders differ from the child support amount mandated by the guideline formula.	■	8	4	6	■
m. The guideline provides sufficient support reflecting the state's high standard of living and high costs of raising children compared to other states.	1	4	4	7	2

In addition to the ratings above, the following comments were noted on the surveys:

- d. "Because of the presumed income stance." Additionally, one person opted to not answer this question.
- e. "But some courts do not."
- f. "Not in high income cases." One person opted to not answer this question.
- g. One person opted to not answer this question.
- h. One person opted to not answer this question.
- j. "Depends – at times creates this."

- k. But...court can deviate."
- m. "Depends on factors."

Focus Group 2 (Commissioners)

For the Commissioners' focus group, we gave this survey as part of the Survey Monkey questionnaire, not separately. Please see Appendix D in Section 10 for the results that include both sets of questions.

Focus Group 3 (Stakeholders)

Focus Group Participant Survey (All responses are confidential)

1. Below are several statements about the California Statewide Uniform Guideline. Please tell us how much you agree or disagree with each statement.					
	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
a. The guideline assumes parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life.	1	1			
b. The guideline assumes both parents are mutually responsible for the support of their children.		3			
c. The guideline takes into account each parent's actual income and level of responsibility for the children.			2	1	
d. The guideline reflects that each parent should pay for the support of the children according to his or her ability.		1	2		
e. The guideline seeks to place the interests of children as the state's top priority.		1	1	1	
f. The guideline reflects that children should share in the standard of living of both parents.		2		1	
g. When both parents have high levels of responsibility for the children, the guideline minimizes significant disparities in the children's living standard in the two homes.		1		2	
h. The guideline considers that the financial needs of the children should be met through private financial resources as much as possible.		2		1	
i. The guideline presumes that a parent having primary physical responsibility for the children contributes a significant portion of available resources for support of the children.		1	1	1	
j. The guideline seeks to encourage fair and efficient settlements of conflicts between parents and seeks to minimize the need for litigation.				1	2
k. The guideline identifies the special circumstances in which child support orders should fall below the child support amount mandated by the guideline formula.				2	1
l. The guideline limits the number of special circumstances in which support orders differ from the child support amount mandated by the guideline formula.	1	1	1		
m. The guideline provides sufficient support reflecting the state's high standard of living and high costs of raising children compared to other states.		1	1	1	

9. Appendix C: Focus Group Agendas and Topics for Discussion

The general agendas for the groups and questions/topics that were posed for discussion with participants in the groups are included on the following pages, by focus group.

Focus Group 1 (DCSS and LCSA Representatives)

DCSS/LCSA Focus Group Agenda

March 29, 2017

1 – 3pm

1. Introductions
2. Project background
3. Topic discussion
4. Next steps & closing

Topics for discussion

1. Are there situations in which the court should enter a zero dollar order?
2. Are there situations in which the court should enter a minimum amount of support for an obligor without a job or the proven ability to pay support?
3. How often do you think your court deviates from guidelines?
 - What are the most common reasons for deviation from the guidelines?
4. If the obligor does not show up for court in an establishment case, your court should enter a default order. Does your court vary from this practice? If so, what does the court base support on if there is no income information?
5. How often do you think your court imputes income?
6. When income is imputed, what methods are used?
 - Is there a finding of voluntary unemployment first?
 - Does the court make a bad faith determination before imputing income?
 - Does the court make an individualized decision about how much to attribute?
 - Is there a difference in attribution methodology in low income vs high income cases?
7. CSF shares the results of the data collection effort, with each rep getting their county's data (or giving all of it to everyone?) Are you surprised by your county's results? Why or why not?
8. Do you feel that the IV-D agency has reliable income information for the majority of obligors?

9. Tell us about how – and when – your court applies hardship deductions. Do they grant partial (half or quarter) hardships?
10. Should the guideline provide for a “self-support reserve”?
11. **Should the guideline calculation be different, based on where the NCP lives in CA? Why or why not? (Hand out table showing median income by county, median rent by county, state map)**
12. The low income adjustment is currently around \$1,600. It is due to sunset 12/31/2017, and revert back to \$1,000. What – if anything – should CA do regarding the sunsetting?
13. Scenario: NCP is 29, chronically unemployed, “couch surfs”, mows lawns and sells scrap metal (cans, etc.), is in and out of jail, has drug/alcohol abuse history. He has one child who receives TANF benefits. What income should his monthly support obligation be based on?
 - Would you feel the same way if there is no TANF paid to the household?
14. Scenario: NCP is 29, unemployed, lives in parents’ basement, and is supported by his parents. He has one child who receives TANF benefits. What income should his monthly support obligation be based on?
 - Again, would you feel the same if there is no TANF paid to the household?
15. Scenario: An NCP is paying support for child #1 – he had with spouse #1. He remarried, and had child #2 with spouse #2. He and spouse #2 divorce, and spouse #2 has primary custody of child #2. How should support be calculated for child #2? Should child support be recalculated for child #1?
16. Give us one piece of advice, one recommendation you want to see in the final report. What is your top concern about how the current guideline calculator works? (Or, if you could change one thing about how child support is calculated, what would it be?)
17. How does your court handle the issue of medical insurance if the child is currently covered by Medicaid?

Focus Group 2 (Commissioners)

Commissioners' Focus Group Agenda

April 5, 2017

1 – 3 pm

1. Introductions
2. Project background
3. Topic discussion
4. Next steps & closing

Topics for discussion

1. If you have entered a zero order, describe the facts/circumstances that led you to do so.
2. What would be examples of circumstances when a zero order or a minimum order might be warranted?
3. How often do you deviate from guidelines?
4. What are the most common reasons for deviation from the guidelines?
5. If the obligor does not show up for a court hearing in an establishment case after proper notice, do you enter a default order?
 - If so, on what do you base support if there is no income information?
6. How often do you impute income?
7. When income is imputed, what methods do you use?
 - Do you make a finding of voluntary unemployment first?
 - Does the court make a bad faith determination before imputing income?
 - How do you decide how much income to attribute to an obligor when imputing income?
 - Is there a difference in attribution methodology in low income vs high income cases?
8. CSF shares the results of the data collection effort, with each rep getting his or her county's data (or giving all of it to everyone?) Are you surprised by your county's results? Why or why not?
9. Do you feel that the IV-D agency has reliable income information for the majority of obligors?
10. Tell us about how – and when – you apply hardship deductions. Do you grant partial (half or quarter) hardships?

11. Should the guideline provide for a “self-support reserve”?
12. **Should the guideline calculation allow for different support awards, based on where the NCP lives in CA? Why or why not? (Hand out table showing median income by county, median rent by county, state map)**
13. The low-income adjustment is currently around \$1,600. It is due to sunset 12/31/2017, and revert back to \$1,000. What – if anything – should CA do regarding the sunseting?
14. Give us one piece of advice, one recommendation you want to see in the final report. What is your top concern about how the current guideline calculator works? (Or, if you could change one thing about how child support is calculated, what would it be?)
15. How does your court handle the issue of medical insurance if the child is currently covered by Medicaid?

Focus Group 3 (Stakeholders)

Topics for discussion and agenda for the Stakeholders focus group were chosen from those used in the previous two focus groups, already included above.

10. Appendix D: Survey Monkey Questionnaire Results

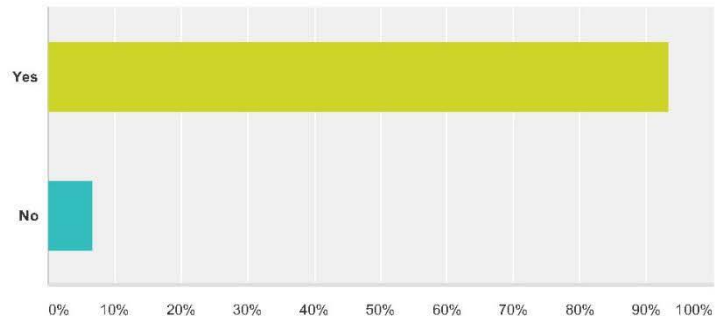
Results of the surveys participants were asked to complete via Survey Monkey, after the focus groups were complete, are included on the following pages, by focus group.

Focus Group 1 (DCSS and LCSA Representatives)

Focus Group for DCSS/LCSA

Q1 Do you think the next guideline study should include a LCSA/DCSS focus group?

Answered: 15 Skipped: 0



Answer Choices	Responses	
Yes	93.33%	14
No	6.67%	1
Total		15

Q2 If you answered "Yes", what could be changed to improve the process?

Answered: 13 Skipped: 2

#	Responses	Date
1	The size of the group and level of expertise in the room was very beneficial to the topic at hand. I liked the open forum perspective to share what was currently happening in the day to day operations but I think the "future asks" at times got lost in the discussion.	4/21/2017 11:04 AM
2	a little more elbow room, more time, no state director	4/20/2017 5:04 PM
3	Trying to reach some concrete recommendations	4/20/2017 3:08 PM
4	longer brain storming and cover more parts of the GC	4/19/2017 11:52 AM
5	Having better data to discuss. The statistics on cost of living were not accurate. In addition, the sampling of county cases was too small to be statistically significant. Moreover, percentages relative to caseload size and county comparisons of data would have been helpful to the discussion.	4/17/2017 3:33 PM
6	A little more time to discuss and develop ideas.	4/14/2017 5:43 PM
7	If the focus group time constraints are limited to 2 hours, the facilitation needs to make certain any questions to be discussed are clear in what is being asked (e.g, feedback on "what is" or "what might be" or both. The Agenda also needs to be tailored to permit coverage of what are critical issues for feedback.	4/14/2017 1:58 PM
8	expand the representation and the time allowance more detailed disussion and other subjectes were not able to be fully veted	4/14/2017 11:42 AM
9	More focus on actual guideline	4/14/2017 10:08 AM

Focus Group for DCSS/LCSA

10	I think 2 hours is not enough time to discuss this topic. Although the conversation went well I think getting the group to focus more on what we can do in the future and actual changes vs what we currently do in our counties and whether we agree or disagree. Great discussion, but more time with more questions.	4/12/2017 11:49 AM
11	I suggest creating two focus groups. A focus group for LCSA/DCSS attorneys to provide the legal perspective, and a focus group of LCSA/DCSS line staff to provide the policy and situational perspective.	4/11/2017 3:14 PM
12	Is it possible to have LCSAs and DCSS input on topics to discuss ahead of time?	4/10/2017 7:48 PM
13	Would be helpful if relevant data analysis that was available could be provided to the group before the meeting.	4/7/2017 2:59 PM

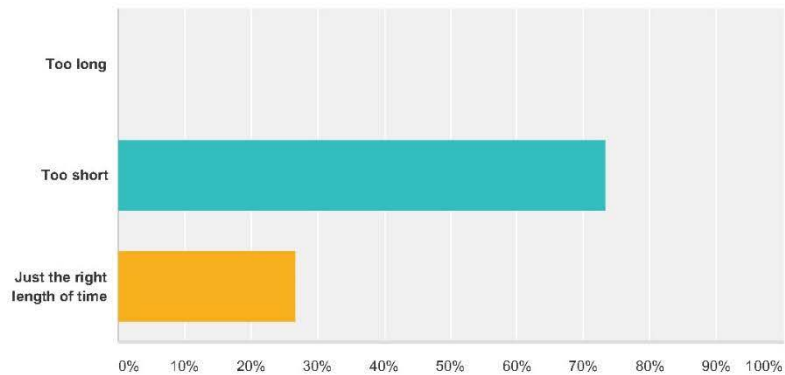
Q3 If you answered "No", what would be a better way to include LCSA/DCSS input in the guideline study?

Answered: 2 Skipped: 13

#	Responses	Date
1	N/A	4/11/2017 3:14 PM
2	Have the representative ask for their LSCA office for input.	4/10/2017 2:34 PM

Q4 At 2 hours, was the focus group

Answered: 15 Skipped: 0



Answer Choices	Responses
Too long	0.00% 0
Too short	73.33% 11
Just the right length of time	26.67% 4
Total	15

Q5 Can you think of additional resources we could have provided in advance, to better prepare you for the focus group?

Focus Group for DCSS/LCSA

Answered: 13 Skipped: 2

#	Responses	Date
1	A thought would have been to capture the "what's happening" now based on the specific topics (e.g. under what circumstance are zero orders established and factors) and then utilize the meeting to discuss improvements to the guideline as it relates to those processes or potential impacts.	4/21/2017 3:04 AM
2	the basic statistics and demographics you handed out at the meeting, so each county could confirm their figures.	4/20/2017 9:04 AM
3	Brief descriptions of the issues with pros and cons list	4/20/2017 7:08 AM
4	previous discussions and results on the G.C.. Questions being asked given to us prior to the conference.	4/19/2017 3:52 AM
5	Summaries of each existing guideline model in the country and how they are meant to function/what they are meant to achieve.	4/17/2017 7:33 AM
6	Data from both DCSS and the court review if provided should be more comprehensive, as suggested by attendees. It would also have been helpful to have information about how effective each State's approach/formula is if one looks at performance on FPMs and in distributed collections.	4/14/2017 5:58 AM
7	more data could have facilitated and targeted discussions	4/14/2017 3:42 AM
8	More line staff from the LCSA	4/14/2017 2:08 AM
9	The actual cases that were reviewed. I think it would have been a good to see the analysis conducted on those cases and the outcome.	4/12/2017 3:49 AM
10	Yes. References to current guideline laws, rules, regulations, and policy related to the topics to be discussed would have been helpful. This would have provided a foundation to discuss specific changes, additions, deletions or updates to existing law, rules, regs, and policy.	4/11/2017 7:14 AM
11	No.	4/10/2017 11:48 AM
12	Emailing the handouts prior to training.	4/10/2017 6:34 AM
13	Analysis of DCSS data	4/7/2017 6:59 AM

Q6 Additional feedback on the Focus Group Meeting - the facility, facilitators, structure, etc.

Answered: 9 Skipped: 6

#	Responses	Date
1	I appreciate the level of expertise in the room and appreciate the environment of sharing ideas, thoughts and concerns freely.	4/21/2017 11:04 AM
2	This was advertised as a session of brainstorming and thinking outside the box, but a few participants didn't want to say anything because the IV-D director was there. The rest of the state staff there could have easily reported back and removed the intimidation factor from the session. Otherwise I thought it was a good mix from the counties of people who actually KNOW the glc program. Honestly, im not exactly sure what information you gleaned that can be reduced to workable improvements in the system. There was a lot of dreaming but not a lot of concrete "hey, lets do this." I also felt some of the discussion was contrary to the mission statements reflected in our State Strategic plan.... We probably should've referred to those goals as part of our overall discussion.	4/20/2017 5:04 PM
3	A little more balance on the child's needs in the discussion - too NCP oriented	4/20/2017 3:08 PM
4	The facility & facilitators were very good. Perhaps having the questions before hand could give us time to prepare more with our answers	4/19/2017 11:52 AM
5	See comment #2	4/14/2017 1:58 PM
6	Welcoming	4/12/2017 11:49 AM

Focus Group for DCSS/LCSA

7	There were too many participants for a 2 hours session. The facilitators did a good job based on the number of participants, however there were a few instances where the focus on the question being discussed was lost. It would have been helpful to have the questions on a PPT slide, and setting a time limit on responses. This may have helped give more people an opportunity to share their thoughts.	4/11/2017 3:14 PM
8	It was a comfortable setting and format to allow open discussion.	4/10/2017 7:48 PM
9	I thought the facilitators and structure were both conducive to the discussion. The room was a little cramped.	4/7/2017 2:59 PM

Q7 Do you have additional thoughts regarding the guideline itself that you would like to provide here?

Answered: 8 Skipped: 7

#	Responses	Date
1	From the perspective of implementing the changes to the calculator, it stresses the importance to me of needing level of uniformity in how the GC is used but also having a tool that is easy to use and not so complicated. The complexity of programming doesn't always lend for quick in easy updates.	4/21/2017 3:04 AM
2	We need one workable uniform system. There was a ton of discussion about discretion and variables based on location and other income factors. However, unless those variables can be grouped and reduced to the push of a button, it's naive to expect workers (many of who are already confused by the GLC) to wade thru the many possibilities such as cost of living variables, deductions, etc. Too many factors discussed will result in a patently disjointed and confusing glc that is opposite of the uniformity we seek.	4/20/2017 9:04 AM
3	The Guideline would be better if it provided some flexibility - perhaps an additional calculation if the result was out of balance with cost of living and/or a standard NCP expenses figure	4/20/2017 7:08 AM
4	I feel it is unfair. The high income NCP's amount they pay does not seem in proportion to low income NCP's	4/19/2017 3:52 AM
5	As mentioned in the session, using presumed income at 40 hours of minimum wages is not realistic now because most employers do not offer 40 hours at minimum wage. ACA provides that full time for benefits averages 30 hours a week. Presumed income may be more appropriate at 30 hours at minimum wage. It looks like starting 1/18, BLS will do a periodic geographic CPI, however it will use 2010 census data. See https://www.bls.gov/cpi/ . It would be great if there was something like this that was done yearly to somehow utilize in the calculation. Overall, some of the actual consequences certain factors in a guideline calc result in illogical consequences in 2 areas--new spouse income and dependency exemptions outside of biological children which the court can consider a hardship. For example, an obligor who has a spouse who is working will pay less than an obligor with a spouse who is not working because of the tax consequence of the spouse's income on the obligor's income. The more the new spouse makes, and thus the higher the household income of the obligor, the lower the obligor's support actually is. Also if an obligor claims dependency exemptions on the tax returns for those that the court does not consider a hardship (stepkids, grandkids, elderly parents, etc.), the obligor will pay higher support despite his/her other responsibilities than someone who did not have such responsibilities. The calculator should be changed so the benefit of the new spouse income and the penalty of the increased dependency exemptions does not exist. On welfare cases especially where there is visitation and low income for CP, utilization of an income amount for CP equal to the amount of income for obligor not to exceed presumed income. If the CP is a caretaker, use the amount of the obligor's income but not exceeding presumed income. Otherwise, from a policy perspective, we are discouraging obligors from visiting with their children as the obligors are expected to pay for the expenses of the child while they are visiting with the child. This would increase stipulations, lower the need for court hearings and encourage relationships between children and obligors.	4/14/2017 9:43 AM
6	While criticism of the existing formula is widespread, especially in terms of its complexity, it DOES take into account what is the cost of raising children in CA, and thus is focused on the family receiving support as well as the obligor paying support. Much of the discussion at the focus group centered on the impact on low income obligors, and not on the custodial families -- so a balance is important AND if there is a way, even if it is complex, to take into consideration the regional difference in economies, of both the custodial parent and the obligor, that would be a move in the right direction.	4/14/2017 5:58 AM
7	provided under separate letter	4/14/2017 3:42 AM

Focus Group for DCSS/LCSA

8	<p>Administrative authority to impute income on either parent based on information available and/or provided by the parties should be given to DCSS. I understand that this would require detailed guidelines for consistency of imputing income. The alternative would be to revise the guidelines related to presumed income. Depending on the region of CA that a parent lives in, guideline support based on presumed income is inconsistent with a parent's earning capacity. It would be interesting to compare states with a legislative approach to states with an administrative approach to calculating child support. The guideline formula is much too confusing for the public (and child support staff for that matter) to understand. If child support staff have a difficult time understanding the guidelines, how can the public expect to be fully informed about the guidelines. Credit for child support "paid" in another relationship should be updated to child support "ordered" from another relationship. When the parent responsible to pay child support has a substantial timeshare (specific timeshare percentage to be determined), income based on the other parent's earning capacity should be imputed to the other parent regardless of his/her aid status. With respect to timeshare, a current custody order should be used for the purposes of calculating child support, whether or not the court ordered custody and visitation schedule is being followed, this would eliminate many arguments during the court process and encourage each party to seek a modification of the existing custody and visitation order. Ultimately, I believe the percent of support that goes unpaid each year is a good indicator of the ineffectiveness of the current child support guidelines. The focus of the guidelines should always be with the general principles underlying the guideline formula. The current guidelines may work at a conceptual level, but they are unrealistic at a practical level at best. This can be seen by the number of deviations that are apparently happening across the state. I also have a unique perspective from both sides of the child support process (I have been a case worker and I am an obligor). I have personally experienced the impact of the current guidelines, and I believe strongly in parents' shared responsibility for the financial, emotional, and physical wellbeing of their children. I believe the current guidelines with respect to determining a parent's income and ability are very flawed. The guideline seeks to find every penny under every seat cushion for the purposes of calculating support, and does not do nearly as much to determine a parent's actual ability to earn, which are two factors that greatly impact the guidelines.</p>	4/11/2017 7:14 AM
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Q8 Optional - Your name and organization.

Answered: 9 Skipped: 6

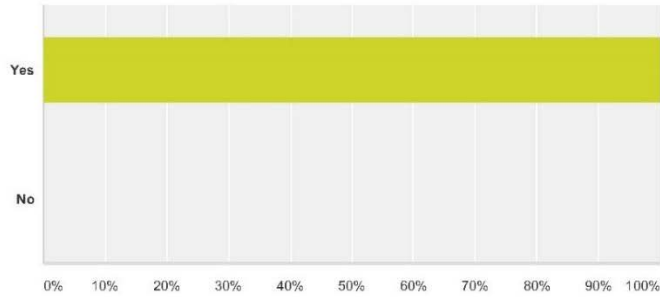
#	Responses	Date
1	Ana Andrade, DCSS Cross Functional Team	4/21/2017 11:04 AM
2	Durney @ Sisq Modoc	4/20/2017 5:04 PM
3	Erik Welton San Diego DCSS	4/20/2017 3:08 PM
4	Patti Smith, San Luis Obispo County Child Support	4/19/2017 11:52 AM
5	Kathleen Ayers-Tulare County DCSS	4/17/2017 3:33 PM
6	Darryl Leong Santa Clara DCSS	4/14/2017 5:43 PM
7	Adele Hendrickson, Central Sierra Child Support Agency	4/14/2017 1:58 PM
8	Alisha Griffin	4/14/2017 11:42 AM
9	Carlos Guzman (Fresno LCSA)	4/11/2017 3:14 PM

Focus Group 2 (Commissioners)

Focus Group Commissioners

Q1 Do you think the next guideline study should include a focus group for commissioners?

Answered: 6 Skipped: 0



Answer Choices	Responses	
Yes	100.00%	6
No	0.00%	0
Total		6

Focus Group Commissioners

Q2 If you answered "Yes," what could be changed to improve the process?

Answered: 6 Skipped: 0

#	Responses	Date
1	More time, more commissioners, no reporter he slowed things down and inhibited the process	4/21/2017 1:19 PM
2	Ask for issues from Commissioners in advance and include Family Law Judges	4/19/2017 3:40 PM
3	Need more notice of time and date for more involvement	4/12/2017 4:24 PM
4	For Commissioners whose courts are not part of the audit a survey would be an easy way to obtain their veiws.	4/12/2017 4:05 PM
5	Theory is wonderful but you need to see the effects of the application	4/12/2017 11:37 AM
6	facilitator needs to have working knowledge of what we do and basic terminology	4/12/2017 11:12 AM

Focus Group Commissioners

Q3 If you answered "No," what would be a better way to include commissioners' input in the guideline study?

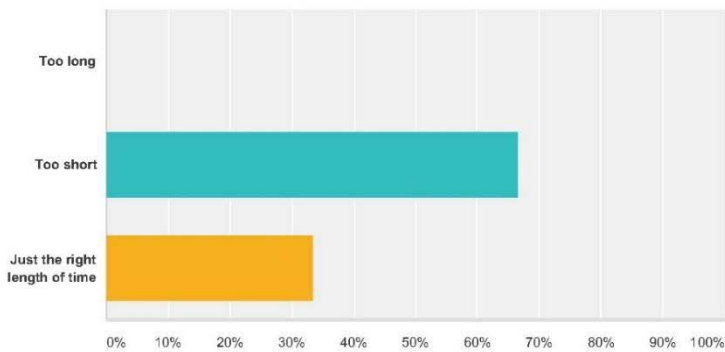
Answered: 0 Skipped: 6

#	Responses	Date
	There are no responses.	

Focus Group Commissioners

Q4 At two hours, was the focus group

Answered: 6 Skipped: 0



Answer Choices	Responses	
Too long	0.00%	0
Too short	66.67%	4
Just the right length of time	33.33%	2
Total		6

Focus Group Commissioners

Q5 Can you think of resources we could have provided in advance to prepare you better for the focus group?

Answered: 6 Skipped: 0

#	Responses	Date
1	the questions and what you were looking for	4/21/2017 5:19 AM
2	Subject areas intended to be discussed	4/19/2017 7:40 AM
3	Let us know the areas of inquiry so that some thought can be put into the answers.	4/12/2017 8:24 AM
4	A survey as to the questions you would ask at the Focus Group.	4/12/2017 8:05 AM
5	Yes, the factors and the premise for the use of said factors	4/12/2017 3:37 AM
6	no	4/12/2017 3:12 AM

Focus Group Commissioners

Q6 Do you have any additional feedback you would like to share on the Focus Group Meeting - the facility, facilitators, structure, etc.?

Answered: 2 Skipped: 4

#	Responses	Date
1	Was frustrated with process. Part was due to recording and logistics but also the focus of the questions was not getting at the information gathering in a efficient way - not sure how to do it differently.	4/19/2017 3:40 PM
2	the use of round tables was awkward	4/12/2017 11:12 AM

Focus Group Commissioners

Q7 Do you have additional thoughts regarding the guideline itself that you would like to provide here?

Answered: 3 Skipped: 3

#	Responses	Date
1	Add health insurance as an add on. Include in report (not the guideline) information about regional differences such as housing and commute espenses that effect the real life effects of the guideline and the need for deviation to keep people housed and employed (on both sides).	4/19/2017 3:40 PM
2	The issue of hardships for child(ren) in the home should not be discretionary it should be automatic. In other words children (bio or adopted) should be a hardship-actually not a hardship but a value/factor that is granted by law.	4/12/2017 4:05 PM
3	Question 9-21 should have been asked before the focus group	4/12/2017 11:12 AM

Focus Group Commissioners

Q8 Optional - Your name and county

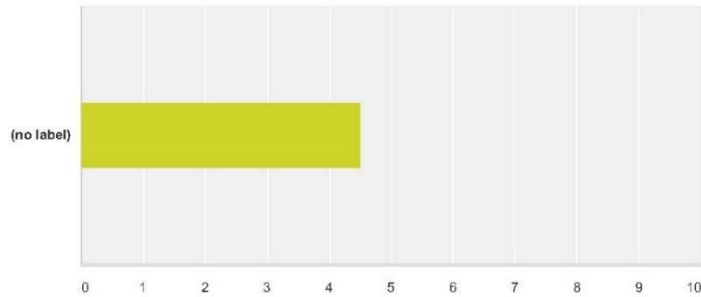
Answered: 3 Skipped: 3

#	Responses	Date
1	Sue Alexander - Alameda County	4/19/2017 3:40 PM
2	Norma Castellanos-Perez Tulare	4/12/2017 4:05 PM
3	María Puente-Porras, Los Angeles	4/12/2017 11:37 AM

Focus Group Commissioners

Q9 The guideline assumes 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.

Answered: 6 Skipped: 0

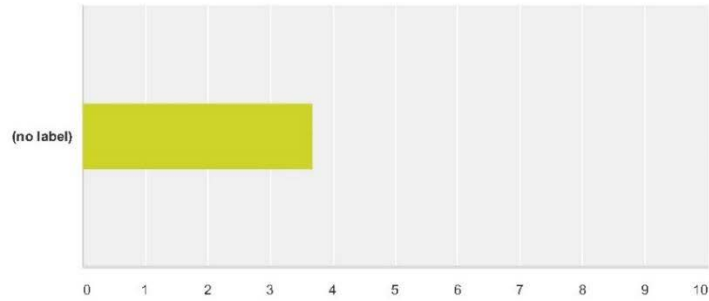


	Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree	Total	Weighted Average
(no label)	0.00% 0	0.00% 0	0.00% 0	50.00% 3	50.00% 3	6	4.50

Focus Group Commissioners

Q10 The guideline assumes both parents are mutually responsible for the support of their children.

Answered: 6 Skipped: 0

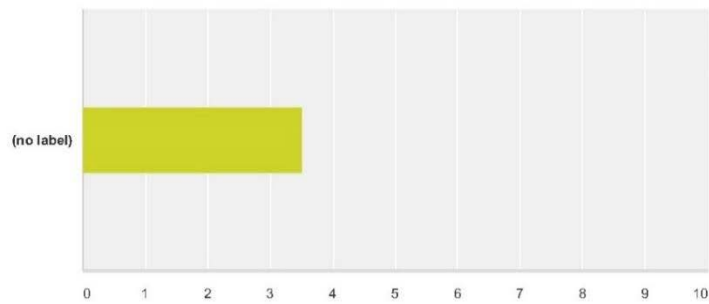


	Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree	Total	Weighted Average
(no label)	0.00% 0	33.33% 2	0.00% 0	33.33% 2	33.33% 2	6	3.67

Focus Group Commissioners

Q11 The guideline takes into account each parent's actual income and level of responsibility for the children.

Answered: 6 Skipped: 0

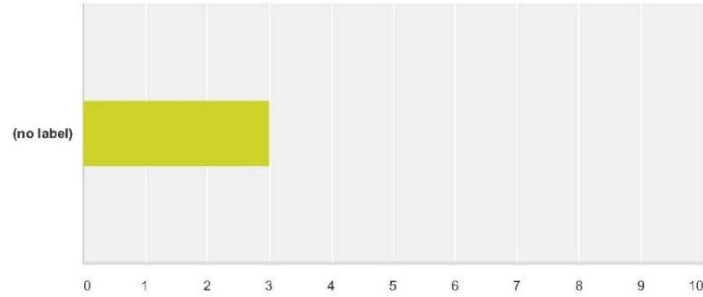


	Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree	Total	Weighted Average
(no label)	0.00% 0	33.33% 2	16.67% 1	16.67% 1	33.33% 2	6	3.50

Focus Group Commissioners

Q12 The guideline reflects that each parent should pay for the support of the children according to his or her ability.

Answered: 6 Skipped: 0

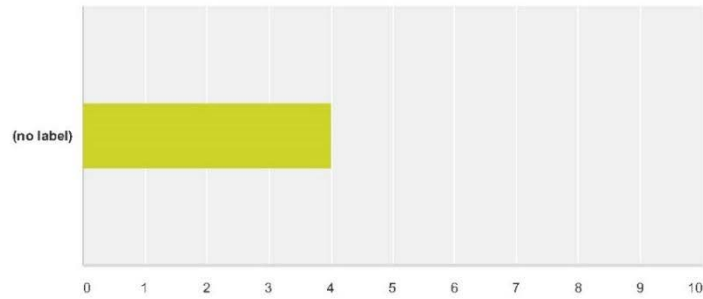


	Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree	Total	Weighted Average
(no label)	0.00% 0	33.33% 2	33.33% 2	33.33% 2	0.00% 0	6	3.00

Focus Group Commissioners

Q13 The guideline seeks to place the interests of children as the state's top priority.

Answered: 6 Skipped: 0

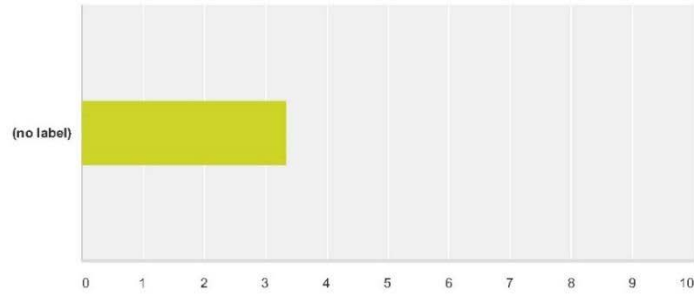


	Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree	Total	Weighted Average
(no label)	0.00% 0	16.67% 1	0.00% 0	50.00% 3	33.33% 2	6	4.00

Focus Group Commissioners

Q14 The guideline reflects that children should share in the standard of living of both parents.

Answered: 6 Skipped: 0

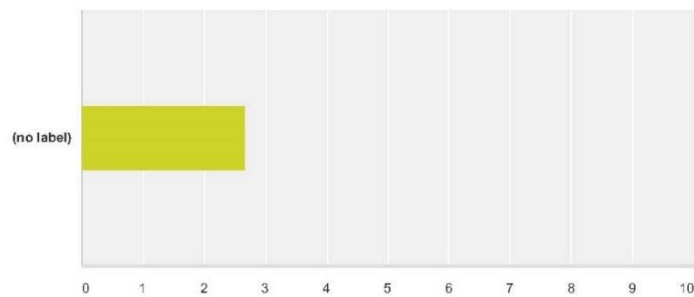


	Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree	Total	Weighted Average
(no label)	0.00% 0	50.00% 3	0.00% 0	16.67% 1	33.33% 2	6	3.33

Focus Group Commissioners

Q15 When both parents have high levels of responsibility for the children, the guideline minimizes significant disparities in the children's living standard in the two homes.

Answered: 6 Skipped: 0

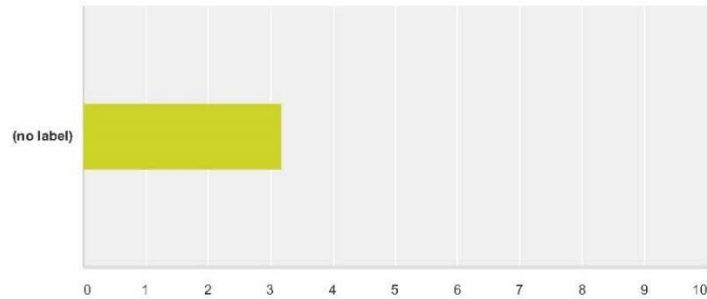


	Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree	Total	Weighted Average
(no label)	0.00% 0	50.00% 3	33.33% 2	16.67% 1	0.00% 0	6	2.67

Focus Group Commissioners

Q16 The guideline considers that the financial needs of the children should be met through private financial resources as much as possible.

Answered: 6 Skipped: 0

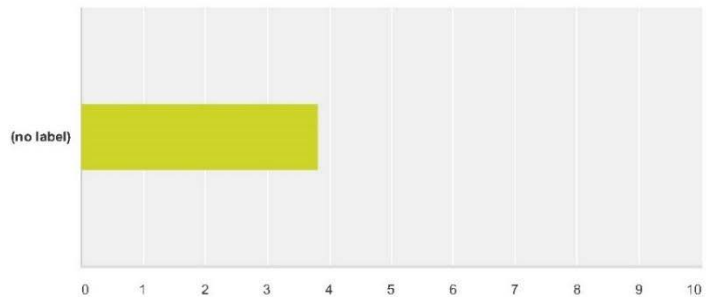


	Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree	Total	Weighted Average
(no label)	16.67% 1	16.67% 1	16.67% 1	33.33% 2	16.67% 1	6	3.17

Focus Group Commissioners

Q17 The guideline presumes that a parent having primary physical responsibility for the children contributes a significant portion of available resources for support of the children.

Answered: 6 Skipped: 0

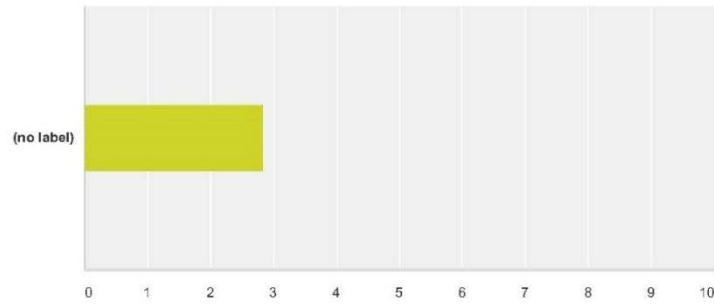


	Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree	Total	Weighted Average
(no label)	0.00% 0	0.00% 0	16.67% 1	83.33% 5	0.00% 0	6	3.83

Focus Group Commissioners

Q18 The guideline seeks to encourage fair and efficient settlements of conflicts between parents and seeks to minimize the need for litigation.

Answered: 6 Skipped: 0

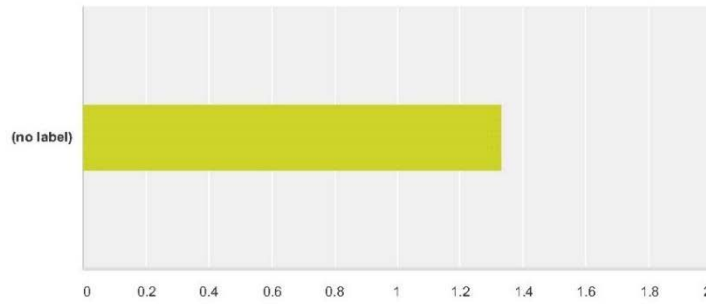


	Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree	Total	Weighted Average
(no label)	0.00% 0	50.00% 3	16.67% 1	33.33% 2	0.00% 0	6	2.83

Focus Group Commissioners

Q19 The guideline identifies the special circumstances in which child support orders should fall below the child support amount mandated by the guideline formula.

Answered: 6 Skipped: 0

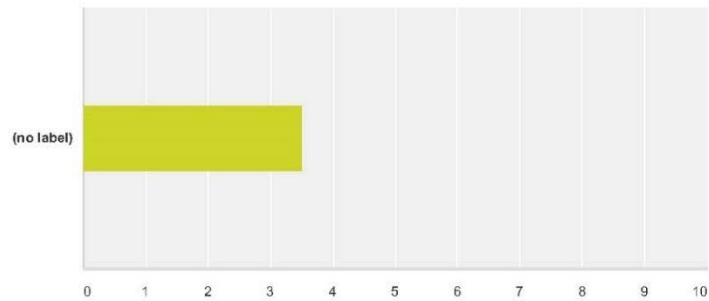


	Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree	Total	Weighted Average
(no label)	66.67% 4	33.33% 2	0.00% 0	0.00% 0	0.00% 0	6	1.33

Focus Group Commissioners

Q20 The guideline limits the number of special circumstances in which support orders differ from the child support amount mandated by the guideline formula.

Answered: 6 Skipped: 0

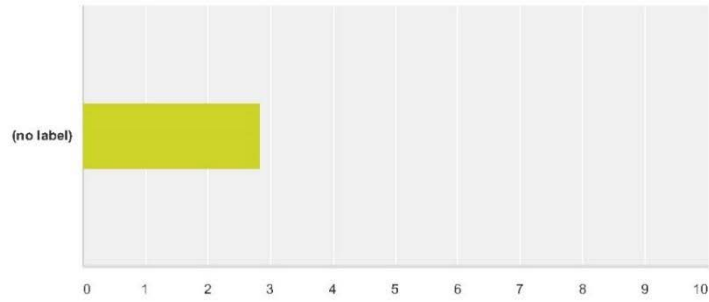


	Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree	Total	Weighted Average
(no label)	0.00% 0	0.00% 0	50.00% 3	50.00% 3	0.00% 0	6	3.50

Focus Group Commissioners

Q21 The guideline provides sufficient support reflecting the state’s high standard of living and high costs of raising children compared to other states. The guideline provides sufficient support reflecting the state’s high standard of living and high costs of raising children compared to other states.

Answered: 6 Skipped: 0



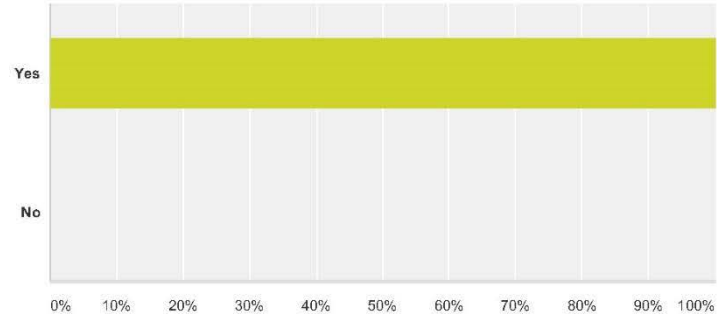
	Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree	Total	Weighted Average
(no label)	0.00% 0	50.00% 3	16.67% 1	33.33% 2	0.00% 0	6	2.83

Focus Group 3 (Stakeholders)

Focus Group for Advocates Envision Session

Q1 Do you think the next guideline study should include a focus group for those representing the interests of children and parents?

Answered: 3 Skipped: 0



Answer Choices	Responses
Yes	100.00% 3
No	0.00% 0
Total	3

Q2 If you answered "Yes", what could be changed to improve the process?

Answered: 3 Skipped: 0

#	Responses	Date
1	Have more focus groups throughout the state and every year.	5/19/2017 6:15 AM
2	Send out surveys ahead of time or to a larger group that wouldn't necessarily attend in person	5/19/2017 4:51 AM
3	cast a wider net of advocates and reach out directly to individuals, maybe ask local agencies for list of attorneys they see frequently in their court rooms.	5/18/2017 7:11 AM

Q3 If you answered "No", what would be a better way to include the input of these stakeholders in the guideline study?

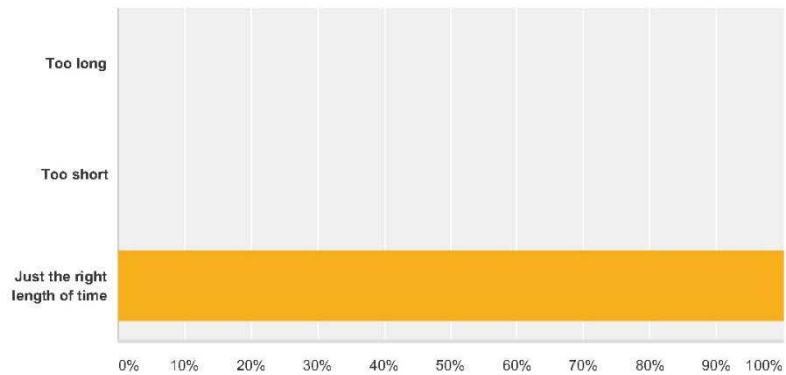
Answered: 0 Skipped: 3

#	Responses	Date
	There are no responses.	

Focus Group for Advocates Envision Session

Q4 At 2 hours, was the focus group

Answered: 3 Skipped: 0



Answer Choices	Responses
Too long	0.00% 0
Too short	0.00% 0
Just the right length of time	100.00% 3
Total	3

Q5 Can you think of additional resources we could have provided in advance, to better prepare you for the focus group?

Answered: 3 Skipped: 0

#	Responses	Date
1	A preliminary list of possible discussion points, solicit discussion points from attendees prior to meeting with ~ 1 week to review	5/19/2017 6:15 AM
2	A list of questions to consider	5/19/2017 4:51 AM
3	specific statutes/topics of interests and/or questions that will be asked.	5/18/2017 7:11 AM

Q6 Additional feedback on the Focus Group Meeting - the facility, facilitators, structure, etc.

Answered: 2 Skipped: 1

#	Responses	Date
1	Facilitators executed well. Attendance too low - expected 5-8, only 3. Parents could attend more easily on a weekend.	5/19/2017 6:15 AM

Focus Group for Advocates Envision Session

2	It was too bad that more people didn't attend but the facilitators were excellent	5/19/2017 4:51 AM
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Q7 Do you have additional thoughts regarding the guideline itself that you would like to provide here?

Answered: 1 Skipped: 2

#	Responses	Date
1	Guideline should not become defacto "welfare" or favor a "permissive" parenting style. It should better protect the non-primary physical custody parent from the slippery slope of less and less custody and continual degradation of that parent's standard of living with ever increasing support payments. Allow for a fraction of the support to go directly to the children once they reach 14 with the fraction approaching 100% once they reach 18. Allow for the support payment to be changed quarterly without having to go to court. Allow for demonstrated support to reduce the total net disposable income value used in the calculation - such as additional rent paid for a 2BR vs 1 BR.	5/19/2017 6:15 AM

Q8 Optional - Your name and organization.

Answered: 1 Skipped: 2

#	Responses	Date
1	Chris Aumann - self	5/19/2017 6:15 AM

Chapter B. Observations and Options for Consideration

Attachment A: Public comments

Attachment B: Acknowledgements

Attachment C: Project Staff Biographies.

Attachment A: Public Comments

	Commentator	Comment
1.	Chris Aumann Thousand Oaks, CA	<p>I am a divorced father of two teenagers living in Ventura County interested in improving California’s (CA’s) family law code and child support guidelines given their adverse effect on my own life and my children’s. I don’t seek fundamental change to the U.S. laws that required states to create their guidelines and collection programs, provided that Federal and State oversight does not allow fundamental individual rights to be violated. The U.S. child support laws developed over time starting decades ago in response to “dead-beat” fathers who failed to provide basic financial support for their children. The costs of child rearing often fell onto local or state welfare programs that were then authorized to track them down to recoup the costs. I don’t know how the support amounts were determined prior to these laws but it is reasonable to expect both parents to support their children financially. It is also important for children to have significant time with both parents throughout their path into adulthood. However, as a Father and parent that has always supported his children financially, I think the U.S. law and its implementation in most, if not all states, violates one parent’s right to property and their freedom to parent as they best see fit. Differences in parental styles often devolve into parental conflict that yields custody time shares that favor the more permissive parent. This means that one can find themselves on a slippery slope to less and less visitation with their children. This increases their child support obligation that betters the other parent’s living situation at the expense of increasing the disparity in quality between the two separate parental residences. CA Family code 4053(f) says: “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”. Because this does not place any limit on the improvement many</p>

	Commentator	Comment
		<p>non-primary custodial parents are faced with down-sizing to cramped, single bedroom situations that some would say is not healthy for children.</p> <p>In addition, I think CA’s child support guideline violates the equal protection clause of the 14th Amendment to the U.S. Constitution. It does this by holding divorced parents to a standard that roughly half of non-divorced parents don’t meet by definition. This and all reviews of the guideline determine the “average” percentage of income that intact families allocate in support of their children (I think the CSF did a good job of reviewing the history and methodology behind CA “K-Factor”, however see my notes section regarding a possible typo in the K-Factor tables). The support guideline requires that divorced parents meet the average exactly – but by difference and based on timeshare. While each of the divorced parents are “presumed innocent”, in family court one of them is “guilty” and required to pay the other parent even though they could have been paying 90% of the average before divorce while separated.</p> <p>Further, there is no oversight to make sure the recipient of child support spends the money directly on their children. In this way, the payer of child support is not treated equitably – if they miss a payment they are immediately subject to fines and penalties – severe oversight.</p> <p>In the next section I offer a proposal for fundamental change to the guideline. I then offer some comments regarding the CA review and for improving the review process.</p> <p><u>Proposed Changes</u></p> <p>I think that the impetus for the U.S. child support laws would lessen and perhaps reverse towards repeal as recognition of its violation of individual property rights increases and if the U.S. Federal and State governments</p>

	Commentator	Comment
		<p>made sure that the expenses they incur in their proper functioning must be paid each year. This would be done by sending each citizen a bill for their share of the deficit with payment plans permitted.</p> <p>But knowing that there likely is not much support for such an approach I would like to see CA change the K-factor to be a single value independent of net disposable income, say 5%, such that 90% or more of families would get a passing grade regarding financial support of their children. Accompanying this would be a form, akin to a tax form, that any parent can fill out themselves without knowing the other parent’s income detail, to document and prove that they were meeting and exceeding the minimum accepted standard of support.</p> <p>As is, the current CA rules violate the property rights of the “payee” by forcing them to transfer money to a parent they likely disagree with – they are divorced after all. Each divorced parent should be responsible for their own situations but if their partner parent believes they are not paying enough, then mandatory mediation would be the only route of appeal – not a court situation. Neither parent would be forced to pay the other against their beliefs with both committed to arriving at the best reasonable option in the best interests of their children. I think a condition for entering mediation should be that both parties be required to pay 25% of the mediation cost towards custodial accounts for their children. The mediation would be conducted towards mutual respect and support of a proper parent – child psychology, not dictatorial or permissive.</p> <p><u>CSF Review & Process</u></p> <p>As two of the three focus groups are composed of those that directly manage and/or support CA’s child support system, it is reasonable that most of the CSF review recommendations concern them. I was disappointed, to</p>

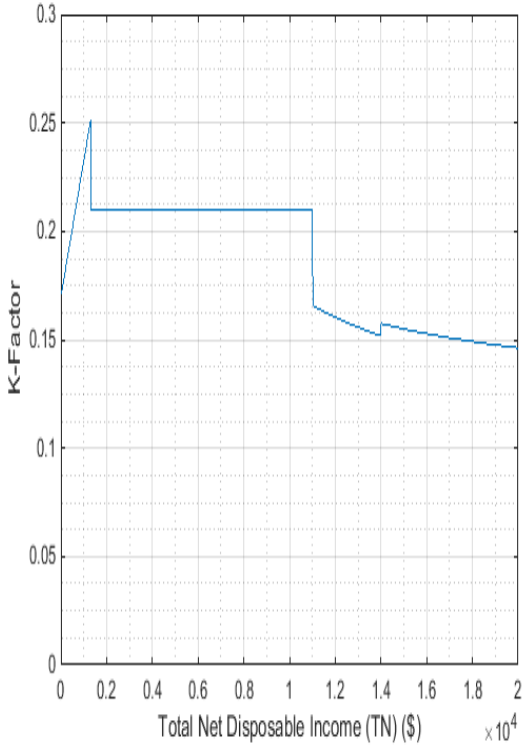
Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commentator	Comment
		<p>say the least, in the small amount of participation in the focus group for stakeholders such as myself. I think the scope of the review is such that inputs from stakeholders should be collected each year from each family court jurisdiction throughout the state. In present form, it might be too big to efficiently conduct a review in just a month or so and should be advertised in some way.</p> <p>It is my understanding that the Center for Families & Children report determined that the percentage of monies spent by intact families on their children has decreased and that their recommendation is that CA's support guideline correspondingly changes its guideline support equation to reflect this decrease. Specifically, the fraction has decreased from 0.25 to 0.21. As this is based on financial data from 2001-2010 I request that the Judicial Council and CA</p> <p>Legislature consider applying this change retroactively as it contributes to the large amount of over-due support payments, a measure of the inefficacy of the system. I request also that the Center for Families & Children review the history of the CA guidelines to clarify whether CA has been delinquent in completing their reviews on time as it would impact how far back in time to apply the correction. If the Wikipedia history is correct, then CA missed its required review in 2009 (published in 2010). There should have been one published in 2013 to maintain the sequence of every four years starting in 1993. I think subsequent reviews were to occur in 1997, 2001, 2005, 2009, and 2013. This would place this year's 2017 review back on schedule.</p> <p>Though I support a decrease in the K-factor I recognize that this would create an immediate huge burden on the court system unless the rules are changed so that parents can use the online calculator to arrive at a support amount themselves that can be documented as required by the "Final Rule". Establishing a fixed support guideline amount that can only change once a year places additional pressure on parents whose income is</p>

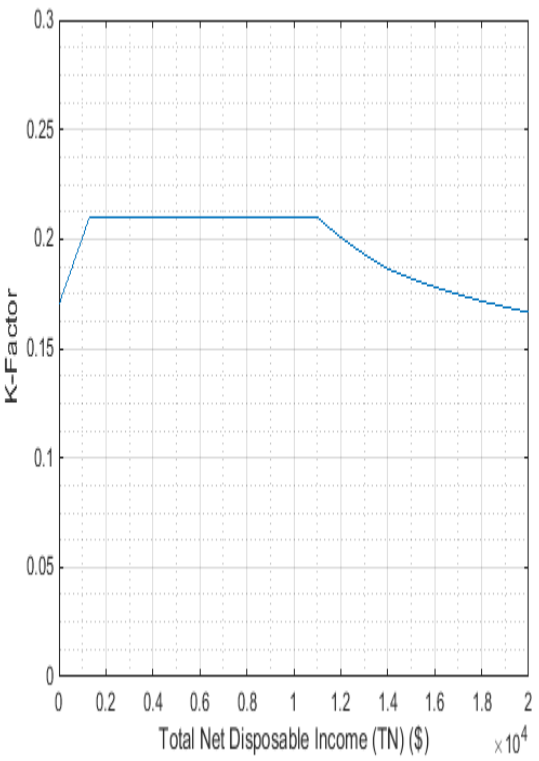
Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commentator	Comment
		<p>not regular – from hourly contract work or self-employment income as example.</p> <p><u>Notes:</u></p> <p>I would like to better understand how the self-support reserve system works for I feel that the 25% factor often impacts the non-primary custodial parent’s wishes for their children’s time with them regarding quality of life and living situation. The high cost of housing is not accounted for in the current guideline. I would like to see housing costs specifically for children as an allowable deduction in determining net disposable income just as health care is deductible. Use of a high K-factor places an undue burden on the primary breadwinner when separate household expenses are effectively doubled through divorce compared to intact families. In CA most divorces are through “irreconcilable differences” that implies no difference in moral standing between parties or compared to intact families.</p> <p>To get a CA driver’s license requires passing both a written exam and a behind-the-wheel exam. I feel that getting a marriage license should require testing as well. At present CA does not require that a couple go through any training regarding understanding current child support law or to draft and agree to a provisional initial parenting plan before getting married. Too often tens of thousands of dollars are spent on lawyer fees by parents through divorce that could have been set aside for children.</p> <p>The Final Rule uses the term “non-custodial” when I think it should define and use the term on primary custodial party.</p> <p>While the CSF is recommending that the Judicial Council modify the “K-Factor” it was not clear to me if</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commentator	Comment								
		<p>the CSF was also recommending that the schedule multiplier for number of children also be changed.</p> <p>I think the tables defining “K-Factor” options on pages 31 and 32 of the CSF report have typos in that they do not yield a smooth function like that shown on page 77. I think the last table on page 32 yields the curve shown below:</p>  <p>I think the table should be corrected to:</p> <table data-bbox="714 1512 1250 1648"> <tr> <td>\$0 – \$1300</td> <td>$0.17 + (TN / 32525)$</td> </tr> <tr> <td>\$1301 - \$11000</td> <td>0.21</td> </tr> <tr> <td>\$11001 – \$14000</td> <td>$0.10 + (1210 / TN)$</td> </tr> <tr> <td>Over \$14000</td> <td>$0.12 + (930 / TN)$</td> </tr> </table> <p>This would yield the chart below:</p>	\$0 – \$1300	$0.17 + (TN / 32525)$	\$1301 - \$11000	0.21	\$11001 – \$14000	$0.10 + (1210 / TN)$	Over \$14000	$0.12 + (930 / TN)$
\$0 – \$1300	$0.17 + (TN / 32525)$									
\$1301 - \$11000	0.21									
\$11001 – \$14000	$0.10 + (1210 / TN)$									
Over \$14000	$0.12 + (930 / TN)$									

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commentator	Comment
		 <p data-bbox="714 1102 1445 1270">If I am not mistaken, I think this means that the four Scenarios discussed starting on page 84 need to be updated. I think the other tables on pg 31 and 32 are also not correct.</p>
2.	<p data-bbox="251 1318 592 1396">Child Support Directors Association of California</p> <p data-bbox="251 1428 625 1585">by Ross Hutchings, CAE, Executive Director & Natalie Dillon, President, Board of Directors</p>	<p data-bbox="714 1318 1437 1606">The Child Support Directors Association of California (CSDA), on behalf of the 49 member regional and local child support agencies (LCSA), appreciates the opportunity to provide comment on the Review of Statewide Uniform Child Support Guideline 2017. The following comments were the result of discussion with our members.</p> <p data-bbox="722 1648 1380 1722"><u>Topic 1: Legislative Changes Needed to Comply with New Federal Final Rule</u></p> <p data-bbox="714 1764 1404 1879">CSDA supports the overall recommendation from the Center for Support of Families (CSF) to implement statutory changes related to the Federal Final Rule</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commentator	Comment
		<p>earlier versus upon the required timeframe of one year from the next California guideline study. As noted, starting earlier will enable more time for revisions to policies and procedures, training of staff, developing necessary software programming changes, and amend or revise related California Rules of Court and Judicial Council forms.</p> <p>CSDA supports the recommendations related to Family Code sections 4007.5, 4055, and 4054. CSDA members noted, though the cost of raising children, as mandated by Family Code section 4054, is necessary in establishing a guideline, the emphasis on that cost does not readily translate into order setting calculations and should also include analysis of compliance probabilities.</p> <p>CSDA member feedback asked for clarification on the recommendation related to Family Code section 4058(b). Is it CSF's recommendation that examples of circumstances when earning capacity may be used versus actual income information be included in the legislation or would this level of detail be provided via a policy letter?</p> <p>In regards to Family Code section 17400(d)(2), member comments questioned the continued use of a presumed income model based upon the federal rule's emphasis on fact-gathering and setting orders based on evidence of the noncustodial parent's actual income and ability to pay, rather than on presumed income. CSDA would support further discussion regarding the overall use of presumed income in the guideline calculation.</p> <p><u>Topic 2: Default Orders</u></p> <p>CSDA supports the recommendation by CSF to identify and distinguish non participatory default judgments from default judgments. Accurately representing</p>

	Commentator	Comment
		<p>noncustodial parent participation levels is beneficial in all phases of the family law process.</p> <p><u>Topic 3: The Low-Income Adjustment</u></p> <p>Two observations were identified by CSF related to Low-Income Adjustment (LIA). Observation A noted that discretion is an inevitable, even desirable, component of the judicial process. Nevertheless, CSF recommended steps to achieve greater uniformity in the courts' approach to LIA. Such steps included educational efforts for bench officers to ensure a common understanding; potential legislative changes to mandate all commercial support calculators automatically generate LIA information when circumstances warrant; and consider amending Family Code section 4055(c) so that when LIA is calculated, a singular, presumptive result is generated versus a range of possible results.</p> <p>CSDA member comments noted the single presumptive result in lieu of the current range could be counter-intuitive, limiting flexibility and minimizing the opportunity for negotiation.</p> <p>Members also questioned the CSF assessment that a fixed presumptive amount would likely result in fewer deviations. Several commented that a fixed amount could result in a higher number of deviations due to the lack of a range. Additional analysis on this recommendation may be warranted.</p> <p>Observation B noted feedback from focus group discussions and concerns surrounding the impact of LIA on low-income cases.</p> <p>The federal rule emphasized the need for state guidelines to take into account the subsistence needs for noncustodial parents. CSF recommended further study may be needed to consider how hardships and</p>

	Commentator	Comment
		<p>deviations from the guideline affect payment compliance. Such study was recommended as groundwork for the next quadrennial review. CSDA supports research related to the impact of hardships and deviations from guideline on low-income noncustodial parents and their effect on payment compliance. CSDA supports moving forward with this research now versus waiting for the next quadrennial review cycle.</p> <p><u>Topic 4: Understanding Child Support Orders</u></p> <p>The report notes that California has one of the most complex guidelines in the nation, making it difficult for parents to understand how aspects of their financial situation and other related life circumstances translate into a dollar amount for a child support obligation. Though CSF highlights a number of recommendations to improve understanding of child support orders, CSDA members questioned whether additional analysis was considered to simplify the calculation so as to make the overall process of calculating support more easily understood and more easily administered. 36 other states have less-complicated, easier to understand income-shares methodologies. Does the current calculation methodology used by California get demonstrably better orders, compliance, collections or process versus other state models?</p> <p>CSF had three observations related to understanding child support orders.</p> <p>Observation A noted several Judicial Council forms exist to assist parties with understanding their orders, but while performing case reviews, they reported many cases lacked the forms or they were not being completed. The recommendation was to provide additional training to LCSA staff and the private bar on the importance and mandatory nature of completing and attaching the various forms to the child support order. Also, additional training was recommended for court</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commentator	Comment
		<p>staff and judicial officers on the federal and state mandates to provide this information to parties.</p> <p>CSDA members noted one option for compliance would be for the court staff to reject all filings lacking the completed and attached forms noted in the report, thereby ensuring the necessary forms are completed and attached. This option could potentially impact service to customers and delay the overall process.</p> <p>Observation B noted a high number of cases reviewed deviated from guideline but lacked written finding or specific finding on the record of the amount that would have been required under the guideline, a finding that the application of the child support guideline would be unjust or inappropriate in the particular case, and a justification for why the order varies from guideline. The report notes the California statute complies with federal law by requiring information "in writing or on the record" however the lack of information in writing or on the record on the cases reviewed means it is difficult to ensure the parties know what the guideline amount was.</p> <p>CSF recommends an amendment to Family Code section 4056(a) to require the court to state in writing the pertinent information when deviating from guideline. Specific information would include: the amount of support that would have been ordered under the guideline; the reasons the amount of support ordered differs from the guideline formula amount; and the reasons the amount of support ordered is consistent with the best interests of the children. CSDA supports the recommendation to create greater consistency and understanding related to deviation from guideline. Members questioned possible increased costs and/or staffing needs to comply with this recommendation. Observation C relates to deviation from guideline amounts when the parties have stipulated and limited</p>

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	Commentator	Comment
		<p>information being included in the stipulation to identify the reason for the deviation. CSF recommends considering amending Family Code section 4065 to ensure stipulated agreements include information about the guideline amount and a justification about why the agreed upon amount varies from the guideline amount, as well as a declaration by the parties that they have been informed of the guideline amount and agree to the justification for a deviation from the guideline amount. CSDA members note this change may increase costs and/or staffing needs to comply with the recommendation.</p> <p><u>Topic 5: The K Factor</u></p> <p>CSF recommends further analysis of the K factor and its adjustment for very low-income ranges. Several models are highlighted to illustrate impacts to the child support obligation based upon adjusting the K factor and income bands to reflect inflation. The report recommends considering adjusting the K factor, reducing it from the current 0.25 to 0.21, to reflect the decrease in parental expenditures on children as noted in a number of recent studies. In addition, the report recommends adjusting the income intervals to reflect inflation.</p> <p>Member input on this topic was mixed. Some members noted the proposed adjustments to the K factor result in decreased child support obligations, benefiting the noncustodial parent but potentially negatively impacting the families relying upon those dollars to be self-sufficient. Are proposed changes equitable to both parties? Additionally, as the report notes, extreme low-income families expend a greater percentage of income on their children, approximately 31% of income. A significant portion of the IV-0 population is in the very low income range. As such, any K factor study would benefit from analysis of payment compliance rates to</p>

	Commentator	Comment
		<p>insure proposed changes would result in positive impacts.</p> <p><u>Topic 6: Data for Next Review</u></p> <p>CSDA is supportive of the recommendation to explore where and how to obtain additional economic data as required by the final rule.</p> <p><u>Topic 7: Zero-Dollar and Minimum Orders</u></p> <p>CSDA is in support of the report's opinion to not recommend establishing a standard minimum order, reinforcing the federal rule's requirement that orders be based upon evidence of the noncustodial parent's earnings and income and other evidence of ability to pay in the specific case.</p> <p>Members also noted the state child support agency's recent policy letter CSSP 17-02, entitled Uniform Initial Pleading Practices provides clarification to LCSAs on the use of zero-dollar orders, though said policy letter may need revisions based upon federal dictates.</p> <p><u>Topic 8: Outreach and Training</u></p> <p>A general observation by the report, whether guideline is changed or not, would be to increase outreach to, and training and guidance of commissioners, family law courts, the private bar, and local child support agency staff with regard to applying LIA and deviating from guideline formula amount. Such outreach and training could be free of cost to encourage maximum participation.</p> <p>An additional observation noted focus group discussions had a general sense that current guideline formula produces a support amount that is "too high." A recommendation was to clearly communicate any</p>

	Commentator	Comment
		<p>changes of the factors in the guideline formula to all stakeholders in a clear and understandable way.</p> <p>CSDA agrees with both of these recommendations.</p> <p><u>Topic 9: Support Order Data Sampling</u></p> <p>The report indicated that sample cases were pulled from the same 11 counties as used in the 2005 and 2010 case reviews. Using the same counties for each study provides stronger comparisons from one study to the other. However, CSF notes characteristics in the sample counties have changed over the years calling into question their viability as representative of the entire state. County caseload and therefore representative sizes has changed. CSDA members note a number of other factors are likely to change between study cycles, including potential changes to court officers and internal operational changes within the LCSAs.</p> <p>The report recommends assessing the 11 study counties to determine if they continue to accurately represent the state as a whole. CSDA supports this recommendation.</p> <p>Additionally, the report questioned whether or not to continue to select samples from IV-D and non-IV-D cases in equal proportion for the guideline review. IV-D orders made up about 78% of the overall orders obtained in the sample year (2015). CSDA members noted though fewer orders were obtained from non-IV-D cases, often those cases could become IV-D cases for enforcement purposes. CSDA recommends considering a statewide random sampling process, similar to that used by the state child support program for the annual Data Reliability Audit. Such a sampling would eliminate the 11 study county issue and the sampling size concerns noted by CSF.</p>

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	Commentator	Comment
		<p>Overall, CSDA appreciates the thorough review performed by CSF. The recommendations put forth and recognition for the need of further analysis and data related to payment compliance related to families in various economic and familial circumstances will create a guideline that reflects California's diverse families and economy. Our Association and its 49 member LCSAs look forward to participating on this future endeavor and each step of the way.</p>
3.	<p>Department of Child Support Services by Alisha A. Griffin, Director</p>	<p>The California State Department of Child Support Services (DCSS) is providing the following comments on the Review of Statewide Uniform Child Support Guideline 2017.</p> <p>Final Rule: Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, published in the Federal Register on page 93492, Volume 81, Number 244 on December 20, 2016, (Final Rule) will hereinafter be referred to as the "Final Rule."</p> <p><u>1. Legislative Changes Needed to Comply with the New Federal Final Rule</u></p> <p>DCSS supports Center of Support for Families recommendations regarding statutory changes to Family Code (FC) sections 4055, 4054, 4058(b), and 17400(d)(2) as they would provide clarity and include additional detail to align with 45 Code of Federal Regulations (CFR) 302.56(h) and 302.56(c)(1). Establishing a clear definition of earning ability and actual income and when they are appropriate to invoke as the basis of calculating support obligations will contribute to the accuracy and suitability of ordered support. Child Support Services Policy letter 17-02, Uniform Initial Pleading Practices, acknowledges the evidence-based requirements in the Final Rule, and that its implementation may require statutory, regulatory, and/or other changes.</p>

	Commentator	Comment
		<p>However, DCSS disagrees that FC section 4007.5(a)(2) violates 45 CFR 302.56(c)(3), as remedies exist to the incarcerated obligor to adjust the order through the Review and Adjustment process based on the state's guideline. Rather than being the exclusive remedy for incarcerated parents for whom there is an order to pay support, FC section 4007.5 provides an additional relief available only to a subset of litigants, namely those who are not incarcerated due to domestic violence. This section does not prevent a court from modifying support upon noticed motion, regardless of the reason the parent is incarcerated.</p> <p>Steven Eldred (Orange County) - The Final Rule and FC section 17400(d)(2) are in conflict and legislative change is required to implement the full intent of the rule. Imputing income based on local data risks uniformity as each jurisdiction may vary in framework. Business practices will need to be reviewed and revised as appropriate once final legislative changes/directives are affirmed.</p> <p>The Final Rule has now codified the leading guideline principle that each child support order should take into account an obligor's ability to pay. Doing so offers greater potential for avoiding the pitfalls which burden parents who do not earn enough to pay what is ordered.</p> <p>In order to determine what a person's "ability to pay" is, the Final Rule's expectation is that local child support agencies (LCSAs) will investigate each case sufficiently to base orders on a broad range of factors.</p> <p>In absence of income or evidence of an individual's earnings, some jurisdictions complete minimal or limited investigations to obtain accurate income information. The risk in limiting or minimizing investigation is the setting of high and inappropriate child support orders in many of their low income cases without any evidence of an obligor's ability to actually</p>

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	Commentator	Comment
		<p>earn the sum utilized in the calculation. Data supports that imputed income results are predictable including but not limited to, uncollectible arrears and support orders out of the payment range of an obligor.</p> <p>For many years, Orange County Department of Child Support Services (Orange County DCSS) has been utilizing many of the now-required methods in the Final Rule regarding imputation and ability to pay. Orange County DCSS has championed collaborative efforts between staff members and the parents of each case. These efforts include not only soliciting income information and income history from them, but educating parents on the importance of accurate child support guideline factors. Coupled with these attempts to obtain accuracy as to a person's ability to pay is a concomitant attempt to obtain an agreement or stipulation on a child support amount if the parents are amenable.</p> <p>Only when no income or income history was available, staff members were compelled to use the California minimum wage in the complaint and proposed judgment. The Final Rule does not completely prohibit imputation. LCSAs, however, may no longer be able to use full-time minimum wage at the pleading stage pursuant to FC section 17400(d)(2) as this practice is not based on evidence of an obligor's ability to pay. A legislative change would be required as only courts have the ability to impute income.</p> <p>Marci Jensen-Eldred (San Bernardino County) - The identified legislative changes support the program's overall emphasis on family centered services and take into account more factors and circumstances of the parties when determining guideline support. San Bernardino County Department of Child Support Services (San Bernardino County DCSS) is willing to participate in workgroups involving the legislative changes, specifically those involving the Final Rule, Order Setting, and zero orders.</p>

	Commentator	Comment
		<p>Sharon Wardale-Trejo, Merced-Mariposa Regional Department of Child Support Services (Merced-Mariposa Regional DCSS): <u>Merced-Mariposa Regional DCSS</u> supports the recommendation to proceed with legislative changes now to bring California in line with the Final Rule versus waiting until one year after the next quadrennial review. That could be five or more years down the road.</p> <p><u>Merced-Mariposa Regional DCSS</u> supports the proposed legislative changes to the Family Code. In regard to the topic of presumed income, considering the Final Rule's position on standard presumed amounts, this may be an opportunity to look for other methods, eliminating the use of presumed income.</p> <p>Ross Hutchings and Natalie Dillon, Child Support Directors Association (CSDA) - CSDA supports the overall recommendation from the CSF to implement statutory changes related to the Final Rule earlier, versus upon the required timeframe of one year from the next California guideline study. As noted, starting earlier will enable more time for revisions to policies and procedures, training of staff, developing necessary software programming changes, and amend or revise related California Rules of Court and Judicial Council forms.</p> <p>CSDA supports the recommendations related to FC sections 4007.5, 4055, and 4054. CSDA members noted, though the cost of raising children, as mandated by FC section 4054, is necessary in establishing a guideline, the emphasis on that cost does not readily translate into order setting calculations and should also include analysis of compliance probabilities.</p> <p>CSDA member feedback asked for clarification on the recommendation related to FC section 4058(b). Is it CSF's recommendation that examples of circumstances</p>

	Commentator	Comment
		<p>when earning capacity may be used versus actual income information be included in the, legislation or would this level of detail be provided via a policy letter?</p> <p>In regard to FC section 17400(d)(2), member comments questioned the continued use of a presumed income model based upon the Final Rule's emphasis on fact-gathering and setting orders based on evidence of the noncustodial parent's (NCPs) actual income and ability to pay, rather than on presumed income. CSDA would support further discussion regarding the overall use of presumed income in the guideline calculation.</p> <p>2) <u>Default Orders</u></p> <p>DCSS supports CSF recommendations to identify and distinguish non-participatory default judgments from default judgments where the terms result from the involvement and agreement of the parents. Currently, there is no way to identify true (non- participatory) default judgements and to distinguish them from participatory default judgments in the court case files or DCSS data repositories. Implementing this recommendation would require system and form changes as well as training. For consistency, the same approach should be followed for IV-D and non-IV-D cases by indicating on the judicial council forms whether the parents participated in the default process.</p> <p>Steven Eldred (Orange County) - In Orange County, a local practice is in place to identify participating default orders through a standardized case note. The practice of identifying these types of defaults in two separate categories (participating and non-participating) is critical. Orange County prefers that the California Child Support Enforcement (CSE) system have a field that accounts for participatory defaults.</p>

	Commentator	Comment
		<p>Marci Jensen-Eldred (San Bernardino County) - The following statement from the Executive Summary is not an accurate representation of how defaults are taken in San Bernardino County: "... the report indicates that discussions with the DCSS and LCSA staff suggest that the terms of many default judgments are actually resolved through involvement and agreement of the non-custodial parent."</p> <p>Typically, when a customer is involved and in agreement with the support amount in the Summons and Complaint, the outcome is a stipulation or order obtained in court - not a default. While some customers may express agreement and allow the order to proceed by Default, I don't think that's common for our customers. This may be a result of varying business practices across LCSAs - in San Bernardino when a customer is involved and expresses agreement we have business practices that encourage a stipulation for filing of an answer if appropriate.</p> <p>Having said that, San Bernardino County DCSS supports the gathering of statewide data that will identify true defaults from "defaults by consent".</p> <p>Sharon Wardale-Trejo, (Merced-Mariposa Regional DCSS): Accurately reporting non-participatory defaults from default judgments will improve our reporting of noncustodial parent participation in the order setting process. Having recently gone through a similar exercise in Merced, this requires clear understanding and communication between the judicial officer and LCSA staff of the level of participation of all parties. In addition, training may be necessary to ensure LCSA staff accurately record in the automation system the type of order obtained to report correctly.</p>

	Commentator	Comment
		<p>Ross Hutchings and Natalie Dillon (CSDA) - CSDA supports the recommendation by CSF to identify and distinguish non-participatory default judgments from default judgments. Accurately representing NCPs participation levels is beneficial in all phases of the family law process.</p> <p>3) <u>Low Income Adjustment</u></p> <p>DCSS supports CSF recommendations to improve statewide education efforts for bench officers to ensure a common understanding of the purpose and application of the low-income adjustment (LIA). The economic levels vary widely across the non-IV-D and IV-D populations and therefore the LIA standards should be applied wherever appropriate, coupled with the court's discretion to order the amount most appropriate within the LIA range. The net disposable income based on California's current full time minimum wage is below the LIA threshold and therefore qualifies for an LIA adjustment. This would indicate a broad application of the LIA in both non-IV-D and IV-D courts. Education efforts may also reduce variations in application of the LIA. Education should be consistent, routine, and mandatory.</p> <p>DCSS also agrees commercial support calculators should automatically generate the LIA information when circumstances warrant, rather than requiring users to generate the information. An obligor's ability to pay support is of primary importance. Automating the calculation of the LIA would ensure it is used when warranted.</p> <p>DCSS disagrees with the CSF recommendation to generate a single, presumptive result rather than a range of possible results when applying the LIA, as this change would limit the courts' discretion in adjusting the support order based on low income and may result in a</p>

	Commentator	Comment
		<p>higher number of deviations from the statewide guideline.</p> <p>DCSS agrees with the recommendation to perform a study to determine whether, and to what extent, the LIA provides for the subsistence needs of noncustodial parents. A better understanding of the subsistence needs will help to determine whether the LIA formula is in compliance with new federal regulations, or if another method to address the subsistence needs of low income parents is warranted.</p> <p>Steven Eldred (Orange County) - Orange County business practice currently includes LIA when entering data in the guideline calculator for NCPs with low income. The automatic LIA calculation feature will achieve greater uniformity. However, removing the LIA range limits the flexibility to address a parent's individual circumstances as mentioned in the Final Rule. Consistency in practice of application of the LIA will simplify staff's explanation of how orders are calculated to customers.</p> <p>a. Education of bench officers to ensure common understanding of purpose and application of the LIA. Expending scarce resources to review, train and educate Non-IVD judicial officers may not make economic sense.</p> <p>As evidenced by the comments from the Commissioner Focus Group, our IV-D judicial officers see our customers each and every day and understand that we are often dealing with parties close to, or below, the poverty level. Per the report, there are marked income disparities between the litigants in Non-IVD and IV-D courtrooms. Our IV-D courts are aware of the lack of income in our caseload and the high cost of living in California, therefore deviate from guideline and use LIA more frequently than Non-IVD courts.</p>

	Commentator	Comment
		<p>That being said, a continued dialogue with court partners on how to best serve low income families is warranted. The annual AB 1058 Conference is a perfect vehicle for such brainstorming and idea lab sessions.</p> <p>b. Require Guideline Calculators to Automatically Generate LIA - agree but unclear as to the practicality and logistics in achieving this recommendation.</p> <p>c. Change LIA to Generate One Result versus a Range - The court and the LCSA need discretion to make an order based upon the individual circumstances of the case. Removing the range to a uniform amount is contradictory to the Final Rule which requires that orders be based upon a person's individual circumstances. The stated goal of the Final Rule is to have child support orders reflect an obligor's actual earnings, income, or ability to pay rather than an arbitrary standard dollar amount devoid of any verified evidence. This is thought to lead to appropriate support orders which obligors can make sustained, consistent payments.</p> <p>d. Undertake a study to determine whether, and to what extent, the LIA provides for subsistence needs of noncustodial parents – Agree</p> <p>Marci Jensen-Eldred (San Bernardino County) - The stated recommendations should help to ensure consistent practices related to LIA. The disparity between IV-D and non-IV-D obligors receiving the LIA is likely connected to a higher average income for non-IV-D population of customers. Another factor is that some of the orders taken in the non-IV-D population are made in the Family Law Courts and not the IV-D Courts. The recommended statewide education efforts which could include IV-D and non-IV-D bench officers would be beneficial.</p>

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	Commentator	Comment
		<p>San Bernardino County DCSS supports data gathering and analysis to further determine the reason for the disparity and work towards gaining statewide consistency.</p> <p>Baljit Atwal (Stanislaus County) - The LIA should remain a range, as currently in place and not as a single presumptive result. The range allows for more flexibility in the lowest income cases to allow a court to still issue a guideline order if it is within the range. Most of our customers and LCSA attorneys also appreciate using the range of the LIA as a negotiating tool to get more appropriate stipulations to what then is a guideline amount. Recommending a single presumptive number for the sake of uniformity in the lowest of low income cases is counter-productive and will result in a higher number of deviations from the bench.</p> <p>Sharon Wardale-Trejo, Merced-Mariposa Regional DCSS: Merced-Mariposa Regional DCSS believes the current LIA range provides greater flexibility and opportunity for negotiation. Creating one presumptive LIA amount may increase judicial officer deviation from guideline. More analysis on this recommendation may be beneficial.</p> <p>A study of LIA and if it meets the threshold of subsistence level needs as described in the Final Rule is necessary. With the significant cost of living in California and the high population of very low-income participants in the Child Support Program, this information will be critical with any policy/legislative development.</p>

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	Commentator	Comment
		<p>Ross Hutchings and Natalie Dillon (CSDA) - Two observations were identified by CSF related to LIA.</p> <p>Observation A noted that discretion is an inevitable, even desirable, component of the judicial process. Nevertheless, CSF recommended steps to achieve greater uniformity in the courts' approach to LIA. Such steps included educational efforts for bench officers to ensure a common understanding; potential legislative changes to mandate all commercial support calculators automatically generate LIA information when circumstances warrant; and consider amending FC section 4055(c) so that when LIA is calculated, a singular, presumptive result is generated versus a range of possible results.</p> <p>CSDA member comments noted the single presumptive result in lieu of the current range could be counter-intuitive, limiting flexibility, and minimizing the opportunity for negotiation. Members also questioned the CSF assessment that a fixed presumptive amount would likely result in fewer deviations. Several commented that a fixed amount could result in a higher number of deviations due to the lack of a range. Additional analysis on this recommendation may be warranted.</p> <p>Observation B noted feedback from focus group discussions and concerns surrounding the impact of LIA on low-income cases. The Final Rule emphasized the need for state guidelines to take into account the subsistence needs for noncustodial parents. CSF recommended further study may be needed to consider how hardships and deviations from the guideline affect payment compliance. Such study was recommended as groundwork for the next quadrennial review. CSDA supports research related to the impact of hardships and deviations from guideline on low-income NCPs and their effect on payment compliance. CSDA supports</p>

	Commentator	Comment
		<p>moving forward with this research now versus waiting for the next quadrennial review cycle.</p> <p>4) <u>Understanding Child Support Orders</u></p> <p>DCSS believes that requiring regular, thorough, and application-based training is essential to every practice; therefore, it supports CSF recommendation to provide additional training of LCSA and court staff to ensure they are knowledgeable of current requirements and practice issues and are providing mandatory forms and adequate information to assist and educate the customers.</p> <p>DCSS further supports CSF recommendation to amend FC section 4056 to require the court to provide pertinent information in writing, rather than permitting the court to provide the information either in writing or on the record. Amending FC section 4056 would bring the state further into compliance with 45 CFR 302.56(h) (Final Rule) and FC section 4054 by improving the accuracy of gathered statistical data. DCSS also believes that the required pertinent information should be written in plain language to ensure better understanding for case participants of the application of the statewide uniform guideline in determining the child support amount.</p> <p>Other states have implemented procedures to generate standardized orders in an automated fashion to address appropriate deviations from the guideline. This results in consistency, efficiency, and better documentation of the factors considered in setting the child support amount. This option should be looked at in concert with the revisions to the application of the statewide uniform guideline.</p> <p>Although parties stipulating to a different support amount under FC section 4065 are bound by the federal requirements listed under section 4056 ("whenever the</p>

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	Commentator	Comment
		<p>court is ordering an amount for support that differs from the statewide uniform guideline formula amount..."), section 4065 is silent on the issue. CSF recommended one of two options to amend section 4065 to clarify that the requirements listed under FC section 4056 that apply to section 4065. DCSS agrees section 4065 should be amended to add clarity and finds the second option (to add language in section 4065 to state section 4056 applies to non-guideline orders made pursuant to a stipulation) is the better option as it takes a more direct and simple approach to alleviating the issue.</p> <p>Steven Eldred (Orange County) - There are 37 states that use some form of the income-shares model. None is as complicated as California's. The review did not seem to compile a comparison of the different states' models and make a recommendation as to whether some other formula might better meet California's needs. The complicated nature of the California guideline has always been a problem; is the complexity yielding better orders, better understanding of requirements or better outcomes for families? Or is it just more complicated, requiring substantial computer programming and litigant/provider education to comply?</p> <p>We recommend a thorough analysis of other models.</p> <p>While it is helpful to request judicial officers provide verbiage to include in orders made during court hearings (i.e. Minute Order and Orders) explaining the reason why the support amount deviated from guideline calculator in writing, consideration should be given that making this a requirement for deviation may deter deviations. This applies mainly to the court.</p> <p>We recommend including LCSA staff in training delivered to court staff and judicial officers to ensure consistency and clarity in messaging of information to customers and awareness of practices. This will assist</p>

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	Commentator	Comment
		<p>staff in explaining an order and assessing the potential for modification of the order.</p> <p>a. Provide training of LCSA and private bar on mandatory nature of child support attachments and forms - Agree, as outreach and communication with our stakeholders is usually a positive and proactive plan.</p> <p>b. Amend FC section 4056(a) to require the court state in writing the reasons for deviating from the guideline - This may have a chilling effect on our judicial officers and may end up with higher, non-payable orders. The current requirement is that the court must state on the record the reason for the deviation. As noted in many of the judicial focus group comments, when courts deviate from guideline, in nearly all cases it's because the guideline leaves obligors significantly below the poverty level.</p> <p>c. A requirement that the basis for deviation be detailed in writing by the Commissioner in a busy IV-D courtroom will discourage judicial officers from making appropriate payable orders based upon the circumstances of each case. Such a requirement will delay the court process and require additional verbiage in orders. Additionally, per the report, there is not an exorbitant amount of deviation occurring. In 2011, courts deviated from guideline in 14.6 percent of IV-D cases, versus 17.2 percent in 2017. These are relatively low numbers given the cost of living in California and our unique case constructs. Per an Orange County Child Support research review, approximately 69 percent of our customers are at or below the poverty level. The overall consensus is that parents must support their children, but this is made more difficult in certain economies and with the barriers many of our obligors face on a day-to-day basis. An amendment that discourages the court from deviating to an appropriate</p>

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		<p>payable order runs afoul of the Final Rule and our overall goal of supporting families.</p> <p>Marci Jensen-Eldred (San Bernardino County) - Taking steps to help customers better understand how their life circumstances impacts the guideline calculation would be beneficial as it is often a very complicated and complex to explain. In San Bernardino, our stipulated orders already indicate what guideline amount is and when a below-guideline-amount is being agreed upon. San Bernardino DCSS supports consistency across counties and between IV-D and non-IV-D, and including this information in all orders.</p> <p>Ross Hutchings and Natalie Dillon (CSDA) -The report notes that California has one of the most complex guidelines in the nation, making it difficult for parents to understand how aspects of their financial situation and other related life circumstances translate into a dollar amount for a child support obligation. Though CSF highlights a number of recommendations to improve understanding of child support orders, CSDA members questioned whether additional analysis was considered to simplify the calculation to make the overall process of calculating support more easily understood and more easily administered. 36 other states have less complicated, easier to understand income- shares methodologies. Does the current calculation methodology used by California get demonstrably better orders, compliance, collections, or process versus other state models?</p> <p>CSF had three observations related to understanding child support orders.</p> <p>Observation A noted several Judicial Council forms exist to assist parties with understanding their orders, but while performing case reviews, they reported many cases lacked the forms or they were not being</p>

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	Commentator	Comment
		<p>completed. The recommendation was to provide additional training to LCSA staff and the private bar on the importance and mandatory nature of completing and attaching the various forms to the child support order. Also, additional training was recommended for court staff and judicial officers on the federal and state mandates to provide this information to parties. CSDA members noted one option for compliance would be for the court staff to reject all filings lacking the completed and attached forms noted in the report, thereby ensuring the necessary forms are completed and attached. This option could potentially impact service to customers and delay the overall process.</p> <p>Observation B noted a high number of cases reviewed deviated from guideline but lacked written finding or specific finding on the record of the amount that would have been required under the guideline, a finding that the application of the child support guideline would be unjust or inappropriate in the particular case, and a justification for why the order varies from guideline. The report notes the California statute complies with federal law by requiring information "in writing or on the record" however the lack of information in writing or on the record on the cases reviewed means it is difficult to ensure the parties know what the guideline amount was.</p> <p>CSF recommends an amendment to FC section 4056(a) to require the court to state <i>in writing</i> the pertinent information when deviating from guideline. Specific information would include: the amount of support that would have been ordered under the guideline; the reasons the amount of support ordered differs from the guideline formula amount; and the reasons the amount of support ordered is consistent with the best interests of the children. CSDA supports the recommendation to create greater consistency and understanding related to deviation from guideline. Members questioned possible</p>

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	Commentator	Comment
		<p>increased costs and/or staffing needs to comply with this recommendation.</p> <p>Observation C relates to deviation from guideline amounts when the parties have stipulated and limited information being included in the stipulation to identify the reason for the deviation. CSF recommends considering amending FC section 4065 to ensure stipulated agreements include information about the guideline amount and a justification about why the agreed upon amount varies from the guideline amount, as well as a declaration by the parties that they have been informed of the guideline amount and agree to the justification for a deviation from the guideline amount. CSDA members note this change may increase costs and/or staffing needs to comply with the recommendation.</p> <p>5) <u>The K Factor</u></p> <p>DCSS supports the concept of adjusting both the K factor anchor to more accurately reflect the percentage of income parents spend on their children, and the income interval bands to reflect inflation. DCSS finds that additional study is warranted regarding both adjustments of the K factor anchor and the income interval bands, as well as establishing appropriate child support orders for children whose parents are low-income, as it is recognized considering an obligor's ability to pay and subsistence level needs should be key factors in establishing appropriate orders. DCSS also feels that the effect of the additional multipliers that are based on timeshare and make up a portion of the K factor should also be reviewed and analyzed in ensuring that the guideline results in appropriate child support orders.</p>

	Commentator	Comment
		<p>Steven Eldred (Orange County) - K factor revisions are appropriate according to the data within the report and literature review. The shift to this new K factor may provide benefits to the family as it is based upon economic data on the cost of raising children ensure appropriate orders. Unfortunately, the recommended changes are not then tested against a compliance model to see if these new formula adjustments would result in better compliance or more support paid to families. If the K factor adjustment intends to reduce deviations, the test of the adjustment against compliance models on various income scenarios will provide a more accurate reflection of impact on future deviations. We recommend substantial review of recommendations, as initial testing of the K factor revisions shows minimal impact on orders, and still has support orders above proven compliance break points.</p> <p>Marci Jensen-Eldred (San Bernardino County) - Updating this part of the guideline support formula is appropriate. San Bernardino County DCSS supports further data collection and analysis to show if a different percentage is needed for the K factor. There could also be value to setting up a regular interval in which the K Factor is evaluated (3 years? 5 years?)</p> <p>Baljit Atwal (Stanislaus County) - Stanislaus County agrees with the K factor anchor decrease. A counter argument might be that the cost of raising children has not decreased and looking at more recent economic data may not support lowering of the K factor to the legislature.</p> <p>Sharon Wardale-Trejo, <u>Merced-Mariposa Regional DCSS</u>: Merced-Mariposa Regional DCSS questions the CSF conclusion that parents are spending less on their children and as such the K Factor should be reduced from 0.25 to 0.21 to be more reflective of current spending. We believe further analysis in this area is</p>

	Commentator	Comment
		<p>necessary to truly understand the socio-economic circumstances of the child support population, both IV-D and non-IV-D. Will reducing the K Factor increase payment compliance? Will reducing the K Factor negatively affect the economic circumstances for the families relying upon the child support? What have studies of other state guideline calculation models shown?</p> <p>Ross Hutchings and Natalie Dillon (CSDA) - CSF recommends further analysis of the K factor and its adjustment for very low-income ranges. Several models are highlighted to illustrate impacts to the child support obligation based upon adjusting the K factor and income bands to reflect inflation. The report recommends considering adjusting the K factor, reducing it from the current 0.25 to 0.21, to reflect the decrease in parental expenditures on children as noted in a number of recent studies. In addition, the report recommends adjusting the income intervals to reflect inflation.</p> <p>Member input on this topic was mixed. Some members noted the proposed adjustments to the K factor result in decreased child support obligations, benefiting the NCPs, but potentially negatively impacting the families relying upon those dollars to be self-sufficient. Are proposed changes equitable to both parties? Additionally, as the report notes, extreme low-income families expend a greater percentage of income on their children, approximately 31 percent of income. A significant portion of the IV-D population is in the very low-income range. As such, any K factor study would benefit from analysis of payment compliance rates to insure proposed changes would result in positive impacts.</p>

	Commentator	Comment
		<p>6) <u>Data for Next Guideline Review</u></p> <p>DCSS supports CSF recommendation that the Legislature review the federal requirements for child support guideline studies per 45 CFR section 302.56 and make necessary statutory amendments to FC section 4054. Policy and procedure changes are necessary to add more specific guideline review criteria. The current section describes only general requirements where the new 45 CFR section 302.56(h) is very specific. Procedural and technological improvements to access accurate case data are also required.</p> <p>Steven Eldred (Orange County) - Agree. No comment.</p> <p>Marci Jensen-Eldred (San Bernardino County) - No specific comment on the data that is to be added to the review. It seems appropriate to have random reviews of case information as stated rather than only reviewing during the quadrennial review process.</p> <p>Sharon Wardale Trejo, <u>Merced-Mariposa Regional DCSS</u>: Additional economic data, in line with requirements established in the Final Rule, will be challenging to obtain. Suggest identifying various resources and begin developing processes now to establish interfaces in time for next quadrennial review.</p> <p>Ross Hutchings and Natalie Dillon (CSDA) - CSDA is supportive of the recommendation to explore where and how to obtain additional economic data as required by the Final Rule.</p> <p>7) <u>Zero Dollar and Minimum Orders</u></p> <p>DCSS supports CSF recommendation that additional training regarding the establishment of zero-dollar orders may be necessary to educate LCSA staff.</p>

	Commentator	Comment
		<p>Likewise, providing further guidance to Commissioners in adhering to FC section 4053(k) may be beneficial. DCSS has policy in a policy letter (CSS 05-35) which explains when it is appropriate to establish a zero dollar order in some specific circumstances; however, additional policy is required to implement the Final Rule's requirement for additional investigation and appropriate child support orders based on actual income.</p> <p>Steven Eldred (Orange County) - Orange County staff interviews both parents and conducts a review of both parents' income and obtains a stipulation/agreement using actual income and circumstances (e.g., aid, disability). Clarification aids in avoiding the potential misuse of zero dollar or minimum orders. Orange County adheres to stringent criteria for use of zero dollar orders and is consistent with the expectations noted on page 35.</p> <p>More clarification with specific case examples is always helpful. DCSS has already issued a letter on the subject. See CSS Letter 05-35 11/29/05 - "having actual income or income history information reflects an ability to pay... The lack of income or income history information of the obligor shall not be viewed as the inability of the obligor to earn income." If the LCSA investigates and does not find the NCP is on aid (Supplemental Security Income, General Relief, or CalWorks), incarcerated or institutionalized, or medically verified as totally and permanently disabled, then the order should not be set at zero.</p> <p>Marci Jensen-Eldred (San Bernardino County) - San Bernardino County DCSS does not do standard minimum orders. DCSS policy on when it is appropriate to seek entry of a zero dollar order would be helpful. The Order Setting Practices Committee started preliminary research on zero orders. It would be helpful to utilize that committee to assist in this effort.</p>

Commentator	Comment
	<p>Sharon Wardale-Trejo, <u>Merced-Mariposa Regional DCSS</u>: The recent order setting practices letter addresses the zero-dollar order policy. Agree that California should move away from minimum orders to comply with federal rule requirements.</p> <p>Ross Hutchings and Natalie Dillon (CSDA) - CSDA is in support of the report's opinion to not recommend establishing a standard minimum order, reinforcing the Final Rule's requirement that orders be based upon evidence of the noncustodial parent's earnings and income and other evidence of ability to pay in the specific case.</p> <p>Members also noted the state child support agency's recent policy letter CSSP 17-02, entitled Uniform Initial Pleading Practices provides clarification to LCSAs on the use of zero dollar orders, though said policy letter may need revisions based upon federal dictates.</p> <p>8) <u>Outreach and Training</u></p> <p>DCSS strongly believes additional outreach and education are needed in all recommended areas. Multiple sources of training may be required based on the target audience. Training should be required at least annually to address changes in law or policy and provided at levels appropriate for the intended audience.</p> <p>Steven Eldred (Orange County) - Agree, training required. It is always preferred to communicate with stakeholders as to best practices when dealing with our customer base.</p> <p>Marci Jensen-Eldred (San Bernardino County) - San Bernardino County DCSS supports additional outreach and training to both the IV-D and non-IV-D community including the LCSAs, the Court, Commissioners, and the private bar. A guideline calculation training or</p>

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	Commentator	Comment
		<p>workshop for customers may also be a valuable tool to build customer education.</p> <p>Ross Hutchings and Natalie Dillon (CSDA) - A general observation by the report, whether guideline is changed or not, would be to increase outreach to, and training and guidance of Commissioners, family law courts, the private bar, and local child support agency staff with regard to applying LIA and deviating from guideline formula amount. Such outreach and training could be free of cost to encourage maximum participation.</p> <p>An additional observation noted focus group discussions had a general sense that current guideline formula produces a support amount that is "too high." A recommendation was to clearly communicate any changes of the factors in the guideline formula to all stakeholders in a clear and understandable way.</p> <p>CSDA agrees with both of these recommendations.</p> <p>9) <u>Support Order and Sampling</u></p> <p>DCSS agrees that re-assessment of the 11 counties is beneficial and proposes that statewide data be collected to accurately represent the State of California. Including a statewide sample will bring the state further into compliance with CFR 302.56(h) [Final Rule] and FC 4054 by improving the accuracy of gathered statistical data.</p> <p>DCSS further agrees selecting samples of IV-D and non-IV-D cases equally proportioned to actual total case counts should bring the state further into compliance with CFR 302.56(h)(2) (Final Rule) and FC section 4054 by improving the accuracy of gathered statistical data.</p>

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	Commentator	Comment
		<p>Steven Eldred (Orange County) - Agree with assessing the 11 counties to determine whether or not the counties continue to accurately represent the entire state. Agree with expanding the sample population across counties or all counties and further stratification of the sample. We recommend the assessment of IV-D and Non-IVD cases be separate as the populations we serve are vastly different.</p> <p>Marci Jensen-Eldred (San Bernardino County) - San Bernardino County DCSS agrees with the recommendation to re-evaluate the 11 study counties to determine if they are representative.</p> <p>Ross Hutchings and Natalie Dillon (CSDA) - The report indicated that sample cases were pulled from the same 11 counties as used in the 2005 and 2010 case reviews. Using the same counties for each study provides stronger comparisons from one study to the other. However, CSF notes characteristics in the sample counties have changed over the years calling into question their viability as representative of the entire state. County caseload and therefore representative sizes has changed. CSDA members note a number of other factors are likely to change between study cycles, including potential changes to court officers and internal operational changes within the LCSAs.</p> <p>The report recommends assessing the 11 study counties to determine if they continue to accurately represent the state as a whole. CSDA supports this recommendation.</p> <p>Additionally, the report questioned whether or not to continue to select samples from IV-D and non-IV-D cases in equal proportion for the guideline review. IV-D orders made up about 78 percent of the overall orders obtained in the sample year (2015). CSDA members noted though fewer orders were obtained from non-IV-D cases, often those cases could</p>

	Commentator	Comment
		<p>become IV-D cases for enforcement purposes. CSDA recommends considering a statewide random sampling process, similar to that used by the state Child Support Program for the annual Data Reliability Audit. Such a sampling would eliminate the 11-study county issue and the sampling size concerns noted by CSF.</p> <p>10) <u>Additional Feedback</u></p> <p>Steven Eldred (Orange County) - Page 278: 6. Summary/Conclusions: In 2011, the California IV-D program was continuing to adapt to the 2008 implementation of the statewide-automated system, CSE. Given the passage of almost 10 years and the availability of almost 10 years' worth of data in CSE, it may be an opportune time to undertake a longitudinal—rather than "snapshot"—study of order establishment, the child support guideline, and compliance patterns. Such a study could help determine the optimal order amount for families in various economic and familial circumstances, and help recraft a guideline that reflects California's diverse families and economy." Orange County DCSS strongly supports this recommendation and can assist in completing this task promptly. We are interested in partnering with DCSS/AOC to meet this important goal.</p> <p>Baljit Atwal (Stanislaus County) - Let FC section 4007.5 sunset or amend only to remove the exception for family victims of crime.</p> <p>Veronica Riley (San Joaquin County) - San Joaquin concurs with the findings of the study. We appreciate the depth of detail and common sense recommendations brought forth by CSF.</p> <p>Thank you for the opportunity to view the results and provide feedback.</p>

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	Commentator	Comment
		<p>Lisa Dugan (Humboldt County) - I was heartened to hear that many of the concerns we have up here in the north are also seen as issues with California FC when analyzed in comparison to the new Final Rule. I am excited by the prospect of these changes that will allow us to better help families.</p> <p>Sharon Wardale-Trejo, <u>Merced-Mariposa Regional DCSS</u>: The current guideline calculation methodology is very complex, as noted several times in the CSF report. If it's so complex, why keep using it? It's been in place since 1993, it's time for a complete revamp of the calculation process. Now is the ideal time with the Final Rule requirements coming down, we have a valid reason to start fresh.</p> <p>Ross Hutchings and Natalie Dillon (CSDA) - CSDA appreciates the thorough review performed by CSF. The recommendations put forth and recognition for the need of further analysis and data related to payment compliance related to families in various economic and familial circumstances will create a guideline that reflects California's diverse families and economy. Our Association and its 49 member LCSAs look forward to participating on this future endeavor and each step of the way.</p>
4.	<p>Superior Court of Los Angeles by Sandra Pigati-Pizano, Management Analyst</p>	<p>Topic 1: Legislative Changes Needed to Comply With New Federal Final Rule</p> <p>We have no additional comment regarding the need to change Family Code sections 4007.5 (a)(2), 4055, 4054 and 17400(d)(2) in order to comply with federal regulations.</p> <p>Topic 2: Default Orders</p> <p>While we are not aware of this being an issue in Los Angeles County, as CSSD appears to have a division set up to handle stipulations as opposed to default judgments, we agree with the suggested Option and have no additional comment.</p>

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	Commentator	Comment
		<p>Topic 3: The Low Income Adjustment</p> <p>Observation A –We agree that training in regard to the low-income adjustment (LIA) option may be appropriate. We strongly endorse amending Family Code section 4055(c) to mandate that all commercial support calculators automatically generate LIA information when income circumstances warrant. We also endorse amending Family Code section 4055(c) so that when the LIA is calculated, it generates a singular, presumptive result, rather than a range of possible results, so long as the court retains the discretion of choosing any number from the LIA to and including not using its discretion to adopt the LIA in particular cases.</p> <p>Observation B – We agree that a study be undertaken to determine whether and to what extent the LIA provides for the subsistence needs of noncustodial parents. Put another way, it may be productive to begin such a study by determining the subsistence needs of noncustodial parents. (Such a finding may be useful with respect to Topics 5 and 6 below.)</p> <p>Topic 4: Understanding Child Support Orders</p> <p>Observation A – Prior to considering additional training on the importance and mandatory nature of completing and attaching all applicable forms, and consistent with the overarching goal of making the forms understandable to litigants, we propose that the Judicial Council consider amending and collapsing forms where appropriate. Given federal requirements that California must comply with whether the matter is a family law matter or an IV-D case, it may be appropriate to reconsider the need for some “Governmental” forms.</p> <p>Observation B – Given the stricture of Family Code §4056(a), we agree that legislation requiring the court to state in writing how it found those factors is advisable. A revised form can include the most common factors with a blank for additional reasons.</p> <p>Observation C – Further study may be advisable prior to requiring that in all cases the parties agree to the guideline amount which would be inserted in a stipulation. In non-governmental cases, parties often reach consensus on a child support amount, without agreeing on the guideline factors – just as they do in reaching a permanent spousal support agreement without reaching consensus on the 4320 factors.</p>

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		<p>Requiring that a guideline amount be inserted in all cases may well result in far fewer stipulations being filed. That the stipulated amount is a non-guideline amount should be sufficient where the parties understand that said non-guideline amount may trigger a no-change in circumstances filing. An insistence that the parties agree on a guideline amount will result in a burden on the courts as the failure to agree on the factors may result in extended litigation in a significant number of cases. (Exhibit 4-5 found on page 252 is instructive in this regard as it shows that in non-IV-D cases, 77.3% of the deviations were based on stipulations.)</p> <p>Topic 5: The K Factor</p> <p>We support the adjustment of the K factor from 0.25 to 0.21. We suggest that this change be made in tandem with considering the subsistence needs of noncustodial parents.</p> <p>Topic 6: Data for Next Review</p> <p>We support the collection of additional economic data required by federal rules’ quadrennial review process. We emphasize our belief that a primary goal would be to assess the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level, and factors that influence employment rates among noncustodial parents and compliance with child support orders. We also endorse analyzing payments on orders that have been segregated by characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment.</p> <p>A factor not discussed in this Review, which was brought up in the commissioners’ focus group, was the child care add-on, which can often be higher than the basic child support guideline amount. The inflexibility and impact of this factor needs to be studied.</p> <p>Topic 7: Zero-Dollar and Minimum Orders</p> <p>We agree that California should not establish a standard minimum order in those cases where a zero-dollar order is appropriate. Moreover, we support the federal goal that “guidelines must provide that orders must be based upon evidence of the noncustodial parent’s earnings and income and other evidence of ability to pay in the specific case.”</p>

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	Commentator	Comment
		<p>Topic 8: Outreach and Training</p> <p>Observation A – We agree that further training on the proper application of LIA and deviating from the guideline formula amount is warranted. We suggest that the annual statewide conference held in the fall be reformatted in order to incorporate needed training.</p> <p>Observation B – We agree with the sentiment expressed at the focus groups that support order amounts are “too high” and that further training may help to alleviate this perception through the proper use of LIA and other adjustments.</p> <p>Topic 9: Support Order Data Sampling</p> <p>We agree that the 11 study counties should be assessed to determine if they continue to accurately represent the state as a whole with regard to county size. We also agree that an examination of whether or not to continue to select samples of IV-D and non-IV-D cases in equal proportion for guideline review is warranted.</p>
5.	Douglas Powell Attorney at Law	<p>I write to comment on the Judicial Council’s Review of Statewide Uniform Child Support Guideline 2017, (“Review”).</p> <p>1. <u>Erroneous Data?</u></p> <p>The Review may be based on erroneous expenditure data. As Table 1 of the Review describes, families spend more than 100% of income on certain listed categories of expenditures. In detail, that table, titled <i>Selected Average Spending Categories by Family Composition</i>, is comprised of four subtables (called “panels”). (See Review at 59.) Each panel covers a period of years, over which the panel enumerates the percentages of income that eight types of families spend on each of eleven spending categories, (e.g., Housing, Shelter, Utilities, etc.). Although the panels do not list total percentage expenditures, summing the columns for each family type gives family expenditures totaling more than 100% of income, e.g.:</p> <ul style="list-style-type: none"> ▪ 106% for All Families with No Children,

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		<ul style="list-style-type: none"> ▪ 112% for All Families with One Child, ▪ 116% for Low- and Middle-Income Families with No Children, and ▪ 120% for Low- and Middle-Income Families with 1 Child, etc. <p>(See Review, Table 1, Panel A at 59-60.) Each panel of Table 1 of the Review has similar totals of more than 100%.</p> <p>Those excess sums may indicate that families must overspend to meet expenses. Or, they may mean that the authors of the Review have misinterpreted the Consumer Expenditure Survey (“CEX”) data on which the table is based. In the most recent CEX table, "Housing" is the sum of sub-categories "Shelter" and "Utilities," etc. (See CEX spreadsheet at https://www.bls.gov/cex/2016/msas/west.pdf.) But Table 1 of the Review appears to double count Shelter and Utilities by listing Housing, Shelter, and Utilities as separate categories that sum into the total. Of course, the Review may make unwarranted conclusions from faulty data.</p> <p><u>2. Comments</u></p> <p><u>A. Re Review Proposal 4, Understanding Child Support Orders</u></p> <p>Subdivision (a) of Family Code section 4056 already requires the court to put “in writing or on the record” the guideline amount and justifications for deviations from the child support guideline. (<i>See</i> Fam. Code § 4056, subd. (a).) Subdivision (a) of Family Code section 4056 should be amended to require courts to put the guideline those justifications for deviations “in writing <i>and</i> on the record.” Those twin requirements would enact Proposal 4 and further promote the goal of rendering understandable child support orders.</p>

	Commentator	Comment
		<p>There should be a standard format for the output of guideline child support calculations. The “Dissomaster Reports” used by many courts are filled with jargon that is difficult to read and explain.</p> <p>All guideline software vendors should be required to show calculations on output forms. Dissomaster calculations seem to assume tax rates that may not apply, (e.g., to wealthier parents who may pay fewer taxes), but the reports do not fully expose those underlying tax rates or calculations so that they may be tested against evidence.</p> <p><u>B. Re Review Proposal 5, Modifications to the K Factor</u></p> <p>Given the uncertainty about Review accuracy, it is unclear whether the K factor should be modified downward, as Proposal 5 suggests.</p> <p>1. Have Child-Rearing Costs Declined with a Tripling of Housing Costs?</p> <p>The Review author’s conclusion that the cost of child rearing has declined seems unwarranted in light of housing price data showing that, e.g., housing prices in San Francisco have tripled since the year 2000. Each year the Department of Defense publishes basic allowance for housing (“BAH”) tables that describe how much the Department of Defense will pay enlisted personnel for housing in the United States.¹⁹³ As those BAH tables describe, an “E-5” category two-bedroom townhome in San Francisco cost \$1,306 in the year</p>

¹⁹³ See web site of the Defense Travel Management Office of the Dept. of Defense, at <https://www.defensetravel.dod.mil/site/bah.cfm>, describing the basic allowance for housing, (“BAH”), which the military uses to set regional housing allowances for military personnel. The annual housing cost data is available in pdf format at the linked-to site for “BAH Rates for All Locations,” <https://www.defensetravel.dod.mil/site/pdcFiles.cfm?dir=/Allowances/BAH/PDF/>. The figures above are from the E-5 category of housing.

	Commentator	Comment
		<p>2000, \$2,928 in 2013, and \$4,197 in 2017. There are similar increases statewide. In light of that data it is difficult to understand how the Review authors justify decreasing the K factor.</p> <p>2. Additional Study is Warranted for All Income Levels</p> <p>Additional study is warranted not only for children whose parents are poor, as the Review suggests, but also for all parents. Noticeably lacking from the Review are tables showing the levels of income and support that remain to parents after guideline child support payments. The following two scenarios show how the guideline really works. Figure 1 shows how both parents with moderate incomes have nothing left to live on. Consider a San Francisco case with the following income data:</p> <ul style="list-style-type: none"> ▪ Each parent has \$75,000 annual income, (a figure used in the Review); ▪ each parent has \$500 monthly personal medical insurance premiums, (characteristic according to Covered California); ▪ the parents have one child; ▪ each parent pays \$100 for the child’s monthly medical expenses; ▪ the parents live in San Francisco, with housing of \$4,197 per month, (from DOD BAH for San Francisco); ▪ the parents have monthly necessary expenses of \$1,915, for food, transportation, and miscellaneous additional expenses. <p>Under that scenario, as Figure 1 of this comment shows, even after guideline child support, <i>each</i> of those parents will be short from \$856 to \$3,097 per month—at any custodial timeshare level. In cases of income disparity, the situation is worse. Suppose the same case as above, but the poorer parent has \$55,350 annual income and the wealthier parent has \$129,150 annual income,</p>

	Commentator	Comment
		<p>(respectively 60% and 140% of median annual income described by SF HUD). In that case, as Figure 2 shows, after guideline child support, costs of housing and necessities, and at any custodial timeshare, the poorer parent has a monthly shortfall of from \$1,450 (at full custody for the poorer parent) to \$3,766 (at no custody for the poorer parent). At a 50/50 timeshare, the poorer parent has a monthly shortfall of \$2,539 compared to the richer parent’s surplus of \$257 per month.</p> <p>In cases like these, the guideline undermines California public policy that children have “frequent and continuing contact” with each parent, (Fam. Code § 3020, subd. (b)), and those parents should “share the rights and responsibilities of child rearing.” (<i>Id.</i>) Where both parents share significant responsibilities, both incur substantial housing costs. Litigants should not have to rely on unpredictable judicial discretion to correct a non-working guideline.</p> <p>C. Re Review Proposal 6, Data for Next Guideline Review</p> <p>In California, the heart of the technological world, there should be a simple, computerized system to collect actual case data on guideline child support, as judicial officers render decisions. With such a system in place the Judicial Council would have statewide guideline child support case information readily available for review. The data would allow legislative bodies to hone the guideline so that it treats all Californians fairly.</p>
6.	Hon. Rebecca Wightman Commissioner	<p>The observations and options described in a number of topics of this report are both informative and seem very reasonable. For example, I agree with most of the options noted in Topics 1, 3, 5, 6, 7, 8 and 9.</p> <p>There are other items, however, where I believe <i>different</i> options should be considered, such as in Topic 2 re: Default Orders. I believe, for example, that there</p>

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	Commentator	Comment
		<p>are better options to consider. First, there should be a comprehensive push by DCSS for LCSAs to reduce their default rates across the board. The EPIC report (produced through a federal SIP grant) published by OSCE a number of years ago is a prime example of ways in which this can be accomplished. Second, a better option than the one listed in the study to consider would be to seek to have the LCSAs obtain stipulations (or at a minimum an Answer form), as opposed to simply allowing the case to go by default and keeping track of/distinguishing these from non-participatory defaults. Allowing a case to simply proceed by default “where the terms result from the involvement and agreement of noncustodial parents and LCSAs,” as noted in the report, creates unnecessary assumptions, and possibly undesirable consequences. It encourages a sloppy short-cut. First, by allowing these “involved” defaults to occur, this subset of cases now has a judgment that cannot be used as a determination <i>on the merits</i> in any other proceedings (e.g. re: parentage determinations), which would be helpful not only in other court divisions (e.g. dependency, probate), but also in other counties within this state, and in other states, or even other countries. Such judgments are also now subject to attack and set aside for a period of time and under different rules than if the case had proceeded by stipulation. These “agreements” to go by default also means no one now knows if the individual understood and waived any rights, e.g. to free genetic testing. While I realize it takes more time to get the paperwork together and back when there is “involvement and agreement” of NCPs and LCSAs, it is well worth pursuing such an option, not only for the reasons stated above, but studies have shown that where you actually get participation by the other parent – such as through a stipulation – it leads to a better outcome in terms of collection, not to mention that it can lead to better participation in the child’s life, as well as create a greater opportunity to educate the NCP on his or her</p>

	Commentator	Comment
		<p>rights and responsibilities. Finally, by not adopting a more proactive option that pushes LCSAs to reduce its default rate, including the number of those where there is “involvement and agreement”, you are going to skew the results on any case data analysis that is required under 45 C.F.R. § 302.56(h)(2) – e.g. which requires that case data analysis include “a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment.” [Note this rule is also discussed under Topic 6 in the study.]</p> <p>Finally, there is one topic, Topic 4 re: Understanding Child Support Orders, in which I have some disagreement, and believe that several recommended options should not be pursued, but rather other options should be considered. In particular is the option listed after Observation B in this topic – to wit, the suggestion that the Legislature consider amending Family Code Section 4056(a) to require the court to state <i>in writing</i> (only) the information required re: the proposed guideline amount, the reasons the amount differs from the guideline amount and the reasons the amount ordered is consistent with the best interests of the children. I believe such a recommendation is premature, and will undoubtedly increase the workload of the courts (likely becoming another unfunded mandate), particularly where they are preparing their own orders after hearing.</p> <p>First, I find it hard to follow and agree with the percentages being noted as to the number of deviations or orders not based on the guideline support as having increased, and consequently whether there is truly a great or widespread need to amend 4056(a) as suggested re: written orders, when the study itself stated (at p. 12): ...It is important to note, however, that insight into courts’ adherence to the guideline is incomplete since</p>

	Commentator	Comment
		<p>our analysis reveals that 33 percent of the orders reviewed did not specify whether the order amount was the guideline amount. Also, we found that the LIA is not necessarily granted consistently, especially in non-IV-D cases.</p> <p>The 2017 case data review also found that in the majority of cases in the sample, the data gatherers were unable to locate income information for one or both of the parents. Thirty-nine percent of all orders in the sample were established without obligor income information, and nearly 51 percent lacked obligee income information. This lack of data also contributes to difficulty in knowing whether obligations were set according to the guideline.</p> <p>The study further reported (p. 27):</p> <p>The 2017 California case sampling included 1,203 child support cases in 11 study counties, drawn from January 2015 through February 2016. The data collection tool asked the question, “Was the amount of the base support the guideline amount?” In 206 of the 1,203 cases, the answer was “No.” In 600 cases the response was “Yes.” However, in 332 of the cases, the answer was “Not specified,” and there were 65 blank responses. Non-IV-D orders were more likely than IV-D orders to lack information about whether the support amount was the guideline amount; of the 332 cases where such information was missing, 107 cases (32 percent) were non-IV-D cases. This was especially true for Los Angeles County, where 84 percent of the non-IV-D cases were missing information about whether the support amount was the guideline amount.</p> <p>If it were to turn out that the 332 cases where the “not specified” were actually cases in which the amount ordered was guideline, then there may very well not be a</p>

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	Commentator	Comment
		<p>huge need to create a greater workload in requiring the what may have been clearly stated in court as the reasons for the any deviation(s). Therefore, getting better training for all and getting the courts to follow the existing statute first – particularly LA county – would likely be more productive on multiple fronts, and would then allow one to determine whether it was really necessary to go back to the legislature. Even strengthening statutory requirement through a more forceful Rule of Court that specified the need to identify the income of the parties used, and a requirement to <i>specifically state on the order itself whether the amount ordered is a guideline amount or one in which the court is deviating from guideline</i> would likely suffice for data analysis responses going forward (while maintaining that the reasons for deviation must be stated in writing or on the record). Please do not unnecessarily create a workload for the courts that can be adequately addressed in other ways. If the proposed suggestion in the study does in fact go forward, then there will be a need to overhaul the forms to provide for greater check the boxes alternative for well-established (by statute AND some by case law), commonly used reasons for deviation.</p> <p>Lastly, I want to simply note – re: Observation C and Option in this topic – that while I understand the issue regarding the need to have parties in a stipulated agreement indicate their reasons, I want to point out that great care must be taken in how any options are pursued, so as not to intrude upon or create a value-based system where courts may inadvertently be allowed to pass judgment (inconsistently throughout the state) on the reasons asserted by agreeing parents for their agreement. There are a myriad of reasons why parents may wish to deviate from guideline that will further what that family has determined will be in the best interest of their child(ren), and will, in their view, adequately meet the needs of their child(ren).</p>

SP17-05 Review of Statewide Uniform Child Support Guideline 2017 All comments are verbatim unless indicated by an asterisk (*).

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	Commentator	Comment
7.	Michael Wright Attorney	<p>The consideration in topic 1 for the legislature to consider earlier statutory changes to allow time for other governmental entities to revise and implement their policies and procedures is an excellent suggestion. The federal final rule mandates do allow states to make a variety of policy choices in how to carry out those mandates. The additional time could allow greater stakeholder input to the legislature on those options.</p> <p>All of the other considerations listed in the guideline study appear to be sound suggestions for improving the child support guidelines and guideline evaluations in California and are supported by the data in this guideline study.</p>

Attachment B: Project Staff Biographies

Barry Blackburn assisted with all facets of the guideline project. Mr. Blackburn has provided training and technical assistance to more than 25 states in a variety of human service programs, including child support enforcement, child welfare, child protective services, and others. Mr. Blackburn holds an M.A. from the University of Chicago, and a B.A. from Indiana University.

Wendy Lynn Gray led the focus groups for this study, and assisted with editing the final report. Ms. Gray brings more than 35 years of public policy experience to her work at the CSF. She has worked in the public, private and non-profit sectors, primarily in the areas of management, finance, and human resources. Ms. Gray holds a B.A. from Harvard's Radcliffe College, and an M.A. from its John F. Kennedy School of Government.

Margaret Campbell Haynes J.D., assisted with identifying and assessing best practices and other guideline models from around the country. She also assisted with data analysis and editing the final report. Ms. Haynes has more than 30 years of experience with legal issues related to child support. Her focus is on the review, analysis, and development of policy and procedures; legal writing; and training on issues such as the Uniform Interstate Family Support Act, international child support, child support guidelines, and working with military families and veterans on child support issues. From 2004 to 2007, Ms. Haynes served as a member of the United States delegation to the Hague Convention on International Recovery of Child Support and Other Forms of Family Maintenance. She served as an official observer to the UIFSA Drafting Committee of the National Conference of Commissioners on Uniform State Laws from 1990 to 2008. She has published extensively in various scholarly and legal journals. Ms. Haynes earned her J.D. from University of North Carolina, School of Law, and holds a B.A. from Davidson College. She has been admitted to the Bar in the District of Columbia, Massachusetts, and North Carolina.

Pamela B. Levin was responsible for the editing and production of the final report. Ms. Levin brings more than 20 years of editorial experience and serves the Center for the Support of Families, Inc. (CSF) as proposal manager and senior editor. She holds a B.A. from the New College in Sarasota FL.

Susan F. Paikin, Esq. assisted with identifying and assessing best practices and other guideline models from around the country. Ms. Paikin joined the Center for the Support of Families (CSF) as a Senior Associate in 1994, after having served as a Master for the Family Court of Delaware for over 15 years. Ms. Paikin was an official observer on the Uniform Law Commission drafting committees for all four iterations of UIFSA (most recently UIFSA 2008) and for the Uniform Parentage Act (UPA 2002). She has written and lectured extensively on a wide range of child support issues, including child support guidelines, intergovernmental support litigation and parentage. She served on the Board of Editors for Delaware Lawyer for 24 years and was issue-

editor for seven volumes of this quarterly publication of the Delaware Bar Foundation. She has published extensively in various scholarly and legal journals. Ms. Paikin holds a J.D. from the Delaware Law School of Widener University, An M.Ed. from Boston University, and a B.A. from the University of Michigan, Ann Arbor.

Diane Potts, Esq., assisted with identifying and assessing best practices and guideline models for this project. Ms. Potts has served as an administrator, litigator, and policy consultant in child support for 21 years. Ms. Potts consults on national child support policies involving low income parents, procedural justice, and intergovernmental issues. She also serves as an official observer to the Uniform Law Commission's revision of the Uniform Parentage Act. Ms. Potts earned her J.D. at the Washington University School of Law, and her B.A. from the University of Illinois.

William M. Rodgers III, Ph.D., conducted the data analysis for this project. Dr. Rodgers is currently a Professor of Public Policy at Rutgers University's Bloustein School of Planning and Public Policy. He is also the Chief Economist, for the John J. Heldrich Center of Workforce Development, and Graduate Faculty for the School of Management and Labor Relations. Dr. Rodgers serves as Senior Research Affiliate of the National Poverty Center, University of Michigan, Gerald R. Ford School of Public Policy, Adjunct Associate for University of Minnesota's Hubert H. Humphrey Institute of Public Affairs, and is a member of the Wilkins Forum. Dr. Rodgers has been widely published, and has had numerous media appearances in the areas of economics, poverty, and race. Dr. Rodgers holds a Ph.D. and M.A. in Economics from Harvard University, an M.A. in Economics from the University of California at Santa Barbara, and a B.A. in Economics from Dartmouth College.

Katherine Sokolik led the project team for the guideline review. Ms. Sokolik is a veteran policy and operations analyst having been involved in social service programs in the public and private sectors since 1983. Ms. Sokolik serves as Vice President for Child Support, for the Center for the Support of Families (CSF). She holds both a B.A. and an M.P.A. from the Evergreen State College, in Olympia WA.

Elizabeth Morgan, J.D., assisted with research on the cost of raising children, the literature review of how other jurisdictions address low-income parents in their child support guidelines, data analysis and editing the final report. Ms. Morgan has more than 29 years of experience in the child support program, where she has worked in field operations, policy, legal, and legislative analysis for both the public and private sectors. Ms. Morgan holds a J.D. from the University of Puget Sound School of Law, an M.S. from Western Washington University, and a B.A. from Whitman College.

Attachment C: Acknowledgements

This report was prepared under the direction and oversight of the Judicial Council's Family and Juvenile Law Advisory Committee. At the time the report was prepared, the committee was co- chaired by Hon. Jerilyn L. Borack and Hon. Mark A. Juhas, and its members were Hon Sue Alexander, Hon. Craig E. Arthur, Mr. Robert Bayer, Hon. Carolyn M. Caietti, Hon. Carol D. Codrington, Hon. Roger Chan, Hon. Tari L. Cody, Hon. Michael J. Convey, Mr. Kevin Darrow Cunningham, Ms. Mary Majich Davis, Ms LaRon Dennis, Ms. Sylvia Deporto, Mr. G. Christopher Gardner, Hon. Michael Gassner, Hon. Suzanne Gazzaniga, Hon. Susan M. Gill, Hon. Rebecca C. Hardie, Ms. Leslie Heimov, Mr. John Daniel Hodson, Ms. Catherine Hohenwarter, Ms. Sharon Lawrence, Ms. Patricia Lee, Ms. Miranda Neal, Hon. Kimberly J. Nystrom-Geist, Hon. Annmarie G. Pace, Mr. Brian Richart, Ms. Sudha Shetty, Hon. Scott B. Thomsen, Hon. Patrick Tondreau, Hon. Adam Wertheimer, Hon Heidi K. Whilden, Hon. Daniel Zeke Zeidler and Dr. Cindy Van Schooten.

Staff from the Judicial Council assisted in the execution of this project and preparation of this report: Chelsie Bright (Project Manager), Irene Balajadia, Charlene Depner, Marita Desuasido, Audrey Fancy, Tracy Kenny, Anna Maves, Ruth McCreight, Juan Palomares, Gary Slossberg, and Nancy Taylor. The report was edited by Patricia Valentine.

As the independent contractor selected to assist with this project, the Center for the Support of Families under the leadership of its Vice President, Kathy Sokolik, spent countless hours conducting research, facilitating focus groups, analyzing case data, and drafting the guideline study report in consultation with Judicial Council staff. Biographies of the project staff are included in Attachment B.

The California Department of Child Support Services consulted with local child support agency representatives and advocates to obtain broad input in the development of additional research questions which were shared with the Judicial Council and integrated into the study.

Thank you to the focus group participants from various advocacy groups and to the child support commissioners from the 11 study counties for their insight and help with interpreting the preliminary case file review findings.

Thank you to Michael Wright for conducting an in-depth review and analysis of the guideline study report.

Lastly, the case file review was an essential part of this study. It could not have taken place without the invaluable assistance from the court executive officers and their staff in the 11 study counties who arranged the reviews locally, and from our contracted case file reviewers Louise Bayles-Fightmaster, David Bianchi, Cory Bliesner, Joanne Brown, Mary Grove, Sue

Kern, Deborah Kratky, Suma Mathai, Amy Ponsness, William Shepherd, and Michael Wright who spent many hours reviewing case files.