

OCSE-ABA Evaluation of Child Support Guidelines

Volume I. Findings and Conclusions

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Executive Summary

<http://www.acf.dhhs.gov/programs/cse/rpt/gdl/execsum1.htm>

The Evaluation of Child Support Guidelines was conducted from October 1994 to March 1996 and focused on three major issues:

- (1) how State child support guidelines are applied;
- (2) the extent, amount, direction, and causes of deviations from State guideline formulae; and
- (3) how States account for families' special circumstances in determining child support awards.

This executive summary provides synopses of finding of the expert panel, the Current Population Survey analysis, State guideline review studies, and the case record analysis.

EXPERT PANEL

A panel of experts was assembled to provide advice on the general nature of the research and to make recommendations based on the findings generated by the study. This panel was composed of knowledgeable judges, attorneys, officials, administrators, representatives of advocacy groups for custodial and noncustodial parents, consultants, and academics.

The panel concluded that

- (1) no steps should be taken at this time to adopt a national child support guideline because States are still in the experimental phase;
- (2) presumptive State guidelines should continue, with emphasis that States should conduct their required guideline reviews every 4 years in accordance with Federal regulations; and
- (3) the Federal Government should provide technical assistance and point out areas for the States to consider within the guideline review process.

These discussions have guided the nature of the conclusions and recommendations set forth in this report.

CURRENT POPULATION SURVEY ANALYSIS

Analysis of the latest available data from the Child Support for Custodial Mothers and Fathers Supplement to the 1992 Current Population Survey (covering 1991 child support information) indicated that support awards may have increased by a small amount after the shift from voluntary to presumptive guidelines. However, the income of the noncustodial parent was unavailable, preventing any definitive assessment of the impact of mandatory guidelines, and the demographic composition of custodial parents changed over the period.

STATE GUIDELINE REVIEW STUDIES

The ABA's survey of State guideline reviews from 48 States indicates that most States conducted thorough, thoughtful reviews that examined numerous issues and considered varied perspectives. Guideline reviews uncovered significant discussions or deviations in the following areas: income determination, tax exemptions, multiple families, agreements between the parties, health care, visitation and custody, and child care expenses. Consideration of these discussions and/or data often resulted in an adjustment to the guideline amount or a permissible deviation. Approximately 20 States have conducted a review of actual case records, and approximately 35 have reviewed the cost of childrearing, as required by Federal regulations.

To conduct more thorough reviews, States should

- (1) allocate sufficient resources, time, and staff to the guideline review process;
- (2) conduct case surveys, using the results to improve guidelines by reducing deviations and increasing consistency; and
- (3) review the cost-of-childrearing data.

CASE RECORD ANALYSIS

CSR analyzed more than 4,000 case records from 21 counties in 11 States. While this sample contains a geographic variety of States with all three major guideline models represented, it was not designed to be nationally representative. The analysis indicates that these States formally deviated in 17 percent of cases. A deviation case was one in which a decisionmaker explicitly departed from the guideline calculation in establishing a child support award.

The analysis of deviation cases shows that the four most common reasons for deviations across all cases were

- (1) agreement between the parties (21 percent);
- (2) second households (14 percent);
- (3) extended or extraordinary visitation or custody expenses (13 percent); and
- (4) low income of the payor (11 percent).

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In the case records, 74 percent of deviations decreased the amount of support by an average of 36 percent of the guideline amount; 15 percent increased the amount of support by an average of 30 percent of the guideline amount.

In a significant percentage of cases—ranging from less than 10 percent to more than 45 percent across the 21 counties—the ordered amount of support differed from the calculated guideline amount of support; these differences were found both in cases that followed the guideline calculations and in deviation cases. Reasons were not documented in the case records; however, they may be attributable to a variety of causes, such as incomplete documentation of facts or decisions contained only in the oral record for the case.

However, this finding suggests that States should

- (1) strive to emphasize in the training process that decisionmakers need to document departures from the guideline amount and reasons for the departures,
- (2) enforce a more consistent application of guidelines across cases, and
- (3) improve the completeness of documentation to facilitate the guideline review process.

The study presents a detailed review of areas with significant State interest including multiple families; income definition, verification, and imputation; health care; child care; support for postsecondary education; tax considerations; and custody and visitation. While some factors (such as income and health care) were considered in nearly all orders, the incidence of other factors seemed relatively low and quite variable across counties (even within the same State). For example, child care expenses were mentioned in 19 percent of all cases, although national data show that 73 percent of custodial parents are employed. These expenses had an effect on the award in 14 percent of cases, with a range across the counties from less than 2 percent to 45 percent). Similarly, multiple families were mentioned in 9 percent of cases and had an effect on the award in 7 percent, despite a remarriage rate of approximately 75 percent in the general population.

The findings generated by the case record analysis in some of these areas indicate that when a particular factor is mandated by a numerical formula in the guidelines, there generally is a higher incidence and more uniform treatment of that factor being considered in child support actions. Data from cases in the States with mandatory numerical adjustments suggest that child(ren) in similar circumstances would be treated equitably if mandatory adjustments were included in all State guidelines. For most of these subject areas (e.g., second families, income definition, child care, health care, and visitation and custody), States should consider a mandatory or consistent treatment. For other more exceptional circumstances (e.g., extraordinary health expenses and income imputation), individual circumstances may need to be closely evaluated and a discretionary approach may be preferred. In other areas where there is a lack of a policy consensus (e.g., support for postsecondary education), discretionary treatment also may be desirable. In discussions with more than 200 decisionmakers and other stakeholders across the 21 study counties, the ABA found a consensus that these issues need to be investigated further.

In addition to the recommendations discussed above, this report makes two overall recommendations with respect to procedural aspects of guideline implementation, based on observation of the case records, State case studies on deviations, and State guideline review reports. First, States need to improve their performance on independent verification of income. Across all cases, 15 percent contained an independent source of income verification for the noncustodial parent (ranging from 0 to 53 percent). Income is the driving factor behind every child support calculation, and accurate information is vital to arriving at an appropriate order. Second, States should consider adopting a standardized support order to ensure that certain factors common to the majority of child support actions are addressed consistently. A form that required documenting departures from the guideline calculation would certainly help to reduce the number of discrepancies and would allow State review teams to evaluate child support guidelines more effectively.

ACKNOWLEDGMENTS

This report was prepared for the Office of Child Support and Enforcement (OCSE) by CSR, Incorporated, in Washington, D.C., with the American Bar Association (ABA), our subcontractor, under Contract No. 105-94-8373 for an Evaluation of Child Support Guidelines. We would like to acknowledge the contributions of Charles Adams, Burt Barnow, Donald Bieniewicz, Joan Entmacher, Judge Aubrey Ford, Lynn Gold-Bikin, Lowell Groundland, Judge C. Philip Nichols, and State Senator Debbie Stabenow of Michigan, all of whom served as members of the Expert Panel. We are grateful to the States of Arkansas, Delaware, Florida, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, Pennsylvania, Washington, and Wisconsin for providing the data for this study.

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Chapter 1. INTRODUCTION

<http://www.acf.dhhs.gov/programs/cse/rpt/gdl/chap1.htm>

Note that the Tables and Exhibits are at the end of the chapter.

In October 1994, CSR, Incorporated, and its subcontractor, the American Bar Association's Center on Children and the Law (ABA), were awarded a contract by the Office of Child Support Enforcement (OCSE) to evaluate the implementation of child support guidelines. This chapter discusses the history of child support guidelines, describes the components of the research undertaken to perform the evaluation, and provides a plan for the report.

1.1 A HISTORY OF CHILD SUPPORT GUIDELINES

Historically, determining a child support award was at the discretion of the decisionmaker. He or she typically considered such factors as the financial resources of the child, the financial resources of the custodial parent (CP), the child's standard of living had the parents' marriage not dissolved, the physical and emotional conditions of the child, the child's educational needs, and the financial resources and needs of the noncustodial parent (NCP). [Uniform Marriage and Divorce Act, 1973, 309, 9A U.L.A. 400.]

The results of allowing the decisionmaker to determine the award amount was not always adequate to support the children or equitable among the parties. One study [Yee, L.M. 1979. " What Really Happens in Child Support Cases: An Empirical Study of Establishment and Enforcement of Child Support Orders in the Denver District Court. " Denver Law Journal 57(1):21 – 68.] found that the average monthly child support award in Colorado was less than average obligor monthly car payments. In addition to small award amounts, the decisionmaker's discretion often resulted in awards that were widely different for persons of similar circumstances. For example, the same study discovered that child support awards made by a single district court were 6.0 to 51.7 percent of an obligor's income for one child and from 5.6 to 40.0 percent of an obligor's income for two children. [id ., at 27, Tables 3, 4, 5, 6 at 52-4.] Motivated by such findings, in 1984, Congress required every State seeking Federal funding for public welfare programs to establish child support guidelines. [The Child Support Enforcement Amendments of 1984, Public Law (P.L.) 98 – 378, 98 Stat. 1305 (1984).] Initially these guidelines were required to serve only in an advisory capacity. However, some States adopted mandatory guidelines. The Family Support Act of 1988 required that State child support guidelines operate as rebuttable presumptions of the proper support amount. In order to deviate from these guidelines, a decisionmaker must submit written findings or findings on the record on why the guideline amount would be unjust or inappropriate for his or her particular case. [Section 102 of the Family Support Act of 1988, P.L. 100 – 485, 102 Stat. 2343 (1988), codified at 42 U.S.C. 667(b)(2) (1991).] Implementing final regulations are published at 45 C.F.R. 302.56. These regulations require that any order deviating from the guideline amount must include a finding on what the presumptive guideline amount would have been and a justification for the deviation. Currently, no nationwide child support guideline exists.

However, the following Federal requirements guide States in developing support guidelines:

- Support guidelines must be uniform throughout the State.
- Support guidelines must be numerical formulas that, at a minimum, consider all of an obligor's income and provide for the child's health care needs. [See 45 CFR 302.56.]
- Support guidelines must provide rebuttable, presumptive amounts in any judicial or administrative proceeding involving the establishment of a child support order. (Based on this requirement, it is clear that guidelines apply equally to (1) cases handled by a State child support agency [IV-D cases], (2) cases handled by a private or legal services attorney, and (3) cases in which the parties are appearing pro se [i.e., without an attorney]. Guidelines apply to administrative, judicial, and quasi-judicial determinations of support. In addition, guidelines apply to interstate and intrastate cases, negotiated agreements, [See 56 Fed. Reg. 22,347 (1991).] and contested cases. They must be used in setting temporary support as well as "final" support orders. Decisionmakers establishing child support in the context of a child protection or foster care proceeding, as well as in conjunction with a temporary restraining order in a domestic violence case, should establish such orders pursuant to child support guidelines.)
- Support guidelines must be used both to establish an initial child support order as well as to determine any subsequent award modification. [42 U.S.C. 666(a)(10)(A), (B).]
- A State must apply the guidelines to all cases; it cannot exclude an entire category of cases (e.g., high-income or low-income cases). [See 56 Fed. Reg. 22,335 (1991).]
- State criteria for deviating from a guideline must take into consideration the child(ren)'s best interests. [45 CFR 302.56(g).]

The Family Support Act of 1988 also requires that States reevaluate their guidelines at least once every 4 years in order to ensure that their applications result in the determination of appropriate child support awards (effective October 13, 1989). [Section 103(b) of the Family Support Act, supra note 5 to be codified at 42 U.S.C. 667(a) (1991).] As part of the reevaluation, Federal regulations require States to consider economic data on the cost of raising children and to analyze case data, gathered through sampling or other methods, on the application of and deviations from the guidelines. [See 45 CFR 302.56(h).] Findings from the resulting analysis must inform each State's guideline review to ensure that guidelines truly apply to the majority of cases in that State.

Finally, the Family Support Act of 1988 requires States to provide procedures for the review and adjustment of IV-D child support orders. Beginning October 13, 1993, a review must occur at least once every 3 years unless (1) in an Aid to Families with Dependent Children (AFDC), Title IV-E foster care, or medicaid case, neither parent requests a review and the State determines that such a review would not be in the child's best interest or (2) in a non-AFDC IV-D case, neither parent requests a review. [42 U.S.C. 666(a)(10)(B).] Any adjustment must be pursuant to child support guidelines.

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1.2 MAJOR CHILD SUPPORT GUIDELINE MODELS

Current Federal law does not require States to adopt a particular type of support guideline. Although State guidelines vary, they often are based on the following models: the percentage-of-income model, the income-shares model, and the Delaware Melson formula. Each model is discussed below.

1.2.1 Percentage-of-Income Model

Fewer than 15 States establish child support awards based on a percentage of the obligor's income. Of these States, some use the obligor's gross income to determine awards; other States use the obligor's net income. Most States that base their guidelines on the percentage-of-income model use a fixed percentage that remains constant at varying income levels. For example, Wisconsin's guidelines set awards at 17 percent of the noncustodial parent's (NCP's) gross income for one child, 25 percent for two children, 29 percent for three children, 31 percent for four children, and 35 percent for five or more children. The guideline does not explicitly consider the custodial parent's (CP's) income. It is assumed that the CP is contributing an equivalent amount of support through direct expenditures and in-kind services.

1.2.2 Income-Shares Model

The income-shares model, which is used by more than 30 States, was developed by Dr. Robert Williams and was based on the work of Thomas Espenshade. Espenshade analyzed the 1972-1973 Consumer Expenditure Survey to determine the costs of raising children in the United States. According to Espenshade (1984), although the dollar amount spent on behalf of a child increases with income level, the actual percentage of parental income spent on a child decreases as income increases.

Calculating an award using this model involves consulting a chart that lists support amounts based on Espenshade's economic studies for varying income levels. The appropriate support amount is then prorated between the parents based on each parent's proportion of the total parent income. The support amount allows for prorated shares of child care and medical expenses to be added to the basic support amount. [See Advisory Panel on Child Support Guidelines and Williams, R. 1987. Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report, II-68 to II-75. Washington, DC: U.S. Department of Health and Human Services, Office of Child Support Enforcement.]

1.2.3 Delaware Melson Formula

The Delaware Melson formula was developed by Judge Elwood F. Melson, Jr., of Delaware. It has been used statewide in Delaware since 1979 [See Dalton v. Clanton, 559 A.2d 1197 (Del. 1989).] and was revised in 1990. The Melson formula is based on the net income of both parents, from which a self-support reserve is subtracted. From that balance, an amount for the primary support needs of the children is subtracted. After providing for these basic needs, the Delaware Melson formula also allows a child to benefit from each parent's remaining income. This additional support amount is determined by multiplying the remaining income by a percentage determined by the number of children needing support. Finally, child care expenses are added as part of the primary support allowance. Versions of the Delaware Melson formula have been enacted in Delaware, Hawaii, Montana, and West Virginia.

1.3 SCOPE OF THE PRESENT STUDY

The evaluation was designed to investigate (1) the application of guidelines in actual case records, (2) the subjective perceptions of individuals involved in the child support system with regard to the overall operation of guidelines, (3) the extent and quality of mandated State guideline reviews, and (4) the effect of guideline implementation on award amounts by analyzing the 1992 Current Population Survey (CPS) Matched March–April Data File. The fifth component of the study was an expert panel. This remainder of this chapter provides a brief overview of the research questions and methodology for the five major components of the study. (Appendix A provides a more comprehensive description of the methodology.)

1.3.1 Overall Research Questions

This study addressed a variety of questions related to the formulation and application of guidelines, including the following:

- How are State child support guidelines applied?
- What are the extent, amount, direction, and causes of deviations from the guideline formula?
- How do States account for families' special circumstances, such as second-family members (e.g., former or other children, stepchildren, and subsequent spouses), work-related and other child care, health insurance or health care expenses, and visitation and custody expenses? In addition, how do States extend guideline application to children who are past the age of majority or emancipation? To what degree are guidelines applied in the case of children who are students in postsecondary vocational or academic schools? Do decisionmakers address these circumstances by adjusting the award amount or by deviating from the guideline formula? When guidelines are implemented, is a verified income statement used? Is income imputation mentioned in the guidelines?
- What special issues relate to interstate child support cases? Have any problems arisen in applying guidelines to such cases? What aspect(s) of establishing interstate support orders using guidelines present particular challenges (e.g., gathering financial information and seeking or preventing deviations)?
- What is the extent and quality of each mandated State guideline review? What findings resulted and what actions were taken as a result of these mandated reviews? Are the guideline reviews up to date, and do they meet the regulatory requirements (e.g., collect data on deviations and provide evidence of analyzing the cost of raising children when determining guidelines)?

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- What is the impact of mandated guidelines on the level of the award amount and on compliance? What is the effect of case status (in-state versus interstate) on the award amount?

These questions were addressed in five areas of investigation undertaken in the evaluation. Each area is described below in the following section.

1.3.2 Overview of the Study Design

The study design has the following five major components:

- *Case Data Collection.*—Child support case records were collected and coded for quantitative analysis of guideline outcomes for families in 21 counties in 11 States.
- *Stakeholder Interviews.*—Various participants in the child support system in each of the 21 study counties were interviewed to obtain their views on guideline implementation and operation. The information was collected in each study county.
- *Analysis of State Guideline Review Studies.*—State guideline review studies were requested from each State and U.S. territories (49 of 55 provided written responses). These studies were analyzed for their extent and quality. In addition, any findings and actions taken as a result of these mandated reviews were described and analyzed.
- *Analysis of the CPS Supplement and the March CPS Matched File.*—A secondary analysis of the 1992 CPS Matched March–April Data File was performed to examine the effects of States' presumptive guidelines on child support award amounts and compliance. This analysis was designed to provide a national context for the collected case information collected.
- *Expert Panel.*—A panel of experts was assembled on two occasions to provide advice on (1) the direction that would be taken for research and (2) interpreting the findings and preparing the final report in order to make meaningful recommendations to the child support community. A variety of individuals was invited to join the Expert Panel to ensure representation from a full spectrum of interests, including representatives of CP and NCP advocate groups, administrators, judges, attorneys, and researchers. (See below for a complete list of Expert Panel members and a discussion of their recommendations.)

The case data collection and the stakeholder interviews were designed to address the first four research questions. The analysis of state guideline review studies addressed the fifth research question. Each component of the evaluation is discussed in greater detail below.

1.3.3 Case Data Collection

This component involved collecting and analyzing case records in which a child support order was established or modified. The case records were obtained various forums, such as administrative agencies and courts. The data obtained from these cases were analyzed to answer the first four research questions.

1.3.3.1 State and County Selection

The study sites were obtained by selecting 2 counties in each of 11 States. It should be noted that achieving a random sample was not essential to this selection process. The criteria used to choose the initial study States were representation of all specific guideline models (i.e., percentage-of-income, income-share, and Delaware Melson models) and willingness to participate. Many States refused to participate because of the involved work burden.

After a State confirmed its participation in the study, CSR contacted a designated liaison who secured the cooperation of State and local IV-D agencies and courts. CSR provided assistance to this State liaison in ways such as developing a preliminary data collection protocol for that State. The liaison used this protocol to assist discussions with local staff. CSR periodically monitored the liaison's progress in obtaining their cooperation.

The following 11 states elected to participate in the study:

- Arkansas;
- Delaware;
- Florida;
- Massachusetts;
- Minnesota;
- Missouri;
- New Hampshire;
- New Jersey;
- Pennsylvania;
- Washington; and
- Wisconsin.

1.3.3.2 Data Collection Methodology

The aim of this study was to collect 200 cases with complete documentation from each participating county (4,200 cases total). To ensure that a diversity of case types was represented, the child support award process in each county was carefully researched. The end goal was a sample of cases from each county that reflected the various forums in which orders could be established or modified and that also included a mix of IV-D and non-IV-D cases. The methodology is further discussed in greater detail below.

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Cases were prospectively selected; that is, for a case to be included in the study, a child support award must have been established or modified during the period of the study. The collected data were of two types: (1) worksheet information containing data on the income and expenses of the parties, adjustments, and the calculations of award amounts and (2) supplemental information from the case records on deviations, the size and composition of families, the type of award, case type, and other descriptive data. Although strenuous efforts were made to obtain complete case records containing both worksheet and supplemental data, some case files contained incomplete information.

Table 1-1 following this page lists (1) the 21 counties from which data were collected and (2) the number of case records of each type (i.e., worksheet or supplemental data) included in the research database. One county in New Jersey provided no usable worksheet data. Most analyses reported in Chapter 2 of this report combined worksheet with supplemental data, while the analysis reported in Chapter 3 used the supplemental data. The study methodology was designed to collect data on the full range of support cases decided in the counties, including both AFDC cases and non-AFDC cases handled by the IV-D agency, as well as non-IV-D cases. The case status, summarized by county in Table 1-2, shows that cases across all counties were nearly equally divided among three categories: (1) AFDC cases, (1) IV-D non-AFDC cases, and (3) non-IV-D cases. In Pennsylvania all child support cases are handled by the IV-D agency, and New Jersey does not make an administrative distinction between IV-D and non-IV-D cases. Child support orders applicable to the study included the following:

- Temporary orders;
- Permanent orders;
- Interim orders; and
- Award modifications.

Table 1-3 shows the distribution of cases by type of award across all sites. The most frequent type of award was a permanent award (in 63.0 percent of the cases). Modifications were made in 20.9 percent of cases, and temporary awards were reported in 10.5 percent of cases.

These awards could be made in any type of case, such as separations, dissolutions, or paternity establishments. Table 1-4 summarizes the types of cases and shows that paternity establishments were most frequent (29.3 percent of cases), followed by dissolutions (26.2 percent). Modifications to existing awards did not report a separate case type, and 18.6 percent of the records had missing case types.

Cases were collected in all relevant forums where cases are heard in the county, including courts, quasi-judicial settings, and administrative bodies. Table 1-5 shows that 38.9 percent of the cases were heard in courts and 51.0 percent in quasi-judicial settings. In addition, 6.7 percent were heard before administrative bodies. There was less uniformity than expected within States—only two States (Arkansas and Massachusetts) heard all cases in judicial forums, while in most States, many forums were used. Different case types were heard in different forums in some counties. As shown in Table 1-6 following this page, only 14.4 percent of non-IV-D cases were heard in judicial forums, compared with 38.9 percent of all cases, while 62 percent were heard in quasi-judicial forums, and 22.4 percent were heard in administrative forums.

The study counties varied substantially in case characteristics. The following characteristics were notable:

- Overall, more than one-third of the cases were IV-D AFDC cases (see Table 1-2). Among the counties, the percentage of cases that were AFDC cases ranged from a low of 12.2 percent (in a Wisconsin county) to a high of 54.8 percent (in a Massachusetts county). Across all counties, 33.0 percent were IV-D non-AFDC cases, 3.0 percent were IV-D cases for which AFDC status was not reported, and 29.0 percent were non-IV-D cases.
- Fathers were the obligors in 90 percent of the cases, as expected (see Table 1-7). Counties varied little among each other with respect to the parent who was most often the obligee. Mothers were obligees in 78 percent of the cases, fathers were obligees in 5 percent, and the State was the obligee in 6 percent (see Table 1-8).
- The number of children covered by the order was one child in 67 percent of the orders, two children in 25 percent, and 3 or more children in the remainder of orders. This differed somewhat from the national CPS data, of which 52 percent of cases involved one child and 31 percent involved two children. [Table 1 in: Census Bureau. 1995. Child Support for Custodial Mothers and Fathers: 1991. Current Populations Reports, Series P60-187. Washington, DC: U.S. Government Printing Office.] The age of the youngest child was younger than age 6 in 57 percent of the cases and was age 6 to 10 in 19 percent of the cases.

1.3.3.3 Data Limitations

A variety of factors compromised the extent to which the study data and findings can be applied to the general population of child support cases. It is important to emphasize that the data and findings presented in this report cannot be used to make statements about all child support cases in any particular study State or in the entire United States for the following reasons, which are primarily linked to the research methodology.

- The participating States were chosen as a convenience sample, not a representative sample of all States. Although an effort was made to include a diversity of guideline model types and child support formulas in the study, States ultimately made the decision to participate, and several States chose not to participate for a variety of reasons, some of which were discussed earlier in this chapter.
- The method and period of the data collection were implemented to minimize the burden on court and agency staff. The effect was that collection in some counties was not continuous.

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- The case record collection was conducted prospectively, and county personnel were fully aware that a study was underway in their counties. This awareness possibly influenced caseworkers, hearing officers, masters, judges, and others in the child support field, prompting them to follow procedures more closely and document proceedings more completely than usual. Although the quality of the records received from States suggests the contrary, this study sample cannot be described as "representative."
- The data collection methodology emphasized a balanced sample between IV-D and non-IV-D cases. In practice, this could not be attained because IV-D cases were more numerous than non-IV-D cases.
- The cases were collected by county personnel and, in some instances, a temporary staff or consultants. It is possible that some cases were inadvertently overlooked by the data collectors and other cases were not sent because they were incomplete.
- The documents collected for coding and analysis dictated what information could be gleaned. For example, if a second-family matter was discussed with the decisionmaker, but was not recorded on the written order, the information was not available for use in this study. Some documents were not kept in the permanent record due to storage limitations, for example (usually true of income verification papers). Unless the record explicitly discussed how income was verified, the information was lost and thus not included in this study.

1.3.3.4 *Conducting Unstructured Telephone Interviews With State and Local Officials*

Unstructured telephone interviews were designed to collect information from those involved in the formulation and application of guidelines and the parents who have had personal experience with child support guidelines. The questions and topics discussed in the interviews were designed to gather information on the respondent's experience with issues such as the following:

- Adherence to guidelines by the court, referee, or administrative hearing officer;
- Specificity of findings supporting deviations from guideline;
- Representation by an attorney during proceedings;
- Procedures for obtaining relevant information (e.g., income information) from parties, including parties in interstate child support cases;
- Application of guidelines in interstate cases;
- Adequacy and efficiency of State guideline worksheets;
- Effectiveness of training offered in the State on guideline application and worksheet completion;
- Process used to establish and modify State guideline formulas or schedules;
- Respondent perceptions of guideline "fairness"; and
- Recommended changes.

Identifying Interview Participants

The ABA contacted State liaisons to identify selected individuals in 2 counties of the 11 study states. The participants to be interviewed included CPs, NCPs, IV-D caseworkers, IV-D attorneys, private attorneys, and judges. In those States where they played a role in child support, mediators, masters and commissioners were interviewed.

Parent advocacy groups also were contacted to identify CPs and NCPs willing to speak with an ABA representative regarding personal child support experiences. In those States where CPs and NCPs could not be identified, [CP organizations were quick and helpful in providing names and numbers of persons who might agree to share their personal experiences with the ABA representative. Unfortunately, many provided CP telephone numbers were not valid and the organizations did not always refer a CP listed in the studied county. Some CPs contacted provided names of other CPs who would provide information. NCP organizations were less cooperative, and many State chapters or affiliates did not return initial contact phone calls. Other organizations expressed discomfort in providing a government study with their members' names or telephone numbers. The NCP organizations that cooperated did so without any hesitation and the provided names and phone numbers were a valuable source of information.] the ABA contacted the State child support agency and asked if some of their clients would be willing to talk with CSR staff. This avenue proved effective in contacting CPs as well as NCPs.

This final report analyzes and summarizes 215 unstructured telephone interviews that were conducted in an effort to gain a real-life, as opposed to perceived, look at how State child support guidelines are formulated and applied.

1.3.3.5 *Evaluating State Guideline Reviews*

CSR and the ABA developed the following list of factors and issues against which each State's support guideline review was analyzed:

- Basis for study (e.g., anecdotal information or case records);
- Number of cases reviewed by the State;
- Type of cases (e.g., IV-D AFDC, IV-D non-AFDC, or non-IV-D);
- The entity conducting the review;
- Factors listed as justification for deviation;
- Frequency of particular factors;
- Direction of deviation (i.e., upward or downward);
- Average amount of deviation;
- Completeness of case files, if the study provides this information;
- Recommendations resulting from State review;
- Quality of the research design; and

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- Any changes made to State guidelines as a result of the review.

The findings from this analysis are presented in their entirety in Volume II of this final report. Specific results, as they pertain to child support issues, are presented in the main body of this report.

1.3.4 Analysis Plan for the CPS Supplement and the March CPS Matched File

Current Population Survey (CPS) data were analyzed to provide a national context for the review of child support guideline worksheets and deviations and the analysis of State guideline review reports. This secondary analysis examined the effect of State presumptive guidelines on award amounts. A primary research question guided this analysis: What effect, if any, did presumptive State guidelines have on child support award amounts?

The monthly CPS is an in-person or telephone survey administered by the U.S. Bureau of the Census. Interviewers ask each household member older than age 15 questions on labor force participation, and in addition to basic CPS questions, interviewers ask supplementary questions. Each March the CPS collects economic data on individuals and families for the previous year, and each April of every other year (even-numbered years), interviewers ask CPs supplementary questions on child support. The Census Bureau matched responses to the April 1992 CPS supplement to responses to the March 1992 survey, creating a single data set with demographic, economic, employment, and child support information.

A total of 2,277 cases were in the March-April Matched CPS file, representing 5.3 million persons in the United States with established child support awards in 1992. Cases excluded from the selected subsample included cases in which the award was established in 1992, if no dollar amount was given for a child support award for 1991, or if the supported child was born after 1991. Therefore, 2,218 cases were eligible for inclusion in the analysis.

The key demographic characteristics of the population of child support obligees were as follows:

- **Sex.**—In 1992 most obligees with child support awards were women. Eight percent of obligees were males, compared with 92 percent who were females. Female obligees received larger award amounts than males.
- **Race/ethnicity.**—In 1992 three-fourths of obligees were white and non-Hispanic, sixteen percent of the obligees were black non-Hispanic, and seven percent were Hispanic. White obligees received larger award amounts than obligees who were racial or ethnic minorities. Hispanics received the smallest average award amount.
- **Age.**—In 1992 almost one-half (48 percent) of the obligee population were over age 35 and 1 percent were teenagers. Seven percent were teenagers at the time of the award/modification, 19 percent were ages 20 to 24, 32 percent were ages 25 to 30, 22 percent were ages 31 to 35, and 21 percent were over age 35. Older obligees (age 31 and older), received larger award amounts than younger obligees.
- **Number of children.**—One-half of obligees (53 percent) had one child, one-third (34 percent) had two children, 11 percent had three children, and 3 percent had four or more children. [Table 1 in: Census Bureau. 1995. Child Support for Custodial Mothers and Fathers: 1991. Current Populations Reports, Series P60-187. Washington, DC: U.S. Government Printing Office.] Average award amounts for obligees with one child covered by the award were smaller than for obligees with more than one child covered by the award. The average award amounts for one child and three children were \$2,770 and \$5,144, respectively.

Data analysis of the 1992 CPS child support supplement reveals that larger child support award amounts are associated with the following obligee characteristics:

- Persons who were older than 19 in 1992 and at the time that the award was established or modified;
- White;
- Female;
- Currently separated or divorced;
- Had more than one child;
- Resided in the Northeast or Midwest or in a suburban area;
- Had an award modified; and
- Did not receive public assistance in 1991.

For the analysis, CPS data were linked with State-level information on implementation dates of advisory and presumptive guidelines. Sources for this information included OCSE, the Policy Studies Incorporated, and Dr. H. Elizabeth Peters at Cornell University, who is conducting a study of guideline effects using the National Longitudinal Survey for Youth. States' implementation dates widely varied. Some States had slowly phased-in implementation, first adopting presumptive guidelines initially for AFDC cases or in selected counties. Other States made presumptive guidelines that were applicable statewide for all cases by a specific date. Therefore, the dates when States enacted presumptive guidelines is open to interpretation.

The mean and median amounts of awards were larger after guidelines became presumptive, but the average increase was only \$400, from an average of \$3,131 for awards that were made 2 or more years before presumptive guidelines were adopted to an average of \$3,503 for awards 2 or more years after presumptive guidelines were adopted.

The average award amount for blacks decreased after presumptive guidelines were adopted by States (from \$3,235 before to \$2,362 after). The average amount for whites increased by \$600.

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Few differences existed between the proportions of persons who had an award established or modified before or after presumptive guidelines were adopted. However, the postpresumptive guidelines group were older at the time that the award was established/modified, although they tended to be younger in 1992 compared with the prepresumptive guidelines group. A smaller proportion were married at the time and a larger proportion had never married than was the case for the prepresumptive guidelines group. More in the postpresumptive guidelines group received public assistance in 1991 than in the prepresumptive guidelines group.

1.3.5 Limitations of the CPS Data

A number of important data limitations have shaped and restricted this analysis, including the following:

- Information on parties' income at the time the award was established or modified was not available for this analysis. In addition, the best predictor of a child support award is the obligor's income. Without this information, issues of adequacy could not be addressed.
- The CPS' residences at the time of award establishment or modification were unknown, which hampers analyzing the effect of guideline implementation on awards. It also was unknown if the party lived in a State that had implemented guidelines (either for the specific type of case or for child support matters in general) at the time of award.

1.3.6 Summary of Expert Panel Recommendations

As discussed earlier, a panel of experts was assembled to provide advice on the general nature of the research and to make recommendations based on the findings. Their following recommendations have guided the conclusions in this report:

- The current guideline periodic reviews should continue. States should continue to research and design consistent and equitable guidelines and also strive to enforce more consistent application of guidelines in all child support matters.
- The Federal role in child support should be to (1) provide advice to States on guideline construction and application areas they might incorporate into their review processes and (2) suggest solutions to potential problems.
- No steps should be taken to adopt a national child support guideline.
- The Expert Panel was comprised of the following individuals:
 - Charles Adams, Ph.D., Professor, School of Public Policy and Management, Ohio State University;
 - Burt Barnow, Ph.D., Economist, Institute for Policy Studies, Johns Hopkins University;
 - Donald Bieniewicz, Consultant, Children's Rights Council;
 - Joan Entmacher, Senior Policy Counsel for Family and Economic Security Programs, Women's Legal Defense Fund;
 - The Honorable Aubrey Ford, District Judge, Macon County, Alabama;
 - Lynne Gold-Bikin, Esquire, Partner, Gold-Bikin, Clifford, & Young;
 - Lowell Groundland, Director, Administrative Office of the Courts, State of Delaware;
 - The Honorable C. Philip Nichols, Jr., Associate Judge, Seventh Judicial Circuit of Maryland, Prince Georges County; and
 - Debbie Stabenow, Michigan State Senator.

1.4 SUMMARY AND PLAN OF THIS FINAL REPORT

The remainder of this report presents the findings of this evaluation. Chapter 2 presents the characteristics of cases that (1) follow the presumptive guideline amount of child support, (2) deviate from the presumptive amount for a specified reason, and (3) differ from the presumptive amount for an unknown reason. These cases are referred to respectively, as "guideline cases", "deviation cases", and "discrepant cases".

Chapter 3 presents findings from the analysis of case records, stakeholder interviews, State guideline review reports, and State deviation case studies with respect to seven factor areas. These factor areas represent the most pressing issues in the design and implementation of child support guidelines, including multiple families; income determination, verification, and imputation; health care needs; day care; postsecondary educational support; tax considerations; and custody and visitation.

Chapter 4 is a summary of conclusions and recommendations resulting from this evaluation.

Following these chapters are a series of appendixes: Appendix A contains a detailed look at the research methodology, Appendix B contains typical child support orders and worksheets for the 11 study States, Appendix C contains the child support guidelines of the 11 study States, Appendix D contains summary tables for the 7 factor areas discussed in Chapter 3, Appendix E contains data tables and charts, and Appendix F contains a report on CPS analysis.

- [Table 1-1: Number of Cases Analyzed Using Worksheet Data, Supplemental Data, or Both by County](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_01.gif) , http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_01.gif
- [Table 1-2: IV-D Status of Cases by County](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_02.gif) , http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_02.gif
- [Table 1-3: Number and Percentage of Cases by Type of Award](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_03.gif) , http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_03.gif
- [Table 1-4: Number and Percentage of Cases by Type of Case](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_05.gif) , http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_05.gif
- [Table 1-5: Type of Forum in Which the Support Order Was Established by County](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_04.gif) , http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_04.gif
- [Table 1-6: Judicial Forum by IV-D Status of Case](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_06.gif) , http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_06.gif
- [Table 1-7: Obligors by Type](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_08.gif) , http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_08.gif
- [Table 1-8: Obligees by Type](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_07.gif) , http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_07.gif

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Chapter 2. USE OF GUIDELINES IN CHILD SUPPORT CASES

<http://www.acf.dhhs.gov/programs/cse/rpt/gdl/chap2.htm>

Note that the Tables and Exhibits are at the end of the chapter.

Child support guidelines are required to be applied on a presumptive basis for child support cases in a state. The intent of guidelines is for similar cases to be handled in a similar fashion, thus decreasing the variability in order amounts across similar cases. The guidelines also recognize that certain factors or conditions may apply in a case that require more flexibility. Support guidelines provide decisionmakers with the discretion to vary from the presumptive guideline amount if application of the guideline would result in a situation for either parent or the child that is deemed to be unjust or inappropriate. One of the primary research questions to be answered by this study is the extent to which States apply their guidelines in arriving at child support orders.

In this chapter, we adopt the following terminology to designate the possible outcomes of the deliberative process:

- The support order is in conformity with the award amount that is computed in a worksheet. In other words, the bottom line figure on the worksheet represents the amount that is to be paid by the obligor on a periodic basis. This type of case is a guideline formula case (or guideline case).
- The support order deviates from the award amount computed in a worksheet as a result of a decisionmaker's decision to exercise discretion in establishing a child support award. This type of case is a guideline deviation case (or deviation case).
- The support order does not agree with the calculated guideline amount on a worksheet, yet is not designated as a deviation. In some cases, the reason for the discrepancy may be inferred or otherwise explained in the case documentation. In other cases, the only information that exists is the two figures. This type of case is a discrepancy case.

The next section describes the methodology for assessing implementation of case records. The chapter then explores State guideline implementation in some detail. The second and third sections examine guideline and deviation cases, respectively. In the third section, we analyze what the case records indicate about discrepancy cases.

2.1 DETERMINATION OF GUIDELINE AND DEVIATION CASES AMONG THE CASE RECORDS

The determination of the conformity of case records with the guidelines was a two-step process. The first step involved coding and recording information contained in both the child support order and in the worksheet, if available. The process of recording this information is briefly described below. The second step was a computer check that compared the order amount and the guideline, determined the magnitude of any difference, and standardized the difference as a percent of the support order. This part of the methodology is called discrepancy analysis, which is described in greater detail in Section 2.4.

2.1.1 Guideline and Order Information

Information on the guideline computations and order amounts were integral parts of the data collection. The child support amount contained in the order was routinely extracted as part of the case record coding process. In most counties, documenting the guideline amount required access to the worksheet. To accurately reflect the computational steps in the determination of a guideline amount, CSR, Incorporated, entered virtually all worksheet information submitted with the case record into a computer database. The worksheet database for each case documents the incomes and adjustment expenses of the parties. In addition, it contains the calculations that were performed and the mandatory numerical adjustments that were made in arriving at the guideline. Typically, each worksheet contained a bottom-line figure that the obligor would be responsible for sending to the obligee on a periodic basis, unless the decisionmaker deviated from the guideline.

2.1.2 Guideline and Deviation Case Determination

During coding, cases were categorized as either a guideline or a deviation case. In many instances, the order clearly indicated that the award was made in accordance with the State guideline. If the order was silent about case designation, a case was determined to be in accordance with the State guideline by default; in other words, each case not considered to be a deviation was coded as a guideline case.

According to Federal mandate, decisionmakers are required to support their decision to deviate from the guideline by incorporating the reason in the order or in some portion of the record of the proceedings. The latter may encompass inclusion in the court transcript or verbally on tape. Our data collection strategy focused solely on written documentation (e.g., orders and case notes); we were precluded from obtaining findings found in the court transcript or on tape.

When examining the case record documentation, coders from CSR and the American Bar Association (ABA) determined whether there was evidence that the decisionmaker exercised discretion to deviate from the guideline. We adopted a conservative approach and were guided by the language of the order. In some jurisdictions this was a straightforward task; the case documentation routinely specified whether the award deviated from the calculated guideline amount. For example, Washington State has a line item (#3.6) in its court orders that indicates the "reasons for deviation from [the] standard calculation." Other States, such as Massachusetts, have standard forms for decisionmakers to complete if they deviate from the guideline.

In other jurisdictions, this determination required a measure of interpretation. For example, many orders stated that the award was not made in accordance with the guideline. In other jurisdictions, the fact finder's case notes indicated that a recommendation was made to the court to deviate from the guideline. If the court approved that recommendation, as evidenced by the actual support award in accordance with this recommendation, it was considered to be a deviation.

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Once the case was determined to be a deviation, the coders ascertained the amount of the deviation and whether the deviation increased or decreased the order in relation to the guideline. In many cases, these determinations were uncomplicated because they were clearly identified in the order. In other cases, it was impossible to calculate either the amount or the direction of the deviation, or both. In cases of multiple deviations in a case, generally we were able to determine only the amount and direction of the combined deviations.

The analyses in the next three sections are based on the information obtained through these processes.

2.2 WHAT DO THE CASE RECORDS SAY ABOUT THE EXTENT TO WHICH DECISIONMAKERS IMPLEMENT GUIDELINES?

To obtain a general perspective on implementation, individual case record data from the 21 counties were pooled. The data show that 83 percent of cases were considered to follow the guideline, while 17 percent of cases were categorized as formal deviations. These aggregate statistics suggest that decisionmakers do indeed indicate that the State guidelines have been followed when establishing orders and that discretion is exercised with restraint (see Exhibit 2-1 and Table 2-1 following this page).

There is considerable variation across counties in the ratio of guideline to deviation cases. Nine counties report that more than 90 percent of cases were categorized as guideline cases, with another four counties reporting guideline cases of between 80 and 89 percent. Conversely, there were two counties that reported close to 50 percent of cases categorized as deviation cases (PA2 and WA2).

The percentages above represent implementation as determined from descriptive information contained in case records, as opposed to the application of mandatory numerical adjustments in support order establishment. Further analysis of the case record data reveals a more complex picture about consistency in the application of guidelines. This is discussed in greater detail in the section on discrepancy cases (see Section 2.4 below).

2.3 DEVIATIONS

The guidelines recognize that certain factors or conditions may apply in a case and therefore require more flexibility. Support guidelines provide decisionmakers with the discretion to vary from the presumptive guideline amount if application of the guideline would result in a situation for either the parent or the child that is deemed to be unjust or inappropriate. A deviation occurs when a decisionmaker exercises such discretion.

There is considerable variability across States with regard to the number and specificity of their deviation criteria. Some States (e.g., Delaware) are more general than others and provide little guidance to the decisionmaker; other States (e.g., Florida) provide more detailed and specific guidance to decisionmakers.

One research issue on the project concerned the direction (i.e., up or down) and the magnitude of the dollar amount of the deviation. To facilitate the analysis, the data from 21 counties were pooled and then analyzed. A number of findings have emerged from an analysis of the case record data. These include the following:

- *Direction of Deviations.*—Across all counties having 5 or more deviation cases in which the direction of the deviation was documented, 16.7 percent of the deviations were upward, and 82.8 percent were downward. The highest rate of upward deviations was 42 percent in one county; six additional counties had 20 percent or more upward; and three counties had no upward deviations. Therefore, overall, in all counties, deviations reduced the amount of the award in the vast majority of the cases. The directions of deviations are shown by county in Table 2-2 following this page.
- *Deviation Reasons.*—In 1994 the Federal Office of Child Support Enforcement examined State guidelines and compiled a list of deviation reasons that were included in guidelines. [See Arnaudo, D., " Deviation From State Child Support Guidelines," in Haynes, M.C. (ed.), *Child Support Guidelines: The Next Generation* (Washington, DC: Center on Children and the Law, American Bar Association, 1994).] There were 47 reasons listed, which were arranged in order of most to least frequently listed reason. CSR utilized this list in its code book, and other reasons were added if a particular reason appeared with some regularity within a county. Across all counties, the most frequent reason (in 21 percent of the cases) for deviations documented in the case records was agreement between the parties (e.g., stipulated agreements). Second households, extended or extraordinary visitation or custody expenses, and low income of the noncustodial parent (NCP), each was cited in more than 10 percent of the cases. In 8 percent of the cases, the reason given was that the guideline amount would be unjust or inappropriate, and 4 percent of the cases cited extraordinary needs of the parent. Other reasons were cited in 15 percent of the cases, and 13 percent did not give a reason (see Table 2-3 following this page). CSR also analyzed the deviation reasons in each county and prepared a table of the documented deviation reasons, arranged according to the number of counties in which each reason appears in a case record. Table 2-4 presents the deviation reasons most frequently cited and the number of counties in which the reason appears in one or more case records.
- *Direction of Deviation by Deviation Reason.*—The direction of the deviation varied significantly across each of the reasons mentioned above. As shown in Table 2-3, downward deviations were common across all deviation reasons. Deviations because of low NCP income and because of a second household were the two reasons most frequently listed for a downward deviation (each mentioned in over 90 percent of deviation cases). Among the other common deviation reasons mentioned above, downward deviations were found in a minimum of 60.7 percent of cases. In contrast, upward deviations occurred less frequently and were concentrated on two specific reasons: agreement between the parties and guideline amount was unjust/inappropriate (in which more than 20 percent of the cases had upward deviations). In addition, more than 20 percent of the cases with other reasons or missing reasons had upward deviations.

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- *Deviation Amount.*—The average change in the award amount was calculated by comparing the amount of award before the deviation to the award amount (see Table 2-5). For awards that increased, the average increase was 30 percent, while for awards that decreased, the average decrease was 36 percent. When cases were grouped into condoles by predeviation award amount, deviations that increased the award resulted in the largest increases in the two lowest groups. Monthly child support amounts of less than \$200 were increased by an average of 88.7 percent, while those in the other award amount categories increased by less than 39.5 percent (which represents the \$200.00–\$299.00 per month category). Deviations that decreased the award reduced it by approximately one-third in each award group, except in the lowest group (less than \$200.00), which was reduced by 52.6 percent (i.e., cut in half).
- *Frequency of Deviation, by Obligor.*—Fathers were the obligors in 93 percent of cases. Cases in which the mother was the obligor were more likely to have a deviation (28 percent) than those in which the father was the obligor (16 percent) (see Table 2-6 following this page).
- *Frequency of Deviation, by IV-D Status.*—There was only a small difference in the frequency of deviations by the IV-D status of the case. Deviations occurred in 17.6 percent of non-AFDC (Aid to Families with Dependent Children) IV-D cases, in 13.1 percent of AFDC IV-D cases, and in 15.2 percent of non-IV-D cases. The highest rate of deviations (21.5 percent) was registered among IV-D cases in which we could not determine the status of the case as AFDC or non-AFDC (see Table 2-7).

2.4 DISCREPANCY CASES AND CONSISTENCY OF GUIDELINE APPLICATION

As defined in Section 2.1, discrepancy cases are those in which the computed guideline amount is not in agreement with the order amount, yet the case is not designated as a deviation—in fact, often there is a wide variance between the two. The degree of agreement between the two figures is defined as a measure of the consistency of guideline application in case records. Discrepancy cases were identified during case coding and as a result of an analysis of the case record data. In some cases, the reason for the discrepancy may be inferred or otherwise explained in the case documentation. In other cases, the only information that exists are the two figures. This type of case is a discrepancy.

The actual computational process of determining a discrepancy is relatively straightforward once the intricacies of the different units of time and income and obligation definitions in each of the counties have been mastered. [Discrepancy analysis could not be conducted in four counties, primarily because of insufficient worksheet information. In one Florida county and in one New Jersey county, no worksheets accompanied the case record documentation. In the Florida county, CSR was able to reconstruct select worksheets, but this was considered to be too unreliable for discrepancy analysis. The two Wisconsin counties were excluded for an additional reason. Orders frequently are expressed as a percent of the obligor's income, not as a dollar amount, which makes it impossible to conduct discrepancy analysis.] For nondeviation cases, we calculated the difference between the court order and the computed guideline figure. In designated deviation cases, the amount of the upward/downward deviation amount was factored into the calculation. All differences were converted to a percentage of the order amount. A positive sign in front of the percentage indicates that the order is higher than the guideline amount. The percentage indicates the magnitude of the difference, standardized by the order amount. For example, if the two amounts are equal, the percentage should be at or near zero. If the percentage is +10, the difference amounts to 10 percent of the total order amount. Higher percentages indicate a greater divergence between the two amounts. The same logic holds for percentages with negative signs.

This process provides a useful way of comparing cases because each of the percentages reported in this section is standardized as a percentage of the actual court order. If the percentage falls within the range of +2 or -2 percent of the order, the guideline is considered to be consistently applied in that case. This provides a margin of error and does not penalize counties for minor arithmetic, transcription, and interpolation errors when computing the guideline amount. [In some States, the guideline permits a wider tolerance than 2 percent before a case must be considered a deviation case, and this will be noted in the comments section in the following tables.]

One caveat is that discrepancy determination in individual cases is limited by the quality and completeness of the documentation made available to CSR. For example, additional information may be made known to the decisionmaker between the time the worksheet was calculated and the actual hearing. In some counties, it was made clear that worksheets prepared in the IV-D agency routinely are superseded by worksheets prepared in court when new information is presented before the court (e.g., the NCP provides documented earnings information). Some counties routinely did not include these new worksheets in the court record, especially in one county in Florida and one in Pennsylvania. In addition, no worksheet data were available for one New Jersey county.

2.4.1 How Frequently Do Discrepancies Occur in the Case Records?

If a discrepancy is operationally defined as a difference in the standardized percentage of more than ± 2 percent from a mean of zero (i.e., no difference), it is clear from our analysis that discrepancies occur quite frequently in the case records. Two counties have discrepancies in fewer than 10 percent of cases in their counties, six counties have discrepancies in the range of 10.1 to 20 percent, five have discrepancies in the range of 20.1 to 30 percent, and four have discrepancies in more than 30 percent of cases (see Table 2-8 following this page).

When this analysis is conducted on guideline cases only, the distribution of discrepancy cases is similar to the pattern for all cases. When the analysis focuses on deviation cases, we expect that guideline cases would be more consistently applied than deviation cases. [Technically, guideline cases follow the guideline computations, and deviation cases do not; however, there is a computational logic to deviation cases in which we can determine whether or not the computed guideline amount plus or minus a deviation amount (depending on the direction of the deviation) equals the order amount. The same analysis that is performed on guideline cases was also performed on deviation cases.] The data presented do not support this contention. There is no clear direction or pattern in the consistency of application. In some counties, consistency across guideline and deviation cases is nearly equal. In other counties, consistency clearly favors one type of case over another. Again, this indicates that there is (1) little difference between case types and (2) extreme variability within and across States.

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When the order is larger than the guideline, positive discrepancies can occur; the opposite is true for negative discrepancies. Overall, it can be seen that discrepancies occur with about equal regularity, regardless of whether the standardized percent has a positive or a negative sign (see Table 2-9 following this page). This suggests that there is no systematic pattern across counties in terms of orders exceeding or not exceeding the guideline.

2.4.2 Why Do Discrepancies Occur?

Several factors can explain discrepancies, which can be categorized as either random or systematic and are summarized in the following sections.

2.4.2.1 Random Factors

Random factors include arithmetic error, transcription error, insufficient or incomplete documentation, complexity of the case, and inconsistency among fact finders in documenting deviations.

- *Arithmetic Error.*—This includes error in computing the guideline, error in using a lookup table of child support obligation amounts, and error in interpolation or rounding the support obligation amount.
- *Transcription Error.*—This occurs when the wrong amount (e.g., guideline amount or income amount) is transferred to the order or is not incorporated in the order.
- *Insufficient or Incomplete Documentation.*—This can occur when the worksheet that was sent was superseded in a court hearing, when worksheets were missing, when worksheets were incomplete and had missing fields (especially gross income), or when information on prior orders and subsequent families was referenced in a worksheet but the computations to take multiple families into account frequently was not included in the documentation.
- *Complexity of the Case.*—Worksheets frequently are able to capture only select information on a complex case and the court order may only contain a skeletal statement of fact. In addition, stipulated agreements frequently contain complex arrangements between divorcing parties on marital property, tax, and other considerations that may affect an order amount, yet the agreement may not be included in the documentation. Unique situations may be minimally referenced in the documentation, such as NCP's in jail who are ordered to pay a high alimony and child support award or NCPs who earn small amounts of money (verified) and yet are ordered to pay child support greater than their income. Parents who have sole physical custody of the child may be ordered to pay child support to the parent without physical custody of the child.
- *Inconsistency Among Fact Finders in Documenting Deviations.*—In some States, decisionmakers are very thorough and consistent in documenting deviations; in other States, they are not. Some States have forms that should be filled out by a decisionmaker if he or she exercises discretion on a case and deviates from the guideline; few forms ever appear in the documentation. Because the lack of consistency occurs both within and across States, this factor can be seen as either random or systematic, or both.

2.4.2.2 Systematic Factors

Systematic factors include inconsistency in policy within and across agencies and courts, the decisionmaker exercising discretion to lower the order below the guideline amount, and decisionmaker discretion to increase the order above the guideline amount.

- *Inconsistency in Policy Within and Across Agencies and Courts.*—Guidelines frequently are applied in an inconsistent manner by fact finders. For instance, NCPs earning below a minimum monthly figure are automatically ordered to pay a minimum monthly amount of \$25.00 or \$50.00 per child, depending on the county. Some fact finders specify this as a deviation, while others are silent on a similar case. Administrative cases may also deal with identical situations, yet agency policy usually prohibits the fact finder from recommending a deviation, barring exceptional circumstances. Because the ordered amount is always less than the computed amount in these situations, the difference will appear as a discrepancy, unless the case has been specified as a deviation. A high discrepancy rate in some counties may be attributed to this lack of consistency.
- *The Decisionmaker Exercising Discretion To Lower the Order Below the Guideline Amount.*—The majority of the discrepancies occur at percentages that exceed 10 percent of the order amount. In cases where the guideline amount is greater than the order, the majority of discrepancies occurs at the lowest income levels. This suggests that decisionmakers are exercising a measure of discretion in establishing orders for parents with very low incomes. For example, a typical case might be an NCP earning a gross income of \$800.00 per month, in which the calculated guideline amount would be approximately \$150.00 per month. The decisionmaker might order child support in the amount of \$50.00 per month. The discrepancy in this case would be \$100.00, twice the order amount of \$50.00. State policy on how to categorize low-income cases is inconsistent.
- *Decisionmaker Discretion To Increase the Order Above the Guideline Amount.*—The majority of discrepancies in these cases occurs at percentages that exceed 10 percent of the order amount. Many of these discrepancies occur in cases where the obligee's income is among the highest income levels. This suggests that decisionmakers are exercising a measure of discretion in establishing higher orders for parents with very high incomes. Paradoxically, there also are significant numbers of low-income parents that agree to awards that are higher than the guideline amount.

The fact of the matter is that some discrepancies can be explained by some aspect of the case or its accompanying documentation. In these cases, it is possible to explain or infer a reason for the discrepancy. Other discrepancies occur and cannot be explained. [From the data CSR collected and entered into its case record database, it is possible to determine a likely reason for many of the discrepancies. This is beyond the scope of the current contract and is left to researchers who may use the database in the future.]

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2.5 CONCLUSIONS REGARDING THE CONSISTENCY OF GUIDELINE APPLICATION

This section outlines conclusions and resulting recommendations regarding the consistency of guideline applications.

2.5.1 Conclusion

In this chapter we have noted that there is considerable variability within and across States with regard to the consistency of guideline application. In a majority of cases, guidelines are implemented in a way that the order agrees with the computed guideline figure. While this was expected, consistency of guideline application is lower in some counties than expected. As noted above, there are a variety of random and systematic factors that account for discrepancies, and no single reason systematically explains discrepancies across or within counties.

2.5.2 Recommendation

A number of strategies need to be adopted by the various States to increase the consistency of guideline application. These include the following:

- To address random inconsistency, better training and technical assistance on applying and completing worksheets needs to be provided to fact finders and decisionmakers; complexity and length of the worksheets seems to be less important in determining consistency of application than the training provided to decisionmakers in completing the worksheet. Expectations need to be set regarding the careful and complete documentation of deviations; in some counties and States, the case documentation is thorough and well laid out, while in others it is incomplete at best and unavailable at worst.
- To address systematic inconsistency, coordinated and consistent policy within and between agencies and courts is needed with regard to expectations and procedures involving worksheet completion, documentation of deviations, application and attribution of deviations, and assuring the completeness of total case record documentation.

2.5.3 Conclusion

In some States and counties, CSR had to develop either a worksheet and/or a supplemental data form to obtain information required for the study. For example, Arkansas, Minnesota, and Wisconsin—States categorized as Income Shares—do not use worksheets in the calculation of a child support award. In one Pennsylvania county, as well as in Arkansas, the child support order does not contain information on case type, the number of children, and other case characteristics that are necessary for the analysis. The absence of such worksheets made the evaluation more difficult and may have led to deviations or discrepancies that could have been avoided. In the absence of complete case records, it is difficult for analysts—evaluation researchers or State guideline review commissions—to assess the extent to which guidelines are applied to child support cases.

2.5.4 Recommendation

States should consider adopting more standard case documentation within their counties. This should include a standardized worksheet containing the final data on which the court or other decisionmaker based the award decision, the basis for any deviations, and select characteristics of the case.

- [Table 2-1: Guideline Status of Cases and Direction Deviations](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_09.gif), http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_09.gif
- [Table 2-1: Guideline Status of Cases and Direction Deviations, continued](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_11.gif), http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_11.gif
- [Exhibit 2-1: Guideline Formula Used in Case Records](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_10.gif), http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_10.gif
- [Table 2-2: Direction of Deviations by County](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_12.gif), http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_12.gif
- [Table 2-3: Reasons for Deviations Cited in Orders and Direction of Deviation](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_14.gif), http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_14.gif
- [Table 2-4: Deviation Reasons Most Frequently Cited in Case Records Across Counties](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_13.gif), http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_13.gif
- [Table 2-4: Deviation Reasons Most Frequently Cited in Case Records Across Counties, continued](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_16.gif), http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_16.gif
- [Table 2-5: Deviation Increases and Decreases by Award Amount](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_15.gif), http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_15.gif
- [Table 2-6: Deviation Status by Type of Obligor](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_17.gif), http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_17.gif
- [Table 2-7: Deviation Rates by IV-D and Non-IV-D Status](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_18.gif), http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_18.gif
- [Table 2-8: Guideline and Deviation Cases in Each County in Which the Guideline Amount Equals the Order Amount and Discrepancy Cases in Which the Amounts Are Not Equal](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_19.gif), http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_19.gif
- [Notes to Table 2-8](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_19a.gif), http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_19a.gif
- [Table 2-9: Analysis of Discrepancy Cases in Each County: Percentage of Cases in Which the Order Does Not Equal the Guideline Amount or the Guideline Amount +/- the Deviation](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_20.gif), http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_20.gif

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Chapter 3. FACTORS IN CHILD SUPPORT GUIDELINES

<http://www.acf.dhhs.gov/programs/cse/rpt/gdl/chap3.htm>

Note that the Tables and Exhibits are at the end of the chapter.

The evaluation of child support guidelines involved examining the major factors considered by State guidelines in determining award amounts. Whereas Chapter 2 of this report examines overall guideline implementation, this chapter examines seven factors that affect child support—multiple families, income definition, health care costs, child care costs, postsecondary education, tax considerations, and custody and visitation.

3.1 OVERVIEW

As States develop and review their child support guidelines, they also address issues and factors that might affect child support awards. This chapter considers such factors as multiple families, income, health care costs, day care, postsecondary education, tax exemptions, and child custody and visitation. These factors were chosen upon the recommendation of the Office of Child Support Enforcement (OCSE) for their relevance to child support. Experts have discussed the issues related to these factors in *Child Support Guidelines: The Next Generation*, 1995 (Haynes, 1995) and guidelines reviewers from many States have considered them in their deliberations (see Volume II of this report).

State guidelines address the factors that affect child support in three ways. First, guidelines may direct the decisionmaker to handle the factor according to a specific procedure. For example, the guideline may advise providing reasonable child care expenses that are incurred in order for the custodial parent (CP) to work or seek employment should first be added to the basic support amount and then apportioned between parents in the same manner as the basic child support amount. Such provisions not only mandate that the decisionmaker consider the factor, but also direct how the factor should be numerically calculated within the guideline formula. These factors may be characterized as "mandatory numerical adjustment factors."

The second way in which guidelines address factors does not involve a mandatory numerical adjustment. The terminology for nonnumerical adjustments varies among State guidelines. In some States, the decisionmaker considers a list of factors that "adjust" the basic support amount. Other guidelines direct the decisionmaker to consider factors in deciding whether to "modify" the support amount. Still other guidelines list factors for courts to consider in deciding whether to "deviate" from the guideline amount. Despite the different terminology, the intent is the same for these guidelines; the decisionmaker may or must consider each factor, but may use his or her discretion in deciding the direction or amount of the adjustment. In particular, it is up to the decisionmaker's discretion to determine how important the factor is in each particular case, and if the decisionmaker decides to "adjust," "modify," or "deviate" from the basic support amount, he or she can use discretion in deciding how that "adjustment," "modification," or "deviation" will be calculated. In other words, no direction is given as to how to address the particular factor (although some State guidelines place a limit on the decisionmaker's discretion). Because of the different terminology, such factors are characterized as "discretionary factors."

Finally, guidelines may not address certain factors at all, either numerically through a mandatory adjustment or in a discretionary manner. New spouse income is an example of a factor that many guidelines fail to address. Such factors may be considered by decisionmakers as de facto "deviations to the guidelines."

The factors mentioned in guidelines as mandatory numerical adjustment factors or discretionary factors is consistent with the guidelines treatment of multiple family issues, as presented in the OCSE publication *The Treatment of Multiple Families Under State Support Guidelines* and in this chapter. This chapter also will use the terms "mandatory" and "numerical adjustment" when referring to mandatory numerical adjustment factors.

Some terms used in the following discussion are specific to the child support field. "CP" refers to the parent who has primary physical custody of the child(ren), and "noncustodial parent" (NCP) refers to the parent who does not have primary physical custody. The CP is usually a biological parent (often the mother), but may be another relative, such as a foster parent, or another legal guardian in the case. The NCP is almost always the parent who is required to pay the child support award issued in the case. In this report, party and parent are used interchangeably, although the parties to a given case may not always be the parents of the child(ren). An "obligor" is the person responsible for paying the award, and an "obligee" is the person or party receiving the award. In most cases, the obligor is the NCP, and the obligee is the CP, but in some cases (e.g., Cases that involve Aid to Families with Dependent Children [AFDC]), the obligee may be the State.

The chapter is organized into seven sections. Each section considers issues that involve factors affecting child support, the treatment of these factors in guidelines and guideline reviews, the perceptions of individuals in the support field regarding the significance and ways of addressing these factors, and the factors' impact on the cases as reflected in the records. The following section provides analysis of factors relating to multiple families. All factors are discussed in this chapter with regard to their treatment as mandatory numerical adjustment factors or as discretionary factors. The discussions are based on (1) the analyses of case records and interviews from the 11-State (and 21-county) study; (2) the findings from the State case studies of guidelines deviations; and (3) the study of State guideline reviews.

3.2 MULTIPLE FAMILIES

Research indicates that an estimated 75 percent of divorced persons remarry, and many have additional children after they remarry. [Espenshade, T. 1985. "Marriage Trends in America: Estimates, Implications, and Underlying Causes." *Population and Development Review* 11:193.] Furthermore, Folk and colleagues [Folk, K.F., Graham, J.W., and Beller, A.H. "Child Support and Remarriage." *Journal of Family Issues* 13(2):142 – 57.] report that 80 percent of divorced men and 55 percent of divorced women remarry within 10

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years. Multiple families are increasingly becoming the norm, not the exception. State guideline review teams recognized that the traditionally nuclear or "Ozzie and Harriet" type of family is no longer commonplace, and their reports acknowledged that parents throughout the country increasingly have children from more than one relationship. The review teams also noted that child support decisionmakers often review cases involving children from multiple relationships, remarriage, and blended families, and they require attention to these complex circumstances in guidelines. According to the State guideline review materials submitted to the American Bar Association (ABA), 16 States considered general multiple-family issues in their reviews. The consensus was that guidelines should specify consistent handling of this issue.

This consensus of State guideline review teams is supported by ABA interviews in the 11 study States. During interviews with more than 200 judges, mediators, masters, commissioners, IV-D attorneys, private attorneys, IV-D caseworkers, and parents, multiple family issues were one of the three most commonly mentioned reasons for requesting a mandatory adjustment to income or a discretionary deviation from the guideline amount. In fact, 100 percent of the interviewed NCPs stated that court-ordered obligations or subsequent family situations must be considered by decisionmakers when guideline child support amounts are being established. Multiple-family issues also were cited as causing deviation in State case studies of deviations. In contrast, none of the CPs mentioned multiple-family issues as an issue of concern.

Surprisingly, sample of case records collected by CSR does not reveal a high incidence of multiple-family issues. Prior support orders and subsequent obligations were documented in only 0.5 percent to 42 percent of cases in the 21 counties (see Exhibit 3-2-1 following this page). This variability occurred both within and across States. Further analysis of the county data by various case aspects (e.g., case type, AFDC status, forum, and attorney presence) did not shed any further light on the wide variability and low incidence of multiple-family issues. Some variability can be explained by certain aspects of the research methodology. For example, this study did not limit the case record collection to multiple-family cases or to modifications, where the majority of multiple-family issues are expected to appear.

The following subsections address issues and findings from States and study sites regarding multiple families, issues and findings regarding multiple-family deviations, and conclusions and recommendations. Each subsection presents information from the State guideline reviews, interviews with local officials, and analysis of case record data.

3.2.1 Multiple-Family Issues and Findings

This subsection address preexisting support obligations and subsequent support obligations as discussed in State guidelines and in the guidelines used by the 11 study States.

3.2.1.1 *Preexisting Support Obligations*

The following discusses preexisting support obligations as discussed in State guidelines, guideline review studies, case record data collection, and interviews.

Guideline Reviews

As part of the State guideline review process, a number of the review teams debated methods for handling support obligations established prior to each case. Typically, reviewers opted to subtract any existing court-ordered child support awards from the responsible parent's income prior to calculating the child support amount. In some jurisdictions, deductions also were permitted for children not covered by prior court orders, but these income adjustments were limited to verifiable expenses or to the Federal tax exemption available for the child. This is called a "first family approach," in which the earliest family's obligations are handled first. However, this approach can be extended to any prior child support order, regardless of when the child was born; therefore, it can be applicable to children outside a parent's first family.

Study States

Among the 11 States participating in this study, 8 had guidelines that deducted the full amount of any prior order from the obligor's gross income before support is calculated in the current action. [These States include Arkansas, Florida, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, and Wisconsin.] Delaware and Pennsylvania developed other mandatory numerical adjustments to take prior orders into account. Only Washington State allowed the decisionmaker to consider prior support orders as a basis for deviating from guidelines. Table G-1 in Appendix G presents a complete description of each State's strategy for prior support orders.

Whether State guidelines provide a mandatory adjustment for prior support orders or gives the decisionmaker discretion, this seems to impact the amount of documentation on that issue within the case record. Although prior orders were not frequently mentioned across all 21 study counties, prior orders were documented in 3 percent to 8 percent of cases from Washington, which uses a discretionary approach. In the 10 study States with a mandatory adjustment approach, prior orders were mentioned in up to 27 percent of cases. In 12 pilot counties, multiple families were reported in more than 5 percent of cases, and in 9 counties, they were reported in more than 10 percent of the cases (see Exhibit 3-2-2 following this page).

In most cases, decisionmakers in the 21 study counties followed their guideline mandates in calculating support where there was a prior order. In the 10 States using mandatory adjustment (e.g., deduct the full amount of the prior order from paying party's income), the mandated method was used in 33 to 100 percent of cases in which the NCP had a prior order. [The low end of this range occurred in a county that had only three cases where the NCP had a prior order.] In other counties decisionmakers occasionally deviated from the

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guideline or did not consider the prior order when establishing the current support order. Decisionmakers also used other methods, which varied from case to case, to consider the prior order(s) (see Exhibit 3-2-3).

There was considerable variation by State and county in how prior orders were handled. In Washington State, guidelines permit a discretionary approach to considering the NCP's prior order, so all adjustments are considered deviations. The two counties in this State were among those with the highest rates of deviations and of cases in which prior orders were not considered. More surprising was that data from neither Pennsylvania county showed numerical adjustments for prior orders, but this appears to be due to coding issues. In fact, the prior order calculations were performed in most cases but had no effect on the award. Decisionmakers also used other methods, which varied from case to case and often were not identified in the documentation (see Exhibit 3-2-3; also see Table E-1 in Appendix E for additional details).

The case data findings are supported by subjective perceptions gathered from interviewees in the study States. The majority of decisionmakers, attorneys, caseworkers, and parents interviewed agreed that decisionmakers usually follow the guideline methodology for addressing prior orders for support. Most agency attorneys and caseworkers believed that the results are fair. Private attorneys, some agency attorneys, and CPs believed that if prior court orders are deducted from the obligor's gross income, very little income, if any, is left to determine subsequent obligations. Respondents in Washington State generally were supportive of the discretionary approach used there.

3.2.1.2 *Subsequent Support Obligations*

This section discusses subsequent support obligations and presents findings from the State guideline reviews, the case records collected in study counties, and interviews conducted in those counties.

Guideline Reviews

A number of State review teams considered how a new child impacts the parent's existing child support obligation. Some reviewers recommended that parents be allowed income deductions equal to an existing child support order or representing some level of expenditures made for subsequent children. Other reviewers recognized that these deductions could be perceived as permitting parents to decrease existing obligations by having more children and devised conditions for the use of the income deduction accordingly. For example, one team recommended an income adjustment for subsequent children in the amount of an appropriate child support order or actual expenses; however, a deduction would not be permitted in cases where a prior order is being modified if the deduction resulted in lower support for the child at issue. Other reviewers preferred that parents not receive the full benefit associated with additional children and recommended calculating separate support obligations for each household of new children. This award amount would be multiplied by a selected percentage and only then subtracted from the parent's gross income. Another suggested approach involved permitting a deduction equal only to the Federal tax exemption for the child rather than for actual expenses.

Other State review teams rejected the income adjustment approach for subsequent children. Two review teams recommended special multiple-family guideline formulas to facilitate the calculation of support. According to these teams, the goal of developing a fixed formula is an equitable and consistent treatment of multiple-family cases. Other State review teams believed that the decisionmaker should handle subsequent families because the establishment of fair and realistic orders in multiple-family cases requires consideration of complex and diverse issues beyond the scope of a formula.

Study States

Of the 11 study States, [The 11 study States are Delaware, Missouri, New Jersey, Pennsylvania, and Wisconsin.] 5 have guidelines that provide mandatory numerical adjustments for subsequent obligations. Three of these five States [The three States are Missouri, New Jersey, and Wisconsin.] require the decisionmaker to determine the support obligation for the subsequent children based on the guidelines and to deduct this obligation from the responsible parent's income before support is determined in the current action. The amount to be subtracted from the responsible parent's income varies slightly from State to State, especially with respect to using the new spouse or partner's income.

Delaware does not allow a deduction for subsequent obligations from the income of either parent before calculating the basic support amount, i.e., the amount defined in the guidelines as needed to support the basic needs of the child. However, the State's guideline does allow the obligor a credit for subsequent obligations before calculating the Standard of Living Allowance (SOLA) for each family involved. Pennsylvania allows each obligation of the responsible parent to be reduced proportionally if the obligations total more than 50 percent of his or her gross income.

The six remaining States [The six remaining study States are Arkansas, Florida, Massachusetts, Minnesota, New Hampshire, and Washington.] either have no guideline regarding these obligations or have a discretionary provision allowing the decisionmaker to consider these obligations when determining support. A common rule for allowing the mandatory adjustment or general consideration of subsequent obligations is that the adjustment or consideration can be used only as a defense against a motion for an upward modification and not as a justification for a reduction in support. Table G-2 in Appendix G presents State-by-State details regarding subsequent obligations.

Unlike prior orders, the frequency with which subsequent obligations of the NCP was documented in case records did not appear to be related to the guideline approach adopted by the State—mandatory numerical adjustment for a subsequent obligation or discretionary consideration. In States that give decisionmakers discretion over subsequent obligations, the factor was noted in up to 14 percent of cases. The range was slightly wider in States that use a mandatory adjustment, from 1 to 19 percent of cases (see Exhibit 3-2-4).

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following this page). As with prior orders, from the case record documentation the extreme variability within and across States is surprising with regard to how often subsequent obligations were found to be a factor in the order.

In general, decisionmakers tended to follow their guideline mandate. As expected, in States that use a mandatory numerical adjustment, decisionmakers were most likely to use the mandatory method provided in the guideline to consider the NCP's subsequent obligations. Most counties studied used the mandatory method in 60 percent or more of cases when the NCP had a subsequent obligation. Decisionmakers occasionally did not consider the subsequent obligation or used some other method to take the obligation into account. There was considerable variability in applying the mandatory numerical method across counties, with a range of up to 97 percent (see Exhibit 3-2-5 following this page).

In four of the counties that permit discretion, as a result of considering the subsequent obligation(s), decisionmakers deviated from the guideline amount in more than 70 percent of cases. In the remaining seven counties, the number of deviations was more variable and somewhat smaller. The overall range across all 11 counties was 16 to 100 percent of applicable cases in the county. In a small percentage of these cases, decisionmakers did not consider the NCP's subsequent obligation(s) when establishing the current support order (see Exhibit 3-2-5).

Responses to the ABA interviews varied on the issue of subsequent families, depending on whether their support guideline provided a mandatory numerical adjustment or allowed discretionary consideration of the factor. In States where an adjustment is mandated for subsequent children, especially when the adjustment can be used only as a defense against a motion to increase support, most respondents were satisfied with the result. In States where decisionmakers can use discretion to consider subsequent obligations, most respondents felt that subsequent obligations: should be considered, but one respondent said "the guidelines need to be flushed out more regarding the subsequent families to give better guidance in determining how much to deviate" One judge preferred the "old" method of calculating the deviation amount for subsequent obligations: "In the past, decisionmakers could deviate 10 percent rather than try to come up with what it costs to support a second family." The majority of obligors stated that subsequent families must be considered and one respondent said that "to do otherwise is telling an obligor that he no longer has a right to procreate because the prior relationship did not work out." One NCP stated, "My new spouse must have been crazy to marry me because I will not have more children. I can't afford to! This is unfair to my new spouse, and the theory that she knew what she was getting into doesn't fly in the face of reality."

3.2.1.3 *New Spouse or Partner Income*

This section discusses new spouse or partner income as discussed in State guidelines and the guidelines used by the 11 study States.

Guideline Reviews

The impact the income of a new spouse or partner should have on a parent's child support obligation was addressed in four State guideline reports. The overwhelming sentiment expressed by reviewers was that income from a new spouse or partner should be excluded from support calculations. Reviewers recognized that the new spouse has no legal duty to support a child from a former relationship, and some were concerned about indirectly causing a disincentive to remarriage.

However, at least two States conceded that such income may be relevant in child support cases, because the expenses of children in the new marriage have an impact on calculation of the support obligation for the child(ren) covered by the order at issue. These jurisdictions cautiously included some or all of income of the new spouse or partner as income to the responsible parent. In doing so, the parent would receive no extra benefit from sharing expenses that would not be passed on to the child(ren) at issue in the current action.

The case record aspect of this study did not examine the impacts of new spouse or partner income.

3.2.2 *Issues and Findings Regarding Multiple-Family Deviations*

This section discusses issues and findings regarding multiple-family deviations as found in State guideline reviews, case record data, and interviews in the 11 study States.

State Case Studies on Deviations

Ten States submitted information to the ABA about their data collection on guideline deviations. Eight States highlighted in their reports the most frequently cited reasons for deviation. Four of these States found that having multiple families was one of the most frequent reasons for deviation.

In Maryland, a 1992 case study found that 67 percent of all deviations were due to a subsequent obligation of the obligor. In fact, this was the overwhelming reason for deviation, with the next highest reason being an agreement between the parties (18 percent). A 1992 Massachusetts study of 21,577 cases found that having multiple families was the most frequent reason for deviation. A concern of the Massachusetts Department of Revenue was the large variance from the guideline amount that resulted from the deviation—the average judicial deviation was 36 percent below the guideline amount. As a result, the Department of Revenue recommended the addition of a supplementary formula to address expenses of subsequent families. Based on our 1995 case record data from Massachusetts, the factor of multiple families is still significant. In one study county, it was tied with custody and visitation factors as the deviation reason most frequently found in case records. In Virginia, approximately 20 percent of IV-D and non-IV-D cases deviated from the guidelines in 1991 and 1992. The second most frequently cited reason for the deviation was the fact that the obligor was providing actual monetary

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support to other children. In Iowa's 1994 study of 696 deviation cases, multiple families was the second most frequent reason for deviation, accounting for 17 percent of all deviations.

Based on a case sampling of 135 cases, Delaware found that factoring in multiple orders to ensure equal treatment of all the obligor's children was one of the issues most often litigated. However, multiple families was not a frequently cited reason for deviating upward or downward.

California found that 14 percent of all cases collected over a three week period in 1993 resulted in a discretionary deviation due to "hardship deduction" for the father ranging from \$2.00 to \$1,585.00. The types of hardship recognized by California include a natural or adopted child who lives with the parent. Similarly, in Kansas' sample of 286 orders established or modified after October 1, 1987, approximately 17 percent of the deviations were due to financial conditions. The meaning of this finding is unclear; perhaps included within the financial condition are preexisting orders for support or other dependents in the parent's current household. In New Mexico, there were deviations in 23 percent of all cases; the most frequently cited reason for deviation was substantial hardship on the obligor (16 percent), again with no explanation. California also found that approximately 12 percent of cases had a discretionary factor of new spouse income—another multiple-family issue.

Three States conducted written surveys that addressed multiple-family issues. Kansas received 511 responses to a 1993 survey. Approximately 36 percent of parent respondents and 35 percent of judicial and attorney respondents believed that a new spouse's income and extraordinary expenses should be wholly or partially considered in determining the support amount; however, approximately 60 percent of all respondents felt that a new spouse's income and extraordinary expenses should not be considered. Respondents were more supportive of considering preexisting support orders and other dependents. Approximately 66 percent of parent respondents and 88 percent of judicial and attorney respondents believed that the guidelines should include an adjustment for preexisting obligations. Approximately 55 percent of parent respondents, 68 percent of judicial respondents, and 71 percent of attorney respondents believed that if the NCP has remarried and has children from the new marriage, expenses related to the new children should be considered in determining support for the children of the prior marriage. [The parent survey results do not distinguish between CPs and NCPs.] However, according to 86 percent of the parent respondents, a multiple-family adjustment was not applied in their case. When applied, 73 percent of the judicial respondents and 66 percent of the attorney respondents indicated that they thought the multiple-family adjustment resulted in "about the right amount" of support.

In Kentucky's 1993 written survey to judges and commissioners, the State found that 77 percent of the respondents felt that in addition to a deduction for any preexisting support order, parents legally responsible for and supporting other prior dependents should be allowed a deduction from gross income for these payments, as long as they do not exceed the guideline amount.

The 277 respondents to Michigan's written survey in 1992 indicated that support orders follow the guidelines in approximately 90 percent of cases. The issue of multiple families was listed as a common reason for deviation, although it was not considered one of the most common reasons. In fact, it was one of the three areas recommended by the Administrative Office of the Courts (AOC) for further study.

Study States

The presence of prior orders and/or other dependents impacts child support orders. The impact was measurable in many cases that deviated from the guideline amount because sufficient information appeared on the worksheet and child support order to allow determination of the amount of the deviation. However, where there were multiple deviations in a case, it was impossible to disaggregate the total deviation into its component parts.

Two counties in Washington State authorize deviation from the guideline based on the presence of prior orders. A total of 12 deviations were reported for the existence of a prior support order of the NCP. The range of average deviation for the existence of a prior support order was a decrease of \$114.00 to \$185.00 per month. [This range includes sole and combined deviations, as do all ranges presented in this section.] Only a small number of deviations were reported in counties that have a mandatory numerical adjustment for prior orders.

Eleven counties authorize consideration of subsequent obligations as a basis for deviation from the guideline amount. In all cases, the effect of the deviation was to reduce the amount of the child support order. The range of average deviation amounts in these counties was a decrease of \$48.00 to \$232.00 per month. Surprisingly, a number of deviations were reported in Pennsylvania, a State that has a mandatory numerical adjustment for subsequent obligations. The range of downward deviations for subsequent obligations in this State was \$30.00 to \$104.00 per month.

3.2.3 Conclusions and Recommendations

This section presents conclusions and recommendations regarding consistency in considering multiple families and case record documentation of their effects on support orders.

3.2.3.1 Consistency in Considering Multiple Families as an Equity Concern

The incidence of prior orders and subsequent obligations is higher in study States with mandatory numerical adjustments than those with only a discretionary provision to deviate, although the disparity between the two was not striking. More importantly, parents residing in States using numerical adjustment have other obligations factored into the current support calculation in a more frequent and consistent manner.

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In jurisdictions with guideline provisions allowing for discretion, it is less likely that multiple-family concerns will be considered in determining the award. When a multiple-family issue is considered, they apparently are not addressed consistently across cases. Within States the differences were not great between the counties. However, between States the range of average downward deviation was \$48.00 to \$232.00 per month for subsequent obligations and \$17.00 to \$185.00 per month for prior support orders. Furthermore, State guideline review teams, practitioners, and participants in the child support system agree that multiple families are a pressing concern, and that consistent and equitable methods are needed to handle them.

Recommendation

By providing clear instructions, State guidelines can help ensure that other support obligations are both considered by the decisionmaker and treated in a consistent manner. If a State chooses to address multiple family issues, its guideline should contain a mandatory provision to consider pre-existing support orders and subsequent obligations.

3.2.3.2 Case Record Documentation

During this study, it was sometimes difficult to determine the presence of a multiple family issue because the guideline worksheet was incomplete or the order did not contain detailed findings.

Recommendation

For research purposes, case records need more complete documentation about the existence of prior support orders and subsequent children. This information will be helpful to future decisionmakers at the time of modification.

3.3 INCOME DEFINITION, VERIFICATION, AND IMPUTATION

A crucial step in developing a correct child support order is accurately determining parental income. The decisionmaker must decide which of the parents' resources will be used to calculate the child support award and whether credible proof of those resources exists. Federal regulations require that guideline calculations be based on all of an NCP's income; however, income is not defined in these regulations. [45 CFR 303.8.] When a party fails to appear at a hearing after service, or when a party is voluntarily unemployed or underemployed, the decisionmaker in many States may impute income. In States using Percentage of Income, the NCP's income is the most important. In States using income-shares and the Delaware Melson models, the decisionmaker must determine both parents' incomes.

The following sections discuss definition of income, gross versus net income, income verification, income imputation, and conclusions and recommendations regarding income verification and income imputation.

3.3.1 Definition of Income

This section discusses the definitions of income specified by the guidelines reviews, State case samplings, and study States.

3.3.1.1 Guideline Reviews

Income determination was one of the most popular topics of guideline reviews. A number of State reviewers recommended definitions of income. All offered expansive descriptions, generally including resources such as salary and wages; commissions; bonuses; tips and perquisites; rental income; estate or trust income; royalties; interest, dividends, and annuities; self-employment earnings; alimony and other unearned income; in-kind compensation or noncash fringe benefits; and lottery winnings.

Certain types of income were addressed separately. For instance, some committees examined the potential inclusion of income from means-tested assistance programs. They routinely concluded that AFDC benefits received for a child within the household would not be considered as income in calculating child support. Committees did not agree about other forms of public assistance. While some reasoned that these benefits were intended, and hence sufficient, to meet only the needs of the particular recipient, others recommended the inclusion of means-tested assistance because it represented a financial resource of the parent.

It appears that only one State review team questioned whether earnings from self-employment should be considered as income for child support purposes. The more prevalent issue was how that income level should be calculated. Overwhelmingly, the decision was to set self-employment income as gross receipts minus ordinary and necessary business expenses. With this definition, committees sought to include all the self-employed parent's earnings as well as to recognize that reinvestment of some resources is necessary for continued business growth.

States varied in their decision to consider overtime and part-time income from a second job. Some States, such as New Hampshire, limit consideration of income beyond a 40-hour work week if the income consists of hourly wages in an employment area that generally pays overtime. Other States, such as Pennsylvania and Florida, expressly include overtime and second job earnings.

Approximately five State reviews addressed the topic of a parent's extra earnings. The teams generally concluded that earnings from a second job should be included as income. Some committees recommended, however, to exclude this type of income during the modification phase of a case if the parent took the job after the support award was established and the purpose was to help pay the child support award, provide support for another family, or reduce a debt associated with divorce from the obligee.

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The treatment of overtime income was somewhat more discretionary. The teams felt that the decisionmaker should determine whether the overtime was required or voluntary and whether it was sporadic or frequent. They usually included required overtime and voluntary but regular overtime as income.

3.3.1.2 *Study States*

Guidelines in each of the 11 study States contain a detailed list of income to include and exclude in calculating support. However, the case record study did not investigate these various income components and how they were handled in each case.

3.3.1.3 *State Case Samplings*

Five States submitted information to the ABA about written surveys they had conducted on implementation of support guidelines. In its 1993 survey, Kansas asked questions about gross versus net income, types of income considered, and imputation of income. Almost all parent respondents stated that the court had used the parents' gross income from their primary jobs in calculating support. The judicial respondents indicated a much higher consideration of income other than gross income: 80 percent said that they routinely considered income from a second job or overtime pay, and 70 percent routinely considered unearned income such as interest or royalties. Only 18 percent routinely considered income from a current spouse. In a 1992 written survey conducted by the State of Michigan, the judicial respondents listed overtime and second jobs and sources of income as two of the top five areas of deviation. As a result, they recommended that determination of income (e.g., overtime and second jobs, income imputation, self-employed parents, and deductions from income), be studied further. About 60 percent of the respondents also believed that support orders were inadequate when the obligor was self-employed because true income was hard to determine.

3.3.2 *Gross versus Net Income*

Guidelines varied according to a parent's gross or net income. Most States used the gross income of one or both of the parents; however, a substantial minority used net income. Net income is defined in many ways. It is not necessarily wages adjusted for income, social security, and Medicaid taxes. Many States also allow as adjustments from gross income the following costs: amounts under prior support orders being paid, mandatory retirement contributions, mandatory union dues, and health insurance premiums paid for the child's benefit.

3.3.2.1 *Guideline Reviews*

About half of the guideline review teams discussed whether their guidelines should base child support calculations on gross or net income. Review materials show that the States were split between the two positions; however, because States often interpreted the term "gross income" more narrowly than its traditional meaning—earnings before tax deductions or other adjustments—there frequently was little difference between States' definitions of gross and net income for child support purposes.

3.3.2.2 *Study States*

Guidelines in the 11 study States varied in their use of gross or net income. All 11 States have at least 1 adjustment to gross income before support is calculated. Massachusetts, for example, allows only prior support orders to be deducted from the NCP's income before support is calculated. Other States, such as New Hampshire, New Jersey and Washington, allow many more adjustments, including taxes, mandatory union dues, and retirement plan payments. These States varied in how these adjusted income figures are termed. For example, New Hampshire refers to the adjusted income figure as "adjusted monthly gross income," New Jersey refers to this figure as "weekly available income" and Washington State refers to this figure as "monthly net income." Refer to each State's guidelines in Appendix C for a complete description of income adjustments. The case record analysis did not investigate the use of gross versus net income.

3.3.3 *Income Verification*

This section discusses income verification as specified in the guideline reviews, study States, and State case samplings.

3.3.3.1 *Guideline Reviews*

With the exception of New York (discussed below), no guideline reviews discussed income verification.

3.3.3.2 *Study States*

The following sections discuss the guideline methodology and incidence in case records within the study States.

Guideline Methodology

Child support guidelines commonly instruct the decisionmaker to use certain documents to verify income. This is true of the majority of guidelines in the 11 study States. Supporting documentation may include current pay stubs, past years' income tax returns, financial affidavits, and employer verification. The guidelines in Arkansas, Massachusetts, Missouri, New Hampshire, and Wisconsin lack specific requirements or procedures for verifying income. Table G-3 in Appendix G following this section provides a more complete description of each State's strategy.

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Incidence in Case Records

The extent of income verification varied widely among the 21 study counties. The following was found in case records:

- Income was verified for NCPs in as few as 23.7 percent of cases collected in one Wisconsin county and in as many as 97.8 percent of cases collected in a Massachusetts county (see Exhibit 3-3-1 following this page).
- Income was verified for CPs in States counting CP income [Nationally, 73 percent of CPs with dependent children are working full time or part time. (Child Support for Custodial Mothers and Fathers 1991, Current Population Report, Bureau of Census, Series p. 60, No. 187, August 1995.)] in as few as 43.8 percent of cases collected in one Delaware county and in as many as 96.9 percent of cases collected in the Massachusetts county noted above [This range excludes the States of Arkansas and Wisconsin because they use straight percentage-of-income models and do not explicitly include the income of the CP in calculations.] (see Exhibit 3-3-1).

Respondents perceived the incidence of income verification to be much higher than the case records indicate. The overwhelming majority of persons interviewed stated that income was verified in 70 percent or more cases. When income was verified, case records do not reveal that any particular documentation was required more frequently than others (see Exhibits 3-3-2 and 3-3-3). However, respondents to the ABA interviews most often described verification through financial affidavits, personal testimony, tax returns (Schedule C form for the self-employed), pay stubs, W-2 forms, Department of Employment Security records, and employer documentation.

Case records from agency personnel often contained an independent source of verification as well as more than one form of verification.

3.3.3.3 State Case Samplings

The low level of income verification that CSR found in the case records from the 11 study States is consistent with the findings of States that have conducted similar case analysis within the State. For example, California collected orders over a 3-week period during July and August 1993. The Judicial Council discovered that often incomplete information appeared in the records, including a lack of income information. Because no mandatory form was used by all courts to enter a child support order, data ranged from a form order containing findings, to a minute order, to an attached computer printout of the worksheet calculations. In its study of IV-D and non-IV-D orders entered throughout the State between July 1992 and July 1993, New York found that all required proofs of income were missing from 55 percent of the NCP's files and 67 percent of the CP's files. Not surprisingly, noncompliance was highest in default cases (74 percent). Finally, in a sampling of IV-D and non-IV-D cases from 20 counties from September 1987 to December 1989, Wisconsin discovered that 24 percent of the cases lacked income information so that the researcher was unable to determine compliance with the guideline.

3.3.4 Income Imputation

The decisionmaker commonly is authorized to impute income to a voluntarily unemployed or underemployed party or to a party who has purposely masked his or her true earnings to avoid paying child support. Guidelines instruct decisionmakers to generally impute income based on an evaluation of the opportunities available in the community and the parent's work history, age, education, and skills. Some guidelines establish a minimum wage rate or annual salary for purposes of imputing income.

The following sections discuss income imputation as specified in the guideline reviews and study States.

3.3.4.1 Guideline Reviews

Imputed income was a major issue for review teams. Most States settled on imputing income for unemployed or underemployed parents. The definition of unemployment was not in dispute. However, teams took pains to define underemployment. They generally concluded that the terms described situations when the parent was not employed in a manner consistent with his or her education, skills, or experience.

The teams did carve out exceptions to the rules on attributing income. The four most common were when the parent's unemployment or underemployment (1) was related to the care of a preschool or disabled child; (2) was due to medical reasons; (3) was caused or assisted by a depressed market (e.g., the parent had made diligent but unsuccessful efforts to find employment, within his or her geographic area, consistent with his or her education and skill level); or (4) had occurred so that the parent could pursue some legitimate self-improvement activity expected to benefit the child and was not undertaken to avoid child support obligations.

Review approaches regarding the amount of imputed income differed. Some States left the matter entirely to the discretion of the decisionmaker. A second group of committees set the imputed income level at the parent's last full-time employment amount. In a third group of States, the amount would be the minimum wage for a 40-hour work week unless the evidence pointed to a better figure. Finally, a few State teams recommended a set amount to be placed in the guideline; at least one used an artificially high figure as an incentive to parents to provide income evidence in their pleading or at the hearing.

3.3.4.2 Study States

This section discusses the guideline methodology and the incidence in case records within the study States.

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Guideline Methodology

Two States—Arkansas and Delaware—have guidelines addressing income imputation in self-employed cases. Delaware's guideline uses a formal methodology. Decisionmakers in Arkansas must use a net-worth approach or consider the parents' earning capacity.

Eight States—Delaware, Florida, Massachusetts, Minnesota, Missouri, New Hampshire, Pennsylvania, and Washington—authorize decisionmakers to impute income to voluntarily underemployed or unemployed parents. The guidelines usually state that factors to consider include the parent's education, work experience, job skills, and availability of work in the area. Washington's guideline differs; it states that income should be imputed based on the median income of year-round full-time workers as derived by the Current Population Survey (figures are provided in the guideline). New Jersey's guideline indicates that underemployment may make the guidelines inapplicable, and no other direction for imputing income is provided. Wisconsin's guideline discusses imputation only for non-income-producing assets or where income has been diverted to avoid child support.

The only guideline of the study States that mentions imputation in default cases is Delaware's guideline. It has a formal method for imputing income to an unprepared or nonappearing parent. Table G-4 in Appendix G presents a complete description of each State's strategy.

Incidence in Case Records

The frequency of income imputation varied greatly among the 21 study counties. The following was found:

- Income was imputed to NCPs in as few as 0.5 percent of cases collected in a Minnesota county and in as much as 34.5 percent of cases collected in a Washington county (see Exhibit 3-3-4 following this page).
- Income was imputed to CPs in as few as 0 percent of cases collected in a New Jersey county and in as much as 51.1 percent of the cases collected in a Delaware county [This range excludes the States of Arkansas and Wisconsin because they use straight percentage-of- income models and do not explicitly include the income of the CP in their calculations.] (see Exhibit 3-3-4).

The most common reasons for imputing income to NCPs were underemployment or unemployment and the parent's failure to submit evidence of his or her earnings. The most common reasons for imputing income to the CP were underemployment or unemployment and "other" reasons. In most counties, these "other" reasons could not be determined. However, in one of the Florida counties, the most common reason for imputing income to the CP was because he or she was on AFDC. This case record finding was consistent with the Florida interview results. Judges and child support agency personnel stated that income will be imputed to a CP on AFDC based on 40 hours at minimum wage, unless there is a job available earning more.

The telephone survey did not specifically ask respondents to discuss reasons for imputing income to NCPs as distinct from imputing to CPs. However, based on responses, it appears that income is most often imputed to NCPs. Respondents stated that imputation occurs most frequently in cases where no income information is available or the decisionmaker is confident that the NCP is voluntarily underemployed or unemployed. The decisionmakers interviewed in Massachusetts stated that they imputed income in every default case. Based on responses from all the study States, it appears that imputation is less frequent in cases of self-employed parents than in cases of unemployed or underemployed parents.

Imputing the prevailing minimum wage for a 40-hour work week was a common imputation method among decisionmakers in the 21 study counties. This method also was often mentioned during the telephone interviews. However, the most frequent methods were classified as "other" (see Exhibits 3-3-5 and 3-3-6). "Other" reasons typically included using hourly wages above the minimum wage or following county-specific methods for imputing income. For example, the Delaware guidelines state, among other imputation requirements, that "all unemployed, able-bodied persons shall be attributed with no less than \$5.00 per hour for a 40-hour work week." Another example of a State-specific imputation method comes from Arkansas, where decisionmakers typically use the minimum income and award amount from the "Monthly Family Support Chart" in the guidelines for the purpose of imputation.

Telephone respondents also mentioned imputing income based on the community standard (e.g., certain income for certain types of jobs in that locale).

3.3.4.3 Case Samplings on Deviation

Alaska collected deviation orders for 1 year (1992–93). In examining 81 cases, the State found that the top two reasons for deviation were that the obligor's income was below poverty level (approximately 30 percent or 24 of 81 cases) and that no reliable income information was available from the obligor (approximately 26 percent or 21 of 81 cases). Iowa also found that income issues were the most frequent reason for deviation (32 percent or 223 cases). The phrase "income issues" was defined in this Iowa study to include unemployment and underemployment. In its 1994 case sampling of IV-D and non-IV-D cases, New Mexico found that 23 percent of the 236 sampled cases deviated from the guideline amount. Among the top five reasons for deviation were "default order with no income information" (four cases) and "AFDC case, no income information from the noncustodial parent" (three cases).

3.3.5 Conclusions and Recommendations

This section presents conclusions and recommendations regarding income verification and income imputation.

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3.3.5.1 *Conclusions and Recommendations Regarding Income Verification*

Income ideally should be accurately verified for each parent in a child support action. The results from the study States do not fully reflect this ideal. This result can be explained, in part, by certain aspects of the research methodology, the nature of the documents collected, and administrative and court rules regarding the filing of certain documents.

In attempting to capture all information relevant to each child support matter during a specific period of time, CSR developed a protocol that included photocopying and forwarding to CSR income verification documents by county, or, in some instances, temporary personnel. It is quite possible that documents submitted by parents at the time of the hearing simply did not become part of the record used by this study. Furthermore, documents may have been returned to parents at their request or due to storage limitations at the court. It also is possible that some documents did not get photocopied. In some counties, such as one in New Jersey, CSR received few pieces of documentation. A variety of methodological issues might account for a portion of those cases not containing verified income for one or both parents.

After considering the above limitations, the overall findings do not seem completely unacceptable. Court, agency, and professional personnel stated that income is verified in 70 to 100 percent of cases. However, parents and agency personnel reported that while these are the requirements, only about 50 percent of parents submit verification. The failure of parents to submit proper forms of income verification likely is faced by many child support decisionmakers.

Recommendations regarding income verification include the following:

- State guidelines should require that income be verified;
- State decisionmakers should compel parties to comply with the verification requirement; and
- States should provide decisionmakers with resources to verify income through independent, automated sources such as employment security records, and access to these records should be available in non-IV-D as well as in IV-D cases.

3.3.5.2 *Conclusions and Recommendations Regarding Income Imputation*

Although it seems appropriate to give decisionmakers discretion in determining whether to impute income in a particular case, greater State guidance for exercising that discretion would result in more consistent treatment of parents.

Recommendations regarding income imputation include the following:

- Where guidelines address imputation of income, they should specify the type of cases appropriate for income imputation and explain the basis on which income should be imputed. This decision should be discretionary.

3.4 HEALTH CARE

The Family Support Act of 1988 and Federal regulations require that State guidelines provide for children's health needs through "health insurance or other means." [45 CFR 302.56(c)(8).] In addition, Federal regulations require the IV-D agency in an AFDC establishment or modification case to petition the court or administrative authority to include health insurance that is available to the NCP at a reasonable cost. In non-AFDC IV-D cases, consent from the applicant or recipient of IV-D services is needed before the IV-D agency may petition for medical coverage. [45 CFR 303.31(b)(1). See the following for a discussion of support guidelines and health insurance: Notar, S.A., and Schmidt, N.C. 1995. " State Child Support Guideline Treatment of Children's Health Care Needs. " In Haynes, M., ed. Child Support Guidelines: The Next Generation, 1995 . Washington, DC: U.S. Department of Health and Human Services.] In 1992 41 percent of AFDC IV-D cases had health insurance benefits included in their child support award. In 1991 only 69 percent of NCPs that were required to provide health insurance benefits as part of their child support award actually provided it. [U.S. Bureau of the Census. 1995. Child Support for Custodial Mothers and Fathers: 1991 . Current Population Reports, Series P60-187. Washington, DC: U.S. Government Printing Office.] When discussing child health care needs, a distinction should be made between health insurance costs and routine, unreimbursed and/or extraordinary medical expenses. Typically, unreimbursed medical expenses include deductibles, copayments, and other expenses that are not covered by the health insurer or health maintenance organization. Extraordinary medical expenses include nonroutine expenses unique to the child, such as those due to accident, infirmity, and disability. [See the following for a further discussion of these issues: Elrod, L.H. 1995. " Adding to the Basic Support Obligation. " In Haynes, M., ed. Child Support Guidelines: The Next Generation, 1995 . Washington, DC: U.S. Department of Health and Human Services.] The presentation of analysis and findings on child health care issues is divided into four parts in the following sections: health insurance in the guidelines, extraordinary health care costs, health insurance as a deviation factor, and extraordinary health care costs as a deviation factor. The presentation concludes with a summary of findings and recommendations.

3.4.1 Health Insurance Issues and Findings From States and Study Sites

This section discusses findings from guideline reviews and study States regarding health insurance.

3.4.1.1 *Guideline Reviews*

In State guideline reviews, health care issues arose in three contexts—(1) inclusion of insurance premiums in the child support calculation, (2) the amount of premium included, and (3) the payment of extraordinary medical costs.

A frequent issue arising in guideline reviews was how payments for health insurance premiums should impact child support awards. Some States recommended including insurance premium costs as deductions from parent income before calculation of the basic guideline support award. Other States treated insurance premium costs as a mandatory numerical add-on to the basic support amount.

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Therefore, these costs would be below-the-line costs, and they would affect the guideline order after calculation of the basic guideline support award.

State guidelines also differed in their methods for determining the amount of insurance credit each parent should receive. According to some State guidelines reviewers, the only premium costs that should be considered are those for the child in the pending support case. At least one State permitted only one-half of the insurance costs to constitute an income adjustment to the obligor. However, under another approach a parent could receive an income adjustment for premiums paid for the health insurance of others within the household, but premiums for the child would be treated as a deviation factor.

3.4.1.2 Study States

This section discusses the guideline methodology incidence in the study States and compliance with guideline methodology.

Guideline Methodology

Ten study States used mandatory numerical adjustments to address health insurance premiums. Below is a brief discussion of these adjustment that illustrates variability between States.

Six of the study States—Arkansas, Delaware, Minnesota, New Hampshire, New Jersey, and Pennsylvania—had guidelines requiring the deduction of health insurance premiums from the paying party's income before the guideline support amount was calculated. In New Hampshire, the deduction was limited to 50 percent of the dependent's coverage cost.

Florida's guidelines require that health insurance costs, excluding those of the dependent child(ren), must be deducted from gross income. The health insurance cost attributable to the dependent child(ren) is a mandatory add-on to the basic support amount, which is then prorated between parties based on their respective incomes. If the NCP prepays the premium, the insurance cost attributable to the child(ren) is credited to his or her support obligation. Missouri's guidelines are similar to those of Florida; the only difference is that the portion of health insurance cost not attributable to the dependent child(ren) is not an allowable income deduction.

Washington State takes a different approach to health costs. The health insurance costs paid by both parties for the dependent child(ren) is one component of the "extraordinary health care expense" computation on its child support worksheet. The Washington guideline states that "ordinary health care expenses are included in the economic table. Monthly health care expenses that exceed five percent of the basic support obligation shall be considered extraordinary health care expenses. Extraordinary health care expenses shall be shared by the parents in the same proportion as the basic support obligation" (see Appendix C). As in Florida and Missouri, any health costs prepaid by either party are credited to their respective support obligations.

Massachusetts' guidelines require that 50 percent of the cost of family coverage is deducted from the obligor's obligation if he or she is providing the coverage. It is noteworthy that this insurance deduction is not limited to the cost of the child(ren)'s health insurance. Of all the study States, only Wisconsin had guidelines stating that the cost of health insurance is a discretionary factor which the court can consider in deciding whether to deviate from the guideline amount. (See Table G-5 in Appendix G for a more complete description of each State's strategy.)

Incidence Within Case Records

In complying with Federal law, decisionmakers mandated health insurance in 82.7 percent of all collected cases (see Exhibit 3-4-1 following this page). In 18 of the 21 study counties, health insurance coverage was ordered in 70 percent or more of the cases. In the remaining three counties, coverage was ordered in only 34 percent of the cases in a New Jersey county, 51 percent in a Pennsylvania county, and 56 percent in a Wisconsin county. Health insurance was petitioned but not mandated in 3.5 percent of the cases across the counties. The reasons most commonly cited for not mandating health insurance were the unavailability of insurance at a reasonable cost and the inability of the payor to obtain employee-related health insurance. However, in one Pennsylvania county, 27 percent of cases lacked a reason for not ordering health insurance coverage.

Health insurance was not addressed in 13.8 percent of the cases across all counties. While this number seems high, in view of the Federal mandate to include health insurance in orders, the presence of significant numbers of modification cases in the case record sample tends to inflate this figure. Across all counties, 35.7 percent of cases that did not address health insurance were modifications (see Exhibit 3-4-2). The explanation is that many modification cases incorporated the terms of the prior order, especially with regard to health insurance. Hence, modifications tended to be silent on this issue.

In summary, there were important differences among the States and counties in the percentage of cases in which health insurance was ordered for children. records were analyzed to determine whether and how insurance premium costs were factored into the guideline computations.

Two-thirds of These differences did not appear to be related to the type of case or type of award. While more complete data and especially data on type of case might have revealed other patterns, the available data suggest that the differences seen in the data resulted from differences among the counties in guideline implementation.

Compliance With Guideline Methodology

Across all cases, two-thirds ordered the NCP to obtain or maintain health insurance, 13.1 percent ordered the CP to do so, and 14.6 percent ordered it of both parents. As shown in Exhibit 3-4-2, the States of Arkansas and Washington tended to make both parties

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responsible for obtaining or maintaining health insurance, averaging approximately 57 and 44 percent, respectively. While often it is assumed that the NCP bears the heaviest burden of health insurance, the data show the following variations by county:

- The CP was ordered to obtain or maintain health insurance in more than 20 percent of the cases collected from five counties.
- Both parents were ordered to obtain or maintain health insurance in more than 40 percent of the cases collected from four counties.
- In two counties the NCP was ordered to obtain or maintain health insurance in less than 50 percent of the cases collected.

Case cases that ordered health care to be provided by one or both parents did not include the cost in the child support calculation (See Table E-7). In virtually all of these cases, however, the data suggest that the guideline methodology was used, as shown by the following:

- The order required one or both of the parties to continue current insurance coverage or to obtain coverage. In 19.8 percent of these cases, one party was ordered to continue current coverage.
- The order specified which of the parties was to pay for the medical insurance coverage in 78.4 percent of these cases, the remainder of which were missing data on payment responsibility.

Therefore, the data suggest that the cost of insurance coverage was not known at the time the worksheet calculations were performed to determine the award amount and that this was the primary reason why the cost of medical coverage was not included in the calculation.

3.4.2 Extraordinary Health Care Costs and Findings From the States and Study Sites

This section discusses findings from guideline reviews and study States regarding extraordinary health care costs.

3.4.2.1 Guideline Reviews

Typically, the costs of extraordinary medical expenses were treated as deviation factors by guideline review teams. Most of the discussion focused on how to define the term "extraordinary." The usual answers were that extraordinary expenses were those not covered by insurance; those associated with a chronic illness, as opposed to the cost of routine care; or costs above a threshold level set by the State.

A few State teams determined how extraordinary expenses should be divided between the parents. States were split between an equal allocation of these costs and a division in proportion to the parents' incomes.

3.4.2.2 Study States

This section discusses the guideline methodology incidence in the study States and allocation of costs.

Of the 11 study States, 4 States (i.e., Missouri, New Jersey, Pennsylvania, and Washington) have guidelines that require a numerical adjustment for extraordinary health expenses. [Note that the Washington guidelines define "extraordinary" as expense in excess of 5 percent of the basic child support need.] These expenses must be added to the basic support amount and shared proportionally by the parties. Six States (i.e., Arkansas, Florida, Massachusetts, Minnesota, New Hampshire, and Wisconsin) provide that extraordinary health expenses are discretionary factors that the court may consider in determining whether to deviate from the guideline amount. The Delaware guideline is silent. (See Table G-6 in Appendix G for a more complete description of each State's strategy.)

Incidence in Case Records

In 14 counties extraordinary health care costs were discussed in one-half or more of the orders. In the other seven counties, such costs were not discussed very frequently, falling in a range of 5 to 42 percent, with the two Pennsylvania counties representing the high and low ends of the range. It is clear from the case record coding that the low percentages were found in counties that do not routinely contain standard health care language in the order (see Exhibit 3-4-3 following this page). It is surprising that orders in discretionary States were more likely to discuss extraordinary health costs than orders in States that have a mandatory numerical adjustment for such costs. There is no clear explanation for this difference.

Allocation of Costs

Across all counties, nearly 75 percent of the cases collected ordered that the parents share extraordinary health expenses in some manner (e.g., 50/50 split, proportional shares of income). A very small percentage of cases ordered one of the parties to pay for 100 percent of these costs, as shown in Exhibit 3-4-4 following this page.

3.4.3 Health Insurance Costs as a Deviation Factor

This section discusses health insurance as a deviation factor in State case studies and in the study States.

3.4.3.1 State Case Studies on Deviations

Of the 19 States that indicated they had collected case data on deviations, only one State report listed health care coverage as among the top 5 reasons for deviation; in its 1991–92 study of 2,036 deviation cases, Virginia found that the third highest deviation factor (9

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percent of cases) was "direct payment ordered by court for health care coverage." In the five States conducting written surveys, the respondents also appeared to be satisfied with their guideline methodology for addressing health insurance costs.

There were two interesting findings in New York and Massachusetts. In its 1992–93 study of 3,152 IV-D and non-IV-D cases, New York found that only 30 percent of all orders addressed allocation of health care expenses. Contrary to the guideline requirement that the expenses be prorated according to income, orders in 48 percent of the cases stated that the costs should be born equally between the parties. The Massachusetts Department of Revenue, Child Support Division, also was dissatisfied with one of its findings. At the time of the case sampling in 1993, the Massachusetts guideline allowed the entire cost of health insurance coverage, including the premium attributable to the obligor's coverage, to be deducted from the child support order as a below-the-line credit. Adjusting the order to account for such health insurance premium costs reduced the average order by 28 percent. The guideline committee felt that the result was too harsh for children. As a result, Massachusetts changed its guideline to allow a credit for only 50 percent of the cost of health insurance.

3.4.3.2 Study States

The case record data show that deviations for health insurance appeared in only a small number of cases in seven counties. The low incidence is compatible with the guideline requirement in 10 of the study States that health insurance be addressed through a mandatory numerical adjustment rather than through the decisionmaker's discretion. [Most respondents were aware that their State guidelines had a numerical methodology for addressing health insurance and were satisfied with that approach.]

3.4.4 Extraordinary Health Care Costs as a Deviation Factor

This section discusses extraordinary health care as a deviation factor in State case studies and in the study States.

3.4.4.1 State Case Studies on Deviations

Based on information submitted to the ABA, no State case study on deviations found extraordinary health expenses as one of the top five reasons for deviation. However, judicial respondents to a 1993 written survey in Kentucky ranked a child's extraordinary medical and dental needs as the second most frequently cited reason for deviation. Judicial respondents to a 1992 written survey in Michigan also listed health care as a frequent deviation factor. They noted that health care expenses resulted in more deviations in smaller counties, rural counties, and low-income counties. Twenty percent of the respondents thought that the guidelines should allow for uninsured medical expenses for the payer's immediate family or allow discretion in making an adjustment for the payer's extraordinary expenses. About 50 percent of all respondents believed that when there is no credit for child-related expenditures, child support orders seemed inappropriate. About 45 percent of the respondents believed that support orders were excessive when extra education and incidence of postsecondary support within the study States.

Guideline Methodology

All participating States addressed postsecondary education support in a discretionary manner. Seven study States' guidelines allow the decisionmaker to consider postsecondary education costs in determining awards, and the remaining four study States have guidelines that do not mention such support. Missouri is the only State in the study that uses a guideline worksheet that numerically addresses postsecondary education expenses. This line item on the worksheet is "special extraordinary expenses," which incorporates other expenses besides postsecondary support. However, filling out this line item is left to the discretion of the court or mediator (see Table G-8 in Appendix G).

Incidence of Postsecondary Education Support in Case Records

Given this project's case methodology, it is not surprising that the number of cases in the study sites that mentioned postsecondary support was relatively small. The frequency ranged from 0 percent to 60 percent, with raw numbers ranging from 0 to 120 cases (see Exhibit 3-6-1 following this page). Only Washington State had a significant number of orders that dealt with postsecondary support (slightly more than one-half of the State sample). Moreover, proceedings that ordered postsecondary support awards typically were stipulated agreements and non-IV-D cases. Case records from Missouri and New Hampshire provided evidence for this finding. Additionally, a correlation was not found between an order for postsecondary support and a parent's income.

Most persons interviewed by the ABA also stated that postsecondary education expenses are requested on an infrequent basis. Private attorneys most frequently reported postsecondary education support as a deviation factor, usually as part of a negotiated agreement. CPs complained that stopping support when a child reaches age 18 made their financial situations difficult because a great deal of financial help is needed to ensure that the child can attend college.

3.6.2 Deviations Due to Support for Postsecondary Education

This section discusses support for postsecondary education as a deviation factor and allocation of postsecondary support expenses based on case records.

3.6.2.1 Support for Postsecondary Education as a Deviation Factor

The following sections discuss deviation findings due to postsecondary education expenses found in the State case samplings and the study States.

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Study States

There are instances when a decisionmaker can order postsecondary education support. In the first instance, the order requires immediate support because the child is in college or a vocational school or will shortly enter a postsecondary institution. In the second instance, the decisionmaker orders future support in case the child enters postsecondary education (e.g., the child is young and a trust fund is established). In the third instance, the order reserves the right to petition for such support in the future.

As indicated above, Washington was the only State with a significant number of cases that dealt with postsecondary education support. An overwhelming majority of its orders reserved the right to petition for future postsecondary education support (approximately 90 percent), while the remaining cases ordered the parties to establish a trust fund or to provide immediate support (approximately 4 percent and 2 percent, respectively).

Minnesota was the only study State where all respondents stated that postsecondary education expenses are considered by the decisionmaker in awarding support.

State Case Samplings

Ten States submitted information to the ABA on their data collection for guideline deviations. Of the eight States that highlighted the most frequent reasons for deviation, only Virginia found that education expenses were a significant reason for deviation. In its 1991–92 examination of 2,644 deviation orders, including both IV-D and non-IV-D cases, Virginia found that the third most-frequent reason for deviation was direct payment ordered by the court for health care coverage, life insurance coverage, and education expenses (9 percent combined).

Five States conducted written surveys on the application of the guidelines. Kansas surveyed parents, judges and hearing officers, and attorneys in 1993, and respondents listed an agreement to support children past the age of majority as an adjustment factor; however, it ranked much lower as an adjustment factor than other such factors as income tax exemption, long-distance visitation costs, extended visitation and custody arrangements, special needs of the children, and overall financial conditions. Only approximately 40 percent of the judges and 32 percent of the attorneys who responded believed that judges should use their discretion to order child support through age 22.

3.6.2.2 Allocation of Postsecondary Support Expenses Based on Case Records

In the 21 study counties, case data indicates that the most common method for allocation of postsecondary education support involved the parents splitting the expenses 50/50. Also common were cases in which the decisionmaker did not allocate the expenses at the time of the order, but presumably would determine the amount at a later date. One of these two allocation methods was used for most cases across the 21 counties in this study. Other methods included an order that either the NCP or CP pay 100 percent of the postsecondary education expenses or a requirement that both parties pay a proportional share of income.

Respondents in the 11 States provided further details of allocation methods. For example, respondents in Massachusetts stated that when postsecondary education support is requested and approved, the amount might be based on the child support guideline amount, the tuition amount, or a sum determined by the decisionmaker. Respondents in Missouri stated that the amount usually is larger than the guideline amount and is based on the school's tuition. The amount is then divided between the parents and prorated according to their incomes.

3.6.3 Conclusions and Recommendations

The duration of child support varies widely across States. The purpose of this study was not to make policy decisions on the necessity of postsecondary support for children from separated families to ensure that they have the same educational opportunities as children from intact families. However, the study results do support the current practice in almost all States.

Should States decide to consider postsecondary education expenses as part of a child support award, it is recommended that the support be a discretionary factor because no requirement exists for the population at large to obtain a postsecondary education.

3.7 TAX CONSIDERATIONS

For parents with middle- to upper-range incomes, tax-related matters are important issues. Child support orders may impact Federal income taxes in two ways. First, the allocation of support to a spouse or child(ren) determines the tax consequences of that amount of money; that is, spousal support is taxable for the obligee and deductible for the obligor, whereas child support is neither taxable nor deductible. Second, the assignment of the dependent tax exemption(s) may have an important impact on one or both parents' income.

Tax implications were raised by guideline committees in the following ways: through determination of net income for purposes of applying guidelines, allowable withholdings, and allocation of the dependent tax credit. In the analysis of case records, the most common form of tax consideration was for orders that allocated the dependent tax credit(s). In States where guidelines address provided for tax considerations, cases addressing tax exemptions ranged from less than 5 percent (New Jersey) to nearly 40 percent (Washington). Responses from the 214 persons interviewed by the ABA also varied significantly among States. For example, all persons interviewed in Florida and Massachusetts stated either that tax exemptions never arise or that they arise infrequently when their child support orders are established or modified. In contrast, private attorneys and judges in Arkansas reported that tax exemptions frequently are cited as a basis for deviation from guideline amounts. Tax exemptions were not significant factors for deviation in case studies conducted by other States.

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3.7.1 Tax Consideration Issues and Findings From States and Study Sites

This section discusses issues and findings from guideline reviews and study States regarding tax considerations.

3.7.1.1 Guideline Reviews

Guideline review committees raised the issue of tax implications of child support in several ways. First, some teams considered that income tax withholding largely determines the income available for child support. The trend among review committees was to permit some degree of Federal, State, and local income tax withholdings to adjust income before application of the guideline formula. Two review committees addressed the issue of the acceptable amount of tax withholdings. One team recommended that for child support calculation purposes, all parents should be allowed a tax withholding status at the single-person exemption level. By setting this standard level, all parents and children would be treated equitably. The other team recommended overturning the State practice of using standard deductions and tax tables to determine a parent's tax rate. The rationale for their decision was the indication that some obligors were getting a windfall because the table and standard amounts were more than what they actually paid.

Second, some State reviewers examined allocation of the tax exemption for the child. When the parties did not reach an independent agreement on this issue, reviewers felt that the court should allocate the exemption between the parents in proportion to their contributions to the child's expenses. For instance, if the obligor bears 75 percent and the obligee bears 25 percent of the cost, then during a 4-year period, the obligor would claim the exemption for 3 years and the obligee for 1 year. One State team added a caveat to this approach—a parent would be prohibited from claiming the exemption if he or she would not receive a tax benefit from the exemption or if the parent had support arrears as of the end of the tax year.

3.7.1.2 Study States

These following sections discuss the guideline methodology regarding tax considerations and incidence of tax considerations within the study States.

Guideline Methodology

Only one State, Arkansas, specifies that a particular parent should receive the dependent tax exemption—the CP receives the exemption unless the parties otherwise agree. Five States—Florida, Massachusetts, Minnesota, Washington, and Wisconsin—leave the decision up to the court or State that the support amount may be adjusted when taking into account the impact of the dependency exemption. In fact, Washington guidelines indicate that the court may award the exemption(s) to either parent, divide the exemptions between them, or alternate the exemption(s). The guidelines in three States—New Hampshire, New Jersey, and Pennsylvania—authorize the decisionmaker to optimize both parties' after-tax income by taking into account Federal tax consequences in determining support. Only two States' guidelines—Delaware and Missouri—did not direct the allocation of tax exemptions or other tax-related issues (see Table G-9 in Appendix G).

Incidence of Tax Considerations in Case Records

In this study, if the order allocated the tax exemption in some manner to either or both parents, the case was coded as one in which tax considerations were part of the child support order.

In two States where guidelines did not discuss tax-related matters, tax exemptions never (Delaware) or rarely (Pennsylvania) appeared in the case records. Judges and masters interviewed in Delaware stated that they never heard a request for deviation based on tax exemptions. The lack of such a request may be based on assumptions about the Delaware Melson formula. Both child support agency and private attorneys in Delaware stated that they believed the dependent tax credit was already factored into the guideline. Conversely, Missouri guidelines also do not discuss tax-related issues, but nearly a quarter of all cases addressed exemptions.

In study States with guidelines that authorize the decisionmaker to consider tax consequences, cases addressing tax exemptions varied from less than 5 percent in New Jersey and one county in both Arkansas and Florida to nearly 40 percent in Washington (see Exhibit 3-7-1 following this page). It should be noted that Washington's allocation of the tax exemption is determined through an item on the standard court order form, but not the administrative order form. Little more than one-half of court orders in Washington allocated the tax exemption.

Responses of persons interviewed by the ABA also were varied. Most respondents stated that tax exemptions rarely arose as a basis for deviating from the guideline amount. However, private attorneys and judges in Arkansas reported that tax exemptions are frequently cited as a basis for a deviation.

3.7.2 Findings on Deviations Due to Tax Exemptions

The following sections discuss deviation findings due to tax considerations found in the State case samplings and the study States.

3.7.2.1 Study States

The study identified three basic ways in which decisionmakers, exercising their discretion, typically allocated the dependency tax exemption: (1) the NCP always received the exemption(s); (2) the CP always received the exemption(s); and (3) both parents shared

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the exemption(s), usually by splitting multiple exemptions or by alternating exemptions over the years. Exhibit 3-7-2 shows the allocation of exemptions between the parties.

Guidelines in only one State, Arkansas, specifically allocate tax exemptions (in this case to the CP) unless the parties agree otherwise. Case data from Arkansas indicate that its decisionmakers follow the guideline allocation method. In Washington, where guidelines present three discretionary methods for handling tax exemptions, the data show that when the exemption is given to one party, it is usually the CP who receives it. Orders that result in shared exemptions between parents are almost as common, and this shared allocation seems common throughout the study States. NCPs were given the tax exemption more frequently than CPs in only Massachusetts, one county in New Jersey, and one county in Wisconsin.

In some cases, the tax exemption allocation was conditional. For example, the order would specify that NCPs could claim exemptions until CPs became employed, NCPs could claim exemptions as long as support payments were current, or NCPs could claim exemptions for a certain number of years. In cases that allocated the exemption(s) in such a manner, the order would often specify that when the specified conditions were met, CPs could claim exemptions, exemptions could be split, or parents could alternate exemptions.

The allocation of tax exemptions usually was treated narratively in the order, and did not affect the calculation of the child support award. Considering the numerous conditional arrangements, orders often used tax exemptions to optimize parties' incomes over time, in expectation of changing circumstances. Occasionally tax exemptions were used as incentives to encourage continued payment of child support.

3.7.2.2 *State Case Samplings on Deviations*

Tax exemptions were not significant factors for an overwhelming majority of State case samplings on deviations. Of the 10 States that submitted information to the ABA, only Kansas found tax exemptions to be a significant deviation factor. Furthermore, in Kansas, tax exemptions were the most frequent reason for deviation (46 percent of 65 deviation cases). All respondents—parents, attorneys, and judges—to a written survey in Kansas also listed tax exemptions as the most frequent reason or the second most frequent reason for deviation. A 1991–92 study of 2,644 deviation cases in Virginia also found that tax consequences were among the "top five" listed deviation factors. However, tax considerations affected awards in only 5 percent of the cases, fewer than the top two deviation factors (i.e., a written agreement and actual monetary support to other children, representing 51 percent and 12 percent, respectively).

3.7.3 **Conclusions and Recommendations**

Tax exemptions resulting from child support are frequently addressed by decisionmakers in several States, although some States rarely consider tax exemptions. The low incidence in such States may simply reflect the documentation that CSR received, not the true frequency. In Washington State, for example, the standard document for court orders addresses this issue. In other States where orders are not standard, tax exemption allocation often is not discussed.

It is recommended that State guidelines treat tax exemptions and other tax-related considerations in a consistent manner.

3.8 **CUSTODY AND VISITATION**

State guideline review teams spent a great deal of time debating the way that child support guidelines should be applied to various custodial arrangements—it was the third most frequently discussed issue.

Sole custody has recently been the most common custody arrangement. In this custody scenario, one parent has primary physical custody of the child(ren) and the other parent has general visitation privileges. Often this visitation period consists of alternate weekends, designated holidays, and 2 weeks in the summer with the NCP. Most guidelines assume a level of visitation between the child and the obligor without any impact on the support amount. Guidelines differ regarding how much visitation is built into the basic guideline award and how additional visitation days affect the guideline award.

Increasingly, families are establishing joint custody arrangements (i.e., situations in which the parents share legal and physical custody of the children). Recent Census Bureau data show that 73 percent of noncustodial mothers and 58 percent of noncustodial fathers had visitation privileges, joint custody, or both. [Census Bureau, U.S. Department of Commerce. 1995. *Child Support for Custodial Mothers and Fathers: 1991*. Current Population Reports: Consumer Income, Series P-60, No. 187, August. Washington, DC: U.S. Government Printing Office.] State review teams recognized the growth of joint custody and extended visitation. They also recognized that where the guidelines did not account for this type of arrangement, inconsistencies and inequities were prevalent. State reviewers discussed a number of issues regarding joint custody or extended visitation arrangements. The main concern was the impact that extended visitation (i.e., visitation that exceeds a threshold established for usual visitation) had on the guideline support amount. For example, parents may extend the period of visitation by increasing the period of time that the child spends with the NCP during the summer or the number of days or nights that the child spends with the NCP during the school year. Such extended visitation may increase expenses for the NCP and may decrease expenses for the CP.

Some States also considered the calculation of support when each parent has one or more children from the relationship. This arrangement is often referred to as "split custody." Guidelines in the study States differed in their treatment of split custody and joint custody/extended visitation arrangements. Most treated the arrangements as a reason to deviate from the guideline amount.

Extended visitation or split custody arrangements were rare in the 21 study counties, as shown in Exhibit 3-8-1 following this page. The distribution of these cases by custody arrangement is shown in Exhibit 3-8-2. These arrangements were more likely to arise in non-IV-D cases than in IV-D cases, [This result may be influenced by the prohibition of State child support agencies using Federal IV-D funds for

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services related to visitation and custody.] and they usually resulted in a downward deviation from the guideline amount. In contrast to the data, most respondents interviewed by the ABA stated that shared custody arrangements are frequently used as reasons for deviation requests; NCPs often rated them as the most common basis for deviation requests. However, CPs often remarked that NCPs received a credit or deviation related to a shared custody and extended visitation arrangement without providing proof of the arrangement; in reality, the CPs complained, no custody or visitation was occurring.

The above results were consistent with studies conducted at the State level. Based on findings of case samplings conducted by the States, custody arrangements were not usually the main reasons for deviation. However, the factor was frequently raised by respondents to State written surveys.

3.8.1 Custody and Visitation Issues and Findings From States and Study Sites

This section discusses issues and findings from guideline reviews and study States regarding child custody and visitation.

3.8.1.1 Guideline Reviews

This section discusses guideline review findings regarding sole and joint custody/visitation.

Sole Custody/Visitation

Because sole custody is a common custody arrangement, it was discussed most frequently during reviews. In the sole custody/visitation scenario, one parent has primary physical custody of the child and the other parent has general visitation privileges. Because questions arose about when the obligor should receive an abatement for visitation expenses, the State review committees needed to determine whether the basic child support award included any provision for these visitation expenses. Most review teams concluded that their guidelines did include some level of visitation between the child and the obligor. However, differences arose regarding how much visitation was built into the basic guideline award and the extent visitation beyond that threshold amount would affect the guideline award.

With respect to what constitutes "normal" visitation, States cited such amounts as 27 nights per year, 25 percent of a month, or between 100 and 185 days per year. Once the obligor met that level of visitation, some reviewers would allow no abatement, reasoning that visitation beyond every other weekend and 2 weeks in the summer does not necessarily translate into an expense-sharing situation. Another approach would be to leave the issue of support abatement to the discretion of the trier of fact. Finally, one State, Arkansas, permitted a 50 percent abatement of support for an extended visitation situation.

Joint Custody/Extended Visitation

State review teams recognized that increasing numbers of families have joint custody arrangements in which the parents share legal and physical custody of the children. However, guidelines in many States did not seem to account for this type of arrangement, and, as a result, inconsistencies and inequities were prevalent. States discussed many issues in this regard.

The first point raised by State review teams was the meaning of joint custody/extended visitation for child support purposes. Reviewers concluded that joint custody/extended visitation was any custodial arrangement that exceeded the visitation threshold set for the sole custody scenario. Therefore, if a State's sole custody category anticipates visitation for 25 percent of the year, then joint physical custody/extended visitation is considered to be anything above that level.

The second issue was how to calculate support after a joint custody/extended visitation arrangement was evident. Several States instituted specific calculations for each situation. For instance, some States recommended the use of a multiplier, such as 1.5, to arrive at the support award amount. By increasing the basic support amount by 50 percent, the State attempted to recognize the increased cost of maintaining two households. Thus, a \$200.00 support award in a sole custody case would become a \$300.00 award in a joint custody/extended visitation case. The \$300.00 would then be allocated between the parents based on the amount of time the child spends with each parent. At least one other State team felt that each parent should retain one-half of the respective support obligation in joint physical custody cases. [To be entered in Volume II, Part A of this report]

Some States, however, rejected the use of a multiplier, and felt that the issue of offsetting child support in joint custody/extended visitation cases should be made at the discretion of the trier of fact. One reason for taking the discretionary approach was that, while the obligor might incur some additional expenses, joint custody/extended visitation does not always markedly reduce the obligee's household expenses. Therefore, the trier of fact must be able to evaluate the facts of the particular case in order to set the appropriate abatement amount.

In a related issue, one State committee considered the effects of an expected joint physical custody that does not occur. When the obligor fails to follow through with the arrangement for which she has received an abatement, what happens? The review team recommended that its guideline incorporate a solution—the situation would be grounds for a modification of support as long as the obligee did not deny the interaction between the obligor and child.

3.8.1.2 Study States

This section discusses the guideline methodology, incidence in case records, and compliance with guideline methodology with regard to custody and visitation.

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Guideline Models

Of the 11 study States, only Wisconsin had guidelines requiring a numerical adjustment to the guideline amount based on the number of days that the child spent with the NCP. The guidelines prescribed a percentage for decreasing the child support obligation, using a "shared-time formula" based on the percentage of overnight stays in 1 year (ranging from 30 percent to 60 percent of the year) spent with the NCP. Six States [Arkansas, Massachusetts, Missouri, New Hampshire, New Jersey, and Washington] provided that either joint custody arrangements or extended visitation are a reason to deviate from the guideline amount or that the guidelines only apply to the usual custody arrangements. Four States' guidelines [Delaware, Florida, Minnesota, and Pennsylvania] did not address joint/shared custody arrangements (see Table G-10 in Appendix G for excerpts from each State's guidelines).

In addition, three States explicitly addressed extraordinary travel costs in their guidelines. In Massachusetts, Arkansas, and Wisconsin, these costs were considered grounds for a deviation. New Hampshire guidelines authorized deviations due to extraordinary costs related to the NCP's custody arrangements.

Incidence in Case Records

Joint custody/extended visitation arrangements were rare in the 11 study States. Joint physical custody arrangements were present in more than 5 percent of the cases in only two counties. [5.8 percent in one Missouri county and 8.0 percent in one New Hampshire county] In contrast, most respondents of the ABA interview stated that shared custody arrangements were frequent reasons for a deviation request. In addition, according to interviews, NCPs in Arkansas believed that credit should be given in the case of an extended stay because the situation created additional second household expenses. CPs in Delaware, however, stated that NCPs are often granted credit or deviation without providing proof, when in reality, no custody or visitation occurs. Transportation costs for visitation purposes were considered in orders of 13 counties, but exceeded 5 percent of the cases in only one county in New Hampshire. Although in every county at least one case involving transportation costs was an interstate case, most interstate cases did not involve transportation costs.

Nearly two-thirds of the cases involving extended visitation arrangements and more than three-fourths of the joint physical custody cases in the 11 study States were non-IV-D cases, although in one county in Wisconsin, two-thirds of these cases were IV-D non-AFDC cases. One-third of the joint custody/extended visitation cases were pro se, while more than one-half of the cases involved a private or legal service attorney.

Compliance With Guideline Methodology

Based on the case records, the most common methods for handling these situations were (1) abatement of the NCP's child support costs during periods of extended visitation; (2) deviations from the guideline amount; and (3) use of numerical formulas, including an offset and Wisconsin's shared-time formula. Most frequently, custody issues resulted in deviations in all States except Delaware and Florida, regardless of whether they were listed in the guidelines as deviation reasons. In four counties, these issues arose in 8 percent to 10 percent of cases. [One county in Missouri, two in New Hampshire, and one in Washington] In New Hampshire, many deviations were handled by offsetting the obligations of the two parties, or by setting an award amount of zero. In the remainder of counties the incidence was less than 5 percent. In particular, in Wisconsin, where extended visitation is handled by a numerical formula, two of the three extended custody cases used the formula, while the third used a deviation.

Abatement was most frequently used in addressing extended visitation in Missouri. [85 percent of the extended visitation cases in Missouri were handled using abatement.] In one case, the NCP's obligation was abated during the summer months, when he had the children living with him; in a second case the obligation was abated whenever the NCP had the children with him for more than 2 weeks.

Transportation costs related to visitation appear to be most commonly handled by having the NCP pay 100 percent of the costs or by having both parents split the costs 50/50. Transportation costs for visitation reasons were used as reasons for deviations in five States (Arkansas, Massachusetts, Minnesota, New Hampshire, and Wisconsin), although this reason for deviation was used in fewer than 2 percent of the cases.

3.8.1.3 Split Custody

Split custody was analyzed in the State guideline reviews and in the case record data.

Guideline Reviews

States considered the calculation of support when each parent has one or more children from the relationship. The approaches to addressing split custody recommended by review teams differed; there was no trend.

One approach was to calculate separate support orders for each household. The parent with the larger obligation would pay the difference between the two awards to the other parent. Add-on expenses would be prorated between the parents in proportion to their incomes.

Another option in split custody cases was to calculate a single support order for all children and then divide that award by the number of children present in each home. This approach was rejected in favor of the previous approach.

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A third approach to addressing these cases involved a separate child support order calculation for each child. The amount per household would then be tallied and the parent with the larger obligation would pay the difference to the other parent.

Study States

Three States—Missouri, Pennsylvania, and Wisconsin—require the decisionmaker to compute awards using two worksheets in split custody cases. The awards are then offset, and the parent with the larger obligation pays the difference. The remainder of the States lacked a numerical formula for treating split custody cases. They either did not address the issues, state that split custody arrangements are a reason to deviate, or indicate that guidelines only apply to the usual custody arrangements.

Of the three States that give specific directions regarding split custody arrangement, the decisionmakers nearly always followed the guideline mandate. In Wisconsin, where orders are frequently expressed as percentages of gross income, the numerical computation often resulted in each parent paying the percentage of gross income appropriate for the number of children in the other parent's custody. However, in one order, a parent paid for a proportion of the percentage appropriate for the total number of children in the family, resulting in a lower award.

Missouri was the only State using numerical adjustments that also used deviations as a way to address split custody cases. Approximately one-half of the split custody cases in Missouri involved deviations.

3.8.1.4 State Custody/Foster Care

This issue was addressed in guideline reviews. Two States [To be entered from Volume II, Part A of this report.] considered the issue of child support for children in the State's custody or foster care—children who live in foster homes or other State facilities, not in their parent's home or family-arranged situation. One State team attempted to improve the guideline provision so that it would better apply to cases in which only some of the family's children enter State custody or foster care. The other State team's goal was to simplify the guideline calculation of State custody/foster care cases. It is not clear whether the recommendations of either team were enacted.

3.8.2 Findings Regarding Deviations Due to Custody and Visitation

Deviations due to custody and visitation factors included joint custody and extended visitation, split custody, and State custody/foster care.

3.8.2.1 Joint Custody and Extended Visitation

Data on joint custody and visitation were collected from state case samples and case records.

State Case Samplings on Deviation

Only one State case sampling that was reported to the ABA found that joint physical custody and extended visitation were frequent reasons for deviation from the guideline amount. In a retrospective random sampling of 599 IV-D orders established or modified after October 1, 1987, the Kansas Office of Judicial Administration discovered deviations in 60 percent of the cases (65 cases total) sampled after Kansas guidelines became presumptive. Of these 65 cases, long-distance visitation and time spent with the NCP were among the top 5 reasons for deviation, justifying the deviation in 8 and 5 cases, respectively. California's report also discussed visitation issues. In its 1993 sampling of 495 child support orders, it found that 85 percent of the cases involved one or two children.

In 32 percent of the cases, the children spent less than 5 percent of the time with the NCP. In 38 percent of the cases, the children spent 16 percent to 20 percent of their time with the NCP. Based on these findings, the guideline review report recommended that the "default" level of visitation should be 20 percent, plus or minus 5 percent. Cases outside this range would be entitled to an upward or downward deviation, as warranted.

Despite the low incidence of joint physical custody and extended visitation factors in the case sampling data, respondents to State written surveys ranked the factors as among the most common reasons for deviation from the guideline amount. In a 1993 Kansas survey to parents, decisionmakers, and attorneys, judges listed the cost of long-distance travel for visitation as the most common factor considered as a basis for deviation. Also high on the judges' list was time spent with the NCP. Attorneys also ranked long-distance visitation costs and time spent with the NCP as frequent reasons for deviation. In a 1992 written survey to 277 judicial personnel, Michigan discovered that approximately 15 percent of all respondents believed that the guidelines should provide for a visitation cost offset if an extended geographical distance lay between the NCP and the child. Some believed that transportation costs should be split between the parties on a percentage, expense-sharing, or mileage basis. The Administrative Office of the Court recommended child-related expenditures, such as transportation costs for visitation, as areas for its further study.

Case Records

Deviations for joint physical custody occurred 49 times (68 percent of all joint custody cases) in the study and for extended visitation 21 times (51 percent of all joint custody cases). Nineteen of the joint custody deviations occurred in the two New Hampshire counties, [These deviations occurred in 79 percent of the joint custody cases in that county.] and thirteen occurred in one Missouri county. [These deviations cases occurred in 68 percent of the joint custody cases in these two counties.] In nearly every case in which joint custody/extended visitation were reasons for a deviation, the adjustment was downward. Often no information was given as to how the deviation was determined. However, when methods were described, they were often simply to set the obligation to zero or to calculate the obligations each parent would have had as an obligor, and the parent with the greater obligation would pay the difference. The

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average monthly downward deviation, where the custody arrangement was the only reason for the deviation, ranged from \$32.00 in Arkansas to more than \$300.00 in Missouri.

3.8.2.2 *Split Custody*

Split custody did not appear to be a significant factor in the State case samplings on deviation. The exception was a 1993 Kansas written survey to parents, decisionmakers, and attorneys. In the survey, respondents ranked split custody as one of the top eight reasons for deviation.

Deviations for split custody occurred in only 6 cases across the 21 study sites. One case included an additional reason for the deviation, three cases carried out the deviation by offsetting the award against expenses, and the remaining two cases applied downward deviations of \$372.00 and \$500.00.

3.8.2.3 *State Custody/Foster Care*

The existence of cases in which child(ren) were placed in State custody, such as in foster care cases, was not a significant deviation factor in the State case samplings. Only Iowa's report included such cases. In a 1994 sampling of 696 deviation cases, Iowa found that expenses related to foster care were the justification for a deviation in 23 cases (approximately 3 percent of the deviations).

3.8.3 **Conclusion and Recommendations**

The case data collected from the 11 study States indicated that while custody arrangements other than sole custody were far from being the norm, they were frequent enough to warrant careful consideration. Of the three arrangements—split custody, joint physical custody, and extended visitation—split custody was addressed in the most consistent manner as a mandatory numerical adjustment factor. It was more difficult to determine whether shared custody and extended custody were handled in an equitable and consistent way. In States that provided a mandatory numerical adjustment for these cases, the number of cases using this method were too few to allow an assessment, and the individual circumstances of these cases were too varied to determine whether discretionary or mandatory methods would be appropriate. However, guidelines should clarify the level of visitation assumed within the guideline amount.

This chapter of the report has presented the findings from data collection and analysis for seven major factors in child support guidelines: multiple families; income definition, verification, and imputation; health care expenses; child care; postsecondary education; tax considerations; and a variety of custody and visitation arrangements. Findings for this evaluation were generated from analyses of guideline reviews, interviews with individuals in the child support system, and actual case records collected in 21 counties. The final chapter of this report summarizes findings, conclusions, and recommendations from the study as a whole.

- [Exhibit 3-2-1: Percentage of Cases Involving Multiple Families, Including All Cases With Prior Orders and/or Other Obligations, http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_21.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_21.gif)
- [Exhibit 3-2-2: Percentage of Cases Involving Prior Orders, by Mandatory Numerical Adjustment and Discretionary States', http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_22.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_22.gif)
- [Exhibit 3-2-3: Method Employed to Handle Prior Orders, by Mandatory Numerical Adjustment and Discretionary States', http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_23.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_23.gif)
- [Exhibit 3-2-4: Percentage of Cases Involving Subsequent Obligations by Mandatory Numerical Adjustment and Discretionary States', http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_24.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_24.gif)
- [Exhibit 3-2-5: Method Employed to Handle Subsequent Obligations by Mandatory Numerical Adjustment and Discretionary States', http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_25.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_25.gif)
- [Exhibit 3-3-1: Percentage of Cases Involving Verified Income, http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_26.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_26.gif)
- [Exhibit 3-3-2: Sources of Income Verification for Noncustodial Parents, http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_26a.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_26a.gif)
- [Exhibit 3-3-3: Sources of Income Verification for Custodial Parents, http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_27.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_27.gif)
- [Exhibit 3-3-4: Percentage of Cases in Which Income Was Imputed, by Mandatory Numerical Adjustment and Discretionary States, http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_28.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_28.gif)
- [Exhibit 3-3-5: Method Employed To Impute Income to Noncustodial Parents, http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_29.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_29.gif)
- [Exhibit 3-3-6: Method Employed To Impute Income to Custodial Parents, http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_30.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_30.gif)
- [Exhibit 3-4-1: Health Insurance Provisions in Child Support Orders, http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_31.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_31.gif)
- [Exhibit 3-4-2: Party Responsible for Health Insurance of the Cases in Which Insurance is Ordered, http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_32.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_32.gif)
- [Exhibit 3-4-3: Cases Adjusted for Extraordinary Health Care Costs, http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_33.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_33.gif)
- [Exhibit 3-4-4: Method Employed To Handle Extraordinary or Unreimbursed Health Expenses, http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_34.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_34.gif)
- [Exhibit 3-5-1: Percentage of Cases That Mention Child Care Expenses, http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_36.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_36.gif)
- [Exhibit 3-5-2: Child Care Expense Adjustments of Cases Reporting Expenses, by Mandatory Numerical Adjustment and Discretionary States, http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_35.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_35.gif)
- [Exhibit 3-5-3: Cases Using Guidelines To Account for Child Care Costs, by Mandatory Numerical Adjustment and Discretionary States, http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_37.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_37.gif)
- [Exhibit 3-5-4: Average Monthly Child Care Costs, by Mandatory Numerical Adjustment and Discretionary States', http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_38.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_38.gif)
- [Exhibit 3-6-1: Cases Involving Postsecondary Support, http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_39.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_39.gif)

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- [Exhibit 3-7-1: Cases Addressing Child-Dependency Tax Exemptions, http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_41.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_41.gif)
- [Exhibit 3-7-2: Allocations for Tax Exemptions Resulting From Child Support Awards, http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_40.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_40.gif)
- [Exhibit 3-8-1: Cases Involving Split Custody, Joint/Shared Custody, and Extended Visitation, http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_42.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_42.gif)
- [Exhibit 3-8-2: Type of Custody Arrangement, http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_43.gif](http://www.acf.dhhs.gov/programs/cse/rpt/gdl/5v_43.gif)

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Chapter 4. SUMMARY OF FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

<http://www.acf.dhhs.gov/programs/cse/rpt/gdl/chap4.htm>

CSR, Incorporated, and its subcontractor, the American Bar Association's Center on Children and the Law (ABA), conducted this evaluation of the implementation of child support guidelines under a contract with the Office of Child Support Enforcement. This evaluation began in October 1994 and concentrated most of its resources on the collection and analysis of child support case records from 21 counties in 11 States. Other major components of the evaluation were the collection and analysis of State guideline reviews, interviews with key individuals in the States with case record data, data from the Current Population Survey, and meetings with an expert panel of judges, attorneys, and professionals in academia. This chapter summarizes the major findings, conclusions, and recommendations generated by the evaluation. Section 4.1 presents a summary of guideline implementation, deviations, and discrepancies based on the guidelines of 11 States and case records from 21 counties. Section 4.2 summarizes the results for seven key factors in child support guidelines—multiple families; income definition, verification, and imputation; health care expenses; child care; support for postsecondary education; tax considerations; and extended custody and visitation arrangements. Section 4.3 presents findings from the analysis of guideline reviews, and Section 4.4 summarizes the overall findings.

4.1 GUIDELINE IMPLEMENTATION, DEVIATIONS, AND DISCREPANCIES IN CASE RECORDS

Chapter 2 of the report presented a detailed analysis of guideline implementation, deviations, and discrepancies in case records. The following is a summary of findings, conclusions, and recommendations from Chapter 2.

Overall, the pooled individual case record data indicate that 83 percent of cases were considered to be guideline cases, while 17 percent of cases were categorized as deviations in the case records. These statistics suggest that State guidelines have been followed when orders are established and that discretion is exercised with restraint. However, the percentage of guideline and deviation cases varied considerably across the counties.

The analysis of deviation cases indicates that the four most common reasons for deviations were (1) an agreement between the parties, (2) second households or multiple families, (3) extended or extraordinary visitation or custody expenses, and (4) low obligor income. Overall, 15 percent of the deviations were upward (the average award increase was 30 percent), while 74 percent were downward deviations (the average award decrease was 36 percent).

In addition to deviations identified as such in the case records, the analysis found discrepancies between the award amount calculated using the guideline methodology (including any documented deviation) and the final award in the court order. These discrepancies were not documented as deviations in case records. Two counties had discrepancies in fewer than 10 percent of their cases, six counties had discrepancies in 10 percent and 20 percent of their cases, five had discrepancies in 20 percent to 30 percent of their cases, and four had discrepancies in more than 30 percent of their cases. No discernible difference in discrepancy rates was found in cases following the guideline methodology as compared to deviation cases. Also, no systematic cross-county pattern existed with regard to whether orders exceeded or fell short of the calculated guideline amount.

Overall, the analysis of case records indicates that consistency of guideline application varied considerably within and across States. For most cases, guidelines were implemented in a way that the order was consistent with the computed guideline figure, as expected. However, in some counties, consistency of guideline application was less frequent than expected. As noted previously, various random and systematic factors accounted for discrepancies and no one reason can be systematically linked to discrepancies across or even within counties.

Based on these findings, we recommended that several strategies be adopted by States in order to increase consistency of guideline application. These strategies include identifying the causes of random inconsistency and improving training and technical assistance. In addition, coordination and consistency of policy within and between agencies and courts is needed with regard to procedures and documentation.

4.2 FACTORS IN CHILD SUPPORT GUIDELINES

Chapter 3, Factors in Child Support Guidelines, presents a detailed analysis of State guideline reviews, interview findings, and case record data for each of seven factors that pose major challenges in the development and implementation of guidelines. The following sections summarize the findings, conclusions, and recommendations for each factor.

4.2.1 Multiple Families

Decisionmakers are increasingly faced with the task of computing a child support order that balances the child(ren)'s needs with the available parental resources. This task is difficult at best, and the factor of multiple families is a major concern in designing equitable child support guidelines.

Guideline review teams and individuals directly involved with the child support system agreed that measures are needed to ensure that these situations are treated equitably and consistently. The analysis of child support cases from the 21 study counties suggests that a mandatory numerical adjustment results in a greater number of multiple family situations being recognized by the decisionmaker and, more importantly, being considered in a consistent manner when determining support. This approach contrasts those of States that only use a discretionary provision for multiple family situations. In these States, not only were the multiple family situations recognized less frequently, but when they were considered, they were not consistently handled across cases.

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Based on these findings, States should consider adopting a provision that requires decisionmakers to consider prior support orders and subsequent obligations of both parents when calculating child support.

4.2.2 Income Definition, Verification, and Imputation

An important step in calculating an accurate child support order is determining the available parental resources. The analysis of child support cases indicated that income verification is not frequent across the counties. States should strive to enforce verification of parental income in every child support award, and States should provide decisionmakers with specific instructions to verify income. Furthermore, respondents reported that parties often were not prepared with the proper income verification forms at hearings. Providing decisionmakers with the ability to verify income through independent sources, such as employment security records, would help remedy this problem.

Consistent income verification procedures would (1) ensure that child(ren) are treated equitably, (2) allow decisionmakers to better understand a family's economic history when modifying support orders, and (3) permit guideline reviewers to better evaluate the definition of income and identify problems in obtaining accurate information.

When all available income verification sources yield little or no information on a parent's income, or if the parent is voluntarily unemployed or working below his or her potential, the decisionmaker in many States must impute an income for that parent. Many States provide general guidelines on how to impute income, and a discretionary approach seems to be the most appropriate for imputing income, as the circumstances from case to case will vary. However, guidelines should provide specific instructions on how and under what circumstances to impute income. This would result in more consistent treatment of families.

4.2.3 Health Care Expenses

The case record analysis showed that decisionmakers complied with Federal Regulations for cases by ordering the provision of health insurance. However, when health insurance was ordered for one or both of the parents, the cost was rarely included in the child support calculation in States that have a mandatory numerical adjustment for such costs. While this exclusion may be due to unavailable health insurance costs or no-cost coverage for the providing parent, States should strive to enforce more consistent use of their respective adjustments.

Parents and decisionmakers alike expressed concern about extraordinary health care expenses and the tendency for these to result in excessive support orders. Because costs of this nature occur randomly, States should ensure that they are addressed at the outset to provide for the child(ren)'s needs. To that end, States should continue to research (1) the involved costs and (2) the methods to handle the costs in a fair and consistent manner. This basically is discretionary, however, in view of the unusual nature of the problem.

4.2.4 Child Care

A significant number of custodial parents work, and many work full time. Therefore, a substantial majority of these working parents may incur day care expenses. Many States have developed mandatory numerical adjustments to handle these costs when calculating a child support order. Child care expenses were mentioned in 19.9 percent of the case records, with a range from 0.5 percent to 44.7 percent across the counties. The case record analysis showed that day care expenses were included in the child support calculations for the cases that mentioned child care expenses.

To ensure that the custodial parents' child care needs are addressed, States should work to consistently implement any adjustment to the guideline amount or require decisionmakers to address these expenses in child support orders, whenever appropriate.

4.2.5 Support for Postsecondary Education

Custodial parents who were interviewed expressed concern over the termination of support upon their child's 18th birthday. Financial resources are especially needed at this time to ensure that the child can attend college. Guideline review teams varied in their discussions and conclusions regarding the provision of postsecondary education support, with no clear consensus.

The analysis of case records showed that the consideration of postsecondary education in support orders occurred most frequently in stipulated agreements and non-IV-D cases. Most of these cases provided for the future needs of the child(ren), rather than addressing immediate expenses. States at their discretion may decide to allow consideration of postsecondary education costs. It would be difficult to mandate this because coverage cannot be required for intact families.

4.2.6 Tax Considerations

Standards specified in guidelines that discuss tax exemptions seem adequate to allow the decisionmaker to make an equitable arrangement. This is reflected in the analysis of case records, which showed that tax exemptions are commonly allocated in a flexible manner in order to adjust with changing circumstances.

Although tax considerations are likely to affect only middle- to upper-range income parents, States should strive to allocate tax exemptions in every child support order and provide guidance on how to best meet the needs of the parents and children. This is particularly true in cases for which maximizing the after-tax income of each parent would benefit the child(ren).

4.2.7 Extended Custody and Visitation Arrangements

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Extended custody arrangements—including split custody, joint custody, and shared custody—are becoming more common, and this was one of the most common issues discussed by State guideline review teams. The teams' investigations showed that States handled the arrangements with a considerable degree of inconsistency and inequity, and the teams recognized that formal methods were needed to remedy this problem. This view was repeated by parents who reported that extended custody arrangements are a common reason to request deviation. Furthermore, in their case studies of deviations, States found that extended custody arrangements were commonly used reasons for deviation.

Although the definition of split custody is a straightforward one, States vary considerably in their definitions of extended visitation (i.e., when "normal" visitation becomes "extended") and of what constitutes joint or shared custody. The States also vary in their guideline methodologies for calculating how extended visitation or split custody should affect the order amount. A few methods have been proposed and adopted to handle split custody arrangements, such as computing and offsetting two awards. Several methods have been proposed for handling joint/shared custody, ranging from sliding percentage scales that adjust for the number of days the child(ren) spend with the noncustodial parent, to support abatements for the period(s) of extended visitation.

Split custody arrangements apparently are the easiest situations to address in a mathematical fashion, and States should consider addressing these arrangements using this method. Study States that have such a provision used it most of the time, resulting in consistent treatment of families. States should attempt to develop clear definitions of joint/shared custody and extended visitation, although these arrangements do not lend themselves to mathematical solutions as easily as split custody. Because the circumstances will vary greatly from family to family, the decisionmaker must carefully consider the right approach to an equitable support order. Further guidance on determining the nature of the custody arrangement and on factors to consider would result in greater consistency and equity across cases.

4.3 ANALYSIS OF GUIDELINE REVIEWS

The Family Support Act of 1988 requires States to review their guidelines every 4 years. The purpose of these guideline reviews is to evaluate whether State guidelines provide child support in an adequate and consistent manner. Reviewers are required to consider case data regarding the application of guidelines and to consider economic data related to the cost of raising children. One component of this research was a study of the extent and quality of guideline reviews, the review findings, and resulting actions. This analysis, conducted by the ABA, was based on the guideline reviews of 45 States.

Guideline reviews often discussed the child support issues addressed by this study, including income-related matters, child-custody and multiple family arrangements, and other factors that contribute to the cost of raising children.

Many review teams considered how to determine the income on which to base support. They discussed whether to use net income or gross income, often deciding to use an adjusted gross income that was similar to net income. They considered whether to include income from sources other than full-time employment. Reviewers generally agreed not to include Aid to Families with Dependent Children benefits, but included earnings from second jobs and bonuses. Recommendations regarding the inclusion of overtime earnings, bonuses, and other assistance monies differed among reviewers.

While verification of income was discussed by only one State, imputation of income was considered often among the study States. Reviewers agreed that income should be imputed for a voluntarily underemployed or unemployed parent and that "underemployment" refers to situations in which a parent's job is not consistent with his or her level of education, skills, or experience. Reviewers further determined conditions under which income should be attributed, the level at which imputation income should be set, and exceptions that would permit a parent to avoid income imputation.

Reviewers considered several custody and multiple family issues. Recommendations for situations involving joint custody or multiple families included both guideline formulae and deviations at the discretion of the decisionmaker. In addressing split custody, reviewers considered several procedures and technical aspects for calculating support. They discussed definitions of "normal" visitation and "extended" visitation and the abatement of the obligor's support amount during such periods. Some reviewers distinguished State custody cases according to whether some or all the children were in State custody, and others decided to treat all foster care cases as multiple family cases.

Finally, State review teams considered several factors which impact the cost of raising children. Among these were child care costs, health insurance premiums, uninsured health care costs, and postsecondary education. In some cases these factors were handled as above-the-line adjustments to the parents' income; in others they were treated as below-the-line award adjustments.

An important finding from this analysis of guideline reviews is that only about 20 States collected and analyzed case data. Fewer than one-half of the States considered economic data on the cost of raising children. Furthermore, the extent to which these States took action as a result of these data is unclear.

4.4 SUMMARY

Child support guidelines have been developed and implemented by all States under guidance provided by the Family Support Act of 1988 and Federal regulation (45 CFR 302.56). This evaluation of child support guidelines focused on the implementation of presumptive guidelines and issues arising from that implementation. In doing so, the evaluation examined how guidelines operate, but did not address the adequacy of awards to provide for the child(ren)'s needs, the equity of awards for custodial parents and noncustodial parents or the enforcement of awards. Even within this narrow scope, the range and complexity of the issues arising in setting child support awards make it necessary to consider each issue alone and with other issues, and not to generalize guidelines' effectiveness as a whole.

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In the analysis of guideline implementation, the evaluation revealed that most awards conform to Federal law and regulations—the cases were based solely on the numerical calculations mandated in State guidelines or deviated from the presumptive guideline amount with appropriate justification. However, documentation of the reasons for deviations was missing or unclear in a significant number of cases. In addition, many cases included discrepancies between the award amount calculated from the available data and the amount awarded in the order. Although evaluators recognized the enormous demands of time and energy on decisionmakers throughout the child support system, it is highly recommended that the States improve their case documentation so that State guideline review commissions and future evaluations can perform more definitive analyses.

In any child support case under any guideline, the decisionmaker must always decide a wide range of facts, such as the right amount of day care expenses based on the applicable law and the facts of the case. After these facts have been established, the guidelines may mandate numerical adjustments for a specific factor, such as child care, or may leave the adjustment to the discretion of the decisionmaker. The evaluation examined seven key factors in child support guidelines—multiple families; income definition, verification, and imputation; health care expenses; child care; support for postsecondary education; tax considerations; and extended custody and visitation arrangements.

The examination of these seven factors was intended in part to analyze the differences among guidelines that mandated numerical adjustments or calculations for each factor and those that allowed decisionmakers to use their discretion in making adjustments. The evaluation found, in general, that where guidelines included mandatory numerical adjustments, the adjustments were mostly made where applicable. However, discretionary adjustments were made in relatively fewer cases. Data from cases in the States with mandatory numerical adjustments suggest that child(ren) in similar circumstances would be treated equitably if mandatory adjustments were included in all State guidelines.

Finally, States are required to review their guidelines every 4 years to evaluate their adequacy and consistency. Reviewers analyze case data related to the application of and deviations from the guidelines and consider economic data related to the cost of raising children. This evaluation examined State review efforts with regard to review procedures, review issues, and reviewers' recommendations. The findings were that only approximately one-half of the States appeared to have followed Federal requirements to analyze case data and to consider economic data regarding the cost of raising children.

In future guidelines reviews States should consider the following:

- Use sufficient resources, time, and staff;
- Perform case surveys and use the results to limit deviations and improve consistency; and
- Review the economic data on the cost of raising children and update the tables used to calculate child support awards.

OCSE-ABA Evaluation of Child Support Guidelines

Volume II. Findings of State Guideline Reviews, State Guideline Studies, and Unstructured Interviews

Executive Summary

<http://www.acf.dhhs.gov/programs/cse/rpt/gdl/execsum2.htm>

The Family Support Act of 1988 requires states to review their child support guidelines at least once every four years to ensure that their application results in appropriate child support award amounts. Federal regulations also require State to analyze case data related to the application of, and deviations from, the guidelines. They also must consider economic data related to the cost of raising children. Beyond these federal requirements, States have broad discretion in conducting guideline reviews. This report examines the review process of State and jurisdictions.

ENTITY CONDUCTING STATE GUIDELINE REVIEWS

Usually a government entity such as the court or State child support agency was responsible for the guideline review. Often this entity solicited input from others, such as expert consultants and advisory subcommittees. Many States held public hearings to solicit diverse perspectives. The makeup of the review body was not as significant a factor in the quality of the review as the time and resources committed to the effort. Also key was the receptivity of the responsible State authority to the reviewers' recommendations. In some cases, the responsible bodies rejected recommended changes.

Less than half of the responding states appear to have followed the federal requirements to analyze case data and to consider economic data regarding the cost of raising children. Most State studies on child-rearing costs relied on national data on consumer expenditures. Few States examined state or region-specific expenditure levels. Reviewers acknowledged the age of some of the research upon which the national data was based. Another limitation is that these studies rarely factored in costly expenditures such as child care, post-secondary education, and medical insurance.

About 20 States and jurisdictions indicated that they had collected case data on deviations from the guidelines. Lack of funding, resources, automated data processing, and adequate documentation in case files affected these studies. A summary and analysis of State cases samplings is found in Part 2 of this report.

TOPICS ADDRESSED BY REVIEWERS

State guideline reviewers studied a number of issues related to the application of guidelines. Surprisingly, few States reviewed their core guideline model or methodology. Rather, guideline reviews focused on issues relating to income, adjustments to income, adjustments to the guideline amount, and deviations from the guideline amount.

GUIDELINE MODELS

According to the records, guideline models were generally not considered by reviewers. When considered, states usually recommended that the current model be kept. Of the two states which recommended changes only one adopted the change.

AVAILABLE INCOME

In deliberating factors which determined the income available for support, reviewers considered who might owe support, how long child support should be owed, and issues regarding parent income.

AVAILABLE INCOME: WHO PAYS AND HOW LONG

Review committees discussed the question of who might have an obligation to pay child support. Deliberation centered on the obligations of the custodial parent, either parent's new spouse or partner, and the child's grandparents. Reviewers had mixed recommendations regarding whether and how the custodial parent income would figure into the determination of child support, but generally rejected the idea of including new spouse income and were unable to decide whether to designate grandparents as obligors.

Another review issue was the termination of child support. Some reviews focus on age-related termination. Other recommendations allowed extensions of support if the child was still in high school or post-secondary school or if the child was mentally ill or physically disabled.

AVAILABLE INCOME: DETERMINATION OF INCOME

One of the first steps in any child support case is the determination of income. State guideline reviewers devoted considerable time to issues regarding parent income. Key income determinations issues included (1) the use of net or gross income, (2) the definition of income; (3) the verification of income; and (4) adjustments to income.

The use of net versus gross was a popular issue. While the states were split, in reality there was little difference between the two positions, as most definitions of gross income allowed some kinds of adjustments. In defining income, review teams considered whether means-tested and other assistance monies should be included as income. They agreed that AFDC benefits would not be considered as income, but reached different conclusions about other forms of assistance. Committees also determined how to assess incomes of self-employed parents and military personnel.

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Committees also considered the inclusion of monies derived from second jobs, overtime, or bonuses. They generally concluded that second job earnings be included as income; in some states that decision would be conditioned on the point at which the party took the job and the reasons for taking it. They generally recommended that overtime be left to the discretion of the decision-maker, and bonuses be included.

A number of reviewers considered the issue of imputation of income. The teams tended to agree that income should be imputed when a parent is voluntarily under-or unemployed. The usual treatment was that underemployment referred to situations when the partner's job was not consistent with the level of education, skills, or experience. They further determined conditions under which income should be attributed, the level at which imputation income should be set, and exceptions that would permit a parent to avoid the imputation of income.

In a related matter, one state studied verification of income and expressed concern over the inadequacy of verification.

Some reviewers considered income adjustments for child-rearing costs, and how to allocate these costs. Income-adjustment factors included child care expenses, medical insurance premiums, extraordinary medical expenses, and post-secondary education costs. Many teams recommended that they be handled as "above the line" income adjustments which occur prior to the calculation of the child support obligation. Alternatively they recommended that some of these expenses be handled as "below-the-line" adjustments, discussed below. Other issues pertaining to these matters were allocation of expenses and method of payment.

They also considered other income-related issues such as federal and/or state income tax withholdings, alimony and other child support obligations.

APPLICATION OF GUIDELINE

In considering issues related to the application of guidelines, reviewers discussed matters such as the particular income levels to which guidelines apply, whether the guidelines were generally adequate to meet children's basic needs at different ages, how guidelines manage various custody and care schemes, guideline treatment of other family-related situations, and the inclusion of certain items in the basic child support amount versus treatment as an add-on to the basic award.

Reviewers discussed the particular income levels to which guidelines apply, and recommended self-support reserves and minimum support obligations for low income obligors and income or award caps for high income obligors. They considered how to incorporate children's basic needs, and whether the support amount should vary with age.

Review teams considered several issues relating to custody and multiple families. They discussed the definitions of *normal visitation* and *extended visitation* and whether or not and by how much to abate the obligor's support award during such periods.

Recommendations for joint or shared custody situations were generally either to incorporate a joint custody calculation method into the state guideline or to leave the matter to the discretion of the decision-maker. States which dealt with split custody in their reviews considered the procedures for calculating support in such cases and technical factors, such as the types of worksheets to be completed. State custody issues were handled both by distinguishing cases according to the number of children in state custody and by treating all foster care cases as multiple family cases.

Recommendations for multiple family issues included incorporating subsequent families as well as prior families into guideline formulae and allowing for deviations at the discretion of the decision-maker.

Review committees considered a number of below-the-line adjustments to the basic award amount in the form of add-ons to, or deviations from the guideline amount. Factors to be treated in this way included child care costs, health insurance premiums, costs of and the definition of uninsured health care, and costs of post-secondary education. These were handled either as above-the-line income adjusters, as discussed above, or as below-the-line award adjustments. Allocation of these expenses to the parties and method of payment were also addressed.

ADMINISTRATIVE ISSUES

In addition to factors affecting the child support amount, reviewers considered administrative issues. These included obligee accountability, the role of child support guidelines in the modification of awards, automatic award adjustments to handle cost-of-living increases, retroactive child support, support enforcement and arrears. They also considered the related topic of spousal support.

RECOMMENDATIONS

- States should have a broad representation of interests on the guidelines review board;
- At the time of the review, states should do a case survey of the application of guidelines, and find out where the significant deviations occur, and take steps to reduce such deviations where desirable;
- At the time of guideline reviews, states should review changes on the costs of raising children since the previous guidelines were adopted and adjust guidelines accordingly.

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PART 1: SUMMARY OF STATE GUIDELINE REVIEW PROCESSES AND OUTCOMES

<http://www.acf.dhhs.gov/programs/cse/rpt/gdl/v2pt1.htm>

In 1994 the U.S. Department of Health and Human Services' (HHS') Office of Child Support Enforcement (OCSE) engaged CSR, Incorporated, and the American Bar Association (ABA) Center on Children and the Law to study the impact and operation of State child support guidelines. These groups analyzed child support guideline formulation and application, deviations from State guidelines, documentation of guideline decisions, and guideline review requirements and procedures. [Statement of Work for Evaluation of Child Support Guideline Project (undated).]

This report analyzes State reviews of their child support guidelines. [State data on guideline deviations are fully addressed in a separate report; therefore, the topic is only briefly included here.] While the scope of this report is limited—its findings are based solely on the documents forwarded to the ABA by each State and are supplemented only minimally by the independent knowledge and/or research of the authors—it presents a wealth of information about (1) how State guideline reviews are conducted, (2) the range of substantive issues considered and recommendations made during reviews, and (3) the implementation of review body recommendations.

BACKGROUND

The Family Support Act of 1988 (Public Law 100-485) allows States to receive funding under Title IV-D of the Social Security Act (hereafter referred to as "IV-D"), if they meet certain requirements. One condition is that 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." [45 CFR 302.56(a); 42 U.S.C. 667(a).]

Congress took a three-pronged approach to its child support guideline requirement: (1) a single, statewide approach was supposed to result in greater consistency within each State (i.e., cases with similar facts should produce similar orders); (2) with a standard approach to setting orders, Congress expected the entire child support process to become more efficient, and if people could better predict their child support obligations before a hearing, they would have more incentive to enter voluntary settlements—an outcome that would decrease the rate of time-consuming contested cases; and (3) Congress anticipated that because a State's guideline would be based on child-rearing data, child support orders would better reflect the actual costs of raising children. [Williams, " An Overview of Child Support Guidelines in the United States, " in Child Support Guidelines: The Next Generation (M. Haynes ed. 1994), p. 1.]

Congress gave States a basic framework for their child support guidelines. At a minimum, guidelines were designed to do the following:

- Consider all earnings and income of the noncustodial parent (NCP);
- Be based on specific descriptive and numeric criteria;
- Compute an actual child support amount;
- Be used in both judicial and administrative proceedings;
- Be a rebuttable presumption of the correct level of support for a child under the particular circumstances; and
- Provide for a child's health care needs by means of health insurance coverage or another arrangement. [45 CFR 302.56 © and (f).]

Congress also recognized that the world is not static. For instance, orders that were adequate to meet children's needs in 1990 might be too small in 1995 because of cost-of-living changes within a State. Social changes also may affect a State's guidelines. For example, the incidence of multiple families was far greater in 1990 than in 1995. Thus, it is likely that guidelines in effect in 1990 either did not address this issue at all or addressed it in a cursory manner only.

To ensure the continued effectiveness of guidelines, States would have to evaluate them periodically. Congress sought to guarantee guideline review by requiring an evaluation at least once every 4 years. If the guideline review indicated the need for change, the State was to amend its guideline accordingly. [Id . at 302.56(f).] During these reviews, States were to examine the structure and use of their guideline formulae as well as to "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." [45 CFR 302.56(h). See generally 45 CFR 302.56(a).]

METHODOLOGY

The first section of this report addresses the ABA process for evaluating State reviews of child support guidelines. It is divided into three subsections: data collection, the responses, and data selection.

Data Collection

In December 1994, Judge David Gray Ross, Deputy Director of OCSE, wrote to the Child Support Director of each State, the District of Columbia, and the U.S. territories (collectively, "the States" or "the jurisdictions") and outlined the Guideline Evaluation Project. [A copy of Judge Ross' letter appears as Appendix 1.] He asked each State to inform the ABA about their guideline reviews since the effective date of the Family Support Act's guideline review mandate. Specifically, each State was asked to send the following:

• Information concerning the number of guideline reviews undertaken since October 13, 1989;

• A summary of the State's review process (e.g., hearings, advisory committees, case studies, case data compilations, judicial reviews, and child-rearing cost studies);

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- All guideline review reports;
- A summary of the action taken as a result of the review(s); and
- Information about upcoming reviews.

Some States responded immediately with some or all of the requested materials. To obtain information from other States, the ABA supplemented Judge Ross' letter with a telephone campaign. ABA callers frequently contacted the State child support director; the State's review team leader, if one had been identified; the State's chief justice; and/or personal contacts within the child support community to renew the request for data. While many responded to these supplemental contacts, some jurisdictions failed to provide any of the requested information in writing. A total of 49 of 55 jurisdictions provided some form of written response. [A full listing of the jurisdictions, their designated contact people, and the materials submitted to the ABA appears in Appendixes 2, 3, and 4.]

The Responses

The format and content of the State responses varied greatly. States sent formal guideline review reports, committee minutes, consultant reports, summary letters with differing degrees of detail, workshop notes, and/or the guidelines themselves. These materials often provided the information that Judge Ross requested. When there were obvious omissions, ABA staff attempted to reach State contacts for supplemental information. [The ABA limited its analysis to the materials sent by the State. Staff did not set out to examine each State's materials for accuracy or completeness. However, as stated above, when there was no information, a response that was clearly partial or insufficient, or a package without deviation information, staff attempted to secure additional responses from the state. Staff did not correct or supplement State materials through independent research.] However, supplemental efforts were not always successful. Thus, the uneven quality of State responses yields a report with very different levels of detail by State.

Data Selection

The States varied greatly in how and when they evaluated their child support guidelines. For this reason, ABA staff had to set criteria for selecting what would constitute a review for this report. Two questions were asked:

- Was the process conducted after October 1989, the Family Support Act's effective date?
- Was the evaluation complete? Did it result in recommendations about the State child support guideline? [It was not necessary at this point to know whether the State actually implemented its reviewers' recommendations. The final outcome was not vital to determining the completeness of the State review.]

ABA staff measured each State's responses against these criteria. Of the 49 responding jurisdictions, 45 had at least one completed review since October 1989. [A listing of the States and their reported review schedules appears in Appendix 5.] The four remaining States reported that they had either an established review schedule or a review in progress. However, information about partially completed reviews is omitted here.

THE STATE GUIDELINE REVIEW PROCESSES

Before analyzing the substance of the guideline reviews, the ABA examined the many ways in which States performed reviews. The sections that follow discuss this aspect of State guideline reviews.

Reviewing Entities

States officially gave the guideline review task to a variety of people or entities. [A listing of guideline reviewers by State appears in Appendix 6.] The general pattern involved a responsible review body, such as the State court. That entity, in turn, often contracted with an expert, relegated the review duty to subcommittees, or convened an advisory panel to study the State guideline. State IV-D agencies and the courts were the most frequent guideline reviewers. Some statutes empowered governors to convene independent guideline review commissions, consisting of representatives from the child support community and the public. A few States left the function to their legislatures. Some State guideline reviewers either did not fit into any of the above categories or could not be identified from the submitted materials.

It is interesting to note that States often limited the authority of their review bodies. Many reviewers could recommend changes, but they could not alter the statutes or court rules to implement their suggestions. For example, when a guideline appears in State law, but the IV-D agency is the designated reviewer, the IV-D agency can suggest changes, but only members of the State's executive branch have the authority to alter the statute.

One type of review body did not perform better than another. An analysis of State materials does not support a performance comparison by team composition. Rather, the success of a State's review depended more on the time and/or resources committed to the effort and the receptivity of the responsible State authority to its reviewers' recommendations.

While performance comparisons do not seem appropriate, the materials demonstrate that review committee composition does have an impact on the issues discussed. For example, groups with parent involvement may be more practical. They frequently provided details on issues of importance to the individual parties in a child support case, such as the sufficiency of awards under the guideline, income identification, enforcement, and the connection between visitation and support. IV-D-based committees often deal with the more mechanical aspects of the guidelines, such as award computation or the use of accompanying worksheets or forms. Similarly, committees dominated by judges and/or attorneys often focus on issues that arise in contested cases, such as deviation factors or income sources, levels, and imputation.

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Review Methods

The Federal Government set only two requirements for State guideline reviews. Every 4 years, States must (1) analyze case data related to the application of and deviations from the guidelines and (2) consider economic data related to the cost of raising children. [45 CFR 302.56(h).] Despite such minimal requirements, roughly one-half of the responding States either did not follow or did not cite these required review methods. [Appendix 7 regarding State references to cost of child-rearing studies and deviation case data analyses in their materials.]

Even though Federal requirements were not always followed, States used a variety of methods to gather information for their reviews. [Appendix 7 outlines the most frequently used review methods. Note that this table is prepared only from the materials that States forwarded to the ABA. It may not reflect all methods employed by a State. Furthermore, some States took actions that fit into more than one category. For example, a State may have secured an expert, who then prepared a report on statewide child-rearing costs or who conducted a judicial survey. Whenever an activity crossed categories, it was included in each applicable column.] They considered case studies, child-rearing cost analyses, surveys, public hearings, written comments, special presentations to review committees, and expert research.

Once reviewers gathered information from the field, it was analyzed in light of the relevant statutes, regulations, court rules, administrative procedures, State and local practice, and public perception. This provided reviewers with an understanding of the history, rationale, and structure of the guideline. It also gave them insight about whether and how to alter the guidelines.

STATE GUIDELINE REVIEW TOPICS

State guideline reviewers grappled with a wide range of topics related to the use of guidelines, general appropriateness of the State's guideline model, adequacy of awards generated by the guideline, determination of income available for support purposes, guideline application to special circumstances, and similar matters. This discussion outlines some State deliberations and outcomes.

Child-Rearing Costs

One Federal requirement called for States to consider economic data related to the cost of raising children. [45 CFR 302.56(h).] From the documentation submitted to the ABA, the conclusion is that fewer than one-half of the responding jurisdictions complied with this Federal mandate. [It is not clear how many of the remaining States actually failed to conduct this analysis and how many simply neglected to send or reference the appropriate documents in the packets sent to the ABA.] It is possible to make some general comments about States that submitted child-rearing information.

First, States generally conducted their child-rearing cost analyses in one of two ways: (1) studies performed by the reviewers themselves, which usually took a national bent, including scholarly studies of national trends and concerns or Federal Government child-rearing cost reports. Several States fit this mold. For example, Alaska's principal resource in 1993 was a report by Maureen A. Pirog-Good, then a visiting professor at the University of Wisconsin-Madison, titled *Child Support Guidelines and the Economic Well-Being of Our Nation's Children*. [The Arizona study included the U.S. Poverty Guideline, the U.S. Department of Agriculture's 1987 Consumer Expenditure Survey, and the Espenshade report funded by the National Institutes for Child Health and Human Development.] In 1994 Delaware utilized three primary sources of child-rearing information—the U.S. Census Bureau's report, *Poverty in the United States: 1992*; the U.S. Department of Agriculture's *Expenditures on a Child by Families, 1993*; and a recent Policy Studies Incorporated (PSI) economic analysis of the Ohio income shares child support model. Massachusetts' reviewers also cited a Federal source, the U.S. Bureau of Labor Statistics' data on the cost of raising a family in the geographic location encompassing Massachusetts. However, reviewers specifically pinpointed the data relevant to the Boston Metropolitan area to perform the analysis.

Other States hired experts to conduct a more State-specific analysis of the existing reports and data related to the cost of raising children. For example, the Arkansas Institute for Economic Advancement prepared an analysis, titled *Child Support and the Cost of Raising Children in Arkansas*. The Illinois Department of Public Aid contracted with Andrea Beller from the University of Illinois at Urbana-Champaign to produce "An Analysis of Child Support Guidelines and Costs of Raising Children." PSI performed State-specific child-rearing cost studies for Vermont, and that State's reviewers brought in State experts to help them interpret the report in ways that were relevant to their State.

Second, some State materials identified limitations to the child-rearing cost information supplied to them. For example, some of the expenditure levels represented average amounts spent by intact families and failed to include costs for single-parent households. [Arkansas Institute for Economic Advancement, *Child Support and the Cost of Raising Children in Arkansas* (February 1993), p. 3; hereafter referred to as the " Arkansas Report. "] In addition, household expenditures on children were difficult to track at times.

While experts could determine certain costs directly related to children (e.g., child care, medical treatment, and education), there were other normal expenditures (e.g., transportation and housing) that were easily apportioned between family members. [See e.g., Arkansas Report, *supra*, at p. 4; PSI, " Briefing Materials Related to Child Support Guidelines " (prepared for the Tennessee Department of Human Services) (September 1993), p. 2, hereafter referred to as the " Tennessee Briefing. "] Some of the data omitted other major cost categories, such as child care, postsecondary education, and medical insurance. [Arkansas Report, *supra*, at p. 4.] In other cases, State- or region-specific expense levels were not available for reviewers. Several review teams only had access to dated expenditure information. [*Id.*] Each of these factors made an impact on the weight reviewers accorded these analyses. Finally, the States reported similar goals for their child-rearing cost studies. In addition to performing these studies to meet Federal requirements, reviewers attempted to produce awards that were consistent with average child-rearing costs. To do this, they typically compared the child-rearing information to average child support awards to decide whether use of the guidelines minimizes "the economic impact on the child of a family breakup and [entitles] the child to a standard of living that is equivalent to that of the more affluent parent." [

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Massachusetts Department of Revenue, Report on the Child Support Guidelines (September 1993), p. 6, hereafter referred to as the "Massachusetts Report."] These analyses produced different results. A number of State review teams concluded that their guidelines performed as planned. States such as Maryland, New Hampshire, and New York found that their guidelines generally produced awards that met average child-rearing costs. [Letter from Department of Human Resources Secretary to Speaker of the Maryland House of Delegates (December 11, 1992), p. 2; New Hampshire Department of Health and Human Services, Report on the Impact of Child Support Guidelines in New Hampshire (March 1992), p. 4, hereafter referred to as the "New Hampshire Report" ; State University of New York at Albany, New York State Child Support Standards Act: Evaluation Project Report 1993 , p. xvii, hereafter referred to as the "New York Report."] In New York, however, this finding was contingent upon the exclusion of child care costs—a large cost for many parents. [New York Report, supra , at p. xvii.] Cost-of-care studies caused several other States to reevaluate their child support guideline structures because they found that children's needs were not being met. For example, in 1994 North Carolina reviewers recommended a guideline change to reflect new economic data on child-rearing expenses, and the State legislature enacted the recommendation. [PSI, Economic Basis for Updated Child Support Schedule: State of North Carolina (November 24, 1993), pp. 4 – 5, hereafter referred to as the "North Carolina Report"); memorandum from Barry G. Burger, North Carolina Child Support Enforcement, to Margaret Campbell Haynes, ABA (December 19, 1994).] The Utah committee also encouraged a child support schedule increase of between 10 and 15 percent to more adequately meet child-rearing costs; however, there is no indication that this team's recommendation was instituted. [Child Support Guideline Advisory Committee 1993 Report to the Utah Legislature , p. 3, hereafter referred to as the "Utah Report."] Proposed formula increases in South Dakota also were rejected. In 1990 and 1992, experts advocated child support schedule updates that would reflect changes in the Consumer Price Index. The Department of Social Services (the formal review entity) disagreed with this alteration because it was not in the Department's report to the State guideline authority in either year. [Letter from PSI to South Dakota Child Support Enforcement Program Administrator (June 26, 1990), hereafter referred to as the "1990 South Dakota Expert Recommendations"); letter from PSI to South Dakota Child Support Enforcement Program Administrator (December 21, 1992), hereafter referred to as the "1992 South Dakota Expert Recommendations"); letter from Terry Walter, Child Support Administrator, to Margaret Campbell Haynes, ABA (December 20, 1994), p. 1.] The 1991 Illinois reviewers had several resources finding that its guideline levels were insufficient to meet costs of care. In fact, the team cited a Women's Legal Defense Fund ranking of States in which Illinois placed 44th for average child support guideline award amounts. [Improving Child Support Awards: Summary Report of the Guidelines Subcommittee of the Illinois Department of Public Aid's Child Support Advisory Committee (October 1991), p. 11, hereafter referred to as the "Illinois Report."] While the committee recommended an increase, it realized that its compromise increase still underestimated child-rearing levels because the new figures were based on a study of intact and not dual household expenses. Without rationale, the materials indicate that the legislature rejected the committee's recommended increase.

Guideline Models

Only a few State reviews reported consideration of the particular guideline model (i.e., income shares, Melson, or percentage of income). It is unclear exactly how many State committees deliberated about guideline methods, but review reports do not tend to mention this topic.

State review teams generally focused on whether the particular guideline model yields adequate, equitable, and consistent orders. These examinations produced different results. For example, several States decided to keep the existing model. Illinois' committee could not reach agreement about the proper guideline model. The majority favored maintaining the State's percentage of income approach, while others advocated for a change to income shares. Eventually a decision was made to follow the majority opinion because the committee viewed income shares as simple to implement and effective. They found that their model and income shares produced similar awards. [Illinois Report, supra , at pp. 1 – 3.]

Ohio reviewers also recommended continued use of the income shares model. They concluded that it safeguarded children's right to have comparable standards of living in intact and single-parent families. Further, they felt that income shares ensured that both parents would be obligated to support the child and that they would do so in proportion to their combined income. The legislature agreed with the committee. [Report of the Ohio Department of Human Services to the General Assembly on Its Review of the Child Support Guidelines (March 1, 1993), p. 6, hereafter referred to as the "Ohio Report" ; letter from Cynthia G. Lucas, Office of Child Support Enforcement, to June Mickens, ABA (May 8, 1995), p. 1.] The Wisconsin percentage-of-income model is the basis for Nevada's guideline. Nevada reviewers studied the guideline model and also rejected a change. They reached this decision after finding that even if the State's children received insufficient support, based on the State's ranking for average child support awards, they were not significantly worse off than children nationally. Therefore, the formula was unchanged. [Nevada State Bar, Family Law Section, Child Support Guideline Review Committee Report (August 1, 1992), pp. 59 – 60, hereafter referred to as the "Nevada Report."] Only Montana and North Dakota reported that their committees recommended a change of guideline formula as a result of review processes. [Staff has independent knowledge that North Carolina changed from a percentage of income to an income shares model during the period included in this report. However, because this information is not reflected in the materials submitted to the ABA, it is not clear whether the model change occurred as a result of a formal guideline review or as a part of some other process.] Montana adopted the Melson formula following its 1991 review. [Telephone Conversation between Mary Ann Wellbank, Administrator, Department of Social and Rehabilitation Services, Child Support Enforcement Division, and Margaret Campbell Haynes, ABA.] Alternatively, the North Dakota legislative committee, which conducted the first of two State reviews, advocated a change from the percentage of income to the income shares model. However, the legislature as a whole defeated this recommendation, and the State maintained its existing guideline. [Letter from Barbara Holzer, Child Support Enforcement, to Margaret Campbell Haynes, ABA (December 16, 1994), p. 1.]

Who Owes Child Support

When discussing the calculation of support under guidelines, it is important to consider whose income will be measured in the support calculation. Four categories of potential income providers typically appear in State review materials: (1) the NCP, (2) the custodial parent (CP), (3) the parent's new spouse or partner, and (4) the child's grandparents. Discussion of the NCP's obligation to provide

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support is omitted because none of the review teams questioned NCPs. However, the obligation of the other categories was an issue for many review teams, and a summary of State review comments follows.

Custodial Parents

A few review committees considered whether and how CP income would play a role in child support guidelines. While CP income is directly or indirectly a part of all guideline models, some reviewers felt that the topic still warranted discussion. For example, in New Hampshire—an income shares State—reviewers said that "both parents should share the responsibility for the support of their children. Accordingly, the current guideline formula consider[s] the income of both parents in the calculation of the support award." [New Hampshire Report, *supra*, at p. 8.] The reviewers confirmed that in some situations CP resources would have little effect on the obligor's order: "The support award amount for a noncustodial parent earning \$25,000 per year, for example, is essentially the same...whether the custodial parent earns nothing, \$15,000, or \$25,000 per year." [*Id.* at p. 14.]

The Tennessee review resulted in the addition of a new provision on CP income. In this percentage-of-income State, there was a guideline amendment after review so that obligee income would be excluded in both the guideline award calculation and deviation. This was the result of a presumption that the obligee would expend "at least an equal percentage of net income as that of the obligor for the support of the children for whom support is sought." [Rulemaking Hearing Rules of the Tennessee Department of Human Services, Child Support Division, Chapter 1240-2-4 (September 1994 amendments) citing 1240-2-4-.03(2), p. 3, hereafter referred to as the " Tennessee Rulemaking Hearing Rules. "] CP income was viewed differently by reviewers in Colorado, another income shares State. During the 1990 review, the committee noted that the guideline permitted a low-income obligor's child support order to be increased solely because of a rise in the obligee's income. The review committee agreed with commenters that such an outcome was not equitable. To resolve the matter, the committee contemplated a "quick fix" solution to prohibit such increases for obligors whose incomes had remained constant despite a general increase in the combined income figure. Committee members ultimately rejected the proposed solution because it would result in inconsistent orders for families with similar economic circumstances—a result contrary to the original intent of the guidelines. However, because the committee could not agree on an acceptable resolution, it tabled the matter. [Colorado Child Support Committee Report to the Governor and the General Assembly (December 1, 1990), pp. 16 – 17, hereafter referred to as the " 1990 Colorado Report. "]

New Spouses

To frame the issue of new spouse income, consider the characterization of Nevada's reviewers:

This subject area presents an unfortunate collision whereby social policy and community property principles are at odds. Generally speaking, an individual is only liable for the support of his or her own children. On the other hand, Nevada law gives both parties to a marriage a "present, existing, and equal" interest in all income (or other property) acquired after marriage. At its most simple, the question is whether the income of an Obligor's new spouse increases the Obligor's "gross monthly income" against which the statutory formula should be applied, or whether a Recipient's new spouse's income can justify a reduction in support on the basis of a lessening of need, in that "the relative income" of the Recipient is higher when measured against that of the Obligor. [Nevada Report, *supra*, at p. 38.]

States reached very different conclusions regarding the inclusion or exclusion of new spouse or partner income as a part of the child support matter. However, the majority of the reports preferred to exclude this income. Reviewers in Illinois generally accepted their expert's recommendation to exclude new spouse income because it can discourage remarriages. In other cases, when an obligor claims that extraordinary expenses prevent the payment of support consistent with his or her income, the trier-of-fact may consider how spousal or partner income defrays the claimed expenses. [Illinois Report, *supra*, at p. 9.]

The New Mexico team reached a similar outcome. The review commission established that new spouse resources should not be included as income for the child's parent. Such earnings could be relevant for other purposes, such as to (1) decide whether a guideline application would be unjust or inappropriate or (2) award court costs and attorneys' fees. [Definition of Income in Commentary (October 21, 1994), p. 1, cited in 1994 New Mexico Child Support Review Committee Final Report, hereafter referred to as the " New Mexico Income Commentary — 10/21/94. "] Connecticut's committee confirmed the State rule of excluding subsequent spouses' income from child support calculations. Although the public was strongly split on the issue, reviewers held that inclusion of new spouse income unnecessarily complicates the guideline calculation, especially if that new spouse or partner has his or her own child support obligations. The committee also noted that under State law there was no legal authority to impose a support liability upon the new spouse for a child for whom he or she owes no duty of support. [Child Support and Arrearage Guidelines (June 1, 1994), p. ix, hereafter referred to as the " 1994 Connecticut Guidelines. "]

Nevada reviewers debated the treatment of new spouse income in a variety of contexts:

- A majority concluded that new spouse income should not be considered when a parent is voluntarily unemployed or underemployed, even though supported by the spouse. In such cases, the trier-of-fact should impute income to the parent based on his own earning capacity, not that of the spouse. However, the team rejected the addition of explicit language to this effect in the statute. Instead, the committee chose to leave new spouse income to the discretion of the child support decisionmaker. [Nevada Report, *supra*, at p. 39.]
- Reviewers discussed whether new spouse income should be a factor in reducing the obligor's living expenses and thus in making additional money available for child support. Because a new spouse could be either a help or a burden on household income, the team took no action on this issue. [*Id.* at p. 40.]
- Reviewers pondered imputing the new spouse's or partner's income to the child's parent. The committee reached a consensus that the resources of an obligor's spouse should not be considered in calculating the amount of income available for child support.

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Furthermore, unless an overview of household income and expenses is specifically needed to understand the obligor's ability to pay, the income of an unmarried cohabitant should not be considered. They also reached consensus regarding new spouse contributions to the obligee's household. Because such income would not decrease the child's need, they felt that it is irrelevant to an obligor's request for a downward modification of the child support award. Reviewers felt that to conclude otherwise "would be to tacitly admit that the new spouse undertook an obligation of support for the children in Recipient's household, without benefit of any right of access to or control over those children." [Id .]

Reviewers in both Louisiana and Hawaii saw some benefit to the minority view and opted to include this income under certain conditions. Following a guideline review, the Louisiana legislature redefined "income" to include benefits a party derives from expense sharing. However, the legislature specified in determining the benefits of expense sharing that the decisionmaker should not consider the income of the new spouse, except as such income directly reduces the party's actual expenses. [Letter from Gordon Hood, Department of Social Services, Office of Family Support, to Margaret Campbell Haynes, ABA (January 5, 1995), hereafter referred to as the " Louisiana Letter. "] In Hawaii, if a child's mother remarried, had another child, and either left work or reduced her hours to care for that new child, Hawaii's reviewers would allow the income of her new spouse to become a part of the child support calculation. Under these circumstances, the mother would be attributed with up to 50 percent of the combined gross income of herself and her new spouse. The same rule would be applied to an unmarried parent with children from a new relationship. [Hawaii Department of the Judiciary, Family Courts, Guidelines in Determining Child Support (November 1989), p. 5, hereafter referred to as the " 1989 Hawaii Report. "]

Grandparents

When a minor child has a child who bears the cost? This is an issue not considered by many child support guidelines. Review materials showed that two States—Colorado and Nevada—discussed the propriety of making grandparents' resources a part of the income calculation for child support purposes. The Colorado legislature specifically required its 1990 guideline review committee to examine two aspects of grandparent support: (1) establishing and enforcing support against grandparents until the parent reaches age 18 and (2) recovering public assistance for a dependent child (whose CP also is a minor) until that parent reaches age 18.

As a result of the study, a majority of Nevada reviewers recommended that the support obligation not be extended to grandparents. This recommendation had a three-pronged basis: [1990 Colorado Report, supra, at pp. 15 – 16.]

- Reviewers felt that the costs of imposing grandparent support would outweigh the benefits. It would be expensive to collect a small amount of support for a relatively short period between order establishment and the parent reaching age 18.
- The committee foresaw difficulty in drafting a fair statute given the number of components that would have to be included. They felt that at a minimum the statute would have to encompass provisions for the treatment of the following types of cases: (1) couples in which one parent is older than age 18 and the other is not, (2) the father is unknown or paternity has not been established, (3) low-income grandparents, (4) out-of-State grandparents, (5) noncustodial grandparents, and (6) the parent reaches age 18 before the establishment of the order.
- Even if a fair statute could be crafted, the reviewers were skeptical that the inclusion of grandparent income would have a real impact on any worthwhile objective. Several objectives were mentioned, including reducing teen pregnancy, recovering Aid to Families with Dependent Children (AFDC) expenditures, promoting shared grandparent support, increasing communication between parents and teens, educating teens about sexual behavior, and educating teens about family responsibility. However, there were questions, based on Wisconsin's experience, that such a law would produce the desired results.

One of Nevada's reviewers sought to connect grandparent support obligations to a State interest and prompted that team's discussion of the issue. The reviewer suggested that grandparent support could remedy the problem of "too many young people...becoming parents while they are still children themselves, creating a self-perpetuating impoverished class for which the State is forced to take financial responsibility, to the detriment of the people caught in the system and to the public generally." [Nevada Report, supra, at p. 53.] Even though the review team seemed to have carefully considered the possibility and cited a number of accompanying legal issues, the experience of other States, and technical and policy matters, the consensus was that there was insufficient data to adequately evaluate the proposal; thus, they took no action. [Id . at pp. 53 – 54.]

How Long Is Child Support Owed?

In practice, child support usually ends with a child's emancipation (i.e., when the child reaches the age of majority [The age of majority is decided by each State. Often it differs by issue. For instance, the age of majority may be set at 18 for child support purposes but at 21 for the consumption of alcoholic beverages. Generally, however, for child support purposes it ranges from ages 18 to 23.] or achieves some designated circumstance, such as marriage, full-time employment, or enlistment in the military). Guidelines do not always clearly reflect State practice, however, which can cause confusion and inconsistency. Accordingly, a number of State guideline review teams discussed clarifying the term of the support obligation.

Guideline reviews focused on age-related or education-related termination rather than other emancipation events. In Alaska, reviewers recommended the continued termination of support at age 18. The Nevada committee recommended the termination of support after the child's 18th birthday or high school graduation, whichever occurred later. Age 19, however, was imposed as an absolute end of support, even if the child had not yet graduated from high school. A similar recommendation was made by Utah reviewers. In that State, support could extend beyond age 18, but only until the date of a normal, expected high school graduation.

In their 1991 report, Colorado reviewers recommended termination of support at age 18. An extension of support beyond the child's 18th birthday could be granted if the child was mentally ill or physically disabled; the child was still in high school, but only through age

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21; or the child was pursuing postsecondary education, but only through age 23. Reviewers recommended in these instances that support also should include medical insurance. The legislature ultimately adopted language allowing termination of child support at age 19, subject to the three extension criteria. With respect to postsecondary education, however, an extension of support was permitted only through age 21 rather than the recommended age of 23. [For a discussion of how support for postsecondary education is calculated, see pp. 80 – 81, *infra* .]

Determining the Income Available for Child Support

The determination of available income is an essential step in the process of reaching a child support award amount. Before any guideline formula can be applied, the income sources of one or both parents must be identified. The decisionmaker must decide how much of these amounts are to be used to meet the needs of the particular child or children. [The particular State guideline formula will designate whether the incomes of both parents are to be considered or whether only obligor income is necessary for the support calculation. Some of the same issues may be considered by States as they determine income and make decisions about deviations from basic support awards. Income determination is an "above-the-line" step and the identification of appropriate deviation criteria is a "below-the-line" step.] State guideline reviewers devoted a great deal of time to income determination issues.

This discussion highlights State deliberations on key income determination issues.

Net Versus Gross Income

The choice between net and gross income, [Simply stated, gross income is earnings before tax deductions or other adjustments, and net income is earnings after allowable deductions.] as well as the general definition of income, [See pp. 21 – 24, *infra* .] are key to the starting points for calculating child support. Although State review teams decided to use gross or net income in the State's child support guideline, as the following discussion demonstrates, there frequently is little practical distinction between the two terms.

Some States opted for a gross income standard. Illinois and Nevada fall into this category. The Nevada review report, issued in August 1992, indicates that many obligors believe that they have unrealistic child support obligations. Their first complaint was that the gross income-based guidelines caused them to pay more in support than they could afford. [Nevada Report, *supra* , at p. 43.]

To correct the situation, these obligors suggested that the State move to a net income calculation. Reviewers concluded that a change to a net income framework "would not result in any change at all to the actual dollar sum of support orders." [*Id.* at p. 44.] They reasoned that the State's child support laws were based on three underlying factors: maintenance of a particular standard of living, income sharing, and the satisfaction of children's needs. Assuming that these factors remain constant, irrespective of the income designation used, the mere change from a gross income-based to a net-based formula would not automatically produce a downward change in support obligations.

Obligors also made a second assertion: Since the State's gross-based formula failed to consider certain relevant facts, which were accounted for by different statutory schemes, it generally yielded higher results for Nevada obligors. However, reviewers again declined to recommend change to a net-based formula. The committee cited the 1990 Women's Legal Defense Fund survey of State child support data. According to that data, awards in Nevada were typically near the national average in the studied categories and were not higher, as obligors contended. Therefore, there was no evidence of a formula-based imbalance in the support obligations of Nevada NCPs.

Nevada's guideline history also provided reason for retention of the gross income standard. The original guideline commission believed that a net-based system would create inequity between similarly situated individuals by permitting arbitrary choices as to income inclusions and exclusions. Reviewers also restated the original guideline commission's finding that gross income-based formulas are prized for their simplicity:

For every layer of complexity added to the statute that yields guideline support, a certain increased expense is added to the cost of being in the court system and is paid by every litigant in terms of time and attorney's fees. Additionally, the entire public pays for those complexities by paying the salaries of the public servants who must spend more time on each case to calculate support under the more complex guideline. [*Id.* at p. 45.]

The 1993 version of Nevada's guideline statute establishes the support obligation according to gross income figures; [Nev. Rev. Stat. 125B.070(1)(a).] thus, the reviewers' 1992 recommendation appears to have been accepted. However, as outlined further in the next section of this report, the statute modifies the traditional definition of gross income. [See pp. 21 – 22, *infra* .]

The Illinois expert also cited equity between similarly situated parents in support of the recommendation that gross income serve as the basis for support awards. [Illinois Report, *supra* , at p. 4. From proposed legislation (Amendment to House Bill 1351; this legislation was not passed) based on the committee's recommendations, it appears that a net income basis was being used at the time of the review.] Gross income was found to offer the highest level of equity between parents when establishing support. "Even though the argument has been made that net income better reflects a parent's ability to pay, net income will vary depending upon the tax deductions available to each parent, and these may differ between parents." [*Id.*]

Illinois' review committee basically agreed with the expert opinion that the inconsistencies between parents, associated with net income-based formulas, made a gross income standard more desirable. However, like their Nevada counterparts, Illinois reviewers also felt that a strict application of gross income was inappropriate and recommended several adjustments before arriving at the income figure that would be used to calculate the child support obligation.

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Unlike Illinois and Nevada, Connecticut favored a net income-based formula. [State of Connecticut Child Support Guidelines (January 1991), p. 5, hereafter referred to as the " 1991 Connecticut Guidelines. "] The State's review committee cited three reasons for recommending the retention of this standard:

- *The net income approach seemed to be working well in the State.*—Even though there were other States using the gross income standard, and there were recognized advantages to that method, the committee did not find that the apparent benefits warranted abandonment of their chosen approach until additional study could be conducted.
- *The guideline tables were based on the net income standard.*—They rejected a suggestion to alter the tables prior to studying the exact effect of the gross income standard.
- *Reviewers perceived a possible problem for low-income obligors with the adoption of a gross income approach.*—They seemed concerned, due to mandatory deductions from the disposable income of low-income obligors, that the conversion to a gross income approach would leave these obligors with insufficient money to survive. The State legislature seems to have accepted this recommendation.

The Definition of Income

Most State guideline reviews considered how income would be defined. Some review teams set very general income factors. Others analyzed whether money derived from particular sources should be made income for child support purposes. The first part of this discussion focuses on State deliberations of the general meaning of income, and the second part considers State treatment of several of the specific factors affecting income.

General Definition of Income

As noted in the gross versus net income discussion above, reviewers in both Illinois and Nevada opted for a gross-income basis but allowed modifications to be made to the obligor's actual gross income to arrive at what could be best labeled as an "adjusted gross." For example, the Illinois committee recommended adjustments for other child support obligations, the child's health insurance premiums, and professional fees required as a condition of employment. [Illinois Report, supra , at pp. 4 – 5.] Gross income was defined by Nevada as "the total amount of income from any source of a wage-earning employee or the gross income from any source of a self-employed person, after deduction of all legitimate business expenses, but without deduction for personal income taxes, contributions for retirement benefits, contributions to a pension or for any other personal expenses." [Nev. Rev. Stat. 125B.070(1)(a).]

In 1991 Connecticut's reviewers recommended a net income standard and arrived at a parent's net income by "subtracting mandatory deductions and special exemptions from the parent's gross income." [1991 Connecticut Report, supra, at p. 11. In 1994 regulations were promulgated, which simplified the calculation process by establishing a single list of permissible deductions from income. 1994 Connecticut Report, supra , at p. ix.] Among the State-authorized mandatory deductions were Federal income taxes with all allowable exemptions; [This deduction was continued in 1994; however, an additional deduction was established for State and local taxes. Since 1991 the State had instituted a State income tax, and the commission suggested an allowance for local taxes paid by persons living in those areas that levied such a tax. 1994 Connecticut Report, supra , at p. ix.] Social Security tax; retirement plan deductions; [A deduction for Social Security taxes remained in effect, according to the 1994 Connecticut Report. However, to promote the equitable treatment of parents with vastly different pension plans, the separate deduction for mandatory retirement plans was eliminated.

Specifically, this action was taken to prevent parents who are subject to Social Security withholding from also claiming a deduction for another retirement contribution. Id .] union dues or fees; group life insurance premiums; medical, hospital, dental, or health insurance premiums for all legal dependents; and legitimate business expenses of the self-employed. Reviewers also permitted special exemptions for costs attributed to unreimbursed child care for an employed parent and other child support orders for which there was verified payment. Gross income was defined as parent's weekly income before deductions, including the following:

- Salary and wages, including overtime;
- Commissions;
- Bonuses;
- Tips and perquisites;
- Rental income;
- Estate or trust income;
- Royalties;
- Interest, dividends, and annuities;
- Social Security or supplemental security income (SSI);
- Veterans' benefits, unemployment compensation, workers' compensation, retirement, pension, and other benefits;
- Proceeds from contractual agreements;
- Self-employment earnings;
- Alimony and other unearned income; and
- In-kind compensation (any basic maintenance or special need such as food, shelter, or transportation provided on a recurrent basis in lieu of salary). [Id. at p. 10.]

The West Virginia materials indicate that proposed rules regarding the definition of income contained some of the most significant changes to the guidelines recommended by reviewers. [Johnson, R.J., The Proposed Child Support Guidelines (outline for presentation at a West Virginia University College of Law Continuing Education program, September 3 and 4, 1993), p. 1, hereafter referred to as the " West Virginia Proposed Guidelines. " This material does not provide the prereview definition of income, nor does it

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note whether the proposed rule was ever promulgated.] Under the proposed rules, to calculate gross income of either parent, one should consider the following: Wages, salary, commissions, and other income due to the parent from his or her employer;

- Payments made from profit sharing or pension plans, insurance contracts, or annuities;
- Social Security, unemployment compensation, workers' compensation, or supplemental employment benefits;
- State lottery winnings;
- Noncash or fringe benefits or reimbursable expenses;
- Money due from a partnership, association, public or private corporation, agency (Federal, State, or local), or any legal entity indebted to the parent;
- Interest, dividends, distributions from "S" corporations, excess earnings from closely held corporations, or capital gains;
- Rental income; and
- Overtime income.

[The West Virginia materials fail to set out the specific changes to the income definition that resulted from the review. However, reviewers recommended that all income information should be presented at the time of the support calculation hearing. They also concluded that income information should be based on monthly figures, unless the court directed otherwise.]

The Washington State materials did not include the full proposed definition of income; however, comments contained in the Governor's Veto Message on SB 5120-S2 contain interesting rationale for his rejection of that proposal. [Washington Legislative Digest and History of Bills, Veto Message on SB 5120-S2 (May 21, 1991), pp. 57 – 58, hereafter referred to as the " Washington Veto Message. "] According to the Governor, the new section on income would have eliminated consideration of all overtime, second jobs, contract-related benefits, gifts, prizes, and bonuses, unless specifically included as income by the deciding judge. He felt that the exclusion of these income sources would have resulted in a lowering of the majority of support awarded in the State.

According to the Governor, there was no reason to use a definition of income that "arbitrarily excludes as a benefit for children these very real types of resources that are available to parents." [Id .]

Income From Means-Tested and Other Assistance

One potential source of income is money that a parent receives due to her own or her child's need, status, or disability. For example, a CP may lack sufficient income to meet her child's needs and, thus, receive AFDC benefits in order to meet the needs of any children in her care. In another case, an obligor may have been severely injured on the job and, as a result, he now collects monthly disability payments. Several State review committees dealt with the issue of means-tested or other assistance. Some States decided to include, and others to exclude, such benefits as income for child support purposes.

Arkansas and Delaware reviewers recommended the inclusion on such benefits as income. In Arkansas, prior to the 1993 review, three categories of benefits were considered as income for child support: Social Security disability awards made to the recipient's spouse and/or children, workers' compensation benefits, and unemployment compensation. [In re Child Support Guidelines (petition to revise guidelines) (filed 10/7/93), p. 2.] The guideline review added a benefit to this list: veterans' disability payments (VA [Veterans Administration] benefits). Citing *Belue v. Belue*, [38 Ark. App. 81, 828 S.W.2d 855 (1993).] the committee reasoned that "the Court of Appeals found that although VA benefits are not taxable income, when appropriate, they should be used to determine support. The Committee submits that the Court of Appeals' reasoning is sound, and that provision should be adopted." [In re Child Support Guidelines, supra at p. 2.]

The report summarizing Delaware's 1990 review references Social Security benefits only. The committee stated without explanation that any such benefits paid to a child's custodian, either due to the status of the parent or the child, are to be considered income for that recipient parent. [Family Court Judiciary, The Delaware Child Support Formula: Evaluation and Update (January 25, 1990), p. 8, hereafter referred to as the " 1990 Delaware Report. "] By 1994's review, however, the court's committee broadened the types of benefits to be included as income. The decision was to retain Social Security disability benefits and to add "those pension/disability benefits issued by private corporations, paid to a child(ren) on behalf of a disabled parent...[as a part of] the disabled parent's income for use in the child support calculation....When a child receives these benefits on his/her own behalf[,] the amount would be added to the custodial parent's income." [Family Court Judiciary, The Delaware Child Support Formula: Evaluation and Update (August 1, 1994), p. 6, hereafter referred to as the " 1994 Delaware Report. "] This view can be contrasted with that expressed by reviewers in Connecticut, Pennsylvania, and Tennessee, who recommended against the inclusion of such benefits as income.

Without detailed explanation, the Connecticut team discontinued consideration of SSI as a part of the gross income calculation. The stated rationale simply was that SSI is a means-tested Federal assistance grant. [1994 Connecticut Report, supra , at p. viii.] Pennsylvania materials, also without explanation, rejected the consideration of certain benefit income. Following the State's review process, AFDC was formally excluded as income to obligees. [Letter from John F. Stuff, Pennsylvania Bureau of Child Support, to Margaret Campbell Haynes, ABA (May 2, 1995), p. 1, hereafter referred to as the " Pennsylvania Letter. "] Finally, Tennessee's income definition was amended pursuant to recommendations made in a 1993 review. The concept of "gross income" was to exclude: child support payments made to either parent for any other child and all means-tested public assistance programs otherwise excluded by Federal law or regulation, such as AFDC, Food Stamps, and SSI. [Tennessee Rulemaking Hearing Rules, supra , p. 4.]

As these examples demonstrate, States that reviewed the inclusion of means-tested benefits as income generally recorded what the States did but not really why such action was taken. It may be that States chose to include such benefits to support the belief that any financial resource of a parent should be made available for the purposes of calculating her support obligation to the child. On the other hand, a State may have opted to exclude such benefits because they are scaled only to meet the basic needs of the recipient and/or of

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other specified individuals. Thus, these benefits would be insufficient both to cover the needs of the parent and/or another child and also to serve as a support resource for the child at issue. [In discussing whether child support money paid on behalf of another child could be income for calculating the support of the child at issue, the Illinois committee stated that " [c]hild support income is 'earmarked' for support of children in the obligor's own household. To base a child support obligation on child support income would take away from the needs of one child to meet the obligation to another. This is an undesirable outcome. " Illinois Report, *supra*, at p. 5.]

Income From Self-Employment

Another important area for income determination is the treatment of self-employed parents. There are two basic questions to be answered in this regard: whether the monies made by self-employed parents will be considered for the purpose of calculating child support and, if so, how an appropriate figure is to be reached. State guideline review materials touch on both issues.

Although a number of States appear to have considered the first question, the materials of only one State seem to provide an actual response. New Mexico's reviewers stated specifically that "income and expenses from businesses should be carefully reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support obligation." [1994 Child Support Commission, Final Report (October 1994), p. 3, hereafter referred to as the " New Mexico Report. " The commission further noted that the form of the business (e.g., sole proprietorship, general partnership, limited partnership, limited liability company, S-corporation, and C-corporation) should have no bearing on the level of the parent's income for child support purposes.] The question on which the State review material primarily focused concerns how to arrive at a measurable and accurate income amount in such cases. The Alaska review committee provided one alternative: amending the guideline commentary to include not only a listing of the types of proceeds to be included as "self-employment income" but also a process for determining the extent to which that income would be considered for child support purposes. The proposed language, which was approved by the State Supreme Court, provided the following:

Income from self-employment, rent, royalties, or joint ownership of a partnership or closely held corporation includes the gross receipts minus the ordinary and necessary expenses required to produce the income. Ordinary and necessary expenses do not include amounts allowable by the IRS [Internal Revenue Service] for the accelerated component of depreciation expenses, [depreciation of real estate,] investment tax credits, or any other business expenses determined by the court to be appropriate. Expense reimbursements and in-kind payments such as use of a company car, free housing or reimbursed meals should be included as income if the amount is significant and reduces living expenses. [Memorandum from Alaska Guidelines Review Committee to the Alaska Supreme Court regarding Recommendations for Amending Alaska's Child Support Guidelines: Civil Rule 90.3 (March 17, 1994), p. 20, hereafter referred to as the " Alaska Memo — 3/17/94. "] Idaho reviewers examined, but decided not to act on, a concern regarding the inclusion of rents and business proceeds as income for parents who work together in a business. Believing that guidelines already adequately covered the matter, the committee noted that salary drawn from the business by either spouse is income for child support calculation purposes. Beyond that, one-half of the business income also would be attributable to the obligor in the computation of child support income. [Minutes of Annual Meeting, Child Support Guidelines Committee (December 3, 1993), p. 6, hereafter referred to as the " Idaho Minutes. "] The criterion of gross receipts less ordinary and necessary business expenses appeared throughout the discussions of self-employment income. For example, Illinois reviewers reached a conclusion similar to Alaska's but made some interesting distinctions. First, they emphasized that although the IRS' permissible business deductions could serve as a guide, the individual decisionmaker may find these deductions inappropriate in the context of child support. [Illinois Report, *supra*, at p. 6.] Second, the committee specified that self-employment income should exclude extraordinary perks, even though the IRS often would permit them. Unfortunately, they did not give a rationale for this prohibition. [*Id.* at p. 7.] New Mexico also distinguished ordinary and necessary expenses for income tax and child support purposes. When child support is at issue, the term would not include amounts claimed for pension contributions, profit sharing, or other retirement plans. [To treat the parents equitably, however, if the other parent's employer funds a retirement benefit, the self-employed parent may deduct actual retirement contributions up to 10 percent of his gross income. New Mexico Report, *supra*, at p. 4.] Ohio reviewers also recommended the limited reduction of a self-employed parent's gross income to account for retirement contributions. The State legislature approved this provision, which would permit the self-employed party to reduce gross income by 5.6 percent or the difference between the tax rate paid by the individual and the current FICA (Federal Insurance Contributions Act) rate. [Ohio Report, *supra*, at p. 12.] Also omitted from business expenses would be "amounts allocated to immediate family members if the parent has a controlling interest in the business" and expenses which significantly reduce personal living expenses. [*Id.*]

A small number of States also considered the propriety of making property depreciation an ordinary and necessary expense and hence a deduction from self-employment income. Ohio's legislature followed the committee's recommendation to include only the "depreciation of replacement business equipment as shown on the books of the business" as such an expense. Under the prior version of the guideline, it appears that all depreciation deductions were prohibited because they would have resulted in an unfair portrayal of gross income for the child support calculation. A change in Federal tax laws allowed such depreciation to be calculated in a manner that would be less open to unfair manipulation. Furthermore, since the purchase of equipment often is critical for a business' continued ability to generate income, depreciation of such equipment is appropriate for determining income derived from that business to establish child support. [*Id.* at p. 13.] However, reviewers opted against a deduction for real estate depreciation.

According to New Mexico's reviewers, depreciation expenses always should be carefully examined in child support cases, even though they ultimately recommended following tax depreciation standards. Notwithstanding this general rule, the committee recognized that there are certain situations in which the two sets of rules conflict. New Mexico's reviewers prohibited a deduction for depreciation taken on real estate. In addition, they felt that first-year bonus depreciation should be scrutinized for reasonableness. [New Mexico Report, *supra*, at p. 4. Reviewers stipulated that if first-year bonus amounts were disallowed, these amounts should be considered in future years under the specific depreciation method available to the taxpayer.]

Income From Second Jobs, Overtime, and/or Bonuses

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In determining the amount of income available for child support purposes, often it is necessary to consider compensation derived from overtime, second jobs, and/or bonuses. Several States addressed these issues as a part of their reviews. A summary of State debate appears in this section as well as in the discussion of multiple family situations. [See pp. 73 – 76, *infra* .]

Money derived from overtime was treated differently by the States, although it seems that, in some way, each of the jurisdictions that examined this issue included these resources as income. Public concern about the guideline's failure to define overtime prompted review of this issue in Colorado. By Federal regulation, child support decisionmakers must consider all of an obligor's earnings and income; accordingly, the commission recommended the inclusion of all required overtime in the gross income figure. However, to sustain some level of judicial discretion, the committee recommended that voluntary overtime and/or secondary employment would constitute reason to deviate from the guideline. [1991 Colorado Report, *supra* , at pp. 26 – 27.]

Nevada reviewers addressed the issue of overtime because of an administrative determination that had provoked a number of complaints in the State. It appears, prior to the 1992 review, that there had been no definitive decision about the inclusion of overtime in the calculation of a parent's income. An administrative decision rendered shortly before the review held that overtime compensation should be regarded as income where it is substantial and can be accurately determined. The guideline committee agreed with this sentiment. "Income is income"; therefore, its source was insignificant. Further, the committee reasoned that, in an income-sharing model, all income is presumed to be included in a child support determination. The committee considered legislation unnecessary to convey their opinion, finding that the administrative ruling offered "sufficient protection against injustice." [Nevada Report, *supra* , at p. 42.]

Protection against injustice also provided the basis for the veto of a proposed income definition provision in Washington State.

Explaining the veto, the Governor concluded that the proposed definition would have omitted the consideration of all overtime, second jobs, and bonuses for child support purposes. An income definition, without these and other resources, would lower most support awards in the State. The Governor felt that this would arbitrarily prevent children from accessing resources that rightfully are available to their parents. [Washington Veto Message, *supra* , at p. 58.]

New Mexico's review committee extensively addressed the ways that resources from overtime, bonuses, and second jobs are to be treated. [The materials detailed the handling of these matters but failed to address the rationale behind the process choices.] For example, overtime is divided into four categories: required, voluntary, preseparation and postseparation, and irregular. Overtime, which is frequent and which the employer historically has required, is to be included as gross income and averaged over a period of 6 to 12 months. If the overtime is voluntary, but the parent typically undertakes this work, it also should be included as gross income and averaged over a period of 6 to 12 months. Alternatively, irregular overtime, even if it produces significant compensation, should be excluded from the calculation of income; however, if the obligor is the parent at issue, that person should be required to make an additional lump sum child support payment in the month following the receipt of the overtime income. [New Mexico Report, *supra* , at pp. 2 – 3. The lump sum payment would be 10 percent of the gross overtime amount for one child, 15 percent for two children, 20 percent for three children, 22 percent for four children, 24 percent for five children, and 26 percent for six or more children.] Commission members also decided that bonuses were to be generally included in the parent's gross income. The same considerations established for overtime payments were to be applied for bonus income. [*Id.* at p. 1.]

The treatment of money derived from an additional job depended on the particular circumstances. According to the commission, the money made at an additional job, which the parent had prior to the determination of support, could be considered income in the same way as overtime. If the CP secured an additional job after the determination of support for one of several reasons (e.g., specifically to obtain more income for the support of the children at issue, to help support a subsequent family, or to reduce significant debt associated with the termination of the relationship with the obligee), the proceeds from that job would ordinarily not become income for the purpose of calculating child support. [*Id.* at p. 3.]

Military Benefits

States report that it is often difficult to accurately determine the income of a parent who is in the military. For military personnel, salary is one part of a multifaceted benefit package that constitutes income. A small number of State reviews analyzed the way that guidelines compute income for military personnel. Arkansas and Ohio are two examples. In an effort to better explain the income packages of military personnel, Arkansas reviewers recommended the expansion of the current guideline language. Therefore, instead of simply directing child support decisionmakers to "see the latest military pay allocation chart and other benefits" and then add Basic Allowance for Quarters (BAQ), the statute was refined. [In re Guidelines for Child Support, *supra* , at Exhibit A, p. 4.] While the formula still focuses on salary and/or BAQ, it requires use of the BAQ rate for which the person is actually eligible, rather than the one for which the parent has opted. In addition, under the proposed guideline, the military's variable allowance only would be considered on a case-by-case basis. There was concern that application of this resource to all cases might be inappropriate because it generally is awarded to offset extraordinary living expenses. [*Id.*] The State guideline authority found the changes to be appropriate and enacted the recommendations.

Ohio's guideline authority approved the suggestion of the State's reviewers regarding the military pay aspects of the gross income definition. The term was amended to encompass not only base pay, but also BAQ, Basic Allowances for Subsistence, Supplemental Subsistence Allowances, cost-of-living adjustments, specialty pay, Variable Housing Allowances, and National Guard and Reserve drill pay. [Ohio Report, *supra* , at pp. 13 – 14.]

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Imputed or Attributed Income

A number of State reviews addressed the determination of income for unemployed or underemployed parents. Typically, States have chosen to impute or attribute income to these parents. Delaware's reviewers found the following:

Underlying the Delaware Child Support Formula is the concept that both parents are responsible for the support of their children. One of the linchpins of the formula which has enhanced the perception of its fundamental fairness and which, coincidentally, has been adopted by States as part of other formulas, is the tenet that an individual cannot by voluntary unemployment shift the burden of support to the other parent. [1990 Delaware Report, *supra* , at p. 6; see also Illinois Report, *supra* , at p. 8.]

Colorado presents the issue differently:

The most crucial step in the calculation of child support is the determination of income. The goals of the guidelines would be frustrated if a parent could evade the support obligation by being voluntarily unemployed or underemployed. The statute deals with this problem by providing for imputation of income to a parent who is voluntarily unemployed or underemployed based on their potential income. [1990 Colorado Report, p. 17.]

State review of imputed income seems to have covered three basic areas. The first involves the circumstances under which income should be attributed to a parent. The second is the level at which imputed income should be set. Third are exceptions that would permit a parent to avoid the imputation of income.

When Should Income Be Imputed?

Most State guidelines attributed some level of income to unemployed or underemployed parents. The real issue, then, is what the terms unemployed and underemployed mean for child support purposes. Reviewers in Illinois defined underemployment as any job change that substantially reduces income. [These reviewers rejected their expert's more hard-line approach to the underemployment concept, finding it far too intrusive into the lives of divorced parents. Instead of approving an attribution of income for any reduction of income, the committee preferred the " substantial reduction " standard noted above.] A finding of underemployment would constitute a rebuttable presumption that the parent's actions were precipitated by an intent to avoid child support. [Illinois Report, *supra* , at pp. 8 – 9.] Similarly, North Dakota reviewers defined underemployed parent as one whose gross income from earnings is significantly less than the earnings of people with similar work history and occupational qualifications in the obligor's community. [Amendments to Chapter 75-02-04.1, North Dakota Child Support Guidelines (undated), p. 19 (proposed 75 - 02-04.1-07(1)(b)), hereafter referred to as the " Proposed North Dakota Guidelines. "] They quantified the term substantial as gross earnings income that is less than 6/10 of the prevailing amount for those with a similar background in the obligor's community. [*Id.* (75-02-04.1-07(2)).] The guideline commission in New Mexico based its explanation of unemployment and underemployment on the voluntariness of the action. When the parent has achieved a particular employment status voluntarily, income would be imputed; however, when the status is imposed upon the parent, income generally would not be attributed. [Definition of Income Statute and Commentary (undated), pp. 1 – 2, cited in New Mexico Report, *supra* , hereafter referred to as the " New Mexico Commentary — undated. " If income is imputed to a parent, the appropriate portion of any child care expenses also should be attributed to the parent.] The report went on to describe certain examples of voluntary situations. For example, in the case of underemployment due to retirement, reviewers noted that the trier-of-fact would have to consider the age and health of the retiree. Alternatively, a career or job change, made in good faith to improve the parent's potential earning potential for himself and the child, generally would not spark an attribution of income. However, if the improvement is unlikely to occur in time to benefit the child, income should be imputed at the rate of full potential. [*Id.*] The West Virginia materials indicate that an attribution of income would be acceptable for parents who are unemployed or underemployed. Underemployment, however, points to parents who work at a job which doesn't correspond to their training or education level. In addition, it could be applied to a parent who can but fails to work in full-time employment. [West Virginia Outline, *supra* , at pp. 3 – 4.] *Are There Reasons Not To Impute Income?* Although a parent's situation may constitute unemployment or underemployment, are there situations in which it may be inappropriate to impute income?

Reviewers in many States concluded that there indeed are unemployed or underemployed parents for whom income should not be imputed at all. For example, West Virginia materials suggest that an attribution of income is correct unless one of the following has occurred; The parent must care for a child of the relationship, who is either preschool age or disabled;

- The parent is pursuing self-improvement, which will ultimately result in economic improvement for the child;
- The parent has valid medical reasons for his or her employment status;
- The parent can demonstrate diligent but unsuccessful efforts to find employment; or
- The decisionmaker makes written findings that other reasons exist that would make the attribution of income inequitable. [*Id.*]

In Illinois, reviewers believed that parents should be permitted to rebut a presumption of intentional unemployment or underemployment by producing evidence that a physical or mental incapacity justifies the employment reduction. Also acceptable as rebuttal would be an indication that the current income reduction either will result in long-term gain, as in a return to school to improve skills, or was done for some reason not associated with an attempt to avoid the payment of support. [Illinois Report, *supra* , at p. 9.]

The Colorado review committee reached a similar outcome in its effort to reconcile conflicting goals: meeting the needs of the child and recognizing some legitimate reasons for a parent to take a lower paying job. Under the proposal, child support decisionmakers would have authority to protect the child's economic well-being by imputing income to "spiteful or irresponsible parent[s]." Parents with decreased income would be shielded from income imputation only if they are employed full-time and if the reduction is expected to be temporary and lead to a subsequent increase in income or a part of a good faith career change, neither intended to deprive a child of

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support nor to unreasonably reduce the level of support available. [1990 Colorado Report, supra , at pp. 17 – 18.] The rationale for this exception to the imputation rule is worthy of note:

[T]here was a belief that in practice the imputation of income had made it nearly impossible for an obligor to take a lower paying job, no matter how laudable the reasons, because he or she could not afford to pay the support level at the imputed income level. By contrast, a custodial parent could choose a lower paying job so long as he or she were willing to accept somewhat reduced child support....A 1990 amendment eliminated this issue by preventing imputation of income for any parent gainfully employed on a full-time basis. This swing of the pendulum has created yet another problem. So long as the full-time employment test is met, an obligor can choose very low-income employment for the purpose of depriving a child of support or without consideration for the child's needs. This gives an angry parent excessive power to reduce needed support. [Id. at p. 17.]

As stated previously, New Mexico reviewers prefaced income attribution on the voluntariness of the unemployment or underemployment. If the parent's situation was prompted by an involuntary act, income would not be imputed. The report provided examples of involuntary acts that would protect a parent from having income attributed. For example, physical or mental incapacity would generally constitute an exception to the attribution rule. [New Mexico Income Commentary — undated, supra , at pp. 1 – 2. Although not stated in the report, it would seem appropriate to attribute income to a parent, despite an incapacity, if the parent has assets that could be used for support.] The report also indicated that there may be instances when incapacity would not protect a parent; unfortunately, there is no explanation. A loss of employment, unrelated to the parent's actions, also could cause income to be attributed. [Id . Reviewers noted that income could be imputed to a parent whose unemployment compensation is less than minimum wage or less than what the parent could earn through employment.]

The 1990 Delaware review specifically dealt with the issue of imputing income to a homemaker parent. Pursuant to the review committee, there would no longer be an assignment of value to a parent's home-based duties. Reviewers felt that attributing income in this manner was rarely used, if ever, and simply represented a diversion from the real issues in the case. [1990 Delaware Report, supra, at p. 6.]

How Much Income Should Be Attributed?

Once there is a decision to attribute income to a parent, the next step is to determine the amount of income to be charged. State review bodies offered differing recommendations about the appropriate level of income to be imputed to the unemployed or underemployed parent. Some State review teams concluded that the level of attributed income should be set on a case-by-case basis. Others established either specific figures or percentages. Others established a flexible approach guided by the particular situation.

For example, Ohio reviewers suggested that potential income be calculated on a case-by-case basis, not according to any previously set schedule. When imputing income, the trier-of-fact should look at the parent's employment potential and probable earnings level, based on recent work history, occupational qualifications, and the job climate and salary levels in his community. Furthermore, if the parent has nonincome-producing assets, income from those sources also should be considered. The income level should be based on the local passbook savings rate, instead of the previously used and more difficult to obtain long-term treasury bill rate. [Ohio Report, supra, at p. 7.]

According to New Mexico records, income is attributed after consideration of the last full-time employment of the unemployed or underemployed parent. If this factor is ineffective to reach an amount, the trier-of-fact may use earning levels of people with comparable education, training, or experience. That amount may be reduced if the parent has been out of the workforce for some time or is unlikely to find that type of job. In such a case, the minimum wage for a 40-hour week should be the income attribution basis. [New Mexico Income Commentary — undated, supra, at pp. 2 – 3.]

North Dakota reviewers proposed an interesting approach for setting the imputed income amount. An obligor's gross monthly income generally would be the greatest of (1) 167 times the hourly Federal minimum wage, (2) 6/10 of the prevailing gross monthly earnings in the community of those with similar backgrounds, or (3) 90 percent of the obligor's greatest average monthly earnings for any 12-month period within 36 months of the child support matter's commencement. This rule would apply for unemployment, underemployment, or a failure to produce reliable income information. The decisionmaker could enter a lesser amount for an obligor who shows one of the following:

Child care costs of at least 70 percent of the attributed income amount for a natural or adopted child in his physical custody who is under age 14 and who has no other available adult caregiver during the obligor's employment-related absences;

- A disability of sufficient severity to prevent the pursuit of employment that would produce a gross monthly income of at least 167 times the hourly Federal minimum wage;
- The existence of a minor child with emotional or physical needs that prevent gainful employment; or
- A lack of significant income-producing opportunities in the community.

No income is to be attributed if the obligor's average monthly gross earnings are equal to or greater than 167 times the hourly Federal minimum wage and if the obligor is not underemployed. [Proposed North Dakota Guidelines, supra, at 75-02-04.1-07.]

According to Tennessee materials, the calculation of income to be attributed to a parent who is willfully and voluntarily unemployed or underemployed should be based generally on the parent's education and/or previous work experience. [Tennessee Rulemaking Hearing Rules, supra, at p. 4, citing 1240-2-4-.03(3)(d).] Reviewers advocated a slightly different standard for the imputation of income to obligors who provide no income evidence at the child support establishment hearing. In such cases, the trier-of-fact should be authorized to use an annual income of \$25,761—the 1990 average median State income. For a modification or adjustment case at

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which the obligor provides no income, the decisionmaker may increase the order by up to 10 percent per year for each year that has elapsed since the order was entered or last modified, whichever occurred last. [Id . citing 1240-2-4-.03(3)(e) and (f).]

CPs and NCPs in Alaska who fail to present income statements with their initial pleadings also could be charged with a set amount of income—a presumptive income figure of \$84,000 per year. This presumption is rebuttable by reasonable, accurate, and complete information, which may be available to the decisionmaker through other means. Reviewers explained that the intent behind the presumption was not only to give parties an incentive to provide the appropriate financial information but also to give trier-of-fact effective recourse when parents did not follow through. Reviewers noted that the use of presumptive income should not be employed automatically. Parties are first entitled to notice of the consequences associated with a failure to file financial information.

If reasonably accurate financial information is available from another source (e.g., the other party), the presumed amount should not be used. Finally, the parent, against whom income is attributed, may provide actual income information at a later time. However, because of nonretroactivity provisions in the statute, such later-supplied information may only work to adjust an order prospectively. [Alaska Memo — 3/17/94, supra , at pp. 11 – 12.]

Other State review teams included more modest attribution amounts among their recommendations. For example, in West Virginia it was recommended that income be imputed at the minimum wage rate for a full-time position. At the time of the report, the figure would have been \$757 per month. Income levels also were a subject for Delaware's guideline reviewers. In 1990 they approved a basic framework for calculating a parent's appropriate support level. First, the committee gave the trier-of-fact discretion to determine the maximum potential earnings of each parent. However, reviewers established that the minimum income levels for unemployed parents should be comparable to the earnings of an average, able-bodied person, and they set that amount at \$5 per hour for a 40-hour week (\$607 per month). [1990 Delaware Report, supra, at pp. 6 – 7.] During the 1994 review, the committee raised the minimum monthly income amounts to \$867 gross or \$714 net income. A provision also was added that would allow a parent to overcome this presumed income if the parent's skill level dictated otherwise. Additionally, reviewers suggested that in default cases a parent's income should be imputed in an amount at least equal to that of the appearing parent, absent contrary information available to the trier-of-fact. [1994 Delaware Report, supra, at p. 7.]

The Verification of Income

The trier-of fact in a child support case must make certain determinations about income levels presented by the parents. Principally, the decisionmaker must decide whether parents' income representations reflect both correct and current amounts. To achieve this, there must be some method of verifying income. Only New York guideline reviewers appear to have raised this issue. New York's report illustrated the overwhelming inadequacy of the financial disclosures typically made by parents. After examining actual case files for their compliance with the State's requirements regarding statutory proof of income, reviewers concluded that most cases lacked at least some of the mandated income evidence. In the works of the committee, there was "minimal compliance with the...requirements for financial disclosure." Even more important, in 55 percent of obligor files and 67 percent of obligee files, none of the required proof had been supplied. Accordingly, there were real concerns about the financial basis for the support orders entered in the State. Despite such striking outcomes, the committee only offered that the State should make greater efforts to fully and consistently implement the statute. Members reported that by doing so, parties in child support cases could make significant strides toward the statute's underlying purpose of fair and appropriate child support. [New York Report, supra, at p. 35.]

Adjustments to Income

Once the parent's gross or net income has been determined and, in some cases, verified, the decisionmaker may consider whether there are special circumstances that would warrant an adjustment to this income figure. Income adjustments occur prior to the calculation of the child support obligation; they often are the same factors considered by other States as reasons to deviate from the basic child support award.

States use a number of potential income adjusters, including self-support reserves, Federal and/or State income tax withholdings, child care expenses, alimony or other child support obligations, medical insurance premiums, and extraordinary medical or other expenses. As income adjusters, such factors have an "above-the-line" impact on child support. [This is differentiated from factors employed after the calculation of a basic support award. This above-the- line category adjusts an already-determined support amount; therefore, they are more appropriately termed award deviation rather than income adjustment criteria.]

Self-Support Reserves

The self-support reserve is incorporated implicitly or explicitly into the guidelines of most States. It permits the low-income obligor to retain some minimal level of income before child support is assessed. The rationale for the self-support reserve concept is stated in materials prepared by South Carolina's expert:

The rationale behind the standard is quite simple. That is, the obligor should have sufficient income available to maintain a minimum standard of living which does not affect negatively the obligor's earning capacity, incentive to continue working, and ability to provide for him or herself. Many States have concluded that it is in the public interest that the obligor continue working as a productive member of society and not be so impoverished by the payment of child support that he/she will require public assistance. [PSI, Special Factors and Comparative Analysis: South Carolina Child Support Guidelines Revisions (September 17, 1993), p. 21, hereafter referred to as the " South Carolina Expert Report. " See also 1994 Delaware Report, supra, at p. 8; 1994 Connecticut Guidelines, supra, at p. v.] States have adopted different methods of incorporating the self-support reserve into their guidelines. [South Carolina Expert Report, supra, at pp. 25 – 26.] Some States use the self-support reserve to adjust income; a specific amount is subtracted from an obligor's income before the calculation of child support to account for the parent's own basic needs. The effect of this reserve is to reduce the income

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available for support purposes. A second way for States to reflect self-support is to build that consideration into the actual child support table. In those States, support is not assessed until an obligor's income exceeds a certain minimum amount. Even after obligor income reaches the threshold, support will be gradually phased in so that obligor income, after assessment of the support award, does not fall below the built-in reserve level. The third approach is the self-support reserve, which is used to adjust the child support order. Here, the reserve amount is subtracted from the calculated child support amount. For this discussion, however, the focus is on guideline review reports that consider use of the self-support reserve as an income adjustment factor. For example, Delaware's guideline instructions set forth that the "Court has established an absolute minimum amount of income that a parent must retain to function at maximum productivity. Subtract each parent's self support allowance from their [sic] net income and calculate the net total income available to support the child(ren)." [Delaware Instructions for Child Support Guidelines (November 1990), p. 2.] In 1990 reviewers recommended an increase of the self-support allowance from \$450 to \$550; the increase was endorsed by the State Supreme Court. [Id .]

Delaware reviewers also sought the elimination of a reduced self-support allowance for two categories of obligors:

- Those who were either remarried or cohabiting "in the relationship of husband and wife with an employed individual" or
- Those who were unemployed but imputed with half of a spouse's or partner's income. [1990 Delaware Report, supra, at pp. 4 – 5.]

Materials cited a three-pronged rationale for this action. First, the change acknowledged current State law under which the child support obligation belonged to the parents, not to any third party. Second, reviewers noted the extended litigation prompted by, and the inherent problems with, the guideline provisions; therefore, they opted for a plan that would promote clarity and consistency. Finally, with the high volume of child support cases to be decided on a daily basis, the expected increased caseload due to Federal review and adjustment requirements and impending automation of different self-support levels would be far too complicated to benefit the State. [Id. at p. 5.]

Self-support reserves (renamed "standard deductions" following a 1994 review) are treated as above-the-line items in West Virginia as well. The reserve amount is deducted from the parent's net income amount to establish the income available for child support. In addition to the new name, reviewers eliminated the previous graduated reserve amounts: \$315, \$365, and \$450. Instead, they recommended a flat \$550 per month. [West Virginia Proposed Guidelines, supra, at p. 5. Note that the standard deduction applies to both the NCP and the CP.]

Hawaii's self-support reserve amounts also were adjusted by guideline reviewers. The intention was to keep pace with Federal poverty levels based on minimum food, clothing, shelter, and other essential needs. In 1989 guideline reviewers increased the net self-support reserve from \$454 to \$470, in 1991 to \$478 net, and in 1994 to \$574 net. [1989 Hawaii Guidelines, supra, at p. 3; Hawaii Department of the Judiciary, Guidelines in Determining Child Support (November 1988), p. 4, hereafter referred to as the " 1988 Hawaii Guidelines " ; Hawaii Department of the Judiciary, Guidelines in Determining Child Support (March 1991), p. 4, hereafter referred to as the " 1991 Hawaii Guidelines " ; Hawaii Family Courts (First, Second, Third and Fifth Circuits), Guidelines in Determining Child Support (November 1, 1994), pp. 4 – 5, hereafter referred to as the " 1994 Hawaii Guidelines. "]

Income Tax Withholding

Some States have determined that the amounts withheld from earnings for Federal, State, and/or local income taxes also should be a basis for adjusting income available for support purposes. Summaries of review committee deliberations from a few of those States follow.

At the conclusion of Connecticut's 1990 review, the committee determined that a parent's net income (the income used to establish the child support award) would be set by subtracting certain mandatory deductions from the parent's gross income. That list included "Federal income taxes based upon all allowable exemptions." [1991 Connecticut Guidelines, supra, at p. 11.] In 1994 reviewers agreed to retain the deduction for Federal income tax withholdings. They also added deductions for State and local taxes because a State income tax had been passed since the last review and because local taxes had been raised in various parts of the State. [1994 Connecticut Guideline, supra, at p. ix.]

In response to expert recommendations, Ohio reviewers also proposed reducing income by local tax payments or estimates. These taxes were omitted from previous income calculations because local tax rates varied. One suggestion had been to use an average rate, when taxes ranged from zero to several percentage points or when people live in one area but work in another; however, this was rejected as too difficult a scheme. Under the new proposal, reviewers created a deduction for local taxes, where applicable. The parent wishing to use the deduction would have to offer proof of the tax amount claimed. [Ohio Report, supra, at p. 12.]

In 1994 Delaware reviewers reaffirmed the use of income tax withholding adjustments; in doing so, they focused strongly on the level of the deduction. The recommendation was that all parents with taxable income are to be accorded a single exemption for the purpose of computing income available for child support. Reviewers felt that this was an appropriate way to treat parents and children equitably for child support purposes. [1994 Delaware Report, supra, at pp. 5 – 6.]

Proposed changes to the North Dakota guidelines also reflect concerns about a parent's tax-related income adjustments. While the reviewers advocated the retention of the adjustments for Federal and State taxes, they rejected the continued application of standard tax deductions and the tax tables to determine the appropriate rates. Reviewers took this action because of reported windfalls by obligors, who actually paid substantially less in taxes than the amounts derived from using the standard deduction or the tax tables. [Proposed North Dakota Guidelines, supra, at pp. 5 – 6.]

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Child Care Expenses

At least one State has determined that child care expenditures should be deducted from income prior to the calculation of child support. [Most often, such expenses were treated as add-ons to the support award. See pp. 76 – 77, *infra* .] According to Connecticut's 1991 guidelines, "the weekly cost of unreimbursed child day care" is incurred so that the CP maintaining employment would be deemed a special exemption. As such, they were to be deducted from income before support was determined. [1991 Connecticut Guidelines, *supra* , at p. 11.] The State's 1994 guideline continues to allow above-the-line consideration for child care costs but adds clarity. Reviewers recognized the confusion in the treatment of and the distinction between mandatory deductions and special exemptions and sought to ease the situation by developing a single list of allowable deductions that would contain child day care expenses. Furthermore, reviewers applied the deduction to either parent as long as the parent had contributed to unreimbursed work-related child care costs for the child at issue. [1994 Connecticut Guidelines, *supra* , at p. x.]

Health Insurance Premiums

Several State review teams deliberated the inclusion of health insurance premiums as income adjustment factors. For example, the 1993 Massachusetts report cites reviewer displeasure with the treatment accorded health insurance expenses under the guideline in place at the time. Under that scheme, there was an above-the-line deduction for the full cost of family coverage, including the obligor's own insurance:

[Such an approach] dramatically reduces the amount of the order and causes a significant decline in the child's standard of living. In some cases, this leads the custodial parent to forego health insurance coverage for the child in favor of a more adequate child support award. In effect, the Massachusetts Guidelines...can force parents to choose between meeting the child's needs for food, clothing and shelter, or meeting the child's health care needs. The Guidelines review process presents an opportunity to rectify this problem. [Massachusetts Report, *supra* , at p. 1.]

To correct this situation, the review team recommended that obligors receive an above-the-line adjustment only for the difference between the total cost of family coverage and coverage for the child at issue. By doing so, the obligor would be credited for insuring the children, but the economic effect on children is eased. [*Id* .]

Discussion of adjustments for medical insurance also appears in the New Hampshire materials. Although the materials do not indicate the practice prior to the 1992 review, it seems that reviewers advocated the continued limitation of the income adjustment. A parent's income could be adjusted up to 50 percent of the out-of-pocket expenses incurred for the child's medical insurance. According to reviewers, it was important to permit such a credit in order to ease the effects on parents of the increasing costs of medical coverage and the decision of many employers to discontinue such coverage for employees and their families. The committee found that a 50-percent deduction would reduce the financial burden of those parents who must pay the entire insurance costs, while not making their child support payments substantially lower than parents whose employers cover the entire medical insurance expense. [New Hampshire Report, *supra* , at pp. 9 – 10.]

Each of the above States carved out above-the-line allowances for costs associated with the child's insurance. In other State reviews, the conclusion was to have a deduction for the total health insurance premium paid by the parent, not just those costs attributable to the child at issue.

For example, Delaware materials show that 1994 reviewers recommended that either parent be able to claim an above-the-line adjustment for health insurance premiums, irrespective of the people covered. The exception would be for cases in which there had been an actual request, accepted by the decisionmaker, to exclude the child at issue from the coverage. In explaining this action, the committee noted that "the prevailing national view [is] that it is in no one's best interest to be uninsured: not the child, either parent, or either parent's subsequent children. Any major medical expenditure, due to lack of insurance coverage, by either parent on behalf of that parent, or his/her child(ren) could interfere with the routine payment of child support." [1994 Delaware Report, *supra* , at p. 6.]

The review undertaken by Florida's legislature yielded a somewhat similar result. That State's guideline was changed, following the review, to allow parents to deduct from gross income all health insurance premiums, except those attributed to the child at issue. [Laws of Florida 93-208(3)(e) (1993).] Premiums for that child would be an add-on to the support award. [*Id* . at 93-208(8).]

In Illinois the State's expert suggested that where a NCP is ordered to provide health insurance for the child, he should be allowed to deduct his prorated share of the premium from the child support obligation—in essence, a below-the-line deviation. The committee rejected this approach; instead, they favored retention of the existing law that made health insurance premiums an adjustment to the gross income figure. Because reviewers were considering a change in the guideline model to income shares, they also proposed an alternative that would be effective under that proposed model. In the event of a move to income shares, the committee seemed to endorse a below-the-line deduction. If the noncustodial parent pays the insurance premium, the parent could reduce the support obligation by a pro rata share of the premium. If the custodial parent were the premium payer, then the noncustodial parent's support obligation should be increased by that parent's share of the insurance cost. [Illinois Report, *supra* , at pp. 22 – 23.]

From Hawaii's materials, it appears that reviewers decided to continue to permit income adjustments for health insurance premiums; however, following the 1991 review, the statute required verification of the health insurance amounts paid. [1991 Hawaii Guidelines, *supra* , at p. 4.]

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Multiple Families

The issue of multiple families was perhaps the most popular topic for the guideline review committees. In the words of the Nevada team, a "large proportion of child support cases involve multiple families. It is no longer unusual for parents to have one or more former spouses or to be custodians of children from one marriage and noncustodians of children from another." [Nevada Report, supra, at p. 26.] Hence, there was a significant amount of interest in the way that child support will reflect multiple family situations.

Guidelines tend to approach multiple family scenarios in one of two ways. One approach is to factor existing child support obligations into the actual support calculation. That tactic, along with multiple families as matters for the discretion of the child support decisionmaker, is addressed in the section on guideline application. [See pp. 75 – 76, infra .] The other approach is to make the obligations to other children an income deduction; the result would be to reduce income prior to the calculation of support for the child at issue. Jurisdictions that follow the latter method are discussed in this section.

Alaska's reviewers recommended a change to the definition of adjusted annual income. Pursuant to the new language, that term would mean the parent's total income minus child support for children of prior relationships who live with the parent. [Alaska Memo, supra , at pp. 8 – 9. Alaska's treatment of subsequent children is discussed in the section of this report on support deviation. See pp. 75 – 76, infra .] Maryland's review team chose to follow what has become known as the Colorado approach to multiple family support obligations. A parent's legally recognized financial responsibilities to other children usually would be deducted from gross income in a child support establishment or modification case. In modification cases, however, if the adjustment for other children would result in a lower order for the child at issue, the deduction would be prohibited. [Letter from Carolyn W. Colvin, Maryland Department of Human Resources, to R. Clayton Mitchell, House of Delegates (December 11, 1992), p. 1, hereafter referred to as the " Maryland DHR Letter, " citing Colorado Guideline at p. 2.] The matter was submitted to the legislature in 1995 but had not been decided at the time materials were submitted for inclusion in this report. [Letter from Kenneth H. Runsey, Child Support Enforcement Administration, to Margaret Campbell Haynes, ABA (January 3, 1995), p. 1, hereafter referred to as the " Maryland Cover Letter. "] Prior to Connecticut's 1994 review, child support orders were treated as special exemptions from income, as long as the payment amounts were verified.

Connecticut's review amended this procedure. Court-ordered child support, paid on behalf of persons not involved in the particular support matter, would be retitled income deductions. No verification beyond the inclusion of the specific amount on the paying parent's financial affidavit would be required. The review team purposely declined to require the obligated parent to show that these alimony and/or child support amounts were actually paid. There is a presumption that payment is made "in deference to the sanctity of a court order and in recognition that unpaid orders remain subject to enforcement and future collection." The guideline commentary did provide, however, that whenever a trier-of-fact finds that payment is not being made, she has discretion to disallow the income deduction. Reliance on such discretion provides greater assurance that the family at issue would not be deprived of funds which the obligor has chosen to retain. [1994 Connecticut Guidelines, supra , at p. 10.]

The review of the North Dakota guidelines included consideration of court-ordered child support awards as well as custodial child support expenses. The conclusion was that such items should be treated as income adjustments. Reviewers agreed that any ordered payment, on behalf of a child other than the one at issue, should be permitted as a deduction. [Proposed North Dakota Guidelines, supra , at p. 7 (emphasis in original).] North Dakota's proposed changes also would have allowed a deduction of an obligor's expenditures for resident children whose parents are not the obligor and obligee. Again, the stated rationale was that the obligor has a duty to support all of his children. [Id .]

South Carolina's guideline reviewers also engaged in discussion regarding additional dependents. They noted that when child support decisionmakers consider multiple family cases, they are "often faced with the task of balancing the needs of the NCP's additional dependents with those of the children in the action before the court, while also trying to encourage parental responsibility." [South Carolina Child Support Guidelines Handbook (May 1994), p. 7, hereafter referred to as the " 1994 South Carolina Guidelines. "] To rectify this problem, reviewers suggested that NCPs receive credits for any additional biological or adoptive children living in the home (i.e., children for whom the obligor owes a legal duty of support). The decisionmaker calculates a basic child support obligation for these additional children. That support figure then would be multiplied by .75 and subtracted from the obligor's gross income. The remaining income would be deemed available for the support of the child at issue. This scheme generally would be used. Reviewers stated that in modification cases this income deduction should not be used, if the result would be lower support for the children who are the subjects of the modification action. Obligor in such cases were encouraged to pursue other means, such as second jobs, to improve their financial status for their other dependants. Reviewers found that such a policy "encourages parental responsibility while protecting children in the homes of both the noncustodial and custodial parent." [Id .]

The Nevada report offers a detailed description of its review team's deliberations. Among the topics were recent case law, the distinction between a "first mortgage" and "equal treatment" approach to subsequent family obligations, and both Federal and State policy. Under the "first mortgage" approach, the earliest support obligation takes precedence over later assumed obligations. This method would "insulate" children of a first marriage or relationship from subsequent choices made by the obligor parent. [Nevada Report, supra, at p. 28.] The "equal treatment" approach differs in that it would put all of the obligor parent's children on the same footing for child support purposes; all would have comparable access to the obligor's pool of obligor resources determined to be available for support. [Id . at p. 29.] First, the committee concluded that child support decisionmakers needed guidance about the handling of multiple family situations. Second, the committee's majority considered the "first mortgage" the more appropriate model for these situations, regardless of whether that later family is intact or divided. Third, in fairness to obligors, in the formal calculation of support for subsequent children, reviewers decided that the decisionmaker should presumptively consider the existing support obligation for the first family and reduce the obligor's available income by that amount. [Id. at pp. 30 – 31.] Finally, Ohio had an interesting approach to the handling of "children who are the children of either the obligee or obligor but not the children of the parties together." [Ohio Report, supra , at p. 17.] The team noted that the current guidelines permitted a deduction to either parent for child support amounts ordered and paid on behalf of other children. For other children in the home of either parent (i.e., those for whom the

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parent lacked an actual support order), the guideline allowed a gross income adjustment equal to the Federal tax exemption for that child. The tax exemption amount would be reduced by any child support received for the child. [Id . The tax exemption amount was selected as a compromise. It could not be directly related to the cost of raising children but provided relief to parents with obligations to support other children.] After considering the propriety of other approaches, the committee decided to retain both methods. [Id. at p. 18.]

Application of the Guideline Formula

Once the trier-of-fact arrives at a decision about the income available to one or both parents for child support purposes, the particular State's guideline will be applied to produce a basic child support award figure. This basic figure is the base amount presumed to meet the child's primary needs.

Depending on the guideline model, the basic child support obligation may represent the amount assumed to be provided by both parents. Therefore, this obligation would be allocated between the parents, as appropriate in that State. Under other guideline models, application of the formula only results in the obligation of the noncustodial parent. In such cases, the obligee is presumed to match the obligor's contribution or to supplement it in the manner necessary to meet the child's basic needs.

As the States reviewed their guidelines, a number of issues arose that related to the guideline application or the formula phase of the process. Typically, reviewers discussed such matters as the particular income levels to which guidelines apply, whether the guidelines were adequate generally to meet children's basic needs and whether this was true at different ages, how guidelines manage various custody and care schemes, guideline treatment of other family-related situations, and whether certain items should be assumed into the basic child support amount covered by the guidelines or designated as an add-on to the basic award.

Application of Guidelines to Specific Income Levels

Child support guidelines establish presumptive award amounts based on the combined incomes of both parents or that of the obligor alone. Although the States vary as to the applicable income levels, guidelines usually apply to cases in which the relevant income falls between a certain designated floor and ceiling amount. Many of the State guideline reviews considered the handling of cases with low-income obligors, especially those whose financial resources are below the floor, or high-income obligors whose financial resources exceed guideline ceiling amounts. Examples of the State review team treatment of these issues follow.

Low-Income Obligor

State guideline review materials indicate two major focuses regarding low-income obligors: (1) self-support reserves and (2) minimum support obligations.

Self-Support Reserves

Self-support reserves are mechanisms to establish the minimum income amount that obligors are permitted to retain before being charged with a child support obligation. This ensures that support awards do not deprive the obligor of income for basic subsistence. As discussed previously, some States have instituted above-the-line, explicit, self-support reserves; in these States, a reserve figure is deducted from income to determine how much a parent will have for support purposes. [See pp. 39 – 41, supra .] In other States, the reserve is implicit; the guideline formula or table in such a State simply would not set support awards for certain incomes. In the alternative, such States would establish minimum amounts at lower percentages or levels than applied to the cases of parents who are more financially able to provide support.

Missouri's reviewers recommended a low-income self-support reserve by offering "a fixed range of modest support for persons with income at or below the Federal poverty level guidelines." [Missouri Report, supra , at p. 4.] They felt that this action was an appropriate way to protect parents in cases where an application of guidelines, pursuant to the regular schedule, would jeopardize the parent's ability to survive. A second reason was that the development of a mechanism for "implementing a modest child support for persons in the poverty or exceptionally low-income level[s]" would enable the State to fix support in a large number of cases without having to deviate from the chart. [Id.] Obligor with monthly incomes of \$300 or less were charged with \$20 of support, while those with incomes between \$301 and \$700 were responsible for \$50 monthly support awards.

Following its review, North Carolina adopted a similar approach to the issue of awards for low-income obligors. The guidelines now have a built-in self-support reserve. For very low-income obligors (defined as those with monthly adjusted gross incomes of less than \$700, which was the 1993 poverty level for a single person), a minimum of \$50 per month is required as support, unless the trier-of-fact allows a deviation. Even for obligors with monthly incomes above the poverty amount, the guideline incorporates the reserve so that the obligor is assured income of least at the poverty level after the payment of child support. Finally, the amended income shares guideline seeks to protect the self-support reserve and to prevent disproportionate increases in child support when there are only moderate income increases by setting aside certain incomes at which obligor income will be the sole determiner of the support level. [North Carolina Child Support Guidelines Commentary (October 1, 1994), p. 2, hereafter referred to as the " North Carolina Commentary. " See also 1994 South Carolina Guidelines, supra , at p. 5.] Connecticut also incorporated a self-support reserve into its guidelines. As part of the 1990 review, the self-support figure was set at \$135 per week. However, 1994 reviewers concluded that the amount was "unrealistically low given the costs an obligor incurs in maintaining a separate household." [1994 Connecticut Guidelines, supra , at p. v.] In response, the minimum self-support reserve was raised to \$145 per week, which was less than the amount proposed by some but approximately 150 percent of the poverty level for a single person. [Id .]

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A second concern was raised for Connecticut reviewers: a low self-support reserve diminished the incentive of low-income obligors to increase income because everything above the \$135 figure would be considered available for use in the child support calculation. To encourage earning among these obligors, reviewers offered and the legislature approved another strategy. Obligor at the transitional levels of income would be spared a dollar-for-dollar increase in support of their additional earnings. Instead, support would be raised based on a percentage of the additional income (70 percent for net weekly incomes between \$150 and \$190, 80 percent for those between \$200 and \$240, and 90 percent for those between \$250 and \$430). [The guideline does not indicate how the interim levels (e.g., \$191 – \$199 and \$241 – \$249) are to be treated.] This phase-in has been dubbed an "effective self-support reserve" because it allows lower income obligors to retain more than the base \$145 per week while still providing for the child. [1994 Connecticut Guideline, *supra*, at pp. v – vi.]

Minimum Support Obligation

A second issue considered by State review teams was the minimum amount of child support that low-income obligors should be allowed to pay. Minimum child support may arise when the NCP's income is at or close to the self-support reserve amount. In States without reserves, it may be imposed for obligors whose incomes are at the floor for application of the child support guideline. Typically, these amounts are not presumed to be sufficient to meet the child's needs; however, they are important to establish a sense of obligation on the part of the parent and/or to partially defray the costs associated with child-rearing.

For example, Nevada reviewers considered the propriety of a \$100 monthly minimum support award. The committee noted that Nevada's minimum (\$100) was among the highest nationally; most minimum award amounts were \$50, and some were as low as \$10. The committee did acknowledge that due to inflation \$100 in 1992 was far different from \$100 in 1987, when the minimum was initially set. For the floor support amount to have the same value that it did at its inception, it should have been raised to \$121.67. The committee also discussed whether the State's minimum support obligation should be based on the child's need or the parent's ability to pay. The conclusion was that a minimum was imposed so that all children, irrespective of parental ability to pay, would have at least some small level of support. However, there was insufficient evidence to determine whether this minimum amount was enough to keep children out of poverty. As a result of this dialogue, the recommendation was to maintain the \$100 minimum. [Nevada Report, *supra*, at pp. 14 – 15.]

In Delaware, the judiciary amended the guideline to provide for a monthly minimum support award of "not less than \$50.00 per child." [1990 Delaware Report, *supra*, at p. 8 (emphasis in original).] The committee selected this figure because it is the pass-through amount that Federal law permits an AFDC family to receive. Accordingly, the committee felt at a minimum that an obligor whose children receive AFDC should pay that sum that would directly benefit his or her children. Furthermore, because AFDC and non-AFDC children should not be treated differently, the same minimum would be applied across the board. [*Id.* This minimum was changed to a graduated scale by 1994 reviewers: monthly figures of \$52 for one child, \$91 for two children, \$130 for three children, and \$26 for each additional child. Reviewers explained the increase from \$50 to \$52 as needed to make it easily divisible into weekly obligations. Furthermore, the amounts for additional children were based on a newly established primary support rate structure.]

Reviewers in Ohio also recommended a \$50 monthly minimum. Reviewers provided that a court could enter a smaller amount, even zero support, if warranted by the facts, such as a verified medical or mental disability. If a minimum amount of support is entered for a parent who is a need-based public assistance recipient, that award would accumulate an arrearage each month, but the current payment obligation would be suspended while the parent is on public assistance and fully complies with any seek-work orders. The committee offered this guidance in an effort to eliminate confusion for decisionmakers and to offer assistance to obligors who actually are unable to work and provide support to their children. [Ohio Report, *supra*, at p. 10.]

Illinois' committee recommended a monthly support award equal to \$50 per month or 10 percent of the obligor's income, whichever is lower. This floor would apply to obligors whose incomes were at or below the poverty level established for a single person. The proposed implementation of this minimum was interesting. Reviewers in this income shares State decided that only the low-income parent's share of the support award would be affected and offered the following example:

For example, if total parental income is equal to \$1,500 per month with one parent's income equal to \$1,000 and the other's equal to \$500, then the latter parent is below poverty-level income. If the guidelines indicate a total obligation of 20 percent of the combined parental income, the higher earning parent will be obligated to 20 percent of his/her income (\$200) [sic] per month) rather than \$250 per month which would be the difference between the lower earning parent's \$50 poverty-level obligation and 20 percent of his/her income (\$100 per month). If the lower earning parent is also the custodial parent, then the court would order a child support payment of \$200 per month to that parent. If the situation is reversed, the court would order a child support payment of \$50 per month to the custodial parent. [Illinois Report, *supra*, at pp. 13 – 14.]

In Colorado the issue of the treatment of low-income obligors was raised as a result of public testimony that in some instances an unrealistically high level of support was expected from this group. After study, the commission agreed that support at the lowest levels was "inappropriately high." Therefore, the recommendation was to adjust the support table at the low levels in order to ease the burden. [1991 Colorado Report, *supra*, at pp. 17 – 18.] An examination of the guideline table before and after this recommendation demonstrates that the support amounts required of obligors with incomes less than \$1,600 per month had in fact decreased. [The tables begins with an income of \$700 monthly.] Amounts in the 1991 table do not meet 1990 levels until monthly income reaches \$1,600. [1991 Colorado Report, *supra*, at pp. 17 – 18 and Appendix 1.]

High-Income Obligor

Guideline tables typically have a ceiling (i.e., a specific income level or actual support level beyond which the formula ceases to apply). When a case presents income above that ceiling, the establishment of support can be troublesome. As a result, the treatment of cases

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with incomes at or above the guideline ceiling was discussed by a number of review committees. They addressed the propriety of having any ceiling, the appropriate level of such a ceiling, and whether and how support should be set when income exceeds the State's selected ceiling level.

The materials summarizing the Nevada review contained the most detailed discussion of the ceiling issue. Pursuant to the guidelines in place at the time of the August 1992 review, child support would be set at a percentage of gross monthly income based on the number of children to be supported; for instance, if there were one child at issue, support would be set at 18 percent of gross monthly income. Regardless of income, however, support could not exceed \$500 per month per child, unless the court issued findings of fact to support the establishment of a different support amount. [Nevada Report, *supra*, at p. 16, citing Nev. Rev. Stat. 125B.070(b).] Therefore, even if 18 percent of gross monthly income was more than \$500, support would be set at \$500 and would be presumed to meet the child's basic needs. A larger support amount could not be set without detailed findings of fact by the court.

The committee reached a few conclusions regarding this cap. They recognized that a ceiling of this type "has a differential impact on persons at different income levels, depending on the number of children involved." [Nevada Report, *supra*, at p. 16.] In support of this assertion, the committee noted that an obligor with one child would reach the per child ceiling amount with an annual income of \$33,335, with two children at \$48,000, with three children at \$62,100, and with four children at \$77,450. The cap did not seem to apply to obligors with more than four children.

The committee also noted that the cap was not absolute. A child support decisionmaker could order an obligor with sufficient income to provide support beyond the amount of the cap. Reviewers reached a consensus, however, that the ceiling was most often applied in cases of obligors whose incomes were not much higher than the cutoff amounts listed above. The higher the obligor's income, the more likely it was for the support order to be in excess of the presumptive ceiling. [*Id.* at p. 17.]

It appears that there was a great deal of discussion about the philosophical basis for a ceiling. The committee recommended that the legislature issue a clear statement of intent in this regard. However, in arriving at this point, reviewers debated whether the ceiling was enacted because of an underlying belief that no more than \$500 per month is needed to meet a child's basic needs. They questioned whether basic needs were to be defined as the poverty level or the standard of living enjoyed by the family. Using recent State advisory opinions since the legislative history provided no guidance, members felt that the statute was developed from a standard of living or at least an income-sharing perspective. They agreed that there is an "unavoidable tension between maintenance of a child's standards of living (or at least income sharing) on the one hand, and avoiding subsidization of the former spouse as primary custodian on the other." Notwithstanding the tension, a majority of the committee felt that making the child suffer, by ordering support at artificially low levels so that a CP would not be substantially subsidized, would do more harm than good.

Therefore, even though clarity from the legislature was sought, the committee recommended that the ceiling either should be modified to \$1,000 per month per child or should be eliminated. [*Id.* at pp. 18 – 20.] The materials do not indicate whether the legislature implemented this recommendation or offered the requested guidance.

At public hearings conducted as a part of the New Hampshire review, a number of commenters spoke about the application of guidelines in high-income cases (defined by the State as cases with combined annual income of more than \$50,000):

- The support orders in these cases were far greater than the amount needed to reasonably support a child;
- Such substantial awards were an incentive for CPs to divorce the obligor since they provided *de facto* alimony;
- Awards that exceed the amount necessary to adequately care for the children result in "an abridgement of the personal liberty of the parents and a judgment that children are entitled to share in the wealth of their parents." [New Hampshire Report, *supra*, at p. 11.]

Despite the level of obligor concern, the committee report only offers a suggestion that there may be a need to further define high income because of an inequitable application of guidelines in cases of similarly situated families. [*Id.* at p. 14.]

A number of States, with varying degrees of discussion, reported that their review committees recommended an increase in the guideline ceiling amounts in order to have the support schedule apply to larger segments of the population. Nebraska moved its upper income limit from \$5,000 to \$8,000 per month. [Letter from Joe Steele, Nebraska State Court Administration, to Mary Ann Miller, Department of Social Services Child Support Enforcement (January 19, 1995), p. 1, hereafter referred to as the " Nebraska Letter. "] In 1991 Hawaii extended its Table of Net Incomes from a maximum gross of \$5,449 to \$10,249. [1991 Hawaii Guideline, *supra*, at p. 1.] After reviews, both Missouri and Rhode Island increased their ceilings to \$15,000 per month. [Report and Recommendations of the Ad Hoc Committee to Review Child Support Guidelines (Missouri) (undated), pp. 3 – 4, hereafter referred to as the " Missouri Report "; Letter from Ronald A. Lebel, Department of Human Services Office of Legal Services, to Jeremiah S. Jeremiah, Jr., Rhode Island Family Court (January 14, 1992), pp. 1 – 2, hereafter referred to as the " Rhode Island Letter. "] The cap was altered twice in Connecticut. In 1991, due to committee recognition that the State's \$750 combined monthly income cap was the lowest in the Nation, the ceiling was raised to \$1,500 and was increased to \$1,750 in 1994. [1991 Connecticut Guidelines, *supra*, at p. 4; 1994 Connecticut Guidelines, *supra*, at p. vii. Support for cases with incomes above the cap would be determined on a case-by-case basis.] The Ohio cap moved from \$120,000 to \$150,000 annually; however, reviewers rejected a suggestion to extend the guideline table beyond that amount due to a concern over statistical validity. [Ohio Report, *supra*, at pp. 5 and 7.] As a part of its 1990 review, Colorado's team noted that the triers-of-fact may set child support on a case-by-case basis in cases with monthly incomes more than \$10,000. Although few families would fall into this category, reviewers recognized that the determination of support in these cases would mean lengthy litigation and the consumption of significant judicial resources—the very items the guidelines were intended to save. Accordingly, they recommended studying ways to ease the burden on courts and to encourage settlement in the area. [1990 Colorado Report, *supra*, at p. 11.] The following year, reviewers recommended an extension of the guideline table to encompass combined total parental incomes of \$15,000 per month. [1991 Colorado Report, *supra*, at p. 18.] The October 1994 guidelines reflect this change. According to Utah's

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committee, courts should have discretion to decide support in cases with combined annual incomes above \$80,400. In such cases, however, the support amount should be no less than the guideline award that would have been made at the \$80,400 ceiling, unless there is evidence to the contrary. [Utah Report, supra , at p. 3.] In Tennessee, the issue was not the ceiling level but how it should be paid. Reviewers suggested that obligors earning more than \$6,250 per month should be allowed to make alternative payments for any support ordered due to income over that ceiling amount. Hence, an obligor would have to pay support due on the first \$6,250 of income to the obligee, but support based on the excess could be paid into an education or other trust for the child's benefit. [Tennessee Rulemaking Hearing Rules, supra , at p. 7.] Illinois' expert set out for the review committee four potential methods of treating child support in high-income cases: [Illinois Report, supra , at p. 15.]

- An absolute ceiling amount could be set. For example, if the guideline ceiling were set at \$150,000 of annual income, parents with higher incomes would be obligated for more support than the amount established for the \$150,000 level.
- A flexible ceiling amount could be set. Under this alternative, guideline application could end at \$150,000 or some other level. In cases with incomes above that amount, the additional child support obligation would be left to the decisionmaker's discretion.
- The guideline could be extended to all income levels. [The report references Illinois case law (in re Marriage of Bush), which indicates that in high-income families a strict application of the guideline may result in an unjustified windfall to the custodial parent and that household.]
- The guideline could apply, as in the alternative above. However, an adjustment could be made to the distribution of the award: part would be paid to the child and part to a trust fund or savings account for specific future expenses, such as postsecondary education. [A benefit of this method was that it afforded the noncustodial parent some modicum of control over the child's expenditures.]

The committee found insufficient data to determine whether flat percentage guidelines, such as those provided in the third and fourth options above, provide accurate levels of support. On the other hand, members noted their discussions with IV-D attorneys yielded information that decisionmakers, even when no formal cap exists, tend to create one on their own. Moreover, these informal ceilings typically are set at lower levels than the committee would endorse. [Illinois Report, supra , at p. 16.]

Given this information, the committee decided to impose a cap and to set it at a higher level than those that were judicially imposed. The proposed ceiling was \$150,000 of adjusted gross income. Beyond that level, the decisionmaker's discretion would apply. [The committee expressed concern that recent Federal regulations may preclude caps for any income level. They recommended that if caps indeed are to be prohibited, there would need to be explicit statutory language to this effect so that there would not be a reliance on informal caps.]

The Child's Need as a Guideline Calculation Factor

A few State reviews grappled with the general issue of how each child's need should be reflected in the application of the guideline. Although closely related to the discussion of child-rearing costs, the two should not be confused. [See pp. 7 – 10, supra .] Examinations of child-rearing costs were undertaken to establish whether a State's guideline awards were sufficient overall to support children. Alternatively, there also is a question about whether the child's particular need should be considered during the calculation of support under the guidelines.

In addition to separate need-based considerations, a second matter was presented by some review committees. There was a suggestion in some States that it might be appropriate to have different guideline tables or calculations for children of different ages. In that way, awards would be more reflective of the needs of children at different ages. Review committee discussions about both issues follow.

General Needs

As stated above, a few review teams debated whether and how a State's guideline calculation should incorporate children's basic needs. Need was naturally an issue for Melson States such as Delaware and Hawaii because that guideline model makes children's needs a part of the support calculation. However, Idaho materials reflected a discussion of need, even though that State uses a percentage-of-income guideline.

From the inception of guidelines in Hawaii, the underlying notion has been that they are to be child centered. In fact, that principle is prominently positioned in the guideline statute:

Until the basic needs of children are met, parents should not be permitted to retain any more income than that required to provide the bare necessities for their own self-support....Where income is sufficient to cover the basic needs of the parents and all dependents, children are entitled to share in any additional income so that they can benefit from the absent parent's higher standard of living. [1987 Hawaii Guidelines, supra , at p. 1 (footnote omitted).]

Accordingly, after the determination of the obligor's available income, an amount is set aside to cover the primary child support need of the child at issue. The guideline itself sets forth basic child support obligations for households with different numbers of children. For example, in that original guideline, the basic need for the first child was set at \$200 per month, an additional \$150 per month would be added for the second and third children, and \$100 per month would be added for each subsequent child. [Id. at p. 5. The primary child support need for each child was set by first determining that child's rank in the custodial parent's household and applying the figures noted in the text.]

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After review, the 1991 Hawaii guidelines ended the practice of setting a child's primary need according to placement in the custodian's household. Instead, each person's basic needs were estimated at \$200, roughly the 1991 Federal poverty-level estimate for additional household members. [Memorandum to 1994 Hawaii Guidelines, p. 2; 1994 Hawaii Guidelines, supra, at p. 6.]

Delaware's reviewers recommended similar changes to that State's guideline:

[F]ocusing on children, the current formula was modified, setting the primary support needs of those whose support is at issue. Rather than assign need based on the rank of children within a household and thereby varying the figure based on the presence of older, unrelated children and/or spouse or cohabitor, the primary support need is to be ascertained based solely on the number of children to whom the parents owe a joint legal responsibility. [1990 Delaware Report, supra, at p. 5.]

Therefore, a family with one child would have a primary need of \$220, an additional \$165 would be added per child for families with two or three children, and an additional \$110 per child would be added for families with four or more children. [Id.] The judiciary made further adjustments in 1994 so that "all children's needs [would be treated] in a more equitable fashion, while creating an economically sound regressive rate structure considering the needs of children and the parents' income." [1994 Delaware Report, supra, at p. 8.] Monthly allowances were adopted: \$275 for one child, \$485 for two, \$660 for three, and \$132 for each additional child.

Reviewers in Idaho were challenged by reviewers to examine the needs of children, not just the incomes of the parties, as the determining factor in the support calculation. The materials report a lengthy discussion, after which the review team concluded that it would be impossible to compute the needs of children on a case-by-case basis. Therefore, a guideline, based on the incomes of the parties, would be the only practical way to calculate support, except in unusual cases with specific facts that called for a deviation. [Idaho Minutes, supra, at pp. 2 – 3.]

Age as a Determiner of Need

The review teams in several States considered whether the age of the child should have any bearing on the level of support awarded under the guidelines. States approached "age as a determiner" in different ways and reached different conclusions. For example, West Virginia's materials indicate that there was a proposal for age-based modifications to the guidelines following that State's review. Prior to the review, West Virginia's guideline established the child's primary need based on rank in the custodian's household. [For further discussion of primary child support need, see pp. 57 – 59, supra.] The recommendation of reviewers, however, was to convert the primary need to an age-based factor. They proposed that a child age 13 or older should have \$230 per month to satisfy primary needs, those between ages 5 and 12 would need \$200 per month, and those up to age 4 would get \$170 per month. [West Virginia Proposed Guidelines, supra, at p. 5.] The State's legislature voted to table all proposed changes indefinitely. [Letter from R. Jeffrey Johnson, West Virginia Child Advocate Office, to Margaret Campbell Haynes, ABA (December 20, 1994), p. 1, hereafter referred to as the "West Virginia Letter. "] At the time of its first reported review, Connecticut's guideline had three age brackets (i.e., ages 0–5, 6–15, and 16–17). Reviewers commented that "[t]his concept [was] reflective of the economic fact that as children get older, a greater percentage of family income is generally spent on them." [1991 Connecticut Guideline, supra, at p. 5.] The group's recommendation was to reduce the table to two age ranges: 0–11 and 12–17. Connecticut's reviewers cited the following reasons for this recommendation:

- Expenses for children between birth and age 11 were not sufficiently different to justify separate calculations;
- Guidelines should be as simple as possible to understand and to administer;
- Other States have found success with a two-bracket approach; and
- Economic data indicates that child-rearing differentials do not become evident until children reach approximately age 12.

To collapse the three age brackets into two, reviewers recommended applying the figures formerly used for the former middle category (i.e., ages 6–15) to the younger grouping. [Id.] By 1994, however, Connecticut decided to eliminate age-based calculations of support entirely. The new guidelines took into the consideration the cost of raising a child throughout minority and incorporated average costs into the guidelines. As the 1994 report states, reviewers made the choice "to simplify use of the guidelines and [to] make them more consistent with the majority of income-shares States." [1994 Connecticut Guidelines, supra, at p. vii.]

Ohio reviewers discussed age differentials in the context of deviation criteria, but their conclusion also is relevant here. They found that older children require larger expenditures of parental income; however, they believed that the guideline schedule already factored these differentials into an average support obligation. Therefore, there was neither a need to permit age to be a deviation criterion nor a need to develop separate age-based guideline tables. [Ohio Report, supra, at p. 19.]

Custody and Care Issues

Also relevant to the calculation of child support pursuant to a State's guideline formula is the custody or care arrangement entered into either by the child's two parents or, in some instances, by the parent and the child's caregiver (e.g., a grandparent, a family friend, or the State). State review committees considered the whole range of these issues. In fact, the New Mexico commission reported that it established a special subcommittee to examine visitation and visitation enforcement issues presented in that State. Although this subcommittee does not appear to have made any recommendations specifically related to the calculation of support, it did present some interesting conclusions. Among them were several basic determinations about visitation:

The Commission concludes that the most serious problem related to resolving custody and visitation issues and promoting active involvement of both parents is the need to get preliminary time-sharing established promptly whenever a divorce, parentage, custody modification or enforcement proceeding has begun. The Commission has determined that (1) children need to have a continuing relationship with both parents early in a case; (2) children need the financial support of both parents; and (3) the promotion of the

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relationship may have a positive effect on the payment of child support. [Child Support Guideline Commission Report on Visitation (October 22, 1994), Exhibit D of the New Mexico Report, supra .]

Many examined the calculation of support in a traditional sole custodial arrangement. [These situations deal only with the arrangements regarding physical custody of the child. Legal custody (i.e., the right to make decisions and have input in matters affecting the child) has no impact on the calculation of support, even though the decision made might affect the ultimate amount of support required from the parents.] Others looked into support calculation in the shared or joint custody scenario. Split custody also is addressed in this section. Finally, the issue of State custody is raised.

Traditional Sole Custody and the Calculation of Support

Many State review teams addressed the calculation of support in cases with traditional sole custody arrangements (i.e., those cases in which primary physical custody rests with one parent and the other parent may or may not have some level of general visitation rights). [This situation also could apply to a third party (e.g., a grandparent or other legal guardian) who is the primary custodian and a parent who is in the noncustodial position. For the purposes of this discussion, however, reference will be made only to the custodial and noncustodial parent.] Reviewers generally found that State guidelines were developed to cover a normal visitation schedule by the NCP. Several matters consumed a great deal of reviewer energy; among them were the definition of normal visitation, the propriety of adjusting support to compensate for visitation in excess of the State's designated norm, and how any such adjustment would be calculated.

Turning first to the issue of what constitutes normal visitation, few State review materials give a concrete indication of how this term is to be interpreted. In Alaska, however, the interpretation appears in discussion of the State's civil rule on visitation credit. Pursuant to that rule, it appears that the guideline anticipates visitation of at least 27 nights per year; anything beyond that, but less than the joint custody threshold, would be considered extended visitation. [Alaska Report, supra , at pp. 2 – 3.] The Illinois definition of normal visitation also can be found in the reviewers' discussion of visitation abatement. Visitation of 8 consecutive nights or less (the equivalent of 25 percent of any given month) seems to be incorporated into the guideline. [Illinois Report, supra , at p. 27.] Normal visitation in Hawaii is up to 100 days per year. Annual interaction greater than 100 days but less than 183 (the joint custody threshold) would be considered extensive visitation. [1994 Hawaii Guidelines, supra , at p. 8.]

Once the NCP exceeds the anticipated visitation level in a sole custody case, the issue of support abatement follows. [Included in this category are cases in which there is more interaction between obligor and child than is expected under the basic guideline but less than would be necessary to constitute joint or shared custody.] Should there be some adjustment to the child support obligation because of the extra time the obligor spends with the child? Reviewers in Illinois rejected the idea of visitation abatement presented by the State's expert: [Illinois Report, supra , at pp. 26 – 28.]

[W]hen the child spends an extended amount of time with the noncustodial parent, that parent realizes both fixed and flexible direct costs of the child's care. When guidelines do not provide for abatement for extended visitation, the...principle that "a guideline should encourage the involvement of both parents in the child's upbringing" is not being fully addressed....When there is extended visitation, it is reasonable that the noncustodial parent should be able to provide an adequate living space for the child and to retain sufficient resources to provide for the child's needs as well as they are provided for in the custodial parent home. Visitation abatement will help to achieve that goal. [Id . at p. 27.]

The committee disagreed. The members felt that the typical visitation scenario is woven into the basic child support award. If extraordinary visitation situations were to arise, they should be handled by the decisionmaker on a case-by-case basis, not in a blanket fashion by the guideline.

Delaware reviewers reached a similar outcome. However, reviewers specifically decided that in the traditional sole custody situation, "the proportion of time a child spends visiting with the obligor parent [should not be used] as a means of establishing or modifying a support obligation." Their rejection stemmed from a feeling that "[v]isitation beyond the traditional every-other-weekend and 2 weeks in the summer does not routinely translate into a sharing of primary expenses and sometimes spurs custody/visitation litigation." [1994 Delaware Report, supra , at p. 11.]

Alternatively, several State committees expressed support for the notion of visitation credit or abatement. The State summaries that follow involve a visitation credit or abatement that occurs as a part of the basic award calculation process. At least one State (Ohio) considered this option but decided to use visitation as a deviation criterion. Thus, the proposal was that deviation of up to 15 percent of the child support order could be sought when three conditions were met: (1) the custodian's annual income is \$25,000 or more, (2) the obligor exercises visitation of more than 91 overnights per year, and (3) the obligor exercises visitation and keeps child support obligation current for the year prior to the request for deviation. [Ohio Report, supra , at p. 21.] The explanation of that committee, though referring to a deviation criterion, is instructive. The committee stated the following:

The issue of whether and how to give credit to a nonresidential parent for time spent with a child was the most controversial to be addressed by the Commission. At its heart was the debate over the amount of increased costs, which begin to occur with visitation and the point at which those costs begin to become significant.

Several points of view emerged. On one side was the assertion that any visitation, however short, causes expenses by the nonresidential parent, with a corresponding lessening of those expenses by the residential parent. Another view was that regardless of the amount of time a child spends with a nonresidential parent, costs for items such as housing and utilities remain fixed for the residential parent, making any credit unfair to the residential parent.

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Though most Commission members originally assumed that expenses for some level of visitation were built into the current Child Support Schedule, it was determined that at no time...have the current or recommended Schedules ever contained any assumptions regarding visitation. Therefore, additional discussion occurred over where such a threshold might begin and its effect.

This recommendation attempts to recognize the reality of visitation costs as fairly as possible for the nonresidential parent as well as the residential parent. It is essentially a deviation criterion applicable only under certain specific conditions. By limiting the availability of the deviation to cases where the obligee's income is \$25,000 or more, the recommendation hopes to avoid impoverishing low-income residential parents by further reducing the household income.

This recommendation recognizes "standard" visitation of approximately 25 percent by allowing for the deviation only where visitation occurs more frequently than 91 overnights per year. It also attempts to address the problem of a lower overall support order, which occurs when visitation credit is awarded but visitation is not exercised by requiring parties to prove that visitation has actually occurred and support has actually been paid within the year before the request for deviation is made.

The ceiling of 15 percent on the change which a court may make in a support order when considering a deviation for visitation is intended to prevent support orders from unfairly favoring either party.

Finally, the Commission recognizes that in certain cases, parties will want to agree on a shared parenting plan, which provides for support and visitation in a different manner than stated in this factor. Therefore, parties are given the option to agree on this type of plan separate from the requirements stated herein. [*Id.* at pp. 21 – 22.]

As stated above, Alaska reviewers reaffirmed the propriety of their State's credit for extended visitation (i.e., anything in excess of 27 consecutive days). The amount to be credited would be left to the discretion of the decisionmaker, whom reviewers felt should be required to consider the financial implications that any such credit would have on both parties and specify the credited amount in the support order. They also corrected the method of calculating the abatement in order to make it applicable to cases in which the obligor's income was less than that of the child's custodian. The review team also decided that any nominal time the child spends with the custodial parent during the extended visitation period would not defeat the visitation credit. For example, the child could spend a night or so with the custodial parent and leave the obligor's credit intact. [Alaska Memo, *supra*, at pp. 2 – 3.]

The Utah committee stated its recommendation without explanation. The proposal was to allow a 50-percent abatement in child support for any extended visitation period, even if the period were interrupted by a visit to the CP. [Utah Report, *supra*, at p. 7.] Extended visitation is not defined.

The final State for inclusion is Tennessee. That State's material did not reference abatement; rather, it outlined a proposed amendment regarding the treatment of obligors who failed to exercise even basic visitation. Where the decisionmaker found that "the average visitation period of every other weekend from Friday evening to Sunday evening, 2 weeks during the summer and 2 weeks during the holiday periods throughout the year" is not being kept, an amount should be added to the child support obligation to compensate the custodian for the cost of providing care for the child during this extra time. [Tennessee Rulemaking Hearing Rules, *supra*, at p. 6.] This proposal was passed.

Shared/Joint Custody

State materials presented some lengthy discussions about the handling of child support in joint- or shared-custody situations. By and large, the result was a recommendation either to incorporate a joint custody calculation method into the State guideline or to leave the matter to the discretion of the decisionmaker, essentially making this custodial arrangement a deviation criterion. Only one of the States seems to have decided to take no action regarding the issue.

Colorado's 1991 review included a great deal of discussion about what the State called "shared custody" (i.e., an arrangement in which each parent has the child for more than 25 percent of the year). This situation could also apply to a third party (e.g., a grandparent or other legal guardian) with whom the child's biological parent or parents share physical custody. For the purposes of this discussion, however, reference will be made only to the actual parents and not to other potential caregivers. [1991 Colorado Report, *supra*, at pp. 28 – 29.] Commenters had two major concerns with the State's practice: (1) some claimed that 25 percent was too high a threshold for shared custody and (2) there was an assertion that the change in the support rate was too drastic once that 25-percent threshold had been met.

Colorado reviewers, disagreeing with the 25-percent threshold, noted that even if a child stayed with a parent for the entire summer, the threshold would not be met; thus, it was too high. According to the committee's minority, the NCP incurs significant costs to provide a separate home for the child, even if it is for less than 25 percent of the year. The minority also believed that the threshold had become a real source of difficulty between parents. In fact, they noted such contentiousness that "visitation arrangements turn on the economic impacts of staying below—or rising above—the threshold. Thus, this statutory formula does not achieve its goals and has the effect of discouraging increased visitation for economic reasons." [*Id.* at p. 31.]

In response to the concern over the threshold, the committee considered the complete elimination of a threshold. However, the majority rejected the idea, citing the potential for increased litigation and the likely manipulation of child support that would occur if a credit were given for every overnight with the NCP. The committee also evaluated the propriety of instituting a support abatement for periods beyond 1 month, when the NCP served as primary caregiver. The majority also rejected this alternative as procedurally impractical to implement due to the use of and need for wage assignments. Committee members felt that wage assignment would bar the use of abatements, since it would be difficult to temporarily suspend support with various employers. [*Id.* at pp. 29 – 30.]

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The committee's second concern was that support changed too significantly upon reaching the 25-percent threshold. Citing studies, the majority found that the NCP incurred roughly 50 percent of the child-rearing costs once visitation exceeded the threshold. To defray some of this expense, the guideline directed that the basic support amount was to be multiplied by 1.5 to produce an award amount in shared-custody cases. Therefore, the total award would be greater, and a larger amount would be allocated to each parent for his or her costs of care. Furthermore, the 1.5 multiplier would prevent a drastic drop in the support award once the threshold is reached and still give the obligor credit for household expenses. As stated above, however, many reviewers felt that the support drop-off was too drastic after meeting the threshold; in fact, even the majority reported a "cliff effect" at the threshold but found that no other satisfactory calculation method had been presented. The minority opinion recommends the use of a 1.12 multiplier for support based on custodial arrangements in which the child spends more than 31 overnights with the NCP. According to this segment of the committee, this scheme produces the most gradual decline in support awards and thus would be acceptable to CPs. Alternatively, because it starts the support adjustment on the 31st night (an early though significant time commitment), it would find favor with NCPs faced with the costs of providing a home worthy of the child who visits. [Id. at p. 32.]

While other multipliers were considered, the committee's majority noted that there was insufficient data to indicate that the resulting awards would meet the basic needs of the child. Furthermore, reviewers found that the elimination of a multiplier would result in significant support falloffs for CPs—an unacceptable outcome. Although discussed in another context in this section, Alaska's reviewers also discussed the calculation of support in shared-custody cases. [Memorandum from Alaska Child Support Guidelines Review Committee to the Alaska Supreme Court (October 5, 1993), p. 1, hereafter referred to as the "Alaska Shared Custody Memo."] Listing several separate factors, the committee decided not to recommend a change to the State's calculation method, which entailed use of a 1.5 multiplier:

- The committee noted that Alaska's guidelines produce support awards that are lower than the national average. Members felt that many parents fail to recognize this fact. In addition, the committee reminded readers that the State's guidelines placed a support obligation on both parents, not just on the NCP. [Alaska Shared Custody Memo, supra, at p. 1.]
- The committee emphasized that the basic support obligation covered a range of custodial arrangements. The basic support award applied to cases that have NCP care up to 30 percent of a given year. [Id. at pp. 1 – 2.]
- Members felt that commenters mistakenly asserted that the 1.5 multiplier made little difference to support. Rather, application of the multiplier substantially reduced payments. [Id. at p. 2.]
- The committee found that the State rule accomplished several goals: (1) it recognized that the shared custody arrangement can increase the total costs to parents by as much as 50 percent, (2) it noted the importance of children being adequately supported in such arrangements, and (3) it encouraged joint custody by allowing the support reduction while also providing the CP "at least minimally adequate support." [Id. at p. 3.]
- The committee responded that the Alaska shared custody scheme is more generous to the obligor than the plans of many States. [Id.]
- The State's approach offered a rather simple support calculation process. The committee found this to be a critical point given the number of cases in which it would need to be applied. [Id.]

Several other State reviews concluded that the handling of support in joint-custody situations should be left to the discretion of the decisionmaker. Nevada reviewers considered various factors concerning joint-custody situations. Among them were the following:

- Recent State case law;
- The unofficial State practice of permitting abatements for extended visitation (e.g., summers);
- Technical matters (e.g., the proper threshold for time-share arrangements);
- The appropriate ways to define time (e.g., clock hours, meals taken while in a parent's custody, and overnight stays); and
- The custodial arrangements incorporated into the basic child support award. [Nevada Report, supra, pp. 34 – 36.]

The committee found abatements to be inequitable. Thus, abatements were to be used as an exception to, rather than the rule for, shared-custody situations. The committee stated the following:

The big problem in any sort of explicit connection between child support on the one hand and time share or visitation on the other is that the determination of visitation becomes a surrogate arena for disputes over the level of child support. Any such possibility should be avoided to the degree possible, for the benefit of the children involved, and must be acknowledged as a probable cost of any statutory abatement provision. [Id. at pp. 36 – 37.]

There was a consensus that abatement must be supported by reasonably reliable data, showing an actual reduction in the primary custodian's expenses. Even then, however, the abatement should not exceed the actual expense amount. Because the committee felt that the overall data indicate that the reduction to the primary custodian's household is typically not appreciable, despite significant visitation periods with the NCP during which he may incur considerable expenditures, the conclusion was to avoid abatement. The committee also distinguished between a regular practice of weekly time-sharing and extended visitation (i.e., visitation for several weeks or months at a time). Recognizing the difference, several committee members favored abatement during extended visitation because these instances provide a set period of direct responsibility during which each parent would serve as the primary caregiver for the child. They also found a more demonstrable reduction in primary household expenses with extended visitation periods. [Id. at p. 37.] However, because individual cases may present facts warranting different treatment, reviewers recommended that the handling of visitation, for any period more than 14 consecutive days, be left to the discretion of decisionmakers. [Id. at pp. 37 – 38.]

While Nevada's committee report was by far the most detailed of those that ceded discretion to the child support decisionmaker, the conclusions of other State reviewers also are important to note. For example, Delaware reviewers recommended that in joint-custody situations where there is shared residence (i.e., an actual sharing of physical custody), each parent could retain half of the parent's

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respective child support obligation. [1994 Delaware Report, *supra* , at p. 11. " Shared residence " was defined roughly as an equal division of the child's time between his parents, either pursuant to a court order or agreement of the parties.] Connecticut followed the recommendation of its reviewers to make shared custody a discretionary deviation factor. That State's committee considered including a shared-custody adjustment in the guideline, but decided against it finding that "such adjustments should be based on the totality of circumstances in individual cases. To do so inevitably would be a more complex process than could be adequately incorporated into a rigid mathematical formula." [1991 Connecticut Guideline, *supra*, at p. 6.]

The Alabama guideline did not specifically address joint custody situations but instead allowed appropriate deviations on a case-by-case basis. [Recommendations for Revision of the Alabama Child Support Guidelines Rule 32 (August 1993), p. 15, hereafter referred to as the " Alabama Report. " Discretion was warranted because guidelines were to cover the typical rather than the exceptional custodial arrangement.] The committee's decision was to retain this approach. In reaching this end, the committee found that joint custody best expressed the legal condition in which responsibility was held by both of a child's parents. However, shared physical custody would address the time that a child spends with either parent. For the latter concept, reviewers concluded that the possibilities for child support are endless. However, the committee rejected the processes utilized by "[m]any States...[that have] complicated formulae based on threshold time periods deemed in excess of normal visitation or other determinative factors." Leaving this decision with the trier-of-fact was seen as the most realistic alternative. [*Id.* at p. 15.]

Two things seemed to motivate Missouri reviewers: the desire to avoid complexity and a belief that the custody issue exceeded the committee's scope. The State's review report notes that "[a]t risk of causing confusion, the Committee has included in the comments...an indication that where the NCP has significantly more physical custody of a child...than is normally observed in dissolution cases, an adjustment of the presumed child support amount may be appropriate." [Missouri Report, *supra*, at p. 6.]

However, reviewers were reluctant to set a blanket shared-custody procedure. They believed that a standard procedure might undermine the entire guideline approach by suggesting that a NCP should receive a reduction in support for any period spent with the child. Therefore, the decisionmaker in each case would make this determination.

This topic also engendered concern for Illinois reviewers. While they did not believe that decisionmakers were addressing the matter adequately, they felt that "if the Guidelines specify anything like the [expert] Report's recommendation, they may spawn even greater confusion." [Illinois Report, *supra*, at p. 29.] As a result, the committee recommended that the matter of support in joint custody cases be left to the discretion of the decisionmaker. [*Id.*]

Before moving to the next section, there is one final aspect of the joint custody arrangement that must be addressed. Alaska reviewers offered a recommendation for a child support calculation when a NCP fails to follow through with the ordered or agreed shared-custody scheme. The NCP may choose not to exercise his or her part of the ordered or agreed custody arrangement. However, reviewers found that this choice results both in higher expenses to the CP and less support. To rectify this inequity, the NCP's failure to visit or exercise custody as intended would be grounds for a modification of support. [Alaska Memo, *supra*, at pp. 3 – 5.] However, the committee would specifically prohibit a CP from benefiting if the parent had denied visitation to the other parent. [*Id.*]

Split Custody

The concept of split or divided custody was a focus for a number of State review teams. In the words of the Alaska review committee, split or divided custody represents the situation in which "one parent has sole or primary physical custody of one or more children of the relationship, and the other parent has sole or primary custody of one or more other children of the relationship." This situation also could apply to a third party (e.g., a grandparent or other legal guardian) who has custody of one or more of the parents' children, even though the parent or parents have retained physical custody of one or more children. For purposes of this discussion, however, reference will be made only to split custody by the parents and not arrangements with other caregivers. [Alaska Memo, *supra*, at p. 5; see also Alabama Report, *supra*, at p. 16.] States that dealt with this topic in their reviews considered the calculation of support in such cases and technical factors, such as the types of worksheets to be completed. First turning to the issue of support calculation in split-custody cases, the reviews of Illinois, Alabama, and Colorado are instructive.

Prior to the Illinois review, the guideline contained no mechanism for deciding support in split-custody cases. Reviewers recommended the calculation of separate support obligations for each household. The parent with the larger obligation would pay the difference between the two obligations. If there were any add-on expenses, these would be calculated separately and prorated between the parents in proportion to their incomes. [Illinois Report, *supra*, at pp. 28-29.]

In Alabama, the review team found a common split-custody approach—calculating a single support order for all of the children and dividing that sum by the number of children present in each home—to be inequitable and impractical. Instead, this committee recommended the preparation of offsetting guideline calculations and the payment of the difference between the two as the support amount. [Alabama Report, *supra*, at p. 16.]

Citing the increased frequency of split-custody cases and the often accompanying confusion, Colorado's team also rejected the joint computation/split allocation approach. However, the committee suggested a separate computation of support for each child. The amount per household would then be tallied, and the parent with the higher obligation would pay the difference to the other. [1991 Colorado Report, *supra*, at p. 21.]

The Ohio review addressed a practical matter related to split-custody cases: the way in which these cases are calculated on the guideline worksheet. Commenters suggested an amendment of the existing worksheet for split-custody information and calculations. By having all situations covered on one form, the parties would be able to use a single form for any scenario. Reviewers also were influenced by cost. The proposed worksheet would have doubled the length of each printed form, which would be an uneconomical

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outcome given the relatively small number of split-custody cases presented annually. The review team believed, and the legislature agreed, that it would be more fiscally responsible to develop a separate split-custody worksheet for use only in the relevant cases. [Ohio Report, *supra*, at p. 11.]

State Custody

Up to this point, the visitation/custody discussion has focused on arrangements between the child's parents. [The person with support responsibility may be a natural or adoptive parent. Some States also may include a legal guardian, if the duty of support follows from that position.] Another important matter was the determination of the child support owed to the State when a child is in State care because of abuse, neglect, delinquency, or other reasons.

Alaska's reviewers recommended total revision of the guideline provision on support in State custody cases. They found that the State's guideline only worked well for cases in which all of a family's children were in State custody; in those instances, the guideline would be applied, and the parents would pay the State the usual basic award. However, when the State had assumed control of one or more (but not all) of the children, application of the usual percentages produced inequities. To rectify this situation, the review team recommended that if all children go into State custody, the parents would owe a support obligation equal to their adjusted annual incomes, multiplied by a certain percentage. However, if the State were to take some (but not all) of a family's children, the obligation would be equal to the adjusted annual income, multiplied by the total number of children, multiplied by the number of children in State custody, and divided by the total number of children. The total only would apply to children placed with the State, children currently with the parent, or children in the parent's legal custody though located elsewhere and substantially supported by the parent. The parents' other children, such as those who have been adopted, would not be included in the total. [Alaska Memo, *supra*, at pp. 17 – 19.]

Changes also were proposed to North Dakota's guideline provisions on support in foster care cases. Reviewers decided to simplify the calculation of support in these cases. If parents live together and owe no duty of support to other children, their incomes would be combined and a joint support award calculated. If the parents live separately, each parent would be considered a separate obligor for whom support would be determined accordingly. Each child in foster care would be an obligee for child support purposes. Furthermore, if the calculated support amount exceeds the foster care cost, support would be reduced to the level of foster care reimbursement. [North Dakota Amendments, *supra*, at p. 35 (75-02-04.1-11).] Reviewers took this action based on comments and decided that the most appropriate response would be to treat all foster care cases as multiple family cases. [Comments to Proposed Administrative Code Amendments, *supra*, at p. 22.]

Guideline Handling of Multiple Family Cases

As discussed previously, the existence of multiple families has raised a host of issues related to the determination of child support under a system of guidelines. [For a discussion of multiple families as an income adjustment factor, see pp. 45 – 48, *supra*.] Some jurisdictions have decided to make support obligations to other dependents a way for a parent to reduce the income available for support. Other States either have incorporated such support obligations into the actual calculation of support for the child at issue or have left it to the discretion of the decisionmaker. The discussions of review teams regarding the latter two methods are addressed in the following sections.

Incorporating Multiple Families Into Guideline Formulae

Recognizing the frequency of multiple-family cases, Massachusetts reviewers recommended a change to that State's guideline. Prior to this amendment, the guideline only covered child support in simple cases. Support paid pursuant to an order secured by a prior family would be considered, whereas expenses for subsequent families would not be considered. If there were children from prior relationships who lacked established support orders or if subsequent children were involved, these cases would be left to the discretion of the child support decisionmaker. [Massachusetts Report, *supra*, at p. 11.]

The Massachusetts committee recommended a guideline revision to the section on subsequent family expenses. Under the new provision, the regular child support schedule presumptively would permit the obligor to retain sufficient funds to support any child in the current household. In a modification proceeding brought by the CP, this presumption could be rebutted by proof that application of the guideline would place the obligor's household at a lower standard of living than that available to the child at issue. If the obligor's argument were convincing, the decisionmaker could order a modified support amount that would put the two households at comparable standards of living. [*Id.* Standards of living were to be computed using the entire household income and size on the basis of the most recent poverty-level data.] Decisionmakers were provided the following formula to assist in the calculation of a child support order:

$$\frac{(IO \times WC) - (IC \times WO)}{WC + WO}$$

where IO represents the gross weekly income of the obligor's household, IC is the gross weekly income of the child's household, WO is the weekly income standard for the obligor's household, and WC is the weekly income standard for the child's household. [*Id.* at p. 12.]

Guidelines in North Dakota also were targeted for revision to better address multiple-family cases. Reviewers acknowledged that obligors have a duty to support all of their children. [North Dakota Comments, *supra*, at p. 7.] Hence, reviewers recommended an amendment of the statutory language that would read as follows:

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75-02-04.1-06.1. Determination of support amount in multiple family cases.

1.This section must be used to determine the child support amount presumed to be the correct amount of child support in all cases involving an obligor who:

- a.Owes duties of support payable to two or more obligees; or
- b.Owes a duty of support to at least one obligee and also owes a duty of support to a child living with the obligor who is not also the child of that obligee....

3.A hypothetical amount that reflects the cost of supporting children living with the obligor...and a hypothetical amount due to each obligee...must first be determined for the children living with the obligor and each obligee (whether or not the obligee is a party to the proceeding), assuming for purposes of that determination:

- a.The obligor has no support obligations except to the obligee in question; and
- b.The guidelines amount is not rebutted.

4.A hypothetical amount due to each obligee...must next be determined for each obligee who is a party to the proceeding, assuming for the purposes of that determination:

- a.The obligor's net income is reduced by:
 - (1)The amount of child support due to all other obligees...and
 - (2)The cost of supporting a child living with the obligor, who is not also the child of that obligee....
- b.The guidelines amount is not rebutted; and
- c.Any support amount otherwise determined to be less than one dollar is determined to be one dollar.

5.For each obligee before the court, the support obligation presumed to be the correct amount of child support is equal to one half of the total of the two amounts determined, with respect to that obligee, under sections 3 and 4.

6.The fact, if it is a fact, that the obligor is required to pay, or pays, a different amount than the hypothetical amounts determined under subsections 3 and 4 is not a basis for deviation from the procedure described in this section. [Proposed North Dakota Guidelines, supra, at pp. 16 – 18.]

Discretionary Treatment of Multiple Family Cases

Other State review teams felt that decisions regarding the setting of support in multiple-family cases were best left to the discretion of the decisionmaker. For example, Alabama reviewers found the multiple-family issue to be largely covered by case law. While reviewers did not feel responsible for recommending "a major doctrinal change...in the case law of [the] State," reviewers did suggest an amendment of the guideline comments regarding the treatment of second families. The proposal was to prohibit an income deduction for subsequent children but to permit the consideration of evidence regarding the amount of support paid for such children to rebut presumptive guideline awards in specific circumstances. [Alabama Report, supra , at p. 18.]

The reviewers in Arkansas added support on behalf of dependent children, including the amount a parent actually pays, to the list of factors that could precipitate an adjustment to the child support obligation. The support payments mentioned above did not have to be made pursuant to a court order to be used in this way. [In re Child Support Guidelines (petition to revise guidelines), Exhibit A (October 7, 1993), p. 7, hereafter referred to as the " Arkansas Guideline Petition. "] Furthermore, in Alaska the guideline review committee concluded that under normal circumstances the existence of subsequent families would not constitute a basis for varying from the guidelines. Whereas the child support award could be reduced if a trier-of-fact finds that a failure to reduce support would cause substantial hardship to the subsequent family, whenever substantial hardship is claimed, the decisionmaker would be permitted to consider income and potential income of both parents of that child in the obligor's home. [Alaska Memo, supra, at pp. 6 – 7.] In addition, the committee specifically stated that income derived from a second job, which was taken specifically to meet the needs of a subsequent family, could be excluded from income in modification cases brought by the CP. [Id .]

Guideline Amount Add-Ons and Deviations

Once a basic guideline support amount is computed, there are several possible adjustments to that amount that would result in an award higher or lower than the strict guideline-generated amount (i.e., a deviation). Among those items are child care costs, health insurance premiums, costs of uninsured health care, and costs of postsecondary education. While some jurisdictions included these same factors as income adjusters, other States chose to treat them as below-the-line factors.

Child Care Costs

At least two State review bodies considered child care expenses a "below-the-line" adjustment to child support. Several States addressed the circumstances that prompted the child care expense. For example, Delaware approved reviewers' recommendations that only the actual expenses incurred by a working CP should be considered. [1990 Delaware Report, supra, at p. 7.] Utah's review team discussed the validity of expenses and recommended statutory revisions that would require the verification of amounts paid for and sources of any such child care. [Utah Report, supra, at p. 7.] Furthermore, Colorado reviewers concluded that unemployed CPs only should be able to collect child care costs that are bona fide and actually work related (i.e., those incurred to enable that parent to find or receive training for a job). [1991 Colorado Report, supra , at p. 15.] Reviewers in Colorado reasoned that child care costs are "a direct cost to the custodial parent and quite often...substantial....In many cases the custodial parent could not afford to work without contribution from the noncustodial parent for these costs." [1991 Colorado Report, supra , at p. 14.] State law provided for the following:

- ·Work-related child care costs to be an add-on to the basic child support order;
- ·A cap on those costs, set at the typical licensed child care cost within the State;
- ·The Federal income tax credit for child care to be subtracted from the actual cost in order to arrive at the net figure; and
- ·The division of this cost between the parents in proportion to their adjusted gross incomes. [Id .]

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The committee believed that this law offered "an uncomplicated method of equitably distributing the direct cost of work-related child care costs." [*Id.* at p. 15.] Therefore, they recommended no change to the treatment of this aspect of support.

The Nevada report indicated that the current guideline did not presumptively include child care expenses. Instead, the law treated these costs as a specific factor to be resolved by the decisionmaker. [*Nevada Report*, *supra*, at p. 20.] The committee agreed that "child care costs [were] not adequately reflected in the current statutory framework, especially not in cases where both parents are working and at least one child is not yet of school age." [*Id.* at p. 21.] Experience showed that the State's decisionmakers seldom applied the child care cost deviation factor.

Reviewers noted a possible response: incorporating some amount into the guideline for child care costs so that it would be included to an extent in each order. Citing fairness, however, reviewers thought it "best not to presume the existence of such expenses...since in some cases the expense will be zero, while in others it might be considerable. The best approach would be to leave child care factors outside of the formula and add them to the support obligation only when the facts of the case so warrant." [*Id.* at p. 22.] Accordingly, the committee offered modification of the guideline to reflect this notion.

Medical Insurance Premiums

Medical insurance premiums also were accorded below-the-line treatment by some jurisdictions. For example, the review teams in both Idaho and Ohio recommended a guideline change; instead of constituting an income deduction for the paying parent, premium payments would be add-ons to the support award. [*Idaho Minutes*, *supra*, at pp. 13 – 14; *Ohio Report*, *supra*, at p. 9.] Per the Ohio team, this change would be a more equitable way to address the expense. [*Ohio Report*, *supra*, at p. 10.]

In 1993 Alabama reviewers were reluctant to make substantial changes regarding medical care costs and health insurance because of the anticipated changes at the Federal level. Nevertheless, they recommended an add-on approach to take the place of the adjustment-to-income method currently in use. "[T]he present method of allowing only a deduction from gross income for the cost of health insurance is not realistic when compared to the effect it has on the overall child support obligation." [*Alabama Report*, *supra*, at p. 8.]

Health insurance was treated differently in Missouri. Reviewers recommended restructuring the guideline worksheet so that the presumptive child support amount would be raised automatically when the CP paid the insurance premiums. However, the NCP would receive a credit, thereby lowering the basic support amount, if the NCP paid the premium. The addition or reduction of support would be in the amount of the parent's pro rata share of the cost. [*Missouri Report*, *supra*, at p. 4.]

Florida's legislature changed its guideline after the State's review. Under the new law, a parent could deduct all health insurance premiums from gross income, except those attributable to the child at issue. The premium for the instant child would be an add-on to the support amount. [*Laws of Florida 93-208*(8).]

Extraordinary Medical Expenses

Treatment of extraordinary medical expenses was the subject of a great deal of discussion by review teams. Such expenses typically were relegated to a below-the-line position. Review materials focus on the following:

- The specific level of expenses to be considered extraordinary;
- The rationale for add-on treatment;
- The scheme for allocating these expenses between parents; and
- How payments to providers and/or reimbursements are to be made.

Extraordinary was defined either directly or indirectly by several review committees. Alaska reviewers proposed a provision regarding the treatment of a child's reasonable health care expenses which are beyond the coverage of insurance. [*Alaska Memo*, *supra*, at p. 13.] In Missouri the review team defined extraordinary medical costs as expenses associated with a child's chronic health care needs. That committee offered \$100 per illness per child as the level to distinguish chronic from routine care costs. [*Missouri Report*, *supra*, at pp. 4 – 5.] In contrast, Alabama reviewers recognized that the guideline schedule included some medical expenses considered routine, such as nonprescription medications and well visits to doctors. These expenses were estimated at \$100 per person annually. Anything above that amount would be considered extraordinary. [*Ohio Report*, *supra*, at p. 9.]

A few State review materials indicated the rationale for below-the-line treatment of extraordinary medical expenses. For example, according to Ohio's expert, the guideline table provided for ordinary and necessary uninsured medical costs of \$100 per year per child; therefore, some provision had to be made, apart from the guideline amount, for expenses which exceeded this level. [*Id.*] Utah's rationale for below-the-line treatment was to reflect actual costs for the family in question; reviewers felt that this approach would not undermine the underlying goals of guidelines. [*Utah Report*, *supra*, at p. 6.]

Reviews resulted in two alternative methods of allocating of these below-the-line expenses between parents: (1) States that opted for an even distribution of the costs between parents (e.g., Alaska and Utah) [*Alaska Memo*, *supra*, at pp. 14 – 15; *Utah Report*, *supra*, at p. 6.] and (2) States that decided extraordinary medical expenses should be attributed to the parents in proportion to their respective incomes (e.g., Delaware, Idaho, and Missouri). [*1990 Delaware Report*, *supra*, at pp. 7 – 8; *Idaho Report*, *supra*, at p. 14; *Missouri Report*, *supra*, at p. 4.]

Some jurisdictions' reviews made recommendations for payment of these expenses. Per the Idaho materials, extraordinary expenses are to "be paid directly between the parties." [*Idaho Report*, *supra*, at p. 14.] However, Washington's legislature recommended that

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CPs initially pay extraordinary expenses and then seek reimbursement from the NCP for the appropriate share. If the NCP failed to offer reimbursement, the recommendation followed that the CP could institute formal legal proceedings. However, the Governor vetoed this recommendation as unreasonably harsh. [Washington Veto Message, *supra* , at pp. 57 – 58.]

Postsecondary Education

While postsecondary education received a great deal of attention by guideline review teams, only one State review report seems to suggest how such expenses should be incorporated into the support calculation process. Most reviews appear to raise different aspects of the postsecondary education issue. For example, Illinois reviewers rejected a blanket requirement that parents assume postsecondary expenses, citing the complex issues associated with such cases (e.g., who would receive the money and how part-time students should be treated). Instead, the matter was left entirely to the decisionmaker's discretion. [Illinois Report, *supra*, at p. 26.]

In Ohio reviewers instituted a presumptive ceiling on the payment of higher education costs at age 18. The review committee viewed such decisions to be not only within the decisionmaker's discretion but also beyond the scope of the child support review committee's charge. [Ohio Report, *supra*, at p. 9.]

Materials from a number of other States dealt with issues that arise once the jurisdiction has decided to permit some level of postsecondary education costs. For example, Colorado reviewers recommended that orders for postsecondary education expenses include medical insurance and extend through age 23. Although the State's legislature set the termination age at age 21, it approved the rest of the proposal. It also instituted the terms of an earlier statute, making such expenses a below-the-line factor applicable only to the portion of the award attributable to the child in college.

If there were an award for two children, one of whom was in college, the adjustment would apply only to the difference between the guideline amount for a single child and the actual expense amount. [1991 Colorado Report, *supra* , at pp. 3 – 4.] The Washington State legislature supported even more limited postsecondary education treatment by proposing an absolute ceiling on such expenses equal to the level of tuition charged to resident students by the Washington State university system. This recommendation was vetoed as unnecessarily infringing upon the discretion of child support decisionmakers and the educational options available to the State's children. [Washington Veto Message, *supra*, at p. 58.] Alabama reviewers recommended that "[e]xpenses of college education incurred prior to a child's reaching the age of majority" would be considered as an appropriate reason for deviating from the support amount produced by the guideline. [Alabama Report, *supra*, at p. 6.]

Related Issues

Up to this point, this report has focused on issues specifically related to the determination of child support. These were general topics that shaped States' choices of guideline model, determined the income deemed available for support purposes, outlined the calculation of a basic support award, and examined some of the typical factors that would alter that basic support award. Guideline reviews in many States broached issues beyond those associated with the determination of an award amount. This report concludes with a brief discussion of these matters.

Obligee Accountability

Guideline reviewers frequently heard obligor assertions that money paid as child support does not always go to meet the child's needs. Accordingly, some obligors have sought to have State guidelines formally incorporate the notion of CP accountability; they want some level of assurance that child support is used, exclusively or primarily, for the benefit of the children. The issue of accountability led to interesting debate and recommendations by review teams.

The materials from three States—Colorado, Nevada, and Utah—point to discussions of the topic. Colorado and Nevada reviewers rejected the addition of CP accountability to guidelines. Nevada reviewers stated the following:

There are some attractions to such a proposal. Precise accountings could show whether support being paid is excessive or inadequate in a particular case, whether or not child support is being utilized as a tax-free "hidden alimony," and might provide peace of mind to a large number of Obligor who would then be more willing to pay the support ordered. On the other hand, the available data shows that a child's standard of living is inextricably intertwined with that of the child's primary custodian, so it may be impossible to show how the custodian's improved living standard is not, in fact, that of the child. Further, anecdotal accounts indicate that there is a significant "control" issue present in some of these cases, and a provision for accounting would be a further means for an Obligor to control by audit the actions of the Recipient. Additionally, a large record-keeping burden would be imposed on the Recipient. [Nevada Report, *supra*, at p. 46.]

After weighing the options, a closely divided Nevada committee rejected the idea. In their opinion, the institution of an accounting requirement would open a "Pandora's Box." Any potential benefits of the accounting concept would be easily outweighed by "abusive litigation in the form of accounting requests." [*Id.* at p. 47.]

Colorado's reviewers also decided to forego the adoption of an accounting provision for the child support guidelines. They felt that the problems associated with accounting surpassed the likely benefits to be achieved in a small category of cases. In support of this conclusion, the committee noted the following:

Already crowded dockets would be further burdened by petitions requesting accountability and by the need for review hearings after the accounting had been completed. Custodial parents would face the additional task of trying to account for the children's share of expenses such as housing, utilities, and transportation, which cannot be easily separated from that portion spent on others in the

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household. Problems also would arise after an accounting had been ordered. What should be the penalty imposed on a custodial parent if he or she fails to provide complete accounting or refuses to do it at all? What if the accounting shows that expenditures consistently do not add up to the total amount of support dictated by the guidelines? What if the expenditures exceed this figure? Are these grounds for an upward or downward modification of the support order? [1991 Colorado Report, *supra*, at pp. 23 – 24.] Without explanation, Utah reviewers favored the institution of some mechanism for encouraging CP accountability for their child-related expenditures. [Utah Report, *supra*, at p. 4.] It is unclear whether this recommendation was ever acted upon by the State legislature.

Guidelines and Award Modification

The role of child support guidelines in the modification of awards also was a subject considered by State review committees. Some jurisdictions considered whether and how guidelines could be used to modify a support order. The review materials indicate, following their reviews, that some States more clearly articulated the connection between guidelines and modification criteria.

Prior to its 1994 review, South Carolina employed a substantial change of circumstance standard for the modification of child support orders. It appears that the State's expert recommended that substantial change be interpreted in the context of the guidelines. Thus, rather than a subjective standard, the suggestion was to permit modification when application of the guideline would produce an award that differs at least 10 percent from the existing award. [South Carolina Expert Report, *supra*, at pp. 64 – 66.] The expert report seems to use the terms modification and adjustment interchangeably. The expert refers to the Family Support Act's periodic review and adjustment requirement for child support orders, as well as to the permissible establishment of quantitative standards for the measurement of adjustments. However, it is not clear whether the expert's recommendations are made only with respect to adjustments or for traditional modifications. The State's 1994 guideline does not indicate whether this recommendation was adopted. [Nebraska did amend its guideline in 1991 to create a rebuttable presumption of changed circumstances whenever the guideline varied at least 10 percent from the current support award. Nebraska Letter, *supra*, at p. 1.]

Materials submitted by Tennessee also show that reviewers intended guidelines to be used to modify child support. The team concluded that a variance between current support and the guideline calculation of at least 15 percent would justify modification of an order. [This threshold would apply to all cases with current monthly support orders of at least \$100. It also would apply unless a downward modification were sought by an obligor who was willfully or voluntarily unemployed or underemployed. Tennessee Rulemaking Hearing Rules, *supra*, at p. 2.]

Delaware reviewers spent a great deal of time on the modification issue. That State's 1990 review report recommended that the modification threshold be set at a specific dollar amount (\$25 per month) rather than any percentage of the award. They reasoned that "[t]his language will avoid the problem of whether the changes in the formula are sufficient in and of themselves to warrant a modification of the order and the issuance of a modified wage attachment." [1990 Delaware Report, *supra*, at p. 9.] These reviewers also examined modification in light of second family expenses. They rejected an obligor's offensive use of such new expenses to decrease an existing support obligation, absent unusual circumstances, such as an unexpected and serious illness of a second family member. [*Id.* at pp. 9 – 10.]

In 1994 Delaware reviewers made additional modification recommendations. They suggested that modification not be allowed within 2½ years of the last order, except where the moving party can prove that guideline application would produce an increase or decrease of at least 10 percent. Furthermore, reviewers noted that a decisionmaker should not be restricted by the moving party's upward or downward modification request, but the trier-of-fact would be expected to increase or decrease the order, as appropriate. [1994 Delaware Report, *supra*, at pp. 11 – 12.]

Alaska's review committee also considered modification in light of other family obligations and decided to permit support of a subsequent family as a defense to a motion for a support increase. [Alaska Memo, *supra*, at p. 8.] Reviewers also recommended that health insurance premiums could be a modification factor. Therefore, premium cost not included in the existing order could be properly attributed to the requisite 15-percent material change in circumstances that would warrant modification. [*Id.* at pp. 14 – 15.]

West Virginia reviewers found that a revision of the guideline formula, without more, would not be a sufficient ground for modification. Instead, a party requesting modification would have to show the following:

- There had been a change of circumstances, not contemplated by either party;
- The child's welfare required the requested modification; and
- Payments under the existing order were lower than 85 percent or higher than 115 percent of the amount under the revised guideline schedule. [The third prong of the test would be omitted if there had been no guideline modification since the entry of the order in question. West Virginia Proposed Guidelines, *supra*, at p. 10.]

Both Arkansas and Massachusetts recommended the deletion of statutory language prohibiting modifications based on guideline formula revisions. The Massachusetts guideline provided that "[t]he guidelines, in and of themselves, do not constitute significant change of circumstances to warrant a modification." [Massachusetts Report, *supra*, at p. 16.] That language was "intended to reinforce the traditional rule that required parties to show a substantial change in the factual circumstances of the case before a modification of the support order will be granted." [*Id.* (emphasis added).] Reviewers found that guidelines were presumed to provide appropriate child support in all modification cases. Furthermore, the changes prompted by periodic review and adjustment of child support orders required a departure from the sentiment that guidelines were insufficient to measure change of circumstances. [*Id.*]

Arkansas reviewers noted that, when guidelines were adopted, there was concern that they would trigger "massive petitions for modification." Because this anticipated result never materialized due to changes in Federal regulations, the committee reevaluated the

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provision. The conclusion was that guidelines were to be used to both establish and modify awards. [Arkansas Guideline Petition (committee recommendations), *supra* , at pp. 2 – 3.]

At least two State reviews also investigated the use of pro se modification processes. In Alaska the reviewers recommended the development of a simple modification process for pro se litigants. [Alaska Memo, *supra* , at p. 16.] Nevada reviewers ultimately concluded that the matter was beyond their authority. Notwithstanding this decision, they reached a consensus that the implementation of low- or no-cost pro se modification procedures should be attempted. [Nevada Report, *supra* , at p. 41.]

Automatic Award Adjustments

Several States considered whether child support awards should contain provisions for automatic adjustments due to cost-of-living increases and/or guideline changes. Automatic support adjustments based on cost-of-living changes were considered by Nevada reviewers. "The idea [was] to keep parties out of court longer by making awards reflect changing economic conditions so as to maintain the same amount of relative support irrespective of inflation....The goal [was] to save money for both the litigants and the system that they would otherwise have to expend to get a modification." [*Id.* at p. 42.] The committee was split between those favoring an automatic adjustment process and those opting for a pro se procedure. While they all agreed that some form of a streamlined adjustment procedure was necessary to incorporate cost-of-living changes, they could not agree on a process. Members preferred to pass the matter to the family courts for a decision regarding the propriety of legislative direction to resolve the impasse. [*Id.* at p. 43.]

It appears that the Alaska court had developed an order form that encouraged automatic cost-of-living increases. However, reviewers recommended that the references to automatic cost-of-living increases be deleted from the orders because such increases had not been envisioned by the State rule. [Alaska Memo, *supra* , at p. 20.] It appears the guideline authority approved this recommendation.

The Connecticut committee's 1991 report indicated that automatic adjustment clauses were not included in the guidelines due to the complexity of such provisions. According to reviewers, the issue would be best left to the discretion of support decisionmakers. [1991 Connecticut Report, *supra* , at p. 7.]

The Utah committee recommended the addition of statutory language to allow stipulations for the automatic adjustment of orders under certain circumstances. [Utah Report, *supra* , at p. 7.] However, it did not appear that the committee authorized a blanket approval of automatic adjustments.

Retroactive Child Support

Retroactive child support is an engaging issue. It may be used in separation or out-of-wedlock birth cases, where the CP or the State seeks reimbursement for some of the expenses incurred on behalf of the child before the effective date of the child support order. Another application of retroactive support is in cases where the obligor seeks to delay proceedings interminably to avoid the child support obligation for as long as possible. When this occurs, the decisionmaker has the ability to order an award back to the date of the petition's filing or to some other reasonable time, thereby minimizing the negative fiscal impact of adversarial tactics on the child.

Not many States analyzed retroactive child support in their guideline reviews. However, there was some noteworthy discussion in the reports of those States that did. The retroactivity of temporary child support orders was the issue in Kentucky, whose 1991 reviewers recommended that temporary child support orders should be retroactive to the filing of the appropriate motion. They found that attorneys and judges generally did not follow the current law. Thus, the proposed retroactive support amendment, coupled with an amendment regarding ex parte temporary orders, would "provide for the early commencement of temporary child support while affording the adverse party acceptable notice and opportunity to be heard." [First Report of the Kentucky Child Support Guidelines Commission (September 10, 1991), pp. 4 – 5, hereafter referred to as the " 1991 Kentucky Report. "] It appears that this recommendation was not enacted because it was offered again by 1993 reviewers. [Second Report of the Kentucky Child Support Guidelines Commission (November 15, 1993), pp. 3 – 4, hereafter referred to as the " 1993 Kentucky Report. "] Kentucky's commission also considered the possibility of allowing child support to be obtained retroactively through age 19, as long as the child was in high school at the time the legislation was passed. However, members appear to have rejected this proposal because it is not included among the committee's final recommendations for that year's review. [Kentucky Child Support Guidelines Review Commission Minutes (July 21, 1993), p. 1; see generally 1993 Kentucky Report.] Following Tennessee's review, a new provision was added to that State's guideline. Initial support orders had to include retroactive child support from the child's date of birth, the date of the parent's separation, or the date of abandonment, whichever is appropriate. That monthly retroactive amount would be calculated according to the guidelines, using the obligor's average income over the previous 2 years as the support basis, unless rebutted. The obligor would have a reasonable monthly amount added to the ongoing support order so that the arrears, related to the retroactive amount, could be reduced in a timely manner. [Tennessee Rulemaking Hearing Rules, *supra* , at p. 6.] Alaska's reviewers recommended amendment of the rule regarding the retroactive modification of child support orders. They recognized the Federal prohibition on retroactive modification of awards but noted that Federal law would permit modification back to the date a motion for modification was served. The sentiment was that the State rule reflected the Federal legislation but had not allowed such retroactive award setting in administrative hearings. Thus, they proposed an amendment that also would apply to the administrative process. [Alaska Memo, *supra* , at pp. 10 – 11.]

Spousal Support

While most review topics specifically dealt with the calculation of child support, some teams also considered related matters such as spousal support. Colorado's 1991 review team deliberated the propriety of changing the child support calculation scheme to prevent alimony from being deducted from the income of the obligor and added to the obligee's income prior to the calculation of support.

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This was envisioned by some as a way to "symbolically place the child first in the allocation of parental income and...simplify the process for the court in allocating payments between child support and maintenance." [1991 Colorado Report, *supra*, at p. 15.] Alternatively, opponents of the change offered that it would "absolutely reduce the income available to pay child support, and it would introduce a perception of unfairness if that reduction in income were not reflected in the calculation. [It also] would...reduce benefits available to families by tax planning the allocation of payments between maintenance and child support." [*Id.* at p. 16.] Based on their discussion, the committee rejected the change.

In Connecticut alimony payments to the other parent of the subject child would not be an income adjustment. Reviewers felt that child support should be established "either before the award of alimony or in conjunction with a coordinated plan for total family support, subject to the applicable deviation criterion." [1994 Connecticut Guidelines, *supra*, at p. 10.] The review team purposely declined to require the obligated parent to show that these alimony amounts were actually paid. There is a presumption that payment is made "in deference to the sanctity of a court order and in recognition that unpaid orders remain subject to enforcement and future collection." [*Id.*] However, the guideline commentary did provide that whenever a trier-of-fact finds that payment is not being made, she has discretion to disallow the income deduction. Reliance on such discretion provides greater assurance that the family at issue would not be deprived of funds that the obligor has chosen to retain. Another reason for leaving the treatment of alimony to the discretion of the decisionmaker is that the review commission's mandate was limited to an analysis of child support and not spousal support. [*Id.*]

Commenters in North Dakota attempted to have alimony treated in the same manner as child support for the parent's other children. However, reviewers declined to accord these obligations similar status, reasoning that such deductions were "policy determination[s]....It reflects a consideration of the significance of the obligor's responsibility to support all of the obligor's children. That support responsibility is more significant than the responsibility to a former spouse, and more significant than the responsibility to repay student loan debts." [Proposed North Dakota Guidelines, *supra*, at p. 7 (emphasis in original).]

The South Carolina team made an interesting distinction between the handling of alimony for the obligee and alimony for a different former spouse. [South Carolina did not send materials outlining the review that preceded the issuance of its 1990 guideline. This alimony distinction appears in the 1990 guidelines, but it is unclear from the submitted materials whether it is new to that version of the guideline or whether it existed previously.] Any existing child support order or alimony for a different spouse was to be protected; therefore, alimony actually paid to a former spouse other than the obligee constituted an adjustment to gross income. [South Carolina Guidelines Handbook (May 1990), p. 5, hereafter referred to as the " 1990 South Carolina Guidelines. "] An alimony award between the parties is handled differently: such a payment would be deducted from the payor's gross income and added to the recipient's gross income. [Lump sum rehabilitative or reimbursement alimony may be considered as a possible ground for deviation. *Id.* at pp. 4 – 5.] The committee supported this action by stating the following: Each parent's proportional share of total combined monthly income changes with the introduction of any alimony award between the parties. [Thus, equity requires] a sharing of the Total Combined Monthly Child Support Obligation based upon each parent's actual percentage share of the total combined monthly income, taking into consideration the financial impact of any alimony award between them rather than the parent's share of the total combined monthly income as it existed before any alimony award. [*Id.* at p. 4.]

Support Enforcement

Most State review materials reflect that the teams typically addressed matters specifically related to the establishment or modification of support orders. Few State reviews touched on such far-reaching matters as the enforcement of support. However, deliberations about enforcement (more specifically, income withholding) did appear in two State reports. Idaho reviewers debated whether income withholding should be formally incorporated into the State child support guideline. They concluded that at the time income withholding was adequately covered by State statute; therefore, it did not need to be added to the guideline. [Idaho Minutes, *supra*, at p. 5.]

In addition to guideline-related discussion, Ohio's team indicated that they also "expressed concern over the confusion caused by the wide variety of different income withholding orders in use by courts and [State child support agencies]." [Ohio Report, *supra*, at p. 4.] To eliminate this confusion, the committee recommended that the State supreme court draft a uniform income withholding order for use by the courts and administrative tribunals. [*Id.*]

Arrears

Another related issue that appeared in a small number of State review materials is the treatment of child support arrears. The materials from two States—Idaho and Connecticut—mentioned the topic. Idaho's discussion of arrears was very brief. One CP, who was a member of the review committee, suggested the system should not ask an NCP to delay proceedings for an interminable period, depriving the child of ongoing support, and also be responsible only for the payment of arrearages. In support of this assertion, the reviewer cited a personal situation in which a modification hearing was delayed for 2 years. The committee "explained...that this [was] the method of handling these cases, and...that theoretically the custodial parent might have to borrow money to support the child until the child support was increased so that the lump sum award for arrearages [would] not necessarily [be] a windfall to that parent." [Idaho Minutes, *supra*, at p. 3.]

The 1991 Connecticut reviewers considered the determination of arrearage amounts. However, they decided that the matter was not within the scope of their function and accordingly took no action. [1991 Connecticut Report, *supra*, at p. 7.] By 1994 Connecticut's statute required the development of guidelines for arrearages, based on the obligor's ability to pay. [1994 Connecticut Report, *supra*, at p. xi. The committee interpreted this provision to apply only to periodic arrearage payments; thus, lump sum arrearage payments were not incorporated into the guidelines. Such payments were left to the discretion of the decisionmaker.] Reviewers cited six criteria for the arrearage guideline:

- Any arrearage guidelines had to "be fairly simple to understand and apply[.]" [*Id.*]

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- Arrearage payments should be based on a percentage of the current child support order. Reviewers selected 20 percent of the current order as reasonable for most cases. In cases without current orders, an arrearage amount would be imputed based on the regular child support guidelines.
- The team recognized that basing the arrearage determination on the current support order inherently implicates the obligor's ability to pay. However, they found that there should be a more in depth analysis of obligor ability to pay. For example, the arrearage payment scheme, combined with the periodic ongoing support award, should not exceed 55 percent of an obligor's net income. The obligor must be permitted to retain at least \$145 per week, the minimum self-support reserve amount. If the obligor is considered "low income," he should be ordered to pay \$5 per week for the arrearage, as long as that payment does not take his weekly income below the \$145 self-support reserve amount.
- Recognizing that arrears may be owed to both the State and the family, reviewers decided that "the bulk of any arrearage payments should be paid to the family." [Id . at p. xii.] In keeping with this sentiment, the State could retain only \$5 of any arrearage, if monies were owed to both the State and the family.
- The committee decided that there should be special consideration given in cases of obligors who live with the child when the arrearage order is entered. Thus, in such cases, the \$5 minimum would be assessed to any obligor whose income was less than 250 percent of the poverty level for the obligor's household size. Alternatively, if the obligor's income exceeded that amount, the guidelines would require a payment of 20 percent of the imputed support amount.
- When an obligor has been relieved of the support obligation because all children have reached the age of majority, the arrearage payment amount may be increased to 50 percent of the imputed current support obligation. [Id .]