

# SETTING REALISTIC AND ACCURATE CHILD SUPPORT ORDERS

## Child Support Policy Fact Sheet

### Table of Contents

<b>What the Research Shows .....</b>	<b>2</b>
<b>What Isn't Working.....</b>	<b>3</b>
<b>Why It Matters to Families.....</b>	<b>5</b>
<b>Why It Matters to States.....</b>	<b>5</b>
<b>A Better Way to Do Business.....</b>	<b>6</b>
<b>1. Establishing Child Support Orders.....</b>	<b>8</b>
a. Low-Income Protections.....	9
b. Income Imputation.....	12
<b>2. Modifying Child Support Orders .....</b>	<b>15</b>
a. Orders Reduced During Unemployment .....	16
b. Orders Reduced During Incapacitation.....	18
c. Orders Reduced During Incarceration.....	20
<b>Endnotes.....</b>	<b>25</b>

## Introduction

Child support is an important source of income for children, but many noncustodial fathers have a limited ability to pay. Unrealistically high child support orders based on faulty assumptions about earning capacity do not produce more income for children; they produce uncollectible debt. Orders set beyond the ability of noncustodial fathers to pay them are counterproductive, resulting in less consistent payments, decreased labor force participation, increased debt, and strained family relationships. Unrealistic orders increase the compliance gap in child support collection rates, potentially reducing performance incentive funds and reducing public confidence in the effectiveness of the program.<sup>1</sup>

This fact sheet is part of the **Centering Child Well-Being in Child Support Policy** series produced by Ascend at the Aspen Institute and Good+Foundation to highlight family-centered child support policies. This fact sheet offers examples of effective state policies for setting and changing child support orders when parents have low incomes.

## What the Research Shows

The best predictor of compliance with a child support order is the noncustodial father's monthly income.<sup>2</sup> Lower-earning fathers pay less child support, pay less regularly and have lower rates of compliance.<sup>3</sup> For example, noncustodial parents in Maryland who paid all of their monthly child support earned \$42,000 on average, while parents who did not pay any of their support earned \$7,000.<sup>4</sup> Similarly, the payment compliance rate in Wisconsin was 99 percent for noncustodial parents with earnings of at least \$40,000, but only 30 percent for those earning less than \$10,000.<sup>5</sup>

Another strong predictor is the amount of the support order compared to a noncustodial father's income, especially for those with lower incomes.<sup>6</sup> The most recent research shows that compliance with the order and regularity of payments decline as the obligation amount increases at all earnings levels, but especially for lower-earning fathers. The greatest decline in payment regularity occurs once the order reaches 30 percent of earnings. When compliance declines, arrears accumulate.<sup>7</sup>

For fathers at various earnings levels, payment amounts increase until the order reaches 30 percent of the father's earnings, then stop increasing or decline when the order exceeds 30 percent. For lower-earning fathers, amounts paid do not increase when the order increases. In other words, for lower-earning fathers, higher orders do not result in increased payments for children. Those fathers who have an order but no reported earnings have very low payments regardless of the order amount.<sup>8</sup>

In some states, fathers with the lowest incomes are expected to pay a disproportionate share of their income toward child support.<sup>9</sup> A University of Maryland study found that noncustodial parents in the state who earned a \$50,000 median income were ordered to pay 14 percent of their earnings as child support, while parents earning a \$6,000 median income were ordered to pay 61 percent of their earnings.<sup>10</sup>

In about half of cases involving noncustodial fathers with low incomes, support orders are based on “potential” income, typically full-time minimum wages, rather than on evidence of actual income.<sup>11</sup> This potential income is “imputed” or estimated for fathers.<sup>12</sup> Fathers with more complicated personal circumstances – such as a young age, no recent work history, an incarceration history, housing instability, or more than one family to support – are more likely to have imputed orders.<sup>13</sup>

Payments and compliance rates for imputed orders, those based on estimated income, are substantially lower than those based on actual income. Low-earning parents with imputed orders in Maryland actually earned 72 percent less than the imputed amount, and the collection rate was 10 percentage points lower than orders based on actual income.<sup>14</sup> Similarly, a California study found that parents with minimum wage or imputed income orders had lower compliance and lower payments.<sup>15</sup>

## What Isn’t Working

This is a time of transition as states implement federal child support rules adopted in 2016 and update their child support guidelines and procedures for setting child support orders. Several of the 2016 rule provisions are outlined in the following sections. In addition, states are reassessing their child support processes in light of their experiences and innovations during the COVID-19 pandemic. We want to acknowledge the ongoing efforts of policymakers, judges, and administrators to improve child support establishment and modification processes.

Both parents have a responsibility to support their children, and children have a legal right to a share of their parents’ income. All states allow courts or the child support agency to impute potential income in determining order amounts when they cannot identify full-time wages when noncustodial fathers are unemployed, work part-time, or fail to participate in the child support process.<sup>16</sup> Imputation policies assume that noncustodial fathers with no or low reported earnings could earn more, but are avoiding full-time work or failing to disclose informal earnings.

Minimum wage orders exaggerate earnings.<sup>17</sup> Researchers have found that low or no reported income is a reasonable predictor of economic hardship. For example, half of fathers with no reported earnings receive Supplemental Nutrition Assistance Insurance (SNAP) benefits.<sup>18</sup> Because minimum wage orders do not accurately reflect noncustodial fathers' ability to pay, they fail to produce more support for children. Instead, imputed orders leave many fathers with insufficient resources to meet their own basic needs for food, housing, transportation, health care, and other subsistence needs.<sup>19</sup> In some states, the amount of income imputed has the effect of bypassing self-support adjustments.<sup>20</sup>

Before the 2016 rules were issued, no evidentiary basis was required to establish a default minimum wage order in almost half of states.<sup>21</sup> Although half of Maryland fathers with minimum wage orders had earnings records in the year before order establishment, this evidence was not used to determine the orders.<sup>22</sup> By contrast, income is rarely imputed as the basis for support orders when fathers have higher earnings. In those cases, there must be specific evidence that a noncustodial father is intentionally under-employed to avoid child support payments or a discrepancy between the father's reported income and lifestyle that implies that a father is hiding income or assets.

Even though state policies and practices are changing, many low-earning noncustodial fathers continue to struggle with paying minimum wage orders that exceed their ability to pay them. Many states add fees, interest, and other costs to the orders. A few states and counties add childbirth costs covered by Medicaid or retroactive support obligations for past periods, pushing noncustodial fathers deeply into debt as soon as the orders are issued.<sup>23</sup>

A support order also can become out of line with a noncustodial father's income during periods of reduced work hours, job loss, illness, or incarceration. When fathers do not earn sufficient income to pay their support obligations, child support arrears build. Courts may not modify orders for past periods to reflect decreased earnings because a federal law called the Bradley amendment prohibits courts from retroactively modifying child support orders (discussed further in section 2).<sup>24</sup>

Timely order modification is critical to prospectively "stopping the clock" on the accumulation of arrears when a support order does not reflect current earnings. However, state processes to change a child support order are often cumbersome and too slow to prevent the buildup of child support debt. In addition, parents are not always aware that they need to request a review and adjustment of their orders when they lose a job or other circumstances change. During the height of the pandemic, court closures in some states temporarily shut down or delayed order modifications, meaning that arrears continued to

accrue without any opportunity to readjust orders to reflect changed financial circumstances.

Until the 2016 federal rules prohibited the policy, about a dozen states treated incarcerated fathers as “voluntarily unemployed” and legally prohibited them from obtaining a reduction of their order amount while in prison despite their inability to earn income. These states are in the process of changing their policies. Until states reduce existing orders, however, fathers will continue to leave prison owing huge debts that accumulated when they could not earn—another collateral consequence of incarceration.<sup>25</sup>

## Why It Matters to Families

Fathers with limited earnings and barriers to employment struggle to support themselves and pay their child support obligations. Most noncustodial fathers work, but the jobs available to fathers with a limited education pay minimum wages, have hours that fluctuate or are seasonal, and are part time. Most fathers also pay informal or in-kind support directly to their families, especially when the separation is more recent.<sup>26</sup>

The support orders for these fathers often do not align with their actual financial circumstances.<sup>27</sup> Although custodial families need the support, the reality is that noncustodial fathers cannot comply with support orders that exceed their ability to pay. Thirty percent of custodial parents reported to the Census Bureau that they did not pursue a child support order because the other parent could not afford to pay.<sup>28</sup> Faced with support obligations they cannot comply with, some fathers can only pay a portion. Others work in the informal economy where it is difficult to track income and collect payments. Sometimes high orders and unmanageable debt can pressure noncustodial fathers to generate income illegally.<sup>29</sup>

Unpaid child support debt can lead to harsh legal consequences, including incarceration or driver's license suspension.<sup>30</sup> Unmanageable child support debt can decrease labor force participation, earnings, credit scores, and housing stability for noncustodial fathers. It can decrease child support payments, increase conflict between the parents, reduce father-child contact, and increase paternal depression and alcohol use, which can compromise parenting. Shame and despair can drive fathers away from their children.<sup>31</sup>

## Why It Matters to States

Unrealistically high child support orders based on faulty assumptions about earning capacity do not produce more income for children; they produce uncollectible debt. They increase the compliance gap in child support

collection rates, potentially reducing performance incentive funds and reducing public confidence in the effectiveness of the program.

When states do not adopt policies that ensure accurate and equitable child support orders, fathers with limited earnings are less likely to comply with their orders, and both parents are less likely to engage and cooperate with the child support program.<sup>32</sup> Unsustainable support orders can increase job-hopping and decrease participation in the formal economy.<sup>33</sup> They undermine trust in the fairness and legitimacy of the child support program and government as a whole.

Incarcerated noncustodial fathers, in particular, have no earnings or ability to pay child support. Upon release, few fathers will have the ability to pay off indebtedness due to child support arrears along with accumulated fines and fees.<sup>34</sup> People with a history of incarceration struggle to find employment, working and earning less.<sup>35</sup> Child support debts can undermine successful return to the community by interfering with employment and further straining family relationships upon release from prison.<sup>36</sup>

## A Better Way to Do Business

Noncustodial fathers are better able to comply with their support orders and pay more consistently when their support orders are based on their actual incomes and are kept up-to-date. This, in turn, could make it more likely that children will receive regular support from their fathers and that state child support policies will yield more positive outcomes.

The 2016 federal rules make several changes intended to improve the accuracy, proportionality, and fairness of child support orders for low-earning parents. The rules are being phased in over several years to allow for changes in state laws and procedures.<sup>37</sup> The “ability to pay” standard for setting orders has been federal policy for three decades, and many state guidelines expressly incorporate the “ability to pay” standard.<sup>38</sup> The 2016 federal rules codified this standard, requiring state guidelines to provide that support orders are based on “earnings, income and other evidence of ability to pay.”<sup>39</sup>

Standard minimum wage orders, which are not based on a factual inquiry into a noncustodial parent’s ability to pay on a case-by-case basis, are no longer allowed under the rules.<sup>40</sup> Instead, states using income imputation must base order amounts on evidence of the specific circumstances of the case to the extent known, including such factors as “residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal records and other employment barriers, record of seeking work, local job market,

availability of employers willing to hire this parent, prevailing earnings level in the local community, and other relevant background factors.”

Child support agencies have the specific responsibility under the 2016 rules to take reasonable steps to develop and document a sufficient factual basis for an order amount. They must base recommended order amounts on actual earnings and income whenever available, gathering specific information about the parents’ earnings, income, and other circumstances bearing on ability to pay.<sup>41</sup> Generalized assumptions that a noncustodial father is “able-bodied” or that there are “plenty of jobs out there” do not constitute evidence of ability to pay in a specific case.

The 2016 rules also require state child support guidelines used to establish and modify support order amounts to recognize the basic subsistence needs of noncustodial (and custodial) parents by incorporating a low-income adjustment, such as a self-support reserve or guidance to reduce order amounts in low-income cases.<sup>42</sup>

Under the 2016 rules, states may not treat incarceration as “voluntary unemployment” that excludes incarcerated parents from obtaining a modification of their support orders. Instead, incarceration must be recognized as a substantial change in a parent’s ability to earn just like other changed circumstances, such as unemployment or incapacitation.<sup>43</sup> As with any right to review and adjustment, the rules require states to notify both parents of their right to request a review of their order. Under the rules, states must notify both parents within 15 days of learning that a noncustodial parent will be incarcerated for more than 180 days. Alternatively, states may elect to initiate an automatic review, with notice to the parents, without the need for a costly case-by-case review, since nearly all incarcerated parents lack income to pay existing orders.<sup>44</sup>

Most states are in the process of revising state policies to set and change support orders. As states implement federal rules, it will take more court and agency staff resources to conduct individual case reviews and realistically assess parents’ specific circumstances than it does to issue standard minimum wage orders. But the alternative—to base orders on assumptions rather than evidence—is unfair, creates one legal standard for low-earning parents and another for higher-earning parents, and leads to worse outcomes for fathers, families, and communities.

In addition, several state child support programs are reviewing their child support procedures to improve fact gathering, parent outreach and

engagement, and timeliness. A number of states have improved their establishment and modification processes through the use of technology and data analytics to help them identify income sources and changed circumstances such as unemployment, disability, or incarceration.<sup>45</sup> Other states allow parents to negotiate and enter into voluntary agreements or primarily use administrative processes and consent orders instead of court hearings to establish and modify orders. A few states have implemented problem-solving courts to address child support or have extended alternative dispute resolution judicial processes used in private divorce cases to parents with child support program cases (to be discussed in a future fact sheet).

This fact sheet offers examples of effective state policies for setting and changing child support orders when parents have low incomes. Some states have had policies described in the fact sheet in place for years, while other states are still reviewing and implementing changes to their policies. This fact sheet may be updated in the future as more states update their policies. Section 1 of this fact sheet provides a high-level view of state guidelines and other laws to establish support orders and provides several examples of more realistic approaches to order establishment. Section 2 describes state laws and procedures developed to modify existing support orders during unemployment and incarceration.

## 1. Establishing Child Support Orders

Depending upon the state, child support orders may be established either by courts or the child support agency. Every state has child support guidelines that include policies and a numeric schedule used by courts and agencies to compute obligation amounts when establishing and modifying child support orders.<sup>46</sup> Federal law requires states to apply their guidelines to all child support orders entered in the state, not only in program cases. States must review and update their guidelines on a four-year cycle (called a quadrennial review) based on economic and labor market analyses, caseload data, and public input.<sup>47</sup> Over the past four years, states have reviewed or are in the process of reviewing their guidelines in order to incorporate federal rule changes.

Guideline schedules that specify order amounts are based on parental income, pegging obligation amounts to parental income. Guidelines also take into account the number of children, multiple families, parenting time, and other factors. Most state guidelines are explicitly based on the incomes of both parents, while a few state guidelines are based on a percentage of the noncustodial parent's income.<sup>48</sup> The support order amounts listed in the guideline schedule are presumed to be the correct amounts, promoting consistent order amounts from court to court. However, a court or agency may deviate from the guidelines by making a written or specific finding on the record that the guidelines amount



would be unjust or inappropriate in a particular case and justifying the deviation.<sup>49</sup>

State guidelines include a range of policies to establish support orders in low-income cases. Some state policies are described below. In addition, several tribes have adopted child support guidelines that allow for in-kind support to custodial families.<sup>50</sup> While federal rules limit state flexibility to set orders based on in-kind support, states and counties might consider seeking federal waivers to conduct pilot programs to test approaches that credit in-kind and informal support when earnings are low.

#### a. Low-Income Protections

Some states, including Wisconsin, Michigan, and Iowa, use a separate low-income schedule or tiered approach in their guidelines to calculate orders with a lower percentage for parents with incomes below a specified level.<sup>51</sup> A number of state guidelines incorporate a self-support reserve that excludes an amount of the noncustodial parent's income to be used for self-support in calculating the support amount. For example, New York state sets its self-support reserve at 135 percent of the federal poverty level, Washington state sets it at 125 percent, and Minnesota sets it at 120 percent. The federal poverty level for one person was \$17,388 in 2021.<sup>52</sup> Some states, such as New York and Washington set a nominal order amount in cases involving noncustodial parents with low incomes.<sup>53</sup> More detailed state examples are provided below.

##### + **LOW-INCOME GUIDELINES**<sup>54</sup> MICHIGAN



Michigan uses an income shares guidelines model based on the family's net income. Each parent's income is calculated separately to balance a parent's subsistence needs and contribution to the costs of raising the parent's children when one parent's net monthly income is at or below the "low-income threshold" (defined as the 2020 federal poverty level of \$1,063 per month for one person). When a parent's income falls below the low-income threshold, the base order is calculated as 10 percent of the parent's monthly net income. Applying a "low-income transition equation," the support order amount gradually increases based on income and the number of children when a family's net monthly income falls between the low-income threshold and \$1,318 for one child (the lower threshold of the numeric guidelines scale). The base order is \$336.09 when the family's net income reaches \$1,318 for one child, the numeric guidelines threshold, which is 25.5 percent of family net income.

+ **SELF-SUPPORT RESERVE<sup>55</sup>**  
NEW YORK STATE



New York's self-support reserve is set at 135 percent of the federal poverty level of \$17,388. Since New York guidelines use an income shares model, the basic obligation is calculated by applying the applicable guidelines percentage to the combined income of the parents, with each parent responsible for a pro rata share. However, low-income protections apply when the basic obligation amount would reduce the noncustodial parent's income below \$17,388. The order is presumptively set at \$50 per month (or the difference between the noncustodial parent's income and the self-support reserve, whichever is greater) when the noncustodial parent's remaining income, after subtracting the basic obligation amount, falls between \$17,388 and \$12,880 (the federal poverty level). If the noncustodial parent's remaining income falls below \$12,880, a \$25 poverty order (\$300 annually) is established.

+ **SELF-SUPPORT RESERVE<sup>56</sup>**  
MARYLAND



The Maryland legislature recently increased the self-support reserve for parents with low incomes to 110 percent of the 2019 federal poverty level for an individual. The amended law will become effective on July 1, 2022.

The amended statute includes an unusually clear statement of the purpose of the self-support reserve. It defines the self-support reserve as "the adjustment to a basic child support obligation ensuring that a child support obligor maintains a minimum amount of monthly income, after payment of child support, federal and state income taxes, and federal insurance contribution act taxes, of at least 110 percent of the 2019 federal poverty level for an individual."

Under the statute, the basic child support order is calculated by reducing the combined actual income of both parents by the self-support reserve amount. The new guidelines schedule indicates which income levels and basic support order amounts are adjusted by the self-support reserve, increasing the transparency of the policy. In addition, the court may now consider whether a child support order amount based on application of the guidelines would leave the obligor with a monthly actual income below the self-support reserve amount in determining whether to deviate from the guidelines.

+ **POVERTY ORDERS<sup>57</sup>**  
NEW YORK STATE



When a noncustodial parent is before a New York court and has income below the federal poverty level (\$12,880 for one adult in 2021), New York statute provides for the issuance of a poverty order of \$25 per month based on application of the statutory factors, unless the court finds that a deviation is appropriate.<sup>58</sup> The court makes its determination and sets a poverty order based on the financial information provided by the parties. A noncustodial parent is not required to file a motion or otherwise seek a poverty order or arrears cap in the pleading.

For newly established \$25 poverty orders, arrears owed by noncustodial parents are automatically capped at \$500. A noncustodial parent may apply to the court to modify an existing order to \$25 and cap the accrual of arrears thereafter at \$500, effective from the date the application is made.<sup>59</sup> The arrears cap is reflected on the child support account created by the local child support agency whenever the court order indicates that the court has issued a poverty order.<sup>60</sup>

The court enters a \$25 poverty order when a noncustodial parent's income would fall below the federal poverty level after paying the basic child support obligation calculated under the guidelines. In addition, the court sets the order at \$50 per month (or the difference between the noncustodial parent's income and the self-support reserve, whichever is greater) if, after subtracting the basic obligation amount, the noncustodial parent's income is below the self-support reserve but above the poverty level. In 2021, New York's self-support reserve is set at 135 percent of the federal poverty level for one person (\$17,388 in 2021). Arrears are not capped with a \$50 order.

Every two years, the New York State Child Support Program, administered by the Division of Child Support Enforcement, New York Office of Temporary and Disability Assistance, automatically reviews each child support order to determine cost-of-living increases, subject to an objection filed in court by a parent. The child support order amount is increased if the cost of living has increased by more than 10 percent since the order was entered or updated.

+ **\$50 MINIMUM ORDERS<sup>61</sup>**  
WASHINGTON STATE



When a paying parent's monthly net income is below 125 percent of the federal poverty level for one person, the Division of Child Support, Washington State Department of Social and Health Services, enters a \$50

order per child, unless the agency deviates from the guideline in the best interest of the child. The basic child support order may not reduce the net income of the parent required to pay support below the self-support reserve of 125 percent, except to set a presumptive minimum payment of \$50 per month per child.

An order may be modified one year or more after it has been entered without a showing of substantially changed circumstances if, among other reasons, the order in practice imposes severe economic hardship on either party or the child.

## b. Income Imputation

Michigan guidelines expressly require courts to justify imputation and prohibit imputation “based on generalized assumptions that parents should be earning an income based on a standardized calculation.”<sup>62</sup> Some states, such as Virginia and Iowa, require the court or agency to deviate from child support guidelines and provide a case-specific justification for imputing income as the basis for a support order.<sup>63</sup> Other states, such as Maryland, have clarified their legal standard for considering a noncustodial parent to be “voluntarily” impoverished or unemployed.<sup>64</sup> Examples of state imputation policies are described below.

### + **FACTUAL BASIS FOR IMPUTATION**<sup>65</sup> MICHIGAN



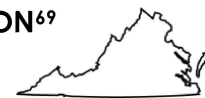
Michigan child support guidelines allow the court to impute “potential income” that a parent could earn, subject to the parent’s actual ability, when the parent is voluntarily unemployed or underemployed or has an unexercised ability to earn. The court may impute income to either parent, or both, in determining their relative contribution to their children’s support. The guidelines include a set of evidentiary factors for the court to consider in determining whether the parent in question has the actual ability to earn and a reasonable likelihood of earning the imputed amount.<sup>66</sup> Incarceration is not considered to be “voluntary unemployment.” In addition, imputation may not be used when a parent is working at least 35 hours per week.

The guidelines specify that an imputed income amount should not exceed the level the income would have been if there was no “reduction” in income, and the amount should account for the additional costs associated with earning the potential income (such as taxes or child care).<sup>67</sup> They also contain a number of prohibitions against imputing income amounts without sufficient evidence of earning capacity, including:

- a) Inferring based on generalized assumptions that parents should be earning an income based on a standardized calculation (such as full-time minimum wages or median income) rather than a parent's actual ability to earn and likelihood of earning the imputed income amount;
- b) Imputing an income amount absent any information or indication concerning a parent's ability to earn;<sup>68</sup>
- c) Failing to articulate how each of the factors applies to a parent having the actual ability and a reasonable likelihood of earning the imputed income, or failing to state that a specific factor does not apply;
- d) Inferring that commission of a crime is voluntary unemployment, without evidence that the parent committed the crime with the intent to reduce income or to avoid paying support.

The court may deviate from the guidelines amount based on a number of factors, including when a "parent must pay significant amounts of restitution, fines, fees, or costs associated with that parent's conviction or incarceration for a crime other than those related to failing to support children, or a crime against a child in the current case or that child's sibling, other parent, or custodian."

+ **GUIDELINES DEVIATION REQUIRED FOR INCOME IMPUTATION<sup>69</sup>**  
VIRGINIA



The Division of Child Support Enforcement (DCSE), Virginia Department of Social Services, may establish and modify child support orders administratively. In limited circumstances, DCSE will not establish a child support order, for example, when the noncustodial parent receives public assistance or is incarcerated, institutionalized in a psychiatric facility, or totally and permanently disabled with no identifiable assets or evidence of potential of paying support.<sup>70</sup>

In addition, DCSE must refer certain types of cases to court for order establishment, including situations in which the noncustodial parent shows indications of long-term economic hardship materially affecting the parent's ability to earn income or otherwise provide support.<sup>71</sup> A court may set an order amount below the statutory minimum amount based on evidence of inability to pay if the noncustodial parent's gross income is equal to or less than 150 percent of the federal poverty level unless that amount would seriously impair the custodial parent's ability to provide necessities for the child.

DCSE bases child support orders on imputed income only in limited circumstances. A parent is considered to be voluntarily unemployed and an administrative support order is based on imputed income when the parent quits a job without good cause or is fired for cause.<sup>72</sup> DCSE does not impute income to unemployed parents without considering the good faith and reasonableness of employment decisions made by the parent, such as pursuit of additional training or education.<sup>73</sup> Income is not imputed to custodial parents with children under the age of 13, or who otherwise need dependent care, because they are not considered to be voluntarily unemployed.<sup>74</sup> In addition, income may be imputed when a parent fails to provide financial information as requested. DCSE uses financial statements submitted by both parents, as well as other information, to establish support order amounts.

In order to impute income, DCSE or the court issuing the order is required to deviate from state child support guidelines, making written findings that application of the presumptive guidelines would be unjust or inappropriate in the particular case and providing the reason for the deviation based on relevant evidence and factors.<sup>75</sup> DCSE calculates the amount of imputed income based on the average of earnings information on file. The order is based on zero income if the parent is involuntarily unemployed or if the parent is not receiving unemployment insurance and there is no earning information on file for the previous year.<sup>76</sup>

+ **DEFINITION OF VOLUNTARY IMPOVERISHMENT<sup>77</sup>**  
MARYLAND



Like all states, Maryland statute permits support order amounts to be based on “potential,” or imputed, income. Before potential income may be imputed to a parent, however, the court must find that the parent is “voluntarily impoverished.”

The Maryland legislature recently codified the definition of “voluntarily impoverished” based on existing case law and created a statutory framework for determining the amount of income to impute in a specific case. The amended statute, effective on July 1, 2022, defines “voluntarily impoverished” to mean “a parent has made the free and conscious choice, not compelled by factors beyond the parent’s control, to render the parent without adequate resources.”

If there is a dispute about whether a parent is voluntarily impoverished, the court is required to make a finding of voluntary impoverishment based on the totality of the circumstances. The court is required to determine the

amount of potential income that should be imputed based on 14 statutory factors, including the parent's age, physical and behavioral condition, residence, educational attainment, special training or skills, literacy, occupational qualifications and job skills, employment and earnings history, record of efforts to obtain and retain employment, criminal record and other employment barriers, employment opportunities in the community where the parent lives (including the status of the job market, prevailing earnings levels, and the availability of employers willing to hire the parent), assets, actual income from all sources, and any other factor bearing on the parent's ability to obtain funds for child support.

The amended law provides that the court may decline to establish a child support order or may modify the order if the parent who would have the obligation to pay child support:

- a) lives with and is contributing to the child, or
- b) is unemployed, has no financial resources from which to pay child support, and is unable to obtain or maintain employment in the foreseeable future (1) due to compliance with criminal detention, hospitalization, or a rehabilitation treatment plan or (2) is expected to be incarcerated or institutionalized for the remainder of the time that the parent would have a legal duty to support the child, or is totally and permanently disabled and the only source of income is Social Security Disability or Supplemental Security Income benefits.

## 2. Modifying Child Support Orders

Federal law requires states to conduct a guidelines-based review of child support orders entered in child support program cases at least every 36 months and adjust the order upon a request by either parent (or when the child support order is assigned to the state to reimburse TANF assistance). States must notify parents at least once every three years of their right to request a review and provide parents an opportunity to contest a proposed change in the order amount. The requesting party need not prove changed circumstances to adjust an order during the three-year review period. Instead, the order is adjusted upward or downward if the order varies from the guidelines amount. States may establish a reasonable quantitative standard to determine an inconsistency between the support order amount and guidelines amount (for example, a difference of 15% or \$50).<sup>78</sup>

Support orders must be adjusted outside the three-year review cycle if a party demonstrates a substantial change in circumstances since the existing order was issued. Often state statutes refer to an adjustment outside of the review cycle as

a modification. Federal law does not prescribe a specific adjudicative process for changing orders. In some states, the child support agency reviews and adjusts orders. In other states, only a court may modify orders, and still other states use a hybrid process.<sup>79</sup>

Support orders may only be modified prospectively and may not be changed retroactively. The Bradley amendment, a federal statute, provides the legal basis for interstate enforcement and treats child support payments due under a support order as state judgments subject to full faith and credit by other jurisdictions. Like all state judgments, child support judgments are final and may not be modified by the court. However, similar to all state judgments, the parties may compromise or forgive child support arrears accruing under an order.<sup>80</sup>

Changes in employment and income may result in an upward or downward change in an order. A number of states are in the process of revising their statutes to notify parents experiencing a loss of earnings due to incarceration of their right to request a review and modification. Other states have elected to proactively modify, suspend, or abate support obligations during incarceration.

A recent federal demonstration called Behavioral Interventions to Advance Self-Sufficiency (BIAS) tested a behavioral intervention designed to increase the number of noncustodial parents in Texas and Washington state applying for order modification in order to prevent the accumulation of arrears during incarceration. Texas contacted incarcerated parents by mail, informed them of their right to seek a modification, and instructed them on how to apply. Only 28 percent of contacted parents responded and applied for a modification at the demonstration outset. The BIAS project implemented improvements to the outreach and notification process designed to encourage parents to apply, including mailing a postcard followed by a simplified and colorful modification packet and reminder postcard. As a result, the response rate increased to 39 percent, demonstrating both the importance of a well-designed outreach and application process and the limitations of relying on notification to prevent the accumulation of arrears during incarceration.<sup>81</sup> The Washington state intervention increased the percentage of parents requesting a modification by 32 percentage points.<sup>82</sup>

#### a. Orders Reduced During Unemployment

##### + **OUTREACH CAMPAIGN AND ACCELERATED REVIEW AND ADJUSTMENT** VIRGINIA



In March 2020, during the early weeks of the COVID-19 pandemic, the Virginia Division of Child Support Enforcement (DCSE) started an outreach campaign to noncustodial parents who could be facing the impact of



economic hardship due to loss of employment or lay-offs. DCSE took proactive steps to help identify any needs and provide resources to parents during a particularly challenging time.

DCSE used agency data and reporting systems to identify noncustodial parents who may have lost their job rather than wait to receive a report from the employer or written request for a modification by the parent. An automated monthly report was generated to identify potentially unemployed parents and to determine the status of income withholding orders by matching wage withholding data and the last payment date on the case.

Caseworkers were tasked with calling noncustodial parents in their caseload who were identified by the new automated monthly report. DCSE also developed a telephone script with potential questions and answers for parents relevant to their child support cases, such as how to request a modification, and to provide parents with information on such topics as how to apply for services from the Virginia Unemployment Commission and how to obtain state assistance, if needed, for food or health care.

When caseworkers were unable to reach noncustodial parents by phone, they mailed each parent a contact letter requesting that the parent reach out to the caseworker. An important part of the calling campaign was for caseworkers to identify noncustodial parents who needed community resources or modification of their obligation amount, or would be good candidates for the DCSE Family Engagement Program, which is designed to work one-on-one with noncustodial parents to help remove any potential barriers to payment compliance.

Caseworkers documented results of each call on a spreadsheet that was designed to capture the necessary data relevant to the outreach campaign, such as whether noncustodial parents were furloughed, laid off, or lost their job due to COVID-19; whether they filed for or were receiving unemployment benefits; and whether they needed a child support modification or access to community resources for assistance.

The outreach campaign has been ongoing since March 2020, and DCSE plans to adapt these processes as permanent changes to their procedures. The results have shown that it is difficult to reach the noncustodial parent by telephone. On average, caseworkers were able to reach 25 percent of noncustodial parents identified through the data match every month by phone. However, the follow-up letters sent by caseworkers often resulted in a phone call from noncustodial parents in

the weeks after the initial call. Caseworkers also referred approximately 182 cases to the Family Engagement Program for services.

The outreach campaign expanded to become the Accelerated Review and Adjustment (ARA) pilot process developed by a cross-agency work group. The pilot process aimed to streamline and speed up the review and adjustment process by abbreviating or eliminating process steps, increasing electronic and telephonic communications with parents, developing new staff training and materials, and temporarily augmenting review and adjustment staff.<sup>83</sup> In May 2020, DCSE reassigned staff and launched a special project team to implement the new ARA procedures on a permanent basis.

DCSE's existing review process relied heavily on manual processes and mailing documents back and forth with parents. COVID-19 protocol compliance sharply reduced timely mail processing within the Department of Social Services. In addition, COVID-19 court protocols extended judicial timeframes. Service of process delays also became more challenging because of COVID-19 protocols implemented by sheriffs' departments and the U.S. Postal Service. Because of these challenges, it became clear to DCSE that focusing on verbal and electronic communications, rather than written notices, and developing a more effective, timely administrative response would benefit parents and DCSE beyond the pandemic. The ARA measures implemented in response to the pandemic provided a more streamlined process that also empowered staff to collaborate and communicate more effectively with parents to complete reviews of their orders more quickly. As a result, DCSE adopted the ARA process as a permanent procedure.

DCSE concluded that more than half (55.8%) of all requests for review during the pilot process were eligible for an adjusted support order. Despite the implementation challenges, the ARA pilot reduced the time to complete a review and enter a new Administrative Support Order to 88 days on average, less than half the time needed to comply with federal regulations. From May 20 through September 16, 2020, DCSE received 2,269 review and adjustment requests and completed 2,249 reviews, or 99 percent as of March 1, 2021. From September 17 through February 26, 2021, DCSE received 1,165 parent-initiated reviews and completed 1,064, or 91 percent, by March 1, 2021.<sup>84</sup>

## **b. Orders Reduced During Incapacitation**

+ **MODIFICATION BASED ON INCAPACITATION**<sup>85</sup>  
MICHIGAN



The Michigan legislature recently amended the state modification statute, effective on December 30, 2021. Under the new law, the monthly child support amount is abated by operation of law when a noncustodial parent becomes incarcerated for 180 days or more and does not have the ability to pay support.<sup>86</sup> A parent may object only on the basis of mistake of fact or identity.<sup>87</sup>

The state Office of Child Support is located within the Michigan Department of Health and Human Services, while local child support offices are located within the Friend of the Court (FOC), part of the state circuit court family division and supervised by the chief judge. After the FOC sends a notice of abatement to the parents, it adjusts the records to reflect the abatement. If the parent has income or assets, the FOC initiates a review and modification.

The abatement is effective on the date of incarceration, and the order amount remains abated until after the order is reviewed and modified. The FOC must initiate a review within 30 days of learning that the parent has been released. A support payment becomes due under the modified order after 90 days following release.<sup>88</sup> The state corrections agency and local jail authorities are required to provide the state child support agency with the records needed to identify parents who are or will be incarcerated for 180 days or more, including the incarcerated parent's crime and release date.

Under the laws and guidance currently in place, the FOC may initiate a modification review of a support order under several circumstances, including when a parent's financial conditions change.<sup>89</sup> However, the FOC must "proactively seek to identify cases that may require modification due to incapacitation."<sup>90</sup> Within 14 days of learning that a parent becomes incapacitated, the FOC initiates a modification review unless it can document sufficient income or assets to pay support obligations. "Incapacitation" is defined as "the inability to pay the ordered support obligation caused by a parent being temporarily or permanently unable to earn an income for a period that will likely last 180 days or longer and due to disability, mental incompetency, serious injury, debilitating illness, or incarceration."<sup>91</sup> The FOC may not consider the parent's crime when deciding whether to conduct a review.<sup>92</sup>

To allow the court to act quickly yet preserve flexibility when the facts are uncertain, the court may issue temporary orders or include contingency language in support orders. The court may include contingency language

in child support orders that requires abatement of support when a noncustodial parent is incapacitated. When the court includes contingency language in the court order, the FOC must abate support obligations, setting the support order amount to zero. The administrative abatement is subject to objection by a party and judicial review. The court also may exercise its discretion to grant relief when the actual duration is less than 180 days. If directed to do so by the court in the court order, the FOC administratively reinstates support amounts 60 days after the incapacitation ends, subject to objection and judicial review.<sup>93</sup>

When incapacitating events that disrupt a parent's ability to pay are expected to last through a child's minority, the order may be modified and the case closed.<sup>94</sup> The FOC may schedule a joint meeting between the parties to expedite resolution of support modification issues.

An unusual and instructive feature of Michigan guidelines is the inclusion of explanatory statements that provide additional insight into the reasons behind a policy or procedure. For example, the guidelines explain that the FOC should initiate a review, rather than waiting for a parent to request a review, because "Beyond the financial impacts, incapacitation often limits the parent's ability to act in his or her own self-interests." The guidelines also recognize that often a parent's income does not immediately return to pre-incapacitation levels and encourage the FOC to consider the impact that incapacitation could have on a parent's future ability to return to work and to conduct a second review when an incapacitated parent is released from incarceration or other incapacitation ends. The guidelines encourage the FOC to reduce the effect of delay in the review and modification process in order to minimize the impact of the Bradley amendment's bar on retroactive modification.<sup>95</sup>

### c. Orders Reduced During Incarceration

#### + **ORDERS EXPIRE BY OPERATION OF LAW<sup>96</sup>** NORTH DAKOTA



In North Dakota, a monthly support obligation in effect on January 1, 2018, or later expires by operation of law when a noncustodial parent is incarcerated under a sentence of 180 days or longer. When the parent is sentenced for 180 days or more,<sup>97</sup> the order expires immediately upon incarceration. The expiration is based on the length of the sentence and is not affected if the parent actually serves less than 180 days. A court may establish a new order based on the incarcerated parent's actual income if the income exceeds the minimum guidelines level of \$800 monthly net income.<sup>98</sup> When an order expires, the Child Support Division, North Dakota Department of Human Services,

notifies the parents of the expiration and explains how the obligation can be reestablished when the noncustodial parent is released from prison.

Because there is no current support order, these cases may be closed by the Child Support Division under federal case closure rules.<sup>99</sup> In general, the Child Support Division keeps cases open when arrears are owed to custodial parents or the state. If a case remains open upon release, the Child Support Division begins a court action to reestablish a child support order without requiring a request from a parent. If the case is closed during incarceration, a parent may apply to reopen the case after release, and the court will establish a new order based on the noncustodial parent's post-incarceration income.<sup>100</sup> The case is not evaluated for potential income for the first six months after release.<sup>101</sup>

The Child Support Division reports that about 0.1 percent of current support orders expire every month because the noncustodial parents are incarcerated under a sentence of 180 days or longer.<sup>102</sup> The state's current collection rate, a federal performance measure, increased by 2 percentage points in the first nine months after the law went into effect and maintained that level until at least the beginning of the COVID-19 pandemic.

+ **REBUTTABLE PRESUMPTION OF INABILITY TO PAY DURING INCARCERATION**<sup>103</sup>  
OREGON



The Oregon Child Support Program, administered by the Division of Child Support, Oregon Department of Justice, primarily uses administrative processes to establish and modify child support orders, subject to appeal to the circuit court.<sup>104</sup>

A parent who is required to pay support and is incarcerated for 180 or more consecutive days on or after January 1, 2018, is presumed unable to pay child support during the incarceration period and the first 120 days following release under a rebuttable presumption established by state statute, and the obligation does not accrue. In Oregon, the paying parent's incarceration for at least 180 days and release from incarceration is considered a "substantial change in circumstances."<sup>105</sup>

After 120 days following release, the order is automatically reinstated by operation of law at 50 percent of the previous support order amount. The Oregon Child Support Program notifies parties of reinstatement and that it will initiate a review and modification of the support order within 60 days of reinstatement. It then files the reinstatement notice with the court.

The Oregon Child Support Program obtains information about a paying parent's incarceration status through a data match with the Oregon Department of Corrections. Within 30 days after identifying an incarcerated parent, the Oregon Child Support Program sends notice to the parties that child support will stop accruing beginning on the first day of the first month following the start of the paying parent's qualifying incarceration and ending on the first day of the first month after the parent has been released for 120 days. A party may object to the presumption by providing information about the incarcerated parent's resources or other evidence that rebuts the presumption of inability to pay.

Proof of incarceration for at least 180 consecutive days is sufficient cause to allow a credit and satisfaction against child support arrears accruing during the periods of incarceration and the 120 days following the parent's release. If a child support order would ordinarily be established in the case, the Oregon Child Support Program establishes a zero order while the parent is incarcerated.<sup>106</sup>

Under a second rebuttable presumption, a parent who is required to pay child support and is eligible for and receives cash payments through the Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or designated state cash or tribal assistance programs is presumed unable to pay support.<sup>107</sup> The Oregon Child Support Program receives certified information from the Oregon Department of Human Services about parents who receive cash assistance from the state through a data match. Paying parents who receive cash assistance from the federal government or other states or tribes must provide individual documentation to the program. If a child support order would ordinarily be established in the case, a zero order is established while a parent is receiving cash assistance.<sup>108</sup>

The Oregon Child Support Program provides notice to the parties that it will stop billing a paying parent, and that the child support obligation will be suspended from the date the paying parent began receiving cash assistance. The parent receiving support may object to the presumption by providing information about other resources that the other parent can use to pay support or other evidence to rebut the presumption of inability to pay. If a parent receiving support objects and provides evidence, the program sets a hearing before an administrative law judge to determine whether the evidence is sufficient to rebut the presumption.

The order of the administrative law judge is filed in court. If no hearing is requested, the state's Notice Suspending Support is finalized and filed in court. A party can request de novo review by the circuit court by filing a

written request for review, in court, within 60 days of when the order or notice is entered. Once a paying parent stops receiving cash assistance, the child support obligation resumes by operation of law. Within 30 days after assistance ends, the Oregon Child Support Program notifies the parties that the child support obligation will resume and explains their right to request a review and modification of the support order based on a “substantial change in circumstance.” The program also files a copy of this notice with the court.

+ **ABATEMENT DURING INCARCERATION**<sup>109</sup>  
WASHINGTON STATE



Orders in child support program cases are established and modified in both judicial and administrative forums. Court orders are modified in superior court, with the child support program represented by the county prosecuting attorney's office in cases with a state interest. Administrative law judges at the Office of Administrative Hearings, an administrative agency separate from the child support program, modify administrative orders. The child support program appears in all administrative child support proceedings.

When a parent required to pay support is incarcerated, the support order may be reduced either through abatement or modification. Effective February 1, 2021, the order must include language that abates the obligation to \$10 per month (regardless of the number of children covered under the order) if the paying parent is confined for or serving a sentence of at least six months. When an order contains abatement language based on incarceration, there is a rebuttable presumption that the incarcerated parent is unable to pay the child support obligation.<sup>110</sup> A parent who has been incarcerated for six months or begins serving a sentence of at least six months of confinement is eligible for abatement. The effective date of the abatement is the date the parent's current incarceration commenced, but no earlier than February 1, 2021.<sup>111</sup> When a child support order does not contain abatement language and the Division of Child Support learns the paying parent is incarcerated, the case must be referred to the court or administrative forum for a determination of whether the order should be modified to contain abatement language and to abate the obligation due to current incarceration.

An order may be modified at any time to add language to abate the order due to incarceration. If the order does not include abatement language and the Division of Child Support learns of the noncustodial parent's incarceration, it must petition the court or the administrative forum that entered the order to include abatement language. There is a

rebuttable presumption that an incarcerated person is unable to pay the child support obligation. When the Division of Child Support is reviewing the order to determine abatement status, either the Division of Child Support or the parties may rebut the presumption of inability to pay by demonstrating that the parent required to pay support has income or assets available to provide support during incarceration. The Division of Child Support is required to notify the parties of its abatement determination and administrative hearing rights.<sup>112</sup>

If the obligation is abated, it remains abated for three months following release from confinement.<sup>113</sup> After the abatement period ends, the support amount is automatically reinstated at 50 percent of the underlying order, or \$50 per month per child, whichever is greater, for nine more months. After one year following release from confinement, the underlying obligation is automatically reinstated at 100 percent unless it is modified or the court orders different reinstatement terms for good cause shown.

In addition to abatement, two other remedies are available to an incarcerated parent in addition to abatement:

- a) The Division of Child Support may adjust an order one year or more after it has been entered without a showing of substantially changed circumstances during the incarceration period if, among other reasons, the obligated parent is incarcerated and the incarceration is the basis for the inconsistency between the existing child support order amount and the amount of support determined as a result of a review.<sup>114</sup>
- b) The Division of Child Support or either parent may petition for a prospective modification of the child support order if the parent required to pay support is incarcerated.

Following release, the Division of Child Support or either parent may file an action to modify the order, in which case the reinstatement of the support amount at 50 percent of the underlying obligation does not apply. An order may be modified without showing a substantial change of circumstances when a parent required to pay support has been released from incarceration.

If incarceration is the basis for the difference between the existing child support order amount and the proposed amount of support determined as a result of a guidelines review, the department may file an action to modify or adjust the order even if there is no other change in circumstances and the change in support does not meet the 15 percent



standard modification threshold. In general, a support order may be adjusted once every 24 months without a showing of substantially changed circumstances based on changes in the income of the parents or guidelines table.<sup>115</sup> In addition, the department may modify the order based upon a substantial change of circumstances.

In addition, a party may petition for a modification based on a showing of substantially changed circumstances at any time. Under Washington state law, a “substantial change in circumstances” is defined as a 15 percent variance between the order amount and the amount determined under the guidelines.<sup>116</sup>

The department made about 1,200 referrals to the court to modify court orders and 570 referrals to adjust administrative orders during the three-month period ending in April 2021. This is an average of 600 orders per month.

+ **ORDER SUSPENDED DURING INCARCERATION**<sup>117</sup>  
MARYLAND



A new Maryland statute allows for suspension of child support obligations when a parent required to pay child support is incarcerated if the obligor: (1) was sentenced to a term of imprisonment of 180 consecutive days or more; (2) is not on work release and has insufficient resources to make payments; and (3) did not commit the crime with the intent of being incarcerated or otherwise becoming impoverished.

The suspension by operation of law continues for 60 days after the incarcerated obligor's release. Previously, the law provided for a suspension of child support obligations when the obligor was incarcerated for 18 months or longer.<sup>118</sup> The statutory amendments became effective on October 1, 2020.

The amended statute authorizes the Child Support Administration, Maryland Department of Human Services, to adjust an incarcerated obligor's payment account to reflect the suspension of arrears accrual without the need for a motion to be filed with the court, after sending notice to the parent receiving support with an opportunity to object. The Child Support Administration plans to automate the suspension process as a future enhancement of a new statewide computer system that is being developed.

## Endnotes

---

<sup>1</sup> Both fathers and mothers living apart from their children are legally responsible for paying child support, and the incomes of both parents are taken into account in setting support orders. Although the focus of this fact sheet is on noncustodial fathers, gender-neutral terms are used to accurately describe specific research findings and state practices. This fact sheet is authored by Vicki Turetsky, Esq., former federal Office of Child Support Enforcement (OCSE) commissioner.

<sup>2</sup> Leslie Hodges, Daniel R. Meyer, and Maria Cancian, “What Happens When the Amount of the Child Support Due Is a Burden? Revisiting the Relationship Between Child Support Orders and Child Support Payments,” *Social Service Review*, vol. 94, 2020; Mark Takayesu, *How Do Child Support Order Amounts Affect Payments and Compliance?* Orange County Department of Child Support Services, 2011.

<sup>3</sup> Hodges, Meyer, and Cancian, 2020; Takayesu, 2011.

<sup>4</sup> Lauren A. Hall, Letitia Logan Passarella, and Catherine E. Born, *Who Pays Child Support? Noncustodial Parents’ Payment Compliance*, School of Social Work, University of Maryland, 2014.

<sup>5</sup> Daniel R. Meyer, Yoonsook Ha, and Mei-Chen Hu, “Do High Child Support Orders Discourage Child Support Payments?” *Social Service Review*, vol. 82, 93-118, 2008.

<sup>6</sup> Takayesu, 2011; Judi Bartfeld, *Forgiveness of State-Owed Child Support Arrears*, Institute for Research on Poverty, University of Wisconsin-Madison, 2011.

<sup>7</sup> Hodges, Meyer, and Cancian, 2020. For older studies, see Takayesu, 2011 (Order compliance and payment regularity decline once an order is more than 19% of income); Carl Formoso and Quinghua Liu, *Arrears Stratification in Washington State: Developing Operational Protocols in a Data Mining Environment*, Washington State Department of Social and Health Services, 2010 (Arrearage growth occurs when an order is more than 20% of gross monthly earnings); Elaine Sorensen and Helen Oliver, *Policy Reforms are Needed to Increase Child Support from Poor Fathers*, Urban Institute, 2002 (Support orders set high relative to a noncustodial parent’s income produce high arrears balances that parents can not pay, especially poor fathers).

<sup>8</sup> Hodges, Meyer, and Cancian, 2020.

<sup>9</sup> Institute for Research on Poverty (IRP), “How States Decide on the Right Amount of Child Support When Setting Orders for Low-Income Parents, *Fast Focus Policy Brief No. 54-2021*, University of Wisconsin-Madison, 2021.

<sup>10</sup> Demyan and Passarella, 2018.

<sup>11</sup> University of Wisconsin researchers reviewing studies from various states found that income was imputed in 42 to 63% of child support program cases where the noncustodial parent had a low income and 15 to 25% of all program cases. In Wisconsin specifically, income was imputed in 42% of child support program cases where the noncustodial parent had a low income, and 16% of all program cases. Leslie Hodges, Chris Taber, and Jeffrey Smith, *Alternative Approaches to Income Imputation in Setting Child Support Orders*, Institute for Research on Poverty, University of Wisconsin-Madison, 2019. A National Child Support Enforcement Association (NCSEA) state survey found that 20 to 30 percent of child support orders were established by default judgment when orders are often based on imputed income. In almost half of responding states no evidentiary basis was required to enter a default minimum wage order. James Fleming, *Imputed Income and Default Practices: The State Directors’ Survey of State Practices Prior to the 2016 Final Rule*, National Child Support Enforcement Association (NCSEA), 2017.

<sup>12</sup> States that use a shared income guidelines model that explicitly considers the incomes and circumstances of both parents often impute income to both parents. National Conference of State Legislatures (NCSL), *Child Support Guidelines Models* (website).

<sup>13</sup> Hodges, Taber, and Smith, 2019; Demyan and Passarella, 2018.

<sup>14</sup> Demyan and Passarella, 2018. The University of Wisconsin found similar differences in compliance rates and payments in the state. See Maria Cancian, Steven Cook, and Daniel Meyer, *Child Support Payments*,

---

Income Imputation, and Default Orders, Institute for Research on Poverty, University of Wisconsin-Madison, 2019 (Because the characteristics of noncustodial parents who receive imputed orders differ from those who receive orders based on actual income, it is difficult to show that imputation causes lower compliance and payments.).

<sup>15</sup> Takayesu, 2011.

<sup>16</sup> Demyan and Passarella, 2018.

<sup>17</sup> Hodges, Taber, and Smith, 2019; Cancian, Cook, and Meyer, 2019; Demyan and Passarella, 2018. Robert D. Plotnick and Alec I. Kennedy, “How Accurate are Imputed Child Support Orders?” *Children and Youth Services Review*, vol. 88, 490-496, 2018 (Washington State minimum wage orders were inaccurate.)

<sup>18</sup> Hodges, Meyer, and Cancian, 2020.

<sup>19</sup> Lawrence Berger, Maria Cancian, Angela Guarin, Leslie Hodges, and Daniel Meyer, *Barriers to Child Support Payment*, Institute for Research on Poverty, University of Wisconsin-Madison, 2019; Steven Eldred and Mark Takayesu, *Understanding Payment Barriers to Improve Child Support Compliance*, Orange County, California Department of Child Support Services, 2013; Formoso and Liu, 2010.

<sup>20</sup> Hodges, Taber, and Smith, 2019; Vicki Turetsky, *Reforming Child Support to Improve Outcomes for Children and Families*, Abell Foundation, 2019.

<sup>21</sup> Fleming, 2017.

<sup>22</sup> Demyan and Passarella, 2018.

<sup>23</sup> Vicki Turetsky and Maureen Waller, “Piling on Debt: The Intersections Between Child Support Arrears and Legal Financial Obligations,” *UCLA Criminal Justice Law Review*, vol. 4, 2020; Maria Cancian, Carolyn Heinrich, and Yiyeon Chung, “Discouraging Disadvantaged Fathers’ Employment: An Unintended Consequence of Policies Designed to Support Families,” *Journal of Policy Analysis and Management*, 2013.

<sup>24</sup> 42 U.S.C. § 666(a)(9).

<sup>25</sup> Turetsky and Waller, 2020; Council of State Governments, *Report of the Reentry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community*, 2005 (policy statements 8, 13, 18, 23, 24).

<sup>26</sup> Timothy Grall, *Custodial Mothers and Fathers and Their Child Support: 2017*, Census Bureau, U.S. Department of Commerce, 2020; Maureen Waller, Allison Emory, and Elise Paul, “Money, Time, or Something Else? Measuring Noncustodial Fathers’ Informal and In-Kind Contributions,” *Journal of Family Issues*, vol. 39, 2018; Laurel Sariscany, Irwin Garfinkel, and Lenna Nepomnyaschy, “Child Support Enforcement and Fathers’ Contributions to Their Nonmarital Children,” *Social Service Review*, vol. 84, 2019.

<sup>27</sup> Hodges, Taber, and Smith, 2019.

<sup>28</sup> Grall, 2020.

<sup>29</sup> Lauren J. Kotloff, *Leaving the Street: Young Fathers Move From Hustling to Work*, Public/Private Ventures, 2005; Lauren M. Rich, “Regular and Irregular Earnings: Implications for Child Support Practices,” *Child and Youth Services*, vol. 23, 353, 2001.

<sup>30</sup> Federal law requires driver’s license suspension in “appropriate” cases. 42 U.S.C. § 666(a)(16). For civil contempt, see 45 C.F.R. § §303.6, amended in 2016.

<sup>31</sup> Turetsky and Waller, 2020; Hyunjoon Um, *The Role of Child Support Debt on the Development of Mental Health Problems among Nonresident Fathers*, Center for Research on Child Wellbeing, Princeton University, 2019; Daniel Miller and Ronald Mincy, “Child Support Arrears and Father’s Labor Force Participation,” *Social Service Review*, vol. 86, 2012; Cancian, Heinrich, and Chung, 2013.

<sup>32</sup> Maria Cancian, Daniel R. Meyer, and Robert G. Wood, *Final Impact Findings from the Child Support Noncustodial Parent Employment Demonstration (CSPED)*, Institute for Research on Poverty, University of

---

Wisconsin-Madison, 2019; Maureen R. Waller and Robert Plotnick, “Effective Child Support Policy for Low-Income Families: Evidence from Street-Level Research,” *Journal of Policy Analysis and Management*, vol. 20, 2001.

<sup>33</sup> Cancian, Heinrich, and Chung, 2013.

<sup>34</sup> Turetsky and Waller, 2020.

<sup>35</sup> The Pew Charitable Trusts, *Collateral Costs: Incarceration’s Effect on Economic Mobility*, 2010.

<sup>36</sup> Turetsky and Waller, 2020; Christy Visser and Shannon Courtney, *Cleveland Prisoners’ Experience Returning Home*, Urban Institute, 2006.

<sup>37</sup> States must comply with the guidelines’ provisions of the 2016 federal rule by one year after completion of the first quadrennial review of the guidelines that commences more than one year after publication of the final rule. 81 *Fed. Reg.* 93492. For a discussion of state approaches, see Leslie Hodges and Lisa Klein Vogel, “Too Much, Too Little, or Just Right? Recent Changes to State Child Support Guidelines,” *Journal of Policy Practice and Research*, 2020 and the study summary in IRP, *Fast Focus Policy Brief No. 54-2021*.

<sup>38</sup> 42 U.S.C. § 667; Office of Child Support Enforcement (OCSE), *State IV-D Program Flexibility with Respect to Low Income Obligor*, OCSE-PIQ-00-03 (Sept. 14, 2000); OCSE, *Use of Presumptive Child Support Guidelines to Establish and Collect Child Support*, OCSE-AT-93-04 (March 22, 1993). See preamble to *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs*, 81 *Fed. Reg.* 93492, 93516 (Dec. 20, 2016).

<sup>39</sup> 45 C.F.R. § 302.56(c)(1). For a discussion of new federal guidelines requirements, see preamble to *Flexibility, Efficiency, and Modernization of Child Support Enforcement Programs Final Rule*, 81 *Fed. Reg.* 93492, 93516-93526 (Dec. 16, 2016).

<sup>40</sup> 45 C.F.R. § 302.56(c)(1)(iii).

<sup>41</sup> 45 C.F.R. § 303.4(b)(2), If quarterly earnings data are not available, child support agencies must gather additional information through investigations, case conferencing, parent interviews and questionnaires, appear and disclose procedures, and testimony.

<sup>42</sup> 45 C.F.R. § 302.56(1)(1)(ii). The federal rules make consideration of custodial parent income optional because not all states use shared income guidelines models but instead use a model based on the percentage of the obligor’s income.

<sup>43</sup> 45 C.F.R. § 302.56(c)(3); 303.8(b)(2) and (7). For a discussion about requirements applicable to incarcerated parents, see rule preamble at 81 *Fed. Reg.* 93524; 93537-93540.

<sup>44</sup> 45 C.F.R. § 303.8(b)(2) and (7)(ii).

<sup>45</sup> Congressional Research Service, *Modification of Child Support Orders: Background, Policy, and Concerns*, 2015.

<sup>46</sup> 42 U.S.C. § 667; 45 C.F.R. § 302.56.

<sup>47</sup> 45 C.F.R. § 302.56(e) and (h).

<sup>48</sup> NCSL, 2020.

<sup>49</sup> 42 U.S.C. § 667(b)(2); 45 C.F.R. § 302.56(g).

<sup>50</sup> OCSE, “How does a tribal child support program determine the amount of child support owed?” *Frequently Asked Questions About Tribal Child Support (FAQ)* (June 26, 2015).

<sup>51</sup> 2017 Michigan Child Support Formula Manual (MCSF) § 3.02; Iowa Child Support Guidelines, Rule 9; Wisconsin Administrative Code Chapt. DCF 150, Appendix C.

<sup>52</sup> RCW § 26.19.065(2)(b); Minn. Stat. § 518A.42, subd. 1(b); NY Family Court Act §§ 413. (See New York Office of Temporary and Disability Assistance website for an explanation of its self-support reserve.) ASPE, *2021 Poverty Guidelines* and *2019 Poverty Guidelines*, U.S. Department of Health and Human Services.

<sup>53</sup> N.Y. Family Court Act §§ 413 and 413A; RCW 26.19.065.

---

<sup>54</sup> 2021 MCSF §§ 2.01; 2.09. “Net income” means all income minus taxes and other specified deductions.

<sup>55</sup> N.Y. Family Court Act §§ 413.

<sup>56</sup> Md. Code, Family Law Art. §§ 12-201(e) and (n); 12-202(a)(3) and (e), as amended by S.B. 847, enacted on May 8, 2020, and H.B. 1339, enacted on March 9, 2021. The 2019 federal poverty level is \$12,490, while 110 percent of the federal poverty level is \$13,739 for a one-person household. The 2021 federal poverty level is \$12,880. ASPE, *2021 Poverty Guidelines* and *2019 Poverty Guidelines*, U.S. Department of Health and Human Services.

<sup>57</sup> N.Y. Family Court Act §§ 413(1)(b)(5) and (6); 413(1)(d) and (g); 413A.

<sup>58</sup> N.Y. Family Court Act § 413(1)(d) provides in part: “[W]here the annual amount of the basic child support obligation would reduce the non-custodial parent’s income below the poverty income guidelines amount for a single person as reported by the federal department of health and human services, the basic child support obligation shall be twenty-five dollars per month; provided, however, that if the court finds that such basic child support obligation is unjust or inappropriate, which finding shall be based upon considerations of the factors set forth in paragraph (f) of this subdivision, where the annual amount of the basic child support obligation would reduce the non-custodial parent’s income below the self-support reserve but not below the poverty income guidelines amount for a single person as reported by the federal department of health and human services, the basic child support obligation shall be fifty dollars per month or the difference between the non-custodial parent’s income and the self-support reserve, whichever is greater[.]”

<sup>59</sup> N.Y. Family Court Act § 413(1)(g) provides in part: “Where the non-custodial parent’s income is less than or equal to the poverty income guidelines amount for a single person as reported by the federal department of health and human services, unpaid child support arrears in excess of five hundred dollars shall not accrue.”

<sup>60</sup> Not all \$25 orders are poverty orders; the language of the court order must indicate that a poverty order has been issued for the arrears cap to apply.

<sup>61</sup> RCW §§ 26.09.170(8)(a); 26.19.065(2); 74.20A.059(3)(a).

<sup>62</sup> 2017 MCSF § 2.01(G).

<sup>63</sup> Iowa Child Support Guidelines, Rule 9.11(A); Code of Virginia, § 20-108.1.

<sup>64</sup> Md. Code, Family Law Art. § 12-204(b), as amended by S.B. 847 and H.B. 1339.

<sup>65</sup> MCL §§ 552.517b; 2021 MCSF 2021 MCSF 1.04(E)(13); 2.01(G); 2021 MCSF 3.01(B) 2021 MCSF 1.04(E)(13).

<sup>66</sup> The factors listed in 2021 MCSF 2.01(G)(2) include: (a) Prior employment experience and history, including earnings history, and reasons for any termination or changes in employment; (b) Educational level, literacy, and any special skills or training; (c) Physical and mental disabilities that may affect a parent’s ability to work, or to obtain or maintain gainful employment; (d) Availability for work (exclude periods when a parent could not work or seek work, e.g., hospitalization, incarceration, debilitating illness, etc.); (e) Availability of opportunities to work in the local geographical area; (f) The prevailing wage rates and number of hours of available work in the local geographical area; (g) Diligence exercised in seeking appropriate employment; (h) Evidence that the parent in question is able to earn the imputed income; (i) Personal history, including present marital status, age, health, residence, means of support, criminal record, ability to drive, and access to transportation, etc.; (j) The presence of the parties’ children in the parent’s home and its impact on that parent’s earnings; (k) Whether there has been a significant reduction in income compared to the period that preceded the filing of the initial complaint or the motion for modification.

---

<sup>67</sup> 2021 MCSF 2.01(G)(1) and (3) state: “The amount of imputed potential income should be sufficient to bring that parent’s income up to the level it would have been if the parent had not reduced or waived income.”

<sup>68</sup> Income may be imputed if a party fails or refuses to provide information requested by the FOC as part of a modification review. MCL § 552.517b.

<sup>69</sup> Code of Virginia §§ 20-108.2(B); 63.2-1903; 63.2-1915; 63.2-1918.

<sup>70</sup> DCSE, *Program Manual* 6.2(D)(1), “Child Support Establishment: When Obligations Are Not Established,” 169-171 (04/2021).

<sup>71</sup> DCSE, *Program Manual* 6.2(D)(2), 171-172 (04/2021).

<sup>72</sup> 22 VAC 40-880-240(1); DCSE *Program Manual* 6.2 (G)(1)(a)(1), “Support Order Establishment: Deviation from the Child Support Guidelines,” 181.

<sup>73</sup> An incarcerated parent may be considered voluntarily unemployed in Virginia. Federal regulations adopted in 2016 prohibit the treatment of incarceration as voluntary unemployment, 45 C.F.R. §§ 302.56(c)(3) and 303.8(c). These rules become effective one year after completion of the first quadrennial review of the state’s guidelines that commences more than one year after December 20, 2016.

<sup>74</sup> Code of Virginia § 63.2-1918; DCSE *Program Manual* 6.2(G), 183-184.

<sup>75</sup> In reviewing the evidence, the court considers the ability of each parent to provide child support, the best interests of the child, and a set of other statutory factors. Code of Virginia §20.108.1(B); 22 VAC 40-880-240; DCSE *Program Manual* 6.2(C), “Support Order Establishment: Virginia’s Child Support Guidelines” (07/2020), 169, and (G), 181.

<sup>76</sup> DCSE *Program Manual* 6.2(G), 181.

<sup>77</sup> Md. Code, Family Law Art. §§ 12-201; 12-202(b); 12-204(b), as amended by S.B. 847 and H.B. 1339.

<sup>78</sup> 42 U.S.C. § 666(a)(10)(A); 45 C.F.R. § 303.8.

<sup>79</sup> 42 U.S.C. § 666(a)(10)(B); 45 C.F.R. § 303.8.

<sup>80</sup> 42 U.S.C. § 666(a)(9); 45 C.F.R. § 303.106. State judgments are final and, under typical state rules of civil procedure, may only be changed within a reasonable period on the basis of fraud, mistake, inadvertence, excusable neglect, newly discovered evidence, discharge, or other reasons. Federal policy permits states to reduce state-owed child support debt without owing a share to the federal government, but only custodial parents may forgive arrears owed to them. OCSE-AT-00-03, *State IV-D Program Flexibility with Respect to Low Income Obligor* (Sept. 14, 2000); OCSE-PIQ-99-03, *Policy Supporting Two Parent Families/Compromise of Arrears* (March 22, 1999).

<sup>81</sup> Mary Farrell, Caitlin Anzelone, Dan Cullinan, and Jessica Wille, *Taking the First Step: Using Behavioral Economics to Help Incarcerated Parents Apply for Child Support Order Modifications*, MDRC, 2014.

<sup>82</sup> Asaph Glosser, Dan Cullinan, and Emmi Obara, *Simplify, Notify, Modify: Using Behavioral Insights to Increase Incarcerated Parents’ Request for Child Support Modifications*, Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services, 2016.

<sup>83</sup> Federal rules require state child support agencies to complete reviews of child support orders and determine whether the orders should be adjusted within 180 calendar days of receiving a request for review. 45 C.F.R. § 303.8(e).

<sup>84</sup> All reviews from these periods, and earlier periods, have since been completed.

<sup>85</sup> MCL § 552.517; 552.517b; 552.517f; 552.642a.

<sup>86</sup> Orders entered before the law goes into effect are abated as of December 30, 2021, the date the amendment becomes effective. S.B. No. 1091, amending section 17 and adding new section 17f to 1981 PA 294 (MCL § 552.517 and 552.517f)(effective one year after enactment).

---

<sup>87</sup> If a parent objects to the proposed abatement, the FOC conducts an administrative review, which the parent then can object to by filing a motion in circuit court. MCL § 552.517f(b)(5).

<sup>88</sup> Absent good cause to the contrary, a support order under a modified support order is due no sooner than the first day of the first month following the 90<sup>th</sup> day after release from incarceration. A modified order entered after the 90<sup>th</sup> day following release may become effective back to the first day of the first month after the 90<sup>th</sup> day but must be calculated using the parents' actual resources. MCL § 552.517f(9) and (10).

<sup>89</sup> MCL § 552.517(1); 2021 MCSF 4.05(A). Under the statute currently in effect, the grounds for the FOC to initiate a modification review include: (1) a child in a case is receiving public assistance every 36 months; (2) a child is receiving medical assistance every 36 months; (3) upon the request of a party; (4) in an interstate case, upon request of the initiating state not less than 36 months; (5) at the direction of the court; and (6) at the initiative of the FOC, if there are reasonable grounds to believe that the amount of child support ordered should be modified, including a change in physical custody, changed needs of the child, access to or changed health care coverage, changed financial conditions of a party (including application for or receipt of public assistance, unemployment compensation, or workers compensation or incarceration; or if the order is based on incorrect facts). The minimum income change threshold for modification is 10 percent or \$50, whichever is greater.

<sup>90</sup> SCAO Administrative Memorandum 2019-03 (March 12, 2019); MCL § 552.517(f)(v)(B), currently in effect, provides that "Reasonable grounds to review an order under this subdivision include ... [i]ncarceration or release from incarceration after a criminal conviction and sentencing to a term of more than one year. Within 14 days after receiving information that a recipient of support or payer is incarcerated or released from incarceration ... the office shall initiate a review of the order."

<sup>91</sup> 2021 MCSF 4.02; SCAO Administrative Memorandum 2019-03.

<sup>92</sup> If there is evidence the parent committed the crime with the intent to reduce income, that evidence should be brought to the court's attention for consideration. SCAO Administrative Memorandum 2019-03.

<sup>93</sup> 2021 MCSF 4.02; MCSF-S 304; SCAO Administrative Memorandum 2019-03.

<sup>94</sup> SCAO Administrative Memorandum 2019-03.

<sup>95</sup> 2021 MCSF 4.02(A) and (C); 2021 MCSF-S 3.01(B); 2021 MCSF-S 3.04(B)(2); SCAO Administrative Memorandum 2019-03.

<sup>96</sup> N.D. Cent. Code § 14-09-09.38.

<sup>97</sup> Under the statute, the 180-day period excludes credit for time served before sentencing. For example, if a noncustodial parent is sentenced for 180 days but receives credit for 40 days time served and is expected to serve an additional 140 additional days under the sentence, the order will not expire.

<sup>98</sup> Net income is defined as gross income minus taxes; public assistance benefits, child support payments, and certain allowances and nonrecurring payments are excluded from gross income. N.D. Cent. Code § 14-09-09.7; N.D. Admin. Code § 75-02-04.1-01. North Dakota primarily uses judicial processes to establish and modify child support orders.

<sup>99</sup> 45 C.F.R. § 303.11(b)(1), (2), and (8) allow a state child support agency to close cases when: (1) there is no longer a current support order and arrears are \$500 or unenforceable under state law; (2) there is no longer a current support order and all arrears are assigned to the state; or (8) the child support agency determines that the noncustodial parent cannot pay support and shows no evidence of support potential because the parent will be incarcerated throughout the duration of the child's minority and has no income or assets available above subsistence level.

<sup>100</sup> Unlike most states, North Dakota guidelines are based on a percentage of the noncustodial parent's income rather than the income of both parents. See NCSL, *Guidelines Models* webpage.

---

<sup>101</sup> N.D. Admin. Code § 75-02-04.1-07(4)(g).

<sup>102</sup> In the first 18 months after the law went into effect, 4.1 percent of child support orders that were accruing support every month were terminated because the obligor was incarcerated under a sentence of 180 days or longer. More than half of these orders were terminated in the first month, reflecting a backlog of parents who were already incarcerated and had orders eligible for termination under the law. During the following 12 months, between June 2018 and May 2019, the Child Support Division averaged 26 terminated orders per month.

<sup>103</sup> ORS 180.345; 25.245. 25.247; 25.287; 25.505; 25.527.

<sup>104</sup> OAR 137-055-2140.

<sup>105</sup> OAR 1137-055-3300; 137-055-3430; 137-055-3480. Pending state legislation (SB 821) would clarify that it is not incarceration or the release from incarceration that qualifies a parent for a modification based on a change in circumstances but rather reinstatement of support after a suspension due to incarceration. This change prevents premature modifications on suspended orders, permitting a recently released paying parent the full grace period following release to get back on their feet. However, a modification can still occur if the parent also experiences a change in financial circumstances that rebuts the presumption that they are unable to pay support.

<sup>106</sup> In general, child support establishment activities are triggered when a parent applies for child support services or the case is referred for child support services by another program and no order has yet been established.

<sup>107</sup> Federal law does not permit child support garnishment of SSI benefits. 42 U.S.C. § 659(h); 45 C.F.R. § 307.11(c)(3); see § 303.11(b)(9)(ii).

<sup>108</sup> If a parent who would otherwise pay support is receiving cash assistance, a non-calculated, zero support order is entered. The order can be modified to include support when the parent is no longer receiving cash assistance.

<sup>109</sup> RCW 26.09.170; 26.09.320; 26.09.335; 26.23.050.

<sup>110</sup> RCW 26.09.320(1), effective February 1, 2021.

<sup>111</sup> RCW 26.09.170(5), effective February 1, 2021. For example, assume a paying parent has been in jail since May 1, 2021, awaiting trial. The child support order includes abatement language. On November 1, 2021, the parent is still in jail awaiting trial. The order may be abated because the parent has been confined for at least six months. The support obligation is abated to \$10 per month effective in May 2021.

<sup>112</sup> RCW 26.09.330.

<sup>113</sup> The order remains abated “through the last day of the third month after the person is released from confinement.” RCW 26.09.320(3)(b).

<sup>114</sup> RCW 74.20A.059(2).

<sup>115</sup> RCW 26.09.170(9); 74.20A.059(5).

<sup>116</sup> The department has authority to file for modification in either a cash assistance or non-assistance case. RCW 26.09.170(10)(a).

<sup>117</sup> Md. Code, Family Law Art. §12-104.1, as amended by H.B. 234, enacted on May 8, 2020.

<sup>118</sup> The Maryland Court of Special Appeals found that payment obligations automatically ceased during the covered incarceration period under the prior statute. *Demon v. Robles*, 226 A.3<sup>rd</sup> 410, 245 Md. App. 233 (Md. Ct. Spec. App. 2020).