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Child Support Guidelines and Guidelines Reviews: State Differences and Common Issues

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I. Introduction

Since 1989, federal regulations require each state to provide presumptive guidelines (formulas) for determining the amount of child support awards and to review their guidelines at least once every four years.[1] Most states developed and adopted their initial guidelines in the late 1980s. States developed their guidelines based on similar premises and guidelines models and relied on a limited number of available economic studies on the cost of child-rearing.

In the past two decades, most states have made some change to their guidelines, but some states have made more substantive changes than others. Most states have extended their guidelines to cover higher incomes, expanded their guidelines to consider medical child support, and have made other changes to their guidelines. Most states have retained their original guidelines model, but some states have switched guidelines models. Most states also have changed or updated their core formula/schedule to reflect more current economic data at least once in the past two decades. Despite the federal requirement for each state to review its guidelines periodically, few states have routinely updated their guidelines formulas/schedules every time the state has conducted a guidelines review. Still, a few states have made no changes to their core formula/schedule for over a decade.

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1. 45 C.F.R. § 302.56 (2012).

These factors and other differences contribute to the similarities and differences among state guidelines today. This article explores similarities and differences in existing state guidelines and common issues identified by states as part of their most recent guidelines reviews.

II. Background Information and Federal Requirements

Child support guidelines play an important role in the financial well-being of many children. In 2010, there were twenty million children eligible for child support in the United States.[2] According to U.S. Census data, child support receipts averaged $5,135 per year among families that received child support and represented 16% of their average income in 2009.[3] National research finds that child support contributes to 40% of family income among poor custodial families receiving child support on average, and without child support, child poverty would increase by 4.4%.[4]

Prior to the enactment of the federal requirement for statewide guidelines, child support awards were estimated to average only 80% of poverty level and only 25% of available economic estimates of average expenditures on children.[5] The Child Support Amendments of 1984 (Pub. L. No. 98–378) required states to adopt advisory child support guidelines by 1987. The Family Support Act of 1988 (Pub. L. No. 100–485) (FSA) expanded this requirement. As of 1989, each state must have one set of guidelines that are to be applied presumptively, rather than on an advisory basis. The FSA also requires each state to establish deviation criteria that allow for rebuttal of the state's presumptive guidelines. The state-determined criteria must take into consideration the best interest of the child.

The FSA of 1988 also established the requirement that states must review their guidelines at least once every four years. As part of that review, states must consider economic data on the cost of raising children and examine case file data to analyze the application and deviation from the guidelines.

Federal regulation does not prescribe which guidelines model a state must use. Instead, federal regulation allows states considerable flexibility in their guidelines. The only requirements imposed on state guidelines are

2. Kye Lippold & Elaine Sorensen, Urban Inst., Characteristics of Families Served by the Child Support (IV-D) Program: 2010 Census Survey Results 4 (2013).

3. Office of Child Support Enforcement, U.S. Dep't of Health & Human Servs., Child Support Fact Sheet No. 2 (2013).

4. Elaine Sorensen, Urban Inst., Child Support Plays an Increasingly Important Role for Poor Custodial Families 1 (2010).

5. Robert G. Williams, Development of Guidelines for Child Support Orders, Part II at II-i (1987) (final report to the U.S. Office of Child Support Enforcement).

that the guidelines:

- be based on specific descriptive and numeric criteria;
- take into consideration all earnings and income of the non-custodial parent; and
- address how the parents will provide for the child(ren)'s health care needs through health insurance coverage and/or through cash medical support.[6]

III. Basis of State Guidelines

State guidelines are based partially on policy and partially on economic data.

A. Premises and Models Underlying State Guidelines

When developing guidelines, all states considered the best interest of the child and the appropriateness of the guidelines-determined support awards. Other policy considerations common to states in both the adoption of guidelines and their subsequent revisions are the fairness, equity, comprehensiveness, predictability, transparency, and ease of use of the guidelines.

Table 1 shows that as of 2013, thirty-nine states base their guidelines on the Income Shares Model, nine states base their guidelines on the Percentage of Obligor Income Model, and three states base their guidelines on the Melson Formula. Researchers classify both the Income Shares Model and the Percentage of Obligor Income Model as a Continuity of Expenditures Model because they both relate to measurements of child-rearing costs that consider how much intact families typically spend on their children.[7] The underlying premise of the Continuity of Expenditures Model is that children should continue to receive the same amount of expenditures they would have received had the parents never separated or divorced. This premise was popular in the 1980s because many children eligible for child support were children of divorcing or separating parents. Nonetheless, all states relying on the Continuity of Expenditures Model also apply the principle to children whose parents never married or lived together. The underlying premise is that children of never-married parents and children of divorced or separated parents should be treated the same. Several states specify this premise in their guidelines.

Under the Income Shares Model, each party is responsible for his or her prorated share of child-rearing expenditures. The obligated parent's share

6. 45 C.F.R. § 302.56(c) (2012).

7. *See* Ingrid Rothe & Lawrence Berger, Estimating the Costs of Children: Theoretical Considerations Related to Transitions to Adulthood and the Valuation of Parental Time for Research on Poverty (2007).

Table 1: Comparison of State Guidelines

State	Guidelines Model	Income Base	Last Update of the Entire Core Formula/Schedule
Alabama	Income Shares	Gross	2009
Alaska	% of Obligor Income	Net	None
Arizona	Income Shares	Gross	2011
Arkansas	% of Obligor Income	Net	2007
California	Income Shares	Net	1992
Colorado	Income Shares	Gross	2014
Connecticut	Income Shares	Net	2003
District of Columbia	Income Shares	Gross	2007
Delaware	Melson	Net	2011
Florida	Income Shares	Net	1992
Georgia	Income Shares	Gross	2008
Hawaii	Melson	Net	2010
Idaho	Income Shares	Gross	None
Illinois	% of Obligor Income	Net	None
Indiana	Income Shares	Gross	2008
Iowa	Income Shares	Net	2013
Kansas	Income Shares	Gross	2012
Kentucky	Income Shares	Gross	None
Louisiana	Income Shares	Gross	2008
Maine	Income Shares	Gross	2009
Maryland	Income Shares	Gross	2010
Massachusetts	Income Shares	Gross	2013
Michigan	Income Shares	Net	2013
Minnesota	Income Shares	Net	2006
Mississippi	% of Obligor Income	Net	None
Missouri	Income Shares	Gross	2009
Montana	Melson	Net	2013
Nebraska	Income Shares	Net	2008
Nevada	% of Obligor Income	Gross	1991
New Hampshire	Income Shares	Net	2013
New Jersey	Income Shares	Net	2013
New Mexico	Income Shares	Gross	2008
New York	% of Obligor Income	Gross	None
North Carolina	Income Shares	Gross	2011
North Dakota	% of Obligor Income	Net	2011
Ohio	Income Shares	Gross	1994

State	Guidelines Model	Income Base	Last Update of the Entire Core Formula/Schedule
Oklahoma	Income Shares	Gross	2000
Oregon	Income Shares	Gross	2006
Pennsylvania	Income Shares	Net	2013
Rhode Island	Income Shares	Gross	2012
South Carolina	Income Shares	Gross	2006
South Dakota	Income Shares	Net	2009
Tennessee	Income Shares	Gross	2005
Texas	% of Obligor Income	Net	1995
Utah	Income Shares	Gross	2008
Vermont	Income Shares	Net	2011
Virginia	Income Shares	Gross	None
Washington	Income Shares	Net	None
West Virginia	Income Shares	Gross	1999
Wisconsin	% of Obligor Income	Gross	1983
Wyoming	Income Shares	Net	2013
Total	Income Shares = 39 % of Obligor Income = 9 Melson = 3	Gross = 28 Net = 23	2010 or after = 18 2005 – 2009 = 16 2000 – 2004 = 2 Before 2000 = 7 None = 8

becomes the base of the support award calculation. The Income Shares Model requires information about each party's income in the calculation of the support award. In contrast, the Percentage of Obligor Income Model considers the obligor's income only. Many Percentage of Obligor Income guidelines, however, assume that the custodial parent's child-rearing expenditures are the same dollar amount or percentage of income as the support award. The key difference between the award amounts under the Income Shares Model and the Percentage of Obligor Income Model is the impact of the custodial parent's income on the support award amount. Under the Income Shares Model, the support award is lowered if the custodial parent has income. The higher the income of the custodial parent, the lower the support award becomes. Under the Percentage of Obligor Income Model, the custodial parent's income has no bearing on the support award amount.

Named after a Delaware judge, the Melson formula is not a Continuity of Expenditures Model. It first considers the basic needs of the child and each parent. Basic needs amounts relate to the poverty level or a similar subsistence amount. If the obligated parent's income is more than sufficient to cover his or her prorated share of the child's basic needs and the parent's own basic needs, an additional percentage of the obligated parent's remaining income is assigned to child support. This last step allows the child to share in the standard of living afforded by the obligated parent.

The 1984–86 National Advisory Panel on Child Support Guidelines, which was convened by the federal Office of Child Support Enforcement (OCSE) to fulfill a congressional mandate, recommended that states adopt either the Income Shares Model or the Melson Formula. The Income Shares Model was actually developed by the Advisory Panel staff to embody the Advisory Panel's recommendations and relate to actual economic evidence on child-rearing expenditures.[8] In the 1980s, OCSE also funded technical assistance to states to help them develop guidelines. Much of the technical assistance was provided by the Advisory Panel staff that had developed the Income Shares Model.

1. States Switching Guidelines Models

By 1990, thirty-one states had implemented the Income Shares Model, fifteen states had implemented the Percentage of Obligor Income Model, three states had implemented the Melson Formula, and two states had implemented another guidelines model that is no longer in use.[9] Since 1990, nine states have switched guidelines models. With the exception of Montana, all of the states switched to the Income Shares Model. The most common switch was from the Percentage of Obligor Income Model to the Income Shares Model. Most states switched because the Income Shares Model can more readily factor in and address a larger variety of case circumstances than can the traditional Percentage of Obligor Income Model. This includes circumstances in which the custodial parent has more income than the noncustodial parent, shared-parenting time, and other circumstances.

2. States Apply Guidelines Models Differently

Guidelines award amounts among states using the same guidelines model rarely produce identical amounts. As a consequence, one guidelines model does not consistently result in lower or higher support awards than another guidelines model.

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8. More information about the panel and the development of the Income Shares Model is provided in Williams, *supra* note 5.

9. Jane C. Venohr & Robert G. Williams, *The Implementation and Periodic Review of State Child Support Guidelines*, 33 Fam. L.Q. 7 (1999). The guidelines model that is no longer in use is the hybrid model that was used previously by Massachusetts and the District of Columbia.

Some Percentage of Obligor Income guidelines apply the same percentage to all obligor incomes, whereas other Percentage of Obligor Income guidelines use a sliding scale. Only about half of state guidelines categorized as Income Shares guidelines resemble the prototype Income Shares Model developed in the 1980s. Several states have developed their own version of the Income Shares Model. For example, the California guideline formula is shown in Exhibit 1. Although the State of California offers an easy-to-use automated calculator from its website, the California guideline formula appears complicated and not intuitive. In contrast, Exhibit 2 shows an excerpt of a child support schedule from a state relying on the prototype Income Shares Model.[10] The schedule consists of the basic child support obligation owed by parents for a range of combined parental incomes and number of children and reflects economic data on child-rearing expenditures incurred by intact families of similar incomes and family sizes. The nonresidential parent's prorated share of the schedule amount forms the basis of the support award.

B. Differences in Underlying Economic Data and Assumptions

The numbers underlying state guidelines using the same model differ for several reasons. The most obvious difference is that states rely on different measurements of child-rearing expenditures. There are at least eight different studies of child-rearing expenditures that form the basis of current state guidelines.[11] These studies vary in data years, and some of the studies rely on different methodologies to measure child-rearing expenditures. Some consider expenditures made by families surveyed in the early 1970s, whereas others consider expenditures from families surveyed as recently as 2009. When initially developing their guidelines, most states considered one of two economic studies that were available at the time.[12] Since then, new studies that are based on more current expenditure data have become available. Many states have updated their guidelines formulas/schedules based on the new studies. Some of the studies currently used by states during their guidelines reviews are discussed in more detail later in this article.

There are several other economic assumptions made in the development of guidelines, such as assumptions concerning tax rates, price levels,

10. The California guideline almost could be categorized as a Percentage of Obligor Model if there is no timesharing.

11. More information about the eight studies is provided in JUDICIAL COUNCIL OF CALIFORNIA, REVIEW OF THE STATEWIDE UNIFORM CHILD SUPPORT GUIDELINE 2010 (2010).

12. THOMAS J. ESPENSHADE, INVESTING IN CHILDREN: NEW ESTIMATES OF PARENTAL EXPENDITURES (1984); JACQUES VAN DER GAAG, UNIVERSITY OF WISCONSIN INSTITUTE FOR RESEARCH ON POVERTY, ON MEASURING THE COST OF CHILDREN (1981).

Exhibit 1: California Child Support Guideline Formula

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

CS	Child support amount
K	Amount of both parents' net income to be allocated for child support as calculated below
HN	Net monthly disposable income of the higher earner of the two parents.
H%	Approximate percentage of time that the high earner has or will have primary physical responsibility for the children
TN	Total net monthly disposable income of both parents

K = k-fraction x (1 + H%) if H% is less than or equal to 50 percent
k-fraction x (2 - H%) if H% is greater than 50 percent

Total net disposable income per month	K-fraction
\$0 – 800	0.20 + TN/16,000
\$801 – 6,666	0.25
\$6,667 – 10,000	0.10 + 1,000/TN
Over \$10,000	0.12 + 800/TN

For more than one child, multiply CS by:

2 children	1.6
3 children	2.0
4 children	2.3
5 children	2.5
6 children	2.625
7 children	2.75
8 children	2.813
9 children	2.844
10 children	2.86

and some types of child-rearing expenditures. As shown in Table 1, twenty-eight state guidelines rely on gross income and twenty-three state guidelines rely on net income. Nonetheless, the classification of a guidelines income basis as gross or net income is not always definitive because some states develop their own definitions of income available for child support. For example, Table 1 shows the New York guidelines as being based on gross income. New York, unlike most gross-income guidelines, actually excludes FICA from income available for child support. New York and Wisconsin both rely on the Percentage of Obligor Income Model and assign essentially the same percentage of income to determine

Exhibit 2: Format of a Typical Income Shares Schedule *(Excerpt)*

Parents' Combined Adjusted Gross Income	**Basic Obligation Owed by Both Parents**					
	One Child	**Two Children**	**Three Children**	**Four Children**	**Five Children**	**Six Children**
4,000	580	837	982	1,085	1,176	1,258
4,050	583	841	987	1,090	1,182	1,265
4,100	586	845	992	1,096	1,188	1,271
4,150	589	850	997	1,102	1,194	1,278
4,200	592	854	1,002	1,107	1,200	1,284
4,250	595	859	1,007	1,113	1,206	1,291
4,300	598	863	1,012	1,119	1,213	1,297
4,350	601	867	1,017	1,124	1,219	1,304
4,400	604	872	1,023	1,130	1,225	1,311
4,450	607	876	1,028	1,136	1,231	1,317
4,500	610	880	1,033	1,141	1,237	1,324

the support award (i.e., 17% of gross income for one child), but they produce very different guidelines amounts because Wisconsin and New York define guidelines income differently.

Many states with gross-income guidelines also incorporate assumptions about tax filing status and federal and state income tax rates from the year the state last updated its guidelines. In all, the year that the state last updated its guidelines can exacerbate differences because, over time, tax rates change, prices change, and new economic studies on the cost of child rearing become available. Table 1 shows the last time a state has updated all of its core guidelines formula/schedule, which is also usually the last time that state guidelines based on tax assumptions updated the underlying tax calculations. Table 1 does not reflect changes that were made only to very low incomes or only extended the formula/schedule to higher incomes. Similarly, the increase in the Illinois guidelines percentage for two children in 2003 is not considered a change to the whole formula/schedule. Using this definition of an updated core guidelines formula/schedule, eighteen states have updated their guidelines in the last few years, another sixteen states updated sometime between 2005 and 2009, two states updated sometime between 2000 and 2004, seven states updated sometime in the 1990s, and eight states have never updated.

There are several other differences underlying state guidelines formulas/schedules. Some states with relatively high or low incomes or housing costs make additional adjustments to account for their particular state's economic circumstances. Many state guidelines factor in the actual cost of the child's health insurance and out-of-pocket medical expenses on a case-by-case basis so the core formulas/schedules in these states exclude some or all of these healthcare-related expenses. Many states make a similar adjustment for work-related childcare expenses. In contrast, other states guidelines do not contain similar exclusions to their core formulas/schedules.

Most state guidelines also vary significantly at very low incomes. For example, many state guidelines based on the Continuity of Expenditures Model provide a guidelines amount that is lower than average child-rearing expenditures at that income and family size if the nonresidential parent's income is below a subsistence level. The amount of the low-income adjustment and the income threshold for its application are state-determined policy decisions and vary considerably among states.

Another difference, which is discussed later, is adjustment for shared parenting time. A few states include a standard adjustment for timesharing in their core guidelines schedules. This effectively lowers the schedules in these states.

IV. State Guidelines Reviews

The federal requirements for state guidelines review are:

> The State must review, and revise, if appropriate, the guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support award amounts.
>
> . . . [A] State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviation from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.[13]

In general, states have complied with the federal requirement for periodic reviews. Most states review their guidelines through a state- or court-appointed commission or committee. In many states with guidelines that are set in state statute (e.g., Colorado, South Dakota, and Utah), the composition of the review committee is also set in statute and ensures

13. 45 C.F.R. § 302.56 (e) and (h) (2008).

a range of diverse stakeholders, such as family law attorneys, advocates for children, an economist or accountant, and parent representatives. Some states with guidelines set in court rule (e.g., Indiana and Pennsylvania) will assign the guidelines review to their domestic relations committee. Child support guidelines are set in statute or by administrative rules requiring legislative approval in thirty-three states and by court rules in eighteen states.[14] Most states also solicit input from the general public through websites, public hearings, and other means. In addition to the federal requirements to review economic data on the cost of child-rearing and guidelines-deviation data, states often identify other guidelines issues to be considered in their review through the committee and public comments.

The committee usually develops recommendations for updating the guidelines that are reported to the state legislature or court, depending on how the state promulgates its guidelines. The state legislature or state supreme court (which actually could be the court's judicial council or another entity of the court) has ultimate authority to make guidelines changes, if any. There is no guarantee that the recommendations developed by a guidelines review committee will be adopted.

A. Review of the Economic Data

Most states consider studies that measure how much intact families spend on their children. This comports with the Continuity of Expenditures Model. Studies measuring child-rearing expenditures in single-parent families are not that helpful to the development and review of state guidelines because many single-parent families live in poverty and few have high incomes. Most states believe that their guidelines should provide more than a poverty level for children and that guidelines should provide an evidence-based formula/schedule for higher incomes. In 2012, 37% of single-parent families with related children lived in poverty.[15] In 2011, half of female householders living with their own children had incomes below $23,240 per year, while half of married couples living with their own children had incomes below $79,746 per year.[16]

Some states compare their guidelines amounts to the lower and upper bound of credible measurements of child-rearing expenditures among intact families. If the guidelines amounts generally fall between the lower and upper bound, the amounts are deemed appropriate. If the guidelines

14. Venohr & Williams, *supra* note 9, at 11.

15. ANNIE E. CASEY FOUNDATION, KIDS COUNT (2013).

16. U.S. CENSUS, 2011 AMERICAN COMMUNITY SURVEY *available at* http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml.

or part of the guidelines is below the lower bound, it is identified as possibly providing an inadequate level of support for children. This bracketing method was developed in 1990 by researchers assessing differences in methodologies used to measure child-rearing expenditures and making recommendations to states on developing and reviewing their state guidelines.[17] The researchers also recognized the limitations of using bracketing to assess guidelines adequacy. Some states had lower or higher living costs or other justifiable reasons for being less or more than national measurements of child-rearing expenditures.

States that have recently used the bracketing approach often use the United States Department of Agriculture (USDA) measurement of child-rearing expenditures as the upper bound. The USDA study is the only study that is updated annually. The USDA's most recent study found that the cost of raising a child from birth through age seventeen, is $173,490 for lower-income families, $241,080 for middle-income families, and $399,789 for higher-income families.[18] When converted to monthly amounts, the average cost of raising a child is $803 per month for lower-income families, $1,116 per month for middle-income families, and $1,850 per month for higher-income families. The USDA classifies families with incomes less than $60,640 per year as lower income, families with incomes between $60,640 and $105,000 per year as middle income, and families with incomes above $105,000 per year as higher income.

The 1990 assessment of child support guidelines relied on measurements using the "Rothbarth" methodology as the lower bound.[19] States applying the bracketing assessment usually rely on more current Rothbarth measurements as the lower bound. Unlike the USDA measurements, however, Rothbarth measurements are not updated annually. The Rothbarth measurements are usually expressed as a percentage of total family expenditures. A recent Rothbarth study found that 24% of total family expenditures are devoted to one child, 37% are devoted to two children, and 45% are devoted to three children.[20] If family expenditures are converted to gross income, these percentages would be lower due to federal and state income taxes and FICA and savings at higher incomes. Many states base their guidelines formulas/schedules on Rothbarth meas-

17. LEWIN/ICF, ESTIMATES OF EXPENDITURES ON CHILDREN AND CHILD SUPPORT GUIDELINES, Report to the U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation (1990).

18. MARK LINO, EXPENDITURES ON CHILDREN BY FAMILIES 2012, 2013 ANNUAL REPORT (U.S. Dep't of Agriculture, Center for Nutrition Policy and Promotion), Misc. Pub. No. 1528–2012.

19. More information about the Rothbarth estimator is available from Judicial Council of California, *supra* note 11, at 134–36.

20. Judicial Council of California, *supra* note 11, at 153.

urements, and some states have lowered their formula/ schedules for new Rothbarth measurements if their existing formula/ schedule is more than the new amount.

As shown in Table 1, eighteen states have updated their core formulas/schedules since 2010, and other states have never revised their core formulas/schedules. Some proposed updates have recently failed as state legislation (e.g., Kentucky and Ohio). Other recent guidelines review committees (e.g., Georgia and South Dakota) have not recommended changes to their core formulas/schedules because of the recent economic recession and its lingering aftermath of high unemployment rates and reduced earnings.

B. Deviations and Case File Data

There is no recent state-by-state compilation of guidelines deviation rates and other findings from state case file reviews. New York's most recent guidelines review, however, compared its guidelines deviation rate to those from ten state studies and a national study conducted more than a decade ago.[21] It found that state guidelines deviation rates ranged from a low of 3% to a high of 32%. Some of the rate differences can be explained by sampling methods. For example, some states calculate their deviation rates from only state child support case data (i.e., IV-D cases) that is tracked by the state's automated system. There are generally few deviations among IV-D cases, and deviation information is not always recorded in the automated system. In contrast, states that also sample from private cases and court records have higher guidelines deviation rates because the sample is more representative of all types of cases and the data source is more accurate.

In general, New York's patterns of guidelines deviations mimic the patterns of other states that collect and analyze case file data from both IV-D and non-IV-D cases. New York found that the deviation rates are higher in non-IV-D cases than IV-D cases, in nonpublic assistance cases than public assistance cases, and in cases in which one or both parties have attorney representation than those without attorney representation. New York also found that the majority of guidelines deviations are downward, and one of the most common guidelines deviation reason is consent or agreement between the parties.

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21. Jane Venohr & Carly Everett, 2010 Review of the New York Child Support Guidelines, Report to the New York Office of Temporary Assistance and Disability 46 (2010).

C. Other Issues in State Guidelines Reviews

Some of the other issues commonly addressed in state guidelines reviews are adjustments for low-income nonresidential parents, including provisions for imputing income and incarcerated parents; extending the guidelines formula/schedule to higher incomes; shared-parenting adjustments; adjustments for additional dependents; and changes necessary, if any, to conform with the Patient Protection and Affordable Care Act (Pub. L. No. 111–148). With the exception of the high-income extensions, each of these issues is discussed in more detail.[22] This section also discusses the extent to which guidelines review committees consider switching guidelines models.

1. Low Income

The treatment of low-income, nonresidential parents in the child support system has become a national issue as well as an issue for most state guidelines reviews. Many nonresidential parents owing child support, particularly in the IV-D caseload, are poor or have very low incomes and limited means to pay their child support orders.[23] Most states base their guidelines on economic data that reflect average child-rearing expenditures, but reduce these amounts for very low-income parents. The intent is to establish guidelines formulas/schedules at very low incomes, such that low-income nonresidential parents will pay the full amount of the guidelines-determined award or have sufficient remaining income to live at least at a sustainable level after paying the guidelines-determined award. If they do not pay the full amount and it is a state child support enforcement case, driver's license suspension or other child support enforcement remedies are triggered. In turn, this could reduce the amount of child support paid, impede the nonresidential parent's willingness to work, and alienate the nonresidential parent from the child.

All but five state guidelines provide low-income adjustments, and several states have recently updated their low-income adjustments. Many states also have refined their imputation income provisions to better address the actual income and earning potential of low-income, nonresidential parents. This includes no longer imputing income to incarcerated parents.

The amount of the low-income adjustment and the incomes at which the low-income adjustment applies vary considerably among states. The

22. More information about child support for high income cases is provided by Lori W. Nelson, *High Income Child Support*, 45 Fam. L.Q. 191 (2011).

23. A summary of the impact of child support enforcement policies on poor families is provided by Leslie Joan Harris, *Questioning Child Support Enforcement Policy for Poor Families*, 45 Fam. L.Q. 157 (2011).

most frequently used low-income adjustment consists of a self-support reserve, which ranges from $500 per month to 135% of the annual poverty level for one person (i.e., almost $1,300 per month using the 2013 poverty level). The guidelines amounts using the self-support reserve adjustment are based on a percentage of the difference between the nonresidential parent's income and the state-determined self-support reserve. Usually, the self-support reserve is provided in the guidelines worksheet or schedule. Most states also provide a rebuttal minimum support amount. Fifty dollars per month is a common minimum support amount.

The challenge to the low-income adjustment is the balance between an adequate and appropriate amount of support for the children and setting an amount that is collectible from or will be voluntarily paid by low-income nonresidential parents. Research from two different states finds that orders set at 20% or more of gross income will not be paid or accumulate arrears.[24] More research is needed, particularly in states that pass through child support payments to families receiving Temporary Assistance to Needy Families (TANF), to help states develop the right balance for their particular state.

2. Shared-Parenting Time

Shared-parenting time is an issue that is often brought up during guidelines reviews, but guidelines revisions for shared-parenting time adjustments are infrequent. In 2013, thirty-four state guidelines include a formulaic adjustment for shared-parenting time. State guidelines set a variety of criteria for applying the formula (e.g., judicial discretion), rely on a range of timesharing thresholds for applying the adjustment (i.e., as low as four overnights per year to almost equal residential custody) and use a few different formulas for their adjustments.[25] Since 1999, four states without a shared-parenting formula have adopted one. For two states, the adoption was part of a guidelines model switch to the Income Shares Model. In addition, two states have changed their shared-parenting time formulas and lowered their thresholds for applying the formulas. Other states have contemplated lowering the time-sharing threshold as part of their guidelines review, but it usually does not result in a committee recommendation. Proponents of expanding shared-parenting time formulas argue that it is fair to recognize the nonresidential parent's direct expen-

24. Mark Takayesu, Research Unit of the Orange County Department of Child Support Services. How Do Child Support Order Amounts Affect Payments and Compliance? (2011); Carl Formoso, Washington Department of Social and Health Services, Division of Child Support, Determining the Composition and Collectibility of Child Support Arrearages (2003).

25. More information can be found at Venohr & Williams, *supra* note 9, at 21.

ditures on the child while the child is in his or her care. Opponents argue that the custodial parent's direct child-rearing expenditures are not always significantly reduced when the child spends time with the nonresidential parent and that low thresholds encourage parents to bargain the timesharing arrangement to raise or lower the amount of the support award.

Public comment often identifies shared-parenting time as an issue. Invariably, some comments challenge state provisions for determining residential custody, which are outside what the committee is charged with reviewing. Many state guidelines, however, provide that the shared-parenting time adjustment can only be applied if there is a court order for shared residential custody/visitation, a parenting plan, or an agreement between the parties. This unintentionally makes the shared-parenting time adjustment more accessible to divorcing and separating parents than never-married parents. Custody/visitation issues are routinely addressed as part of a divorce proceeding, but this is not normally part of support order establishment proceedings. Usually, never-married parents must file a separate legal action to address custody/visitation issues. Federal funding of state child support programs also limits the scope of what issues can be addressed in support order establishment proceedings.

The impact of this nuance is illustrated by comparing support awards for two case scenarios using the Missouri child support guidelines, which provide a standard adjustment for timesharing if there is ordered custody/visitation. Missouri also offers a parenting plan guide to divorcing parents. One case scenario involves divorcing parents, and the other involves never-married parents. The case scenario involves one child and identical incomes. The nonresidential parent's gross income is $2,500 per month, and the custodial parent's gross income is $1,500 per month. For this case scenario, it is assumed that visitation of one overnight per week (i.e., fifty-two overnights per year) is ordered to the nonresidential parent in the divorce case. The never-married, nonresidential parent also visits his or her child, but does not have a visitation order. Under the Missouri guidelines, the support award would be set at $426 per month for the divorce case and $468 per month for the case involving never-married parents. In states with a more generous timesharing adjustment, the difference would be larger than it is under the Missouri guidelines.

The divergent treatment between previously married parents and never-married parents is likely to become a larger issue in the future as more child support cases involve never-married parents. In 2009, 1.7 million children were born to unmarried mothers, and 1.1 million children had newly divorced parents.[26] Nonetheless, not all of these children will

26. Diane R. Elliott & Tavia Simmons, *Marital Events of Americans: 2009*, U.S. CENSUS

become part of a child support case. Some unmarried parents will marry and live with their children, still other children will be adopted, and other life events will reduce the numbers of children eligible for child support.

3. Additional Dependents and Nontraditional Families

Like shared-parenting time adjustments, adjustments for additional dependents are often brought up during guidelines reviews, but guidelines revisions for additional dependents are infrequent. Most state guidelines provide an income deduction to recognize a parent's financial support of his or her additional children. The adjustment is applicable to either parent, regardless of the parent's custody status. Some state guidelines limit it to paid support and prior-born children. Still other state guidelines provide that the adjustment can be made for all children living with the parent, even stepchildren. Another variation among states is the amount of the income deduction.

Tightening or expanding eligibility for the additional dependents adjustment and increasing or decreasing the amount of the adjustment are often discussed during guidelines reviews, but generally there is no consensus on what specific changes would be more appropriate than the existing adjustment. Similarly, developing adjustments for parents who have children with three or more partners is often discussed, but is also divisive. A few states (e.g., Pennsylvania and Washington), however, do provide adjustments that address circumstances in which a parent has children with three or more partners.

Proponents of expanding additional dependents adjustments often believe that all children of a parent should be treated equally and recognize that additional dependents compound ability-to-pay issues encountered by very low-income parents. Opponents of expanding adjustments for additional dependents often perceive them as rewarding parents for having multiple families.

Besides multiple families, there are other nonnuclear family structures that appear to challenge the underlying premises of state guidelines. This includes situations in which both the mother and father are ordered to pay support because the child lives with a relative or with foster parents. However, many states and local jurisdictions will not pursue support in this situation, particularly if the goal is to reunify the child with the parent who previously had custody of the child. A more complicated situation could arise when more than two legal parents are recognized. This situation may occur in nontraditional family situations involving surrogate births and

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American Community Survey Reports, ACS-13 (2011); B.E. Hamilton, J.A. Martin, & S. J. Ventura, *Births: Preliminary Data for 2009*, National Vital Statistics Reports, 59 (2010).

same-sex parenthood. For example, California just adopted legislation recognizing more than two legal parents in response to a case in which the father sought custody of his biological child born to a mother in a same-sex marriage when each of the mothers could no longer physically care for their child.[27]

4. Medical Child Support

As identified earlier, federal regulation requires that state guidelines address how the parents will provide for the child's healthcare needs. All state guidelines provide that one or both parents can be ordered to provide health insurance for his or her child if it is available through the parent's employment, at a reasonable cost, or both. Further, most state guidelines provide an adjustment in the award calculation to account for the parent's actual cost of the child's health insurance premium. Most state guidelines also provide that the parents share in the child's uninsured, extraordinary medical expenses. In addition, a few state guidelines provide that the non-residential parent shall be ordered to pay cash medical support that is distributed to the Medicaid agency if his or her child is enrolled in Medicaid. In these situations, it is common to set a cash medical support equal to 5% of the nonresidential parent's gross income, which is added to the support award. Most of these provisions conform to federal rules on medical child support, which became effective in 2008.[28]

States are unsure of what to do about medical child support provisions in light of the Affordable Care Act (ACA). They recognize that the parent mandated to provide health insurance under ACA may not be the same parent ordered to provide health insurance by the child support order. There is also a concern that the cost of the child's health insurance used to determine the support award will be different once ACA is fully implemented. There is a similar concern about the underlying assumptions about the cost of the child's healthcare incorporated into guidelines formulas/schedules. Another concern is the impact of which parent claims the child as a tax exemption because the parent who claims the child faces the IRS shared-responsibility payment (i.e., a penalty) for failure to comply with the health insurance mandate. It is not uncommon for child support orders to reflect that the custodial parent has released his or her claim to the tax exemption for the child to the nonresidential parent. In addition, states are concerned that enforcing medical support orders, as federally required, overlaps with some of the activities that will be used to enforce the ACA insurance mandate.

27. Patrick McGreevy & Melanie Mason, *Brown Signs Bill to Allow Children More Than Two Legal Parents,* L.A. Times (Oct. 4, 2013).

28. 73 Fed. Reg. 140 42416–42 (2008).

OCSE has attempted to provide some guidance to states to address these issues. For example, OCSE has worked with the Centers for Medicare & Medicaid Services (CMS) to allow parents to obtain an exemption from the IRS-imposed shared-responsibility payment if one parent claims the child as an IRS tax exemption, but the child's other parent is ordered to provide the child's health insurance and does not.[29] Most states have put revisions to their current medical support provisions on hold until further federal guidance is provided.

5. GUIDELINES MODELS

Most states are interested in learning about different guidelines models, but not necessarily changing the guidelines model that they use. Based on the experiences of states that have done so, it is widely recognized that switching guidelines models takes a couple of years and is a challenging process. For some states based on a Percentage of Obligor Income Model, there appears to be a natural progression to an Income Shares Model. Six states have switched from Percentage of Obligor Income to Income Shares since initially adopting statewide guidelines. When a state contemplates a switch, it is often because the state's current Percentage of Guidelines Model does not address a wide variety of circumstances like the prototype Income Shares Model does. Illinois is a case in point. Illinois currently bases its guidelines on the Percentage of Obligor Income Model, and the Illinois guidelines do not provide a low-income adjustment, shared-parenting time formula, a method for adjusting for work-related childcare expenses, or other provisions to address special factors. There are other issues with the current Illinois guidelines, including its application to higher incomes. One recommendation that came out of Illinois's last guidelines review was to switch to the Income Shares Model. Illinois is still in the process of developing a legislative proposal to adopt the recommendation.

States have also explored alternative guidelines models, but none have been adopted. In the late 1990s and early 2000s, several states explored the Cost Shares Model.[30] In 2009, the Arizona guidelines review committee developed and recommended the Child Outcome-Based Support (COBS) Model for state adoption.[31] Both models are alternatives to the Continuity

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29. Vicki Turetsky, *What Is Our Medical Support Road Map?* 35 CHILD SUPPORT REP., 3 (2013).

30. More information about the Cost Shares Model can be found at Jo Michelle Beld & Len Biernat, *Federal Intent for State Child Support Guidelines, Income Shares, Cost Shares, and the Realities of Shared Parenting*, 37 FAM. L. Q. 165 (2003).

31. More information about COBS can be found in *Arizona Child Support Guidelines Review Committee, Interim Report of the Committee*, Arizona Judicial Council, Oct. 21, 2009, *available at* www.azcourts.gov/cscommittees/childsupportguidelinereviewcommunity/aspx.

of Expenditures Model, which "looks backward" at what is spent on child-rearing expenditures in intact families. Instead, both the Cost Shares Model and COBS Model are "forward-looking methods" of calculating support in that they consider the living standard of each parent and the children after the transfer of child support. Besides those similarities, the Cost Shares Model and COBS Model are remarkably different. They differ in their underlying assumptions about the impact of the parents' relative incomes on support awards, the tax assumptions used to determine the income that each parent have available for support, the consideration of each parent's share of parenting time, and the financial needs of the child while in each parent's home.

V. Case Comparisons of Current State Guidelines

Case scenarios are used to illustrate the differences in core formulas/schedules among state guidelines.

A. Description of the Case Scenarios

The case scenarios consider 2011 median earnings by gender by educational attainment for the U.S. population twenty-five years and over, which for a male and female, respectively, were $21,840 and $14,623 per year for those with less than a high school diploma, $40,248 and $27,330 per year for some college or associate's degree, and $80,917 and $54,115 per year for a graduate or professional degree.[32] For the scenarios, the custodial parent's income is based on median female earnings for a particular educational attainment and the nonresidential parent's income is based on median male earnings for a particular educational attainment. Median incomes are divided by twelve to obtain a monthly gross income amount. Net monthly equivalents are calculated using the 2013 IRS employer tax withholding formula and assumes that the nonresidential parent's tax-filing status is single and the custodial parent files as a head of household and claims the tax exemption for the child.

Case A:

- Highest educational attainment of the parents: less than a high school diploma
- Number of children: one
- Gross income of the custodial parent: $1,219/month
- Gross income of the nonresidential parent: $1,820/month

32. U.S. Census, American Fact Finder: Median Earnings in the Past 12 Months (in 2011 Inflation-Adjusted Dollars) by Sex by Educational Attainment for the Population 25 Years and Over.

- Net equivalent to the custodial parent's gross income: $1,119/month
- Gross equivalent to the nonresidential parent's gross income: $1,570/month

Case B:
- Highest educational attainment of the parents: some college or an associate's degree
- Number of children: two
- Gross income of the custodial parent: $2,278/month
- Gross income of the nonresidential parent: $3,354/month
- Net equivalent of the custodial parent's gross income: $2,021/month
- Gross equivalent of the nonresidential parent's gross income: $2,278/month

Case C:
- Highest educational attainment of the parents: graduate or professional degree
- Number of children: one
- Gross income of the custodial parent: $4,510/month
- Gross income of the nonresidential parent: $6,743/month
- Net equivalent of the custodial parent's gross income: $3,666/month
- Gross equivalent of the nonresidential parent's gross income: $5,089/month

The case scenarios assume there are no other factors considered in a state guidelines calculation. For example, there are no work-related childcare expenses, no health insurance costs, and no cash medical support ordered. For the few guidelines that factor in the timesharing arrangement into their core formulas/schedules, it is assumed that there is zero timesharing. For the few guidelines that consider the child's age, it is assumed the child is age ten. Support awards are calculated from state- or court-issued websites when available.

B. Findings from the State Comparisons

Table 2 compares the guidelines-determined amount for each case scenario.[33] For Case A, the median state guidelines award is $339 per month and ranges from $220 to $412 per month. The median award ($339) approximates the poverty level for one child, which was $335 per month in 2013.[34] The guidelines award for Case A is less than $300 per month in

33. The Colorado amount is based on the Colorado guidelines that will become effective January 2014.

34. This is based on the poverty level for an additional person as reported in 78 Fed. Reg. 16, 5182–83 (Jan. 24, 2013).

Table 2: Comparison of State Guidelines Amounts

	Monthly Support Award		
State	**Case A**	**Case B**	**Case C**
Alabama	$352	$658	$690
Alaska	$314	$745	$1,018
Arizona	$362	$774	$738
Arkansas	$366	$695	$763
California	$384	$1,052	$1,014
Colorado	$324	$811	$791
Connecticut	$386	$823	$808
District of Columbia	$362	$790	$1,033
Delaware	$363	$771	$863
Florida	$343	$868	$784
Georgia	$377	$802	$821
Hawaii	$341	$833	$757
Idaho	$295	$730	$717
Illinois	$314	$773	$1,018
Indiana	$303	$723	$758
Iowa	$385	$827	$804
Kansas	$322	$774	$920
Kentucky	$281	$658	$635
Louisiana	$329	$764	$819
Maine	$324	$671	$626
Maryland	$341	$801	$873
Massachusetts	$400	$904	$1,306
Michigan	$357	$804	$828
Minnesota	$361	$802	$852
Mississippi	$220	$552	$712
Missouri	$362	$770	$738
Montana	$273	$643	$735
Nebraska	$390	$854	$874
Nevada	$340	$839	$600
New Hampshire	$368	$863	$1,029
New Jersey	$412	$683	$854
New Mexico	$306	$608	$722
New York	$286	$775	$1,059
North Carolina	$318	$762	$717
North Dakota	$368	$774	$923
Ohio	$312	$628	$704

	Monthly Support Award		
State	**Case A**	**Case B**	**Case C**
Oklahoma	$306	$606	$732
Oregon	$339	$715	$697
Pennsylvania	$371	$780	$766
Rhode Island	$328	$843	$859
South Carolina	$347	$655	$684
South Dakota	$387	$770	$730
Tennessee	$359	$704	$744
Texas	$314	$690	$1,018
Utah	$298	$755	$655
Vermont	$335	$757	$733
Virginia	$269	$675	$631
Washington	$316	$642	$687
West Virginia	$299	$614	$686
Wisconsin	$309	$839	$1,146
Wyoming	$337	$775	$762
Average Award	$336	$754	$812
Median Award	$339	$770	$763
Range	$220 – $412	$552 – $1,052	$600 – $1,306

eight states. Five of these states have never updated their core guidelines formula/schedule, and two of these states have not updated their core guidelines formula/schedule for more than ten years.

The New Jersey and Massachusetts guidelines produce the highest awards for Case A: $400 and $412 per month, respectively. Both states last updated their guidelines in 2013. New Jersey ranks among the top states in median family income, and the New Jersey schedule accounts for the state's relatively high cost of living. Massachusetts, which has been known for having relatively high guidelines, actually decreased its one-child amounts in 2013.

For Case B, the median state guidelines award is $770 per month and ranges from $552 to $1,052 per month. The median award for this case scenario also approximates the 2013 poverty level, which is $770 per month for two children. The guidelines award for Case B is less than $700 per month in fifteen states. Most of these states are very low-income states or have not updated their core guidelines formula/schedule in the past two decades. A notable exception is New Jersey, which just updated its guidelines in 2013 and is a higher-income state. The New Jersey guidelines produce an award of $683 per month for Case B. There is an anomaly in the two-child amounts under the New Jersey schedule promulgated in 2013.

The New Jersey guidelines schedule amounts for two children are about 10% more than the New Jersey schedule amounts for one child. In contrast, previous economic studies find that child-rearing expenditures for two children are 40% to 70% more than they are for one child.[35]

For Case B, two state guidelines produce award amounts above $900 per month. The California guidelines award shown in Table 2, which is $1,052 per month, is calculated based on zero timesharing. In contrast, if the percentage of the child's time with the nonresidential parent is 20%, the California-guidelines award would be $776 per month. According to California's most recent case file review, children in all sampled cases spend an average of 17% of their time with the nonresidential parent, whereas in over 60% of the sampled IV-D cases, the award was determined using zero timesharing.[36] The difference between the $776 and $1,052 award amounts underscores the unintentional disparate treatment of previously married and never-married parents.

For Case C, the median state guidelines award is $763 per month and ranges from $600 to $1,306 per month. Ten state guidelines produce an award below $700 per month for Case C. Most of these states are based on the Income Shares Model and have not updated their core guidelines formula/schedule for several years. Eleven state guidelines produce an award above $900 per month for Case C. Six of these eleven state guidelines are based on the Percentage of Obligor Income Model. Percentage of Obligor Income guidelines, based on flat percentages of gross income, generally produce greater award amounts at higher incomes than other guidelines models.

VI. Summary and Conclusions

It has been nearly twenty-five years since many states first adopted child support guidelines, and most states have conducted several rounds of guidelines reviews since. Some states have made more changes than others. A few states have made no changes to their core formulas/schedules.

The current status of state guidelines is that they share some similarities, yet they have many differences. Most states rely on the Continuity of Expenditures Model, based on the premise that a child should receive the same amount of financial resources that the child would have received if the parents lived together and shared financial resources. To this end, most states based on this model relate their core child support formula/schedule to measurements of child-rearing expenditures in intact families. The

35. Judicial Council of California, *supra* note 11, at 13.
36. *Id.* at 61.

underlying premise is that children of never-married parents should not be treated differently than children of divorcing or separating parents.

Some states have considered alternative guidelines models that are based on the living standard of each parent and the children after the transfer of child support. For a variety of reasons, none of these alternative guidelines have been adopted by any state. Nonetheless, a few states that have switched guidelines models have switched from one type of Continuity of Expenditures Model to another type of Continuity of Expenditures Model (i.e., Percentage of Obligor Income Model to the Income Shares Model) because the Income Shares Model framework can address a wide variety of case circumstances better than the Percentage of Obligor Income Model.

Even though most states are based on the same guidelines model, the similarities end there. There are several different studies of child-rearing expenditures underlying guidelines formulas/schedules that vary in age of the expenditure data and economic methodologies, as well as different assumptions about tax rates, what expenses are included or excluded, adjustments for a state's relatively high or low income or housing expenses, and other factors.

Most states have revised their core formula/schedule at least once since their guidelines were initially adopted. Several states, however, have never updated their core formula/schedules or have not updated them recently. The differences are apparent in the comparisons of simple case scenarios presented in this article. A consistent pattern in the case comparison is that state guidelines that have not been updated for several years tend to produce lower awards than more recently updated guidelines. Some of these older state guidelines produce award amounts below the poverty level. A caveat to this is that some of these states are very low-income states, so the difference may be appropriate.

Most state guidelines provide formulaic adjustments for a range of unique case circumstances, including adjustments for low incomes, shared-parenting time, and additional dependents. The adjustment formulas, however, vary among states. Most state guidelines reviews consider refinements to these specific adjustments, but the specifics and whether the revision will be better than the state's current adjustment are often the subject of debate in guidelines review committees. This is particularly true of adjustments for shared-parenting time and additional dependents. Additional research on the impact of these adjustments would be helpful to state guidelines reviews as well as additional research on the impact of low-income adjustments. States could also benefit from periodic updates to the Rothbarth measurements of child-rearing expenditures since many states use the Rothbarth measurements as the basis of their guidelines and to review their guidelines. (States also use the USDA measurements of child-rearing expenditures, but the USDA measurements are updated annually.) In addition, states need federal guidance on medical support in light of changes resulting from implementation of the Affordable Care Act.

States may also benefit from considering whether their current guidelines will serve the future population eligible for child support or required to pay child support. This includes an increasing number of never-married parents and modern family situations, such as three or more legal parents. For example, the shared-parenting adjustment is not often considered in the calculation of support awards for never-married parents, but as demographics and family law change, there may be more pressure to do so.