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Washington State Child Support Schedule: Selected Issues Affecting Predictability and Adequacy

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State of Washington
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Chapter I

Introduction

Federal law requires each state to have statewide child support guidelines that are to be applied presumptively to all cases [45 CFR 302.56]. In addition, federal law requires statewide guidelines to provide that a deviation can be made upon a written or specified finding that the guidelines-determined amount results in an inappropriate or unjust order amount; and, that states periodically review their guidelines to ensure that application of the guidelines results in the determination of appropriate child support award amounts and deviations are kept at a minimum.

The Washington State Legislature established statewide guidelines in 1989 with the intent to:

[I]nsure that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources and standard of living [RCWA 26.19.001].

Most recently, academics and other stakeholders have questioned the adequacy of the Washington State Schedule. The particular concerns are:

- Whether the Schedule provides an adequate level of support for children; and,
- Whether the Schedule results in a predictable amount, minimizes deviations and treats similarly situated cases equally.

ADEQUACY OF THE SCHEDULE

The adequacy of the Schedule is of concern due to recent research that found a disturbingly high proportion of children in the Washington IV-D caseload living in poverty even after child support.¹ The study also found a large drop in the standard of living among all custodial-parent families (IV-D and non-IV-D) even after the receipt of child support. According to the recent research, 40 to 75 percent of children (the percentage varies depending on which parent has custody) in the Washington IV-D caseload live in poverty even after child support, and the standard of living drops twice as much among custodial-parent families as it does for noncustodial parents when the parents do not live together.

There are two components of the Schedule that may contribute to its inadequacy. The first component is the Schedule's Table, which is used to determine a base level of support. It reflects child-rearing expenditures in intact families because the Income Shares guidelines model—which forms the basis of the Washington State Schedule and 32 other states—presumes that the child is entitled to the same amount of expenditures the child would have received if the parents lived together. The amount in the Table is prorated between the parents to determine each parent's share.

¹ Kate Stirling, *The Impact of Child Support: Balancing the Economics Needs of Children and their Noncustodial Parents*, University of Puget Sound (September 2002).



Secondly, other provisions in the Schedule (e.g., definitions of income, basic subsistence limitation, deviation criteria), that typically downward adjust the amounts from the Table, may also contribute to the Schedule's inadequacy.

Inadequacy of Schedule's Table

A recent review of the Table found that over a third of the amounts are **below** the current costs of child rearing.² Almost all of the amounts in the Table for one child are **below** the current costs of raising one child and two thirds of the Table amounts for younger children (ages 0-11) are **below** the current costs of child rearing. These findings are of alarming concern since the majority of child support orders are in the area of the Table that is **below** the current costs of child rearing. Specifically, 67 percent of new orders are for one child and 90 percent of new orders are for younger children. To reiterate, almost all of the Table amounts for one child are too low and two thirds of the Table amounts for younger children are too low.

Inadequacy of Other Schedule Provisions

The Table is just one component of the Schedule used to determine the support award amount. As evident in the Guidelines worksheet, there are many other factors that are considered in the Schedule to determine the support award amount. Many have the effect of lowering the support award that would be calculated based solely on the Table. For example, some of the major factors in the Schedule that affect award levels are:

- ♦ Imputation of income;
- ♦ Permissible deductions from income (i.e., income tax, FICA, State industrial insurance deductions, mandatory union or professional dues, pension plan payments, spousal maintenance paid, and normal business expenses);
- ♦ Additional child-rearing costs such as health care, day care, long distance transportation expenses, and other special expenses;
- ♦ Application of the lower limit on the child support amount (i.e., applicable when the combined net income is \$600 or less per month);
- ♦ Application of the upper limit on the child support amount (i.e., the 45% net income limitation);
- ♦ Application of the basic subsistence limitation standard;
- ♦ Permissible deviations for the residential schedule (i.e., a significant amount of time with the parent who is obligated to make a support transfer payment); and
- ♦ Permissible deviations for children from other relationships.

With a few exceptions, most of these items contribute to lower order amounts. The most notable exception is when the custodial parent incurs additional child-rearing costs (e.g., day care). When these additional costs are incurred by the custodial parent, the support award amount is higher than what would be calculated solely based on the Table.

² Jane C. Venohr and Tracy E. Griffith, *Comparison of The Washington State Schedule to Current Measurements of Child-Rearing Costs*, Report to the State of Washington Department of Social and Health Services, Policy Studies Inc., Denver, Colorado (January 2005).

PREDICTABILITY AND DEVIATIONS

The ultimate purpose of the federal mandate for child support guidelines is to ensure greater predictability in order amounts and to treat similarly situated cases equally. A large number of guidelines deviations indicates failure to achieve these objectives. In addition, inexplicit and unclear Schedule provisions exacerbate the lack of predictability in the guidelines.

A recent review of case files found that the Washington State Schedule is deviated from in 29 percent of the orders reviewed.³ This is much larger than the 17 percent deviation rate found in a national study.⁴ Some of the more common reasons for deviation noted in the case file review (e.g., children from other relationships, residential schedule) are also factors identified above that may contribute to lower support award amounts. An additional problem is that there is no common methodology to adjust for many special factors. For example, sometimes adjustments for the parent's additional children are made using the "whole family approach" and sometimes, in cases with similar circumstances, the "blended family approach" is used.⁵

Discussions with DCS administrators, deputy prosecutors and claims officers reveal other provisions in the Schedule that are applied differently. Namely, there is variation in the imputation of income to custodial parents receiving public assistance, the tax assumptions used to convert gross to net income, which needs standard is used in the basic subsistence limitation, and other aspects of the guidelines. These variations weaken the predictability of the Schedule and result in unequal treatment among similarly situated cases.

PURPOSE OF THE REPORT

The purpose of this report is to identify and review Schedule provisions that may contribute to inadequate levels of support, a high level of deviations, lack of predictability, or unequal treatment among similarly situated cases. Specifically, this study examines the following factors that affect award amounts:

- ♦ Children from other relationships;
- ♦ The residential schedule (i.e., shared physical custody and split custody);
- ♦ Low-income obligors (i.e., basic subsistence limitation and minimum support orders); and
- ♦ Other income issues (i.e., income imputation, gross to after-tax income conversions, net incomes above the \$5,000 presumption, and maximum order amounts).

Many of these factors were identified by Professor Stirling's research on guidelines deviations. Additional factors were identified through comparison to other states' guidelines provisions and the application of those provisions, and discussions with DCS administrators and staff, deputy prosecutors, and claims officers.

³ Kate Stirling, Professor of Economics, University of Puget Sound, *A Review of the Washington State Child Support Schedule*, Report to Washington State Division of Child Support (March 2003).

⁴ CSR, Incorporated and the American Bar Association, *Evaluation of Child Support Guidelines: Volumes I and II*, Report to Federal Office of Child Support Enforcement, Contract No. 105-94-8373 (March 1996).

⁵ The "whole family approach" is the method to be used in DCS cases to adjust for the noncustodial parent's children from other relationships. The "blended family approach" was a method used from about 1989 to 1993, but is still used selectively.



Data Sources

There are three major data sources for this study.

- ♦ **Washington State Statistics.** Professor Stirling, University of Puget Sound, or the MAPS unit of DCS provided all of the statistics describing the Washington State child support caseload. PSI did not examine any primary data. Specifically, under contract to DCS, Professor Stirling used data for a 2001-2003 study funded through a federal Office of Child Support Enforcement (OCSE) grant. The database consists of about 4,000 orders entered between October 2000 and February 2001. The sample consists of IV-D orders (i.e., orders enforced by DCS) and non-IV-D orders (i.e., orders not enforced by DCS). The IV-D order may have been established administratively or judicially. Many of the findings are published in a series of DCS reports that can be found on the DCS website.⁶
- ♦ **State Child Support Guidelines.** PSI maintains a compendium of current child support guidelines. We have used it to compile state-by-state comparisons of specific guidelines provisions. Some are included in this report.
- ♦ **Analysis of Case Files to Determine Guidelines Applications and Deviations in Selected States.** Federal law requires the analysis of case files as part of a state's quadrennial guidelines review. The depth and scope of the analysis varies among states. Some states report the findings simply, such as a one-page memorandum summarizing the number of deviations and other information based on a query of recently established or modified orders recorded in the automated system. Other states conduct more thorough analyses and produce more detailed reports. States with more thorough and published analyses are included in this study.

ORGANIZATION OF REPORT

The remainder of the report consists of five chapters.

Chapter Two compares the findings from Washington State's most recent deviation study to those of other states.

Chapter Three reviews the deviation and adjustment for the parents' children from other relationships. This includes discussion of the "whole family" and "blended family" approaches.

Chapter Four reviews the deviation and adjustment for the residential schedule.

Chapter Five reviews the adjustments for low-income noncustodial parents. Specifically, those provisions for minimum orders and the basic subsistence limitation are reviewed.

Chapter Six reviews income issues; specifically, income imputation to custodial parents on public assistance, tax assumptions used to convert gross to net income, the application of the schedule to incomes above \$5,000 per month, and the 45 percent of net income cap on award amounts.

⁶ The website is: <http://www1.dshs.wa.gov/dcs/reports.shtml>. There are several reports that are listed under Grant Number 90-FD-0035.

Chapter II

Application of and Deviation from the Schedule

Federal law requires that state must analyze case data to ensure deviations are limited [45 CFR 302.56].

[A] State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.

The intent of a case file review is to provide information that helps identify deviation factors. If there are numerous deviations for a particular issue— for example, say for the parent's children from other relationships— this would suggest that the guidelines should be modified to better address that issue.

In this chapter, we compare the deviation rate from Washington State's most recent case file review to studies in other states. We also discuss methodological issues inherent to case file reviews that suggest the deviation rate is likely to be understated in many studies including the Washington State study.

DEVIATION STUDIES

Methodological Issues

Most studies examining the application of and deviation from child support guidelines have found that child support orders do not always clearly state whether the guidelines were applied or deviated from in a particular case. If the order is silent as to whether there is a guidelines application or guidelines deviation, it is a common practice among researchers to assume that the guidelines were applied.⁷ This is consistent with a federal regulation that mandates the documentation of all deviations. To assume otherwise, would be to assume that these cases are in violation of the federal regulation to document deviations [45 CFR 302.56].

In this section, we compare the deviation rates among states using this standard definition. Washington State uses a version of the standard definition in its most recent case file review. Specifically, Washington State defines a deviation as occurring if a deviation was indicated by a nonzero value in the field for “amount of deviation” *and* the field for “reason for deviation” is complete.

Deviation Rates

Deviations in Washington State

Washington State's most recent review of case files found that the Schedule was deviated from in 29 percent of the cases reviewed.⁸ Deviations in non-IV-D orders were more common (43%) than deviations in IV-D orders (22%). An overwhelming 87 percent of the deviations were downward, reducing the child support obligation from the presumptive amount. Downward deviations average \$172 per month.

⁷ For example, see CSR, Incorporated and the American Bar Association (March 1996), page 2-2.

⁸ Stirling (September 2002).

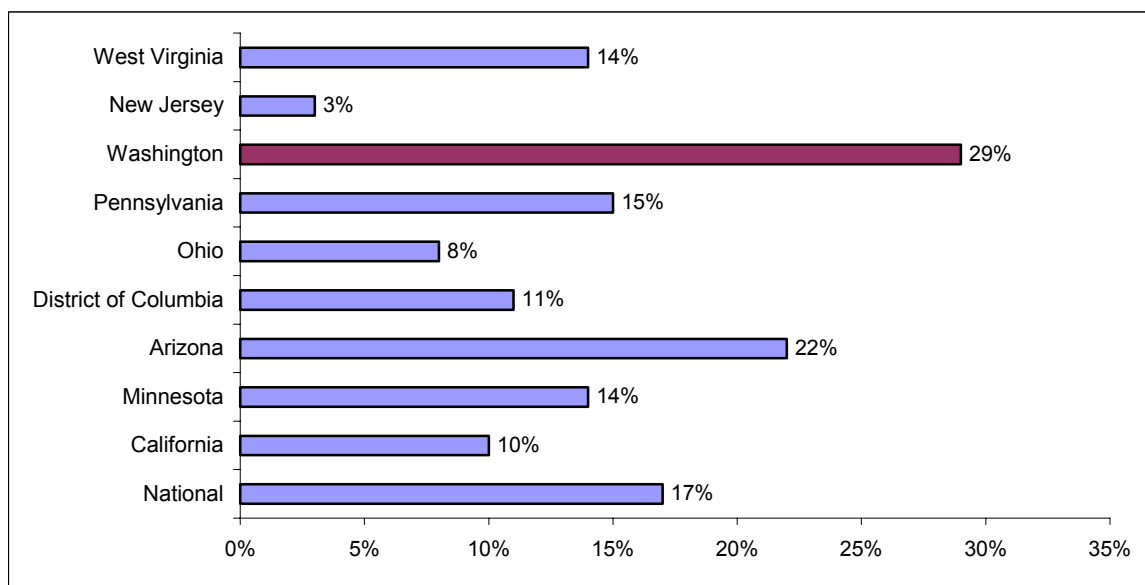


National and State-Specific Deviation Rates

In 1995, OCSE sponsored a study to (a) investigate how states were fulfilling the federal requirement to review their child support guidelines; and, (b) conduct a case file review to measure the extent of guidelines deviations across the nation.⁹ For the first part of the study, all states were contacted and asked several questions about their most recent child support guidelines review. For the second part of the study, case file data were collected from 21 counties spanning 11 states (i.e., 10 states with two counties and one state with one county). States were selected to represent the range of child support guidelines models and on the basis of whether they would cooperate with the study.

Overall, the 1995 study revealed a 17 percent deviation rate. This national study has not been updated, but several other states have conducted recent studies. Exhibit 1 displays the deviation rates from several recent state studies (including Washington). As evident in Exhibit 1, Washington State has a high guidelines deviation rate compared to other states.

Exhibit 1
Guidelines Deviation Rates in Other State Case File Reviews¹⁰



⁹ CSR, Incorporated and the American Bar Association.

¹⁰ State of West Virginia, Bureau of Child Support Enforcement, *Summary of Family Court Judge Compliance with Income Shares Formula* (2004). Policy Studies Inc., *Draft Findings from Child Support Order Case File Reviews*, Submitted to the State of New Jersey Administrative Office of the Courts (2004). Kate Stirling, Professor of Economics, University of Puget Sound, *A Review of the Washington State Child Support Schedule*, Report to Washington State Division of Child Support (2003). Policy Studies Inc., *Pennsylvania Child Support Guidelines Review and Deviation Study* (2003). Ohio Department of Job and Family Services, *Report to the Child Support Guidelines Council* (2003). Policy Studies Inc., *Preliminary Findings of a Case File Review*, Submitted to the District of Columbia Office of Corporation Counsel, Child Support Enforcement Division (2003). Policy Studies Inc., *Arizona Child Support Guidelines, Findings from a Case File Review*, Submitted to the Supreme Court of Arizona, Administrative Office of the Courts (2003). Jo Beld, *Child Support Enforcement Division, Child Support Guidelines Review: Case Data Analysis Final Report*, Prepared for the Minnesota Department of Human Services (2001). Judicial Council of California, *Review of Statewide Uniform Child Support Guideline* (2001).

Reasons for Deviations

Deviation Criteria in Washington State Schedule

The Washington State Schedule provides a list of deviation standards, which includes, but is not limited to the following.

- ♦ *Sources of income and tax planning.* Examples in this category include income of a new spouse or other adults in the household of the parent seeking a deviation, possession of wealth, child support received from other relationships, tax planning considerations and income of a child.
- ♦ *Nonrecurring income.* This criterion may include overtime pay, bonuses or income from second jobs.
- ♦ *Debt and high expenses.* Circumstances that may be considered in this category include high debt not voluntarily incurred, a disparity in the living costs of the parents, special needs of disabled children, and special medical, educational or psychological needs of the children.
- ♦ *Residential schedule.* If the child spends a significant amount of time with the noncustodial parent, the court may consider a deviation from the Schedule. A deviation for the child's residential schedule is not allowed if it will result in insufficient funds in the custodial household or if the child is receiving temporary assistance for needy families.
- ♦ *Children from other relationships.* The court may consider a deviation if either or both parents have children from other relationships to whom they owe a duty of support.

According to federal regulations, states are to establish their own deviation criteria. Consequently, state deviation criteria vary. Exhibit 2 shows how the factors used by Washington State as deviation factors are treated in the other states compared in Exhibit 1. It shows that most states provide a formula or more specific provisions for these factors than Washington does.

Exhibit 2					
Treatment of Guidelines Factors that Are Considered a Deviation Factor in Washington State					
	Considered a Deviation Factor in Washington State				
	Sources of income and tax planning	Nonrecurring income	Debt and high expenses	Residential schedule	Children from other relationships
Washington State	Deviation factor	Deviation factor	Deviation factor	Deviation factor	Deviation factor
West Virginia	Explicitly excludes child support received, new spouse's income and means-tested income. Payee parent has the right to claim children as dependents except in shared parenting cases, when the exemptions are prorated between the parents.	50% of the average overtime compensation during the preceding 36 months is included as gross income. Deviation factor for nonrecurring or nonguaranteed income.	Deviation factors for special needs of disabled children or special educational expenses for children or a parent.	Formula for shared parenting – cross credit with 1.5 multiplier at 35% parenting time.	Permissive deduction of 75% of a dummy order from income.



Exhibit 2
Treatment of Guidelines Factors that Are Considered a Deviation Factor in Washington State

	Considered a Deviation Factor in Washington State				
	Sources of income and tax planning	Nonrecurring income	Debt and high expenses	Residential schedule	Children from other relationships
New Jersey	Explicitly excludes child support received, new spouse's income (except to determine other dependent credit) and means-tested income. The earned income tax credit is considered a source of income. Deviation factors for income taxes, and the tax advantages for paying for a child's health insurance.	Lump sum payments (settlements, winnings) are included as income. Sporadic income is averaged over the previous 36 months. Overtime pay average over the prior 12 months. Both can be excluded if the party proves income will not be available in the future.	Deviation factors for equitable distribution of property, fixed direct payments, education expenses, special needs of disabled children, and financial obligations for elder care.	Deviation with formula – Indiana Approach when a parenting plan specifies that the parent of alternate residence will have the child on a regular basis.	Presumptive deduction of a dummy order from income. Considers the income (can be imputed) of the other parent of the additional dependents.
Pennsylvania	Explicitly excludes public assistance and SSI benefits from income. Deviation factor for other income in the household. The court may award the federal child dependency tax exemption to either party to maximize the total income available to the parties.	The court has discretion to determine a method for imputing lump-sum awards of income for purposes of establishing a support obligation.	Deviation factors for unusual needs and unusual fixed obligations, and standard of living of the parties.	Formula-per diem credit at 40% parenting time.	Proportionate reduction to all orders if the total of all obligations (excluding add-ons) exceeds 50% of the obligor's net income.
Ohio	Explicitly excludes child support received, new spouse's income and means-tested income. Deviation factor - Federal, state and local taxes paid. Deviation factor for benefits a parent receives from remarriage or sharing of living expenses with another person.	Nonrecurring income is explicitly excluded from gross income definition. A lottery prize is not considered nonrecurring income. Bonuses and overtime are included in gross income definition.	Deviation factors for special needs of disabled children, disparity in income between parties, special educational expenses or needs of the child.	Deviation with formula – cross credit with 1.5 multiplier.	Presumptive formula - federal tax exemption - subtracted from income. Any child support received for the additional dependents will be offset against the amount deducted from the parent's income.
District of Columbia	Deviation factor for a property settlement that provides resources readily available for the support of the child in an amount at least equivalent to the formula amount.	Overtime, bonuses and lump-sum payments are included as gross income.	Deviation factors for exceptional needs of the child, gross income of the noncustodial parent substantially less than the custodial parent, noncustodial parent needs a temporary period of reduced child support to repay a debt provided that the reduction does not exceed 12 months.	Deviation with formula – cross credit with 1.5 multiplier at 40% parenting time.	Prorated deduction from income if the obligor has additional children living in the home; deviation criteria if the obligee has additional children living in the home or if obligor has additional children not living in the home and not covered by a court order.

Exhibit 2 Treatment of Guidelines Factors that Are Considered a Deviation Factor in Washington State					
	Considered a Deviation Factor in Washington State				
	Sources of income and tax planning	Nonrecurring income	Debt and high expenses	Residential schedule	Children from other relationships
Arizona	Explicitly excludes child support received, new spouse's income and means-tested income. The tax exemptions can be allocated based on the percentages of support being provided by each parent, provided that all current support is paid for the year.	Income which is not recurring in nature need not be deemed gross income for child support purposes. It is generally not expected that a parent will earn income greater than what would be earned from full-time employment.	Education and extraordinary expenses for the child are discretionary add-ons to the basic obligation.	Formula – Indiana Approach starting at 4 days per year.	Dummy order deducted from income - presumptive if the parent is the custodial parent of the additional dependents and permissive if the parent is the noncustodial parent of the additional dependents not covered by an order.
Minnesota	Explicitly excludes new spouse's income. Deviation factors for the resources of the parents, including real and personal property, and which parent receives the income taxation dependency exemption.	Overtime is excluded as long as the party demonstrates that excess employment began after the filing of the petition and is voluntary.	Deviation factors for financial needs and educational needs of the child, the parents' debts if the debt was incurred for necessary support of the child or for the generation of income. Deviation based on debt is not to exceed 18 months and obligation automatically increases at that time.	Not Addressed	Subsequent children are generally not to be considered. If they are considered, the other parent's income must be considered too and support should be equalized among all children.
California	Income from a new spouse is not considered except in extraordinary cases where excluding the income would lead to severe hardship to the child. Explicitly excludes child support received and means-tested income. Tax filing status and deductions must be disclosed if the court deviates from the Guideline.	The court may adjust the child support order as appropriate to accommodate seasonal or fluctuating income of either parent.	Deviation factors for special medical or other needs, the sale of the family home is deferred, parents have equal time-sharing of the children and one parent has a much higher or lower percentage of the combined income.	All calculations for support consider the percent of time the child spends with each parent.	Deviation factor for dependents living with the parent – the deduction may not exceed the support allocated to each child in the instant case. For children not living with the parent and not covered by an order, a deduction not to exceed the guidelines determined amount is permitted if payment of support is proven.

Reasons for Deviations in Washington Study

Exhibit 3 depicts the reasons and frequency of deviations for noncustodial fathers from Washington's recent deviation study. As seen in Exhibit 3, some of the most frequently cited deviation reasons relate to issues that could be handled more effectively through the adoption of an adjustment or formula (i.e., children from other relationships, residential schedule).

Also shown in Exhibit 3 is that the application of the provisions under the "Limitations Standards" section in the Guidelines was sometimes considered a deviation in the Washington study. However, the language regarding the limitations standards (45 percent income cap, presumptive minimum order, basic subsistence



limitation and income in excess of \$5,000 per month) presumes that the court will apply these provisions. For example, the Guidelines state that a child support obligation shall not reduce a parent's net income below the need standard for one person. Therefore, setting a support award at the difference between the noncustodial parent's income and the need standard is actually an *application* of the Guidelines and not a deviation.

Exhibit 3	
Reasons for Deviations in Washington Study¹¹	
Children from Other Relationship	22.9%
Blended Family Approach	5.4%
Whole Family Approach	17.5%
Limitations Standards	20.5%
Noncustodial Parent Income is Less than AFDC Needs Standard	18.1%
Child Support Exceeds 45% of Noncustodial Parent Income	0.7%
\$25 Presumptive Minimum Order Per Child	0.7%
Income Greater than \$5,000	1.7%
Residential Schedule and Split Custody	14.9%
Residential Schedule	13.3%
Arvey Split Custody	1.6%
Sources of Income and Tax Planning	10.9%
Child Support from Other Relationships	9.1%
Possession of Wealth	0.5%
Tax Planning considerations	1.3%
Debt and High Expenses	2.7%
Extraordinary Debt	1.3%
Disparity in Living Costs	0.3%
Special Needs of Disabled Children	0.2%
Medical Educational or Psychological Needs	0.9%
Mutual Agreement	11.8%
Other Reasons	12.2%
No Reason Stated in Order	3.2%

Reasons for Deviations in Other States

As mentioned above, deviation criteria vary among states. In some states, the language surrounding the grounds for deviating from the guidelines amount is very broad (e.g., “that application of the guidelines would be unjust or inappropriate”), while other states provide specific deviation factors (e.g., children with special needs, extraordinary medical needs of a parent, transportation expenses). Case file reviews have found that deviations occur for a myriad of reasons, all of which could not be contemplated by rule makers when developing criteria. Not all of the studies depicted in Exhibit 1 above detail the reasons for deviations. Some of the more frequently cited deviation reasons from other state studies are listed below.

¹¹ Stirling, 2002. Adapted from Table III-A.

- Agreement of the Parties (Arizona, California, District of Columbia, New Jersey, Pennsylvania, West Virginia, OCSE)
- Multiple Child Support Orders or Multiple Dependents (New Jersey, Ohio, West Virginia)
- Extended Visitation, Costs Associated with Visitation, Time Sharing (California, Ohio)
- Financial Resources of Parent (District of Columbia, New Jersey, Ohio, Pennsylvania, West Virginia).
- Special Needs of Parent or Children (New Jersey, Ohio, Pennsylvania, West Virginia)
- Incarcerated Noncustodial Parent (California, West Virginia)
- Guidelines inappropriate or unjust, with no other detail provided (Arizona, California, West Virginia).

APPARENT DEVIATIONS AND GUIDELINES DISCREPANCIES

Some states use definitions of deviations that differ from the standard definition compared in Exhibit 1. As mentioned earlier, the standard definition is to assume

- that only orders in which a deviation is clearly stated are deviated orders, and
- that a deviation is not made in orders that do not clearly state whether the guidelines were applied or deviated from.

Some states (i.e., Florida, Maryland and Wisconsin), however, use alternative definitions. These states compare the guidelines-recommended amount to the support award amount. If they do not match, they assume a deviation or call it a guidelines discrepancy (e.g., Minnesota). Nonetheless, these states allow some difference to account for the rounding up or down of order amounts.

Exhibit 4 compares Washington's apparent deviation rate to those of states with alternative definitions.

- The apparent deviation rate is 49 percent among Washington cases. The definition of an apparent deviation is if the worksheet amount was more than \$5 different than the support award amount. The \$5 rate is to exclude round-off errors.
- The apparent deviation rate is 27 percent among Maryland cases. Maryland's definition of an apparent deviation is if the guidelines-recommended amount differed from the support award amount by more than \$10.¹² Maryland uses a \$10 threshold to account for the rounding of dollar amounts. If Washington State used a \$10 threshold, the comparable apparent deviation rate would be 48 percent.
- The apparent deviation rate is 34 percent among Florida cases.¹³ This represents the percent of orders with worksheets that were at least five percent different than the guidelines amount. Florida uses a five percent difference between the guidelines-recommended amount and the actual support award amount to define a deviation. If a similar definition was applied to Washington State, the apparent deviation rate would be 45 percent.
- The apparent deviation rate is 50 percent among Wisconsin cases.¹⁴ Wisconsin compared the simulated guidelines-recommended amount to the order amount to arrive at this rate. They used automated court

¹² University of Maryland, School of Social Work, *Child Support Guidelines Review: Case-Level Report*, Prepared for the Maryland Department of Human Resources, Child Support Enforcement Administration (2000).

¹³ Florida Legislature, Office of Program Policy Analysis and Government Accountability, *Adherence to Florida's Child Support Guidelines Appears to be Improving*, (Weighted average of IV-D and Private Cases.) Report No. 02-13 (2002). Calculated from Table B-1.

¹⁴ *A Preliminary Report*, Report to the Wisconsin Department of Workforce Development, Bureau of Child Support (2001).



records and wage records from the State Division of Unemployment Insurance to simulate the guidelines-recommended amount. They excluded cases where there was insufficient information to conduct the simulation.

- ♦ The apparent deviation rate is 29 percent among Minnesota cases. This includes orders where a deviation was clearly stated in the order and orders in which the guidelines-recommended amount did not match the support award amount.

Exhibit 4
Apparent Deviations and Guidelines Discrepancies

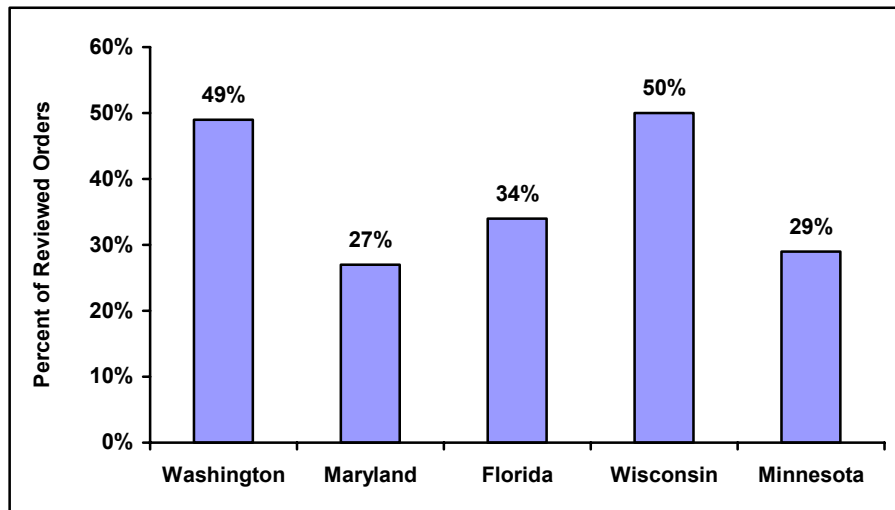
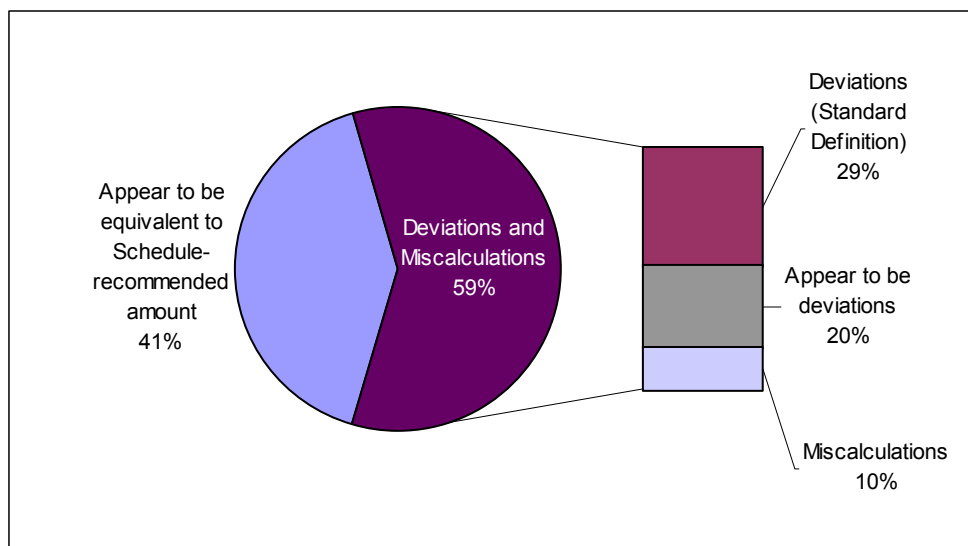


Exhibit 5 summarizes the use of the guidelines in Washington. It shows that:

- ♦ 29 percent of the orders are clearly deviations because they are stated as such in the order;
- ♦ 20 percent of the orders appear to contain a deviation because they are more than \$5 different than the Schedule-determined amount even though there is no mention of a deviation;
- ♦ 10 percent of the orders contain miscalculations; specifically, the wrong basic obligation is pulled or there is a miscalculation in each parent's share of combined net income;¹⁵ and
- ♦ 41 percent of the orders appear to be equivalent to the Schedule-recommended amount but cannot be definitively concluded since all orders did not have worksheets or summary worksheets.

¹⁵ Stirling (September 2003), Table 5. This is the computation error rate for one-child order amounts. The error rate is higher among orders for two or more children. Stirling does not provide a rate for all orders or the sample size needed to derive a rate for all orders.

Exhibit 5 **Use of the Guidelines in Washington**





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Chapter III

Adjustments for Children from Other Relationships and the Whole Family Approach

In addition to the children for whom support is being determined, a parent may have children from other relationships. These other children may be the subject of another child support order or they may not be. Most states treat other children subject to a court order differently than other children who are not subject to a court order. The latter are commonly referred to as “additional dependents.”

TREATMENT IN WASHINGTON STATE

Schedule Provisions

Children from other relationships. The court may deviate from the standard calculation when either or both of the parents before the court have children from other relationships to whom the parent owes a duty of support.

- (i) The child support schedule shall be applied to the mother, father, and children of the family before the court to determine the presumptive amount of support.
- (ii) Children from other relationships shall not be counted in the number of children for purposes of determining the basic support obligation and the standard calculation.
- (iii) When considering a deviation from the standard calculation for children from other relationships, the court may consider only other children to whom the parent owes a duty of support. The court may consider court-ordered payments of child support for children from other relationships only to the extent that the support is actually paid.
- (iv) When the court has determined that either or both parents have children from other relationships, deviations under this section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received, and owed for all children shall be disclosed and considered.

(2) All income and resources of the parties before the court, new spouses, and other adults in the households shall be disclosed and considered as provided in this section. The presumptive amount of support shall be determined according to the child support schedule. Unless specific reasons for deviation are set forth in the written findings of fact and are supported by the evidence, the court shall order each parent to pay the amount of support determined by using the standard calculation.

Under the Washington Guidelines, a court may deviate from the standard calculation if either or both of the parents before the court have a duty to support children from other relationships. This provision is applicable to children from other relationships, regardless of whether or not the parent has a court order to provide support.

Washington’s provision is unique in that the court is instructed to consider the “total circumstances of both households” when determining whether a deviation is warranted for additional dependents. Specifically, all child support obligations paid, received and owed must be disclosed, as well as the income and resources of new spouses or other adults in each household.



In addition, the Schedule explicitly excludes child support received from other relationship in the inclusion of gross income. It is silent on whether child support paid can be subtracted from gross income, but it does clearly state that subtracting items other than the ones specified as permissible subtractions, would be a deviation.

Application of the Deviation Criterion for Additional Dependents

Washington State's most recent case file review found a deviation was made for additional dependents in 29 percent of the orders noting a deviation. The majority (97%) were downward deviations and resulted in a \$122 reduction to the Schedule-recommended level of support. The methods for adjusting for additional dependents consisted of:

- ♦ The "Whole Family Approach" (56% of the deviations for additional dependents);
- ♦ The "Blended Family Approach" (17% of the deviations for additional dependents); and,
- ♦ Child support from other relationships (27% of the deviations for additional dependents).

The "Whole Family Approach" and the "Blended Family Approach" are concepts unique to Washington. Based on discussions with deputy prosecutors and claims officers, it appears that the whole family approach is the most commonly used adjustment but there are a few counties that will use the blended family approach or another approach depending on the circumstances of the case (e.g., whether the additional dependent resides with the parent, whether there is a stepparent).

The Whole Family Approach

The Whole Family Approach is a method employed by the Child Support Enforcement Division to deviate from the standard calculation when there are children from other relationships. It essentially counts the total number of children (including those for whom support is being decided and those for whom support is not being decided) to determine what column of the Table should be used to establish the award amount. For example, if there is one child for whom support is being decided and another child of the parent for whom support is not being decided, the two-child, per child column of the Table would be used to establish the award amount. [In visualizing this adjustment, it is important to note that the amounts in the Table are expressed as 'per child' amounts. So, if support is being determined for two children and there are no additional dependents, the amount in the two-child column would be multiplied by two.]

The court may choose to use this method when deviating from the standard calculation; however, the courts are not bound to using the Whole Family method. In *In re the Marriage of Bell*, 101 Wash.App. 366, 4 P.3d 849 (2000), the Court of Appeals noted that the intent of the Legislature was to give the courts discretion in deciding whether or not to deviate, and how much to deviate, when there are children from other relationships. In fact, the *Bell* decision notes that it is up to the Legislature, not the courts, to determine whether or not there should be a specific formula for judges to use when there are additional dependents.

The Blended Family Approach

The Blended Family Formula is a method that was published by the Washington State Child Support Commission in 1989 for adjusting for children from other relationships *living* with the parent. Essentially, under the Blended Family Formula, each child for whom support is being decided is counted as one child. Each child from another relationship that is living with that parent is counted as 0.5 (one-half). For example,

if support is being decided for one child, and the noncustodial parent also has one child from another relationship living in the parent's household, the total number of children would be 1.5. Then, using only the noncustodial parent's income, support is determined by averaging the per child amounts from the Table. In September 1993, the whole family method replaced the blended family formula as the adjustment for DCS to use when a parent has children from other relationships to support.

COMPARISON TO TREATMENT IN OTHER STATES

Court-Ordered Support of Other Children

In contrast to Washington, the majority of states (40 states) routinely deduct court-ordered support from a parent's income prior to the calculation of the support award. Several of these states qualify that the support must actually be paid in order to be deducted. In six states, including Washington, the existence of other orders for child support is a deviation criterion, while a few other states have different methods for adjusting for prior orders of support (e.g., prorating support among all of an obligor's children).

Several state guidelines that deduct court-ordered support provide that a change in additional dependents (e.g., birth of a new child) or a change in a court order for support alone is not considered a change of circumstances; therefore, is not grounds for a review and adjustment. However, most of these state guidelines provide that the additional dependents can be considered if the order is being reviewed for another change in circumstances (e.g., change in income).

Treatment of Additional Dependents Not Subject to a Child Support Order

As evident in Exhibit 6, states vary widely in their treatment of additional dependents.

- ♦ The most common formula used to adjust for additional dependents is to subtract a dummy order from the parent's income; that is, a theoretical child support order based on the guidelines table is calculated for the additional dependents. This approach is similar to the subtraction of child support orders.

To calculate the dummy order, most state guidelines will only use the income of the parent, but some state guidelines will consider the income of the child's other parent (e.g., the parent's new spouse or partner). Further, some states multiply the dummy order by 50 or 75 percent (e.g., North Carolina, West Virginia). Without the multiplier, the children of the dummy order receive a greater share of the parent's income than the children for whom support is being determined.

- ♦ A few states (e.g., North Dakota, Pennsylvania) have provisions that allow for the recalculation of all support orders of an obligor when there are multiple orders and/or additional dependents.
- ♦ Though not depicted in Exhibit 6, some states consider the ability of the other parent of the additional dependents to contribute to their support (e.g., North Carolina, Tennessee).
- ♦ Almost all states identify "other children" as natural or legally adopted children. A few states include step-children in limited circumstances. For example, in Michigan, an adjustment is allowed for step-children if both biological parents of the step-children are unable to contribute financially. Connecticut



has a provision that if a parent is not the child's legal guardian the child must have lived with the parent for the previous six months in order to qualify for an adjustment.

- About half of the states apply the additional dependents adjustment presumptively.
- Some states limit the additional dependents adjustment to prior born children or children living with the parent. A few states permit the adjustment for children not living with the parent.
- In a few states (e.g., Missouri, Ohio), any child support that is received by a parent for additional dependents living with the parent is offset against the adjustment.
- Many states have a provision that prevents an adjustment for subsequently born children in modification proceedings to decrease an existing order. However, some states will allow the presence of subsequently born children to be used as a defense to an increase to an existing support award.
- A few states do not provide the adjustment unilaterally to the custodial and noncustodial parents.

Exhibit 6 Treatment of Additional Dependents Not Covered by Court Orders			
State	Treatment	Permissive/ Presumptive	Limitations & Special Considerations
Alabama	Dummy order	Permissive	
Alaska	Dummy order	Permissive	Dummy order for prior born children. Subsequent children are generally not considered but may deviate.
Arizona	Dummy order	Permissive	Deduction is presumptive if children live with the parent and permissive if the children don't live with the parent.
Arkansas	Deviation		
California	Deviation, dummy order		Adjustment may not exceed support amounts for children in the instant case.
Colorado	Dummy order	Presumptive	Applies to prior born children only.
Connecticut	Pro-rated Basic Support	Presumptive	Presumptive adjustment applies to children in the home. Children outside the home may warrant a deviation.
DC	Pro-rated Basic Support	Presumptive	Presumptive adjustment applies to children in the home of NCP. Children outside the home, or CP's other children may warrant a deviation.
Delaware	Dummy order	Presumptive	For children not living with the parent, a pattern of support must be established.
Florida	Deviation		The existence of subsequent children affects whether secondary income is considered in an upward modification.
Georgia	Deviation		
Hawaii	Deviation		
Idaho	Dummy order	Presumptive	For children not living with the parent, a pattern of support must be established.
Illinois	Not addressed		
Indiana	Dummy order	Presumptive	Applies to children in the home when order is established, does not apply to subsequent children in modifications.
Iowa	Set amount for number of children	Presumptive	Or, a parent can deduct the actual amount paid in support.
Kansas	Pro-rated Basic Support	Presumptive	Only applicable to the noncustodial parent, cannot be granted to the custodial parent or shared custody cases. Discretionary if award amount is below poverty.
Kentucky	Dummy order	Presumptive	Prior-born children only. Subsequent children are not addressed

Exhibit 6 Treatment of Additional Dependents Not Covered by Court Orders			
State	Treatment	Permissive/ Presumptive	Limitations & Special Considerations
			in the guidelines.
Louisiana	Deviation		
Maine	Dummy order	Presumptive	Applies to the noncustodial parent's children in the home only. Actual amounts for children outside the home may be subtracted.
Maryland	Deviation		
Massachusetts	Deviation		
Michigan	50% Dummy order	Presumptive	Differs for biological/adopted children and step-children
Minnesota	Deviation		Subsequent children are generally not to be considered.
Mississippi	Adjustment to income	Permissive	Amount is discretionary
Missouri	Dummy order	Presumptive	Must be in the parent's primary physical custody/away at school.
Montana	Dummy order	Presumptive	
Nebraska	Adjustment to income	Permissive	Amount is discretionary
Nevada	Deviation		
New Hampshire	Deviation		
New Jersey	Dummy order	Presumptive	Adjustment must be requested by parent and income of the other parent to the secondary family must be provided.
New Mexico	Dummy order	Presumptive	Generally not allowed for subsequent children. Adjustment applies to children in the parent's custody.
New York	Deviation		Applicable only if the resources available to support the additional dependents are less than the resources available to support the children for whom support is being determined.
North Carolina	50% Dummy order	Presumptive	For children not living with the parent, a pattern of support must be established.
North Dakota	Adjustment to all orders - Dummy order	Permissive	Two support awards are calculated: one without a deduction of the dummy order, and one deducting the dummy order from the obligor's income. The support order is set at the average of the two calculations.
Ohio	Formula-federal tax exemption	Presumptive	Any child support received for the additional dependents will be offset against the amount deducted from the parent's income.
Oklahoma	Adjustment for subsequent children is not allowed		Child support orders for prior born children may not be modified for the purpose of providing support for later-born children.
Oregon	Dummy order	Presumptive	Does not apply if income is imputed to a TANF recipient. If there is an order for arrears only, the adjustment is not allowed
Pennsylvania	Proportionate reduction to all orders	Permissive	The total of all obligations (excluding add-ons) must exceed 50% of the obligor's net income for a reduction.
Rhode Island	50% Dummy order	Presumptive	Dummy order considers the other parent's income. If the other parent is unable to contribute, the court may deduct 100% of the dummy order.
South Carolina	75% Dummy order	Presumptive	
South Dakota	Deviation		
Tennessee	Percentage Adjustment Income	Permissive	Adjustment varies by whether children live with the parent and whether the other parent can support the additional children
Texas	Pro-rated Basic Support	Presumptive	Adjustment applies to all of the obligor's children, regardless of court order or where the child(ren) live.
Utah	Deviation		
Vermont	Dummy order	Presumptive	
Virginia	Dummy order	Presumptive	May not be applied if it impairs the custodial parent's ability to provide basic necessities for the child.
Washington	Deviation		All income sources, child support paid, and child support received must be disclosed if the court deviates.
West Virginia	75% Dummy order	Permissive	



Exhibit 6 Treatment of Additional Dependents Not Covered by Court Orders			
State	Treatment	Permissive/ Presumptive	Limitations & Special Considerations
Wisconsin	Dummy order	Presumptive	Obligations are prioritized by date or birth or court order
Wyoming	Deviation		

Comparisons of Various Approaches

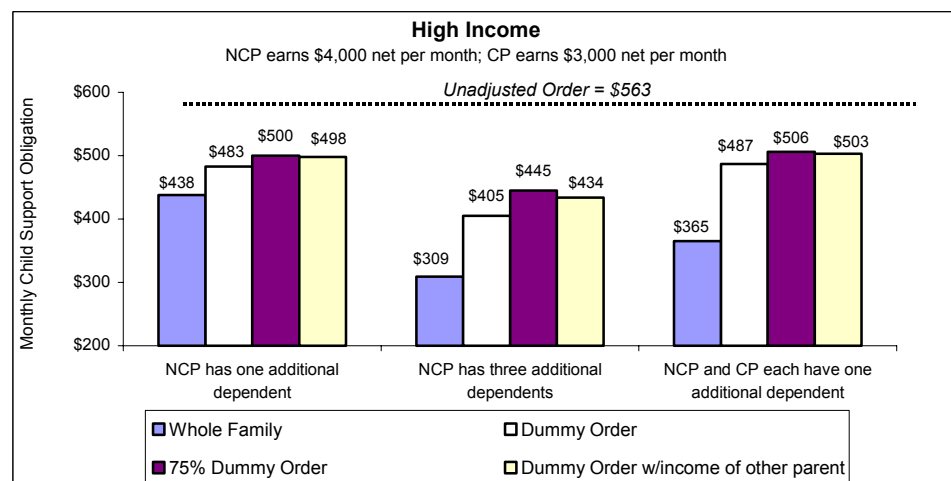
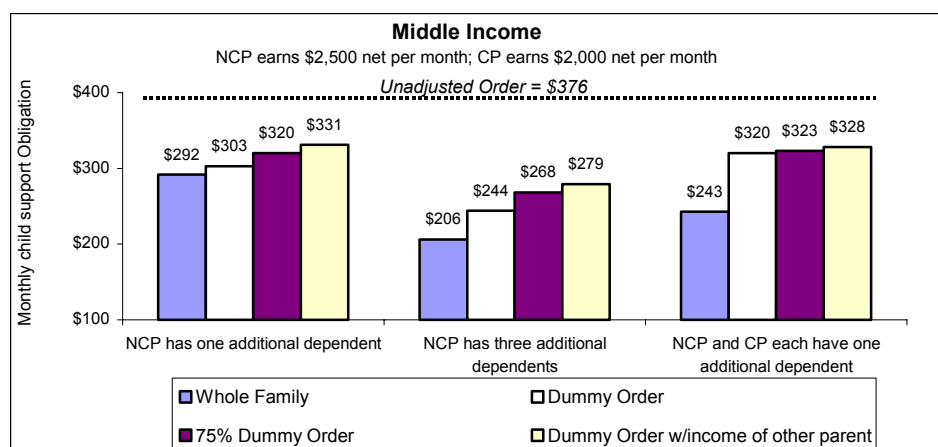
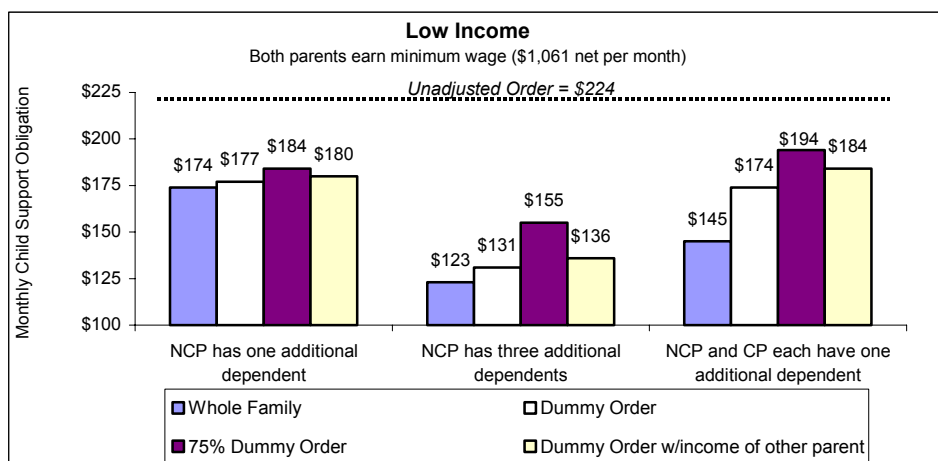
Exhibit 7 compares the Whole Family Approach to the method used by the majority of other states when a parent is paying court-ordered support for another child. The Whole Family Approach does not take into consideration the amount of support actually being paid by a parent on a support order. As seen in Exhibit 7, this approach consistently results in lower child support obligations for the child for whom support is being decided than if the actual amount of support paid is subtracted from the paying parent's income.

Exhibit 7 Comparison of Adjustments for Additional Dependents Covered by Child Support Orders Middle Income = NCP earns \$2,500 net per month; CP earns \$2,000 net per month		
	Method Used in Washington Whole Family Approach	Method Used in 40 States Subtracted from Income
Scenario 1: Support is being determined for one child, no additional dependents or court-ordered support of other children	\$376	\$376
Scenario 2: Support is being determined for one child, NCP pays \$200 per month in court-ordered support of one child from another relationship	\$292	\$348
Scenario 3: Support is being determined for one child, NCP pays \$600 per month in court-ordered support for three children from another relationship	\$206	\$290
Scenario 4: Support is being determined for one child, NCP pays \$200 per month in court-ordered support for one child from another relationship, CP pays \$100 per month in court-ordered support for one child from another relationship	\$243	\$349

Exhibit 8 compares child support obligations for one child, using different methods to adjust for additional dependents that are not covered by a child support order. We use three different levels of parental income: low income (both parents earn minimum wage); middle income (combined net income of \$4,500 per month) and high income (combined net income of \$7,000 per month). Each scenario addresses a different number of additional dependents. Exhibit 8 compares four different methods for adjusting for additional dependents:

- The Whole Family Approach used in Washington State;
- A standard dummy order deducted from the parent's income;
- 75% of a dummy order deducted from the parent's income; and
- North Carolina's method, which deducts 50% of a dummy order calculated using the income of both parents of the additional dependent.

Exhibit 8 **Comparison of Adjustments for Additional Dependents Not Covered by Child Support Orders** (Before Application of the Basic Subsistence Limitation)





As evident from Exhibit 8, the Whole Family Approach consistently results in the lowest support award amounts. For example, in a high income case where the noncustodial parent has three additional dependents (bottom graph, middle cluster of Exhibit 8), the support award amount would be \$309 per month using the Whole Family Approach and over \$400 using any of the other approaches.

Exhibit 8 also illustrates another anomaly of the Whole Family Approach; that is, it does not credit the custodial parent for his or her additional children. Instead, it results in a further reduction to the support award amount. To illustrate this, once again, examine the high income example, but this time compare the examples in the first and last cluster. The example in the first cluster considers the situation where only the noncustodial parent has an additional dependent. In this example, the support award amount under the Whole Family Approach would be \$438 per month. The example in the last cluster considers the situation where both parents have an additional dependent. Using the Whole Family Approach results in a further reduction to the order (\$365 per month). In other words, the custodial parent's additional dependent reduced the amount of support the custodial parent will receive.

Exhibit 8 does not show the application of the Blended Family Approach. Nonetheless, it should be noted that the Blended Family Approach sometimes has anomalous results; specifically, it can increase support award amounts in some cases. For example, in the middle income example where the noncustodial parent has one additional dependent (middle graph, first cluster of Exhibit 8), application of the Blended Family Approach results in a support award amount equivalent to \$467 per month, which is more than support award would be if there was no adjustment for additional dependents (\$376 per month).

Policy and Consistency Considerations

Below we highlight some of the issues that Washington State may want to consider if they are to provide a formula to adjust for the parent's children from other relationships.

- ♦ *Whether there should be differential treatment between the parent's children that are subject to a support order and those that are not.* Most states differentiate between the two. Washington does not. Specifically, the vast majority of states subtract the amount of court-ordered child support from the parent's income and provide another formula for other children who are not subject to a support order. In some respects, this is a practical issue. If there is no support order, it cannot be subtracted from the parent's income.
- ♦ *Defining "additional dependents."* Should the adjustment be limited to own children or consider stepchildren? Should the adjustment be limited to children in the home or consider other children not living in the home without a court order for support?
- ♦ *Equal treatment of the noncustodial and the custodial parents' additional dependents.* Most guidelines strive to be gender neutral and apply adjustments equally to the noncustodial and custodial parents. The Whole Family Approach does not treat the additional dependents of the noncustodial parent and the additional dependents of the custodial parent equally (see Exhibit 8). If they were treated equally, the noncustodial parent's additional dependent should reduce the support award amount and the custodial parent's additional dependent should increase the support award amount.
- ♦ *Formula for Adjustment.* Most states use a dummy order approach, but there are several considerations in applying the dummy order. Most states only use the income of the parent of the additional dependents to calculate the dummy order; yet, some states use the income of the other parent to the additional

dependents. Another consideration is whether 100, 75 or 50 percent of the dummy order should be subtracted. Subtracting 100 percent of the dummy order directs more of the parent's income to the additional dependents than the children for whom support is being determined. Subtracting 75 percent of the dummy order tends to equalize support between the two sets of children. (The 75 percent is arrived at mathematically.) Subtracting 50 percent of the dummy order appears more equitable and intuitive (i.e., the other parent of the additional children provides the other half), but actually directs more of the parent's income to the children for whom support is being determined than the additional dependents.

- ♦ *Consideration of two or more families.* It is not uncommon for a father to have children with more than two mothers. Similarly, it is not uncommon for a mother to have children with more than two fathers. Applying an adjustment on top of an adjustment for additional dependents can leave little available for the children for whom support is being determined. Pennsylvania's solution is to make a proportional reduction to all orders, but this also requires the modification of all orders. Other solutions (e.g., Virginia) involve limiting the adjustment if the custodial-parent family is low income.
- ♦ *Interaction between Review and Adjustment Criteria and Adjustment for Additional Dependents.* Some state guidelines limit the consideration of subsequent additional dependents in modifications. Other states permit the consideration of subsequent additional dependents only if other modification criteria have been met; that is, the existence of subsequent additional dependents cannot be the only reason for the modification. There must be another change in circumstances such as change in income.

***Example of Adjustment for
Additional Dependents District of Columbia (Proposed)***

Either parent shall receive credit for additional dependent children living in the parent's home for whom the parent owes a legal duty of support. Using only the income of the parent with the additional children in the home, the basic child support obligation for the number of additional children living with that parent (from the Schedule of Basic Child Support Obligations in subsection (e)(2)) is determined for that parent. This figure is multiplied by 75% and the resulting amount is subtracted from that parent's gross income before the child support obligation is computed in the instant case.



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Chapter IV

Treatment of the Residential Schedule

A perennial question to child support guidelines is when and how to adjust for shared-parenting time. In the past few decades, fathers have become increasingly involved in child rearing. In disrupted families, there are several ways that the noncustodial parent (which is still the father in the majority of cases) remains involved with the child. He may share in child-rearing decisions through shared legal custody, team parenting, parenting plans and other mechanisms. This may involve decisions pertaining to the child's religious upbringing, education, health care treatment and other child-rearing decisions. The child may also be in his physical care for a significant proportion of the child's time. The latter is what we call "shared-parenting time" and typically addressed in the "residential schedule" in Washington State.

Although most state guidelines address shared-parenting time, the adjustments vary significantly in when and how the adjustment is made. Most states seek a delicate balance between two considerations.

- ♦ Child-rearing expenditures incurred by the custodial parent (or also called the parent with primary residence) are not always significantly reduced when the child spends time with the other parent. For example, just because the child is spending nights with the other parent, does not mean the custodial parent can rent out of the child's room or cut electricity to the child's room. The eminent question is: "When are the custodial parent's costs reduced due to the child being in the care of the other parent?"
- ♦ On the other hand, the noncustodial parent (or also called parent with alternate residence) incurs child-rearing costs when the children are in his or her care. When and how should the other parent receive an adjustment for his or her direct child-rearing expenses?

In large part, the problem is that it costs more to raise a child in two households than one household. Most guidelines models start off with the assumption that the child is being raised in one household, so must first adjust for the additional costs of raising a child in two households before a credit to the other parent can be applied.

CONSIDERATION OF THE RESIDENTIAL SCHEDULE IN WASHINGTON STATE

Provisions in the Washington State Schedule

According to the Washington Schedule, "the court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment." The Schedule advises that the court "consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment." However, the Schedule does not define or offer guidance on what is a "significant amount of time," and do not provide a method or formula for adjusting the standard calculation.



In addition, the Schedule states that a deviation for significant time spent with the noncustodial parent cannot be made if it will result in insufficient funds in the custodial household to meet the basic needs of the child or if the child is receiving temporary assistance for needy families.

Split Custody

Split custody refers to the situation where there are at least two children and one parent has primary custody of at least one child; and, the other parent has primary custody of at least one child. In *In re Marriage of Arvey*, 77 Wash.App. 817, 894 P.2d 1346 (1995), the Court of Appeals held that because each parent was the primary residential caretaker of one or more of the children of the marriage, each parent should be viewed both as support obligor and support obligee for the purpose of calculating support. Under the *Arvey* method, a support obligation is calculated for each parent for the child or children living primarily with the other parent. Each parent's support obligation is then multiplied by the percentage of children living with the other parent. For example, if there are three children, two living primarily with the mother and one living primarily with the father, the father's net support obligation would be multiplied by 0.67 (2/3) for the number of children living with the mother. Finally, the lesser of the two support obligations is subtracted from the greater obligation to arrive at the transfer payment.

Treatment of Residential Schedule in Case Files

According to the most recent case file review, 13 percent of the deviations are due to the residential schedule. Most of the deviations for residential schedule occurred among non-IV-D orders. (The Schedule explicitly excludes a deviation for residential schedule among public assistance cases.) Almost all (99%) are downward deviations and result in a downward deviation of \$315 per month, on average.

Split custody is rare. It accounted for 2 percent of all deviations. In other states, even those that have a formula for split custody, it occurs in one percent or fewer of the cases.

ADJUSTMENTS IN OTHER STATES

We use the term, "shared-parenting time" to mean shared physical custody or substantial visitation. This is to avoid confusion among differences between state definitions of "shared physical custody," "joint custody," and other similar terminologies. For example, one state defines "shared physical custody" as almost equal physical custody and other states use it to mean court-ordered shared physical custody. Shared-parenting time implies that the child spends a considerable amount of time in both parents' households, so both parents incur substantial amounts of child-rearing costs.

In this section, we first review adjustments for shared-parenting time, then provide a discussion about split custody.

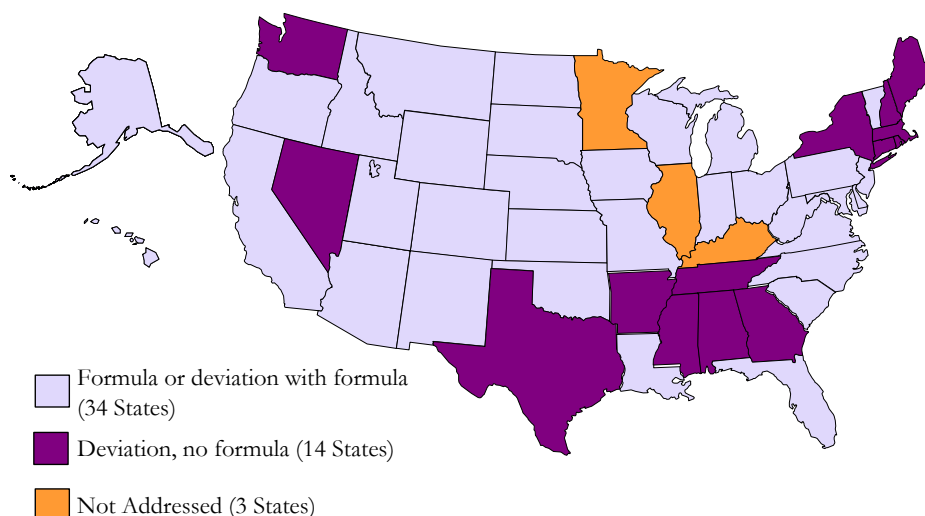
Adjustments for Shared-Parenting Time

Exhibit 9 shows which states adjust for shared-parenting time in their child support guidelines. It shows that

- ♦ 34 states provide a formula or a deviation factor with a formula;
- ♦ 14 states (including Washington) allow for a deviation but do not specify a formula; and
- ♦ 3 states do not address shared-parenting time.

Although not shown in Exhibit 9, almost all Income Shares states specify a formula to adjust for shared-parenting time. Washington, Alabama, Connecticut, Maine, and Rhode Island are the only exceptions.

Exhibit 9 Treatment of Shared Physical Custody in State Guidelines



In devising a shared-parenting time formula, there are typically at least three factors considered.

1. *Criteria for Applying the Adjustment (e.g., timesharing threshold, court order required).* All states with an adjustment set criteria for applying the shared-parenting time adjustment. Most state criteria include a timesharing threshold and require a court order or that timesharing is actually exercised. A few states (e.g., Alaska, Pennsylvania, South Dakota) specify that if a low-income adjustment is applied, the shared-parenting adjustment cannot be applied. In addition, New Jersey has a provision that the shared-parenting adjustment cannot be applied if the custodial parent household income is less than 200 percent of the poverty guideline.
2. *Specify formula to determine amount of adjustment.* As elaborated below, there are a variety of formulas used by states to determine the amount of the adjustment for shared-parenting time.
3. *Treatment of additional child-rearing expenses.* Many states prorate the costs of child care, the child's health insurance premium, and extraordinary medical and education expenses between the parents and add the prorated amounts to the base support. In states with shared-parenting time formulas, these additional child-rearing expenses are still prorated based on income and there is no additional weight based on the time split between the parents.



Criteria for Applying Adjustment

Timesharing Threshold

The timesharing threshold is a state policy decision that typically balances when the custodial parent's child-rearing expenses are substantially reduced due to the child's time with the other parent; and, when the other parent should be credited for substantial direct child-rearing costs incurred when the child is in his or her care. Unfortunately, little academic research has been conducted in this area, so there is little empirical evidence to guide what the appropriate timesharing threshold should be.

States typically express the timesharing threshold as a number of overnights or a percent of the child's time. As shown in Exhibit 10, it typically ranges from 20 to 50 percent of the child's time (73 to 183 overnights), although a few states set the threshold even lower (e.g., Arizona adjustment, which is discussed in greater detail later, starts with four overnights per year). Several states set the threshold slightly above the amount normally ordered in a standard visitation or shared-parenting schedule.

Exhibit 10	
Thresholds for Shared-Parenting Adjustments	
Threshold for Shared-Parenting Adjustment	Number of States
< 20%	4 (AZ, IN, MO, & NJ: CP income must be above 200% of poverty level in NJ)
20-30%	13 (AK, CA, CO, ID, DE, MT, NM, OR, SC, UT, VT, VA, WI)
31-35%	7 (IA, MD, MI, NC, OK, SD, WV)
36-49%	6 (DC, FL, HI, ND, PA, WY)
50%	2 (LA, KS)
Per Custody Order/Not Specified	1 (OH, NE)
Total Number of States	34

Court-Ordered Time-Sharing Schedule

As mentioned earlier, many states require that there be a court-ordered time-sharing schedule before the adjustment may be applied. Alternatively, some states require agreement between the parties, a parenting plan, or exercised shared-parenting time. The strength of requiring a court order is that it limits cases with shared-parenting time adjustments to those where the timesharing arrangement has been sanctioned by the court. The weakness of requiring a court order is not all parties obtain or can afford to obtain a court-ordered timesharing schedule even though they exercise shared-parenting time. (Government child support agencies funded through Title IV-D can help parties obtain court-ordered financial child support, but not court-ordered timesharing schedules.) In contrast, basing the adjustment on exercised shared-parenting time avoids this pitfall; yet, it may also provide more contention between the parties if the timesharing schedule is not agreed to or court ordered.

Formulas to Adjust for Shared-Parenting Time

Formulaic adjustments for shared-parenting time are summarized in the following three bullets.

1. *The Cross-Credit Approach.* Successfully used by some states for almost 20 years, the cross-credit is the most common approach to adjust for shared-parenting time. It is currently used by 21 states. It essentially calculates a theoretical support amount for each parent assuming that the parent is the noncustodial parent and the other parent is the custodial parent and weighs those amounts for the time the child spends with the other parent. The final step is to offset them against each other. An example of a cross-credit adjustment is provided in Exhibit 11. In this example, the basic obligation is multiplied by 150 percent to account for child-rearing expenses that are duplicated between the parents (e.g., housing). All states with the cross-credit formula use a multiplier except Nebraska and Wyoming.
2. *Indiana Approach and Variations.* The Indiana approach and variations of it are gaining popularity. Variations are used in Arizona, New Jersey, Missouri and Oregon. It is rooted in the concept that there are three types of child-rearing expenditures: variable (e.g., food); fixed, duplicated (e.g., housing); and fixed, non-duplicated (e.g., the child's clothing). The concept is that at low levels of timesharing (e.g., the noncustodial parent has the child 10 percent of the time and the custodial parent has the child 90 percent of the time), there should be an adjustment to the support award for variable costs only. When the timesharing is substantial, the adjustment should consider both variable and fixed, duplicated expenses because both parents incur these expenses. Yet, it also assumes that only one parent (e.g., in New Jersey, it is the parent with more time or the parent living near the child's school in equal custody situations) purchases fixed, non-duplicated expenses. States vary in the percentages they attribute to variable and fixed expenditures. Variable expenditures are assumed to be 37 to 40 percent of total child-rearing expenditures. Fixed, duplicated expenditures are assumed to be 30 to 50 percent of total child-rearing expenditures. Fixed, non-duplicated expenditures are assumed to be 10 to 33 percent of total child-rearing expenditures.

An Indianan Judge initially developed this concept over ten years ago. New Jersey was the first state to promulgate a formula based on this concept. Arizona modified New Jersey's formula so the adjustment could be performed as a look-up table based on the number of overnights. An example of Arizona's approach is illustrated in Exhibit 12. Oregon adopted the Arizona approach but starts it a higher timesharing threshold. In 2004, Indiana also refined and promulgated the adjustment. An example of Indiana's adjustment is included in Exhibit 13.

The Arizona approach is favored by many states because: its tabular format makes it easy to apply and understand; it gradually reduces the order amount as timesharing increases; it gives the noncustodial parent credit even with little timesharing; and, there was no evidence of the gaming of time for money in Arizona's last case file review. The Indiana approach was just implemented in 2004, so is too new to make conclusions about. New Jersey Guidelines users speak favorably of the New Jersey adjustment, but no other state has adopted it.

3. *Other Methods.* There are eight states that have shared-parenting formulas based on other methods. The per diem method is used by three of these states. Once timesharing reaches a state-determined threshold,



the support order is reduced by a per diem amount based on the number of overnights exceeding the threshold. In addition, there are five states that have unique adjustments. For example, California incorporates its adjustment into its base support formula. It assumes standard timesharing is 20 percent, and will adjust upward for timesharing less than that, or downward for timesharing more than that. Michigan's 2002 proposed formula is the most mathematically complex, but results in the most gradual decrease in order amounts with incremental increases in timesharing. Its basic premise is a cross-credit approach, but the equation structure does not appear to be similar to a standard cross-credit because of the use of exponentials. Michigan's current formula includes exponentials to the second power, its proposed formula involves exponentials to the third power and is shown below.

$$\frac{(PAd)^3 (PBs) - (PBd)^3 (PA_s)}{(PAd)^3 + (PBd)^3}$$

PAd = The number of overnights the children will annually spend with Parent A.

PBd = The number of overnights the children will annually spend with Parent B.

PA_s = Parent A's general support obligation.

PB_s = Parent B's general support obligation.

Exhibit 11				
Example of Cross-Credit Approach Used to Adjust for Shared-Parenting Time				
Line		Mother	Father	Combined
1	Monthly Combined Net Income	\$1,500	\$3,500	\$5,000
2	Percentage Share of Income	30%	70%	100%
3	Basic Obligation (Line 1 combined applied to Schedule- one child)			\$738
4	Shared Custody Basic Obligation (Line 3 x 1.5)			\$1,107
5	Each Parent's Share (Line 4 x each parent's Line 2)	\$332	\$775	
6	Overnights with Each Parent (must total 365)	182.5	182.5	365
7	Percentage Time with Each Parent (Line 6 divided by 365)	50%	50%	100%
8	Amount Retained (Line 5 x Line 7 for each parent)	\$166	\$388	
9	Each Parent's Obligation (Line 5 – Line 8)	\$166	\$388	
10	Amount transferred for basic obligation (Subtract smaller from larger on Line 9)		\$222	

Exhibit 12 - Example of Arizona's Adjustment

Shared-Parenting Time Adjustment Table		
Number of Visitation Days		Adjustment Percentage
0	3	0
4	20	.012
21	38	.031
39	57	.050
58	72	.085
73	87	.105
88	115	.161
116	129	.195
130	142	.253
143	152	.307
153	162	.362
163	172	.422
173	182	.486

Formula

Obligor's Share of Total Obligation
 - (Total Basic Child Support Obligation x
Adjustment Percentage from Table A)
 = Recommended Child Support Order

Example

Father's Income = \$3,500 (70% of combined)
 Mother's Income = \$1,500 (30% of combined)
 Basic Obligation = \$738,
 Visitation Days with Father = 182
 $(.70 * 738) - (738 * .486) = \mathbf{\$158}$

Exhibit 13 - Example of Indiana Parenting Time Credit

Indiana's Parenting Time Table			
Annual Overnights		Total	Duplicated
From	To		
1	51	0.000	0.000
52	55	0.062	0.011
56	60	0.070	0.014
61	65	0.080	0.020
66	70	0.093	0.028
71	75	0.108	0.038
76	80	0.127	0.052
81	85	0.150	0.070
85	90	0.178	0.093
91	95	0.211	0.122
96	100	0.250	0.156
101	105	0.294	0.195
106	110	0.341	0.237
111	115	0.388	0.280
116	120	0.434	0.321
121	125	0.476	0.358
126	130	0.513	0.390
131	135	0.544	0.417
136	140	0.570	0.438
141	145	0.591	0.454
146	150	0.609	0.467
151	155	0.623	0.476
156	160	0.634	0.483
161	165	0.644	0.488
166	170	0.652	0.491
171	175	0.660	0.494
176	180	0.666	0.495
181	183	0.675	0.500

Example

Father's Income = \$3,500 (70% of combined)
 Mother's Income = \$1,500 (30% of combined)
 Basic Obligation = \$738
 Visitation Days with Father = 182
 Total Parenting Time Expenses from table = .675
 Duplicated Parenting Time Expenses from table = .5
 Father's Share of Basic Obligation = \$517
 $(\$738 * .70)$
 Total Expenses during Parenting Time = \$498
 $(\$738 * .675)$
 Duplicated Expenses = \$369
 $(\$738 * .5)$
 Father's Share of Duplicated Expenses = \$258
 $(\$369 * .70)$
 Parenting Time Credit = \$240
 $(\$498 - \$258)$
Father's Adjusted Obligation = \$277
 $(\$517 - \$240)$



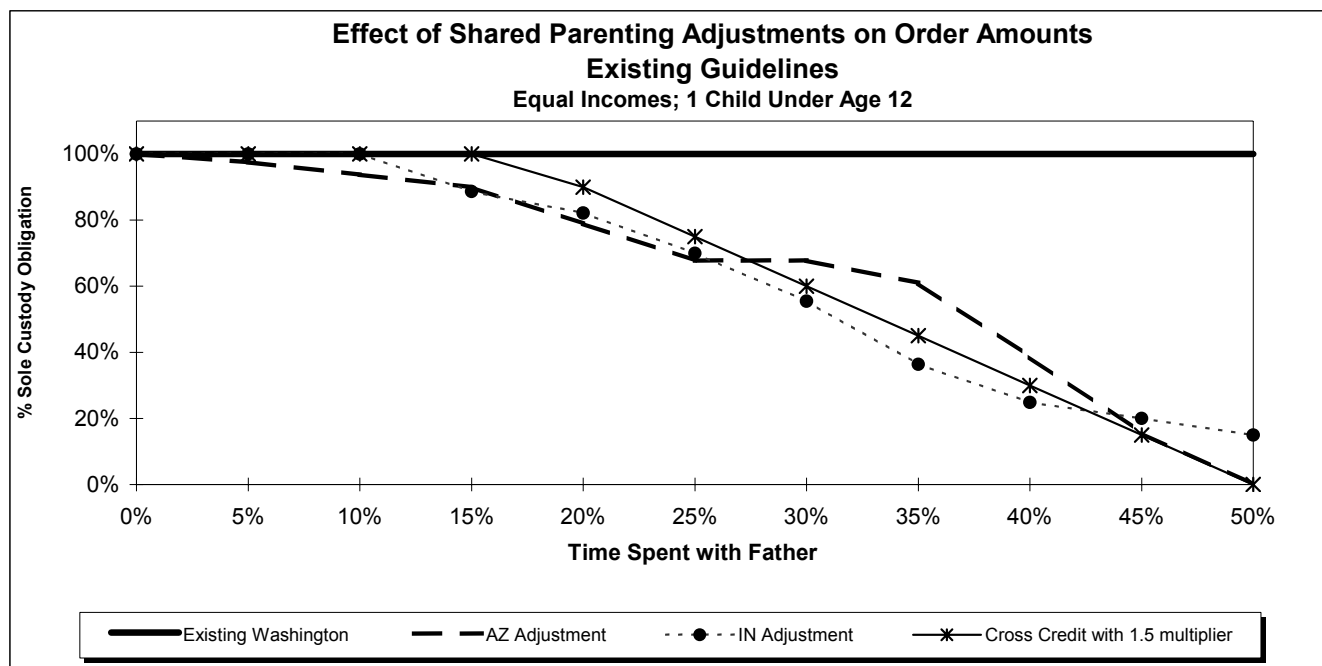
Comparisons of Shared-Parenting Time Adjustments

Exhibits 14 and 15 compare the impact of the following shared-parenting time adjustment formulas using the current Washington Schedule.

- ♦ The current Washington Schedule (no adjustment for parenting time).
- ♦ The Arizona adjustment applied to Washington orders.
- ♦ The Indiana adjustment applied to Washington orders.
- ♦ The cross credit approach with a 1.5 multiplier to account for duplicated child-rearing expenses starting at 25 percent timesharing.

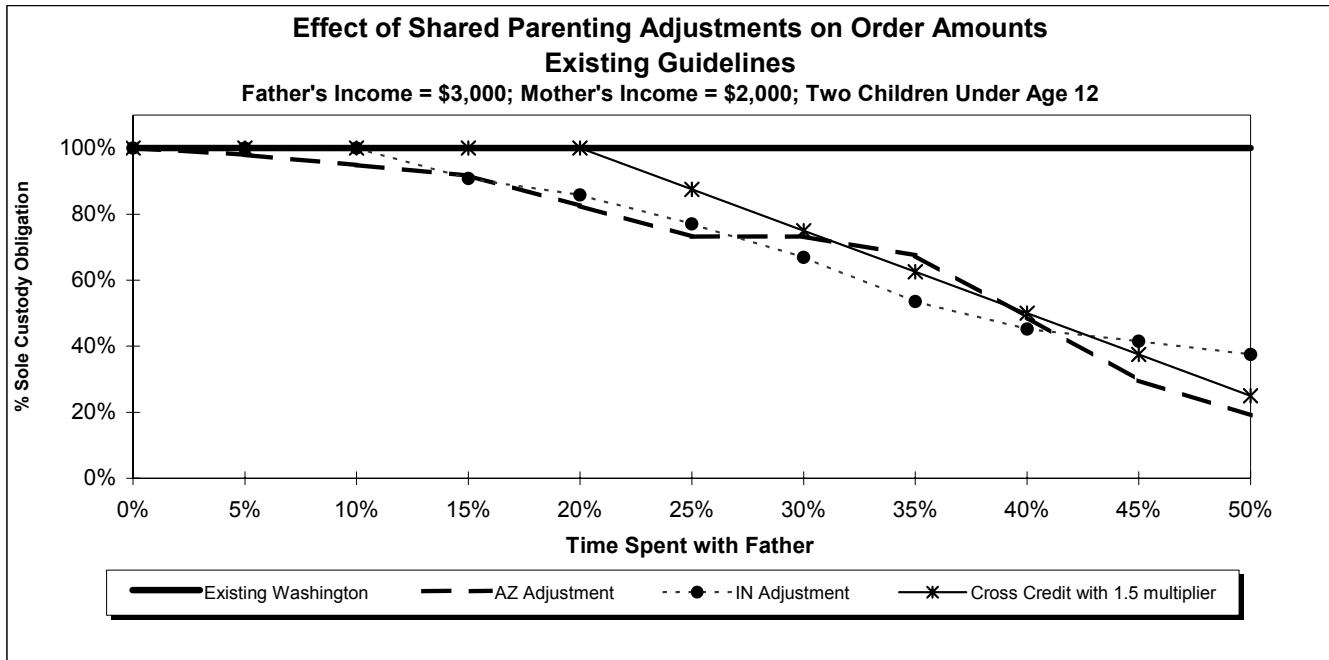
Exhibit 14 illustrates how the pure Indiana approach does not result in zero orders when the parents have equal income and equal timesharing. This occurs because the Indiana adjustment is founded on the premise that one parent will always incur non-duplicated, fixed costs such as the child's clothing and recreational and entertainment expenses (e.g., prom dress, CD player). When incomes and timesharing are equal the cross-credit approach will result in a zero order. Further, the Arizona Guidelines contain a provision that no support will be ordered in situations where incomes and parenting time are essentially equal.

Exhibit 14



Comparison of Shared Custody Formulas									
Father's Monthly Net Income = \$3,500, Mother's Monthly Net Income = \$3,500									
Support Due (\$\$ per month)					% of Sole Custody Obligation				
Time Spent with Father (Percent)	Existing Washington (No Adjustment)	AZ Adjustment	IN Adjustment	Cross Credit with 1.5 multiplier	Time Spent with Father (Percent)	Existing Washington	AZ Adjustment	IN Adjustment	Cross Credit with 1.5 multiplier
0% (0 days)	\$493	\$493	\$493	\$493	0%	100%	100%	100%	100%
5% (18 days)	\$493	\$481	\$493	\$493	5%	100%	98%	100%	100%
10% (36 days)	\$493	\$462	\$493	\$493	10%	100%	94%	100%	100%
15% (55 days)	\$493	\$444	\$437	\$493	15%	100%	90%	89%	100%
20% (73 days)	\$493	\$389	\$405	\$444	20%	100%	79%	82%	90%
25% (91 days)	\$493	\$334	\$345	\$370	25%	100%	68%	70%	75%
30% (110 days)	\$493	\$334	\$274	\$296	30%	100%	68%	56%	60%
35% (128 days)	\$493	\$301	\$179	\$222	35%	100%	61%	36%	45%
40% (146 days)	\$493	\$190	\$123	\$148	40%	100%	39%	25%	30%
45% (164 days)	\$493	\$77	\$99	\$74	45%	100%	16%	20%	15%
50% (182 days)	\$493	\$0	\$74	\$0	50%	100%	0%	15%	0%

Exhibit 15



Comparison of Shared Custody Formulas									
Father's Monthly Net Income = \$3,000, Mother's Monthly Net Income = \$2,000									
Support Due (\$\$ per month)					% of Sole Custody Obligation				
Time Spent with Father (Percent)	Existing Washington (No Adjustment)	AZ Adjustment	IN Adjustment	Cross Credit with 1.5 multiplier	Time Spent with Father (Percent)	Existing Washington	AZ Adjustment	IN Adjustment	Cross Credit with 1.5 multiplier
0% (0 days)	\$689	\$689	\$689	\$689	0%	100%	100%	100%	100%
5% (18 days)	\$689	\$675	\$689	\$689	5%	100%	98%	100%	100%
10% (36 days)	\$689	\$653	\$689	\$689	10%	100%	95%	100%	100%
15% (55 days)	\$689	\$631	\$625	\$689	15%	100%	92%	91%	100%
20% (73 days)	\$689	\$568	\$591	\$689	20%	100%	83%	86%	100%
25% (91 days)	\$689	\$504	\$531	\$603	25%	100%	73%	77%	88%
30% (110 days)	\$689	\$504	\$461	\$517	30%	100%	73%	67%	75%
35% (128 days)	\$689	\$465	\$369	\$431	35%	100%	68%	54%	63%
40% (146 days)	\$689	\$336	\$311	\$344	40%	100%	49%	45%	50%
45% (164 days)	\$689	\$204	\$286	\$258	45%	100%	30%	41%	38%
50% (182 days)	\$689	\$131	\$258	\$172	50%	100%	19%	38%	25%

Adjustments for Split Custody

Most states (30 states) specify a formula in their guidelines to adjust for split custody situations. The majority of states (22 states) use an offset method. That is, they calculate an obligation for each parent as the noncustodial parent of the child(ren) not living with him/her and then offset the two obligations. Seven states use the prorate method, which is similar to the *Arvey* method. They calculate an obligation for all of the children and then prorate the obligation between the parents based on the number of children living with each parent. All child support calculations in California include the percent of time with each parent, and for split-custody cases, the average time each parent spends with all children is used in the formula. There are 12 states that allow for a deviation in split custody situations, and eight states do not address the issue. Exhibit 16 below compares the *Arvey* method with the prorating method used in South Carolina and the offset method used in Pennsylvania.

Exhibit 16 Comparison of Split Custody Adjustments						
	Father's Net Income = \$2,500 per month Mother's Net Income = \$2,000 per month			Father's Net Income = \$4,000 per month Mother's Net Income = \$3,000 per month		
	Method 1	Method 2	Method 3	Method 1	Method 2	Method 3
		South Carolina Method (Prorating)	Pennsylvania Method (Offset)		South Carolina Method (Prorating)	Pennsylvania Method (Offset)
	<i>Arvey</i>			<i>Arvey</i>		
Scenario 1: Two children - one child with each parent	\$58	\$58	\$75	\$110	\$110	\$141
Scenario 2: Three children - two live with mother, one lives with father	\$292	\$292	\$282	\$456	\$456	\$454



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Chapter V

Adjustments for Low-Income Noncustodial Parents

Most states find that balancing the needs and resources of noncustodial and custodial-parent families to be a difficult task, especially when both families have limited incomes. Setting the needs of the children as paramount, most states designed their guidelines with the primary goal of ensuring that the needs of the children are met. However, if a child support obligation is set at a level that leaves a noncustodial parent unable to provide for his or her own basic subsistence needs, the noncustodial parent may be left impoverished or may accumulate large sums of arrears because he or she is unable to pay.¹⁶ Many state guidelines have provisions to protect low-income noncustodial parents by allowing them a self support reserve; that is, enough income after payment of the child support to at least live at a subsistence level.

The question in Washington State is whether its “self support reserve” is set too high? (Most states call what Washington State calls the “basic subsistence level,” the “self support reserve.” The findings from the recent Washington State case file review underscore the need to reconsider whether Washington’s “self support reserve” is set at a reasonable level. As discussed in the first chapter, recent research has found a disturbingly high proportion of children in the Washington IV-D caseload living in poverty even after child support and a large drop in the standard of living among custodial-parent families (both IV-D and non-IV-D families) post separation.

WASHINGTON STATE SCHEDULE PROVISIONS

The Washington Guidelines have three provisions that attempt to establish reasonable orders for noncustodial parents.

- ♦ *Limit at 45 percent of a parent’s net income.* Except for good cause, the total child support obligation cannot exceed 45 percent of a parent’s net income. This provision is discussed in greater detail in the next chapter.
- ♦ *Minimum Order.* There is a presumptive minimum order of \$25 per child per month, unless the noncustodial parent establishes that it would be unjust or inappropriate. Nonetheless, as evident in *In re the Marriage of Gilbert*, 88 Wash.App. 362, 4 P.2d 238 (1997), the \$25 minimum order amount is rebuttable. In the Gilbert case, the \$25 minimum order was rebutted because the noncustodial parent was incarcerated and had no income.

¹⁶ The relationship between arrears accumulation and support award amounts was investigated recently through a grant from the federal Office of Child Support Enforcement to Washington State to study arrears composition and collectibility. The study concluded that among noncustodial parents with gross monthly incomes below about \$1,400, child support is on average set above the level that would prevent arrearage growth. The study also suggests that arrears will not grow among low-income noncustodial parents if the support award amount is less than 20% of gross earnings. Carl Formoso, *Determining the Composition and Collectibility of Child Support Arrearages: Volume 1: The Longitudinal Analysis*, Report submitted to the federal Office of Child Support Enforcement, Grant #90-FD-0027, Division of Child Support, Washington State Department of Social And Health Services, Olympia, WA (May 2003).

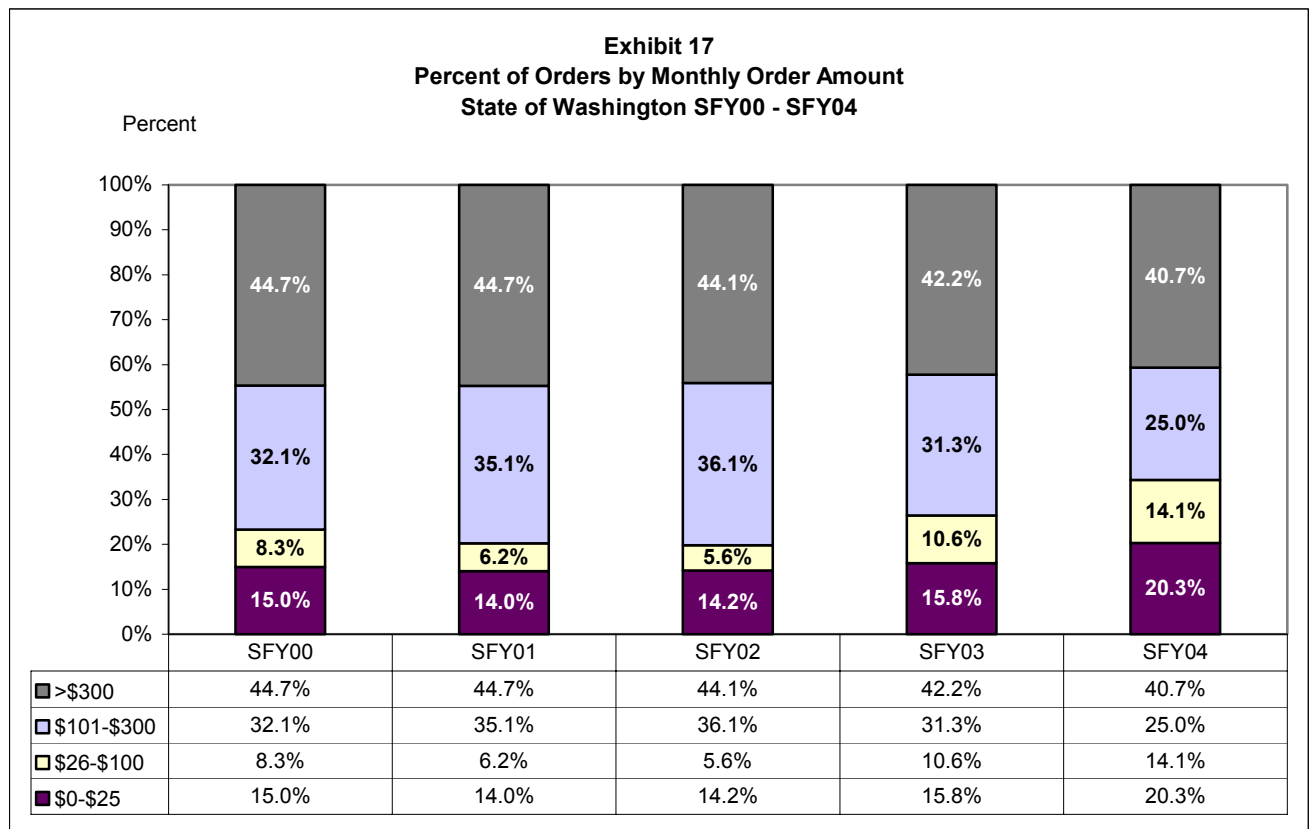


- ♦ *Basic Subsistence Limitation.* A child support obligation cannot reduce a parent's net income below the need standard for one person, except for the minimum order of \$25 per child per month. The 2004 need standard for one person is \$1,036 per month.¹⁷ The needs standard is updated annually. It is based on the standard of need for cash assistance programs. Although it relates to studies on actual living costs, it is about twice as much as the maximum amount of TANF cash assistance. Further, there are actually two needs standards: one with shelter costs; and, one without shelter costs. Most often, the needs standard with shelter costs is used but some counties will use the one without shelter if there is evidence that the noncustodial parent is free of rent or room and board (e.g., noncustodial parent lives with his or her parents).

Impact of Provisions

Exhibit 17 shows the numbers of \$0 and minimum orders are increasing.¹⁸ Between State Fiscal Years 2000 and 2004:

- ♦ The percent of \$0-\$25 orders has increased from 15 to 20 percent; and
- ♦ The percent of \$0-\$100 orders has increased from 23 to 34 percent.

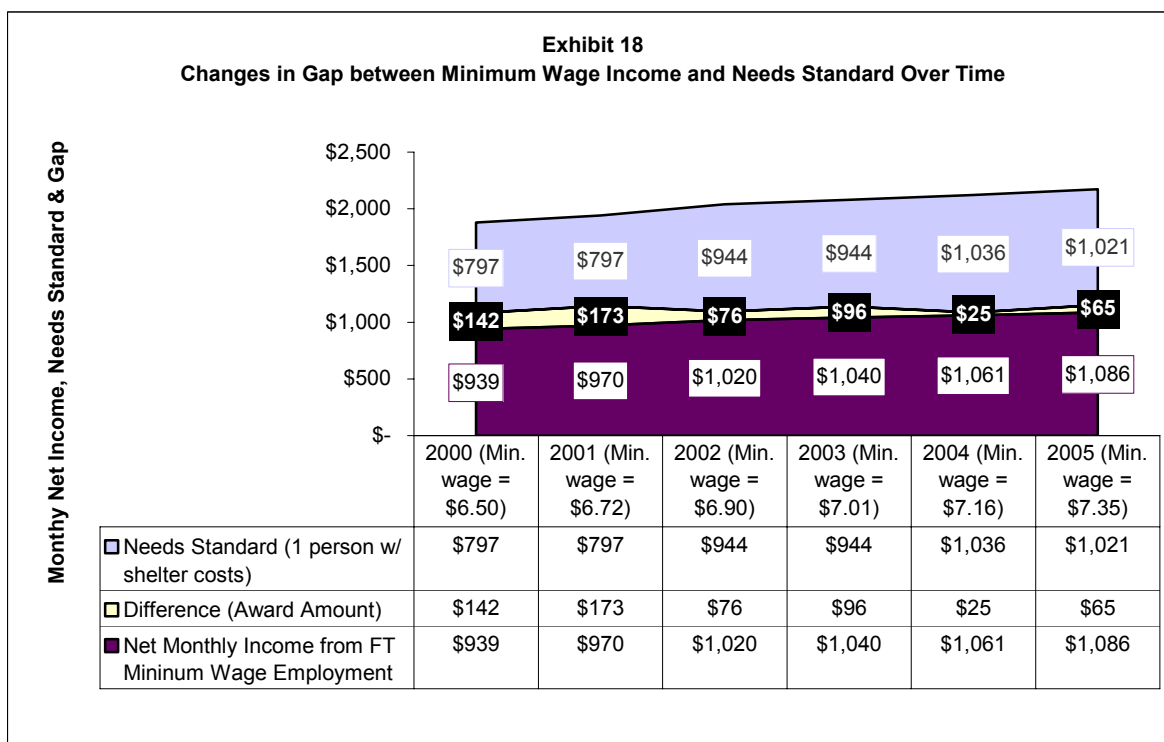


¹⁷ WAC 388-478-0015.

¹⁸ These statistics were provided by DCS and produced from its automated system.

In large part, recent increases in the needs standard that have surpassed increases to Washington State's minimum wage explains why \$0 to \$25 orders jumped from 15.8 percent of all orders in fiscal year 2003 to 20.3 percent of all orders in fiscal year 2004. As shown in Exhibit 18, the needs standard increased almost \$100 from 2003 to 2004; yet, minimum wage increased by only 15 cents per hour over the same time period. How much the needs standard is relative to the minimum wage is important because a parent's income is frequently imputed at minimum wage. In fact, the Washington State case file review found that the noncustodial parent's income was imputed at minimum wage or less in 35 percent of the cases.¹⁹

As shown in Exhibit 18, Washington's 2004 minimum wage, \$7.16 per hour, results in \$1,061 in net income after federal taxes and FICA for a parent working full-time. This is exactly \$25 different from the 2004 needs standard (\$1,061 per month); hence, results in \$25 per month orders. In 2005, the minimum wage will increase to \$7.35 per hour, which is equivalent to \$1,086 per month in net income after federal taxes and FICA. The needs standard will also decrease to \$1,021 per month. Combined, this should result in an increase in order amounts since the difference will now be \$65 per month.



MINIMUM ORDERS AND LOW INCOME ADJUSTMENTS IN OTHER STATES

As seen in Exhibit 19, most states (37 states) have an adjustment for low income obligors.

- Adjustments are typically based on a "self support reserve" test similar to Washington's Basic Subsistence Limitation. The self support calculation can be made in the child support worksheet (e.g.,

¹⁹ This is based on the net equivalent of minimum wage in 2001. The case file review examined orders entered between October 2000 through February 2001.



Washington, Vermont and Oregon), or it can be incorporated into the schedule (e.g., North and South Carolina).

- The self support reserve averages about \$659 per month.
- The minimum order is typically \$50 per month, although some states (e.g., Delaware, Iowa and Pennsylvania) vary the minimum order amount based on the number of children.

Exhibit 19 Self Support Reserve Amounts and Low Income Adjustments			
State	Minimum Order Amount	Income Threshold for Applying Minimum Order Amount	Adjustment for Low Income Above Minimum Order Threshold
Alabama	Discretion	\$550 gross	SSR (\$447 net) incorporated into schedule
Alaska	\$50	federal poverty level	
Arizona	Discretion	\$710 gross	Ability to Pay Calculation in Worksheet (\$710 gross)
Arkansas			
California			Formula (Below \$1,000 net)
Colorado	\$50	\$850 gross	Minimum amount (varies by number of children) plus 40% of income above \$900
Connecticut	\$4.33 (\$1 per week)	\$43 net (\$10 per week)	SSR (\$645 net) Incorporated into shaded schedule
Delaware	Varies with the number of children, starts at \$78	\$850 net	SSR (\$850 net) subtracted from income
District of Columbia	\$50	\$625 gross	
Florida	Discretion	\$650 net	SSR (\$568 net) incorporated into schedule
Georgia			
Hawaii	\$50	\$743 net	SSR (\$743 net) subtracted from income
Idaho	\$50 per child	\$800 gross	
Illinois			
Indiana	Discretion	\$433 gross	Lowered Amounts in Schedule
Iowa	varies with the number of children, starts at \$50	\$500 net	Lowered Percentages applied to lower incomes
Kansas		\$50 gross	SSR incorporated into schedule (amount unknown)
Kentucky	\$60	\$100 net	SSR (\$447 net) incorporated into schedule
Louisiana	\$100	\$600 gross	SSR (\$522 net) incorporated into schedule
Maine	10% of gross income per child	federal poverty level	SSR (\$596 net) incorporated into schedule
Maryland	\$20 - \$50	\$600 gross	SSR (\$447 net) incorporated into schedule
Massachusetts	\$80	\$433 gross	Lowered Percentages applied to lower incomes
Michigan	Formula starting with 10% of net income	\$738 net	Formula (\$738 net)
Minnesota	Discretion	\$550 net	Lowered Percentages applied to lower incomes
Mississippi	Discretion	\$417 gross	
Missouri	\$50	\$800 gross	SSR (\$658 net) incorporated into schedule
Montana	Formula	130% of Federal poverty level	SSR (\$1,009 net) subtracted from income
Nebraska	\$50	\$650 net	SSR (\$696 net) incorporated into schedule
Nevada			
New Hampshire	\$50	\$658 gross	Difference between SSR (\$748 net) and net income
New Jersey	\$22 (\$5 per week)	\$737 net	SSR (105% of poverty) adjustment made in worksheet

Exhibit 19 Self Support Reserve Amounts and Low Income Adjustments			
State	Minimum Order Amount	Income Threshold for Applying Minimum Order Amount	Adjustment for Low Income Above Minimum Order Threshold
New Mexico	Varies with the number of children, starts at \$100	\$800 gross	SSR (\$613 net) incorporated into schedule
New York	\$50	135% poverty level	Difference between SSR (135% of poverty) and net income
North Carolina	\$50	\$800 gross	SSR (\$738 net) incorporated into shaded schedule
North Dakota	Varies with the number of children, starts at \$14	\$100 net	
Ohio	Discretion	\$500 gross	SSR (\$568 net) incorporated into schedule
Oklahoma	\$50	\$650 gross	SSR (amount varies) incorporated into schedule
Oregon	\$50	\$900 gross	SSR (\$716 net) incorporated into schedule
Pennsylvania	Varies with the number of children, starts at \$50	\$600 net	SSR (\$550 net) incorporated into shaded schedule
Rhode Island	\$20 - \$50	\$600 gross	SSR (\$658 net) incorporated into schedule
South Carolina	\$50	\$600 gross	SSR (\$500 net) incorporated into shaded schedule
South Dakota	Varies with the number of children, starts at \$100	\$800 net	Minimum order + \$25 for every \$50 above \$800 net
Tennessee			
Texas			
Utah	\$20	\$650 gross	Additional table for low income (@\$625 gross)
Vermont	\$50	\$865 net	SSR (\$865 net) adjustment in worksheet
Virginia	\$65	\$600 gross	SSR (\$458 net) incorporated into shaded schedule
Washington	\$25 per child	\$600 net	SSR (\$1036 net) adjustment in worksheet
West Virginia	\$50	\$550 gross	SSR (\$500 net) adjustment in worksheet
Wisconsin			Additional table for low incomes (\$575-\$950 gross)
Wyoming	\$50	\$732 net	
Totals	Dollar or formula = 35 Not Addressed = 9 Discretion = 7	Threshold identified = 43 No threshold = 8 Average = \$659 Average gross = \$684 Average net = \$656	Adjustment incorporated into schedule = 21 Adjustment made in worksheet = 12 Lowered percentages = 3 Other = 3

Unique Provisions

- New Jersey does not permit the noncustodial parent to have a low-income adjustment unless custodial parent income is above 105% of the poverty level.
- The Michigan adjustment for low-income noncustodial parents is unique because it factors in whether the custodial parent's income is at or near poverty.
- Under Arizona's self support reserve test, the court may set the support obligation at the difference between the noncustodial parent's income and the self support reserve if that amount is less than the guidelines-determined obligation, but must consider the financial impact the reduction would have on the custodial household.
- Three states base their low-income noncustodial parent's adjustment on an approach that attempts to equalize income between low-income households (Colorado, Oklahoma and South Dakota). This approach starts from the assumption that each parent is capable of earning full-time minimum wage



earnings. Starting with this assumption, it calculates the amount of support necessary to equalize the incomes of the parents after taxes and payment or receipt of child support. This amount is the minimum support order if the noncustodial parent's income is equivalent to full-time, minimum wage earnings. It then phases into the actual measurements of child-rearing costs.

POLICY AND CONSISTENCY CONSIDERATIONS

The fundamental policy question is:

Is the needs standard an appropriate amount to use for the basic subsistence limitation (called a self support reserve in other states) for noncustodial parents?

- ♦ The 2004 needs standard is \$1,036 per month. The 2005 needs standard is \$1,021 per month.
- ♦ It is more than the 2004 federal poverty guideline for one person, which is \$776 per month.²⁰
- ♦ It is one of the highest self support reserves nationally. Most states set their self support reserve at \$650 to \$700 per month.
- ♦ It exceeds the payment standard for TANF in Washington State (\$440 for a parent and one child; and \$546 for a parent and two children).²¹
- ♦ It results in minimum support awards for children (i.e., \$25 per child per month).

In addition, there are several other factors to consider when determining what the appropriate policy for low-income noncustodial parents should be.

- ♦ **If there is an insufficient amount of combined net income and economic resources for both the custodial-parent family and the noncustodial parent to live at least at poverty, what should the guidelines amount be?** Some states (e.g., Colorado) try to equalize income between the noncustodial parent and the custodial-parent family. Specifically, the Colorado low-income adjustment is designed such that the parents' income to needs ratios are equal after the transfer of support. Colorado uses the federal poverty guidelines to define needs ratio.
- ♦ **Is the minimum order amount appropriate?** Washington State sets its minimum monthly order amount at \$25 per child, which results in \$25 award amounts for one child. Since the vast majority of orders in Washington cover one child, an overwhelming number of \$25 orders are being entered. In contrast, most states set their minimum order at \$50 per month regardless of the number of children.
- ♦ **How does the low-income adjustment interact with other Schedule provisions and deviation factors; namely, add-ons and adjustments for additional dependents?** The interaction of low-income adjustments, add-ons for child care and the child's health insurance premiums, and adjustments for additional dependents have caused some unexpected support award amounts in state child support guidelines. For example, some states, including Washington, adjust the base support for low-income noncustodial parents before applying the add-on for child care and are surprised at how high the final award amount is. The reason is the noncustodial parent's share of child care expenses. A solution to this is to apply the adjustment for low-income noncustodial parents after add-ons. On the other hand, other states purposely adjust the base support for low-incomes noncustodial parents before add-ons.

²⁰ *Federal Register*, Vol. 69, No. 30, February 13, 2004, pp. 7336-7338.

²¹ Wash Admin. Code 388-478-0020.

They base this on the principle that if the noncustodial parent does not share child care expenses, the custodial parent incurs all of the expenses.

In a similar vein, adjustment on top of adjustment for additional dependents can drive the support award amount down to the minimum order amount (\$25 per month). This is of particular concern given the apparent increase in noncustodial parents who have children with more than two mothers. To counter this, some states limit the additional dependents adjustment or the low-income adjustment such that it is not provided unless the custodial parent-household has income above poverty (e.g., Arizona, New Jersey, Louisiana).

- ♦ **What is the impact on default orders, collections and arrears accumulation?** Recent research suggests that default orders should be avoided and measurements should be taken to encourage the noncustodial parent's involvement in the child support award process.²² The basis is that engaged noncustodial parents are more likely to pay. One factor that may encourage default orders is low order amounts. If the noncustodial parent's income is imputed at minimum wage, the guidelines-determined amount based on the current subsistence limitation would result in a minimum order of \$25 per month. With such a low award amount, the noncustodial parent has no economic incentive to provide the State with his or her actual income information because it would undoubtedly result in a higher award amount. In contrast, if the noncustodial parent's income is imputed at median earnings, he or she has an economic incentive to share his or her actual income information with the State to determine an appropriate order amount.

Another issue is whether it makes sense to set award amounts above a noncustodial parent's ability to pay. As one of the earlier research papers on the topic so aptly framed it, it is like trying to squeeze blood out of a turnip.²³ The topic of whether different child support enforcement strategies and approaches are necessary for low-income noncustodial parents has gained an enormous amount of attention at professional child support enforcement conferences and is the subject of many policy briefings, position papers and research studies. Washington State DCS has also conducted a vast amount of research on arrears accumulation and difficult-to-collect cases that examines the relationship between support award amounts, payment and arrears accumulation.²⁴ Another well-balanced resource is a publication based on town meetings between representatives of a group advocating for low-income custodial parents and another group advocating for the rights of noncustodial parents.²⁵ Unfortunately, however, this group did not reach consensus on low-income adjustments in guidelines. On the one hand, the group recognized that it does not make sense to set support awards above what a noncustodial parent could reasonably pay. On the other hand, the children's needs, including the children's basic subsistence, should come first.

²² Paul Legler, *Low-Income Fathers and Child Support: Starting Off on the Right Track*, Report funded by the Annie E. Casey Foundation, Policy Studies Inc., Denver, CO (January 2003).

²³ Ronald Mincy and Elaine Sorensen, "Deadbeats and Turnips in Child Support Reform," *Journal of Policy Analysis and Management*, Vol. 17, No. 1, 44-51 (1998).

²⁴ For example, see Formoso (2003).

²⁵ National Women's Law Center and Center on Fathers, Families, and Public Policy, *Dollars and Sense: Improving the Determination of Child Support Obligations for Low-Income Mothers, Fathers and Children*, Washington, D.C. (2002).



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Chapter VI

Other Income Issues

In this Chapter, we discuss several income issues that may contribute to the inadequacy of the Schedule or its lack of predictability.

- ♦ **Imputation of income to the custodial parent in public assistance cases.** Based on our discussion with county deputy prosecutors and claims officers, there appears to be wide variation in the practice of imputing income to custodial parents in public assistance cases. Although this currently results in little differences in award amounts due to the application of the needs standard this could change particularly if the needs standard is no longer used as the basic subsistence limitation as suggested in the previous Chapter.
- ♦ **Income from overtime or second jobs.** These are deviation factors in the Washington Schedule. Some states provide more direction on how to treat income from overtime or second jobs.
- ♦ **Tax assumptions used to convert gross to net income.** Frequently, a parent's income information is provided as a gross income amount; yet, the Table considers net incomes. Automated guidelines calculators convert gross to net income using federal tax formulas. (There is no Washington State personal income tax.) Assumptions about the number of exemptions must be made in the conversion. These assumptions vary considerably and yield different order amounts.
- ♦ **Schedule is no longer presumptive above combined net incomes of \$5,000.** The \$5,000 threshold is unusually low relative to other state thresholds and out of line with today's incomes. In 1989 when the Schedule was developed, the \$5,000 threshold was considered high income. Based on today's standards, however, it is no longer considered the upper echelon of those in the top income bracket.
- ♦ **45 percent of net income cap on support award amounts.** Washington's cap is unusual. Only a few other states have a similar cap. The cap comes up more often in cases covering a large number of children or large add-ons for child care or health insurance than those covering one child and average child care expenses or other add-ons. One reason for the cap is that it does not make sense to set support awards above what can be collected legally from income withholding. (The Consumer Credit Protection Act limits income withholding for child support to 50 to 65 percent of disposable income.) On the other hand, an argument against the cap is that it results in inadequate level of support among large families and those with high child care expenses.

IMPUTATION OF INCOME TO THE CUSTODIAL PARENT

The Washington State Schedule is silent as to whether to impute income to the custodial parent in public assistance cases. Other state guidelines have provisions that allow the court to impute income to either the noncustodial or custodial parent if the parent is voluntarily unemployed or underemployed. However, several states do not impute income to a custodial parent who cares for a young child (the age of the child ranges from two to six years in states with this provision). Further, the majority of states do not consider means-tested income (e.g., TANF) as income for child support purposes, and do not impute income to a parent receiving assistance. The exceptions are:



- In Oregon, if the custodial parent receives TANF, gross income is attributed to him/her at 40 hours per week at minimum wage.
- In South Carolina, the court may impute income to a TANF recipient.
- In South Dakota, the presumption is that each parent is capable of earning minimum wage. A parent has to provide evidence if he/she is disabled or is the primary caretaker for an individual with special needs. Income is imputed to parents receiving public assistance under this provision.

The impact of imputing income to the custodial parent in public assistance cases is illustrated in Exhibit 20. It shows that the basic obligation is more when income is imputed and the noncustodial parent's share of the basic obligation is less (\$224 per month when income is imputed to the custodial parent and \$242 when income is not imputed). Although the final award amount would be the same regardless if income is imputed to the custodial parent when the current needs standard is applied, this may not always be the situation if the needs standard is no longer used to adjust order amounts for low-income noncustodial parent. (The previous chapter suggests that Washington may want to consider using an amount other than the needs standard for its basic subsistence limitation.)

Exhibit 20 Example to Illustrate the Impact of Imputing Minimum Wage to the Custodial Parent in Public Assistance Cases						
	Case 1 Income imputed at minimum wage to both parents			Case 2 Income imputed at minimum wage to noncustodial parent only		
	Noncustodial Parent	Custodial Parent	Combined	Noncustodial Parent	Custodial Parent	Combined
Net Income	\$1,061	\$1,061	\$2,122	\$1,061	\$0	\$1,061
% Share of Net Income	50%	50%	100%	100%	0%	100%
Basic Obligation from Table (One Child under 11)			\$447			\$242
Each parent's share of basic obligation	\$224	\$224		\$242	\$0	

INCOME FROM OVERTIME AND SECOND JOBS

Income from overtime is included as a source of gross income under the Income Standards section of the Washington State Schedule. In addition, income from overtime or a second job can also be considered as a deviation criterion. None of the deviated orders in Washington State's most recent case file review indicated that the reason for the deviation was income from overtime or a second job.

The majority of states are silent on the treatment of income from overtime or a second job. Two states (Arizona and New Hampshire) specifically exclude overtime pay from income. There are 13 states, including Washington, that include overtime pay in the definition of income. Another 11 states allow the court discretion in including or excluding overtime pay when calculating support. Some states have a caveat that if the income from overtime or a second job would have been available for support of the child if the family had formed or remained intact, it should be included as income for the calculation of support. This allows

noncustodial parents who seek additional income from voluntary overtime or second job to increase their standard living post-separation.

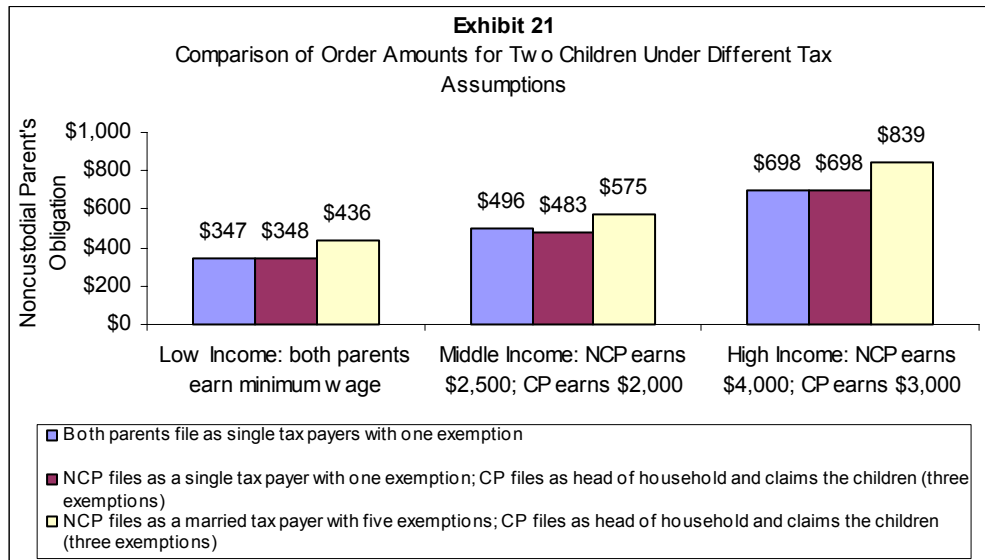
TAX ASSUMPTIONS

Although the Table considers net incomes, many cases start with the parents' gross income and make assumptions about the parent's tax filing status to arrive at net income. In fact, SSGen (Support Schedule form generation) and other automated guidelines calculators will convert gross income to net income automatically. SSGen uses the federal tax formulas in the IRS Circular E, Employer's Tax Guide for the calculation. The formula in the Withholding Guide does not result in the exact same amount from using the end of year Form 1040 Tax Return. The major differences are: (a) The Tax Guide does not discern between taxpayers whose filing status is single and head of household; whereas, Form 1040 does; (b) The Tax Guide only advances part of the Earned Income Tax Credit; and (c) the Withholding Guide does not include the child tax credit.

Tax Assumptions in Washington State

Based on discussions with deputy prosecutors, private attorneys and claims officers, tax assumptions vary from case to case. It appears that the most common assumption is that the parent's tax filing status is single and claims no dependents. This assumption is commonly applied to both the custodial and noncustodial parent. Other assumptions that are used: the noncustodial parent's tax filing status is single and the custodial parent's tax filing status is a head of household and claims the children as dependents; and, that the parents split the exemptions for their common children in half. If there is an odd number of children (say, one child), they may rotate the exemption for the child year to year. In addition, sometimes, the actual tax filing status and number of exemptions claimed is used.

Exhibit 21 compares and contrasts the consequences of using different tax assumptions on order amounts for two children with the same amount of gross income for a low, middle and high income example. In the first scenario, both parents file as single tax payers with one exemption. In the second scenario, the noncustodial parent files as a single tax payer with one exemption and the custodial parent files as head of household and claims the children as dependents (three exemptions total). In the final scenario, the noncustodial parent has four dependents and files as a married tax payer (five exemptions total), and the custodial parent files as head of household and claims the children for whom support is being determined (three exemptions total).



Tax Assumptions in Other States

More than half of the states (29 states) base their guidelines on gross income and the remaining 22 states base their guidelines on net income. Yet, many of the net-income states start with gross income and use tax formulas to arrive at net income. Several of these states standardize the tax assumptions (e.g., Tennessee, South Dakota and Vermont). Tennessee and South Dakota assume the parent(s) tax filing status is single and claims no dependents. Tennessee does not consider the custodial parent's income in the guidelines calculation, so does not need to make any assumptions about the custodial parent's tax liability. South Dakota applies the exact same tax assumptions to both parents regardless of their custodial status. Vermont assumes that the tax filing status of the noncustodial parent is single with no dependents and the tax filing status of the custodial parent is head of household with a number of dependents equivalent to the number of children for whom support is being determined. In shared custody cases, Vermont assumes both parents file as head of household and split the dependents equally.

Gross Income and Standardized Net Income

The advantage to using gross-income based guidelines or standardized net income is that parents with identical gross incomes are treated equally. In contrast, when net income is used, two noncustodial parents with the same amount of gross income may be issued different child support awards because one noncustodial parent is single and rents an apartment and the other noncustodial parent is remarried, has additional children, and mortgage interest.

Non-standardized Net Income

There are a few states (e.g., California, Iowa) that purely use net income. Hence, in the scenario discussed above, where two noncustodial parents are similarly situated except the only difference is one is remarried and the other is single, the award amount would differ because the married noncustodial parent would have a lower tax liability, hence more after-tax income available for child support than the single noncustodial parent.

A few years ago, California re-evaluated this provision because there was concern that the remarriage of a parent could lessen or increase that particular parent's tax rate depending on whether the new spouse had high or low income. If the remarriage was to a high-income spouse, the tax rate would increase and the parent would have less after-tax income available for child support. Conversely, if the remarriage was to a low-income spouse, the tax rate would decrease and the parent would have more after-tax income available for child support. Several formulas for considering changes in tax consequences were proposed, however, to the best of our knowledge, none were adopted.

COMBINED NET INCOME ABOVE \$5,000

Washington State's Economic Table is presumptive for combined net monthly incomes up to and including \$5,000. Above that amount, the Economic Table is advisory but not presumptive. This is an artifact of the Table not being changed since 1989; when at that time, \$5,000 per month was considered high income and the measurements of child-rearing costs were unavailable for incomes much higher than that.

Further, above combined net income of \$7,000 per month, the court has the discretion to use the Table amounts for \$5,000 to \$7,000 to set an advisory amount or can set support at an amount that exceeds the Table with written findings of fact.

Among orders entered from October 2000 through February 2001, the sampling period of the last Washington State case file review, 14 percent of all orders involved cases where the combined net incomes of the parents was more than \$5,000 per month and 5 percent of all orders involved cases where the combined net income of the parents was more than \$7,000 per month. This translates into a large number of orders that are not covered by the presumptive guidelines and those numbers are likely to increase. According to the 2003 American Community Survey done by the U.S. Census Bureau, 19 percent of Washington families have income over \$100,000 per year (\$8,333 per month).

The case file review found that 23 to 29 percent of the orders with combined net incomes above \$5,000 per month did not comply with Schedule instructions. In addition, anecdotal evidence suggests another problem is that it is not uncommon to cap support award amounts for high income cases at the basic obligation amounts at combined net incomes of \$7,000 per month. (Such a cap does not violate Schedule instructions.) The case file review found that support awards averaged about \$1,000 per month for combined net incomes of \$7,000 per month, but without consideration of all of the case's circumstances (e.g., number of children, total net income, each parent's share of net income, adjustments to income, add-ons for child care), we cannot determine how often this type of capping occurs.

Most state schedules stop at combined incomes of \$10,000 to \$20,000 per month (\$120,000-\$240,000 per year). Mostly income shares states, these states base their schedule on the economic measurements of child-rearing costs. The highest income considered varies depending on the age of the schedule and other factors. Seven states stop their formula if the noncustodial parent's income is under \$120,000 per year and 14 states apply a formula to infinite incomes. Most state guideline specify that highest amount is a "floor"—that is, the support order shall not be lower than the highest amount in the schedule— for incomes above the schedule.



45-PERCENT CAP ON SUPPORT

The Consumer Credit Protection Act (CCPA), codified at 15 U.S.C. 1671 et seq., was designed to provide protection for consumers against predatory extensions of credit and excessive garnishment of wages. Subsection 1673 provides that the maximum garnishment allowed is 25 percent of disposable earnings. However, child support orders are an exception to the 25 percent maximum:

[15 U.S.C. 1673(b)(2)] The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed—

- (A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used). 50 per centum of such individual's disposable earnings for that week; and
- (B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week;

The act goes on to delineate that if an individual is in arrears by 12 weeks or more, those percentages are raised to 55 and 65 percent, respectively. States can enact limitations that are more restrictive than the federal CCPA. About two-thirds of states have adopted the CCPA limits, with the remaining states setting a lower limit, usually 50 percent.

CCPA Limits in Washington

According to RCW 6.27.150(2), 50 percent of an individual's disposable earnings are exempt from garnishment if the individual is supporting a spouse or children, and 40 percent of disposable earnings are exempt if the individual is not supporting a spouse or children. Stated another way, the maximum amounts that can be garnished are 50 percent and 60 percent, respectively. This mirrors the basic CCPA limits except that the percentages in Washington do not increase if the individual has arrears.

Child Support Guidelines Income Cap

The Washington Schedule contains a provision that the child support obligation cannot exceed 45 percent of a parent's net income, except for good cause. Examples of good cause provided in the Schedule include: possession of substantial wealth, children with day care expenses, special medical needs, educational need, psychological need and larger families. The 45 percent limitation in the Guidelines is more restrictive than Washington's garnishment limitation.

The limit appears to be applied infrequently in IV-D cases based on the case file review. (The field indicating that the 45 percent limit was applied was not regularly coded in non-IV-D cases.) The case file review included over 4,000 cases reviewed and only about 40 orders had any information that implied that the 45 percent limit may have been applied.

Income Caps in Other States

There are a few other states that have an income cap or limitation in their guidelines that relates to the CCPA.

- ♦ Pennsylvania addresses the CCPA within the scope of the child support guidelines for cases involving multiple families. The court can consider a proportionate reduction in all of the obligations of a noncustodial parent if the total of his or her obligations exceeds 50 percent of monthly net income.
- ♦ Indiana and New Mexico establish a cap for child support obligations:
 - ♦ Indiana – 50 percent of the obligor’s weekly adjusted income; and
 - ♦ New Mexico – 40 percent of gross income for a single child support order.

Oregon recently abandoned its cap. In part, Oregon eliminated it because they could better address the issue in their low-income adjustment. Prior to this change, child care and other add-ons were added after the support award was adjusted for low-income noncustodial parents. The consensus among the Oregon Guidelines Review Commission was that this resulted in order amounts that were too high, so they changed the low-income adjustment such that it was applied after consideration of add-ons. Due to this change, the support award will never be above the CCPA limit among low-income noncustodial parents in Oregon. Yet, the support award could exceed the CCPA limit in high income cases.