

Final Report

Child Support Guidelines Review Survey

INTRODUCTION

At the request of the federal Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, NCSL conducted a comprehensive survey of states regarding their child support guidelines. The work took place in 2004 and 2005, and we succeeded in interviewing 45 states. In addition, we used research contained in *Child Support Guidelines*, a legal treatise by Laura Morgan, particularly for some of our guidelines content information. The survey covered three broad areas which are reflected in the structure of this report.

- *Guidelines Content.* NCSL asked states numerous questions about the current policies in their guidelines. We asked for information on the original economic basis of the guidelines and any changes, questions about changes to guideline models, and questions about numerous guideline policy decisions that concern state policymakers, such as medical support, parenting time adjustments, child care expenses, retroactive support, and treatment of low-income parents. In addition to asking for the current policy, we asked about previous changes in the guidelines regarding these issues, and whether or not any of these issues were controversial either when first enacted or currently.
- *Guideline Review Process.* We wanted to know how states conduct their child support reviews and asked numerous questions about the process. We learned which state entity (i.e, court, legislature, etc) conducts the reviews, who is involved in the process, and how much public input is solicited.
- *Case Data Review.* Many states report that the case data review is the most challenging aspect of a guidelines review. We asked about methodology for conducting case data reviews, the rates of deviations found in the reviews, and common reasons for deviations. As anticipated by anecdotal evidence prior to the project, we found that this was, indeed, the most technically challenging aspect of the review process for many states.

A copy of the survey can be found in the appendices to this report.

Who We Interviewed

We attempted to find someone in each state who knew the history of the child support guidelines and was closely involved in the review process. In most cases, we interviewed staff persons responsible for overseeing the review process, usually in the administrative office of the courts or in the child support agency. In a few cases, we interviewed legislative staff or members or former chairs of the review committees. Most of the people we interviewed had long-term involvement with the guidelines reviews in their state, but we were not always able

to find someone with that institutional knowledge. In compiling the information from the surveys, we emphasized fidelity to the tone and content of the interviewee. This report and the related charts reflect our commitment to accurately recording information from our sources, and in some cases we have sacrificed uniformity of response to reflect this accuracy.

GUIDELINES CONTENT

Economic Basis

We asked states for the original economic basis of their guidelines, whether they had changed the data they used to determine the costs of raising children and to formulate the guidelines, and whether there were any questions or concerns about the available data.

Thirteen states reported that the original economic basis for their guidelines was Betson/Rothbarth data; and 14 states reported using PSI/Espensshade data.

- Betson/Rothbarth: Dr. David Betson used research from Erwin Rothbarth to develop estimates of child-rearing expenditures, and then used data from the 1980-86 Consumer Expenditure Survey to obtain then-current amounts. Rothbarth used the amount of money spent on "adult goods" in a household to estimate the expenditures on children within the household.
- PSI/Espensshade: Robert Williams of PSI used data from a 1984 study by Thomas Espensshade to develop the economic basis for the federal guidelines advisory panel which was used to develop the income shares guideline model. Espensshade used data from the 1972-73 Consumer Expenditure Survey to estimate the expenditures on children in a variety of categories, such as transportation, food, household goods, entertainment, health care, and so on. He demonstrated that expenditures on children rise as household income rises, and that expenditures of the household decrease for each additional child compared to the previous child.

The rest of the states reported a variety of different sources for their original economic data, from independent research conducted by in-state experts, to federal poverty guidelines.

When we asked states about concerns with current data, responses were mixed. Several respondents expressed concerns that the most commonly-used national data did not account for variations by state, and some states have requested additional research to make adjustments to the national data based on state-specific economic data. Respondents also noted the following perceived shortcomings with current available data:

- No accurate information on spending on children in single-parent households
- Lack of information on spending on children in very high-income households
- Lack of information on spending on children in very low-income households
- Available data is outdated

Conversely, some of our contacts felt that the current available data was sufficient to meet the needs of their guideline review efforts.

Guideline Models

We also asked several questions about state guideline models. There are three child support guideline models used by the states:

- The Income Shares Model is based on the concept that the child should receive the same proportion of parental income that he or she would have received if the parents lived together. In an intact household, the income of both parents is generally pooled and spent for the benefit of all household members, including any children.
- The Percentage of Income Model sets support as a percentage of only the noncustodial parent's income; the custodial parent's income is not considered. This model has two variations: the Flat Percentage Model and the Varying Percentage Model.
- The Melson Formula is a more complicated version of the Income Shares Model, which incorporates several public policy judgments designed to insure that each parent's basic needs are met in addition to the children's. The Melson Formula was developed by a Delaware Family Court judge and fully explained in *Dalton v. Clanton*, 559 A.2d 1197 (Del. 1989).

All of the guideline models have certain aspects in common. First, most of the guidelines incorporate a "self-support" reserve for the obligor. Second, all the guidelines have a provision relating to imputed income. Third, by federal regulation, all the guidelines take into consideration the health care expenses for the children, by insurance or other means. Lastly, most of the guidelines have incorporated into the presumptive child support formula special additions for child care expenses, special formulas for shared custody, split custody, and extraordinary visitation, and special deductions for the support of previous and subsequent children.

Currently, nine states utilize a percentage of obligor income model: Alaska, Arkansas, Illinois, Massachusetts, Mississippi, Nevada, North Dakota, Texas, and Wisconsin. The Virgin Islands also utilizes this model.

The most common model is the income shares model, used by 38 states, Guam, and the District of Columbia (the District recently changed from a hybrid model to a full income shares model; Minnesota and Tennessee also changed from a percentage of income to an income shares model in 2005; Georgia changed from a percentage of income to an income shares model in 2007).

Three states use the Melson model: Delaware, Hawaii and Montana.

We asked states how they felt their guideline model worked. Most of the respondents felt that their guideline model worked well, and cited the common arguments in favor of each model. Contacts from percentage of income states appreciated the simplicity of their model, and several also noted that awards do not differ significantly from awards based on the other two models. Some suggested that the other two models are unnecessarily complex, given the similarity in award amounts. One proponent noted that the percentage of income model is easier to use for the increasing number of parents who do not use attorneys in divorce or child support cases.

Interviewees from income shares and Melson model states emphasized the perception of fairness in their models. One of the contacts we spoke with from a Melson model state believes that its' reputation for complexity is unwarranted. He believes that it is the fairest model and that once people become familiar with it, they find that it is easy and straightforward to apply.

In the states that have recently changed models, the process has been difficult and controversial. In Georgia, for example, the initial recommendation to change to income shares was not endorsed by a majority of the guidelines commission. In Minnesota, the initial recommendation to change to income shares was made in a 1999 report, and didn't pass the legislature until 2005. Tennessee officials were able to alleviate some concerns regarding the increased complexity when they switched to income shares by providing judges with toll-free numbers through which they could reach identified experts to help with calculations.

Medical Support

We asked states the following questions about medical support: is it an add-on or deduction? How do they handle extraordinary medical expenses? Do they allow for a review and adjustment if a parent obtains previously-ordered medical support? Do they have provisions if total amount awarded, including medical support, exceeds CCPA limits?

Thirty states reported that medical support is an add-on to the basic award; 14 reported that it is a deduction from income. The remaining states used approaches that were not easily classifiable as either an add-on or a deduction. The most common approach to extraordinary medical expenses is to divide them proportionally between the parents based on income and/or add them to the basic support obligation (23 states). Five states reported that extraordinary expenses are split equally between the parents, and five reported that they are a reason to deviate from the guidelines.

Almost all of the states reported that obtaining ordered insurance would be treated the same as other criteria for modification of a support order. Some of our contacts specified that a change in insurance status qualifies as substantial change in circumstances warranting a review, regardless of other factors in the case (Louisiana, North Carolina, Tennessee). In a few instances, the process is streamlined in such cases. In Alaska, an adjustment based on a change in insurance is automatic and doesn't require the parties to return to court. South Carolina uses a similar approach - the agency changes the award once it receives proof of coverage and of the cost.

When we asked whether the state had procedures to deal with orders that exceeded CCPA withholding limits, the most common response was that the contact didn't know, or that the state didn't address the issue in statute or policy. In states that did address it, all of them prioritized cash support over medical support. (One state contact noted, however, that insurance premiums are deducted from income, therefore, there is a de facto priority of insurance over cash support. This argument could be made for all of the states that deduct insurance premiums from income.) A couple of our contacts noted that if medical support pushed the total award beyond the withholding limit, then the medical support would be

defined as not being available at reasonable cost. In some states, such a high award would be a deviation factor. In most, however, there are no provisions to change the total award if CCPA limits are exceeded. The states can only order automatic withholding up to the limit, but the parent would still be responsible for paying any additional support, or incur arrears.

Parenting Time Adjustments

We gathered information regarding state approaches to parenting time adjustments, and asked states whether the adjustments were perceived as fair in their state. Nineteen states treat parenting time as a reason to deviate from the guidelines - the remaining states have incorporated a formula into the guidelines to address parenting time. (Some states list parenting time as a deviation factor, but provide a formula to use if the deviation is applied. We have counted them in the deviation category, but also included them in our counts of the different kinds of formulas.) The most common approach for states with formulas is the cross-credit approach, because it is easy to integrate with the income shares guideline model, and it is based in the same assumptions. Twenty states use a cross-credit approach. Most of the states using the cross-credit approach include a multiplier to account for the increased costs when children spend substantial time in two households. An additional eight states use a per diem or modified per diem approach to adjust for parenting time; two states use a quadratic equation, and five use the "Indiana approach" (as it has been dubbed by PSI). The Indiana approach attempts to separate transferable costs that move with the child, and fixed costs. It identifies and divides the support obligation in three categories: transferable costs, duplicated costs and fixed-duplicated costs.

Our interviewees expressed several opinions regarding parenting time adjustments. Interestingly, in states where PTAs had been a part of the guidelines when they were adopted, they were not controversial and were widely viewed as fair. States that tried to add a PTA to their guidelines after initial adoption encountered much more controversy and concern among all stakeholders.

Areas of disagreement in states include the threshold at which a PTA is applied and related concerns regarding "cliff effects," concerns about consistent application of PTAs, and arguments about the definition of an overnight, or whatever unit the guidelines use to measure time spent with each parent. States do not appear to be moving toward a consensus on these issues.

Child Care Expenses

Most respondents reported that their state's approach to child care expenses works well. The three most common approaches to child care are adding it to the basic obligation (32 states), deducting it from the income of the paying parent (6 states), or treating it as a deviation (7 states). At least four of the states that add it to the obligation make an adjustment to the amount to account for child care tax credits.

A few of our contacts expressed some concerns with treatment of child care expenses. Some felt (particularly in states that treat child care as a deviation) that the guidelines did not adequately address the rising costs of child care. Others noted that even though the guidelines in their state(s) automatically adjust for the tax credit, not all parents claim the

credit. Overall, however, discussion about child care in guideline reviews has focused on the best strategy to account for the expense, not whether or not it should be addressed in the guidelines.

Retroactive Support

Policies regarding retroactive support practices vary widely across the states; and vary by the type of case. Many of the states have different policies for retroactive support in divorces vs. paternity cases where the parents may not have resided together. A few states, such as Florida, look at the residential, rather than legal, status of the parents. Florida allows support to be ordered back to the date when the parents no longer resided together in the same household with the child (not exceeding 2 years prior to filing of a petition).

There are an equal number of states on both “ends” of this policy spectrum. Eighteen states do not order retroactive support or only allow it back to the date of filing. Conversely, 17 states allow retroactive support to be ordered back to the date of birth – or earlier. Massachusetts, for examples, allows support to be ordered for the prenatal period. Some states are counted in both categories if they limit retroactive support for dissolution cases, but allow it back to the date of birth for paternity cases – or vice versa. Some states use slightly different criteria. In North Dakota, for example, retroactive support in TANF cases can go back to the date of assignment or the birth of the child, whichever is later. In non-TANF cases, it is ordered back to the date of the application.

Many states fall in between these two extremes as well, limiting retroactive support to a certain period of years prior to the date of filing. In states such as California, Delaware, Minnesota and South Dakota, retroactive support is limited to three or fewer years prior to the date of filing. Conversely, Maine and Rhode Island allow retroactive support for up to six years, and Oklahoma and Washington allow it for five.

Our interviewees also expressed widely varying viewpoints on this issue. Many reported that their state’s policy on retroactive support was not controversial and was not a focus of discussion during the guidelines review, while numerous other said that this had been discussed in-depth and is an area of major concern for the guidelines review group. Many of those who reported that retroactive support was discussed said that concerns around arrears played a role in those discussions. California, for example, limited retroactive support after a study on arrears management suggested that their policy was contributing to their high arrears.

Low-income Obligors

Nearly every state has some provision to address the circumstances of low-income obligors. These range from allowing judges to deviate in low-income cases, to a separate formula to calculate support for low-income parents. In some cases, the deviation is discretionary, but a formula is provided. Many states still have a minimum support amount in the guidelines. The most common minimum amount is \$50 – twelve states have this provision. Ten states have established minimum amounts that are lower than \$50, and seven have a minimum that is higher. In conjunction with these limits, self-support reserves are becoming increasingly common. At least 20 states have established them.

Provisions for low-income parents are a significant topic of discussion during guideline reviews. Concerns range from setting amounts that are actually collectible, to determining what a fair support award is when both parents have low incomes. While a few states continue to feel that allowing judges to deviate in low-income cases is an adequate strategy, most states have established specific guidelines and policies to follow in these cases. Guidelines reviewers are also increasingly aware of the potential impact of high award amounts for low-income parents on state arrears levels.

GUIDELINE REVIEW PROCESSES

It's kind of like cooking. You get all done, what you have is really good, but you look at it and ask, "How did that happen?"

- Survey respondent on the guidelines review process

Responsibility for Review

Typically, the court, the legislature or the state agency conducts the review. Working groups, committees, or task forces are often created to review the guidelines and submit recommendations for final approval. Some states establish independent commissions.

The entity that conducts the review does not necessarily depend on whether the guidelines are statutory, court rule or administrative rule:

- 25 states have statutory guidelines and only three states conduct a legislative review;
- 17 states have guidelines in court rule and the court is responsible for conducting the review in 21 states;
- eight states have their guidelines in administrative rules, and the agency conducts the review in sixteen states;
- and 10 states have established independent review commissions to conduct the review.

Who is Involved

We asked each state contact about the membership of their guidelines review groups and how they solicit public input. Almost every state includes judges and attorneys on their review group. (A very small number of states that conducts agency reviews have not included judges, but at least some of the staff involved are practicing attorneys.) The review group also may include court staff, private attorneys, state agency staff, parents (custodial and noncustodial; at least one state makes an effort to include parents with joint or split custody), county and local agency staff, legislators and legislative staff, CPAs, consultants, representatives of social services agencies and advocates for low-income families. 25 states report including parents or parent advocate groups on their guideline review committees, although the parents are not always actively involved.

Almost all states had mechanisms for members of the public to provide input. Some states noted that by law, their meetings were open to the public, and they did not go to great

lengths to solicit additional input. Most states made more efforts to get public opinions. Strategies range from mailing surveys or asking people to complete online surveys, to holding public hearings around the state specifically for members of the public. Other groups reached out to key advocacy groups and requested feedback.

We were particularly interested in the level of legislative involvement. 23 states reported that legislators are or have been members of guidelines review groups. However, actual levels of involvement vary widely. Some legislators have been committed and active members of review commissions, while other appointed members rarely attend meetings. In some cases, legislative staff may attend the meetings on behalf of legislators. In a number of states that did not include legislative involvement in the review group, the legislature is still responsible for reviewing recommendations of the group and/or passing legislation to implement the changes. In a few states without formal legislative representation, our contacts noted that the review groups solicit legislative input either formally through public hearings or invitations to comment, or informally through relationships with the group members. In those instances, contacts reported that legislative concerns are generally taken seriously and are discussed by the group. One of the most significant barriers to amending the guidelines occurs when the legislature is responsible for adopting changes to the guidelines in statute, but isn't involved in the review process. In those cases, suggested guidelines amendments are rarely adopted by the legislature.

Common Recommendations for Review Process

We asked interviewees what aspects of their guideline review process works well and what they would like to improve. From their responses, we have compiled a list of recommendations for effective reviews.

- Start the review process early. Provide time to educate the committee members about economics, child-rearing cost estimates and the guidelines.
- Create a budget to cover some expenses for the group. It can allow them to hire an expert or an economist to help with portions of the guidelines review.
- Solicit public commentary from advocacy groups, the bar association and the general public. Many states, no matter what entity is responsible for the review, hold public hearings or conduct written or on-line surveys.
- Include legislative input but avoid legislative reviews because the process may become politicized and making basic changes, such as updating the tables for inflation, can be challenging. When the courts or child support agency conducts the review there appears to be a greater ease in obtaining approval for submitted recommendations. The courts or the child support agency may also be better suited to review guidelines because their staff works with the guidelines daily. Some respondents believe a legislative review validates the process and the guidelines and that the guidelines have more authority as established law. Although there is debate over whether the legislature should be responsible for the review, most state contacts said legislators should be involved in the review process at some level.
- Include a wide range of stakeholders. Reviews that include all of the stakeholders—

attorneys, judges, child support agency staff, legislators, advocacy groups, noncustodial parents, and custodial parents—in the review process reported a greater sense of fairness and willingness to comply with the recommendations and modifications.

CASE DATA REVIEWS

Many states report that the case data review is the most challenging aspect of their guidelines review. Reasons for this vary from insufficient resources to review a statistically valid number of orders, to inadequate data collection on orders initially. Automation has helped somewhat, but not all child support orders are entered into IV-D databases, so samples pulled from databases disproportionately represent cases in the IV-D system. In addition, not all automated systems are set up to capture the data needed for a case data review, such as whether or not a case is a deviation from the guidelines, and the reason for the deviation. In some cases, judges or hearing officers may not be recording the data in ways that are useful for a case data review. For instance, some of our interviewees reported that judges often do not note whether or not a case is a deviation, but if someone reviewing the file performs a calculation, the support amount ordered differs from what the guidelines would suggest. Obviously, if the original order does not note whether the case is a deviation, the reason for the deviation also is unlikely to be captured. Therefore, the information we gathered concerning case data reviews can be considered, at best, anecdotal and a compilation of educated guesses.

Methodology

The methodology for conducting case data reviews varies widely. Almost half of the states report pulling a random sample of cases from their automated systems to study deviation rates, although several of these states noted that they do not capture information for non IV-D cases using this method. A few states noted that they do not conduct a case sample for every guideline review, either due to budgetary constraints or the perception that the data is not useful. Many of the states that conduct random sampling contract with external entities to do the work. Some work with universities in their state, others contract with national providers.

Other states report using a point-in-time strategy, either by pulling all cases ordered in a certain time period or by requesting that judges send copies of orders to be reviewed. Still others rely on periodic surveys of judges. In both of these latter examples, the response rate from judges varies widely and affects the reliability of the data. A small number of states have, or plan to implement, automated court systems, which they hope will improve their ability to conduct case data reviews. Finally, a few states routinely review all cases where a deviation is indicated on the order.

Deviation Rates

23 of our state contacts had information on the deviation rate for their state (although in some cases, they simply said it was a “low deviation rate”). In the other states, they did not have the information, although some of our contacts made educated guesses. Of the 23 states that reported a rate, it ranged from less than 1 percent of cases to 29 percent (at least one state reported a deviation as high as 48 percent for private cases, but the primary reason for deviation was that the parties agreed to it). Most of these states – sixteen – reported a deviation rate of 10% or less. Because not all of the state samples included both IV-D and non IV-D cases, it is not helpful to compare deviation rates across states.

Only three states where orders are established both judicially and administratively had enough information to distinguish deviation rates between judicial and administrative orders. We expected judicial deviations to be higher than administrative – that was true in two of the three states.

Three of our state contacts also could tell us whether deviations were up or down from the guideline amount. In all three states, they recorded more downward than upward deviations.

Reasons for Deviations

The most commonly-cited reason for deviations is agreement between the parties. This is much more common in private cases than IV-D cases, but still dominated the reasons for deviations in several states. Frequently, “other” (in states with a catchall deviation category) or “no reason given” was also one of the top reasons listed.

It is misleading to compare common reasons for deviations across states, because of differences in the guidelines themselves (some states include certain provisions within the guidelines and others treat those criteria as deviations). However, a few of the common reasons include income (disproportionate, low-income, etc), visitation time, multiple families and visitation travel expenses. In a few states, our respondents felt that their case data was misleading in that orders would indicate a deviation, and then list a reason that had, in fact, been incorporated into the guidelines, such as use of the self-support reserve, or multiple families.

Use of Case Data Review

Opinions varied on the usefulness of the case data review. Some of our contacts reported that the review committees carefully considered the data and that it substantially influenced their discussion of the guidelines. Other groups felt that the data was not particularly useful – either because they did not feel they had reliable, complete data on cases in their states, or they just didn’t feel that it was relevant. (One person noted that the committee felt that “the court is authorized to deviate so it doesn’t make sense to spend a lot of money to see if they are doing something they are allowed to do.”) Most people felt, however, that it was useful to review the information. The most common concern focused on the reliability of the information collected in the case data review.

CONCLUSION

Although we heard a number of specific concerns regarding guideline reviews in the states, most respondents, overall, felt that their state's guideline review process was effective and worked well. We asked contacts for a general impression, and most of them responded that their state had an effective process in place. It was only when we asked specifically how it could be improved, or probed into particular areas, that they mentioned particular criticisms.

The two biggest sources of frustration regarding the review process were 1, lack of reliable data for the case data review, and 2, that review committees would recommend changes to the legislature which weren't implemented, resulting eventually in guidelines that were outdated and based on very old economic data.

In spite of the significant variation both in the review practices, and in the policies that result from those practices, most respondents believe that their state is effectively reviewing guidelines to ensure that child support orders are fair and equitable for the children and for parents.