

REVIEW OF THE NEVADA CHILD SUPPORT GUIDELINES

Report to:

State of Nevada Division of Welfare and Support Services
Child Support Enforcement Program
Carson City, NV 89706

Report by:

Jane Venohr, Ph.D.
Economist/Research Associate
Center for Policy Research
Denver, CO 80218

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Points of view expressed in this document are those of the author and do not necessarily represent the official position of the State, Court or others. The author is responsible for any errors and omissions.

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EXECUTIVE SUMMARY

Nevada is reviewing its child support guidelines. Federal regulation requires that states review their guidelines at least once every four years. As part of a state's guidelines review, a state must collect and analyze case file data on the application of and deviation from the guidelines and consider economic data on the cost of child rearing. Both requirements are fulfilled in this report.

OVERVIEW OF FINDINGS FROM THE ECONOMIC ANALYSIS

Child support guidelines typically relate to economic evidence on child-rearing expenditures, but also contain many policy decisions. For instance, most states consider both parents' incomes in the calculation of support. The Nevada guidelines calculate support based on a flat percentage of the obligor's gross income only (*e.g.*, 18 percent of gross income for one child and 25 percent of gross income for two children). The percentages were adapted from Wisconsin, one of the first states to provide a statewide guideline, and are based on a 1981 economic study of child-rearing expenditures. Besides Nevada and Wisconsin, only one other state (*i.e.*, New York) bases its guidelines on a flat percentage of gross income, and that state also adapted the Wisconsin percentages. One reason a flat percentage of gross income is counterintuitive is economic theory and evidence finds that households make their expenditures decisions based on their after-tax incomes. Since federal tax rates are progressive, after-tax income as a percentage of gross income declines, so the percentage of gross income devoted to expenditures also declines.

Despite this caveat, the Nevada percentages are generally in the range of the current economic evidence on how much parents spend on their children. The evidence considers a range because economists do not agree on which economic methodology for separating the child's share of expenditures from total household expenditures best measures actual child-rearing expenditures, but they generally agree that guidelines amounts between the lowest credible measurement of child-rearing expenditures and the highest credible measurement of child-rearing expenditures are appropriate for a state's guidelines amounts.

SPECIAL CASE OF LOW INCOMES

Besides the flat percentages, the Nevada guidelines provide a minimum order amount of \$100 per child per month. Among the states that do provide minimum orders (and most do), Nevada provides the highest minimum order. Further, unlike most states, Nevada does not provide an adjustment for low-income parents. Most states provide a self-support reserve for obligated parents with poverty or near-poverty incomes. This is to facilitate full payments because less than full payments can trigger automatic enforcement remedies (*e.g.*, driver's license suspension) that can impede employment and the parent-child contact. The expected outcome is that child support payments will become more regular and predictable, which help monthly budgeting among custodial households. Evidence from an analysis of Nevada case file data corroborates that the percentage of paying cases, compliance rates, and the average number of months paid are generally higher among cases in which the order is set below the \$100 per child minimum.

PRESUMPTIVE MAXIMUM AMOUNTS

The presumptive maximum amounts are unique to Nevada; specifically, Nevada provides a maximum amount per child for each of seven income ranges. Most of the income ranges span about \$2,000 per month in gross income. The unintended consequence is the guidelines award amount can be the same amount (*i.e.*, the maximum amount) for two obligated parents even though one of the obligated parent's gross income is \$2,000 per month more than the other obligated parent's income.

No other state provides similar presumptive maximum amounts. For obligated parents whose income is near the top of one income range, there is an economic disincentive to increase earnings because the increased income could push the obligated parent into the next income range with a larger presumptive maximum, hence result in a substantial increase in the support award. For obligated parents whose income is at the bottom or middle of the income range, in some situations, there is no increase in the guidelines amount even though there is almost a \$2,000 increase in income. In contrast, economic theory and evidence finds that incremental increases in income result in incremental increases in expenditures.

FINDINGS FROM ANALYSIS OF CASE FILE DATA

Nevada has a high guidelines deviation rate: 36 percent of the State's child support agency (the Child Support Enforcement Program—CSEP) cases reviewed contained guidelines deviation rates. In other words, the guidelines were not applied in these cases. Federal regulation encourages states to make guidelines changes that keep guidelines deviations at a minimum. Based on the experiences of other states, the deviation rate in Nevada would be even higher if the case file review included non-CSEP cases. Other states find higher deviation rates in private child support cases. For example, in Arizona's and California's most recent child support guidelines reviews, which included cases from both the state child support caseload and private caseload, the respective guidelines deviation rate was 26 and 15 percent.

Most of the reasons cited for guidelines deviations in Nevada involve factors that are usually addressed through formulas in other state guidelines. These factors include responsibility for other children, the obligor being unable to pay the minimum amount, the child's time with each parent, the cost of health insurance, and the cost of child care. Most states provide an income deduction for other children, a self-support reserve for obligated parents without the capacity to earn more than a poverty or near-poverty income, a formulaic adjustment for shared parenting time, and provide that the actual cost of the child's health insurance and child care expense be prorated between the parents, with a parent's prorated share either added or subtracted from the core guidelines amount depending on which parent pays the expense when determining the final award amount. Formulas for special factors improve consistency in award amounts for similarly situated parents and improve the predictability of support award amounts among parents seeking child support or a parent responding to a child support complaint.

Another finding from the analysis of case file data is that Nevada would benefit from establishing a method for a more thorough and comprehensive case file review. This would include both CSEP and non-CSEP cases. It would also include information about the incomes of each parties; whether income

was imputed to either party; the consideration of special factors such as child care expenses, the cost of the child's health insurance, additional dependents, and custody arrangements; and other information such as payment patterns. This information could be used to inform formulaic adjustments for these factors as well as track the application of these formulas in future reviews if they are indeed adopted. Based on the findings from other states, the best way to collect case file data is from actual case files tracked by the clerk of the court or child support agency.

OTHER FINDINGS

There are several other findings. Other changes to Nevada's provisions for the medical child support provisions may be warranted to improve the congruency with the Affordable Care Act of 2010 (ACA). For example, providing that Medicaid and CHIP are health insurance for the children will improve congruency with the ACA. Nevada is in the minority of states that do not consider both parents' incomes in the guidelines calculation. Recent trends suggest the gap between male-female incomes or husband-wife incomes has closed somewhat. Many of Nevada's guidelines deviations involved parents who were incarcerated or recently released from prison. More states are adopting provisions to address this special population because they comprise a significant share of the government agency caseload in most states. States are adopting provisions that complement strategies for successful re-integration of these parents into society and their families. Finally, the Nevada fee on delinquent payments is onerous. In general, empirical evidence finds that fees and interest do not encourage payment; rather, they add to arrears, and high arrears discourages payment, particularly among low-income obligated parents.

Nevada is one of four states that promulgates its guidelines in state statute but does not provide for how the four-year review will be conducted or by whom. In contrast, most states periodically review their guidelines through a committee of diverse stakeholders including representatives of the judiciary, state child support agency as well as tribes with child support agencies, private attorneys or the family law division of the state bar association, the office of the attorney general or other entity handling the legal issues of state child support cases, and children's advocacy groups. Often, they also include parents with differing custody status and at least two legislators (one from each political party). Another limitation to periodically updating the Nevada child support guidelines is that the Nevada legislature meets every other year. Two of the three other states with legislation sessions that meet less than annually have child support guidelines promulgated through agency rule, which facilitates more frequent updates to the core guidelines formula in these states.

RECOMMENDATIONS

Implementing the recommendations shown below will reduce guidelines deviations, and provide more consistent and predictable award amounts within Nevada. They are appropriate and will serve the best interest of Nevada families and children.

Exhibit ES-1: Recommendations

1.	Obtain input from child support guidelines users and stakeholders through establishing a standing a committee to
2.	Review the premise and basis of Nevada child support guidelines model to establish a foundation for determining other recommendations.
3.	Determine whether the base guidelines percentages/formula should be changed based on the economic evidence on
4.	Determine whether more case file data is needed for the initial review to inform recommendations and develop a process to obtain better information from case file data in the future.
5.	Eliminate the presumptive maximum amounts and replace them with a formula and provision consistent with economic
6.	Develop a self-support reserve or low-income adjustment like those used by other states.
7.	Review the appropriateness of the minimum order and make changes if necessary.
8.	Explicitly address the treatment of incarcerated parents or parents recently released from prison.
9.	Limit income imputation beyond a parent's earning potential.
10.	Develop and adopt an adjustment for additional dependents.
11.	Develop and adopt an adjustment for shared parenting time.
12.	Develop and adopt an adjustment for the child's health care expenses.
13.	Develop and adopt an adjustment for child care expenses.
14.	Review and revise the deviation criteria, if deemed appropriate.
15.	Review and revise child support arrears policies on interest and fees.
16.	Address other issues and concerns identified from Nevada guidelines users and stakeholders and the public. Also, review and consider any relevant federal rule changes such as the Child Support Modernization rules scheduled to be released by the current (2016) administration.

SECTION I: INTRODUCTION

PURPOSE

Nevada is reviewing its child support guidelines. Child support contributes to the financial well-being of many Nevada children. National data from 2013 finds that child support income accounts for 70.3 percent of the mean annual personal income for custodial parents below poverty who receive full child support.¹ The Nevada Child Support Enforcement Program (CSEP), which is part of the Nevada Division of Welfare and Supportive Services (DWSS), collected and distributed almost \$180 million in child support in Federal Fiscal Year (FFY) 2015.² Besides CSEP child support collections, there is an unknown amount of child support collected and distributed in non-CSEP cases.

In FFY 2015, there were 105,747 children in the CSEP caseload that consisted of 94,112 cases.³ According to the 2014 American Community Survey, there were 662,531 children living in Nevada.⁴ The total number of children in the non-CSEP caseload is unknown. Findings in other states suggest that the total child support caseload of a state is almost equally split between child support cases enforced by the state child support agency (which would be CSEP in Nevada) and private child support cases (*i.e.*, the non-CSEP cases in Nevada). If this is true of Nevada, there could be over 200,000 Nevada children eligible for child support.

Federal regulation (45 C.F.R. § 302.56) requires each state to establish one set of rebuttal presumptive guidelines to be used by all judges and decision makers setting support awards. Federal regulation also requires states to periodically review their child support guidelines at least once every four years. The review must consider economic data on the costs of raising children and examine case file data to analyze the application and deviation from the guidelines. The objective of the data analysis is to ensure that deviations from the guidelines are limited.

In Nevada, all child support orders (regardless of CSEP status) must be set using the child support guidelines provided under state statute (NRS 125B). The guidelines apply the following percentages of the parent's gross income to determine the amount of the obligation for support:

- 18 percent for one child;
- 25 percent for two children;
- 29 percent for three children;
- 31 percent for four children; and
- An additional 2 percent for each additional child.

¹ Grall, Timothy. (January. 2016). *Custodial Mothers and Fathers and Their Child Support: 2013*. Current Population Survey, Report P60-246. U.S. Census Bureau, Washington, D.C. Retrieved from <http://www.census.gov/content/dam/Census/library/publications/2016/demo/P60-255.pdf>.

² Federal Office of Child Support Enforcement (OCSE). (April 2016). *Report to Congress: Preliminary 2015*, Washington, D.C. Retrieved from <http://www.acf.hhs.gov/programs/css/resource/fy-2015-preliminary-report>.

³ *Supra* note 2, OCSE (2015).

⁴ U.S. Census American Community Survey (2014). Retrieved from <http://factfinder.census.gov/>.

The Nevada guidelines also provide a rebuttal presumptive maximum amount per month per child. The guidelines provide that the presumptive amounts be updated annually for changes in the price level. In addition, the Nevada guidelines also provide a rebuttal minimum order of \$100 per month per child.

The purpose of this report is to fulfill the federal requirement for Nevada's child support guidelines review. This report documents the findings from the analyses of case file data and economic data on the cost of raising children. The report has been prepared by the Center for Policy Research (CPR), a nonprofit organization with over 25 years of experience evaluating and providing technical assistance to federal, state, and local governments; courts; and foundations on family and children issues, especially child support issues. CPR has also developed recommendations from its findings.

ORGANIZATION OF REPORT

The report is organized into nine sections.

Section II summarizes federal regulations requiring state guidelines and the major factors underlying them, including state guidelines models and measurements of child-rearing expenditures.

Section III discusses the findings from the analysis of case file data, including the frequency of deviations from the guidelines. This fulfills the federal requirement to analyze case file data and guidelines deviations. In addition, Section III summarizes the methodologies that other states use to collect case file data.

Section IV analyzes economic data on the cost of raising children. It uses the data to assess the adequacy and appropriateness of the Nevada child support percentages and presumptive maximums. This fulfills the federal requirement to consider economic data on the cost of raising children.

Section V explores in more detail the presumptive maximums and guidelines amounts at high incomes. It also compares Nevada's approach for high incomes to those of other states.

Section VI explores the minimum support amounts and consideration of ability-to-pay among nonresidential parents with poverty or near-poverty income. This Section also summarizes proposed federal regulations that would impose new requirements of state guidelines in their treatment of low-income nonresidential parents.

Section VII reviews the treatment of selected factors in state guidelines (*e.g.*, child care expenses.) It compares Nevada's approach to the approaches of other states.

Section VIII discusses the guidelines review process in other states, including the statutory requirement in many states for a guidelines review committee, and the composition of that committee.

Section IX provides conclusions and recommendations.

SECTION II: STATE GUIDELINES MODELS AND THEIR UNDERLYING ECONOMIC STUDIES

The basis of most state child support guidelines is part policy and part economic data. Most states relate their child support formula or schedule to economic data on the cost of raising children. This section summarizes the guidelines models and economic data underlying state guidelines. There are also many variations within a guidelines model and state interpretation and usage of the economic data (e.g., adjustments to the economic data for a state's higher income tax rate). The consequence is that no two state guidelines are alike. This section also identifies the factors that contribute to these variations.

GUIDELINES MODELS

Federal regulations impose few requirements on the structure or type of guidelines that a state must use. Regulations (45 C.F.R. § 302.56) simply require that a state's guidelines be based on specific descriptive and numeric criteria, take all earnings and income of the noncustodial parent into consideration, and provide for the child(ren)'s health care needs.

The most common principle used for state guidelines models is what University of Wisconsin researchers call "continuity of expenditures model"—that is, the child support award should allow the children to benefit from the same level of expenditures had the children and both parents lived together.⁵ The consequence is that continuity-of-expenditures model states base their guidelines on measurements of child-rearing expenditures in intact families. State guidelines based on this principle essentially believe that the guidelines should apply equally to children of divorce and children of unmarried parents, regardless of whether the parents ever lived together, because most states believe that children should not be the economic victims of their parents' decisions to live apart.

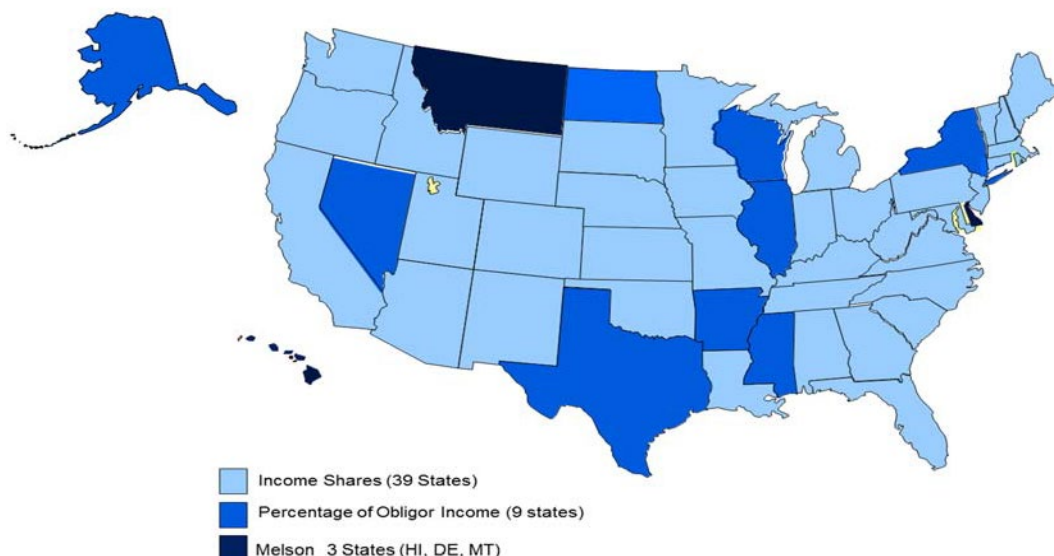
States rely on two variations of the continuity-of-expenditures model: the percentage-of-obligor income model and the income shares guidelines model. As shown in Exhibit 1, nine states, including Nevada, rely on the percentage-of-obligor income model and 39 states rely on the income shares model, including all states surrounding Nevada (i.e., Arizona, California, Idaho, Oregon, and Utah). Besides these two models, three states rely on the "Melson" formula.

The key difference between the percentage-of-obligor income model and the income shares model as well as the Melson formula is that the consideration of the custodial parent's income affects the amount of the support award in the income shares model and Melson formula but not the percentage-of-obligor income model. The explicit or implicit premise of most states using the percentage-of-obligor income

⁵ Ingrid Rothe and Lawrence Berger. (Apr. 2007). "Estimating the Costs of Children: Theoretical Considerations Related to Transitions to Adulthood and the Valuation of Parental Time for Developing Child Support Guidelines." *IRP Working Paper*, University of Wisconsin: Institute for Research on Poverty, Madison, Wisconsin. Retrieved from http://www.irp.wisc.edu/research/childsup/cspolicy/pdfs/Rothe_Berger_Task6.pdf.

model is that the custodial parent contributes the same percentage of income or dollar amount to the children as the amount of the child support award owed by the nonresidential parent.

Exhibit 1: State Child Support Guidelines Models



PERCENTAGE-OF-OBLIGOR INCOME GUIDELINES MODELS

None of the nine state guidelines based on the percentage-of-obligor income guidelines model are identical. Some rely on a percentage of the obligor’s gross income, while others rely on a percentage of obligor’s net income. Some of the net-income based guidelines (*i.e.*, Arkansas and North Dakota) assign a declining percentage of the obligor’s net income to child support because economic evidence finds that families devote a smaller share of their after-tax income to expenditures as their income increases. Alaska, Texas, Illinois, and Mississippi, however, assign a flat percentage of after-tax income to support. As discussed later, Illinois just passed legislation to adopt an income shares guidelines.⁶

PERCENTAGE-OF-GROSS INCOME GUIDELINES: NEVADA, NEW YORK, AND WISCONSIN

Only three percentage-of-obligor income guidelines relate to gross income: *i.e.*, New York, Nevada, and Wisconsin. As shown in Exhibit 2, the influence of Wisconsin, which first adapted a statewide guideline in 1984, is obvious in Nevada and New York by the almost identical percentages used for the number of children. In fact, per the June 23–24, 1986, meeting notes of the Nevada Child Support Enforcement Commission, Nevada adapted the Wisconsin percentages except for a one-point increase to the one-

⁶ See Illinois HB3892. Available at: <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=3982&GAID=13&DocTypeID=HB&LegId=90198&SessionID=88&GA=99>.

child percentage.⁷ One reason that Nevada adopted Wisconsin’s approach was it was the simplest to calculate manually.

Exhibit 2: Comparisons of Percentages by Number of Children in States Using Percentage-of-Obligor Gross Income Guidelines					
	1-Child Percentage	2-Children Percentage	3-Children Percentage	4-Children Percentage	5-Children Percentage or 5 or More children
Nevada	18%	25%	29%	31%	2% more for each additional child
New York	17%	25%	29%	31%	35%
Wisconsin	17%	25%	29%	31%	34%

Wisconsin, New York, and Nevada vary in how high of an income that each state will apply the percentages shown in Exhibit 2. The original version of the Wisconsin guidelines presumptively applied the percentages to an infinitive amount of income. Since then (and shown in more detail in Section V), Wisconsin lowered its percentages at higher incomes (*e.g.*, for one child, it now applies 17 percent to the first \$7,000 of gross monthly income plus 14 percent of any gross income between \$7,000 and \$12,500 per month plus 10 percent of any gross income above \$12,500 per month). Wisconsin lowered the percentage to reflect actual patterns of child-rearing expenditures. Families with higher incomes face higher tax rates, so they have less after-tax income to spend, as well as less after-tax income available for child-rearing expenditures. In other words, the percentage-of-gross income devoted to child-rearing expenditures declines as gross income increases.

New York originally applied its percentages presumptively up to a combined parental income of \$80,000 per year, but also provided that the percentages could be applied for incomes above that. In other words, the presumption does not preclude the use of the guidelines percentages at higher incomes. In setting a cap for presumptive application, New York recognized that high-income families do not devote the same percentage of income to child-rearing expenditures as low- or middle-income families do. As more economic data on child-rearing expenditures became available with time, and also available at higher incomes, New York began periodically updating the threshold for applying its percentages presumptively in 1989. The New York income threshold is now \$143,000 per year.

The 1986 Nevada Child Support Enforcement Commission did not originally recommend a presumptive maximum;⁸ rather, it was added pursuant to a 1987 Nevada legislator’s request.⁹ Originally, the presumptive maximum was a flat \$500 per month per child, then changed in 2001 to a sliding scale that is now updated annually.¹⁰ Nevada’s issue with the presumptive maximum is more than New York’s concern about whether higher incomes devote the same percentage of income to child-rearing

⁷ Nevada Child Support Statute Review Committee. (1992). “Exhibit 2: Meeting Notes: June 23-24, 1986.” *1992 Report of the Child Support Statute Review Committee*. Retrieved from <http://www.willicklawgroup.com/child-support/>.

⁸ *Ibid.*

⁹ Nevada Child Support Statute Review Committee. (1992). *Report of the Child Support Statute Review Committee*. Page 6. Retrieved from <http://www.willicklawgroup.com/child-support/>.

¹⁰ Willick, Marshall. (June 2007). “What Almost Happened in Nevada, and Why We Still Have to Fix It.” *Nevada Lawyer*. Retrieved from: <http://willicklawgroup.com/wp-content/uploads/2012/04/What-Almost-Happened.pdf>.

expenditures as low- or middle-income families do. The 1992 Commission reviewing the Nevada guidelines debated whether the presumptive maximum reflects a legislative intent that the guidelines should be capped at a level at which the child’s basic needs are sufficiently met.¹¹ Some argue that applying the percentages presumptively to higher incomes produces “hidden alimony.” Still others argue that the cap is inconsistent with the child sharing the standard of living afforded by the obligated parent. The issue of the cap is discussed in greater detail in Section V.

INCOME SHARES MODEL

In the income shares model, each parent is responsible for his or her prorated share of child-rearing expenditures. To that end, the income shares calculation requires information about the nonresidential parent’s income as well as the income of the custodial parent. The higher amounts of a custodial parent’s income lower the support award under income shares model, while the amount of custodial income has no bearing on the amount of the support award under percentage-of-obligor guidelines.

At the core of most state guidelines based on the income shares model is a “schedule of basic child support obligations” that reflects measurements of child-rearing expenditures in intact, two-parent families. The schedule is

essentially a look-up table of how much families spend on children by a range of combined parental incomes and number of children. Exhibit 3 provides an excerpt of Arizona’s income shares schedule. To illustrate how a support award is calculated from an income shares schedule, consider a case where the father is the nonresidential parent, the

Combined Adjusted Gross Monthly income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
3000	592	857	1008	1126	1239	1347
3050	601	870	1024	1144	1258	1367
3100	610	883	1039	1161	1277	1388
3150	619	896	1055	1178	1296	1409
3200	628	909	1070	1195	1315	1429
3250	637	922	1085	1212	1334	1450
3300	646	935	1101	1230	1353	1470
3350	655	948	1116	1247	1372	1491
3400	663	961	1132	1264	1391	1512
3450	672	974	1147	1281	1409	1532
3500	681	987	1163	1299	1428	1553

mother is the custodian, the father’s gross income is \$2,000 per month, and the mother’s gross income is \$1,000 per month. Assuming they have one child, the basic child support obligation for a combined parental income of \$3,000 gross per month using Exhibit 3 is \$592 per month. The father is responsible for his prorated share—which is 67 percent (\$2,000 divided by \$3,000)—and amounts to \$395 per month (\$592 multiplied by 67 percent). This is the basis of the amount of the guidelines award. Most income shares guidelines, including Arizona’s guidelines, will make additional adjustments for low-income parents, the actual amounts expended for child care and the child’s healthcare insurance, shared parenting time, and other adjustments. Most of these adjustments occur in a worksheet that is published by the administrative office of the courts or set in state statute.

All states (*i.e.*, District of Columbia, Georgia, Massachusetts, Minnesota, and Tennessee) that have changed guidelines models in the last 15 years have switched to the income shares model. Illinois is also

¹¹ *Supra* note 8, Nevada Child Support Statute Review Committee. (1992). Page 15.

switching to an income shares model with support from practitioners because they perceive the consideration of both parents’ income in the calculation as a fair approach. Like Nevada, the existing Illinois percentage-of-obligor income guideline treats a lot of common special factors (e.g., child care expenses and shared-parenting time) as deviation factors rather than provides presumptive formulas. Illinois believes that the predictability and consistency of its guidelines calculation will improve by providing presumptive formulas for these factors and that the income shares model is more conducive to these presumptive formulas. Most of these states have taken several years to change guidelines models. Vetting the proposed guidelines changes among stakeholders generally takes longer than anticipated. States have also found that switching guidelines models also requires staff resources to draft rule changes and develop automated guidelines calculators. Most states have included an automated calculator as part of their switch.

MELSON FORMULA

Used by Delaware, Hawaii, and Montana, the Melson formula is named after a Delaware judge. It first considers the basic needs of the children and each parent. If the obligated parent’s income is more than sufficient to cover his or her share of the basic needs of the children and his or her basic needs, an additional percentage of that parent’s remaining income is assigned to child support. This additional percentage ensures that the children share in the standard of living afforded by the obligated parent. Exhibit 4 illustrates the Melson formula using the Delaware guidelines.

Exhibit 4: Illustration of the Delaware Melson Formula

	Nonresidential	Primary	Parents’
1 Monthly Gross Income	\$2,000	\$1,000	\$4,000
2 Monthly Net Income (after-tax income)			
3 Parent’s Self-Support Allowance (\$1,000)	\$1,000	\$1,000	
4 Net Income Available for Primary Support (Line 2 – Line 3)			
5 Share of Total Available Net Income (Each parent’s line 4 divided by line 4 Combined)	100%	0%	100%
6 Child’s Primary Support Need (\$500 for 1 child)			
7 Primary Support Obligation (Each parent’s line 5 times line 6)	\$500	\$0	\$500
8 Income Available for SOLA (Each parent’s line 4 – line 7)			
9 Standard of Living Adjustment (One Child = 19%)	0.19	0.19	
10 SOLA Amount (Each parent’s line 8 x line 9)			
11 Recommended Child Support Order (Nonresidential parent’s line 7 plus nonresidential parent’s line 10)	\$521		

The basic needs of the child in the Melson formula are called the “child’s primary support need.” Delaware sets it at \$500 per month for one child. The percentage of the nonresidential parent’s net income after subtracting an amount to meet the parent’s basic needs (called the self-support reserve) and the parent’s share of the child’s primary support is called the SOLA in the Melson formula. It stands for “Standard of Living Adjustment.” Delaware sets its SOLA at 19 percent for one child.

ECONOMIC BASIS OF STATE GUIDELINES

There are several studies measuring the cost of raising children. All studies underlying state guidelines measure child-rearing expenditures across a range of incomes rather than measure the minimum and basic needs of children. This is because the premise of most state guidelines is that children should share in the lifestyle afforded by their parents.

There are eight studies of child-rearing expenditures that underlie state child support guidelines. The studies, which are listed in Exhibit 5, vary in the age of the expenditures data that were used and the methodology used to isolate child-rearing expenditures from total household expenditures. Which study a state uses (and whether to use a study at all) is a policy decision. Some states have used a study for one area of their schedule but other amounts in other areas (*e.g.*, Indiana uses Betson-Rothbarth measurements at higher incomes only), Georgia averages two studies, and other states have made other adaptations of similar magnitude. Most of the states based on older studies have not updated their core guidelines schedule or formula for several years.

Exhibit 5: Economic Studies Underlying State Child Support Guidelines		
Study	Overview	Approximate Number of States Using Study
Jacques van der Gaag (1981). <i>On Measuring the Cost of Children</i> . Discussion Paper 663-81. University of Wisconsin Institute for Research on Poverty, Madison, Wisconsin.	WI, one of first states to develop guidelines, commissioned this study. NV and NY adopted WI's percentages.	6 states
Thomas J. Espenshade (1984). <i>Investing in Children: New Estimates of Parental Expenditures</i> , Urban Institute Press: Washington, D.C.	Used to develop the prototype Income Shares guidelines as part of the 1984–1997 National Child Support guidelines.	9 states
David M. Betson (1990). <i>Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey</i> , Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, University of Wisconsin Institute for Research on Poverty, Madison, Wisconsin.	U.S. Dept. of Health and Human Services commissioned this study to help states with their guidelines reviews. Betson applied 5 different methodologies and concluded that the Rothbarth methodology was the most robust and recommended it for guidelines usage.	3 states
David M. Betson (2001). "Chapter 5: Parental Expenditures on Children," in Judicial Council of California, <i>Review of Statewide Uniform Child Support Guidelines</i> , San Francisco, California (2001). http://www.courtinfo.ca.gov/programs/cfcc/1058files2001/CH5.PDF .	Update of 1990 study using more current consumer expenditures data.	4 states
David M. Betson (2006). "Appendix I: New Estimates of Child-Rearing Costs" in PSI, <i>State of Oregon Child Support Guidelines Review: Updated Obligation Scales and Other Considerations</i> , Report to State of Oregon, Policy Studies Inc., Denver, Colorado. Available at http://www.dcs.state.or.us/oregon_admin_rules/psi_guidelines_review_2007.pdf .	Update of the 2001 study using more current consumer expenditures data. Many states have retained because of methodological changes to the Betson 2010 study that produced some decreases, while some states believe the guidelines amounts should not decrease over time.	14 states
David M. Betson (2010). "Appendix A: Parental Expenditures on Children: Rothbarth Estimates," in Judicial Council of California, <i>Review of Statewide Uniform Child Support Guidelines</i> , San Francisco, California.	Update of the 2006 study using more current consumer expenditures data and some data changes to capture expenditures on second mortgages, home equity loans, and installment payments that were not included in previous measurements and other changes.	7 states
New Jersey Child Support Institute (March 2013). <i>Quadrennial Review: Final Report</i> , Institute for Families, Rutgers, the State University of New Jersey, New Brunswick, NJ. Available at http://www.judiciary.state.nj.us/reports2013/F0_NJ+QuadrennialReview-Final_3.22.13_complete.pdf .	The New Jersey measurements are adjusted to reflect New Jersey's above average cost of living.	1 state

<p>Lino, Mark (2014) <i>Expenditures on Children by Families: 2013 Annual Report</i>. U.S. Department of Agriculture, Center for Nutrition and Policy Promotion. Miscellaneous Publication No. 1528-2013, Washington, D.C. Available at http://www.cnpp.usda.gov/sites/default/files/expenditures_on_children_by_families/crc2013.pdf.</p>	<p>The USDA updates its study annually. The last study was conducted in 2014. USDA expects to release a new study Summer 2016. Minnesota is the only state to use the USDA. It relies on the 2002 USDA study.</p>	<p>1 state</p>
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Nevada, New York, and Wisconsin rely on the van der Gaag (1981) study, which is the first one listed in Exhibit 5. The states surrounding Nevada are based on a variety of studies. Oregon and Arizona rely on Betson (2006), which is his third study of child-rearing expenditures. California relies on both the van der Gaag study and Espenshade study. Idaho also appears to be based on both the van der Gaag study and Espenshade study. The original version of the Utah guidelines was derived from consideration of multiple sources, including guidelines for public assistance cases dating back to the 1980s. Utah considered updating its guidelines using Betson measurements over a decade ago but met significant resistance. Since then, Utah has updated its guidelines, but the source of the update is unknown, although it appears to be a marginal increase to its original guidelines.

More information about the most current economic studies of child-rearing expenditures and how they compare to the existing Nevada percentages and presumptive maximums is provided in Section IV.

ECONOMIC BASIS OF WISCONSIN, NEW YORK, AND NEVADA GUIDELINES

Wisconsin policymakers contracted with the University of Wisconsin–Institute for Research on Poverty (IRP) in 1981 to determine the costs of raising a child in an intact family. As documented in the resulting publication,¹² IRP conducted a literature review of about a dozen studies and concluded that there was no consensus on the costs of a child. Obligated to develop a point estimate, however, IRP used the midpoint of the credible range detected from the literature review. Specifically, IRP estimated that a childless couple needs 25 percent more income to cover the costs of their first child, the second child costs about half as much as the first child, the third child costs about the same as the second child, and subsequent children cost about half as much as the second and third child. Strict application of these findings to the guidelines would result in guidelines percentages of 25 percent for one child, 37.5 percent for two children, 37.5 percent for three children, 56 percent for four children, and 84 percent for five children.

Wisconsin policymakers reduced the IRP percentages to reflect a variety of factors including the presumption that the nonresidential parent would incur the additional expense of the child’s health insurance, the nonresidential parent would incur some costs of normal visitation with the child, and the nonresidential parent may not derive the same level of satisfaction (called “utility” in economics) from the child as the custodial parent, and what a nonresidential parent would reasonably pay in child

¹² van der Gaag, Jacques. (1981). *On Measuring the Cost of Children*. Discussion Paper 663-81. University of Wisconsin Institute for Research on Poverty, Madison, Wisconsin.

support.¹³ New York made almost identical adjustments to IRP’s findings on child-rearing expenditures with a few small changes.¹⁴

OTHER STATE GUIDELINES DIFFERENCES

States using the same guidelines model rarely yield similar amounts for the same case circumstances.¹⁵ This is because state guidelines use different studies of child-rearing measurements as the base of their schedule, price levels and income tax rates from different years and different states, and other factors. State guidelines also vary considerably in their assumptions and treatment of the child’s time with each parent, adjustments for low-income parents, and other factors. Exhibit 6 summarizes some of the key differences between the Nevada guidelines and other state guidelines. Section VIII explores many of these factors in greater detail.

One factor identified in Exhibit 6 is adjustments for states with extraordinarily low or high income or price levels. U.S. Bureau of Economic Analysis finds that Nevada’s 2014 purchasing power parity (PPP) was 97.7 percent.¹⁶ The PPP measures the differences in the price levels of goods and services across states for a given year. PPPs are expressed as a percentage of the overall national price level for each year, which is equal to 100 percent. States with PPPs above 100 percent have higher prices than the national average and states with PPPs below 100 percent have lower prices than the national average. Based on its PPP of 97.7 percent, Nevada price levels are close to the national average, so adjustment for Nevada’s cost of living is not considered to the measurements of child-rearing expenditures that reflect national data.

¹³ Rothe, Ingrid, Cassetty, Judith, and Boehnen, Elisabeth. (2001). *Estimates of Family Expenditures for Children: A Review of the Literature*, University of Wisconsin-Institute for Research on Poverty, Madison, Wisconsin. Retrieved from <http://www.irp.wisc.edu/research/childsup/cspolicy/pdfs/famexp4kids.pdf>.

¹⁴ New York State Commission on Child Support and Association of the Bar of the City of New York, *What Are the Child Support Guidelines? The Child Support Standards Act*, presentation to the Association of the Bar of the City of New York on October 21, 1989, New York, New York, page 5.

¹⁵ Jane C. Venohr. (2013). “Child Support Guidelines and Guidelines Reviews: State Differences and Common Issues,” *Family Law Quarterly*, vol. 43, no. 3 (Fall 2013).

¹⁶ Bureau of Economic Analysis. (July 7, 2016). *Real Personal Income for States and Metropolitan Areas, 2014*. Retrieved from http://www.bea.gov/newsreleases/regional/rpp/rpp_newsrelease.htm.

**Exhibit 6: Major Factors and Assumptions underlying State Child Support Guidelines
(Nevada Child Support Guidelines Compared to Other States)**

	Nevada	Other States
Guidelines models	Flat percentage of obligated parent's gross income	<ul style="list-style-type: none"> 42 states use a model that factors in both parents' incomes. 3 percentage-of-obligor income states rely on smaller percentages at higher incomes, which is consistent with expenditures patterns.
Economic data on the cost of raising children	Based on WI's percentages, which are from van der Gaag (1981)	<ul style="list-style-type: none"> Varies. Most states rely on more recent data. Most states update to the price level of the year of the update.
Other assumptions about child-rearing costs	Unclear	<ul style="list-style-type: none"> Most states recognize that the percentage of income devoted to child-rearing expenditures declines as income increases. For gross-income states, the declining percentages are exacerbated by progressive federal tax rates. Highly variable child-rearing expenses (<i>i.e.</i>, child care expenses, the cost of the child's health insurance premium, unreimbursed medical expenses, and extraordinary education expenses) are not usually included in the basic schedule/formula, but the actual amount of the expense is prorated between the parents and added or subtracted to the base award amount, depending on which parent incurs the expense. Some states with exceptionally high or low incomes or a high or low cost of living adjust the measurement of child-rearing expenditures, which are based on national data, to reflect that state's income or costs.
Presumptive maximum for higher incomes	Updated annually	<ul style="list-style-type: none"> Most states provide that the highest amount on their schedule or percentage formula is a "floor" for very high incomes, and court discretion above that amount.
Minimum order	\$100 per month per child	<ul style="list-style-type: none"> \$50 per month per order is typical.
Low-income adjustment or self-support reserve	None	<ul style="list-style-type: none"> Most states set the guidelines amount for obligated parents with poverty and/or near-poverty income below what it costs to raise a child. The most common low-income adjustment is a self-support reserve that relates to the federal poverty guidelines level for one person.
Income available for support	Gross income	<ul style="list-style-type: none"> Use of gross income requires tax assumptions when translating some measurements of child-rearing expenditures to a gross-income basis. For the conversion, most states use the prevailing federal and state income tax rate and FICA.
Age of the child	Deviation factor	<ul style="list-style-type: none"> A few states (<i>e.g.</i>, Kansas, and Washington) vary the guidelines amount by the age of the child.
Shared parenting responsibility or expense	Deviation factor	<ul style="list-style-type: none"> Most states provide a presumptive formulaic adjustment for shared physical custody. Some adjustments are triggered by as little as a few overnights per year. A few states incorporate a standard amount of visitation into their core child support schedules.

SECTION III: ANALYSIS OF CASE FILE DATA

Federal regulations (45 C.F.R. § 302.56(f)–(g)) require that a state guidelines are to a rebuttable presumption in the award of child support. They also require that each state develop its own guidelines deviation criteria in which application of the guidelines would be unjust or inappropriate in a case. The criteria must take into consideration the best interest of the child. Exhibit 7 shows Nevada guidelines deviation criteria.

Exhibit 7: Deviation Criteria Provided in Nevada Child Support Guidelines

NRS 125B.080 Amount of payment: Determination. Except as otherwise provided in NRS 425.450:

1. A court of this State shall apply the appropriate formula set forth in NRS 125B.070 to:
 - (a) Determine the required support in any case involving the support of children.
 - (b) Any request filed after July 1, 1987, to change the amount of the required support of children.
2. If the parties agree as to the amount of support required, the parties shall certify that the amount of support is consistent with the appropriate formula set forth in NRS 125B.070. If the amount of support **deviates** from the formula, the parties must stipulate sufficient facts in accordance with subsection 9 which justify the deviation to the court, and the court shall make a written finding thereon. Any inaccuracy or falsification of financial information which results in an inappropriate award of support is grounds for a motion to modify or adjust the award.
4. Notwithstanding the formulas set forth in NRS 125B.070, the minimum amount of support that may be awarded by a court in any case is \$100 per month per child, **unless the court makes a written finding that the obligor is unable to pay the minimum amount.** Willful underemployment or unemployment is not a sufficient cause to deviate from the awarding of at least the minimum amount.
9. **The court shall consider the following factors when adjusting the amount of support of a child upon specific findings of fact:**
 - (a) The cost of health insurance;
 - (b) The cost of child care;
 - (c) Any special educational needs of the child;
 - (d) The age of the child;
 - (e) The legal responsibility of the parents for the support of others;
 - (f) The value of services contributed by either parent;
 - (g) Any public assistance paid to support the child;
 - (h) Any expenses reasonably related to the mother's pregnancy and confinement;
 - (i) The cost of transportation of the child to and from visitation if the custodial parent moved with the child from the jurisdiction of the court which ordered the support and the noncustodial parent remained;
 - (j) The amount of time the child spends with each parent;
 - (k) Any other necessary expenses for the benefit of the child; and
 - (l) The relative income of both parents.

FEDERAL REQUIREMENT FOR DATA ANALYSIS AND DATA COLLECTION METHODS

States are required to examine case file data on guidelines deviations as part of their periodic guidelines review. The intent is to make revisions to the guidelines that will keep guidelines deviations at a minimum. The federal requirement (45 C.F.R. § 302.56(h)) states:

As part of the review of a State's guidelines required under paragraph (e) of this section, 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.

States have used five methods to collect the case file data.

Sample court records and child support records. For example, for Arizona's last guidelines review, a random sample was drawn from court records.¹⁷ Using cluster sampling, each of the sampled courts provided the researcher with their dockets for the last year in which child support was issued. In turn, the researcher identified a random sample and provided the case numbers to the courts so they could pull the final order and child support guidelines worksheet used to calculate the final order. (Since Arizona does electronic data imaging, the courts sent the researcher electronic files. For prior case file reviews, the courts sent the researcher hard case files.) The researcher developed and entered the case file data into a database for analysis.

Merits: It is the best method for obtaining the most complete and thorough data that was used to set the order (e.g., income information). It is the best method for obtaining a random sample of all orders established (e.g., orders established by state child support agency, orders established by private attorneys, and orders established by self-represented parents).

Limitations. Requires the most time and staff resources. It may require manual extraction if the court does not use data imaging. Regardless of the use of data imaging, it requires clerk of the court staff time and coordination. The information is only as good as what is stored in the case file, particularly guidelines worksheets. Not all jurisdictions use worksheets or attach them to the final order.

Extract data from automated guidelines calculators. This is how Pennsylvania obtains data for its case file review.

Merits: The automated guidelines calculator contains all information used for the calculation (e.g., incomes of the parties, adjustments to income, and the cost of the child's health insurance).

Limitations. This method only works if there is an automated calculator, it is used by all decision makers, and the data can be extracted. If it is not used by all decision makers, the sample is biased. For example, parties that stipulate may not use the guidelines calculator, hence would be excluded from the sample. Extraction may require computer programming.

Extract data from state automated systems. This is how several states (e.g., Illinois, New Mexico, and Nebraska) obtain data for their case file reviews.

¹⁷ Venohr, J.C. (2014). *Arizona Child Support Guidelines Review: Findings from the Case File Data*. Report to Arizona Supreme Court Administrative Office of the Courts. Retrieved from <http://www.azcourts.gov/Portals/31/GuidelinesReview/AZChildSupportGuidelinesReviewFindingsfromCaseFileData082014RED.pdf>.

Merits: Data are generally readily available because federal certification of a state automated system used to track the state child support caseload requires data fields recording guidelines applications and/or deviations. The specific content of the data fields varies among states. At a minimum, it may consist of a “yes/no” data field on whether the guidelines were applied or there was a deviation. It may also track the deviation reason, the direction of the deviation, and the amount of the deviation.

Limitations. The data are limited to the state child support caseload, so they ignore orders established in private cases. It is not an audited data field, so most states find that the data field is not always populated and likely understates the number of guidelines deviations. For example, the states using this methodology typically find guidelines deviation rates less than 10 percent, while states examining case file data typically find guidelines deviation rates of double digits. Also, most state automated systems do not track income used for the guidelines calculation. They also do not track child care expenses, shared physical custody, and other factors often considered in guidelines calculations. In general, availability of data fields is limited.

Require judges and decision makers to track and report the orders that they entered over a specified time. West Virginia and Michigan have used this approach. For example, for one of its previous reviews, Michigan required its judicial decision makers to track the orders they entered over the course of a week.

Merits: This allows for a sampling of all orders, including those from the state child support caseload and private cases.

Limitations. Decision makers under study may enter orders differently than they would if they were not under study. The data are limited to what decision makers report.

Survey judges and decision makers on their guidelines usage. For its last guidelines review, Colorado surveyed decision makers about their guidelines deviations in private cases. Colorado used this survey to supplement the guidelines deviation data it pulled from its automated child support system.

Merits: Provides information in private cases.

Limitations. The information is limited to what is self-reported by decision makers. It may be biased and not statistically representative of all decision makers. It does not allow for analysis of data by income and other factors.

NEVADA METHODOLOGY AND DATA LIMITATIONS

The ideal data would have included case files from both CSEP orders and private orders. Due to time and resource constraints, however, data were collected from only CSEP orders. The hope is that subsequent reviews will also include data from private cases.

CSEP provided CPR with a data extract of all orders with effective dates in Federal Fiscal Year (FFY) 2014–2015, including data from the fields tracking guidelines deviations. Recognizing those data fields

are not always populated, which is the situation for most states, CSEP supplemented the data extract with a manual review of 100 orders randomly selected from the FFY 2014–2015 CSEP extract. The targeted sample consisted of 50 newly established orders and 50 modified orders. CSEP staff reviewed the files of these cases to determine if there were guidelines deviations, the reasons for the deviations, and the amounts of the deviations. CSEP staff also collected other information about case circumstances pertinent to the guidelines calculation when available (*e.g.*, incomes of the parents and whether the nonresidential parent was incarcerated). CSEP staff recorded the information in an Excel spreadsheet that was sent to CPR for data analysis.

DATA LIMITATIONS

No private child support orders were examined to determine the percentage of orders with guidelines deviations and the deviation reasons. This is a major limitation of the data. Based on studies for other states, there are more guidelines deviations in private cases than there are in a state child support caseload. Consequently, the findings presented in this report likely understate the percentage of orders in which there were guidelines deviations.

Other limitations concern sample size and data tracked by CSEP. The sample size is inadequate to detect statistical differences among subgroups (*e.g.*, differences in deviation rates between public assistance cases and non-public assistance cases). The data tracked by and available to CSEP may not reflect all information considered by the court when setting the final order. Income information is not available, so the guidelines amounts could not be simulated.

DATA USED TO ANALYZE THE APPLICATION OF THE NEVADA GUIDELINES

In addition to analyzing deviations from the Nevada guidelines, the CSEP data is used to analyze the application of the guidelines. This included information about order amounts, payment data, the number of children, and other information. Findings from the analysis of these data are provided where they add context to the discussion (*e.g.*, findings about payments among minimum orders are discussed in the section addressing what the appropriate amount is for a minimum order).

CSEP provided CPR with information from 12,976 orders with effective dates between October 1, 2014 and September 30, 2015. According to data reported to the federal Office of Child Support Enforcement (OCSE), CSEP established 3,822 orders in FFY 2014–2015 and modified an unknown number of orders over the same time period.¹⁸ The number of modified orders is unknown because of data limitations. Historically, the number of modified orders in most states is typically less than the number of newly established orders; however, this has changed since the Great Economic Recession of 2008–2009, particularly among states that have adapted policies and practices more conducive to modification. Nevada has adapted more conducive policies and practices.

In all, the number of orders in the data extract likely exceeds the number of orders established and modified by CSEP because of data limitations. The extract considers orders, not cases. An order for the

¹⁸ *Supra* note 2, OCSE (2015).

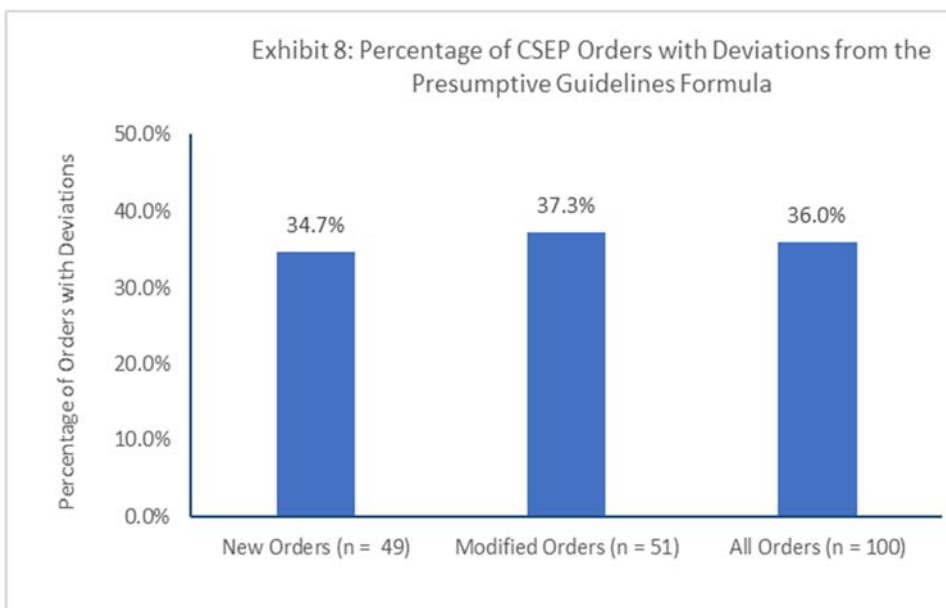
same case may be entered more than once within a year to make a correction (e.g., change the effective date) or because there was an actual modification to the order amount. The extract includes several current support orders of zero because the case is a medical support order only or an arrears-only case or for another reason. The order amount is typically re-entered when there is an enforcement action, so some orders may appear to have an effective date during the time period examined but the order was not actually established or modified during that time period. To rectify some of these issues, CPR limited the analysis to non-zero orders and the order with the most current effective date if the case had more than one order effective date within the fiscal year. This limited the data analysis to 8,346 cases with one order each.

To be clear, the 8,346 cases was not the sample used to calculate the guidelines deviation rate; rather, the supplemental sample of 100 orders described above was. The 8,346 cases were considered when reporting statistics on payment data, the number of children, and minimum orders.

FINDINGS FROM THE ANALYSIS OF GUIDELINES DEVIATIONS

As described above, the analysis of guidelines deviations was limited to 100 CSEP cases.

Exhibit 8 summarizes the results of the analysis: it shows an overall guidelines deviation rate of 36.0 percent, the guidelines deviation rate of 34.7 percent among newly established orders, and a guidelines deviation rate of 37.3 percent



among modified orders. The difference between newly established and modified orders is not statistically significant. Based on the experiences of other states, Nevada's guidelines deviation likely understates the guidelines deviation rate for all Nevada cases because other states find that the guidelines deviation rate is higher among private cases.

Exhibit 9 shows the reasons for the guidelines deviations and provides other information about the deviations. In general, most guidelines deviations were downward and were for factors and circumstances for which presumptive formulas are provided by guidelines of most other states (e.g., a presumptive formula to adjust for the child's time with each parent).

Exhibit 9: Reasons for Deviations from the Presumptive Child Support Formula			
	% of All Cases Reviewed (n = 100)	Frequency (% of deviations, n = 36) ^a	Other Findings
Responsibility for other children (NRS 125B.080 (9)(e))	15%	42%	<ul style="list-style-type: none"> All are downward deviations except for one case, which also considered the new spouse's income. Most of the final orders are 62 to 90 percent of the guidelines formula. Suggests a 10 to 38 percent reduction in the adjusted gross income of the noncustodial parent used for the calculation of support.
Obligor unable to pay minimum amount (NRS 125B.080(4))	12%	33%	<ul style="list-style-type: none"> The final order amount was \$0 for over half (53 percent) of these deviations. The remaining 47 percent were set at \$150 per month or less. This reason was used in almost the same percentage of newly established and modified orders (i.e., 33 and 29 percent of establishment and modification deviations, respectively). Suggests that parties are requesting modifications for other reasons as well. Incarceration is noted in half (50 percent) of these cases. Most other details were unique to one or a few cases (e.g., mental health issues).
Child's time with each parent (NRS 125B.080 (9)(j))	7%	19%	<ul style="list-style-type: none"> All of these deviations were downward. The deviation amount ranged from 35 to 84 percent of the guidelines-calculated amount. The other parent's income was about \$3,250 per month in 33 percent of these cases, but is usually unknown. The decision in <i>Wright v. Osburn</i>, 970 P.3d 1071 (Nev. 1998), was cited in many of these deviations.
Cost of health insurance (NRS 125B.080 (9)(a))	3%	8%	<ul style="list-style-type: none"> Resulted in upward deviations in the range of about \$20 to \$50 per month. Suggests that the custodial parent was carrying the health insurance in these cases. Suggests no deviations for when the noncustodial parent provides the child's health insurance.
Cost of child care (NRS 125B.080 (9)(b))	2%	6%	<ul style="list-style-type: none"> These resulted in upward deviations in the range of \$100 to \$140 per month.
Willfully unemployed to avoid support (NRS 125B.080(8))	1%	3%	<ul style="list-style-type: none"> This was coded as a deviation reason, but some may interpret it as a guidelines presumption.

^aDoes not total to 100 percent because some cases had multiple deviation reasons.

FINDINGS FROM OTHER STATES

This section considers the findings from guidelines deviation studies in Arizona,¹⁹ California,²⁰ and New York.²¹ Arizona and California are included because they are neighboring states. New York is included because of its similarity to Nevada: both states calculate support based on a percentage of the obligor's gross income and use similar percentages. Wisconsin also uses similar percentages but studied guidelines application and deviations using a different approach.²² It conducted simulations across several years of data (*i.e.*, 1996 through 2007) and found 60 percent of the actual orders entered in 2006-2007 were consistent with the Wisconsin guidelines calculation, the 2006-2007 rate was lower among Wisconsin divorce cases (46.9 percent) than Wisconsin paternity cases (72.8 percent), and consistency with the guidelines has diminished over time.

The Wisconsin simulations relied on income and custody data from the Wisconsin court system. Researchers simulated the guidelines amount using the Wisconsin percentages, shared placement status, and Wisconsin's low- and high-income adjustments. In contrast, all of the other states discussed in this section did not simulate the guidelines amount, rather they reviewed actual case file data and tracked deviations actually noted in the case file. The Wisconsin study did analyze written explicit deviations, but reported them by simulation finding and custody status. For cases in which the mother had sole placement, the percentage of cases with a written deviation ranged from 10.7 to 26.0 percent depending on the simulation finding. As shown later, this deviation rate is more consistent with the findings of other states. It may also underscore the limitation of using simulations to analyze deviations.

FINDINGS FROM ARIZONA

Arizona uses the income shares guidelines model. For Arizona's last guidelines review (2014), case file data was collected from clerk offices in four Arizona counties. The court records include both private orders and orders established by the state child support agency, but the court records do not include information to distinguish between private and state child support cases.

- Based on Arizona's last guidelines review in 2014, the guidelines deviation rate in Arizona was 26 percent.
 - Arizona did not report guidelines deviation rates separately for private cases and orders established by the state child support caseload.

¹⁹ Venohr, J.C. (2014). *Arizona Child Support Guidelines Review: Findings from the Case File Data*. Report to Arizona Supreme Court Administrative Office of the Courts. Retrieved from <http://www.azcourts.gov/Portals/31/GuidelinesReview/AZChildSupportGuidelinesReviewFindingsfromCaseFileData082014RED.pdf>.

²⁰ Judicial Council of California. (2010). *Review of Statewide Uniform Child Support Guideline*. San Francisco, California. Retrieved from <http://www.courts.ca.gov/partners/documents/2011SRL6aGuidelineReview.pdf>.

²¹ Venohr, Jane and Everett, Carly. (Oct. 2010). *Review of the New York Guidelines*, Report to the New York State Department of Temporary and Disability Assistance, Center for Policy Research.

²² Cook, Stephen, et al. (Dec. 2013). *The Use of Child Support Guidelines in Wisconsin: 1996 to 2007*, University of Wisconsin-Madison Institute for Research on Poverty, Madison, WI. Retrieved from http://www.irlp.wisc.edu/research/childsup/cspolicy/pdfs/2009-11/Task4B_CS%2009-11_Cook-Brown.pdf.

- Most (75 percent) of the Arizona deviations were due to “best interest of the child” and “the guidelines amount is inappropriate.”
- Most (73 percent) of the Arizona deviations were downward.
- A presumptive adjustment for court-ordered child support or the obligor’s other children was applied in 5 percent and 12 percent, respectively, of Arizona child support cases reviewed.
- A presumptive adjustment for the child’s medical, dental, and/or vision insurance was made in 56 percent of the Arizona child support cases reviewed.
- A presumptive adjustment for child care expenses was made in 29 percent of the Arizona child support cases reviewed.
- A presumptive adjustment for shared parenting time was made in 84 percent of the Arizona child support cases reviewed. The Arizona adjustment applies to parenting time as little as four overnights per year.
- Thirteen percent of the orders reviewed were set at zero.
- Only 1 percent of the cases involved parents whose combined gross income exceeded \$20,000 per month, which is the highest income considered in Arizona’s presumptive schedule.
- The self-support reserve (SSR), which reserves a subsistence level of income for the obligated parent, was applied in only 5 percent of the cases. One reason is that Arizona presumes a minimum income equivalent to earnings from full-time work at minimum wage. Those earnings are sufficient to cover the SSR.
- The tax exemption for the child was divided almost equally between the parents.
- The parent ordered to provide for the child’s health insurance and the parent with the tax exemption for the child, according to the court order, were consistent for 39 percent of the cases. This is important because the Affordable Care Act holds the parent with the tax exemption liable for providing the child insurance.
- Arizona requires all divorcing and never-married parents with a parenting time dispute to attend a parenting education classes. Most (76 percent) of the parents who are supposed to receive support attend it; 56 percent of parents obligated to pay support attend it.

FINDINGS FROM CALIFORNIA

California uses a unique income shares guidelines formula that almost functions as a percentage-of-obligor model when there is no adjustment for timesharing. For California’s last guidelines review (2010), case file data was collected from court and child support offices in 11 counties.

- The deviation rate was 15 percent.
 - The deviation rate was 9 percent among orders established or modified in the state child support caseload and 26 percent among those that were not.
 - Most (60 percent) of deviations were stipulations between the parties.
 - Most (69 percent) of deviations were downward.
- 32 percent of orders were entered by default, 23 percent were contested and entered by a hearing, and 46 percent were stipulations.

- A hardship deduction for additional dependents or the party's extraordinary health expenses was entered for 4 percent of the parents.
- Fourteen percent of the obligors were eligible for the low-income adjustment. It was applied for 59 percent of the parents who were eligible. At the time, the adjustment was discretionary. Since then, California has made it a presumptive formula and expanded its income eligible threshold to higher incomes.
- California provides formulas that can be applied discretionary for child care expenses and other expenses. They were used for child care expenses in 12 percent of the cases, the child's uninsured health care costs in 18 percent of the cases, and travel expenses for visitation in 1 percent of cases.

FINDINGS FROM NEW YORK

Like Nevada, New York's guidelines are based on a flat percentage of the obligor's gross income. For New York's 2010 review, 12 counties were sampled. Case files were examined from both family courts (which hear most of the state child support caseload) and supreme courts (which hear most of the private child support cases).

- The guidelines deviation rate in New York was 23 percent.
 - The guidelines deviation rate was 41 percent among superior court cases and 20 percent among family court cases.
 - Most New York guidelines deviations are downward.
 - The deviation rate among New York cases with joint/shared custody was 54 percent. New York does not provide a presumptive formula to adjust for joint/shared custody. It also appears that those with joint/shared custody used a variety of deviation codes. New York provides for a deviation criterion for extraordinary visitation expenses of the noncustodial parent, but does not explicitly identify shared-parenting time as a reason.
 - The most common reasons for deviation were the financial resources of a parents/child or consent or agreement between the parties. Each of these reasons accounted for about a quarter or a third of the deviations among family court and supreme court orders. No other reason was used more frequently.
- New York provides presumptive deductions from income for several factors.
 - Income deductions for payment of other child support orders were made for 6 percent of the family court orders. The percentage was smaller among supreme court orders.
 - Deductions for maintenance paid to an ex-spouse were made in 7 percent of the obligors in the supreme court caseload and a smaller percentage in the family court caseload.
- New York guidelines provide presumptive formulas for low-income obligors, child care expenses, and the child's educational expenses.
 - The New York low-income adjustment consists of a self-support reserve, also known as a poverty test. New York's self-support reserve is set at 135 percent of the federal poverty level for one person and is updated annually. It was applied to 14 percent of the sampled family court orders and 10 percent of the sampled supreme court orders. In most orders

- adjusted for the self-support reserve, the order was set at the New York minimum, \$25 per month.
- Child care expenses were included in 17 percent of family court orders and 27 percent of supreme court orders.
 - The child's educational expenses were included in 2 percent of family court orders and 31 percent of supreme court orders.

DISCUSSION

The Nevada guidelines deviation rate appears high relative to other states. Further, the guidelines deviation rate calculated for this study is believed to understate the actual guidelines deviation rate because it did not consider private cases in the analysis. Findings from other states indicate that deviation rates are higher in private cases.

To reduce the number of guidelines deviation, Nevada should consider developing presumptive formulas to consider each parent's other children, ability to pay issues among very low-income obligors, shared parenting time arrangements, child care expenses, and the cost of the child's health care. This may include codifying some of the court decisions or approaches used to adjust the order amounts in guidelines deviations. The findings from case data analyses in other states that provide presumptive formulas for these factors find that they are applied frequently.

The ability-to-pay issue is discussed in Section VI. Each of the remaining issues is discussed more in Section VIII.

SECTION IV: COMPARISONS TO ECONOMIC DATA ON THE COST OF CHILD REARING

This section compares the Nevada guidelines percentages and presumptive maximums to the most current economic evidence on the cost of child rearing. The presumptive maximums are also explored in more detail in Section V.

CURRENT ECONOMIC EVIDENCE OF CHILD-REARING EXPENDITURES

The comparisons consider economic evidence from intact families because Nevada, like all states relying on economic evidence, is based on a continuity-of-expenditures child support guidelines model. (This is described and documented in Section II.)

MINIMUM NEEDS AND CHILD-REARING EXPENDITURES IN SINGLE-PARENT FAMILIES

No state bases its entire guidelines formula on the minimum needs of the child or how much is spent on children in single-parent families. The Melson formula comes the closest by providing a “primary support amount” for the child, but the Melson formula also provides that a percentage of the obligated parent’s income be assigned to support if the obligated parent has any income in surplus of what is needed for basic needs. As described in Section II, this percentage adjustment (which is 19 percent for one child in Delaware) allows for the child to share the standard of living afforded by the obligated parent.

Exhibit 10 shows that there are few studies that measure the cost of the child’s basic needs. The most commonly used measurement is the Federal Poverty Level (FPL).²³ Montana and Delaware consider it in setting their primary support amounts. The FPL is updated annually. The FPL varies by household size, although it assumes that each additional person in a household requires the same dollar amount. Another federal measure is called the Supplemental Poverty Measure (SPM), but it is not a dollar threshold; rather, it measures the number of people living in poverty.²⁴ A third federal measurement, which was used in Michigan to consider whether the child support adjustment for shared parenting time was adequate, is the United States Department of Agriculture (USDA) thrifty food plan.²⁵ The USDA publishes the cost of four food plans for individuals by age range and gender. The thrifty food plan is used to determine SNAP (formerly called Food Stamps) benefits and the liberal plan is used for military allowances. Another significance of the thrifty food plan is that the original threshold of poverty, which dates to English Poor Laws, consists of thrice what it costs for a subsistence diet.

²³ U.S. Department of Health and Human Services. (Jan. 25, 2016). “Annual Update of the HHS Poverty Guidelines.” *Federal Register*. Retrieved from <https://www.federalregister.gov/articles/2016/01/25/2016-01450/annual-update-of-the-hhs-poverty-guidelines/>.

²⁴ More information about the SPM can be found at the U.S. Census Bureau website: <http://www.census.gov/hhes/povmeas/methodology/supplemental/overview.html>.

²⁵ U.S. Department of Agriculture. (Mar. 2016). Official USDA Food Plans: Cost of Food at Home at Four Levels, U.S. Average. Retrieved from http://www.cnpp.usda.gov/sites/default/files/CostofFoodMar2016_0.pdf.

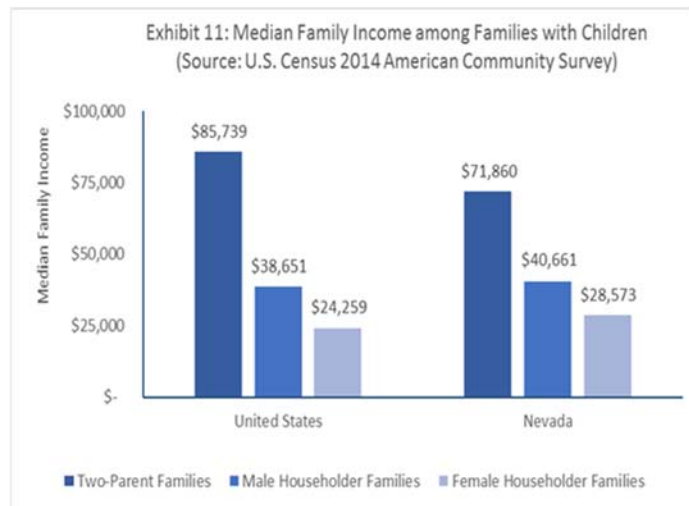
Exhibit 10: Measurements and Indicators of the Child’s Basic Needs	
Source	Findings
2016 Federal Poverty Level	One person: \$990 per month Each additional person: \$347 per month
2016 Thrifty Food Budget (selected ages)	Individual child (1 year old): \$94 per month Individual child (9–11 year old): \$157 per month Male, 14–18 years old: \$173 per month
2002 Self-Sufficiency Standard (Clark County, Nevada)	Implicit ^a amount for 1 child: \$897/month (2002\$), \$1,183/month (2016\$) Implicit ^a amount for 2 children: \$1,249/month (2002\$), \$1,647/month (2016\$)
2011 Kinshare Care Allowance	0–12 years old: \$417 per month for 1 child 0–12 years old: \$400 per child per month for 2 or more children 13 years old or more: \$462 per child per month

^a The amount is implicit because it is based on the difference needed for a household consisting of one adult and a household consisting of one adult and one or two children.

Other commonly used measures or indicators are kinshare or foster care allowances or the self-sufficiency standard.²⁶ The Nevada Department of Health and Human Services Division of Welfare and Support Services can provide an allowance for children living with relatives other than parents.²⁷ In some states, this amount is perceived as a minimum needs amount. The economic basis of Nevada’s kinshare care allowance is unknown, but it approximates the FPL level for an additional person in a household.

A scholar with the University of Washington Center for Women’s Welfare developed the self-sufficiency standard with help from a Ford Foundation grant.²⁸ It measures the earnings needed for a working family to adequately meet the family’s basic needs. The measures are typically at a county or city level and focus on the needs of a one-parent family with one or two children. The self-sufficiency standard was last measured for Nevada in 2002. It is converted to 2016 prices for comparison in Exhibit 10.

Over a decade ago, a few states proposed guidelines changes that would have related the guidelines amounts to expenditures in single-parent families. None of these proposals were legislated. One reason is that an inordinate percentage of single-parent families live in poverty, while most states believe that the children should share in the standard of living afforded by the obligated parent. Exhibits 11 and 12 compare incomes and poverty rates of two-parent families and single-parent families using 2014 Census data. Exhibit 12



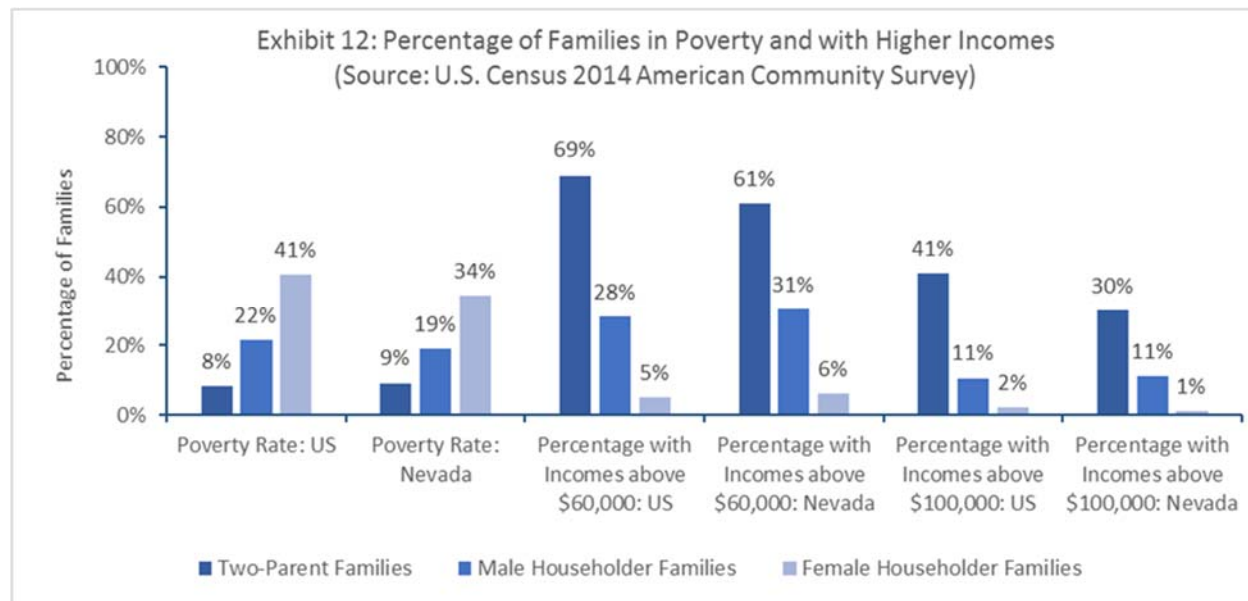
²⁶ Pearce, Diana. (Mar. 2002). *The Self-Sufficiency Standard for Nevada*. Prepared for Progressive Leadership Alliance of Nevada. Retrieved from: <http://depts.washington.edu/selfsuff/docs/Nevada%202002.pdf>.

²⁷ More information can be found at the Nevada Department of Health and Human Services Division of Welfare and Supportive Services website: https://dwss.nv.gov/TANF/Kinship_Care_Program/.

²⁸ More information can be found at its website: <http://selfsufficiencystandard.org/>.

corroborates that single-parent families are more likely to live in poverty and have lower incomes. It shows that 9 percent of Nevada two-parent families live in poverty while 34 percent of Nevada female-household families live in poverty. It also shows that few single-parent families have middle to higher incomes, which is important since many two-parent families have middle to higher incomes. For example, in Nevada, 61 percent of two-parent families have income above \$60,000 per year while only 6 percent of Nevada female-householder families have incomes above \$60,000 per year.

Exhibits 11 and 12 consider both male and female householders. Female householders comprise most (69 percent) of Nevada’s single-parent families.



UPPER AND LOWER BOUND OF MEASUREMENTS OF CHILD-REARING EXPENDITURES

As mentioned in Section II, there are several economic methodologies used to separate the child’s share of expenditures from total expenditures of a household. Economists do not agree on which methodology best measures actual child-rearing expenditures. Nonetheless, many economists and policy makers agree that any guidelines amount between the lower and upper bounds of credible measurements of child-rearing expenditures are appropriate guidelines amounts. Guidelines amounts below the lower bound are generally deemed to be inadequate for the support of children.

Through a contract with the U.S. Department of Health and Human Services, Lewin/ICF (1990)²⁹ developed this approach for assessing state guidelines. Since then, several states have used it and continue to use it. The most commonly used methodology, the “Rothbarth” methodology is generally considered the lower bound of the range of credible measurements. For theoretical reasons, economists also believe that the Rothbarth methodology understates actual child-rearing expenditures. Professor David Betson, University of Notre Dame, has developed four sets of measurements of child-

²⁹ Lewin/ICF. (1990). *Estimates of Expenditures on Children and Child Support Guidelines*. Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. Fairfax, Virginia.

rearing expenditures over the past 25 years using the Rothbarth method. For each of his studies, he uses the most current expenditures data available from the Consumer Expenditure Survey, which is a comprehensive survey of household expenditures and used by all economists measuring child-rearing expenditures.³⁰ The Betson-Rothbarth (BR) measurements form the basis of 28 state guidelines, including Arizona and Oregon, which border Nevada.

The most current study considered for the upper bound is conducted by the United States Department of Agriculture (USDA). Minnesota is the only state to use the USDA study as the basis of its guidelines.

USDA METHODOLOGY

The USDA estimates child-rearing expenditures individually for seven expenditure categories (*e.g.*, food, transportation, housing, clothing, health care, child care and education, and miscellaneous expenses), then adds them to develop a total. The USDA study is considered the upper bound of current measurements of child-rearing expenditures. It is usually updated annually, but it is in the process of some methodological changes, so its next release is not scheduled till late 2016.

The most recent USDA study is for 2013, and it found that average child-rearing expenses are \$9,950 to \$27,090 per year for the youngest child in a two-child family in the urban West.³¹ The comparable amounts for a child in rural areas ranges from \$7,510 to \$19,070 per year, depending on family income and child age. The majority (96 percent) of Nevada's population lives in urban areas. The USDA also finds that child-rearing expenditures are higher in high-income families and for older children.

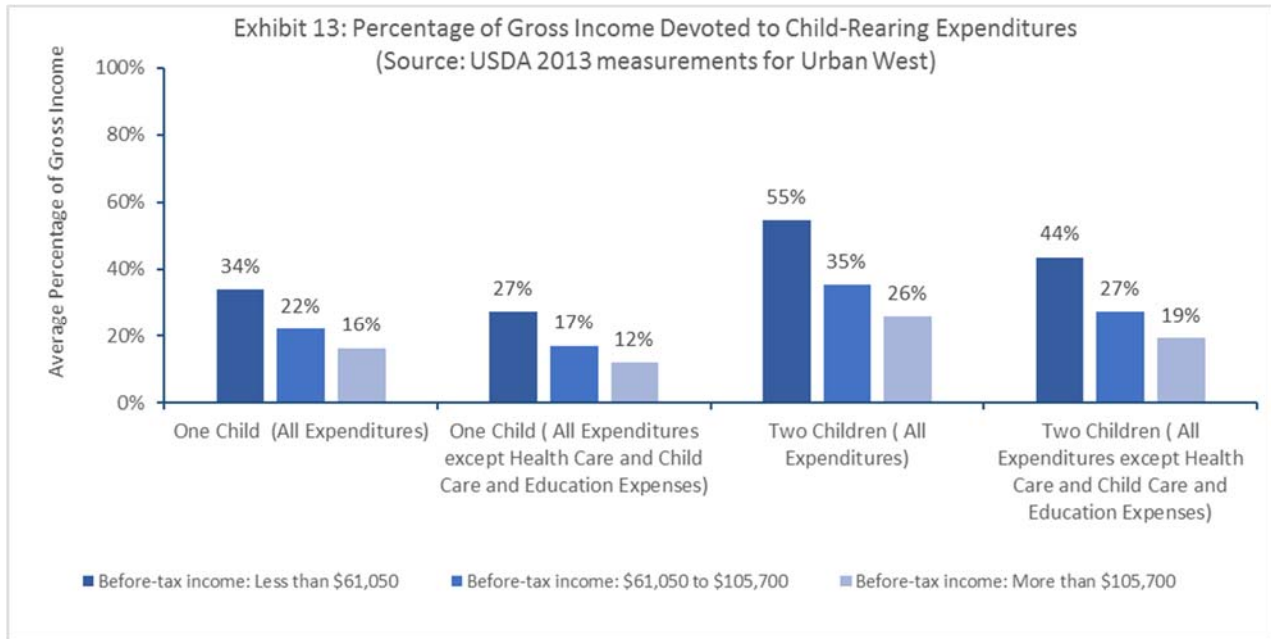
The USDA estimates consider three income ranges. In 2013, they were before-tax income less than \$61,050 per year, with an average income of \$39,050; before-tax income of \$61,050 to \$105,700 per year, with an average of \$82,140 per year; and before-after tax income more than \$105,700 per year, with an average of \$184,990 per year. Exhibit 13 compares the percentage of gross income devoted to child-rearing expenditures for each of these income ranges. Specifically, the percentage is calculated by dividing average expenditures for each income range by average income of that range. This is done to make the USDA percentages comparable to the Nevada guidelines percentages. One set includes all child-rearing expenses. The other set excludes the children's health care, child care, and education expenses. Most state guidelines exclude these expenses from their core formula or schedule because they use the actual amount expended on a case-by-case basis in the child support calculation. In Nevada, most of these factors are considered deviations factors.

Exhibit 13 considers the amounts for one and two children. According to the analysis of CSEP orders, 65 percent of orders cover one child and 26 percent cover two children. Nonetheless, the pattern across income ranges illustrated in Exhibit 13 would be the same for three or more children.

³⁰ More information about the Consumer Expenditure Survey can be found at the U.S. Bureau of Labor Statistics website: <http://www.bls.gov/cex/>.

³¹ Lino, Mark. (2014). *Expenditures on Children by Families: 2013 Annual Report*. U.S. Department of Agriculture, Center for Nutrition and Policy Promotion. Miscellaneous Publication No. 1528-2013, Washington, D.C. Available at http://www.cnpp.usda.gov/sites/default/files/expenditures_on_children_by_families/crc2013.pdf.

One of the major points of Exhibit 13 is the percentage of gross income devoted to child-rearing expenditures declines as gross income increases. Progressive federal tax rates contribute to this decline. Spending decisions are made from after-tax income, not gross income.



ROTHBARTH METHODOLOGY

As identified in Section II, there are five different Rothbarth measurements that form the basis of 29 state guidelines. Four were developed by Professor David Betson, University of Notre Dame. The fifth was developed by a Rutgers University professor for New Jersey, is adjusted for New Jersey’s relatively high income, and is used only by New Jersey. Named after the British WWII economist who derived it, the Rothbarth methodology is a marginal cost approach that compares expenditures of two sets of equally well-off households: one set consists of two-parent families with children, and the other consists of couples without children. The difference in their expenditures is presumed to be spent on child rearing. The Rothbarth methodology relies on the percentage of total expenditures devoted to adult goods (*i.e.*, adult clothing in Betson’s application) to determine equally well-off families.

Over time, four sets of Betson-Rothbarth (BR) measurements have been produced. For Betson’s first study,³² he used 1980–1986 CES Data. For his second study,³³ he initially used 1996–1998 CES data, but

³² David M. Betson. (1990). *Alternative Estimates of the Cost of Children from the 1980–86 Consumer Expenditure Survey*, Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, University of Wisconsin Institute for Research on Poverty, Madison, Wisconsin.

³³ Betson, David M. (2001). “Chapter 5: Parental Expenditures on Children.” in Judicial Council of California, *Review of Statewide Uniform Child Support Guideline*. San Francisco, California.

later expanded it to encompass 1996–1999. For his third³⁴ and fourth study,³⁵ respectively, he used data from the 1998–2004 and 2004–2009 CES. Betson’s four different studies estimating child-rearing expenditures over the past few decades vary in other ways besides data years. Some of his studies use other methodologies besides the Rothbarth methodology to measure child-rearing expenditures. Betson’s first study was conducted in 1990 and responded to a Congressional mandate to provide information about child-rearing expenditures for states to develop and revise child support guidelines. For this study, he used and compared five different methodologies for measuring child-rearing expenditures and concluded that the Rothbarth estimator produced the most “robust” (*i.e.*, sound and statistically reliable) results, and recommended its use for state guidelines.

Betson measures child-rearing expenditures as a percentage of family expenditures. This makes it difficult to compare them to the USDA measurements that relate to gross income. For his most recent study (BR4), he found that on average families devote the following percentages of total family expenditures on child rearing: 24 percent for one child, 37 percent for two children, and 45 percent for three children. Betson’s estimates are converted to percentages that relate to net income and gross income for use by state guidelines. For the purposes of a comparison to the Nevada percentages and presumptive maximums, a similar conversion is made. The steps and assumptions used for this conversion are summarized in Appendix A.

COMPARISONS

This section compares the existing Nevada percentages and presumptive maximums to the USDA measurements and BR4 measurements by the number of children across a range of incomes. This section also compares the existing Nevada percentages and presumptive maximums using case scenarios. If an amount under the Nevada guidelines is below the BR4 measurement for a particular number of children and income, it would suggest that the Nevada amount is an inadequate amount of support at that level. If the amount under the Nevada guidelines is above the USDA measurement for a particular number of children and income, it would suggest that the Nevada amount is set unreasonably high at that level.

THE USDA AND BR4 MEASUREMENTS USED FOR THE COMPARISONS

The USDA measurements for the Urban West are used for the comparisons. Child care and education expenses are excluded because they are deviation factors under the Nevada guidelines that generally result in an upward deviation. Health care expenses are retained because the Affordable Care Act (ACA) implicitly implies that the custodial parent is responsible for the child’s health insurance, and the custodial parent incurs the penalty if the children do not have insurance if the custodial parent claims the child as an exemption for federal tax purposes. If the health care amounts are subtracted from the USDA measurements, it could reduce the USDA measurements used for the comparisons that, in turn,

³⁴ Betson, David M. (2006). “Appendix I: New Estimates of Child-Rearing Costs” in *State of Oregon Child Support Guidelines Review: Updated Obligation Scales and Other Considerations*, Report to State of Oregon, Prepared by Policy Studies Inc., Denver Colorado. Available at http://www.oregonchildsupport.gov/laws/guidelines_archive/docs/psi_guidelines_review_2006.pdf.

³⁵ Betson, David M. (2010). “Appendix A: Parental Expenditures on Children.” in Judicial Council of California, *Review of Statewide Uniform Child Support Guideline*. San Francisco, California.

negate its function as an upper bound. The USDA measurements, less child care and education expenses, are converted to a percentage of gross income for each of the three income ranges using the average income and dividing child-rearing expenditures to reflect 18 years of child rearing. The percentages are interpolated between these three points. It is assumed that incomes below the average income of the lowest income range devote the same percentage of gross income to child-rearing expenditures. It is assumed that incomes above the average income of the highest income range devote the same percentage of gross income to child-rearing expenditures. Nonetheless, there is not sufficient evidence to know whether and how the percentage of gross income devoted to child-rearing expenditures declines above the 2016 income equivalent of the average income of the highest USDA income range (*i.e.*, about \$16,000 gross per month).

Both the USDA and BR4 measurements are updated to 2016 price levels using changes in the consumer price index since each measurement was developed. It is assumed that the custodial parent incurs an equal amount of child-rearing expenditures in both the USDA and BR4 measurements used for the comparisons.

As identified earlier, the BR4 measurements require more steps and assumptions to convert to gross-income amounts, which are documented in Appendix A. In general, the steps and assumptions reduce the amounts used for the comparisons so the Nevada guidelines is compared to a true lower bound. For example, the BR4 amounts used for the comparisons exclude both child care and education expenses and health care expenses. If the child's health care expenses were included, the BR4 amounts used in the comparisons would be more. Still another example is that the BR4 amounts are converted to gross income by backing out tax rates assuming a single tax filer with no dependents. Any other tax assumption would result in more after-tax income available for child-rearing expenditures and a higher percentage of gross income assigned to child-rearing expenditures; hence, the BR4 amounts used in the comparisons would also be more.

Neither the USDA nor BR4 measurements used for comparison consider the nonresidential parent's normal visitation that was considered in Wisconsin's adaption of van der Gaag's measurements of child-rearing expenditures. As discussed in Section II, Wisconsin factored in normal visitation costs when converting van der Gaag's measurement of child-rearing expenditures to gross-income guidelines percentages, and Nevada adapted the Wisconsin percentages. Factoring in normal visitation costs requires assumptions about the percentage of time the child spends with the obligated parent and which child-rearing expenditures the custodial parent no longer (*e.g.*, the child's food and transportation expenses) incurs because the children are with the obligated. These assumptions are highly subjective and largely a policy decision when indeed included in a state's child support formula. The adjustment, however, based on the experiences of other states could be nominal.³⁶

³⁶ For example, Pennsylvania includes an adjustment for normal visitation in its child support schedule. It reduces the schedule amounts by about 5 percent based on the assumptions of 30 percent timesharing for all nonresidential parents and that the custodial parent forgoes some of the child's food costs and entertainment costs (*e.g.*, fees and admissions). Application of Pennsylvania's adjustment would result in 20 percent being 19 percent once adjusted for normal visitation.

COMPARISONS BY NUMBER OF CHILDREN AND FOR A RANGE OF INCOMES

Exhibits 14 through 21 compare the existing Nevada percentages and presumptive maximums (effective July 1, 2016) for gross income of \$700 to \$13,000 per month. For incomes below and above these levels, additional assumptions to the USDA and BR4 measurements are necessary. Based on the CSEP data, the frequency of orders by number of children are:

- 65 percent cover one child,
- 26 percent cover two children,
- 7 percent cover three children,
- 2 percent cover four children, and
- less than 0.5 percent cover five children.

There were 10 cases that covered more than five children. The highest number was eight children. The graphs consider one, two, three, four, and five children. Two graphs are provided for one, two, and three children. One graph considers the dollar amount of the support award; the other considers the support award as a percentage of the obligated's gross income.

Exhibit 14: Comparisons of Nevada 2016 Child Support Formula for One Child to BR4 and USDA Measurements of Child-Rearing Expenditures

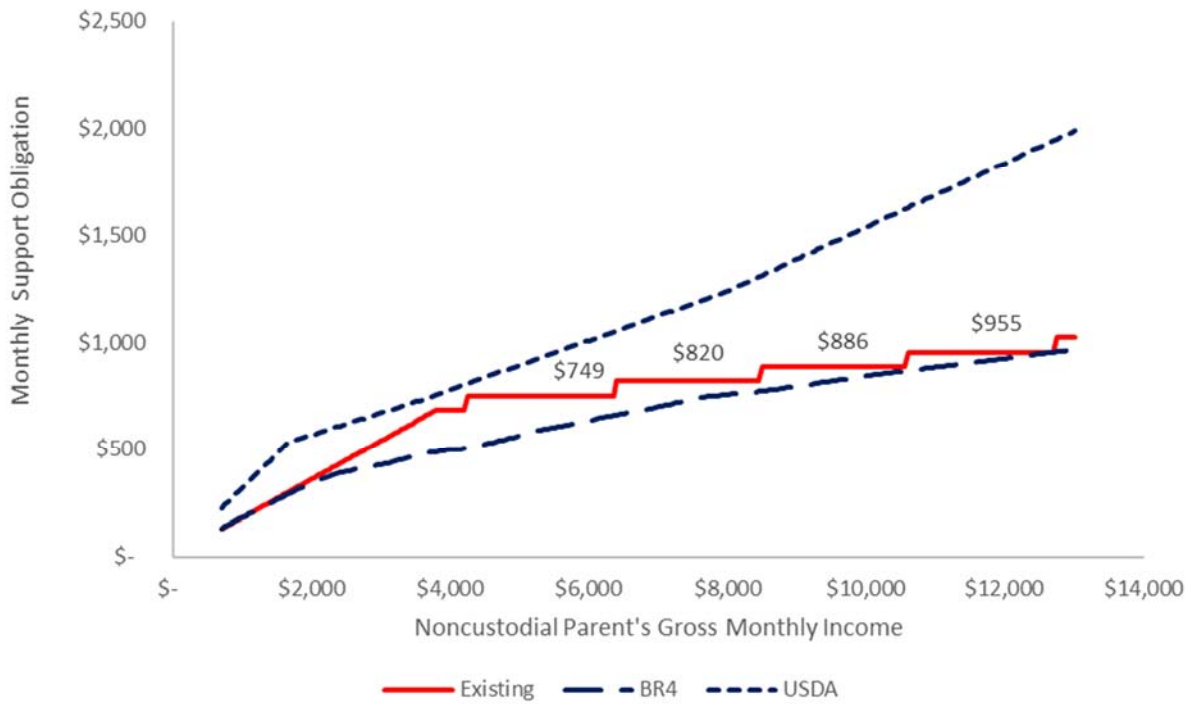


Exhibit 15: Comparisons of Nevada 2016 Child Support Formula for One Child to BR4 and USDA Measurements of Child-Rearing Expenditures

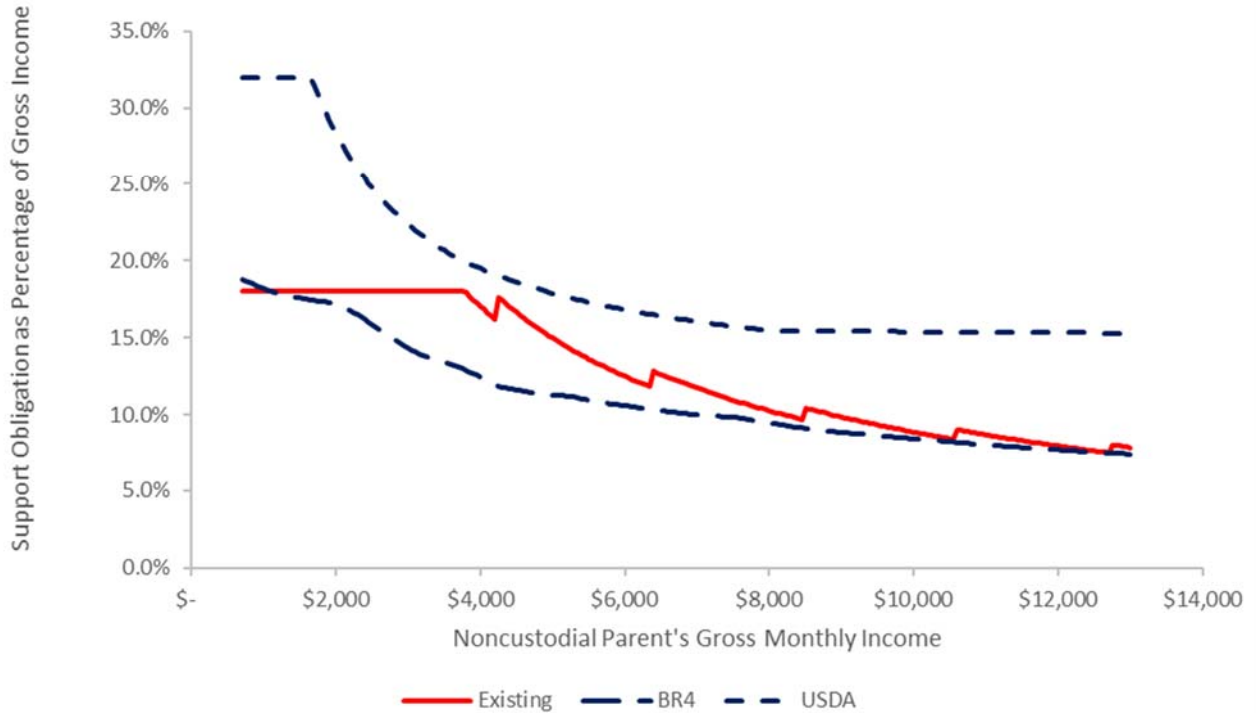


Exhibit 16: Comparisons of Nevada 2016 Child Support Formula for Two Children to BR4 and USDA Measurements of Child-Rearing Expenditures

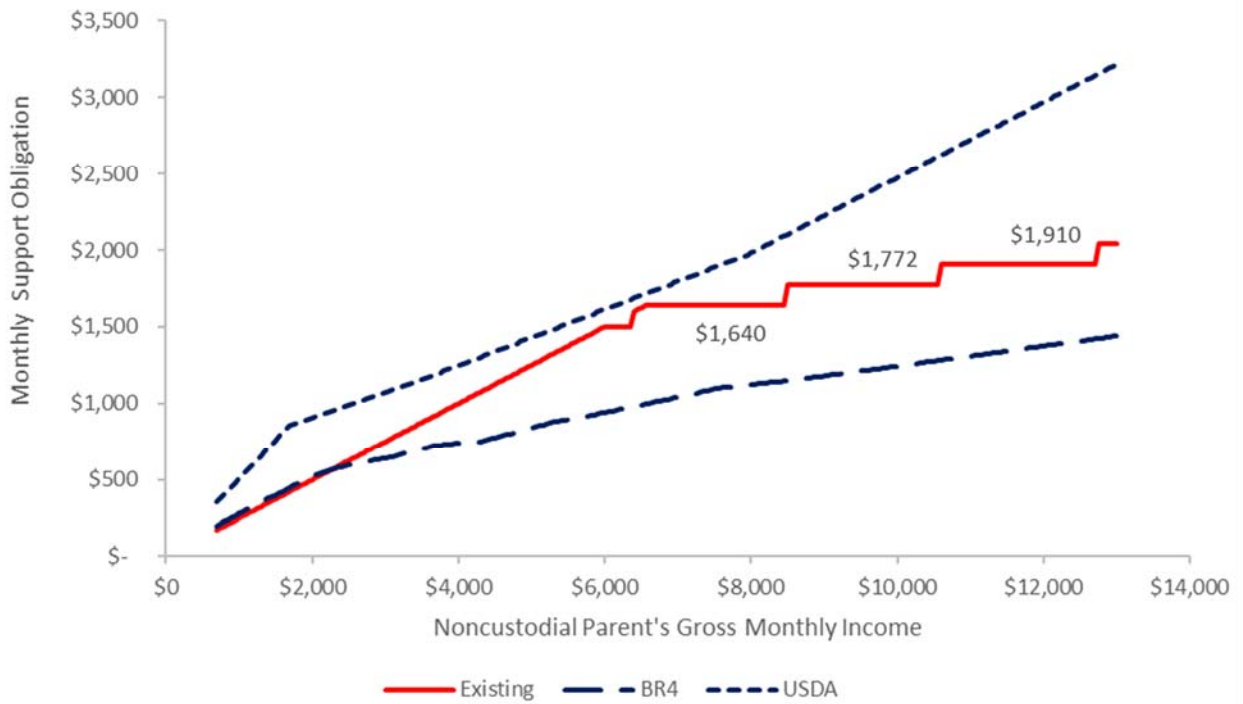


Exhibit 17: Comparisons of Nevada 2016 Child Support Formula for Two Children to BR4 and USDA Measurements of Child-Rearing Expenditures

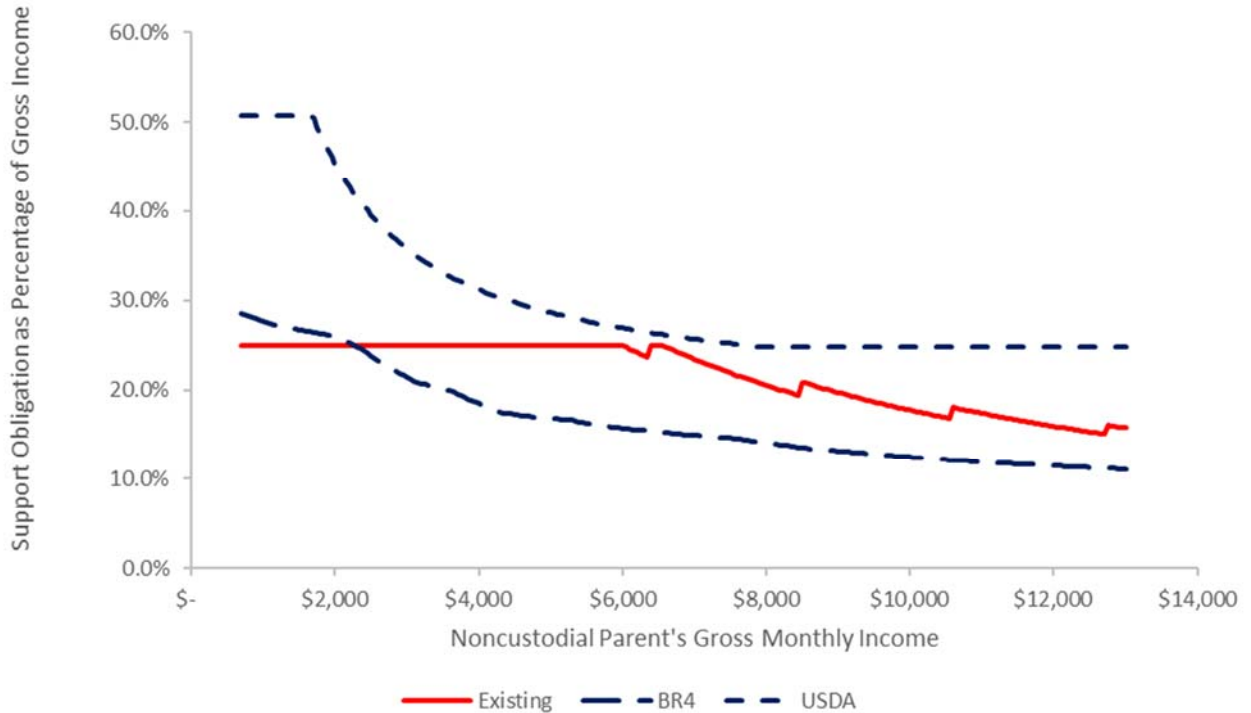


Exhibit 18: Comparisons of Nevada 2016 Child Support Formula for Three Children to BR4 and USDA Measurements of Child-Rearing Expenditures

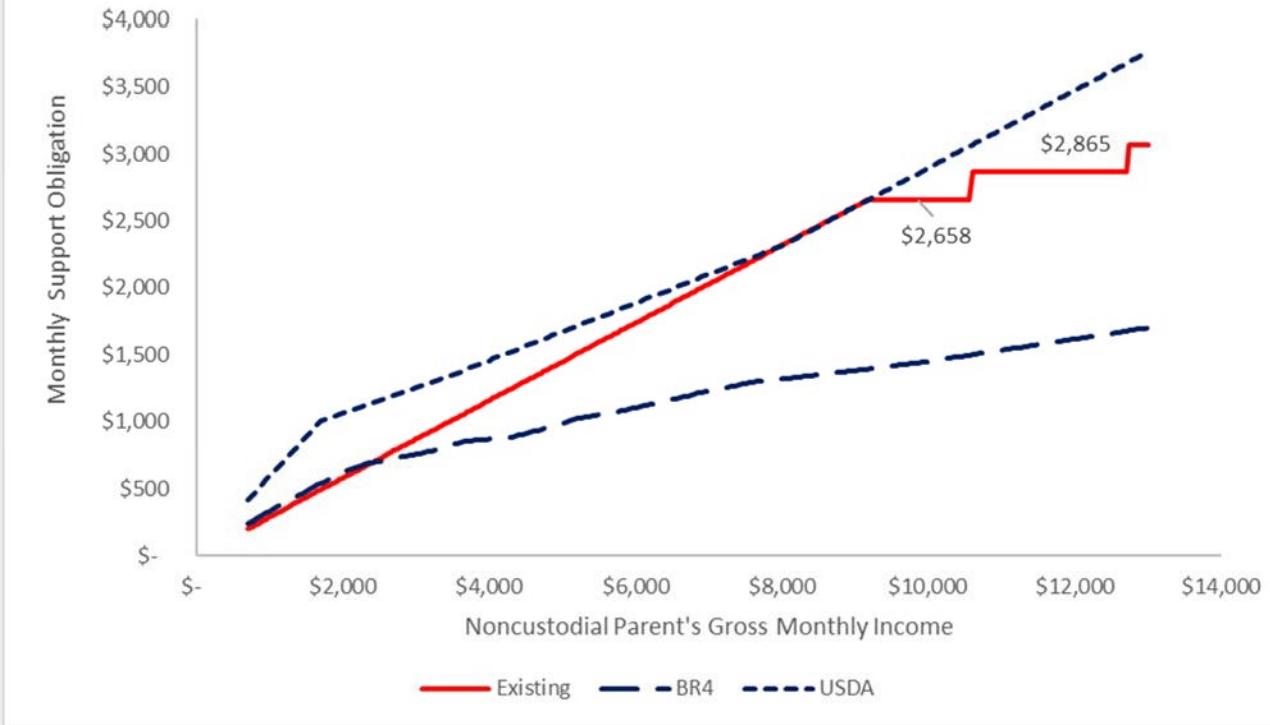


Exhibit 19: Comparisons of Nevada 2016 Child Support Formula for Three Children to BR4 and USDA Measurements of Child-Rearing Expenditures



Exhibit 20: Comparisons of Nevada 2016 Child Support Formula for Four Children to BR4 and USDA Measurements of Child-Rearing Expenditures

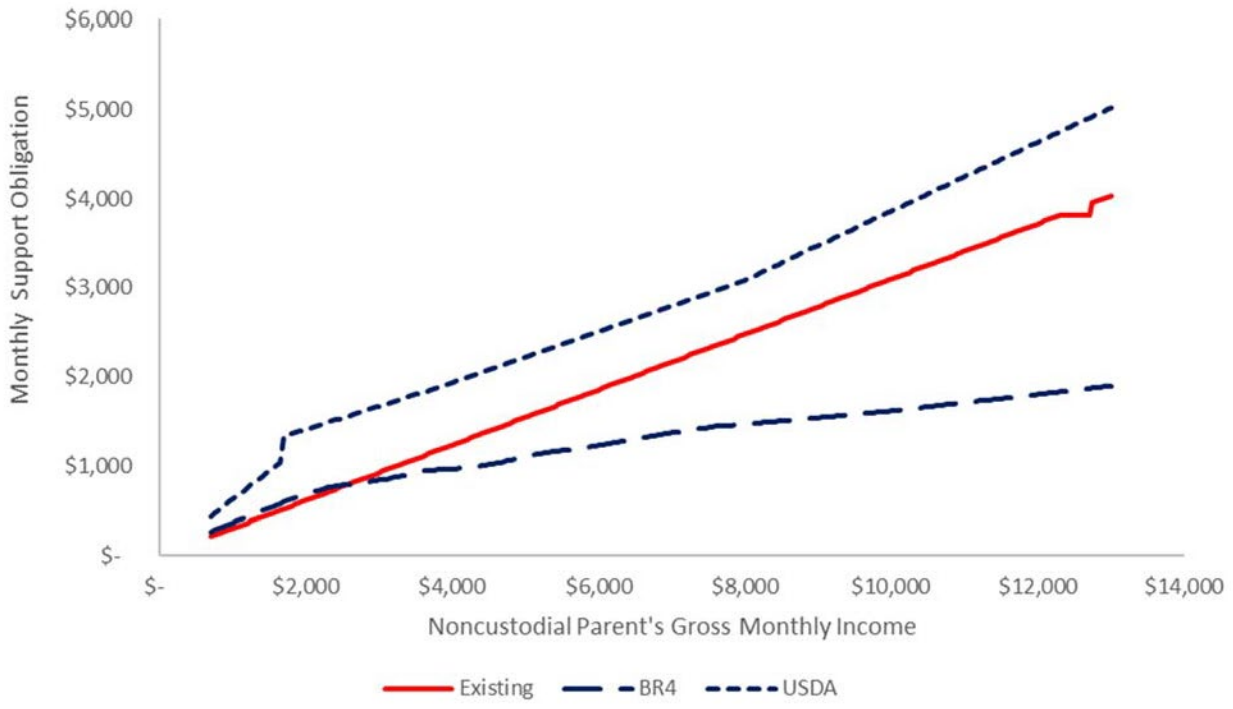


Exhibit 21: Comparisons of Nevada 2016 Child Support Formula for Five Children to BR4 and USDA Measurements of Child-Rearing Expenditures

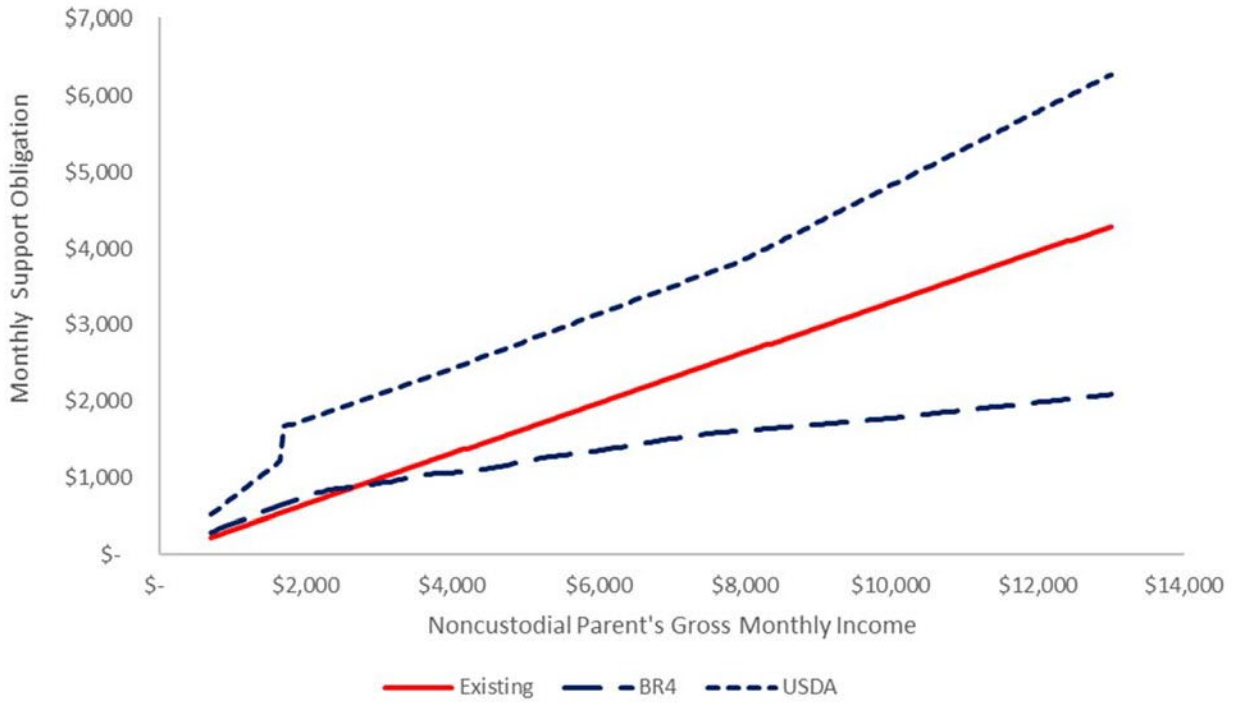


Exhibit 22: Comparisons of Nevada Child Support Formula for One Child to Formulas of Bordering States: Custodial Parent Has No Income

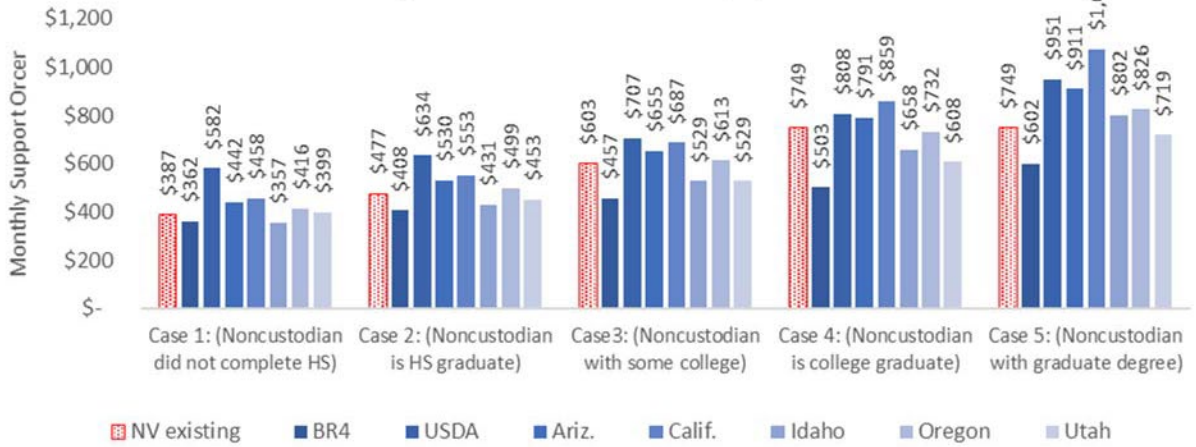


Exhibit 23: Comparisons of Nevada Child Support Formula for One Child to Formulas of Bordering States: Custodial Parent Has Income

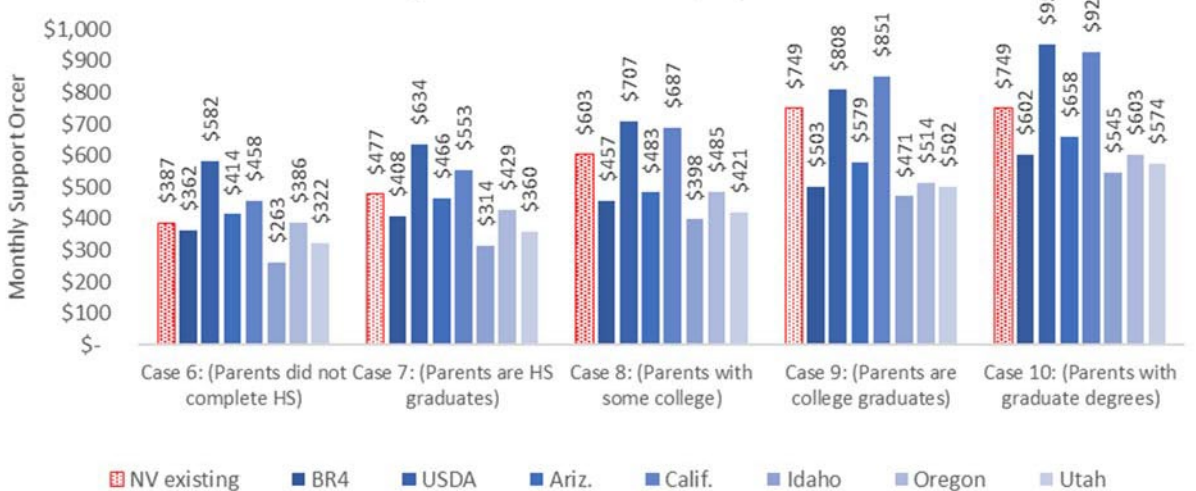


Exhibit 24: Comparisons of Nevada Child Support Formula for One Child to Formulas of Bordering States: Custodial Parent Has No Income

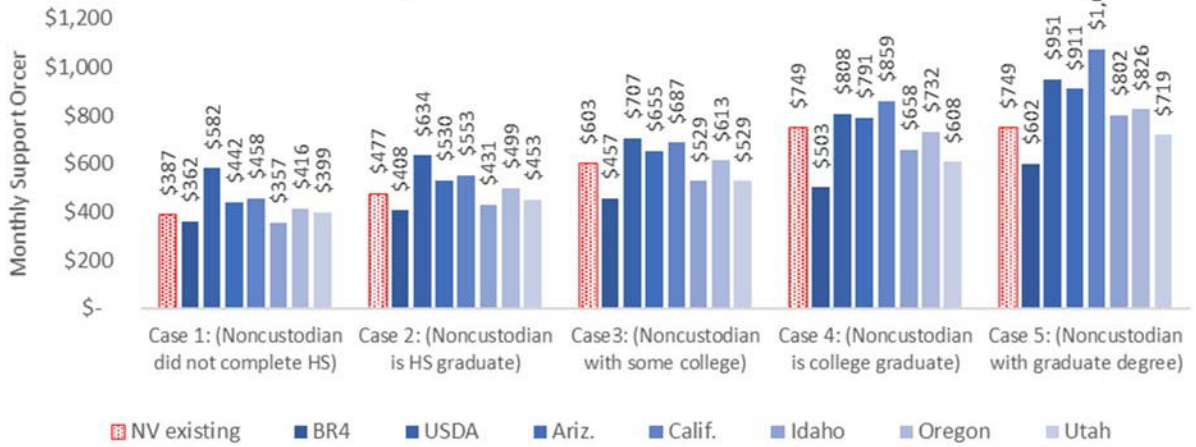


Exhibit 25: Comparisons of Nevada Child Support Formula for One Child to Formulas of Bordering States: Custodial Parent Has Income

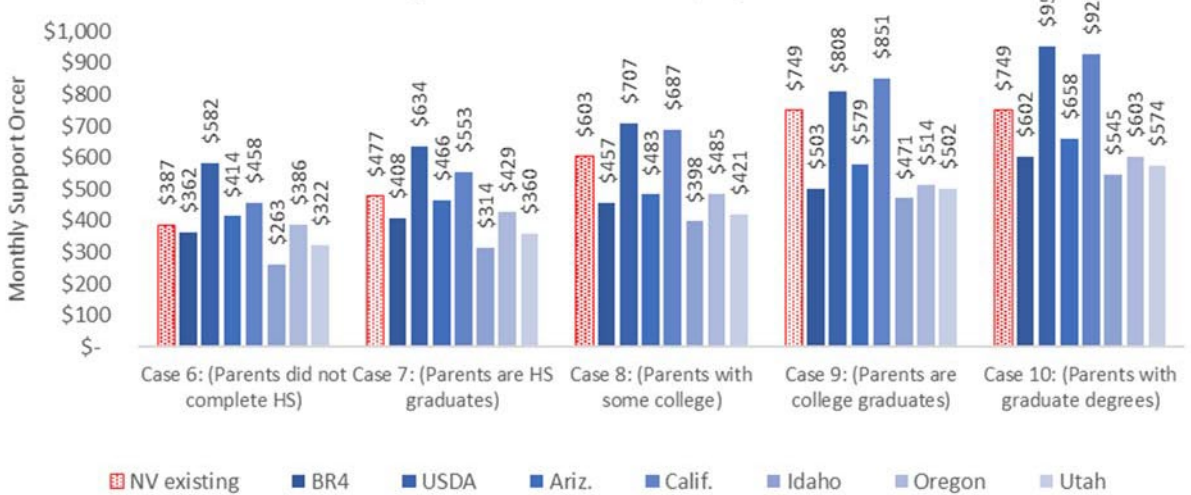


Exhibit 29 provides an example of a modified version of Wisconsin’s high income formula that is simple and produces amounts similar to existing Nevada presumptive amounts and within the credible range of measurements of child-

Exhibit 29: Example of Modified Version of Wisconsin Percentages Applicable to Nevada: Alternative A	
1 Child	<ul style="list-style-type: none"> • First \$4,000 of income: 18% • Portion of income between \$4,000 and \$15,000: 5%
2 Children	<ul style="list-style-type: none"> • First \$7,000 of income: 25% • Portion of income between \$7,000 and \$15,000: 8%
3 Children	<ul style="list-style-type: none"> • First \$9,000 of income: 29% • Portion of income between \$9,000 and \$15,000: 15%

rearing expenditures. The precise formula is a policy decision, but tweaking the income thresholds and percentages would likely still yield amounts within the credible range of child-rearing expenditures. If the objective is to achieve amounts similar to existing amounts, more income intervals would be necessary.

Exhibits 30, 31, and 32 compare the existing Nevada percentages and presumptive maximums to the proposed amounts in Exhibit 29, which is also called, “Alternative A.” for one, two, and three children. They show that Alternative A can reduce the staircase effect: that is, produce an increase in the order amount as income increases.

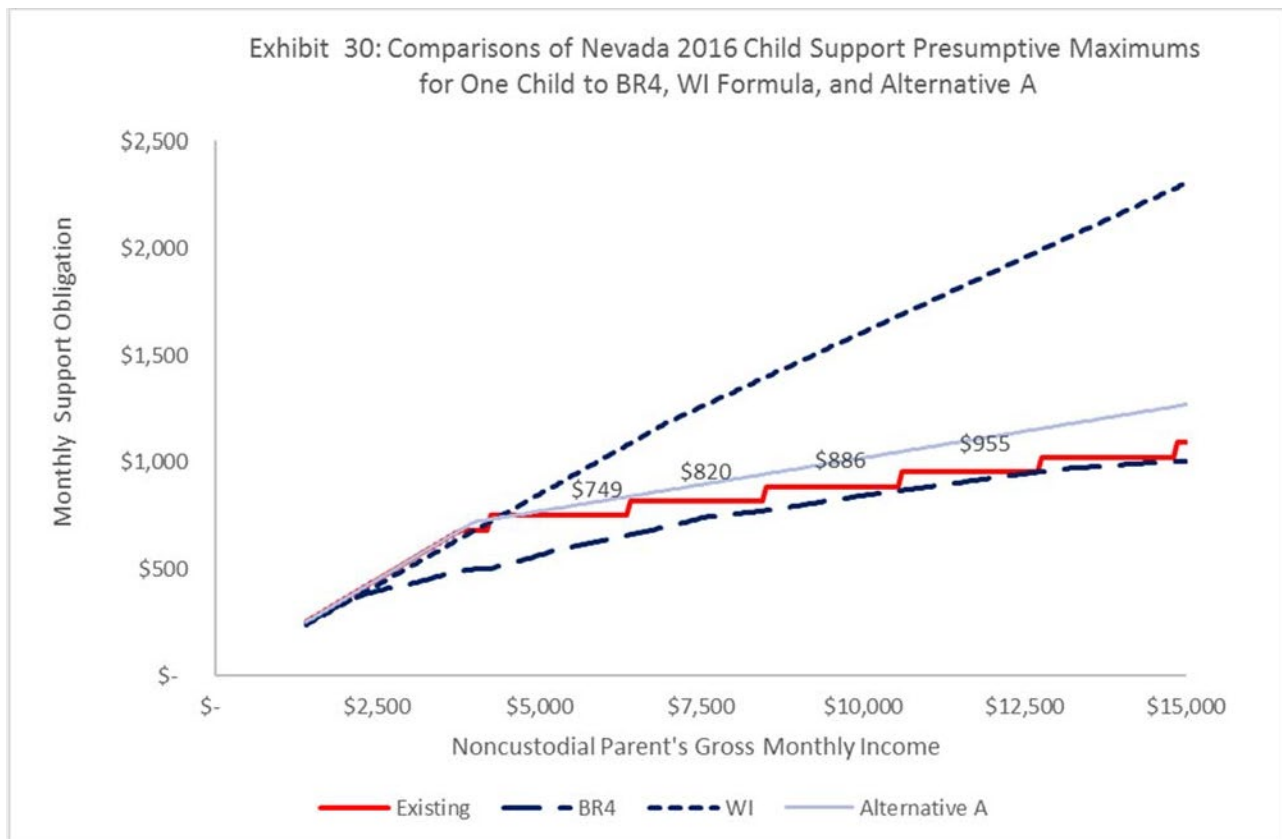


Exhibit 31: Comparisons of Nevada 2016 Child Support Presumptive Maximums for Two Children to BR4, WI Formula, and Alternative A

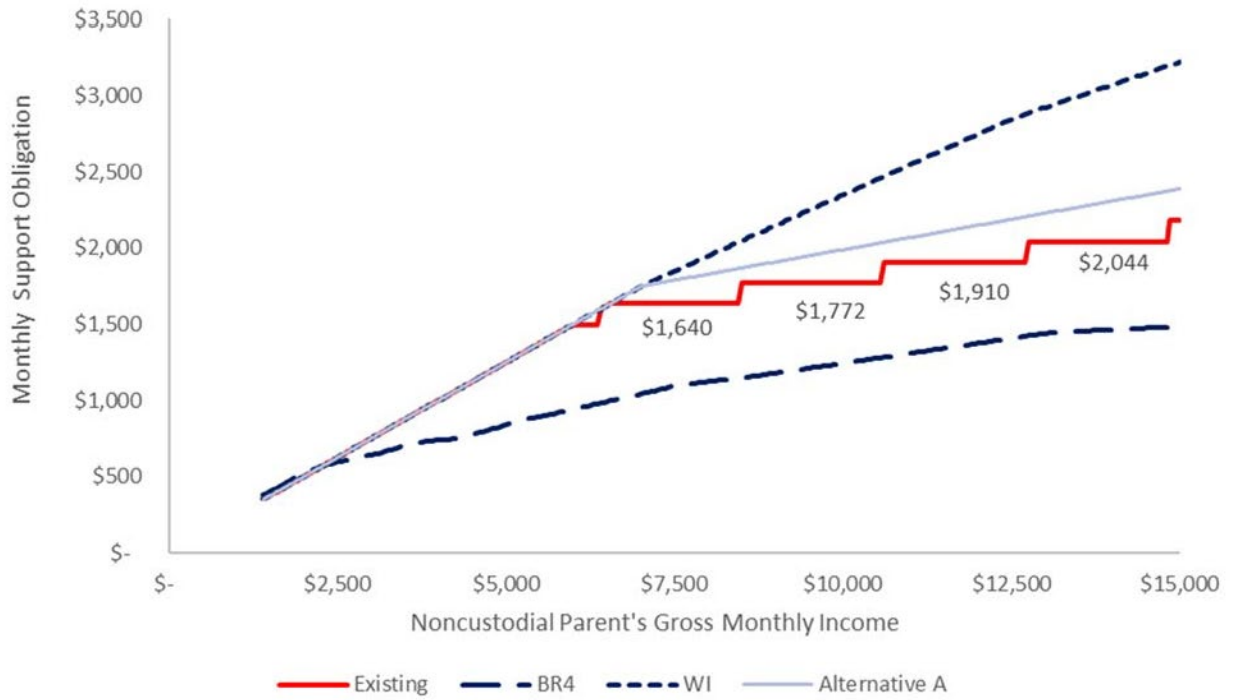
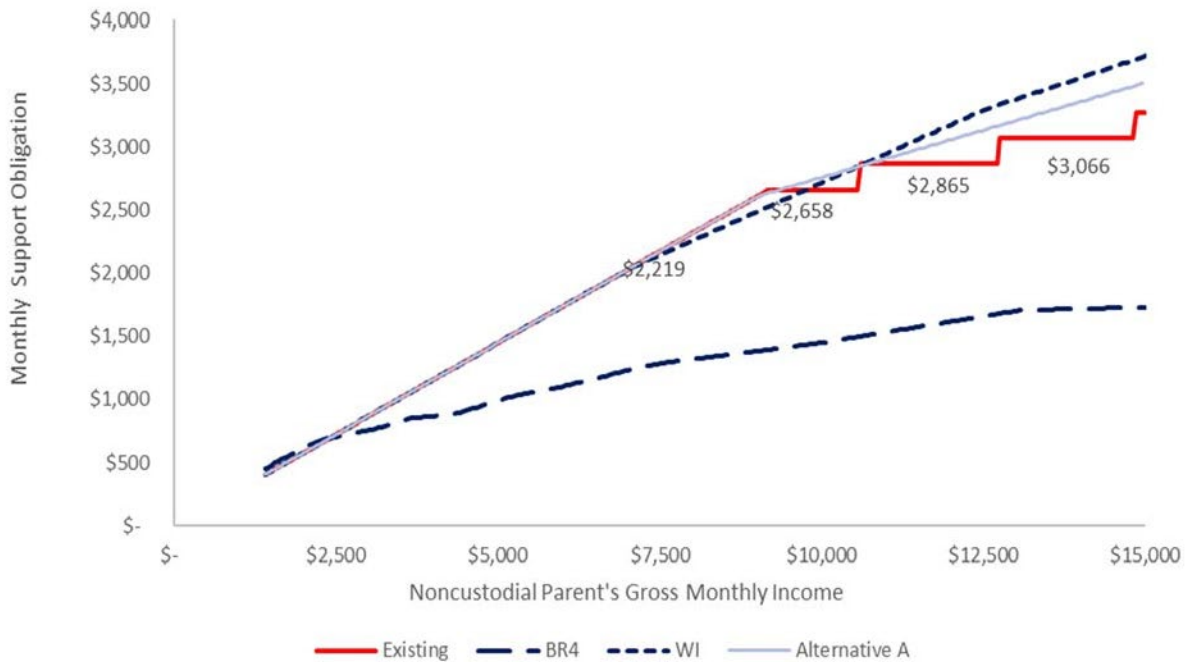


Exhibit 32: Comparisons of Nevada 2016 Child Support Presumptive Maximums for Three Children to BR4, WI Formula, and Alternative A



FINDINGS FROM COMPARISONS BY NUMBER OF CHILDREN AND FOR A RANGE OF INCOMES

The 2016 Nevada percentages and presumptive maximums are generally between the USDA and BR4 amounts. This suggests that they are generally within the credible range of measurements of child-rearing expenditures; that is, they are generally adequate and do not exceed what is typically spent for child rearing.

LOW INCOMES

The notable exceptions are at very low incomes. At very low incomes, the Nevada percentages are below both the USDA and BR4 measurements of child-rearing expenditures. As discussed in Section VI, however, the federal Office of Child Support Enforcement (OCSE) advocates for consideration of ability to pay at very low incomes. This would yield lower support award amounts. As discussed more in Section VI, adjusting for ability to pay requires some policy decisions about the appropriate adjustment method.

The incomes at which the Nevada percentages are below the BR4 measurements vary with the number of children. For one child, it is the incomes below \$1,100 gross per month. For two children, it is incomes below \$ 2,250 gross per month. For three children, it is incomes below \$ 2,400 gross per month. For four and five children, the income thresholds are higher. Below these incomes, the BR4 percentage is up to 18.8 percent for one child, 27.4 percentage for two children, and 34.5 percentage for three children.

As a frame of reference, the 2016 federal poverty level for one person is \$990 per month. This is an after-tax income amount. Its approximate gross equivalent is \$1,100 per month. In other words, some of these incomes in which the Nevada percentages are low relative to data on the cost of raising children are poverty incomes. Another frame of reference is that the research that OCSE cites finds that order compliance significantly declines among orders set at 20 percent or more of the noncustodial parent's gross income when there is one child and 28 percent or more of the noncustodial parent's gross income when are two or more children.³⁷

ANOMALOUS RESULT DUE TO PRESUMPTIVE MAXIMUMS

Another observation from Exhibits 14 through 21 is the anomalous result due to the presumptive maximums. The dollar amounts of support abruptly increase when the next income range of the presumptive maximum is reached. This produces a staircase effect as the obligated parent's income increases. In the graphs examining support awards as a percentage of gross income, it produces anomalous dips and rises as income increases. Section V explores this issue further.

³⁷ Takayesu, M. (2012). "How Do Child Support Order Amounts Affect Payments and Compliance?" Santa Ana, CA: Research Unit of the Orange County Department of Child Support Services. Retrieved from http://www.css.ocgov.com/about/research_studies.

COMPARISONS USING CASE SCENARIOS

The remaining exhibits use case scenarios to illustrate the differences among the Nevada percentages and presumptive maximums, the USDA and BR4 amounts, and the guidelines of neighboring states. The case examples consider median incomes by five different levels of educational attainment of Nevada workers. The data are from the 2014 U.S. Census American Community Survey. Median earnings for five levels of educational attainment are:

- \$19,427 for females and \$25,794 for males with less than a high school degree;
- \$25,606 for females and \$31,723 for males with a high school degree or GED;
- \$30,204 for females and \$40,054 for males with some college or associate's degree;
- \$39,996 for females and \$51,111 for males with a bachelor's degree; and
- \$51,667 for females and \$66,334 for males with a graduate or professional degree.

Exhibits 22 and 23 consider support awards for one child. Exhibit 22 assumes the custodial parent has *no* income and the noncustodial parent's income is equivalent to median male earnings. Exhibit 23 is the same as Exhibit 22 except it assumes that the custodial parent's income is equivalent to median female earnings. Exhibits 24 and 25 provide similar comparisons for two children. There are no additional considerations in the child support calculation such as shared parenting time or child care expenses.

FINDINGS FROM COMPARISONS OF CASE SCENARIOS

The major finding from Exhibits 22, 23, 24, and 25 is that the Nevada percentages and 2016 presumptive maximums are generally in line with support awards of neighboring states. Another observation is that for all neighboring states except California, the support award is less when the custodial parent has income. This is because all the neighboring states rely on the income shares model. California relies on a quasi-income shares model that only functions as an income shares model at higher incomes or if the parenting time adjustment is applied. In contrast, the Nevada amounts are the same regardless of whether the custodial parent has income.

SECTION V: TREATMENT OF HIGH INCOMES AND PRESUMPTIVE MAXIMUMS

The Nevada guidelines (NRS 125B.070) provides a cap on the amount of child support that can be awarded through presumptive maximums. Originally set at \$500 per child, the guidelines were increased in 2001 for increases in the price level with much debate.³⁸ They currently consist of a sliding scale of presumptive maximums covering seven income ranges, which are updated annually for changes in price levels by the Office of Court Administrator. Exhibit 26 shows the presumptive maximums effective July 1, 2016.

The presumptive maximums contained in the Nevada child support guidelines have been debated for almost three decades. As described in Section II, the legislative intent of them is unclear. Some believe that it was to limit the amount of child support so it would not produce “hidden alimony.” Still others believe the presumptive maximums conflict with the premise that the child should share in the standard of living afforded by the obligated parent. In addition, some have expressed concerns about how the updated presumptive maximums are calculated.³⁹

Exhibit 26: Presumptive Maximums (effective July 1, 2016 – June 30, 2017)

Gross Income Is at Least...	But Less Than	Presumptive Maximum Amount
\$0	\$4,235	\$681 per child
\$4,235	\$6,351	\$749 per child
\$6,351	\$8,467	\$820 per child
\$8,467	\$10,585	\$886 per child
\$10,585	\$12,701	\$955 per child
\$12,701	\$14,816	\$1,022 per child
\$14,816	No limit	\$1,092 per child

ECONOMIC ISSUES WITH PRESUMPTIVE MAXIMUMS

There are several economic issues with the presumptive maximums. First, they do not relate to measurements of child-rearing expenditures. With that said, it is unclear whether that was the legislative intent. Nonetheless, as a simple comparison, the USDA 2013 measurements for two-parent families and single-parent families are converted to monthly amounts and shown in Exhibit 27. The USDA expenditures consider three income ranges for two-parent families and two income ranges for single-parent families. Only two income ranges are considered for the USDA amounts in single-parent families because the USDA found that 85 percent of single-parent families are in the lowest income range.⁴⁰

There are a several observations made from Exhibit 27. A per-child amount is not appropriate for every family size. For example, for a husband-wife family in the lowest income range, they spend \$1,109 per month for one child, an average of \$887 per child per month for two children, and an average of \$692

³⁸ Nevada Assembly Bill 37 of the 2001 Nevada Legislature. Retrieved from http://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/2001/AB037_2001.pdf.

³⁹ Willick, Marshall. (June 2007). “What Almost Happened in Nevada, and Why We Still Have to Fix It.” *Nevada Lawyer*. Retrieved from: <http://willicklawgroup.com/wp-content/uploads/2012/04/What-Almost-Happened.pdf>.

⁴⁰ Lino, Mark. (2014). *Expenditures on Children by Families: 2013 Annual Report*. Page 14.

per month per child for three or more children. The decreasing *per child per amount* essentially represents an economies of scale in expenditures items (*e.g.*, housing) when there are more children. In general, economic evidence suggests that expenditures for two children are about 140 to 170 percent of expenditures for one child and expenditures for three children are about 160 percent to 200 percent of expenditures for one child.⁴¹

The amounts presented in Exhibit 27 can also be used to gauge the appropriateness of the existing presumptive maximums. There is some discretion as to whether expenditures in husband-wife families or single-parent families are the more appropriate gauge. One option would be to presume that the nonresidential parent is only responsible for half of the average expenditures up to the average income of each income range (*e.g.*, \$1,255, which is half of \$2,510 for one child in a husband-wife family with before-tax income more than \$8,808 per month). This would yield amounts about equal to or more than the 2016 presumptive maximums.⁴²

Exhibit 27: USDA Average Child-Rearing Expenditures (2013, Monthly Amounts)				
	Average Income	Per Child (1 Child)	Per Child (2 Children)	Per Child (3 or more Children)
Husband-Wife Families (urban West)				
• Before-tax income less than \$5,088	\$ 3,254	\$1,109	\$ 887	\$ 692
• Before-tax income: \$5,088 – \$8,808	\$ 6,845	\$1,512	\$1,210	\$ 944
• Before-tax income: more than \$8,808	\$15,416	\$2,510	\$2,008	\$1,566
Single-Parent Family (urban West)				
• Before-tax income less than \$5,128	\$2,374	\$ 980	\$ 760	\$ 585
• Before-tax income: More than \$5,128	\$9,305	\$2,084	\$1,615	\$1,244

There are two economics concerns with setting the presumptive maximum as a dollar amount. It imposes an economic disincentive to increase income. For example, strict adherence to the presumptive maximums for an obligated parent whose gross income increased \$1 per month from \$12,700 to \$12,701 per month would result in a \$67 increase from the presumptive maximum of \$955 per month to the presumptive maximum of \$1,022 per month. Another economic issue is it ignores the marginal propensity to consume (MPC). This is an issue for those income ranges in which a dollar increase in income does not increase the support award. Investopedia defines the MPC as “the proportion of an aggregate raise in pay that a consumer spends on the consumption of goods and

⁴¹ Judicial Council of California. (2010). *Review of Statewide Uniform Child Support Guideline*. San Francisco, California. Page 13. Retrieved from <http://www.courts.ca.gov/documents/review-sucsg-0611.pdf>.

⁴² For example, if it is assumed that the nonresidential parent is financially responsible for only half of the average expenditures on children in husband-wife families at the average income of each income range, the presumptive caps for one child would be \$555 for gross incomes below \$3,254 per month, \$756 for gross incomes between \$3,254 and \$6,845, and \$1,260 for gross incomes between \$6,845 and \$15,416. (These amounts are in 2013 dollars. They could be updated to 2016 levels using changes in price levels. Another option is use of the USDA most current study, which is scheduled to be released Summer 2016.) The USDA amount for the lowest income, \$555 per month, is almost equal to the Nevada guidelines percentage applied to the average income of that range (*i.e.*, \$3,254 multiplied by 18 percent equals \$589). The middle income amount under the USDA (\$756) is close to the 2016 Nevada presumptive maximum, \$749 per month for incomes of \$4,235 to \$6,351 per month. Finally, the USDA amount for the highest income (\$1,260 per month) is significantly more than the highest 2016 Nevada presumptive maximum (\$1,092 per month).

services, as opposed to saving it.”⁴³ In other words, for each dollar gained in income, there is some increase in expenditures. Economic theory and evidence also indicates that MPC changes with income: it becomes smaller at higher incomes because higher income families save more.

The MPC essentially recognizes that an individual or household will spend some of each additional dollar of after-tax income. This is true of individuals and households with children, with the sub-axiom being that a proportion of the household’s total of increased expenditures is devoted to child-rearing expenditures. For example, Gronau (1991) uses the MPC to find that families, regardless of race, tend to allocate three-quarters of their consumption to parents and one-quarter to children.⁴⁴ Another research study (Del Boca and Flinn, 1995) finds when families receive more child support, they spend it on children.⁴⁵ In other words, this study does not corroborate that child support can be hidden alimony after a certain level. Still another study that is useful to understanding that MPC is a percentage amount rather than fixed dollar amount that also relates to child-rearing expenditures is by Betson (2000).⁴⁶

These economic issues are also illustrated in Exhibits 14–21. They show the change in the support award regardless whether it is expressed as a dollar amount or percentage of gross income does not yield a linear or quasi-linear direction as based on an economic understanding of the MPC and household expenditures; rather, it staircases or dips and rises.

RELEVANT STATISTICS AND FACTS

- The rate at which expenditure on child rearing decreases as a percentage of income is reliable for the USDA and BR4 measurements up to gross incomes of about \$16,000 and \$26,000 per month, respectively. Above these amounts, it is not known whether, say, a family with income of \$30,000 per month devotes the same percentage of income to child-rearing expenditures as a family with income of \$100,000 per month.
- Few CSEP orders are set at the presumptive maximums. Of the over 8,000 CSEP orders analyzed:
 - only 212 one-child orders were set at the presumptive maximum and only 28 two-child orders were set at the presumptive maximum, and
 - only 130 one-child orders and 53 two-child orders were set above the presumptive maximums.

As shown in Exhibit 12, 30 percent of Nevada husband-wife families had incomes of \$100,000 or more in 2014.

⁴³ Investopedia.com. Retrieved from <http://www.investopedia.com/terms/m/marginalpropensitytoconsume.asp>.

⁴⁴ Gronau, Reuben. (July 1991). “The Intrafamily Allocation of Goods—How to Separate the Adult from the Child.” *Journal of Labor Economics*. vol. 9, no. 3. Retrieved from <http://www.journals.uchicago.edu/doi/abs/10.1086/298266>.

⁴⁵ Del Boca, Daniela and Flinn, Christopher. (Dec. 1995). “Rationalizing Child Support Decisions.” *The American Economic Review*. vol. 85, no. 5. Pp. 1241-1261. Available at http://www.jstor.org/stable/2950986?origin=JSTOR-pdf&seq=1#page_scan_tab_contents.

⁴⁶ Betson, David. (2000). *Savings and Consumption in Families with Children: Has the Relationship Changed over Time?* University of Notre Dame, Unpublished manuscript. <http://www3.nd.edu/~dbetson/research/documents/IncomeSpending.pdf>.

TREATMENT OF HIGH INCOME IN OTHER STATES

The provision of sliding-scale, presumptive maximums set as a dollar amount is unique to Nevada. No other state sets a dollar presumptive maximum. Instead, the common practice is to provide that the amount at the highest income considered for the guidelines percentage or schedule is a floor. The Arizona and Idaho provisions, which are shown in Exhibit 28, illustrates this approach. Both states also provide factors to consider for determining whether to order a higher amount for more income (*e.g.*, the standard of living the child realized when the parents lived together and combined financial resources).

Most income shares guidelines schedules include obligations for combined gross and net incomes up to \$10,000 to \$30,000 per month. Economic evidence on the cost of raising children is limited at high incomes, so most states stop their child support guidelines schedule at the highest income for which the measurements are reliable. Percentage-of-obligor income guidelines typically set the income for applying their percentages presumptively somewhat lower. This may be because income shares states tend to update their guidelines for more current economic evidence on child-rearing expenditures than states relying on the percentage-of-obligor income guidelines.

There are 12 states that provide a presumptive formula to an infinitive amount of income. The percentages in these states range from 6 to 25 percent of gross or net income for one child, and from 7 to 33 percent of gross to net income for two children. The percentages tend to be higher among those states relying on the Melson formula (*i.e.*, Delaware, Hawaii, and Montana). For example, Delaware provides 19 percent for one child and 27 percent for two children. The percentages also tend to be lower in those states that essentially factor in the diminishing rate of expenditures at higher incomes; that is, as income rises, a smaller percentage of income is spent. For those states, the percentages range from 6 to about 10 percent for one child and 7 to 15 percent for two children at very high incomes.

As discussed in Section II, Nevada essentially relies on the same percentages as Wisconsin’s original percentage; however, over a decade ago, Wisconsin added a sliding scale percentages for high incomes that functions like a tax schedule. These percentages are also shown in Exhibit 28 (which include the provisions of bordering states.) For its highest income bracket, Wisconsin assesses 10 percent of gross income as the support award for one child and 15 percent of gross income as the support award for two children. These changes result in the the Wisconsin percentages being closer to measurements of child-rearing expenditures at high incomes.

Exhibit 28: Treatment of High Income in Guidelines of Selected States

State	Guidelines Model	Summary	Provision
Ariz.	Income Shares	Highest amount in schedule is a floor, schedule goes to \$20,000 per month	If the combined adjusted gross income of the parties is greater than \$20,000 per month, the amount set forth for combined adjusted gross income of \$20,000 shall be the presumptive Basic Child Support Obligation. The party seeking a sum greater than this presumptive amount shall bear the burden of proof to establish that a higher amount is in the best interests of the children, taking into account such factors as the standard of living of the children would have enjoyed if the parents and children were living together, the needs of the children in excess of the

			presumptive amount, consideration of any significant disparity in the respective percentages of gross income for each party and any other factors which, on a case by case basis, demonstrate that the increased amount is appropriate.																		
Calif.	Quasi-Income Shares	Formula applies to an infinitive amount of income	<p>The statewide uniform guideline for determining child support orders is: $CS = K[HN - (H\%)(TN)]$ where <i>CS</i> means the "child support" amount determined by the formula to be payable for one child. <i>CS</i> is multiplied by an incremental variable for every additional child. The factors are shown below. <i>K</i> stands for the amount of both parents' net income allocated to child support as calculated using the steps in this paragraph.</p> <table border="1"> <thead> <tr> <th>Total net disposable income per month</th> <th>K-fraction</th> </tr> </thead> <tbody> <tr> <td>\$ 0-\$800</td> <td>0.20 + $TN/16,000$</td> </tr> <tr> <td>\$801-\$6,666</td> <td>0.25</td> </tr> <tr> <td>\$6,667-\$10,000</td> <td>0.10 + $1,000/TN$</td> </tr> <tr> <td>Over \$10,000</td> <td>0.12 + $800/TN$</td> </tr> </tbody> </table>	Total net disposable income per month	K-fraction	\$ 0-\$800	0.20 + $TN/16,000$	\$801-\$6,666	0.25	\$6,667-\$10,000	0.10 + $1,000/TN$	Over \$10,000	0.12 + $800/TN$								
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\$6,667-\$10,000	0.10 + $1,000/TN$																				
Over \$10,000	0.12 + $800/TN$																				
Idaho	Income Shares	Provides that amount at \$300,000 per year is floor. Provides factors to consider if awarded more support.	Income over \$300,000. The Guideline Income schedules are not a limitation on the award of child support for combined Guidelines Income above \$300,000 per year. The support based on the first \$300,000 shall be calculated by these Guidelines in proportion to the relative incomes of the parents. In determining any additional support for Guidelines Income above \$300,000, the court shall consider all relevant factors, which may include: (1) The financial resources of the child. (2) The financial resources, needs, and obligations of both parents, consistent with Section 6(a)(3). (3) The standard of living the child enjoyed during the marriage. (4) The physical and emotional condition and needs of the child, including educational needs. (5) Any special impairment, limitation or disability of the child and any need for special education. (6) Any special ability or talent of the child and the cost of educating or training that ability or talent. (7) Any special living conditions that create additional costs for the child.																		
Oregon	Income Shares	Provides highest amount in schedule (\$30,000 gross per month) is a floor	<p>(3) If the combined adjusted gross income of the parents is more than \$30,000 per month, the basic child support obligation is the same for parents with combined adjusted income of \$30,000 per month.⁴</p> <p>⁴ Commentary: The guideline scale only computes support obligations for combined incomes up to \$30,000. If the result is unjust or inappropriate, it may be rebutted as provided in OAR 137-050-0760.</p>																		
Utah	Income Shares	Highest amount in schedule (\$100,000 gross per month) is floor	<p>78B-12-206. Income in excess of tables.</p> <p>If the combined adjusted gross income exceeds the highest level specified in the table, an appropriate and just child support amount shall be ordered on a case-by-case basis, but the amount ordered may not be less than the highest level specified in the table for the number of children due support.</p>																		
Wisc.	%-of-Obligor Income	Adopted a sliding percentage scale about a decade ago	<table border="1"> <thead> <tr> <th>First \$7,000 of income</th> <th>Portion of income between \$7,000 & \$12,000</th> <th>Portion of income above \$12,500</th> </tr> </thead> <tbody> <tr> <td>1 child: 17%</td> <td>14%</td> <td>10%</td> </tr> <tr> <td>2 children: 25%</td> <td>20%</td> <td>15%</td> </tr> <tr> <td>3 children: 29%</td> <td>23%</td> <td>17%</td> </tr> <tr> <td>4 children: 31%</td> <td>25%</td> <td>19%</td> </tr> <tr> <td>5 children: 34%</td> <td>27%</td> <td>20%</td> </tr> </tbody> </table>	First \$7,000 of income	Portion of income between \$7,000 & \$12,000	Portion of income above \$12,500	1 child: 17%	14%	10%	2 children: 25%	20%	15%	3 children: 29%	23%	17%	4 children: 31%	25%	19%	5 children: 34%	27%	20%
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4 children: 31%	25%	19%																			
5 children: 34%	27%	20%																			

DISCUSSION AND RECOMMENDATION

There are many policy decisions to factor in when deciding if the Nevada presumptive maximums are appropriate. NRS 125B.080 states:

5. It is presumed that the basic needs of a child are met by the formulas set forth in NRS 124B.070. This presumption may be rebutted by evidence proving that the needs of a particular child are not met by the applicable formula.

As the extreme end, this provision could be fulfilled by setting the presumptive maximums at the federal poverty level for an additional person or another subsistence amount shown in Exhibit 10. If Nevada were to do so, however, it would be the only state to cap child support at the basic needs of the child.

If the premise of the presumptive maximum is to alleviate the possibility of child support being spent on the custodial parent, the economic evidence does not support there is a maximum amount of child support in which, once reached, the custodial parent would not spend additional child support on the child. If this is an issue of concern, it can better be addressed by requiring child support accounting⁴⁷ in these cases in which it is a concern and a real possibility. Because this can be burdensome to track and may be requested by a party out of spite, if Nevada contemplates this option, it should carefully craft the circumstances in which child support accounting can be ordered. For example, a limitation that Utah imposes is that child support accounting can only be ordered if requested and the child support order is in full compliance.⁴⁸

Despite these policy issues concerning the intent of the presumptive maximums, a special provision for very high incomes is appropriate because the economic evidence on child-rearing expenditures is limited at very high incomes. Specifically, at very high incomes, it is unknown whether the same percentage of income is devoted to child-rearing expenditures for a family with \$30,000 gross income per month as a family with \$100,000 gross income per month. To better address that, Nevada should consider a provision similar to Idaho's, which is shown in Exhibit 28, that limits the presumption of the formula but does not cap it. In addition, Nevada should consider declining percentages for higher incomes, like Wisconsin does (and shown in Exhibit 28), to eliminate the staircase effect, which creates economic disincentives to increase income and is inconsistent with economic evidence on household expenditures and expenditures on child rearing.

⁴⁷ Utah Code Tit. 78B, Ch. 12, Pt. 2, Sec. 218. Retrieved from <http://le.utah.gov/xcode/Title78B/Chapter12/78B-12-S218.html>.

⁴⁸ See the economic research conducted by Gronau (1991), Del Boca and Flinn (1995), and Betson (2000), *supra* notes 44, 45, and 46.

SECTION VI: MINIMUM ORDERS AND LOW-INCOME ADJUSTMENTS

Minimum orders and low-income adjustments are complicated and require many policy decisions. The economic and empirical evidence is limited to what is needed for subsistence and payment patterns. Minimum orders and low-income adjustments are also intertwined with income imputation policies and practices for low-income parents who do not work full time, year round.⁴⁹ Specifically, many states and jurisdictions impute full-time minimum wage to obligated parents who do not work or work less than full-time or year-round because they were in and out of jail, quit or were fired, and do not transition well between jobs.⁵⁰ Many are not readily employable due to little or poor employment histories, low skills and educational attainment, prior felonies, alcohol or substance abuse issues, mental health issues, or other issues. The ideal policy strives to balance the subsistence needs of the obligated parent, providing for the child financially, and the possibility of adversely affecting the parent-child relationship that, in turn, can adversely affect child outcomes.⁵¹ Although legally, child support and parenting time are generally treated separately for never-married parents (which comprise a growing majority of low-income cases nationally), parents perceive them as intertwined, so nonpayment may also affect the parent-child relationship and parent-parent relationship.⁵² Exacerbating the problem are automated child support enforcement tools (*e.g.*, driver's license suspension) that are triggered when the child support order is not fully paid. Loss of a driver's license can be a barrier to employment and stable employment and limit the nonresidential parent's contact with the child.

To be clear, most policymakers, however, take the position that low-income adjustments should supplement, not supplant, other efforts to improve the employability and earnings potential of low-income obligated parents, such as referrals and court orders to employment programs and other programs aimed at overcoming employment barriers.

PROPOSED FEDERAL REGULATION CHANGES PERTAINING TO LOW INCOMES

The current federal administration proposes major changes to child support policy that they base on research finding a negative correlation between order amounts as a percentage of the noncustodial parent's gross income and payment of child support.⁵³ In 2014, the federal Office of Child Support

⁴⁹ In most states, whether lack of employment is voluntary or involuntary affects income imputation. Regardless, the policies and practices often presume a minimum income equivalent to full-time minimum wage regardless if income is below that.

⁵⁰ Venohr, Jane. (Feb. 2015). "Income Available for Child Support: Fact and Fiction in State Child Support Guidelines." National Child Support Enforcement Association CommInQue, Fairfax, Virginia.

⁵¹ Some of the attributes of having both parents involved with their children are identified in U.S. Department of Health and Human Services, Administration for Children and Families. (n.d.) *Pathways to Fatherhood*. Retrieved from <http://www.acf.hhs.gov/programs/ofa/programs/healthy-marriage/responsible-fatherhood> and Osborne, C. and Ankrum, N. (Apr. 2015.) "Understanding Today's Changing Families." *Family Court Review*, 53, no. 2. pp 221–232.

⁵² Pearson, J. (Apr. 2015). "Parenting Time and Co-Parenting for Unmarried Parents." *Family Court Review*, 53, no. 2. pp 217–220.

⁵³ For example, Takayesu, M. (2012). "How Do Child Support Order Amounts Affect Payments and Compliance?" Santa Ana, CA: Research Unit of the Orange County Department of Child Support Services. Retrieved from

Enforcement (OCSE) proposed rule changes that would essentially require state child support guidelines to include a self-support reserve and limit the use of imputed income.⁵⁴ The underlying research finds that payment rates sharply decline when the order exceeds 20 percent of the obligor's gross income for one child and 28 percent of the obligor's gross income for two or more children.⁵⁵

Exhibit 33 shows the proposed rule change pertaining to the treatment of low-income parents in state child support guidelines in strikeout form. OCSE received over 1,000 comments on the proposed rule changes and prepared finalized rules in consideration of these comments. Although OCSE cannot release its proposed revisions prior to the finalization of the rule, OCSE suggests that there are many. OCSE does not know whether the revised rules will be released prior to the end of the current (2016) administration, or, if not, whether the next administration will finalize them.

Exhibit 33: Redline/Strikeout of Proposed Changes to Federal Requirements of State Guidelines for Setting Child Support Awards Concerning Low-Income Noncustodial Parents

C.F.R. § 302.56

(a) ~~effective October 13, 1989,~~ Within one year after completion of the State's next quadrennial review of its guidelines, pursuant to §302.56(e), as a condition of approval of its State plan, the State must establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State that meet the requirements in this section.

(b) The State must have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts.

(c) The guidelines established under paragraph (a) of this section must at a minimum:

- (4) Take into consideration the noncustodial parent's subsistence needs and provide that any amount ordered for support be based upon available data related to the parent's actual earning, income, assets, or other evidence of ability to pay, such as testimony that income or assets are not consistent with a noncustodial parent's current standard of living; and
- (5) Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders.

There are three components to the proposed rule changes affecting low-income obligated parents:

- Consideration of the noncustodial parent's subsistence needs;
- Consideration of the low-income noncustodial parent's actual income; and
- Providing that incarceration is not treated as voluntary unemployment.

Subsistence Needs. OCSE advocates for setting child support orders that reflect an actual ability to pay to encourage compliance, increase accountability for making regular payments, and discourage uncollectible arrears. OCSE proposes that states accomplish this by taking into consideration the noncustodial parent's subsistence needs in their state guidelines. States will have discretion on how to

http://www.css.ocgov.com/about/research_studies, and Formoso, Carl. (2003). *Determining the Composition and Collectability of Child Support Arrearages: Volume 1*, Washington State Department of Social and Health Services, Olympia WA.

⁵⁴ U.S. Department of Health and Human Services. (Nov. 17, 2014). "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs." *Federal Register*, vol. 79, no. 221, p. 68580. Retrieved from <http://www.acf.hhs.gov/programs/css/resource/nprm-flexibility-efficiency-and-modernization-in-child-support-enforcement-programs>.

⁵⁵ The author disputes this finding. She has evidence from several states that the issue may be income imputation not the order amount. See Venohr, J. (Aug, 12 2015). "Evidence-Based Ideas for Using the Proposed Federal Rule Changes to Improve Your Child Support Program," Presentation to the National Child Support Enforcement Leadership Symposium Milwaukee, WI. Other studies also find that high percentage orders are indeed paid among nonresidential parents with middle and higher incomes.

define subsistence needs. In the commentary to the proposed changes, OCSE cites a dictionary definition of subsistence needs being the minimum needed, such as food and shelter, to support life. OCSE uses New Jersey as an example of a state guidelines that meets this requirement. New Jersey, like many states, provides a self-support reserve (SSR) based on the federal poverty guidelines for one person. (State usage of SSRs is discussed later in this section.)

Consideration of the Actual Incomes of Parents. Adjusting for ability to pay requires knowledge of actual income. To this end, OCSE aims for state guidelines resulting in support awards reflective of the actual incomes of parents and proactive modification to ensure child support orders continue to reflect the current circumstances of the parents. Further, citing evidence-based research that links noncompliance to default and income imputation, OCSE believes that default orders and income imputation should be limited. OCSE suggests that if states are unable to obtain income data from the noncustodial parent in the proceedings, they may have income data from the numerous electronic sources available to state child support agencies. OCSE also clarifies that the proposed rule still allows for income imputation where the noncustodial parent's lifestyle is inconsistent with the income available for child support. In other words, OCSE recognizes that some parents purposely lower their income to affect the amount of their child support award and income imputation is appropriate for these parents.

Treatment of Incarcerated Parents. The proposed rules claim that a dozen states or less have a policy of treating incarceration as voluntary unemployment and impute income accordingly. They also cite research that many incarcerated parents often leave prison with extraordinary levels of child support arrears and no means to pay them upon release. OCSE cites other research that "indicates that orders that are unrealistically high may undermine stable employment and family relationships, encourage participation in the underground economy, and increase recidivism."⁵⁶

TREATMENT OF LOW INCOMES UNDER THE NEVADA GUIDELINES

Unlike most states, the Nevada guidelines does not provide a presumptive formula or adjustment that takes into consideration the noncustodial parent's subsistence needs. The Nevada guidelines (NRS 125B.80) does provide for a deviation if the court finds a nonresidential parent is unable to pay the minimum amount.

4. Notwithstanding the formulas set forth in NRS 125B.070, the minimum amount of support that may be awarded by a court in any case is \$100 per month per child, unless the court makes a written finding that the obligor is unable to pay the minimum amount. Willful underemployment or unemployment is not a sufficient cause to deviate from the awarding of at least the minimum amount.

There is no mention of the special circumstance of incarcerated parents in the Nevada guidelines, although it was frequently mentioned as a reason for a guidelines deviation in the case file review data.

⁵⁶ *Supra* note 54, page 65556.

RELEVANT STATISTICS AND FACTS

There are many relevant statistics from the CSEP case file data of over 8,000 non-zero orders with effective dates sometime in FFY2015. The statistics concern orders set at the \$100 per child minimum compared to those that were set at lower levels and those set at higher levels. Income information—specifically, the income used to establish the order—is not available. Nonetheless, it is assumed that a finding of very low income (explicitly limited ability-to-pay) was made in the orders set at less than the \$100 per month per child minimum. It is also assumed that the incomes of orders set above the \$100 minimum per month per child were generally in the middle to higher range. The case circumstances in which the monthly \$100 minimum per child are entered are unclear. They could be default orders, minimum-wage earners, cases where the parents have shared custody, or another circumstance.

- Thirty-three percent of the CSEP orders were based on the \$100 minimum order per child. Among these minimum orders, 39 percent had no payments within a year, 5 percent had compliance rates of over 90 percent, and the remaining 56 percent paid something but not more than 90 percent. The payment patterns did not vary by the number of children.
- Seven percent of the CSEP case file data contained orders set less than \$100 per year per child. The percentage of paying cases,⁵⁷ the compliance rates, and the average number of months paid among these cases were generally better than those set at the \$100 minimum amount. However, the dollar amount paid was not significantly different between these orders set below and at the \$100 minimum amount. This implies, on average, setting lower orders does not affect the amount of dollars received as child support, but has indirect effects such as more regular payments and less need for enforcement actions.
 - Among orders set below the \$100 minimum amount, the percentage with no payments was 22 percent, 11 percent had compliance rates of over 90 percent, and the remaining 67 percent paid something but not more than the 90 percent.
 - The average payment rate (45.1 percent) among paying orders set below the \$100 minimum was higher than the average payment rate (37.8 percent) among paying orders set at \$100 per child per month.
 - The average number of months over a year with payments was also slightly more (6.0 months) among paying orders set below the \$100 minimum than paying orders set at the \$100 per child amount (*i.e.*, 5.1 months).
 - As a comparison, 90 percent of the orders set above the \$100 per child minimum had some payment within a year and among those that did pay, the percent paid averaged 64.2 percent and they paid an average of eight out of 12 months. These better payment patterns

⁵⁷ Other states (*e.g.*, California, Pennsylvania, and Tennessee) that frequently impute at full-time, minimum wage if actual income information is not available have found that payment patterns are better among orders set below what would be ordered at full-time, minimum wage than when the order is set at full-time, minimum wage. It is unclear whether the difference in payment patterns are caused by other factors, such as those parents who provide evidence that their income is less than full-time, minimum wage are more engaged in the child support process, while those in which income is imputed are more likely to be default cases. A similar concern exists between Nevada orders set below the \$100 per child minimum (because it requires a finding by the court) and those Nevada orders set at the \$100 per child minimum.

undoubtedly reflect that the nonresidential parents in this group had higher incomes and hence, better ability to pay.

There are also relevant statistics from other data sources.

- National research finds that about 23 percent of nonresidential parents have no or limited reported earnings.⁵⁸ (The comparable Nevada percentage is not readily available.)
- According to research across several states, most child support arrears are owed by nonresidential parents with no income or reported income under \$10,000 per year (which is about poverty income for one person) and will not be collected.⁵⁹
- There is \$116 billion in arrears owed nationally and \$686 million owed in Nevada alone.⁶⁰
- Several studies find that current support goes unpaid when arrears are substantial.⁶¹ The proportion of nonresidential parents that has ever been incarcerated, nationwide, has increased and stands at 28 percent.⁶²

TREATMENT OF LOW-INCOME PARENTS IN OTHER STATES

The most common low-income adjustment is a self-support reserve test. It is used by two of Nevada's neighboring states: Arizona and Oregon. The low-income adjustments in the other states bordering Nevada are unique to those states. California provides a percentage reduction for adjusted net incomes of \$1,500 per month or below. Utah provides another table (see Exhibit 34) for low-income obligors. Idaho provides a minimum order of \$50 per child per month to gross incomes less than \$500 per month.

SELF-SUPPORT RESERVES

There are 37 state guidelines that provide a self-support reserve (SSR). Most states base their self-support reserve on the federal poverty guidelines (FPL) for one person from the year in which that state last updated its guidelines. Only a few states (*e.g.*, Oregon and New York) index to the FPL, which is updated annually. In 2016, the FPL was \$990 per month for the first person and \$347 per month per additional person. Some states use more than the FPL (*e.g.*, Oregon uses 116.7 percent of the FPL to account for the FPL being an after-tax amount, while the Oregon guidelines is based on gross income). Many income shares states incorporate their SSR into their guidelines schedule and do not explicitly identify it in the guidelines narrative, so many guidelines users are unaware of it. Exhibit 35 illustrates a

⁵⁸ Sorensen, Elaine. (Feb. 7, 2014). *Employment and Family Structure Changes: Implications for Child Support*. Presentation to the National Child Support Enforcement Association, Washington, D.C.

⁵⁹ Sorensen, E., Sousa, L., and Schaner, S. (2007). *Assessing Child Support Arrears in Nine Large States and the Nation*. Prepared for Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Office of Human Services and Policy and Office of Child Support Enforcement. Washington, D.C.

⁶⁰ Federal Office of Child Support Enforcement (OCSE). (Apr. 2016). *Report to Congress: Preliminary 2015*, Washington, D.C. Retrieved from <http://www.acf.hhs.gov/programs/css/resource/fy-2015-preliminary-report>.

⁶¹ For example, see Heinrich, Carolyn, et al. (2011). *The Families Forward Program Final Evaluation Report*, University of Wisconsin Institute for Research on Poverty, Madison, WI. <http://www.irp.wisc.edu/research/childsup/pubtopics/arrears.htm> and Office of the Inspector General. (2002). *Child Support for Children on TANF*, February 2002. OIG-05-99-00392, Washington, D.C.: Department of Health and Human Services.

⁶² Smeeding, T.M., Garfinkel, I. and Mincy, R.B. (2011). "Young Disadvantaged Men: Fathers, Families, Poverty and Policy." *The Annals of the American Academy of Political and Social Science*. 635: 6-21.

self-support reserve calculation. There are several variations of it. For example, West Virginia only assigns a portion of the difference between the nonresidential parent’s gross income and the self-support reserve such that every dollar increase in income does not yield a dollar increase in the support award. This maintains an economic incentive to increase earnings, which is an issue for increased tax liability also.

Exhibit 34: Utah’s Low Income Table

78B-12-302. Low income table—Obligor parent only.

The table in this section shall be used to:

(1) establish a child support order entered for the first time on or after January 1, 2008;

(2) modify a child support order entered for the first time on or after January 1, 2008;

Monthly Combined Adj. Gross Income		Number of Children					
From	To	1	2	3	4	5	6
0 -	649	30	30	30	30	30	30
650 -	675	30	30	30	30	31	31
676 -	700	58	60	60	61	61	62
701 -	725	88	88	90	91	92	92
726 -	750	117	118	119	120	122	123
751 -	775		148	149	151	153	155
776 -	800		178	179	182	183	186
801 -	825		207	209	212	214	216
826 -	850		236	239	242	244	247
851 -	875		266	269	272	275	278
876 -	900			299	303	305	309
901 -	925			329	333	337	339
926 -	950				363	366	370
951 -	975				393	398	402
976 -	1,000					428	433
1,001 -	1,050						494

Exhibit 35: Illustration of a Self-Support Reserve Test

Line 1. Nonresidential parent’s monthly gross income (Federal minimum wage of \$7.25/hour @ 40-hour workweek)	\$1,257
Line 2. Preliminary order amount for two children (25% of line 1)	\$314
Low-income adjustment	
Line 3. Self-support reserve (The actual amount of the self-support reserve is a state policy decision. This example uses the 2016 federal poverty level for one person.)	\$990
Line 4. Income available for support (line 1 minus line 3)	\$267
Line 5. Child support order (the lesser of lines 2 and 4)	\$267

Exhibit 36 contains provisions from selected states that describe the SSR. In reviewing the Nebraska and Pennsylvania provisions, the reader should note that both states base their guidelines on net income rather than gross income. Nonetheless, the provisions could be adapted by Nevada by substituting “gross income” for “net income” hence applied to gross income rather than net income. Explicitly describing the SSR provision improves its transparency to guidelines users.

Exhibit 36: Examples of State Guidelines Provisions Providing a Self-Support Reserve

<p>Nebraska (net-income based guidelines)</p>	<p>https://supremecourt.nebraska.gov/supreme-court-rules/2007/%C2%A7-4-218-basic-subsistence-limitation</p> <p>§ 4-218. Basic subsistence limitation. A parent's support, child care, and health care obligation shall not reduce his or her net income below the minimum of \$990 net monthly for one person, or the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services under authority of 42 U.S.C. § 9902(2), except minimum support may be ordered as defined in § 4-209.</p>
<p>Oregon (gross-income based guidelines)</p>	<p>OREGON 137-050-0745 Self-Support Reserve</p> <p>(1) The support calculation must leave an obligated parent enough income to meet his or her own basic needs (2) To determine the amount of the parent's income available for support ("available income"), subtract the self-support reserve of \$1145 from the parent's adjusted income; (3) The parent's total obligation, including the parent's shares of the basic support obligation, child care costs, health insurance, and cash medical support, may not exceed the parent's available income, except as provided in OAR 137-050-0750(7). (4) The limitation on support described in this rule is reflected in the specific provisions of OAR 137-050-0710 (Calculating Support), OAR 137-050-0725 (Basic Support Obligation), OAR 137-050-0735 (Child Care Costs), and OAR 137-050-0750 (Medical Support). (5) The amount of the self-support reserve is based on the federal poverty guideline, multiplied by 1.167 to account for estimated taxes, and rounded to the nearest whole dollar. This rule will be reviewed and updated annually to reflect changes in the federal poverty guideline.</p>
<p>Penn. (net-income based guidelines)</p>	<p>http://www.pacode.com/secure/data/231/chapter1910/s1910.16-2.html</p> <p>(e) Net Income Affecting Application of the Support Guidelines. (1) Low Income Cases. (A) When the obligor's monthly net income and corresponding number of children fall into the shaded area of the schedule set forth in Rule 1910.16-3, the basic child support obligation shall first be calculated using the obligor's income only. For example, where the obligor has monthly net income of \$1,100, the presumptive amount of support for three children is \$156 per month. This amount is determined directly from the schedule in Rule 1910.16-3. Next, calculate the obligor's child support obligation as in any other case, using both parties' monthly net incomes. The lower of the two calculations shall be the obligor's basic child support obligation.</p> <p>Example: The parties have two children. The obligor has net monthly income of \$1,500, which falls into the shaded area of the schedule for two children. Using only the obligor's income, the amount of support for two children would be \$518. Next, calculate support using both parties' incomes. The obligee has net monthly income of \$2,500 so the combined net monthly income of the parties is \$4,000. The basic child support amount at that income level for two children is \$1,240. As the obligor's income is 38% of the combined net monthly income of the parties, the obligor's share of the basic support amount is \$471. As the amount of support the obligor would pay using the obligor's income alone is more than the amount calculated using both parties' incomes, the lower amount would be awarded. Thus, the obligor's basic child support obligation is \$471.</p> <p>(B) In computing a basic spousal support or alimony pendente lite obligation, the presumptive amount of support shall not reduce the obligor's net income below the Self-Support Reserve of \$931 per month. For example, if the obligor earns \$1,000 per month and the obligee earns \$300 per month, the formula in Part IV of Rule 1910.16-4 would result in a support obligation of \$280 per month. Since this amount leaves the obligor with only \$720 per month, it must be adjusted so that the obligor retains at least \$931 per month. The presumptive minimum amount of spousal support, therefore, is \$69 per month in this case.</p> <p>(C) When the obligor's monthly net income is \$931 or less, the court may award support only after consideration of the parties' actual financial resources and living expenses.</p>

MINIMUM ORDERS

Many state guidelines with a self-support reserve also provide a minimum order for incomes below the self-support reserve. The most typical minimum order amount used by states is \$50 per order. Some states set minimum orders lower or higher. One state that previously set its minimum order at \$10 per month raised it out of criticism that it was too low to justify the time and resources necessary to establish an order.

A few states increase the minimum order for more children, but not usually by the same amount (*e.g.*, Colorado has a minimum order of \$50 for one child, \$70 for two children, and \$90 for three children). Few states provide a per-child minimum order. Nevada's per-child minimum order makes it high for orders involving more children. Another state with very high minimum orders is South Dakota (*i.e.*, \$216 per month for one child, \$279 per month for two children, \$312 per month for three children, \$335 per month for four children, \$357 per month for five children, and \$379 per month for six children). Depending on the number of children, Nevada's minimum order is more than South Dakota's or vice versa.

There are a few states that provide a SSR but no minimum order (*e.g.*, Arizona and Pennsylvania); hence, the order amount for incomes below the SSR is at the court's discretion in these states. There are a few states that have no SSR and no minimum order (*e.g.*, Mississippi and Arkansas). In all, whether to provide a minimum order and what to set it at are policy decisions.

INCARCERATED PARENTS

About 25 states specifically mention the treatment of incarcerated parents in their child support guidelines. Only two of these states provide that incarceration is to be considered voluntary employment in their guidelines, although other states may have case law that has the same consequence. Instead, most states explicitly mentioning incarcerated parents provide that the incarcerated parent should not be ordered to pay support (*e.g.*, Pennsylvania) or that income should not be imputed to an incarcerated parent (*e.g.*, Colorado, Delaware, and Indiana). Oregon takes it a step further and provides that the order cannot be modified for at least 60 days after the obligor's release from incarceration to allow the parent some time to reintegrate into the community and find employment.

DISCUSSION AND RECOMMENDATION

Besides anticipation of federal rule changes, there are many other reasons that Nevada should adopt a SSR provision and a provision that limits income imputation to incarcerated parents. The latter may be straightforward because, as evident in the analysis of Nevada guidelines deviations, many are already deviating downward when the obligated parent is incarcerated. Nevada is one of a few states that has no SSR.

There is no amount that clearly emerges as the best policy option for Nevada's SSR. The analysis of CSEP case data indicates better payment patterns (*i.e.*, higher percent of cases paying, higher average

compliance rate, and higher average number of months with payments) among order amounts set below the \$100 per child minimum order amount but no difference in the dollar amount paid between those orders set below \$100 per child and those orders set at \$100 per child. Other limitations to these findings are that income information is not available in the case file data so it could not be considered in the analysis, and there may be other factors causing these differences. For example, the parents with the lower orders may have been more engaged in the child support process so they provided evidence of their income to the court, the court entered a lower order, and these parents continue to be engaged by paying their orders, while those parents with higher orders may have not been engaged and their orders were entered by default. More data and data analysis is needed to understand these patterns, and even then, the additional data may not be sufficient to inform a recommended SSR and revisions to the minimum order amounts.

One sensible option is basing the SSR on the federal poverty level for one person, which in 2016 is \$990 per month for the first person in a household and another \$349 for each additional person. Adopting a SSR would require some conforming changes to the Nevada percentages and presumptive minimums of \$100 per child per month. The magnitude of the conforming changes required is larger the higher the SSR is set. There is a wide range of options for the conforming changes. For example, Nevada could retain or lower its minimum order amounts and develop a sliding scale of minimum order amounts for incomes below the SSR that would be similar to the Utah low-income table. Exhibits 37 provide an example of this option. In the example, the SSR is set at \$990 per month (which is a policy option), and the order amounts are gradually phased to existing percentages by taking 60 percent of each additional dollar (which is a policy option) above \$1,200 per month (which is a policy decision) and adding the remainder to the minimum orders of \$100 for one child, \$150 for two children, \$175 for three children, \$190 for four children, and \$200 and five children (which are policy options). These alternative minimum orders better reflect the marginal increase in expenditures for additional children starting with a \$100 minimum order amount.⁶³ The example in Exhibit 37 also suggests court discretion for income below \$800 per month (which is a policy option). For the illustration, this amount was selected because it is below the 2016 benefit level for Supplemental Security Income (SSI), which is a means-tested disability benefit. Many states find a notable percentage of obligated parents receive SSI.

Regardless, Nevada should consider changing the minimum order amount for more than one child anyway because it results in high minimum orders for more children (*e.g.*, a minimum order of \$100 per child for five children produces a minimum order of \$500 per month). The research OCSE cites in its rationale for limiting order amounts is that orders of 20 percent or more of the obligor's gross income for one child and 28 percent or more of the obligor's gross income for two or more children go unpaid. Using these thresholds, an obligated parent with \$1,000 per month should not be ordered to pay more than \$280 per month for two or more children. In contrast, Nevada provides that the minimum order would be \$300 for three children, \$400 for four children, and so forth for an obligor with a gross income of \$1,000 per month.

⁶³ See Appendix A on expenditures increase for the number of children. There is some economies of scale. For example, the cost of raising two children is not twice the amount of the cost of raising one child.

Exhibit 37: Illustration of a Low-Income Table for Nevada with a Self-Support Reserve = \$990 (2016 federal poverty level) and Alternative Minimum Order Amounts								
Gross Monthly Income			1 child	2 children	3 children	4 children	5 or more children	
Below \$800			Court discretion					
\$	800	- \$	1,200	100	150	175	185	200
\$	1,201	- \$	1,250	130	180	205	220	230
\$	1,251	- \$	1,300	155	205	230	245	255
\$	1,301	- \$	1,350	180	230	255	270	280
\$	1,351	- \$	1,400	205	255	280	295	305
\$	1,401	- \$	1,450	230	280	305	320	330
\$	1,451	- \$	1,500	255	305	330	345	355
\$	1,501	- \$	1,550		330	355	370	380
\$	1,551	- \$	1,600	18% of income	355	380	395	405
\$	1,601	- \$	1,650		380	405	420	430
\$	1,651	- \$	1,700		405	430	445	455
\$	1,701	- \$	1,750		430	455	470	480
\$	1,751	- \$	1,800	25% of income		480	495	505
\$	1,801	- \$	1,850		505	520	530	
\$	1,851	- \$	1,900		530	545	555	
\$	1,901	- \$	1,950		555	570	580	
\$	1,951	- \$	2,000	29% of income		595	605	
\$	2,001	- \$	2,050		620	630		
\$	2,051	- \$	2,100		645	655		
\$	2,101	- \$	2,150			680		
\$	2,151	- \$	2,200	31% of income		705	730	
\$	2,201	- \$	2,250			755		
\$	2,251	- \$	2,300					
\$	2,301	- \$	2,350					
							33% of income + 2% for each additional child	

SECTION VII: TREATMENT OF SPECIAL FACTORS

This section discusses the following special factors that are often considered by state child support guidelines:

- Cost of child care expenses,
- Cost of the child's health insurance,
- Consideration of a parent's additional dependents, and
- Parenting time.

It also considers state-determined deviation criteria and interest and fees. The bulleted items are deviation factors under the Nevada child support guidelines.

CHILD CARE EXPENSES

Child care can be a significant expense to families. Whether a family incurs child care expense depends on the age of the children, whether both parents work outside the home, the work schedules of the parents and whether they coincide with when the child is not in school and in need of child care, and other factors. For these reasons, most state guidelines do not include child care expenses in their basic formula/schedule. Instead, the actual amount of work-related child care expense is considered typically on a case-by-case basis in the calculation of the support award. Under the Nevada child support guidelines, child care expenses are a guidelines deviation factor.

RELEVANT FACTS

There are several facts pertinent to the discussion about the treatment of child care expenses.

- The advocacy group, Child Care Aware of America, finds that Nevada is one of the least affordable states for child care. Based on its 2014 survey, Nevada, with a cost of \$8,118 per year, ranked sixth highest among states in the average annual cost of center-based child care for a four-year old.⁶⁴
- As discussed previously, the cost of child care was the fifth most common reason for a guidelines deviation among Nevada CSEP cases.
- The incidence of child care expenses in Nevada child support cases is unknown. Findings from other states that consider the actual cost of child care expenses in the guidelines calculation may inform what the likely Nevada incidence is. Arizona, California and New York provide guidelines formulas for child care expense. (The findings from those states guidelines reviews was summarized in

⁶⁴ Child Care Aware of America. (2015). *Parents and the High Cost of Child Care*. [online]. Available from <http://usa.childcareaware.org/wp-content/uploads/2016/05/Parents-and-the-High-Cost-of-Child-Care-2015-FINAL.pdf>.

Section III and repeated here.) Based on Arizona’s most recent analysis of case file data, 29 percent of Arizona orders considered the cost of child care expenses. Based on California’s most recent analysis of case file data, 12 percent of the orders considered child care expenses. Based on New York’s most recent analysis of case file data, 17 percent of orders established by the family court (which hears mostly IV-D cases) considered actual child care expenses and 27 percent of orders established by the supreme court (which hears mostly non-IV-D cases) considered actual child care expenses.

- Nevada’s low-income child care subsidy, through the federal Child Care Development Fund, served about 4,100 children in about 2,400 families.⁶⁵ Other sources report that there is a waitlist to receive the Nevada child care subsidy and the subsidy is below what is recommended by federal standards.⁶⁶

APPROACHES IN OTHER STATES

Most states consider the actual cost of work-related child care expense in the child support calculation. Exhibit 38 shows excerpts from guidelines provisions of bordering states, New York, and Washington. (New York is shown because its guidelines model and percentage formula are almost identical to those of Nevada.) Some common themes emerge.

- Most state guidelines consider work-related child care expenses. This may include child care expenses incurred while the parent is attending school or training to increase his or her employability or income.
- Most state guidelines prorate the expense between the parents. If the custodial parent incurs a work-related child care expense, the obligated parent is responsible for his or her prorated share of that expense. A few states (*e.g.*, Utah) divide the expense equally.

Exhibit 38: Treatment of Child Care Expenses in Selected States	
Arizona	Childcare expenses that would be appropriate to the parents' financial abilities. Expenses for childcare shall be annualized in accordance with Section 2.F. A custodial parent paying for childcare may be eligible for a credit from federal tax liability for childcare costs for dependent children. The custodial parent is the parent who has physical custody of the children for the greater part of the year. In an equal physical custody situation, neither parent shall be entitled to the credit for purposes of calculating child support. Before adding childcare costs to the Basic Child Support Obligation, the court may adjust this cost in order to apportion the benefit that the dependent tax credit will have to the parent incurring the childcare costs.
California	4062. (a) The court shall order the following as additional child support: (1) Child care costs related to employment or to reasonably necessary education or training for employment skills. 4063. (a) When making an order pursuant to paragraph (2) of subdivision (a) of Section 4062, the court shall: (1) Advise each parent, in writing or on the record, of his or her rights and liabilities, including financial responsibilities. (2) Include in its order the time period for a parent to reimburse the other parent for the reimbursing parent's share of the reasonable additional child support costs subject to the requirements of this section.

⁶⁵ U.S. Department of Health and Human Services, Office of Child Care. (2015). *FY 2014 CCDF Data Tables (Preliminary)*. [online.] Available from <http://www.acf.hhs.gov/programs/occ/resource/fy-2014-preliminary-data-table-1>.

⁶⁶ National Women’s Law Center. (March 2016). *State Child Care Assistance Policies: Nevada*. [online]. Available from <https://nwlc.org/wp-content/uploads/2016/04/nevada-childcare-subsidy2015.pdf>.

Idaho	<i>Child Care Costs.</i> A basic child support calculation does not cover work-related child care expenses. The court may order a sharing of reasonable work-related child care expenses incurred by either party in proportion to their Guideline Income. If the court imputes income to a student parent, then the court may order up to a pro-rata sharing of the student’s reasonable child care expenses while attending school. If ordered, these payments shall be paid directly between the parties, unless agreed otherwise. The court may consider whether the federal child care tax credit for such minor is available as a benefit to a parent.
Oregon	<p>Child Care Costs</p> <p>(1) Adjust the support obligation for child care costs paid by either parent or the child’s caretaker if the child for whom support is being calculated is disabled or under the age of 13.1</p> <p>(2) Child care costs must be related to the parent’s or caretaker’s employment, job search, or training or education necessary to obtain a job. Only actual costs² paid by a parent or caretaker for child care that can be documented and determined may be used to compute an adjustment under these rules.</p> <p>(3) Child care costs are allowable only to the extent that they are reasonable and, except as provided in section (4), do not exceed the maximum amounts set out in Table 1.</p>
New York	4) Where the custodial parent is working, or receiving elementary or secondary education, or higher education or vocational training which the court determines will lead to employment, and incurs child care expenses as a result thereof, the court shall determine reasonable child care expenses and such child care expenses, where incurred, shall be prorated in the same proportion as each parent’s income is to the combined parental income. Each parent’s pro rata share of the child care expenses shall be separately stated and added to the sum of subparagraphs two and three of this paragraph.
Utah	<p>(1) The child support order shall require that each parent share equally the reasonable work-related child care expenses of the parents.</p> <p>(2) (a) If an actual expense for child care is incurred, a parent shall begin paying his share on a monthly basis immediately upon presentation of proof of the child care expense, but if the child care expense ceases to be incurred, that parent may suspend making monthly payment of that expense while it is not being incurred, without obtaining a modification of the child support order.</p> <p>(b) (i) In the absence of a court order to the contrary, a parent who incurs child care expense shall provide written verification of the cost and identity of a child care provider to the other parent upon initial engagement of a provider and thereafter on the request of the other parent.</p> <p>(ii) In the absence of a court order to the contrary, the parent shall notify the other parent of any change of child care provider or the monthly expense of child care within 30 calendar days of the date of the change.</p> <p>(3) In addition to any other sanctions provided by the court, a parent incurring child care expenses may be denied the right to receive credit for the expenses or to recover the other parent’s share of the expenses if the parent incurring the expenses fails to comply with Subsection (2)(b).</p>
Washington	(3) Day care and special child rearing expenses, such as tuition and long-distance transportation costs to and from the parents for visitation purposes, are not included in the economic table. These expenses shall be shared by the parents in the same proportion as the basic child support obligation. If an obligor pays court or administratively ordered day care or special child rearing expenses that are not actually incurred, the obligee must reimburse the obligor for the overpayment if the overpayment amounts to at least twenty percent of the obligor’s annual day care or special child rearing expenses. The obligor may institute an action in the superior court or file an application for an adjudicative hearing with the department of social and health services for reimbursement of day care and special child rearing expense overpayments that amount to twenty percent or more of the obligor’s annual day care and special child rearing expenses. Any ordered overpayment reimbursement shall be applied first as an offset to child support arrearages of the obligor. If the obligor does not have child support arrearages, the reimbursement may be in the form of a direct reimbursement by the obligee or a credit against the obligor’s future support payments. If the reimbursement is in the form of a credit against the obligor’s future child support payments, the credit shall be spread equally over a twelve-month period. Absent agreement of the obligee, nothing in this section entitles an obligor to pay more than his or her proportionate share of day care or other special child rearing expenses in advance and then deduct the overpayment from future support transfer payments.

OTHER DIFFERENCES IN STATES’ APPROACHES TO CHILD CARE EXPENSES

- Although most states (e.g., Arizona) treat child care expenses as an add-on to base support, there are a few states (e.g. Idaho) that provide a separate order. The advantage of addressing child care expenses within the child support award is that child support enforcement tools are applicable. In

contrast, if child care expenses are ordered separately, then the court must reduce past-due child care expenses to a judgment before child support enforcement tools can be applied. The perceived advantage to separating child care expense from the child support award is that the child care order can be modified without reviewing the entire child support award.

- *Many states, specifically income shares states provide that the adjustment can be applied to either parent.* This is an issue particularly if both parents have physical custody or significant timesharing.
- *Some states provide a cap on the amount of child care expenses that can be considered.* For example, Oregon uses information from a state-specific survey to ensure that child care costs are reasonable. (Oregon’s cap is provided in Table 1 of its guidelines, but is not included in the excerpt in Exhibit 38.)
- *Some states provide an adjustment for the federal child care tax credit.* For example, Arizona does, but because Arizona is also aware that very low-income families are ineligible for a tax credit because of their limited tax liability, Arizona directs guidelines users not to consider the child care tax credit for families with incomes below certain thresholds that vary with family size. Oregon recently eliminated a similar provision to simplify its guidelines because Oregon believes that only a small proportion of families actually receive the tax credit. (Arizona’s and Oregon’s provisions relating to the tax credit are not shown.)
- *Some states specifically address child care subsidies.* The states that do are mixed in their treatments. Some consider the cost of child care before the subsidy, while others consider it after the subsidy.
- *Some states that consider child care expenses also cap the total amount of child support.* The addition of the obligated parent’s share of actual child care expenses to the base support award can sum to a much larger support award. To keep orders at a level that can be reasonably paid, a few states provide a cap on the support award or provide a deviation criterion if the summed order amount exceeds a state-determined percentage threshold of the obligated parent’s gross income or another provision to limit the amount of the final award. For example, Utah essentially provides that if the summed order amount exceeds 50 percent of the obligated parent’s adjusted gross income, the actual child care expenses should not be added into the calculation of the final support award. Oregon has a similar cap. Most states with caps or thresholds set it at about 40 to 50 percent of gross or net income. This aligns closely with the maximum percentage of disposable income that can be withheld from a noncustodial parent’s paycheck for child support. Based on the Consumer Credit Protection Act, 50 to 60 percent of disposable income can be withheld with the exact percentage varies depending on whether the parent is supporting another spouse or child or is in arrears.⁶⁷

⁶⁷ U.S. Department of Labor. (July 2009). *Fact Sheet #30: The Federal Wage Garnishment Law, Consumer Protection Act’s Title 3 (CCPA)*. Retrieved from <https://www.dol.gov/whd/regs/compliance/whdfs30.pdf>.

- *Repayment if childcare does not occur.* Washington’s provision is unique because it requires that the custodial parent repay the obligor if the order factors in childcare expenses but it does not occur.

COST OF THE CHILD’S HEALTH CARE EXPENSES

Most states treat the cost of the child’s health care expenses identical to how they treat the cost of work-related child care. This is also true of Nevada: the Nevada guidelines provide the cost of child care is a guidelines deviation factor, and the cost of the health insurance is a guidelines deviation factor.

Nonetheless, there are more issues and considerations surrounding the cost of the child’s health care than the cost of the child care. Federal regulation requires that state guidelines address, “How the parents will provide for the child(ren)’s health care needs through health insurance coverage and/or thorough cash medical support”⁶⁸ Nevada fulfills this federal requirement through NRS 125B.85, which requires all child support orders to specify that one or both parents provide medical support for the child and to specify the details of that requirement. Nevada’s provision for medical support essentially includes enrolling the child in a parent’ existing health care insurance plan or another plan if the cost is reasonable, the cost of adding a dependent child to that plan, and any copayment or deductible associated with the cost of the child’s health care. In other words, the cost of the child’s health care expense is not only the cost of child’s health insurance but may include out-of-pocket expenses.

Federal medical support provisions were established prior to the Affordable Care Act (ACA) of 2010. The federal Office of Child Support Enforcement (OCSE) and others recognize incongruences between medical child support and the ACA. One difference is that the medical child support rules require states to define whether the cost of child’s health care coverage is reasonable to a parent, while the ACA considers affordability of health care for an entire household based on household income and cost of plans offered through the health care exchange. Although many advocate for alignment, it would require statutory changes at the federal level.⁶⁹

Another issue is medical child support prioritizes private health care coverage,⁷⁰ while the ACA and the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA) expanded and strengthened Medicaid and CHIP for children. Consequently, most state guidelines do not recognize Medicaid or CHIP coverage as health insurance, while Medicaid/CHIP has recently become a major source of healthcare coverage for children nationally. The emerging promising practice is to recognize Medicaid and CHIP as health insurance for purposes of medical child support.

⁶⁸ Title 45, Public Welfare, C.F.R § 302.56(c)(3). Retrieved from <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=d829d9fb6969a2402303f45c14097e61&r=PART&n=45y2.1.2.1.3#45:2.1.2.1.3.0.1.28>.

⁶⁹ See session at the Western Interstate Child Support Enforcement Association. (Sept. 2014). Medical Support and the Affordable Care Act at the Western Interstate Child Support Enforcement Association meeting at Mission Bay, California.

⁷⁰ U.S. Department of Health and Human Services Administration for Children and Families (ACF). (2008). “Child Support Enforcement Program; Medical Support: Final Regulation.” *Federal Register*, Vol. 73, No. 140 (July 21, 2008, pp. 42416–42442). Retrieved from <http://www.gpo.gov/fdsys/pkg/FR-2008-07-21/html/E8-15771.htm>.

RELEVANT FACTS

There are several facts pertinent to the discussion about the treatment of the child's health care expenses.

- As discussed previously, the cost of the child's health insurance was the fourth most common reason for a guidelines deviation among Nevada CSEP cases.
- In FY2015, 55 percent of Nevada's IV-D children were also eligible for Medicaid.⁷¹ In contrast, 41 percent of all IV-D children nationally were also eligible for Medicaid. Other data suggests that there were 265,496 Nevada children enrolled in Medicaid or CHIP in 2015 at any time, and like most states, Medicaid/CHIP enrollment has increased substantially since ACA.⁷² There are typically no premiums, copays, co-insurance, or deductibles for Medicaid enrollees. This means a limited proportion of Nevada children are unlikely to be non-Medicaid and hence, incur medical expenses on their behalf.

APPROACHES IN OTHER STATES

Prorating the cost of the child's health insurance between the parents is the most common approach among states. Like Nevada, most states separate the child's cost of the insurance premium by considering the difference between individual and family coverage or the cost of adding a dependent child. Several states also provide that the child's share also can be determining by dividing the insurance premium by the total number of individuals covered by the plan if other cost information is not readily available.

Most states provide that uninsured medical expenses should also be prorated between the parents. Many states, however, also include an amount in the core guidelines percentage or schedule to cover ordinary, uninsured medical expenses (*e.g.*, Arizona and Oregon include \$250 per child per year because it approximates average out-of-pocket medical expenses). If the uninsured medical expenses are recurring (*e.g.*, uninsured asthma treatments) and exceed the amount included in the core percentage or schedule, they are included in the calculation of the support award in many states. If the uninsured medical expenses are not recurring, many states also provide for them to clarify how parents will share the child's unexpected medical expenses if they were to occur (*e.g.*, use of non-network ambulatory care provider). In addition, several states (*e.g.*, Michigan) provide that a parent incurring a medical expense for the child must provide the receipt to the other parent within so many months to receive reimbursement. If the parent does not pay, the extraordinary medical expense can be reduced to a judgment

⁷¹ *Supra* note 2, OCSE (2015), calculated from Tables P-93 and P-94.

⁷² Artiga, Samantha, et al. (2015). *Recent Trends in Medicaid and CHIP Enrollment as of January 2015: Early Findings from the CMS Performance Indicator Project*. Kaiser Family Foundation. Retrieved from <http://kff.org/report-section/recent-trends-in-medicare-and-chip-enrollment-as-of-january-2015-issue-brief/>.

Exhibit 39 shows that some of Nevada’s neighboring states use a different approach. Utah splits the costs of the child’s health insurance equally. California deducts the cost of the insurance premium from the parent’s income. About a dozen states subtract the cost of the child’s health insurance from the income of the parent providing it.

Exhibit 39: Treatment of the Cost of the Child’s Healthcare Insurance in Selected States	
Arizona	To determine the Total Child Support Obligation [which is prorated between the parties], the court: Shall add to the Basic Child Support Obligation the cost of the children's medical dental or vision insurance coverage, if any (this provision does not imply any obligation of either parent to provide dental or vision insurance). In determining the amount to be added, only the amount of the insurance cost attributable to the children subject of the child support order shall be included. If coverage is applicable to other persons, the total cost shall be prorated by the number of persons covered. The court may decline to credit a parent for medical, dental or vision insurance coverage obtained for the children if the coverage is not valid in the geographic region where the children reside.
California	(d) Deductions [from income] for health insurance or health plan premiums for the parent and for any children the parent has an obligation to support and deductions for state disability insurance premiums.
Idaho	(d) Health insurance premiums and health care expenses not covered by insurance. (1) For each child support order, consideration should be given to provision of adequate health insurance coverage for the child. Such health insurance should normally be provided by the parent that can obtain suitable coverage through an employer at the lower cost. The actual cost paid by either parent for health insurance premiums or for health care expenses for the children not covered or paid in full by insurance, including, but not limited to, orthodontic, optical, dental, psychological and prescription medication expenses, shall be prorated between the parents in proportion to their Guidelines Income. These payments shall be in addition to basic child support and will be paid directly between the parents; however, the prorata share of the monthly insurance premium may instead be either a credit against or in addition to basic child support. (2) Any claimed health care expense for the children, whether or not covered by insurance, which would result in an actual out-of-pocket expense to the other parent of over \$500 for the course of treatment, must be approved in advance, in writing, by both parents or by prior court order. Relief may be granted by the Court for failure to comply under extraordinary circumstances, and the Court may in its discretion apportion the incurred expense in some percentage other than that in the existing support order, and in so doing, may consider whether consent was unreasonably requested or withheld.
Oregon	(1) The basic support obligation (OAR 137-050-0725) includes ordinary unreimbursed medical costs of \$250 per child per year. These costs represent everyday expenses such as bandages, non-prescription medication, and co-pays for doctor’s well visits. The basic support obligation does not account for health care coverage costs or for extraordinary medical expenses. (2) – (12) define cash medical support and reasonable cost (13) A medical support clause may order an obligor to provide appropriate private health care coverage whenever it is available to the obligor, and to pay cash medical support whenever the obligor does not provide appropriate private health care coverage. (14) Determine each parent’s share of the cost of health care coverage to be ordered under this rule by multiplying the total cost by each parent’s percentage share of the parents’ combined reasonable in cost limitation, as determined in section 5 of this rule. (a) If only one parent has income above the highest Oregon minimum wage, that parent is responsible for all health care coverage costs. No share of the cost is apportioned to a parent with income at or below the highest Oregon minimum wage as provided in section 12(c)(C) of this rule.
Utah	78B-12-212. Medical expenses. The order shall require each parent to share equally the out-of-pocket costs of the premium actually paid by a parent for the children's portion of insurance unless the court finds good cause to order otherwise. (4) The parent who provides the insurance coverage may receive credit against the base child support award or recover the other parent's share of the children's portion of the premium. In cases in which the parent does not have insurance but another member of the parent's household provides insurance coverage for the children, the parent may receive credit against the base child support award or recover the other parent's share of the children's portion of the premium. (5) The children's portion of the premium is a per capita share of the premium actually paid. The premium expense for the children shall be calculated by dividing the premium amount by the number of persons covered under the policy and multiplying the result by the number of children in the instant case.

ADDITIONAL DEPENDENTS/LEGAL RESPONSIBILITY FOR OTHERS

As identified in Section III, the most frequently cited reason for a guidelines deviation based on the analysis of case file data is “the legal responsibility of the parents for the support of others.” The more common terminology for a party’s other children from another relationship is “additional dependents.”

RELEVANT FACTS

There are no available data on the incidence of additional dependents in Nevada child support orders other than 15 percent of the Nevada cases reviewed for a guidelines deviation included a deviation for other children, and 42 percent of the deviations were due to other children. There are likely to be more parents with additional children, however, besides those with guidelines deviations. Many parents with non-deviated orders may also have additional dependents.

- Based on evidence from other states that have the automation capacity to detect additional dependents, the proportion of parents with other children is likely to be over 30 percent. For example, an analysis of the Illinois IV-D caseload found that 36 percent of obligated parents are obligated parents on another case, 33 percent of custodial parents are custodial parents on another case, 4 percent of obligated parents are custodial parents on another case, and 3 percent of custodial parents are obligated parents on another case.⁷³ Based on an analysis of its administrative child support data, Wisconsin also found percentages above 30 percent: 31.4 percent of fathers have children with more than one partner and 30.8 percent of mothers have children with more than one partner.⁷⁴
- The percentage of child support awards factoring in additional dependents is generally lower. This is because not all parents request the adjustment or provide evidence to support the adjustment or the additional child is born after the child support award is determined. As discussed in Section III, the percentage of child support awards that factored in a parent’s additional dependents ranged from 4 percent in California to 12 percent in Arizona. Application of the California adjustment is more restrictive than the Arizona adjustment because it also requires that a state-determined criterion for a financial hardship must be met to be applied.
- There is a strong positive correlation between nonpayment of child support and multiple orders. A 2007 national study of nine large states found that 12 percent of obligated parents with current support orders had more than one order, but the same obligated parents owe one quarter of the arrears.⁷⁵

⁷³ Venohr, Jane and Everett, Carly. (2010). *Review of the Illinois Child Support Guidelines*, Report to the Illinois Child Support Advisory Committee, Center for Policy Research, Denver, CO.

⁷⁴ Cancian, Maria and Meyer, Dan. (2006). *Alternative Approaches to Child Support Policy in the Context of Multiple-Partner Fertility* University of Wisconsin Institute for Research on Poverty, Madison, Wisconsin.

⁷⁵ *Supra* note 60, Sorensen, et al. (2007). It should also be noted that the study’s finding of 12 percent of obligated parents with more than one order may have been limited by the ability of the participating study state’s automated system to identify additional order at the time. Automation has improved significantly since then in many states.

APPROACHES IN OTHER STATES

Most state guidelines provide an income deduction for pre-existing child support orders. Several states (e.g., Arizona and Oregon) provide an income deduction for other children living with the parent for whom the parent has a legal duty to financially support. The income deduction usually relates to a theoretical support award based on the guidelines. Several income shares states deduct 75 percent of the theoretical order because empirical evidence finds that that percentage equalizes income between the sets of children. Another approach is to deduct 50 percent of theoretical order based on the assumption that another parent, such as a current spouse, also has a financial responsibility for the child.

Exhibit 40 shows the additional dependent adjustment for Nevada’s bordering states and Texas. Like Nevada, Texas relies on a flat percentage of the obligor’s income to determine the support award. The Texas adjustment provides a theoretical support award that is weighted to provide a balance between the children for whom support is being determined and the other children for whom the parent has a legal duty to support. Without the weight, the Texas income deduction would be larger, hence, reduce the guidelines-determined amount for the children for whom support is being determined.

Exhibit 40: Treatment of Additional Dependents in Selected States	
Arizona	<p>B. The court-ordered amount of child support for children of other relationships, if actually being paid, shall be deducted from the gross income of the parent paying that child support. Court-ordered arrearage payments shall not be included as an adjustment to gross income.</p> <p>C. An amount shall be deducted from the gross income of a parent for children of other relationships covered by a court order for whom they are the custodial parent. The amount of the adjustment shall be determined by a simplified application of the guidelines (defined in example below).</p> <p>D. An amount may be deducted from the gross income of a parent for support of natural or adopted children of other relationships not covered by a court order. The amount of any adjustment shall not exceed the amount arrived at by a simplified application of the guidelines (defined in example below).</p>
California	<p>4059. The annual net disposable income of each parent shall be computed by deducting from his or her annual gross income the actual amounts attributable to the following items or other items permitted under this article:</p> <p>(e) Any child or spousal support actually being paid by the parent pursuant to a court order, to or for the benefit of any person who is not a subject of the order to be established by the court. In the absence of a court order, any child support actually being paid, not to exceed the amount established by the guideline, for natural or adopted children of the parent not residing in that parent’s home, who are not the subject of the order to be established by the court, and of whom the parent has a duty of support. Unless the parent proves payment of the support, no deduction shall be allowed under this subdivision.</p>
Idaho	<p>Adjustments to Gross Income. Alimony, Maintenance, and Other Child Support Obligations.</p> <p>(1) Other court orders. A deduction shall be allowed from Gross Income for the amount ordered pursuant to any other court order for child support or spousal maintenance from another relationship.</p> <p>4) Support of other children living in home. Because the custodial parent’s share of support is presumed to be spent directly on the child, a deduction shall be allowed from Gross Income when a natural or adopted child of another relationship resides in the home of either parent. The deduction shall be the Guideline support amount calculated for that child, using only that parent’s income.</p> <p>(5) In a proceeding to modify an existing award, children who are born or adopted after the entry of the existing order shall not be considered.</p>
Oregon	<p>(2)A parent is entitled to a non-joint child income deduction when the parent is legally responsible for the support of a child not included in the current calculation.</p> <p>(a)To qualify for the non-joint child deduction, the minor child must reside in the parent’s household or the parent must be ordered to pay ongoing support for that child.</p> <p>(B)Using the parent’s income after the adjustments in section 2(e)(A) of this rule and total number of joint and non-joint children, reference the obligation scale and determine the applicable support amount; and</p>

	(C) Divide the result by the total number of the parent's joint and non-joint children and multiply by the number of non-joint children to determine the amount of the non-joint child deduction.
Pennsylvania	<p>Rule 1910.16-7. Support Guidelines. Awards of Child Support When There Are Multiple Families.</p> <p>(a) When the total of the obligor's basic child support obligations equals fifty percent or less of his or her monthly net income, there will generally be no deviation from the guideline amount of support on the ground of the existence of a new family. For example, where the obligor requests a reduction of support for one child of the first marriage on the basis that there is a new child of the second intact marriage, and the relevant monthly net incomes are \$2,500 for the obligor, \$500 for the former spouse and \$1,300 for the current spouse, the request for a reduction will be denied because the total support obligation of \$1,141 (\$593 for the first child and \$548 for the second child) is less than half of the obligor's monthly net income.</p> <p>(b) When the total of the obligor's basic support obligations exceeds fifty percent of his or her monthly net income, the court may consider a proportional reduction of these obligations. Since, however, the goal of the guidelines is to treat each child equitably, in no event should either a first or later family receive preference. Nor shall the court divide the guideline amount for all of the obligor's children among the households in which those children live.</p> <p>Example. The obligor is sued for support of three children of a second marriage. There is already an order in effect for two children of the first marriage. The relevant monthly net incomes are \$1,500 for the obligor, \$0 for the first spouse and \$500 for the second spouse. The obligor's basic support obligations to each family are \$531 for the two children of the first marriage and \$615 for the three children of the second marriage for a total support obligation of \$1,146. Since this total obligation leaves the obligor with only \$354 on which to live, the order for the three children of the second family is too high. However, reducing the order for three children while leaving the existing order intact would give preference to the first family, contrary to the rule. Therefore, both orders must be reduced proportionally.</p> <p>(c) For purposes of this rule, the presumptive amount of the obligor's basic support obligation is calculated using only the basic guideline amounts of support, as determined from the formula in Rule 1910.16-4, and does not include any additional expenses that may be added to these amounts pursuant to Rule 1910.16-6. In calculating the presumptive amount of the obligor's basic support obligation, the court should ensure that obligor retains at least \$867 per month consistent with Rule 1910.16-2(e).</p>
Texas	<p>Sec. 154.128. COMPUTING SUPPORT FOR CHILDREN IN MORE THAN ONE HOUSEHOLD. (a) In applying the child support guidelines for an obligor who has children in more than one household, the court shall apply the percentage guidelines in this subchapter by making the following computation:</p> <ol style="list-style-type: none"> (1) determine the amount of child support that would be ordered if all children whom the obligor has the legal duty to support lived in one household by applying the schedule in this subchapter; (2) compute a child support credit for the obligor's children who are not before the court by dividing the amount determined under Subdivision (1) by the total number of children whom the obligor is obligated to support and multiplying that number by the number of the obligor's children who are not before the court; (3) determine the adjusted net resources of the obligor by subtracting the child support credit computed under Subdivision (2) from the net resources of the obligor; and (4) determine the child support amount for the children before the court by applying the percentage guidelines for one household for the number of children of the obligor before the court to the obligor's adjusted net resources. <p>(b) For the purpose of determining a child support credit, the total number of an obligor's children includes the children before the court for the establishment or modification of a support order and any other children, including children residing with the obligor, whom the obligor has the legal duty of support.</p> <p>(c) The child support credit with respect to children for whom the obligor is obligated by an order to pay support is computed, regardless of whether the obligor is delinquent in child support payments, without regard to the amount of the order.</p>
Utah	(1) As used in this chapter, "adjusted gross income" is the amount calculated by subtracting from gross income alimony previously ordered and paid and child support previously ordered.

Most states that consider both parents' incomes in the guidelines calculation provide that the additional dependent adjustment can be applied to either parent. Several state guidelines limit modifications based solely on the birth of an additional child from another relationship. The trend is to move away from a consideration of birth order or "first-to-the courthouse" in the calculation. Historically, many believed that the first-born child should be prioritized because the parents of any subsequent births would know of the first-born child and the consequence. Over time, however, several stories have

rebuked that premise. For example, an impetus for Colorado to expand its additional dependents adjustment to all children regardless of birth order was a case in which a father and mother had a son, divorced, and the father initially had custody of the child and no child support was ordered. The father eventually remarried and had several additional children with his new wife believing his first son would continue to live with him. When the first son turned 14 years old, the son decided to live with the mother and she pursued child support. At the time, Colorado would not provide an adjustment for the father's additional children because they were born after the first son.

Yet, the solution to treating all children of a parent equally requires being able to modify all of a parent's child support orders simultaneously. This imposes some challenges when the child support orders are not issued in the same jurisdiction. Nonetheless, a few states (*i.e.*, New Jersey and Pennsylvania) provide for this in their guidelines. The Pennsylvania adjustment is shown in Exhibit 40. It essentially provides for a proportional reduction if the total of the obligated parent's child support obligations and theoretical obligations for additional dependents in the home of the obligated parent exceed 50 percent of the obligated parent's net income, which aligns with the income withholding limit for child support.

ADJUSTMENTS FOR SHARED-PARENTING EXPENSES

The decision in *Wright v. Osburn*, 970 P.3d 1071 (Nev. 1998), was cited in many of the deviations. The methodology for adjusting for shared parenting expense in *Wright v. Osburn* is known as the cross-credit formula, which is the shared-parenting adjustment formula used by most states that specify a formula to adjust for shared-parenting time in their guidelines.

RELEVANT FACTS

There are no available data on the incidence of shared physical custody or joint parenting-time arrangements in Nevada.

- More states are adopting legislation to encourage shared custody. Research generally shows that children do better when both parents are in their children's lives.⁷⁶ Father involvement can improve a child's academic success, reduce levels of delinquency, and promote the child's social and emotional well-being.⁷⁷
- Based on a U.S. Census national survey in 2013, 80 percent of the custodial parents who were supposed to receive child support reported that the other parent had visitation privileges and 30 percent reported that the other parent had joint custody, either legal or physical or both.⁷⁸ In all, 83 percent of the surveyed parents reported that the other parent had either visitation privileges or joint custody. Having visitation privileges or joint custody is only part of picture. Another consideration is whether the other parent exercises visitation or physical custody. Most (73

⁷⁶ For example, see U.S. Department of Health and Human Services, Administration for Children and Families. (n.d.) *Pathways to Fatherhood*. Retrieved from <http://www.acf.hhs.gov/programs/ofa/programs/healthy-marriage/responsible-fatherhood>.

⁷⁷ Osborne, Cynthia and Ankrum, Nora. (April 2015). "Understanding Today's Changing Families." *Family Court Review*, Vol. 53, No. 2. pp 221–232.

⁷⁸ *Supra* note 1, Grall (2016).

percent) of the surveyed parents reported that the other parent had some contact with the child in the last year.

- Another study finds that among fathers and children living separately, 22 percent have contact more than once a week, 29 percent have contact one to four times a month, 21 percent have contact several times a year, and 27 percent have no visits.⁷⁹

APPROACHES IN OTHER STATES

Most states (21 of the 37 states with a formula) rely on the cross-credit formula. Most of the states relying on the cross-credit formula, however, include a multiplier to account for the parents duplicating some of types of expenses for the child (*e.g.*, the child’s housing expense), while the decision in *Wright v. Osburn* does not include a multiplier. Wisconsin’s provision, which is shown in Exhibit 41, illustrates how the cross-credit with a multiplier works. Idaho also uses a cross-credit with a multiplier. Wisconsin, Idaho and most cross-credit states use a multiplier of 50 percent. This implies that it costs about 50 percent more to raise a child in two households than it would cost to raise the child in one household. The 50 percent approximates the percentage of child-rearing expenditures devoted to housing and transportation that are likely to be duplicated by the parents.

Exhibit 41: Treatment of Shared Parenting Expenses in Selected States

Arizona	<p>The number resulting from this multiplication then is subtracted from the proportionate share of the Total Child Support Obligation of the parent who exercises parenting time.</p> <p style="text-align: center;">PARENTING TIME TABLE A</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">Number of Parenting Time Days</th> <th style="text-align: center;">Adjustment Percentage</th> </tr> </thead> <tbody> <tr><td style="text-align: center;">0 - 3</td><td style="text-align: center;">0</td></tr> <tr><td style="text-align: center;">4 - 20</td><td style="text-align: center;">.012</td></tr> <tr><td style="text-align: center;">21 - 38</td><td style="text-align: center;">.031</td></tr> <tr><td style="text-align: center;">39 - 57</td><td style="text-align: center;">.050</td></tr> <tr><td style="text-align: center;">58 - 72</td><td style="text-align: center;">.085</td></tr> <tr><td style="text-align: center;">73 - 87</td><td style="text-align: center;">.105</td></tr> <tr><td style="text-align: center;">88 - 115</td><td style="text-align: center;">.161</td></tr> <tr><td style="text-align: center;">116 - 129</td><td style="text-align: center;">.195</td></tr> <tr><td style="text-align: center;">130 - 142</td><td style="text-align: center;">.253</td></tr> <tr><td style="text-align: center;">143 - 152</td><td style="text-align: center;">.307</td></tr> <tr><td style="text-align: center;">153 - 162</td><td style="text-align: center;">.362</td></tr> <tr><td style="text-align: center;">163 - 172</td><td style="text-align: center;">.422</td></tr> <tr><td style="text-align: center;">173 - 182</td><td style="text-align: center;">.486</td></tr> </tbody> </table>	Number of Parenting Time 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
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173 - 182	.486																												
Idaho	<p>(e) “Shared Physical Custody.”</p> <p>(1) Determining Shared Custody. It is recognized there is an overall increase in child rearing costs created by shared custody. If the child spends more than 25% of the overnights in a year with each parent, an adjustment in the Guidelines amount shall be made.”</p> <p>(2) Computation. To compute the adjustment, the Basic Child Support Guideline obligation shall be multiplied by 1.5. The amount is then multiplied by each parent’s percentage of income. The resulting amounts are then multiplied by the percentage of time the child spends with the other parent. The respective child support obligations are then offset, with the parent owing more child support paying the difference between the two amounts. In no event shall a parent be required to pay more support than the parent would have paid had there not been split or shared custody and all children were residing with the other parent. Whenever the</p>																												

⁷⁹ Livingston, Gretchen, and Parker, Kim. (June 2011). *A Tale of Two Fathers: More Are Active, but More Are Absent*. Pew Social & Demographic Trends. Retrieved from <http://www.pewsocialtrends.org/files/2011/06/fathers-FINAL-report.pdf>.

	guidelines calculation results in a parent having over 50% of the overnights paying child support, that parent may show that such payment is inappropriate considering factors (1) through (7) of Section 10(d) of the Guidelines.												
California	<p>4055. (a) The statewide uniform guideline for determining child support orders is as follows: $CS = K[HN - (H\%)(TN)]$.</p> <p>(b) (1) The components of the formula are as follows:</p> <p>(A) CS = child support amount. (B) K = amount of both parents' income to be allocated for child support as set forth in paragraph (3). (C) HN = high earner's net monthly disposable income. (D) H% = approximate percentage of time that the high earner has or will have primary physical responsibility for the children compared to the other parent. In cases in which parents have different time-sharing arrangements for different children, H% equals the average of the approximate percentages of time the high earner parent spends with each child. (E) TN = total net monthly disposable income of both parties.</p>												
Oregon	<p>(6) Determine each parent's parenting time credit percentage as follows: $credit\ percentage = 1 / (1 + e^{(-7.14 * ((overnights / 365) - 0.5)))} - 2.74\% + (2 * 2.74\% * (overnights / 365)))$</p> <p>(a) The precisely computed credit percentage is preferred. However, where this is impractical (for example, when calculating support by hand) an approximate credit percentage can be determined by referencing the table at the end of this rule using the parents' average overnights determined in step 2, 3, or 4, rounding up or down to the nearest whole number of overnights.</p>												
Utah	<p>78B-12-208. Joint physical custody -- Obligation calculations.</p> <p>In cases of joint physical custody, the base child support award shall be determined as follows:</p> <p>(1) Combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base combined child support obligation table. (2) Calculate each parent's proportionate share of the base combined child support obligation by multiplying the base combined child support obligation by each parent's percentage of combined adjusted gross income. The amounts so calculated are the base child support obligation due from each parent for support of the children. (3) If the obligor's time with the children exceeds 110 overnights, the obligation shall be calculated further as follows:</p> <p>(a) if the amount of time to be spent with the children is between 110 and 131 overnights, multiply the number of overnights over 110 by .0027, then multiply the result by the base combined child support obligation, and then subtract the result from the obligor's payment as determined by Subsection (2) to arrive at the obligor's payment; or (b) if the amount of time to be spent with the children is 131 overnights or more, multiply the number of overnights over 130 by .0084, then multiply the result by the base combined child support obligation, and then subtract the result from the obligor's payment as determined in Subsection (3)(a) to arrive at the obligor's payment.</p>												
Wisconsin	<p>Child Support Guidelines for Shared-Placement Cases</p> <p>Courts may use the shared-placement guidelines when a court gives each parent placement of the child for at least 25% of the time - at least 92 days/year.</p> <ul style="list-style-type: none"> ▪ The court will order each parent to assume the child's basic support costs in proportion to the time that the parent cares for the child. Basic support costs include food, shelter, clothing, transportation, and personal care. ▪ The court must also assign responsibility for payment of the child's variable costs in proportion to each parent's share of placement. ▪ Incomes of both parents are used to set the amount of support. ▪ The parent's share of placement determines that parent's share of support. <p>Example: Parents have 2 children Parent A: Monthly gross income is \$2,000, Cares for both children 219 days a year (60% of the time) Parent B: Monthly gross income is \$3,000, Cares for both children 146 days a year (40% of the time)</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 70%;">This chart does not include payments for the children's variable costs.</th> <th style="width: 15%;">Parent A</th> <th style="width: 15%;">Parent B</th> </tr> </thead> <tbody> <tr> <td>Monthly Income for Child Support</td> <td style="text-align: center;">\$2,000</td> <td style="text-align: center;">\$3,000</td> </tr> <tr> <td>Multiply the Monthly Income by the Percentage Standard for 2 children (25%)</td> <td style="text-align: center;">x 25%</td> <td style="text-align: center;">x 25%</td> </tr> <tr> <td>Line # 1</td> <td style="text-align: center;">\$500</td> <td style="text-align: center;">\$750</td> </tr> </tbody> </table>	This chart does not include payments for the children's variable costs.	Parent A	Parent B	Monthly Income for Child Support	\$2,000	\$3,000	Multiply the Monthly Income by the Percentage Standard for 2 children (25%)	x 25%	x 25%	Line # 1	\$500	\$750
This chart does not include payments for the children's variable costs.	Parent A	Parent B											
Monthly Income for Child Support	\$2,000	\$3,000											
Multiply the Monthly Income by the Percentage Standard for 2 children (25%)	x 25%	x 25%											
Line # 1	\$500	\$750											

For each parent, multiply the amount in line #1 by 150%. The 150% accounts for the basic support costs paid by both parents (food, shelter, clothing, etc.)	x 150%	x 150%	
Line # 2	\$750	\$1,125	
Multiply the amount in line #2 by the percent of time the children spend with the other parent	x 40%	x 60%	
Line #3	\$300	\$675	
Offset – subtract the amount in line #3 for Parent A’s (the parent with the lower amount) from the amount in line #3 for Parent B (parent with the higher amount). Parent B will pay \$375 (estimate).	$\$675 - \$300 = \$375$		

Besides recognizing that it costs more to raise a child in two households, another merit of the multiplier is it mitigates the decrease in the guidelines-determined support award when the timesharing threshold is met. Most states relying on the cross-credit formula require that each parent have the child for at least 20 percent of the child’s time before applying the cross-credit formula, and several states set the threshold at 35 percent timesharing or more. If there are significant disparities in income between the parents, this can cause a significant decrease in the support award at the timesharing threshold, particularly if there is no multiplier. The advantage of setting a lower timesharing threshold is that it mitigates the cliff effect. The advantage of setting a higher timesharing threshold is that it arguably reduces parental conflict over the timesharing arrangement to affect the amount of the child support award.

Exhibit 41 also illustrates that Nevada is surrounded by states (*i.e.*, Arizona, California, Oregon, and Utah) that have unique adjustments for shared-parenting time. In fact, each of the 16 states that do not use the cross-credit formula, but provides a timesharing formula, has a formula unique to that state. Without further analysis, it is unclear whether any of these alternative formulas could be applied to Nevada’s percentage-of-obligor guidelines model. All states using alternative formulas consider both parents’ incomes in the guidelines calculation. Some of these states (*e.g.*, Oregon) have specifically designed their formula to produce very small decreases to the support award amount as the number of the child’s overnights with the obligated parent increases by one or two overnights. By doing this, Oregon believes it reduces parental conflict over the number of overnights. Oregon’s formula was designed by a mathematics professor to specifically achieve that outcome. That formula is shown in Exhibit 41, but Oregon also converts it to an easy-to-use table similar to the format of the Arizona adjustment table shown in Exhibit 41 and makes that table available to guidelines users.

DEVIATION CRITERIA

As identified Section III, federal regulation requires states to develop its own guidelines deviation criteria in which application of the guidelines would be unjust or inappropriate. The criteria must take into consideration the best interest of the child.

RELEVANT FACTS

As discussed in Section III, Nevada has a high deviation rate (36%) compared to other states. Nevada’s rate is higher than the rates of bordering states (*e.g.*, 26 percent in Arizona and 15 percent in California). It is also high relative to New York, which uses guidelines percentages almost identical to Nevada’s. New York’s deviation rate was 23 percent. It is also higher than the percentage of cases with written explicit deviations in Wisconsin (*i.e.*, 10.7 to 33.6 percent depending on custody status and guidelines simulation result).

APPROACHES IN OTHER STATES

Exhibit 42 shows the deviation criteria of neighboring states as well as those of New York and Wisconsin. Nevada, New York, and Wisconsin share many similarities in deviation criteria (*e.g.*, a long list of deviation criteria). In contrast, Arizona and Utah limit their deviation criteria to when the guidelines application would be inappropriate or unjust. Oregon recently updated and modernized its deviation criteria. The modernization is evident in some of the concepts and wording (*e.g.*, reunification plan if the child is in state-financed care and income of domestic partner).

Exhibit 42: Deviation Criteria in Selected States	
Arizona	<p>20. DEVIATIONS</p> <p>The court shall deviate from the guidelines, <i>i.e.</i>, order child support in an amount different from that which is provided pursuant to these guidelines, after considering all relevant factors, including those set forth in Arizona Revised Statutes Section 25-320, and applicable case law, only if all of the following criteria are met:</p> <ol style="list-style-type: none"> 1. Application of the guidelines is inappropriate or unjust in the particular case, 2. The court has considered the best interests of the child in determining the amount of a deviation. A deviation that reduces the amount of child support paid is not, by itself, contrary to the best interests of the child.
California	<ol style="list-style-type: none"> (1) The parties have stipulated to a different amount of child support under subdivision (a) of Section 4065. (2) The sale of the family residence is deferred pursuant to Chapter 8 (commencing with Section 3800) of Part 1 and the rental value of the family residence where the children reside exceeds the mortgage payments, homeowner's insurance, and property taxes. The amount of any adjustment pursuant to this paragraph shall not be greater than the excess amount. (3) The parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children. (4) A party is not contributing to the needs of the children at a level commensurate with that party's custodial time. (5) Application of the formula would be unjust or inappropriate due to special circumstances in the particular case. These special circumstances include, but are not limited to, the following: <ol style="list-style-type: none"> (A) Cases in which the parents have different time-sharing arrangements for different children. (B) Cases in which both parents have substantially equal time-sharing of the children and one parent has a much lower or higher percentage of income used for housing than the other parent. (C) Cases in which the children have special medical or other needs that could require child support that would be greater than the formula amount. (D) Cases in which a child is found to have more than two parents.
Idaho	<p>the court shall consider all relevant factors, which may include:</p> <ol style="list-style-type: none"> (1) The financial resources of the child. (2) The financial resources, needs, and obligations of both parents, consistent with Section 6(a)(3). (3) The standard of living the child enjoyed during the marriage. (4) The physical and emotional condition and needs of the child, including educational needs. (5) Any special impairment, limitation or disability of the child and any need for special education. (6) Any special ability or talent of the child and the cost of educating or training that ability or talent. (7) Any special living conditions that create additional costs for the child.

Oregon	<ul style="list-style-type: none"> (a) Evidence of the other available resources of the parent; (b) The reasonable necessities of the parent; (c) The net income of the parent remaining after withholding required by law or as a condition of employment; (d) A parent’s ability to borrow; (e)The number and needs of other dependents of a parent; (f)The special hardships of a parent affecting the parent’s ability to pay support, including, but not limited to, any medical circumstances, extraordinary travel costs related to the exercise of parenting time, or requirements of a reunification plan if the child is in state-financed care; (g)The desirability of the custodial parent remaining in the home as a full-time parent or working less than full-time to fulfill the role of parent and homemaker; (h)The tax consequences, if any, to both parents resulting from spousal support awarded, the determination of which parent will name the child as a dependent, child tax credits, or the earned income tax credit received by either parent; (i)The financial advantage afforded a parent’s household by the income of a spouse or domestic partner; (j)The financial advantage afforded a parent’s household by benefits of employment including, but not limited to, those provided by a family owned corporation or self-employment, such as housing, food, clothing, health benefits and the like, but only if unable to include those benefits as income under OAR 137-050-0715; (k)Evidence that a child who is subject to the support order is not living with either parent; (L) Findings in a judgment, order, decree or settlement agreement that the existing support award is or was made in consideration of other property, debt or financial awards, and those findings remain relevant;
New York	<p>The court shall calculate the basic child support obligation, and the non-custodial parent’s pro rata share of the basic child support obligation. Unless the court finds that the non-custodial parents’ [FN1] pro-rata share of the basic child support obligation is unjust or inappropriate, which finding shall be based upon consideration of the following factors:</p> <ul style="list-style-type: none"> (1) The financial resources of the custodial and non-custodial parent, and those of the child; (2) The physical and emotional health of the child and his/her special needs and aptitudes; (3) The standard of living the child would have enjoyed had the marriage or household not been dissolved; (4) The tax consequences to the parties; (5) The non-monetary contributions that the parents will make toward the care and well-being of the child; (6) The educational needs of either parent; (7) A determination that the gross income of one parent is substantially less than the other parent’s gross income; (8) The needs of the children of the non-custodial parent for whom the non-custodial parent is providing support who are not subject to the instant action and whose support has not been deducted from income pursuant to subclause (D) of clause (vii) of subparagraph five of paragraph (b) of this subdivision, and the financial resources of any person obligated to support such children, provided, however, that this factor may apply only if the resources available to support such children are less than the resources available to support the children who are subject to the instant action; (9) Provided that the child is not on public assistance (i) extraordinary expenses incurred by the non-custodial parent in exercising visitation, or (ii) expenses incurred by the non-custodial parent in extended visitation provided that the custodial parent’s expenses are substantially reduced as a result thereof; and (10) Any other factors the court determines are relevant in each case, the court shall order the non-custodial parent to pay his or her pro rata share of the basic child support obligation, and may order the non-custodial parent to pay an amount pursuant to paragraph (e) of this subdivision.
Utah	<p>A written finding or specific finding on the record supporting the conclusion that complying with a provision of the guidelines or ordering an award amount resulting from use of the guidelines would be unjust, inappropriate, or not in the best interest of a child in a particular case is sufficient to rebut the presumption in that case. If an order rebuts the presumption through findings, it is considered a deviated order.</p>
Wisconsin	<p>Deviation from standard; factors. Upon request by a party, the court may modify the amount of child support payments determined under sub. (1j) if, after considering the following factors, the court finds by the greater weight of the credible evidence that use of the percentage standard is unfair to the child or to any of the parties:</p> <p>767.511(1m)(a)</p> <ul style="list-style-type: none"> (a) The financial resources of the child. (b) The financial resources of both parents. (bj) Maintenance received by either party.

- (bp) The needs of each party in order to support himself or herself at a level equal to or greater than that established under 42 USC 9902 (2).
- (bz) The needs of any person, other than the child, whom either party is legally obligated to support.
- (c) If the parties were married, the standard of living the child would have enjoyed had the marriage not ended in annulment, divorce or legal separation.
- (d) The desirability that the custodian remain in the home as a full-time parent.
- (e) The cost of child care if the custodian works outside the home, or the value of custodial services performed by the custodian if the custodian remains in the home.
- (ej) The award of substantial periods of physical placement to both parents.
- (em) Extraordinary travel expenses incurred in exercising the right to periods of physical placement under s. 767.41.
- (f) The physical, mental, and emotional health needs of the child, including any costs for health insurance as provided for under s. 767.513.
- (g) The child's educational needs.
- (h) The tax consequences to each party.
- (hm) The best interests of the child.
- (hs) The earning capacity of each parent, based on each parent's education, training and work experience and the availability of work in or near the parent's community.
- (i) Any other factors which the court in each case determines are relevant.

INTEREST AND PENALTIES ON DELINQUENT PAYMENTS

Interest and fees increase the amount of arrears owed. Studies have found that the assessment of interest, fees, and penalties rarely provides an economic incentive for timely payment in IV-D cases. One reason for this is that much of the arrears are owed by parents with no income to very low income.

Nevada statutes provides for both a fee (assessed similar to how other states assess interest) and interest. NRS 125B.095 provides for the addition of a penalty to the obligation if the amount owed for one month becomes delinquent by operation of law. Further, the same statute provides that the amount of the penalty is 10 percent per annum, or a portion thereof, that the installment remains unpaid; and, that CSEP and the district attorney must enforce this penalty.

NRS 125B.140 also provides that at an arrears hearing, the court shall determine and include in its order, the interest upon arrearage at a rate set pursuant to NRS 99.040, which is essentially the prime rate at the largest bank in Nevada plus two percent.

FACTS RELEVANT TO INTEREST AND PENALTIES

- In 2015, there were 85,945 Nevada CSEP cases with arrears due and the total amount of arrears owed was more than \$686 million.⁸⁰
- Although there is no Nevada-specific data, a national study of nine states found that 70 percent of the arrears were owed by obligors who had no income or income of \$10,000 a year or less.⁸¹ In other words, most of the arrears is owed by obligor with poverty incomes or less. The study also found that most arrears are not collectible.

⁸⁰ *Supra* note 2, OCSE (2015).

⁸¹ *Supra* note 60, Sorensen, et al. (2007).

- The same study found that the routine assessment of interest is the primary cause of the dramatic increase in arrears. For one study state that also uses a 10 percent annum rate, the researchers found that starting with arrears in the baseline study year and tracking actual payments for a year, that 23 percent of the arrears accrued in a one-year period were due to interest. Over a 10-year period, assessing the 10-percent annum rate increased the dollars of arrears owed by over 50 percent.
- Research finds that reducing debt can increase payment of current support.⁸²

ASSESSMENT OF INTEREST AND FEES IN OTHER STATES

Nevada's fee of 10 percent per annum, which is effectively a requirement to assess interest, is comparable to interest policies of other states. According to a federal OCSE survey of states in 2015, most states (31 states) can assess interest on child support arrears.⁸³ The interest rate ranges from one to 12 percent. In addition, several states relate their rate to a government rate such as a U.S. Treasury bond rate. Arizona and California also rely on an interest rate of 10 percent per annum. Oregon relies on a simple interest rate of 9 percent for judgments, but only if a party requests it. OCSE did not obtain information from Idaho or Utah.

Although most states can assess interest, it does not mean they automatically do so; that is, it is not comparable to Nevada's 10 percent fee that is imposed by operation of law. For example, in Arizona, the court considers all relevant circumstances including the conduct and motivation of the parties when determining past due support.⁸⁴ In many of the states assessing interest, however, the child support agency has some discretion on whether to assess interest. For example, although Tennessee and Colorado have the highest interest rates— both states charge 12 percent—both states have discretion whether to assess interest. In Colorado's county-administered child support program, whether to assess interest is a decision made at the county level. In contrast, Tennessee's program is state-administered and they do not routinely assess interest on arrears owed to the state. This helps Tennessee avoid the accrual of arrears that may not be paid while still allows the custodial parent who is owed child support arrears the opportunity to pursue interest on arrears owed to them.

⁸² See Heinrich, Carolyn, et al. (June 2011). "Reducing Child Support Debt and Its Consequences: Can Forgiveness Benefit All?" *Journal of Policy Analysis and Management*. Volume 30, issue 4, pp. 755–774.

⁸³ Federal Office of Child Support Enforcement. (Oct. 2015). *IRG State and Tribal Child Support Users' Guide Version 3.0*. Retrieved from <https://ocsp.acf.hhs.gov/irg/profileQuery.html?geoType=1>.

⁸⁴ Arizona State Senate. (Aug. 2011). Issue Brief: Child Support and Enforcement: Child Support Establishment and Guidelines. Retrieved from <http://www.azleg.gov/briefs/Senate/CHILD%20SUPPORT%20ENFORCEMENT.pdf>.

SECTION VIII: STATES' APPROACHES TO GUIDELINES REVIEWS

States vary in how they fulfill the federal requirement to review their guidelines at least once every four years. Most states review it through a committee. If the state promulgates the guidelines through state statute, the guidelines often specifies that the guidelines will be reviewed by the child support agency or a governor- or agency-appointed committee. About half of the states (25 states including Nevada) promulgate their guidelines through statute, 18 states promulgate their guidelines through court rule, and eight states promulgate their guidelines through administrative rules, typically through the child support agency. How a state promulgates its guidelines inadvertently affects its periodic guidelines review process, use of a committee to review the guidelines, and how often a state actually updates its core guidelines formula or schedule.

STATUTORY GUIDELINES WITHOUT REVIEW PROVISIONS OR ANNUAL LEGISLATIVE

Nevada is one of four states that promulgates its guidelines in state statute but does not provide for how the federally required review will be conducted or by whom. The three other states are Florida, Mississippi, and Texas. Florida, which relies on the income shares model, has not updated its guidelines schedule for over 25 years. Mississippi and Texas both rely on a percentage-of-obligor guidelines model and have also not made substantial changes to their percentages since their original guidelines were adopted. The Mississippi guidelines is very basic and does not provide adjustments for special factors common to other state guidelines (*e.g.*, a self-support reserve and adjustment for actual child care expenses).

Exacerbating the issue for Nevada is that the Nevada legislative session occurs every other year. This limits the opportunity to introduce legislative changes to the guidelines. Besides Nevada, there are three other states that do not have annual legislative sessions (*i.e.*, Montana, North Dakota, and Texas). Montana and North Dakota promulgate their guidelines through administrative rule; hence, the child support agency can periodically update the guidelines percentages or amounts.

Texas, however, is somewhat similar to Nevada. Texas, like Nevada, relies on a percentage-of-obligor income guidelines model with a cap. The Texas cap is currently applicable to the first \$8,550 of the obligated parent's monthly net income. Up to this income threshold, the Texas guidelines percentages (*e.g.*, 20 and 25 percent of net income for one and two children, respectively) apply. So, for illustrative purposes, the maximum amount of child support that can be ordered for one child in Texas is \$1,710 per month (20 percent multiplied by \$8,550).

Texas statute provides that the agency can update the cap every six years for inflation. In contrast, Nevada statute (NRS 125B.070) directs the Nevada Office of Court Administrator to annually update the presumptive maximum amount the parent may be required to pay using changes in price levels. The Nevada presumptive maximum amount is a per child amount, which is a nuanced difference from Texas,

and produces some anomalous results compared to the Nevada guidelines percentage, as shown in Exhibits 14 through 21.

STATES WITH STATUTORY GUIDELINES AND PROVISIONS FOR PERIODIC REVIEWS

There are 21 states with guidelines promulgated through statute that also provide for how the guidelines should be periodically reviewed. Most (15 states) provide for a committee, commission, task force, workgroup, or panel to periodically review the guidelines, and typically specify the composition of those committees in statutes. Excerpts from some of those states are shown in Exhibit 43 at the end of the section. Some of the common and more interesting required members are:

- At least two or more legislators (with a balance in the number by political party);
- Representatives of the bench or from the state supreme court;
- Attorneys representing the child support agency (*e.g.*, office of the attorney general);
- Private attorneys practicing family law or a representative of the family law division of the state bar association;
- Representatives of the child support agency;
- Representatives of children’s advocacy groups;
- Representatives of low-income advocacy groups (in practice, this may include advocates for low-income children and families as well as advocates of ex-felons seeking to re-integrate into society);
- Representatives of a tribal community or a tribe with a IV-D program;
- Representatives of parents with different perspectives based on their custody and obligation status (*e.g.*, parents with sole custody or shared custody, and obligated parents); and
- Economists, accountants, or academicians.

There are many other common and interesting provisions in state statutes providing for guidelines review.

- *Who appoints the committee?* Typically, it is the governor or the child support agency.
- *The duties and powers of the committee.* In addition to reviewing the guidelines and making recommendations, most committees must provide a report to the legislature or governor or court. In some states, the scope of duties is very general: reviewing the guideline. In other states’ provisions (*e.g.*, Georgia and Minnesota, which are both shown in Exhibit 43), the scope is very specific and detailed.
 - One reason that Georgia may have spelled out the duties and powers of its commission more thoroughly is the commission was formed as part of the legislation that resulted in Georgia switching from a percentage-of-obligor income guidelines model to the income shares model. Georgia faced considerable controversy about what economic data on child-rearing expenditures Georgia should use for its new guidelines schedule: the schedule amounts were more controversial than the switch in guidelines models. Georgia assigned the commission the duty of developing the schedule numbers. In other words, there was no income shares schedule specified in Georgia’s legislation that resulted in Georgia switching

- to the income shares model; rather, the Commission developed a schedule about a year later.
- The duties of the Minnesota committee are interesting because they address contemporary issues (e.g., balancing the needs of low-income custodial parents and low-income, obligated parents) and changing trends in families (e.g., more grandparents raising children and other non-nuclear family structures). Minnesota just adopted this provision in 2016.
 - *Who staffs the committee?* When specified, it typically is the child support agency.
 - *Requirements for public hearings or comments.*
 - *The timeframe for the committee and when it will be terminated.* Most states statutes provide for an ongoing committee or the formation of a new committee for each review or after so many years. The Minnesota provision is a notable exception. The committee is essentially a special committee tasked with addressing very specific issues within a couple of years. This makes sense, because those specific issues may not be the same issues Minnesota faces next guidelines review.
 - *Expenses incurred by committee members to attend meetings.* Ohio's provision, which is shown in Exhibit 43, is an example of a state that punts the expense to the child support agency, which has some flexibility due to the federal match available to state child support agencies.

STATUTORY GUIDELINES WITHOUT REVIEW COMMITTEES

Another approach is for the child support agency to take the lead on the guidelines review. State statutes in Maryland, New York, and Wyoming direct the child support agency to periodically review the guidelines. This year, however, Wyoming convened a committee of diverse stakeholders to review the guidelines because the Wyoming legislature had also adopted presumptive joint custody. Wyoming policymakers perceived the federally mandated guidelines review, which coincided with the new legislation, as an opportunity to review the parenting-time formula provided in the guidelines. (As an aside, like Nevada, Wyoming uses the cross-credit formula without a multiplier for its timesharing adjustment. The 2016 committee, however, favors a cross-credit formula with a multiplier.)

Statutes in California, Hawaii, New Mexico, and Oklahoma provide unique directives. California statute provides that its Judicial Council periodically reviews the guidelines. Making recommendations that require statutory changes puts the court in an awkward and reserve role, as normally they interpret statutes rather than recommend statutory changes. Oklahoma statute provides that the Judiciary Committees of the Senate and the House of Representatives review of the guidelines. Hawaii statute directs the court in consultation with the agency to review of the guidelines. New Mexico statute provides that the appropriate executive or legislative commission or executive department shall review the guidelines.

Most of these states have not updated or have had difficulty updating their core guidelines formula or schedules. In the years that Maryland and New Mexico successfully updated their guidelines, both states formed committees of diverse stakeholders to conduct the review and make recommendations.

STATES WITH CHILD SUPPORT GUIDELINES SET IN COURT RULE OR ADMINISTRATIVE RULE

There are 26 states that set their guidelines in court rule or administrative rule. Court rule is more common. States that promulgate their guidelines through court rule also tend to update their guidelines more frequently than those that promulgate their guidelines in statute. Almost all states with guidelines promulgated in court rule use either a standard committee or the court appoints a special committee to periodically review the guidelines. For example, Indiana relies on its standing committee, the Domestic Relations Committee, to review its guidelines. Still another example is Idaho, which relies on its civil rules committee to review its guidelines.

Oregon and Arizona, two of Nevada's neighbors, also set their guidelines in court rule. Oregon usually reviews its guidelines using a committee of diverse stakeholders including representatives of the bench, bar, and child support agency. Arizona has also appointed a special committee to conduct comprehensive guidelines reviews (*e.g.*, when considering changes to the underlying premise such as the guidelines model), but Arizona has also relied on a standing, oversight committee (*i.e.*, Committee of the Superior Court) for more routine reviews (*e.g.*, when there is little inflation, hence small changes to an updated schedule).

STATES THAT SET GUIDELINES IN ADMINISTRATIVE RULE

There are eight states that currently set their guidelines in administrative rule. Illinois will become the ninth state in 2017. Illinois just adopted legislation that will set its guidelines in administrative rule and directs the agency to develop the child support tables and periodically update them beginning in 2017. The major impetus behind this action was that Illinois had not updated its guidelines, which were set in state statute, for several decades. The Illinois legislature believed that this method would be a better and more effective way to keep the guidelines tables updated for current economic data, and, to this end, it would better serve Illinois families and children. The Ohio legislature is considering similar legislation that would give the child support agency the authority to periodically update the Ohio guidelines table, which is currently set in state statute. Ohio has not updated its guidelines tables for over two decades. So far, the Ohio legislature has generally been supportive of the change, particularly of taking the update out of the legislative process. (The hang-up in Ohio concerns the proposed update to the low-income adjustment that is opposed by some Ohio advocacy groups.)

In most states with administrative guidelines, the child support agency is also charged with conducting the quadrennial guidelines review, making recommendations, and reporting their findings and recommendations to the legislature or the state supreme court. About half of these states have the authority to make periodic updates to the guidelines percentages or tables. However, the child support agency in most of these states do not have the authority to make substantial changes (*e.g.*, switch guidelines models); rather, they have a limited scope of what changes they can make administratively. Substantial changes require statutory changes in most of these states.

WHETHER A REVIEW RESULTS IN PROMULGATED CHANGES

It is one thing to review a state’s guidelines and recommend changes; and it is another thing to have those recommendations promulgated. States with guidelines promulgated through statute are the least likely to be updated. Even if the state’s statute requires a committee to review the guidelines, make recommendations, and report their findings, it does not mean the state legislature will adopt those changes. One challenge is that in most states with statutory guidelines, there still needs to be a legislator sponsoring a bill. In many states, the ability of the child support agency to introduce legislative bills is limited, often by limiting the number of bills a state agency can introduce. In turn, any proposed bill with guidelines changes must still go through the regular process that typically includes hearings by more than one subcommittee, several readings, a majority vote by the general assembly, and approval by the state’s governor.

In contrast, several states with guidelines promulgated by court rule have state statutes that provide that the court must periodically review the guidelines, and update the guidelines. The latter part of that provision undoubtedly facilitates more frequent updates to court-promulgated guidelines than statute-promulgated guidelines.

Exhibit 43: Provision for State Guidelines Review Committees in Selected States

Colorado	<p>16) Child support commission. (a) The child support guidelines, including the schedule of basic child support obligations, and general child support issues shall be reviewed and the results of such review and any recommended changes shall be reported to the governor and to the general assembly on or before December 1</p> <p>(b) The child support commission shall consist of no more than twenty-one members. The governor shall appoint persons to the commission who are representatives of the judiciary and the Colorado bar association. Members of the commission appointed by the governor shall also include the director of the division in the state department of human services that is responsible for child support enforcement, or his or her designee, a director of a county department of social services, the child support liaison to the judicial department, interested parties, a certified public accountant, and parent representatives. In making his or her appointments to the commission, the governor MAY shall attempt to appoint persons as parent representatives. or as other representatives on the commission who include a male custodial parent, a female custodial parent, a male noncustodial parent, a female noncustodial parent, a joint custodial parent, and a parent in an intact family. In making his or her appointments to the commission, the governor shall attempt to assure geographical diversity by appointing at least one member from each of the congressional districts in the state. The remaining two members of the commission shall be a member of the house of representatives appointed by the speaker of the house of representatives and a member of the senate appointed by the president of the senate and shall not be members of the same political party. (c) As part of its review, the commission must consider economic data on the cost of raising children and analyze case data on the application of, and deviations from, the guidelines and the schedule of basic child support obligations to be used in the commission's review to ensure that deviations from the guidelines and schedule of basic child support obligations are limited. In addition, the commission shall review issues identified in the federal "Personal Responsibility... .</p>
Connecticut	<p>Sec. 46b-215a. Commission for Child Support Guidelines. Duties. Members. Validity of actions taken during vacancy.</p> <p>(a) The Commission for Child Support Guidelines is established to issue child support and arrearage guidelines to ensure the appropriateness of criteria for the establishment of child support awards and to review and issue updated guidelines every four years. Such guidelines shall ensure, subject to section 46b-215c, that current support, health care coverage, child care contribution and orders of payment on any arrearage and past due support shall be based on the income of both parents and the obligor’s ability to pay. Such guidelines shall also ensure the appropriateness of periodic payment orders on arrearages when the obligor (1) is the child’s legal guardian and resides with the child, or (2) is not the child’s legal guardian but has resided with the child either for at least six months immediately preceding the order of payment on the arrearage or for at least six months of the twelve months immediately preceding such order. In such cases, the commission shall consider exemptions similar to those in the uniform contribution scale adopted pursuant to section 4a-12. Updated arrearage guidelines shall be issued at the same time as the child support guidelines.</p>

	<p>(b) The commission shall consist of eleven members as follows: (1) The Chief Court Administrator, or the Chief Court Administrator's designee; (2) The Commissioner of Social Services, or the commissioner's designee; (3) The Attorney General, or the Attorney General's designee; (4) The chairpersons and ranking members of the joint standing committee on judiciary, or their designees; (5) A representative of the Connecticut Bar Association, designated by the Connecticut Bar Association; and (6) Three members appointed by the Governor, one of whom represents an agency that delivers legal services to the poor, one of whom represents the financial concerns of child support obligors and one of whom represents the Permanent Commission on the Status of Women.</p> <p>(c) The Commissioner of Social Services shall convene the commission whenever a review is required to issue updated guidelines pursuant to subsection (a) of this section.</p> <p>(d) The chairperson of the commission shall be elected by the members of the commission. A vacancy on the commission at any time shall not invalidate any actions taken by the commission during such vacancy, provided at least nine members of the commission are serving at the time of such action.</p>
Georgia	<p>§ 19-6-51. Members; terms; chairperson, other officers, and committees; staffing and funding</p> <p>(a) The Georgia Child Support Commission shall be composed of 15 members. The Governor shall appoint all of the members as follows: (1) Three members who shall be judges in a superior court; (2) One member who shall be a Justice of the Supreme Court of Georgia or a Judge of the Georgia Court of Appeals or the Justice's or Judge's designee; (3) Two members of the House of Representatives and two members of the Senate; and (4) Seven other members. Each member of the commission shall be appointed to serve for a term of four years or until his or her successor is duly appointed except the members of the General Assembly, who shall serve until completion of their current terms of office. The initial members of the commission appointed pursuant to paragraph (1) of this subsection shall serve for terms of three years. The initial member of the commission appointed pursuant to paragraph (2) of this subsection shall serve for a term of four years. The initial members of the commission appointed pursuant to paragraph (4) of this subsection shall serve for terms of two years. The initial members of the commission shall be appointed not later than May 22, 2005, and shall serve until their terms expire. The succeeding members of the commission shall begin their terms of office on July 1 of the year in which appointed. A member may be appointed to succeed himself or herself on the commission. If a member of the commission is an elected official, he or she shall be removed from the commission if he or she no longer serves as an elected official.</p> <p>(b) The Governor shall designate the chairperson of the commission. The commission may elect other officers as deemed necessary. The chairperson of the commission may designate and appoint committees from among the membership of the commission as well as appoint other persons to perform such functions as he or she may determine to be necessary as relevant to and consistent with this article. The chairperson shall only vote to break a tie.</p> <p>(c) The commission shall be attached for administrative purposes only to the Department of Human Services. The Department of Human Services shall provide staff support for the commission. The Department of Human Services shall use any funds specifically appropriated to it to support the work of the commission.</p> <p>§ 19-6-53. Duties; powers; authorization to retain professional services</p> <p>(a) The commission shall have the following duties: (1) To study and evaluate the effectiveness and efficiency of Georgia's child support guidelines; (2) To evaluate and consider the experiences and results in other states which utilize child support guidelines; (3) To create and recommend to the General Assembly a child support obligation table consistent with Code Section 19-6-15; (4) To determine periodically, and at least every four years, if the child support obligation table results in appropriate presumptive awards; (5) To identify and recommend whether and when the child support obligation table or child support guidelines should be modified; (6) To develop, publish in print or electronically, and update the child support obligation table and worksheets and schedules associated with the use of such table; (7) To develop or cause to be developed software and a calculator associated with the use of the child support obligation table and child support guidelines and adjust the formula for the calculations of self-employed persons' income pursuant to applicable federal law, if the commission determines that the calculation affects persons paying or receiving child support in this state; (8) To develop training manuals and information to educate judges, attorneys, and litigants on the use of the child support obligation table and child support guidelines; (9) To collaborate with the Institute for Continuing Judicial Education, the Institute of Continuing Legal Education, and other agencies for the purpose of training persons who will be utilizing the child support obligation table and child support guidelines; (10) To make recommendations for proposed legislation; (11) To study the appellate courts' acceptance of discretionary appeals in domestic relations cases and the formulation of case law in the area of domestic relations; (12) To study alternative programs, such as mediation, collaborative practice, and pro se assistance programs, in order to reduce litigation in child support and child custody cases; and (13) To study the impact of having parenting time serve as a deviation to the presumptive amount of child support and make recommendations concerning the utilization of the parenting time adjustment.</p> <p>(b) The commission shall have the following powers: (1) To evaluate the child support guidelines in Georgia and any other program or matter relative to child support in Georgia; (2) To request and receive data from and review the</p>

	<p>records of appropriate agencies to the greatest extent allowed by state and federal law; (3) To accept public or private grants, devises, and bequests; (4) To enter into all contracts or agreements necessary or incidental to the performance of its duties; (5) To establish rules and procedures for conducting the business of the commission; and (6) To conduct studies, hold public meetings, collect data, or take any other action the commission deems necessary to fulfill its responsibilities.(c) The commission shall be authorized to retain the services of auditors, attorneys, financial consultants, child care experts, economists, and other individuals or firms as determined appropriate by the commission.</p>
Louisiana	<p>315.16. Review of guidelines</p> <p>A. The guidelines set forth in this Part shall be reviewed by the legislature not less than once every four years. A review of the guidelines shall take place in 2012 and every four years thereafter, and it shall be the responsibility of the office of children and family services, child support enforcement section of the Department of Children and Family Services, and the Louisiana District Attorneys Association, in consultation with the child support review committee provided in Subsection B of this Section, to obtain all information required to comply with the provisions of 42 U.S.C. 667(a) and present the same to the legislature sixty days prior to the beginning of the 2008 Regular Session of the Legislature and every four years thereafter.</p> <p>B. The child support review committee shall serve without compensation, except for the members of the legislature who shall receive a per diem as provided by law, and shall consist of the following members:</p> <ol style="list-style-type: none"> (1) The reporter of the Louisiana State Law Institute Marriage and Persons Advisory Committee. (2) The chairman or designee of the House Committee on Civil Law and Procedure. (3) The chairman or designee of Senate Committee on Judiciary A. (4) The president or designee of the Louisiana District Judges Association. (5) The executive director or a designee of the Louisiana District Attorneys Association. (6) The president or designee of the Juvenile and Family Court Judges Association. (7) The chairman or designee of the Louisiana State Bar Association, Family Law Section. (8) The chairman or designee of the Louisiana Chapter of American Academy of Matrimonial Lawyers. (9) The secretary or a designee of the Department of Children and Family Services. (10) The chairman or designee of the Louisiana Children’s Cabinet. (11) The president or designee of the Louisiana Hearing Officers’ Association.
Minnesota	<p>Sec. 22. [518A.79] CHILD SUPPORT TASK FORCE</p> <p>Subdivision 1. Establishment; purpose. There is established the Child Support Task Force for the Department of Human Services. The purpose of the task force is to advise the commissioner of human services on matters relevant to maintaining effective and efficient child support guidelines that will best serve the children of Minnesota and take into account the changing dynamics of families.</p> <p>Subd. 2. Members (a) The task force must consist of: (1) two members of the house of representatives, one appointed by the speaker of the house and one appointed by the minority leader; (2) two members of the senate, one appointed by the majority leader and one appointed by the minority leader; (3) one representative from the Minnesota County Attorneys Association; (4) one staff member from the Department of Human Services Child Support Division; (5) one representative from a tribe with an approved IV-D program appointed by resolution of the Minnesota Indian Affairs Council; (6) one representative from the Minnesota Family Support Recovery Council; (7) one child support magistrate, family court referee, or one district court judge or retired judge with experience in child support matters, appointed by the chief justice of the Supreme Court; (8) four parents, at least two of whom represent diverse cultural and social communities, appointed by the commissioner with equal representation between custodial and noncustodial parents; (9) one representative from the Minnesota Legal Services Coalition; and, (10) one presentative from the Family Law Section of the Minnesota Bar Association.</p> <p>(b) Section 15.059 governs the Child Support Task Force.</p> <p>(c) Members of the task force shall be compensated as provided in section 15.059, subdivision 3.</p> <p>Subd.3. Organization. (a) The commissioner or the commissioner’s designee shall convene the first meeting of the task force. (b) The members of the task force shall annually elect a chair and others officers as the members deem necessary. (c) The task force shall meet at least three times per year, with one meeting devoted to collecting input from the public.</p> <p>Subd. 4. Staff. The commissioner shall provide support staff, office space, and administrative services for the task force.</p> <p>Subd. 5. Duties of the task force. (a) General duties of the task force include, but are not limited to: (1) serving in an advisory capacity to the commissioner of human services; (2) reviewing the effects of implementing the parenting expense adjustment enacted by the 2016 legislature; (3) at least every four years, preparing for and advising the commissioner on the development of the quadrennial review report; (4) collecting and studying information and data relating to child support awards; and (5) conducting a comprehensive review of child support guidelines, economic conditions, and other matters relevant to maintaining effective and efficient child support guidelines. (b)</p>

	<p>the task force must review, address, and make recommendation on the following priority issues: (1) the self-support reserve for custodial and noncustodial parents; (2) simultaneous child support orders; (3) obligors who are subject to child support orders in multiple counties; (4) parents with multiple families; (5) non-nuclear families, such as grandparents, relatives, and foster parents who are caretakers of children; (6) standards to apply for modifications; and (7) updating section 518A.35, subdivision 2, the guidelines for basic support.</p> <p>Subd. 6. Consultation. The chair of the task force must consult with the Cultural and Ethnic Communities Leadership at least annually on the issues under consideration of the task force.</p> <p>Subd. 7. Report and recommendations. Beginning February 15, 2018, and biennially thereafter, if the task force is extended by the legislature, the commissioner shall prepare and submit to the chairs and ranking minority members of the committees of the house of representatives and the senate with jurisdiction over child support matters a report that summarizes the activities of the task force, issues identified by the task force, methods taken to address the issues, and recommendations for legislative action, if needed.</p> <p>Subd. 8 Expiration. The task force expires June 30, 2019, unless extended by the legislature.</p>
Ohio	<p>3119.024 Child support guideline advisory council to review basic schedule and worksheet.</p> <p>At least once every four years, the department of job and family services shall review the basic child support schedule set forth in section 3119.021 of the Revised Code to determine whether child support orders issued in accordance with the schedule and worksheets adequately provide for the needs of the children who are subject to the child support orders, prepare a report of its review, and submit a copy of the report to both houses of the general assembly.</p> <p>For each review, the department shall establish a child support guideline advisory council to assist the department in the completion of its reviews and reports. Each council shall be composed of obligors; obligees; judges of courts of common pleas who have jurisdiction over domestic relations cases; attorneys whose practice includes a significant number of domestic relations cases; representatives of child support enforcement agencies; other persons interested in the welfare of children; three members of the senate appointed by the president of the senate, no more than two of whom are members of the same party; and three members of the house of representatives appointed by the speaker of the house, no more than two of whom are members of the same party.</p> <p>The department shall consider input from the council prior to the completion of any report under this section. The advisory council shall cease to exist at the time that it submits its report to the general assembly. Any expenses incurred by an advisory council shall be paid by the department.</p> <p>On or before the first day of March of every fourth year after 1993, the department shall submit a report under this division to both houses of the general assembly.</p>
South Dakota	<p>25-7-6.12. Review and amendment of schedule. The Governor shall, commencing in the year 2000, establish quadrennially a commission on child support. The commission shall review the provisions of this chapter, shall report its findings to the Governor and the Legislature, and may propose amendment thereof to the Legislature.</p>
Utah	<p>78B-12-401. Advisory committee -- Membership -- Expiration.</p> <p>(1) On or before May 1, 2012, and then on or before May 1 of every fourth year subsequently, the governor shall appoint a child support guidelines advisory committee consisting of:</p> <p>(a) one representative recommended by the Office of Recovery Services; (b) one representative recommended by the Judicial Council; (c) two representatives recommended by the Utah State Bar Association; (d) two representatives of noncustodial parents; (e) two representatives of custodial parents;</p> <p>(f) one representative with expertise in economics; and (g) two representatives from diverse interests related to child support issues, as the governor may consider appropriate. However, none of the individuals appointed under this subsection may be members of the Utah State Bar Association.</p> <p>(2) The term of the committee members expires one month after the report of the committee is submitted to the legislature under Section 78B-12-402.</p> <p>(3) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.</p> <p>(4) The committee ceases to exist no later than November 1, 2017, and then on or before November 1 of every fourth year subsequently.</p>
Virginia	<p>The Code of Virginia, §20-108.2 (H), sets forth the authority for the Secretary's Child Support Guideline Review Panel:</p> <p>The Secretary of Health and Human Resources shall ensure that the guideline set out in this section is reviewed by October 31, 2001, and every four years thereafter, by the Child Support Guidelines Review Panel, consisting of 15 members that include four legislative members and 11 nonlegislative citizen members. Members shall be appointed as follows: three members of the House Committee for Courts of Justice, upon the recommendation of the chairman of such committee, to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; one member of the Senate Committee for Courts of Justice, upon the recommendation of the chairman of such committee, to be appointed by</p>

	<p>the Senate Committee on Privileges and Elections; and one representative of a juvenile and domestic relations district court, one representative of a circuit court, one representative of the Department of Social Services' Division of Child Support Enforcement, three members of the Virginia State Bar, two custodial parents, two noncustodial parents, and one child advocate, upon the recommendation of the Secretary of Health and Human Resources, to be appointed by the Governor. The Panel shall determine the adequacy of the guideline for the determination of appropriate awards for the support of children by considering current research and data on the cost of and expenditures necessary for rearing children, and any other resources it deems relevant to such review. The Panel shall report its findings to the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports before the General Assembly next convenes following such review. Legislative members shall serve terms coincident with their terms of office. Nonlegislative citizen members shall serve at the pleasure of the Governor. All members may be reappointed. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments</p> <p>. . . The Department of Social Services shall provide staff support to the Panel. All agencies of the Commonwealth shall provide assistance to the Panel, upon request.</p> <p>The chairman of the Panel shall submit to the Governor and the General Assembly a quadrennial executive summary of the interim activity and work of the Panel no later than the first day of 2006 regular session of the General Assembly and every four years thereafter. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's Web site.</p>
Washington	<p>Quadrennial review of child support guidelines and child support review report—Work group membership—Report to legislature.</p> <p>(1) Beginning in 2011 and every four years thereafter, the division of child support shall convene a work group to review the child support guidelines and the child support review report prepared under RCW * 26.19.026 and 26.18.210 and determine if the application of the child support guidelines results in appropriate support orders. Membership of the work group shall be determined as provided in this subsection.</p> <p>(a) The president of the senate shall appoint one member from each of the two largest caucuses of the senate;</p> <p>(b) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives;</p> <p>(c) The governor, in consultation with the division of child support, shall appoint the following members: (i) The director of the division of child support; (ii) A professor of law specializing in family law; (iii) A representative from the Washington state bar association's family law executive committee; (iv) An economist; (v) A representative of the tribal community; (vi) Two representatives from the superior court judges' association, including a superior court judge and a court commissioner who is familiar with child support issues; (vii) A representative from the administrative office of the courts; (viii) A prosecutor appointed by the Washington association of prosecuting attorneys; (ix) A representative from legal services; (x) Three noncustodial parents, each of whom may be a representative of an advocacy group, an attorney, or an individual, with at least one representing the interests of low-income, noncustodial parents; (xi) Three custodial parents, each of whom may be a representative of an advocacy group, an attorney, or an individual, with at least one representing the interests of low-income, custodial parents; and (xii) An administrative law judge appointed by the office of administrative hearings.</p> <p>(2) Appointments to the work group shall be made by December 1, 2010, and every four years thereafter. The governor shall appoint the chair from among the work group membership.</p> <p>(3) The division of child support shall provide staff support to the work group, and shall carefully consider all input received from interested organizations and individuals during the review process.</p> <p>(4) The work group may form an executive committee, create subcommittees, designate alternative representatives, and define other procedures, as needed, for operation of the work group.</p> <p>(5) Legislative members of the work group shall be reimbursed for travel expenses under RCW 44.04.120. Nonlegislative members, except those representing an employee or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.</p> <p>(6) By October 1, 2011, and every four years thereafter, the work group shall report its findings and recommendations to the legislature, including recommendations for legislative action, if necessary.</p>

SECTION IX: CONCLUSION AND RECOMMENDATIONS

This report documents several issues with the current Nevada child support guidelines.

- Nevada has a high guidelines deviation rate: 36 percent of the State’s child support agency (the Child Support Enforcement Program—CSEP) cases reviewed contained guidelines deviation rates. Federal regulation encourages states to make guidelines changes that keep guidelines deviations at a minimum. Based on the experiences of other states, the deviation rate in Nevada would be even higher if the case file review included non-CSEP cases. Other states find higher deviation rates in private child support cases.
- Most of the reasons cited for guidelines deviations in Nevada involve factors that are usually addressed through formulas in other state guidelines. These factors include responsibility for other children, obligor unable to pay minimum amount, the child’s time with each parent, the cost of health insurance, and the cost of child care. Most states provide an income deduction for other children, a self-support reserve for very low-income obligated parents, a formulaic adjustment for shared parenting time, and provide that the actual cost of the child’s health insurance and child care expense be prorated between the parents with a parent’s prorated share either added or subtracted from the core guidelines amount depending on which parent pays the expense when determining the final award amount.
- Despite the economic basis of the Nevada guidelines being over 30 years old, the Nevada guidelines percentages are generally in the range of the current economic evidence of how much parents spend on their children. Yet, there are issues at low incomes and high incomes. Most states provide an adjustment for very low-income obligated parents, such as a self-support reserve. Nevada is in the minority of states that do not. Further, Nevada’s \$100 per month per child minimum order is one of the highest in the nation. Nevada’s presumptive maximums are unique to Nevada. They are also counterintuitive to economic theory and empirical evidence about household consumption and expenditures; that is, for each dollar of additional disposable income, a proportion of it will be spent. Instead, the Nevada presumptive maximums imply that for some income levels, there is no increase in expenditures on children when income increases.
- There is no clear mechanism for the periodic review of the Nevada child support guidelines, despite a federal requirement of states to review their guidelines at least once every four years. Most states periodically review their guidelines using a committee of diverse stakeholders. Another limitation to periodically updating the Nevada child support guidelines is that the Nevada legislature meets every other year. Two of the three other states with legislation sessions that meet less than annually have child support guidelines promulgated through agency rule, which facilitates more frequent updates to the core guidelines formulas in these states.

- There are other concerns with the Nevada guidelines. Nevada is in the minority of states that do not consider both parents' incomes in the guidelines calculation. Recent trends suggest the gap between male-female incomes or husband-wife incomes has closed somewhat. Many of the guidelines deviations involved parents who were incarcerated or recently released from prison. More states are adopting provisions to address this special population since they comprise a significant share of the government agency caseload in most states. States are adopting provisions that complement strategies for successful re-integration of these parents into society and their families. Finally, the Nevada fee on delinquent payments is onerous. In general, empirical evidence finds that fees and interest do not encourage payment, rather they add to arrears and high arrears can discourage payment particularly among low-income obligated parents.

The Center for Policy Research has developed 16 recommendations. They are shown in Exhibit 44.

Exhibit 44: Recommendations	
1.	<p>Obtain input from child support guidelines users and stakeholders.</p> <p><i>Why?</i> There are many policy decisions in the formation of child support guidelines.</p> <p><i>How?</i> Formulate a guidelines review committee and provide opportunities for public input through public hearing and/or websites. Provide a process for how future guidelines reviews will be conducted.</p>
2.	<p>Review the premise and basis of Nevada child support guidelines model.</p> <p><i>Why?</i> This provides a foundation for other policy decisions.</p> <p><i>How?</i> Review the premise and basis of the Nevada child support guidelines and other states' guidelines in Section II. Identify and review supplemental information if appropriate.</p>
3.	<p>Determine whether the base guidelines percentages/formula should be changed.</p> <p><i>Why?</i> The base guidelines percentages/formula should reflect the premise and basis of the Nevada guidelines model.</p> <p><i>How?</i> Review the economic evidence on child-rearing expenditures in this report in Sections II, III, and IV, and new studies of child-rearing expenditures as they become available.</p>
4.	<p>Determine whether more case file data is needed and develop a process to obtain better information from case file data in the future.</p> <p><i>Why?</i> The case file data examined in this report is limited because it does not contain information from private cases or income information. Case file data from private cases could inform whether both parents' incomes should be considered in the calculation of support and the specifics of formulaic adjustments for child care expenses, the cost of health insurance for the child, and shared-parenting time. Private cases are more likely to include these special factors. Income data could inform low-income adjustments and alternatives to the presumptive maximums.</p> <p><i>How?</i> Review the methodologies summarized in Section III to determine which methodologies are feasible. Also, identify data needed to inform guidelines changes and whether it is feasible to obtain those data fields.</p>
5.	<p>Eliminate the presumptive maximum amounts and replace them with a formula and provision consistent with economic theory and the economic data on child-rearing expenditures.</p> <p><i>Why?</i> The presumptive maximum amounts are not consistent with economic theory or evidence on consumer expenditures or expenditures on children. No other state provides for presumptive maximum amounts.</p> <p><i>How?</i> Develop a tax-like table of percentages or schedule to address higher incomes, extend the presumptive formulas to incomes where the economic evidence of child-rearing expenditures is reliable, and provide that for incomes above this income, the highest amount is a presumptive floor rather than a presumptive cap.</p>
6.	<p>Develop a self-support reserve or low-income adjustment like those used by other states.</p> <p><i>Why?</i> Low-income adjustments require more policy decisions than reliance on economic data because of the balance between the needs of the custodial family and obligated parent. Many of the deviations were due to ability-to-pay</p>

	<p>issues. Many obligated parents do not have income or inconsistent earnings and limited employability.⁸⁵ This impedes regular and full payments, and in turn, can result in enforcement actions (e.g., driver’s license suspension) that impede earnings and contact with the child.</p> <p><i>How?</i> Review the impact of varying levels of self-support reserves and low-income adjustments on support awards using the framework in Section VI. Is the resulting amount less than what is currently being collected? What can reasonably be ordered that will result in full compliance and financially benefit the child? Run case examples to ensure that the transition from the self-support reserve/low-income adjustment is not abrupt.</p>
7.	<p>Review the appropriateness of the minimum order and make changes if necessary.</p> <p><i>Why?</i> The Nevada minimum order is much higher than those of most states. Application of the minimum order when there are three or more children often exceeds what low-income nonresidential parents can reasonably pay.</p> <p><i>How?</i> Obtain more data and information about the circumstances in which the minimum order is applied. Is it usually applied to very low-income, obligated parents or due to other circumstances (e.g., a shared parenting adjustment)? Coordinate the minimum order with the self-support reserve/low-income adjustment.</p>
8.	<p>Explicitly address the treatment of incarcerated parents or parents recently released from prison.</p> <p><i>Why?</i> Many of the guidelines deviations were for incarcerated parents. Most incarcerated parents have no to little income. Even the minimum orders are beyond what an incarcerated parent can pay. Setting reasonable orders will limit the amount of arrears that accumulates during incarceration that, in turn, can also reduce the barriers to re-entry and re-integration upon release.</p> <p><i>How?</i> Review and codify current practices and other states’ provisions and adapt, if appropriate for Nevada.</p>
9.	<p>Limit income imputation beyond a parent’s earning potential.</p> <p><i>Why?</i> There is national concern and at the federal OCSE level about the imputation of income beyond what a low-income, disadvantaged parent can reasonably earn (e.g., imputation at full-time minimum wage when the nonresidential parent is disabled and cannot work full time). Pending federal regulation encourages the use of actual income and to limit income imputation.</p> <p><i>How?</i> Review the best provisions of other states, including those newly adopted ones in response to federal concern and pending rule changes, and adapt, if appropriate for Nevada.</p>
10.	<p>Develop and adopt an adjustment for additional dependents.</p> <p><i>Why?</i> Many of the guidelines deviations were for additional dependents. Most states provide an income deduction for additional dependents. A formula will reduce the number of deviations for additional dependents and produce consistent and predictable award amounts when there are additional dependents.</p> <p><i>How?</i> Review and codify current practices and other states’ provisions and adapt, if appropriate for Nevada.</p>
11.	<p>Develop and adopt an adjustment for shared parenting time.</p> <p><i>Why?</i> Many of the guidelines deviations were for shared parenting time. Most states provide a presumptive formula for shared parenting time. There are many policy decisions associated with the adjustment for shared parenting time (e.g., the formula parameters and the criteria for applying the adjustment such as the number of overnights). A formula will reduce the number of deviations for shared parenting time and produce more consistent and predictable award amounts for cases with shared parenting time.</p> <p><i>How?</i> Review the appropriateness of codifying of <i>Wright v. Osburn</i> or the same formula used in <i>Wright v. Osburn</i> but with a 1.5 multiplier, which is what most states use. Review other states’ provisions. Run case examples of typical circumstances. Provide for deviation criteria for atypical circumstances (e.g., combination of split and shared custody).</p>
12.	<p>Develop and adopt an adjustment for the child’s health care expenses.</p> <p><i>Why?</i> The child’s health care expenses were identified as reason for deviation. Most states provide a presumptive formula for the child’s health care expenses. Providing a formula will reduce the number of deviations and produce more consistent and predictable award amounts.</p> <p><i>How?</i> Review and codify current practices and other states’ provisions and adapt if appropriate for Nevada. Avoid adaptation of rules that are not congruent with both federal statutes and laws concerning medical child support and the Affordable Care Act and recognize that there are conflicts between the two that may not be resolved in the immediate future because they require federal action.</p>
13.	<p>Develop and adopt an adjustment for child care expenses.</p>

⁸⁵ An obvious caveat to this is situations in which domestic violence is of concern.

	<p><i>Why?</i> Child care expenses were identified as reason for deviation. Most states provide a presumptive formula for child care expenses. Providing a formula will reduce the number of deviations and produce more consistent and predictable award amounts.</p> <p><i>How?</i> Review and codify current practices and other states' provisions and adapt, if appropriate for Nevada.</p>
14.	<p>Review and revise the deviation criteria if deemed appropriate.</p> <p><i>Why?</i> Some of the deviation criteria are not used, may no longer be appropriate or needed once other guidelines changes are made, or are obsolete.</p> <p><i>How?</i> Review the deviation criteria with guidelines users.</p>
15.	<p>Review and revise child support arrears policies on interest and fees.</p> <p><i>Why?</i> Research finds that interest and fees on child support arrears contributes to burgeoning arrears, most arrears is owed by very low-income parents, much of the arrears owed will never be paid, and parents with larger arrears are less likely to pay current support.</p> <p><i>How?</i> Review the promising practices of other states' provisions and adapt, if appropriate for Nevada.</p>
16.	<p>Address other issues and concerns identified from Nevada guidelines users and stakeholders and the general public. Also review and consider any relevant federal rule changes such as the Child Support Modernization rules scheduled to be released by the current (2016) administration.</p> <p><i>Why?</i> There may be other issues that should be addressed.</p> <p><i>How?</i> Provide opportunities for input from child support stakeholders and guidelines users and the general public.</p>

CONCLUSION

There is room for improvement to the Nevada child support guidelines. Not only will many of the recommendations reduce guidelines deviations, but they will also improve the predictability of guidelines amount and the consistency of award amounts among similarly situated parties. In all, the proposed recommendations will improve the appropriateness of the child support guidelines and better serve Nevada children and families.

APPENDIX A: TECHNICAL STEPS AND ASSUMPTIONS

The Betson-Rothbarth (BR) measurements are expressed as a percentage of total family expenditures so must be converted to a gross income to be comparable to the Nevada guidelines percentages and presumptive maximums. This is accomplished through several steps and assumptions that are documented in this appendix. This appendix also provides more details about the Consumer Expenditure Survey (CES) used to derive the Betson-Rothbarth measurements and the USDA measurements.

The BR measurements of child-rearing expenditures include all expenditures on the children, including work-related child care expenses, the cost of the child's health insurance benefit, and the child's unreimbursed medical expenses. In contrast, most child support guidelines consider the actual amount of these expenses on a case-by-case basis when calculating the support award. Because the actual amounts are considered, they are not included in the BR4 amounts used in the comparisons. Including them in both places would result in double-accounting of those expenses.

Betson provided supplemental information in order to subtract these expenses from his total estimates of child-rearing expenditures. Using the same subset of the CES that he used to measure child-rearing expenditures, he measured the percentage of total expenditures devoted to child care expenses; the percentage of total expenditures devoted to uninsured healthcare expenses, including the cost of the child's health insurance benefits; and expenditures to net income ratios. Exhibit A-1 shows these measurements, as well as the BR4 measurements of child-rearing expenditures for a range of incomes in 2012 dollars, which is how Betson provided the numbers to CPR. In turn, CPR converted them to 2016 price levels using changes in the consumer price index. (As discussed in Section IV, a similar adjustment was made to the USDA measurements.)

To be clear, the percentages of expenditures devoted to child care are across all families regardless whether they actually had child care expenses. Some families may not incur child care expenses because their children are older or they make other arrangements. Additional adjustments are needed to the medical expenses because they are expressed as a per-person amount rather than per-child amount. The CES captures all medical expenditures and cannot discern which are made on behalf of the child and those that are made on behalf of the parents living in the same household. Instead, data from the National Medical Expenditure survey was used to identify differences in medical expenditures between children and adults. The survey finds the average out-of-pocket medical expense for adults is more than the average for children.

Exhibit A-1: Parental Expenditures on Children and Other Expenditures by Income Range							
Annual Net Income Ranges (2012 dollars)	Number of Observations	Current Consumption as a % of Net Income	Expenditures on Children as a % of Total Consumption Expenditures (Rothbarth 1998-2004 data)			Child Care \$ as a % of Consumption (per child)	Medical \$ as a % of Consumption (per person)
			1 Child	2 Children	3 Children		
\$ 0 - \$14,999	244	426.04%	21.66%	33.77%	41.67%	0.34%	0.56%
\$15,000 - \$19,999	239	165.00%	22.48%	34.99%	43.12%	0.47%	0.75%
\$20,000 - \$24,999	312	134.12%	22.71%	35.68%	43.51%	0.43%	1.08%
\$25,000 - \$34,999	711	114.61%	22.95%	35.68%	43.94%	0.63%	1.11%
\$35,000 - \$39,999	463	105.39%	23.13%	35.95%	44.25%	0.75%	1.28%
\$40,000 - \$44,999	432	98.85%	23.22%	36.08%	44.41%	0.87%	1.43%
\$45,000 - \$49,999	468	95.66%	23.28%	36.17%	44.52%	1.13%	1.57%
\$50,000 - \$59,999	821	89.18%	23.34%	36.26%	44.62%	1.25%	1.58%
\$60,000 - \$64,999	421	85.17%	23.41%	36.35%	44.73%	1.23%	1.46%
\$65,000 - \$69,999	447	82.64%	23.44%	36.40%	44.79%	1.41%	1.63%
\$70,000 - \$74,999	335	78.18%	23.45%	36.42%	44.81%	1.51%	1.57%
\$75,000 - \$84,999	710	76.06%	23.50%	36.49%	44.89%	1.48%	1.49%
\$85,000 - \$89,999	297	74.54%	23.56%	36.57%	44.99%	1.41%	1.49%
\$90,000 - \$99,999	493	72.70%	23.60%	36.63%	45.06%	1.58%	1.57%
\$100,000 - \$109,999	378	70.15%	23.65%	36.70%	45.14%	1.82%	1.33%
\$110,000 - \$119,999	292	66.42%	23.67%	36.74%	45.18%	1.45%	1.34%
\$120,000 - \$129,999	220	66.26%	23.73%	36.82%	45.28%	1.92%	1.24%
\$130,000 - \$149,999	288	61.26%	23.75%	36.86%	45.32%	1.86%	1.21%
\$150,000 - \$174,999	194	58.69%	23.83%	36.97%	45.45%	2.27%	1.24%
\$175,000 or more	156	50.69%	23.90%	37.06%	45.57%	1.69%	1.08%

The BR measurements only cover one, two, and three children. The number of families in the CES with four or more children is insufficient to produce reliable estimates. For many child support guidelines, the National Research Council's (NRC) equivalence scale, as shown below, is used to extend the three-child estimate to four and more children.⁸⁶

$$= (\text{Number of adults} + 0.7 \times \text{number of children})^{0.7}$$

Application of the equivalence scale implies that expenditures on four children are 11.7 percent more than the expenditures for three children, expenditures on five children are 10.0 percent more than the expenditures for four children, and expenditures on six children are 8.7 percent more than the expenditures for five children.

The Betson-Rothbarth estimates of child-rearing expenditures are expressed as a percentage of total family expenditures. As illustrated in Exhibit A-2, families may not spend all of their net or gross income.

⁸⁶ Citro, Constance F. and Robert T. Michael, Editors. (1995). *Measuring Poverty: A New Approach*. National Academy Press. Washington, D.C.

Before the BR measurements can be backed out to gross income, they must be backed out to after-tax income. Various assumptions can be made to back out the measurements to a net-income base. One assumption is that families spend all of their after-tax income. Under this assumption, family expenditures and after-tax income are equal and no additional adjustment is necessary. The District of Columbia is the only state using the Betson estimates to make this assumption. Instead, most BR states consider the expenditures to consumption ratios observed in the CES. As shown in Exhibit A-1, higher income families do not spend all of their net income on current consumption. The percentages adjusted for child care and the child's health care expenses are multiplied by the expenditures to consumption ratios shown in Exhibit A-1. This step produces smaller schedule amounts than what the District of Columbia assumption produces, particularly at higher incomes because higher income households have more savings.

Exhibit A-2: Family Consumption and Net and Gross Income	
Gross Income:	Federal and State Taxes and FICA
Net Income:	Savings and Other Spending
Family Expenditures:	Total Family Expenditures/Outlays for the Family
	Child's Share of Total Family Expenditures/Outlays

The consumption rate used in this calculation is capped at 100 percent. This effectively assumes that families should not be required to spend more than their income. However, the actual data finds that on average, families with incomes below about \$40,000 net per year spend more than their income. The lower the family income, the more the family spends exceeding their income on average. To keep guideline amounts reasonable at very low incomes, the calculation for those in the \$25,000 to \$34,999 income bracket is applied to incomes below \$25,000 as well.

At this point, the application of the steps yields percentages of net income attributable to child-rearing expenditures for one to five children that do not include child care expenses, health insurance premiums, or uninsured, extraordinary medical expenses for several income ranges. To gradually phase between income ranges, percentages are interpolated between the income range to create a tax-like schedule.

The steps above result in child-rearing expenditures that are expressed as a percentage of after-tax income. The final consideration is to back them out to gross income. Most states favor gross-income based guidelines. This requires tax assumptions. The most common assumption is that all income is earned and taxed at the rate of a single taxpayer with no dependents. This is the assumption used by most states relying on the BR measurements. Federal employer withholding formulas were used to calculate the federal tax rate and FICA. Nevada has no state income tax.

CONSUMER EXPENDITURE DATA

All of the economists of the studies cited in this report estimated child-rearing expenditures from the Consumers Expenditures Survey (CES) that is administered by the Bureau of Labor Statistics (BLS). Economists use the CES because it is the most comprehensive and detailed survey conducted on household expenditures and consists of a large sample. The CES surveys about 6,000 households per quarter on expenditures, income, and household characteristics (*e.g.*, family size). Households remain in the survey for five consecutive quarters, with households rotating in and out each quarter. Most economists use three or four quarters of expenditures data for a surveyed family. This means that family expenditures are averaged for about a year rather than over a quarter, which may not be as reflective of typical family expenditures.

The BLS designed the CES to produce a nationally representative sample and samples representative of the four regions (Midwest, Northeast, South, and West). The sample sizes for each state, however, are not large enough to estimate child-rearing costs for families within a state. We know of no state that has seriously contemplated conducting a survey similar to the CES at a state level. The costs and time requirements would be prohibitive.

The CES asks households about expenditures on over a hundred detailed items. Exhibit A-3 shows the major categories of expenditures captured by the CES. It includes the purchase price and sales tax on all goods purchased within the survey period. In recent years, the CES has added another measure of “expenditures” called “outlays.” The key difference is that outlays essentially include installment plans on purchases, mortgage principal payments, and payments on home equity loans, while expenditures do not. To illustrate the difference, consider a family who purchases a home theatre system during the survey period, puts nothing down, and pays for the home theatre system through 36 months of installment payments. The expenditures measure would capture the total purchase price of the home theatre system. The outlays measure would only capture the installment payments made in the survey period.

Outlays include mortgage principal payments, payments on second mortgages and home equity payments, which is what the 2010 Betson-Rothbarth measurement considers. The CES traditional measure of expenditures does not consider these outlays. The merit of using expenditures, which does not include mortgage principal payments, is that any equity in the home should be considered part of the property settlement and not part of the child support payments. The limitations are not all families have substantial equity in their homes and some families have second mortgages or home equity loans that further reduce home equity. The merit of using outlays is that it is more in line with family budgeting on a monthly basis in that it considers the entire mortgage payment including the amounts paid toward both interest and principal, and the amount paid toward a second mortgage or home equity loan if there is such a payment. Both measures include payment of the mortgage interest, rent among households dwelling in apartments, utilities, property taxes, and other housing expenses as indicated in the above table. Housing-related items, which are identified in Exhibit A-3, comprise the largest share of total family expenditures. Housing expenses compose about 40 percent of total family expenditures.

Exhibit A-3: Partial List of Expenditure Items Considered in the BLS, the Data Source Used to Estimate Child-Rearing Expenditures

Housing	Rent paid for dwellings, rent received as pay, parking fees, maintenance, and other expenses for rented dwellings; and interest on mortgages, interest on home equity loans and lines of credit, property taxes and insurance, refinancing and prepayment charges, ground rent, expenses for property management and security, homeowners' insurance, fire insurance and extended coverage, expenses for repairs and maintenance contracted out, and expenses of materials for owner-performed repairs and maintenance for dwellings used or maintained by the consumer unit. Also includes utilities, cleaning supplies, household textiles, furniture, major and small appliances and other miscellaneous household equipment (tools, plants, decorative items).
Food	Food at home purchased at grocery or other food stores, as well as meals, including tips, purchased away from home (e.g., full-service and fast-food restaurant, vending machines).
Transportation	Vehicle finance charges, gasoline and motor oil, maintenance and repairs, vehicle insurance, public transportation, leases, parking fees, and other transportation expenditures.
Entertainment	Admission to sporting events, movies, concerts, health clubs, recreational lessons, television/radio/sound equipment, pets, toys, hobbies, and other entertainment equipment and services.
Apparel	Apparel, footwear, uniforms, diapers, alterations and repairs, dry cleaning, sent-out laundry, watches, and jewelry.
Other	Personal care products, reading materials, education fees, banking fees, interest paid on lines of credit, and other expenses.

Transportation expenses account for about one-fifth of total family expenditures. In the category of “transportation,” the CES includes net vehicle outlays, vehicle finance charges, gasoline and motor oil, maintenance and repairs, vehicle insurance, public transportation expenses, and vehicle rentals, leases, licenses, and other charges. The net vehicle outlay is the purchase price of a vehicle less the trade-in value. Net vehicle outlays account for about one-third of all transportation expenses. Net vehicle outlays are an important consideration when measuring child-rearing expenditures because the family’s use of the vehicle is often longer than the survey period. In Betson’s first three studies, he excluded them because in his earlier estimates that consider expenditures the vehicle can be sold again later after the survey period. In contrast, Betson’s 2010 estimates that consider outlays capture vehicle payments made over the survey period. The USDA, which relies on expenditures, includes all transportation expenses including net vehicle outlays. There are some advantages and disadvantages to each approach. Excluding it makes sense when the vehicle may be part of the property settlement in a divorce. An alternative to that would be to include a value that reflects depreciation of the vehicle over time, but that information is not available. Including the entire net vehicle outlay when expenditures are used as the basis of the estimate likely overstates depreciation. When the basis of the estimates is outlays, it includes only vehicle installment payments rather than net vehicle outlays. This effectively avoids the issues of vehicle equity and depreciation.

Exhibit A-4: Composition of Average Spending by Families (adopted from Betson 2010)				
Expenditure Category	Childless Couple	One Child	Two Children	Three or More Children
Total Annual Outlays	\$51,428	\$55,968	\$59,096	\$49,491
Budget Share (Percentage of Total Outlays)				
Food	15.7%	16.0%	16.8%	18.3%
Housing	37.9%	41.2%	41.4%	40.9%
Apparel	2.6%	3.1%	3.2%	3.6%
Transportation	20.3%	19.9%	19.0%	18.4%
Entertainment	7.2%	6.4%	6.8%	6.3%
Healthcare	6.1%	5.3%	5.3%	4.6%
Personal Care	.7%	.6%	.6%	.5%
Education and Reading	1.9%	1.8%	1.7%	1.7%
Miscellaneous	7.6%	5.7%	5.2%	5.7%

Betson also excludes other expenditure items captured by the CES because they are obviously not child-rearing expenses. Specifically, he excludes contributions by family members to Social Security and private pension plans, and cash contributions made to members outside the surveyed household. The USDA also excludes these expenses from its estimates of child-rearing expenditures.

Gross and net incomes are reported by families participating in the CES. The difference between gross and net income is taxes. In fact, the CES uses the terms “income before taxes” and “income after taxes” instead of gross and net income. Income before taxes is the total money earnings and selected money receipt. It includes wages and salary, self-employment income, Social Security benefits, pensions income, rental income, unemployment compensation, workers’ compensation, veterans’ benefits, public assistance, and other sources of income. Income and taxes are based on self-reports and not checked against actual records.

The BLS has concerns that income may be underreported in the CES. Although underreporting of income is a problem inherent to surveys, the BLS is particularly concerned because expenditures exceed income among low-income households participating in the CES. The BLS does not know whether the cause is underreporting of income or that low-income households are actually spending more than their incomes because of an unemployment spell, the primary earner is a student, or the household is otherwise withdrawing from its savings. In an effort to improve income information, the BLS added and revised income questions in 2001. The new questions impute income based on a relationship to its expenditures when households do not report income. The 2010 Betson-Rothbarth measurements rely on these new questions. Previous Betson measurements do not.

The BLS also does not include changes in net assets or liabilities as income or expenditures. In all, the BLS makes it clear that reconciling differences between income and expenditures and precisely measuring income are not parts of the core mission of the CES. Rather, the core mission is to measure and track expenditures. The BLS recognizes that at some low-income levels, the CES shows that total expenditures exceed after-tax incomes, and at very high incomes, the CES shows total expenditures are considerably less than after-tax incomes. However, the new income questions used by the BLS

ameliorate some of this perceived anomaly at low incomes. The consideration of outlays rather than expenditures at high incomes lessens some of the perceived anomaly at high incomes.

In developing child support guidelines, a long-standing assumption has been that at higher incomes the difference between after-tax income and expenditures is a form of “savings.” This includes traditional savings (*i.e.*, deposits into a bank account) and other contributions to family wealth such as mortgage principal payments, which are included in CES measurement of expenditures but not in the CES measurement of outlays.

A high level of “savings” seems to contradict reports about the national savings rate being low. However, economists calculate the national savings rate using a different methodology.⁸⁷ Some of the differences concern the treatment of housing and medical expenses. When calculating the national savings rate, economists define savings to be the difference between disposable income and consumption. In defining consumption, economists impute the rental value of housing to homeowners even though the rental value may exceed the mortgage payment. Similarly, economists impute the value of all medical services received even though there was insurance coverage and the family incurred no out-of-pocket expense. These imputed values increase consumption considerably and hence, reduce the national savings rate. In fact, the escalating cost of health services contributes significantly to the declining national savings rate.⁸⁸

⁸⁷ More information about this difference can be found in California’s guidelines review report (Judicial Council, 2006).

⁸⁸ *Ibid.*