CHAPTER TEN – ESTABLISHMENT OF CHILD SUPPORT AND MEDICAL SUPPORT OBLIGATIONS

CHAPTER TEN – ESTABLISHMENT OF CHILD SUPPORT AND MEDICAL SUPPORT OBLIGATIONS

CHAPTER TEN
ESTABLISHMENT OF CHILD SUPPORT AND MEDICAL SUPPORT OBLIGATIONS

INTRODUCTION

The child support program serves nearly one in five children in the United States, providing 41% of family income to poor families who receive support payments and lifting one million people out of poverty every year.[1] With the time limits on Temporary Assistance for Needy Families (TANF) benefits, this additional source of income is especially important. Increased income flowing to the family can enable families to achieve economic stability, and allow the custodial parent to enter the workforce by covering child care costs and providing a source of health care coverage. Establishing parentage and a support obligation also can connect a parent to a child, and thereby begin or restore a relationship between the child and the noncustodial parent.

This chapter discusses the steps involved in establishing a support obligation and issues arising under child support guidelines. The information may be especially useful to the attorney preparing intergovernmental cases. Because guidelines are state-specific, the chapter contains information about how guidelines differ regarding the determination of income, factors to be included in calculations, and bases for deviation. The section on medical support focuses on the mandates for obtaining orders for health care coverage, the National Medical Support Notice (NMSN), and the Employee Retirement Income Security Act of 1974 (ERISA).[2]

DEFINITION OF CHILD SUPPORT

Traditionally, child support has been defined as cash contributions made on behalf of a minor child pursuant to an order or an agreement between the parents. This definition has evolved and broadened, however, and may include medical support, child care, and education expenses.[3]

---

[1]Office of Child Support Enforcement, The Child Support Program is a Good Investment; Story Behind the Numbers (Dec. 2016).

[2] Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (1974).

[3] *See* Full Faith and Credit for Child Support Orders Act, Pub. L. No. 103-383, § 3, 108 Stat. 4063, 4064 (1994), codified as amended at 28 U.S.C. § 1738B (2018). This law defines child support as "a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child."

OVERVIEW OF THE ESTABLISHMENT PROCESS

Establishment of a child support order is vital to ensuring support for a child. Although a legal obligation to support a child may exist, it is not enforceable without a court order or an administrative order.[4]

Context

Before a tribunal[5] can establish a child support order, it must first find that the person has a legal obligation to provide support to the child. This legal obligation may arise in several different contexts.

Married parents. When parents are married, the child is presumed to be a child of the marriage, and establishment of a child support order most often occurs during separation or divorce proceedings. If a divorce order is silent on the issue of support, the custodial parent can later seek establishment of a support order.

Unmarried parents. When parents are unmarried, there are a number of ways to legally establish parentage.[6] For example, state or tribal law may create a legal presumption of paternity. Federal law requires states to have laws creating a legal presumption of paternity when genetic testing results indicate a probability of paternity above a certain threshold.[7] Most states also have laws creating presumptions of paternity in cases where the child was born within a certain time after the marriage ended.[8] Under the Uniform Parentage Act (2017), an individual is also a presumed parent if the individual resided in the same household as the child for the first two years of the child's life and openly held out the child as his own.[9] When an unrebutted presumption or parentage exists, a tribunal has the legal authority to establish parentage and a support order. In cases where more than one presumption exists for the same person, the tribunal must determine which presumption controls. Additionally, federal law requires

---

[4] Federal law allows jurisdictions to use judicial or administrative processes for the establishment and enforcement of child support. For a complete discussion of these processes, *see* Chapter Six: Expedited Judicial and Administrative Processes.

[5] For purposes of this publication, the term "tribunal" means a "court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child." Unif. Interstate Family Support Act § 102(29) (2008).

[6] The Uniform Parentage Act of 2017 creates several categories of parent for purposes of establishing parentage. Unif. Parentage Act, Art. 6 Part 2 (2017). For a detailed explanation of parentage establishment, *see* Chapter Nine: Establishment of Parentage.

[7] 45 C.F.R. § 302.70(a)(5)(iv), (v) (2019). States may choose whether to make these presumptions rebuttable or conclusive. For a detailed explanation of the paternity establishment process, *see* Chapter Nine: Establishment of Parentage.

[8] *See, e.g.,* Colo. Rev. Stat. § 19-4-105 (2019).

[9] Unif. Parentage Act § 204(a)(2) (2017). For a detailed discussion of the Uniform Parentage Act, *see* Chapter Nine: Establishment of Parentage.

states to provide that a signed paternity acknowledgment constitutes a legal finding of paternity, subject to a 60-day rescission period.[10]

Federal Requirements

Federal regulations require that within 90 calendar days of locating an alleged father or noncustodial parent, regardless of whether paternity has been established, an agency must either establish a support order, or complete the service of process necessary to establish a support order[11] and, if necessary, paternity, or document unsuccessful attempts to serve process.[12] A support order may also be entered on behalf of a caretaker or foster care agency when a tribunal has placed a child in the custody of a caretaker relative or agency.[13]

Standing

The custodial relative or caretaker for the child has standing to bring an action for support. In addition, the child can file by next friend – a person appearing in, or appointed by, a court to act on behalf of a child lacking legal capacity where circumstances so merit. The next friend can be a guardian ad litem, appointed by a court to represent the minor child in a particular lawsuit, or it can be a relative or family friend of competent age acting on behalf of the child without court intervention. The child support agency can also bring an establishment action, either because of an assignment of support rights in public assistance cases or because of a state statute giving the child support agency standing in IV-D cases.[14]

Jurisdiction

For a tribunal to enter a valid order for child support, there must be jurisdiction over the parties and the subject matter.

Subject matter jurisdiction. Ordinarily, subject matter jurisdiction should not be a problem in child support cases. In judicial proceedings, it is a matter of filing the petition in the proper tribunal. In an administrative case, it means acting within the authority of the administrative agency. When a challenge to subject

[10] 42 U.S.C. § 666(a)(5)(D) (2018).
[11] 45 C.F.R. § 303.4 (2019).
[12] 45 C.F.R. § 303.3(c) (2019).
[13] 42 U.S.C. § 654(4)(A)(i) (2018).
[14] In some states, there is law providing that the child support agency is a necessary party in any proceeding involving the IV-D case. *See, e.g.*, Kan. Stat. Ann. § 23-2209 (2019); Mont. Code Ann. § 40-5-202(5) (2019) (if a substantial interest of the department could be adversely affected); Okla. Stat. tit. 43, § 112F (2019) (if public assistance money or medical support is being provided).

matter jurisdiction arises in a child support case, it is usually in the context of modification under the Uniform Interstate Family Support Act (UIFSA).[15]

Personal jurisdiction. A tribunal must have personal jurisdiction in order to establish a support order. Where the noncustodial parent is physically present in the forum state, personal jurisdiction is usually not an issue. Gaining personal jurisdiction over a nonresident noncustodial parent, however, can present challenges. The attorney should review the facts of the case to determine if there is a basis for asserting long-arm jurisdiction. Every state has enacted UIFSA (2008), which includes expansive long-arm provisions.[16] Federal regulations require initiating child support agencies to determine whether it is appropriate to use long-arm jurisdiction as part of the initial investigation into an intergovernmental case.[17] Although child support agencies rely on caseworkers to do the majority of case preparation, most agencies require review by an attorney before filing a pleading seeking establishment based on long-arm jurisdiction. The attorney must ensure that the facts satisfy the long-arm statutory provisions as well as due process requirements.[18]

Service of process. Whether the establishment action is filed within the state, or forwarded to another state, tribe, or country for filing under that jurisdiction's law, the law of the forum jurisdiction governs service of process on the noncustodial parent. States promulgate rules for service of process that are, for the most part, based upon the Federal Rules of Civil Procedure.[19] Many jurisdictions allow service of establishment pleadings by certified or registered mail, return receipt requested. Others require personal service. Some states have electronic filing systems for service of process and documents, and some state and federal cases have addressed service of process by e-mail and Facebook.[20] In an administrative system, the agency may mail the noncustodial parent a Notice of Support Debt.

---

[15] *See, e.g., In re Schneider*, 268 P.3d 215 (Wash. 2011). *See generally Office of Child Support v. O'Brien*, 67 A.3d 916 (Vt. 2013). For more information on modification and jurisdiction under UIFSA, *see* Chapter Thirteen: Intergovernmental Child Support Cases.

[16] *See* Unif. Interstate Family Support Act § 201 (2008).

[17] 45 C.F.R. § 303.7(c)(3) (2019). For more information about initiating and responding agencies in intergovernmental cases, *see* Chapter Thirteen: Intergovernmental Child Support Cases.

[18] *See Kulko v. Superior Court of Cal.*, 436 U.S. 84 (1978).

[19] Fed. R. Civ. P.4, 5.

[20] *See, e.g.*, N.D. Ind. L.R. 5.2 (documents may be served through court's transmission facilities by electronic means to extent authorized by CM/ECF User Manual approved by court); Colorado and New York have implemented electronic filing systems that allow users to e-serve and e-file documents. *See, e.g.*, *Federal Trade Commission v. PCCare247 Inc.*, 2013 U.S. Dist. LEXIS 31969, No. 12 Civ. 7189 (PAE)**,** 2013 WL 841037 (S.D.N.Y. Mar. 7, 2013) (holding that service of process on a defendant in an international case via Facebook does not violate international agreements, comports with due process, and was warranted in the specific case given plaintiff's attempts to serve the defendant through multiple other methods); *Rio Props. Inc. v. Rio Int'l Interlink*, 284 F.3d1007 (9th Cir. 2002); and *Hollow v. Hollow*, 193 Misc.2d 691, 747 N.Y.S.2d 704 (N.Y. Sup. Ct. 2002). Both the *Rio* and *Hollow* cases permitted service via e-mail by court order on defendants who were outside the country and when attempts at service using standard

Child support attorneys should review their jurisdiction's service of process requirements to determine what type of service is allowed.

Elements of Proof

Before a tribunal will issue a support order, it requires that the attorney prove the following for purposes of applying the support guidelines:

- The existence of a legal obligation to pay support by the alleged noncustodial parent, either by proving that
  - the alleged noncustodial parent is the parent of the child in question, or
  - the alleged noncustodial parent has a parental relationship with the child, justifying establishment of a support duty; and
- The noncustodial parent's income, and the custodial parent's income in many states.

There are many electronic sources of income information that a IV-D attorney can review, including quarterly wage data from the Federal Parent Locator Service (FPLS), data from the National Directory of New Hires (NDNH), and financial institution records from the multistate or single state Financial Institution Data Match (FIDM), in addition to any state-specific databases that may be available.[21]

Many guidelines expressly require the parties to document their income through income tax returns and pay stubs. In examining pay records, the attorney should seek at least one year's worth of pay stubs as income can fluctuate monthly in many jobs. Pay stubs from the end of the year are particularly significant as they reveal the actual taxes paid over the course of the year and the total of all paycheck deductions. Most states also require parties to complete a standardized financial affidavit.

---

methods had failed or were impractical. For a discussion of the constitutionality of service of process via text messaging, *see* Claire M. Specht, *Text Message Service of Process - No LOL Matter: Does Text Message Service of Process Comport with Due Process?*, 53 B.C. L. Rev. 1929 (2012). *See also* Kristina Coleman, *Beyond Baidoo v. Blood-Dzraku: Service of Process Through Facebook and Other Social Media Platforms Through an Indiana Lens*, 50 Ind. L. Rev. 645 (2017); Christopher M. Finke, *Friends, Followers, Connections, Lend Me Your Ears: A New Test for Determining the Sufficiency of Service of Process Via Social Media*, 46 U. Balt. L. Rev. 139 (Fall 2016); John M. Murphy, III, *From Snail Mail to E-Mail: The Steady Evolution of Service of Process*, St. John's J. C.R. & Econ. Dev. 73 (2004); Angela Upchurch, *"Hacking" Service of Process: Using Social Media to Provide Constitutionally Sufficient Notice of Process*, 38 U. Ark. Little Rock L. Rev. 559 (Summer 2016).

[21] For more information on FPLS, NDNH and FIDM, *see* Chapter Five: Location of Case Participants and Their Assets.

There are certain circumstances in which the child support attorney might want to conduct additional discovery.[22] Where a person owns a Subchapter S corporation or operates a cash-based business, the attorney should carefully scrutinize the person's income and expenses. Another situation is when a person's lifestyle seems to far exceed the income the person is claiming; there could be hidden income that the attorney can discover, or it might be appropriate to advocate for imputing income.[23] Keep in mind that federal regulations address imputation of income by requiring a specific analysis of each individual noncustodial parent's situation. As discussed in more detail later in this chapter, if the child support attorney has a case where information about the noncustodial parent's earnings and income is unavailable or insufficient, the child support agency and attorney must search such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.[24] The state employment commission is a helpful resource. Once there has been a thorough search of these factors, using the discovery methods at the attorney's disposal, the attorney will be in a much better position to present evidence in support of a recommended income level for the tribunal to use in applying the child support guidelines.

Defenses

In an establishment case, when parentage has not been determined by law, the alleged noncustodial parent can raise a nonparentage claim. In cases where the alleged noncustodial parent is alleged to be the biological parent, genetic testing usually resolves such a claim.[25] When the legal relationship between the child and parent has already been established, there are a limited number of challenges to a petition to establish support. The fact that support is already being provided does not preclude a civil action to obtain an order for support. A decision maker may entertain defenses such as the following:

- The petitioner has served the wrong person;
- The tribunal lacks personal jurisdiction over the parties;
- The noncustodial parent is living with the minor child for whom support is sought (as the primary caregiver, in an intact two-parent household, or is receiving TANF benefits);

[22] For additional discussion on discovery, *see* Chapter Eight: Advocacy Skills for Child Support Attorneys.
[23] *See* the discussion on imputation of income, herein.
[24] 45 C.F.R. § 302.56(c)(1)(iii) (2019).
[25] *See* Chapter Nine: Establishment of Parentage for additional information.

- The child is emancipated; or
- An order of support entitled to recognition is already in place. Both the Full Faith and Credit for Child Support Orders Act (FFCCSOA) and UIFSA prohibit entry of a de novo order in such a circumstance.[26]

CHILD SUPPORT GUIDELINES

Federal Requirements

In an attempt to increase the use of objective criteria in the establishment of child support orders, the Child Support Enforcement Amendments of 1984[27] required states, as a condition of receiving federal funds, to develop mathematical calculations to determine appropriate child supports awards.[28] Initially advisory, the Family Support Act of 1988[29] required that the guideline calculation must create a rebuttable presumption that it is the appropriate amount of support. If the tribunal deviates from the guideline amount, it must make a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate.[30]

Regulations governing child support guidelines are at 45 C.F.R. § 302.56. They were significantly amended in 2016 when the federal Office of Child Support Enforcement (OCSE) published the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs final rule ("Final Rule").[31] The Final Rule's goals included increasing regular, on-time payments to families, and reducing the accumulation of unpaid child support arrears.[32] It emphasized that the support obligation or recommended support obligation amount should be based on the actual earnings, income, and ability to pay of the noncustodial parent in the specific case.[33]

Federal regulations at 45 C.F.R. § 302.56(c) require that child support guidelines must, at a minimum, provide that the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay. In order to achieve that, the guideline must:

---

[26] 28 U.S.C. § 1738B (2018); Unif. Interstate Family Support Act §§ 102, 207 (2008). *See* Chapter Thirteen: Intergovernmental Child Support Cases for a complete discussion of FFCCSOA and UIFSA. Because of the prohibition on *de novo* orders, some states have rules of civil procedure or statutes requiring that pleadings include an allegation regarding the existence of other support orders. *See, e.g.*, Iowa Code § 598.5(1)(e) (2020).
[27] Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305.
[28] 45 C.F.R. § 302.56(c)(2) (2019).
[29] Family Support Act of 1988, Pub. L. No. 100-485, §103, 102 Stat. 2343, 2346.
[30] 42 U.S.C. § 667(b)(2) (2018).
[31] Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, 81 Fed. Reg. 93,492 (Dec. 20, 2016).
[32] *Id*.
[33] 81 Fed. Reg. 93,517 (Dec. 20, 2016).

- Take into consideration all earnings and income of the noncustodial parent (and at the state's discretion, the custodial parent);

- Take into consideration the basic subsistence needs of the noncustodial parent (and at the state's discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method determined by the state; and

- If imputation of income is authorized, take into consideration the specific circumstances of the noncustodial parent (and at the state's discretion, the custodial parent) to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.[34]

In addition, the guideline must address how the parents will provide for the child's health care needs through private or public health care coverage and/or through cash medical support.[35] The guidelines must provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders.[36] Finally, the guidelines must be based on specific descriptive and numeric criteria and result in a computation of the child support obligation.[37]

In order to ensure their application results in an appropriate child support amount, states must review their guidelines at least once every four years and revise them if appropriate.[38] The Final Rule added requirements concerning the guideline review. As part of the review, a state must:

> (1) Consider economic data on the cost of raising children, labor market data (such as unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level for the State and local job markets, the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level, and factors that influence employment rates among noncustodial parents and compliance with child support orders;

[34] 45 C.F.R. § 302.56(c)(1) (2019).
[35] 45 C.F.R. § 302.56(c)(2) (2019).
[36] 45 C.F.R. § 302.56(c)(3) (2019)
[37] 45 C.F.R. § 302.56(c)(4) (2019).
[38] 45 C.F.R. § 302.56(e) (2019).

> (2) Analyze case data, gathered through sampling or other methods, on the application of and deviations from the child support guidelines, as well as the rates of default and imputed child support orders and orders determined using the low-income adjustment required under paragraph (c)(1)(ii) of this section. The analysis must also include a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment required under paragraph (c)(1)(ii). The analysis of the data must be used in the State's review of the child support guidelines to ensure that deviations from the guidelines are limited and guideline amounts are appropriate based on criteria established by the State under paragraph (g); and
>
> (3) Provide a meaningful opportunity for public input, including input from low-income custodial and noncustodial parents and their representatives. The State must also obtain the views and advice of the State child support agency funded under title IV-D of the Act.[39]

The state must publish on the internet and make accessible to the public all reports of the guidelines reviewing body, the membership of the reviewing body, the effective date of the guidelines, and the date of the next quadrennial review.[40]

Federal regulations governing tribal child support programs recognize tribal sovereignty and the importance of allowing tribes to administer their IV-D child support programs in a way that best meets the needs of tribal children and their families, consistent with their values and cultures.[41] The requirements governing child support guidelines are at 45 C.F.R. § 309.105. Tribes must establish one set of child support guidelines for setting and modifying support obligation amounts that result in a rebuttable presumption of the correct support amount. The guidelines must at a minimum:

- Take into account the needs of the child and the earnings and income of the noncustodial parent; and
- Be based on specific descriptive and numeric criteria and result in a computation of the support obligation.[42]

Tribal guidelines may permit non-cash payments to satisfy support obligations. If they do, the guidelines must:

---

[39] 45 C.F.R. § 302.56(h) (2019).
[40] 45 C.F.R. § 302.56(e) (2019).
[41] *See* 45 C.F.R. § 309.01–.170 (2019). For additional information on child support cases involving a tribal member or tribal court, *see* OCSE-IM-07-03: Tribal and State Jurisdiction to Establish and Enforce Child Support (March 12, 2007).
[42] 45 C.F.R. § 309.105(b) (2019).

- Require tribal support orders allowing non-cash payments to also state the specific dollar amount of the support obligation;

- Describe the type(s) of non-cash support that will be permitted to satisfy the underlying specific dollar amount of the support order; and

- Provide that non-cash payments will not be permitted to satisfy assigned support obligations.[43]

The tribunal must apply the guidelines unless there is a written finding or a specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case in accordance with criteria established by the tribe or tribal organization. The guidelines must be reviewed and revised, if appropriate, at least once every four years.

Overview of Guideline Models

Federal regulations provide that guidelines can be established by law or by judicial or administrative action.[44] Each state develops its own guidelines, the use of which is binding on judges and other officials who set child support awards. All states use one of three guideline models: Income Shares, Percentage of Income, or the Melson formula.[45]

Income Shares. The Income Shares model is the most common model in the states. It is based on the premise that both parents should share in the expenses of the family proportionate to their incomes and that the child should continue to receive the same amount of support as the child would have received had the parents never separated or divorced. This same premise is applied to the children of unmarried parents. Under this model, the decision maker first determines the income of each parent and consults a table to determine the basic child support obligation at that combined income level. The tables vary from state to state and are typically based on economic estimates of child-rearing expenditures minus average amounts for health insurance, child care, and extraordinary medical expenses for a child.[46] The basic support amount also varies based on factors, such as the number of children. The presumed basic needs of the child are met by the figure from the table; then expenses, such as

---

[43] 45 C.F.R. § 309.105(a)(3) (2019).
[44] 45 C.F.R. § 302.56(a) (2019).
[45] *See generally* Jane C. Venohr, *Differences in State Guideline Amounts: Guidelines Models, Economic Basis, and Other Issues*, 29 J. Am. Acad. Matrim. Law. 377 (2017), Table 1. *See also* Laura W. Morgan, Child Support Guidelines: Interpretation and Application (2d ed. 2013 and Supp. 2017). For links to each state's support guidelines, *see* National Conference of State Legislatures, *Child Support Guideline Models by State* (Feb. 2019), https://www.ncsl.org/research/human-services/guideline-models-by-state.aspx (last visited Jan. 15, 2021). For information about each state's support guideline model, *see also* Office of Child Support Enforcement, Intergovernmental Reference Guide (IRG), Question F.1, https://ocsp.acf.hhs.gov/irg/profileQuery.html?geoType=1 (last visited Mar. 3, 2020).
[46] Venohr, *supra* note 45, at 385.

work-related child care costs, health insurance premiums, and extraordinary medical expenses, are added as appropriate. The total is then prorated between the parents based on their proportionate shares of the total available income. This type of formula can be based on either gross or net parental income. The person with primary physical custody of the child is presumed to be contributing his or her proportionate share of the total support obligation directly to the child. The tribunal orders the noncustodial parent to pay his or her proportionate share of the support obligation as the child support award.

Percentage of Income. The Percentage of Income model bases the support amount on a percentage of the income of the noncustodial parent and the number of children to be supported. The basic percentages vary from state to state.[47] Some states using the Percentage of Income model may consider other factors, such as the age of the children. There are two variations of the Percentage of Income method: flat percentage and varying percentage. Under a flat percentage formula, the portion of income devoted to child support does not vary regardless of the income of the noncustodial parent.[48] A varying percentage formula provides for an increasing percentage of the noncustodial parent's net income at low-income and mid-income levels, then caps it with a constant percentage after it reaches a certain level. Under the percentage-of-income model, the tribunal does not consider the income of the custodial parent. The tribunal calculates the support amount by first determining the noncustodial parent's income. It then determines the basic order by taking the appropriate percentage of that income based on the state's law. The tribunal may adjust the basic support amount for add-ons or deductions, which are discussed in detail later in this chapter.

Melson Formula. The Melson formula, a hybrid of the cost-sharing and income-sharing models, requires that each parent's basic needs be met before child support is set. It is premised on the allocation of a poverty-level amount to each parent before determining the child's needs. The three underlying principles of the Melson formula are that: (1) parents are entitled to keep sufficient income to meet their basic needs to encourage continued employment; (2) until the basic needs of the child are met, parents should not be permitted to retain any more income than that required to provide the bare necessities for their own self-support; and (3) where income is sufficient to cover the parents' basic needs and those of the dependent, the child is entitled to share in any additional income and benefit from the noncustodial parent's higher standard of living. The Melson formula considers the primary needs of the child, work-related child care expenses, extraordinary medical expenses, and any standard-of-living

[47] *See, e.g.,* Alaska R. Civ. P. 90.3(2)(A) (20% for one child); Nev. Rev. Stat. § 125B.070(1)(b)(1) (2019) (18% for one child); Miss. Code Ann. § 43-19-101(1) (2018) (14% of adjusted gross income for one child).
[48] *See, e.g.,* N.Y. Dom. Rel. Law. § 240(1-b) (McKinney 2019).

adjustment before allocating the child's total needs between the parents based on a percentage of income of each.[49]

Although the use of only three guideline models by states would suggest that child support orders established using a particular model would not vary much from state to state, there are, in fact, many differences among the states in the application of a model. These include differences in the definition of income, how and when to impute income, and whether gross or net income is used. Differences also exist in how the guidelines consider other factors.

Choice of Law

The governing child support guideline will be that of the forum jurisdiction. For intergovernmental cases, that means it will usually be the law of the responding state.

APPLICATION OF CHILD SUPPORT GUIDELINES

It is important that tribunals enter child support orders based on a noncustodial parent's realistic ability to pay. The child support attorney plays a vital role in the establishment of child support orders by documenting on a case-by-case basis, all allowable sources of income for each party, following regulatory requirements concerning imputation of income when income information is unavailable or insufficient, presenting to the tribunal a proposed support amount using the applicable guideline, and proposing a deviation from the guideline amount when appropriate.

In the Final Rule, OCSE expressed concern that some states had reduced their case investigation efforts about a noncustodial parent's present circumstances or sustained ability to pay support.[50] The regulations require state IV-D agencies to use tools such as investigations, case conferencing, interviews with both parties, appear and disclose procedures, parent questionnaires, testimony, and electronic data sources to determine income of an obligor.[51] Child support attorneys will likely be involved in the use of some of these tools. The Final Rule noted that orders issued in IV-D cases should not reflect a lower threshold of evidence than applied in private cases represented by legal counsel.[52]

[49] *See Dalton v. Clanton*, 559 A.2d 1197 (Del. 1989), for a full explanation of this model.
[50] 81 Fed. Reg. 93,492, 93,516 and 93,519 – 93,520 (Dec. 20, 2016).
[51] 45 C.F.R. § 303.4(b)(1) (2019).
[52] 81 Fed. Reg. 93,517 (Dec. 20, 2016).

Definition of Income

Federal regulations require that guidelines must consider all earnings and income of the noncustodial parent.[53] Some guideline models consider the incomes of both parents, including the earnings and income of the custodial parent in the calculation, while other models are based primarily on the income of the noncustodial parent. Regardless of the model used, the computation of income, based upon each state's definition for the purposes of calculating child support, is the critical first step in establishing a child support order.

States use varying definitions of what constitutes income, and these definitions are often very broad; at least one state's definition of income ends with "potential cash flow from any source."[54]

Salary and resources. All guidelines require the tribunal to consider earned income of one or both parties when determining a support order. Typically, this income is salary, but all states offer lists of resources that can be included in income. Often these include commissions, bonuses, tips and perquisites, rental income, estate or trust income, royalties, interest, dividends and annuities, self-employment earnings, alimony, in-kind and fringe benefits, and lottery winnings. North Dakota includes as in-kind income, "income producing activity of any valuable right, property right or property interest, . . . and the use of consumable property or services at no charge or less than the customary charge."[55] New York allows consideration of non-income-producing assets at the discretion of the court,[56] and Wisconsin includes undistributed income of a corporation and contributions to an employee benefit plan.[57] Some support guidelines expressly address military pay.[58] The examples of income are listed in the guidelines themselves[59] and are often expanded upon in case law.[60]

---

[53] 45 C.F.R. § 302.56(c)(1) (2019).
[54] Ohio Rev. Code Ann § 3119.01(C)(12) (2019).
[55] N.D. Admin. Code § 75-02-04.1-01(5) (2019).
[56] N.Y. Dom. Rel. Law § 240(1-b)(b)(5)(iv)(A) (McKinney 2019).
[57] Wis. Admin. Code DCF § 150-02(13)(a)(9) (2019).
[58] *See, e.g.,* La. Stat. Ann. § 9:315(C)(3)(a) (2018); N.J. Ct. R., Appendix IX-B (2019). For more information on the military, *see* Chapter Fourteen: Military Parents.
[59] *See, e.g.*, Cal. Fam. Code § 4058 (West 2019); Me. Rev. Stat. Ann. tit. 19-A, § 2001(5) (2019); Tex. Fam. Code Ann. § 154.062(b) (West 2018); Va. Code Ann. § 20-108.2(C) (2019). *See also* Ala. R. Jud. Admin. R. 32(B)(1) – (4) (2019); Vt. Stat. Ann. tit. 15, § 653(5)(A)(ii) (2014) (in-kind contributions are income); and Tex. Fam. Code § 154.062(b)(5) (West 2018) (gifts and prizes are income).
[60] *See, e.g.*, *In re Marriage of Morton,* 238 Cal. Rptr. 3d 407 (Cal. Ct. App. 2018) (trial court erroneously excluded former husband's income tax refunds from his net income available for child support based on state statute); *K.W. v. M,W.*, 944 N.Y.S.2d 858 (N.Y. Fam. Ct. 2012) (union fringe benefits paid to a parent are income if the recipient regularly receives the benefits or if they reduce that parent's living expenses); *McMurchie v. McMurchie*, 304 P.3d 751 (Or. App. 2013) (lottery winnings and the interest from invested lottery winnings are both income); *Murphy v. McDermott*, 979 A.2d 373 (Pa. Super. Ct. 2009) (income includes IRA earnings, as long as the amount of the withdrawal penalty is factored into the calculation); *In re P.C.S.*, 320 S.W.3d 525

Under many support guidelines, income includes inheritance and one-time benefits, such as lottery winnings or personal injury awards.[61] Generally, most states also include interest and dividends in their definitions of income. There is case law suggesting that the tribunal may even include income from a "one-time" capital gain.[62]

Commissions. Most state guidelines consider commissions as income. The issue is how long a period to use in computing an average when commission payments are sporadic. Most state guidelines also include royalties and bonuses, even severance pay, in their definition of what constitutes gross income, even though they may not be recurring payments.

Income from overtime, second job, and seasonal employment. State support guidelines vary in how they treat income from overtime, second jobs, or seasonal employment. Some states – such as Florida, Kansas, and Texas – expressly include overtime or periodically received income within their definition of gross income.[63] Other state support guidelines expressly exclude overtime or seasonal income from the definition of gross income if, in the court's discretion, the inclusion would be inequitable to a party.[64] Colorado includes overtime within the definition of gross income only if the overtime is required by the employer as a condition of employment.[65] Other states, such as California, provide the tribunal discretion to consider such income.[66] States also vary in their treatment

---

(Tex. App. 2010) (noncustodial parent's $400,000 cash inheritance should have been included in his income). *But see In re Marriage of Unruh*, 88 P.3d 1241 (Kan. App. 2004) (41% of Subchapter S corporation earnings that were reinvested are not income); *Crawford v. Schulte*, 829 N.W.2d 155 (S.D. 2013) (inheritance was not considered income).

[61] *See, e.g., M.S. v. O.S.,* 97 Cal. Rptr. 3d 812 (Ct. App. 2009) (twice yearly bonus a Native American father received from his tribe was income includable in his gross income); *In re A.M.D.*, 78 P.3d 741 (Colo. 2003) (include monetary inheritance income if withdrawn and spent to meet living expenses or increase standard of living); *In re New Hampshire ex rel. Taylor*, 904 A.2d 619 (N.H. 2006) (lump sum personal injury settlement is income); *Lyman v. Lyman*, 795 N.W.2d 475 (Wis. Ct. App. 2011) (settlement from wrongful termination of employment lawsuit was income). *But see Crawford v. Schulte*, 829 N.W.2d 155 (S.D. 2013) (an expected inheritance cannot be considered as "monthly income"); *Dupigny v. Tyson*, 66 V.I. 434 (2017) (although personal injury settlement is income under the guidelines, deviation from the guidelines may be both necessary to avoid injustice and in the best interests of the child, especially where the settlement relates to medical expenses. The Supreme Court remanded the case for consideration of the purposes for which the personal injury settlement was intended to compensate and whether such inclusion of the gross amount as income for child support purposes would operate a hardship upon the noncustodial parent).

[62] *See Moore v. Moore*, 254 S.W.3d 357 (Tenn. 2007) (all capital gains, including those from an isolated transaction, should be included as gross income for calculating child support); *Wellborn v. Wellborn*, 100 So. 3d 1122 (Ala. Civ. App. 2012) (capital gains income should be included in income).

[63] *See, e.g.,* Fla. Stat. § 61.30(2)(a)(2) (2019); Kan. Supreme Ct. Admin. Order 2019 AD 307; Tex. Fam. Code Ann. § 154.062(b)(1) (West 2018).

[64] *See, e.g.,* La. Stat. Ann. § 9:315(C)(3)(d) (2018).

[65] Colo. Rev. Stat. § 14-10-115(5)(I)(Z) (2019).

[66] *See, e.g.,* Cal. Fam. Code § 4064 (West 2019) (The court may adjust the child support order as appropriate to accommodate seasonal or fluctuating income of either parent).

of income from second jobs in excess of a 40-hour work week. Although federal policy prohibits the categorical exclusion of such income from consideration under child support guidelines, state guidelines may provide that application of the guidelines to such income may be rebutted as unjust or inappropriate on a case-by-case basis, in accordance with state criteria.[67]

When overtime or second-job income occurs regularly, the child support attorney can calculate the income the parent consistently receives from such employment and include it within the parent's gross income, if permitted, in the guideline calculation.[68] When it is not a regular occurrence, the child support attorney can calculate income based on the average of overtime over a period of time.

Other benefits. Most states include Social Security retirement benefits, other pension or retirement benefits, disability insurance benefits, workers' compensation benefits, and educational grants or subsidies as income.[69] However, benefits intended to assist needy families, including TANF and Supplemental Security Income (SSI), are excluded from income for the purpose of calculating child support.[70]

Self-employment income. If the parent is a business owner or other self-employed individual, the child support attorney needs to conduct detailed research in order to determine the parent's correct income. Income from self-employment often fluctuates by definition and is not always readily apparent from a review of the individual's tax returns and other business records.[71] The attorney

---

[67] *See, e.g.,* Minn. Stat. § 518A.29 (2019); Utah Code Ann. § 78B-12-203 (West 2018). *See also* La. Stat. Ann. § 9:315.12 (2018) (court may consider interests of subsequent family as defense in action to modify existing child support order when obligor has taken second job or works overtime to provide for subsequent family. Obligor must prove additional income is used to provide for subsequent family).

[68] *See, e.g., Brown v. Brown*, 988 So. 2d 1053 (Ala. Civ. App. 2008) (overtime income was properly included because it was substantial and continuing); *Heiny v. Heiny*, 904 N.Y.S.2d 191 (N.Y. App. Div. 2010) (annual bonuses should be included in a child support calculation); *Welter v. Welter*, 711 N.W. 2d 705 (Wis. Ct. App. 2006) (the court should have considered overtime income in its calculation of support).

[69] *See, e.g.*, Colo. Rev. Stat. § 14-10-115(5)(I) (2019); Me. Rev. Ann. Stat. tit. 19-A, § 2001 (2019).

[70] *See, e.g.,* N.M. Stat. Ann. § 40-4-11.1 (2019); Okla. Stat. tit. 43, § 118B (2019). *See also Marrocco v. Giardino*, 767 A.2d 720 (Conn. 2001) (the amount that a parent receives from SSI or a public grant provides only a minimum level of support, and the fact that SSI and public assistance are excluded in the guidelines indicates a recognition that parents are not required to live at or below poverty to support their children); *State ex rel. Secretary, Kansas State Dep't of Social and Rehab. Servs. v. Moses*, 186 P.3d 1216 (Kan. App. 2008). *But see Commonwealth, Cabinet for Health and Family Servs. v. Ivy*, 353 S.W.3d 324 (Ky. 2011) (holding that SSI benefits may be used to calculate child support, but must be addressed on a case-by-case basis).

[71] *See generally* Tracy Coenen, *Finding Hidden Income in a Divorce or Child Support Case*, 44 Family Law Review, Family Law Section, New York State Bar Association 4 (2012); Tracy Coenen, *Calculating Income in Family Law Cases*, ABA Section of Family Law eNewsletter (Nov. 2013), http://www.sequenceinc.com/fraudfiles/2011/06/finding-hidden-income-in-a-divorce-or-child-support-case/ (last visited Mary 23, 2020).

should also carefully scrutinize the reasonableness and appropriateness of business decisions that lessen the amount of income available for child support. A self-employed parent's business deductions should be reviewed in order to ensure the parent has not sheltered income at the expense of lessening income available for child support.[72]

A relatively new but quickly growing type of self-employment is known as the "gig" or freelance economy. The gig economy is a labor market characterized by the prevalence of short-term contracts or freelance work ('gigs") as opposed to permanent jobs. Usually, online platforms connect workers and customers, and payment is intermediated by the platforms. Noncustodial parents who work in the gig economy may work at a variety of one-time or different types of jobs. They work whenever they want and are paid a rate for a specific task. Gig workers are not considered employees under most states' income withholding laws, so employers are not required to report them to new hire directories. Also, parents' incomes in the gig economy often vary greatly from month to month. If the noncustodial parent is working in the gig economy, it may be necessary to subpoena the parent's bank and other financial records, such as income tax returns, in order to determine the parent's income. The attorney can subpoena company records to determine whether a particular noncustodial parent works there or has worked there in the past. And, the attorney can send subpoenas to the registered agent of a company that is headquartered in another state. In the case of taxi or other gig driving, and delivery services, the attorneys can subpoena trip sheets. Certified public accountants or forensic accountants may be helpful in locating gig income.[73] Because there may be a significant cost involved when engaging accountants for this type of investigation, attorneys should secure agency approval for the expense. In-depth interviews with custodial parents and exploration of social media sites may also be useful in identifying income sources.

Most state guidelines contain a separate definition of gross income for self-employed individuals. These definitions usually include a comprehensive list of income sources, such as self-employment; proprietorship of a business; partnership; and closely held or Subchapter S corporations. Nebraska's definition is even more expansive, including "income that could be acquired by the parties through reasonable efforts" and provides an example of retained earnings from closely held corporations.[74] Most guidelines also require the subtraction from

---

[72] *See J.W. v. R.J.*, 463 P.3d 1238 (Haw. Ct. App. 2020).

[73] *See* Craig Burshem, Theodora Andreopoulos, Catherine Weaver, and Laura Cromwell, *Skipping Rocks: The GIG Worker, the Underemployed and the Determination of the Right Sized Support Obligation*, ERICSA Conference (2019), https://s3.amazonaws.com/v3-app_crowdc/assets/0/0a/0ad944c53ce0a38a/C-3_Skipping_Rocks_Final_Presentation.original.1557195498.pdf?1557195500 (last visited May 11, 2020). *See also* Miles Mason Sr., *Finding Hidden Income and Secreted Assets in Divorce,* The Family Law Review, State Bar of Georgia Summer (2015), https://www.gabar.org/committeesprogramssections/sections/familylaw/upload/FLR_Summer_15_web.pdf.

[74] Neb. Ct. R. § 4-204.

gross income of ordinary and necessary business expenses required to produce income.[75] States define ordinary and necessary business expenses in several ways, including "one-half of the self-employment tax actually paid,"[76] "a reasonable yearly deduction for necessary capital expenditures,"[77] and "straight line depreciation for the life of the asset and one-half of the self-employment social security tax paid on the trade or business income."[78]

In the case of a self-employed individual, the child support attorney needs to know which income sources and IRS forms to research. However, the attorney needs to keep in mind that information on tax returns may be misleading and often does not accurately reflect a self-employed individual's actual spendable income. Child support guidelines should be calculated on actual cash flow and not on the income reported on a tax return. Therefore, child support attorneys need to begin by reviewing the information contained in tax returns, but also must understand the difference between income reported on a business tax return and actual cash flow to the self-employed individual. This will provide the attorney with a complete picture of the self-employed individual's ability to pay support.

Self-employment income is reported in many different ways to the IRS, depending on the type of business or corporation involved. For example, a sole proprietorship that is unincorporated and owned by a single individual is required to report income from the business on that individual's personal income tax Schedule C. A standard or C corporation, on the other hand, reports corporate income on IRS form 1120. Corporations are taxed on their income, separately from any dividend or other income that may be paid to shareholders. A closely held C corporation may pay out all of its income to shareholders. In that case, each shareholder receives a W-2 form for that income.

In the case of a Subchapter S corporation, all of the income is passed through to individual shareholders. This income is reported by the corporation on Schedule K-1 (IRS form 1120S) and to the shareholder on a W-2. In this case, it is important to understand that sometimes earnings appearing on the K-1 form do not actually represent income to the individual, but instead earnings retained by the corporation.[79]

If an individual is a partner in a business, partnership income is reported on IRS form 1065.

---

[75] *See, e.g.*, Ala. R. Jud. Admin. 32(B)(3) (2019); N.C. Child Support Guidelines (2), developed by the Conference of Chief District Judges, required by N.C. Gen. Stat. § 50-13.4 (2019), http://www.nccourts.org/Forms/Documents/1226.pdf.

[76] Ariz. Child Support Guidelines (5)(C) (S. Ct. Order 2018-08), http://www.azcourts.gov/Portals/22/admorder/Orders18/2018-08.pdf; Ariz. Rev. Stat. § 25-320 (2019).

[77] Ind. Child Support Guidelines, Guideline 3A(2).

[78] Idaho R. Fam. L. P. 126 F.1.b.

[79] *See Walker v. Grow*, 907 A.2d 255 (Md. App. 2006).

To determine the actual spendable income of the individual, other financial documents such as balance sheets, statements of cash flow, and records of depreciation expenses should be carefully reviewed and compared to information from relevant IRS forms.[80] For example, a business return might show no taxable income after depreciation of equipment, allowances for losses and inventory, and business expenses, while the statements of cash flow may actually show income that could be available for calculating child support. In other cases, the self-employed individual may frequently receive in-kind payments from an employer, such as meals, lodging, tickets for sporting events, frequent flyer miles, and company-owned vehicles. Payments of this nature reduce personal expenditures and, therefore, free income for other purposes.

In the case of a partnership, the partnership agreement will often contain information about the ownership interest the individual has in the partnership, and information about the individual partner's allocation of income or loss. Statements of cash flow outline the net cash used during a particular period and a balance sheet is a financial statement showing assets and liabilities of a business.

In the case of depreciation expense records, a business may show an item as "expensed" all in one year or depreciated according to an accelerated schedule. Both of these methods artificially reduce the amount of income the business will report for the year in question. For this reason, state guidelines often require depreciation to be calculated differently than the business record shows. Kentucky provides that income used for the calculation will "differ from a determination of business income for tax purposes" and mandates that only straight-line depreciation be used,[81] while Tennessee does not allow any kind of depreciation as a reasonable business expense.[82] Some states, such as Indiana, say that self-employed income and expenses should be carefully reviewed "to restrict the deductions to reasonable out-of-pocket expenditures necessary to produce income."[83]

---

[80] For a thorough explanation of self-employment income in the calculation of child support, *see* Charles W. Clanton and Jon G. Strickland*, Determining Income of Self-Employed Persons for Purposes of Child Support in North Carolina,* presented at U.N.C. School of Gov't, 2008 Special Topic Seminar on Child Support Law (Apr. 2008), https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course_materials/Clanton%20DOCS.pdf. *See also* Jason V. Owens, *Determining Self-Employment Income for Child Support Purposes: The Massachusetts View Compared with the National View,* 16 Suffolk J. Trial & App. Advoc. 171 (2011).

[81] Ky. Rev. Stat. Ann. § 403.212 (2)(c) (West 2019). *See also In re Marriage of Wiese*, 203 P.3d 59 (Kan. App. 2009).

[82] Tenn. Comp. R. & Regs., 1240-2-4.04(3)(a)(3). *See also Asfaw v. Woldberhan*, 147 Cal. App. 4th 1407, 55 Cal. Rptr.3d 323 (2007) (depreciation expenses were not allowed to reduce gross income).

[83] Ind. Child Support Guidelines, Guideline 3A(2). *See also* Tracy Coenen, *Income Available for Support*, ABA Section of Family Law eNewsletter (May 2013), http://www.americanbar.org/content/dam/aba/publications/family_law_enewsletter/201305.authcheckdam.pdf.

Dealing with self-employed parents can become very complicated. In some cases, a child support attorney may benefit from the services of an accountant to assist in reviewing business records and determining the appropriate amount of income to use in calculating a child support guideline order.

Gross income v. net income. There is no requirement in federal law or regulations about whether states should base the support guidelines on the gross or net incomes of the parties.[84] About half of the states use gross or a form of adjusted gross income.[85] Most gross-income based guidelines schedules adjust for federal and state income taxes and FICA.[86] Other adjustments vary. Many states include an adjustment for child or spousal support payments actually paid.[87] Massachusetts allows adjustments for reasonable child care, health care coverage, and dental/vision insurance.[88] Ohio and Oregon allow an adjustment for mandatory union or labor organization contributions,[89] and Rhode Island allows pension payments, life insurance premiums, and payments for marital debts to be deducted in the discretion of the court.[90]

The remaining states base their support guidelines on the net income of the parties, which is not necessarily net income for purposes of income taxes.[91] Many definitions of net income are very similar to adjusted gross income. For example, net income is typically defined as gross income minus deductions for federal, state, and local taxes; and includes other deductions, such as mandatory contributions to retirement plans, mandatory union dues, or mandatory job-related expenses.[92] Some states, such as Connecticut, allow for deductions of other support orders and health insurance premiums.[93]

Using net income allows the tribunal to consider the actual income available to pay support and captures differences in the tax implications of the dependency deduction for the custodial parent. However, it is also subject to manipulation by the parties. For example, an attorney should be aware that a party might be able to manipulate the amount of net income by changing the number of exemptions claimed for federal tax purposes. Also, some view net income as inequitable. Because it usually only recognizes mandatory deductions,

---

[84] 45 C.F.R. § 302.56 (2019). *See also* 81 Fed. Reg. 93,492 at 93,517 (Dec. 20, 2016).
[85] *See* Washington State Department of Social and Health Services, *Survey of Child Support Guidelines: Do They Use Net Income or Gross Income?* (Jan. 2015), https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/Gross%20and%20Net%20Matrix%202015.pdf.
[86] Venohr, *supra* note 45.
[87] *See, e.g.*, Ariz. Child Support Guidelines (6)(A), (B) (S. Ct. Order 2018-08); Idaho R. Fam. L.P. 126 G.1.
[88] Mass. Child Support Guidelines II(E), II(H), II(I).
[89] Ohio Rev. Code Ann. § 3119.01(C)(12)(d) (2019); Or. Admin. R. 137-050-0720.
[90] R.I. Family Court Admin. Ord. 2017-01.
[91] *See* Clanton & Strickland, *supra* note 80.
[92] *See, e.g.*, Alaska R. Civ. P. 90.3; Cal. Fam. Code § 4059 (West 2019).
[93] *See, e.g.*, Conn. Gen. Stat. § 46b-215a-6 (2019).

it allows the working parent a deduction for retirement contributions but does not allow a parent a deduction for a voluntary pension contribution. It may be appropriate for an attorney to request a deviation from the guideline amount in order to allow a nonworking parent a deduction for such voluntary contributions.

Imputation of Income

Attribution of income based on a person's earning capacity is called imputation of income. Every state child support guideline allows consideration of a person's "earning capacity" when the person is voluntarily unemployed or underemployed, in order to calculate an appropriate amount of child support.[94]

Usually, tribunals look at the reason for the reduced income. If there is evidence that the parent has voluntarily reduced his or her income in order to avoid paying child support, the tribunal will usually impute income to the parent.[95]

On the other hand, if the parent has gone back to school or taken a different, lower-paying job because of the potential for future growth and earnings, the tribunal may find that there is a valid reason for the reduced income.[96] Other courts, while appreciating the rights of the individual for personal growth, have found that a parent cannot act in a way that will have a detrimental effect on the child's well-being.[97]

A parent is generally not required to relocate or switch careers to maximize income. And where relocation has resulted in reduced income due the job market in the new location, courts often do not impute higher income if the purpose of the relocation is to foster the parent-child relationship.[98]

---

[94] *See generally* Laura W. Morgan, *The Use of Vocational Experts in Support Cases*, 30 J. of Matrimonial L. 351 (2018).

[95] *See, e.g., In re Marriage of Nielsen*, 759 N.W.2d 345 (Iowa Ct. App. 2008); *Lorincz v. Lorincz*, 961 A.2d 611 (Md. App. 2008); *Parnell v. Parnell*, 239 P.3d 216 (Okla. Civ. App. 2010).

[96] *Sherman v. Sherman*, 160 S.W.3d 381 (Mo. Ct. App. 2004); *Iliff v. Iliff*, 339 S.W.3d 74 (Tex. 2011) (proof that a person intended to avoid child support is not required before income can be imputed). *But see People v. Martinez*, 70 P.3d 474 (Colo. 2003) (if the trial court does not find that the parent is shirking his or her child support obligation by unreasonably foregoing higher paying employment, the court should calculate the amount of child support from actual gross income only).

[97] *See Goldberger v. Goldberger*, 624 A.2d 1328 (Md. App. 1993). *See also In re Marriage of Salby*, 126 P.3d 291 (Colo. App. 2005); *Rabbath v. Farid*, 4 So. 3d 778 (Fla. Dist. Ct. App. 2009); *Carlson v. Carlson*, 809 N.W.2d 612 (Mich. App. 2011).

[98] *See, e.g., Abouhalkah v.Sharps,* 795 N.E.2d 488 (Ind. Ct. App. 2003) (a father who voluntarily left his employment as a chemist, when his employer relocated out of state, in order to remain close to his children's home, was not voluntarily underemployed); *Gordon v. Gordon*, 923 A.2d 149 (Md. Ct. Spec. App. 2007) (where the mother took a pay cut to take a job that provided her with some flexibility and that was located within a reasonable proximity to her home and her three-year-old son, the trial court would not impute income).

Courts have also considered whether to impute income to a custodial parent who chooses not to work. Most states prohibit the imputation of income to a custodial parent of a child of "tender years."[99]

The other circumstance in which a tribunal may impute income is when a noncustodial parent fails to appear at the hearing after proper service. OCSE was particularly concerned about imputation in this circumstance when it promulgated the Final Rule. In the response to comments, OCSE expressed concern that some states had reduced their case investigation efforts and routinely set orders based on imputed income that bore no relation to the noncustodial parent's present circumstances or sustained ability to pay support.[100] Some state guidelines imputed income at a minimum wage when specific facts about a noncustodial parent's income were not readily apparent. Other states imputed income to incarcerated noncustodial parents on the premise that they were "voluntarily or willfully unemployed." OCSE noted:

> Overuse of imputed income frequently results in IV–D orders that are not based on a realistic or fair determination of ability to pay, leading to unpaid support, uncollectible debt, reduced work effort, and underground employment. Because such orders are not based on the noncustodial parent's ability to pay, as required by Federal guidelines law, they typically do not yield consistent payments to children.[101]

The Final Rule requires a child support agency to gather information regarding the earnings and income of the noncustodial parent.[102] If earning and income information is unavailable or insufficient in a case, and the support guidelines authorize imputation of income, such imputation must take into consideration, to the extent known, such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.[103] The

---

[99] *See, e.g.*, Fla. Stat. § 61.30(2)(b) (2019); Me. Rev. Stat. Ann. tit.19-A, § 2001(5)(D) (2019); Va. Code Ann. § 20-108.1(B)(3) (2019).
[100] 81 Fed. Reg. 93,492, 93,516 and 93,519 – 93,520 (Dec. 20, 2016).
[101] 81 Fed. Reg. 93,519, 93,520 (Dec. 20, 2016).
[102] 45 C.F.R. § 303.4(b)(2) (2019).
[103] 45 C.F.R. § 302.56(c)(1)(iii) (2019). At state discretion, the guidelines may also take into consideration the specific circumstances of the custodial parent. *See also* Leslie Hodges, Chris Taber, & Jeffrey Smith, Institute for Research on Poverty, Univ. of Wisconsin-Madison, Alternative Approaches to Income Imputation in Setting Child Support Orders (2019), https://www.irp.wisc.edu/wp/wp-content/uploads/2020/01/CS-2018-2020-T6.pdf.

factual basis for the support obligation must be documented in the case record.[104]

In addition, the regulation prohibits the guideline from treating incarceration as voluntary unemployment in establishing support orders. That means state guidelines, which authorize imputation of income, must provide for consideration of the actual circumstances of the noncustodial parent.[105]

Some states impute income by considering assets owned by the parent. This is particularly true for the self-employed who have low retained earnings and return significant income to the company. If the party has invested in assets that could be income-producing, the child support attorney could advocate for an addition of reasonable interest and dividends to the income figure. Some states give the tribunal discretion to consider assets that do not produce income. Wisconsin, for example, includes a separate definition of "income imputed from assets" which includes "the amount of income ascribed to assets that are unproductive and to which income has been diverted to avoid paying child support or from which income is necessary to maintain the child or children at the standard of living they would have if they were living with both parents, and that exceeds the actual income from the assets."[106] Ohio allows "imputed income from any non-income producing assets of the parent as determined from the local passbook savings rate or other appropriate rate.[107] Many states also include "in-kind income" in their definition. North Dakota, for example, includes "in-kind income," and "amounts received in lieu of actual earnings."[108]

---

[104] 45 C.F.R. § 303.4(b)(4) (2019). *Cf. Lewis v. Lewis,* 734 S.E.2d 322 (S.C. Ct. App. 2012) (the family court abused its discretion in imputing income to an unemployed husband in the amount of $34,800 per year for the purposes of establishing his child support obligation in a divorce proceeding; the court made no finding as to whether the husband was at fault in losing his job, whether he was voluntarily unemployed, or whether he put forth his best efforts to gain employment equal to his capabilities; the court failed to address the necessary factors delineated by the child support guidelines concerning recent work history, occupational qualifications, prevailing job opportunities and earning levels in the community, and there was nothing in the record to suggest how the court arrived at the annual income figure).

[105] *Cf. Lambert v. Lambert,* 861 N.E.2d 1176 (Ind. 2007) (The Supreme Court of Indiana affirmed the Superior Court's ruling that "although husband's incarceration did not relieve him of child support obligation, trial court should not have imputed to husband pre-incarceration income, for purposes of calculating child support amount but, instead, should have calculated support based on any actual income or assets available to husband during period of incarceration.").

[106] Wis. Admin. Code DCF § 150.02(15) (2019). Wisconsin also includes a definition of "income modified for business expenses" that adds income paid to dependent household members and undistributed income not necessary for business growth and subtracts business expenses determined by the court to be reasonably necessary. Wis. Admin. Code DCF § 150.02(16) (2019).

[107] Ohio Rev. Code Ann. § 3119.01(C)(17)(b) (2019).

[108] N.D. Admin. Code § 75-02-04.1 (2019).

Establishment of Realistic Orders in Low Income Cases

Minimum support amount. Historically, state guidelines have followed various approaches in setting support awards for low-income parents. One approach used by most support guidelines is to establish a minimum support amount that is a rebuttable presumption of the appropriate amount of support.[109] The guidelines often provide examples of facts a court may use to set a discretionary support order lower than the minimum amount. Such factors may include resources and living expenses of the parties, number of children, and the physical or mental disability of the noncustodial parent.[110]

When finalizing amendments to child support regulations in 2016, OCSE voiced concern about minimum support orders that were not based on the circumstances of a particular obligor:

Over time, we have observed a trend among some States to reduce their case investigation efforts and to impose high standard minimum orders without developing any evidence or factual basis for the child support ordered amount. Our rule is designed to address the concern that in some jurisdictions, orders for the lowest income noncustodial parents are not set based upon a factual inquiry into the noncustodial parent's income and ability to pay, but instead are routinely set based upon a standardized amount well above the means of those parents to pay it.[111]

The Final Rule requires child support agencies to take reasonable steps to develop a sufficient factual basis for the support obligation. This must include gathering information on a case-by-case basis regarding the earnings and income of the noncustodial parent, as well as detailed information about the specific circumstances of the noncustodial parent.[112] OCSE noted that "[h]igh minimum orders that are issued across-the-board without regard to the noncustodial parent's ability to pay the amount do not comply with these regulations."[113]

Consideration of basic subsistence needs. The Final Rule also requires child support guidelines to take into consideration the basic subsistence needs of the noncustodial parent (and at the state's discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method

---

[109] Venohr, *supra* note 45. *See also Rose ex rel. Clancy v. Moody*, 83 N.Y.2d 65, 629 N.E.2d 378 (1993), *cert. denied*, 511 U.S. 1084 (1994) (a mandatory minimum support amount, without the possibility of deviation from that amount, violates the federal requirement that guidelines be presumptive).
[110] See, e.g., Cal. Fam. Code § 4055(b)(7) (West 2019); Iowa Child Support Guidelines, Rule 9.3(2); Va. Code Ann. § 20-108.2(B) (2019); W. Va. Code § 48-13-302 (2019).
[111] 81 Fed. Reg. 93,492, 93,516 (Dec. 20, 2016).
[112] 45 C.F.R. § 303.4(b); 45 C.F.R. § 302.56(c)(iii) (2019).
[113] 81 Fed. Reg. 93,492, 93,525 (Dec. 20, 2016).

determined by the state that is intended to ensure that a low-income parent can meet his or her own basic needs as well as permit continued employment:

> Our goal is to establish and enforce orders that actually produce payments for children. Both parents are expected to put their children first and to take the necessary steps to support them. However, if the noncustodial parent cannot support his or her own basic subsistence needs, it is highly unlikely that an order that ignores the need for basic self-support will actually result in sustainable payments. One of the unintended, but pernicious, consequences of orders that are not based on ability to pay is that some noncustodial parents will exit low wage employment and either avoid the system entirely or turn to the drug trade or other illegal activities to pay support obligations and contempt purge payments. It is not in children's best interests and counterproductive to have their parents engage in a cycle of nonpayment, illegal income generation, and incarceration.[114]

> As part of its quadrennial review of child support guidelines, each state must consider a wide variety of data, including:
>
> Labor market data (such as unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level for the State and local job markets, the impact of guideline policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level, and factors that influence employment rates among noncustodial parents and compliance with child support orders.[115]

Each review must also include an analysis of case data on the application of deviations from the guidelines, as well as the rates of default based on imputed income or through use of any low-income adjustment.[116]

At the time of the Final Rule, almost all state support guidelines already included some type of self-support reserve or low-income adjustment.[117] States using a self-support reserve usually base it on the U.S. poverty guideline for one person.[118] The federal poverty guidelines are issued each year in the *Federal Register* by the Department of Health and Human Services and are used to determine eligibility for certain federal programs. Most states using the federal poverty guidelines identify the amount of the current federal poverty guideline for

---

[114] 81 Fed. Reg. 93,492, 93,518–9 (Dec. 20, 2016).
[115] 45 C.F.R. § 302.56(h)(1) (2019).
[116] 45 C.F.R. § 302.56(h)(2) (2019).
[117] 81 Fed. Reg. 93,492, 93,518 (Dec. 20, 2016), citing Jane Venohr, *Child Support Guidelines and Guidelines Reviews: State Differences and Common Issues*, 47 Fam. L.Q. 327 (Fall 2013),
[118] States basing a self-support reserve on the federal poverty level range from 150% of the federal poverty level (*see, e.g.*, Va. Code Ann. § 20-108-2 (2019)) to 100% of the federal poverty level (*see, e.g.,* 2017 Mich. Child Support Formula Supp. § 2.01*;* North Carolina Child Support Guidelines (2020)); to 75% of the federal poverty level (*see, e.g.*, 750 Ill. Comp. Stat. 5/505 (2019)).

one person in their guideline and do not update the self-support reserve until the next quadrennial guideline review. A few states index their self-support reserve to the annual updating of the poverty income guidelines as reported by the federal Department of Health and Human services, which results in the self-support reserve also being updated annually.[119]

Many Income Shares states incorporate a self-support reserve or low-income adjustment into their guidelines schedule. Note, however, that if the guidelines explanation does not explicitly note that the schedule incorporates a self-support reserve or low-income adjustment, attorneys and parents may be unaware of the protection. Florida is an example of a state that provides a low-income adjustment as a separate calculation, rather than as a component of the guideline schedule.[120] Other state guidelines without a self-support reserve or low-income adjustment require the tribunal to carefully consider all the facts in order to determine a support amount that can be reasonably ordered without denying the obligor the means for self-support at a subsistence level.[121]

After a thorough investigation of all income sources for the noncustodial parent, the child support attorney should determine whether any low-income adjustment or self-support reserve within the state child support guideline is applicable. This calculation may not be needed in those states where the self-support reserve is built into the guidelines table itself. However, in states where a low-income adjustment must be applied as a separate step from the actual guidelines calculation, or the adjustment may be used in conjunction with a minimum support order, it may be appropriate for the attorney to propose an adjustment to the tribunal in recognition of the subsistence needs of the noncustodial parent (and custodial parent, under some state support guidelines).[122]

Establishment of Orders in High Income Cases

Treatment of high-income cases varies from state to state, and even from tribunal to tribunal.[123] There are three main approaches. First, some support guidelines include a numerical formula expressly for high-income cases. For example, Virginia, which uses an Income Shares model, has a special formula

---

[119] *See, e.g.,* N.Y. Dom. Rel. Law § 240(1-b)(b)(6) (McKinney 2019).
[120] Fla. Stat. § 61.30(6)(a)(2) (2019) (The obligor parent's child support payment shall be the lesser of the obligor parent's actual dollar share of the total minimum child support amount as determined on subparagraph 1, and 90% of the difference between the obligor parent's monthly net income and the current poverty guidelines).
[121] *See* Ind. Child Support Guideline 2 (2020).
[122] *See, e.g.,* Mich. Child Support Formula Manual 3.02(C) and (D) (2021) and Mich. Child Support Formula Supp. 2.01 (2021); N.H. Rev. Stat. Ann. §§ 458-C:1 to:7 (2019).
[123] *See generally* Charles J. Meyer, Justin W. Soulen, & Ellen Goldberg Weiner, *Child Support Determinations in High Income Families – A Survey of the Fifty States*, 28 J. Am. Acad. Matrim. Law. 483, 496 (2016); Jacqueline Singer *et al*., *Beyond the Guidelines: The Use of Mental Health Experts In Determining Appropriate Levels of Child Support for Affluent Families*, 32 J. Am. Acad. Matrim. Law. 145, 165–88 (2019).

that a tribunal must use when gross income exceeds $10,000 per month,[124] and Florida guidelines provide that the obligation is the minimum amount of support provided on the schedule, plus a percentage multiplied by the amount of income that exceeds a certain amount per month.[125]

A second approach is to presume that the highest amount provided for in the guideline is the correct amount, and allow a tribunal to deviate above that amount based on certain statutory factors.[126] For example, the Arizona guidelines provide that a party seeking a sum greater than the presumptive amount bears the burden of proving that the higher amount "is in the best interests of the children, taking into account such factors as the standard of living 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"[127] Connecticut's guideline provides that when the parents' combined net weekly income exceeds $4,000, child support awards shall be determined on a case-by-case basis, consistent with statutory criteria; however, the guideline also establishes a minimum presumptive amount and a maximum presumptive amount for high income cases.[128]

Finally, in some states using the Income Shares model, the guideline schedule addresses combined incomes to a certain level and allows the tribunal expansive discretion in determining a support amount where the combined income exceeds the highest level specified in the schedule. For example, the guidelines in Alabama and Maryland simply provide that if the combined adjusted actual income exceeds the highest level specified in the schedule, the court may use its discretion in setting the amount of child support.[129] Georgia's guidelines permit the court or the jury to consider an upward deviation "to attain an appropriate award of child support for high-income parents which is consistent with the best interest of the child."[130] Mississippi, which uses a Percentage of Income model, also allows the court wide latitude; its guidelines provide that in cases where the adjusted gross income of the noncustodial parent is more than $100,000, the court must make a written finding in the record as to whether the application of the guidelines is reasonable.[131]

Some appellate courts have held it is appropriate for the trial court, in exercising its discretion in high income cases, to award support at a level that

---

[124] Va. Code Ann. § 20-108.2(B) (2019).
[125] Fla. Stat. § 61.30(2)(b)(6)(b) (2019).
[126] *See, e.g.,* Ariz. Child Support Guidelines (7) (S. Ct. Order 2018-08), Ariz. Rev. Stat. Ann. § 25-320 (2019); Conn. Agencies Regs. § 46b-215a-2c(a)(2) (2019);.Minn. Stat. § 518A.35(3) (2019); N.Y. Dom. Rel. Law § 240(1-b)(f)(3) (McKinney 2019).
[127] Ariz. Child Support Guidelines (7) (S. Ct. Order 2018-08).
[128] Conn. Agencies Reg. § 46b-215a-2c(a)(2) (2019).
[129] Ala. R. Jud. Admin. R. 32(C) (2019); Md. Code Ann., Fam. Law § 12-204(d) (West 2018).
[130] Ga. Code Ann. § 19-6-15(i)(2)(A) (2018).
[131] Miss. Code Ann. § 43-19-101(4) (2019).

allows the child to share in the standard of living of the high-income parent.[132] Other appellate courts have ruled that the trial court may consider the reasonable needs of the child.[133] A Georgia court struck down an upward deviation from the guidelines amount that equaled 18% of the noncustodial parent's gross monthly income, finding it punitive and premised in part on an attempt to compensate the child for the relatively low child support payments made in the past despite the parent's expenditures of "enormous" sums on gambling.[134]

To avoid windfalls to the custodial parent, courts or administrative agencies can require funds in excess of the child's actual needs to be placed in a trust for the future.[135]

Effects of Custody and Shared Parenting Time

Where parents are separated or divorced, there may be a number of different parenting time arrangements: sole custody of children to one parent, with the other parent having the opportunity to spend time with the children; split custody, where one or more children are awarded to one parent while other children are awarded to the other parent; joint legal custody, where both parents share legal custody of the child or children, with living arrangements and visitation time specified; or shared parenting, where the children's time is shared

---

[132] *See, e.g., In re Marriage of Macilwaine,* 26 Cal. App. 5th 514 (2018).

[133][133] *See, e.g., Hanrahan v. Bakker*, 186 A.3d 958 (Pa. 2018) (The trial court had ordered more than $50,000 per month for the support of two children where the noncustodial parent's income had increased to 15 million dollars. The trial court had rejected the father's claim that the court was required to conduct a discrete analysis of the reasonable needs of the children, concluding that any such analysis had been eliminated from the child support guidelines. The appellate court reversed. Although economic data on the reasonable needs of a child is factored in the guidelines table for standard cases, the court noted that there is no such economic data for high-income cases. As a result, the Pennsylvania guideline establishes a three-step process for high-income cases. The appellate court concluded that an analysis of the reasonable needs of a child is appropriate under the third step. "[E]mploying a discrete reasonable needs analysis will minimize the disparity among treatment of high income cases, while also preventing support awards in such cases from inappropriately increasing in tandem with an obligor's income into perpetuity and resulting in a mere transfer of wealth between parents."). *Cf. Maturo v. Maturo*, 995 A.2d 1 (Conn. 2010) *(*the effect of unrestrained child support awards in high income cases is a potential windfall that transfers *wealth* from one spouse to another or from one spouse to the children under the guise of child support).

[134] *Cousin v. Tubbs*, 840 S.E.2d 85 (Ga. App. 2020) (The court held that "the nature and extent of factual findings required to support a deviation necessarily must bear some relation to the magnitude of the deviation."). *See also Maturo v. Maturo*, 995 A.2d 1 (Conn. 2010); *In re Keon C.*, 800 N.E.2d 1257 (Ill. App. 2003) (setting support at 20% of the noncustodial parent's income of 4.5 million dollars per year would result in a windfall, justifying a downward deviation); *Strahan v. Strahan*, 953 A.2d 1219 (N.J. Super. 2008) (holding that the lower court's award of $200,000 per month, in addition to the child support order, should be overturned. The court stated there was no correlation between the supplemental award and the needs of the children, and concluded that the supplemental award was actually a windfall to the custodial parent).

[135] *See generally* Lori W. Nelson, *High Income Child Support*, 45 Fam. L.Q.191 (2011). *See also* National Conference of State Legislatures, *States' Treatment of High and Low Income Parents in Making Child Support Determinations* (May 2013), https://www.ncsl.org/research/human-services/states-treatment-of-low-high-income-child-support.aspx (last visited May 20, 2020).

between the parents. These arrangements are usually pursuant to a voluntary parenting agreement or a court order. Recognizing this, most states now have some type of shared parenting time formula built into their guidelines that is implemented either as a formula within the guidelines or as a deviation from the standard guideline formula.[136]

Sole custody. All guidelines use a basic formula or percentage of income for cases where one parent has sole custody. Many then implement a parenting time adjustment after the basic support amount is calculated. Most of the guidelines with parenting time adjustments make no adjustment unless the child is with the noncustodial parent more than 25 to 35% of overnights per year.[137]

Shared or joint custody. Most state guidelines address shared or joint custody situations, in which the child spends extensive time with the noncustodial parent. The most common approach is to establish a threshold amount of parenting time in excess of the ordinary 25 to 35% of overnights, at which level support is adjusted on a sliding scale. To compute the adjustment, usually the basic child support guideline obligation is multiplied by some specified amount to account for the parents duplicating certain types of expenses for the child.[138]

The threshold at which there is a support adjustment varies among states that use one. In Maryland, the formula for shared custody is used when the threshold of 35% of overnights is met. After the threshold is met, the court requires evidence that both parents contribute to the expenses of the children in addition to the payment of child support.[139] Contrast that with South Dakota, where the court may, if deemed appropriate, abate support if the child resides with the obligor 10 or more nights in a month pursuant to a custody order. The statute establishes the minimum and maximum amount of abatement and instructs the court to consider whether the abatement would have a substantial negative effect on the child's standard of living in making its decision.[140] Usually adjustments for shared physical custody and parenting time are considered in the guideline worksheet.[141]

Finally, several states treat shared physical custody as a deviation factor.[142] Instead of a particular formulaic method of calculating a child support amount under circumstances of shared or joint custody, these states allow the decision maker to adjust the calculated support amount to reflect to current

---

[136] Jane C. Venohr, *Differences in State Child Support Guidelines Amounts: Guidelines Models, Economic Basis, and Other Issues*, 29 J. Am. Acad. Matrim. Law. 377 (2017).
[137] Jane C. Venohr and Robert G. Williams, *The Implementation and Periodic Review of State Child Support Guidelines*, 33 Fam. L.Q. 7 (Spring 1999).
[138] *See, e.g.*, Fla. Stat. § 61.30(11)(b) (2019) (1.5 multiplier); La. Stat. Ann. § 9:315.9 (2018) (1.5 multiplier).
[139] Md. Code Ann., Fam. Law § 12-201(n)(1) (West 2018).
[140] S.D. Codified Laws § 25-7-6.14 (2019).
[141] Venohr, *supra* note 45, at 395.
[142] *See, e.g.,* Fla. Stat. § 61.30(11)(a)(10) (2019); Ohio Rev. Code Ann. § 3119.24 (2019).

custody arrangements. Orders are less likely to be consistent under similar circumstances using this method.

Split custody. In split custody cases, each parent is awarded custody of at least one child. The most common approach involves an offset.[143] The tribunal calculates the support that each parent would owe to the other for the support of the child in his or her custody. The tribunal then offsets the two amounts against each other. The parent who owes the greater amount pays the difference to the other parent. The second approach is used by just a few states. In those states, split custody is considered a deviation factor, with the amount of the support award at the discretion of the decision maker.[144]

Add-ons to Basic Support Amount

Although the goal of guidelines is to standardize child support awards as much as possible, there are some aspects of support that are so variable that they require separate consideration. While basic needs, such as food, shelter, and clothing, remain consistent, other expenses attributable to children do not. These include child care and medical expenses.

Child care. For many parents with young children, child care is essential for the parents to work or attend school or training to increase their employability. The care may be in a family daycare setting, center-based care, after-school care, or through an individual child care provider. Because child care expenses vary so greatly depending on family circumstances, child support guidelines do not include them within the basic support schedule.

The most common approach, regardless of the guidelines model used, is to add the child care costs to the basic support amount and then allocate the cost between the parents.[145] If both parents share significant parenting time with the children, many Income Shares guidelines provide that child care expenses for both parents may be considered.[146]

Usually states address actual child care costs incurred. A few states limit the amount of child care expenses that the tribunal can consider. For example, Oregon provides for an adjustment in the support amount for child care costs that are reasonable and do not exceed applicable tables; Table 1 establishes Maximum Allowable Child Care Costs by Provider Location and other Employment-related Day Care Allowance tables establish maximum amounts allowed by the Department of Human Services.[147] Because adding an allocation of child care expenses to the support schedule amount can result in a large

[143] *See, e.g.*, N.C. Child Support Guidelines (2019).
[144] *See, e.g.,* Ind. Child Support Guidelines, Guideline 3F; N.H. Rev. Stat. §§ 458-C:5 (2019).
[145] *See, e.g.,* Ariz. Child Support Guidelines (9)(B)(1) (S. Ct. Order 2018-08).
[146] *See, e.g.,* Fla. Stat. § 61.30(7) (2019); Idaho Child Support Guidelines, Idaho R. Fam. L.P. 126.H.1.
[147] *See, e.g.,* Or. Admin. Reg. 137-050-0735 (2019).

support award, a few states set an overall cap on the total support award or permit a deviation if the total order amount exceeds a certain threshold.[148] Guidelines may also subtract the value of the federal income tax credit for child care from the actual costs to arrive at a figure of net child care expenses.[149] Washington's guideline is unique in requiring the custodial parent to repay the obligor if the childcare expenses are not incurred.[150]

Medical expenses. Federal law requires that all child support orders enforced by the Title IV-D program must include a provision for medical support for the child to be provided by either or both parents.[151] Implementing federal regulations require the state IV-D agency to petition the tribunal to include health care coverage that is accessible to the children, as defined by the state, is available to the parent responsible for providing medical support and can be obtained for the child at reasonable cost. The agency must also petition the tribunal to allocate the cost of coverage between the parents. If health care coverage is not available at the time the order is entered, the agency must petition the tribunal to include cash medical support until such time as health care coverage, that is accessible and reasonable in cost, becomes available.[152]

There are three categories of medical expenses that support guidelines typically address: health insurance, ordinary medical expenses, and extraordinary medical expenses. All three are within the regulatory definition of "cash medical support." Federal regulation defines cash medical support to include both amounts ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment or otherwise and amounts for other medical costs not covered by insurance.[153] These costs encompass a range of items that include co-payments, medicine costs, uncovered procedures and conditions, as well as cash payments in lieu of health insurance. Since the regulation does not provide specific guidance on how support guidelines should address these expenses, states have developed a variety of mechanisms for addressing them within child support orders. There is additional discussion on the establishment of a medical support order later in the chapter.

- **Health insurance**

  The Patient Protection and Affordable Care Act (ACA),[154] passed in 2010, defines heath care coverage, known as "minimum essential

[148] *See, e.g.,* Massachusetts Child Support Guidelines, II(E)(1); Utah Code Ann. § 78B-12-211 (West 2019).
[149] *See, e.g.*, Neb. Ct. R. § 4-214.
[150] Wash. Rev. Code § 26.19.080 (2019).
[151] 42 U.S.C. § 666(a)(19) (2018). More detailed information about federal medical support requirements are later in the chapter.
[152] 45 C.F.R. § 303.31(b) (2019).
[153] 45 C.F.R. § 303.31(a)(1) (2019).
[154] Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010).

coverage" in the Act, to include government sponsored programs such as Medicare, Medicaid, Children's Health Insurance Program (CHIP), or TRICARE, employer sponsored coverage, coverage purchased under the individual market, grandfathered health plans, or other coverage.[155] In response, OCSE amended 45 C.F.R. § 303.31 to define health care coverage in the child support context as a "fee for service, health maintenance organization, preferred provider organization, and other types of private health insurance and public health care coverage under which medical services could be provided to the dependent child(ren)."[156] Some states define health insurance to include additional providers. For example, Oklahoma includes coverage from the Indian Health Service and the Defense Eligibility Enrollment Reporting System (DEERS).[157]

In the Final Rule, OCSE also amended the definition of "reasonable costs" for health care coverage in the context of establishing a medical support obligation: "Cash medical support or the cost of health insurance is considered reasonable in cost if the cost to the parent responsible for providing medical support does not exceed five percent of his or her gross income or, at State option, a reasonable alternative income-based numeric standard defined in State law, regulations, or court rule having the force of law or State child support guidelines."[158]

As states proceed with quadrennial child support guideline reviews, they have updated their guidelines to reflect current federal requirements governing health care coverage. For example, Michigan now defines "reasonable cost of coverage" as that which does not exceed 6% of the providing parent's gross income. The Michigan guideline also provides that a parent's cost of providing health care coverage is unreasonable if the total obligation for support, child care expenses, ordinary health care expenses, plus the parent's net share of health care insurance is greater than 50% of the parent's regular, aggregate disposable earnings. Ohio support guidelines provide that the total actual out-of-pocket cost of a health insurance premium paid or expected to be paid cannot exceed 5% of the annual income of the paying parent.

---

[155] Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, 248 (2010), codified at 26 U.S.C. § 5000A(f). This provision was held to be unconstitutional by *Texas v. United States*, 945 F.3d 355 (5th Cir. 2019). The decision was appealed to the U.S. Supreme Court, which accepted it for review and argument in February 2020.
[156] 45 C.F.R. § 303.31(a)(2) (2019).
[157] Okla. Stat. tit. 43, § 118F(A)(1)(d) (2019). Note that although the Oklahoma statute expressly refers to DEERS, the actual name of health care coverage for service members is TRICARE. *See also* Alaska R. Civ. P. 90.3(d)(1).
[158] 45 C.F.R. § 303.31(a)(3) (2019).

Because the cost of insurance varies so greatly, states do not include it within the basic guideline amount. Instead, most guidelines add the actual cost of the child's health insurance to the basic support amount and then prorate the cost between the parents based on their proportion of income.[159] Usually guidelines determine the cost of the child's health insurance premium by looking at the difference between single and family coverage or the cost of adding a dependent child.[160] Some state guidelines allocate insurance costs between the parents,[161] and some order one parent to pay for health insurance and then deduct that cost from the paying parent's income. This latter approach is the one that Nebraska follows. The Nebraska guidelines provide that the increased cost to the parent for the child's health insurance must be allowed as a deduction from gross income. The parent requesting an adjustment for health insurance premiums must submit proof of the cost of the premium.[162]

- **Ordinary medical expenses**

  - **Definition**

    Some states provide a definition of medical expenses. For example, some list reasonable costs for medical, dental, orthodontia, optometric, counseling, mental health treatment, substance abuse treatment, treatment for chronic conditions and asthma, and/or physical therapy as medical expenses.[163] Michigan guidelines define medical expenses as "treatments, services, equipment, medicines, preventative care, similar goods and services associated with oral, visual, psychological, medical, and other related care, provided or prescribed by health care professionals for the children." Ordinary medical expenses also include "the support recipient's co-payments and deductibles, and uninsured medical-related costs for all children" in the case.[164] Other states simply refer, for example, to "on-going medical costs."[165]

---

[159] *See, e.g.*, Fla. Stat. § 61.30(2)(b)(8) (2019) (statute also provides that, after the health insurance costs are added to the basic obligation, any moneys prepaid by a parent for health-related costs for the child(ren) must be deducted from that parent's child support obligation); Va. Code Ann. § 20-108.2(E) (2019).
[160] *See, e.g.,* Iowa Code § 252E.1A (2020).
[161] *See, e.g.*, Alaska R. Civ. P. 90.3(d)(1)(B); Mass. Child Support Guidelines II(G)(1) (each party may deduct the reasonable cost of family health insurance actually paid); N.H. Rev. Stat. Ann.§ 458-C:3 (V) (2019).
[162] Neb. Ct. R. § 4-215.
[163] *See, e.g.*, Ga. Code Ann. § 19-6-15(a)(23) (2018); S.D. Codified Laws § 25-7-6.16 (2019).
[164] Mich. Child Support Formula Manual § 3.04(A)(1), (3) (2021); Mich. Comp. Laws § 552.519 (2019).
[165] Ky. Rev. Stat. Ann. § 403.211(7)(c)(2) (West 2019).

Guideline treatment of ordinary medical expenses

Support guidelines that expressly address medical expenses vary in how they distinguish ordinary medical expenses from extraordinary medical expenses.

Some states expressly provide that the basic support amount assumes a certain amount of unreimbursed medical costs. For example, the Alabama Schedule of Basic Child Support Obligations assumes unreimbursed medical costs of $200 per family of four per year. These assumed costs include medical expenses not covered or reimbursed by health insurance, Medicaid, or Medicare.[166] Many states set a threshold amount for what constitutes an add-on medical expense; by implication, medical expenses that do not meet that threshold are subsumed within the basic support amount. For example, in New Jersey unreimbursed health care expenditures of medical and dental, up to and including $250 per child per year are included in the schedules. “Such expenses are considered ordinary and may include items such as nonprescription drugs, co-payments or health care services, equipment or products.” The fact that a family does not incur that amount of health care expense is not a basis for deviating from the guidelines. Predictable and recurring unreimbursed health care expenses in excess of $250 per child per year are added to the basic support amount.[167] In Connecticut, unreimbursed medical expenses are apportioned between the parties.[168] In Indiana, uninsured expenses in excess of 6% of the basic support obligation are considered extraordinary medical expenses resulting in an add-on to the basic amount. Expenses less than 6% of the basic child support obligation are considered ordinary expenses that are paid by the parent required to pay support, as part of the basic support amount.[169]

Other states take the approach that the basic support amount can be adjusted by adding the cost of any noncovered medical, dental, and prescriptive medical expense.[170]

[166] *See* Ala. R. Jud. Admin. R. 32, Comment (2), (2019).
[167] *See* N.J. Ct. R., Appendix IX-A (8) (2019).
[168] *See* Conn. Child Support and Arrearage Guidelines Preamble § (b)(7).
[169] Ind. Child Support Guidelines, Guideline 7.
[170] *See*, *e.g.,* Fla. Stat. § 61.30(8) (2019); Nev. Rev. Stat. § 125B.080(7) (2019); Okla. Stat. tit. 43, § 118F(F)(4) (2019).

- **Extraordinary medical expenses**

  Extraordinary medical expenses are those expenses that extend beyond the ordinary expectation of medical need in a family, as contemplated by most state guidelines.

  - **Definition**

    About one-third of the states and the District of Columbia define "extraordinary medical expenses."[171] There are several approaches to this definition. The most common approach is to define extraordinary medical expenses as unreimbursed medical expenses that exceed a certain amount per child per calendar year.[172] Other approaches define extraordinary medical expenses as uninsured expenses in excess of a certain total amount per year, expenses for a single illness or condition, or those uninsured expenses that exceed a certain percentage of the basic obligation.[173]

    Other states do not use the phrase "extraordinary medical expenses," or do not define it by a particular amount. They do, however, recognize an adjustment for certain unreimbursed medical expenses. Alabama, for example, allows the court to make an additional order for extraordinary medical, dental, and educational expenses if there is a written agreement between the parties to pay those expenses, or if the order would be in the best interest of the child.[174]

    Connecticut's guidelines split all uninsured medical costs proportionally between the parents based on their net disposable incomes. To calculate net disposable income for this purpose, the guidelines add 80% of any alimony paid to the income of the parent

[171] *See* Colo. Rev. Stat. § 14-10-115(1)(b)(II) (2019); D.C. Code § 16-916.01(j)(1) (2019); Ind. Child Support Guidelines, Guideline 7; Ky. Rev. Stat. Ann. § 403.211(9) (West 2019); La. Stat. Ann. § 9:315.5 (2018); Me. Rev. Stat. Ann. tit. 19A, § 2001(4) (2019); Md. Code, Fam. Law § 12-201(g) (West 2018); Mo. Child Support Guidelines, Directions for Form 14, Comment to line 6d; Mo. Rev. Stat. § 452.340(8) (2019); N.M. Stat. Ann. § 40-4-11.1(I) (2019); N.C. Child Support Guidelines; Ohio Rev. Code Ann. § 3119.05-2(F) (2019); S.C. Soc. Serv. Reg. 114-4710-4750 (2014); Vt. Stat. Ann. tit. 15, § 653(4) (2019); Va. Code Ann. § 20-108.2(D) (2019); Wash. Rev. Code § 26.19.080(2) (2019); W. Va. Code § 48-1-225 (2019).

[172] For example, extraordinary medical expenses are defined as exceeding $100 per child, per year in Kentucky, New Mexico, and Ohio; the same expenses are defined as exceeding $250 per child per year in Colorado, District of Columbia, Louisiana, Maine, Missouri, North Carolina, Oregon, South Carolina, Virginia, and West Virginia.

[173] Examples of this approach are found in the guidelines of Alaska (reasonable uncovered health care expenses that are more than $5,000 per year); Indiana (expenses in excess of 6% of the basic obligation; Maryland, (uninsured expenses over $100 for a single illness or condition); and Vermont (uninsured annual medical expenses in excess of $200).

[174] Ala. Child Support Guidelines, Ala. R. Jud. Admin. R. 32 (2019).

receiving it and subtract the same 80% from the income of the parent paying the alimony before calculating each parent's share of the uninsured medical costs. The guidelines also add any Social Security dependency benefit amounts for the children that are based on the earnings record of the noncustodial parent to the net disposable income of the custodial parent before calculating the parent's share of these costs.[175]

Some states simply allocate uninsured medical expenses over a certain amount or on a case-by-case basis.[176]

In some states, extraordinary expenses, including uninsured medical expenses, are listed among deviation factors for a tribunal to consider.[177]

- **Guideline treatment of extraordinary medical expenses**

  No state support guideline includes extraordinary medical expenses within the basic support amount. Such expenses are usually the basis for a deviation from the basic support amount or an add-on to the guideline amount.

Deviations from Support Guidelines

Although tribunals must treat support guidelines as rebuttable presumptions of the appropriate amount of support,[178] they may deviate from the guideline amount in certain circumstances. In order to do so, they must make a written or specific finding on the record of a judicial or an administrative proceeding that the application of the guidelines would result in an inappropriate or unjust order in that particular case.[179] Findings that rebut the guidelines must

[175] Conn. Child Support and Arrearage Guidelines, Preamble.
[176] *See, e.g.*, Iowa Child Support Guidelines, Rule 9.12(5) (Amounts are split proportionally. In split custody cases, the custodial parent pays $250 per year per child up to $800 per year. Amounts above that are allocated); Mass. Child Support Guidelines II(G)(4) (Absent an agreement of the parties, the court allocates these expenses on a case-by-case basis); 231 Pa. Code R. 1910.16-6(c)(1) (allocates expenses by net income of the parties over $250 per person per year; and S.D. Codified Laws § 25-7-6.16 (2019) (allocates expenses over $250 total per year.
[177] *See, e.g.,* Tenn. Comp. R. & Regs., 1240-02-04-.07(2)(e). *See also* Ky. Rev. Stat. Ann. § 403.211(3) (West 2019) (listing a child's extraordinary medical or dental needs as a deviation factor); La. Stat. Ann. § 9:315.1(C)(4) (2019) (listing the extraordinary medical expenses of a party, or extraordinary medical expenses for which a party may be responsible, not otherwise taken into consideration under the guidelines, as a deviation factor). Both Kentucky and Louisiana also define extraordinary medical expenses separately.
[178] 45 C.F.R. § 302.56(f) (2019).
[179] 45 C.F.R. § 302.56(g) (2019); 42 U.S.C. § 667(b) (2018).

state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.[180]

The issue of when deviation from guidelines is appropriate poses a challenge for states. Too many bases for deviation undermine the effectiveness of standard calculations; yet some flexibility is necessary to ensure that orders are realistic and can be paid in certain cases. While the standard guideline calculation addresses the basic needs of a child, deviation criteria tailor the order to meet the needs of a specific child or children. Federal regulations, in addition, require any deviation criteria established by a state to take into account the best interest of the child.[181]

Some states, such as Delaware, provide little guidance to the decision maker by way of deviation criteria. Others, such as Florida, provide detailed and specific criteria on what may constitute the basis for deviation.[182]

Those states that list deviation factors often list extraordinary medical expenses as discussed herein, as well as factors such as educational expenses, the effect of a federal tax dependency exemption, or the presence of other dependents.

Educational expenses. Deviation from guidelines for educational expenses are primarily attributed to costs such as private school tuition, programs for special needs, post-secondary or college expenses, or extracurricular programs and activities. In deciding whether to award educational expenses, the tribunal will usually consider the income of the parents and their decisions regarding educational issues when they were together. Factors can include the type of schooling the child was enrolled in prior to the separation or divorce; the special needs of the child for whom support is sought; whether the parents went to private school; whether the parents can afford private school costs; and whether it is necessary to maintain the child's current status and well-being.

Some state guidelines have detailed criteria for deviating from the guideline amount for educational expenses. Tennessee, for example, lists "tuition, room and board, lab fees, books, fees, and other reasonable and necessary expenses associated with special needs, education or private elementary and/or secondary schooling that are appropriate to the parents' financial abilities and to the lifestyle of the child if the parents and child were living together" in the definition of extraordinary educational expenses[183] and

---

[180] *See Tanner v. Tanner*, 223 So.3d 920 (Ala. Civ. App. 2016) (appellate court reversed and remanded case where trial court deviated from the guidelines without specific findings that the guideline amount would be unjust or inequitable).
[181] 45 C.F.R. § 302.56(g) (2019).
[182] Fla. Stat. § 61.30(11)(a) (2019).
[183] Tenn. Comp. R. & Regs., 1240-2-4-.07(2)(d)(1)(i).

allows the consideration of "scholarships, grants, stipends, and other cost-reducing programs received by or on behalf of the child."[184]

Other states provide shorter lists of educational factors a tribunal can consider for a deviation.[185] Indiana's guidelines define extraordinary education expenses as expenses for elementary, secondary, or post-secondary education and list criteria that could be relevant to justifying an award of child support for educational purposes. The commentary recommends the court consider whether the expense is the result of a personal preference of one parent or whether both parents concur; whether the parties would have incurred the expense while the family was intact; and whether education of the same or higher quality is available at less cost.[186]

The Indiana guidelines also contain a worksheet designed to apportion the cost of post-secondary education between the parents and suggests that the court may want to consider the value of tax subsidies that may be available in the apportionment.[187] States often require an authorizing statute, prior case law, or an agreement of the parties for a tribunal to require payment of support after emancipation when the child wishes to attend college. Tribunals also consider other factors in ordering payment for college expenses. For example, the Indiana appellate court held that the parents' relative ability to pay college expenses should be considered,[188] and the Massachusetts appellate court held that college expenses must be reasonable, based upon equitable factors.[189] The Court of Appeals in Arkansas allowed a deviation so that funds could be accumulated for future use by the child in attending college.[190] Although some courts had held that ordering payment of college expenses violates equal protection, these cases have been overruled on appeal.[191] Other courts have rejected constitutional challenges.[192]

---

[184] Tenn. Comp. R. & Regs., 1240-2-4-.07(2)(d)(1)(ii).
[185] *See* W. Va. Code § 48-13-702(b)(2) (2019).
[186] Ind. R. of Ct., Child Support Rules and Guidelines, Guideline 8.
[187] *Id.*
[188] *Eppler v. Eppler*, 837 N.E.2d 167 (Ind. Ct. App. 2005).
[189] *Mandel v. Mandel*, 906 N.E.2d 1016 (Mass. App. 2009). *See also L.L. v. R.L.*, 36 Misc.3d 777, 949 N.Y.S.2d 863 (N.Y. Sup. Ct. 2012).
[190] *Hayes v. Otto*, 344 S.W.3d 689 (Ark. App. 2009).
[191] *See McLeod v. Starnes*, 723 S.E.2d 198 (S.C. 2012), overruling *Webb v. Sowell*, 692 S.E.2d 543 (S.C. 2010); *In re Marriage of McGinley*, 19 P.3d 954 (Or. App. 2001) (holding that the law allowing courts to order post-secondary support does not violate the state constitution, and criticizing *Curtis v. Kline*, 666 A.2d 265 (Pa. 1995), which had reached the opposite conclusion). *See also Mackay v. Mackay*, 984 A.2d 529 (Pa. Super. Ct. 2009) (holding Pennsylvania law does not impose an obligation on parents to provide for college expenses but allows a parent to assume financial responsibility for post-secondary education).
[192] *See, e.g., Donnelly v. Donnelly,* 2012 Conn. Super. LEXIS 1964, 2012 WL 3667312 (Conn. Sup. Ct. 2012). *See also Jaylo v. Jaylo*, 262 P.3d 245 (Haw. 2011) (awarding post-secondary education support for a 25-year-old disabled child). For a further discussion of support beyond the age of majority, *see* Duration of the Support Obligation, *infra*. *See generally* Sally F. Goldfarb, *Who Pays for the "Boomerang Generation"? A Legal Perspective on Financial Support for Young*

Multiple family issues. Many guidelines in use today are based on the premise that both parents should share in the expenses of the family proportionate to their incomes and that the child should continue to receive the same amount of support as the child would have received had the parents remained together. This premise, however, is difficult to apply in situations where the parents have never lived together. In addition, families are becoming increasingly complicated as more parents have children with more than one partner.[193] Based on responses to a nationally representative survey administered by the U.S. Census Bureau, approximately one in 10 of all adults aged 15 or older have had children with more than one partner.[194]

There are many kinds of multiple families. In addition to families where the father has had children with multiple women, there are also families where the mother has had children with multiple men, or where both parents have had children with multiple partners. States, therefore, increasingly recognize the need to address multiple family issues within their guidelines.[195]

States address the multiple family situation in different ways. Questions policy makers must answer include whether the child support obligation to the first family should be reduced when one of the parents has a second family, whether prior-born children receive preference, and whether all children should be treated equally.[196] Factors to consider are whether there is a court-ordered child support order in place for the additional child; whether the additional child is a biological child of the parent; whether the additional child resides with the parent; whether the parent has actually been paying support for the additional

---

Adults, 37 Harv. J. L. & Gender 45 (Winter 2014); Leslie Joan Harris, *Child Support for Post-Secondary Education: Empirical and Historical Perspectives,* 29 J. Am. Acad. Matrim. Law. 299 (2017).

[193] *See* Tonya Brito, *Child Support Guidelines and Complicated Families: An Analysis of Cross-State Variation in Legal Treatment of Multiple-Partner Fertility*, Institute for Research on Poverty, University of Wisconsin–Madison (May 2005), http://citeseerx.ist.psu.edu/viewdoc/download?rep=rep1&type=pdf&doi=10.1.1.152.3828.; Adrienne Jennings Lockie, *Multiple Families, Multiple Goals, Multiple Failures: The Need for "Limited Equalization" as a Theory of Child Support*, 32 Harv. J.L. & Gender 109 (2009) (arguing that changes are needed in current child support policy to deal with multiple family situations).

[194] *See* Lindsay M. Monte, Multiple Partner Fertility Research Brief, Current Population Reports, P70BR-146, U.S. Census Bureau, Washington, DC (2017), https://www.census.gov/content/dam/Census/library/publications/2017/demo/p70br-146.pdf (Based on responses to the 2014 Survey of Income and Program Participation, 10.1% of all adults aged 15 or older have had children with more than one partner, or roughly one out of every ten adults.). *Cf.* Maria Cancian and Donald Meyer, *Who Owes What to Whom? Child Support Policy Given Multiple-Partner Fertility,* 85 (4) Soc. Serv. Rev. 587 (Dec. 2011) (This Wisconsin study examined families in the Wisconsin child support program from 1997 to 2005 that met research criteria. The study found that 69% of the custodial mothers had children with only one father, and that father only had children with the custodial mother. The remaining 31% were couples where at least one parent had children from a different partner).

[195] Brito, *supra* note 193.

[196] Emma Casper, *Review of Child Support Policies for Multiple Family Obligations: Five Case Studies,* Institute for Research on Poverty, University of Wisconsin–Madison (September 2006).

child; and whether the additional child was born prior to or subsequent to the child who is the subject of the proceeding.[197]

Income deductions and deviations. Many states recognize other dependents within the calculation of a parent's income, allowing a deduction from a parent's gross income for a support obligation the parent has for another child if the obligation is based on an order or a written agreement. In some cases, the deduction is only allowed if there is proof of actual payment of support for the other child.[198] One criticism of the deduction approach is that it favors prior support orders, not necessarily first-born children. Therefore, if a later-born child "gets to the courthouse" before a prior child, the deduction approach results in less income available to support the prior-born child.[199]

Other states permit a tribunal to consider support actually paid for children with or without a support order, either as grounds for a deviation from the guideline amount or as a deduction from income.[200] In California, for example, in the absence of a court order, any child or spousal support that is actually being paid is deducted from the gross income of the parent making the payment, as long as this amount is not more than the amount established by the guidelines.[201] Arizona takes a similar approach.[202]

Imputed obligations. Some states address multiple family obligations by imputing a "dummy" support obligation for children who live in the parent's home and for whom the parent has a legal obligation to support, but who are not the subject of a child support order.[203] This approach assumes that the parent is using part of his or her income to support the other child or children who live in the parent's household. Most states that use this approach calculate this imputed order using the guideline formula, although states sometimes use multipliers or require the use of the income of the child's other parent as part of the calculation.[204]

---

[197] Brito, *supra* note 193.
[198] *See, e.g.*, Colo. Rev. Stat. § 14-10-115(6)(a) (2019); S.D. Codified Laws § 25-7-6.7(5) (2019).
[199] Brito, *supra* note 193, noting that the timing of court orders does not always correlate with birth order.
[200] *See, e.g.*, Ark. Code Ann. § 9-12-312 (2018) and Admin. Order of the Ark. Supreme Court No. 10 § II(a)4 (deviation factor); Cal. Fam. Code § 4059(e) (West 2019) (deduction from income).
[201] Cal. Fam. Code § 4059(e) (West 2019).
[202] Ariz. Child Support Guidelines (6)(D) (S. Ct. Order 2018-08).
[203] *See, e.g.,* Ohio Rev. Code Ann. § 3119.05(C) (2019) (a formula within the worksheet calculates a per child credit for each child who is not the beneficiary of the current order but for whom a party has a duty to support); Or Admin. R. 137-050-0720 (2020).
[204] *See, e.g.*, N.J. Ct. R., Appendix IX-B (2019) (requires a separate calculation that includes the income of the other parent in the secondary family, if requested, and if that income information is made available to the court); S.C. Soc. Serv. Reg. 114-4710 through 114-4750 (114.4720.A.9 requires a court to calculate an imputed support amount for additional children in the home, multiply that amount by 75% and subtract the result from the gross income of the noncustodial parent).

In Texas, the support obligation of a noncustodial parent who has a legal obligation for children in more than one household, including those who may be living with him or her, can be determined by the court in one of two ways. The first way involves several steps:

- Calculate the amount of support that would be ordered if all of the children lived in the same household;
- Calculate a credit by dividing that amount by the total number of children to obtain a per child amount;
- Multiply the per child amount by the number of children who are not involved in the order in question;
- Deduct the resulting credit amount from the net resources of the noncustodial parent; and
- Apply the percentage guidelines to the net resource amount to obtain the child support amount for the children in the case in question.

The second way to obtain a child support order in this circumstance is to apply the Multiple Family Adjusted Guidelines percentages to the noncustodial parent's net resources.[205]

Birth order issues. States also treat the issue of birth order of children differently. Some states have attempted to treat children from different relationships as equally as possible with guideline language allowing tribunals to deviate from the presumptive guideline order, taking into account the total financial circumstances of all households.[206]

The New Jersey guidelines approach this issue with an "other-dependent deduction." This deduction is "part of an adjustment mechanism to apportion a parent's income to all legal dependents including those born before or after the children for whom support is being determined," and includes three separate support obligation calculations.[207]

Wisconsin guidelines contain an adjustment mechanism for use only when a prior obligation exists to the one in question. The statute specifically says that this adjustment cannot be used as the basis for modification of an existing order, based on a subsequently incurred support obligation.[208]

---

[205] Tex. Fam. Code § 154.128 (West 2018); Tex. Fam. Code § 154.129 (West 2018).
[206] *See, e.g.,* Wash. Rev. Code § 26.19.075(1)(e)(i-iv) (2019) ("When the court has determined that either or both parents have children from other relationships, deviations under this section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received, and owed for all children shall be disclosed and considered.").
[207] N.J. Ct. R., Appendix IX-B.
[208] Wis. Admin. Code DCF § 150-04(1)(a).

In contrast, South Dakota allows a court to deviate from the presumptive guidelines amount, based on "the obligation of either parent to provide for subsequent natural children, adopted children, or stepchildren."[209]

Child support attorneys must understand the policy underlying their state or tribal support guidelines and present the relevant facts to the tribunal. Often the support amount in a case involving multiple children in different households will come down to a case-by-case determination.[210]

Child support attorneys can also assist policymakers in understanding the complexity of families in the child support caseload. Issues that guidelines reviewers need to address include not only policy decisions regarding the impact of birth order on support, but also "the potential inequities that may result when parents have multiple children with multiple partners (and/or one or more of the parents shares a household with a new partner who may be contributing to the family's finances) and the payment and receipt of child support across these households is uneven."[211]

Federal tax dependency exemption. Another consideration in the determination of child support is the federal tax dependency exemption.[212] Typically, the custodial parent is entitled to take the federal tax dependency exemption.[213] The parent can claim the exemption if he or she provides more than half of the support for the child and the child resides with the parent in excess of one half of the year.

Federal law permits the noncustodial parent to claim the exemption when the custodial parent releases the claim to the exemption or where there are

---

[209] S.D. Codified Laws § 25-7-6.10(5) (2019) (An existing support order cannot be modified only for this reason).
[210] *See* Brito, *supra* note 193 for an in-depth analysis of various state approaches to multi-family situations. *See also* Cancian and Meyer, *supra* note 194.
[211] Brito, *supra* note 193. *See also* Maria Cancian and Daniel R. Meyer, *The Implications of Complex Families for Poverty and Child Support Policy,* University of Wisconsin-Madison Institute for Research on Poverty (2012), https://www.irp.wisc.edu/publications/media/webinars/Cancian%20%20Meyer%20Webinar%20September%202012%20to%20post.pdf; Maria Cancian, Daniel R. Meyer, and Steven T. Cook, *Changes in the Incidence of Complex Families and the Implications for Child Support Orders,* University of Wisconsin-Madison Institute for Research on Poverty (2017), https://www.irp.wisc.edu/resource/changes-in-the-incidence-of-complex-families-and-the-implications-for-child-support-orders/.
[212] *See* Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* (2nd ed. 2013 and Supp. 2017). For a general discussion of child-related federal income tax benefits, including the tax dependency exemption, *see* https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/child-related-tax-benefits (last visited May 1, 2020). *See also* Elaine Maag, *Child-Related Benefits in the Federal Income Tax,* Urban Institute (2014), https://www.urban.org/research/publication/child-related-benefits-federal-income-tax (last visited May 21, 2020).
[213] 26 U.S.C. § 152(e)(1) (2018).

multiple sources for the child's support, none of which amount to more than one-half of the support.

Tribunals in most states have held that they can allocate the federal tax dependency exemption and order parents to execute the proper Internal Revenue Service documents to effectuate the tribunal's order.[214] The tribunal must determine when it is appropriate to allocate the exemption to the noncustodial parent and whether doing so will produce a tax savings and benefit by considering the parents' gross income, tax filing status, and relevant tax rules.[215]

After the tribunal allocates the exemption to the noncustodial parent, the issue becomes whether the guideline support amount should be adjusted. The commentary to the North Carolina Child Support Guidelines addresses the exemption and the effect of an allocation. It specifically permits deviation to increase the support amount under the circumstances.[216] Many states consider who takes the exemption as a factor in determining the appropriate amount of support. Some allow for deviation to increase the support amount and others do not.[217] The Arkansas court held that allocation of the federal tax dependency exemption automatically entitles the custodial parent to an upward deviation.[218]

Tribunals holding that they lack authority to impose income tax liability have been either overruled or criticized.[219] Idaho amended its guidelines to specifically address the exemption, stating that the parent without the exemption is entitled to a pro rata share of the benefit in relation to the parent's share of the guidelines income.[220]

---

[214] *See, e.g.*, *Gould v. Dickens*, 143 S.W.3d 639 (Mo. Ct. App. 2004); *Dindal v. Dindal*, 2009 Ohio 3528, No. 5-09-06, 2009 WL 2159689 (Ohio Ct. App. 2009).

[215] Some state laws also address this allocation. *See, e.g.,* Alaska R. Civ. P. 90.3(k); Ohio Rev. Code § 3119.82 (2019); W. Va. Code § 48-13-801 (2018).

[216] N.C. Child Support Guidelines, N.C. Gen. Stat. § 50-13.4 (2019).

[217] Ga. Code Ann. § 19-6-15(i)(2)(E) (2018); Ohio Rev. Code Ann. § 3119.23(H) (2019) allows a deviation based on the amount of taxes paid or estimated by the parties. *See also* Wash. Rev. Code § 26.19.075(1)(a)(viii) (2019), which allows a deviation for "tax planning considerations."

[218] *Fontenot v. Fontenot*, 898 S.W.2d 55 (Ark. App. 1995). *See also Dumas v. Tucker*, 119 S.W.3d 516 (Ark. App. 2003); *White v. White*, 236 S.W.3d 540 (Ark. App. 2006).

[219] *See, e.g., Gray v. Gray*, 658 So. 2d 607 (Fla. Dist. Ct. App. 1995) (holding that the court had no discretion to order a change to the income tax dependency exemption. It was overruled in part by *Harris v. Harris*, 760 So. 2d 152, (Fla. Dist. Ct. App. 2000), which held the court has discretion to order a custodial parent to execute a release of claim to the income tax deduction); *Floyd v. Floyd*, 436 S.E.2d 457 (Va. App. 1993) (holding that the trial court had no authority to order the custodial parent to execute a waiver of the federal income tax dependency exemption. It was criticized in *Miller v. Miller*, 744 A.2d 778 (Pa. Super. Ct. 1999), holding that the dependency exemption is an economic claim related to the divorce, and that the trial court may fairly and expeditiously resolve this claim during divorce proceedings; the court criticized cases that found no authority to allocate the exemption).

[220] Idaho R. Fam. L.P. 126H.3.This section contains a specific table for calculating the tax benefits of the exemption.

Other deviation factors. In addition to the deviation factors listed above, most states have a criterion called "any other factor the court deems relevant to the best interests of the child"[221] or "[a]ny other adjustment that is needed to achieve an equitable result."[222]

Parties have asked tribunals to consider many situations for possible deviation based on such a "catch-all" criterion. Tribunals have refused to allow deviations for the establishment of a bank account to cover expenses of the children;[223] discretionary travel expenses that were not related to court ordered parenting time,[224] or a disabled child's receipt of Social Security.[225] Appellate courts have also overturned deviations when court orders did not contain any reason or basis for the deviation.[226]

Tribunals have granted deviations in many other situations. They have allowed deviations when there were expenses for extraordinary medical care,[227] when the noncustodial parent's income was difficult to predict,[228] and when parties received adoption subsidies for their adopted children.[229]

Some tribunals have also allowed deviation from the guideline amount based on an agreement between the parties, especially where the noncustodial parent agrees to pay expenses outside of the guideline, such as college tuition or mortgage payments.[230]

---

[221] Mich. Child Support Formula Manual § 1.04(E)(21) (2021).
[222] Fla. Stat. § 61.30(11)(a)(11) (2019).
[223] *Laughlin v. Laughlin*, 229 P.3d 1002 (Alaska 2010).
[224] *Tibor v. Tibor*, 623 N.W.2d 12 (N.D. 2001). *See also Kavanah v. Kavanah*, 66 A.3d 922 (Conn. App. 2013).
[225] *Paton v. Paton,* 742 N.E.2d 619 (Ohio 2001) (holding that Social Security disability does not constitute a financial resource of the child under Ohio law for the purpose of justifying the trial court's deviation from the basic child support schedule). *Accord Abrams v. Abrams,* 92 N.E.3d 368 (Ohio Ct. App. 2017). *See also Coshocton Cty. Dept. of Job & Fam. Servs., Child Support Enforcement Agency v. Miller*, 2011 Ohio 6356 (Ohio Ct. App. 2011) (child's receipt of adoption assistance does not constitute a financial resource of the child under Ohio law, which might support a deviation from the child support schedule).
[226] *See, e.g., Y.R. v. A.F.*, 215 Cal. Rptr. 3d 577 (Cal. Ct. App. 2017); *Righi v. Righi*, 160 A.3d 1094 (Conn. App. App. 2017); *In re Marriage of Mihm*, 842 N.W.2d 378 (Iowa 2014).
[227] *Koslowski v. Koslowski*, 78 So. 3d 642 (Fla. Dist. Ct. App. 2011) (where the child was mentally incompetent and required many medications and ongoing care). *See also Linge v. Meyerink*, 806 N.W.2d 245 (S.D. 2011) (allowing a deviation due to significant medical expenses of the current wife).
[228] *Hults v. Hults*, 11 So. 3d 1273 (Miss. Ct. App. 2009).
[229] *In re Marriage of Newberry*, 805 N.E.2d 640 (Ill. App. 2004).
[230] *See, e.g.*, *Knott v. Knott,* 806 A.2d 768 (Md. App. 2002) (where the noncustodial parent agreed to pay the mortgage and other household expenses, but no child support, the court of appeals remanded, holding that a court must first apply the guidelines, and deviate if it determines that their application would be unjust or inappropriate).

When considering whether to recommend a deviation to the tribunal, a child support attorney should consider the statutory grounds for deviation, case law, fairness and equity of the situation, and the best interests of the child.[231]

CONSTITUTIONALITY OF GUIDELINES

Shortly after enactment of the federal statute that states develop presumptive support guidelines, there were challenges to the constitutionality of the federal mandate; all such challenges failed.[232] Guidelines have also withstood constitutional challenges to the states' methods of enactment.[233] Courts have held that the legislation of these guidelines no more unconstitutionally usurps the authority of the courts than does the legislation of mandatory sentencing guidelines.[234]

Noncustodial parents have raised other constitutional challenges to guidelines, particularly along equal protection lines. For example, in a case involving remarriage and a second family, the court did not allow a downward deviation in the guidelines because the noncustodial parent had three other children, holding that the difference in classification between children living with the noncustodial parent and those not living with the noncustodial parent was rational and did not violate equal protection.[235] An Alaska court also rejected the argument that the Alaska Percentage of Income guideline violated equal protection by considering only the noncustodial parent's income.[236]

RETROACTIVE APPLICATION OF GUIDELINES

Courts have held that child support guidelines are not applicable to the *de novo* appellate review of child support orders entered before the guidelines' effective date.[237] If new guidelines were applicable, most of the cases pending on

---

[231] *See* 45 C.F.R. § 302.56(g) (2019). *See also Knott v. Knott*, 806 A.2d 768 (Md. App. 2002).
[232] *See, e.g., P.O.P.S. v. Gardner*, 998 F.2d 764 (9th Cir. 1993); *Childrens & Parents Rights Ass'n of Ohio, Inc. v. Sullivan*, 787 F. Supp. 724 (N.D. Ohio 1991) and companion case *Childrens & Parents Rights Ass'n of Ohio, Inc. v. Sullivan*, 787 F. Supp. 738 (N.D. Ohio 1992).
[233] *Lawson v. Lawson*, 108 P.3d 883 (Alaska 2005). *See, e.g., Dalton v. Clanton*, 559 A.2d 1197 (Del.1989); *Ga. Dep't of Human Resources v. Sweat*, 580 S.E.2d 206 (Ga. 2003); *Keck v. Harris*, 594 S.E.2d 367 (Ga. 2004); *Fathers and Families, Inc. v. Mulligan*, 2009 Mass. Super. LEXIS 243, 26 Mass. L. Rep. 165, 2009 WL 3204984 (2009); *Doll v. Barnell*, 693 N.W.2d 455 (Minn. Ct. App. 2005).
[234] *See Blaisdell v. Blaisdell,* 492 N.E.2d 622 (Ill. App. 1986).
[235] *Child Support Enforcement Agency v. Doe*, 91 P.3d 1092 (Haw. 2004). *See also Kimbrough v. Commonwealth*, 215 S.W.3d 69 (Ky. Ct. App. 2006); *Gallaher v. Elam*, 104 S.W.3d 455 (Tenn. 2003).
[236] *Coghill v. Coghill*, 836 P.2d 921 (Alaska 1992).
[237] *In re Marriage of Olsen*, 902 P.2d 1217, 1219 (Or. App. 1995*), citing In re Butcher,* 786 P.2d 1293 (Or. App. 1990).

appeal would have to be remanded for redetermination and consideration of evidence relevant to criteria used in applying the guidelines.

RETROACTIVE SUPPORT

Historically, states often sought retroactive support back to the birth of the child. Many states currently have specific guidance in their guidelines regarding the possible retroactivity of support orders.[238] Most states use the filing date rather than the service date as the appropriate measure of the beginning of the obligation.[239] Courts have refused to impose a duty on a parent who has been barred from a relationship with the child during the period for which support is sought.[240] Courts have, however, imposed obligations on parents during periods when they eluded service and location in an effort to avoid the obligation to support their children.[241] Application of retroactivity poses particular problems for cases involving low-income parents, where retroactively compounding the monthly support amount can result in a large debt the parent can never repay. These factors are weighed carefully by courts in deciding whether to impose retroactive support obligations.[242]

TEMPORARY SUPPORT (*PENDENTE LITE*)

Often a proceeding for child support is delayed to complete discovery or because a party, attorney, or the tribunal is unavailable at the time scheduled for hearing. Because the need for support is so essential, many states allow the issuance of a temporary order for support, *pendente lite*, pending the action. Typically, this amount is set based on income information that is available. For instance, usually the child support attorney will have access to wage statements.

---

[238] *See* Tennessee's child support guidelines at Tenn. Comp. R. & Regs., 1240-2-4-.06(1)(a) (support may be ordered retroactively to the birth of a child in a paternity case). *See also, e.g.*, Conn. Gen. Stat. § 46b-215a-1(2)(C) (2019); Fla. Stat. § 61.30(17) (2019); N.C. Child Support Guidelines.

[239] *See, e.g., Morris v. Swanson,* 940 So. 2d 1256 (Fla. Dist. Ct. App. 2006). *Cf. In the Matter of Valentina Conant and William Faller*, 116 A.3d 561 (N.H. 2015) (circuit court struck down a lower court ruling requiring the noncustodial parent to pay child support for a period before the motion to establish paternity was filed). For information on each state's retroactive support establishment procedures, *see* the OCSE Intergovernmental Roster and Referral Guide, Section I, Support Order Establishment, question 14 and the follow up questions, https://ocsp.acf.hhs.gov/irg/profileQuery.html?geoType=1,

[240] *See, e.g., Gaines v. Gaines*, 870 So.2d 187 (Fla. Dist. Ct. App.2004).

[241] *See, e.g., Diane S. v. Carl Lee H.*, 472 S.E.2d 815 (W. Va. 1996). *See also Leffers v. Leffers*, 2011 Neb. App. LEXIS 152, 2011 WL 4991750 (Neb. Ct. App. 2011) (holding that a modification retroactive to the original date of filing in 2008 [approximately three years] was appropriate because it was caused by the custodial parent's avoidance of service of the application for modification).

[242] See *Henke v. Guerrero*, 692 N.W.2d 762 (Neb. App. 2005) (holding that, depending on the equities of the situation, a court may determine whether support should be applied retroactively in modification cases).

Temporary support orders rarely remain in effect beyond one year, and some states limit the time even further. Although temporary support allows money to reach children in a timely manner pending issuance of a final order, child support attorneys should argue against repeated use of temporary orders. Such orders encourage delay in finalizing and resolving the family situation, which can have negative consequences for the children and the parents.

DURATION OF SUPPORT OBLIGATION

All states have statutes establishing the duration of a support obligation. This duration is implicit in all support orders. The duration in state statutes ranges from age 18 to age 21. The most common duration of support is 18, unless the child is in high school; then the duration is graduation from high school, or age 19, whichever comes first.[243]

Many states have statutes or case law that impose a support obligation past the age of majority for children who are mentally or physically disabled.[244] Some states will impose the support duty only if the disability arose during the child's minority.[245] Some states also provide for support beyond the age of majority if the child is attending post-secondary schooling.[246]

In intergovernmental cases, UIFSA contains choice of law rules regarding the duration of a support obligation. Section 604 provides that the law of the issuing state governs the duration of current payments of a support order

---

[243] For a complete list of state information on age of majority and on duration of the obligation, *see* Exhibit 10-2 at the end of the chapter. *See also* Office of Child Support Enforcement, Intergovernmental Reference Guide, Section D, Age of Majority, https://ocsp.acf.hhs.gov/irg/profileQuery.html?geoType=1 (last visited Mar. 3, 2020).

[244] *See* Office of Child Support Enforcement, Intergovernmental Reference Guide, question D.6 within Section D, Age of Majority, https://ocsp.acf.hhs.gov/irg/profileQuery.html?geoType=1 (last visited Mar. 3, 2020). *See, e.g.,* Ariz. Rev. Stat. § 25-320(E) (2019); Ark. Code Ann. § 9-12-312(a)(6)(B) (2018); Cal. Fam. Code § 3910 (West 2019); Fla. Stat. § 743.07(2) (2019); Haw. Rev. Stat. § 580-47(a) (2019); 750 Ill. Comp. Stat. 5/513.5(a) (2019); Ind. Code § 31-16-6-6(a)(2) (2019); Ky. Rev. Stat. Ann. § 405.020(2) (2019); Md. Code Ann., Fam. Law § 13-107 (West 2018); Minn. Stat. § 518A.26(5) (2019); Mo. Rev. Stat. § 452.340(4) (2019); Nev. Rev. Stat. § 125B.200(2)(c) (2019); Ohio Rev. Code Ann. § 3119.86(A)(1)(a) (2019); Tex. Fam. Code § 154.001(a)(4) (West 2017); Utah Code Ann. § 78B-12-102(7)(c) (West 2018); Va. Code Ann. §§ 20-60.3(5), 20-124.2(C) (2019); Wyo. Stat. Ann. § 14-2-204(a)(i) (2019). *See also Corby v. McCarthy*, 840 A.2d 188 (Md. App. 2003); *Fenstermaker v. Fenstermaker,* 57 N.E.3d 206 (Ohio Ct. App. 2015); *In re Conservatorship of Jones*, No. M2004-00173-COA-R3-CV, 2004 WL 2973752 (Tenn. Ct. App, 2004). *But see Geygan v. Geygan*, 973 N.E.2d 276 (Ohio Ct. App. 2012) (the court would not award child support for an adult disabled child, when the child was 38 years old at the time of the divorce).

[245] *See* Ariz. Rev. Stat. § 25-320(E)(3) (2019); Fla. Stat. § 743.07(2) (2019). *See also In re Marriage of Gibbs*, 258 P.3d 221 (Ariz. Ct. App. 2011); *In re Jacobson*, 842 A.2d 77 (N.H. 2004) (court would not allow a support order for a child of 20 who had been diagnosed with multiple sclerosis after her emancipation).

[246] For information on state laws addressing post-majority support, including education expenses, *see* Exhibit 10-2.

registered under UIFSA. UIFSA also addresses duration of support when a party registers an order for modification in another state. Section 611 prohibits a state tribunal from modifying any aspect of a child support order that may not be modified under the law of the issuing state, including the duration of support.[247] According to the official Comment to Section 611, "the original time frame for support is not modifiable unless the law of the issuing state provides for its modification." Therefore, in most cases, the registering tribunal may modify the support amount but not the duration of support. In the rare event the case has multiple support orders, it is the duration of the order initially determined to be controlling that governs duration.[248]

Most states that do not require support beyond the statutory age of majority will enforce an agreement between the parents that obligates one or both parents to provide such support. For example, although the duration of the support obligation in Mississippi is age 21, the court has upheld agreements to continue support beyond emancipation and given credit for payments made.[249] Whether the child support agency and IV-D attorneys provide assistance in enforcing an obligation beyond the statutory duration of support will depend on agency policy.

In some states, the agreement to pay post-majority support is not subject to modification, nor is it a basis for deviation from guidelines.[250] In other states, post-majority support is modifiable, even if the order is the result of an agreement between the parties.[251] New Jersey leaves the decision to continue support beyond the age of majority to the discretion of the tribunal, who reviews the need and capacity of the child for education, including higher education.[252]

Case law has considered factors such as the definition of educational expenses, amount of support sought and reasonableness of the expenses, ability of the obligated parent to pay, financial situation of the custodial parent, and the parents' education and expectations for the child, based on their social and

---

[247] Unif. Interstate Family Support Act § 611(c) (2008).

[248] Unif. Interstate Family Support Act § 611(d) (2008). Section 611(d) further provides that the "obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support" by a tribunal of another state that may have a longer duration. For more information about intergovernmental cases, *see* Chapter Thirteen: Intergovernmental Child Support Cases.

[249] *Broome v. Broome*, 75 So. 3d 1132 (Miss. Ct. App. 2011). *See also Carlson v. Carlson,* 909 N.W.2d 351 (Neb. 2018); *Adams v. Adams*, 108 N.E.3d 615 (Ohio Ct. App. 2018) (court upheld enforcement of the separation agreement's provisions related to post-majority support but reversed the trial court's award of payments to the mother. The appellate court remanded the case for determination of whether payments should be made directly to the bank accounts of the adult children, pursuant to the agreement).

[250] *Ching v. Ching*, 751 P.2d 93 (Haw. App. 1988) (holding that a father's agreement to pay post-high school education expenses was not an exceptional circumstance that would allow the court to deviate from guidelines).

[251] *Walters v. Walters*, 901 N.E.2d 508 (Ind. Ct. App. 2009).

[252] See *Sakovits v. Sakovits*, 429 A.2d 1091 (N.J. Super. 1981); *Avelino-Catabran v. Catabran*, 139 A.3d 1202 (N.J. Super. Ct. App. Div. 2016).

economic backgrounds, when determining whether to award post majority educational support.[253]

Despite a statutory age of majority, most states recognize that a child can become emancipated earlier through marriage, military service, or employment resulting in the child becoming self-supporting.[254]

MEDICAL SUPPORT

Federal law now requires that "All child support orders … shall include a provision for medical support for the child to be provided by either or both parents."[255] Medical support includes provisions to cover health insurance costs as well as cash payments for unreimbursed medical expenses.[256] Child support guidelines must address how the parents will provide for the children's health care needs through public or private health care coverage and/or through cash medical support.[257] Earlier sections of this chapter discussed how child support guidelines incorporate these requirements.[258] This section focuses primarily on the requirement to provide health care coverage and the National Medical Support Notice (NMSN).

Tribal child support orders are not required to include provisions for medical support, although no regulations prevent tribes from issuing such orders. If a tribe does issue an order for medical support, it is entitled to full faith and credit.[259]

Federal Mandates

The first connection between medical support and child support came as an attempt to recoup the costs of Medicaid provided to public assistance families under Title XIX of the Social Security Act. Two years after creation of the IV-D child support program, the Medicare/Medicaid Antifraud and Abuse Amendments of 1977 established a medical support enforcement program that allowed states to require that Medicaid applicants assign their rights to medical support.[260] Further, in an effort to cover children by private insurance instead of public programs, when available, it permitted child support and Medicaid agencies to

---

[253] *See, e.g., Eppler v. Eppler*, 837 N.E.2d 167 (Ind. Ct. App. 2005); *Schacht v. Schacht*, 892 N.E.2d 1271 (Ind. Ct. App. 2008); *Vagenas v. Vagenas*, 879 N.E.2d 1155 (Ind. Ct. App. 2008); *Mandel v. Mandel*, 906 N.E.2d 1016 (Mass. App. Ct. 2009).
[254] *See Borders v. Noel*, 800 N.E.2d 586 (Ind. Ct. App. 2003)*; Diamond v. Diamond*, 283 P.3d 260 (N.M. 2012). *But see In re Marriage of Baumgartner*, 930 N.E.2d 1024 (Ill. 2010) (incarceration of a minor child does not, by itself, emancipate the child).
[255] 42 U.S.C. § 666(a)(19) (2018).
[256] 45 C.F.R. § 303.31 (2019).
[257] 45 C.F.R. § 302.56(c)(2) (2019).
[258] For a discussion of guideline treatment of health insurance costs, *see infra.*
[259] Tribal Child Support Enforcement Programs, 69 Fed. Reg. 16,638, 16,660 (Mar. 30, 2004).
[260] Medicare/Medicaid Antifraud and Abuse Amendments of 1977, Pub. L. No. 95-142, § 1912, 91 Stat. 1175, 1196.

enter into cooperative agreements to pursue medical child support assigned to the state.[261] Also, state child support agencies were required to notify Medicaid agencies when private family health coverage was either obtained or discontinued for a Medicaid-eligible person.[262]

Child Support Enforcement Amendments of 1984. In 1984, the Child Support Enforcement Amendments[263] added the requirement that child support agencies secure medical support information and obtain and enforce medical support in the form of health care coverage from the noncustodial parent when such coverage is available at a reasonable cost.[264] Implementing regulations defined "reasonable cost" as the cost of insurance available through one's employment.[265]

Although the medical support requirements of the Child Support Enforcement Amendments of 1984 were helpful, obstacles to enforcement of medical child support still remained. For example:

- Medical insurance policies contained provisions that limited the ability of a parent to add a child living outside the parent's household and not claimed as a tax dependent.

- Some plans disallowed children born to single parents or living outside a limited service area.

- Many times, the parent would fail to enroll the child, sometimes because insurance premiums were too high. To hold the parent in contempt might cause the loss of a job that was the very source of support.

- Whether health care orders were enforceable under group health plans covered by the Employee Retirement Income Security Act of 1974 (ERISA)[266] was unclear.

Employee Retirement Income Security Act of 1974. In 1974, Congress enacted ERISA to help protect employer-provided pension and health benefits

---

[261] *Id*.
[262] 45 C.F.R. § 303.30 (2019).
[263] Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305.
[264] Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, § 16, 98 Stat. 1305, 1321.
[265] 45 C.F.R. § 303.31(a)(3) (2019). The term "reasonable cost" has evolved, however. It now includes the cost of cash medical support, public health care coverage, or private health insurance and is defined as reasonable "if the cost to the parent responsible for providing medical support does not exceed five percent of his or her gross income or, at State option, a reasonable alternative income-based numeric standard defined in State law, regulations or court rule having the force of law or State child support guidelines adopted in accordance with § 302.56(c) of this chapter."
[266] Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829.

and to encourage employers to establish such plans. ERISA regulates most privately sponsored pension plans and health benefit plans. The law is important for child support purposes because it preempts state laws and regulations governing health insurance and employee benefit plans, including employer self-funded health insurance plans. ERISA also imposes requirements regarding information that must be provided to plan participants and beneficiaries, internal procedures for determining benefit claims, and standards of conduct of those responsible for plan management.

ERISA originally made no mention of child support or medical support orders, and the original language limited a plan participant's ability to assign benefits. This appeared to prevent companies under ERISA from accepting an income withholding order sending retirement benefits to anyone other than the plan participant. The Retirement Equity Act of 1984 created the Qualified Domestic Relations order (QDRO) to correct this problem as it pertained to child support.[267] This change did not, however, allow employers to deal with medical support.

The Omnibus Budget Reconciliation Act of 1993. The Omnibus Budget Reconciliation Act of 1993 (OBRA '93) prohibited discriminatory health care coverage practices; allowed employers to deduct the cost of health insurance premiums from an employee's income; and created "qualified medical child support orders" (QMCSOs) to obtain coverage from group plans subject to ERISA.[268]

Additionally, OBRA '93 included provisions that became Medicaid state plan requirements.

Personal Responsibility and Work Opportunity Reconciliation Act. In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)[269] required states, as a condition of receiving federal funds, to enact a provision for health care coverage in all orders established or enforced by the child support agency.[270] Before PRWORA, the requirement to seek health insurance coverage had been mandatory for public assistance cases, while nonpublic assistance IV-D applicants could opt not to have medical support established and enforced.

Child Support Performance and Incentive Act of 1998. In 1998, Congress passed the Child Support Performance and Incentive Act of 1998 (CSPIA),[271] which contained provisions to eliminate further barriers to establishing and enforcing medical support coverage. These included a Medical

[267] Retirement Equity Act of 1984, Pub. L. No. 98-397, § 104, 98 Stat. 1426, 1433.
[268] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 609, 107 Stat. 312, 372.
[269] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105
[270] 42 U.S.C. § 666(a)(19)(A) (2018).
[271] Child Support Performance and Incentive Act of 1998, Pub. L. No.105-200, 112 Stat. 645.

Support Working Group whose purpose was to "identify the impediments to the effective enforcement of medical support;"[272] a National Medical Support Notice (NMSN);[273] and a requirement for child support agencies to enforce health care coverage by using the NMSN.[274] Federal regulations[275] implement the provisions of CSPIA. A parallel regulation, developed by the Department of Labor, adopts the use of the NMSN under ERISA.[276]

The Medical Support Working Group completed its report in June 2000. The report contained 76 recommendations for expanding health care coverage for children in the child support system.[277] Federal regulations in 2008 implemented many of those recommendations.[278]

Federal regulations implemented the NMSN, as required by CSPIA, in December 2000. The form has been amended and revised several times.[279] Its purpose is to implement medical support orders by officially transmitting the health care coverage provisions for the children in child support orders from the child support agency to the employer of the person ordered to provide the coverage. There are two parts to an NMSN. One part requires the employer to transfer the MNSN to the appropriate group health plan within 20 days of the date of the NMSN, and the other part requires the employer to withhold any amount of employee contributions required to obtain the insurance and send the amount withheld directly to the insurance provider.

The NMSN complies with ERISA's informational requirements and restrictions and with Title IV-D requirements.[280] In addition, the NMSN can constitute a Qualified Medical Child Support Order (QMSCO) for orders under ERISA, as discussed above. To be considered a QMCSO, the NMSN must contain the following information:

- The name of the issuing agency;
- The name and address of the employee/participant;

---

[272] Child Support Performance and Incentive Act of 1998, Pub. L. No.105-200, § 401(a), 112 Stat. 645, 659.
[273] Child Support Performance and Incentive Act of 1998, Pub. L. No.105-200, § 401(b), 112 Stat. 645, 660.
[274] Child Support Performance and Incentive Act of 1998, Pub. L. No.105-200, § 401(c), 112 Stat. 645, 661.
[275] 45 C.F.R. § 303.32 (2019).
[276] 29 C.F.R. § 2590.609-2 (2019).
[277] The Medical Child Support Working Group, *21 Million Children's Health: Our Shared Responsibility* (June 2000), https://aspe.hhs.gov/system/files/pdf/139346/FullReport.pdf.
[278] Child Support Enforcement Program; Medical Support, 73 Fed. Reg. 42,416 (July 21, 2008).
[279] National Medical Support Notice, 65 Fed. Reg. 82,165 (Dec. 27, 2000); 45 C.F.R. § 303.32 (2019). In 2019 the Office of Management and Budget re-approved the revised National Medical Support Notice (NMSN) Part A with an expiration date of October 31, 2022.
[280] 29 U.S.C. § 1169(a) (2018).

- The name and address of the alternative recipient, or a substituted official, if necessary; and

- Identification of an underlying order.[281]

Patient Protection and Affordable Care Act. The most recent federal legislation pertaining to medical support and health care in the United States is the Patient Protection and Affordable Care Act (ACA).[282] This law makes many changes to health care coverage that impact the child support program. These changes include a requirement that all "applicable individuals" ensure that they, and any of their dependents under the Internal Revenue Code, are covered under health care coverage defined by the ACA as "minimum essential coverage".[283] This means that the custodial parent (the applicable individual) who claims the federal tax dependency exemption must provide health care coverage for the child, which may conflict with the support order or divorce decree for the parties. This conflict can be resolved through the use of an IRS form that allows the custodial parent to release his or her claim to the exemption and permits the noncustodial parent to claim the child. The release also requires the noncustodial parent to obtain health insurance coverage since the child is now a dependent of the noncustodial parent.[284]

As a result of the ACA, child support agencies may receive referrals from Medicaid, which may or may not be appropriate child support referrals. This is because the ACA requires the use of a single, streamlined application process for those applying for medical insurance through the Healthcare Marketplaces. Although some of those applications may involve custodial parents and child support eligible children, many will not, or will not contain enough information to identify a noncustodial parent. Nevertheless, these applications may be referred to child support agencies. OCSE has taken several steps to clarify the effect of the ACA on child support enforcement. In the case of Medicaid referrals, this guidance encourages child support and Medicaid agencies to work together to identify referrals that are not related to the child support program or to prevent those referrals from being made at all.[285]

States may also want to consider revising medical support policies to enhance collaboration with the Medicaid agency and cross-train workers.[286]

---

[281] 29 U.S.C. § 1169(a) (2018). For more information about NMSNs, *see* Chapter Eleven: Enforcement of Support Obligations.
[282] Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010).
[283] Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, 244 (2010), codified at 26 U.S.C. §5000A(f) (2018). This provision was held to be unconstitutional in *Texas v. United States*, 945 F.3d 355 (5th Cir. 2019). The decision was appealed to the U.S. Supreme Court, which accepted it for review and argument in February 2020.
[284] *Id. See* IRS Form 8332, *Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent* (2018).
[285] *See* OCSE-IM-14-01: Medicaid Referrals to the IV-D Agency (Mar. 13, 2014).
[286] OCSE-AT-10-10: State CSE Program Flexibility to Improve Interoperability with Medicaid and CHIP (Nov. 4, 2010).

OCSE has clarified that federal financial participation funds are available for activities that provide outreach and information to CHIP and Medicaid to assist with enrolling children.[287]

OCSE has taken additional action to facilitate changes resulting from the ACA. These include issuing grants that allowed child support and Medicaid agencies to work together to identify issues resulting from differences between the ACA and then-existing medical support policy; issuing policy guidance; clarifying that child support agencies may order either public or private insurance coverage; and clarifying allowable activities for FFP. OCSE has also developed a series of fact sheets designed to provide the child support community with information and resources about the ACA.[288]

Because of the impact of the ACA on the child support program, child support attorneys should pay particular attention to evolving case law on the ACA as well as guidance from OCSE on this subject. OCSE has also directed states to review their laws, rules, and policies to ensure compliance with the requirements of the Medical Support Final Rule and the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Rule.[289] Child support attorneys can play a critical role in that review.

CONCLUSION

Establishment of child support and medical support orders is a crucial first step to ensuring that children get the support they need. Child support attorneys play a critical role in providing information to tribunals so they can appropriately apply the support guidelines and enter realistic orders based on the parties' ability to provide financial and medical support. Attorneys also often play a role in the quadrennial review of guidelines, serving on guidelines commissions or providing testimony regarding application of guidelines. Issues that are increasingly the focus of guideline reviews are the treatment of low-income parents, imputation of income, multiple family issues, shared parenting time arrangements, and medical support.

---

[287] OCSE-PIQ-12-02: Partnering with other programs, including outreach, referral, and case management activities (Dec. 7, 2012).
[288] Office of Child Support Enforcement, Child Support Health Care Connections, Child Support Fact Sheet (July 3, 2013).
[289] OCSE-AT-18-06: Compliance with Medical Support Final Rule Requirements (Aug. 1, 2018).

[This page left blank intentionally.]

CHAPTER TEN

TABLE OF STATUTES AND AUTHORITIES

Statutes, Regulations, and Court Rules **Page**

Statutes, Regulations, and Court Rules **Page**

Statutes, Regulations, and Court Rules **Page**

Statutes, Regulations, and Court Rules **Page**

Statutes, Regulations, and Court Rules **Page**

Case Law **Page**

Case Law **Page**

Model Codes **Page**

Model Codes **Page**

[This page left blank intentionally.]

Exhibit 10-1: Child Support Guidelines[290]

Citations by State

Alabama	Ala. R. Jud. Admin. 32
Alaska	Alaska Civ. R. 90.3
Arizona	Ariz. Child Support Guidelines (S. Ct. Order 2018-08); Ariz. Rev. Stat. Ann. § 25.320
Arkansas	In re: Administrative Order No. 10, Ark. Child Support Guidelines
California	Cal. Fam. Code §§ 4050 to 4076
Colorado	Colo. Rev. Stat. § 14-10-115
Connecticut	Conn. Child Support and Arrearage Guidelines; Conn. Gen. Stat. §§ 46b-215a-1 to -6
Delaware	Delaware Child Support Guidelines; Del. Code tit. 13, § 514
District of Columbia	D.C. Code § 16-916.01
Florida	Fla. Stat. § 61.30
Georgia	Ga. Code Ann. § 19-6-15
Guam	Guam Child Support Guidelines
Hawaii	Hawaii Child Support Guidelines, Haw. Rev. Stat. § 576D-7
Idaho	Idaho R. Civ. P. 6(c)(6)
Illinois	750 Ill. Comp. Stat. 5/505 to 5/510
Indiana	Ind. Child Support Guidelines; Ind. Sup. Ct., Rules of Court
Iowa	Iowa Child Support Guidelines; Iowa Code § 598.21B
Kansas	Kan. Child Support Guidelines (Sup. Ct. Admin. Order 307)
Kentucky	Ky. Rev. Stat. Ann. §§ 403-210 to -213
Louisiana	La. Stat. Ann. §§ 9:315.1 to .20
Maine	Me. Rev. Stat. Ann. tit. 19-A, §§ 2001 to 2010
Maryland	Md. Code Ann., Fam. Law §§ 12-201 to -204
Massachusetts	Mass. Child Support Guidelines
Michigan	Michigan Child Support Formula Manual; Michigan Child Support Formula Supplement; Mich. Comp. Laws § 552.605

[290] *See also* National Conference of State Legislatures, *Child Support Guidelines Models by State*. (Feb. 20, 2019), https://www.ncsl.org/research/human-services/guideline-models-by-state.aspx, http://www.guamcourts.org/compileroflaws/GAR/19GAR/19GAR001-Art2.pdf, and http://www.lexisnexis.com/hottopics/lawsofpuertorico/.

Minnesota	Minn. Stat. §§ 518A.35 to .43
Mississippi	Miss. Code §§ 43-19-101 to -103
Missouri	Mo. Rev. Stat. § 452.340; Civil Procedure Form 14
Montana	Mont. Admin. R. 37.62.101 to .148
Nebraska	Neb. Court Rules, Chap. 4, Art. 2, §§ 4-201 to 4-220
Nevada	Nev. Rev. Stat. §§ 125B.070 to .085
New Hampshire	N.H. Rev. Stat. Ann. §§ 458-C:1 to :7
New Jersey	N.J. Rules of Court, Rule 5.6A, Appendix IX
New Mexico	N.M. Stat. Ann. § 40-4-11.1 to -4-11.6
New York	N.Y. Dom. Rel. Law § 240(1-b)
North Carolina	N.C. Child Support Guidelines, N.C. Gen. Stat. § 50-13.4
North Dakota	N.D. Admin. Code §§ 75-02-04.1 to -04.13; 14.09.09.7
Ohio	Ohio Rev. Code Ann. §§ 3119.01 to .231
Oklahoma	Okla. Stat. tit. 43, §§ 118 to 120
Oregon	Or. Admin. R. 137-50-320 to -490
Pennsylvania	Pa. R. Civ. P. 1910.16-1 to -5, 1910.19
Puerto Rico	P.R. Laws tit. 8, § 518 (2013)
Rhode Island	R.I. Child Support Guidelines (Fam. Ct. Admin. Order 2012-05)
South Carolina	S.C. Soc. Serv. Reg. 114-4710 to -4750; S.C. Code Ann. § 20-7-852 and § 43-5-580(b)
South Dakota	S.D. Codified Laws Ann. §§ 25-7-6.1 to .23
Tennessee	Tenn. Comp. R. & Regs. 1240-2-4-.01 to -.057
Texas	Tex. Fam. Code §§ 154.001 to .133
Utah	Utah Code Ann. §§ 78B-12 to -302
Vermont	Vt. Stat. Ann. tit.15, §§ 653 to 657
Virgin Islands	16 V.I. Code Ann. §§ 341, 345
Virginia	Va. Code Ann. §§ 20-108.1, -108.2
Washington	Wash. Rev. Code §§ 26.19.001 to .100
West Virginia	W. Va. Code Ann. § 48-13-101, -803
Wisconsin	Wis. Stat. § 767.511; Wis. Admin. Code DCF 150.01 to .05
Wyoming	Wyo. Stat. Ann. §§ 20-2-301 to -315

Exhibit 10-2: Age of Majority for Child Support Purposes/Duration of Child Support Obligations[291]

STATE	TERMINATION OF SUPPORT	POST-MAJORITY EDUCATION
Alabama	19 years of age, unless child is emancipated prior to that time. Ala. Code §§ 26-1-1; 30-3-62 (2019)	Alabama law allows post-majority support to be paid in the case of handicapped children and for college expenses. As of October 4, 2014, Alabama case law does not allow post-majority support to be established for college expenses. However, existing orders established prior to October 4, 2013 may be enforced under Alabama law. *Ex parte Christopher*, No. 1120387, 2013 WL 5506613 (Ala. 2013).
Alaska	18; Can be extended to age19 or date of graduation, whichever comes first, if the child is actively pursuing a high school diploma or an equivalent level of technical or vocational training and is living as a dependent with a parent, guardian, or designee of the parent or guardian. Alaska Stat. §§ 25.20.010; 25.24.140(a)(3) (support during pendency of a divorce action); 25.24.170; 25.27.061 (permits direct payment to unmarried 18-year-old in certain circumstances) (2019)	A child has no right to post-majority support for education. *H.P.A. v. S.C.A.*, 704 P.2d 205 (Alaska 1985). Alaska Stat. § 25.20.010; Alaska Stat. § 25.24.140(a)(3); Alaska Stat. § 25.24.170(a)

[291] *See generally* the Office of Child Support Enforcement, Intergovernmental Reference Guide, Section D, Age of Majority, https://ocsp.acf.hhs.gov/irg/profileQuery.html?geoType=1, and the National Conference of State Legislatures: *Termination of Child Support – Age of Majority* (May 2, 2015), https://www.ncsl.org/research/human-services/termination-of-child-support-age-of-majority.aspx, and *Termination of Support-College Support Beyond the Age of Majority* (May 6, 2015), https://www.ncsl.org/research/human-services/termination-of-support-college-support.aspx.

STATE	TERMINATION OF SUPPORT	POST-MAJORITY EDUCATION
Arizona	18; or graduation from high school or equivalent, up until the child reaches 19 years of age. Ariz. Rev. Stat. Ann. §§ 25-503(O); 25-320(F); § 25-501 (2019)	The court may order support past age of majority for a mentally or physically disabled child, but not for college. *Young v. Burkholder*, 690 P.2d 134 (Ariz. Ct. App. 1984). Any agreement between the parties for support after the child reaches majority is enforceable by the parties as a contract. *Solomon v. Findley*, 808 P.2d 294 (Ariz. 1991)
Arkansas	18 or graduation from high school, or the end of the school year after the child reaches age 19. Ark. Code Ann. § 9-14-237(2018)	If the court order specifically extends the support for a child beyond age 18 when there are circumstances of special need. *Mitchell v. Mitchell*, 616 S.W.2d 753 (Ark. Ct. App. 1981).
California	18; if the child is in high school, until 19 or high school graduation, whichever occurs first. Cal. Fam. Code § 3901 (West 2019)	An adult child cannot compel parents to pay for college education if the child is not physically or mentally disabled. *Jones v. Jones*, 225 Cal. Rptr. 95 (Cal. Dist. Ct. App. 1986).
Colorado	19 unless judicial determination, or the child is still in high school. No later than 21. Colo. Rev. Stat. § 14-10-115(13)(a)(III) (2019) (for orders entered after July 1, 1997); Colo. Rev. Stat. § 14-10-115 (15) (2019) (for orders entered prior to July 1, 1997)	Colo. Rev. Stat. § 14-10-115(15) (2005) allows a court to make an order for postsecondary education. *In re marriage of Robb*, 934 P.2d 927 (Col. Ct. App. 1997) (support exists until child reaches 19 years of age unless child is mentally or physically disabled, in high school or equivalent, parents agree to extension of support, or court finds it appropriate for parents to contribute to postsecondary education expenses)

STATE	TERMINATION OF SUPPORT	POST-MAJORITY EDUCATION
Connecticut	18; if child is unmarried and a full-time high school student, continues until completion of the twelfth grade or age 19, whichever comes first. Conn. Gen. Stat. §§ 1-1d (2019); 46b-215 (2019)	The court may order support for a child for four years of undergraduate study, up to the child's 23rd birthday, if the parent would have provided such support if the family was intact. Conn. Gen. Stat. § 46b-56c (2009) lists six factors for the court to consider.
Delaware	18; if the child is in high school, until 19 or high school graduation, whichever occurs first. Del. Code Ann. tit 13, § 501 (2019)	No statutory or case law duty found.
District of Columbia	21 or emancipation. *Nelson v Nelson*, 548 A.2d 109, 111 (D.C. 1988)	If the child is away at school, support continues, but no later than 21. *Nelson v Nelson*, 548 A.2d 109, 111 (D.C. 1988).
Florida	18; or the disability of nonage is removed. Fla. Stat. §§ 61.14(9); 743.07 (2019)	No statutory or case law duty, unless otherwise ordered by the court or agreed by the parties. Fla. Stat. Ann. § 61.14(9) (2019). *Grapin v. Grapin*, 450 So. 2d 853 (Fla. 1984).
Georgia	18; 20 if the child is still in high school. Ga. Code Ann. §§ 39-1-1; 19-6-15(e) (2018)	Georgia court cannot forcibly order parents to pay for a child's college expenses. *Coleman v. Coleman*, 240 Ga. 417 (1977). However, *Brandenburg v. Brandenburg*, 274 Ga. 183 (2001) held that contributions to custodial accounts established before divorce and created pursuant to the Georgia Transfers to minors Act may be exempt from this prohibition.

STATE	TERMINATION OF SUPPORT	POST-MAJORITY EDUCATION
Guam	18 5 Guam Code Ann. § 34105.2	May extend beyond age 18 if child is disabled before age 18. 19 Guam Code Ann. § 4105.1 Parents may in an acknowledged writing or stipulated court order agree they have a mutual obligation to provide educational assistance to a minor child after the age of majority and may agree that support shall continue for a child after age 18 for a time certain for purposes of educational assistance. The agreement may be enforced by the Attorney General, either parent, or the child if over age 18. Such support shall be paid directly to child after age 18. 19 Guam Code Ann. § 4105.1
Hawaii	18, or 19 if attending school. Haw. Rev. Stat. §§ 577-1; 580-47 (2019)	Haw. Rev. Stat. § 580-47 (2019) authorizes a court to provide for the support and education of an adult child. In cases where child support is to continue due to the adult child's pursuit of education, the agency must send the custodial parent and adult child notice three months prior to the child's 19th birthday that prospective child support will be suspended unless proof is provided by the custodial parent or adult child to the child support enforcement agency, prior to the child's 19th birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and plans to attend as a full-time student for the next semester a post-high school university, college, or vocational school. If the custodial parent or adult child fails to do so, prospective child support payments may be automatically suspended by the child support enforcement agency, hearings officer, or court upon the child reaching the age of 19 years.

STATE	TERMINATION OF SUPPORT	POST-MAJORITY EDUCATION
Idaho	18; or, in the court's discretion, 19 if the child is enrolled in formal education. Idaho Code Ann. § 32-706 (2019)	"A court can compel a parent to support a child only until a child is eighteen years of age or until he or she reaches the age of nineteen if the child continues to pursue formal education." *Noble v. Fisher*, 894 P.2d 118, 123 (Idaho 1994).
Illinois	18; or 19, if attending high school. 755 Ill. Comp. Stat. 5/11-1 (2019); 750 Ill. Comp. Stat. 5/505 (2019); 750 Ill. Comp. Stat. § 5/513 (2019)	Courts may require post-majority payment of support and educational expenses (college, graduate school, professional education, or other training after graduation from high school). 750 Ill. Comp. Stat. § 5/513 (2019)
Indiana	19 or emancipation. Ind. Code § 31-16-6-6 (2019)	Support may include sums for college education. Ind. Code § 31-16-6-6 (2019).
Iowa	18 or up to 19 if completing high school or general education equivalency full time. Iowa Code § 598.1(9) (2020)	Iowa Code §§ 598.1(8) (2020) permits child support until age 22 if the child is regularly attending a course of career and technical training either as part of a regular school program or under special arrangements adapted to the child's special needs; or is a full-time student in a college, university, or community college, or has been accepted for admission for the next term.
Kansas	18, but automatically extended to the end of the school year in which the child reaches age 18; 19 by agreement. Kan. Stat. Ann. § 23-3001(b) (2019)	Support may be extended by agreement. There is no authority for a court to require post-majority educational support. *Ferguson v. Ferguson*, 628 P.2d 234 (Kan. Ct. App. 1981).
Kentucky	18; 19 if the child is in high school. Ky. Rev. Stat. Ann. § 403.213(3) (West 2019)	There is no duty to provide support for college education. *Miller v. Miller*, 459 S.W.2d 81 (Ky. Ct. App. 1970).

STATE	TERMINATION OF SUPPORT	POST-MAJORITY EDUCATION
Louisiana	18; if the child is in high school, then until 19 or high school graduation, as long as they are a full-time student in good standing and dependent on either parent. La. Civ. Code Ann. art. 29 (2018); La. Stat. Ann. § 9:315.22 (2018)	There is no legal duty to provide adult children with assistance for higher education unless agreed. *Miller v. Miller*, 1 So. 3d 815 (La. Ct. App. 2009).
Maine	18; unless the child is attending secondary school, then until the child graduates, withdraws or is expelled from secondary school or attains 19 years of age, whichever occurs first; becomes married; or becomes a member of the armed services. Me. Rev. Stat. Ann. tit.19A, §1653(12) (2019)	Maine does not allow support to continue for post-majority education. *Peterson v. Leonard*, 622 A.2d 87 (Me. 1993).
Maryland	18; or 19, if enrolled in secondary school. Md. Code Ann., General Provisions §1-401 (2019)	Support may be extended by agreement. *Kirby v. Kirby*, 741 A.2d 528 (Md. Ct. Spec. App. 1999).
Massachusetts	18; 21 if the child is domiciled with a parent; 23 if the child is enrolled in an educational program. Mass. Gen. Laws Ann. ch. 208, § 28 (2019)	Mass. Gen. Laws Ann. ch. 208, § 28 (2019) permits the court to order payment of educational expenses until the child reaches age 23, excluding costs beyond an undergraduate degree.

STATE	TERMINATION OF SUPPORT	POST-MAJORITY EDUCATION
Michigan	18; support may be ordered until age 19½ for completion of high school; beyond that age by agreement. Mich. Comp. Laws § 552.605b (2019)	Support may be extended by agreement. Mich. Comp. Laws § 552.605b(5) (2019).
Minnesota	18; 20 if the child is in high school. Minn. Stat. § 518A.26 (2019)	No statutory or case law duty, unless specifically addressed in the order, or if parties agreed to post-secondary education costs. Minn. Stat. § 518.551(5d) (2019). *Peterson v. Peterson*, 319 N.W.2d 414 (Minn. 1982).
Mississippi	21. Miss. Code Ann. §§ 93-5-23; 93-11-65(8)(a) (2018)	No statutory or case law authority to order a parent to pay college expenses post-majority, except by agreement of the parties. *Mottley v. Mottley*, 729 So. 2d 1289 (Miss. 1999); *Hays v. Alexander*, 114 So. 3d 704 (Miss. 2013).
Missouri	18; if the child is in high school, until age 21 or high school graduation, whichever occurs first. Mo. Rev. Stat. §§ 452.340; 452.340(5) (2019)	If the child immediately enrolls and is a full-time student at a higher educational institution, the parental support obligation shall continue until the earlier of degree completion or age 21. Mo. Rev. Stat. § 452.340(5) (2019).
Montana	18; 19 if the child is in high school. Mont. Code Ann. §§ 40-4-208(5); 40-5-201(2) (2019)	Support may be extended by an agreement or a provision in the divorce decree. *In re Marriage of Perkins*, 908 P.2d 208 (Mont. 1995).
Nebraska	Age 19. Neb. Rev. Stat. §§ 43-2101; 42-371.01 (2018)	Support may be extended by agreement. *Moore v. Bauer*, 657 N.W.2d 25 (Neb. Ct. App. 2003).

STATE	TERMINATION OF SUPPORT	POST-MAJORITY EDUCATION
Nevada	18; 19 if the child is in high school. Nev. Rev. Stat. §§ 129.010; 125.510; 125B.110; 425.300 (2019)	A court cannot require educational support post-majority. *Norris v. Norris*, 560 P.2d 149 (Nev. 1977).
New Hampshire	18 or high school graduation, whichever occurs later. N.H. Rev. Stat. Ann. § 461-A:14, IV. (2019)	A parent cannot be required to provide post-majority educational support except as agreed. N.H. Rev. Stat. Ann. §§ 461-A:14, 461-A:21 (2019).
New Jersey	Termination pursuant to a petition at, or after, the age of majority. N.J. Stat. Ann. § 9:17B-3 (West 2018) "Although there is no fixed age when emancipation occurs, *N.J.S.A.* 9:17B-3 provides that when a person reaches eighteen years of age, he or she shall be deemed to be an adult." *Gac v. Gac*, 1897 A.2d 1018 (N.J. 2006).	As determined by the court. There is a non-exhaustive list of twelve factors a court should consider in evaluating a claim for contribution toward the cost of higher education. *Newburgh v. Arrigo,* 443 A.2d 1031 (N.J. 1982); *Gac v. Gac*, 897 A.2d 1018 (N.J. 2006). N.J. Stat. Ann. § 2A:34-23(a) (West 2018).
New Mexico	18, or 19 if still in high school. N.M. Stat. Ann. § 40-4-7(B)(3) (2019)	By written agreement of the parties. N.M. Stat. Ann. § 40-4-7(C) (2019).
New York	21 or emancipation, as determined by the court. N.Y. Fam. Ct. Act § 413(1)(a) (McKinney 2019)	By agreement of the parties. The court lacks authority, absent an agreement, to order a parent to pay college expenses after a child reaches age 21. *Cohen v. Cohen*, 687 N.Y.S.2d 726 (N.Y. App. Div. 1999).

STATE	TERMINATION OF SUPPORT	POST-MAJORITY EDUCATION
North Carolina	18; if the child is in high school, until 20 or high school graduation, whichever occurs first. N.C. Gen. Stat. § 48A-2 (2019); N.C. Gen. Stat. § 50-13.4 (2019)	The court has no authority to order support for college after the age of majority, unless there is an enforceable agreement between the parents. *Bridges v. Bridges*, 355 S.E.2d 230 (N.C. Ct. App. 1987).
North Dakota	18; if the child is in high school, until 19 or high school graduation, whichever occurs first. N.D. Cent. Code § 14-09-08.2 (2019)	N.D. Cent. Code § 14-09-08.2 (2019) allows a court to order support for college expenses.
Ohio	18; if the child is in high school, until 19 or high school graduation, whichever occurs first. Ohio Rev. Code Ann. § 3109.01; 3119.88 (West 2019)	Without specific agreement, there is no authority for the court to order payment of college expenses post-majority. *Bardes v. Todd*, 746 N.E.2d 229 (Ohio Ct. App. 2000).
Oklahoma	Effective 11/01/06, 18 years of age or up to the 20th birthday if the child is regularly enrolled and attending high school. Okla. Stat. tit. 43, § 112E (2019)	No statutory or case law duty found.
Oregon	18; 21 if the child is in school at least half-time. Or. Rev. Stat. §§ 107.108, 109.510 (2019)	A court may order support to continue until age 21 for a child regularly attending post-secondary education. *In re Marriage of Crocker,* 971 P.2d 469 (Or. Ct. App. 1998). Or. Rev. Stat. § 107.108 (2019).

STATE	TERMINATION OF SUPPORT	POST-MAJORITY EDUCATION
Pennsylvania	18 or graduation from high school whichever occurs later. 23 Pa. Cons. Stat. §§ 4321(2); 4323(a) (2019) Pa. R.C.P. 1910.19 (c) (1) – (4)	Pennsylvania no longer recognizes a statutory cause of action for post-secondary educational support. 23 Pa. Cons. Stat. § 4327(a) was ruled unconstitutional in *Curtis v. Kline*, 666 A.2d 265 (Pa. 1995). However, contractually based agreements for post-secondary educational support contained in marital separation agreements are enforceable.
Puerto Rico	21 Age of majority: Article 247 of the Civil Code, 31 P.R. Laws Ann. § 971; Emancipation by marriage: Article 239 of the Civil Code, 31 P.R. Laws Ann. § 931; Emancipation by parents: Article 233, 31 P.R. Laws Ann. § 911; Emancipation by court: Articles 234 and 242 of the Civil Code, 31 P.R. Laws Ann. §§ 912 and 951. For Additional Information - http://www.asume.gobierno.pr/	Support beyond the age of majority can be ordered only by the court if the child is a full-time student, maintains good academic progress, and can demonstrate economic needs to justify continuation of support. Also, when the child is handicapped and unable to support himself/herself. These petitions are based in Articles 143 and 146 of the Civil Code, 31 P.R. Laws Ann. §§ 562 and 566, which establishes reciprocal obligations between descendants and ascendants. The established support would be based on the necessity of the child and the capacity of the obligor. The IV-D agency does not have jurisdiction on this matter.
Rhode Island	18, or by court order for ninety days after graduation, but no longer than 19. R.I. Gen. Laws Ann. §§ 15-5-16.2(b); 15-12-1 (West 2019)	The court has no authority to order post-majority educational support. *Adam v. Adam*, 624 A.2d 1093 (R.I. 1993).
South Carolina	18 or graduation from high school. S.C. Code Ann. § 63-3-530(A)(17) (2019)	A court may order college support. *West v. West,* 419 S.E.2d 804 (S.C. 1992).

STATE	TERMINATION OF SUPPORT	POST-MAJORITY EDUCATION
South Dakota	18; 19 if the child is in high school. S.D. Codified Laws § 25-5-18.1 (2019)	Parties can agree to a longer period of support, which is binding if approved by a court order. S.D. Codified Laws § 25-7-9 (2019).
Tennessee	18 or graduation from high school. Tenn. Code Ann. § 34-1-102(b) (West 2018)	No statutory or case law duty. There is no obligation to pay for college expenses of a child post-majority, unless the parents have so agreed. *Corder v.* Corder, 231 S.W.3d 346 (Tenn. Ct. App. 2006).
Texas	18 or graduation from high school, whichever occurs later. Tex. Fam. Code Ann. §§ 101.003, 154.002 (West 2008)	No statute or case law holding parents to a duty to college support in the absence of an agreement. *Burtch v. Burtch*, 972 S.W.2d 882 (Tex. App. 1998).
Utah	18 or graduation from high school. Utah Code Ann. § 78B-12.219 (West 2019)	Utah Code Ann. § 15-2-1 (West 2019) provides that, in divorce cases, courts may order support to age 21.
Vermont	18 or graduation from high school. Vt. Stat. Ann. tit.1, § 173 (2019)	Support may extend to 21 years if the child is a student regularly attending a school, college, university, or their equivalent, or is regularly attending a course of vocational or technical training designed to fit him for gainful employment. Vt. Stat. Ann. tit.15, § 201 (2019).

STATE	TERMINATION OF SUPPORT	POST-MAJORITY EDUCATION
Virgin Islands	18; may extend to age 22 if child is regularly attending an accredited school or vocational training. 16 V.I. Code Ann. § 261 (2019)	Support may continue up to age 22 so long as proof is submitted that the child is regularly attending an accredited school or a school approved by the court in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational technical training either as a part of a regular school program or under special arrangements adapted to the individual person's needs, or is, in good faith, a full-time student in a college, university, or area school, or has been accepted for admission to a college, university, or area school and the next regular term has not yet begun. 16 V.I. Code Ann. § 341(g) (2019)
Virginia	18; if the child is in high school, until 19 or high school graduation, whichever occurs first. Va. Code Ann. § 20-124.2(C) (2019)	There is no requirement to provide for college expenses of an adult child. *Jones v. Jones*, 450 S.E.2d 762 (Va. Ct. App. 1994).
Washington	18; a court may order post-secondary support. Wash. Rev. Code § 26.28.010 (2019)	Wash. Rev. Code § 26.19.090 (2019) grants the court discretionary authority to award college support based on specified factors.
West Virginia	18; if the child is in high school, until 20 or high school graduation, whichever occurs first. W. Va. Code §§ 2-3-1; 48-11-103 (2019)	W. Va. Code § 48-11-103 (2019) prohibits an award of post-majority college expenses, after March 14, 1994. Orders entered before that time continue unless ordered by a court.
Wisconsin	18; if the child is in high school, until 19 or high school graduation, whichever occurs first. Wis. Stat. §§ 54.01(20); 767.511(4) (2019)	There is no statutory or case law duty to pay for college expenses beyond the age of majority. *See Miller v. Miller*, 227 N.W.2d 626 (Wis. 1975).

STATE	TERMINATION OF SUPPORT	POST-MAJORITY EDUCATION
Wyoming	18; if the child is in high school, until 20 or high school graduation, whichever occurs first Wyo. Stat. Ann. §§ 14-1-101; 14-2-204(a)(iii) (2019)	There is no statutory duty to pay for post-majority college expenses. *Witowski v. Roosevelt*, 199 P.3d 1072 (Wyo. 2009).

[This page left blank intentionally.]