

The Story Behind the Numbers

Effects of Child Support Order Amounts on Payments by Low-Income Parents

About a quarter of noncustodial fathers have reported incomes below the Federal poverty level¹ and about 2.5 million of these fathers do not pay child support.² In addition, many noncustodial mothers have reported incomes below the Federal poverty guidelines.³

Neither national surveys nor the Federal Office of Child Support Enforcement (OCSE) administrative data track child support orders as a percent of noncustodial parents' income.⁴ However, several multistate studies indicate that many low-income noncustodial parents have support orders that represent a high percentage of their reported earnings (high percentage orders).⁵ The Department of Health and Human Services (HHS) 2006 income guidelines set the poverty level for one person at \$9,800 per year,⁶ and earnings from year-round, 40-hour per week employment at minimum wage are \$10,712 gross per year.

A 2006 Urban Institute study matched noncustodial parents in seven States (Arizona, Illinois, Michigan, New Jersey, Ohio, Pennsylvania, and Texas) to earnings from the quarterly wage files.⁷ The study found that median current support orders are 83% of reported earnings for noncustodial parents with incomes up to \$10,000 per year. In contrast, it also found that median current support orders are 11% of reported earnings for noncustodial parents with incomes starting at \$40,000 per year.

A 2002 Office of Inspector General (OIG) study of TANF (Temporary Assistance for Needy Families) cases in 10 States found that support obligations represented 40% of noncustodial parents' reported earnings on average.⁸ The same study found that child support obligations are a substantially higher proportion of income, 69% among noncustodial parents with reported earnings below the poverty line.

High percentage orders were found to be an issue for low-income noncustodial parents

participating in responsible fatherhood programs. An evaluation of OCSE responsible fatherhood programs in five States found that for noncustodial parent participants with reported earnings of \$500 per month or less, support obligations averaged over 100% of their reported earnings.⁹ The same study found that percentage orders were less for participants with reported earnings of \$501 to \$1,000 per month. Support obligations ranged from 21% to 61% of reported earnings for noncustodial fathers in this income range.¹⁰

There is a relationship between low income and high percentage orders. Both poor custodial parents and noncustodial parents face barriers to improving their income situation.¹¹ Barriers include lack of education and poor work records. Studies show that 42% have less than a high school education and about one-third lack recent work experience. Health issues and not having a telephone are other common employment barriers.

A significant proportion of low-income noncustodial fathers are also likely to be institutionalized. One study estimates that 29% of poor noncustodial fathers who are not paying child support are institutionalized, mostly in prisons.¹²

FACTORS CONTRIBUTING TO HIGH PERCENTAGE ORDERS AMONG LOW-INCOME NONCUSTODIAL PARENTS

Factors that contribute to high percentage orders are (1) the structure of child support guidelines, (2) income imputation and default orders, (3) retroactive support, (4) noncustodial parents owing support on multiple orders, and (5) the lack of modification of orders.

Guidelines

Most State guidelines assess between 17% and 37% of the noncustodial parent's net or gross income as the support obligation for one to two children.¹³ In addition, many guidelines require the establishment of minimum support orders—

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typically \$50 per month—and additional support to cover the custodial parent's work-related child care expenses or the child's non-reimbursed medical expenses.¹⁴

Although many State guidelines allow low-income adjustments to ensure that a noncustodial parent's income after payment of child support and taxes provides a subsistence level of living, these adjustments are not always updated to account for inflation.¹⁵ As a result, the adjustments become inadequate over time. For example, prior to recently being updated, the low-income adjustment in one State had not been updated for over 10 years. As a result, a noncustodial parent with annual earnings of \$10,000 would be left with about \$6,000 (or 64% of the 1999 poverty level for one person) after payment of the guideline amount, Federal and State taxes, and work expenses.¹⁶

Default Orders and Income Imputation

One of the major factors contributing to high percentage orders is income imputation. Sometimes the imputed income is much greater than the noncustodial parent's actual income. Income imputation is common when the noncustodial parent's income is unknown or the parent is temporarily or voluntarily unemployed or underemployed. Income imputation occurs frequently in default judgments because, by definition, default means that the noncustodial parent did not show up for the hearing. Typically, at the hearing the noncustodial parent has an opportunity to provide his/her actual income information. Without accurate income information, default orders are frequently based on imputed income.

The practice of issuing default orders varies widely among States and jurisdictions. For example, a Casey Foundation publication reports that the percentage of orders entered by default ranged from 10% to 79% in selected jurisdictions.¹⁷ Among the seven States interviewed, the percentage of orders entered by default ranged from about 25% to 83%.¹⁸ These States reported varying rates of income imputation, from a low of 2% among all cases in one State to a high of 46% among TANF cases in another State.

Although the OIG analysis of case files in several States did not note default orders, it found that 45% of orders were based on imputed income. The OIG also found that noncustodial parents with imputed-income orders were about four times more likely to pay nothing than noncustodial parents without imputed-income orders.¹⁹

Several state-specific studies found that noncustodial parents are less likely to pay child support if the order was entered by default. For example, a 2001 Colorado study found that the proportion of cases making no payments was 55% among orders established by administrative default, compared to 35% of orders established through a stipulation at administrative conference hearings.²⁰ A Washington State study of hard-to-collect cases (i.e., cases with debts over \$500 and no payments in the preceding six months) found that about 70% of orders entered by default had no payment while 50% of orders set by other means had no payment.²¹

California was able to reduce the percentage of orders established through default from 45% in 2001 to 29% in 2005 by undertaking measures such as changes in policies and procedures, placing family facilitators in the courts to help parents navigate the court system, and training of child support commissioners by the courts.²² California also reduced income imputation. The availability of the noncustodial parent's actual income information also increased from 40% in 2001 to 76% in 2005. California attributes this increased reliance on actual income to the same policy and procedural changes that resulted in a decline in defaults, along with advances in technology and information sharing that provide better access to income from automated sources (e.g., quarterly wage data).

Retroactive Support and Arrears

The OIG 2000 study also found that noncustodial parents were charged retroactive support in 58% of TANF cases. About one-third of noncustodial parents charged for more than 12 months of retroactive support made no payment during the first 32 months of the obligation. In contrast, only 14% of

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noncustodial parents who were not charged retroactive support made no payments during the same time period.

There are numerous State studies that have profiled cases with high arrears or assessed the collectability of arrears.²³ A Washington State study illustrates a possible link between high percentage orders and child support arrears.²⁴ The study found that the average order amount for noncustodial parents who had increasing child support arrears was in excess of 100% of the parent's wages. Specifically, the median income of noncustodial parents with increasing arrears was \$163 per month and the median order amount was \$335 per month.

In contrast, median support order amounts were 4% of wages among noncustodial parents with decreasing debt and 11% of wages among noncustodial parents with no change to debt. The median monthly gross income among noncustodial parents with decreasing debt was \$1,812 per month. The median monthly gross income among noncustodial parents with no change in debt was \$2,380 per month.

STATE RESPONSES

We interviewed seven States for this policy brief. Based on their experience, they offered several suggestions for setting orders in low income cases. Their specific suggestions were also congruent with strategies identified in the National Child Support Enforcement Plan for FY2005-2009, such as the strategy to emphasize prevention and early intervention to avoid payment problems.²⁵ Other recommendations are as follows:

- ✓ Collaborate with programs and agencies that help noncustodial parents find employment or increase their earnings potential.
- ✓ Index or periodically review and update the low-income adjustment in State child support guidelines.
- ✓ Encourage noncustodial parents to appear (hence avoid a default process) or otherwise provide income information by keeping legal notices easy to understand, clearly

explaining the establishment and enforcement process, scheduling and offering parents an opportunity to stipulate at a negotiation conference, and reminding both parents of conference and hearing dates.²⁶

- ✓ Impute income only if information cannot be obtained from other sources (e.g., the noncustodial parent, the custodial parent, employers, automated sources).
- ✓ When there is no evidence of income, impute the noncustodial parent's income using the normal work hours of local service-sector employers. For example, if local fast-food restaurants only offer 32-hour work weeks, impute income using a 32-hour work week, rather than a 40-hour work week.
- ✓ Use early intervention strategies (e.g., personal telephone reminders) to engage the parent and to help alleviate barriers to full compliance.
- ✓ Limit the period covered by retroactive support and limit the assessment of state-owed retroactive support, particularly when the noncustodial parent has low income or is receiving public assistance.

Further, the interviewed States affirmed the importance of establishing reasonable and appropriate support order amounts from the start. That is, establish order amounts that:

- ✓ noncustodial parents have the ability to pay;
- ✓ help avoid the accumulation of arrears that are not collectable;
- ✓ provide adequate support for children; and
- ✓ promote family self-sufficiency.

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¹ Sorensen, Elaine and Chava Zibman, 2000. "A Look at Poor Dads Who Don't Pay Child Support," *New Federalism*: Discussion Paper 00-07. Washington, D.C.: The Urban Institute.

² Sorensen, Elaine and Helen Oliver, 2002. *Policy Reforms Are Needed to Increase Child Support from Poor Fathers*. Washington, D.C.: The Urban Institute.

³ Sousa, Liliانا and Elaine Sorensen, 2006. "The Economic Reality of Nonresident Mothers and Their Children," *New Federalism*, Series B, No. B-69. Washington, D.C.: The Urban Institute.

⁴ For more information about what datasets provide representative samples of noncustodial parents, their incomes, order amounts, and the limitations of those data, see Garfinkel, Irwin, Sara S. McLanahan, and Thomas L. Hanson. 1998. "A Patchwork Portrait of Nonresident Fathers" in Garfinkel, Irwin, et al., eds., *Fathers under Fire: The Revolution in Child Support Enforcement*, New York, New York: Russell Sage Foundation.

⁵ A limitation to these studies is that they only consider earnings reported to the State Unemployment Compensation Quarterly Wage Files, which do not capture total income. These files do not include unearned income, and not all earnings are reported to Quarterly Wage Files. For example, earnings for the self-employed and independent contractors are not captured by Quarterly Wage Files.

⁶ *Federal Register*, Vol. 71, No. 15, January 24, 2006, pp. 3848-3849.

⁷ Sorensen, Elaine, 2006. *Understanding Child Support Arrears*. Preliminary findings presented to the Federal Office of Child Support Enforcement and the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, May 16, 2006, Washington, D.C.: Urban Institute.

⁸ Office of the Inspector General. 2002. *Child Support for Children on TANF*, February 2002. OIG-05-99-00392, Washington, D.C.: Department of Health and Human Services.

⁹ Center for Policy Research and Policy Studies Inc., 2003. *OCSE Responsible Fatherhood Programs: Client Characteristics and Program Outcomes*. Report to the Federal Office of Child Support Enforcement, Denver, CO. Available on the Internet at: <http://fatherhood.hhs.gov/Stability/RespFaPgmsClientChar.pdf>.

¹⁰ There were eight demonstration sites. Earnings data were from State quarterly wage files.

¹¹ Sorensen, Elaine and Chava Zibman, 2001. "Poor Dads Who Don't Pay Child Support: Deadbeat or Disadvantaged?" *The New Federalism*: Series B: No. B-30. Washington, D.C.: The Urban Institute.

¹² *Ibid.*

¹³ These are the percentages at or just above poverty income. Many States assign even smaller percentages at higher incomes. The maximum of the range, 37%, is assigned to a net income. Hence, when converted to a gross-income amount, it would be less.

¹⁴ Child care expenses are included in the order infrequently. For example, a recent California study found that child care expenses were added to 15% of the orders. The low percentage is attributed to low-income families receiving subsidized child care or using relative care. Judicial Council of California, 2006. *Review of Statewide Uniform Child Support Guidelines 2005: A Report to the California Legislature*, Administrative Office of the Courts, San Francisco, California.

¹⁵ Venohr, Jane and Tracy Griffith, 2006. "Child Support Guidelines: Issues and Reviews," *Family Court Review*, vol. 43, no. 3, pages 415-428.

¹⁶ Primus, Wendell and Kristina Daugirdas, 2000. *Improving Child Well-Being by Focusing on Low-Income Noncustodial Parents in Maryland*. Baltimore, MD: Abell Foundation.

¹⁷ Legler, Paul, 2003. *Low-Income Fathers and Child Support: Starting on the Right Track*. Report to the Annie E. Casey Foundation, Denver, Colorado: Policy Studies Inc. Available on the Internet at: http://www.aecf.org/publications/data/right_track.pdf.

¹⁸ This policy brief was developed through U.S. DHHS/ACF/OCSE Contract Number 105-00-8300, Task Order 39 with Policy Studies Inc. Interviews were conducted with Colorado, Massachusetts, Mississippi, Missouri, Nevada, South Dakota, and Wisconsin. The States were selected to represent different geographic regions and various child support guideline approaches.

¹⁹ Office of Inspector General, 2000. *The Establishment of Child Support Orders for Low Income Non-custodial Parents*. OIG-05-99-00390, Washington, D.C.: Department of Health and Human Services.

²⁰ Thoennes, Nancy and Pearson, Jessica, 2001. Report to the Colorado Department of Human Services, Denver, CO: Center for Policy Research.

²¹ Peters, Jo, 1999. *Overcoming the Barriers to Collection*. Olympia, WA: Washington Department of Social and Health Services.

²² Judicial Council of California, 2006. *Review of Statewide Uniform Child Support Guidelines 2005: A Report to the California Legislature*, Administrative Office of the Courts, San Francisco, California.

²³ California, Colorado, Massachusetts, Minnesota, and Virginia are States that have conducted arrears studies.

²⁴ Peters, Jo, 2003. *Determining the Composition and Collectibility of Child Support Arrears, Volume 2: The Case Assessment*. Olympia, WA: Washington Department of Social and Health Services.

²⁵ Office of Child Support Enforcement, *National Child Support Enforcement Strategic Plan: FY2005-2009*, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, Washington, DC. Available on the Internet at: www.acf.hhs.gov/programs/cse/pubs/2004/Strategic_Plan_FY2005-2009.pdf

²⁶ Preliminary results from a 2005-06 Colorado demonstration project that was funded by an OCSE 1115 grant find that the default rate was decreased by about a half or more in the counties testing strategies aimed at reducing the number of orders entered by default and encouraging noncustodial parents to stipulate. Some of the specific strategies used in the Colorado demonstration were simplified notices (e.g., 5th grade reading level and also available in Spanish).

U.S. Department of Health and Human Services
Administration for Children and Families
Office of Child Support Enforcement
<http://www.acf.hhs.gov/programs/cse/>



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