
2018 NEBRASKA CHILD SUPPORT GUIDELINES REVIEW

FINDINGS AND RECOMMENDATIONS



DECEMBER 28, 2018

Table of Contents

SECTION 1: PURPOSE AND BACKGROUND	1
ORGANIZATION OF REPORT	1
OVERVIEW OF NEBRASKA’S EXISTING GUIDELINES AND REVIEW PROCESS	2
SECTION 2: OVERVIEW OF FEDERAL REQUIREMENTS	4
<i>Prior Federal Requirements that Are Still in Effect</i>	6
<i>Expanded Federal Requirements</i>	7
SECTION 3: COMPLYING WITH FEDERAL REQUIREMENTS	9
COMPLYING WITH FEDERAL REQUIREMENTS OF STATE GUIDELINES REVIEWS	9
<i>Considering Economic Data on the Cost of Raising Children</i>	9
Economic Basis of Existing Nebraska Child Support Table	10
Current Studies	11
Updating the Child Support Table	14
<i>Examine Case File Data</i>	19
Overview	19
Guidelines Applications and Deviations	20
Application of the Low-Income Adjustment	21
Income Imputation and Default	23
<i>Examination of Labor Market Data</i>	23
<i>Publishing Guidelines Review Report and Other Information</i>	24
<i>Public Input</i>	24
COMPLYING WITH EXPANDED FEDERAL REQUIREMENTS OF STATE GUIDELINES	25
<i>Address the Subsistence Needs of the Parents</i>	25
<i>Income Imputation</i>	25
<i>Incarceration is Not Voluntary Unemployment</i>	26
<i>Public Health Care Coverage is Healthcare Coverage for the Child</i>	26
<i>Other Considerations</i>	26
SECTION 4: SUMMARY OF RECOMMENDATIONS	28
APPENDIX A: RECOMMENDATIONS PRESENTED IN STRIKETHROUGH FORMAT	30
APPENDIX B: CENTER FOR POLICY RESEARCH’S REPORT	48
APPENDIX C: PRESENTATION AND REPORT BY PROFESSOR COMANOR	49

2018 CHILD SUPPORT ADVISORY COMMISSION MEMBERS

Name	Statutory Category
Sen. Laura Ebke	Judiciary Committee Chair
Sen. Merv Riepe	HHS Committee Chair
Tim Burns	District Court Judge
Karin Noakes	District Court Judge
Troy Reiners	Assistant State Treasurer
Corey Steel	State Court Administrator
Cindy Wiesen	DHHS Child Support Administrator
Aimee Melton	Member of Nebraska State Bar Association
Kari Fisk	County Attorney
Dr. Eric Thompson	Professional in economics or mathematics
Sen. Tyson Larson	Custodial Parent
James Creigh	Non-Custodial Parent

Staff to the Commission and Technical Assistance

The Commission was staffed by Timothy Hruza and Dick Clark who both served as Legal Counsel to the Judiciary Committee. Laurie Vollersten and Krissa Delka served as clerks for Commission meetings. Economic analysis and technical assistance were provided to the Commission by the Center for Policy Research. In addition, Professor William Comanor, University of California, shared his expertise on the economic cost of raising children. Adam Astley, who has developed an automated support calculator, shared his expertise on the working of the guidelines calculation and the impact of possible changes.

SECTION 1: PURPOSE AND BACKGROUND

This is the first and final report of the Nebraska Child Support Advisory Commission that was formed in August 2018 and charged with reviewing the State's child support guidelines by December 31, 2018. Federal and State law require that the appropriateness of the guidelines be reviewed at least once every four years.¹ The federal requirements for state guidelines and each state's periodic review of its guidelines are conditions for approval of the state plan for child support (42 U.S. Code §667).

In December 2016, the federal requirements of state child support requirements expanded.² The 2018 review of the Nebraska guidelines not only focused on meeting the federal requirements that have been in place since 1989, but also on meeting the expanded requirements.

ORGANIZATION OF REPORT

Section 2 lists the federal requirements pertaining to a state's review of its guidelines and summarizes the rationale for the expanded requirements.

Section 3 summarizes Nebraska's fulfillment of the federal requirements for its 2018 review.

Section 4 summarizes the Commission's recommendations.

Appendix A provides a mark-up of the Commission's recommended changes.

Appendix B consists of the report prepared by the technical consultant to the Commission, Center for Policy Research (CPR). It provides more detail on the analysis of data that federal regulation requires states to consider as part of its guidelines review (*i.e.*, economic data on the cost of raising children, findings from the analysis of case file data, and labor market data.) CPR presented the information to the Commission on October 26 and November 28.

Appendix C includes the written materials from Dr. William Comanor's presentation to the Commission on economic data on the cost of raising children on November 8.

¹U.S. Code §667(a) and Neb. Rev. Stat. §43-3342.05.

² U.S. Department of Health and Human Services. (Dec. 20, 2016). "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs." *Federal Register*, Vol. 81, No. 244, p. 93562. <https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-29598.pdf>.

OVERVIEW OF NEBRASKA'S EXISTING GUIDELINES AND REVIEW PROCESS

Nebraska child support guidelines are set in Nebraska Supreme Court Rules Chapter 4, Article 2, §§4-201 to 4-220. The guidelines are to be applied as a rebuttable presumption in all proceedings establishing or modifying a child support order. As shown in Exhibit 1, Nebraska statute (Neb. Rev. Stat. §43-3342.05) provides for the formation of the Child Support Advisory Commission, specifies the wide range of stakeholders to form the Commission, and tasks the Commission with reviewing the guidelines and making recommendations.

The Child Support Advisory Commission held meetings on August 16, August 30, October 26, November 8, November 28, and December 18, 2018. Public testimony was accepted at the August 30 and December 19 meetings. In addition, written comments received by Commission staff were shared with the Commission. All Commission meetings and public testimonies conformed to Nebraska's Open Meetings Act.

Exhibit 1: Nebraska Statute Creating the Child Support Advisory Commission

(Retrieved from: <http://nebraskalegislature.gov/laws/statutes.php?statute=43-3342.05>)

43-3342.05. Child Support Advisory Commission; created; members; terms; expenses; personnel; duties; Supreme Court; duties.

(1) The Child Support Advisory Commission is created. Commission members shall include:

- (a) Two district court judges whose jurisdiction includes domestic relations, to be appointed by the Supreme Court;
- (b) One member of the Nebraska State Bar Association who practices primarily in the area of domestic relations;
- (c) One county attorney who works in child support;
- (d) One professional who works in the field of economics or mathematics or another field of expertise relevant to child support;
- (e) One custodial parent who has a court order to receive child support;
- (f) One noncustodial parent who is under a support order to pay child support;
- (g) The chairperson of the Judiciary Committee of the Legislature, who shall serve as the chairperson of the commission;
- (h) The chairperson of the Health and Human Services Committee of the Legislature;
- (i) The State Treasurer or his or her designee;
- (j) The State Court Administrator or his or her designee; and
- (k) The director of the Title IV-D Division or his or her designee.

(2)(a) The Supreme Court shall notify the Executive Board of the Legislative Council of its intent to review the child support guidelines pursuant to section 42-364.16. Following such notification, the chairperson of the commission shall call a meeting of the commission.

(b) Each time the commission meets pursuant to subdivision (2)(a) of this section, the Supreme Court shall make appointments to fill the membership under subdivision (1)(a) of this section and the chairperson of the Executive Board shall make appointments to fill each membership under subdivisions (1)(b) through (f) of this section. The terms of these members shall expire after the commission has fulfilled its duties pursuant to subsection (3) of this section.

(c) Members shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

(d) If determined to be necessary to perform the duties of the commission, the commission may hire, contract, or otherwise obtain the services of consultants, researchers, aides, and other necessary support staff with prior approval of the chairperson of the Executive Board.

(e) For administrative purposes, the commission shall be managed and administered by the Legislative Council.

(3) The duties of the commission shall include, but are not limited to:

(a) Reviewing the child support guidelines adopted by the Supreme Court and recommending, if appropriate, any changes to the guidelines. Whenever practicable, the commission shall base its recommendations on economic data and statistics collected in the State of Nebraska. In reviewing the guidelines and formulating recommendations, the commission may conduct public hearings around the state; and

(b) Presenting reports, as deemed necessary, of its activities and recommendations to the Supreme Court and the Executive Board. Any reports submitted to the Executive Board shall be submitted electronically.

(4) The Supreme Court shall review the commission's reports. The Supreme Court may amend the child support guidelines established pursuant to section 42-364.16 based upon the commission's recommendations.

SECTION 2: OVERVIEW OF FEDERAL REQUIREMENTS

An excerpt of the federal requirements for a state's child support guidelines is provided in Exhibit 2. The rest of this section separates the requirements in two parts: those that have been placed since 1989; and those that have become effective since Nebraska last reviewed its guidelines in 2014.

Exhibit 2: Federal Requirements Pertaining to Child Support Guidelines (45 C.F.R. §302.56)

- (a) Within 1 year after completion of the State's next quadrennial review of its child support guidelines, that commences more than 1 year after publication of the final rule, in accordance with §302.56(e), as a condition of approval of its State plan, the State must establish one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support order amounts within the State that meet the requirements in this section.
- (b) The State must have procedures for making the guidelines available to all persons in the State.
- (c) The child support guidelines established under paragraph (a) of this section must at a minimum:
- (1) Provide that the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay that:
 - (i) Takes into consideration all earnings and income of the noncustodial parent (and at the State's discretion, the custodial parent);
 - (ii) Takes 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
 - (iii) If imputation of income is authorized, takes 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.
 - (2) 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;
 - (3) Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders; and
 - (4) Be based on specific descriptive and numeric criteria and result in a computation of the child support obligation.
- (d) The State must include a copy of the child support guidelines in its State plan.
- (e) The State must review, and revise, if appropriate, the child support guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support order amounts. The State shall 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.
- (f) The State must provide that there will be a rebuttable presumption, in any judicial or administrative proceeding for the establishment and modification of a child support order, that the amount of the order which would result from the application of the child support guidelines established under paragraph (a) of this section is the correct amount of child support to be ordered.
- (g) A written finding or specific finding on the record of a judicial or administrative proceeding for the

establishment or modification of a child support order that the application of the child support guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case will be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must take into consideration the best interests of the child. Findings that rebut the child support guidelines shall 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.

(h) As part of the review of a State's child support guidelines required under paragraph (e) of this section, 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;

(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.

Other Provisions of the New Federal Rule that Indirectly Affect Provisions of State Guidelines

§303.4 Establishment of support obligations. (b) Use appropriate State statutes, procedures, and legal processes in establishing and modifying support obligations in accordance with §302.56 of this chapter, which must include, at a minimum: (1) Taking reasonable steps to develop a sufficient factual basis for the support obligation, through such means as investigations, case conferencing, interviews with both parties, appear and disclose procedures, parent questionnaires, testimony, and electronic data sources; (2) Gathering information regarding the earnings and income of the noncustodial parent and, when earnings and income information is unavailable or insufficient in a case gathering available information about the specific circumstances of the noncustodial parent, including such factors as those listed under §302.56(c)(1)(iii) of this chapter; (3) Basing the support obligation or recommended support obligation amount on the earnings and income of the noncustodial parent whenever available. If evidence of earnings and income is unavailable or insufficient to use as the measure of the noncustodial parent's ability to pay, then the support obligation or recommended support obligation amount should be based on available information about the specific circumstances of the noncustodial parent, including such factors as those listed in §302.56(c)(1)(iii) of this chapter. (4) Documenting the factual basis for the support obligation or the recommended support obligation in the case record.

§303.8 Review and adjustment of child support orders. * * * * (b) * * * (2) The State may elect in its State plan to initiate review of an order, after learning that a noncustodial parent will be incarcerated for more than 180 calendar days, without the need for a specific request and, upon notice to both parents, review, and if appropriate, adjust the order, in accordance with paragraph (b)(1)(i) of this section. * * * * (7) The State must provide notice— (i) Not less than once every 3 years to both parents subject to an order informing the parents of their right to request the State to review and, if appropriate, adjust the order consistent with this section. The notice must specify the place and manner in which the request should be made. The initial notice may be

included in the order. (ii) If the State has not elected paragraph (b)(2) of this section, within 15 business days of when the IV–D agency learns that a noncustodial parent will be incarcerated for more than 180 calendar days, to both parents informing them of the right to request the State to review and, if appropriate, adjust the order, consistent with this section. The notice must specify, at a minimum, the place and manner in which the request should be made. Neither the notice nor a review is required under this paragraph if the State has a comparable law or rule that modifies a child support obligation upon incarceration by operation of State law. (c) * * * Such reasonable quantitative standard must not exclude incarceration as a basis for determining whether an inconsistency between the existing child support order amount and the amount of support determined as a result of a review is adequate grounds for petitioning for adjustment of the order.

§303.31 Securing and enforcing medical support obligations.³

(a) * * * (2) Health ~~insurance care coverage~~ includes fee for service, health maintenance organization, preferred provider organization, and other types of private health insurance and public health care coverage ~~which is available to either parent,~~ under which medical services could be provided to the dependent child(ren).

(3) Cash medical support or the cost of ~~private~~ 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 adopted in accordance with § 302.56(c) of this chapter. ~~In applying the five percent or alternative State standard for the cost of private health insurance, the cost is the cost of adding the child(ren) to the existing coverage or the difference between self only and family coverage.~~

(b) * * * (1) Petition the court or administrative authority to:

(i) Include ~~private health insurance care coverage~~ that is accessible to the child(ren), as defined by the State, and is available to the parent responsible for providing medical support and can be obtained for the child at reasonable cost, as defined under paragraph (a)(3) of this section, in new or modified court or administrative orders for support; and

(ii) Allocate the cost of coverage between the parents.

(2) If ~~private health insurance care coverage~~ described in paragraph (b)(1) of this section is not available at the time the order is entered or modified, petition to include cash medical support in new or modified orders until such time as health ~~insurance care coverage~~ care coverage, that is accessible and reasonable in cost as defined under paragraph (a)(3) of this section, becomes available. In appropriate cases, as defined by the State, cash medical support may be sought in addition to health ~~insurance care coverage~~ care coverage.

(3) Establish ~~written~~ criteria, which are reflected in a record, to identify orders that do not address the health care needs of children based on—

(i) Evidence that ~~private health insurance care coverage~~ may be available to either parent at reasonable cost, as defined under paragraph (a)(3) of this section; and * * * * *

Prior Federal Requirements that Are Still in Effect

The major federal requirements that have been in place since 1989, and are still in place, are:

- Have one set of guidelines to be used by judges (and all persons within a state with the authority) to issue a child support order;⁴

³ Presented in strikethrough format to illustrate the subtle changes in the federal requirements.

⁴ 45 C.F.R. 302.56(a).

- Consider all earnings and income of the noncustodial parent in the calculation of support;⁵
- Provide for the child's healthcare coverage,⁶ and
- Review their guidelines at least once every four years; and, in that review, consider the findings from an analysis of case file data on guidelines applications and deviation, and economic evidence on the cost of raising children.⁷

Nebraska has always met these requirements. Nebraska's last guidelines review was conducted in 2014. The 2018 review also meets these requirements.

Expanded Federal Requirements

The expanded federal requirements are:

- A state's guidelines must take into consideration the basic subsistence needs of the noncustodial parent who has a limited ability to pay;⁸
- If imputation of income is authorized under the state's guidelines, it must also take into consideration the specific circumstances of the noncustodial parent to the extent known, such as the 14 specific factors identified in the federal rule;⁹
- A state's guidelines may not treat incarceration as voluntary unemployment in establishing or modifying support orders;¹⁰ and
- In addition, there is a small change in the federal requirement considering medical child support that allows for the child's healthcare needs to be satisfied through public healthcare coverage. It is shown in strikethrough format below.

§ 302.56(a) Guidelines for setting child support awards.

~~(3) (2) Address how the parents will provide for the child(ren)'s child's health care needs through private or public health insurance care coverage and/or through cash medical support in accordance with § 303.31 of this chapter.;~~

⁵ 45 C.F.R. 302.56(c)(1)(i).

⁶ 45 C.F.R. 302.56(c)(2).

⁷ 45 C.F.R. 302.56(e).

⁸ 45 C.F.R. 302.56(c)(1)(ii).

⁹ 45 C.F.R. 302.56(c)(1)(iii).

¹⁰ 45 C.F.R. 302.56(c)(3).

- As part of a state’s guidelines review, a state must:
 - Consider labor market data by occupation and skill-level, the impact of guidelines amounts on parties with incomes below 200 percent of the federal poverty guidelines, factors that influence employment rates among noncustodial parents and compliance with child support orders, and analyze rates of default and imputed child support orders and orders determined using the adjustment for the noncustodial parent’s subsistence needs;¹¹
 - Provide opportunity for public input, including input from low-income parents and their representatives and the state/local IV-D agency;¹² and
 - Make all reports public and accessible on the internet, make membership of the reviewing body known, and publish the effective date of the guidelines and the date of the next review.¹³

Much of the federal rule changes aim to improve child support policies for low-income parents. The rule changes are grounded in research that finds compliance is lower and unpayable arrears accrue when income is imputed.¹⁴ The specific concern is when income is imputed beyond what an obligated parent— particularly, an obligated parent with income below or near poverty— actually has in income or the capacity to earn. This concern extends to obligated parents while incarcerated. The federal rule changes also recognize the importance of healthy parent-child relationships in the development of children and how unpaid child support in some situations can adversely affect that healthy relationship. For example, driver’s license suspension is triggered by nonpayment of court-ordered child support, but lack of a driver’s license can create a transportation barrier to the obligated parent’s employment or exercising parenting time. To this end, it is important to set orders that are within an obligated parent’s ability to pay, which is why the expanded federal regulation requires consideration of the obligated parent’s subsistence needs in a state’s guidelines.

¹¹ 45 C.F.R. 302.56(h)(1) & (h)(2).

¹² 45 C.F.R. 302.56(h)(3).

¹³ 45 C.F.R. 302.56(e).

¹⁴ U.S. Department of Health and Human Services. (Nov. 17, 2014). “Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs.” *Federal Register*, vol. 79, no. 221/ Retrieved from <http://www.acf.hhs.gov/programs/css/resource/nprm-flexibility-efficiency-and-modernization-in-child-support-enforcement-programs>.

SECTION 3: COMPLYING WITH FEDERAL REQUIREMENTS

This section is broken down into two major subsections:

- Nebraska’s compliance with federal *review* requirements; and
- Nebraska’s compliance with federal *requirements of state guidelines*.

In other words, the former considers the review process and the latter considers the provisions contained in the guidelines.

COMPLYING WITH FEDERAL REQUIREMENTS OF STATE GUIDELINES REVIEWS

Nebraska has always complied with the federal requirement to review its guidelines at least once every four years, consider economic data on the cost of raising children, and analyze case file data on the application and deviation of the guidelines.

Considering Economic Data on the Cost of Raising Children

Two different economists provided economic data on the cost of raising children to the Commission. Their individual reports are contained in Appendix B and Appendix C. There are several different studies of child-rearing expenditures that vary in data years and methodology used to separate the child’s share of expenditures from total family expenditures. Economists do not agree on which methodology best measures actual child-rearing expenditures. However, a federal report recommended that any amount between the lowest and the highest of credible measurements would be appropriate for a state guidelines table or formula.¹⁵

Most states, including Nebraska, rely on measurements of child-rearing expenditures developed by Professor David Betson, University of Notre Dame, using the Rothbarth methodology to separate the child’s share of expenditures. Betson’s first study was published in 1990¹⁶ and has been updated three times.

All of the measurements of child-rearing expenditures rely on national data from the Consumer Expenditure Survey (CES), which is one of the most rigorous and comprehensive surveys on household expenditures in the world.¹⁷ The CES sampling strategy is not designed for

¹⁵ Lewin/ICF. (1990). *Estimates of Expenditures on Children and Child Support Guidelines*. Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. Fairfax, Virginia.

¹⁶ Betson, David M. (1990). *Alternative Estimates of the Cost of Children from the 1980–86 Consumer Expenditure Survey*. Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. University of Wisconsin Institute for Research on Poverty, Madison, Wisconsin.

¹⁷ See the U.S. Bureau of Labor Statistics website for more information about the CES: <https://www.bls.gov/cex/>.

representing individual states. The resources and time necessary to develop and maintain a state-scaled CES survey are prohibitive.

Economic Basis of Existing Nebraska Child Support Table

The existing Nebraska Table (called, “Table 1” in the guidelines) is based on Betson’s second study of child-rearing expenditures that was developed in 2001.¹⁸ For this study, Betson relied on expenditures data from families surveyed in 1996-1998. The Betson-Rothbarth measurements underlying the Nebraska Table appear to be based on 2000 price levels.

To convert the Betson-Rothbarth measurements to a table suitable for child support guidelines, additional assumptions were required. The assumptions are documented in the 2001 report detailing the technical basis of the existing Table.¹⁹

One major assumption concerns how much is incorporated in the Table to cover what is typically spent on out-of-pocket expenses for a child’s healthcare needs. Most state child support guidelines tables and formulas include an amount to cover common out-of-pocket expenses for the child’s health care since some healthcare expenses are likely to be incurred for every child (*e.g.*, \$250 per child per year for co-pays for well visits and some over-the-counter medicines such as children’s cough syrup). Most states, like Nebraska, however, address extraordinary out-of-pocket expenses for the child’s healthcare needs (*e.g.*, a recurring out-of-pocket expense for a child’s asthmatic treatments) on a case-by-case basis just as they address the cost of providing healthcare coverage and unexpected out-of-pocket expenses for the child’s healthcare (*e.g.*, a copay for an emergency room visit or ambulance) on a case-by-case basis. Typically, these expenses are prorated between the parents. The amount for out-of-pocket healthcare expenses incurred for the child in Nebraska’s existing table is estimated to be up to \$480 per year per child. The amount is likely to be less at lower incomes.²⁰

Still another major assumption concerned the percentage of net income that a family spent rather than saved, used to make charitable contributions or for gifts outside the family, or otherwise did not spend directly on household consumption items.

¹⁸ Tier Technologies, the technical consultant to Nebraska at the time used preliminary measurements of child-rearing expenditures developed by David M. Betson (2001). “Chapter 5: Parental Expenditures on Children,” in Judicial Council of California, *Review of Statewide Uniform Child Support Guidelines*, San Francisco, California (2001).

¹⁹ Tier Technologies. (August 2001). *Report to Nebraska Supreme Court: Updating Nebraska’s Child Support Guidelines*. Tier Technologies, California. Note that Tier Technologies has since merged with another firm and no longer provides technical assistance on child support guidelines.

²⁰ Tier Technologies estimated the amount because it could not be measured precisely from the data set used to measure child-rearing expenditures; that is, the Consumer Expenditure Survey (CES) does not capture all healthcare expenditures in the household and cannot determine if the expenditure was made for an adult or child.

Current Studies

The Commission heard from two economists on the different studies of child-rearing expenditures. Dr. Venohr presented on October 26 and November 28. Dr. Venohr focused on providing the Commission with an overview of the various studies underlying guidelines of other states and what current studies states were considering when updating their child support guidelines. Professor William Comanor, University of California, presented to the Commission on November 8. He critiqued the Rothbarth methodology and presented an alternative methodology that he and his colleagues developed.

As part of the November 28 presentation, Dr. Venohr compared the existing Nebraska Table to measurements of child-rearing expenditures based on the following studies. The comparisons are shown in Exhibit 2 and 3 for one and two children (Based on the case file data, the vast majority of Nebraska child support orders cover one or two children.) Each of the measurements are based on different expenditures data from different years so each was updated to 2018 price levels for the comparisons. Childcare expenses and extraordinary healthcare expenses were excluded from the measurements.

*Betson-Rothbarth Measurements.*²¹ These are noted as “BR4” in the graphical comparisons because they are the fourth set of measurements of child-rearing expenditures developed by Betson using the Rothbarth measurements. As mentioned earlier, most states use one of Betson’s four studies of child-rearing expenditures using the Rothbarth methodology. The Rothbarth methodology is a marginal cost approach that compares expenditures between equally well-off families with and without children and attributes the difference in their expenditures to child-rearing expenditures. The percentage of expenditures on adult goods (*e.g., adult clothing*) is used to determine equally well-off households. Most conventional economists believe that the Rothbarth methodology understates actual child-rearing expenditures for theoretical reasons that concern the substitution effect between expenditures for adults and children.²² In other words, parents give up some expenditures on adult goods when they have children. For Betson’s fourth study, he relied on expenditures data from families surveyed from 2004-2009. His measurements indicate that families devote about 22 to 14 percent of their net income for one child and the percentage declines as income increases.

²¹ Betson, David M. (2010). “Appendix A: Parental Expenditures on Children.” In Judicial Council of California, *Review of Statewide Uniform Child Support Guideline*. San Francisco, California. Retrieved from <http://www.courts.ca.gov/partners/documents/2011SRL6aGuidelineReview.pdf>.

²² For example, see Lewin/ICF. (1990). *Estimates of Expenditures on Children and Child Support Guidelines*. Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. Fairfax, Virginia.

*U.S. Department of Agriculture (USDA) Measurements.*²³ The USDA updates its study every one to two years. Minnesota is the only state to rely on a USDA study as the basis of its child support table. The USDA first measures expenditures for seven different categories (*i.e.*, housing, food, transportation, clothing, health care, child care and education, and miscellaneous) then sums them to arrive at a total measurement of child-rearing expenditures. The last USDA study found that it averaged \$215,798 (which averages about \$1,000 per month) to raise a child from birth through 17 years old in a low-income two-parent, two-child household in the Midwest.

*Rodgers/Rothbarth Measurements.*²⁴ This study was developed by a Rutgers University professor for California's last guidelines review. The study was just released in the last year and does not form the basis of any state's child support guidelines table. The study relies on expenditures data from families surveyed from 2000 to 2015. A wide range of years was used to average out economic fluctuations in the economy such as the Great Recession that occurred from 2007 to 2009. The same professor developed the measurements of child-rearing expenditures underlying New Jersey's child support table, but those were adjusted for New Jersey having a higher income than the national average.

*Comanor Measurements.*²⁵ Comanor argues that the Betson-Rothbarth measurements yield "imputed" amounts, not actual child-rearing expenditures; and ignore the utility that parents gain from the presence of their children. Based on the methodology he developed with colleagues, Comanor found that the cost of raising one child in a low-income, married family was \$3,421 per year and \$1,229 of that included child care expenses.²⁶ Comanor did not measure the cost of the child's health care.

In addition to the measurements of child-rearing expenditures listed above, the comparisons in Exhibits 3 and 4 consider the average of the Engel and Rothbarth measurements developed from Betson's second study. Historically, the Engel estimator, which like the Rothbarth estimator is a marginal cost approach, was considered the upper bound of credible measurements of child-rearing expenditures. Most conventional economists believe that the Engel estimator overstates actual child-rearing expenditures because it relies on food shares to determine equally well-off

²³ Lino, Mark (2017). *Expenditures on Children by Families: 2015 Annual Report*. U.S. Department of Agriculture, Center for Nutrition and Policy Promotion. Miscellaneous Publication No. 1528-2015, Washington, D.C. Retrieved from <http://www.cnpp.usda.gov/publications/crc/crc2012.pdf>.

²⁴ Rodgers, William M. (2017) "Comparative Economic Analysis of Current Economic Research on Child-Rearing Expenditures." In Judicial Council of California, *Review of Statewide Uniform Child Support Guideline 2017*. San Francisco, CA. Retrieved from <http://www.courts.ca.gov/documents/lr-2018-JC-review-of-statewide-CS-guideline-2017-Fam-4054a.pdf>

²⁵ Appendix C and William S. Comanor, Mark Sarro, R. Mark Rogers, (2015), The Monetary Cost of Raising Children, in James Langenfeld (ed.) *Economic and Legal Issues in Competition, Intellectual Property, Bankruptcy, and the Cost of Raising Children (Research in Law and Economics, Volume 27)* Emerald Group Publishing Limited, pp.209 – 251. Retrieved from <https://www.emeraldinsight.com/doi/abs/10.1108/S0193-589520150000027008>.

²⁶ See pages 23 and 25 of Appendix C.

households, and children are more food intensive than adults. Georgia is the only state to use the average of the Engel and Rothbarth estimators. Several states (e.g., Florida, Indiana and Kentucky) rely on older Engel estimates dating back to the 1980s.

Exhibit 3: Comparisons of Basic Obligations: One Child

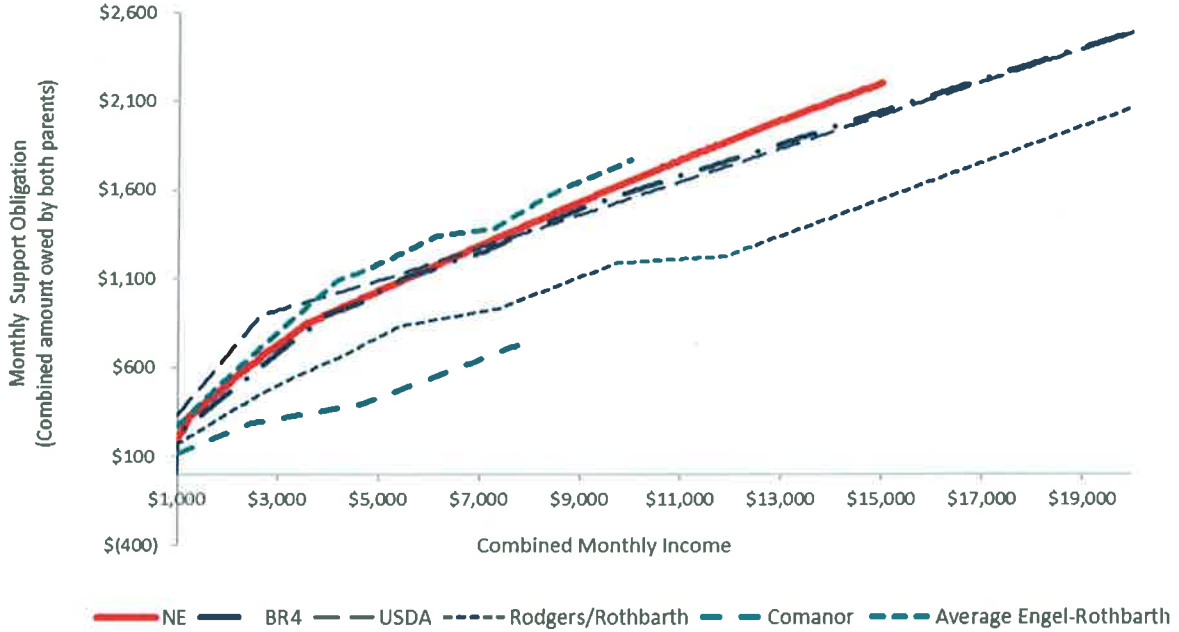


Exhibit 4: Comparisons of Basic Obligations: Two Children



Updating the Child Support Table

After considering the economic data, the Commission directed CPR to develop updated child support tables based on the most current Betson-Rothbarth measurements. Specifically, the Commission directed CPR to update them for 2018 price levels, adjust for Nebraska prices, and alter the amount of ordinary medical expenses incorporated into the Table. The adjustment for Nebraska prices reflects that the cost of living is lower in Nebraska than it is for the U.S. average. The U.S. Bureau of Economic Analysis has developed a price parity measure for states where 100 percent means a state’s price is the same as the U.S. average and amounts above/below 100 percent mean that state’s prices are above/below the U.S. average. Nebraska’s price parity in 2016, the most recent measurement year, is 90.5.²⁷

Updating the Amount of Ordinary Medical Expenses in the Table

The Commission was concerned that the \$480 per child per year in the current guidelines to cover the child’s ordinary out-of-pocket medical expenses did not reflect current data. In Dr.Venohr’s November 28 presentation, she provided information from the 2015 Medical Expenditure Panel

²⁷ U.S. Bureau of Economic Analysis. (2018). *2016 Regional Price Parities by State (US = 100)*. Retrieved from <https://www.bea.gov/news/2018/real-personal-income-states-and-metropolitan-areas-2016>.

Survey (MEPS) that the average out-of-pocket medical expense per child was \$248 per year, but varied depending on whether the child was enrolled in public insurance such as Medicaid or had private insurance. Based on MEPS data, out-of-pocket medical expenses per child averaged \$63 per child per year for children who had public insurance and \$388 per child per year for those with private insurance.²⁸ The Commission recognized that the MEPS definition of medical expenses was limited to expenditures for medical provider visits, hospital outpatient visits, hospital emergency room visits, hospital inpatient stays, dental visits, home health care, vision aids, other medical equipment and services, and prescribed medicines. In other words, it does not include over-the-counter medicines and band-aids.

The Commission requested two different tables that varied by the amount of ordinary healthcare expenses incorporated into the Table. Table A excludes all of the child's healthcare expenses. Table B includes \$250 per child per year for ordinary healthcare expenses such as co-pays for well visits, over-the-counter medicines, and other common healthcare expenses. Three advantages of excluding all healthcare expenses were identified. One is that the actual out-of-pocket expense of the child's healthcare expenses can be added on a case-by-case basis. A second advantage is that it avoids assuming that out-of-pocket healthcare expenses for low-income children (who may be receiving Medicaid, which has no copays or deductibles) are the same as for children of high-income families who have high deductibles. The third advantage is it lends itself to the Michigan approach, which is a standardized amount of ordinary medical expenses that is added in the worksheet.²⁹ The standardized amount (*e.g.*, \$33.58 per month for one child in Michigan) can vary between children enrolled in Medicaid and children not enrolled in Medicaid. It also can be updated periodically without updating the entire child support table. Michigan periodically updates its standardized amounts for ordinary medical expenses without changing its guidelines formula.

Three advantages of including \$250 per child per year for ordinary healthcare expenses in Table were also identified. One advantage is that most children incur some out-of-pocket healthcare expenses. Two-hundred and fifty approximates the average out-of-pocket medical expenses. It is the most common amount included in child support tables of other states. A second advantage is that parents may not know what their likely or actual out-of-pocket expenses for the child are at the time the order is established. A third advantage is

²⁸ Medical Expenditure Panel Survey https://meps.ahrq.gov/mepsweb/about_meps/survey_back.jsp.

²⁹ See Michigan's child support guidelines formula at <https://courts.michigan.gov/Administration/SCAO/Resources/Documents/Publications/Manuals/focb/2017MCSFSuppl.pdf>.

that parents do not have to share receipts and deal with reimbursing the other parent for the child's out-of-pocket healthcare expenses until it exceeds \$250 per child per year.

Updating the Basic Subsistence Limitation in the Table

The existing Table 1 incorporates the minimum order of \$50 per month and basic subsistence limitation based on the federal poverty guidelines (FPG) for one person in the year that Table 1 was developed rather than the current level (*i.e.*, \$1,012 per month in 2018). The FPG is updated annually around February of each year. The excerpt of the Nebraska table on the right shows \$50 orders for incomes below \$1,000 per month and then dramatic increases above that. These increases are of concern if there is higher usage of this part of the table that results from more orders being based on actual income rather than imputed income as provided in the expanded federal requirements.

COMBINED MONTHLY INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
\$500	\$50	\$50	\$50	\$50	\$50	\$50
\$550	\$50	\$50	\$50	\$50	\$50	\$50
\$600	\$50	\$50	\$50	\$50	\$50	\$50
\$650	\$50	\$50	\$50	\$50	\$50	\$50
\$700	\$50	\$50	\$50	\$50	\$50	\$50
\$750	\$50	\$50	\$50	\$50	\$50	\$50
\$800	\$50	\$50	\$50	\$50	\$50	\$50
\$850	\$50	\$50	\$50	\$50	\$50	\$50
\$900	\$50	\$50	\$50	\$50	\$50	\$50
\$950	\$50	\$50	\$50	\$50	\$50	\$50
\$1,000	\$50	\$50	\$50	\$50	\$50	\$50
\$1,050	\$225	\$243	\$260	\$278	\$295	\$313
\$1,100	\$250	\$270	\$290	\$310	\$330	\$350
\$1,150	\$275	\$298	\$320	\$343	\$365	\$388
\$1,200	\$300	\$325	\$350	\$375	\$400	\$425
\$1,250	\$325	\$353	\$380	\$408	\$435	\$463
\$1,300	\$337	\$380	\$410	\$440	\$470	\$500
\$1,350	\$349	\$408	\$440	\$473	\$505	\$538
\$1,400	\$362	\$435	\$470	\$505	\$540	\$575

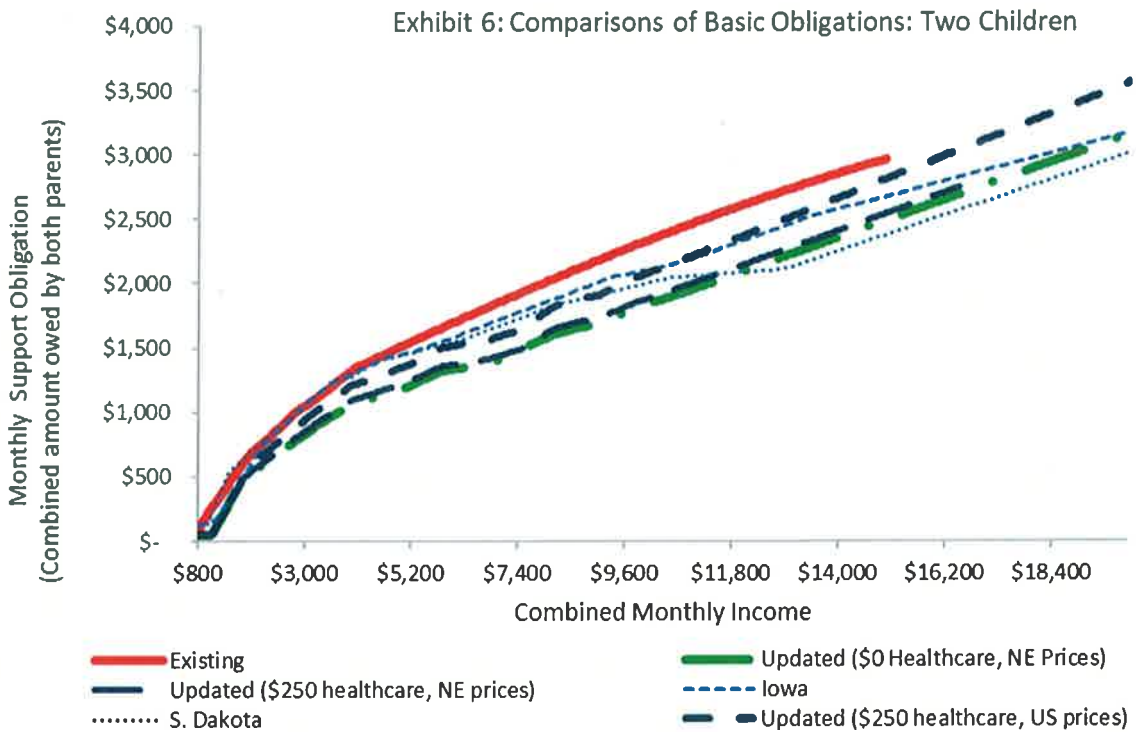
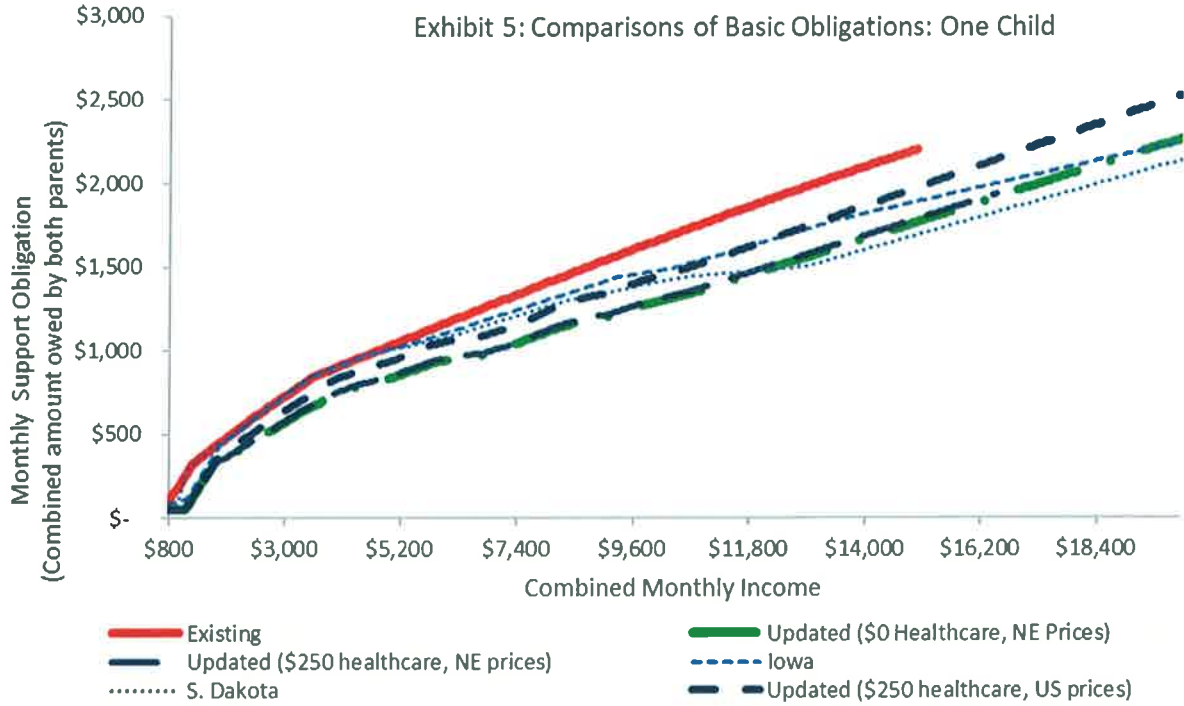
In address this issue, CPR also developed alternative Tables A and B that incorporated the minimum order and basic subsistence limit. For incomes below the current basic subsistence limit (*i.e.*, \$1,012), the table amounts are \$50 per month. For incomes above the basic subsistence limit, the table amount is the lower of the economic measurement of child-rearing expenditures adjusted for Nebraska prices and the differences between the income and the basic subsistence limit multiplied by a percentage that varies by the number of children. The percentage is 50 percent for one child; 70 percent for two children; 80 percent for three children; 85 percent for four children; 87 percent for five children; and 90% for children. The areas of the tables adjusted for the basic subsistence limit are shaded.

The phase-out percentages and the percentage amounts are policy decisions. Some states use more or less percentages for the phases-outs (*e.g.*, more or less than 50% for one child). No percentage phase-out means that every dollar increase in net income is assigned to child support: that is, there is no economic incentive to increase earnings. The lower the percentage, the further

the “shaded area” (*i.e.*, the area adjusted for the basic subsistence limit) extends to higher incomes.

Comparisons. CPR developed comparisons that were shared with the Commission at its December 18 meeting. Exhibits 5 and 6 compare the existing Nebraska to these options as well as the table amounts of South Dakota and Iowa, which are neighboring states. Wyoming, another neighboring state, is not included because it relies on a formula rather than a table. Other neighboring states are not included in the comparisons because they are based on gross income, so tax assumptions are necessary to convert them to a net-income basis. South Dakota’s price parity is 88.3 and Iowa’s price parity is 90.2. Iowa makes no adjustment for its lower cost of living, rather it uses the national measurements. South Dakota does make an adjustment, but uses a different method. It realigns the national measurements of child-rearing expenditures for South Dakota’s lower incomes. Both states include out-of-pocket healthcare expenses of \$250 per child per year in their tables.

Commission’s Final Recommendation for Updating the Table. At its December 18 meeting, the Commission recommended updating Table 1 in the guidelines using Table B, which is the table that includes the \$250 per child per year in ordinary medical expenses. Besides updated for 2018 price levels, Table B includes the same assumptions used to develop the Table proposed by the 2014 Commission. That Court did not promulgate that Table.



Examine Case File Data

Overview

Federal regulation requires the examination of case file data. Data were extracted from the automated system that the Nebraska Department of Health & Human Service Child Support Enforcement (CSE) program uses to track order establishments, payments, enforcement actions and other case information pertinent to the administration of the program. CSE extracted all orders established or modified sometime in state fiscal year (*i.e.*, October 1, 2015 through September 30, 2016) as well as the payments on those orders in the following fiscal year (*i.e.*, October 1, 2016 through September 30, 2017). The data were sent to CPR for analysis. Personal identifiers were not included in the data extract. CPR presented preliminary summary findings to the Commission on October 26 and November 28. More information about the case data and more detailed findings can be found in CPR's report in Appendix B.

IV-D and Non-IV-D Status. Some findings are presented for IV-D and non-IV-D cases separately. IV-D refers to Title IV-D of the Social Security Act that authorizes state child support programs. In other words, if the order is a "IV-D order" it is part of the state child support program. If it is non-IV-D, it is a private case. Orders are further broken down by whether they are new or modified orders. As noted by CPR, the characteristics of new and modified orders generally differ. For example, modified orders generally tend to be higher income cases, have higher orders, and generally have better payment patterns. This may be because there is more at stake in the cases, so they tend to be modified.

Data Limitations. The major data limitation, which is inherent in all states using data from their IV-D automated system, is the systems are not designed to track the data fields of interest to the expanded federal requirements. Specifically, few state automated systems track whether the low-income adjustment was applied, whether income was imputed, whether the order was entered by default, and income used for the guidelines application. There is some availability of income data, however, because quarterly wage data (which is collected from employers for state unemployment insurance programs) is periodically downloaded to state IV-D automated system pursuant federal requirements. Besides being gross income, other limitations of the quarterly wage data are that it does not include self-employed income and income from employers not paying into the state unemployment program (*e.g.*, railroad employees) and it does not always track with the net income used in the guidelines calculation of support.

Guidelines Applications and Deviations

Federal regulation requires the analysis of case file data on guidelines applications and deviations. The existing Nebraska guidelines (§4-203) provides the following deviation criteria:

- When there are extraordinary medical costs of either parent or child;
- When special needs of a disabled child exist;
- When net income exceeds \$15,000 per month;
- For juveniles placed in foster care; or
- Whenever the application of the guidelines in an individual case would be unjust or inappropriate.

In addition, existing Nebraska guidelines (§4-203) provides that deviations must consider the best interests of the child, and stipulated agreements must be reviewed against the guidelines. In the event of a deviation, the reason for the deviation must be documented in the order or worksheet 5.

The case file analysis conducted for this review found that the guidelines deviation rate was 2.9. This is a small increase from the guidelines deviation rate last review, which was 2.3 percent. Exhibit 7 shows small variation in the guidelines deviation rate by IV-D status and whether the order was a newly established order or a modified order. Information about IV-D status was not available in previous case file reviews.

Of concern is the proportion of cases in which it was not known whether there was a guidelines application or guidelines deviation. In all, the application/deviation status, as shown in Exhibit 7, was unknown in 17 percent of orders. This is lower than the unknown rate from the last review (which was 32 percent); yet, is still of concern since federal regulation and state guidelines requires the documentation of guidelines deviations. The unknown rate was highest among new orders (20.9% of IV-D new orders and 23.3% of non-IV-D order).

Exhibit 7 also shows the reasons for guidelines deviations. The most common reason for deviations was children with special needs. There were a few counties, however, that had notably higher guidelines deviation rates due to foster care or unjust or appropriate. (More detail is provided in the CPR report.)

Exhibit 7: Percentage of Cases with Guidelines Applications and Deviations and Deviations by Reason					
Characteristics	IV-D Orders		Non-IV-D Orders		Total (n=9,686)
	New Orders (n =3,848)	Modified Orders (n = 2,303)	New Orders (n = 2,639)	Modified Orders (n = 897)	
Followed Guidelines					
• Yes	77.0%	89.8%	73.7%	87.1%	80.1%
• No (<i>i.e.</i> , a guidelines deviation was made)	2.1%	3.5%	3.0%	4.9%	2.9%
• Unknown/Missing	20.9%	6.7%	23.3%	8.0%	17.0%
Deviation Reason (% of All Cases)					
1. Special Needs Exist	1.5%	2.6%	2.5%	3.9%	2.2%
2. Extraordinary Medical Cost	0.0%	0.0%	0.0%	0.1%	0.0%
3. Foster Care	0.3%	0.1%	0.1%	0.0%	0.2%
4. Unjust or Inappropriate	0.3%	0.8%	0.5%	0.9%	0.5%

Application of the Low-Income Adjustment

Federal regulation requires the analysis of the application of the low-income adjustment (45 C.F.R 302.56(h)(2)). Nebraska provides a low-income adjustment through two different provisions: the minimum order (§4-209) and the basic subsistence limit (§4-218). The minimum order is a recommendation to set a minimum support that is the greater of \$50 per month or 10 percent of the obligor's net income. Many other states also provide a minimum order. Fifty per month is typical. Its general application is intended for circumstances when the obligated parent's income is below the basic subsistence limitation.

Under the existing Nebraska guidelines, the basic subsistence limitation provides that a parent's support, child care, and healthcare obligation shall not reduce his or her net income below the federal poverty guidelines for one person, which was \$1,012 per month in 2018.

Like most states' automated system tracking IV-D cases, the Nebraska automated system does not include a data field specifying whether the minimum order or basic subsistence limit was applied. To compensate for this limitation, CPR developed proxies (*e.g.*, searched the case file data for \$50 per month orders) to full the federal requirement.

\$50 Minimum Order. The major finding was that the minimum order of \$50 per month is applied infrequently (*i.e.*, 8% of all orders in the case file data had a \$50 order). Among obligated parents with quarterly wage income data and that income was less than \$12,000 per year (which approximates the federal poverty level for one person), 14 percent had an order set at \$50 per month.

Application of the 10 percent of Net Income for the Minimum Order. Application of the 10 percent of net income minimum order was estimated by CPR because the data on the obligated parent's net income is not tracked by the automated system. A proxy for its application indicates that the 10 percent-minimum is not applied frequently. Specifically, 15 percent of the cases with quarterly wage data below \$12,000 per year (which approximates the federal poverty level for one person) had an order less than 10 percent of gross income. According to CPR, 15 percent may understate the actual amount since net income is less than gross income and income data was available for only about half of obligated parents in the data set used for the analysis.

Payment Patterns among Minimum-Order Cases. The average percentage of current support paid in the year following the order establishment was 66.4 percent among orders set at \$50 per month. Among orders set at less than 10 percent of gross income among cases in which the obligor's income was known to be less than \$12,000 per year, the average compliance rate was 100 percent. The difference suggests that \$50 per month may be too high in some cases (*e.g.*, juvenile court orders in which the child is removed from the parent's home and for the parent to get the child back the parent must comply with a case plan that may include many activities that limit employment such as getting housing, alcohol or substance abuse treatment, and making all court appearances).

Application of the Subsistence Limitation. The precise percentage of cases in which the subsistence limitation was applied cannot be determined because of data limitations. However, what evidence is available suggests that it is applied infrequently. Using quarterly wage data as a proxy, 20 percent of obligated parents had known incomes between \$1 and \$12,000 per year (which is a proxy for poverty income) when the order was established. Among these cases: 9 percent had an order set at \$0 per month; 1 percent had an order set between \$1 and \$49 per month; 14 percent had an order set at \$50 per month, and 76 percent had an order set at more than \$50 per month. It is likely that some of the parents with no quarterly wage data also were impoverished. Among those, 80 percent had orders exceeding \$50 per month.

Income Imputation and Default

Expanded federal regulation aims to reduce income imputation and default orders, particularly among low-income parents because of research finding that compliance is highly correlated with the ability to pay and that orders entered with income imputation and default can result in orders that exceed an obligated parent's ability to pay, particularly among low-income, obligated parents.³⁰

CPR's analysis of the case file data found no consistent income imputation and default practices across the state. Specifically, there is no order amount in which a large percentage of orders are concentrated. For example, there would be a large concentration of \$209 orders for one child in 2015 using the guidelines if the obligated parent's income was imputed at full-time minimum wage earnings then.

Based on anecdotal evidence provided by practitioners serving on the Commission, the belief is that income imputation practices vary widely across the state. It is also believed that income imputation practices became more diversified to compensate for increases in minimum wage from \$7.25 per hour in 2014 to \$8.00 per hour in 2015 to \$9.00 per hour in 2016. Strict application of an income imputation rule of say 40 hours at state minimum wage would have resulted in large variations in order amounts among those three years if income was indeed imputed. Anecdotal evidence suggests that judges have developed a variety of income imputation schemes (*e.g.*, using 30 hours per week instead of 40 hours per week) such that orders based on imputed income did not increase from year to year just because minimum wage increased.

Examination of Labor Market Data

Federal regulation (C.F.R. 45 § 302.56(h)(1)) requires the consideration of 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. According to CPR's report, the review of labor market data appears to be aimed at informing recommendations for guidelines provisions for income imputation and low-income adjustments. Federal regulation requires certain considerations when imputing income, including the recommendation to consider employment opportunities available to the parent given local labor market conditions. For example, presuming a minimum income equivalent to full-time, minimum wage earnings may not be realistic if there are high

³⁰Department of Health and Human Services. (Nov. 17, 2014). "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs." *Federal Register*, vol. 79, No. 221, p. 68553-68556. Retrieved from <https://www.govinfo.gov/content/pkg/FR-2014-11-17/pdf/2014-26822.pdf>.

unemployment rates across the state or employers do not offer full-time employment for entry-level, low-skilled jobs (*e.g.*, retailers do not commonly offer 40-hour workweeks).

The Nebraska unemployment rate was 2.8 percent as of September 2018, which was lower than the U.S. average of 3.7 percent at that time.³¹ The highest county unemployment rate was in Arthur County. It was 4.7 percent as of August 2018.

Nebraska labor market data reveals that many entry level positions for low-skilled workers pay just above full-time minimum wage earnings (*i.e.*, year-round employment at Nebraska's current minimum wage of \$9.00 per hour would yield an annual income of \$18,720). For example, the entry level pay of fast food cooks is \$20,241 per year, while the median pay is \$20,966 per year and experienced pay is \$23,650 per year. There was not information readily available about the hours usually worked at these entry level jobs in Nebraska.

National data reveals that the average hours is 34.5 hours per week among all workers, 38.9 hours per week among workers in wholesale trade, 31.0 hours per week among retail trade workers, and 26.0 hours per week among leisure and hospitality workers.³² Underscoring the issue of part-time and stable work are Nebraska-specific statistics on workers with multiple jobs and turnover rates.³³ The percentage of Nebraska workers with multiple jobs is 17.6 percent statewide, 14.9 percent in Omaha, and 15.7 percent in Lincoln. The fact that Nebraska workers may not be employed every week of the year is underscored by Nebraska's labor market turnover rate of 8.7 percent for all industries and 17.1 percent in food and accommodations services.

Publishing Guidelines Review Report and Other Information

This report conforms with the federal requirement to publish the report of the guidelines reviewing body, the membership of the reviewing body, the effective date of the guidelines, and the date of the quadrennial review (45 C.F.R § 302.56(e)). The Commission's role is advisory; hence, the Commission does not know if its recommendations will be adopted by the Court; and, if adopted when they will be adopted.

The next guidelines review would begin in 2022.

Public Input

Federal regulation (C.F.R. § 302.56(h)(3)) requires, "meaningful opportunities for public input, including input from low-income custodial and noncustodial parents and their representatives;"

³¹ Nebraska Department of Labor. Retrieved from <https://dol.nebraska.gov/>.

³² U.S. Department of Labor. Retrieved from www.bls.gov.

³³ Nebraska Department of Labor. Retrieved from <https://dol.nebraska.gov/Trends>.

and the state child support program (*i.e.*, the program funded through Title IV-D of the Social Security Act.)

As identified earlier, the Commission received written comments and accepted public comments at two of its meetings. Commission staff also reached out to groups serving low-income parents (*e.g.*, Legal Aide) and the director of the state child support program served on the Commission. Appendix D contains the written testimony received by the Commission. It includes recommendations for the next Commission to consider.

COMPLYING WITH EXPANDED FEDERAL REQUIREMENTS OF STATE GUIDELINES

CPR provided Nebraska with an assessment of whether its current guidelines were in compliance with the expanded federal requirements of state guidelines at the October 26 meeting. The assessment prompted a discussion of the Commission. In turn, the Commission developed recommendations to bring Nebraska in compliance with the federal requirements.

Address the Subsistence Needs of the Parents

Federal regulation (45 C.F.R. § 302.56(c)(1)(ii)) requires a state's guidelines to take into consideration the basic subsistence needs of the noncustodial parent who has limited ability to pay. The existing Nebraska guidelines already fulfill this requirement by providing that a parent's support, child care, and healthcare obligation shall not reduce his or her net income below the federal poverty guidelines for one person, which was \$1,012 per month in 2018. The adjustment, as provided, is known as the basic subsistence limitation (§4-218). In other states and in the federal rules, the subsistence limitation is called the "self-support reserve." It is the approach specifically mentioned in the federal rules as complying with the federal requirement. Most states, like Nebraska, relate it to the federal poverty guidelines (FPG) for one person. Some states use more or less of the FPG. New York uses the highest percentage of FPG (*i.e.*, 135% of the FPG.) Illinois, which just adopted a low-income adjustment last year uses 70 percent. States raise and lower the FPG to align the self-support reserve (called subsistence limitation in Nebraska) with income eligibility programs of government programs available to custodial-parent household. In addition, upward adjustments are made to account for federal and state taxes.

Income Imputation

Federal regulation required that a state's guidelines provide that if income imputation is authorized, that it must consider the specific circumstances of the noncustodial parent to the extent known, such as the 14 specific factors listed in the federal rule (*i.e.*, 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 identified). The existing guidelines do not fulfill the federal requirement. Most states are fulfilling the federal requirement by simply adapting the federal language into their guidelines. The Commission favored this approach and made it one of their recommendations.

Incarceration is Not Voluntary Unemployment

The existing Nebraska guidelines do not explicitly state that incarceration is not voluntary unemployment in the establishing or modifying support orders. Federal regulation (45 C.F.R. § 302.56(3)) requires that a state guidelines cannot consider incarceration to be voluntary unemployment. In other words, it cannot be presumed that if an incarcerated parent earned \$60,000 per year as a supervisor before incarceration that the parent's income is still \$60,000 per year during incarceration because the parent voluntarily committed the crime that resulted in incarceration.

Although the current guidelines do not provide for it, Legislative Bill 702 that was passed by the 2018 legislature provides that incarceration may not be treated as voluntary unemployment in establishing or modified support orders. As an aside, Legislative Bill 702 also meets new federal requirements (45 C.F.R. § 303.8) pertaining to the review and adjustment of child support orders when the obligated parent is incarcerated.

According to Dr. Venohr's October 26 presentation, most states are fulfilling the federal requirement by simply adapting the federal language into their guidelines. State statute essentially does this. The Commission recommended codifying what is in state statute into the guidelines, which are in Court rules.

Public Health Care Coverage is Healthcare Coverage for the Child

Legislative Bill 702 that was passed by the 2018 legislature also replaced "health care insurance" with "health care coverage" in section 42-369 of Revised Statutes of Nebraska. The language in the guidelines (at §4-215) also needs to be modified to comport with these changes and to clarify that public health care coverage is healthcare coverage for the child.

Other Considerations

The Commission also reviewed the definition of reasonable cost in private health insurance and cash medical support provided in §4-215. Nebraska relies on a threshold of 3 percent of the party's gross income. At the November 26 meeting, Dr. Venohr shared information about what

other states are doing.³⁴ As of 2013, 30 states provided a quantitative threshold. Among those 22 states set it at 5 percent, which is the federal recommendation, and 28 states set at 5 percent or more. In other words, Nebraska's threshold is lower than most states. Raising it would increase the number of children with access to their parent's health insurance coverage.

³⁴ Jane C. Venohr (2013) "Medical Support in Today's Child Support Guidelines and the Affordable Care Act." *CommuniQue*, National Child Support Enforcement Association, Washington, D.C. (Dec. 2013).

SECTION 4: SUMMARY OF RECOMMENDATIONS

Exhibit 7 summarizes the recommendations of the Commission.

Exhibit 7: Recommendations of the Commission	
Recommended Guidelines Amendments	
Table 1	Amend Table 1 to utilize an updated economic model; current, Nebraska specific, price levels; to include data-supported health care expenses of \$250 per child per year; and to include the self-support reserve into Table 1. The proposed Table 1 is attached to the Commission report.
§4-201	Amend to add "Child support shall not be a factor in determining custody of the children."
§4-204	Amend to add two additional paragraphs which serve to gain compliance with federal requirements of CFR 302.56 (c)(i)(iii) and to establish a default provision for imputation of income.
§4-209	Amend to address consistency in minimum support orders, to clarify that §4-209 support does not apply when the application of other guideline sections has already reduced support below \$50, and to provide the court with discretion to reduce minimal support below \$50 when an obligated parent will be incarcerated beyond 180 calendar days.
§4-215	<p>Amend to incorporate both public and private insurance options as required by federal law.</p> <p>Amend to update the current 3% affordability standard to 5% so as to be consistent with other states and economic data.</p> <p>To recommend that an interested senator introduce legislation to amend Nebraska Revised Statute §42-369(2)(a) from a 3% standard to a 5% standard.</p> <p>Amend to update the current use of "up to \$480" to a consistent, and data-supported, figure of \$250 per child, consistent with the Commission's recommended amendments to Table 1.</p> <p>Amend to update insurance language to address the availability of policies providing coverage for "employee plus children" as current guidelines only address "family" policies.</p> <p>Amend to provide the Court with discretion to consider the quality and value of available health insurance when determining whether or not it is available to a party.</p>
§4-217	Amend to address incarceration as required by federal law in modifying support orders.
§4-218	Amend to link this section of the guidelines to federal poverty standards without need to amend the guidelines each time these standards are modified.
Worksheet 5	Amend to reference sub-sections of §4-203 to promote better data collection for future commissions.

OTHER RECOMMENDATIONS

The 2018 Commission recommends that the next Child Support Advisory Commission be convened in early 2021.

The current Commission believes convening three years from now is necessary to permit sufficient time for future members to perform the duties of the Commission in a quality manner, to permit adequate time to conduct research and collect data, to provide a smoother path to legislative changes which may be necessary to compliment recommendations of the Guideline Commission and to avoid the Commission conducting the majority of its business during an election year.

The commission recommends that the members be appointed, and the commission convened, as early in 2021 as is practical but *no later than June 1, 2021*.

As it relates to guideline §4-205, the 2018 Commission recommends as follows:

That a legislative research request be made by the Judiciary Committee to provide a multistate comparison of guideline deductions and that this comparison be provided to the next Child Support Advisory Commission.

That the next Commission carefully consider whether an amendment of this section is appropriate to remove, or add, deductions. This Commission encourages the next Commission to include discussion of policies behind each deduction, the impact of each deduction on all parties and on guideline support orders, and to consider the impact of any changes to health care and/or health coverage laws and regulations.

APPENDIX A: RECOMMENDATIONS PRESENTED IN STRIKETHROUGH FORMAT

Below are the proposed guideline changes as adopted by motion of the Guideline Commission. All bolded and underlined text is an addition, all strikethrough is the removed language. Only the paragraphs amended are included. We have included a brief summary of the purpose of the amendment as discussed. In general, all amendments were discussed by the committee with the purpose of creating working guidelines which produced equitable and consistent results.

4-201

PURPOSE OF AMENDMENT

To clarify that child support should not influence or be used to determine custody or parenting time.

AMENDMENT

- *Amend §4-201 to add:*
 - **Child support shall not be a factor in determining custody of the children.**

4-204

PURPOSE OF AMENDMENT

To gain compliance with federal requirements of CFR 302.56 (c)(i)(iii) and to address the question of what a full-time work week is and to standardize what imputation looks like.

Discussion was held as to what the appropriate floor should be for a presumption. Discussion included whether a 30, 35, or 40 hour workweek should be used; the original draft included use of a 35 hour work week but was passed with an amendment to use a 30 hour work week in line with the Affordable Care Act definition of a full time week. Discussion was held that this created a presumption, but not a requirement, as imputation could easily occur above the 30 hour mark if other relevant factors were introduced such as employment history or other factors as set forth and required in federal law.

AMENDMENT

- *Amend §4-204 to add a sixth and seventh paragraphs to state:*

- (6) **When using imputed earnings or earning capacity, a person shall be presumed to be capable of working at least 30 hours per week at minimum wage unless the evidence demonstrates this presumption is inappropriate due to disability of the party, a historical capacity of employment greater than a 30 hour work week, or when other relevant factors support the use of other imputed earnings or earning capacity.**
- (7) **When imputing income to a parent the Court shall take into consideration the specific circumstances of the parents, to the extent known. Those factors may include relevant background factors in the case including assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, employment barriers including criminal record, record of seeking work and availability of employment.**

4-205

PURPOSE OF RECOMMENDATION

Discussion was commenced as it relates to the purpose, value, and merit of the respective deductions contained in Section 4-205. Specific discussions were held about whether or not to remove (C) Retirement and (F) Parents Health Insurance. The commission determined that this is a section worthy of review, however the time limitations faced by the commission made detailed analysis impossible.

The commission discussed the need to collect a nationwide survey to determine whether Nebraska's guideline deductions were similar to other states and to permit a full analysis and robust discussion over the merits of each deduction

PROPOSED RECOMMENDATION

- That a legislative research request be made by the Judiciary Committee to provide a multistate comparison of guideline deductions and that this comparison be provided to the next Child Support Advisory Commission.
- That the next commission carefully consider whether an amendment of this section is appropriate to remove, or add, deductions.

4-209

PURPOSE OF AMENDMENT

To address consistency in the entrance of minimum support orders and to address situations in which minimum support (4-209 support) is in conflict with other support provisions which may reduce support obligations below \$50/10% such as deviations, joint custody, and visitation considerations.

To add a provision which addresses when a reduction below \$50 may be appropriate for obligors incarcerated beyond 180 calendar days. Discussion was held regarding whether this section should include more narrow restrictions such as a percentage of stipend but was amended to be advisory, not directory to the court.

AMENDMENT

- *Amend §4-209 to state:*

~~It is recommended that~~ **Even** in very low income cases, a minimum support of \$50, or 10 percent of the obligor's net income, whichever is greater, per month **should** be set. This will help to maintain information on such obligor, such as his or her address, employment, etc., and, hopefully, encourage such person to understand the necessity, duty, and importance of supporting his or her children.

This minimal support should be ordered unless:

1. **A deviation under §4-203 is granted, appropriately documented on worksheet 5, and the basis for said deviation is set forth in the Court's order; and/or**
2. **A lesser support obligation results from an application of an adjustment under § 4-210 and the specific terms are set forth in the Court's order; and/or**
3. **The use of worksheet 3, under the authority of §4-212, suggests a support amount lower than \$50 or 10% of the obligor's net income; and/or**
4. **When the obligor is incarcerated at the time an obligation is established, and evidence establishes the obligor will remain incarcerated for at least an additional 180 calendar days, support may be reduced below \$50 at the discretion of the**

court. If an inmate has access to other sources of income, or is enrolled in a community-based work release program, this section will not apply.

4-212

PROPOSED AMENDMENT

Amendment was proposed to modify the dates at which worksheet 3 becomes applicable and/or mandatory. A specific vote was passed by the commission to *not* amend this section.

4-215

PURPOSE OF AMENDMENTS

- To update the current 3% standard to a 5% standard consistent with other states and economic data.
- To remove the “up to \$480” standard incorporated into the guidelines as the Commission is recommending the inclusion of \$250 into table 1. The Commission determined that the current “up to \$480” provision was not supported by current economic data and was producing an unsupported cost-shift at many income levels.
- To update insurance language to address the availability of policies providing coverage for “employee plus children” policies as current guidelines only address “Family” policies. The Commission discussed the widespread availability of “employee plus children” policies which are typically more affordable than “family” coverage and provide the same benefit to children.
- To include the consideration of public health programs (Medicaid, etc.) as health coverage as required by federal law.
- To provide guideline provisions to address the value of health coverage relative to a family’s situation and to permit the trial courts to disregard insurance it determines should be treated as unavailable due to the circumstances set forth in the amendments.

AMENDMENTS ADOPTED

As required by Neb. Rev. Stat. §42-369(2), the child support order shall address how the parents will provide for the child(ren)'s health care needs through health insurance as well as the nonreimbursed

reasonable and necessary child(ren)'s health care costs that are not included in table 1 that are provided for in § 4-215(B).

(A) Health Insurance. The increased cost to the parent for health insurance for the child(ren) of the parent shall be prorated between the parents. When worksheet 1 is used, it shall be added to the monthly support from line 7, then prorated between the parents to arrive at each party's share of monthly support on line 10 of worksheet 1. The parent requesting an adjustment for health insurance premiums must submit proof of the cost for health insurance coverage of the child(ren). The parent paying the premium receives a credit against his or her share of the monthly support. If not otherwise specified in the support order, "health insurance" includes coverage for medical, dental, orthodontic, optometric, substance abuse, and mental health treatment.

(B) Health Care. Children's health care expenses are specifically included in the guidelines amount of ~~up to \$480~~ **\$250** per child per year. Children's health care needs are to be met by requiring either parent to provide health insurance as required by state law. All nonreimbursed reasonable and necessary children's health care costs in excess of ~~\$480~~ **\$250** per child per year shall be allocated to the obligor parent as determined by the court, but shall not exceed the proportion of the obligor's parental contribution (worksheet 1, line 6). If not otherwise specified in the support order, "health care costs" includes **public or private** coverage for medical, dental, orthodontic, optometric, substance abuse, and mental health treatment.

(C) Cash Medical Support and Health Care Costs for Title IV-D Cases Only.

(i) All child support orders in the Title IV-D program must address how the parties will provide for the child(ren)'s health care needs through **public or private** health care coverage and/or through cash medical support. Cash medical support or the cost of private health insurance is considered reasonable in cost if the cost to the party responsible for providing medical support for the child(ren) does not exceed ~~3~~ **5** percent of his or her gross income. In applying the ~~3~~ **5**-percent standard, the cost is the cost of adding the child(ren) to existing health care coverage or the difference between self-only and **the lesser of employee plus-children or** family health care coverage. Cash medical support payment shall not be ordered if, at the time that the order is issued or modified, the responsible party's income is, or such expense would reduce the responsible party's net income, below the basic subsistence limitation provided in § 4-218. If a court orders a parent to pay cash medical support, it shall be in lieu of, and not in addition to, requiring the parent to also pay reimbursement for reasonable and necessary children's health care costs as set forth in §4-215(B).

(ii) The amount of cash medical support ordered in the case shall be prorated between the parents. When worksheet 1 is used, it shall be added to the monthly support from line 7, then prorated between the parents to arrive at each party's share of monthly support on line 10 of worksheet 1. The parent paying the cash medical support receives a credit against his or her share of the monthly support.

(D) Quality of Health Insurance/Coverage

For purposes of determining whether a party has health insurance or coverage available, the court may evaluate the value of the health coverage and may elect to treat the coverage as unavailable. The court may consider factors such as deductible costs, out-of-pocket maximums, coverage restrictions or other relevant factors.

4-217

PURPOSE OF AMENDMENT

To address the impact of incarceration as required by federal law in modifying support orders.

AMENDMENT

- *Amend §4-217 to add:*

Application of the child support guidelines which would result in a variation by 10 percent or more, but not less than \$25, upward or downward, of the current child support obligation, child care obligation, or health care obligation, due to financial circumstances which have lasted 3 months and can reasonably be expected to last for an additional 6 months, establishes a rebuttable presumption of a material change of circumstances. **Incarceration may not be treated as voluntary unemployment in establishing or modifying support orders.**

4-218

PURPOSE OF AMENDMENT

A clean-up proposal to link the guidelines to federal poverty standards without need to amend guidelines each time a change is made.

PROPOSED AMENDMENT

- Amend §4-218 to say:

A parent's support, child care, and health care obligation shall not reduce his or her net income below the ~~minimum of \$1,012~~ net monthly **amount established by the federal poverty guidelines** for one person, ~~or the poverty guidelines~~ as updated annually in the Federal Register by the U.S. Department of Health and Human Services under authority of 42 U.S.C. § 9902(2), except minimum support may be ordered as defined in § 4-209.

WORKSHEET 5

PURPOSE OF PROPOSED AMENDMENT

Federal regulations require the commission review the reason for, and frequency of, deviations from the guidelines, but worksheet 5 does not lend itself to data collection as it permits narrative descriptions of deviations. This amendment would require reference to a specific section of 4-203 rather than a narrative description.

PROPOSED AMENDMENT

- Amend Worksheet 5, line 10, column 1, as follows:

10. Further deviations (specify subsection of §4-203)

(a) reason 1 _____ 4-203 (___)

(b) reason 2 _____ 4-203 (___)

(c) reason 3 _____ 4-203 (___)

(d) Total:

TABLE 1

PURPOSE OF AMENDMENT

- Amend Table 1 to utilize an updated economic model; current, Nebraska specific, price levels; to include data-supported health care expenses of \$250 per child per year; and to include the self-support reserve into Table 1. Proposed Table 1 included as Exhibit ____.
- A substantial amount of the Commission’s time was dedicated to the collection and review of current economic data as it relates to child rearing expenses. Discussion reflected the commissions goals that and updated table is data supported and will produce reasonable and data-supported support orders. Detailed data reviewed is contained in the Commissions full report.
- Of significant note, the Commission *unanimously* recommended the updated Table 1 incorporated herein.

PROPOSED AMENDMENT

- Amend in its entirety as set forth below.

12/10/2018						
Table B.1: Proposed Updated Table for Nebraska (up to \$250 per child per year included in table)						
Combined Monthly Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
500	50	50	50	50	50	50
550	50	50	50	50	50	50
600	50	50	50	50	50	50
650	50	50	50	50	50	50
700	50	50	50	50	50	50
750	50	50	50	50	50	50
800	50	50	50	50	50	50
850	50	50	50	50	50	50
900	50	50	50	50	50	50
950	50	50	50	50	50	50
1000	50	50	50	50	50	50
1050	50	50	50	50	50	50
1100	50	62	70	75	77	79
1150	69	97	110	117	120	124
1200	94	132	150	160	164	169
1250	119	167	190	202	207	214
1300	144	202	230	245	251	259

1350	169	237	270	287	294	304
1400	194	272	310	330	338	349
1450	219	307	350	372	381	394
1500	244	342	390	415	425	439
1550	269	377	430	457	468	484
1600	294	412	470	500	512	529
1650	319	447	510	542	555	574
1700	329	482	550	585	599	619
1750	338	505	590	627	642	664
1800	348	519	630	670	686	709
1850	358	533	660	712	729	754
1900	367	547	678	755	773	799
1950	377	561	695	776	816	844
2000	387	575	712	796	860	889
2050	396	589	730	815	897	934
2100	406	603	747	835	918	979
2150	416	617	764	854	939	1021
2200	425	631	782	873	961	1044
2250	435	645	799	893	982	1067
2300	445	659	817	912	1003	1091
2350	454	673	834	932	1025	1114
2400	464	687	851	951	1046	1137
2450	474	701	869	970	1067	1160
2500	483	715	886	990	1089	1184
2550	493	729	904	1009	1110	1207
2600	503	743	921	1029	1132	1230
2650	512	757	938	1048	1153	1253
2700	522	771	956	1067	1174	1276
2750	532	785	973	1087	1196	1300
2800	541	799	990	1106	1217	1323
2850	551	813	1008	1126	1238	1346
2900	560	827	1025	1145	1260	1369
2950	570	841	1043	1165	1281	1392
3000	580	855	1060	1184	1302	1416
3050	589	869	1077	1203	1324	1439
3100	599	883	1095	1223	1345	1462
3150	609	897	1112	1242	1366	1485
3200	618	911	1129	1262	1388	1508
3250	628	925	1147	1281	1409	1532
3300	637	937	1162	1298	1428	1552
3350	645	949	1177	1314	1446	1572
3400	654	960	1192	1331	1464	1592
3450	663	972	1207	1348	1482	1611

3500	671	984	1221	1364	1501	1631
3550	680	996	1236	1381	1519	1651
3600	689	1008	1251	1398	1537	1671
3650	697	1020	1266	1414	1556	1691
3700	706	1032	1281	1431	1574	1711
3750	715	1044	1296	1447	1592	1731
3800	723	1056	1311	1464	1610	1751
3850	732	1068	1326	1481	1629	1770
3900	741	1080	1340	1497	1647	1790
3950	749	1092	1355	1514	1665	1810
4000	755	1098	1363	1522	1675	1820
4050	760	1104	1370	1531	1684	1830
4100	765	1110	1378	1539	1693	1840
4150	770	1116	1385	1547	1702	1850
4200	775	1122	1393	1556	1711	1860
4250	781	1128	1400	1564	1720	1870
4300	786	1134	1407	1572	1729	1880
4350	791	1140	1415	1580	1738	1890
4400	796	1147	1422	1589	1747	1900
4450	801	1153	1430	1597	1757	1909
4500	805	1159	1437	1605	1766	1919
4550	809	1165	1444	1613	1775	1929
4600	814	1171	1452	1622	1784	1939
4650	818	1177	1459	1630	1793	1949
4700	823	1183	1466	1638	1802	1959
4750	827	1189	1474	1646	1811	1968
4800	831	1196	1481	1655	1820	1978
4850	836	1202	1489	1663	1829	1988
4900	840	1208	1496	1671	1838	1998
4950	844	1214	1503	1679	1847	2008
5000	849	1220	1511	1687	1856	2018
5050	853	1226	1518	1696	1865	2028
5100	858	1232	1525	1704	1874	2037
5150	863	1240	1535	1715	1886	2050
5200	869	1249	1546	1727	1899	2065
5250	874	1258	1557	1739	1913	2079
5300	880	1267	1567	1751	1926	2093
5350	886	1276	1578	1763	1939	2108
5400	892	1284	1589	1775	1952	2122
5450	898	1293	1599	1786	1965	2136
5500	903	1302	1610	1798	1978	2150
5550	909	1311	1621	1810	1991	2165
5600	915	1319	1631	1822	2005	2179

5650	921	1328	1642	1834	2018	2193
5700	927	1337	1653	1846	2031	2207
5750	932	1346	1663	1858	2044	2222
5800	938	1354	1674	1870	2057	2236
5850	942	1359	1680	1876	2064	2243
5900	945	1362	1684	1881	2069	2249
5950	949	1366	1688	1886	2074	2255
6000	952	1369	1692	1890	2079	2260
6050	956	1372	1696	1895	2084	2266
6100	959	1376	1701	1899	2089	2271
6150	963	1379	1705	1904	2095	2277
6200	966	1383	1709	1909	2100	2282
6250	969	1386	1713	1913	2105	2288
6300	972	1389	1716	1917	2109	2292
6350	973	1391	1719	1920	2112	2295
6400	975	1393	1721	1922	2115	2298
6450	976	1396	1723	1925	2117	2302
6500	978	1398	1726	1928	2120	2305
6550	979	1400	1728	1930	2123	2308
6600	981	1402	1730	1933	2126	2311
6650	982	1405	1733	1935	2129	2314
6700	984	1407	1735	1938	2132	2317
6750	986	1410	1738	1942	2136	2322
6800	991	1416	1746	1950	2145	2332
6850	996	1421	1753	1959	2154	2342
6900	1000	1427	1761	1967	2164	2352
6950	1005	1433	1769	1976	2173	2362
7000	1010	1438	1776	1984	2182	2372
7050	1014	1444	1784	1992	2192	2382
7100	1019	1450	1791	2001	2201	2392
7150	1024	1455	1799	2009	2210	2402
7200	1029	1461	1806	2018	2219	2413
7250	1033	1467	1814	2026	2229	2423
7300	1038	1472	1821	2035	2238	2433
7350	1043	1478	1829	2043	2247	2443
7400	1048	1484	1837	2051	2257	2453
7450	1053	1491	1846	2062	2268	2465
7500	1060	1502	1859	2077	2285	2483
7550	1067	1514	1873	2092	2301	2502
7600	1074	1525	1887	2108	2318	2520
7650	1081	1537	1901	2123	2335	2538
7700	1088	1549	1914	2138	2352	2557
7750	1094	1560	1928	2154	2369	2575

7800	1101	1572	1942	2169	2386	2593
7850	1108	1583	1955	2184	2403	2612
7900	1115	1595	1969	2200	2419	2630
7950	1122	1607	1983	2215	2436	2648
8000	1129	1618	1997	2230	2453	2667
8050	1136	1630	2010	2246	2470	2685
8100	1143	1641	2024	2261	2487	2703
8150	1149	1651	2036	2274	2502	2719
8200	1154	1656	2044	2283	2511	2730
8250	1158	1662	2052	2292	2521	2740
8300	1163	1667	2059	2300	2530	2750
8350	1167	1672	2067	2309	2540	2761
8400	1172	1678	2075	2318	2549	2771
8450	1176	1683	2083	2326	2559	2782
8500	1180	1688	2091	2335	2569	2792
8550	1185	1694	2098	2344	2578	2803
8600	1189	1699	2106	2353	2588	2813
8650	1192	1702	2107	2353	2589	2814
8700	1195	1705	2108	2354	2590	2815
8750	1197	1709	2108	2355	2591	2816
8800	1200	1712	2109	2356	2592	2817
8850	1203	1715	2110	2357	2593	2818
8900	1205	1718	2111	2358	2593	2819
8950	1208	1721	2112	2359	2594	2820
9000	1210	1724	2112	2359	2595	2821
9050	1213	1728	2113	2360	2596	2822
9100	1217	1734	2120	2368	2605	2832
9150	1222	1743	2130	2380	2618	2845
9200	1227	1751	2141	2391	2630	2859
9250	1232	1759	2151	2402	2643	2872
9300	1237	1767	2161	2414	2655	2886
9350	1243	1776	2171	2425	2667	2899
9400	1248	1784	2181	2436	2680	2913
9450	1253	1792	2191	2447	2692	2926
9500	1258	1801	2201	2459	2705	2940
9550	1263	1809	2211	2470	2717	2953
9600	1268	1817	2221	2481	2729	2967
9650	1273	1825	2231	2492	2742	2980
9700	1278	1834	2241	2504	2754	2994
9750	1283	1842	2252	2515	2766	3007
9800	1287	1849	2260	2525	2777	3019
9850	1291	1855	2269	2535	2788	3031
9900	1295	1862	2278	2544	2799	3042

9950	1299	1868	2286	2554	2809	3054
10000	1303	1875	2295	2563	2820	3065
10050	1307	1881	2303	2573	2830	3076
10100	1311	1888	2312	2583	2841	3088
10150	1315	1894	2321	2592	2851	3099
10200	1319	1901	2329	2602	2862	3111
10250	1323	1907	2338	2611	2872	3122
10300	1327	1913	2346	2621	2883	3134
10350	1331	1920	2355	2630	2894	3145
10400	1335	1926	2364	2640	2904	3157
10450	1339	1933	2372	2650	2915	3168
10500	1343	1939	2381	2659	2925	3180
10550	1347	1946	2389	2669	2936	3191
10600	1351	1952	2398	2678	2946	3203
10650	1355	1959	2406	2688	2957	3214
10700	1359	1965	2415	2697	2967	3225
10750	1364	1972	2422	2705	2976	3235
10800	1369	1979	2429	2713	2985	3244
10850	1374	1985	2436	2721	2993	3254
10900	1379	1992	2443	2729	3002	3263
10950	1384	1999	2450	2737	3011	3273
11000	1389	2006	2457	2745	3019	3282
11050	1394	2012	2464	2753	3028	3291
11100	1398	2019	2471	2761	3037	3301
11150	1403	2026	2479	2769	3045	3310
11200	1408	2033	2486	2776	3054	3320
11250	1413	2039	2493	2784	3063	3329
11300	1418	2046	2500	2792	3072	3339
11350	1423	2053	2507	2800	3080	3348
11400	1428	2060	2514	2808	3089	3358
11450	1433	2066	2521	2816	3098	3367
11500	1438	2073	2528	2824	3106	3377
11550	1443	2080	2535	2832	3115	3386
11600	1448	2087	2542	2840	3124	3396
11650	1453	2093	2549	2848	3132	3405
11700	1458	2100	2556	2856	3141	3414
11750	1463	2107	2564	2863	3150	3424
11800	1468	2114	2571	2871	3159	3433
11850	1473	2120	2578	2879	3167	3443
11900	1478	2127	2585	2887	3176	3452
11950	1483	2134	2592	2895	3185	3462
12000	1488	2141	2599	2903	3193	3471
12050	1493	2147	2606	2911	3202	3481

12100	1498	2154	2613	2919	3211	3490
12150	1503	2161	2620	2927	3219	3500
12200	1508	2167	2627	2935	3228	3509
12250	1513	2174	2634	2943	3237	3518
12300	1518	2181	2641	2951	3246	3528
12350	1523	2188	2649	2958	3254	3537
12400	1528	2194	2656	2966	3263	3547
12450	1533	2201	2663	2974	3272	3556
12500	1538	2208	2670	2982	3280	3566
12550	1542	2215	2677	2990	3289	3575
12600	1547	2221	2684	2998	3298	3585
12650	1552	2228	2691	3006	3306	3594
12700	1557	2235	2698	3014	3315	3604
12750	1562	2242	2705	3022	3324	3613
12800	1567	2248	2712	3030	3333	3623
12850	1572	2255	2719	3038	3341	3632
12900	1577	2262	2726	3045	3350	3641
12950	1582	2269	2734	3053	3359	3651
13000	1587	2275	2741	3061	3367	3660
13050	1592	2282	2748	3069	3376	3670
13100	1597	2289	2755	3077	3385	3679
13150	1602	2296	2762	3085	3394	3689
13200	1607	2302	2769	3093	3402	3698
13250	1612	2309	2776	3101	3411	3708
13300	1617	2316	2783	3109	3420	3717
13350	1622	2323	2790	3117	3428	3727
13400	1627	2329	2797	3125	3437	3736
13450	1632	2336	2804	3132	3446	3745
13500	1637	2343	2811	3140	3454	3755
13550	1642	2350	2819	3148	3463	3764
13600	1647	2356	2826	3156	3472	3774
13650	1652	2363	2833	3164	3481	3783
13700	1657	2370	2840	3172	3489	3793
13750	1662	2377	2847	3180	3498	3802
13800	1667	2383	2854	3188	3507	3812
13850	1672	2390	2861	3196	3515	3821
13900	1677	2397	2868	3204	3524	3831
13950	1682	2404	2875	3212	3533	3840
14000	1686	2410	2882	3219	3541	3850
14050	1691	2417	2889	3227	3550	3859
14100	1696	2424	2896	3235	3559	3868
14150	1701	2431	2904	3243	3568	3878
14200	1706	2437	2911	3251	3576	3887

14250	1711	2444	2918	3259	3585	3897
14300	1716	2451	2925	3267	3594	3906
14350	1721	2458	2932	3275	3602	3916
14400	1726	2464	2939	3283	3611	3925
14450	1731	2471	2946	3291	3620	3935
14500	1736	2478	2953	3299	3628	3944
14550	1741	2485	2960	3307	3637	3954
14600	1746	2491	2967	3314	3646	3963
14650	1751	2498	2974	3322	3655	3973
14700	1756	2505	2981	3330	3663	3982
14750	1761	2511	2988	3338	3672	3991
14800	1766	2518	2996	3346	3681	4001
14850	1771	2525	3003	3354	3689	4010
14900	1776	2532	3010	3362	3698	4020
14950	1781	2538	3017	3370	3707	4029
15000	1786	2545	3024	3378	3715	4039
15050	1791	2552	3031	3386	3724	4048
15100	1796	2559	3038	3394	3733	4058
15150	1801	2565	3045	3401	3742	4067
15200	1806	2572	3052	3409	3750	4077
15250	1811	2579	3059	3417	3759	4086
15300	1816	2586	3066	3425	3768	4095
15350	1821	2592	3073	3433	3776	4105
15400	1826	2599	3081	3441	3785	4114
15450	1831	2606	3088	3449	3794	4124
15500	1835	2613	3095	3457	3802	4133
15550	1840	2619	3102	3465	3811	4143
15600	1845	2626	3109	3473	3820	4152
15650	1850	2633	3116	3481	3829	4162
15700	1855	2640	3123	3488	3837	4171
15750	1860	2646	3130	3496	3846	4181
15800	1865	2653	3137	3504	3855	4190
15850	1870	2660	3144	3512	3863	4200
15900	1875	2667	3151	3520	3872	4209
15950	1880	2673	3158	3528	3881	4218
16000	1885	2680	3166	3536	3890	4228
16050	1890	2687	3173	3544	3898	4237
16100	1895	2694	3180	3552	3907	4247
16150	1900	2700	3187	3560	3916	4256
16200	1905	2707	3194	3568	3924	4266
16250	1910	2714	3201	3575	3933	4275
16300	1915	2721	3208	3583	3942	4285
16350	1920	2727	3215	3591	3950	4294

16400	1925	2734	3222	3599	3959	4304
16450	1930	2741	3229	3607	3968	4313
16500	1935	2748	3236	3615	3977	4322
16550	1940	2754	3243	3623	3985	4332
16600	1945	2761	3251	3631	3994	4341
16650	1950	2768	3258	3639	4003	4351
16700	1955	2775	3265	3647	4011	4360
16750	1960	2781	3272	3655	4020	4370
16800	1965	2788	3279	3662	4029	4379
16850	1970	2795	3286	3670	4037	4389
16900	1975	2802	3293	3678	4046	4398
16950	1979	2808	3300	3686	4055	4408
17000	1984	2815	3307	3694	4064	4417
17050	1989	2822	3314	3702	4072	4427
17100	1994	2828	3321	3710	4081	4436
17150	1999	2835	3328	3718	4090	4445
17200	2004	2842	3336	3726	4098	4455
17250	2009	2849	3343	3734	4107	4464
17300	2014	2855	3350	3742	4116	4474
17350	2019	2862	3357	3750	4124	4483
17400	2024	2869	3364	3757	4133	4493
17450	2029	2876	3371	3765	4142	4502
17500	2034	2882	3378	3773	4151	4512
17550	2039	2889	3385	3781	4159	4521
17600	2044	2896	3392	3789	4168	4531
17650	2049	2903	3399	3797	4177	4540
17700	2054	2909	3406	3805	4185	4550
17750	2059	2916	3413	3813	4194	4559
17800	2064	2923	3421	3821	4203	4568
17850	2069	2930	3428	3829	4211	4578
17900	2074	2936	3435	3837	4220	4587
17950	2079	2943	3442	3844	4229	4597
18000	2084	2950	3449	3852	4238	4606
18050	2089	2957	3456	3860	4246	4616
18100	2094	2963	3463	3868	4255	4625
18150	2099	2970	3470	3876	4264	4635
18200	2104	2977	3477	3884	4272	4644
18250	2109	2984	3484	3892	4281	4654
18300	2114	2990	3491	3900	4290	4663
18350	2119	2997	3498	3908	4299	4672
18400	2123	3004	3506	3916	4307	4682
18450	2128	3011	3513	3924	4316	4691
18500	2133	3017	3520	3931	4325	4701

18550	2138	3024	3527	3939	4333	4710
18600	2143	3031	3534	3947	4342	4720
18650	2148	3038	3541	3955	4351	4729
18700	2153	3044	3548	3963	4359	4739
18750	2158	3051	3555	3971	4368	4748
18800	2163	3058	3562	3979	4377	4758
18850	2168	3065	3569	3987	4386	4767
18900	2173	3071	3576	3995	4394	4777
18950	2178	3078	3583	4003	4403	4786
19000	2183	3085	3590	4011	4412	4795
19050	2188	3092	3598	4018	4420	4805
19100	2193	3098	3605	4026	4429	4814
19150	2198	3105	3612	4034	4438	4824
19200	2203	3112	3619	4042	4446	4833
19250	2208	3119	3626	4050	4455	4843
19300	2213	3125	3633	4058	4464	4852
19350	2218	3132	3640	4066	4473	4862
19400	2223	3139	3647	4074	4481	4871
19450	2228	3146	3654	4082	4490	4881
19500	2233	3152	3661	4090	4499	4890
19550	2238	3159	3668	4098	4507	4899
19600	2243	3166	3675	4106	4516	4909
19650	2248	3172	3683	4113	4525	4918
19700	2253	3179	3690	4121	4533	4928
19750	2258	3186	3697	4129	4542	4937
19800	2263	3193	3704	4137	4551	4947
19850	2267	3199	3711	4145	4560	4956
19900	2272	3206	3718	4153	4568	4966
19950	2277	3213	3725	4161	4577	4975
20000	2282	3220	3732	4169	4586	4985

NO AMENDMENTS TO THE FOLLOWING SECTIONS:

202,203,206, 207, 208, 210, 211, 213, 214, 216, 219, 220, 221 OR 222

NO AMENDMENTS TO WORKSHEETS 1, 2, 3, 4 OR 6

APPENDIX B: CENTER FOR POLICY RESEARCH'S REPORT

(ATTACHED SEPARATELY)

APPENDIX C: PRESENTATION BY PROFESSOR COMANOR

(ATTACHED SEPARATELY)

APPENDIX D: STATEMENT FROM LEGAL AID OF NEBRASKA

(ATTACHED SEPARATELY)

Review of the Nebraska Child Support Guidelines

Submitted to:
Nebraska Child Support Advisory Commission

Submitted by:
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December 27, 2018

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

CONTENTS

Section 1: Purpose and Background	1
Organization of Report	1
Nebraska Children and Their Parents	2
Calculation of Support Order: The Current Nebraska Guidelines Table	2
Section 2: Federal Requirements of State Guidelines	4
Expanded Federal Requirements of State Guidelines	4
Assessment of Nebraska’s Compliance with Expanded Federal Requirements	6
Section 3: Economic Data on the Cost of Raising Children	15
Summary of Assumptions and Economic Data Underlying Existing Table	15
Overview of Rothbarth Methodology and Early Studies	17
Studies underlying Current State Guidelines	19
New Studies of Child-Rearing Expenditures and Use in State Guidelines	20
2010 Betson-Rothbarth Measurements	20
New Jersey and California Studies by Rodgers	21
USDA Study	22
Comanor Study	23
Underlying Data Source of Economic Studies	24
Appropriateness of National Data to Nebraska’s Economy	24
Assessment of the Existing Nebraska Table and Development of An Updated Table	25
Comparisons to Neighboring States	28
Updating the Child Support Table	29
Updating the Amount of Ordinary Medical Expenses in the Table	29
Updating the Basic Subsistence Limitation in the Table	31
Comparisons of Updated Tables	31
Section 4: Findings from the Analysis of Case File Data and Other Data	34
Findings from the Analysis of Case File Data	34
Number of Children and Gender of the Obligated Parent	35
Income of the Obligated Parent	36
Guidelines Application and Deviations	36
Order Amounts	38
Application of the Low-Income Adjustment	39
Income Imputation and Default	40
Analysis of Labor Market Data and Other Data	41
Section 5: Conclusions and Major Findings	44
Major Findings	44
Conclusions	45
Appendix A: Data and Assumptions underlying Updated Table	46
Consumer Expenditure Data	47
Steps Used to Develop a Child Support Table from Betson-Rothbarth Measurements	50

SECTION 1: PURPOSE AND BACKGROUND

Nebraska is conducting its quadrennial review of its child support guidelines. The Nebraska child support guidelines are set in Nebraska Supreme Court Rules Chapter 4, Article 2, 4-201 to 4-220. Nebraska statute (Neb. Rev. State. 43-3342.05) provides for the formation of the Child Support Advisory Commission to review the guidelines, and if appropriate, recommend changes. The Commission is staffed through the Legislative Council. The Center for Policy Research (CPR)¹ was contracted to provide technical assistance, specifically to help meet federal requirements to review economic data on the cost of raising children and analyze case file data, and help the Commission navigate the expanded federal requirements.² States essentially have until after completion of their quadrennial review commencing after December 2016 to meet the expanded federal requirements.

Nebraska last reviewed its guidelines in 2014 so the expanded federal regulations must be met for this 2018 review. The Commission's findings and recommendations are provided in a separate report to the Supreme Court. This report and a report from another economist (Dr. William Comanor) are appended to the Commission's report. Ultimately, any amendments to the guidelines are at the discretion of the Supreme Court.

Due to the short-time frame of this review, preliminary information that is now finalized in this report was provided to the Commission in powerpoint presentations on October 26 and November 28 and through a written document dated December 11.

ORGANIZATION OF REPORT

The remainder of this Section provides more background information about Nebraska children and families and the existing guidelines.

Section 2 summarizes federal requirements of state guidelines, including the expanded federal requirements and assesses whether Nebraska's current guidelines fulfill the federal requirements.

Section 3 reviews the economic evidence on the cost of raising children, as federally required, and compares it to the existing table and develops an updated table.

Section 4 reviews case file data, labor market data and other data

Section 5 provides conclusions and summarizes major findings.

¹ CPR is a non-profit organization that conducts evaluations of demonstration projects and provides technical assistance on government programs and policies affecting families. CPR has provided over 25 states with technical assistance on their guidelines reviews in the past 12 years. More information about CPR can be found at <http://centerforpolicyresearch.org/>.

² U.S. Department of Health and Human Services. (Dec. 20, 2016). "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs." *Federal Register*, Vol. 81, No. 244, p. 93562. <https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-29598.pdf>.

NEBRASKA CHILDREN AND THEIR PARENTS

Child support is an important source of income to many Nebraska children. Based on the U.S. Census American Community Survey, there were 474,597 children living in Nebraska in 2017, while the total State population was about 1.9 million.³ The 2018 Kids Count profile of Nebraska children reports several statistics relevant to child support based on 2016 data.⁴

- 132,000 Nebraska children (29%) lived in single-parent families;
- 66,000 Nebraska children (14%) lived at or below poverty;
- 91,000 Nebraska children (19%) have parents who lack secure employment;
- 105,000 Nebraska children (22%) are living in a household with a high housing cost burden;⁵ and
- 24,000 Nebraska children (5%) lack health insurance.

In 2017, Child Support Enforcement (CSE) of the Nebraska Department of Health & Human Services reported 106,796 child support cases to the federal Office of Child Support Enforcement (OCSE) and over \$200 million in distributed child support collections.⁶

Although state data are not available, a 2010 national study found that without child support, the child poverty rate would be 4.4 percentage points more.⁷ Nonetheless, other national research finds that 24 percent of nonresidential parents live in poverty.⁸ In other words, many parents obligated to pay support have limited ability to pay.

CALCULATION OF SUPPORT ORDER: THE CURRENT NEBRASKA GUIDELINES TABLE

At the core of the Nebraska guidelines calculation is a table of basic support obligations that is called “Incomes Shares Formula: Table 1.” Exhibit 1 provides an excerpt of the existing table. The support obligation is determined by prorating the obligated parent’s share of the basic obligation from the table. For example, if the income of the obligated parent is \$2,000 per month and the income of the parent receiving support is \$1,500 per month, the combined monthly income is \$3,500 per month. The basic obligation for a combined monthly income of \$3,500 for one child, based on Exhibit 1, is \$835 per month. This reflects economic data on how much parents spend on the child together, if they lived in

³ U.S. Census American Community Survey 2018. Retrieved from <https://factfinder.census.gov>

⁴ The Annie E. Casey. (2018). *2018 Kids Count Data Book: State Trends in Child Well-Being*. Retrieved from <https://www.aecf.org/m/resourcedoc/aecf-2018kidscountdatabook-2018.pdf>

⁵ High housing cost burden is defined as more than 30 percent of monthly household pretax income is spent on housing related expenses, including rent, mortgage payments, taxes and insurance.

⁶ Federal Office of Child Support Enforcement. (2018.) *Office of Child Support Preliminary Report 2017*. Retrieved from https://www.acf.hhs.gov/sites/default/files/programs/css/fy_2017_preliminary_data_report.pdf?nocache=1529610354.

⁷ Sorensen, Elaine. (2010). *Child Support Plays an Increasingly Important Role for Poor Custodial Families*. Urban Institute. Retrieved from <https://www.urban.org/sites/default/files/publication/29421/412272-Child-Support-Plays-an-Increasingly-Important-Role-for-Poor-Custodial-Families.PDF>.

⁸ Sorensen, Elaine. (February 2014). *Employment and Family Structure Changes: Implications for Child Support*. Presentation to the National Child Support Enforcement Association, Washington, D.C. February 7, 2014.

the same household and shared financial resources. The amount for which each parent is financially responsible is based on that parent's prorated share of the basic obligation (\$835 in this scenario). The obligor's prorated share is 57.1 percent (*i.e.*, \$2,000, which is the obligated parent's income, divided by \$3,500, which is the combined income). Hence, the obligor's prorated share of the basic obligation is \$477 per month (57.1% multiplied by \$835). This is the basis of the child support obligation, although there may be additional adjustments for other considerations such as for the child's health insurance premium or when the parents share custody.

Exhibit 1: Excerpt from the
Income Shares Formula; Table 1.

Combined Adjusted Gross Income	One Child	Two Children	Three Children
3000	730	1055	1240
3050	740	1067	1254
3100	749	1080	1268
3150	759	1093	1282
3200	770	1105	1296
3250	781	1116	1308
3300	792	1129	1319
3350	803	1144	1334
3400	814	1159	1352
3450	825	1175	1369
3500	835	1190	1386
3550	846	1205	1404
3600	853	1220	1421

SECTION 2: FEDERAL REQUIREMENTS OF STATE GUIDELINES

The federal rules requiring statewide guidelines and the periodic review of child support guidelines were expanded in December 2016.⁹ Commonly called the Modernization Rule (MR), the new guidelines requirements are shown in Exhibit 2.

Essentially, prior to the MR, states were required to:

- Have one set of guidelines to be used by judges (and all persons within a state with the authority) to issue a child support order;
- Consider all earnings and income of the noncustodial parent in the calculation of support;
- Provide for the child's healthcare coverage; and
- Review their guidelines at least once every four years.

Nebraska has always fulfilled these requirements.

EXPANDED FEDERAL REQUIREMENTS OF STATE GUIDELINES

The previous requirements are still in place. Exhibit 2 shows excerpts of the expanded federal requirements pertinent to state guidelines. The MR requirements become effective a year after a state's next review commencing after 2016, which is the year that the expanded rules were adopted (see 45 C.F.R. § 302.56(a)).

EXHIBIT 2: FEDERAL REQUIREMENTS PERTAINING TO CHILD SUPPORT GUIDELINES (45 C.F.R § 302.56)

- (a) Within 1 year after completion of the State's next quadrennial review of its child support guidelines, that commences more than 1 year after publication of the final rule, in accordance with § 302.56(e), as a condition of approval of its State plan, the State must establish one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support order amounts within the State that meet the requirements in this section.
- (b) The State must have procedures for making the guidelines available to all persons in the State.
- (c) The child support guidelines established under paragraph (a) of this section must at a minimum:
 - (1) Provide that the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay that:
 - (i) Takes into consideration all earnings and income of the noncustodial parent (and at the State's discretion, the custodial parent);
 - (ii) Takes 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
 - (iii) If imputation of income is authorized, takes 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

⁹ U.S. Department of Health and Human Services. (Dec. 20, 2016). "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs." *Federal Register*, Vol. 81, No. 244, p. 93562. <https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-29598.pdf>.

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.

- (2) 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;
 - (3) Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders; and
 - (4) Be based on specific descriptive and numeric criteria and result in a computation of the child support obligation.
- (d) The State must include a copy of the child support guidelines in its State plan.
- (e) The State must review, and revise, if appropriate, the child support guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support order amounts. The State shall 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.
- (h) As part of the review of a State's child support guidelines required under paragraph (e) of this section, 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;
 - (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.

Other Provisions of the New Federal Rule that Indirectly affect Low-Income Provisions of State Guidelines §303.4

Establishment of support obligations. (b) Use appropriate State statutes, procedures, and legal processes in establishing and modifying support obligations in accordance with §302.56 of this chapter, which must include, at a minimum: (1) Taking reasonable steps to develop a sufficient factual basis for the support obligation, through such means as investigations, case conferencing, interviews with both parties, appear and disclose procedures, parent questionnaires, testimony, and electronic data sources; (2) Gathering information regarding the earnings and income of the noncustodial parent and, when earnings and income information is unavailable or insufficient in a case gathering available information about the specific circumstances of the noncustodial parent, including such factors as those listed under §302.56(c)(1)(iii) of this chapter; (3) Basing the support obligation or recommended support obligation amount on the earnings and income of the noncustodial parent whenever available. If evidence of earnings and income is unavailable or insufficient to use as the measure of the noncustodial parent's ability to pay, then the support obligation or recommended support obligation amount should be based on available information about the specific circumstances of the noncustodial parent, including such factors as those listed in §302.56(c)(1)(iii) of this chapter. (4) Documenting the factual basis for the support obligation or the recommended support obligation in the case record.

§303.8 Review and adjustment of child support orders. * * * * (b) * * * (2) The State may elect in its State plan to initiate review of an order, after learning that a noncustodial parent will be incarcerated for more than 180 calendar days, without the need for a specific request and, upon notice to both parents, review, and if appropriate, adjust the order, in accordance with paragraph (b)(1)(i) of this section. * * * * (7) The State must provide notice— (i) Not less than once every 3 years to both parents subject to an order informing the parents of their right to request the State to review and, if appropriate, adjust the order consistent with this section. The notice must specify the place and manner in which the request should be made. The

Initial notice may be included in the order. (ii) If the State has not elected paragraph (b)(2) of this section, within 15 business days of when the IV-D agency learns that a noncustodial parent will be incarcerated for more than 180 calendar days, to both parents informing them of the right to request the State to review and, if appropriate, adjust the order, consistent with this section. The notice must specify, at a minimum, the place and manner in which the request should be made. Neither the notice nor a review is required under this paragraph if the State has a comparable law or rule that modifies a child support obligation upon incarceration by operation of State law. (c) * * * Such reasonable quantitative standard must not exclude incarceration as a basis for determining whether an inconsistency between the existing child support order amount and the amount of support determined as a result of a review is adequate grounds for petitioning for adjustment of the order.

ASSESSMENT OF NEBRASKA'S COMPLIANCE WITH EXPANDED FEDERAL REQUIREMENTS

The expanded MR requirements are grouped into nine requirements for organizational purposes. Each is discussed in context of Nebraska's current guidelines. The assessment is limited to provisions that are in the Nebraska guidelines and does not consider provisions in statute, case law, or general practices. The discussion also compares Nebraska's provisions and practices to those of other states when appropriate.¹⁰

MR Requirements of State Guidelines

1. *Take into the consideration the obligated parent's ability to pay through a self-support reserve (SSR) or another mechanism.*

The existing Nebraska guidelines (§ 4-218, which is shown in Exhibit 3) fulfills this federal requirement by providing a basic subsistence limitation. In addition, Nebraska guidelines (§ 4-209, which is also shown in Exhibit 3) recommends the establishment of a minimum order even in very low-income cases.

EXHIBIT 3: EXCERPTS FROM NEBRASKA GUIDELINES

§ 4-218. Basic subsistence limitation.

A parent's support, child care, and health care obligation shall not reduce his or her net income below the minimum of \$1,012 net monthly for one person, or the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services under authority of 42 U.S.C. § 9902(2), except minimum support may be ordered as defined in § 4-209.

§ 4-209. Minimum support.

It is recommended that even in very low income cases, a minimum support of \$50, or 10 percent of the obligor's net income, whichever is greater, per month be set. This will help to maintain information on such obligor, such as his or her address, employment, etc., and, hopefully, encourage such person to understand the necessity, duty, and importance of supporting his or her children.

¹⁰ As of September 2018, states known to have made changes to conform to the MR requirements include Arizona, Georgia, Massachusetts, North Dakota, Rhode Island, and Utah. The list, however, is rapidly changing. The fact that the count is not at 50 yet reflects that states have till a year after their next review commencing after December 2016 and most states are on four-year review cycles.

The federal rule explicitly mentions a self-support reserve (SSR). Nebraska’s basic subsistence limitation is the same thing as a SSR. Almost 40 states provide some sort of SSR, although it is not always explicit or called that in a state’s guidelines. There are many variations of the SSR and its application. They vary by according to whom, what, where, and how. The whom concerns whether the SSR should be applied to the obligated parent only or both parents. The what is what amount should be used for the SSR and what amount should be ordered if the obligated parent’s income is below the SSR. The where is where the SSR should be applied (*e.g.*, incorporated into the table, the worksheet, or both). The how is how to phase-out the SSR and phase-in the economic evidence on child-rearing expenditures gradually.

For Whom the SSR/Basic Subsistence Limitation Applies. The expanded federal regulation gives states the options to apply the SSR/basic subsistence limitation to both parents. Exhibit 4 shows how such an adjustment could look. The application of the SSR/basic subsistence limitation in Exhibit 4 produces the same final order amount regardless whether the SSR/basic subsistence limitation is applied to both parents or the obligated parent only. The advantage of showing the SSR/basic subsistence limitation for both parents, however, is the appearance of fairness.

Exhibit 4: Illustration of How the SSR Can Be Applied to Both Parents where Parent A Is the Obligated Parent			
Lines from the Worksheet	Parent A	Parent B	Combined
1. Monthly Net Income (after-tax income from 40 hr X \$9.00/hr, State minimum wage)	\$1,354	\$1,354	\$2,708
2. Percentage Share of Income	50%	50%	100%
3. Amount from Child Support Table (2 children)			\$968
4. Each Parent’s Monthly Share from Child Support Table	\$484	\$484	
5. Basic Subsistence Limitation	\$1,012	\$1,012	
6. Income Available for Support (Line 1 minus Line 5)	\$342	\$342	
7. Lower of Line 4 and 6 for Parent with Duty to Pay Support (cannot be less than \$50 or 10% of income)		\$342	

Amount of the SSR/Basic Subsistence Limitation. The amount of the SSR/basic subsistence limitation is a policy decision. Like Nebraska, most states relate it to the federal poverty guidelines (FPG) for one person. Yet, besides Nebraska, only a handful of states index it so it updates each year with the annual increase of the FPG. It is more common for states to relate it to the FPG that was in effect when that state’s guidelines were last updated. Some states use more or less of the FPG. New York uses the highest percentage of FPG (*i.e.*, 135% of the FPG.) Illinois, which just adopted a low-income adjustment last year uses 70 percent. States raise and lower the FPG to align the self-support reserve with income eligibility programs of government programs available to custodial-parent households. In addition, upward adjustments are made to account for federal and state taxes. Arizona just recently updated its SSR to relate to the state minimum wage. Arizona is the first state to relate it to the minimum wage. Since Arizona’s current minimum wage is \$10.50 per hour this yields a SSR of \$1,456 gross per month, which is currently the highest SSR of any state.

Amount of the Minimum Order. The minimum order amount is a policy decision. A minimum order complements the SSR/basic subsistence limitation because without it, the order could be negative if

income is below the SSR/basic subsistence limitation. Some states are providing for zero orders when income is below the SSR/basic subsistence limitation or the obligated parent is incarcerated or incapacitated. For example, North Dakota provides for a zero order when the obligated parent's net income is \$700 per month or less. North Dakota used that the amount because it is close to the maximum Supplemental Security Income benefit for one person. Other states take the position that setting a non-zero amount is important to demonstrating an obligated parent's financial responsibility to his or her child.

The most common minimum order amount among states is \$50 per month. Some states are considering \$60 per month because it approximate what researchers have found is the voluntary in-kind contribution made by low-income fathers.¹¹ Some states (e.g., Arizona) leave the minimum order to court discretion. Colorado's current Child Support Commission is recommending a minimum order of \$10 per month for those with nominal income (i.e., below \$600 per month). One concern of minimum order amounts is that it is worth the time and resources of the courts to set and the custodial parent to attend the hearing if appearance is required.

Where the SSR/Basic Subsistence Limitation Should Be Applied. Putting it in the worksheet, as shown in Exhibit 4, makes it transparent. Nebraska does not put it in its worksheet. Most states incorporate their SSR into their child support table. The disadvantage of this approach is it is not transparent unless it is explicit like North Carolina's provision, which is shown in Exhibit 5. Another advantage to North Carolina's provision is the SSR can be gradually phased-out while the economic data on child-rearing expenditures are gradually phased-in. More information about the phase-out/phase-in is provided in the next paragraph.

Phase-out/Phase-in. The importance of a gradual phase-out of the SSR and phase-in of the economic evidence of child-rearing expenditures is illustrated in existing Table 1, which is excerpted to the right. It shows a precipitous increase in basic obligations from incomes of \$1,000 to incomes of \$1,050. Strict application of this would result in a large increase in the support order if the obligated parent's income increase from \$1,000 per month to \$1,050 per month and the custodial parent had no income. In other words, there would be an

COMBINED MONTHLY INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
\$500	\$50	\$50	\$50	\$50	\$50	\$50
\$550	\$50	\$50	\$50	\$50	\$50	\$50
\$600	\$50	\$50	\$50	\$50	\$50	\$50
\$650	\$50	\$50	\$50	\$50	\$50	\$50
\$700	\$50	\$50	\$50	\$50	\$50	\$50
\$750	\$50	\$50	\$50	\$50	\$50	\$50
\$800	\$50	\$50	\$50	\$50	\$50	\$50
\$850	\$50	\$50	\$50	\$50	\$50	\$50
\$900	\$50	\$50	\$50	\$50	\$50	\$50
\$950	\$50	\$50	\$50	\$50	\$50	\$50
\$1,000	\$50	\$50	\$50	\$50	\$50	\$50
\$1,050	\$225	\$243	\$260	\$278	\$295	\$313
\$1,100	\$250	\$270	\$290	\$310	\$330	\$350
\$1,150	\$275	\$298	\$320	\$343	\$365	\$388
\$1,200	\$300	\$325	\$350	\$375	\$400	\$425
\$1,250	\$325	\$353	\$380	\$408	\$435	\$463
\$1,300	\$337	\$380	\$410	\$440	\$470	\$500
\$1,350	\$349	\$408	\$440	\$473	\$505	\$538
\$1,400	\$362	\$435	\$470	\$505	\$540	\$575

¹¹ See Rosen, Jill. (2015). "Many 'deadbeat dads' support children through gifts, not cash, study shows," John Hopkins University. <http://hub.jhu.edu/2015/06/15/how-low-income-dads-provide>, and Kane, J., Nelson, T. and Edin, K. (2015). "How Much In-Kind Support Do Low-Income Nonresident Fathers Provide? A Mixed-Method Analysis." *Journal of Marriage and Family*, 77 (June 2015): 591-611.

economic disincentive to increase income. Keeping the table increase below the amount of the income increase alleviates the economic disincentive.

EXHIBIT 5: NORTH CAROLINA'S SELF-SUPPORT RESERVE			
Combined Adjusted Gross Income	One Child	Two Children	Three Children
0-1150	50	50	50
1200	71	72	73
1250	106	107	108
1300	140	142	143
1350	176	176	178
1400	209	211	214
1450	243	246	249
1500	278	281	284
1550	288	316	319
1600	297	351	354
1650	305	383	387
1700	313	416	420
1750	321	448	453
1800	329	481	486
1850	337	513	519
1900	345	533	552
1950	353	546	585
2000	361	558	618
2050	369	571	651
2100	378	583	684
2150	386	596	717
2200	394	608	744
2250	402	621	760

Self-Support Reserve: Supporting Parents with Low Incomes

The guidelines include a self-support reserve that ensures that obligors have sufficient income to maintain a minimum standard of living based on the 2014 federal poverty level for one person (\$973.00 per month.) for obligors with an adjustment gross income of less than \$1,097.00 the Guidelines require, absent a deviation, the establishment of a minimum support order (\$50). For obligors with adjusted gross incomes above \$1,097.00 the Schedule of Basic Support Obligations incorporates a further adjustment to maintain the self-support reserve for the obligor.

If the obligor's adjusted gross income falls within the shaded area of the Schedule and Worksheet A is used, the basic child support obligation and the obligor's total child support obligation are computed using only the obligor's income. In these cases, childcare and health insurance premiums should not be used to calculate the child support obligation. However, payment of these costs or other extraordinary expenses by either parent may be a basis for deviation. This approach prevents disproportionate increases in the child support obligation with moderate increases in income and protects the integrity of the self-support reserve. In all other cases, the basic child support obligation is computed using the combined adjusted gross incomes of both parents.

2. ***When income imputation is authorized, take into consideration the specific circumstances of the noncustodial parent, such as employment and earnings history, criminal record and other factors listed in Exhibit 2.***

The new federal requirements imposed by the MR, as shown below, limit income imputation.

(iii) If imputation of income is authorized, takes 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.

They are grounded in research that finds compliance is lower when income is imputed and unpayable arrears accrue.¹² They also recognize the importance of healthy parent-child relationships in the

¹² U.S. Department of Health and Human Services. (Nov. 17, 2014). "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs." *Federal Register*, vol. 79, no. 221/ Retrieved from <http://www.acf.hhs.gov/programs/css/resource/nprm-flexibility-efficiency-and-modernization-in-child-support-enforcement-programs>.

development of children and how unpaid child support in some situations can adversely affect that healthy relationship. The new rules particularly aim to improve the situations of low-income parents with limited ability to pay and their children.

Nebraska’s current guidelines provision concerning income imputation is shown in the first row of Exhibit 6. It is not as comprehensive as the federal requirement. As shown in Exhibit 6, most states (e.g., Massachusetts, Rhode Island, and Utah) that have updated their guidelines for the MR have simply adopted the federal language on what factors should be considered when imputing income. These provisions are shown in bold. North Dakota takes it a step further by providing for what income shall be imputed at after making these considerations and determining that income imputation is appropriate.

EXHIBIT 6: INCOME IMPUTATION PROVISIONS IN NEBRASKA AND SELECTED STATES THAT HAVE MADE CHANGES TO CONFORM TO NEW FEDERAL REQUIREMENTS ON INCOME IMPUTATION		
State	Significance	Provision
NE	Existing provision	§ 4-204. Total monthly income. If applicable, earning capacity may be considered in lieu of a parent's actual, present income and may include factors such as work history, education, occupational skills, and job opportunities. Earning capacity is not limited to wage-earning capacity, but includes moneys available from all sources.
AZ	<ul style="list-style-type: none"> Includes language in Federal Rule income imputation at least minimum wage after consideration of the parent’s specific circumstances prohibits income imputation to incarcerated parents 	<p>If a parent is unemployed or working below full earning capacity, the court may consider the reasons. If earnings are reduced as a matter of choice and not for reasonable cause, the court may attribute income to a parent up to his or her earning capacity. If the reduction in income is voluntary but reasonable, the court shall balance that parent's decision and benefits therefrom against the impact the reduction in that parent's share of child support has on the children's best interest. The court may not attribute income to a person who is incarcerated, but may establish or modify support based on actual ability to pay. In accordance with Arizona Revised Statutes Section 25-320, income of at least minimum wage should generally be attributed to a parent after considering the specific circumstances of the parents to the extent known. This includes such factors as the parents’ 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 parents, prevailing earnings level in the local community, and other relevant background factors in the case. If income is attributed to the parent receiving child support, appropriate childcare expenses may also be attributed.</p> <p>The court may decline to attribute income to either parent. Examples of cases in which it may be inappropriate to attribute income include, but are not limited to, the following circumstances:</p> <ol style="list-style-type: none"> 1. A parent is physically or mentally disabled, 2. A parent is engaged in reasonable career or occupational training to establish basic skills or reasonably calculated to enhance earning capacity, 3. Unusual emotional or physical needs of a natural or adopted child require that parent’s presence in the home 4. The parent is a current recipient of Temporary Assistance to Needy Families, or 5. A parent is the caretaker of a young child and the cost of childcare is prohibitive.
MA	<ul style="list-style-type: none"> Includes language in Federal Rule 	E. Attribution of Income 1. Income may be attributed where a finding has been made that either parent is capable of working and is unemployed or underemployed. 2. If the Court makes a determination that either parent is earning less than he or she could earn through reasonable effort, the Court should consider potential earning capacity rather than actual earnings in making its child support order. 3. The Court shall consider the age, number, needs and care of the children covered by the child support order. The Court shall also consider the specific

		<p>circumstances of the parent, to the extent known and presented to the Court, including, but not limited to, the assets, residence, education, training, job skills, literacy, criminal record and other employment barriers, age, health, past employment and earnings history, as well as the parent's record of seeking work, and the availability of employment at the attributed income level, the availability of employers willing to hire the parent, and the relevant prevailing earnings level in the local community.</p>
<p>ND</p>	<ul style="list-style-type: none"> • Includes language in Federal Rule • income imputation based on state's statewide average earnings • prohibits income imputation to incarcerated parent 	<p>75-02-04.1-07. Imputing income based on earning capacity. 1. For purposes of this section: a. "Earnings" includes in-kind income and amounts received in lieu of actual earnings, such as social security benefits, workers' compensation wage replacement benefits, unemployment insurance benefits, veterans' benefits, and earned income tax credits; and b. An obligor is "underemployed" if the obligor's gross income from earnings is significantly less than this state's statewide average earnings for persons with similar work history and occupational qualifications. 2. An obligor is presumed to be underemployed if the obligor's gross income from earnings is less than the greater of: a. Six-tenths of this state's statewide average earnings for persons with similar work history and occupational qualifications; or b. A monthly amount equal to one hundred sixty-seven times the federal hourly minimum wage. 3. Except as provided in subsections 4, 5, 6, and 7, gross income based on earning capacity equal to the greatest of subdivisions a through c, less actual gross earnings, must be imputed to an obligor who is unemployed or underemployed. a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage. b. An amount equal to six-tenths of this state's statewide average earnings for persons with similar work history and occupational qualifications. c. An amount equal to ninety percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months included in the current calendar year and the two previous calendar years before commencement of the proceeding before the court, for which reliable evidence is provided. 4. Monthly gross income based on earning capacity may not be imputed under subsection 3 if: a. The reasonable cost of child care equals or exceeds seventy percent of the income which would otherwise be imputed where the care is for the obligor's child: (1) For whom the obligor has primary residential responsibility; (2) Who is under the age of thirteen; and (3) For whom there is no other adult caretaker in the obligor's home available to meet the child's needs during absence due to employment. b. Current medical records confirm the obligor suffers from a disability sufficient in severity to reasonably preclude the obligor from gainful employment that produces average monthly gross earnings equal to at least one hundred sixty-seven times the hourly federal minimum wage.</p> <p>c. The unusual emotional or physical needs of a minor child of the obligor require the obligor's presence in the home for a proportion of the time so great as to preclude the obligor from gainful employment that produces average monthly gross earnings equal to one hundred sixty-seven times the hourly federal minimum wage. d. The obligor has average monthly gross earnings equal to or greater than one hundred sixty-seven times the hourly federal minimum wage and is not underemployed. e. The obligor is under eighteen years of age or is under nineteen years of age and enrolled in and attending high school. f. The obligor is receiving: (1) Supplemental security income payments; (2) Social security disability payments; (3) Workers' compensation wage replacement benefits; (4) Total and permanent disability benefits paid by the railroad retirement board; (5) Pension benefits, as defined in subsection 9, paid by the veterans benefits administration; or (6) Disability compensation paid by the veterans benefits administration based on an overall disability rating of one hundred percent. g. It has been less than one hundred eighty days since the obligor was released from incarceration under a sentence of at least one hundred eighty days. h. The obligor is incarcerated under a sentence of one hundred eighty days or longer, excluding credit for time served before sentencing. 5. If an unemployed or underemployed obligor shows that employment opportunities, which would provide earnings at least equal to the lesser of the amounts determined under subdivision b or c of subsection 3, are unavailable within one hundred miles [160.93 kilometers] of the obligor's actual place of residence, income must be imputed based on earning capacity equal to the amount determined under subdivision a of subsection 3, less actual gross earnings. 6. If the obligor fails, upon reasonable request made in any proceeding to establish or review a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, and if that information cannot be reasonably obtained from sources other than the obligor, income must be</p>

		<p>imputed based on the greatest of: a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage. b. An amount equal to one hundred percent of this state's statewide average earnings for persons with similar work history and occupational qualifications. c. An amount equal to one hundred percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months included in the current calendar year and the two previous calendar years before commencement of the proceeding before the court, for which reliable evidence is provided. 7. Notwithstanding subsections 4, 5, and 6, if an obligor makes a voluntary change in employment resulting in reduction of income, monthly gross income equal to one hundred 10 percent of the obligor's greatest average monthly earnings, in any twelve consecutive months included in the current calendar year and the two previous calendar years before commencement of the proceeding before the court, for which reliable evidence is provided, less actual monthly gross earnings, may be imputed without a showing that the obligor is unemployed or underemployed. For purposes of this subsection, a voluntary change in employment is a change made for the purpose of reducing the obligor's child support obligation and may include becoming unemployed, taking into consideration the obligor's standard of living, work history, education, literacy, health, age, criminal record, barriers to employment, record of seeking employment, stated reason for change in employment, likely employment status if the family before the court were intact, and any other relevant factors. The burden of proof is on the obligor to show that the change in employment was not made for the purpose of reducing the obligor's child support obligation. 8. Imputed income based on earning capacity is an example of gross income and is subject to the deductions from gross income set forth in subsection 6 of section 75-02-04.1-01. 9. For purposes of paragraph 5 of subdivision f of subsection 4, "pension benefits" means only needs-based payments made by the veterans benefits administration to war-time veterans whose income is below a yearly limit set by Congress and who are age sixty-five or older or have a total and permanent disability.</p>
RI	<ul style="list-style-type: none"> Includes language in Federal Rule 	<p>Imputed Income. If the Court, within its discretion, decides to impute income in a particular case, the Court shall take into consideration the specific circumstances of the noncustodial parent and 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.</p>
UT	<ul style="list-style-type: none"> Includes language in Federal Rule 	<p>8)(a)Income may not be imputed to a parent unless the parent stipulates to the amount imputed, the parent defaults, or, in contested cases, a hearing is held and the judge in a judicial proceeding or the presiding officer in an administrative proceeding enters findings of fact as to the evidentiary basis for the imputation. (b)If income is imputed to a parent, the income shall be based upon employment potential and probable earnings considering, <i>to the extent known: (i)employment opportunities; (ii)work history; (iii)occupation qualifications; (iv)educational attainment; (v)literacy; (vi)age; (vii)health; (viii)criminal record; (ix)other employment barriers and background factors; and (x)prevailing earnings and job availability for persons of similar backgrounds in the community.</i> (c)If a parent has no recent work history or a parent's occupation is unknown, that parent may be imputed an income at the federal minimum wage for a 40-hour work week. To impute a greater or lesser income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation. (d)Income may not be imputed if any of the following conditions exist and the condition is not of a temporary nature: (i)the reasonable costs of child care for the parents' minor children approach or equal the amount of income the custodial parent can earn; (ii)a parent is physically or mentally unable to earn minimum wage; (iii)a parent is engaged in career or occupational training to establish basic job skills; or (iv)unusual emotional or physical needs of a child require the custodial parent's presence in the home.</p>

3. Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders.

The issue of imputing income to incarcerated parent concerns the same general issues as income imputation. Exhibit 6 also shows that most states are fulfilling this requirement by simply adapting the federal language into their guidelines. Although the current Nebraska guidelines do not provide for it, Legislative Bill 702 that was passed by the 2018 legislature provides that incarceration may not be treated as voluntary unemployment in establishing or modified support orders. As an aside, Legislative Bill 702 also meets new federal requirements (45 C.F.R. § 303.8) pertaining to the review and adjustment of child support orders when the obligated parent is incarcerated.

4. 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.

Exhibit 7 shows how the requirement pertaining to the child's health care needs was expanded using underlined text to show additions and strikethrough text to show deletions.

Exhibit 7: Strike-out Version of the MR Pertaining to Medical Child Support in State Child Support Guidelines
<p><i>§ 302.56 Guidelines for setting child support awards.</i></p> <p>(2) <u>(2) Address how the parents will provide for the child(ren)'s child's health care needs through private or public health insurance care coverage and/or through cash medical support in accordance with § 303.31 of this chapter.;</u></p> <p><i>§303.31 Securing and enforcing medical support obligations.</i></p> <p>(a) * * * (2) Health insurance care coverage <u>includes fee for service, health maintenance organization, preferred provider organization, and other types of private health insurance and public health care coverage</u> which is available to either parent, under which medical services could be provided to the dependent child(ren).</p> <p>(3) Cash medical support or the cost of private health insurance <u>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 adopted in accordance with § 302.56(c) of this chapter. In applying the five percent or alternative State standard for the cost of private health insurance, the cost is the cost of adding the child(ren) to the existing coverage or the difference between self-only and family coverage.</u></p> <p>(b) * * * (1) Petition the court or administrative authority to:</p> <p>(i) Include private health insurance care coverage <u>that is accessible to the child(ren), as defined by the State, and is available to the parent responsible for providing medical support and can be obtained for the child</u> at reasonable cost, as defined under paragraph (a)(3) of this section, in new or modified court or administrative orders for support; and</p> <p><u>(ii) Allocate the cost of coverage between the parents.</u></p> <p>(2) If private health insurance care coverage <u>described in paragraph (b)(1) of this section is not available at the time the order is entered or modified, petition to include cash medical support in new or modified orders until such time as health insurance care coverage, that is accessible and reasonable in cost as defined under paragraph (a)(3) of this section, becomes available. In appropriate cases, as defined by the State, cash medical support may be sought in addition to health insurance care coverage.</u></p> <p>(3) Establish written <u>criteria, which are reflected in a record,</u> to identify orders that do not address the health care needs of children based on—</p> <p>(i) Evidence that private health insurance care coverage <u>may be available to either parent at reasonable cost, as defined under paragraph (a)(3) of this section; and</u> * * * * *</p>

Legislative Bill 702 that was passed by the 2018 legislature also replaced “health care insurance” with “health care coverage” in section 42-369 of Revised Statutes of Nebraska. The language in the guidelines (at §4-215) also needs to be modified to comport with these changes and to clarify that public health care coverage is healthcare coverage for the child.

5. Consider economic data on the cost of raising children.

The Nebraska child support table, like most state guidelines tables, is based on economic data on the cost of raising children. New economic data is provided in Section 3. In other words, this federal requirement is easily met.

6. Consider labor market data, hours worked, and other factors; and the impact of the guidelines policies on low-income parents.

These requirements are met in Section 4, which includes an analysis of labor market data. Section 3 also assesses the appropriateness of the guidelines table and considers low-income case examples.

7. Analyze case file data, gathered through sampling or other methods, on the guidelines application, guidelines deviation, rates of default and imputed orders, and payment patterns.

Nebraska has always met the requirement to analyze case file data on guidelines applications and deviations as part of its guidelines reviews. The expanded federal requirements now also require more information from the case file data. The analysis of case file data for the 2018 review is summarized in Section 4.

8. Provide meaningful opportunity for public input, particularly from the IV-D agency and low-income parents.

All Commission meetings and public testimonies conformed to Nebraska's Open Meetings Act. Public testimony was accepted at the August 30 and December 19 meetings. In addition, written comments received by Commission staff were shared with the Commission. Commission staff also reached out to groups serving low-income parents (*e.g.*, Legal Aide) and the director of the state child support program served on the Commission.

9. Publish the guidelines review on the Internet, list commission members, and provide dates of next review.

For previous reviews, Nebraska has published a report on the findings and the recommendations that also lists commission members. To comport with the expanded federal requirements, Commission staff plan to also include dates in the report.

SECTION 3: ECONOMIC DATA ON THE COST OF RAISING CHILDREN

There are several studies measuring the cost of raising children. Most state guidelines rely on studies of child-rearing expenditures that vary across a range of incomes rather than studies that examine the minimum and basic needs of children. This is because the premise of most state guidelines is that children should share in the lifestyle afforded by their parents; that is, if the obligated parent's income affords the obligated parent a higher standard of living, the support order should also be more for that higher income parent.

In all, there are nine different studies of child-rearing expenditures that form the basis of state guidelines. The studies of child-rearing expenditures underlying state guidelines vary in the age of the data used to measure child-rearing expenditures and the economic methodologies used to separate the child's share of expenditures from total expenditures of a household.

SUMMARY OF ASSUMPTIONS AND ECONOMIC DATA UNDERLYING EXISTING TABLE

The data and major assumptions underlying the existing table (*i.e.*, Table 1) are listed below.

- Nebraska bases its child support guidelines on the income shares model.
- It is based on the second study of child-rearing expenditures by Professor David Betson, University of Notre Dame, using the Rothbarth methodology and was conducted in 2001.¹³ Betson produced his first study in 1990 for the U.S. Department of Health and Human Services for the explicit purposes of assisting states with the development and review of child support guidelines.¹⁴ He has updated it three times. The Betson-Rothbarth (BR) measurements are the most commonly used measurements of child-rearing expenditures underlying state guidelines. More information about the BR measurements is provided later in this section.
- It relies on national data on expenditures; specifically, expenditures data from families participating in the 1996-1998 Consumer Expenditure Survey (CES).¹⁵ More information about the CES is also provided in this section.
- The Betson-Rothbarth measurements underlying the Nebraska Table appear to be based on 2000 price levels.

¹³David M. Betson (2001). "Chapter 5: Parental Expenditures on Children," in Judicial Council of California, *Review of Statewide Uniform Child Support Guidelines*, San Francisco, California (2001).

¹⁴ Betson, David M. (1990). *Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey*. Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. University of Wisconsin Institute for Research on Poverty, Madison, Wisconsin;

¹⁵ See the U.S. Bureau of Labor Statistics website for more information about the CES: <https://www.bls.gov/cex/>.

- To convert the Betson-Rothbarth measurements to a table suitable for child support guidelines, additional assumptions were required. The assumptions are documented in the 2001 report detailing the technical basis of the existing Table.¹⁶
 - They include an estimate of childcare expenses by income so they can be excluded from the table since actual childcare expenses are addressed on a case-by-case basis in the guidelines calculation.¹⁷
 - The Table includes an amount to cover ordinary, out-of-pocket healthcare expenses incurred for the child (e.g., copays for well visits and over-the-counter cough medicine). It also excludes the cost of health insurance for the child and extraordinary, out-of-pocket healthcare expenses for the child. Based on data available at the time the table was developed, ordinary out-of-pocket healthcare expenses was estimated to be up to \$480 per year per child. The amount appears to be less at lower incomes.¹⁸ In other words, the existing Nebraska table includes up to \$480 per year per child in healthcare expenses.
 - The Table was also adjusted to recognize that higher-families do not spend all of their net income. This is important because the Betson-Rothbarth expenditures relate child-rearing expenditures to total household expenditures not net income, which is the basis of the Table. Instead of spending all of their increased income as income increases, households generally tend to save more, and spend more on charitable contributions, gifts outside the family, or otherwise do not spend directly on household consumption items.¹⁹
- The table reflects average child-rearing expenditures from ages 0 through 17 years old.²⁰

Income Shares Model

The income shares model is based on the premises that both parents should share financial responsibility for child-rearing expenditures and that the child should be entitled to the same level of expenditures that the child would have received had the parents lived together and combined financial resources. To this end, the core of the income shares model is a measurement of child-rearing

¹⁶Tier Technologies. (August 2001). *Report to Nebraska Supreme Court: Updating Nebraska's Child Support Guidelines*. Tier Technologies, California. Note that Tier Technologies has since merged with another firm and no longer provides technical assistance on child support guidelines. Further, it appears that Tier Technologies used preliminary measurements from David M. Betson (2001).

¹⁷ See page 10 of Tier Technologies (2001) report.

¹⁸ Tier Technologies estimated the amount because it could not be measured precisely from the data set used to measure child-rearing expenditures; that is, the Consumer Expenditure Survey (CES) does not capture all healthcare expenditures in the household and cannot determine if the expenditure was made for an adult or child. See pages 11-14 of Tier Technologies (2001) report.

¹⁹ See page 9 of Tier Technologies (2001) report.

²⁰ Only a couple of states (i.e., Kansas and Washington) provide a different amount based on the child's age. States (e.g., Maine) have eliminated it because it is cumbersome and individual cases often fail to modify the order as the child ages. Many states, however, provide that age is a deviation factor.

expenditures in two-parent families. That amount is often adjusted in a guidelines worksheet for current realities such as a party may also have to support dependents from another relationship or share physical custody.

The guidelines model used by a state is a policy decision.²¹ As of 2018, there are 41 states, including Nebraska, that rely on the income shares model. In the past two decades, six states have changed guidelines models, and all six states adopted the income shares model. The income shares model was developed through the 1983–1987 National Child Support Guidelines, which was convened by the Federal Office of Child Support Enforcement (OCSE) to fulfill a congressional request.²² At the time, most states did not have statewide child support guidelines. The architect of the income shares model designed it to relate to measurements of child-rearing expenditures and to fulfill the guidelines principles identified by the project’s oversight committee, which included a wide range of stakeholders. Examples of some of the principles are the financial responsibility of the children should be shared by the parents who have legal responsibility for the children; child support guidelines should at least cover a child’s basic needs, but the child should also share a higher standard of living enjoyed by a parent; the subsistence needs of each parent should be taken into consideration; and each child of a given parent should have a right to that parent’s income. One of the major principles is that the child support obligation should allow the children to benefit from the same level of expenditures had the children and both parents lived together. The principle applies to children of divorcing and separating parents, as well as never-married parents. In other words, children are treated the same regardless of their parents’ decisions to marry, divorce, separate, or never marry.

OVERVIEW OF ROTHBARTH METHODOLOGY AND EARLY STUDIES

When Congress first passed legislation (*i.e.*, the Family Support Act of 1988) requiring presumptive state child support guidelines, they also mandated the U.S. Department of Health and Human Services to develop a report analyzing expenditures on children and explain how the analysis could be used to help states develop child support guidelines. This was fulfilled by two reports that were both released in 1990. One was by Professor David Betson, University of Notre Dame.²³ Using five different economic methodologies to measure child-rearing expenditures, he concluded that the Rothbarth methodology was the most robust;²⁴ hence, recommended that it be used for state guidelines.

²¹ More information about the impact of different guidelines models can be found in Jane C. Venohr (April 2017). “Differences in State Child Support Guidelines Amounts: Guidelines Models, Economic Basis, and Other Issues.” *Journal of the American Academy of Matrimonial Lawyers*.

²² National Center for State Courts (1987). *Development of Guidelines for Child Support Orders, Final Report*. Report to U.S. Department of Health and Human Services, Office of Child Support Enforcement, Williamsburg, Virginia.

²³ Betson, David M. (1990). *Alternative Estimates of the Cost of Children from the 1980–86 Consumer Expenditure Survey*. Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. University of Wisconsin Institute for Research on Poverty, Madison, Wisconsin.

²⁴ The term, “robust” in statistics is used to mean that the statistics yield good performance that are largely unaffected by outliers or sensitive to small changes to the assumptions.

One of the other methodologies explored by Betson was the Engel methodology, which is the methodology used by 1984 study²⁵ of child-rearing expenditures that formed the basis of the prototype income shares model developed in 1987 that was adopted by many states.²⁶ The Engel and Rothbarth methodologies are named after the economists who developed them. Both are considered marginal cost approaches; that is, they consider how much more is spent by a couple with children than a childless couple of child-rearing age. To that end, the methodologies compare expenditures of two sets of equally-well off families: one with children and one without children. The difference in expenditures between the two sets is deemed to be child-rearing expenditures. The Engel and Rothbarth methodologies use different indicators of equally well-off families. The Engel methodology uses expenditures on food, while the Rothbarth methodology relies on expenditures for adult goods to determine equally well-off families.²⁷ Through calculus, economists have proved that the Engel methodology's reliance on food shares overstates actual child-rearing expenditures because children are relatively food intensive. In contrast, the calculus behind using expenditures on adult goods in the Rothbarth methodology finds that the Rothbarth estimator understates actual child-rearing expenditures because parents essentially substitute away from adult goods when they have children.

At the time of Betson's 1990 study, most states had already adopted guidelines to meet the 1987 federal requirement to have advisory child support guidelines. (The requirement was extended to be rebuttal presumptive guidelines in 1989.) As mentioned above, most states were using measurements of child-rearing expenditures published in 1984.²⁸ Today, about eight states (including Florida) still rely on Espenshade's study as the basis of their guidelines. Another very early study that still forms the basis of few guidelines (*e.g.*, Nevada, New York, and Wisconsin) is by van der Gaag.²⁹ Based on a literature review of economic studies at the time, he concluded that a couple that adds one child to the household needs 25 percent more gross income in order to maintain the standard of living they enjoyed when they had no children. Wisconsin used van der Gaag's estimates to develop its child support formula, although adjusted this percentage to account for taxes and other factors. Since then, several states adopted Wisconsin's flat percentage of obligor gross income as their guidelines formula.

²⁵ Espenshade, Thomas J. (1984). *Investing in Children: New Estimates of Parental Expenditures*. Urban Institute Press: Washington, D.C.

²⁶ See Section II of the National Center for State Courts (1987). *Development of Guidelines for Child Support Orders, Final Report*. Report to U.S. Department of Health and Human Services, Office of Child Support Enforcement, Williamsburg, Virginia.

²⁷ Specifically, Betson uses adult clothes, whereas others applying the Rothbarth estimator use adult clothing, alcohol and tobacco regardless whether expenditures are made on these items. Betson has conducted sensitivity analysis and found little difference in using the alternative definitions of adult goods.

²⁸ Espenshade, Thomas J. (1984).

²⁹ Van der Gaag, Jacques (1981). *On Measuring the Cost of Children*. Discussion Paper 663-81. University of Wisconsin Institute for Research on Poverty, Madison, Wisconsin.

The second study resulting from the Congressional mandate was by Lewin/ICF.³⁰ It recognized that economists do not agree on which methodology best measures actual child-rearing expenditures. Lewin/ICF were the first to assess the appropriateness of state guidelines by determining whether they generally were above the lowest credible measurement of child-rearing expenditures and generally below the highest of credible measurements of child-rearing expenditures. That methodology has been used for several decades now and by several states, including Nebraska, to conduct guidelines reviews. For Lewin/ICF's initial assessment, they used the Rothbarth and Engel measurements developed by Betson in his 1990 study as the lower bound and upper bound, respectively.

There are no new Engel studies of child-rearing expenditures. As discussed in more detail later, there are new Rothbarth studies of child-rearing expenditures. The Rothbarth methodology is the methodology used in the measurements of child-rearing expenditures underlying most state guidelines.

STUDIES UNDERLYING CURRENT STATE GUIDELINES

Over the years, Betson has updated his Rothbarth measurements three times.³¹ The majority of states (27 states), the District of Columbia, and Guam rely on one of Betson's studies of child-rearing expenditures using the Rothbarth methodology to separate the child's share of expenditures from total household expenditures. As already mentioned, about eight states rely on the Espenshade study and another six states rely on a 1981 literature review of economic studies conducted by the University of Wisconsin.³² Minnesota is the only state to rely on measurements of child-rearing expenditures developed by the United States Department of Agriculture (USDA), which produces new measurements at least every other year. New Jersey and Kansas³³ each developed their own study of child-rearing expenditures that forms the basis of their respective guidelines. Finally, there are about six states in which the economic basis is unknown.

³⁰ Lewin/ICF. (1990). *Estimates of Expenditures on Children and Child Support Guidelines*. Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. Fairfax, Virginia.

³¹ David M. Betson (2001). "Chapter 5: Parental Expenditures on Children," in Judicial Council of California, *Review of Statewide Uniform Child Support Guidelines*, San Francisco, California (2001).

<http://www.courtinfo.ca.gov/programs/cfcc/1058files2001/CH5.PDF>; David M. Betson (2006). "Appendix I: New Estimates of Child-Rearing Costs" in PSI, *State of Oregon Child Support Guidelines Review: Updated Obligation Scales and Other Considerations*, Report to State of Oregon, Policy Studies Inc., Denver, Colorado. Available at http://www.dcs.state.or.us/oregon_admin_rules/psi_guidelines_review_2007.pdf.

Betson, David M. (2010). "Appendix A: Parental Expenditures on Children." In Judicial Council of California, *Review of Statewide Uniform Child Support Guideline*. San Francisco, California. Retrieved from <http://www.courts.ca.gov/partners/documents/2011SRL6aGuidelineReview.pdf>.

³² van der Gaag, Jacques. (1981). On Measuring the Cost of Children. Discussion Paper 663-81. University of Wisconsin Institute for Research on Poverty, Madison, Wisconsin.

³³ The Kansas methodology was developed by a university professor and generally yields amounts higher than the Betson-Rothbarth measurements particularly at high incomes. More information about the Kansas child support guidelines is available at <http://www.kscourts.org/rules-procedures-forms/child-support-guidelines/2016-guidelines.asp>

NEW STUDIES OF CHILD-REARING EXPENDITURES AND USE IN STATE GUIDELINES

In all, there are five current studies of child-rearing expenditures typically considered in state guidelines reviews.

- Betson, David M. (2010). "Appendix A: Parental Expenditures on Children." in Judicial Council of California, *Review of Statewide Uniform Child Support Guideline*. San Francisco, California. Retrieved from <http://www.courts.ca.gov/partners/documents/2011SRL6aGuidelineReview.pdf>
- New Jersey Child Support Institute (March 2013). *Quadrennial Review: Final Report, Institute for Families*, Rutgers, the State University of New Jersey, New Brunswick, NJ. Retrieved from http://www.judiciary.state.nj.us/reports2013/F0_NJ+QuadrennialReview-Final_3.22.13_complete.pdf
- Rodgers, William M. (2017) "Comparative Economic Analysis of Current Economic Research on Child-Rearing Expenditures." In Judicial Council of California, *Review of Statewide Uniform Child Support Guideline 2017*. San Francisco, CA. Retrieved from <http://www.courts.ca.gov/documents/lr-2018-JC-review-of-statewide-CS-guideline-2017-Fam-4054a.pdf> .
- Lino, Mark (2017). *Expenditures on Children by Families: 2015 Annual Report*. U.S. Department of Agriculture, Center for Nutrition and Policy Promotion. Miscellaneous Publication No. 1528-2015, Washington, D.C. Retrieved from <http://www.cnpp.usda.gov/publications/crc/crc2015.pdf>
- William Comanor, Professor of Economics, University of California at Santa Barbara, presented to the Nebraska Child Support Advisory Commission on November 8.³⁴

The Betson study, the Rodgers (2017) study, USDA study (Lino, 2017) and Comanor study are used at the end of the Section to assess the appropriateness of the current Nebraska table. The New Jersey study is not used because it is specific to New Jersey; specifically, it is adjusted upward to reflect that New Jersey has higher incomes than the national average.

2010 BETSON-ROTHBARTH MEASUREMENTS

Exhibit 8 illustrates the differences in BR estimates over time for one child. The percentages exclude childcare, the child's health insurance, and the child's extraordinary medical expenses. The first three sets of BR measurements (BR1, BR2, and BR3) rely on the same assumptions and methodologies, but different data years. The most recent BR measurements (BR4) included two changes in data assumptions. Earlier BR measurements consider "expenditures," while BR4 considers "expenditures-outlays." Expenditures include the purchase price (and sales tax) on any item purchased within the survey year regardless whether the item was purchased through installments. In contrast, outlays only

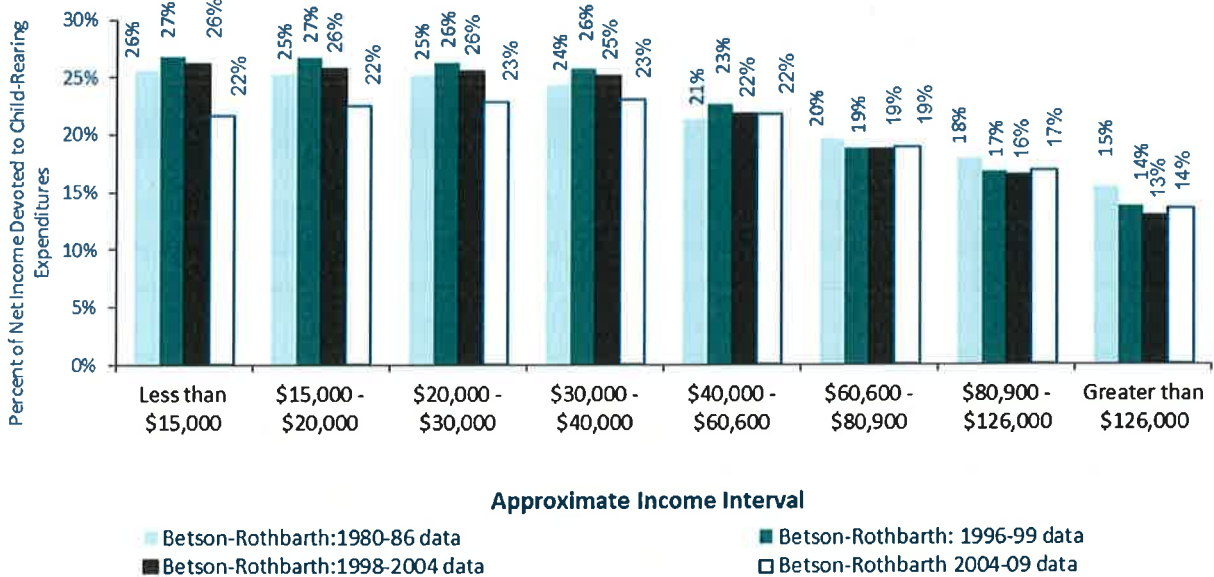
³⁴ His report is appended to the Commission report.

capture what was actually paid toward that item during the survey period. So, if there were only four out of 20 installment payments made during the survey period, only those four payments are captured.

Unlike expenditures, outlays also capture mortgage principal payments, payments on second mortgages, and payments on home equity loans. Both expenditures and outlays capture interest on the first mortgage among homeowners and rent, utilities, and other housing expenses among renters. The merit of expenditures for use in state guidelines is that it excludes mortgage principal payments. This is consistent with property settlements that have historically addressed equity in the home as part of the divorce settlement. The merit of outlays for use in state guidelines is it is a better reflection of actual family budgeting on a monthly basis.

The second difference is that Betson relied on a newly available measure of income developed by the Bureau of Labor Statistics, the organization that conducts the Consumer Expenditure Survey (CES), which is the basis of most measurements of child-rearing expenditures. (See Appendix A for more discussion about the CES.) The underreporting of income is a problem inherent to most surveys. The new measure attempts to correct underreporting, particularly at low incomes. The problem was identified from findings from earlier CES that revealed that many low-income families spend considerably more than what they report as income. The new measurement essentially bumps income for some families—hence, reducing the percentage of their income spent on child rearing.

Exhibit 8: Child-Rearing Expenditures over Time: One Child



NEW JERSEY AND CALIFORNIA STUDIES BY RODGERS

The New Jersey study is only used by New Jersey. It was developed by Professor William Rodgers, Rutgers University, by applying the Rothbarth methodology to expenditures data from the 2000-2011

CES and adjusted for New Jersey incomes, which are higher than the national average. Due to the income adjustment, they are not appropriate for Nebraska.

In 2018, Rodgers also conducted a study for California that is not adjusted for any particular state. The findings from this study are compared later in this section to the current Nebraska table. For this study, Rodgers applied the Rothbarth methodology to families participating in the 2000-2015 CES. One reason he considered a larger time period was to average out the expenditure patterns since there were some anomalous patterns associated with the Great Recession of 2007-2009 and its aftermath. Rodgers concluded there were some actual dollar declines in outlays on children in recent years. In general, Rodgers found that the percentage of total household expenditures devoted to child-rearing expenditures was about three to four percentage points less than the BR4 studies. For example, the BR4 study indicates on average, 24 percent of total household expenditures are devoted to child-rearing expenditures where as Rodgers found the comparable percentage to be 20.9 percent.

The Rodgers-Rothbarth measurements indicate that families, on average, devote about 3 to 4 percentage points less to child-rearing expenditures than the most current Betson-Rothbarth study.

USDA STUDY

Another study that is often considered in the review of guidelines, but has not been used to develop a state's guidelines since 2002, is conducted by the United States Department of Agriculture (USDA). The USDA updates its measurements at least biannually. Its most recent study is for 2015. Using expenditures data from the 2011 through 2015 Consumer Expenditure Survey (CES), the USDA found that average child-rearing expenses are \$9,970 to \$24,150 per year for the youngest child in a two-child family in the Midwest in 2015. The amount varies depending on the income of the family and age of the child.

The USDA finds that average child-rearing expense are \$9,970 to \$24,150 per year for the youngest child in a two-child family in the Midwest in 2015.

The USDA estimates child-rearing expenditures individually for several expenditure categories (*e.g.*, food and clothing), then adds them to develop a total. As discussed more in the USDA report, a different methodology is used to measure expenditures for each category. Some categories unique to children can be measured directly (*e.g.*, children clothing, childcare expenses and education expenses). The child's food costs are measured using the food plans developed by the USDA. The child's transportation is measured by only considering family-related activities, which are 59 percent of total transportation according to research findings. The child's housing expenses are measured from estimating the average additional costs of housing given the number of bedrooms in a home assuming more bedrooms are

required when there is more than one child and controlling for income level. Food, transportation and housing comprise the vast majority of child-rearing expenditures.

Economists generally believed that the USDA's previous approach to measuring child-rearing expenditures overstated actual child-rearing expenditures, but economists have not assessed the USDA methodology since it was changed in 2008.

COMANOR STUDY

Still another study, led by a University of California at Santa Barbara professor, William Comanor, has been extensively vetted by Minnesota.³⁵ Arguably, the Comanor study do not even measure the child's basic needs. It is arguable because Comanor and his colleagues believe their methodology reflects child-rearing expenditures across all income ranges; however, it finds implausibly low amounts. For example, Comanor finds food costs \$640 per year (\$14 per week) for two children in a low-income household.³⁶ In his November 8 presentation, he also reported that the cost of raising one child in a low-income, married family was \$3,421 per year and \$1,229 of that included child care expenses.³⁷ Comanor did not measure the cost of the child's health care. In his Minnesota study, he estimated it to be zero and attributed it to the additional cost of insuring a child being negligible if a family already has insurance.

Using the Comanor amounts for a child support table (hence, excluding childcare expenses) would result in a basic obligation of \$2,129 per year (\$177 per month) for an income of \$36,726 per year (\$3,060 per month).³⁸ In contrast, the 2018 federal poverty guidelines is \$1,012 for a one-person household and \$360 per month for each additional person in the household.³⁹ In other words, the basic obligation for one child does not even cover the poverty level for additional person. Comanor provides several counterarguments to this (*e.g.*, families throw-out a lot of food and that the monetary cost of children is overstated because families do things like convert dens to child nurseries).

Most states believe the child support guidelines should provide for more than a basic needs amount, if the obligated parent can afford a higher standard of living. In other words, if the obligated parent has sufficient income to enjoy a higher standard of living, the child should share in that higher standard of living. For this reason alone, states often dismiss the Comanor study.

³⁵ There are three documents from two economists. Comanor, William. (February 22, 2017.) *Presentation to the Minnesota Child Support Task Force*, Minnesota Department of Human Services, St. Paul, MN. https://mn.gov/dhs/assets/2017-02-22-Dr-Comanor-Report-to-the-Minnesota-Child-Support-Task-Force_tcm1053-280776.pdf. Venohr, Jane. (March 31, 2017 revised). *Review of the Minnesota Basic Child Support Table: Economic Data on the Cost of Raising Children and Other Considerations*. Retrieved from https://mn.gov/dhs/assets/2017-03-31-Revised-Dr-Venohr-Report-to-MN-Child-Support-Task-Force_tcm1053-286690.pdf. Comanor, William. S (April 7, 2017). *Dr. Venohr's Minnesota Report: A Brief Response*. Retrieved from: https://mn.gov/dhs/assets/2017-04-07-Comanor-response-to-Venohr_tcm1053-293396.pdf.

³⁶ See slide 20 of Comanor's November 8 presentation.

³⁷ See pages 23 and 25 of Appendix C.

³⁸ See slide 35 of Comanor's November 8 presentation for average income.

³⁹ U.S. Department of Health and Human Services. *2018 Federal Poverty Guidelines*. Retrieved from <https://aspe.hhs.gov/poverty-guidelines>.

UNDERLYING DATA SOURCE OF ECONOMIC STUDIES

All of the economic studies of child-rearing expenditures (including New Jersey and Kansas) rely on the Consumer Expenditure Survey (CES)⁴⁰ to develop a measurement of child-rearing expenditures. Administered by the U.S. Bureau of Labor Statistics (BLS), economists use the CES because it is the most comprehensive and detailed survey conducted on household expenditures and consists of a large sample. The CES surveys about 6,000 households per quarter on expenditures, income, and household characteristics (e.g., family size). Households generally remain in the survey for five consecutive quarters, with households rotating in and out each quarter. (Just recently, this has been reduced from five quarters to four quarters.) Most economists use at least three quarters or a year of expenditures data for a surveyed family. This means that family expenditures are averaged for about a year rather than over a quarter, which may not be as reflective of typical family expenditures.

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

Appendix A contains more information about the CES.

APPROPRIATENESS OF NATIONAL DATA TO NEBRASKA'S ECONOMY

As mentioned above, replication of the CES at the state level would be prohibitively expensive and time consuming. Instead, many states adjust the national measurements to account for their state's lower or higher cost of living. For example, Alabama, South Dakota, and West Virginia adjust national measurements for their lower incomes. Connecticut, Maryland, New Jersey, and Rhode Island are examples of states that have adjusted national measurements for their higher incomes or higher housing costs.

Several statistics find that Nebraska's cost of living are less than the U.S. as a whole, but incomes are similar.

- According to the 2016 price parity measure developed by U.S. Bureau of Economic Analysis (BEA), Nebraska prices are 90.5, which is 9.5 percentage points less than the U.S. average.⁴¹ The BEA price parity is calculated using a wide array of items tracked by the Consumer Expenditure Survey (i.e., the same survey used to measure child-rearing expenditures) and rent data that is obtained separately from the Census Bureau's American Community Survey (ACS).

⁴⁰ More information about the CES can be found at <http://www.bls.gov>.

⁴¹ U.S. Bureau of Economic Analysis. (2018). *2016 Regional Price Parities by State (US = 100)*. Retrieved from <https://www.bea.gov/news/2018/real-personal-income-states-and-metropolitan-areas-2016>.

- According to the 2017 ACS,⁴² median gross rent (which includes utilities) in Nebraska (\$901 per month) is less than the U.S. average (\$1,012 per month).
- The 2017 ACS also finds that median income of married-couple families living with their own children who are under 18 years old is about the same in Nebraska as it is in the U.S. It is \$91,646 per year in Nebraska, and it is \$96,057 per year for the U.S. as a whole.
- Similarly, the 2017 ACS finds that median earnings of workers 25-years old or older is about the same in Nebraska and U.S. It is \$39,578 per year in Nebraska and \$40,069 per year for the U.S. as a whole.

ASSESSMENT OF THE EXISTING NEBRASKA TABLE AND DEVELOPMENT OF AN UPDATED TABLE

The appropriateness of the Nebraska table is assessed using two methods: comparisons to the most current economic evidence of child-rearing expenditures; and, comparisons to bordering states.

Nebraska Table Compared to New Studies

Exhibits 9, 10 and 11 compare the existing Nebraska table to the newer measurements of child-rearing expenditures (*i.e.*, the Betson-Rothbarth measurements, the USDA measurements, the Comanor measurements, and the Rogers-Rothbarth measurements). In addition, the comparisons consider the average of the Betson-Rothbarth and Betson-Engel measurements from Betson's second study.⁴³ This was the last study of Betson's that included Engel measurements. Most conventional economists believe the Engel methodology overstates actual child-rearing expenditures. All of the measurements in the comparisons are updated to 2018 price levels, exclude all child care expenses, and exclude all out-of-pocket healthcare expenses except up to \$250 per child per year. The only exception is the out-of-pocket medical expenses in Comanor are zero since Comanor finds healthcare costs to be negligible. To be clear, the comparisons do not compare order amounts, rather they consider the basic obligation before being prorated by income and other considerations in the guidelines calculation.

The Comanor measurements are only calculated up to combined net incomes of \$10,000 net per month, which is about the net equivalent of the average gross income (\$168,221 per year) of the highest income range considered by Comanor. The USDA measurements end at the midpoint of the highest income range considered in the USDA measurements.

⁴²Retrieved from <http://www.census.gov>.

⁴³ Georgia is the only state to use Engel measurements that are more updated than Espenshade's 1984 study. Georgia uses the average of the Betson-Rothbarth measurements and the Betson-Engel measurements. Betson has not updated his Engel measurements since his second study.

In general, the existing Nebraska table amounts are in between the highest measurement (the USDA measurement or the average of the Betson-Rothbarth and Betson-Engel measurements) and the lowest measurement (the Comanor measurements) at all incomes and for one, two and three children. The patterns for four and more children would be similar to those of three children. The only notable exception is the table amounts for one child above combined net incomes of \$10,000 per month. The Nebraska table amounts exceed the USDA amounts above this income.

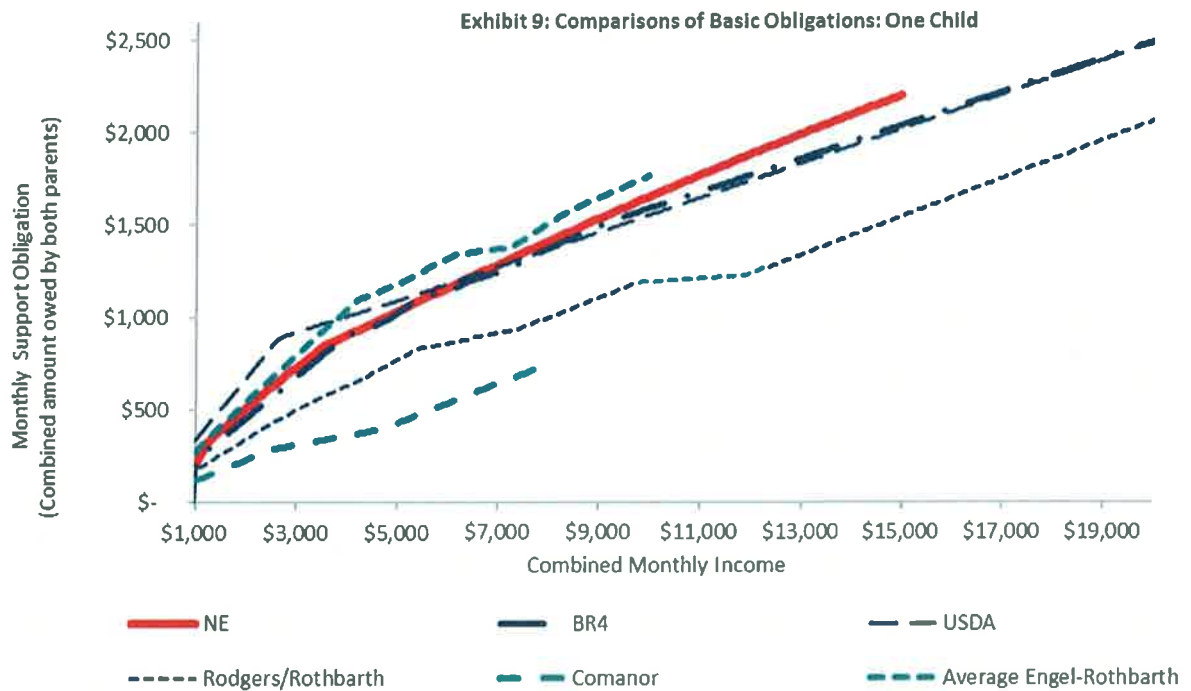


Exhibit 10: Comparisons of Basic Obligations: Two Children

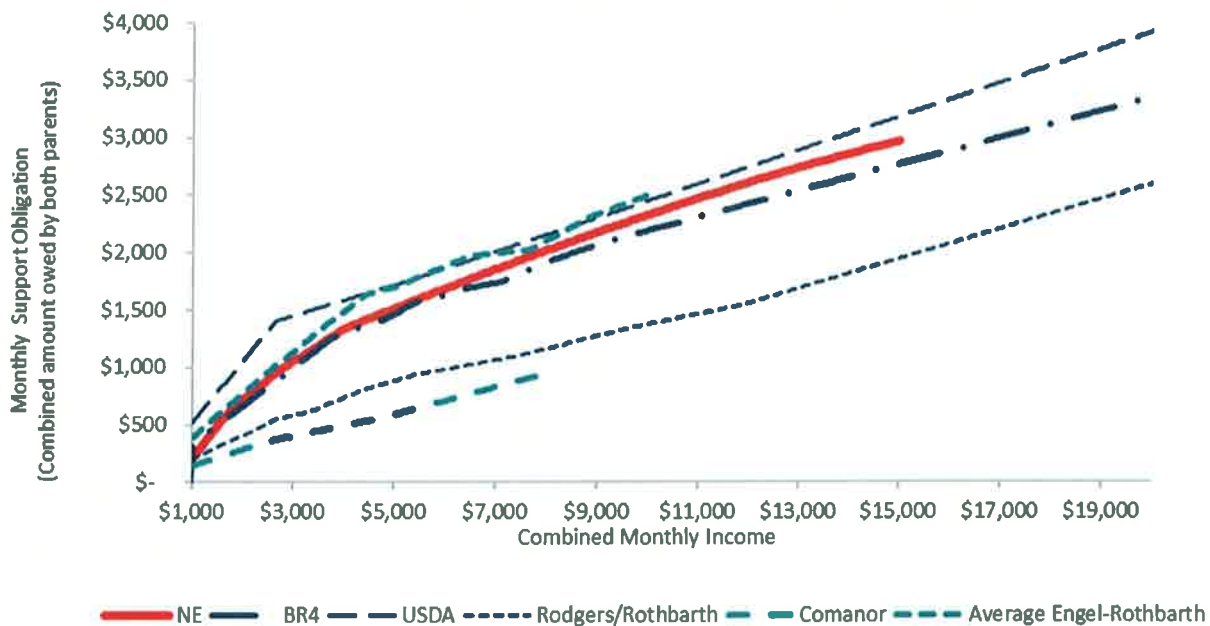
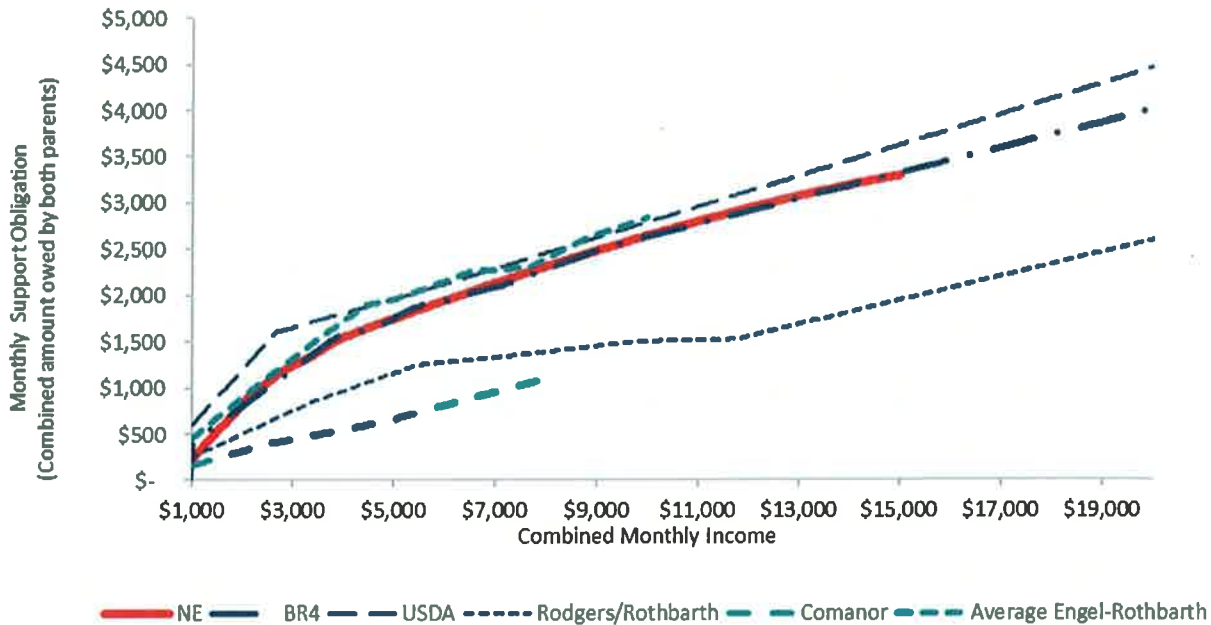


Exhibit 11: Comparisons of Basic Obligations: Three Children

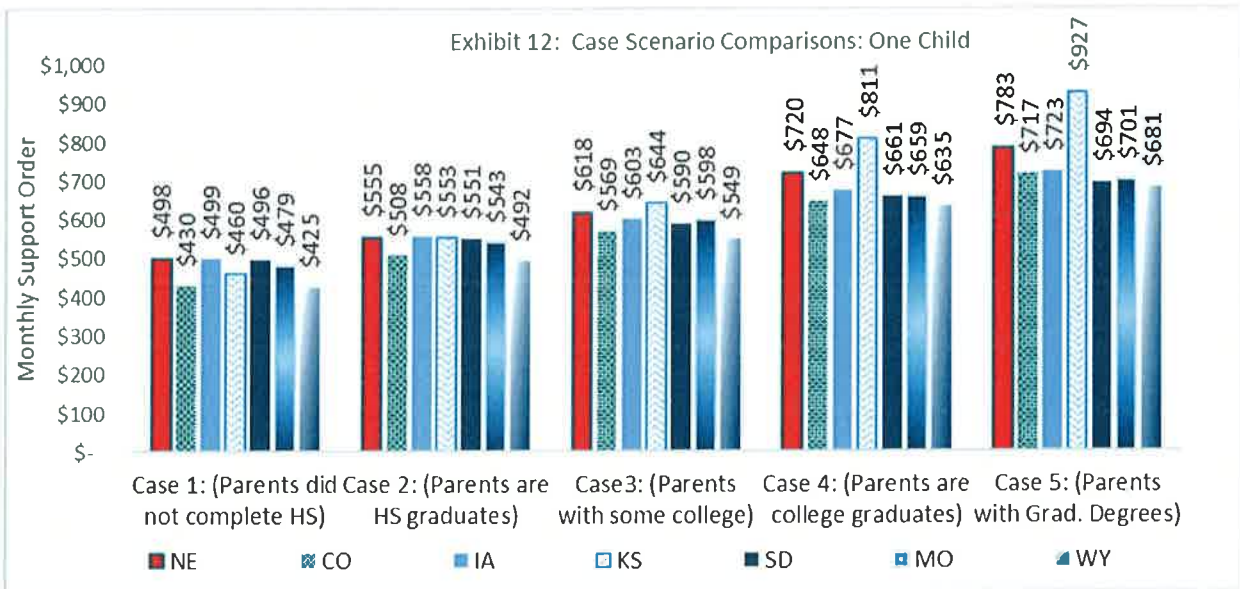


COMPARISONS TO NEIGHBORING STATES

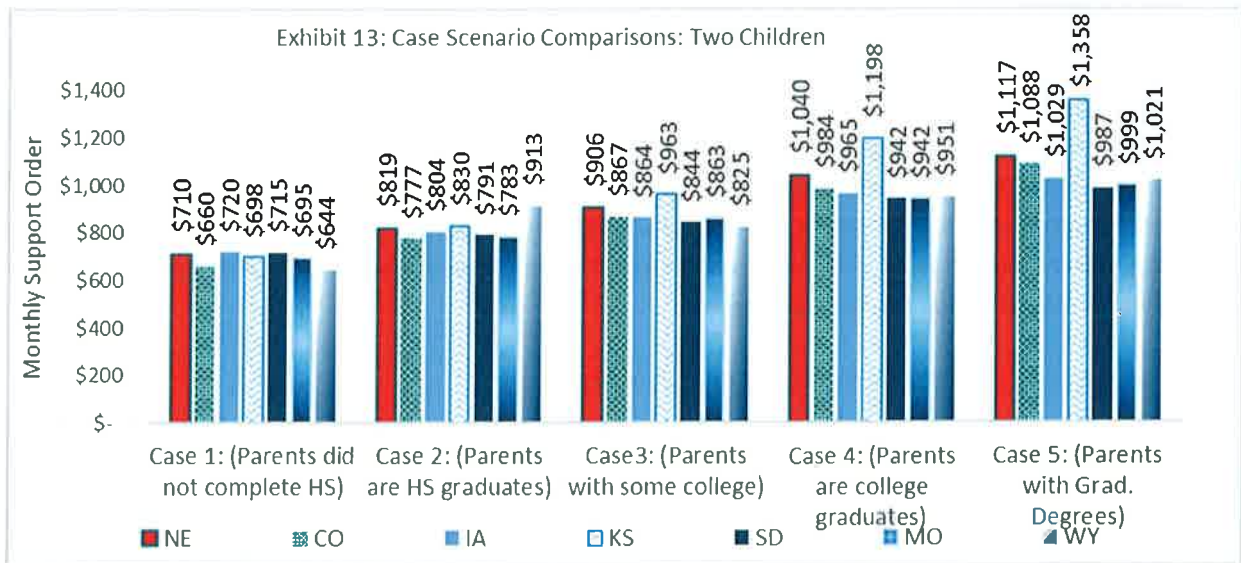
The case examples consider median incomes by five different levels of educational attainment of Nebraska workers. The data are from the 2016 U.S. Census American Community Survey.⁴⁴ Median earnings are:

- \$1,575 for females and \$2,514 for males with less than a high school degree;
- \$2,034 for females and \$3,114 for males with a high school degree or GED;
- \$2,396 for females and \$3,748 for males with some college or associate’s degree;
- \$3,475 for females and \$5,037 for males with a bachelor’s degree; and
- \$4,633 for females and \$5,979 for males with a graduate or professional degree.

The case scenarios assume the median amount among males is the obligated parent’s income and the median amount among females is the custodial parent’s income. Statistically, the clear majority of obligated parents are male. Gross income is converted to net income by assuming that the obligated parent’s tax filing status is single with no dependents and the custodial parent’s tax filing status is head-of-household and claims the children as dependents. The case scenarios assume no other factors that affect the guidelines calculation (e.g., joint physical custody). Since Kansas adjusts for the age of the child, the oldest child amount is used. Exhibit 12 compares the order amounts for one child and Exhibit 13 compares the order amounts for two children. Based on the case file data, the vast majority of orders are for one and two children.



⁴⁴ U.S. Census American Community Survey. (2016). *Median Earnings by Highest Educational Attainment and Sex: 2016*. The ACS reports them as annual amounts. They are converted to monthly amounts for purposes of the comparisons. Retrieved from <http://census.gov>



UPDATING THE CHILD SUPPORT TABLE

After considering the economic data, the Commission directed CPR to develop updated child support tables based on the most current Betson-Rothbarth measurements. The Commission also directed CPR to update them for 2018 price levels, adjust for Nebraska’s price parity (which was discussed earlier in this section), and alter the amount of ordinary medical expenses incorporated into the Table.

UPDATING THE AMOUNT OF ORDINARY MEDICAL EXPENSES IN THE TABLE

The Commission was concerned that the \$480 per child per year in the current guidelines to cover the child’s ordinary out-of-pocket medical expenses did not reflect current realities. Based on the current year in which data are available, the Medical Expenditure Panel Survey (MEPS) finds that the average out-of-pocket medical expense per child was \$248 in 2015, but varied depending on whether the child was enrolled in public insurance such as Medicaid or had private insurance.⁴⁵ Based on MEPS data, out-of-pocket medical expenses per child averaged \$63 per child in 2015 for children who had public insurance and \$388 per child in 2015 for those with private insurance. The MEPS definition of medical expenses was limited to expenditures for medical provider visits, hospital outpatient visits, hospital emergency room visits, hospital inpatient stays, dental visits, home health care, vision aids, other medical equipment and services, and prescribed medicines. In other words, it does not include over-the-counter medicines and band-aids.

⁴⁵ Calculated from the U.S. Department of Health and Human Services 2015 Medical Expenditure Panel Survey. Retrieved from https://meps.ahrq.gov/mepsweb/about_meps/survey_back.jsp.

The Commission requested two different tables that varied by the amount of ordinary healthcare expenses incorporated into the Table. Table A excludes all of the child's healthcare expenses. Table B includes \$250 per child per year for ordinary healthcare expenses such as co-pays for well visits, over-the-counter medicines, and other common healthcare expenses. Many states use \$250. Only a few states use zero. Michigan, a state that sets it at zero, adds a line item in the worksheet to cover a standardized amount for the child's out-of-pocket healthcare expenses (*e.g.*, \$33.58 per month for one child). Other states (*e.g.*, Virginia) with zero included in their tables, typically add all of the child's actual amount of out-of-pocket healthcare expenses.

Advantages of excluding all healthcare expenses

- Actual out-of-pocket expense of the child's healthcare expenses can be added on a case-by-case basis.
- Avoids the assumption that out-of-pocket healthcare expenses for low-income children (who may be receiving Medicaid, which has no copays or deductibles) are the same as for children of high-income families who have high deductibles.
- Lends itself to the Michigan approach, which is a standardized amount of ordinary medical expenses that is added in the worksheet.⁴⁶ The standardized amount can vary between children enrolled in Medicaid and children not enrolled in Medicaid. It also can be updated periodically without updating the entire child support table.

Advantages of including \$250 per child per year for ordinary healthcare expenses in table

- Most children incur some out-of-pocket healthcare expenses. Two-hundred and fifty approximates the average out-of-pocket medical expenses. It is the most common amount included in child support tables of other states.
- Parents may not know what their likely or actual out-of-pocket expenses for the child are at the time the order is established.
- Parents do not have to share receipts and deal with reimbursing the other parent for the child's out-of-pocket healthcare expenses until it exceeds \$250 per child per year.

⁴⁶ See Michigan's child support guidelines formula at <https://courts.michigan.gov/Administration/SCAO/Resources/Documents/Publications/Manuals/focb/2017MCSFSuppl.pdf> .

UPDATING THE BASIC SUBSISTENCE LIMITATION IN THE TABLE

The existing Table 1 incorporates the minimum order of \$50 per month and basic subsistence limitation based on the federal poverty guidelines (FPG) for one person in the year that Table 1 was developed rather than the current level (*i.e.*, \$1,012 per month in 2018). The FPG is updated annually around February of each year. The basic subsistence limit was updated in the Table using the following assumptions.

- For incomes below the current basic subsistence limit (*i.e.*, \$1,012), the table amounts are \$50 per month.
- For incomes above the basic subsistence limit, the table amount is the lower of two measurements: the economic measurement of child-rearing expenditures adjusted for Nebraska prices; and, the differences between the income and the basic subsistence limit multiplied by a percentage that varies by the number of children. The percentage is 50 percent for one child; 70 percent for two children; 80 percent for three children; 85 percent for four children; 87 percent for five children; and 90 percent for six children. The areas of the tables adjusted for the basic subsistence limit are shaded.

The area of the Table containing this adjustment is shaded. It is shown at the end of Appendix A.

The phase-out percentages and the percentage amounts are policy decisions. Some states use more or less percentages for the phases-outs (*e.g.*, more or less than 50% for one child). No percentage phase-out means that every dollar increase in net income is assigned to child support: that is, there is no economic incentive to increase earnings. The lower the percentage, the further the “shaded area” (*i.e.*, the area adjusted for the basic subsistence limit) extends to higher incomes.

COMPARISONS OF UPDATED TABLES

CPR developed comparisons that were shared with the Commission at its December 18 meeting. They are shown in Exhibits 14 and 15. They compare the existing Nebraska Table 1 to Options A and B, as well as the table amounts of South Dakota and Iowa, which are neighboring states. Wyoming, another neighboring state with a net-income based guidelines, is not included because it relies on a formula rather than a table. Other neighboring states are not included in the comparisons because they are based on gross income, so tax assumptions would be necessary to convert them to a net-income basis. South Dakota’s price parity is 88.3 and Iowa’s price parity is 90.2. Iowa makes no adjustment for its lower cost of living, rather it uses the national measurements. South Dakota does make an adjustment, but uses a different method. It realigns the national measurements of child-rearing expenditures for South Dakota’s lower incomes. Both states include out-of-pocket healthcare expenses of \$250 per child per year in their tables.

Exhibit 14: Comparisons of Basic Obligations: One Child

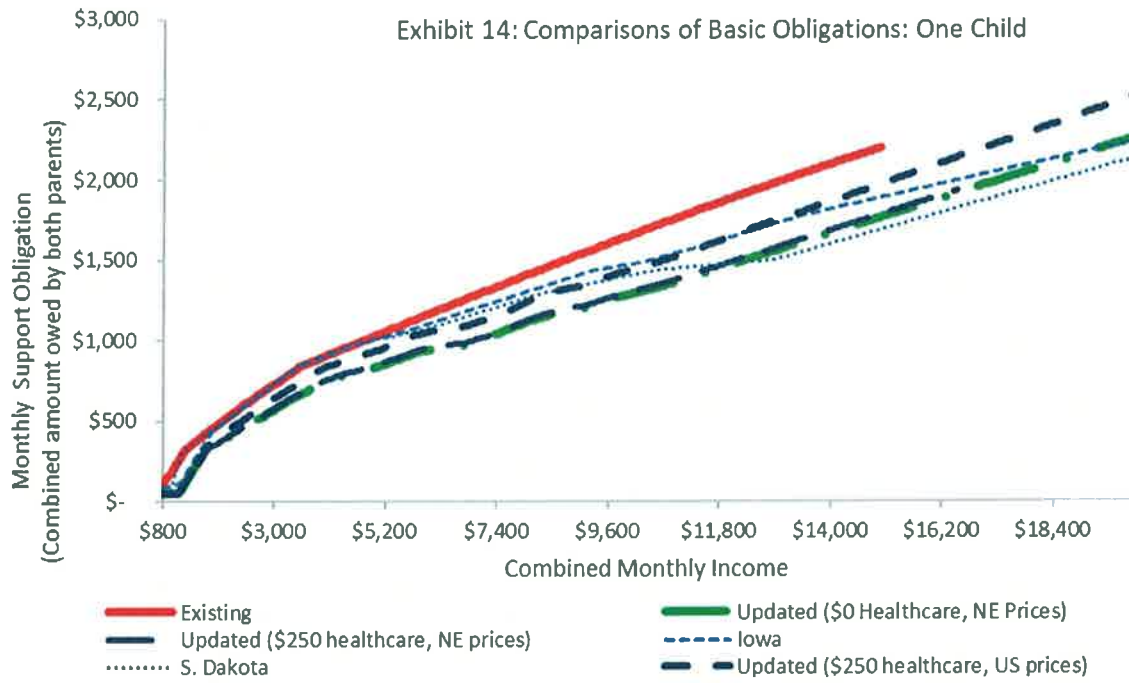
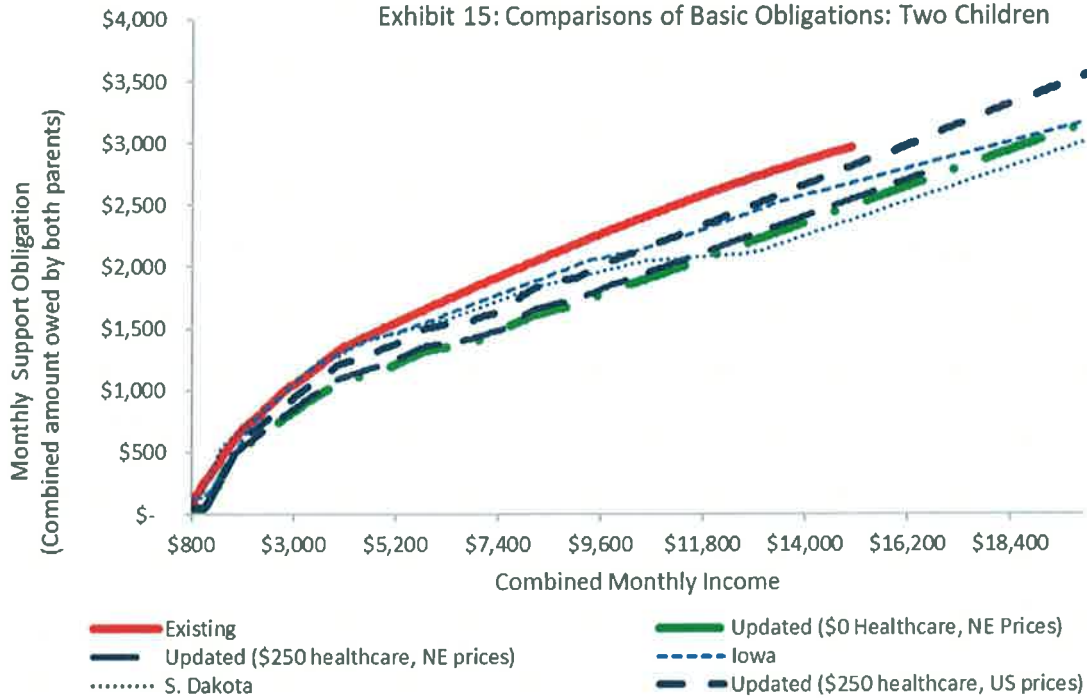


Exhibit 15: Comparisons of Basic Obligations: Two Children



Commission's Final Recommendation for Updating the Table

At its December 18 meeting, the Commission recommended updating Table 1 in the guidelines using Table B, which is the table that includes the \$250 per child per year in ordinary medical expenses. Besides updated for 2018 price levels, Table B includes the same assumptions used to develop the Table proposed by the 2014 Commission. That Court did not promulgate that Table.

More detail about the data and assumptions underlying Table B is provided in Appendix A.

SECTION 4: FINDINGS FROM THE ANALYSIS OF CASE FILE DATA AND OTHER DATA

This section documents the findings from the data analysis required by federal regulation. The findings from the analysis are organized by data source:

- Findings from case file data; and
- Findings from labor market data and other data.

FINDINGS FROM THE ANALYSIS OF CASE FILE DATA

Federal regulation requires the examination of case file data. Data were extracted from the automated system that the Nebraska Department of Health & Human Service Child Support Enforcement (CSE) program uses to track order establishments, payments, enforcement actions and other child support actions. CSE extracted all orders established or modified sometime between October 1, 2015 and September 30, 2016 as well as the payments on those orders in the following fiscal year (*i.e.*, October 1, 2016 through September 30, 2017) and provided that information to CPR.

The major data limitation, which is inherent in all states using data from their state child support automated system, is the systems are not designed to track the data fields of interest to the expanded federal requirements. Specifically, few state automated systems track whether the low-income adjustment was applied, whether income was imputed, whether the order was entered by default, and income used for the guidelines application. In fact, few state automated systems track any of the information used to establish the child support order (*e.g.*, each parent's income and the cost of the child's health insurance).

There is some availability of income data from another source. Pursuant federal regulation, child support systems receive state quarterly wage data collected from employers for state unemployment insurance programs periodically. Besides being gross income, other limitations of the quarterly wage data are that it does not include self-employed income and income from employers not paying into the state unemployment program (*e.g.*, railroad employees) and it does not always track with the net income used in the guidelines calculation of support.

IV-D and Non-IV-D Status. Findings are presented for IV-D and non-IV-D cases separately. IV-D refers to Title IV-D of the Social Security Act that authorizes state child support programs. In other words, if the order is a "IV-D order" it is part of the state child support program. If it is non-IV-D, it is a private case. Orders are further broken down by whether they are new or modified orders. Through previous studies CPR has found that the characteristics of new and modified orders generally differ. For example, modified orders generally tend to be higher income cases, have higher orders, and generally have better payment patterns. This may be because there is more at stake in the cases, so they tend to be modified.

The percentage breakdown between IV-D and non-IV-D orders was 64 percent IV-D and 36 percent non-IV-D. The percentage breakdown between new orders and modified orders was 66 percent new orders and 34 percent non-IV-D orders. Another way, this can be broken down is:

- 3,848 New IV-D orders (40% of all orders);
- 2,302 Modified IV-D orders (24% of all orders);
- 2,639 New non-IV-D orders (27% of all orders); and
- 897 Modified non-IV-D orders (9% of all orders).

A notable percentage of cases changed their IV-D status over the year that case were tracked. About 10 percent of orders that started as IV-D orders became non-IV-D orders and about one third of orders that started as non-IV-D orders became IV-D orders. Data on what triggered the change was not collected.

Large Counties. For the purposes of the analysis, a county is classified as large if it included more than 200 orders that were established or modified in state fiscal year 2015. There were eight counties that were classified as large: Buffalo (281 orders); Douglas (2,978 orders); Hall (461 orders); Lancaster (1,401 orders); Lincoln (224 orders); Platte (234 orders); Sarpy (772 orders); and Scotts Bluff (266 orders). These eight counties comprised most (68%) of the orders analyzed.

NUMBER OF CHILDREN AND GENDER OF THE OBLIGATED PARENT

Exhibit 16 shows that the majority of orders were for one child (*i.e.*, 59.7% of all orders were for one child). This was true regardless of IV-D status and whether it is was a new or modified order.

Exhibit 16: Number of Children (percentage of cases with valid responses)					
	IV-D Orders		Non-IV-D Orders		Total (n=9,686)
	New Orders (n = 3,848)	Modified Orders (n = 2,302)	New Orders (n = 2,639)	Modified Orders (n = 897)	
Number of Children					
• 1 Child	67.2%	55.7%	57.4%	44.7%	59.7%
• 2 Children	23.2%	28.4%	29.3%	37.7%	27.4%
• 3 Children	7.0%	11.6%	10.0%	12.5%	9.4%
• Four or More Children	2.6%	4.3%	3.3%	5.1%	3.4%

Exhibit 17 shows the majority of obligated parents were males. Modified orders tend to have slightly more female obligated parents than new orders. This may be due to mothers being ordered to pay support because of a child protective services issue (*e.g.*, the child was removed from the home because of a neglect issue) or a change in physical custody.

Exhibit 17: Gender of Obligated Parent (percentage of cases with valid responses)					
	IV-D Orders		Non-IV-D Orders		Total (n=7,799)
	New Orders (n = 3,657)	Modified Orders (n = 1,305)	New Orders (n =2,527)	Modified Orders (n = 310)	
Male	89.7%	85.2%	91.4%	87.0%	87.3%
Female	10.3%	14.8%	8.6%	13.0%	12.7%

INCOME OF THE OBLIGATED PARENT

As mentioned earlier, the income used for the guidelines calculation was not readily available. Quarterly wage data, however, was available for about 60 percent of the orders (see Exhibit 18). It was converted to a monthly income. Exhibit 18 shows the frequency of orders by monthly income and the median and average monthly income. In general, incomes were generally low. Over half of all orders with income information had a income of less than \$2,000 per month. In contrast, as stated earlier, the average annual wage in Nebraska is about \$40,000, which is about \$3,300 per month.

Exhibit 18: Payor Monthly Income Based on Quarterly Wage Data (percent of orders)					
All Orders	IV-D Orders		Non-IV-D Orders		Total (n=9,686)
	New Orders (n = 3,848)	Modified Orders (n = 2,302)	New Orders (n = 2,639)	Modified Orders (n = 897)	
Monthly Income					
• No Income Information	25.7%	29.5%	60.2%	70.3%	40.1%
• \$1- 1,000	20.6%	12.0%	10.5%	5.8%	14.4%
• \$1,001- \$1,350/month	7.9%	5.0%	3.9%	2.0%	5.6%
• \$1,351-\$1,500	3.5%	1.8%	1.6%	0.7%	2.3%
• \$1,501-\$2,000	10.8%	8.4%	5.4%	3.8%	8.1%
• \$2,001-\$3,000	15.7%	16.9%	8.3%	7.4%	13.2%
• More than \$3,000	15.7%	26.4%	10.2%	10.0%	16.2%
	New Orders (n = 2,859)	Modified Orders (n =1,624)	New Orders (n = 1,051)	Modified Orders (n = 266)	Total (n=5,800)
Average (among those with Income Information)	\$2,053	\$2,385	\$2,118	\$2,336	\$2,171
Median (among those with Income information)	\$1,751	\$2,435	\$1,903	\$2,287	\$1,975

Data was also obtained on whether the obligated parent was incarcerated or known to have Social Security Income or Supplemental Security Income. The obligated parent was known to be incarcerated in 1 percent of the cases. Social Security Income or Supplemental Security Income was known in 3 percent of the cases. The percentage did not vary significantly by IV-D status or whether it was a new or modified order.

GUIDELINES APPLICATION AND DEVIATIONS

Federal regulation requires the analysis of case file data on guidelines application and deviations. The existing Nebraska guidelines (§4-203) provides the following deviation criteria:

- When there are extraordinary medical costs of either parent or child;
- When special needs of a disabled child exist;
- When net income exceeds \$15,000 per month;

- For juveniles placed in foster care; or
- Whenever the application of the guidelines in an individual case would be unjust or inappropriate.

In addition, existing Nebraska guidelines (§4-203) provides that deviation must consider the best interests of the child, and stipulated agreements must be previewed against the guidelines. In the event of a deviation, the reason for the deviation must be documented in the order or worksheet 5.

The case file analysis conducted for the 2018 review found that the guidelines deviation rate was 2.9. This is a small increase from the guidelines deviation rate last review, which was 2.3 percent. Exhibit 19 shows small variation in guidelines deviation rate by IV-D status and whether the order was a newly established order or a modified order. Information about IV-D status was not available in previous case file reviews.

Exhibit 19: Percentage of Cases with Guidelines Applications and Deviations and Deviations by Reason					
Characteristics	IV-D Orders		Non-IV-D Orders		Total (n=9,686)
	New Orders (n =3,848)	Modified Orders (n = 2,303)	New Orders (n = 2,639)	Modified Orders (n = 897)	
Followed Guidelines					
• Yes	77.0%	89.8%	73.7%	87.1%	80.1%
• No (i.e., a guidelines deviation was made)	2.1%	3.5%	3.0%	4.9%	2.9%
• Unknown/Missing	20.9%	6.7%	23.3%	8.0%	17.0%
Deviation Reason (% of All Cases)					
• Special Needs Exist	1.5%	2.6%	2.5%	3.9%	2.2%
• Extraordinary Medical Cost	0.0%	0.0%	0.0%	0.1%	0.0%
• Foster Care	0.3%	0.1%	0.1%	0.0%	0.2%
• Unjust or Inappropriate	0.3%	0.8%	0.5%	0.9%	0.5%

Several counties (i.e., 11 counties) had deviation rates in excess of 6 percent. None of the large counties had deviation rates in excess of 6 percent. Among those counties with at least 10 orders established or modified, Box Butte County entered 71 orders and had a 8.5 percent deviation rate; Clay County entered 10 orders and had a 13.5 percent deviation rate, Dixon County entered 11 orders and had a 27.3 percent deviation rate; Fillmore County entered 11 orders and had a 7.7 percent deviation rate; Hamilton County entered 62 orders and had a 6.5 percent deviation rate; Nuckolls County entered 26 orders and had a 11.5 percent deviation rate; Pierce County entered 27 orders and had a of 7.4 percent deviation rate; Richardson County entered 47 orders and had a 6.4 percent deviation rate; Washington County entered 92 orders and had a 13.0 percent deviation rate; Wayne County entered 35 orders and had a 8.6 percent; deviation rate and York County entered 73 orders had a 9.6 percent deviation rate.

Of concern in Exhibit 19 is the proportion of cases in which it was not known whether there was a guidelines application or guidelines deviation. In all, the application/deviation status was unknown in 17 percent of orders. This is lower than the unknown rate from the last review (which was 32 percent); yet, is still of concern since federal regulation and state guidelines requires the documentation of guidelines deviation. The unknown rate was highest among new orders (20.9% of IV-D new orders and 23.3% of non-IV-D order). A couple of the large counties (Buffalo County and Hall County) had unknown rates more than twice the statewide average.

Exhibit 19 also shows the reasons for guidelines deviations. The most common reason for deviation was the existence of special needs. In counties with guidelines deviation rates above 6 percent, special needs was the predominant reason in Clay County, Pierce County, Richardson County, Washington County, and York County. Unjust or inappropriate was the predominant reason in Dixon County, Fillmore County, Hamilton County, and Wayne County. Foster care was the predominant reason for deviations in Nuckolls County and York County.

ORDER AMOUNTS

Exhibit 20 shows the order the frequency of orders by order amount as well as the average and median order amounts. Generally, the orders tend to be higher among non-IV-D orders than IV-D orders. The zero orders include cases in which an action was filed but then the parties reconciled, or the action was dropped. Large counties with an above average percentage of zero orders were Buffalo County (14%), Hall County (14%), and Scotts Bluff County (13%).

Exhibit 20: Order as of October 2016 (percentage of all orders)					
	IV-D Orders		Non-IV-D Orders		Total (n=9,686)
	New Orders (n = 3,848)	Modified Orders (n = 2,302)	New Orders (n = 2,639)	Modified Orders (n = 897)	
Amount					
• \$0	6.5%	14.1%	8.5%	12.4%	9.4%
• \$1-49/month	12.1%	6.1%	8.8%	4.6%	9.1%
• \$50- 100/month	14.3%	7.8%	9.1%	4.7%	10.4%
• \$101-\$200/month	11.7%	8.4%	9.2%	6.4%	9.8%
• \$201-\$400/month	26.9%	23.2%	21.5%	18.3%	23.7%
• \$401-\$600/month	15.3%	20.7%	17.1%	18.3%	17.3%
• \$601-\$800/month	7.1%	9.6%	10.1%	13.0%	9.1%
• \$801-\$1,000/month	3.5%	5.3%	5.7%	8.4%	5.0%
• \$1,001-\$3,000/month	2.5%	4.9%	9.5%	13.3%	6.0%
• More than \$3,000/month	0.0%	0.0%	0.6%	0.8%	0.2%
Average (Non-zero orders)	\$307	\$375	\$467	\$557	\$390
Median (Non-zero orders)	\$250	\$331	\$343	\$452	\$309

Few (about 16%) of new orders had arrears at the time of establishment. About half of modified orders had arrears. The average amount of arrears was \$3,656 among modified orders with arrears.

APPLICATION OF THE LOW-INCOME ADJUSTMENT

Federal regulation requires the analysis of the application of the low-income adjustment (45 C.F.R 302.56(h)(2)). Nebraska provides a low-income adjustment through two different provisions: the minimum order (§4-209) and the basic subsistence limit (§4-218). The minimum order is a recommendation to set a minimum support that is the greater of \$50 per month or 10 percent of the obligor's net income. A minimum order of \$50 per month was applied infrequently (*i.e.*, 8% of all orders in the case file data had a \$50 order). A minimum order of \$50 per month was applied somewhat more frequently among new IV-D orders (*i.e.*, 10.6% of new IV-D orders had a \$50 per month order). It was applied less frequently among modified orders (5% or less regardless of IV-D status). Among obligated parents with quarterly wage data and that income was less than \$12,000 per year (which approximates the federal poverty level for one person), 14 percent had an order set at \$50 per month. Lincoln County was the only large county to apply the \$50 order more than average: it applied it to 12 percent of its orders. Large counties that applied considerably less than average were Platte County (5%) and Sarpy County (5%).

Application of the 10 percent of net income minimum order was estimated because the data on the obligated parent's net income is not tracked by the automated system. A proxy for its application indicates that the 10 percent-minimum is not applied frequently. Specifically, 15 percent of the cases with quarterly wage data below \$12,000 per year (which approximates the federal poverty level for one person) had an order less than 10 percent of gross income. This may understate the actual amount since net income is less than gross income and income data was available for just over half of obligated parents in the data set used for the analysis.

Under the existing Nebraska guidelines, the basic subsistence limitation provides that a parent's support, child care, and healthcare obligation shall not reduce his or her net income below the federal poverty guidelines for one person, which was \$1,012 per month in 2018. Like most states' automated system tracking IV-D cases, the Nebraska automated system does not include a data field specifying whether the minimum order or basic subsistence limit was applied. However, what evidence is available suggests that it is applied infrequently. Using quarterly wage data as a proxy, 20 percent of obligated parents had known incomes between \$1 and \$12,000 per year (which is a proxy for poverty income) when the order was established. As shown in Exhibit 21, among the obligated parents of these orders: 9 percent had an order set at \$0 per month; 1 percent had an order set between \$1 and \$49 per month; 14 percent had an order set at \$50 per month, and 76 percent had an order set at more than \$50 per month. It is likely that some of the parents with no quarterly wage data also were impoverished. Among those, 80 percent had orders exceeding \$50 per month.

Exhibit 21: Order Amounts by Availability of Quarterly Wage (QW) Data and QW Income				
	No QW Data	\$12,000/year or less	More Than \$12,000 year	All Orders
All Orders	45%	20%	35%	100%
\$0 Order	10%	9%	9%	9%
\$1-\$49 Order	1%	1%	1%	1%
\$50 Order	9%	14%	3%	8%
More than \$50	80%	73%	87%	82%
All Orders	100%	100%	100%	100%
Orders with Income Information				
Less Than 10% of gross income	Not Available	15%	37%	34%

As shown in Exhibit 22, the average percentage of current support paid in the year following the order establishment was 66.4 percent among orders set at \$50 per month. Among orders set at less than 10 percent of gross income among orders in which the obligor’s income was known to be less than \$12,000 per year, the average compliance rate was 100 percent. The difference suggests that \$50 per month may be too high in some cases (e.g., juvenile court orders in which the child is removed from the parent’s home, particularly because for the parent to get the child back the parent must comply with a case plan that may include many activities that limit employment such as getting housing, alcohol or substance abuse treatment, and making all court appearances).

In general, compliance was high among all orders (90.2% of the current support order was paid). Almost two-thirds of the orders had some payments by income withholding. The percentage with some payment through income withholding was higher among IV-D orders.

Exhibit 22: Average Percentage of Current Support Paid by Available Quarterly Wage (QW) Data and Income				
	No QW Data	\$12,000/year or less	More Than \$12,000 year	All Orders
All Orders	82.9%	73.6%	Over 100%	90.2%
\$0 Order	Not Applicable			
\$1-\$49 order	Over 100%	Over 100%	Over 100%	Over 100%
\$50 Order	56.1%	62.4%	Over 100%	66.4%
More Than \$50	83.9%	74.7%	97.2%	87.1%
Orders with Income Information				
Less than 10% Of Gross Income	Not available	Over 100%	99%	Over 100%

INCOME IMPUTATION AND DEFAULT

Expanded federal regulation aims to reduce income imputation and default orders, particularly among low-income parents because of research finding that compliance is highly correlated with the ability to

pay and that orders entered with income imputation and default can result in orders that exceed an obligated parent's ability to pay, particularly among low-income, obligated parents.⁴⁷

The analysis of the case file data revealed no consistent income imputation and default practices across the state. Specifically, there is no order amount in which a large percentage of orders are concentrated. For example, there would be a large concentration of \$209 orders for one child in 2015 using the guidelines if the obligated parent's income was imputed at full-time minimum wage earnings then.

Based on anecdotal evidence provided by practitioners serving on the Commission, the belief is that income imputation practices vary widely across the state. It is also believed that income imputation practices became more diversified to compensate for increases in minimum wage from \$7.25 per hour in 2014 to \$8.00 per hour in 2015 to \$9.00 per hour in 2016. Strict application of an income imputation rule of say 40 hours at state minimum wage would have resulted in large variations in order amounts among those three years if income was indeed imputed. Anecdotal evidence suggests that judges have developed a variety of income imputation schemes (*e.g.*, using 30 hours per week instead of 40 hours per week) such that orders based on imputed income did not increase from year to year just because minimum wage increased.

ANALYSIS OF LABOR MARKET DATA AND OTHER DATA

Federal regulation (C.F.R. § 302.56(h)(1)) requires the consideration of:

...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;

The review of labor market data appears to be aimed at informing recommendations for guidelines provisions for income imputation and low-income adjustments. The Modernization Rule (MR) requires certain considerations when imputing income, including the recommendation to consider employment opportunities available to the parent given local labor market conditions. For example, presuming a minimum income equivalent to full-time, minimum wage earnings may not be realistic if there are high unemployment rates across the state or employers do not offer full-time employment for entry-level, low-skilled jobs (*e.g.*, retailers do not commonly offer 40-hour workweeks).

In all, labor market conditions may change more frequently than every four years, which is the minimum amount of time in which a state's guidelines must be reviewed. Currently, the Nebraska economy and the U.S. economy is doing well. The Nebraska unemployment rate was 2.8 percent as of September

⁴⁷Department of Health and Human Services. (Nov. 17, 2014). "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs." *Federal Register*, vol. 79, No. 221, p. 68553-68556. Retrieved from <https://www.govinfo.gov/content/pkg/FR-2014-11-17/pdf/2014-26822.pdf> .

2018, which was lower than the U.S. average of 3.7 percent at that time.⁴⁸ The highest county unemployment rate was in Arthur County. It was 4.7 percent as of August 2018.

Nebraska labor market data reveals that many entry level positions for low-skilled workers pay just above full-time minimum wage earnings (*i.e.*, year-round employment at Nebraska's current minimum wage of \$9.00 per hour would yield an annual income of \$18,720). For example, the entry level pay of fast food cooks is \$20,241 per year (\$9.73 per hour assuming a 40-hour workweek), while the median pay is \$20,966 per year and experienced pay is \$23,650 per year. In contrast, 200 percent of the 2018 federal poverty guidelines for one person is \$2,024, which is \$11.68 per hour assuming a 40-hour work week.

Hours worked has been used to inform income imputation policies. For example, South Dakota used labor market data on hours worked to reduce the presumption of a 40-hour work week when imputing income since labor market data indicates South Dakota workers usually work 35 hours per week. There was not information readily available about the hours usually worked at these entry level jobs in Nebraska. National data reveals that the average hours is 34.5 hours per week among all workers, 38.9 hours per week among workers in wholesale trade, 31.0 hours per week among retail trade workers, and 26.0 hours per week among leisure and hospitality workers.⁴⁹ Underscoring the issue of part-time and stable work are Nebraska-specific statistics on workers with multiple jobs and turnover rates.⁵⁰ The percentage of Nebraska workers with multiple jobs is 17.6 percent statewide, 14.9 percent in Omaha, and 15.7 percent in Lincoln. The fact that Nebraska workers may not be employed every week of the year is underscored by Nebraska's labor market turnover rate of 8.7 percent for all industries and 17.1 percent in food and accommodations services.

Factors that Influence Employment Rates and Compliance

There is some evidence that child support can affect employment among obligated parents. A 2005 study analyzing Black men who had a high school education or less in the 1980s and 1990s found that child support enforcement accounted for half or more of the decline in employment activity among Black men between the ages of 16 and 34.⁵¹ Another study finds some weak association of changes in father's earnings with changes in orders among fathers in couples that had their first child support ordered in 2000.⁵² Further, there are many anecdotes of obligated parents who quit working or turn to unreported employment (also called the underground economy) once wages are garnished for child support.

⁴⁸ Nebraska Department of Labor. Retrieved from <https://dol.nebraska.gov/>.

⁴⁹ U.S. Department of Labor. Retrieved from www.bls.gov.

⁵⁰ Nebraska Department of Labor. Retrieved from <https://dol.nebraska.gov/Trends>.

⁵¹ Holzer, Harry J. Offner, Paul, and Sorensen, Elaine. (March 2005). "Declining employment among young black less-educated men: The role of incarceration and child support." *Journal of Policy Analysis and Management*.

⁵² Ha, Yoonsook, Cancian, Maria, and Meyer, Daniel, R. (Fall 2010). "Unchanging Child Support Orders in the Face of Unstable Earnings." *Journal of Policy Analysis and Management*. vol. 29, No. 4, pp. 799-820.

The limitations of these studies are they are dated (hence do not consider today's labor market and child support enforcement practices) and not specific to Nebraska. Opportunities for income from unreported employment are rapidly changing. It is becoming more common to have multiple jobs and one may be unreported employment and the other may be reported employment. Still, more mechanisms are being developed to facilitate the reporting of gig economy jobs (*e.g.*, income from drivers for ridesharing). As is, the earnings from unreported employment are often sporadic and yield inconsistent earnings.

SECTION 5: CONCLUSIONS AND MAJOR FINDINGS

This report fulfills the federal data requirements of a state's guidelines review. This includes a

- Review of the economic evidence on child-rearing expenditures;
- Analysis of case file data to determine guidelines applications and deviations;
- Analysis of payment patterns and income imputation; and
- Consideration of labor market data.

MAJOR FINDINGS

- The existing Nebraska guidelines fulfills the new federal requirement to consider the obligated parent's ability to pay.
- The existing Nebraska guidelines does not fulfill the new federal requirement to consider the specific circumstances of the noncustodial parent when income imputation is authorized. It could easily be fulfilled by adopting the federal language. This is the solution most states are adopting.
- The existing Nebraska guidelines does not fulfill the new federal requirement to provide that incarceration may not be treated as voluntary unemployment, although state statute does. To undoubtedly ensure Nebraska's compliance with this requirement, the statutory provision could simply be codified into the guidelines.
- Federal regulation requires the review of economic data on the cost of raising children; and, making adjustments if appropriate. There are several different studies of child-rearing expenditures. Economists do not agree on which measurement best measures actual expenditures. The current Nebraska table of basic child support obligations is generally within range of credible measurements of child-rearing expenditures. The table recommended by the Commission is also appropriate for Nebraska and within range of credible measurements of child-rearing expenditures.
- Federal regulation requires the analysis of case file data to determine how often deviations from the guidelines are made. The intent is to keep guidelines deviations at a minimum. Based on the most current data available, Nebraska's deviation rate is 2.9 percent, which is low compared to other states and within range of previous rates.
- This was Nebraska's first attempt to meet the new data requirements imposed by the 2016 federal requirements including the analysis of payment data. Data were extracted from the automated system that the Nebraska Department of Health & Human Service Child Support Enforcement (CSE) program uses to track order establishments, payments, enforcement actions and other child support

actions. If possible, it would be ideal for future reviews, if the system could be modified to note whether the basic subsistence limitation was applied.

- The basic subsistence limit and minimum order provisions appear to be applied infrequently. Only 8 percent of orders are set at \$50 per month while at least 20 percent of obligated parents were known have income below poverty. Among those, 87 percent had orders established above \$50 per month.
- Federal regulation also requires the analysis of payment data by income imputation and default orders and consideration of labor market data. There was no indication of consistent income imputation at a particular wage from the data analyzed. This may be due to recent increases to Nebraska's minimum wage from \$7.25 per hour in 2014 to \$8.00 per hour in 2015 to \$9.00 in 2016. Imputation at a 40-hour workweek would have resulted in significant increases in order amounts for those with income imputed at full-time, minimum wage, which is a common practice across the nation. Anecdotal evidence also suggests that other solutions were developed and they varied among counties. In all, the new federal rule aims for more consideration of the circumstances of the parent, rather than blanket income imputation. Nonetheless, the analysis of labor market data indicates jobs are readily available in Nebraska and even entry level jobs pay more than the state minimum wage.

CONCLUSIONS

This report demonstrates that Nebraska has fulfilled the data requirements for a guidelines review as federally required. The major findings point to two improvements to the guidelines at a minimum: adopt the federal language regarding income imputation and voluntary unemployment among incarcerated parents.

APPENDIX A: DATA AND ASSUMPTIONS UNDERLYING UPDATED TABLE

As described in Section 3, there are actually several different studies of child-rearing expenditures that form the basis of state and territory guidelines that vary in data years and economic methodology. Also described in Section 3, all of these studies rely on expenditure data collected through the U.S. Bureau of Labor Statistics Consumer Expenditure Survey (CES).

Overview of Common Economic Methodologies

An economic methodology is necessary to measure child-rearing expenditures to separate the child's share of household expenditures from the adults' share of household expenditures. The most popular methodology underlying state child support guidelines is the "Rothbarth," methodology,⁵³ which is named after the economist who developed. The Rothbarth methodology is one of a few marginal cost approaches used to measure child-rearing expenditures. A marginal cost approach considers how much more is spent by a couple with children than a childless couple of child-rearing age. To that end, a marginal cost approach compares expenditures of two sets of equally-well off families: one with children and one without children. The difference in expenditures between the two sets is deemed to be child-rearing expenditures. The Rothbarth methodology relies on expenditures for adult goods to determine equally well-off families.⁵⁴ The next most common marginal cost methodology, the Engel estimator, uses food shares. Through calculus, economists have proved that the Engel methodology's reliance on food shares overstates actual child-rearing expenditures because children are relatively food intensive. In contrast, the calculus behind using expenditures on adult goods in the Rothbarth methodology finds that the Rothbarth estimator understates actual child-rearing expenditures because parents essentially substitute away from adult goods when they have children.

⁵³ There are actually five Rothbarth studies that form the basis of state guidelines. Four of the studies were conducted by Professor David Betson, University of Notre Dame. Betson's first study was conducted in 1990 and updated three times. His second study forms the basis of the Guam guidelines. New Jersey uses a Rothbarth estimator developed from Rutgers University. (Betson, David M. (1990). *Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey*. Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. University of Wisconsin Institute for Research on Poverty, Madison, Wisconsin. David M. Betson (2001). "Chapter 5: Parental Expenditures on Children," in Judicial Council of California, *Review of Statewide Uniform Child Support Guidelines*, San Francisco, California (2001). <http://www.courtinfo.ca.gov/programs/cfcc/1058files2001/CH5.PDF>; David M. Betson (2006). "Appendix I: New Estimates of Child-Rearing Costs" in PSI, *State of Oregon Child Support Guidelines Review: Updated Obligation Scales and Other Considerations*, Report to State of Oregon, Policy Studies Inc., Denver, Colorado. Available at http://www.dcs.state.or.us/oregon_admin_rules/psi_guidelines_review_2007.pdf. Betson, David M. (2010). "Appendix A: Parental Expenditures on Children." in Judicial Council of California, *Review of Statewide Uniform Child Support Guideline*. San Francisco, California. Retrieved from <http://www.courts.ca.gov/partners/documents/2011SRL6aGuidelineReview.pdf> New Jersey Child Support Institute (March 2013). *Quadrennial Review: Final Report*, Institute for Families, Rutgers, the State University of New Jersey, New Brunswick, NJ. Retrieved from http://www.judiciary.state.nj.us/reports2013/F0_NJ+QuadrennialReview-Final_3.22.13_complete.pdf

⁵⁴ Specifically, Betson uses adult clothes, whereas others applying the Rothbarth estimator use adult clothing, alcohol and tobacco regardless whether expenditures are made on these items. Betson has conducted sensitivity analysis and found little difference in using the alternative definitions of adult goods.

CONSUMER EXPENDITURE DATA

Most studies of child-rearing expenditures, including the BR measurements, draw on expenditures data collected from families participating in the Consumers Expenditures Survey (CES) that is administered by the Bureau of Labor Statistics (BLS). Economists use the CES because it is the most comprehensive and detailed survey conducted on household expenditures and consists of a large sample. The CES surveys about 6,000 households per quarter on expenditures, income, and household characteristics (*e.g.*, family size). In the survey quarters used in the fourth BR (BR4) study (*i.e.*, first quarter of 2004 through the first quarter of 2009), households remain in the survey for five consecutive quarters, with households rotating in and out each quarter. Most economists, including Betson, use three or four quarters of expenditures data for a surveyed family. This means that family expenditures are averaged for about a year rather than over a quarter, which may not be as reflective of typical family expenditures.

In all, the BR4 study relies on expenditures/outlays data from 7,846 households in which 2,937 households were childless married couples and 4,909 were married couples with children. The subset of CES households used for the BR4 study consisted of married couples of child-rearing age with no other adults living in the household (*e.g.*, grandparents), households with no change in family size or composition during the survey period, and households with at least three completed interviews.

The CES asks households about expenditures on over a hundred detailed items. Exhibit A-1 shows the major categories of expenditures captured by the CES. It includes the purchase price and sales tax on all goods purchased within the survey period. In recent years, the CES has added another measure of “expenditures” called “outlays.” The key difference is that outlays essentially include installment plans on purchases, mortgage principal payments, and payments on home equity loans, while expenditures do not. To illustrate the difference, consider a family who purchases a home theatre system during the survey period, puts nothing down, and pays for the home theatre system through 36 months of installment payments. The expenditures measure would capture the total purchase price of the home theatre system. The outlays measure would only capture the installment payments made in the survey period.

Earlier BR measurements also rely on a newly available measure of income developed by the Bureau of Labor Statistics, the organization that conducts the Consumer Expenditure Survey (CES), which is the basis of most measurements of child-rearing expenditures. The underreporting of income is a problem inherent to most surveys. The new measure attempts to correct underreporting, particularly at low incomes. The problem was identified from findings from earlier CES that revealed that many low-income families spend considerably more than what they report as income. The new measurement essentially bumps income for some families—hence, reducing the percentage of their income spent on child rearing.

The BLS designed the CES to produce a nationally representative sample and samples representative of the four regions (Midwest, Northeast, South, and West). The sample sizes for each state, however, are

not large enough to estimate child-rearing costs for families within a state. We know of no state that has seriously contemplated conducting a survey similar to the CES at a state level. The costs and time requirements would be prohibitive.

Exhibit A-1: Partial List of Expenditure Items Considered in the Consumer Expenditure Survey	
Housing	Rent paid for dwellings, rent received as pay, parking fees, maintenance, and other expenses for rented dwellings; and interest and principal payments on mortgages, interest and principal payments on home equity loans and lines of credit, property taxes and insurance, refinancing and prepayment charges, ground rent, expenses for property management and security, homeowners' insurance, fire insurance and extended coverage, expenses for repairs and maintenance contracted out, and expenses of materials for owner-performed repairs and maintenance for dwellings used or maintained by the consumer unit. Also includes utilities, cleaning supplies, household textiles, furniture, major and small appliances and other miscellaneous household equipment (tools, plants, decorative items).
Food	Food at home purchased at grocery or other food stores, as well as meals, including tips, purchased away from home (e.g., full-service and fast-food restaurant, vending machines).
Transportation	Vehicle finance charges, gasoline and motor oil, maintenance and repairs, vehicle insurance, public transportation, leases, parking fees, and other transportation expenditures.
Entertainment	Admission to sporting events, movies, concerts, health clubs, recreational lessons, television/radio/sound equipment, pets, toys, hobbies, and other entertainment equipment and services.
Apparel	Apparel, footwear, uniforms, diapers, alterations and repairs, dry cleaning, sent-out laundry, watches, and jewelry.
Other	Personal care products, reading materials, education fees, banking fees, interest paid on lines of credit, and other expenses.

Outlays include mortgage principal payments, payments on second mortgages and home equity payments, which is what the 2010 Betson-Rothbarth measurement considers. The CES traditional measure of expenditures does not consider these outlays. The merit of using expenditures, which does not include mortgage principal payments, is that any equity in the home should be considered part of the property settlement and not part of the child support payments. The limitations are not all families have substantial equity in their homes and some families have second mortgages or home equity loans that further reduce home equity. The merit of using outlays is that it is more in line with family budgeting on a monthly basis in that it considers the entire mortgage payment including the amounts paid toward both interest and principal, and the amount paid toward a second mortgage or home equity loan if there is such a payment. Both measures include payment of the mortgage interest, rent among households dwelling in apartments, utilities, property taxes, and other housing expenses as indicated in the above table. Housing-related items, which are identified in Exhibit A-2, comprise the largest share of total family expenditures. Housing expenses compose about 40 percent of total family expenditures.

Transportation expenses account for about one-fifth of total family expenditures. In the category of "transportation," the CES includes net vehicle outlays, vehicle finance charges, gasoline and motor oil, maintenance and repairs, vehicle insurance, public transportation expenses, and vehicle rentals, leases, licenses, and other charges. The net vehicle outlay is the purchase price of a vehicle less the trade-in value. Net vehicle outlays account for about one-third of all transportation expenses. Net vehicle outlays are an important consideration when measuring child-rearing expenditures because the family's

use of the vehicle is often longer than the survey period. In Betson's first three studies, he excluded them because in his earlier estimates that consider expenditures the vehicle can be sold again later after the survey period. In contrast, Betson's 2010 estimates that consider outlays capture vehicle payments made over the survey period. The USDA, which relies on expenditures, includes all transportation expenses including net vehicle outlays. There are some advantages and disadvantages to each approach. Excluding it makes sense when the vehicle may be part of the property settlement in a divorce. An alternative to that would be to include a value that reflects depreciation of the vehicle over time, but that information is not available. Including the entire net vehicle outlay when expenditures are used as the basis of the estimate likely overstates depreciation. When the basis of the estimates is outlays, it includes only vehicle installment payments rather than net vehicle outlays. This effectively avoids the issues of vehicle equity and depreciation.

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

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

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

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

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

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

A high level of “savings” seems to contradict reports about the national savings rate being low. However, economists calculate the national savings rate using a different methodology.⁵⁵ Some of the differences concern the treatment of housing and medical expenses. When calculating the national savings rate, economists define savings to be the difference between disposable income and consumption. In defining consumption, economists impute the rental value of housing to homeowners even though the rental value may exceed the mortgage payment. Similarly, economists impute the value of all medical services received even though there was insurance coverage and the family incurred no out-of-pocket expense. These imputed values increase consumption considerably and hence, reduce the national savings rate. In fact, the escalating cost of health services contributes significantly to the declining national savings rate.⁵⁶

STEPS USED TO DEVELOP A CHILD SUPPORT TABLE FROM BETSON-ROTHBARTH MEASUREMENTS

There are several steps and additional data used to develop a child support table from the Betson-Rothbarth measurements.

Step 1. Subtract child care expenses; health insurance premiums; and extraordinary, uninsured health care expenses from estimates of child-rearing expenditures. This step is necessary because the actual amounts of these expenses are considered elsewhere in the guidelines.

Step 2. Extend the estimates of child-rearing expenditures to four and more children. The measurements cover one, two and three children. There are not a sufficient number of households in the data set with four or more children to measure child-rearing expenditures for larger families. The estimates for three children are extended to four and more children using economic equivalence scales. These scales were developed by the National Research Council,⁵⁷ a blue-ribbon panel of academics studying poverty and family income, after extensive research.

Step 3. Relate the estimates of child-rearing expenditures to net incomes. The BR estimates of child-rearing expenditures are expressed as a percentage of total family expenditures. If a family spends all of

⁵⁵ More information about this difference can be found in California’s guidelines review report (Judicial Council, 2006).

⁵⁶ *Ibid.*

⁵⁷ Citro, Constance F. and Robert T. Michael, Editors (1995). *Measuring Poverty: A New Approach*. National Academy Press. Washington, D.C.

its after-tax income, then family expenditures and after-tax income are equal and no additional adjustment is necessary. However, some families may not spend all of their disposable income on current consumption items. Hence, the estimates of child-rearing expenditures are adjusted to reflect net incomes.

Step 4. Calculate marginal percentages between income ranges. This step is necessary to gradually phase-in the estimates of child-rearing expenditures between income ranges similar to how a tax table phases in different tax rates between income ranges. Otherwise, there would be sudden changes in amounts as the table moved from income range to the next income range.

Step 5. Adjust for Nebraska price levels. So far, the steps lead to a table based on net income. The BR measurements are based on national data so reflect national price levels. They are converted to Nebraska prices by multiplying them by 90.5, which is the Nebraska price parity identified in Section 3.

Step 7. The final step is updating the basic subsistence limitation and the minimum order. This was described in Section 3.

Many of the steps involve supplemental information that is provided by Betson. That supplemental information is shown in Exhibit A-2. provided supplemental information in order to subtract these expenses from his total estimates of child-rearing expenditures. Using the same subset of the CES that he used to measure child-rearing expenditures, he measured the percentage of total expenditures devoted to child care expenses; the percentage of total expenditures devoted to uninsured healthcare expenses, including the cost of the child's health insurance benefits; and expenditures to net income ratios. Exhibit A-2 shows these measurements, as well as the BR4 measurements of child-rearing expenditures for a range of incomes in 2012 dollars, which is how Betson provided the numbers to CPR. They were updated to November 2018 price levels.

Exhibit A-2 Parental Expenditures on Children and Other Expenditures by Income Range Used in the BR Table

Annual Net Income Range (2012 dollars)	Number of Observations	Midpoint	Current Consumption as a % of Net Income	Expenditures on Children as a % of Total Consumption Expenditures (Rothbarth 1998-2004 data)			Child Care \$ as a % of Consumption (per child)	Extraordinary Medical \$ as a % of Consumption (per person)
				1 Child	2 Children	3 Children		
				\$ 0 - \$29,999	1119	\$15,000.00		
\$30,000 - \$39,999	850	\$35,000.00	100.000%	23.079%	35.870%	31.433%	0.736%	0.988%
\$40,000 - \$44,999	432	\$42,500.00	98.846%	23.222%	36.080%	30.537%	0.869%	1.149%
\$45,000 - \$49,999	468	\$47,500.00	95.664%	23.284%	36.170%	28.737%	1.126%	1.293%
\$50,000 - \$59,999	821	\$55,000.00	89.178%	23.343%	36.256%	26.667%	1.254%	1.282%
\$60,000 - \$64,999	421	\$62,500.00	85.165%	23.405%	36.348%	25.790%	1.228%	1.203%
\$65,000 - \$69,999	447	\$67,500.00	82.645%	23.441%	36.400%	24.435%	1.414%	1.335%
\$70,000 - \$74,999	335	\$72,500.00	78.181%	23.453%	36.417%	23.094%	1.509%	1.287%
\$74,999 - \$84,999	710	\$80,000.00	76.060%	23.503%	36.491%	22.103%	1.479%	1.491%
\$85,000 - \$89,999	297	\$87,500.00	74.543%	23.557%	36.570%	22.403%	1.415%	1.228%
\$90,000 - \$94,999	262	\$92,500.00	73.057%	23.583%	36.608%	21.829%	1.264%	1.400%
\$95,000 - \$99,999	231	\$97,500.00	72.305%	23.614%	36.653%	21.069%	1.943%	1.209%
\$100,000 - \$109,999	378	\$105,000.00	70.146%	23.645%	36.699%	20.872%	1.823%	1.099%
\$110,000 - \$119,999	292	\$115,000.00	66.421%	23.672%	36.737%	20.298%	1.450%	1.093%
\$120,000 - \$129,999	220	\$125,000.00	66.264%	23.730%	36.822%	19.866%	1.919%	1.001%
\$130,000 - \$149,999	288	\$140,000.00	61.255%	23.754%	36.858%	18.486%	1.858%	0.988%
\$150,000 - \$174,999	194	\$162,500.00	58.687%	23.829%	36.966%	17.205%	2.266%	1.039%
\$175,000 or more	156	\$207,382.20	50.691%	23.896%	37.064%	15.693%	1.689%	0.909%

12/10/2018

Table B.1: Proposed Updated Table for Nebraska
(up to \$250 per child per year included in table)

Combined Monthly Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
500	50	50	50	50	50	50
550	50	50	50	50	50	50
600	50	50	50	50	50	50
650	50	50	50	50	50	50
700	50	50	50	50	50	50
750	50	50	50	50	50	50
800	50	50	50	50	50	50
850	50	50	50	50	50	50
900	50	50	50	50	50	50
950	50	50	50	50	50	50
1000	50	50	50	50	50	50
1050	50	50	50	50	50	50
1100	50	62	70	75	77	79
1150	69	97	110	117	120	124
1200	94	132	150	160	164	169
1250	119	167	190	202	207	214
1300	144	202	230	245	251	259
1350	169	237	270	287	294	304
1400	194	272	310	330	338	349
1450	219	307	350	372	381	394
1500	244	342	390	415	425	439
1550	269	377	430	457	468	484
1600	294	412	470	500	512	529
1650	319	447	510	542	555	574
1700	329	482	550	585	599	619
1750	338	505	590	627	642	664
1800	348	519	630	670	686	709
1850	358	533	660	712	729	754
1900	367	547	678	755	773	799
1950	377	561	695	776	816	844
2000	387	575	712	796	860	889
2050	396	589	730	815	897	934
2100	406	603	747	835	918	979
2150	416	617	764	854	939	1021
2200	425	631	782	873	961	1044
2250	435	645	799	893	982	1067
2300	445	659	817	912	1003	1091
2350	454	673	834	932	1025	1114

2400	464	687	851	951	1046	1137
2450	474	701	869	970	1067	1160
2500	483	715	886	990	1089	1184
2550	493	729	904	1009	1110	1207
2600	503	743	921	1029	1132	1230
2650	512	757	938	1048	1153	1253
2700	522	771	956	1067	1174	1276
2750	532	785	973	1087	1196	1300
2800	541	799	990	1106	1217	1323
2850	551	813	1008	1126	1238	1346
2900	560	827	1025	1145	1260	1369
2950	570	841	1043	1165	1281	1392
3000	580	855	1060	1184	1302	1416
3050	589	869	1077	1203	1324	1439
3100	599	883	1095	1223	1345	1462
3150	609	897	1112	1242	1366	1485
3200	618	911	1129	1262	1388	1508
3250	628	925	1147	1281	1409	1532
3300	637	937	1162	1298	1428	1552
3350	645	949	1177	1314	1446	1572
3400	654	960	1192	1331	1464	1592
3450	663	972	1207	1348	1482	1611
3500	671	984	1221	1364	1501	1631
3550	680	996	1236	1381	1519	1651
3600	689	1008	1251	1398	1537	1671
3650	697	1020	1266	1414	1556	1691
3700	706	1032	1281	1431	1574	1711
3750	715	1044	1296	1447	1592	1731
3800	723	1056	1311	1464	1610	1751
3850	732	1068	1326	1481	1629	1770
3900	741	1080	1340	1497	1647	1790
3950	749	1092	1355	1514	1665	1810
4000	755	1098	1363	1522	1675	1820
4050	760	1104	1370	1531	1684	1830
4100	765	1110	1378	1539	1693	1840
4150	770	1116	1385	1547	1702	1850
4200	775	1122	1393	1556	1711	1860
4250	781	1128	1400	1564	1720	1870
4300	786	1134	1407	1572	1729	1880
4350	791	1140	1415	1580	1738	1890
4400	796	1147	1422	1589	1747	1900
4450	801	1153	1430	1597	1757	1909
4500	805	1159	1437	1605	1766	1919
4550	809	1165	1444	1613	1775	1929
4600	814	1171	1452	1622	1784	1939

4650	818	1177	1459	1630	1793	1949
4700	823	1183	1466	1638	1802	1959
4750	827	1189	1474	1646	1811	1968
4800	831	1196	1481	1655	1820	1978
4850	836	1202	1489	1663	1829	1988
4900	840	1208	1496	1671	1838	1998
4950	844	1214	1503	1679	1847	2008
5000	849	1220	1511	1687	1856	2018
5050	853	1226	1518	1696	1865	2028
5100	858	1232	1525	1704	1874	2037
5150	863	1240	1535	1715	1886	2050
5200	869	1249	1546	1727	1899	2065
5250	874	1258	1557	1739	1913	2079
5300	880	1267	1567	1751	1926	2093
5350	886	1276	1578	1763	1939	2108
5400	892	1284	1589	1775	1952	2122
5450	898	1293	1599	1786	1965	2136
5500	903	1302	1610	1798	1978	2150
5550	909	1311	1621	1810	1991	2165
5600	915	1319	1631	1822	2005	2179
5650	921	1328	1642	1834	2018	2193
5700	927	1337	1653	1846	2031	2207
5750	932	1346	1663	1858	2044	2222
5800	938	1354	1674	1870	2057	2236
5850	942	1359	1680	1876	2064	2243
5900	945	1362	1684	1881	2069	2249
5950	949	1366	1688	1886	2074	2255
6000	952	1369	1692	1890	2079	2260
6050	956	1372	1696	1895	2084	2266
6100	959	1376	1701	1899	2089	2271
6150	963	1379	1705	1904	2095	2277
6200	966	1383	1709	1909	2100	2282
6250	969	1386	1713	1913	2105	2288
6300	972	1389	1716	1917	2109	2292
6350	973	1391	1719	1920	2112	2295
6400	975	1393	1721	1922	2115	2298
6450	976	1396	1723	1925	2117	2302
6500	978	1398	1726	1928	2120	2305
6550	979	1400	1728	1930	2123	2308
6600	981	1402	1730	1933	2126	2311
6650	982	1405	1733	1935	2129	2314
6700	984	1407	1735	1938	2132	2317
6750	986	1410	1738	1942	2136	2322
6800	991	1416	1746	1950	2145	2332
6850	996	1421	1753	1959	2154	2342

6900	1000	1427	1761	1967	2164	2352
6950	1005	1433	1769	1976	2173	2362
7000	1010	1438	1776	1984	2182	2372
7050	1014	1444	1784	1992	2192	2382
7100	1019	1450	1791	2001	2201	2392
7150	1024	1455	1799	2009	2210	2402
7200	1029	1461	1806	2018	2219	2413
7250	1033	1467	1814	2026	2229	2423
7300	1038	1472	1821	2035	2238	2433
7350	1043	1478	1829	2043	2247	2443
7400	1048	1484	1837	2051	2257	2453
7450	1053	1491	1846	2062	2268	2465
7500	1060	1502	1859	2077	2285	2483
7550	1067	1514	1873	2092	2301	2502
7600	1074	1525	1887	2108	2318	2520
7650	1081	1537	1901	2123	2335	2538
7700	1088	1549	1914	2138	2352	2557
7750	1094	1560	1928	2154	2369	2575
7800	1101	1572	1942	2169	2386	2593
7850	1108	1583	1955	2184	2403	2612
7900	1115	1595	1969	2200	2419	2630
7950	1122	1607	1983	2215	2436	2648
8000	1129	1618	1997	2230	2453	2667
8050	1136	1630	2010	2246	2470	2685
8100	1143	1641	2024	2261	2487	2703
8150	1149	1651	2036	2274	2502	2719
8200	1154	1656	2044	2283	2511	2730
8250	1158	1662	2052	2292	2521	2740
8300	1163	1667	2059	2300	2530	2750
8350	1167	1672	2067	2309	2540	2761
8400	1172	1678	2075	2318	2549	2771
8450	1176	1683	2083	2326	2559	2782
8500	1180	1688	2091	2335	2569	2792
8550	1185	1694	2098	2344	2578	2803
8600	1189	1699	2106	2353	2588	2813
8650	1192	1702	2107	2353	2589	2814
8700	1195	1705	2108	2354	2590	2815
8750	1197	1709	2108	2355	2591	2816
8800	1200	1712	2109	2356	2592	2817
8850	1203	1715	2110	2357	2593	2818
8900	1205	1718	2111	2358	2593	2819
8950	1208	1721	2112	2359	2594	2820
9000	1210	1724	2112	2359	2595	2821
9050	1213	1728	2113	2360	2596	2822
9100	1217	1734	2120	2368	2605	2832

9150	1222	1743	2130	2380	2618	2845
9200	1227	1751	2141	2391	2630	2859
9250	1232	1759	2151	2402	2643	2872
9300	1237	1767	2161	2414	2655	2886
9350	1243	1776	2171	2425	2667	2899
9400	1248	1784	2181	2436	2680	2913
9450	1253	1792	2191	2447	2692	2926
9500	1258	1801	2201	2459	2705	2940
9550	1263	1809	2211	2470	2717	2953
9600	1268	1817	2221	2481	2729	2967
9650	1273	1825	2231	2492	2742	2980
9700	1278	1834	2241	2504	2754	2994
9750	1283	1842	2252	2515	2766	3007
9800	1287	1849	2260	2525	2777	3019
9850	1291	1855	2269	2535	2788	3031
9900	1295	1862	2278	2544	2799	3042
9950	1299	1868	2286	2554	2809	3054
10000	1303	1875	2295	2563	2820	3065
10050	1307	1881	2303	2573	2830	3076
10100	1311	1888	2312	2583	2841	3088
10150	1315	1894	2321	2592	2851	3099
10200	1319	1901	2329	2602	2862	3111
10250	1323	1907	2338	2611	2872	3122
10300	1327	1913	2346	2621	2883	3134
10350	1331	1920	2355	2630	2894	3145
10400	1335	1926	2364	2640	2904	3157
10450	1339	1933	2372	2650	2915	3168
10500	1343	1939	2381	2659	2925	3180
10550	1347	1946	2389	2669	2936	3191
10600	1351	1952	2398	2678	2946	3203
10650	1355	1959	2406	2688	2957	3214
10700	1359	1965	2415	2697	2967	3225
10750	1364	1972	2422	2705	2976	3235
10800	1369	1979	2429	2713	2985	3244
10850	1374	1985	2436	2721	2993	3254
10900	1379	1992	2443	2729	3002	3263
10950	1384	1999	2450	2737	3011	3273
11000	1389	2006	2457	2745	3019	3282
11050	1394	2012	2464	2753	3028	3291
11100	1398	2019	2471	2761	3037	3301
11150	1403	2026	2479	2769	3045	3310
11200	1408	2033	2486	2776	3054	3320
11250	1413	2039	2493	2784	3063	3329
11300	1418	2046	2500	2792	3072	3339
11350	1423	2053	2507	2800	3080	3348

11400	1428	2060	2514	2808	3089	3358
11450	1433	2066	2521	2816	3098	3367
11500	1438	2073	2528	2824	3106	3377
11550	1443	2080	2535	2832	3115	3386
11600	1448	2087	2542	2840	3124	3396
11650	1453	2093	2549	2848	3132	3405
11700	1458	2100	2556	2856	3141	3414
11750	1463	2107	2564	2863	3150	3424
11800	1468	2114	2571	2871	3159	3433
11850	1473	2120	2578	2879	3167	3443
11900	1478	2127	2585	2887	3176	3452
11950	1483	2134	2592	2895	3185	3462
12000	1488	2141	2599	2903	3193	3471
12050	1493	2147	2606	2911	3202	3481
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12150	1503	2161	2620	2927	3219	3500
12200	1508	2167	2627	2935	3228	3509
12250	1513	2174	2634	2943	3237	3518
12300	1518	2181	2641	2951	3246	3528
12350	1523	2188	2649	2958	3254	3537
12400	1528	2194	2656	2966	3263	3547
12450	1533	2201	2663	2974	3272	3556
12500	1538	2208	2670	2982	3280	3566
12550	1542	2215	2677	2990	3289	3575
12600	1547	2221	2684	2998	3298	3585
12650	1552	2228	2691	3006	3306	3594
12700	1557	2235	2698	3014	3315	3604
12750	1562	2242	2705	3022	3324	3613
12800	1567	2248	2712	3030	3333	3623
12850	1572	2255	2719	3038	3341	3632
12900	1577	2262	2726	3045	3350	3641
12950	1582	2269	2734	3053	3359	3651
13000	1587	2275	2741	3061	3367	3660
13050	1592	2282	2748	3069	3376	3670
13100	1597	2289	2755	3077	3385	3679
13150	1602	2296	2762	3085	3394	3689
13200	1607	2302	2769	3093	3402	3698
13250	1612	2309	2776	3101	3411	3708
13300	1617	2316	2783	3109	3420	3717
13350	1622	2323	2790	3117	3428	3727
13400	1627	2329	2797	3125	3437	3736
13450	1632	2336	2804	3132	3446	3745
13500	1637	2343	2811	3140	3454	3755
13550	1642	2350	2819	3148	3463	3764
13600	1647	2356	2826	3156	3472	3774

13650	1652	2363	2833	3164	3481	3783
13700	1657	2370	2840	3172	3489	3793
13750	1662	2377	2847	3180	3498	3802
13800	1667	2383	2854	3188	3507	3812
13850	1672	2390	2861	3196	3515	3821
13900	1677	2397	2868	3204	3524	3831
13950	1682	2404	2875	3212	3533	3840
14000	1686	2410	2882	3219	3541	3850
14050	1691	2417	2889	3227	3550	3859
14100	1696	2424	2896	3235	3559	3868
14150	1701	2431	2904	3243	3568	3878
14200	1706	2437	2911	3251	3576	3887
14250	1711	2444	2918	3259	3585	3897
14300	1716	2451	2925	3267	3594	3906
14350	1721	2458	2932	3275	3602	3916
14400	1726	2464	2939	3283	3611	3925
14450	1731	2471	2946	3291	3620	3935
14500	1736	2478	2953	3299	3628	3944
14550	1741	2485	2960	3307	3637	3954
14600	1746	2491	2967	3314	3646	3963
14650	1751	2498	2974	3322	3655	3973
14700	1756	2505	2981	3330	3663	3982
14750	1761	2511	2988	3338	3672	3991
14800	1766	2518	2996	3346	3681	4001
14850	1771	2525	3003	3354	3689	4010
14900	1776	2532	3010	3362	3698	4020
14950	1781	2538	3017	3370	3707	4029
15000	1786	2545	3024	3378	3715	4039
15050	1791	2552	3031	3386	3724	4048
15100	1796	2559	3038	3394	3733	4058
15150	1801	2565	3045	3401	3742	4067
15200	1806	2572	3052	3409	3750	4077
15250	1811	2579	3059	3417	3759	4086
15300	1816	2586	3066	3425	3768	4095
15350	1821	2592	3073	3433	3776	4105
15400	1826	2599	3081	3441	3785	4114
15450	1831	2606	3088	3449	3794	4124
15500	1835	2613	3095	3457	3802	4133
15550	1840	2619	3102	3465	3811	4143
15600	1845	2626	3109	3473	3820	4152
15650	1850	2633	3116	3481	3829	4162
15700	1855	2640	3123	3488	3837	4171
15750	1860	2646	3130	3496	3846	4181
15800	1865	2653	3137	3504	3855	4190
15850	1870	2660	3144	3512	3863	4200

15900	1875	2667	3151	3520	3872	4209
15950	1880	2673	3158	3528	3881	4218
16000	1885	2680	3166	3536	3890	4228
16050	1890	2687	3173	3544	3898	4237
16100	1895	2694	3180	3552	3907	4247
16150	1900	2700	3187	3560	3916	4256
16200	1905	2707	3194	3568	3924	4266
16250	1910	2714	3201	3575	3933	4275
16300	1915	2721	3208	3583	3942	4285
16350	1920	2727	3215	3591	3950	4294
16400	1925	2734	3222	3599	3959	4304
16450	1930	2741	3229	3607	3968	4313
16500	1935	2748	3236	3615	3977	4322
16550	1940	2754	3243	3623	3985	4332
16600	1945	2761	3251	3631	3994	4341
16650	1950	2768	3258	3639	4003	4351
16700	1955	2775	3265	3647	4011	4360
16750	1960	2781	3272	3655	4020	4370
16800	1965	2788	3279	3662	4029	4379
16850	1970	2795	3286	3670	4037	4389
16900	1975	2802	3293	3678	4046	4398
16950	1979	2808	3300	3686	4055	4408
17000	1984	2815	3307	3694	4064	4417
17050	1989	2822	3314	3702	4072	4427
17100	1994	2828	3321	3710	4081	4436
17150	1999	2835	3328	3718	4090	4445
17200	2004	2842	3336	3726	4098	4455
17250	2009	2849	3343	3734	4107	4464
17300	2014	2855	3350	3742	4116	4474
17350	2019	2862	3357	3750	4124	4483
17400	2024	2869	3364	3757	4133	4493
17450	2029	2876	3371	3765	4142	4502
17500	2034	2882	3378	3773	4151	4512
17550	2039	2889	3385	3781	4159	4521
17600	2044	2896	3392	3789	4168	4531
17650	2049	2903	3399	3797	4177	4540
17700	2054	2909	3406	3805	4185	4550
17750	2059	2916	3413	3813	4194	4559
17800	2064	2923	3421	3821	4203	4568
17850	2069	2930	3428	3829	4211	4578
17900	2074	2936	3435	3837	4220	4587
17950	2079	2943	3442	3844	4229	4597
18000	2084	2950	3449	3852	4238	4606
18050	2089	2957	3456	3860	4246	4616
18100	2094	2963	3463	3868	4255	4625

18150	2099	2970	3470	3876	4264	4635
18200	2104	2977	3477	3884	4272	4644
18250	2109	2984	3484	3892	4281	4654
18300	2114	2990	3491	3900	4290	4663
18350	2119	2997	3498	3908	4299	4672
18400	2123	3004	3506	3916	4307	4682
18450	2128	3011	3513	3924	4316	4691
18500	2133	3017	3520	3931	4325	4701
18550	2138	3024	3527	3939	4333	4710
18600	2143	3031	3534	3947	4342	4720
18650	2148	3038	3541	3955	4351	4729
18700	2153	3044	3548	3963	4359	4739
18750	2158	3051	3555	3971	4368	4748
18800	2163	3058	3562	3979	4377	4758
18850	2168	3065	3569	3987	4386	4767
18900	2173	3071	3576	3995	4394	4777
18950	2178	3078	3583	4003	4403	4786
19000	2183	3085	3590	4011	4412	4795
19050	2188	3092	3598	4018	4420	4805
19100	2193	3098	3605	4026	4429	4814
19150	2198	3105	3612	4034	4438	4824
19200	2203	3112	3619	4042	4446	4833
19250	2208	3119	3626	4050	4455	4843
19300	2213	3125	3633	4058	4464	4852
19350	2218	3132	3640	4066	4473	4862
19400	2223	3139	3647	4074	4481	4871
19450	2228	3146	3654	4082	4490	4881
19500	2233	3152	3661	4090	4499	4890
19550	2238	3159	3668	4098	4507	4899
19600	2243	3166	3675	4106	4516	4909
19650	2248	3172	3683	4113	4525	4918
19700	2253	3179	3690	4121	4533	4928
19750	2258	3186	3697	4129	4542	4937
19800	2263	3193	3704	4137	4551	4947
19850	2267	3199	3711	4145	4560	4956
19900	2272	3206	3718	4153	4568	4966
19950	2277	3213	3725	4161	4577	4975
20000	2282	3220	3732	4169	4586	4985

PRESENTATION TO NEBRASKA CHILD SUPPORT ADVISORY COMMISSION

William S. Comanor
University of California
Los Angeles and Santa Barbara

November 8, 2018

Qualifications

- Professor of Economics, Emeritus, University of California, Santa Barbara.
- Professor, Fielding School of Public Health, University of California, Los Angeles.
- Ph.D. in Economics, Harvard University, Cambridge, MA
- Formerly, Chief Economist, U.S. Federal Trade Commission, Washington.
- Publications include:
 - “The Impact of Income and Family Structure on Delinquency,” (with Llad Phillips), *Journal of Applied Economics*, November 2002.
 - *The Law and Economics of Child Support Payments*, editor, Elgar Publishing, 2004.
 - “The Monetary Cost of Raising Children,” (with Mark Sarro and R. Mark Rogers) *Research in Law and Economics*, Vol. 27, 2015.

Objectives (1)

- Entirely academic, no conflicting goals.
 - no consulting contracts sought; my teaching schedule is full time.
 - my prior consulting assignments have not dealt with child support issues.
- I attended an economic conference in 2003 and learned that the child rearing cost figures, which underlay child support awards, did not rest on actual expenditures.
 - were imputed and not actual values.
 - government reports acknowledge that current studies do not measure actual spending on children.*

* "Minnesota Child Support Guidelines Review," 2014, p. 10.

Objectives (2)

- I questioned why indirect means were employed, and whether direct means were possible.
 - the conference was held in 2003 and our research paper on this subject was finally published in 2015.
- My purpose here is to present our findings and discuss why they differ from the indirect means currently employed.
- Federal regulations state: “The Child Support system is not meant to serve a punitive purpose. Rather the system is an economic one, designed ... [so that each parent] should share equitably in the economic burdens of child rearing.”
 - my purpose is to explore how these economic burdens should be defined.
 - how they should be divided, and how child support awards should be crafted, is a different matter which is not addressed.

Direct Child Rearing Costs (1)

- Direct costs are easily measured where specific expenditures are made for children.
 - examples of Children's Clothing; and Child Care and Education.
- But what about expenditure categories like Housing, Food and Transportation, which are consumed by all members of the household?
 - the issue then is how much of these expenditures are spent on children.
 - these expenditures are considered by economists as “household collective goods.”

Direct Child Rearing Costs (2)

- The answer to the previous quandary is actually straight-forward: one should compare expenditures between statistically identical households with similar incomes: those with children and those without children.
 - if the household with a child spends more, then the additional expenditures are considered those attributable to the child.
 - these outlays reflect the marginal or additional expenditures for households with children as compared with those households without children.

Direct Child Rearing Costs (3)

- See the following paragraph from Dr. Venohr's Appendix to the 2014 Nebraska Commission Report:

“The Rothbarth methodology is a marginal cost approach that compares expenditures of two sets of equally well-off households: one set consists of two-parent families with children and the other consists of couples without children. The difference in their expenditures is presumed to be spent on child rearing. The Rothbarth methodology relies on the percentage of total expenditures devoted to adult goods (i.e., adult clothing in Betson's application) to determine equally well-off families.” *

- Dr. Venohr uses differences in expenditures on adult clothing to measure child rearing expenditures rather than expenditures on items actually used by children.
- Her approach doesn't measure child rearing costs but imputes them.

* *Report of the 2014 Nebraska Child Support Advisory Commission, Appendix A prepared by Jane Venohr, Ph.D., November 4, 2014, p. 7.*

Available Data on Child Rearing Costs

- There is available data on household expenditures by major categories, where households can be classified by income levels as well as number and ages of children.
- A point of agreement is that both Dr. Venohr and I use the same data: the Consumer Expenditure Survey published by the U.S. Bureau of the Census.
 - she writes that it is “the nation’s largest and most comprehensive survey of household expenditures.” * I agree.

* *Report of the 2014 Nebraska Child Support Advisory Commission, Appendix A prepared by Jane Venohr, Ph.D., November 4, 2014, p. 5.*

Income Equivalence Models (1)

- Income Equivalence models impute child costs to households rather than measure them.
 - the easiest explanation of this indirect approach is through an example.
- Consider the hypothetical case of a childless couple living in a two-bedroom apartment, with the second bedroom used as a den.
 - now a child arrives and the den is transformed into a nursery.
- In this example, there are no additional monetary or out-of-pocket housing costs, but there is the fact that the den is no longer available.
 - the loss in the use of the den may be considered a cost even when it is not a monetary cost.

Income Equivalence Models (2)

- Dr. Venohr's associate, Dr. Betson, makes this point:

“The childless couple, even though they have the same total spending, will be “wealthier” than the parents with the children. Ignoring the effect of the increased standard of living of the childless couple on their housing expenditures would understate the true marginal housing costs attributable to the children.” *
- Applied to the den-nursery example, Income Equivalence models aim to estimate the dollar amount that must be paid hypothetically to a household with children in order to compensate the adults for their loss when their den is transformed into a nursery.
 - these compensation amounts may even exceed the household's overall budget.
- **A child's housing costs are measured by the compensation required to offset the “loss” of the den and sharing living space with one's children.**

* *Review of Statewide Uniform Child Support Guidelines*, Report to the California Legislature, Appendix A prepared by Dr. David Betson, June 2011, p. 135.

Income Equivalence Models (3)

- Dr. Venohr and her colleague acknowledge this rationale behind the Compensation principle:
 - “Had the parents been childless ... they would have been better off because the consumption of all other goods (i.e., those consumed by both adults and children) would not be ‘shared’ with the child.” *
 - from this presumption, child costs are determined by the amounts needed to bring parents up to their prior living standards, before they shared their common goods with their children.
- **The fundamental premise of Income Equivalence models is that parents are worse off because they share their common goods (housing, food, transportation) with their children.**
- Income Equivalence models rely on the presumption that parents do not gain “utility” from the presence of their children, but rather lose “utility” as they are crowded out from their use of household common goods.

* *Review of Statewide Uniform Child Support Guideline, Report to the California Legislature*, Appendix A-4, June 2011, p. 185.

Income Equivalence Models (4)

- These models require that parents must be compensated for sharing their households with their children, and that this required compensation measures the cost of raising children.
 - **this required compensation has little to do with actual expenditures on children.**
- The Rothbarth model suggests a means to estimate this required compensation.
 - based on an “adult clothing theory of well-being.”
 - Premise of this theory is that childless households and those with children are equally well off only if they spend the same amounts of their income on adult clothing.

Income Equivalence Models (5)

- The critical premise of the Rothbarth model is that the required compensation is founded on prior (childless) levels of adult clothing, which Dr. Venohr's colleague acknowledges constitute generally less than 5% of household spending.*
 - it is surely questionable whether this is a reliable basis for determining living standards.
- The Consumer Expenditure surveys are used in the Rothbarth model to measure outlays on adult clothing.

* *Review of Statewide Uniform Child Support Guideline*, Report to the California Legislature, Appendix A prepared by Dr. David Betson, June 2011, p. 166.

Income Equivalence Models (6)

- Another critical assumption required by the Rothbarth model is that adult preferences in the presence of children are the same as those present without children.
 - that adult preferences are the same in households with and without children.
 - that assumption misrepresents common experiences when families change their priorities when children arrive.
- There is also a large economic literature emphasizing that one should not compare utility (or well-being) in substantially different circumstances.*
 - but the Rothbarth model requires unchanged preferences.

* Frech, H.E., "State-dependent Utility and the Tort System as Insurance: Strict Liability Versus Negligence," *International Review of Law and Economics*, 1994, 14, 261-271; Edwards, R.D., "Optimal Portfolio Choice When Utility Depend on Health," *International Journal of Economic Theory*, 2010, 6(2), 205-225.

Issues Posed by Rothbarth Models

1. Adults in household are worse off when sharing their collective goods with their children.
2. The compensation required to equalize adult well-being measures child rearing costs.
3. The required compensation can be measured by increased expenditures on adult clothing.
4. Adult preferences for clothing are the same in households with and without children.

The Rothbarth model: a Judgment

- A striking feature of the Rothbarth model is that the Imputed costs derived from this model are so large: often more than twice actual expenditures.
- See the following judgment from the *Journal of Economic Literature*:

“The Rothbarth method imputes the same welfare level to households that have the same level of consumption of some adult only good. Once again, I find it is difficult to see why this commands any widespread attention.” *

* Browning, Martin, “Children and Household Economic Behavior,” *Journal of Economic Literature*, Vol. XXX (September 1992), p. 1443

Direct Child Rearing Costs (1)

- My colleagues and I employ regression analysis to determine how much more is actually spent on average in households with and without children within income classifications.
 - A commonly used statistical method, compares average expenditures in different households: those with no children and those with one, two and three plus children, all for given levels of income.
- Carried out separately for three income classes.
 - Low income households: under \$55,859.
 - Medium income households: between \$55,864 and \$101,113.
 - High income households: above \$101,120.

Direct Child Rearing Costs (2)

- This is the “commonsense approach” acknowledged by Dr. Venohr’s colleague:

“...commonsense approach would be to calculate the difference in housing expenditures between parents with children and childless couples with the same amount of total spending.”

- this approach does miss the value of the den.

* *Review of Statewide Uniform Child Support Guidelines, Report to the California Legislature, Appendix A prepared by Dr. David Betson, June 2011, p. 135.*

Incremental Costs: Housing

	One Child	Two Children	Three + Children
Low Income average of \$36,726	\$1,015	\$1,483	\$1,368
Medium Income average of \$76,307	\$1,133	\$1,853	\$2,163
High Income average of \$168,221	\$2,661	\$4,111	\$4,494

- Unlike the earlier example, monetary costs increase on average with the number of children.
- But for low income households, no indication that child housing costs are greater on average for the third child.

Incremental Costs: Food

	One Child	Two Children	Three + Children
Low Income	\$473	\$670	\$1,008
Medium Income	\$394	\$870	\$1,411
High Income	\$720	\$1,341	\$1,994

- These amounts represent incremental outlays in the presence of children and not total household expenditures on food.
 - since “American families throw out approximately 25% of the food and beverages they buy,”* these amounts do not reflect actual food consumption.
 - also, if families without children go out more to restaurants, then food outlays may not be much higher with children than without.

* Dana Gunders, “Wasted: How America is Losing Up to 40% of its Food from Farm to Fork to Landfill,” National Resources Defense Council, Aug. 2012, p. 12.

Incremental Costs: Transportation

	One Child	Two Children	Three + Children
Low Income	\$377	\$284	\$505
Medium Income	\$352	\$496	\$352
High Income	\$1,608	\$1,341	\$1,196

- For Medium and High income households, the more important factor for transportation costs is the age of the children rather than their number.
- Transportation costs largely rest on automobile ownership which depends primarily on the number of adults in the household.

Incremental Costs: Children's Clothing

	One Child	Two Children	Three + Children
Low Income	\$325	\$407	\$479
Medium Income	\$340	\$436	\$540
High Income	\$455	\$624	\$750

- Most households spend modest amounts on children's clothing.
 - and generally spend more on younger children than older ones.

Incremental Costs: Child Care and Education

	One Child	Two Children	Three + Children
Low Income	\$1,229	\$1,448	\$1,387
Medium Income	\$2,521	\$2,806	\$2,917
High Income	\$5,524	\$6,531	\$7,214

- Largest cost category as these outlays are effectively zero without children.
- These costs are uniformly greater for younger children, suggesting that they are more for child care than education.
- An interesting finding is that expenditures with three or more children are not significantly greater than with two children.
 - the implication is that older children often look after younger ones, which reduces outlays for additional child care.

Incremental Costs and Rothbarth Estimates (1)

- As a legal matter, “cost” is the price that is paid for something.*
 - incremental costs represent direct expenditures, as reported by the U.S. Consumer Expenditure Survey.
 - **income equivalence models (Rothbarth) do not rest on expenditures made for children, but rather rest on hypothetical compensation levels paid to adults for having children.**
- See the following table for the two sets of “cost” estimates.
 - incremental cost figures are the sum of category spending amounts; while the Rothbarth figure is a single estimate.

* U.S. Department of Justice, Office of Legal Counsel, as reported in *New York Times*, July 31, 2018, p. A17.

Imputed Costs: Rothbarth Model

	Incremental Costs	Rothbarth Estimates	Imputed Costs
Low Income Married Households: average of \$36,726			
One child	\$3,421	\$6,504	\$3,083
Two children	4,291	10,008	5,717
Three+ children	4,745	12,216	7,471
Medium Income Married Households: average of \$76,207			
One child	\$4,749	\$10,740	\$5,991
Two children	6,633	16,368	9,735
Three+ children	7,475	19,764	12,289
High Income Married Households: average of \$168,221			
One child	\$11,138	\$16,872	\$5,734
Two children	13,706	25,620	11,914
Three+ children	15,957	30,828	14,871

Notes to Cost Tables

Low income married households:

CSR* (2006-2009): household incomes under \$55,859, with average of \$36,726

Betson-Rothbarth estimates at \$36,726.**

Middle income married households:

CSR* (2006-2009): household incomes between \$55,864 and \$101,113, with average of \$76,307

Betson-Rothbarth estimates at \$76,307**

High income married households:

CSR* (2006-2009): household incomes above \$101,120, with average of \$168,221

Betson-Rothbarth estimates at \$168,221.**

* Comanor, W.S., Sarro, M. and Rogers, R.M., "The Monetary Cost of Raising Children," *Research in Law and Economics*, Vol. 27, pp. 209-251. Health care costs are not included in the CSR results. Since these costs are largely paid by others, no adequate results were obtained.

** Center for Policy Research, "Economic Basis for Updating a Child Support Schedule of Georgia," Appendix B, April 2011. Betson-Rothbarth estimates at average income levels indicated; which excludes childcare and private tuition.

Incremental Costs and Rothbarth Estimates (2)

- The two sets of cost figures are quite different, which could result from the fact that households without children spend more on adult clothing.
 - households without children may have very different budgets than those with children.
 - **such households are likely to have very different preferences. However, one cannot conclude that well-being of households with children is lower just because they spend less on adult clothing.**
- Do these results say more about preferences than well-being?
 - that is a critical issue for the Rothbarth model.

Critiques of the Incremental Cost Approach (1)

- “The empirical results are implausibly low, often below or near poverty amounts for the child’s basic needs.” *
- My response is that incremental costs do not reflect consumption amounts in the case of collective goods.
 - for housing, food, and transportation, children consume their shares of these collective goods even when not part of incremental costs.
- This critique is a misrepresentation of the economic concept of incremental costs.
 - with collective goods, costs do not represent amounts actually consumed.

* Jane Venohr, “Review of Minnesota Child Support Guidelines, Economic Basis of Current Table and Potential Updates,” July 17, 2017, p. 4.

Critiques of the Incremental Cost Approach (2)

- A second critique is that incremental costs do not reflect desired amounts that should be spent on children.
 - incremental costs rest in actual expenditures.
- Clearest example is the method used in USDA reports to determine food costs.

“USDA food plans are used to calculate the shares of total household food expenses spent on children. ... The USDA food plans are based on household food use ... and also reflect the cost of a nutritious diet. ... [these plans] were applied to estimated household food expenditures to determine food expenses on children.”*

* *Expenditures on Children by Families*, 2009, USDA, p. 7.

Critiques of the Incremental Cost Approach (3)

- A child's food costs are then determined as a proportion of hypothetical food expenditures.
 - for low income households with one child, the estimated actual incremental expenditures (2006-2009) are \$473 per year rather than the 2009 USDA figure of \$2,064.

The Difference Between Monetary and Economic Costs (including imputed costs)

- Consider the Den-Nursery example: there are two relevant questions regarding the imputed cost for the absence of a den:
 - (a) whether, and (b) how to measure this cost.
- There is first the policy question of whether Child Support payments “should” cover such imputed costs, which are not out-of-pocket (or monetary) costs.
 - this is a “policy” issue rather than an “economic” question.
- Second, there is the measurement question: how to estimate these imputed costs.
 - this measurement can only be done by making strong and arbitrary assumptions.
 - the results depend as much on the assumptions as on the data employed.

Implications of Child Support Awards Which Exceed Direct Costs of Raising Children

- When support amounts exceed the direct costs of raising children, child custody becomes a financial asset.
 - the award structure provides a monetary incentive to gain maximum custody, which affects both payer and recipient.
- Even when custody is not as issue, this award structure creates resentment by the support obligor whose payments fund this asset.
- Payments are missed; enhanced enforcement efforts are taken; and parental conflict follows.
- See the following table from the Federal Office of Child Support Enforcement, Annual Report to Congress, FY 2016.



NEBRASKA

Table S-1. Collecting Regular On-Time Payments

Performance Measures	2012	2013	2014	2015	2016
Current Support Collections (%)	69.95	70.65	71.02	71.35	71.54
Arrearage Collections (%)	69.09	68.78	69.10	69.82	69.49

Table S-2. Other Incentive Performance Measures

Performance Measures	2012	2013	2014	2015	2016
Statewide Paternity Establishment (%)	97.99	100.09	97.91	99.34	95.75
IV-D Paternity Establishment (%)	NA	NA	NA	NA	NA
Support Order Establishment (%)	85.81	86.55	86.93	86.32	86.35
Cost-Effectiveness (\$)	5.80	5.43	5.37	5.97	5.97

Table S-3. Total Number of Children in the Child Support Program

	2012	2013	2014	2015	2016
Number of Children in Child Support Cases	154,480	154,007	153,896	155,245	155,522

Table S-4. Total Distributed Collections and Total Administrative Expenditures (\$ Millions)

	2012	2013	2014	2015	2016
Total Distributed Collections (\$)	200.32	203.72	205.23	206.77	206.15
Total Distributed to Families (\$)	193.39	197.56	199.31	201.09	200.59
Total Administrative Expenditures (\$)	36.67	39.74	40.48	36.59	36.57

Table S-5. Average Collections per Case with Collections

	2012	2013	2014	2015	2016
Current Assistance (\$)	1,413	1,320	1,255	1,339	1,331
Former Assistance (\$)	2,201	2,186	2,180	2,144	2,143
Never Assistance (\$)	3,425	3,519	3,572	3,586	3,580

My Judgment

- An effective child support system rests on the willingness of obligor parents to make their assessed payments.
- This outcome is strengthened when payment amounts reflect the actual monetary costs of raising children.



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December 19, 2018

Child Support Advisory Commission

Dear Members of the Commission:

Legal Aid of Nebraska is grateful for the invitation to appear and speak in front of your Committee on behalf of Nebraska's working poor and Nebraskans living in poverty. Thank you.

Legal Aid of Nebraska (Legal Aid) is the largest nonprofit law firm in the state addressing civil legal issues for low-income Nebraskans. Legal Aid has approximately 90 employees, including 45 attorneys located in seven offices across the state. Legal Aid is a full-service civil law firm, providing advice and counsel, assistance with self-representation, pro bono and direct service referrals, and direct representation in legal forums large and small—administrative, local, state, and federal. For 54 years, Legal Aid has worked to provide disadvantaged individuals with quality legal assistance. The mission of Legal Aid of Nebraska is to promote justice, dignity, hope and self-sufficiency through quality civil legal aid for those who have nowhere else to turn.

Nearly 11% (207,368) of Nebraska's population (1,920,076) live at or below Federal Poverty Level (FPL).¹ To qualify for Legal Aid's services, household income typically needs to be at or below 125% of FPL.² For 2018, a household of one needs to have income at or below \$15,175 a year, and a family of four needs to have household income at or below \$31,375.³ Legal assistance is provided free of charge to qualifying individuals.

¹ <https://www.census.gov/quickfacts/ne> 2017 estimates

² There are some exceptions where household income may be higher than 125% of FPL.

³ Appendix A to 45 CFR 1611 https://www.ecfr.gov/cgi-bin/text-idx?node=pt45.4.1611&rgn=div5#ap45.4.1611_19.a

In 2017, approximately 30%⁴ of cases closed where Legal Aid provided some form of legal assistance involved family law cases.⁵ Additionally, Legal Aid has a contract with Lancaster County to provide representation to parents and children, as their attorney or guardian ad litem, in abuse and neglect cases filed in juvenile court for several hundred cases a year.

When reviewing their child support guidelines, federal regulations direct states to consider, among other things, “the impact of guidelines, policies and amount on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level”. 45 C.F.R. 302.56 (h)(1). Legal Aid has substantial experience in this area. Through this experience, its staff has gained a unique and deep perspective on the operations of Nebraska’s child support guidelines and the impact they have on low-income families.

We begin our remarks here with the premise that parents should support their children. We believe children are entitled to support from both of their parents. With rare exception, we believe that a child is entitled to have access to both parents.

We ask the Committee to understand that, for our client population, there is not enough monthly income for anybody: the children or a child’s parents. Contrary to some stereotypes, many of Legal Aid’s clients work. Working low-wage jobs and paid hourly, they struggle trying to make rent and buy food for themselves and their families.

The Guidelines, as they are interpreted currently by the bench and child support enforcement professionals, drive low-income people further into poverty, and trap them there with no way out. Modifying the current Child Support Guidelines to reflect the current federal standards for establishing and enforcing child support orders, would go a long way to resolving this problem.

We have attached for your review a copy of the recently modified federal rules, and the comments associated with publication of those rules. The published rule and comments in the Federal Register includes citations to all of the most recent and relevant studies that have measured the impact of the previous rules and comments. These studies drove the changes to the rules made by the Secretary of the United States Department of Health & Human Services.

The following narrative is the context from which we approached our remarks to the Judiciary Committee.

In 1996, the “Welfare to Work” bill passed in the United States Congress.⁶ As a result of the bill, Title IV-D agencies were created throughout the 50 states. Title IV-D refers to Title IV-D of the Social Security Act.⁷ Under this law, each state must operate a child support enforcement program meeting federal requirements to be eligible for Temporary Assistance to Needy Families Block Grants (TANF).⁸ In Nebraska TANF is known as Aid to Dependent Children (ADC). Title IV-D

⁴ Approximately 3,200 of the 11,000 cases closed

⁵ This includes divorce where the applicant noted children lived in the household, custody, visitation, paternity and child support issues.

⁶ (P.L. 104-193)

⁷ Title IV appears in the United States Code as §§601-687, subchapter IV, chapter 7, Title 42

⁸ See 42 USC 602 (a) (2)

agencies focus, as does Nebraska's IV-D agency (the Nebraska Department of Health and Human Services), on the poor and working poor. A low-income parent who applies for or receives ADC must provide information to the Nebraska Department of Health and Human Services and cooperate with child support enforcement.⁹ Child support enforcement is required to initiate paternity and child support actions in the name of the state on behalf of the minor child against the noncustodial parent when a custodial parent is receiving ADC benefits. Child support enforcement is also required to enforce the collection of child support payments, including through contempt actions filed in court and administrative sanctions suspending professional and driver's licenses.¹⁰

One of the premises behind the Welfare to Work bill was false: that poor, noncustodial parents, in particular unmarried fathers, were irresponsible, uninterested in their families, not working by choice and deliberately neglecting the needs of the children. The Federal Government now acknowledges that in fact that premise was false.¹¹

Unfortunately, when the bill was passed and incorporated into The Social Security Act under Title IV-D, the attitude of state officials prosecuting non-custodial parents was to "nail them to the wall," get the highest child support order possible, and throw people in jail if they did not pay child support. "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 of factual basis for the child support amount."¹² The result of unrealistic orders does not result in the payment of child support.

Consistent with the Federal Government's findings, Legal Aid of Nebraska has seen this approach in Nebraska result in:

- Setting child support orders so high that a poor parent cannot hope to ever meet the obligation.
- Child support orders that often are based on "imputed" income, not actual income or actual ability to pay child support.
- Non-custodial parents turning to the underground economy for work.
- Parents, out of shame, fall out of contact with their children because they are unable to meet their child support obligation.
- Unfavorable credit scores, for non-payment of child support, affecting non-custodial parents' abilities to get work to pay support.
- Non-custodial parents losing jobs because they have to appear for a *series* of hearings on contempt proceedings.
- Non-custodial parents ordered to pay "purge" plans for contempt that increases their monthly obligation for support, which they already are unable to pay, without any meaningful determination that the parent actually can pay the purge plan.
- Non-custodial parents going to jail because they could not pay the purge plan, despite the fact that a fact based determination about their ability to pay was never made. As a result, they lose whatever work they had been able to find.

⁹ See Neb. Rev. Stat. §§43-512 *et seq.*

¹⁰ See e.g. Neb. Rev. Stat. §§44-3301 *et seq.*

¹¹ See *gen.*, *Fed.Reg.*, Vol. 81 No. 244, pp. 93516-93569.

¹² *Fed.Reg.*, Vol. 81 No. 244, p. 93516.

- Non-custodial parents losing driver's licenses because of their inability to pay inflated child support orders.
- Non-custodial parents losing 65% of their monthly Social Security benefits to pay for ongoing child support orders and child support arrears.
- Non-custodial parents, who have lost their driver's licenses, faced with a Hobson's choice – either drive illegally, due to a lack of adequate mass transit, to find work or don't drive and don't look for work. Those that continue to drive may be ticketed for driving with a suspended license.

The “nail them to the wall” approach also results in high institutional costs. Consider contempt cases. The State must serve an obligor personally with an order to show cause, prosecutors must make several appearances on a single contempt case, court appointed counsel is likely appointed for the obligor, and a referee or judge must preside over all those appearances.

In 2016, the Federal Office of Child Support Enforcement (OCSE) changed the rules, because the rules were counter-productive.¹³ Instead of nailing a non-custodial parent to the wall, the federal push is to obtain “right-sized” child support orders. That is, orders non-custodial parents can pay based on their actual, not imputed, circumstances. The OCSE recognized that “many low-income noncustodial parents do not meet their child support obligations because they do not earn enough to pay what is ordered.”¹⁴ The OCSE further recognized that orders set beyond a noncustodial parents' ability to pay can result in “a number of deleterious effects, including unmanageable debt, reduced low-wage employment, increased underground activities, crime, incarceration, recidivism, and reduced contact with their children.”¹⁵

The new child support rules are “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 to pay it. The Federal child support rules require states to establish guidelines that result in “appropriate child support award” and are based on the fundamental principle that each child support order should take into consideration the noncustodial parent's ability to pay.”¹⁶

Likewise, the Federal Office of Child Support Enforcement has changed the rules for contempt proceedings. Now, a prosecuting authority has an affirmative obligation to verify that a non-custodial parent can pay a purge plan, before asking for one.¹⁷

These changes have yet to permeate throughout the State.

¹³ Fed.Reg., Vol. 81 No. 244, pp. 93492-93569.

¹⁴ Fed.Reg., Vol. 81 No. 244, p. 93516.

¹⁵ Fed.Reg., Vol. 81 No. 244, p. 93516.

¹⁶ Fed.Reg., Vol. 81 No. 244, p. 93516.

¹⁷ Fed.Reg., Vol. 81 No. 244, pp. 93496 -93497; See also 45 C.F.R. §303.6(c)(4)

People of color and poor people are disproportionately impacted by the Nebraska Child Support Guidelines, causing institutional racism.

There are particular sections of the Nebraska Child Support Guidelines that should be changed in order to eliminate institutional racism and the detrimental impact on low-income Nebraska families.

Section 4-218, Basic Subsistence Limitation.

Currently, child support authorities and attorneys throughout the state interpret this section to apply only to the *establishment* of child support. This approach allows them to ask courts to enter purge orders, order health care coverage, or enforce administrative sanctions that put the non-custodial parents below the federal poverty level.

This is contrary to the spirit of the provision, and has a disparate impact on the poor and people of color.

An alternative is to clarify the provision to provide that at *any* juncture in a child support proceeding – establishment, administrative sanction, contempt proceedings - a court *cannot* enter an order that puts a non-custodial parent below the federal poverty guidelines.

Assuming that the problem is in how the Rule is interpreted, not how it is written, it would be very helpful to have comments from the Committee of the Supreme Court accompany the provision so that it no longer is used to force people to live below the federal poverty guidelines.

Section 4-209 Minimum Support

The current Rule “recommends” that courts reviewing child support cases enter a minimum order of \$50.00 per month, or 10% of the obligor’s net income, whichever is higher. There is no *mandate* to enter a minimum order consistent with the Rule.

Nevertheless, Nebraska courts and child support enforcement professionals routinely and consistently argue and interpret this provision as *requiring* a minimum order of \$50.00 per month, or 10% of the obligor’s net income.

There are segments of the poor population for which the current interpretation makes paying a minimum order of \$50.00 per month impossible.

The purpose of the Rule is to keep track of the non-custodial parent so s/he can be found when his or her financial circumstances change. A court can order any amount of support and achieve that goal.

Consider a parent whose child is in the State’s custody pursuant to a juvenile court order. To get a child back, a parent will be ordered to comply with a case plan. That case plan can include some or all of the following:

- Obtain a chemical dependency evaluation and follow all recommendations;
- Obtain a psychological evaluation;
- Participate in individual therapy;
- Participate in therapy with the children;
- Visit the children on a regular basis, under supervision;
- Attend AA/NA;
- Produce specimens for drug testing;
- Get a job;
- Get new housing;
- Participate in treatment for batterers or victims of domestic violence;
- Attend in-patient or out-patient treatment;
- Make all court appearances.

A parent in juvenile court has to manage all of this during normal business hours. On top of this, a parent may be ordered to pay a minimum child support order. It is not clear how child support professionals, county attorneys and judges think low-income parents can get the money to pay child support and accomplish what they are required to do to get their children back.

For these parents, a minimum order of \$50.00 truly is difficult to pay.

Consider a prisoner in a Nebraska correctional facility. Prisoners earn approximately \$20.00 per month. This Committee knows that, from the \$20.00 earned, prisoners are required to purchase, soap, shaving material, stamps, toothpaste, envelopes and other personal hygiene items.

There is a legal mechanism for prisoners to change their child support order to a minimum order. However, a \$50.00 order per month is \$40.00 more than the prisoner can typically pay. Here is why that matters:

- For a prisoner facing a 5-year sentence, the prisoner will have approximately a \$3000.00 debt upon release from prison.
 - This is the best-case scenario, which assumes the prisoner modified the existing child support order *immediately* upon going to prison.
- The \$3000.00 debt will accrue interest at whatever rate was in effect at the time of modification.
- An ex-con will have difficulty finding a job because of his/her criminal background.
- An ex-con likely will not have received treatment for whatever problem led to incarceration.
- An ex-con likely will not have received vocational training while in prison.

- If the ex-con gets a job, s/he likely will be looking at entry-level work for minimum wage with no benefits.
- Whatever job the ex-con gets, the State is entitled to take up to 65% of the ex-con's wages to pay for the child support arrears if s/he is not the head of a household, as well as the ongoing order.
- Working a minimum wage job results in monthly gross wages of \$1560.00.
 - From this amount taxes will be deducted at a rate of about 20%, reducing the ex-con's net pay to \$1248.00.
 - 65% of the ex-con's net pay is \$657.50, leaving the obligor with \$590.00 per month.
 - From the net amount, an ex-con will have to pay for rent; food; clothes; child support; and transportation to and from work.

That simply is not possible. No American can realistically live on \$590.00 per month.

The point is not to coddle criminals. The point is to create incentive to work at a legal job and meet your obligations. If someone cannot earn a living legally, they will turn to the underground economy:

- Where no one knows what they earn;
- Where taxes are not paid;
- From which child support cannot be withheld; and
- Where the prisoner most likely is re-engaging in criminal behavior.

That is not a successful re-entry plan.

Consider individuals found disabled by the Social Security Administration, whose only source of income is Supplemental Security Income (SSI), a means tested public benefit. The monthly SSI benefit in 2018 is \$750.00 a month. In 2019, the monthly benefit will be \$771.00 a month.¹⁸ A \$50.00 child support order is difficult to pay for someone who, due to circumstances beyond their control, is disabled and unable to work.

The Rule can be modified to allow a referee or judge can look at all of an obligor's circumstances and make a "reasonable" determination of what a child support order should be, even if less than \$50.00 a month, based on those circumstances.

Again, if the problem is not the Rule but the way state attorneys and the bench interpret the rule, comments accompanying the Rule would be very helpful.

¹⁸ <https://www.ssa.gov/oact/cola/SSI.html>

Contempt Proceedings must be codified to protect obligors in contempt proceedings

In 2016, the Federal Government changed the rules for contempt proceedings in child support cases. The Government required the States to establish guidelines for the use of contempt in Title IV-D proceedings.¹⁹

Nebraska is not following the rules established by the Federal Government. Under the new rules, a IV-D agency must:

- Screen a case for information regarding the non-custodial parent's *ability* to pay or otherwise comply with the order;
- Provide the court with the information obtained; and
- Provide the non-custodial parent with notice that the parent's *ability* to pay is the "critical question" in a civil contempt action.

These common sense steps are consistent with Nebraska case law. Parents are not receiving the required notices. Courts continue – at the behest of prosecutors - to "impute" ability to a parent without regard to education, training, or current circumstances, e.g., unemployment.

It is well within the Supreme Court's purview to "institutionalize" these steps for contempt proceedings in the Nebraska Child Support Guidelines.

The new federal rules require the Nebraska Child Support Guidelines to include new rules for the establishment of support

Within a year following this Committee's and the Supreme Court's review of the Child Support Guidelines, the State **must** take into consideration the following when establishing support:²⁰

- All income and earnings of the non-custodial parent;
- Basic subsistence needs of the non-custodial parent who has a limited ability to pay by incorporating a low income adjustment;
- If income is to be imputed, it must take into account a non-custodial parent's:
 - assets;
 - residence;
 - employment and earnings history;
 - job skills;
 - educational attainment;
 - literacy;
 - age;
 - health;

¹⁹ Fed.Reg., Vol. 81 No. 244, pp. 93496 -93497; See also 45 C.F.R. §303.6(c)(4)

²⁰ Fed.Reg., Vol. 81 No. 244, p. 93494; 45 C.F.R. 302.56; 45 C.F.R. 303.4

- criminal record;
- record of looking for work;
- the local job market;
- the availability of employers to hire someone with the parent's skills and education;
- and
- prevailing earnings in the local economy.

There is no reason to wait for a full year after this Committee's quadrennial review of the Guidelines to implement this standard. These requirements for establishing child support should be added to the Guidelines immediately.

An exception to the judgment interest rule should be made for child support

It is not unusual for Legal Aid clients to owe more in judgment interest than they owe for the underlying child support principal. Application of judgment interest to child support arrears exacerbates the problems, already outlined, poor people experience with the Child Support Guidelines. It traps them in poverty permanently.

We suggest this Committee consider whether Guidelines should be implemented outlining factors to consider when determining when the State should forgive interest in arrears only cases. The Committee could also consider programs where the non-custodial parent could do community service in exchange for forgiveness of interest owed to the State.

All of a non-custodial parent's children should be treated equitably

A non-custodial parent may have more than one child by different mothers or fathers. The first child support order is very likely to be larger than subsequent orders. We have clients who pay \$350.00 per month for their eldest child and \$50.00 per month for their second child. This is due simply to birth order. Whichever child comes first gets the most money in child support.

When establishing child support for subsequent children, it would be helpful to modify existing orders at the same time. That way, children in similar circumstances would be treated similarly.

Nebraska Child Support Guidelines should provide for cases of hardship

Many states allow for a non-custodial parent's hardships when collecting arrears. Many Nebraska child support enforcement professionals informally arrange to reduce collection of arrears to less than 65% of a non-custodial parent's wages. However, parents are not notified of their ability to seek a hardship agreement. Further, there is no requirement for Nebraska to provide hardship arrangement for the collection of arrears. Finally, Nebraska does not have a uniform regulation to guide child support professionals who are willing to allow an obligor to enter into a repayment agreement for less than is normally owed.

Our client population are the first people to be laid off, the people most likely to have trouble getting adequate transportation to work – thus leading to arriving late, and the population most likely to lose a job based on an inability to secure adequate transportation to work.

During these times, non-custodial parents should be told they have the option to ask for a hardship provision. The option should be mandated, not dependent on the kindness of your child support case worker, and the standard for considering whether to offer a hardship provision should be uniform.

Suspension of driver's licenses is a counter-productive sanction

In Omaha, people who cannot drive have extraordinary trouble looking for work. If a non-custodial parent loses transportation, s/he loses the ability to get to work. If s/he cannot get to work, s/he will lose his or her job. If a non-custodial parent loses a job, a child gets nothing.

Huge numbers of our clients have significant RAP sheets that consist almost solely of charges for "driving under suspension." Many of our clients are "driving under suspension" because it is the only way for them to get to work, take their children to school, take their children to health care appointments, or get their children to school activities.

This problem probably is exacerbated in rural areas, where people may have to travel between counties and great distances to get to work.

If we want to keep people working, we have to keep them driving.

Suspension of driver's licenses can and should be treated differently than other administrative sanctions. There should be stronger procedural safeguards for people facing license suspension, including the right to be represented by court appointed counsel at these hearings.

Legal Aid of Nebraska thanks you for considering our comments.

Respectfully submitted,

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