

Getting the Order Right and Keeping it Right: How Best Orders, Deviations and Modifications are Important for Families and the Counties

Theresa Farrell-Strauss, Sr. Asst. Hennepin County Attorney
Jodie Metcalf, Chief Child Support Magistrate
Melissa Rossow, Asst. Dir., Ramsey County Attorney's Office

A. Why Getting the Order Right and Keeping It Right Matters

1. Evolving IV-D Program –

a. Remember when...

- Records were kept on index cards and there was no statewide case management system?
- Counties represented the custodial parents?
- Counties requested orders in the amount of the AFDC grant?
- Courts set the highest possible order to give children maximum support?
- Counties proposed imputing 150% of minimum wage as a default standard?

- b. The IV- D program is ever-evolving - The current direction of the IV-D program is to be family focused, not focused just on the needs of the custodial parent or just on the needs of the noncustodial parent. The Federal “Bubble Chart” is a helpful illustration of the current direction of the IV-D Program.



- c. We try, we learn, we improve - What we thought was good policy before may or may not have been the best policy or approach. What we think today also may or may not be the best policy or approach. But, we learn along the way, and when we know better, we do better.
- d. Focus on the Basics – We can't forget that the IV-D program is about “feeding the babies.”

2. Some Interesting Statistics

- a. 25% of the nation's children are served by the IV-D program; and 50% of the nation's poor children are served by the IV-D program.
- b. 30-35% of families in the IV-D program live in households at or below 100% of the Federal Poverty Guidelines (FPG); 50% live at or below 150% of the FPG; 80% live at or below 300% of the FPG; 90% live at or below 400%.
- c. Child Support makes up approximately 40% of family income for poor families who receive it.

3. Federal Direction on Setting Right Orders and Keeping them Right

- a. ACF - OCSE Commissioner Vicki Turetsky - The goal of the IV-D program is to get consistent, reliable, regular, and full child support payments to children.
 - i. *"Right-sized" Orders*:
 1. Setting realistic orders based on actual income
 2. Modifying orders quickly
 3. Reducing the compliance gap
 - ii. *Realistic Orders* - When current child support is set on imputed income or unrealistic levels, there is an increase in non-compliance and an increase in arrears. Additionally, orders set based on default¹ orders results in the same. The efforts spend on collecting these orders and arrears reduces resources available to set and collect enforceable child support orders.
 - iii. *Modifying Orders Quickly* – Early intervention and quick modifications keep orders right which increases compliance and reduces arrears. Most importantly, gets child support to children.
 - iv. *Reducing the Compliance Gap* – National establishment rate - 80%. Minnesota establishment rate - 86%. National current collections rate - 71%. Minnesota current collections rate - 71%. We need to work towards reducing the compliance gap. Unpaid orders do not help children. A smaller amount actually paid is more help than a larger amount accruing as arrears.
- b. NCSEA Policy Position –

As a general rule, child support guidelines and orders should reflect actual income of parents and be changed proactively to ensure current support orders reflect current circumstances of the parents and to encourage regular child support payments. Presumed or default orders should occur in limited circumstances.
- c. PAID –

Establishing child support orders based on parents' ability to pay results in higher compliance and increased parental communication².

¹ Orders where there is no verified income information, especially for the obligor/NCP

² June 2012 PAOD Child Supprt Fact Sheet Series

- d. Paradigm Shift³ –
 - i. Early intervention to set reasonable orders and to enforce orders.
 - ii. Using data to select the right enforcement tools to use at the right time. Figuring out why payments are not made and how to get them started through enforcement remedies, modification processes, and education.
 - iii. Changing behavior to encourage payment – build ability and willingness to pay.
 - iv. Partnerships with workforce centers, parenting and fatherhood programs, veterans’ programs, prisoner reentry programs.
 - v. Not the highest possible order to encourage getting a job; the right order to encourage getting and keeping a job.
- e. 2012 NCSEA Conference Keynote - Commissioner Vicki Turetsky:

“Let’s not start our relationship with the noncustodial parent with a fiction and promoting the compliance gap. Let’s recognize the subsistence of both parents and increase engagement with both parents. When the parents think of us, they will think of us as a help rather than a hindrance.”

4. **Studies/Research on Setting Right Orders and Keeping them Right**

- a. Setting a realistic order based on actual income, not imputed income, increases compliance over time.⁴
- b. If child support is unrealistic, low-income NCPs can become discouraged from getting and keeping jobs⁵ and arrears accumulate.⁶
- c. Early intervention improves compliance.⁷
- d. Reducing administrative default orders improves compliance.⁸
- e. Minnesota Order Modification Grant Project – Simplifying and Streamlining Order Modifications. See State Policy issued on December 6, 2012.

5. **Articles on Setting Right Orders and Keeping them Right – Attached at the end**

- a. Commissioner’s Voice Blog
 - i. *Three Tiers – a roadmap of strategies to improve program performance*
 - ii. *Statistics are Critical to our Program*
 - iii. *Change Management in the Child Support Program*
 - iv. *New Poverty Data Matter to our Program*
- b. National Conference on State Legislatures – Policy Trend: Setting Realistic or “Right Sized” Orders to Improve Child Support Payments

³ March 2013 ACF-OCSE *Commissioner’s Voice*

⁴ Carl Formoso, *Determining the Composition and Collectibility of Child Support Arrearages*, Washington Department of Social and Health Services, Division of Child Support 2003. Legler, Paul (2003). *Low-Income Fathers and Child Support: Starting Off on the Right Track*, Policy Studies Inc, Denver, Colorado.

⁵ Vicki Turetsky, *Staying in Jobs and Out of the Underground: Child Support Policies that Encourage Legitimate Work*, Center for Law and Social Policy, 2007.

⁶ Elaine Sorenson, Liliana Sousa, and Simon Schaner, *Assessing Child Support Arrears in Nine Large States and the Nation*, Urban Institute, 2007.

⁷ Elaine Sorenson, *Preventing Child Support Arrears in Texas by Improving Front-End Processes*, Urban Institute, 2006.

⁸ *Reducing Default Child Support Orders in Colorado*, Center for Policy Research, 2007.

- c. Project to Avoid Increasing Delinquencies (PAID) -
 - i. *Establishing Realistic Child Support Orders: Engaging Noncustodial Parents*
 - ii. *Providing Expedited Review and Modification Assistance*
- d. National Child Support Enforcement Association (NCSEA) Board Resolution – Setting Current Support Based on Ability to Pay

6. Modifications are Important

- a. Modifications affect the current support performance measure – Measure of the amount of current support collected versus the amount of current support ordered.
- b. If more orders are modified timely, more current support is collected as compared to the amount of current support ordered.

7. Modifications: The Next Generation

- a. Minnesota Department of Human Services Grant – 2008
 - i. Goals:
 1. Simplify and streamline the review and modification process
 2. Minimize burden and cost to the parties and counties
 3. Provide access to justice
 4. Comply with court rules
 5. Ensure due process
- b. “New” DHS Modification Policy Issued December 5, 2012
 - i. Requests for review not required to be in writing
 - ii. Counties must review all cases when a request has been made (this does not mean a modification must be done though)
 - iii. Counties can no longer cancel based on RFI (requestor failed to return information)
 - iv. Counties are encouraged to pursue settlements, agreements, stipulations
 - v. Counties must review both PA and NPA cases when the county notices a change (no longer need to wait for a party request on NPA cases)
 - vi. Streamlined process and forms
 1. Child support ezDocs
 2. Education for parties and community partners
 3. County initiated process
 - Reduced timeframes
 - Simplified financial statements
 - New policy
 - New reports and worklists
 - Streamlined documents and process for incarcerated
 - Streamlined documents and process for SSI (coming).

8. Modifications: Significant Culture Change – How this plays out in Ramsey County

- a. In the past, Ramsey County didn't pursue modifications when
 - i. The obligor was incarcerated
 - ii. If the order was less than 3 years old
 - iii. The parties agreed (we never pursued stipulations)
 - iv. Unless the parties asked (did some agency initiated PA cases)
- b. In the past, Ramsey County pursued the default flow for most establishment and modification cases, regardless of the facts or lack of information on which to base our recommendation
- c. In the past, Ramsey County set orders based on
 - i. The amount of public assistance grant
 - ii. Based on imputed income at the highest possible amount
 - iii. Based on 150% of minimum wage if no information available
 - iv. With significant pregnancy and confinement expenses
 - v. With significant judgments for past support

9. Ramsey County Improvements

- a. Best Order Policy
- b. Income Committee – a way to improve the best order policy
- c. Drafter Committee – consistent language
- d. Using reports for case management
- e. Taking a holistic approach – breaking down silos between functions
- f. Using early intervention to prevent accumulation of arrears
- g. Improved case management:
 - i. Determining what orders need a modification without the parties requesting
 - ii. Talking to parties who call
 - iii. Educating parties about the process and realistic expectations
 - iv. Not terminating based on RFI
 - v. Researching and finding additional information
- h. Prioritizing incarcerated and SSI modifications
- i. Pursuing stipulations

7. Data and Case Stratification on Setting Right Orders and Keeping them Right – and Some Questions

- a. There is a ton of data in Minnesota's Data Warehouse and in other reports. Why aren't we better at mining data to strategize how to better set and enforce child support orders?
- b. 70% of orders that receive payments are cases where income withholding is in place. Income withholding can take upwards of 2 months to commence, during which time arrears may accrue if an obligor does not or cannot make the past order's payments.

Has your county figured out how to speed that up through the use of bench orders or immediate income withholding orders?

- c. Data suggests that orders based on actual earnings that come from paychecks through income withholding collect approximately 81% of the obligation. Why not 100%?
- d. Data suggests that orders based on imputed income or self-employed income where there is no paycheck involved, have collections ranging from 0.00% to 62% of the obligation. How do we improve compliance with these orders?
- e. There is data and reports to support case stratification to drill down which orders, if modified, will result in payments. Has anyone taken the time to drill down to make these discoveries?

B. When, How and Why to Impute Potential Income

1. Statute - 518A.32 POTENTIAL INCOME

Subdivision 1.General.

This section applies to child support orders, including orders for past support or reimbursement of public assistance, issued under this chapter, chapter 256, 257, 518B, or 518C. If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income. For purposes of this determination, it is rebuttably presumed that a parent can be gainfully employed on a full-time basis. As used in this section, "full time" means 40 hours of work in a week except in those industries, trades, or professions in which most employers, due to custom, practice, or agreement, use a normal work week of more or less than 40 hours in a week.

Subd. 2.Methods.

Determination of potential income must be made according to one of three methods, as appropriate:

(1) *the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community;*

(2) *if a parent is receiving unemployment compensation or workers' compensation, that parent's income may be calculated using the actual amount of the unemployment compensation or workers' compensation benefit received; or*

(3) *the amount of income a parent could earn working full time at 150 percent of the current federal or state minimum wage, whichever is higher.*

Subd. 3. Parent not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis.

A parent is not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis upon a showing by the parent that:

- (1) the unemployment, underemployment, or employment on a less than full-time basis is temporary and will ultimately lead to an increase in income;
- (2) the unemployment, underemployment, or employment on a less than full-time basis represents a bona fide career change that outweighs the adverse effect of that parent's diminished income on the child; or
- (3) the unemployment, underemployment, or employment on a less than full-time basis is because a *parent is physically or mentally incapacitated* or due to incarceration, except where the reason for incarceration is the parent's nonpayment of support.

Subd. 4. TANF recipient.

If the parent of a joint child is a recipient of a temporary assistance to a needy family (TANF) cash grant, no potential income is to be imputed to that parent.

Subd. 5. Caretaker.

If a parent stays at home to care for a child who is subject to the child support order, the court may consider the following factors when determining whether the parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis:

- (1) the parties' parenting and child care arrangements before the child support action;
- (2) the stay-at-home parent's employment history, recency of employment, earnings, and the availability of jobs within the community for an individual with the parent's qualifications;
- (3) the relationship between the employment-related expenses, including, but not limited to, child care and transportation costs required for the parent to be employed, and the income the stay-at-home parent could receive from available jobs within the community for an individual with the parent's qualifications;
- (4) the child's age and health, including whether the child is physically or mentally disabled; and
- (5) the availability of child care providers.

This subdivision does not apply if the parent stays at home only to care for other nonjoint children.

Subd. 6. Economic conditions.

A self-employed parent is not considered to be voluntarily unemployed, underemployed, or employed on a less than full-time basis if that parent can show that the parent's net self-employment income is lower because of economic conditions that are directly related to the source or sources of that parent's income.

2. Caselaw

- a. Welsh v Welsh, 775 N.W.2d 364 (2009)
 - i. Facts: NCP moved to modify his child support based on his increased expenses and CP mother's increased income. The mother was unemployed, but had trust income. The CSM used potential income for the CP in addition to the trust income. Child support was reduced, CP unsuccessfully appealed to the district court, then to the appellate court.
 - ii. Analysis: The review was based on statutory construction. MN. STAT.518A.32, subd. 3 provides that if a parent is voluntarily unemployed, OR employed on a less than full time basis, child support must be calculated based on potential income. Next, the CP argued that potential income should not be used because she was a caretaker of the parties' children. The court looked at the five factors in MN. STAT. 518A.32, subd 5. The children were 13 yr old twins, and the case was remanded to the DC to make findings on this issue because there were none.

- b. Zaldivar v. Zaldivar, 819 N.W.2d 187 (2012)
 - i. Facts: The NCP was a citizen of El Salvador who was not authorized to work in the U.S. NCP appealed a civil contempt finding based on the argument that he was not legally authorized to work.
 - ii. Analysis: The appellate court did a de novo standard of review of statute 518A.32, subd 1. The district court had relied on NCPs' employment history, education, and job skills: "There is no language in the statute addressing unauthorized aliens." The decision was upheld.

3. Reality - Labor Statistics on Persons at work in non-agricultural industries by age, sex, and race (numbers are in thousands)

Age, sex, race, Hispanic or Latino ethnicity, and marital status	March 2013							
	Total at work	Worked 1 to 34 hours				Worked 35 hours or more	Average hours	
		Total	For economic reasons	For noneconomic reasons			Total at work	Persons who usually work full time
				Usually work full time	Usually work part time			
AGE AND SEX								
Total, 16 years and over	136,149	33,421	7,598	6,874	18,949	102,728	38.5	42.5
16 to 19 years	3,811	3,003	304	80	2,619	807	21.7	38.5
16 to 17 years	1,205	1,108	25	3	1,080	96	16.0	38.7
18 to 19 years	2,606	1,895	279	77	1,540	711	24.3	38.4
20 years and over	132,338	30,418	7,294	6,793	16,330	101,920	39.0	42.6
20 to 24 years	12,623	5,350	1,384	549	3,417	7,273	33.4	40.9
25 years and over	119,715	25,068	5,910	6,245	12,913	94,647	39.6	42.7
25 to 54 years	90,293	16,839	4,586	4,581	7,673	73,454	40.2	42.8
55 years and over	29,422	8,229	1,325	1,664	5,240	21,193	37.6	42.4
Men, 16 years and over	71,933	13,206	3,821	3,374	6,011	58,727	40.8	43.6
16 to 19 years	1,784	1,336	168	39	1,129	448	23.3	39.3
16 to 17 years	520	463	12	3	447	57	16.9	-
18 to 19 years	1,264	873	156	36	682	390	26.0	39.4

20 years and over	70,149	11,870	3,653	3,335	4,882	58,279	41.2	43.6
20 to 24 years	6,533	2,355	735	259	1,360	4,178	35.1	41.5
25 years and over	63,616	9,515	2,918	3,075	3,522	54,101	41.8	43.8
25 to 54 years	48,192	6,056	2,234	2,253	1,569	42,136	42.5	43.9
55 years and over	15,424	3,459	684	822	1,953	11,964	39.7	43.5
Women, 16 years and over	64,216	20,215	3,777	3,500	12,938	44,001	36.0	41.2
16 to 19 years	2,027	1,667	136	41	1,490	360	20.2	37.4
16 to 17 years	685	646	13	0	633	39	15.3	-
18 to 19 years	1,342	1,022	123	41	858	321	22.7	37.3
20 years and over	62,189	18,547	3,641	3,459	11,448	43,641	36.5	41.2
20 to 24 years	6,090	2,995	649	289	2,057	3,095	31.7	40.1
25 years and over	56,099	15,553	2,992	3,169	9,391	40,546	37.0	41.3
25 to 54 years	42,101	10,783	2,352	2,327	6,104	31,318	37.6	41.4
55 years and over	13,999	4,770	641	842	3,287	9,229	35.2	41.0
RACE AND HISPANIC OR LATINO ETHNICITY								
White, 16 years and over	108,851	27,083	5,852	5,473	15,759	81,767	38.5	42.7
Men	58,487	10,688	3,014	2,767	4,907	47,799	40.9	43.7
Women	50,363	16,395	2,838	2,705	10,851	33,968	35.7	41.2
Black or African American, 16 years and over	15,514	3,707	1,164	831	1,713	11,807	38.0	41.4
Men	7,247	1,445	536	333	575	5,803	39.5	42.4
Women	8,267	2,263	627	498	1,138	6,004	36.7	40.4
Asian, 16 years and over	7,857	1,680	365	326	988	6,178	39.3	43.0
Men	4,163	651	176	136	339	3,512	41.2	43.8

Women	3,694	1,029	189	190	649	2,665	37.1	41.9
Hispanic or Latino ethnicity, 16 years and over	21,048	5,124	1,741	1,011	2,371	15,924	37.7	41.1
Men	12,187	2,330	943	584	803	9,858	39.3	41.6
Women	8,861	2,794	798	427	1,569	6,066	35.5	40.2
MARITAL STATUS								
Men, 16 years and over								
Married, spouse present	41,523	5,609	1,429	2,056	2,124	35,914	42.5	44.2
Widowed, divorced, or separated	9,252	1,525	537	424	565	7,727	41.3	43.7
Never married	21,158	6,072	1,855	895	3,322	15,086	37.1	42.1
Women, 16 years and over								
Married, spouse present	32,662	9,647	1,382	1,842	6,423	23,015	36.4	41.1
Widowed, divorced, or separated	12,956	3,526	781	790	1,955	9,430	37.3	41.4
Never married	18,599	7,042	1,614	868	4,560	11,557	34.3	41.1
NOTE: Estimates for the above race groups (white, black or African American, and Asian) do not sum to totals because data are not presented for all races. Persons whose ethnicity is identified as Hispanic or Latino may be of any race. Updated population controls are introduced annually with the release of January data. Dash indicates no data or data that do not meet publication criteria (values not shown where base is less than 75,000).								

4. Issues with Potential Income

- a. Factors to consider to rebut presumption of ability to work full time:
 - Age of obligor
 - Education
 - Criminal history
 - Work history: does one or two quarters of guideline income equate with ability to work full time?
 - Availability of full time employment in the area where the obligor resides
 - Transportation availability
 - Lack of stable housing
 - What does voluntary mean?
- b. Self-employment and potential income
 - Lack of evidence results in use of potential income
 - Query; does lack of evidence correlate with lack of ability?

- Consider Minn. Stat. Sec. 518A.32, Subd. 6 above; proof of economic conditions relating to reduced income
- Goal is to distinguish between obligor who is trying to evade child support and obligor who has limited ability.

5. Example of policy to help decide how to establish child support

Minimum Orders Guide:			
Reserve	Minimum Wage Order	\$50 (1-2) "training order"	150% minimum wage
SSI	\$7.25/hour Full Time	Working below SSR (self-support reserve)	Evidence shows that lifestyle supports it.
MFIP	MMC (Magistrate Mass Calendar)	MMC	
GA	(discretion to look at less)	JOBS	
Child out of HH		Part-time income	
NPA intact family		Non-coop PEP	
Multiple families (way below SSR)		No significant barriers	
Not a PFU (Parental Fees Unit) case		Felonies	
Incarcerated NCP		Health Issues	
		No GED	
		1st time, 1st child	

C. When, How and Why to Deviate

1. The Law

- Guidelines are a **rebuttable** presumption (Minn. Stat. §518A.35, subd. 1). The guidelines are a starting point and in many cases, that may be as far as you need to go.
- Family Law, including child support, is based in equity. “Family dissolution remedies, including remedies in child support decisions, rely on the district court’s inherent equitable powers.” *Holmberg v Holmberg*, 588 N.W.2d 720 (Minn. 1999). Equity is about doing the right thing, it is about being fair. Equity is not about blindly following a statute.
- The legislature anticipated that there would be deviations from the guidelines. See Minn. Stat. §518A.37 and 518A.43

- d. The courts have also acknowledged that a deviation from the guidelines is allowed:
 “[The] guideline support amount is presumed to be the correct support amount, but that presumption is rebuttable and deviations from the guideline amount may be made with appropriate findings.” *Sclichting v. Paulus*, 632 N.W.2d 790 (Ct. App. 2001).
- e. Deviation from guidelines requires additional findings. Minn. Stat. §518A.37, subd. 2 provides that when deviating, the order must include written findings that state: each parent’s gross income; each parent’s PICS; the guideline support amount; the reasons for the deviation; and how the deviation serves the best interests of the child.
- f. Deviations from child support guidelines (Minn. Stat. §518A.43 paraphrased)
- i. Deviation is intended to encourage prompt and regular payment of child support and prevent either parent or the joint child from living in poverty
 - ii. The court must take into consideration the following factors in setting or modifying child support or in determining whether to deviate upward or downward from the presumptive child support obligation:
 - (1) all earnings, income, circumstances, and resources of each parent, including real and personal property;
 - (2) the extraordinary financial needs and resources, physical and emotional condition, and educational needs of the child to be supported;
 - (3) the standard of living the child would enjoy if the parents were currently living together, but recognizing that the parents now have separate households;
 - (4) whether the child resides in a foreign country....
 - (5) Which parent receives the income tax dependency exemption and the financial benefit the parent receives from it;
 - (6) The parent’s debts as provided in subd. 2; and
 - (7) The obligor’s total payments for court-ordered child support exceed the limitations set forth in 571.922
 - iii. Minn. Stat. §518A.43, Subd. 2 Debt owed to private creditors
 - Doesn’t apply if the right to support has been assigned
 - The debt must have been reasonably incurred for necessary support of the child or parent or for the necessary generation of income
 - Need a sworn schedule with supporting documentation showing original debt amount, balance, monthly payment and number of months until it will be paid in full. Deviation based on debt to creditors must not exceed 18 months in duration, at end of 18 months, child support to increase to level ordered by court.
 - iv. Minn. Stat. §518A.43, Subd. 3 the court may receive evidence on these factors to determine if guidelines should be exceeded or modified.
 - v. Minn. Stat. 518A.43, Subd. 4 If payments are assigned, court must find that failure to deviate downward would cause extreme hardship on obligor.
 - vi. Minn. Stat. 518A.43, Subd. 5 an award of joint legal custody is not a basis for deviation.

vii. Minn. Stat. 518A.43, Subd. 6 If, after payment of income and payroll taxes, the obligor can establish that they do not have enough for the self-support reserve, a downward deviation may be allowed.

2. **Is Anyone Left in Poverty?** - Do a quick check to see if the guideline calculation will leave either parent in poverty. This is especially true if either (or both) have nonjoint child(ren) in the household. Sometimes they will both be in poverty and we can't fix it. If you are deviating – check again to see if either party will be in poverty as a result of the deviation. Below are the 2013 Poverty guidelines showing both annual income and monthly income for each household size for the 48 contiguous states and the District of Columbia.

Persons in family/household	Annual income	Monthly income
1	\$11,490	\$957.50
2	\$15,510	\$1,292.50
3	\$19,530	\$1,627.50
4	\$23,550	\$1,962.50
5	\$27,570	\$2,297.50
6	\$31,590	\$2,632.50
7	\$35,610	\$2,967.50
8	\$39,630	\$3,302.50
Add \$4,020 annually for each additional person in the household		

3. **Taxes** - www.Tax-rates.org allows you to quickly estimate the federal and state income tax obligation of a party. To calculate payroll taxes, use 7.65% (multiply the income by .0765). This is useful when applying Minn. Stat. 518A.43, Subd. 6, but is also helpful in understanding the relative financial positions of the parties. If the custodial parent is able to claim the child as a dependent, they may claim head of household (rather than single) and can claim the extra dependency exemption for the child. They may also qualify for the child tax credit (up to \$1,000) and/or the Earned Income Credit⁹. See the examples provided below. Also, www.paycheckcity.com is another website some people use to estimate the federal and state income tax obligation of a party.

- a. **Example of How Taxes Makes a Difference** - An example of where income and payroll tax obligations make a difference: NCP makes \$9 per hour full-time. CP is on a full MFIP grant – no income. At \$9 per hour, the monthly income is \$1,559. After the self-support reserve, \$410 is available to pay child support. Guideline basic support for one child is \$292, which is well within the income available to pay child support.

However, if you consider the federal and state income taxes and the payroll taxes, a different picture emerges. The payroll tax (FICA, i.e. social security and Medicare) is

⁹ Awarding the NCP the right to claim the child as a dependent for tax purposes will not confer the same benefits on the NCP as it does on the CP. Head of household, child tax credit and earned income credit all require a “qualifying child”, one of the qualification requirements is that the child has to have lived with that parent at least half of that tax year. If the parents do not have 50 – 50 parenting time, a non custodial parent will not qualify for these tax advantages even if they are awarded the dependency exemption.

\$119 per month, federal income taxes are \$76 per month and state income taxes are \$41 per month. That leaves a monthly income after taxes of \$1,323. Deducting the self-support reserve leaves \$174 per month available for child support. This is \$118 per month less than the guideline amount. This applies in more cases when you have an obligation that includes child care and medical support.

- b. **Example of the Benefits of the CP Claiming the Child** - Below is an example that shows the impact of the benefits received when a custodial parent can claim the child as a dependent (and has the child in their home at least half of the year):

Facts:

- Case with one joint child, no nonjoint child(ren) for either parent
- CP earns \$11.18 per hour, 40 hours per week, \$1,936 per month
- NCP earns \$11 per hour 40 hours per week, \$1,905 per month.
- Assume MA or MinnCare is open
- Child care costs of \$300 per month

Guideline calculation result:

- Basic support: \$352 without PEA or \$310 with 12% PEA
- Medical support: \$34 (contribution to public coverage)
- Child Care support: \$82 per month if no child care assistance and \$62 per month if there is.
- Total obligation: \$406 at a minimum (assumes 12% PEA and child care assistance open) or \$468 maximum (no PEA and no child care assistance)

Taxes:

- CP's gross income is \$1,936 per month. Payroll tax (FICA at 7.65%) is \$148/month
- NCP's gross income is \$1,905 per month. Payroll tax (FICA at 7.65%) is \$146/month
- The estimated state income tax obligations for the parties are: \$60/month for the NCP and \$45 per month for the CP

Federal tax info	CP	NCP	Difference
Standard deduction	8,700 (head of household)	5,950 (single)	2,750
Dependency exemption(s)	7,600 (two – self and child)	3,800(one- self)	3,800
Federal tax obligation	693	1,531.50	838.50
Child tax credit	1,000	0	(1,000)
Earned income credit	2,187	0	(2,187)

The custodial parent would get all of the federal income tax paid and get a refund of \$2,494 or approximately \$200 per month. That is enough to pay all of the payroll tax and all of the state income taxes the custodial parent owes. The custodial parent has \$1,936 per month to meet expenses for self and joint child.

The noncustodial parent pays \$128 per month for federal taxes, \$146 per month for payroll taxes and \$60 per month for state income taxes. That leaves \$1,571 for self-support and child support. Deducting the self support reserve leaves \$422 per month for child support. That is very close to the \$406 and below the \$468.

4. Nonjoint Children Self-Support Reserve Deviation - Did you know that the way PRISM and Web Calculator are set up, the noncustodial parent (NCP) does not receive the benefit of the nonjoint child (NJC) deduction in the self-support reserve calculation (SSR), even though the purpose of the deduction and the SSR is to balance the NCP's obligation to both NJC and joint children as well as leaving the NCP enough money in the end to live off of?

Consider a deviation to have the NJC credit in the SSR calculation. NCPs receive a deduction from their gross monthly income for up to 2 NJC for whom the NCP is legally responsible for (biological or adopted children) living primarily in their home before calculating the child support obligation for the joint children.¹⁰ The amount of the deduction is 50% of the guideline child support amount that would result using just the NCP's income for up to 2 nonjoint children.¹¹

The goal of the self-support reserve is to ensure that a child support order does not exceed the non-custodial parent's ability to pay.¹² The non-custodial parent's income available for support is calculated by subtracting 120% of the federal poverty guidelines from the obligor's gross income not the PICS used to calculate the obligation.¹³ PRISM and the Web Calculator do not reflect the NJC deduction when comparing the non-custodial parent's monthly income to the SSR. This can create an unfair result for a non-custodial parent with NJC in their home, because when the SSR applies, their child support obligation can end up being the same as a non-custodial parent without NJC children in their home.

A deviation can accurately reflect that the NCP has an additional financial responsibility to the NJC living in his or her home. This deviation can help to achieve the underlying policy of balancing the NCP's obligation to the joint child with the obligation to the NJC residing in his or her home, and his or her own living expenses. If the deviation is applied to give the non-custodial parent the deduction for the NJC, the following formula should be used:

NCP's PICS from line 3 of the worksheet¹⁴ minus the SSR (which is 120% of the FPG or \$1,149 in 2013) which equals the NCP's Income Available for Support

¹⁰ Minn.Stat. § 518A.33 and 518A.34 (b)(2).

¹¹ Minn.Stat. § 518A.33 (b) and (c).

¹² Minn. Stat. § 518A.42 subd. 1.

¹³ Minn.Stat. § 518A.42 subd. 1(b).

¹⁴ PRISM and the Web Calculator uses the NCP's PICS from line 1f of the worksheet, which does not include the NJC deduction.

Example #1: NCP's gross income is \$1,256.00 per month, there is 1 joint child for whom support is sought, NCP has 2 NJC living in his home, and NCP's PICS income is \$1129.00 per month. CP is on MFIP and has a gross income is \$0.00 per month. The SSR applies and reduces medical support to \$0.00 and basic support from \$145.00 to \$107.00 per month.

However, NCP's available income after the NJC deduction is \$1,129.00 minus \$1,149.00 SSR which equals negative \$20.00 available for support. A deviation would change the NCP's basic support obligation to the minimum support of \$50.00 per month.

Example #2: NCP's earned income is \$1,550. After deducting another support obligation of \$150 per month, gross income is \$1,400.00 per month. There 1 joint child for whom support is sought, and NCP has 2 nonjoint children living in his home. CP is on MFIP and has a gross income of \$0.00 per month. NCP's PICS income is \$1,123.00 per month. The SSR applies and reduces medical support to \$0.00 and basic support from \$145.00 to \$101.00 per month.

However, NCP's available income after the NJC deduction is \$1,123.00 minus \$1,149.00 SSR which equals negative (\$26.00) available for support. A deviation would change the NCP's basic support obligation to the minimum support of \$50.00 per month.

5. **Standard Policy for Certain Incomes** - You may want to consider a standard policy for certain income levels. Attached is a chart of hourly wage amounts, the monthly income at 40 hours per week, the amount after the self support reserve, the amounts for federal, state and payroll taxes and the amount available for child support after taxes and the self-support reserve are considered.

Hourly rate of pay	Monthly gross income based on 40 hours per week – 120% of FPG (SSR) -Tax obligations =Modified gross income after consideration of taxes	Income available for support after application of the self-support reserve
\$7.25 per hour	\$1,256 - \$1,149 = \$107 - Fed tax: \$44/mo State tax \$25/mo FICA \$96/mo = \$1,091 after taxes	-\$58 (less than \$1,149), minimum support order
\$8.00 per hour	\$1,386 per month - \$1,149 = \$237 - Fed tax \$57/mo State tax \$32/mo FICA \$96/mo =\$1,191 after taxes or	\$42 per month
\$8.50 per hour	\$1,472 per month - \$1,149 = \$323 - Fed tax \$66/mo State tax \$36/mo FICA \$113/mo =\$1,257	\$108
\$9.00 per hour	\$1,559 - \$1,149=\$410 -Fed tax \$76/mo State tax \$41/mo FICA \$119/mo =\$1,323	\$174
\$9.50 per hour	1,645 - \$1,149 = \$496 -Fed tax \$89/mo State tax \$46/mo FICA \$126/mo =\$1,384	\$235
\$10.50 per hour	\$1,819 - \$1,149 = \$670 - Fed tax \$115/mo State tax \$55/mo FICA \$139/mo =\$1510	\$361
\$11.00 per hour	\$1,905 - \$1,149 = \$756 - Fed tax \$128/mo State tax \$60/mo FICA \$146/mo =\$1,571	\$422
\$11.50 per hour	\$1,991 - \$1,149= \$843 -Fed tax \$141/mo State tax \$64/mo FICA \$152/mo =\$1,634	\$485
\$12.00 per hour	\$2,078 - \$1,149 = \$929 -Fed tax \$154/mo State tax \$69 /mo FICA \$159/mo =\$1,696	\$547