

**Getting the Order Right
and Keeping it Right**

How Best Orders, Deviations and
Modifications are Important for
Families and the Counties

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Road Map for the Presentation

- ▶ Our thoughts based on studies and experience:
 - Why getting the order right and keeping it right matters?
 - When, How and Why to Impute Potential Income?
 - When, How and Why to Deviate?
- ▶ Please be open for considering new ways of thinking about setting and modifying orders.
 - What are your thoughts?
 - What are your questions?

Why Getting the Order Right and Keeping it Right Matters

Evolution of a Program

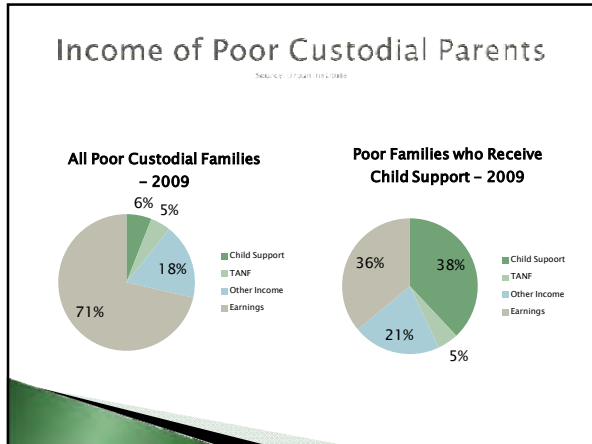
- ▶ Remember when...
- ▶ Federal Direction

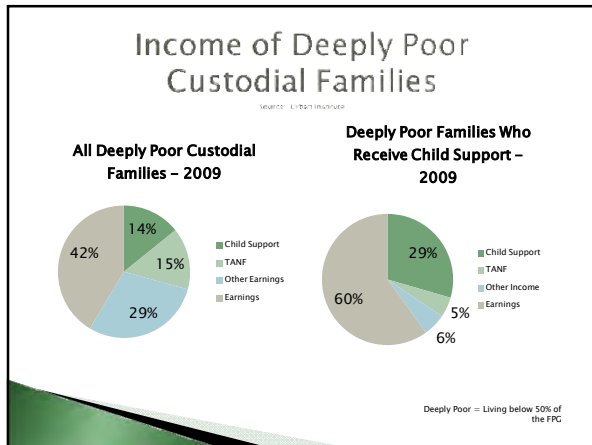


- ▶ Improvement from learning and experience
- ▶ Feeding the babies

Statistics

- ▶ 25% of all children in the U.S. are served by the IV-D Program
 - 50% of poor children are served
- ▶ IV-D Families – Federal Poverty Guidelines
 - 30-35% live at or below 100%
 - \$1,292.50/month for a family of 2 (\$15,510/year)
 - 50% live at or below 150%
 - \$1,938.75/month for a family of 2 (\$23,265/year)
 - 80% live at or below 300%
 - \$3,877.50 for a family of 2 (\$46,530/year)
 - 90% live at or below 400%
 - \$5,170/month for a family of 2 (\$62,040/year)





Federal Direction

► **Federal Child Support Mission Statement**

- Increase the reliability of child support paid by parents when they live apart from their children by:
 - Locating parents
 - Establishing legal fatherhood (paternity)
 - **Establishing and enforcing fair support orders**
 - Increasing health care coverage for children
 - **Removing barriers to payment, such as referring parents to employment services, supporting healthy co-parenting relationships, supporting responsible fatherhood, and helping to prevent and reduce family violence**

Federal Direction

- ▶ **Federal Child Support Office Goals**
 - The child support program annually measures and reports its progress toward achieving these goals:
 - All children have established parentage
 - All children in Social Security Act Title IV-D cases have support orders
 - All children in IV-D cases have medical coverage
 - All children in IV-D cases receive financial support from parents as ordered
 - The IV-D program will be efficient and responsive in its operations

Federal Direction

- ▶ **Consistent, reliable, regular and full child support payments for children**
- ▶ **Reduce the compliance gap**
- ▶ **Early intervention**
- ▶ **Using data**
- ▶ **Changing behavior to encourage payments**
- ▶ **Partnerships and Collaborations**

National Child Support Enforcement Association

- ▶ **January 2013 NCSEA Board Resolution**
 - 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.

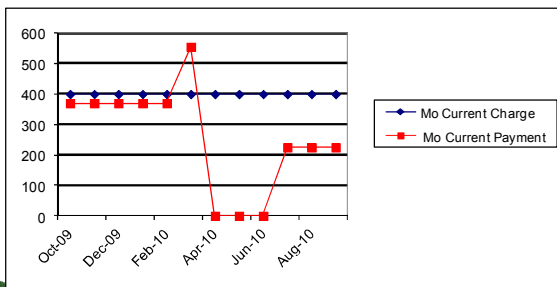
Project to Avoid Increasing Delinquencies (PAID)

- ▶ PAID Fact Sheet – June 2012
 - Establishing child support orders based on parents' ability to pay results in higher compliance and increased parental communication

Modifications are important

- ▶ Hypothetical Facts:
 - Order is originally set at \$400/month.
 - NCP is able to pay and accrues no arrears.
 - NCP is laid off from a job he has had for 12 years.
 - NCP is unable to pay the full \$400 but pays from savings or unemployment benefits or other resources while laid off.
 - Tax hit occurs during one month.
 - NCP exhausts resources and can't pay anything.
 - NCP gets a new job at a lesser wage and the employer remits the maximum allowed under the CCPA which does not fulfill the obligation.

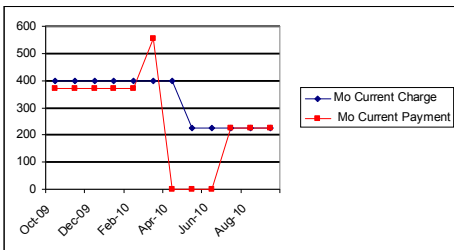
Modifications are important



Modifications are important

- ▶ Consider the same facts, but a modification is done quickly based on job loss and new job
 - By modifying the support, the ratio of current support collected increased from 60.94 % to 71.8%.

Modifications are important



Modifications are important

- ▶ In the hypothetical, collections went from 61% to 72% when a modification was done quickly.
 - The NCP will likely be more compliant and cooperative based on a realistic order.
 - The CP and child can rely on full payments and most importantly, budget accordingly and have realistic expectations.
 - The child is going to receive the same amount of money due to the earnings of the NCP whether a modification is done or not.

Modifications are important

- ▶ PAID Fact Sheet – June 2012
 - The unnecessary accrual of arrears is harmful because it:
 - Hinders payment of regular support
 - Leads to uncollectible debt
 - Limits work opportunities for obligors
 - Interferes with parent-child relationships

Modifications are important

- ▶ Statistics from PRISM
- ▶ Collections before and after modifications
 - 4-6 months before modifications – 53%
 - 4-6 months after modifications – 67%

Modifications are Important

- ▶ Consider the current support performance measure
 - Ratio of the amount collected vs. the amount ordered

\$\$\$ Collected for Current Support In IV-D Cases
Total \$\$\$ Owed for Current Support in IV-D Cases

Modifications are Important

- ▶ **Ramsey County – 2012 DHS Performance Report**
\$37,192,411 collected
\$59,065,523 owed = 62% Collections
- ▶ **If Ramsey County reduced what is owed by 10% through modifications without increasing collections**
\$37,192,411 collected
\$53,158,971 owed =69% Collections
- ▶ **Just think what would happen if Ramsey County increased collections too!**

Modifications: The Next Generation

- ▶ **Minnesota DHS–CSED Order Modification Grant**
 - New Automation to Increase Modifications
- ▶ **New Modification Policy Issued on 12/5/12**
- ▶ **In their research, DHS found that when review and modifications are completed, compliance increases.**
 - This is true regardless if the amount ordered went up or down or stayed the same.

Modifications: The Next Generation

- ▶ **Goals of the DHS Order Modification Grant:**
 - Simplify and streamline the review and modification process
 - Minimize burden and cost to parties and counties
 - Provide access to justice
 - Comply with court rules
 - Ensure due process

Modifications: The Next Generation

- ▶ Features of the “New” Modification Policy
 - Requests for review not required to be in writing
 - Counties must review all cases when a request is made
 - However, this does not mean all cases will be modified
 - Counties can no longer cancel based on RFI
 - (Requester Failed to Return Information)
 - Counties are encouraged to pursue more settlements, agreements and stipulations
 - Counties must review both PA and NPA cases when the county notices a change
 - Even when no request from CP or NCP
 - Streamlined processes and forms are available
 - Culture change for both the State and Counties

Modifications: The Next Generation

- ▶ Improved Processes and Forms
 - Child support ezDocs
 - Interactive web tool used by parties to ask the court for a modification
 - Education for parties and community partners
 - County initiated process
 - Reduced timeframes
 - Simplified financial statements
 - New policy regarding timeframes, documents received and expectations
 - New reports and worklists
 - Streamlined modifications for incarcerated parties
 - Streamlined modifications for obligors on SSI (coming)

Modifications: The Next Generation

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Not all counties doing modifications or just doing public assistance based modifications 2. Counties terminated review if participants did not return forms 3. Time to initiate modification: 6 mos. – 1 yr. 4. Not all counties did incarcerated modifications 5. Very few counties pursued stipulations 6. Very few counties pursued modifications for total and permanent disability SSI cases | <ol style="list-style-type: none"> 1. All counties required to do modifications for both public assistance and nonpublic assistance cases 2. Counties required to proceed with a review regardless of forms being returned 3. Shortened time to initiate modification: 1 –2 mos. 4. Counties required to do incarcerated modifications 5. Counties expected to pursue stipulations 6. Counties expected to pursue modifications for total and permanent disability SSI cases |
|---|--|

BEFORE “NEW” POLICY

AFTER “NEW” POLICY

Significant Culture Change

We are experiencing a significant culture change in the area of modifications.



Ramsey County

▶ Significant culture change:

- We used to pursue a limited number of modifications. We didn't pursue modifications when:
 - the obligor was incarcerated
 - if the order was less than 3 years old
 - parties agreed (we never pursued stipulations)
- We didn't pursue agency initiated modifications
- We also just took our best shot and followed the default flow regardless of how sketchy the facts or information

Ramsey County

▶ Significant culture change:

- We used to get orders:
 - In the amount of the public assistance grant
 - Based on imputed income at the highest amount
 - Based on 150% of minimum wage if we had no other information
 - With significant pregnancy and confinement expenses
 - With significant judgments for past support

Beneficial Change to Ramsey County Processes

- ▶ Setting realistic (best or "right sized") orders from the beginning and modifying orders when something changes
- ▶ Using reports for case management
- ▶ Determining which orders are not enforceable because a modification is necessary
- ▶ Taking a holistic approach
 - Breaking down the silos between establishment, enforcement, and modification functions
- ▶ Using early intervention to prevent accumulation of arrears
 - Just because an order was realistic and a best order before does not mean it is realistic and a best order now

Beneficial Change to Ramsey County Processes

- ▶ Talking to parties who call
- ▶ Educating parties regarding the process and reasonable expectations
- ▶ Not terminating a review based on failure to return forms or non-cooperation
- ▶ Researching and finding additional information
- ▶ Internal review of cases
 - Not waiting for a party to identify or request a review
- ▶ Prioritizing to incarcerated modifications
- ▶ Modifying orders both upwards and downwards
- ▶ Pursuing stipulations

How is Ramsey County doing?

- ▶ Review and Modification Improvements
 - Ramsey County has approximately 30,000 open cases
 - Review and Modification Staff:
 - 4.5 support enforcement agents, 0.5 lead support enforcement agent, 0.75 attorneys, 0.5 supervisor
 - Results
 - 2010 – 300 modification orders
 - 2011 – 424 modification orders
 - 2012 – 588 modifications orders
 - 228 streamlined incarcerated modifications
 - 0.5 FTE to work combination Establishment/Modification or Paternity/Modification cases
 - 2012 – Received over 1,200 referrals from parties and staff
 - Modification staff did not pursue modifications in 35% of cases

Newest Efforts

- ▶ Stipulations
 - Pilot stipulation project began on March 25, 2013
 - Pilot team – 1 attorney, 1 lead support enforcement agent, 1 support enforcement agent
 - All attorneys and support enforcement agents looking for possible good cases and referring to pilot team
 - 40 Stipulations in first 3 months

Do the right thing!

- ▶ Ramsey County tries to do the right thing:
 - Balance the needs of the whole family
 - Best ("right sized") orders are enforceable
 - Even best orders need to be modified when circumstances change to keep the order enforceable
 - Enforceable orders are collectible
 - Collectible orders get money to children

Things to think about

- ▶ How can the State, Counties and Courts:
 - Get more modifications done quicker?
 - Better Use Data Warehouse and other reports to mine data to improve performance?
 - Use data for caseload and workflow stratification?
 - Get income withholding in place/changed faster?
 - Increase collections even when paycheck earners are paying only around 80% of their obligations?
 - Increase collections for non-paycheck earners (cash economy and self-employed)?
 - Engage both parents better to get the right order?

When, How and Why to Impute Potential Income

Potential Income Statute
Minn. Stat. § 518A.32, Subd. 1

- ▶ **When to impute potential income**
 - Impute potential income when a parent is voluntarily
 - Unemployed
 - Underemployed
 - Employed at less than a full-time basis
 - Rebuttable presumption that a parent can be employed full-time
 - Full-time means 40 hours per week
 - Except in jobs where it is custom or practice to work less than 40 hours per week

Potential Income Statute
Minn. Stat. § 518A.32, Subd. 2

- ▶ **How to impute potential income**
 - (1) Probable earnings level
 - Employment potential
 - Recent work history
 - Occupational qualifications/prevaling jobs and earnings in the community
 - (2) Unemployment compensation or workers compensation benefits received
 - (3) 150% of minimum wage

Potential Income Statute
Minn. Stat. § 518A.32, Subd. 3

- ▶ When not voluntarily unemployed, underemployed, or employed on a less than full-time basis
 - When it is temporary and will lead to increased income
 - When it is a bona fide career change that outweighs the decrease in earnings
 - When a parent is physically or mentally incapacitated

Potential Income Statute
Minn. Stat. § 518A.32, Subd. 4

- ▶ TANF - No imputing potential income
 - If the parent of the joint child receives a TANF cash grant, no potential income can be imputed

Potential Income Statute
Minn. Stat. § 518A.32, Subd. 5

- ▶ Stay-at-home parent
 - The Court may consider certain factors to determine whether a parent who stays home to care for the joint child is voluntarily unemployed, underemployed, or employed on less than a full-time basis:
 - What did the parents do before and after separation?
 - What is the stay-at-home parent's history, availability of jobs for qualifications, and when did (s)he last work?
 - What is the relationship between the cost to work (child care, transportation)?
 - What is the child's age and health (mental or physical disability)?
 - What is the availability of child care providers?

Potential Income Statute Minn. Stat. § 518A.32, Subd. 6

- ▶ Economic Conditions
 - Self-employment is not considered to be voluntarily unemployed, underemployed, or employed on less than a full-time basis if it can be shown that the economic conditions cause lower earnings.

Caselaw

- ▶ Welsh v. Welsh, 775 N.W.2d 364 (2009)
- ▶ Zaldivar v. Zaldivar, 819 N.W.2d 187 (2012)

Reality

- ▶ Labor statistics on persons at work in non-agricultural industries

Adults working over the age 16	Total Number in workforce	Percent of workforce
Total employed	136,149,000	
Total working FT (35+ hrs/week)	102,728,000	75%
Married men - FT		86%
Widowed/Divorced/Separated men working FT		83%
Never married men working FT		71%
Married women working FT		70%
Widowed/Divorced/Separated women working FT		72%
Never married women working FT		62%

Issues with Potential Income

- ▶ Factors to consider to rebut the presumption of ability to work full-time:
 - Age of parent
 - Education
 - Criminal history
 - Work history
 - Availability of jobs
 - Transportation
 - Is there stable housing?
 - What does voluntary really mean?

Issues with Potential Income

- ▶ Self-employment and potential income
 - Lack of evidence results in the use of potential income
 - Does lack of evidence correlate with lack of ability?
 - Proof of economic conditions
 - Distinguish between the obligor who is trying to evade and the obligor who has limited ability

Policy Example

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			
Child out of HH	(discretion to look at less)	JOBS	
NPA intact family		Part-time income	
Multiple families (way below SSR)		Non-coop PEP	
Not a PFU (Parental Fees Unit) case		No significant barriers	
Incarcerated NCP		Felonies	
		Health Issues	
		No GED	
		1st time, 1st child	

When, How and Why to Deviate

The Law, Generally

- ▶ Guidelines are a rebuttable presumption
- ▶ Family law and child support is based on equity
- ▶ Equity is about doing the right thing
- ▶ Guidelines should not be blindly applied
- ▶ Legislature anticipated deviations
- ▶ Courts allow deviations
- ▶ Deviations require additional findings

Deviation Statute Minn. Stat. § 518A.43

- ▶ Deviations encourage regular and timely payments
- ▶ Deviations prevent either parent or the child from living in poverty
- ▶ The court must consider a number of factors in determining whether to deviate
 - Minn. Stat. § 518A.43, subd. 1
- ▶ Debts owed to private creditors may be considered in determining whether to deviate
 - Minn. Stat. § 518A.43, subd. 2

Deviation Statute Minn. Stat. § 518A.43

- ▶ Evidence may be received
 - Minn. Stat. § 518A.43, subd. 3
- ▶ Assigned support requires an additional finding about how a failure to deviate will cause an extreme hardship on the obligor
 - Minn. Stat. § 518A.43, subd. 4
- ▶ Joint legal custody is not a basis for deviation
 - Minn. Stat. § 518A.43, subd. 5
- ▶ A downward deviation may be applied if after taxes the obligor does not have enough for the self-support reserve
 - Minn. Stat. § 518A.43, subd. 6

Is Anyone Left in Poverty?

- ▶ Do a quick check to see if the guidelines calculation will leave either parent in poverty.
 - Consider the Federal Poverty Guidelines.
 - Do either or both parents have nonjoint children living with them?
 - Sometimes there is not enough money to go around.

Taxes

- ▶ Minn. Stat. § 518A.43, subd. 6 - Self-support Limitation
- ▶ To quickly calculate payroll taxes, multiply the gross income by 7.65%.
- ▶ Helpful websites:
 - www.tax-rates.org
 - www.paycheckcity.com
- ▶ Does the custodial parent claim the child as a dependent, and can (s)he claim head of household?
- ▶ Does the custodial parent qualify for the child tax credit or earned income credit?

Taxes

- ▶ Example of how taxes makes a difference
- ▶ Example of the benefits of the custodial parent claiming the child

Nonjoint Children Self-Support Reserve Deviation

- ▶ PRISM and the Web Calculator are set up so that the NCP does not receive the benefit of the nonjoint child deduction in the self-support reserve (SSR) calculation
- ▶ The goal of the SSR is to ensure that a child support order does not exceed the NCP's ability to pay
- ▶ The formula:
 - NCP's PICS from line 3 of the worksheet - SSR = NCP's Income Available for Support

What are your thoughts?

What has your county tried?

Questions?

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