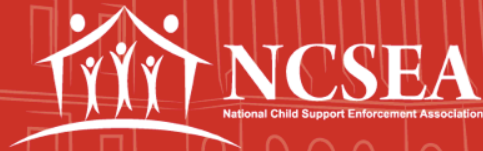


2016 NCSEA Policy Forum
February 11-13, 2016

The Imputation Debate

When Actual Income Doesn't Tell the Whole Story



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NCCSD Survey on State Imputation & Default Practices



- Sent to IV-D directors
- 49 states responded
(presentation analysis based on 34 responses received by deadline)
- Results have just come in, so findings are based on preliminary review

NCCSD Survey on State Imputation & Default Practices

- Intended to capture general approach and best practices for:
 - Establishment procedures
 - Modification procedures
 - General default practices
 - Imputation methodology



What is Income?

- The survey addressed three types of income used to calculate child support obligations:



- Actual income
- Imputed income
- Presumed income

What is Income?

- *Actual Income*

- Known income as supported by sufficient documentation or testimony to be used by the court or administrative authority in establishing or modifying a child support obligation.
- Does not include imputed or presumed income.

What is Income?

- *Imputed Income*

- An amount of income attributed to a parent who is known to be unemployed or underemployed.

- *Presumed Income*

- An amount of income attributed to a parent when the actual income of the parent is unknown.



Scenario 1: The Unresponsive Parent

- Dad signed acknowledgment of paternity (AOP) at hospital.
- Mom applies for IV-D services, and agency wants to establish obligation.
- Dad is personally served with notice.
- Agency attempts to contact him several times, but he does not respond and provides no income information.



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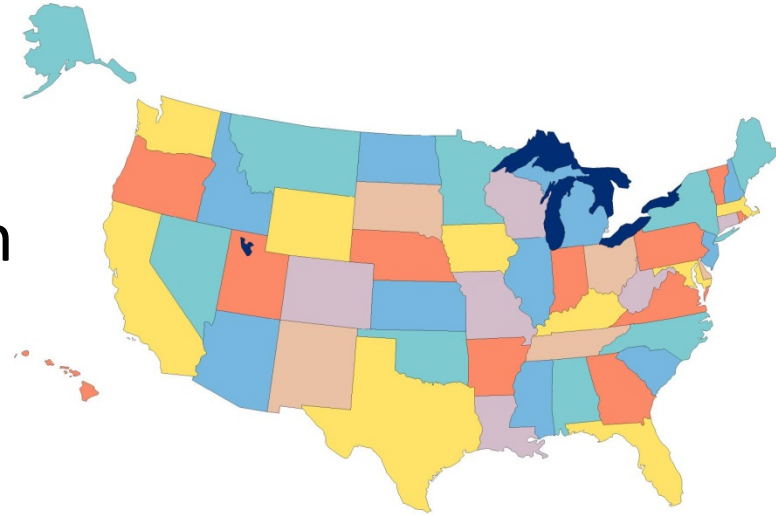
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And the Survey Says...

- Almost all states mentioned using a variety of resources to determine income if Dad does not provide it, including:
 - Program resources (e.g., employment database, FPLS, etc.)
 - Current or former employer
 - Custodial parent
 - Prior tax returns
 - Other state programs (e.g., IV-A)
 - Social Security/unemployment benefit information
 - Subpoenas or other discovery

And the Survey Says...

- Almost all states would obligate Dad.
- Four states specifically noted they will base obligation only on actual income and will not impute if actual income cannot be ascertained.



Produced by the Cartographic Research Lab
University of Alabama

And the Survey Says...

- Most states will impute if no actual income information is available.
- These states use a variety of imputation methods, including:
 - Full-time minimum wage
 - Historical wages imputed to full-time hours
 - Earning potential based on work history, education, and employment opportunity in area
 - Wage tables
 - State-specific basis

Scenario 1: Federal Perspective

- Make every effort to include noncustodial parent (NCP) in order establishment process to:
 - Improve NCP's perception of justice in the process.
 - Contribute to establishment of realistic orders and higher collection rates.

Scenario 1: Federal Perspective

- OCSE urges use of actual data, not assumptions, to determine income.



Scenario 1: Federal Perspective

- Use all available in-state and interstate data systems to determine when NCP has new job, is claiming unemployment benefits, or has quarterly wage information available. Interstate resources include:
 - State and National Directories of New Hires
 - Financial Institution Data Match (FIDM)
 - Multistate Financial Institution Data Match (MSFIDM)

Scenario 1: Federal Perspective

- In presuming income, some states consider:
 - Age, skills, and education of NCP
 - Job market and realistic availability of jobs that suit NCP's skills
 - Availability of full-time minimum wage jobs in NCP's community
 - Other barriers to employment

Scenario 1: Oregon's Approach

- Check wage resources for potential income.
- If recent income history is found and work of that type is available where NCP lives
 - Presume NCP is able to work in that field.
 - Use full-time wages at that rate of pay (less for occupations where work is typically less than full-time).
- If there is not enough information to make a determination of actual or potential income, use minimum wage to calculate obligation.

Scenario 1: Virginia's Approach

- *Administrative:*

- Attempt to verify income through Virginia Employment Commission interface and other sources.
- Use information to complete default order.

- *Judicial:*

- NCP's income presumed based on available evidence from broad range of sources (employer, CP, past wage data, published average earnings for NCP's trade).

Scenario 2: The Malingerer

- Dad is a 19-year old recent high school graduate.
- Never employed and not seeking employment.
- Lives with his parents, who support him.
- No known disabilities or barriers to working.
- Signed AOP at hospital.





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And the Survey Says...

- The vast majority of states would impute income.
- Of those, most would impute at minimum wage.
- Four states would refer Dad to job services.
 - Of those, 2 would still impute at minimum wage.



And the Survey Says...

- A couple of states would use statutory minimum obligation.
 - Minimum order reviewable with expectation that Dad will obtain employment.
 - Upon review, new order would be based on actual income and/or imputed income.

Scenario 2: Federal Perspective

- Look for ways to decrease use of imputation, minimum orders and default orders.
- Test alternative means of identifying income for low-income obligors.
- NPRM proposes state guidelines include self-support reserve or low-income deviation.

Scenario 2: Federal Perspective

- Orders based on imputed/presumed income should be temporary.
 - Consider referring NCP to employment services.
 - Schedule review and consider adjusting order to reflect actual income when NCP gets a job.

Scenario 2: Federal Perspective



- Setting orders that reflect actual ability to pay is critical to:
 - Encourage compliance.
 - Increase accountability for making regular payments.
 - Discourage uncollectible arrears.

Scenario 2: Oregon's Approach

- Determine income using standard formula: actual income + any additional potential income.
- Actual income in this scenario is \$0.
- Because Dad isn't disabled, incarcerated, or receiving workers' compensation, imputation is appropriate.
- Since Dad has no work history, he is unlikely to find work above minimum wage.

Scenario 2: Oregon's Approach

- If area work opportunities exist, use full-time minimum wage.
- If area offers options for higher income (local business hires high school grads full-time at \$12/hour and several similarly-situated classmates work there), perhaps impute at higher amount.
- If area has few job options even at minimum wage, part-time or even little/no income might be more appropriate.
 - Minimum \$100 obligation would still apply in absence of other exceptions.

Scenario 2: Virginia's Approach

- *Administrative:*

- With no prior earnings record, agency would use \$0 for NCP's income.
- Resulting obligation would be considered unjust given the facts, so case would be referred to legal counsel for court referral.

- *Judicial:*

- NCP would likely be presumed capable of earning minimum wage at 30-40 hours per week.

Scenario 3: Malingerer is Incarcerated



Before program can establish obligation, Dad in Scenario 2 is convicted of selling drugs and sentenced to 5 years.

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And the Survey Says...

- Most states would not impute income to establish an obligation.
 - Of those, most would not establish an obligation at all or would enter \$0 order.
 - A few would use actual income.
 - One state would enter \$30 minimum order which would increase to federal minimum wage 6 months after release.

And the Survey Says...

- Several states indicate they would impute income:
 - Some use minimum wage.
 - Some set statutory minimum obligation.
 - Some base obligation on potential income based on earnings history and ability.
 - One state imputes but suspends support until 60 days after incarceration.

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And the Survey Says...

- A few states indicate a pre-existing order would remain unchanged.
 - Incarceration is considered a voluntary act and is not a basis for review except in rare instances.
 - One state indicates order would remain in place but NCP can file to suspend enforcement during incarceration.

And the Survey Says...

Other approaches:

- NCPs can request modification or agency will initiate/assist with review. Various approaches to orders:
 - Reduce to \$0.
 - Use minimum statutory obligation or minimum wage.
- NCPs incarcerated for longer than a specific time with no income/assets qualify for streamlined review and modification.

And the Survey Says...

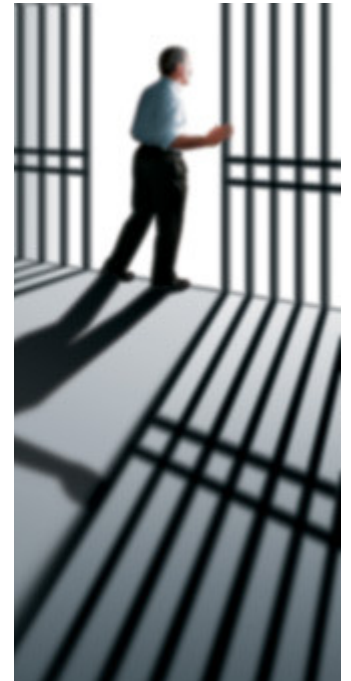
Other approaches:

- Obligation automatically suspended upon incarceration if no other income/assets.
- One state has a step-down approach for both new and existing orders:
 - Order stays in effect for first 12 months.
 - From months 13-36, order is reduced to minimum statutory amount.
 - After that, order is reduced to ½ minimum obligation for remainder of incarceration.

And the Survey Says...

Post-release comments:

- If NCP files motion within 60 days of release, court will review order and can vacate arrears from the time NCP was incarcerated.
- Reduced obligation reverts to prior obligation as matter of law on 61st day after release.



Scenario 3: Federal Perspective

- 38 states and D.C. do not treat incarceration as “voluntary unemployment.”
- NPRM proposes to change “voluntary unemployment” policies because they are inconsistent with authority to review and adjust orders based on material change in circumstances.

Scenario 3: Federal Perspective

- Incarcerated NCPs often enter prison with child support obligations and arrears and with no realistic ability to pay. This debt:

- Is unlikely ever to be collected.
- Contributes to barriers NCPs face when they reenter community.
- May interfere with ability to obtain housing and/or employment.
- Increases likelihood NCPs will enter underground economy.



Scenario 3: Oregon's Approach

- Income would not be imputed to Dad while incarcerated—he is rebuttably presumed to be unable to pay.
- If Dad already had an obligation and was expected to be incarcerated more than 6 months, he could request modification to reduce obligation to \$0.
- Prior obligation would reinstate as matter of law on 61st day after Dad's release.

Scenario 3: Virginia's Approach

- No obligation prior to incarceration:
 - Agency would not impute income.
- With obligation prior to incarceration:
 - Obligation would likely not be modified.

Scenario 4: Clean Start

- Dad has completed jail sentence.
- He wants to improve his situation and support child.
- Conviction and lack of job history impair job prospects.
- Finds part-time jobs for total of 20 hours/week at a little over minimum wage.
- Mom requests review.





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And the Survey Says...

- Respondents are fairly evenly split as to imputation (No: 13, Yes: 10, Maybe: 12)
- Of the states that would impute, obligation would be calculated based on:
 - 40 hours minimum wage
 - 20 hours minimum wage
 - 35 hours at minimum wage
 - Additional 20 hours at actual income to get to 40 hours
 - \$8.25/hour

And the Survey Says...

- Just a few states offer a smaller obligation for a time period after release. Of those that do, time frames given were:



- 30 - 60 days
- 60 days
- 6 months
- A few months

Scenario 4: Federal Perspective

- Consider individual circumstances and barriers NCP may have to stable, full-time employment, including:
 - Lack of high school diploma/GED
 - Experience
 - Physical illness or disability
 - Mental illness
 - Language barriers
 - Criminal and/or incarceration history



Scenario 4: Federal Perspective

- Orders based on imputed/presumed income should be temporary.

*Sometimes
all we need
is a fresh
start.*

QUOTEDIARY.ME

- Consider referring NCP to employment services.
- Schedule review and consider adjusting order to reflect actual income when NCP gets a job.

Scenario 4: Federal Perspective

- NPRM proposes that guidelines include self-support reserve or low-income deviation, which may apply in this situation. This approach:
 - Improves NCP's perception of justice in order establishment process.
 - Contributes to establishment of realistic orders and higher collection rates.

Scenario 4: Oregon's Approach

- This scenario requires consideration of potential income—the parent's *ability to earn* based on employment potential in light of area job opportunities and earning levels and any other relevant factors.
- If evidence suggests Dad is unable to work more than 20 hours/week at minimum wage, Oregon would likely impute using 20 hours at minimum wage.

Scenario 4: Oregon's Approach

- Result would be \$100 minimum order.
 - Will be of some modest benefit to child.
 - Facilitates positive parental involvement.
 - Fairly likely to be paid and provides basis for determining willingness to pay.
- Larger obligation would likely be unpaid and could prompt Dad to leave job or work for cash.
- As earning ability increases over time, obligation can be modified.

Scenario 4: Virginia's Approach

- If matter comes before court (party directly petitions court or appeals administrative action), results vary:
 - Some courts will acknowledge NCP's circumstances and not impute income, especially at initial establishment stage.
 - In modification cases, most courts strictly apply Virginia case law holding that a party whose income has decreased as a result of his/her own misconduct may not use the decrease as grounds for reduction.

Scenario 5: Parent with Health Issues

- Noncustodial Mom with steady work history has terminated employment.
- Agency receives no further payments and no new employment information.
- Agency contacts Mom; she requests reduction because she is unable to work due to health issues.



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And the Survey Says...

- Documentation ranges from just a doctor's note to more stringent, detailed requirements.
- Frequently mentioned requirements include:
 - Medical documentation with diagnosis and info about work limitations, including duration of limitations.
 - Social Security Administration's disability determination.



And the Survey Says...

- About 2/3 of respondents indicate their state will initiate modification with proof of disability/inability to work.
- Remaining states say parent must make request.



Scenario 5: Federal Perspective

- Consider individual circumstances and barriers NCP may have to stable, full-time employment, including:
 - Lack of high school diploma/GED
 - Experience
 - Physical illness or disability
 - Mental illness
 - Language barriers
 - Criminal and/or incarceration history

Scenario 5: Federal Perspective

- If the health problems are temporary, order should be viewed as temporary.
 - Consider referring NCP to employment services.
 - Schedule review and consider adjusting order to reflect actual income when NCP gets a job.

Scenario 5: Federal Perspective

- NPRM proposes that guidelines include self-support reserve or low-income deviation, which may apply in this situation. This approach:
 - Improves NCP's perception of justice in order establishment process.
 - Contributes to establishment of realistic orders and higher collection rates.

Scenario 5: Oregon's Approach

- Response from Mom is treated as a request for modification, but she would be required to sign form formally requesting review and adjustment.
- Documentation of Mom's condition from a medical professional is required.

Scenario 5: Virginia's Approach

- If the obligation has not been reviewed in the last 3 years, the agency will review it regardless.
- If the order is less than 3 years old or hasn't been reviewed in last 3 years:
 - Request documentation from health care provider and/or Social Security Administration verifying inability to work.
 - Based on information received, seek downward modification.

Moving Ahead

- If you think the general approach to imputation could be improved...
 - What changes do you suggest?
 - How do we effect change?
 - What are barriers to change?



NEW WAY OF
THINKING

February 11-13, 2016

2016 NCSEA Policy Forum

Recent Imputation Cases

- *Sharpe v. Sharpe*, 2016 Alas. LEXIS 1 (Alaska)
- *Metz v. Langston*, 2015 Ark. App. 319 (Arkansas)
- *Broga v. Broga*, 166 So.3d 183 (2015) (Florida)
- *In re Lounder*, 166 N.H. 353 (2014) (New Hampshire)
- *Harnett County v. De La Rosa*, 770 S.E.2d 106 (2015) (North Carolina)
- *Carver v. Carver*, 2015 Ohio App. LEXIS 3820 (Ohio)
- *Cook v. Iverson*, 2015 Tenn. App. LEXIS 946 (Tennessee)
- *Murphy v. Murphy*, 65 Va. App. 581 (2015) (Virginia)
- *Niblett v. Niblett*, 65 Va. App. 616 (2015) (Virginia)

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