***NCCSD Survey on State Imputation***

***and Default Practices***

***Introduction***

This survey is intended to capture information from each state regarding its general rules and preferred or endorsed practices. It is understood that facts in individual cases can lead to procedures that are different from the survey responses. Survey responses should be based on an “average” case.

***Definitions***

“Actual income” means 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. The phrase does not include imputed income or presumed income.

“Agreed order” means an order establishing paternity and a child support obligation or an order establishing or modifying a child support obligation with which all parties are in agreement (a/k/a stipulation), even if treated or considered as a “default” order in the sense that no hearing is held prior to the stipulation being approved as a support order.

“Base calculation” means facts and circumstances that are used in reaching the presumptively correct amount of child support under the state child support guidelines, in contrast to a deviation.

“Contested order” means an order establishing paternity and a child support obligation or an order establishing or modifying a child support obligation after a hearing during which one or more parties disagree with the relevant facts alleged by a party.

“Default order” means an order establishing paternity and a child support obligation or an order establishing or modifying a child support obligation with which a party has not expressed agreement but the party has also failed to respond with a timely and proper objection.

“Deviation” means a change in the presumptively correct amount of child support determined under the state child support guidelines, in contrast to facts and circumstances that are used in reaching the presumptively correct amount of support under the guidelines.

“Imputed income” means an amount of income attributed to a parent who is known to be unemployed or underemployed.

“Presumed income” means an amount of income attributed to a parent when the actual income of the parent is unknown.

***State Demographic Information***

1. Name of State
2. Name, email, and phone number of the person that NCCSD may contact with any follow-up questions
3. What guidelines model does your state use?
4. How are your child support guidelines adopted?
	1. State law
	2. Court rule
	3. Child support agency, including IV-D-sponsored committees
	4. Outside child support commission
	5. Other (please explain)

If your state’s default or imputation practices are governed by state laws or specific court rules (other than general rules of civil or administrative procedure and internal IV-D polices), please consider sending them to NCCSD at jfleming@nd.gov.

***Establishment Procedures (paternity and child support)***

1. Assuming an agreed order establishing paternity and a child support obligation, is the order entered by the agency with the force and effect of law (administrative) or established through a stipulation that is submitted and signed by a court (judicial)? For judicial orders, is a hearing required even for agreed orders?
2. When attempting to establish paternity and a child support obligation, is the first contact with a parent:
	1. A legal “complaint”
	2. A notice of hearing
	3. A request for an appointment or conference with the child support program
	4. A request for response with income information, or
	5. Other (please explain)
3. When the child support agency first contacts a parent whose income information is needed to establish paternity and a child support obligation, describe the initial attempted method of communication:
	1. Regular mail
	2. Email
	3. Phone call
	4. Hand-delivered by sheriff or other process server
	5. Certified mail, return receipt requested
	6. Other (please explain)
4. How long after the initial effort to communicate in Question 7 does your agency wait before taking the next step?
5. If a parent has not responded to the initial effort to communicate, the next step is made by:
6. Regular mail
7. Email
8. Phone call
9. Hand-delivered by sheriff or other process server
10. Certified mail, return receipt requested
11. Motion to court for default judgment
12. Other (please explain)
13. Does your state contact both parents, if needed, to try to obtain information about a parent’s income?

***Establishment Procedures (child support only – paternity is not at issue)***

1. Assuming an agreed order establishing a child support obligation (paternity is not at issue), is the order entered by the agency with the force and effect of law (administrative) or established through a stipulation that is submitted and signed by a court (judicial)? For judicial orders, is a hearing required even for agreed orders?
2. When attempting to establish a child support obligation, is the first contact with a parent:
	1. A legal “complaint”
	2. A notice of hearing
	3. A request for an appointment or conference with the child support program
	4. A request for response with income information, or
	5. Other (please explain)
3. When the child support agency first contacts a parent whose income information is needed to establish a child support obligation (paternity is not at issue), describe the initial attempted method of communication:
	1. Regular mail
	2. Email
	3. Phone call
	4. Hand-delivered by sheriff or other process server
	5. Certified mail, return receipt requested
	6. Other (please explain)
4. How long after the initial effort to communicate in Question 13 does your agency wait before taking the next step?
5. If a parent has not responded to the initial effort to communicate, the next step is made by:
6. Regular mail
7. Email
8. Phone call
9. Hand-delivered by sheriff or other process server
10. Certified mail, return receipt requested
11. Motion to court for default judgment
12. Other (please explain)
13. Does your state contact both parents, if needed, to try to obtain information about a parent’s income?

***Modification Procedures***

1. Assuming an agreed order modifying a child support obligation, is the order entered by the agency with the force and effect of law (administrative), established through a stipulation that is submitted and signed by a court (judicial), or depend on the type of order (administrative or judicial) in which the original obligation was established? For judicial orders, is a hearing required even for agreed orders?
2. When attempting to modify a child support obligation, is the first contact with a parent:
3. A legal “complaint”
4. A notice of hearing
5. A request for an appointment or conference with the child support program
6. A request for response with income information, or
7. Other (please explain)
8. When the child support agency first contacts a parent whose income information is needed for a potential modification of a child support obligation, describe the initial attempted method of communication:
	1. Regular mail
	2. Email
	3. Phone call
	4. Hand-delivered by sheriff or other process server
	5. Certified mail, return receipt requested
	6. Other (please explain)
9. How long after the initial effort to communicate in Question 19 does your agency wait before taking the next step?
10. If a parent has not responded to the initial effort to communicate, the next step is made by:
11. Regular mail
12. Email
13. Phone call
14. Hand-delivered by sheriff or other process server
15. Certified mail, return receipt requested
16. Motion to court for default judgment
17. Other (please explain)
18. Does your state contact both parents, if needed, to obtain information about a parent’s income?

***General Default Practices***

1. What sources of actual income information are used by the child support agency, in addition to any response from the parent, when developing a proposed child support obligation (establishment or modification)?
	1. Employer questionnaire
	2. Custodial parent
	3. Previous state tax return
	4. Quarterly or monthly wage
	5. Third-party verifier (such as the Work Number)
	6. In-court testimony
	7. Published wage survey
	8. Other (please explain)
2. If the parent fails to respond, do you issue a subpoena, interrogatories, motion to compel, or other formal “discovery” effort prior to taking the next step?
3. Does your jurisdiction enter judgments or modifications by default at the request of a party if no one responds or opposes the motion?
4. If the answer to Question 25 is yes, how many times will your child support agency typically try to contact the parent, including the initial attempt, before moving forward with a request for a default order? Is service of process required before requesting a default order?
5. If a parent responds to IV-D with a question or disagreement with the calculation but does not provide income information or make an “appearance” in the court action, will your agency proceed to default based on presumed income or request a court hearing?
6. If a parent belatedly offers to provide income information AFTER a default order is entered, does your state give the parent that opportunity? If so, for how long is that option open to the parent, and can it be retroactive? Is this option available only for administrative orders or judicial as well?
7. Has your state taken any steps you would consider “best practices” to reduce the number of default orders? Please explain.
8. Has your state compiled any statistical information that you can share about the portion of obligations established or modified by agreed orders, default orders, or contested orders? If not, can you give an estimate?
9. Which of the following statements more closely resembles your program’s point of view regarding the procedure for establishing and modifying support obligations (sorry – you can only pick 1):
	1. Child support is much like any other litigation. Even if a parent is not responsive after being properly served, IV-D is still required to obtain a minimum amount of evidence (such as a sworn affidavit of the custodial parent) regarding the parent’s income or earning ability in order to present a case to the court or administrative authority to establish or modify a child support obligation.
	2. For child support cases, it is sufficient to present a case to establish or modify a support obligation if IV-D has no evidence of the parent’s actual income or earning ability but the parent has not responded to the action nor claimed any lack of ability to work at least a minimum number of hours per week at minimum wage.
	3. Unlike typical litigation, the procedures required for the child support program in seeking orders and in imputing income are dictated by specific state laws and statutory presumptions (please include copies).
10. Do you think that your courts are generally willing to assume that a parent is able to work, in the absence of evidence to the contrary, and establish or modify a child support obligation on that basis using presumed income?
11. What do you think is the duty of the child support program, on behalf of the state, to prove that a parent was given notice and the opportunity to be heard?

1. Which of the following statements more closely resembles your program’s point of view regarding the procedure for establishing and modifying child support obligations (sorry – you can only pick 1):
	1. Child support is much like any other litigation. IV-D seeks an order based on the best evidence available and relies significantly on the parent’s response to IV-D’s allegations. Once a parent is properly notified of the pending action, if the parent fails to respond or fails to provide needed income information, then the parent assumes the risk of an unfavorable outcome. In the child support context, this means a child support obligation that is based on presumed income and might be different than warranted by the parent’s actual information if it had been known by IV-D from other sources or supplied by the parent. In other words, a parent’s failure to participate in the action will not block the action from moving forward.
	2. The nature of child support cases, including long-term collectability, is such that the IV-D program should look past a parent’s lack of cooperation or response and make a greater effort to obtain actual income information than is typically expected of from the litigants.
	3. Unlike typical litigation, the procedures required for the child support program in seeking orders and in imputing income are dictated by specific state laws and statutory presumptions (please include copies).
2. Do you think that your courts are generally accepting of your agency’s approach in Question 34?

***Imputation Methodology***

1. If your agency is attempting to establish a child support obligation of an unresponsive parent, is it fair to say that you use presumed income as a last resort?
2. What kind of formula is used in your state to determine the appropriate amount of presumed income when establishing a new obligation (e.g. $7.25 per hour x 40 hours per week)? Is the formula different for modifications (e.g. deemed 10% annual increase in income)?
3. If your state considers the parent’s occupation or job skills, what sources of data are used to determine an appropriate amount of presumed income?
4. For an able-bodied parent who is underemployed or unemployed, what kind of formula is used to impute income to the parent (e.g. $7.25 per hour x 40 hours hours per week)?
5. What are the grounds in your state, if any, for a parent to avoid the imputation of income in the amount in Question 39 as part of the base calculation under the child support guidelines?
6. What are the grounds in your state, if any, for a parent to avoid the imputation of income in the amount in Question 39 as a deviation from the amount of support determined under the child support guidelines?
7. Will your state impute or presume income for the custodial parent?
8. Can obligors have a zero-dollar obligation in your state and, if so, under what circumstances?
9. Does your state provide for a low-income adjustment in your child support guidelines, such as a self-support reserve? If so, how are the adjustments applied or made in a case?
10. Is there a minimum support obligation in your state? If so, how is it applied, what is it, and are there exceptions to the minimum obligation?
11. If there is a minimum obligation in your state, is it applied only when there is no income information available, or is it also applied when the child support program has some income information?

Scenario 1 – Unresponsive Parent

Assume Dad has signed an acknowledgment of paternity in the hospital when the child was born and he and Mom were living together (unmarried). After they break up, Mom applies for IV-D services and IV-D wants to establish a child support order. What steps will take place between the initial effort to contact Dad (be specific on the method of each attempted communication) through establishment of the support order, assuming Dad is not responsive at any point? In your response, please be clear on the efforts your program makes to obtain income information from Dad or Mom and the points in the process where Dad or Mom can provide income information that will affect the size of the obligation. Please also describe any formula for presuming income in this scenario and the actual child support amount established for Dad’s child.

Scenario 2 – Malingerer

Dad is 19 years old and has not looked for work since graduating from high school about 6 months ago. He resides off and on with friends or relatives who are willing to support him. He lacks motivation to work, but otherwise has no known disabilities or barriers to employment. Child support is seeking to establish an obligation for Dad’s child (paternity was acknowledged in the hospital), but Dad simply has no income. What is your state’s approach to imputing income to Dad?

Scenario 3 – Incarcerated

Before IV-D can establish a support obligation, Dad in Scenario 2 is convicted of dealing drugs and sentenced to a minimum of 30 months in jail (and could serve as much as 5 years). He has no ability to earn income within the jail and is not eligible for work release. Does your state impute income to Dad and, if so, in what amount? Would the outcome be different if Dad already had a child support obligation at the time he went to jail?

Scenario 4 - Needs a Clean Start

Dad in Scenario 2 and 3 has completed his sentence. His time in jail has had good results, in terms of Dad wanting to improve his situation and support his child. Unfortunately, the felony drug conviction and lack of job history is significantly impairing his employment prospects, and the best he can do without relocating away from the child is work 20 hours a week at a couple part-time jobs for a little over minimum wage. Mom has requested a review of Dad’s obligation after his release from jail. Does your state impute income to Dad and, if so, in what amount? Is there a period during which Dad will owe a smaller obligation while attempting to find work?

Scenario 5 – Health Problems

A parent with a fairly steady employment history starts to work fewer hours and eventually IV-D is notified of termination of the parent’s employment. No further payments are received and no new employment information is obtained, so IV-D contacts the parent or begins an enforcement action. The parent responds and requests a downward modification, explaining that the parent is unable to work due to health reasons. What type of documentation or verification would your state seek from the parent? After obtaining sufficient information regarding the parent’s medical condition and inability to work, would your state seek a downward modification or require the parent to request that on his or her own?