

# Reforming Child Support to Improve Outcomes for Children and Families

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## I. INTRODUCTION

Child support policies matter a lot—to families, to communities, and to taxpayers. However, the child support policy environment is complicated. Child support involves at least two parents with different interests, circumstances, experiences, and perspectives. Child support often evokes heated, value-laden, and sometimes intractable discussions about the ways it impacts family life. In addressing child support, policymakers hear from their constituents and tread on proverbial land mines of love, sex, and money.

There is broad consensus that both parents should contribute to their children’s support when living apart and custodial parents should not have to bear the sole burden of support. Consistent, on-time child support payments can help low-income families increase their economic stability and improve family relationships. Most noncustodial parents want to provide for their children, and most do pay child support.<sup>i</sup>

The main reason for nonpayment is the inability to pay the order amount. Contrary to the stereotype of the “deadbeat parent,” almost all noncustodial parents who fail to pay child support are poor. They have unstable employment and low earnings, and a significant number

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<sup>i</sup> Terms used in the child support program can be technical and confusing. The term “custodial parent” means the parent with whom the child lives most of time and who receives child support, irrespective of legal custody. The term “noncustodial parent” is used to mean the parent who does not have primary care of the child and is responsible for paying child support for the child. The term “custodial family” means the children together with the custodial parent.

have a history of incarceration. One-quarter of all noncustodial parents with a child support case in the Maryland child support caseload receive Supplemental Nutrition Assistance Program (SNAP) benefits, one indicator of low income and food insecurity.<sup>1</sup>

The hard reality is that sometimes there just is not enough money to go around. While child support payments raised 1 million individuals out of poverty, they also pushed 200,000 individuals into poverty nationwide.<sup>2</sup> Falling behind on child support payments can exacerbate family hardship and tensions, driving a wedge between the parents and pushing nonresident parents away from their children—the exact opposite of what the child support program is set up to do.

Mothers and fathers from the same low-income communities often have similar barriers to full-time employment. Across Maryland, 50 percent of noncustodial parents in the state child support program caseload were employed in 2017, and 43 percent of these earned minimum wages. In Baltimore, 57 percent of noncustodial parents were employed and 47 percent earned minimum wages or less.<sup>3</sup> Noncustodial parents with limited education and marketable skills, an intermittent work history, and sometimes a criminal record struggle to find and maintain full-time work at sufficient wages to support themselves and pay their child support obligations.<sup>4</sup> One-quarter of noncustodial parents with a child support case in the Maryland program caseload receive Supplemental Nutrition Assistance Program (SNAP) benefits, one indicator of low income and food insecurity. In Baltimore, it is 42 percent.<sup>5</sup>

Some people may believe that higher orders and tougher enforcement will increase collections. They reason that if a support order is set high and enforced rigorously, parents will be motivated to increase their work hours and earnings.<sup>6</sup> But the evidence is clear: Higher orders and tougher enforcement will not increase collections when the barrier to payment is poverty. It does no good, and in fact, it does harm, when orders are set too high. A realistic and balanced approach to child support is essential to supporting consistent child support payments, family relationships, and child wellbeing.

For this report, we examined evidence of what actually works for low-income families. Two decades of research present a stark picture: Unrealistic child support policies and practices entangle poor African American men and their families in poverty and have become a destabilizing force in the Baltimore community. Child support orders set beyond the ability of noncustodial parents to comply push them out of low-wage jobs, drown them in debt, hound them into the underground economy, and chase them out of their children's lives.

Values matter: We agree that parents should support their children to the best of their ability.<sup>7</sup> But families do not benefit when parents cannot afford to pay their orders. What we have learned from research and experience over the past two decades is that noncustodial parents cannot comply with unrealistically high child support obligations. If a child support order exceeds a noncustodial parent's ability to pay, the result is not higher payments. The result is mounting debt that further compromises the parent's ability to work and provide for their children.

The goal of this report is not to detail these effects on families and the broader community. Rather, the objective is to recommend specific child support policies that can be changed to improve compliance. Increased compliance means more consistent payments and a steadier income source for families. By focusing on these policies, we hope to offer promising alternatives that not only better meet the needs of low-income families but also ensure low-income children receive the support that they need.

Every four years, Maryland and other states review the effectiveness of their child support guidelines and update their approach to setting support orders. Around the country, states are implementing more realistic and evidence-based strategies aimed at increasing consistent, on-time payment; decreasing the accumulation of debt; and redirecting payments to families, instead of state operations. During the upcoming quadrennial review of its state guidelines, Maryland has an opportunity to make the child support process work better for low-income families.

## What is the child support program?

The child support program serves one in five children in the United States, making child support one of the largest income support programs for children. Half of all children in poverty are eligible for child support services, and 82 percent of these eligible poor children receive child support services.<sup>8</sup>

Every state administers a child support program. The child support program, which is primarily funded by the federal government, enforces the legal responsibility of parents to support their children when they are no longer together. The program establishes the paternity of unmarried fathers, sets child support orders, and collects child support. The child support program also makes sure that the children in its caseload have health care coverage. The child support program does not provide legal representation for either parent. Rather, the program represents the interests of the state in securing support for children. The program's underlying mission is to encourage responsible parenting, family self-sufficiency, and child wellbeing.<sup>9</sup>

Title IV-D of the Social Security Act, administered by the federal Office of Child Support Enforcement, established the national child support program in 1975. This law authorizes federal funding and sets basic policies for the child support program. All states follow these policies, which provide the framework for interstate enforcement but allow a certain amount of state discretion in determining how child support is established and enforced.

In 2018, the Maryland Child Support Administration managed almost 199,000 child support cases statewide and 55,000 cases in Baltimore. The program collected almost 70 percent of all current child support due to families participating in the state's child support program. In addition, nearly 80 percent of all support payments collected by the child support program were paid on time: Out of \$552 million in 2018 total collections, \$433 million were paid as current support and \$118 million were past due payments. However, more than \$1.2 billion in

past due child support, or arrears, went uncollected. This amount represents debt accumulating ever since the child support program began more than 4 decades ago.<sup>10</sup>

In Baltimore, a total of \$75 million were collected in 2018. Of these collections, 68 percent, or \$51 million, were paid on time and 32 percent, or \$24 million, were past due payments. The cumulative amount of arrears that went uncollected was almost \$379 million.<sup>11</sup>

Maryland received about \$78 million in federal matching funds to carry out the child support program in 2017. Maryland also earned \$8 million in federal incentive funds based on the state's performance on five measures—paternity establishment, support order establishment, current support collections, arrears collections, and cost-effectiveness.<sup>12</sup>

This report addresses some of the new federal requirements that Maryland must follow when administering the child support program. Every state, including Maryland, is required to update child support guidelines every four years. State judges are required to follow these state guidelines in setting child support orders. Federal rules adopted in 2016 require Maryland to incorporate a set of evidence-based policies into the state child support guidelines to improve payment consistency, workforce participation, and child wellbeing. Maryland's upcoming quadrennial guidelines review provides an opportunity to incorporate the new federal requirements and consider other beneficial policy changes to increase consistent child support payments for low-income families.

## Who does the child support program serve?

Most custodial families receive services through the child support program. Although the program is open to all, regardless of income, low-income custodial families are more likely to participate than better-off families. Parents who hire private attorneys to negotiate child support agreements are not part of the child support program caseload unless they later apply for program services to enforce their agreements and orders. Nationally, one-third of families receiving services from the child support program are poor, compared to 14 percent of families who do not participate in the program. Two-thirds of families receiving program services have incomes below 200 percent of poverty, compared to 38 percent of families not participating in the program.<sup>13</sup>

According to the U.S. Census Bureau, custodial parent earnings are the largest source of income for poor custodial families nationally, averaging more than half of family income in 2013.<sup>14</sup> Among poor custodial parents participating in the child support program in 2015, 44 percent were employed full-time, 32 percent were employed part-time, and 24 percent were unemployed.<sup>15</sup>

For poor custodial families that actually received it, child support averaged 41 percent of family income in 2013. Among deeply poor custodial families that receive it—those families with incomes below 50 percent of the federal poverty level—child support averages 65 percent of family income.<sup>16</sup> Because of the obvious importance of child support to the lowest income

families, it is imperative to identify and implement evidence-based policies that can increase regular support payments that families can depend on.

While income from child support has doubled in the past two decades for poor custodial families, income from cash assistance has declined sharply.<sup>17</sup> Nationally, child support averaged 10 percent of family income for all poor custodial families in 2013 (including families who did not receive any child support payments). Cash assistance through the Temporary Assistance for Needy Families (TANF) averaged 7 percent of family income. Just 9 percent of families participating in the child support program received cash assistance in 2015.<sup>18</sup>

Nationally, about two-thirds of all noncustodial parents participating in the child support program spent time with their youngest nonresident child, according to custodial parents. Over 60 percent of all custodial parents received some type of noncash support from noncustodial parents for their children. Custodial parents report that the top three reasons for not establishing a child support order are that the other parent provides what they can for support (39 percent), they did not feel the need to have a legal agreement (38 percent), or they thought the other parent could not afford to pay child support (34 percent).<sup>19</sup>

While the U.S. Census Bureau regularly surveys custodial parents, there are no comparable studies of noncustodial parents. However, in a pair of studies conducted in 2015 and 2017, the University of Maryland looked at the characteristics of both custodial and noncustodial parents participating in the Maryland child support program.

In one study, researchers found that 95 percent of custodial parents with cases in the Maryland program caseload were women and 64 percent were African American. These custodial parents were on average 37 years old, usually had only one child support case (76 percent) and one or two children (70 percent). Two-thirds had a current support order, and were owed an average of \$476 each month. Approximately 60 percent were owed arrears, that is, overdue child support payments. The average total arrears owed to them were almost \$11,000.<sup>20</sup>

In the companion study, researchers found that 92 percent of noncustodial parents with cases in the Maryland child support program caseload were men and 67 percent were African American. The average age of these noncustodial parents was 41 years old with one or two children.

Statewide, 71 percent of noncustodial parents had a current child support order and owed an average of \$481 each month. Eighty-six percent of parents with an order made at least some payments, and 67 percent of current support due every month was collected. Noncustodial parents were ordered to pay 34 percent of their earnings, but actually paid 20 percent of their earnings. Three in five noncustodial parents (62 percent) owed arrears. Median arrears totaled \$9,792. Fifty percent were employed and earned a median salary of \$22,689. Forty-three percent of employed noncustodial parents earned minimum wages or less. About 10 percent of noncustodial parents earning full-time minimum wages or less were women.<sup>21</sup>

Like noncustodial parents statewide, parents in Baltimore averaged 41 years old and had one or two children. In Baltimore, 56 percent of noncustodial parents had a child support order. Eighty percent of parents with an order made at least some payments, and 55 percent of current support was collected. Parents were ordered to pay 33 percent of their earnings as child support and paid 16 percent of their earnings. Two in three parents (68 percent) owed arrears. The median arrears owed were \$13,327. More Baltimore parents were employed than statewide—57 percent—but earned somewhat less. The median salary was \$20,372. Forty-seven percent earned minimum wages or less.<sup>22</sup>

As of March 2019, there were more than 158,000 noncustodial parents with a child support case in Maryland. Of these, more than 102,000 owed arrears. In Baltimore, almost 41,000 noncustodial parents had a child support case, with almost 24,000 owing arrears.<sup>23</sup>

## **Why can child support collection be a problem for low-income families?**

The main reason for nonpayment of child support is inability to pay the order amount.<sup>24</sup> Most parents who pay sporadically—or do not pay at all—have unstable employment and limited earnings. The University of Wisconsin found that 90 percent of noncustodial parents who made no payment and 60 percent making partial payment were incarcerated or did not have year-round employment.<sup>25</sup> Families do not receive regular support payments when support orders exceed the ability of noncustodial parents to pay them.

Regular payment of child support depends upon stable employment. However, the University of Maryland found that employment was extremely low among Maryland parents who paid none of their child support. Only 15 percent of the parents were employed in a job covered by Maryland unemployment insurance at some point during the study, and just 3 percent were employed during all four quarters of the study year. By contrast, almost 60 percent of parents paying the full amount of support were employed at some point during the study year, and more than half were employed during all four quarters.<sup>26</sup>

Both mothers and fathers from the same low-income communities often have similar barriers to employment. Many noncustodial parents—those with limited education and marketable skills, an intermittent work history, and sometimes a criminal record—struggle to find and maintain work at a sufficient wage to support themselves and pay their child support obligations.<sup>27</sup> Parents with the lowest incomes and most barriers to employment are expected to pay an impossibly large share of their income toward child support.<sup>28</sup> Part II of this report makes recommendations to better align child support orders with the ability of noncustodial parents to pay the ordered amount.

When parents cannot afford to pay their child support orders, compliance falls off and child support debt accumulates. When parents fall behind, poorly targeted and overly aggressive enforcement can make it even harder for them to stay employed and keep up with their current support payments. When parents cannot obtain employment that is sufficient to pay a

child support order, some may work “under the table,” which means they do not pay taxes or pay into the Social Security system. Some may even engage in illegal income generation to support their children and themselves.<sup>29</sup> This could lead to an arrest or incarceration, which further compromises the future employment of noncustodial parents and traumatizes their children.

Not only is a “one size fits all” approach to enforcement ineffective, but it can have unintended and harmful effects on children, families, and communities. Lack of child support payments—and hiding from the system—can create enormous tension in families, often leading to the noncustodial parent’s absence from their children’s lives. In essence, child support can push noncustodial parents away from their children—the exact opposite of what the system is set up to do. Part III of this report makes recommendations for dealing more realistically with unmanageable debt.

Welfare cost recovery policies contribute to parental distrust and avoidance of the child support system.<sup>30</sup> These policies hold back child support payments collected for children who have received cash assistance, treating child support as government revenues and using them to reimburse cash assistance. Welfare cost recovery is not cost-effective. It works against mothers and fathers, discourages compliance, and undermines the integrity of the child support message that parents should support their children. Part IV of this report makes recommendations to allow parents to support their children by eliminating the cost recovery role of the child support program.

## II. CHILD SUPPORT GUIDELINES: SETTING ACCURATE ORDERS

Like all states, Maryland has adopted a set of child support guidelines that circuit courts use to determine the amount of child support orders. Child support guidelines apply to all families with a child support order, not just those participating in the child support program. Guidelines tend to be focused on the circumstances of families with higher incomes and typically do not adequately address the circumstances of low-income families.

Child support guidelines incorporate a schedule of standard obligation amounts that increase as the income of the parents increases. In general, child support orders are based on the combined actual adjusted income of both parents. So long as a child support order set by the court is based on the actual income of the parents, each parent’s share of the total parent support obligation reflects his or her share of income. After calculating the family income, number of children, and other factors, courts set the order based on the standard obligation amount in the schedule. Courts may deviate from the guideline amount if they determine that the order amount is unjust or inappropriate, and provide written findings that justify the deviation.



The 2016 federal rules are intended to improve the accuracy of orders based on factual evidence of income and ability to pay, particularly those orders issued in cases where the parents have the lowest incomes. Every four years, all states review and update their guidelines. Maryland is currently undertaking its quadrennial guidelines review process, and is required to incorporate the federal requirements into this guidelines review cycle. Key federal rule provisions are included in Appendix I.

## How well do orders reflect ability to pay?

The best predictor of compliance with a child support order is a noncustodial parent's monthly gross earnings.<sup>31</sup> The amount of the order compared to actual income is also a strong predictor, especially for parents with the lowest incomes.<sup>32</sup> Parents who meet their current support obligations are more likely to be employed and have significantly higher earnings. By contrast, nearly all parents who fall behind on child support payments have unstable employment and low earnings.<sup>33</sup>

There are two reasons why higher-earning parents are more likely to pay all of the child support they owe. The first reason is straightforward: higher-earning parents have more income to support their children and themselves. But the second reason is more insidious: Higher-earning parents are expected to pay a much lower share of their incomes toward child support.

Research conducted by the University of Maryland found that parents in the Maryland child support caseload who earn a \$50,000 median income in Maryland are ordered to pay 14 percent of their earnings as child support, while parents earning a \$6,000 median income are ordered to pay 61 percent, a highly regressive outcome.<sup>34</sup>

As earnings increased, compliance increased. Parents who paid all of the support due earned an average of \$44,000 in reported earnings during the year in Maryland and \$38,000 in Baltimore. Conversely, parents who did not pay any of their current support earned an average of \$7,350 statewide and \$5,800 in Baltimore.<sup>35</sup> Parents paying all of their current support were expected to pay 18 percent of their gross earnings toward child support. By contrast, parents who paid the least amount were expected to pay more than 70 percent of their earnings. The experience in Baltimore was similar.<sup>36</sup> The implication is obvious: Parents who are expected to pay a disproportionate share of their earnings have a lower compliance rate.

In addition, noncustodial parents with lower incomes were less likely to obtain a deviation from the standard guidelines formula than parents with higher incomes in the child support program caseload. However, when lower-income parents did receive deviations based on their ability to pay and fairness considerations, they were more likely to make payments and to pay a larger share of their orders. By contrast, deviations had no measurable effect on compliance by parents with higher incomes.<sup>37</sup>

A growing body of research has found that compliance declines at all income levels when monthly support order amounts are set higher than about 20 percent of the noncustodial parent's actual gross earnings.<sup>38</sup> This finding holds true in Maryland: Statewide, noncustodial parents were ordered to pay 34 percent of their earnings to current support, but they actually paid only 20 percent.<sup>39</sup> Additionally, there is some evidence, although it is mixed, that orders set above 20 percent of income have the unintended but counterproductive effect of decreasing, not increasing, support payments for families.<sup>40</sup>

When child support orders are set beyond the ability of parents to pay, they cannot fully comply and child support debt builds up. However, setting an accurate child support order that reflects a noncustodial parent's actual ability to pay and recognizes their basic subsistence needs greatly improves the chances that the parent will make regular payments and continue to pay over time. An order based on evidence of actual income and ability to pay is critical to "right-sizing" the order, increasing compliance, holding parents accountable for making regular payments, and decreasing uncollectible arrears.<sup>41</sup>

The 2016 federal rules require that state guidelines clearly account for the noncustodial parent's ability to pay. States are required to incorporate an "ability to pay" standard into their child support guidelines. Under the rules, state guidelines must provide that child support orders are based on "earnings, income and evidence of ability to pay," even when parents earn limited income. State guidelines must also provide that the order amounts reflect a low-income adjustment or allowance that accounts for the subsistence needs of parents.<sup>42</sup>

Under the federal rules, states must limit the use of income imputation. A key requirement in the federal rule is that support orders must be based on available evidence of ability to pay, rather than assumptions that parents can find full-time employment. When actual income is not used, states must consider evidence about the noncustodial parent's specific circumstances. Courts may not order a standard amount in lieu of a case-specific determination of the parent's ability to pay based on evidence.<sup>43</sup>

As will be discussed in the following sections, several updates to Maryland's guidelines are needed to comply with federal requirements:

- State guidelines should articulate a standard requiring that orders be based on a parent's "earnings, income and other evidence of ability to pay."
- The guidelines should expand the factors the courts should consider in determining potential income.
- The low-income adjustment, which is based on 2008 poverty levels, should be updated.
- The routine use of minimum wage orders based upon "voluntary impoverishment" and assumed income potential must end. These orders lack an evidentiary basis, which is required by the federal rules. Instead, order amounts must be based on actual income and other factual evidence of a noncustodial parent's specific circumstances that support a finding of ability to pay.

## Do self-support reserves meet subsistence needs?

The 2016 federal rules require that state guidelines take into consideration the basic subsistence needs of a noncustodial parent with a limited ability to pay. States such as Maryland that calculate child support orders based on the incomes of both parents may also consider the basic subsistence needs of the resident parent and children, at the state's discretion. Guidelines must incorporate a low-income adjustment that reflects the calculation of obligations established for low-income parents. This adjustment may be in the form of a self-support reserve built into the numeric obligation schedule, an allowance added to the worksheet, or some other method determined by the state.<sup>44</sup>

A low-income adjustment is intended to leave enough money in a noncustodial parent's pockets to pay for his or her own basic subsistence needs, such as food, housing, and transportation. An order that fails to make sufficient allowance for subsistence needs can push a low-income noncustodial parent into deeper poverty, interfering with employment and parenting. While some states use the federal poverty guideline amount as the self-reserve standard, other states are more realistic in recognizing the cost of meeting basic subsistence needs. For example, New York State sets the self-reserve at 135 percent of the federal poverty level, while Washington State sets it at 125 percent, Minnesota sets it at 120 percent and Ohio sets it at 116 percent.<sup>45</sup>

The structure of Maryland's self-support reserve, which is built into the guidelines schedule, complies with the federal rule. However, Maryland's self-support reserve is out-of-date and does not adequately take into consideration the basic subsistence needs of noncustodial parents (and custodial parents, at state discretion), as required by the federal rule. Maryland's self-support reserve is currently \$867 per month, based on the 2008 federal poverty guideline for one adult. The 2019 federal poverty guideline is \$12,490 or \$1,041 per month for one adult.<sup>46</sup>

Maryland's self-support reserve should reflect the state's high cost of living. Maryland has one of the highest costs of living based on ratings of all 50 states. Effective in July 2018, Maryland's minimum wage increased to \$10.10, or \$1,751 per month pre-tax for full-time work.<sup>47</sup> The ALICE survival budget, which measures the income needed to cover the cost of basic subsistence needs, for one adult is \$23,568 per year or \$1,964 per month. Similarly, Maryland living wage laws recognize that adults need more income to cover basic expenses.

Just as importantly, low-income parents do not benefit from Maryland's self-support reserve as intended when their actual income is not used as the basis for the order. Instead, many child support orders are based on an inflated income that is attributed, or imputed, to unemployed parents and parents who are employed part-time. In Maryland, imputed income used as the basis for a child support order is called "potential income." Because "potential income" is usually pushed up to full-time minimum wages, low-income parents lose out on most of the benefit of the self-support reserve.

## Do parents comply with support orders based on “potential” income?

Maryland child support guidelines require support orders to be based on actual income, if a parent is employed to full capacity. However, if a parent is “voluntarily impoverished,” the guidelines permit child support orders to be calculated based on “potential” income. The state guidelines define “potential” income as attributed income determined by the parent’s employment potential and probable earnings level based on, but not limited to, recent work history occupational qualifications, prevailing job opportunities, and earnings level in the community.<sup>48</sup> Maryland guidelines restrict a determination of “potential” income in two specific circumstances: (1) if a parent is unable to work because of a physical or mental disability, or (2) if a parent is caring for a mutual child under two.<sup>49</sup> In addition, the statute provides a separate exception for incarceration.<sup>50</sup>

The problem is that, in practice, orders are issued in some Maryland counties that are not based upon evidence of ability to pay. Instead, low-income parents are routinely issued standard orders based on imputed full-time minimum wages. Minimum wage orders are often used when noncustodial parents are unemployed or employed part-time, or if income documentation is missing. Even though Maryland guidelines do not require imputation of full-time minimum wages, many orders appear to be based on this standard. Maryland law does not require courts to justify, document or track support orders based on imputation of “potential” income.<sup>51</sup>

Nearly all minimum wage orders are imputed. It actually is rare for full-time workers to earn minimum wages: only one percent of hourly full-time workers earn federal minimum wages. Most minimum wage jobs are part-time.<sup>52</sup> As Maryland’s minimum wage increases, so do support orders based on imputed full-time minimum wage income—even if the actual income of a noncustodial parent has not increased.

Minimum wage orders exaggerate actual earnings. Parents with orders based on imputed income actually earned 72 percent less than the amount listed on the child support worksheets. Not surprisingly, the collection rate for imputed minimum wage orders is 10 percentage points lower than orders that are based on actual income in low-income cases.<sup>53</sup>

Across the state, one-fourth of all child support orders are based on full-time minimum wages, rather than actual income, according to a 2018 study conducted by the University of Maryland.<sup>54</sup> However, the practice varies widely across the state. Jurisdictions with the three highest imputation rates (Somerset County, Caroline County and Baltimore City) imputed income for half or more of noncustodial parents. By contrast, Talbot, Howard, and Washington Counties imputed income for less than 10 percent of noncustodial parents.

The University of Maryland study found that noncustodial parents with orders based on imputed income were younger, less likely to be employed, less likely to have stable employment, and have lower earnings than those with orders based on actual income. Half of

the parents with imputed orders were employed, compared to two-thirds of those without imputed income. However, employed noncustodial parents with imputed orders had less stable jobs and lower earnings than those without imputed income. They earned part-time minimum wages or less and only two in five worked in all four quarters during the year. The median annual earnings of employed noncustodial parents with imputed orders were just \$4,249, compared to \$24,737 for those with orders based on actual income.

Even when noncustodial parents had part-time earnings, their actual earnings were not used as the basis for the support order in many cases, the study found. Noncustodial parents with support orders based on imputed income had orders that were way out of line with their actual income. An astounding one-third of parents with imputed orders owed over 75 percent of their earnings. By contrast, most parents with orders based on actual income owed 25 percent or less of their earnings.

Imputed orders led to lower compliance rates on every measure, according to the study:

- Only 31 percent of support owed by noncustodial parents with imputed orders was paid, compared to 67 percent of support owed by those with orders based on actual income.
- Only 68 percent of noncustodial parents with imputed orders made any payment, compared to 91 percent of those with orders based on actual income.
- Among noncustodial parents who made payments, those with imputed orders paid 43 percent of the amount owed, compared to 66 percent of those with orders based on actual income.
- Noncustodial parents with imputed orders only paid in half of the months support payments were due, while those with orders based on actual income paid in three-fourths of the months due.
- Employed noncustodial parents with imputed orders paid 18 percent of actual income on average, while employed parents with orders based on actual income paid 19 percent—in line with the research that finding that compliance drops off when orders are set above 20 percent of actual income.
- Noncustodial parents with imputed orders who made payments accumulated \$1,926 in arrears in the year following order establishment, compared to \$1,490 for those with orders based on actual income.

The University of Maryland study also compared outcomes in low-income cases in the child support program caseload when orders were based on part-time earnings compared with orders based on imputed full-time minimum wages. Although payment amounts were higher on minimum wage orders, compliance was lower, payments were more sporadic and debt accumulation was higher. Most troubling, the study found that 3 in 10 parents with imputed income did not make a single payment during the year. Nor did the rate of employment change a year after an imputed order was established. On the other hand, when orders were

more realistic, parents made more payments, paid a larger share of their obligation, paid more regularly, and accumulated fewer arrears.

Other studies have made similar findings.<sup>55</sup> A California study found that payment amounts were actually lower on imputed minimum wage orders than orders based on actual income, finding that payments actually dipped on minimum wage orders compared to both lower and higher orders based on actual income. Imputed minimum wage cases paid at a lower compliance rate, accumulated higher debts, and collected fewer dollars for families than when an order is set based on a lower amount. In fact, the most likely outcome of minimum wage orders was zero payments during the year following order establishment.<sup>56</sup> As the Office of Inspector General for the U.S. Department of Health and Human Services concluded two decades ago, “Income imputation appears ineffective in generating payments.”<sup>57</sup>

Minimum wage orders based on imputed income undermine the long-term financial stability of both noncustodial parents and their families. Regular child support payments are critical for families, so they can budget for the income. Orders based on imputed income lead to nonpayment, more irregular and missed payments, more enforcement actions that can interfere with employment, such as driver’s license suspensions, and high arrears growth as parents struggle to keep up or walk away from the impossibility of compliance. Child support debts accumulating under imputed orders are likely to stalk obligors throughout their working lives.

## What is “voluntary impoverishment”?

Maryland guidelines allow judges to impute potential income to parents only if they find that they are “voluntarily impoverished.”<sup>58</sup> Some states use the term “voluntary unemployment.” In Maryland, it is called “voluntary impoverishment.” The courts have held that a parent who is “voluntarily” impoverished is intentionally poor.<sup>59</sup> If there is no evidence that a parent is voluntarily poor, the support order is supposed to be based on actual income. However, in some counties, standard minimum wage orders are issued routinely without a specific finding that the parent is intentionally and deliberately poor.

Traditionally, courts have limited the use of imputed income to cases where there is evidence that a noncustodial parent has deliberately reduced his or her work effort to avoid paying child support or taken a lower paying job than the parent’s education and skills would predict, or where the facts showed a discrepancy between reported income and lifestyle. For example, imputation might be based on specific evidence that a parent quit his job as soon as she filed for divorce or went on a luxury vacation but claimed lack of resources. When parents have a history of earning substantial income, courts scrutinize evidence introduced by the attorneys for the parties to determine whether the loss of income is in fact voluntary.

However, in many jurisdictions across the country, the rules operate differently when noncustodial parents have a limited education, few marketable job skills, and low or no earnings. The trend over the past two decades has been to standardize income imputation in

lieu of evidence-based orders in low-income cases. In these cases, judges often assume, without necessarily hearing further evidence, that parents ought to be able to secure full-time employment earning minimum wages, and that failure to work full-time is the parent's voluntary choice. Instead of using actual income, the order is set based on imputed income.

When the parents are poor, courts struggle to issue a support order that provides families with needed financial support. However, the routine use of income imputation when parents are poor has created a two-tiered standard for higher and lower income cases—higher income cases receive orders based on specific evidence of income and the purposeful or intentional nature of income shortfalls, while low-income cases receive orders based on generalized assumptions about ability to earn. This outcome does not reflect the realities of the labor market for poor, less educated parents, particularly young African America men—few full-time jobs that pay a living wage, unstable part-time work often located far from the neighborhood, racial discrimination, and the dramatic rise in incarceration rates over the past two decades.<sup>60</sup>

In some Maryland jurisdictions, including Baltimore, full-time minimum wages are routinely imputed to parents who are unemployed or working part-time, or when their income is unknown—without any evidence that parents voluntarily and intentionally reduced their earnings. Unemployment and part-time work are deemed “voluntary,” unless a parent can demonstrate disability or care for a young child. The result is unsustainable child support orders based on exaggerated income that poor noncustodial parents cannot pay consistently and families cannot count on receiving.

In some states, “voluntary” is defined as purposeful conduct—at least in higher earning child support cases. For example, in North Carolina, child support may be calculated based on the parent's potential, rather than actual, income “if the court finds that a parent's voluntary unemployment or underemployment is the result of the parent's bad faith or deliberate suppression of income to avoid or minimize his or her child support obligation.” Washington State statute prohibits imputation of income to a parent who is gainfully employed on a full-time basis, unless the court finds that the parent is “purposely underemployed to reduce the parent's child support obligation.”<sup>61</sup>

Other states have guidelines that disfavor imputation or treat imputed income as a deviation from the guidelines. For example, Iowa and Virginia guidelines require a written deviation from the guidelines when income is imputed.<sup>62</sup> Michigan guidelines require courts to justify imputation, and prohibit imputation “based on generalized assumptions that parents should be earning an income based on a standardized calculation,” such as full-time minimum wages.<sup>63</sup>

The 2016 federal rules disfavor income imputation in low-income cases. Under the rules, states will no longer be able to impute standardized amounts attributed to parents based on general assumptions about employability, income potential, and voluntary impoverishment. Instead, the guidelines must provide that order amounts are based on factual evidence of an individual parent's ability to pay. If income is imputed, the amount must be supported by evidence of the noncustodial parent's specific circumstances. The guidelines must provide that evidence, not

assumptions, must support the court's finding of ability to pay. According to the federal rule preamble, "Without an evidentiary basis, imputed income is fictitious income and does not generally result in orders based on the noncustodial parent's ability to pay."<sup>64</sup>

Under the federal rules, state guidelines must provide that child support orders are based on the noncustodial parent's "earnings, income and other evidence of ability to pay." Under the 2016 rules, states that authorize income imputation must take into consideration the specific circumstances of a noncustodial parent (and at the state's discretion, 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 parent, prevailing earnings level in the local community, and other relevant background factors in the case.

The federal rule places the responsibility on the child support agency to develop a sufficient factual basis for the support obligation through more case investigation, case conferences, parent interviews, use of electronic data sources, and so forth. The child support agencies must base its recommendations on parental earnings and income whenever available, and if unavailable, on other specific circumstances. Finally, the agency must document the factual basis for the recommended obligation in the case record.<sup>65</sup>

## What are "discretionary orders"?

The Maryland guidelines schedule starts at a monthly income threshold of \$1,250 (\$15,000 per year). Above the threshold, the guidelines incorporate a table of presumptively correct order amounts scaled to the combined actual adjusted gross income of both parents and the number of children. Courts calculate the income of both parents and then apply the amounts listed in the table as the basis for support orders. If they deviate from the guidelines amount, they are required to make written findings that application of the guidelines will result in an unjust order and to articulate their reasons for deviation.

Below the \$1,250 income threshold, courts have the discretion to set an order between \$20 to \$150, based on a low-income noncustodial parent's resources and expenses, as well as the number of children. At low incomes, separate consideration of the noncustodial parent's income allows the court to gauge whether the parent's income is sufficient to meet his or her own subsistence needs and still pay child support. The combined incomes of both parents will generally be higher, particularly when income is imputed to one or both parents.

The intent of discretionary orders is to provide the courts with flexibility to set right-sized orders in cases where the noncustodial parent has limited income. When a noncustodial parent's income falls below the \$1,250 monthly income threshold, the court has discretion to set a more realistic order based on the obligor's ability to pay. However, in practice, this approach has some drawbacks.



First, very few orders are actually issued based on incomes below the \$1,250 threshold because additional income is routinely attributed, or imputed, to parents with very low actual incomes. That is, orders for most parents are based on “potential” income of full-time minimum wages. A review of cases in the child support program between 2011 and 2014 conducted by the University of Maryland found that only 5.3 percent of all orders in child support program cases were issued in the discretionary range of \$20 to \$150. These percentages are extremely low, compared to the number of noncustodial parents in the state with actual incomes below \$1,250, and are an indication that discretionary orders are not being used as intended.<sup>66</sup>

The Maryland case review found considerable variation among counties in how frequently they issued discretionary orders, even those with higher unemployment and poverty rates. For example, 3.5 percent of the orders issued in Allegany County, 2 percent of Garrett County orders, and 0.6 percent of Caroline County orders in the child support program caseload were discretionary. On the other hand, 15 percent of Washington and Dorchester County orders and 10 percent of Somerset County orders were discretionary. In Baltimore, 4 percent of orders were discretionary.

Second, discretionary order amounts are inconsistent. The case review found significant variation among counties concerning discretionary order amounts in child support program cases. Indeed, courts often issue discretionary orders for low-income parents above the \$20 to \$150 range. Discretionary orders ranged from \$20 to \$337 (more than twice the amount permitted under the discretionary guidelines), with a median discretionary order of \$129. The case review also found that 40 percent of discretionary orders exceeded \$150 per month. Many of the orders were issued for \$162, which is the first basic support amount listed in the guidelines schedule. For example, an unemployed noncustodial parent with no income, no high school diploma, limited work history, and an incarceration record may receive a \$20 order in one court, and a \$162 order in another court.

To provide for cases where the noncustodial parent’s income is less than the guidelines threshold, some states have implemented a standard minimum order, with judicial discretion to deviate from that amount. In such states, the guidelines might specify a fixed minimum order of \$50 or \$75 in very low-income cases. Other states use a fixed percentage of income. For example, Michigan sets orders based on 10 percent of an obligor’s income up to the federal poverty guideline for one adult.<sup>67</sup>

However, reliance on a standard amount, even if more realistic than imputed full-time wages, is disfavored by the federal rules because it sidesteps the need for evidence and fact-finding.<sup>68</sup> In addition, a fixed minimum order can result in a “cliff” effect, with someone who makes slightly more than the threshold amount receiving an order that is significantly higher than someone making slightly under the threshold.

A number of states have done away with an income threshold in their guidelines. Instead, the guidelines start with zero income and specify low order amounts or income percentages that increase by small increments up to a sufficient income level. In that way, limited income is

acknowledged and incorporated into the state’s guidelines on a graduated basis. For example, Minnesota and Virginia bring zero and low incomes into the guidelines schedule, using a graduated approach to setting lower orders. Iowa uses a three-tiered approach to its guidelines, while Wisconsin uses a separate guidelines scale for low-income payers.<sup>69</sup> In addition, guidelines in some states, including Michigan and California, articulate an extended set of policies or principles in their guidelines to provide additional guidance to judicial decision-making.<sup>70</sup>

## What can the courts do to improve participation in child support hearings by low-income parents?

*Pro se* litigants in child support program cases—that is, parents without legal representation—are often low-income, have little understanding of child support laws, and have difficulty navigating the court process.<sup>71</sup> Child support agency lawyers do not represent either parent. Instead, they represent the state’s interest in obtaining financial support for children so that they are adequately cared for and have less need for public assistance. Most of the time, neither parent in a child support case has a lawyer to represent them in court.

For noncustodial parents, in particular, the legal consequences of going to court without a lawyer to represent their interests can have serious consequences. Parents often do not know how to present evidence and arguments about their financial ability to pay child support that could change the outcome in their cases. They usually have only a limited opportunity to explain their circumstances to the judge. They can often leave the courtroom believing that the child support process is unjust and that they did not have a fair shot. Custodial parents, too, often leave the courtroom feeling that they have not been heard. Parents who feel that they have been dealt with unfairly are less likely to comply with child support orders.<sup>72</sup>

Around the country, state courts have been implementing a range of civil justice reforms that can improve access to justice and procedural fairness for low-income *pro se* litigants in civil cases such as child support.<sup>73</sup> Procedural fairness means the litigants have a fair chance to be heard and have their case resolved equitably, regardless of how much money they have or whether they have a lawyer.

In the *Strategic Plan for the Maryland Judiciary 2015-2010: Moving Justice Forward*, the Maryland judiciary has prioritized access to the courts, responding to the changing community needs and building service partnerships with state, county and community groups. Maryland courts have led the country in expanding access to justice by litigants who typically are low-income and not represented by an attorney, ranking fourth in the national Justice Index, which measures access to lawyers available for low-income litigants, support for *pro se* litigants, support for litigants who have limited English language proficiency, and support for litigants with disabilities.<sup>74</sup>

As Chief Judge Barbera described in her February 6, 2019 *State of the Judiciary* presentation to the state legislature, Maryland also has expanded the number of problem-solving courts,

primarily drug courts, as a way to offer a more effective approach to reducing recidivism. Problem-solving courts address underlying problems such as drug addiction that have caused defendants to enter the justice system. A problem-solving court is a judicial model that combines adjudication with case management and services to work with defendants in a less adversarial setting to help them get on the right path and achieve more positive—and sometimes life-changing—outcomes.

A number of states, including Virginia, Georgia, Minnesota, Kansas, Missouri, and the District of Columbia, have established problem-solving courts for low-income parents with barriers to payment of child support, such as unemployment, an incarceration record, or addiction. Sometimes called accountability courts, fathering courts, or co-parent courts, the problem-solving courts operate diversion programs instead of using standard enforcement procedures. Problem-solving courts are a promising approach to helping parents get jobs, stay employed, and maintain positive relationships with their children and the other parent.<sup>75</sup> The federal Office of Child Support Enforcement has funded a set of research demonstration projects to test procedures that increase procedural fairness in agencies and courts, and that tie employment and parenting time services to child support programs.<sup>76</sup>

As part of its focus on access to justice, Maryland courts have established self-help centers—a key strategy in helping people without lawyers manage their court cases. Self-help centers help *pro se* litigants with help filling out court forms, offering information, and providing limited legal advice on procedural questions. In most Maryland courts, parents with a child support case can walk in, phone call or live chat with a lawyer to get help. In addition, federal 2016 federal rules put more responsibility on child support agencies to thoroughly investigate cases and to focus on the accuracy of support orders based on evidence of a noncustodial parent's ability to pay.

Many judges and other experts agree that family law cases, already emotionally fraught, are particularly ill-suited to the high volume and adversarial nature of litigation, which can damage family relationships and reduce child wellbeing. Alternative approaches to litigating child support cases include increased case conferencing and alternative dispute resolution (ADR).<sup>77</sup> For example, Colorado and Massachusetts, use case conferencing to obtain child support agreements. Both approaches allow parents to tell their stories in less adversarial settings and to have a greater say in the outcome of their cases through negotiation, rather than litigation. Often, parents who have a child support case but never married or divorced want to be able to resolve custody and parenting time at the same time they resolve child support. ADR can provide a means to work out an agreement that addresses all of the issues involved with co-parenting.

## **Modifying child support orders during incarceration**

Parents facing a substantial drop in income are entitled to seek a review and adjustment (also called modification) of their support orders based on state guidelines. The federal review and adjustment statute requires states to review and, if appropriate, adjust orders following a

request by either parent if there has been a substantial change in circumstances—whether due to unemployment, disability, military service, or incarceration.<sup>78</sup> Timely modification is important to prevent the accumulation of overwhelming debts during incarceration, especially because federal law prohibits retroactive modification of child support obligations once they are established.<sup>79</sup>

Research finds that many incarcerated parents do not understand the child support process and do not know their rights. In many prisons, incarcerated parents do not know their rights to request review and adjustment of their orders and cannot easily contact the child support office. Because incarcerated parents are involuntarily confined, their access to the internet or cell phones often is restricted due to security concerns. They may not have access to legal counsel or other community-based resources that could provide timely information. Consequently, their opportunity to seek information and request a review in time to prevent the accumulation of unmanageable debts often is limited or nonexistent.<sup>80</sup>

Over the past two decades, most states have abolished treatment of incarceration as “voluntary” unemployment.<sup>81</sup> As early as 1995, the Maryland Court of Appeals determined in *Wills v. Jones* that incarceration constitutes a material change in circumstances justifying modification of a child support order. The court recognized the validity of zero orders when justified by the facts in a case, stating: “The child support guidelines do not assign ‘blame,’ they assign child support obligations based upon a parent’s income. Similarly, our decision gives no ‘reward’ for his criminal action. Even putting aside the loss of liberty and other negative aspects of incarceration, a prisoner’s child support obligation should be reduced only in proportion to the prisoner’s reduced ability to pay.”<sup>82</sup>

The Maryland legislature has addressed the treatment of incarceration as “voluntary unemployment” through Md. Family Law Code § 12-104. This statute provides that a child support payment is not past due and arrearages may not accrue during any period when the obligor is incarcerated and for 60 days after release if the obligor was sentenced to a term of imprisonment of 18 consecutive months or more, is not on work release and has insufficient resources with which to make payment, and did not commit the crime with the intent of being incarcerated or otherwise becoming impoverished. In addition, § 12-104 permits the Department of Human Resources to initiate an adjustment of an incarcerated obligor’s payments, with notice to the custodial parent.

However, federal rules adopted in 2016 require Maryland to take another step to review and adjust support orders in order to avoid the accrual of arrears during incarceration. The 2016 federal rules, which preclude states from treating incarceration as voluntary unemployment in their guidelines or excluding incarceration as a basis for modifying support orders, require notice to incarcerated parents of their right to request a review of their orders. The federal rule specifies shorter timeframes than Maryland law prescribes. The federal rules require states to provide notice to both parents of their rights to request a review and adjustment of the support order within 15 business days of when the child support agency learns that a parent will be incarcerated for more than 180 days (that is, 6 months).<sup>83</sup>

Alternatively, the federal rules allow states to automatically initiate a review after notice to both parents, without the need for a specific request. Neither a notice nor a review is required if a state has a comparable law or rule that modifies a child support obligation by operation of law. The federal rules permit states to modify the orders of incarcerated parents by operation of law and to automate the process for greater efficiency. This approach was recently adopted by California and North Dakota.<sup>84</sup>

### III. CONSEQUENCES OF NOT PAYING CHILD SUPPORT ORDERS ON TIME: ARREARS AND THEIR AFTERMATH

Policies that guide the setting of child support orders—voluntary impoverishment, minimum wage orders, self-sufficiency reserves, and other guidelines policies—determine the amount of child support payments owed by low-income parents. But to understand the true effect of the child support process on low-income families and communities, we turn to a second category of policies: those that follow when noncustodial parents cannot comply with their support orders and fall behind on payments. This second category of policies—and their implementation—amplify and compound the challenges facing low-income families.

Maryland collected almost 70 percent of on-time support. Three-fourths of support payments are collected through payroll deductions. Despite Maryland's relatively high collection rate compared to the national average, almost a third of support is not collected on time. At the end of the year, the uncollected current amount is added to the agency's cumulative arrearage balance, and the child support agency continues to make efforts to collect the amount as arrears.<sup>85</sup>

Maryland, like all states, carries a significant arrearage balance, which reflects child support debt that has been accumulating year by year for more than 40 years, when the program began in 1976. Most of this debt accumulated before 2000, when Maryland's unpaid arrears balance had climbed to \$1.2 billion. The state unpaid arrears balance peaked in 2007 at nearly \$1.5 billion.<sup>86</sup>

Since then, Maryland has made significant progress. The state child support agency's collection rates for on-time current support and arrears have continued to improve. In 2017, Maryland's current collection rate was 69 percent, compared to 64 percent in 2007. Its arrears collection rate was 70 percent in 2017, compared to 62 percent in 2007.

Even as the national child support debt balance has continued to rise, Maryland actually has reduced its unpaid debt balance. By 2017, Maryland's unpaid debt balance had dropped back to \$1.2 billion, a level not seen since 2000, and remained level in 2018.<sup>87</sup>

There are a few reasons why the Maryland child support program has made progress in chipping away at the debt balance in recent years. First, the Maryland child support program has become more automated and efficient, while federal performance incentive payments and penalties helped focus state collection efforts. In addition, state policies and programs put in place for low-income parents are more realistic today. These include the state's Noncustodial Parent Employment Programs (NPEP) and Payment Incentive Program (PIP) that aim to increase on-time payment of support, as well as early initiatives such as the Arrears Leveraging Pilot Project and Project Fresh Start in Prince Georges County that led to legislative changes to address the build-up of debt.<sup>88</sup>

Despite this progress, \$1.2 billion in unpaid child support debt remains on the books in Maryland. In Baltimore, \$350 million in unpaid debt has gone uncollected.<sup>89</sup> This unpaid debt is carried forward from year to year but most of it will never be collected, no matter how tough enforcement efforts are.

## Who owes arrearages?

A 2017 analysis by the federal Office of Child Support Enforcement found that most child support debt is held by poor noncustodial parents. This federal analysis showed the following:

- Most debtors owe less than \$10,000 in past-due child support.
- Only 15 percent of debtors owe more than \$40,000 in past-due child support but they account for more than half of the total debt.
- Cases with arrearages over \$100,000 account for almost a quarter of the total debt but represent only 3 percent of debtors.<sup>90</sup>

This is consistent with a landmark study of child support arrears in nine states conducted by the Urban Institute. The study found that 57 percent of noncustodial parents owed \$5,000 or less in arrears. These smaller arrears balances represented just 6 percent of total arrears. However, 11 percent of noncustodial parents owed \$30,000 or more. These “high debtors” owed more than half of total arrears.<sup>91</sup>

The Urban Institute study also found that noncustodial parents with reported income of \$10,000 or less owed 70 percent of the arrears. The study concluded that less than two-fifths of the arrears then owed would likely be collected within the next 10 years. By contrast, only 3 percent of parents with reported incomes over \$10,000 failed to pay in the last year. The study concluded that nearly all the arrears owed by parents with incomes of \$30,000 or more would be collected.<sup>92</sup>

The study found that noncustodial parents who owed large child support debts often had multiple support orders, old orders, interstate orders, and no payments in the prior year. They often had no zip code on record and owed criminal justice and other debts. Uncollectible debt balances were higher in states that had a higher gap between current support due and paid.

In a large proportion of cases, the order was based on imputed income. Other contributing state practices included routinely charging interest, assessing retroactive support back to the birth of the child, and allowing a long delay between establishing the order and opening the case.<sup>93</sup>

In 2008, the University of Maryland conducted a study of the state's child support debt profile. Similar to the Urban Institute research, this study found that the majority of Maryland noncustodial parents have low amounts of debt. However, a disproportionate share of the debt is owed by a very small number of obligors with very large debt balances. Baltimore parents owed just over a third of the debts, reflecting the fact that Baltimore cases represent a third of the state caseload. The Maryland study found the following:

- Less than 7 percent of the debt was owed by about half of the debtors owing \$5,000 or less in arrears.
- Almost half of all arrears were owed by 13 percent of debtors.
- Accounting for almost one-third of the total debt, 10 percent of debtors owed between \$25,001 and \$50,000.
- Less than 3 percent of debtors owed more than \$50,000, but they accounted for 16 percent of the total debt owed (Maryland's "high debtors").

The University of Maryland study found noncustodial parents earning less than \$10,000 owed most of the arrears in Maryland. About 30 percent of the parents had no reported earnings, yet they owed 40 percent of the total debt. By contrast, noncustodial parents who earned more than \$30,000 accounted for less than 9 percent of the debt. About two-thirds of noncustodial parents worked at some point during the preceding year, while half worked in the study year. However, earnings were low: Among those who were employed, the average annual earnings were roughly \$20,000.<sup>94</sup>

Further, two-thirds of the debts were at least four years old, and almost half predated implementation of Maryland's child support statewide computer system, CSES, in 1998. Much of this debt was owed in cases where the children were grown and no current support was owed. In some cases, the noncustodial parent had died. There was no current support owed in almost 3 out of 10 cases with arrears. Most of this debt was owed to custodial families, rather than owed to the state to repay cash assistance under a Temporary Cash Assistance (TCA) assignment.

The study identified several risk factors for large child support debts that could be used to identify those cases that are least likely to result in collections. They include:

- Cases opened before 1998, predating conversion to CSES;
- No reported earnings, which could indicate unemployment, self-employment, SSI disability payments, or public assistance receipt;

- Incarceration, accounting for about one-quarter of the total debt;
- No payments through income withholding or other direct payments;
- Out-of-state or out-of-country residence, or residence on a military base;
- Situations where the noncustodial parent has more than one child support case;
- Arrears-only cases with no current support due, accounting for almost 30 percent of cases owing arrears; and
- Noncustodial parents ordered to pay retroactive support at the time the order was established.

The Maryland study found that 45 percent of all cases with an arrears balance during the study month had at least three of the risk factors, and they owed 57 percent of the debt. While the majority of arrears cases had at least one payment, the cases that were least likely to have a recent collection toward arrears involved obligors who had no recent reported income, had no history of payments through income withholding, had been incarcerated, or had no current support due.<sup>95</sup> Other research found that arrears that are more than four years old are virtually uncollectible.<sup>96</sup>

## How does debt affect collections?

Child support debt is both “a cause and a consequence” of noncompliance with child support orders.<sup>97</sup> The reason is straightforward. Noncustodial parents with orders set beyond their ability to pay leads to the accumulation of arrears. Parents with large child support debts have less incentive to cooperate with the child support program and are less likely to pay support.<sup>98</sup>

The child support agency collects most child support payments by withholding child support from a noncustodial parent’s paycheck. A federal law, the Consumer Credit Protection Act, sets a high ceiling for withholding child support payments—up to 65 percent of disposable income can be withheld from the paychecks of noncustodial parents owing arrears. This high withholding rate can have the unintended effect of pushing low-wage parents out of a job, because the remaining paycheck is often too little to survive on. Under federal law, states have the discretion to withhold a lower amount.<sup>99</sup>

Child support debt can interfere with the economic stability of working parents. There is mounting evidence that higher arrears substantially reduce child support payments, earnings, and labor force participation by noncustodial parents.<sup>100</sup> Parents who owe large child support debts are more likely to become discouraged and leave formal employment, further compromising their ability to support their children. Debt can lead to increased job-hopping, participation in the underground economy, and even generation of illegal income as parents try to support themselves and their children and avoid the child support program.

Child support debt also can create a barrier to father involvement. There is evidence that indebted fathers have significantly less contact with their children, are less engaged in their



daily activities, and provide less frequent informal support.<sup>101</sup> Child support debt that exceeds a noncustodial parent's ability to pay can increase friction between the parents. It can unrealistically inflate custodial parent expectations that the child support agency should be able to collect money that does not exist and will not materialize in the future.

Debt takes a personal toll, with implications for employment, health, family life, and civic participation. Indebtedness is associated with greater parental depression, alcohol overuse, poor health, worsened family relationships, less effective parenting, and deteriorating child behavior.<sup>102</sup> Data from the National Longitudinal Study of Adolescent Health indicate that high debt relative to resources is a significant independent predictor of negative health outcomes such as depression and anxiety, suicidal ideation, obesity, substance use, and cardiovascular diseases.<sup>103</sup> Behavioral science research finds that financial stress reduces capacity for good decision-making and problem-solving.<sup>104</sup>

Child support arrears can create lifelong indebtedness, even after the children are grown and have children of their own. In federal surveys, homeless Vietnam veterans said that child support debt was one of their top legal problems.<sup>105</sup> Child support debt can even shut out aging parents from assisted living facilities and residential homes, which sometimes are unwilling to accept someone with an old child support debt.<sup>106</sup>

None of these outcomes serves children well.

Keeping old, uncollectible debt on the books is expensive for taxpayers in several ways. First, monitoring and pursuing uncollectible debt is not cost-effective and adds significant program costs.<sup>107</sup> Second, a large number of uncollectible arrears cases reduce state performance affecting federal incentive payments. Third, uncollectible debt carried on the books for decades also negatively impacts public perception of program effectiveness. And fourth, the family and social consequences of unmanageable debt increase health, social services, judicial, and law enforcement costs.

## How does incarceration affect debt?

Much of the uncollectible child support debt accrues during periods of incarceration. Noncustodial parents typically enter prison owing unmanageable child support debts, and come out owing even more. A 2005 University of Maryland study found that incarcerated parents typically owe on average of \$23,000 upon release from prison.<sup>108</sup> Other studies have found that incarcerated parents leave prison with an average of \$15,000 to \$30,000 or more in unpaid child support, with no means to pay upon release.<sup>109</sup>

The University of Maryland study found that 3 percent of noncustodial parents in Maryland's child support caseload were incarcerated at the time of the study, while an additional 10 percent of parents had a past history of incarceration. More than twice as many Baltimore cases, or 30 percent, involved currently or formerly incarcerated parents.<sup>110</sup> The study found that noncustodial parents that had been incarcerated were more likely to owe arrears and owe

larger amounts than those who have not been incarcerated. In fact, the study found that 100 percent of currently incarcerated parents and virtually all (97 percent) formerly incarcerated parents owed arrears in Maryland.

Although these cases accounted for only 13 percent of noncustodial parents, they accounted for a quarter of child support arrears owed in Maryland. In Baltimore, parents who are or have been incarcerated owed more than 40 percent of arrears. On average, parents currently in prison owed more than \$22,000. Formerly incarcerated parents owed more than \$17,000, almost twice as much as those who were never in prison.<sup>111</sup>

Most incarcerated parents have little or no income and do not have any realistic ability to pay child support. Family members, including custodial parents, typically contribute to prison accounts to pay for such basic sundries as shampoo and deodorant. Even on work release, earnings are usually small and barely cover basic needs while in prison.

The effects of incarceration on child support payments last well beyond the prison sentence. Incarceration is a substantial change in financial circumstances that typically results in a dramatic drop in employability and earnings potential upon release. Parents returning to the community after prison often struggle to find employment. One study showed that after release from jail, formerly incarcerated men were unemployed nine more weeks per year, their annual earnings were reduced by 40 percent, and hourly wages were 11 percent less than if they had never been incarcerated.<sup>112</sup> Parents with a history of incarceration are significantly less likely to pay child support, and they pay less than those who were never incarcerated.<sup>113</sup>

A support order that fails to take into account the real financial capacity of a parent during incarceration and after release makes it more likely that the child will be deprived of adequate support and parental involvement over the long term. Unrealistic support orders, high payroll withholding levels, and large debts serve as a disincentive to seek legitimate employment and pay child support. These factors also undermine the efforts of parents to turn their lives around and take care of their children. Faced with overwhelming financial pressures, some seek work in the underground economy where it is difficult to track earnings and collect payments. Others may generate income through illegal activities to support their children and pay down their debts.<sup>114</sup>

It is unrealistic to expect that most formerly incarcerated parents will be able to repay high arrearages upon release. In 2005, a major report of the Council of State Governments, a nonpartisan association of all three branches of state government, specifically identified child support debt as a collateral civil consequence of incarceration because debt can disrupt family reunification, parent-child relationships, and the employment patterns of formerly incarcerated parents.<sup>115</sup>

## Enforcing arrears through driver's license suspensions

The effectiveness of the child support program depends upon the financial ability of parents to pay their child support orders. Consistent on-time child support payments usually depend on a noncustodial parent having a steady job because most child support is collected through payroll withholding. Although the child support program is quite good at finding and collecting money, it cannot collect money that parents do not have.<sup>116</sup>

When a noncustodial parent is unemployed, self-employed, or falls behind on child support payments for other reasons, the state has an array of enforcement tools to attempt to coerce payment of arrears. For example, the state can seize noncustodial parents' bank accounts, place a lien on their property, suspend their passports, or even find the parents in civil contempt and send them to jail.

One such power is the authority to suspend driver's licenses. Federal law requires states to have and use driver's license suspension to enforce child support arrears "in appropriate cases," but gives states the discretion within constitutional limits on how to implement the process.<sup>117</sup> When parents have sufficient resources to pay child support, but refuse to do so, the threat of driver's license suspension can be an effective enforcement tool for collecting support payments. However, when parents cannot afford to pay all of their child support, driver's license suspension carries serious ramifications for parents, employers, and families, raising potential due process concerns.<sup>118</sup>

Maryland statute authorizes the child support agency to notify the Motor Vehicle Administration to suspend a noncustodial driver's license after notice to the parent. Under the law, a noncustodial parent may request a pre-suspension investigation on three grounds: the accuracy of the arrearage amount, the detrimental effect that a suspension would have on current or potential employment, and hardship to the parent resulting from disability or inability to comply with the child support order. A noncustodial parent's driver's license will not be suspended if the parent enters into a payment plan with the child support agency and complies with the plan. In addition, the motor vehicle administration may issue a work-restricted license.<sup>119</sup>

Once the driver's license is suspended, it will be reinstated if the noncustodial parent's arrearage is paid in full, the parent stays current with court-ordered support payments over 6 months, the parent participates in the Noncustodial Parent Employment program, or on hardship grounds. Last year, Maryland enacted a law allowing for expungement of a suspension record for failure to pay child support.<sup>120</sup>

Child support agency policy identifies several reasons that qualify as a hardship preventing a noncustodial parent from paying child support: (1) an employer's statement that a driver's license is required to perform the parent's current or potential job; (2) documentation that suspension would prevent the parent from complying with the court order due to receipt of unemployment insurance, unemployment for up to 6 months, public assistance receipt,

insufficient earnings if they are less than when the support order was established, incarceration without work release, or medical disability.

Despite these safeguards built into Maryland’s law, a low-income parent may have difficulty qualifying for a waiver from suspension. For example, a noncustodial parent may be unable to demonstrate that his earnings are less now than when his or her order was established or may be unable to qualify even if the family depends upon him to provide transportation for child care or medical treatment.

Over the five-year period between 2012 and 2016, the Maryland Department of Transportation suspended more than 33,000 driver’s licenses in Baltimore due to child support nonpayment.<sup>121</sup> Data show that driver’s license suspensions affect the poor to a much greater extent than other income groups. Having a suspended driver’s license reduces the ability of already economically destabilized parents to work, pay child support, and maintain parent-child relationships, all goals of the child support program. Driver’s license suspension can set up a vicious cycle, making it harder to pay child support than before the suspension.<sup>122</sup>

The U.S. Census found that three-fourths of American workers regularly drive to work, underscoring the importance of driving in everyday life.<sup>123</sup> Yet, driver’s license suspensions threaten the ability of noncustodial parents to earn a livelihood, and can lead to job loss or the inability to look for a job.<sup>124</sup> Even a short suspension could cause a parent to lose a job or job opportunity. Research indicates that available jobs may be far away from home and out of reach of public transportation. Research has also found that greater “job sprawl” is particularly associated with higher spatial mismatch for African American workers, who can be more geographically isolated from jobs. Further, a driver’s license is a requirement for some jobs, such as a delivery person or truck driver. Some employers also use a valid driver’s license as a condition of employment.<sup>125</sup>

Overly aggressive enforcement efforts, particularly driver’s license suspensions, can make matters worse, by interfering with family responsibilities.<sup>126</sup> A noncustodial parent may not be able to drive to see their children, pick them up from school or childcare, attend school conferences, or take them to the doctor. Not being able to drive also can mean that the noncustodial parent cannot help other dependent family members, taking them to doctor appointments, the grocery store, or church.

## Effective debt management policies

Several years ago, Washington State set up a special collection unit to demonstrate how more investigation and specialized enforcement efforts could improve collections. The unit’s primary focus was to concentrate resources on locating employers, assets, and parents in hard-to-collect cases. They used specialized “skip trace” methods, aggressively pursued leads and issued subpoenas, and hired a private collection agency. Soon after beginning work, however, they realized that most of the nonpaying cases involved parents with serious barriers to payment—disability, public assistance receipt, and incarceration.<sup>127</sup>

Early intervention is important when parents start falling behind in their payments.<sup>128</sup> The University of Maryland found that using a proactive, stratified approach to case management—that is, immediately flagging cases that miss payments, identifying case characteristics, analyzing and addressing the reasons for nonpayment, and helping parents get back on track by modifying orders and reducing debt to affordable levels—is effective.<sup>129</sup> Another approach is used by New York State, which caps the accumulation of arrears at \$500 for low-income noncustodial parents.<sup>130</sup>

There is evidence that reducing high uncollectible debts can increase compliance with current support orders. The Maryland Payment Incentive Program (PIP) has been shown to be effective both in reducing uncollectible child support debt owed to the state and encouraging noncustodial parents to pay more child support and pay more frequently.<sup>131</sup> Evaluations of similar programs in other states have consistently found that participants increased the frequency and amount of child support payments.<sup>132</sup>

Many child support programs offer employment services to help increase the capacity of parents to pay child support by offering employment programs.<sup>133</sup> Participants in Maryland's Young Parent Employment Program paid one-third of current support due in the year before enrollment. Employment, earnings and child support payments rose over the two-year period between the years before and after enrollment. The amount paid increased by nearly 20 percent per participant. Participants who had improved earnings paid a larger percentage of their current support obligations.

Research in other states has shown that programs such as the Strengthening Families Through Stronger Fathers program in New York and Noncustodial Parent (NCP) Choices in Texas increase employment and child support payments.<sup>134</sup> In addition, the Child Support Noncustodial Parent Demonstration (CSPED), a multistate demonstration funded by the federal Office of Child Support Enforcement, found that employment services, parenting classes, case management and related services increased earnings, a sense of responsibility for children, contact with children, and satisfaction with the child support program, and it decreased harsh discipline of children.<sup>135</sup> Federal child support performance incentive funds and TANF funds can be used to help pay for employment services.<sup>136</sup>

## IV. FAMILY DISTRIBUTION: WHO KEEPS THE MONEY?

Many of the poorest children in the state never see the child support paid by their parents. This is because families who apply for cash assistance through the Temporary Cash Assistance program (TCA) are required by federal law to assign, or sign over, their rights to child support as a condition of receiving cash assistance. Even after a family leaves cash assistance, the state continues to withhold a share of their child support—the amount collected through federal tax refunds—to pay back cash assistance costs. Families are forced to forfeit part of their child support income even as they try to make it on their own.

Child support collections held back by the state are treated as government revenue and shared equally between Maryland and the federal government. Out of every support dollar retained by the state, 50 cents is sent back to the federal government.<sup>137</sup> The money that is returned to the federal government could instead have been paid to Maryland families and spent at home for food, clothing, and other needs.

Last year, the Maryland legislature adopted a partial pass-through of support payments paid to families receiving TCA. Effective July 1, 2019, families receiving cash assistance will receive up to \$100 for one child and \$200 for two or more children from the support paid by the children's noncustodial parent.<sup>138</sup> This is a step in the right direction, but Maryland needs to do more so that noncustodial parents who pay child support know that their payments actually benefit their children. It is time to pay all child support to children.

## Declining role of welfare cost recovery

When the child support program was first established, most families in the child support caseload received cash assistance and their child support was assigned to the state. Over the past four decades, the mission of the child support program has steadily evolved, and the program has become an important family support and anti-poverty program. Welfare cost recovery now plays a more limited role in the child support program.

Cost recovery contributes less and less revenue to the state budget. Nearly all of the child support collected in Maryland child support program cases is paid to families. In 2017, Maryland paid 97 percent of support collections to families and held back 3 percent, or just over \$16 million, to reimburse cash assistance. Maryland's share was \$8 million, and the federal share was also \$8 million. Twenty years ago, the state retained almost \$38 million and the state's share was \$19 million—a 60 percent decline.<sup>139</sup>

State revenues will decrease further when Maryland's new pass-through law goes into effect. Under the new state law, Maryland will pass through to families currently receiving TCA benefits the first \$100 of collected support for families with one child and \$200 for two or more children, and disregard the child support income in determining TCA. The Maryland legislative fiscal note stated that family income is expected to increase, with state revenue to decrease by \$3.8 million annually.<sup>140</sup>

Two changes in federal policy have sharply reduced the cost-recovery role of the child support program over the past two decades. The first is the deep decline in the number of families who receive cash assistance following implementation of the 1996 federal welfare reform law. In 2017, only 7 percent of child support cases involve families currently receiving TCA, compared to 35 percent in 1996. At the same time, nearly half of child support cases involve families who left cash assistance and are now on their own.<sup>141</sup>

Second, federal laws enacted over the past two decades have prioritized support payments to families over welfare cost recovery. The 1996 welfare reform law adopted “family-first” policies that required states to redirect more child support payments to families who used to receive cash assistance. In 2006, Congress enacted child support distribution reform legislation that included a mix of state requirements and options to direct more child support payments to families.

The 2006 law limited the child support that could be assigned to the state, and waived most of the federal share of retained collections if a state increased the amount of child support paid to families—meaning that Maryland families, rather than the federal government, would receive the money. This waiver of the federal share of collections applies to support payments up to \$100 for one child and \$200 for two or more children passed through to families currently receiving assistance and disregarded (not counted) in determining TCA benefits. The federal share also is waived for any child support paid to families who no longer receive cash assistance.

Since 2006, states have had the flexibility to pay 100 percent of all collected support payments to families—whether they are currently receiving TCA or used to receive it.<sup>142</sup> Under federal law, a state may elect a set of options to:

- Cancel old assignments, many of which cannot be collected on;
- Pass through all support to families with current assistance cases;
- Disregard part or all passed through support in determining TCA eligibility.
- Pay families with former assistance cases child support payments that have been withheld from the federal tax refunds of noncustodial parents, as well as use federal tax refunds to increase payments passed through in current assistance cases; and
- Pay all remaining collections to families with former assistance cases.

Payment of the federal share of retained support is automatically waived if a state adopts any of these options with one exception. If the state passes through all support to families with current assistance cases, it will need to pay a federal share on amounts passed through and disregarded over \$100 for one child and \$200 for two or more children. These state options are summarized in Appendix II.

In July, Maryland will become one of 27 states allowing pass-through of at least some child support to families currently receiving cash assistance. Two states, Colorado and Minnesota, allow pass-through of all support to families with current assistance cases and disregard \$100 and \$200 to take advantage of the automatic waiver of the federal share.<sup>143</sup>

## Why should Maryland pay the money to families?

More parents pay child support when the payments go to their children, instead of the government. Not only do more parents pay, but parents pay more support. Research in Colorado, Wisconsin, and the District of Columbia found that when child support is passed through to families receiving cash assistance, more parents paid child support and parents pay more support.<sup>144</sup> The Wisconsin study also found that childcare satisfaction increased and child protection reports decreased for families who received passed-through child support. Although results from the Colorado pass-through study are still preliminary, early findings are consistent with earlier studies in other states. In Colorado, child support paid to custodial families has increased, family income has increased, noncustodial parents are paying more, and more noncustodial parents pay.<sup>145</sup>

Treating child support like government revenue instead of support for children creates a disincentive for parents to comply with their child support orders. Both custodial and noncustodial parents are less likely to cooperate with the child support program if they see no benefit to their family. It is not surprising that parents are more willing to support their children, than to pay the government. Welfare cost recovery adds to community distrust and cynicism about the child support program. Using child support payments as state revenues has a bait-and-switch quality that undermines the integrity of the child support program—although parents are told that parents should support their children, their support payments do not actually reach their children. Noncustodial parents understand and deeply resent that their child support payments are kept by the state and do not reach their children. Sometimes they reach into their pockets twice—once to pay the state and once to financially contribute to their children informally.<sup>146</sup>

It is plain that the meaning and value of child support paid to children go well beyond financial support. Child support is about more than money to families; it represents parental commitment as well as financial support. However, the importance of paying child support is distorted when the state diverts the payments to use as revenues. Several studies have found that when children receive child support from their noncustodial parents, they are more likely to stay in school and get better grades. When families receive child support, they are less likely to apply for cash assistance and more likely to remain off assistance once they leave.<sup>147</sup> Paying the money to low-income families instead of government directly avoids other government and social costs. In fact, the Wisconsin study found that its pass-through policy resulted in no net costs to the state.<sup>148</sup>

## How much would it cost to pay all collected support to families?

Using the child support program to recover welfare costs is not cost-effective. One expert estimated several years ago that the costs to support the cost-recovery component of the child support program are as high as 6 percent to 8 percent of total program costs. Computer systems are more expensive to reprogram and maintain, customer service calls are more frequent, and child support staff require more staff training and may be less engaged in the



mission.<sup>149</sup> Cost recovery decreases collection rates and increases enforcement costs, because the child support program must attempt to collect support in cases where most noncustodial parents are low-income and reluctant to pay the government. This negatively impacts state incentive performance funding.

Policymakers generally agree that child support should be treated as support for children, rather than government revenues. Yet it is difficult to give up the revenue that welfare cost recovery brings in. However, there are three reasons to think that the revenue loss would be significantly offset by state savings:

First, the state will no longer owe the federal government a 50 percent share of collections passed through to current TCA families when the new law goes into effect this July. (The state will continue to owe a federal share on passed through amounts above \$100 and \$200 for current TCA families.) In addition, the state would not pay a federal share on collections retained from federal tax refunds if those collections were paid to former TCA families. Instead, the state can keep this money in the state for Maryland families to spend on housing, food and clothing. This additional family income can help custodial parents keep their families together, stay in the workforce and manage without public assistance.<sup>150</sup>

Second, the state may be able to increase its federal performance incentive funding attributable to increased compliance, faster paternity establishment, more paying cases, and higher cost-effectiveness. Maryland currently earns about \$8 million in federal performance incentives.

Third, program simplification could boost program performance and efficiency, while decreasing costs, removing disincentives to payment, and benefitting families.<sup>151</sup> The research suggests that the state can expect to see reduced long-term costs in such areas as:

- Reduced information technology development and operational costs,
- Simplified tracking, payment processing, and distribution,
- Reduced child support training and customer service costs,
- Increased caseworker motivation,
- Faster paternity establishment,
- Increased compliance and more paying cases,
- Parents who are more likely to show up for appointments and cooperate with the child support program,
- Less need for public assistance and avoided costs in other means-tested programs,
- Fewer child maltreatment reports.

These potential cost savings attributable to improved child support performance, reduced technology and operating costs in the child support, TCA, and child welfare programs, and

reduced need for public assistance will help offset the long-term costs of foregoing state revenues. In addition, Maryland can count the state share of support passed through and disregarded toward its TCA Maintenance of Effort obligation.<sup>152</sup>

In addition, the research suggests that there may be longer-term government savings attributable to social gains, such as more engaged parents, improved family relationships, less child maltreatment and better educational outcomes for children, when families receive more child support.

It is time for Maryland to get out of the welfare cost recovery business. Cost recovery is not cost-effective. It compromises child support program performance. It reduces child support payments and compliance. It reduces community trust and cooperation with the child support program. It muddles the message to parents about the importance of supporting their children and undercuts the child support program mission. Forcing parents to forfeit their child support aggravates the strains between the parents and further disconnects parents from their children. It deprives some of the poorest Maryland families of much-needed resources and prolongs the need for public assistance. Through the eyes of parents, it is just plain wrong.

## V. RECOMMENDATIONS

Every four years, Maryland and other states review the effectiveness of their child support guidelines and update their approach to setting support orders. Around the country, states are implementing more realistic strategies aimed at right-sizing support orders; decreasing the accumulation of debt, and ensuring children benefit when parents pay. During the upcoming quadrennial review, Maryland has an opportunity to make its child support program work better for low-income families.

This report focuses on 15 specific child support policies that Maryland can change to increase accuracy and compliance when parents are low-income. Three key evidence-based strategies underlie these policy recommendations:

### **Strategy #1: Set child support orders that reflect parents' actual ability to pay.**

This report places particular emphasis on getting the support order right. Federal rules adopted in 2016 are intended to increase compliance by improving the accuracy of orders, particularly those issued in cases where the parents have the lowest incomes. We recommend that Maryland adopt the following specific policies to improve the accuracy of support orders based upon ability to pay, and to conform to new federal requirements.

### **1. Maryland child support guidelines should articulate the standard that child support orders must be based on the obligor’s “earnings, income and other evidence of ability to pay.”**

We recommend that Maryland:

- Incorporate a policy statement in the state guidelines that child support orders must be based on a noncustodial parent’s “earnings, income, and other evidence of ability to pay.”
- Include other important principles and policies in the guidelines to guide judicial decision-making, including a principle that prioritizes the use of actual income, disfavors the use of income attribution, and prohibits the use of standardized minimum wage orders.

### **2. Maryland should update the self-support reserve, leaving enough money in a low-income parent’s pockets to pay for basic subsistence needs.**

We recommend that Maryland:

- Update the existing self-support reserve to 150 percent of the federal poverty guidelines.
- Remove the self-support reserve from the guidelines formula, and instead, list it as a deduction on the worksheet.

### **3. Maryland should tighten up its guidelines so that “potential,” or imputed, income is not routinely used as the basis for orders when the parents are impoverished.**

We recommend that Maryland:

- Clarify the definition of “voluntary” impoverishment” as intentional, purposeful, and deliberate.
- Expand the factors listed in the guidelines to determine “potential” income, consistent with federal rules.
- Treat “potential income” as a deviation from the guidelines, requiring a written justification. This would establish imputation as an exception, not the rule, and help the state identify imputed orders as part of its quadrennial guidelines review.
- Prohibit standardized child support orders based on generalized assumptions that parents should be earning at least full-time minimum wages.

#### **4. Maryland should restructure the state guidelines by extending the schedule to zero income, gradually increasing support amounts consistent with the obligor's ability to pay.**

We recommend that Maryland:

- Eliminate the \$1,250 income threshold in the guidelines and extend the schedule to zero income.
- Eliminate the \$20 to \$150 range of discretionary orders, specifying nominal orders at the lowest end of the range. Under this incremental approach, the guidelines would incorporate the existing \$20 to \$150 discretionary range, Adopt a graduated scale that incrementally increases by small, realistic steps up to existing guideline levels.

#### **5. Maryland should implement child support problem-solving courts and other less adversarial approaches and continue to improve judicial access for *pro se* litigants in child support cases.**

We recommend that Maryland:

- Implement problem-solving courts with jurisdiction to resolve child support and co-parenting matters issues for parents who are low-income and have barriers to payment, such as unemployment, an incarceration record, or addiction.
- Expand judicial self-help centers to help *pro se* litigants navigate the child support judicial process.
- Increase case conferencing and alternative dispute resolution (ADR) for child support and co-parenting matters.

#### **6. Maryland should shorten the timeframes included in § 12-104.1, which allows incarcerated parents to reduce their orders.**

We recommend that Maryland:

- Update the timelines in § 12-104 to require the Child Support Administration to provide notice to both parents of their rights to request a review and adjustment of the support order within 15 business days of when the child support agency learns that a parent will be incarcerated for more than 180 days.

## **7. Alternatively, Maryland should suspend child support obligations upon incarceration by operation of law and automate the process.**

We recommend that Maryland:

- Automatically reduce support orders to zero by operation of law to avoid the cost of notices and case-by-case review of support orders when parents are incarcerated.

## **8. Maryland should institute a procedure to review and adjust obligations upon release from prison.**

We recommend that Maryland:

- Provide specialized case management for recently released parents who have been released recently from prison.
- Develop a process to monitor and regularly review child support orders to determine whether parents have been able to obtain employment upon release from prison and review and adjust their support orders based on their actual incomes.

## **Strategy #2: Reduce uncollectible child support debt.**

Unmanageable debt can interfere with the economic stability of working parents and create a barrier to parental involvement. Driver's license suspension to enforce debt when parents are unable to pay can make matters worse. We recommend that Maryland adopt specific policies to identify and reduce uncollectible child support arrears:

## **9. Maryland should define criteria to automatically review and write off old uncollectible debt owed to the state.**

We recommend that Maryland:

- Review cases with welfare arrears balances that are more than 20 years old, are no longer accompanied by a current support order, or have not received a payment in three years to determine whether the cases have collections potential.
- Review cases with arrears that accumulated during incarceration lasting more than six months.
- Conduct an intensive investigation to locate parents and income in cases under review to determine whether it is possible to collect on the debts
- Write off the old state debt that has no realistic possibility of collection and close the case as permitted by federal law.

## **10. Maryland should strengthen the state’s employment and debt leveraging programs.**

We recommend that Maryland:

- Use TANF funds and child support performance incentive payments to expand employment programs for low-income noncustodial parents.
- Expand the existing debt leveraging program by making reductions in state-owed debt more incrementally (e.g. after every payment instead of at two points).
- Quickly review and adjust support orders downward if appropriate for participants in employment and debt leveraging programs so that compliance is possible and that more debt does not accumulate.
- Have a case manager meet with both parents to discuss an individual case plan that addresses current support and existing unmanageable arrears owed to the custodial parent, allowing for noncash support if both parties agree.
- Improve outreach regarding these programs to courts, parents and the public through expanded publicity and word of mouth in the community.

## **11. Maryland should implement new strategies to reduce the accumulation of debt in low-income cases.**

We recommend that Maryland:

- Reduce the time between order establishment and case initiation.
- Improve data matching (e.g., 1099 tax information filed by self-employed parents).
- Improve income withholding and employer interfaces.
- Stratify cases and provide specialized review and case management for non-paying cases.
- Reduce the income withholding percentage from 65 percent to 25 percent in cases where parents have low-wage jobs.
- Streamline and speed up the modification process so that orders reflect current ability to pay and remain up-to-date.
- Target high default orders and standard minimum wage orders for review, conducting more agency investigation, seeking parent participation, and applying accurate case information.

## **12. Maryland should stop suspending driver’s licenses for child support nonpayment when parents earn less than 200 percent of poverty.**

We recommend that Maryland:

- Exempt parents with incomes less than 200 percent of poverty from driver’s license suspension.

## **Strategy #3: Ensure that children, not the state, benefit when their parents pay.**

More parents pay child support, and parents pay more support when their families receive the money. Using child support to repay Temporary Cash Assistance (TCA) is not cost-effective and erodes community trust. We recommend that Maryland adopt specific policies to increase the amount of collected child support paid to families, rather than keeping the money to reimburse cash assistance costs.

## **13. For current TCA families, Maryland should pass through 100 percent of all support.**

We recommend that Maryland:

- Expand the child support pass-through statute to pass through 100 percent of child support collections to families receiving cash assistance.

## **14. For former TCA families, Maryland should cancel old assignments and pay families the child support collected from federal tax refunds.**

- Adopt the options to discontinue pre-2009 TCA assignments of child support rights.
- Adopt the option to eliminate the federal tax offset special distribution ordering rules, using federal tax offset collections to pay former assistance families first.

## **15. Maryland should get child support completely out of the welfare cost recovery business by adopting the entire set of federal options to pay all collections to families.**

- Adopt all 5 federal options outlined in Appendix II to pay 100 percent of support to current and former assistance recipients.

## VI. CONCLUSION

This report has highlighted three evidence-based strategies for increasing payment compliance by low-income noncustodial parents in the Maryland child support program:

1. Set child support orders that actually reflect the noncustodial parent's ability to pay.
2. Reduce uncollectible child support arrears.
3. Ensure that children, not the state, benefit when their parents pay child support.

Based on these strategies, we have outlined key recommendations that we hope will offer promising alternatives to better meet the needs of low-income families and ensure that low-income children and their families receive the support they need.



# APPENDIX I

## SELECTED FEDERAL CHILD SUPPORT RULES

**Adopted in 81 Fed. Reg. 93492 (Dec. 20, 2016)**

### **45 C.F.R. § 302.56 Guidelines for setting child support orders**

#### **In brief**

Amends child support guidelines provisions to require that orders be set based on a determination of a parent's earnings, income and other evidence of ability to pay, require consideration of basic subsistence needs, restrict the generalized use of income imputation, prohibit treatment of incarceration as "voluntary unemployment", and require additional data, public participation and transparency in the guidelines review process.

#### **Rule:**

§ 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

....

(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.

## 45 C.F.R. § 303.4 Establishment of support obligations

### In brief

Amend order establishment provisions to require child support agencies to carry out additional investigation, fact gathering, and documentation.

### Rule

§ 303.4(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.

## 45 C.F.R. § 303.8 Review and adjustment of child support orders

### In brief

Amends support order review and adjustment provisions to prohibit the exclusion of incarceration as a basis for adjustment, require states to notify incarcerated parents of their right to seek review, and permit states to adjust orders automatically without an incarcerated parent's request.

### Rule

§ 303.8(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—

(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.

## § 303.6 Enforcement of support obligations

### In brief

Amends enforcement provisions to operationalize *Turner v. Rogers* due process standards by requiring state child support agency guidelines for the use of civil contempt, including requirements that child support agencies screen cases for ability to pay, provide courts with additional information, and provide notice before filing for civil contempt.

### Rule

§ 303.6(c)

....

(4) Establishing guidelines for the use of civil contempt citations in IV-D cases. The guidelines must include requirements that the IV-D agency:

(i) Screen the case for information regarding the noncustodial parent's ability to pay or otherwise comply with the order;

(ii) Provide the court with such information regarding the noncustodial parent's ability to pay, or otherwise comply with the order, which may assist the court in making a factual determination regarding the noncustodial parent's ability to pay the purge amount or comply with the purge conditions; and

(iii) Provide clear notice to the noncustodial parent that his or her ability to pay constitutes the critical question in the civil contempt action;

## § 304.20 Availability and rate of Federal financial participation

### In brief

Amends federal financial participation provisions by allowing states to claim expenditures that are necessary and reasonable to carry out the child support program.

### Rule

§ 304.20(a)

....

(1) Necessary and reasonable expenditures for child support services and activities to carry out the State title IV–D plan;

....

(b) Services and activities for which Federal financial participation will be available will be those made to carry out the State title IV–D plan, including obtaining child support, locating noncustodial parents, and establishing paternity, that are determined by the Secretary to be necessary and reasonable expenditures properly attributed to the Child Support Enforcement program including, but not limited to the following:

(3) The establishment and enforcement of support obligations including, but not limited to:

....

(v) Bus fare or other minor transportation expenses to enable custodial or noncustodial parties to participate in child support proceedings and related activities;

(vi) Services to increase *pro se* access to adjudicative and alternative dispute resolution processes in IV–D cases related to providing child support services; and

...

(12) Educational and outreach activities intended to inform the public, parents and family members, and young people who are not yet parents about the Child Support Enforcement program, responsible parenting and co-parenting, family budgeting, and other financial consequences of raising children when the parents are not married to each other.

## APPENDIX II

# FEDERAL OPTIONS TO PAY CHILD SUPPORT TO FAMILIES

### 42 U.S.C. § 657

#### 1. Option to Pass-through Support in Current Assistance Cases:

**Explanation:** The state has the option to pass through to the family the child support payments collected on behalf of families receiving cash assistance under the Temporary Assistance to Needy Families program (TANF). Starting in 2019, Maryland will pass through and disregard \$100 for one child and \$200 for two or more children.

The state does not pay a federal share of the excepted portion of any amount collected during a month if the state (1) pays the excepted portion to the family, and (2) the excepted portion is disregarded in determining the amount and type of assistance provided to the family. The excepted portion is up to \$100 per month, or in the case of a family that includes two or more children, up to \$200 per month.

**Citation:** 42 U.S.C. §§ 608(a)(3); 657(a)(1); 657(a)(6)(B); 657(c); OCSE-AT-07-05 (July 11, 2007).

#### 2. Option to Eliminate the Federal Tax Offset Exception in Current and Former Assistance Cases.

**Explanation:** The state has the option to eliminate the special distribution ordering rule for support collected through a federal tax refund, and treat these collections like collections from other sources. This option increases monthly support payments passed through to current assistance families and increases both monthly support and arrears paid to former assistance families. The state does not owe a federal share, subject to pass-through rules for current assistance families.

The basic child support distribution rule is that the state may keep collected child support collected on behalf of a family receiving TCA, but pays the support payments to families who no longer receive TCA. Under federal law, collected support is first applied to the monthly support due, then to arrears. For current assistance families, both the monthly support and arrears due are assigned to the state (up to the amount of cash assistance paid out). The state may pass this support through to the family, or hold it back it to satisfy state debt.

For former assistance families, the monthly support is owed to the family. Collections used to satisfy arrears are paid to the family first. Once family arrears are satisfied, the collections are used to satisfy the state debt. This is called the “family-first” distribution rule: Both the family

and the state have a claim to the money, but the family's arrears are paid off before the state debt.

However, there is a major exception to this family-first rule: Support collected from the noncustodial parent's federal tax refund is paid to the state to satisfy the state debt first, regardless of the family's TCA status. A federal tax refund is not applied to the monthly support due or to family arrears, even when the family no longer receives TCA, until the state debt is fully paid off.

**Citation:** 42 U.S.C. §§ 654(34); 657(a)(2); former 657(a)(2)(B)(iv); 657(c); OCSE-AT-07-05 (July 11, 2007).

### **3. Option to Pass-through Assigned Support in Former Assistance Cases**

**Explanation:** Even after a family stops receiving cash assistance, the state continues to hold a "conditional" assignment and keeps federal tax refunds to satisfy state debt. In addition, any support collected in excess of family arrears is applied to state debt. However, the state has the option to pass through all support payments to former assistance families, even if the support would otherwise be applied to state debt. The state does not owe a federal share on support paid to former assistance families.

**Citation:** 42 U.S.C. §§ 608(a)(3); 654(34); 657(a)(2); 657(a)(6)(A); 657(c) OCSE-AT-07-05 (July 11, 2007).

### **4. Option to discontinue all pre-1997 assignments.**

**Explanation:** Maryland has the option to discontinue pre-1997 assignments and treat future collections as if the amounts had never been assigned. As a condition of cash assistance, families are required to assign any rights to unpaid child support to the state. Before the federal law changed in 2006, families were required to assign the right to support accruing before the assistance period as well as during the assistance period. After 2006, assignments were limited to support accruing during the assistance period. Often, old uncollectible state debt balances includes assigned pre-assistance support.

**Citation:** 42 U.S.C. §§ 608(a)(3); 657(b)(1); 657(c); OCSE-AT-07-05 (July 11, 2007).

### **5. Option to discontinue post-1997 pre-assistance assignments in effect in 2009.**

**Explanation:** Maryland also has the option to discontinue assignments of support that accrued before the assistance period and were in effect before October 1, 2009.

**Citation:** 42 U.S.C. §§ 608(a)(3); 657(b)(2); 657(c); OCSE-AT-07-05 (July 11, 2007); OCSE-AT-07-05 (July 11, 2007).

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<sup>1</sup> Letitia Logan Passarella, *Maryland's Child Support Caseload: Examining Obligor Who Owed Support in July 2017*, University of Maryland School of Social Work, Ruth Young Center for Families & Children, 2018, accessed at: [https://familywelfare.umaryland.edu/reports1/cscaseload\\_obligors.pdf](https://familywelfare.umaryland.edu/reports1/cscaseload_obligors.pdf).

<sup>2</sup> Liana Fox, *Supplemental Poverty Measure: 2017*, Current Population Reports, P-60-265, Census Bureau, U.S. Department of Commerce, Sept. 2018, accessed at: <https://www.census.gov/content/dam/Census/library/publications/2018/demo/p60-265.pdf>.

<sup>3</sup> Natalie Demyan and Letitia Passarella, *Maryland Snapshot of Noncustodial Parents: Examining Who Owed Support in July 2017 and Baltimore Snapshot of Noncustodial Parents: Examining Who Owed Support in July 2017*, University of Maryland School of Social Work, Ruth Young Center for Families & Children, 2018, accessed at:

<sup>4</sup> Takayesu, 2013; Cancian, Meyer and Han, 2008; Carl Formoso, *Determining the Composition and Collectibility of Child Support Arrearages*, Washington State Department of Social and Health Services, 2003, accessed at: <https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/cv01prn.pdf>.

<sup>5</sup> Natalie Demyan and Letitia Passarella, *Maryland Snapshot of Noncustodial Parents: Examining Who Owed Support in July 2017 and Baltimore Snapshot of Noncustodial Parents: Examining Who Owed Support in July 2017*, University of Maryland School of Social Work, Ruth Young Center for Families & Children, 2018, accessed at:

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<sup>7</sup> Passarella, *Examining Obligor*, 2018.

<sup>8</sup> Melody Morales, *The Child Support Program Provides More Support to Families in 2016*, Office of Child Support Enforcement, Administration for Children and Families, U.S. Department of Health and Human Services, 2017, accessed at: <https://www.acf.hhs.gov/css/ocsedatablog/2017/12/the-child-support-program-provides-more-support-to-families-in-2016>.

<sup>9</sup> Office of Child Support Enforcement, *National Child Support Strategic Plan for 2015-2019* (archived), Administration for Children and Families, U.S. Department of Health and Human Services, accessed at: [https://www.acf.hhs.gov/sites/default/files/programs/css/national\\_child\\_support\\_strategic\\_plan\\_2015\\_2019.pdf](https://www.acf.hhs.gov/sites/default/files/programs/css/national_child_support_strategic_plan_2015_2019.pdf).

<sup>10</sup> Email to the author from Jamie Haskel, University of Maryland School of Social Work, dated May 8, 2019; Office of Child Support Enforcement, *Preliminary Report FY 2017*, Administration for Children and Families, U.S. Department of Health and Human Services, 2018, table P-39, accessed at: [https://www.acf.hhs.gov/sites/default/files/programs/css/fy\\_2017\\_preliminary\\_data\\_report.pdf?nocache=1529610354](https://www.acf.hhs.gov/sites/default/files/programs/css/fy_2017_preliminary_data_report.pdf?nocache=1529610354).

<sup>11</sup> Email from Jamie Haskel, May 8, 2018.

<sup>12</sup> 42 U.S.C. § 658a; OCSE Preliminary Report FY 2017, tables P-37 and P-38.

<sup>13</sup> 27% of all custodial parents nationally have incomes below the federal poverty level, according to the U.S. Census Bureau. 34% of custodial families participating in the child support program have incomes below the federal poverty level, while 65% have incomes below 200% of the federal poverty level. Elaine Sorensen, Arthur Pashi, and Melody Morales, *Characteristics of Families Served by the Child Support Program*, Office of Child Support Enforcement, Administration for Children and Families, U.S. Department of Health and Human Services, Nov. 2018, accessed at:

<https://www.acf.hhs.gov/css/resource/characteristics-of-families-served-by-the-child-support-iv-d-program-2016>; Timothy Grail, *Custodial Mothers and Fathers and Their Child Support: 2015*, Current Population Reports, Census Bureau, Economics and Statistics Administration, U.S. Department of Commerce, 2018, accessed at: <https://www.census.gov/library/publications/2018/demo/p60-262.html>.

<sup>14</sup> Custodial parent earnings represented 56% of the income of poor custodial families in 2013. Elaine Sorensen, "The Child Support Program is a Good Investment," *The Story Behind the Numbers* fact sheet series Office of Child Support Enforcement, Administration for Children and Families, U.S. Department of Health and Human Services, 2016, accessed at:

[https://www.acf.hhs.gov/sites/default/files/programs/css/sbtn\\_csp\\_focused\\_on\\_performance.pdf](https://www.acf.hhs.gov/sites/default/files/programs/css/sbtn_csp_focused_on_performance.pdf)

<sup>15</sup> Sorensen, Pashi, and Morales, 2018.

<sup>16</sup> Sorensen, 2016.

<sup>17</sup> In 1997, child support represented 5% and TANF 21% of the income of poor custodial families, compared to 10% for child support and 7% for TANF in 2013. Sorensen, 2016.

<sup>18</sup> Sorensen, Pashi, and Morales, 2018; Office of Child Support, *Preliminary Report FY 2017*, tables P-5, P-37, P-44.

<sup>19</sup> Sorensen, Pashi, and Morales, 2018; Grail, 2018.

<sup>20</sup> Lauren A. Hall and Letitia L. Passarella, *Maryland's Child Support Caseload: A Profile of Custodians, 2015*, University of Maryland School of Social Work, Family Welfare Research & Training, 2016, accessed at:

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- <sup>42</sup> 45 C.F.R. § 302.56(c).
- <sup>43</sup> 45 C.F.R. § 302.56(c)(1)(ii).and (iii).
- <sup>44</sup> 45 C.F.R. § 302.56(c)(1)(iii).
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- <sup>45</sup> RCW 26.19.065(2)(b); Minn. Stat. § 518A.42, subd. 1(b); Ohio.HB 366; see New York Office of Temporary and Disability Assistance website for an explanation of its self-reserve standard at: [https://www.childsupport.ny.gov/child\\_support\\_standards.html](https://www.childsupport.ny.gov/child_support_standards.html).
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- <sup>49</sup> Md. FAMILY LAW Code Ann. §§ 12-204(b).
- <sup>50</sup> Md. FAMILY LAW Code Ann. § 12.104.1.
- <sup>51</sup> Md. FAMILY LAW Code Ann. §§ 12-201(h); 12-204(b); Demyan and Passarella, *Actual Earnings*, 2018; Lauren A. Hall, Natalie Demyan, and Letitia Logan Passarella, *Maryland Child Support Guidelines: 2011-2014 Case-Level Review*, University of Maryland School of Social Work, Ruth Young Center for Families and Children, 2016, accessed at: <https://familywelfare.umaryland.edu/reports1/guidelines2016.pdf>.
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- <sup>60</sup> Devah Pager, Bruce Western, and Bart Bonikowski, "Discrimination in a Low-Wage Market: A Field Experiment," *American Sociological Review*, vol. 74(5), 777-799, Oct. 2009, accessed at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2915472/>.
- <sup>61</sup> See Cheryl Howell, "Imputing Income: Voluntary Unemployment is Not Enough," *On the Civil Side*, University of North Carolina School of Government, 2015 accessed at: <https://civil.sog.unc.edu/imputing-income-voluntary-unemployment-is-not-enough/>; RCW 26.19.071, sec. (6). Washington State also prohibits imputation when a parent is "unemployable" or unemployed due to child welfare reunification efforts.
- <sup>62</sup> Iowa Child Support Guidelines, Rule 9.11(4); Code of Virginia § 20-108.1.
- <sup>63</sup> 2017 Michigan Child Support Formula Manual, § 2.01(G).
- <sup>64</sup> *Flexibility, Efficiency and Modernization in Child Support Enforcement Programs*, 81 Fed. Reg. 93492, 93521 (Dec. 20, 2016), accessed at: <https://www.acf.hhs.gov/css/resource/final-rule-flexibility-efficiency-and-modernization-in-child-support-enforcement-programs>. See Office of Child Support Enforcement, "Guidelines," *Final Rule Fact Sheets*, Administration for Children and Families, U.S. Department of Health and Human Services, 2017, accessed at: [https://www.acf.hhs.gov/sites/default/files/programs/css/fem\\_final\\_rule\\_guidelines.pdf](https://www.acf.hhs.gov/sites/default/files/programs/css/fem_final_rule_guidelines.pdf).
- <sup>65</sup> 45 C.F.R. § 303.4.
- <sup>66</sup> Hall, Demyan, and Passarella, *2011-2014 Case-Level Review*, 2016.
- <sup>67</sup> 2017 Michigan Child Support Formula Manual, § 3.02.
- <sup>68</sup> 81 Fed. Reg. at 93521, *Comment and Response 3*.
- <sup>69</sup> Minn. Stat. 518A.35, subd. 2; Code of Virginia, § 20-108.2; DCF-150.04; Wisconsin Administrative Code, Chapt. DCF 150, Appendix C.
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