Imputed Income and Default Practices: The State Directors' Survey of State Practices Prior to the 2016 Final Rule

There's an old English proverb "You Catch More Flies with Honey than With Vinegar," and it translates well to child support: sometimes, you get better responses and more collections by working with parents rather than taking an action "against" them. It's another aspect of the concept of procedural justice – fundamental fairness requires that a parent have the opportunity and ability to do the right thing before consequences attach for the parent's failure to do what is required.

At the annual meeting of the National Council of Child Support Directors (NCCSD) in May 2015, the state IV-D directors had an extended discussion with the federal Office of Child Support Enforcement (OCSE) on imputation and order-setting practices. The Supreme Court's *Turner v. Rogers* decision had been issued a few years before and raised awareness of the procedural justice aspects of establishing and enforcing paternity and child support orders. The recent case of Walter Scott was on the minds of many who were worried about maintaining and improving public support for the child support program. (Scott was the South Carolina motorist who was shot and killed by a police officer while fleeing a traffic stop, apparently out of fear of arrest for being delinquent in his child support payments.) Perhaps most importantly, OCSE had issued a proposed rule the previous November with extensive proposals implicating the use of imputed income.

The discussion in 2015 led to the formation of an imputation workgroup within NCCSD, several additional conversations with OCSE, and ultimately a survey of the state IV-D directors. The survey (attached to this article) and the 53 responses received were extensive. The survey results are not available because they reveal state-specific assessments of a state's own practices, but portions of the results of the survey were presented at the 2016 National Child Support Enforcement Association (NCSEA) Policy Forum ("The Imputation Debate" and "With Great Power Goes Great Responsibility") and at the 2016 NCCSD Annual Meeting ("Connecting with Obligors to Reach Good Outcomes for Children"). Prior to finalization of the survey report, which is still forthcoming, OCSE issued a final rule addressing the use of imputed income as a last resort to fill any "evidentiary gaps."

<u>Definitions.</u> The survey began with a definitions section, with the hope of producing consistent responses. The definitions included "actual income," "imputed income," and "presumed income." The subtle difference between "presumed income" and "imputed income" is that the former is applied when a parent's income is unknown, as compared to the latter when a parent is known to be unemployed or underemployed (the December 2016 OCSE final rule and preamble simply use "imputed income").

<u>Establishment and Modification Procedures.</u> After opening with some demographic questions about each state's child support guidelines model and how those guidelines

are adopted, the survey asked a series of six questions focusing on whether an order is entered administratively or judicially, the method of first contact with the parent, the format of the communication between the state and the parent throughout the process (such as certified mail, regular mail, phone call, or e-mail), and the timeframes between each step. For actions to establish paternity and child support, the survey revealed:

- 23 states started with a request for appointment
- 10 states started with a request for information
- 7 states started with a notice of opening of a child support case
- 11 states started with a legal complaint
- 2 states started with varying approaches, depending on a parent's history of cooperation with the state in other child support cases

The intent of the survey in this area was to explore the extent to which states still served a legal complaint on a parent as a first contact, with the concern being that the parent would evade such service if he or she was notified informally of the existence of a child support case. While this may still be a concern, the survey results showed that the large majority of states discounted that risk in favor of contacting a parent in a less adversarial way ("catching flies with honey …"). For the 42 states that started with a more informal approach instead of a legal complaint, eight states would make another informal attempt if the parent did not respond to the first contact. The remaining 34 states proceeded with a legal action if there was no initial response.

Among the roughly 40 states that initially approach a parent more informally through a letter, a dozen still deliver the letter by certified mail or sheriff delivery rather than regular mail. The timeframes for taking action if there is no response to the initial contact varied widely by state, with ten days being close to the shortest and anything longer than 30 days being unusual.

Not surprisingly, state processes are geared toward stipulations and agreed orders, although eight states still require a hearing in paternity cases even for an agreed order. This could be viewed negatively as an unnecessary consumption of legal and judicial resources, or positively as a mandatory opportunity for the parent to be communicating with the child support program. It is also an occasion for the tribunal to assure that the parent understands the nature and extent of responsibility that accompanies a paternity adjudication or establishment of a support obligation.

This series of questions was actually posed three times, to cover cases 1) establishing paternity and child support, 2) establishing child support when parentage was not an issue, and 3) modifying a support obligation. The intent of the survey was to learn whether the process was more formal when paternity needed to be established, given the legal consequences to the child beyond the right to support from the parent, and whether procedures were less formal for modifying existing obligations. There were some states where there was a difference in the three types of cases, but the large majority used similar procedures for all three types of cases.

General Default Practices. For helpful sources of actual income, the most popular were quarterly or monthly wage reports (49 states) and employer questionnaires (47 states), and in-court testimony (42 states). Among "other" sources of income information identified in the survey responses were the Social Security Administration and other state assistance programs. The survey also confirmed that the practice of most states is to contact each parent as a source of income information about the other parent, but seven states indicated they did not rely on the other parent as a source of information.

The survey asked states whether a parent's failure to respond to the action led to more formal "discovery" efforts such as a subpoena or request for interrogatories. Thirty-two states said yes, formal discovery would be attempted if a parent did not respond, and 21 states said no.

If a parent neither responds nor objects to the state's action to establish or modify support, 43 states would be able to complete the action by default, although several states qualified their responses, indicating they would need some minimal income information to obtain an obligation by default. Six states indicated they could not or would not obtain a support order by default. Prior to moving forward in a case by default, states made a varying number of attempts to contact the parent, with eight states saying that if service was valid and a parent did not respond, the state would pursue a default without additional effort to contact the parent.

In some states, an objection to an obligation proposed by the state must be made in a formal manner to the court or tribunal. In others, as long as the parent has responded to the action by the state in some way, even if the objection was addressed to the state rather than the court or administrative tribunal, a default action is not permitted and the decision must be made on the merits of the action (and whatever income information may be available).

Often, a noncustodial parent is motivated to reveal actual income information after enforcement action has begun. The states were split on whether a default judgment could be revisited if a parent belatedly offers information regarding his or her actual income, with 30 states indicating there was some way of re-opening a default judgment, either under the standard rules of civil procedure for all judgments or as a modification.

For best practices, states identified various proactive outreach efforts such as automated phone calls regarding upcoming appointments and early intervention. Few states maintain statistics on imputation or default, but of the states revealing statistics or estimates on the volume of default judgments, the volume ranged from 20% to 30%, although some of those numbers included agreed orders for which a hearing was not held.

This section of the survey concluded with two subjective questions regarding the director's assessment of the state's point of view regarding imputation of income and default child support proceedings as compared to other civil litigation. Here is the first value question:

Which of the following statements more closely resembles your program's point of view regarding the procedure for establishing and modifying support obligations (sorry – you can only pick 1):

a. Child support is much like any other litigation. Even if a parent is not responsive after being properly served, IV-D is still required to obtain a minimum amount of evidence (such as a sworn affidavit of the custodial parent) regarding the parent's income or earning ability in order to present a case to the court or administrative authority to establish or modify a child support obligation.
b. For child support cases, it is sufficient to present a case to establish or modify a support obligation if IV-D has no evidence of the parent's actual income or earning ability but the parent has not responded to the action nor claimed any lack of ability to work at least a minimum number of hours per week at minimum wage.
c. Unlike typical litigation, the procedures required for the child support program in seeking orders and in imputing income are dictated by specific state laws and statutory presumptions (please include copies).

The survey results indicated that 22 states selected response A – even if no objection is made, a state must produce a minimum amount of evidence of income in order to obtain a support order. Eighteen states selected response B – an order can be obtained in the absence of information about actual income or earning ability if the parent has not responded or claimed a disability or other inability to earn. A follow-up question confirmed that state courts are generally willing to assume that a parent is able to work, in the absence of evidence to the contrary, and establish or modify a child support obligation on that basis using presumed income. Only four states said no to that question.

The second value question was the flip-side of the same coin comparing child support actions to other civil litigation.

Which of the following statements more closely resembles your program's point of view regarding the procedure for establishing and modifying child support obligations (sorry – you can only pick 1):

a. Child support is much like any other litigation. IV-D seeks an order based on the best evidence available and relies significantly on the parent's response to IV-D's allegations. Once a parent is properly notified of the pending action, if the parent fails to respond or fails to provide needed income information, then the parent assumes the risk of an unfavorable outcome. In the child support context, this means a child support obligation that is based on presumed income and might be different than warranted by the parent's actual information if it had been known by IV-D from other sources or supplied by the parent. In other words, a parent's failure to participate in the action will not block the action from moving forward.

b. The nature of child support cases, including long-term collectability, is such that the IV-D program should look past a parent's lack of cooperation or response and make a greater effort to obtain actual income information than is typically expected of from the litigants.
c. Unlike typical litigation, the procedures required for the child support program in seeking orders and in imputing income are dictated by specific state laws and statutory presumptions (please include copies).

Twenty-nine states selected response A to this question, and 11 states selected option B. As with the previous question on program philosophy, with only one exception, the survey responses indicated that the state's courts were supportive of the agency's approach.

Imputation Methodology. The survey next asked several questions focusing on imputation methodology. When asked if a state used imputed income as a last resort, 49 states said yes and only three states said no. Given the genesis of the study, this response was significant, at least from the perspective of official state policies.

With regard to the formula for either presumed income (unknown) or imputed income (deliberately unemployed or underemployed), states usually applied either the federal or state minimum wage for a certain number of hours each month, with only a few states using a statewide average wage. In some states, ability to impute income depended on whether the parent's unemployment was voluntary or involuntary. For considering income potential for a parent's occupation or job skills, the predominant source of information identified by states is the state's workforce or labor agency, for both statewide earnings information and previous earning information for the parent.

States varied in their approaches to avoid imputing income, with the responses centering on a common theme of proven inability to earn income. Frequently-cited examples include:

- Incarceration
- Health problems
- Involuntary job loss
- Care for a young child
- Diligent but unsuccessful job search
- Receipt of means-tested public assistance
- Other proven inability to earn income in the amount proposed to be imputed

This section of the survey concluded with a number of questions regarding minimum child support obligations.

- Zero obligation – 42 states confirmed there was a possibility for a zero obligation, frequently as a deviation from guidelines. The reasons cited most often for a zero obligation were incarceration, receipt of SSI, shared parenting, and receipt of

Social Security disability benefits where the derivative benefit for the child exceeds the guideline amount of support.

- Low income adjustment – 36 states confirmed there was a low-income adjustment in their child support guidelines, most often referred to expressly as a "self-support reserve," but other times described simply as a deviation or rebuttal criterion.

- Minimum obligation – 34 states confirmed there was a minimum obligation, with the most common amounts being $50 or $100 per month, but the states setting a minimum obligation also had some exceptions for incarceration, health problems, receipt of SSI, or if the parent was a minor attending high school.

Scenarios. The survey concluded with five common scenarios to obtain practical examples of each state's responses to the questions previously asked in the survey.

1. Unresponsive parent who signed VPA in hospital – what steps are taken to discern income if actual income is not available? Thirty-four states imputed in some way based on minimum wage and a certain number of work hours. Only four states would use actual only with no imputation.

2. Malingerer with no known disability or work history who signed VPA in hospital – what is the approach to imputing income? Forty-five states said definitively they would impute, with the vast majority based on minimum wage and 40 hours per week. Only four states said they would not impute.

3. Incarcerated obligor – does the state impute income in establishing an obligation? What if the parent already had an obligation before being incarcerated? Forty-one states would NOT impute if no order was established before incarceration. Of the 41 states that would not impute, 26 would not establish an order; the remainder would obtain a zero or minimal order, with a handful of states scheduling an increase based on minimum wage after a minimum period following release. Seven states would impute (five of which at minimum wage full time), and four more states might impute. If the parent had an obligation prior to incarceration, 10 states would modify based on incarceration and 20 states would modify if there was a request. For those states that modify based on incarceration, most would pursue a zero or minimum order, with some also reverting to the prior obligation automatically upon release.

4. Former incarcerated parent needs a clean start, but has poor job prospects despite good faith job searches: 17 states would impute, 15 may not, and 23 would not impute. Overall, states take a variety of approaches in this scenario, and decisions are primarily based on the parent's circumstances and the court's judgment. A few states offer a lower obligation for a limited time following release.

5. Parent requests downward modification due to health problems – what kind of documentation is required? Given sufficient documentation, 35 states would initiate an action to modify downward, whereas 15 states would expect the parent to initiate the modification action.

Conclusion. As noted in the introduction to the NCCSD survey, the state directors were asked to describe their general rules and their preferred or endorsed practices. At the time the survey was developed, many state directors (perhaps a large majority) already perceived their state policies and order-setting procedures as being consistent with a conservative use of imputed income and default orders. After all, the federal performance measure for current support collections discourages states from setting orders at artificially high, and hence uncollectible, levels.

Perhaps the most telling result of the survey was that 49 states indicated that imputation was used "as a last resort," which is the exact phrase ultimately used by OCSE in the preamble to the December 2016 final rule. This suggests significant agreement, at least in principle, on the proper role of imputed income in child support. Whether those policies are followed "in the trenches" is another matter, and likely only something that can be addressed in response to the final rule on a state-by-state basis.

The survey results also revealed that a significant majority of states assume the risk of a noncustodial parent evading a legal action by contacting the parent informally prior to commencing a legal action to establish paternity and support. Although the risk today is far less than decades ago with the array of locate tools available to find parents, this also suggests to this author, perhaps optimistically, that many parents deserve the benefit of the doubt in terms of taking responsibility for their children.

The survey captures the use of default judgments and imputation of income prior to the 2016 final rule. The implementation schedule in the final rule gives states up to five years (the first quadrennial guidelines review that commences more than one year after the effective date of the rule) to make the changes necessary to comply with the rule. It would be interesting to see how the results of the survey might change in that time.

NCCSD Survey on State Imputation and Default Practices

Introduction

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

Definitions

"Actual income" means known income as supported by sufficient documentation or testimony to be used by the court or administrative authority in establishing or modifying a child support obligation. The phrase does not include imputed income or presumed income.

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

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

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

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

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

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

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

State Demographic Information

1. Name of State

2. Name, email, and phone number of the person that NCCSD may contact with any follow-up questions

3. What guidelines model does your state use?

4. How are your child support guidelines adopted?
    a. State law
    b. Court rule
    c. Child support agency, including IV-D-sponsored committees
    d. Outside child support commission
    e. Other (please explain)

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

Establishment Procedures (paternity and child support)

5. Assuming an agreed order establishing paternity and a child support obligation, is the order entered by the agency with the force and effect of law (administrative) or established through a stipulation that is submitted and signed by a court (judicial)? For judicial orders, is a hearing required even for agreed orders?

6. When attempting to establish paternity and a child support obligation, is the first contact with a parent:
    a. A legal "complaint"
    b. A notice of hearing
    c. A request for an appointment or conference with the child support program
    d. A request for response with income information, or
    e. Other (please explain)

7. When the child support agency first contacts a parent whose income information is needed to establish paternity and a child support obligation, describe the initial attempted method of communication:
    a. Regular mail
    b. Email
    c. Phone call
    d. Hand-delivered by sheriff or other process server
    e. Certified mail, return receipt requested
    f. Other (please explain)

8. How long after the initial effort to communicate in Question 7 does your agency wait before taking the next step?

9. If a parent has not responded to the initial effort to communicate, the next step is made by:
    a. Regular mail
    b. Email
    c. Phone call
    d. Hand-delivered by sheriff or other process server
    e. Certified mail, return receipt requested
    f. Motion to court for default judgment
    g. Other (please explain)

10. Does your state contact both parents, if needed, to try to obtain information about a parent's income?

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

11. Assuming an agreed order establishing a child support obligation (paternity is not at issue), is the order entered by the agency with the force and effect of law (administrative) or established through a stipulation that is submitted and signed by a court (judicial)? For judicial orders, is a hearing required even for agreed orders?

12. When attempting to establish a child support obligation, is the first contact with a parent:
    a. A legal "complaint"
    b. A notice of hearing
    c. A request for an appointment or conference with the child support program
    d. A request for response with income information, or
    e. Other (please explain)

13. When the child support agency first contacts a parent whose income information is needed to establish a child support obligation (paternity is not at issue), describe the initial attempted method of communication:
    a. Regular mail
    b. Email
    c. Phone call
    d. Hand-delivered by sheriff or other process server
    e. Certified mail, return receipt requested
    f. Other (please explain)

14. How long after the initial effort to communicate in Question 13 does your agency wait before taking the next step?

15. If a parent has not responded to the initial effort to communicate, the next step is made by:
    a. Regular mail
    b. Email
    c. Phone call
    d. Hand-delivered by sheriff or other process server
    e. Certified mail, return receipt requested
    f. Motion to court for default judgment
    g. Other (please explain)

16. Does your state contact both parents, if needed, to try to obtain information about a parent's income?

Modification Procedures

17. Assuming an agreed order modifying a child support obligation, is the order entered by the agency with the force and effect of law (administrative), established through a stipulation that is submitted and signed by a court (judicial), or depend on the type of order (administrative or judicial) in which the original obligation was established? For judicial orders, is a hearing required even for agreed orders?

18. When attempting to modify a child support obligation, is the first contact with a parent:
    a. A legal "complaint"
    b. A notice of hearing
    c. A request for an appointment or conference with the child support program

d. A request for response with income information, or
e. Other (please explain)

19. When the child support agency first contacts a parent whose income information is needed for a potential modification of a child support obligation, describe the initial attempted method of communication:
    a. Regular mail
    b. Email
    c. Phone call
    d. Hand-delivered by sheriff or other process server
    e. Certified mail, return receipt requested
    f. Other (please explain)

20. How long after the initial effort to communicate in Question 19 does your agency wait before taking the next step?

21. If a parent has not responded to the initial effort to communicate, the next step is made by:
    a. Regular mail
    b. Email
    c. Phone call
    d. Hand-delivered by sheriff or other process server
    e. Certified mail, return receipt requested
    f. Motion to court for default judgment
    g. Other (please explain)

22. Does your state contact both parents, if needed, to obtain information about a parent's income?

General Default Practices

23. What sources of actual income information are used by the child support agency, in addition to any response from the parent, when developing a proposed child support obligation (establishment or modification)?
    a. Employer questionnaire
    b. Custodial parent
    c. Previous state tax return
    d. Quarterly or monthly wage
    e. Third-party verifier (such as the Work Number)
    f. In-court testimony
    g. Published wage survey
    h. Other (please explain)

24. If the parent fails to respond, do you issue a subpoena, interrogatories, motion to compel, or other formal “discovery” effort prior to taking the next step?

25. Does your jurisdiction enter judgments or modifications by default at the request of a party if no one responds or opposes the motion?

26. If the answer to Question 25 is yes, how many times will your child support agency typically try to contact the parent, including the initial attempt, before moving forward with a request for a default order? Is service of process required before requesting a default order?

27. If a parent responds to IV-D with a question or disagreement with the calculation but does not provide income information or make an “appearance” in the court action, will your agency proceed to default based on presumed income or request a court hearing?

28. If a parent belatedly offers to provide income information AFTER a default order is entered, does your state give the parent that opportunity? If so, for how long is that option open to the parent, and can it be retroactive? Is this option available only for administrative orders or judicial as well?

29. Has your state taken any steps you would consider “best practices” to reduce the number of default orders? Please explain.

30. Has your state compiled any statistical information that you can share about the portion of obligations established or modified by agreed orders, default orders, or contested orders? If not, can you give an estimate?

31. Which of the following statements more closely resembles your program’s point of view regarding the procedure for establishing and modifying support obligations (sorry – you can only pick 1):
    a. Child support is much like any other litigation. Even if a parent is not responsive after being properly served, IV-D is still required to obtain a minimum amount of evidence (such as a sworn affidavit of the custodial parent) regarding the parent’s income or earning ability in order to present a case to the court or administrative authority to establish or modify a child support obligation.

b. For child support cases, it is sufficient to present a case to establish or modify a support obligation if IV-D has no evidence of the parent's actual income or earning ability but the parent has not responded to the action nor claimed any lack of ability to work at least a minimum number of hours per week at minimum wage.
c. Unlike typical litigation, the procedures required for the child support program in seeking orders and in imputing income are dictated by specific state laws and statutory presumptions (please include copies).

32. Do you think that your courts are generally willing to assume that a parent is able to work, in the absence of evidence to the contrary, and establish or modify a child support obligation on that basis using presumed income?

33. What do you think is the duty of the child support program, on behalf of the state, to prove that a parent was given notice and the opportunity to be heard?

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

35. Do you think that your courts are generally accepting of your agency's approach in Question 34?

Imputation Methodology

36. If your agency is attempting to establish a child support obligation of an unresponsive parent, is it fair to say that you use presumed income as a last resort?

37. What kind of formula is used in your state to determine the appropriate amount of presumed income when establishing a new obligation (e.g. $7.25 per hour x 40 hours per week)? Is the formula different for modifications (e.g. deemed 10% annual increase in income)?

38. If your state considers the parent's occupation or job skills, what sources of data are used to determine an appropriate amount of presumed income?

39. For an able-bodied parent who is underemployed or unemployed, what kind of formula is used to impute income to the parent (e.g. $7.25 per hour x 40 hours per week)?

40. What are the grounds in your state, if any, for a parent to avoid the imputation of income in the amount in Question 39 as part of the base calculation under the child support guidelines?

41. What are the grounds in your state, if any, for a parent to avoid the imputation of income in the amount in Question 39 as a deviation from the amount of support determined under the child support guidelines?

42. Will your state impute or presume income for the custodial parent?

43. Can obligors have a zero-dollar obligation in your state and, if so, under what circumstances?

44. Does your state provide for a low-income adjustment in your child support guidelines, such as a self-support reserve? If so, how are the adjustments applied or made in a case?

45. Is there a minimum support obligation in your state? If so, how is it applied, what is it, and are there exceptions to the minimum obligation?

46. If there is a minimum obligation in your state, is it applied only when there is no income information available, or is it also applied when the child support program has some income information?

Scenario 1 – Unresponsive Parent

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

Scenario 2 – Malingerer

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

Scenario 3 – Incarcerated

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

Scenario 4 - Needs a Clean Start

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

Scenario 5 – Health Problems

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

James C. Fleming is the director of the Child Support Division of the North Dakota Department of Human Services, treasurer of the National Council of Child Support Directors (NCCSD), and member of the board of directors of the National Child Support Enforcement Association (NCSEA). Jim is co-chair of NCSEA's Policy and Government Relations Committee and is a member of the editorial committee for the NCSEA Child Support CommuniQue. Jim chaired the NCCSD committee on national imputation and default order establishment practices and, most recently, chairs the NCCSD workgroup on implementation of the 2016 OCSE final rule.

Jim was the recipient of the 2009 Family Support Council Program Awareness Award and the 2004 Freedom Award from the North Dakota Newspaper Association. He also serves on the board of directors of the North Dakota Newspaper Association Education Foundation. He earned his Bachelor of Arts degree from the University of North Dakota in 1989 and his Juris Doctorate from Notre Dame Law School in 1993. A second-generation attorney and native of Cavalier North Dakota, Jim and his wife Terri live in Bismarck and are blessed with four daughters. In his spare time, Jim likes to sing, cook, garden, follow UND hockey, and do woodworking.