

The Child Support Guidelines in Practice

2020–2022 Child Support Policy Research Agreement: Task 9

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I. INTRODUCTION

Wisconsin, like all states and as required by the federal government, provides presumptive child support guidelines for court officials to use when setting child support order amounts. Wisconsin's guidelines are designed to take into consideration an array of factors related to family circumstances, including parents' financial circumstances. The guidelines are intended to ensure that noncustodial parents contribute to the well-being of children, and to help ensure that parents with similar circumstances are treated consistently in the determination of child support order amounts (Pirog & Ziol-Guest, 2006; Venohr, 2013). These guidelines are presumptive; court officials may set orders at an amount that is higher or lower than the guidelines, if the court determines that the guidelines yield an amount unfair to the child or a party to the case. Wisconsin state statute provides court officials with several factors that could warrant a deviation from the guidelines, and also provides judicial discretion to take into account other relevant factors not accounted for by statute.

Over several decades, the Institute for Research on Poverty (IRP) has conducted quantitative analyses examining consistency of child support order amounts with the Wisconsin child support guidelines, drawing on the Wisconsin Court Record Data (CRD). While providing crucial insights into patterns related to use of the guidelines, these analyses are also constrained in their ability to shed insights into the reasons court officials deviate from the guidelines, as they reflect reasons captured within the written court record only. The current study aims to help inform our understanding of the circumstances under which court officials find it appropriate to order an amount that differs from the amount yielded by the guidelines. In doing so, we leverage alternate sources of data: interviews with court officials and observations of court hearings. We focus on describing the perspectives articulated by court officials, and the range of factors that

appear salient in actual court proceedings. In doing so, we aim to shed light on some of the factors contributing to the outcomes that much of IRP's past work has documented. Learning more about how the guidelines are used, and the variety of circumstances under which deviations occur, could help improve understanding of the alignment between Wisconsin's guidelines and the circumstances court officials encounter when setting orders in practice.

II. BACKGROUND AND POLICY CONTEXT

A. The Role of Child Support Guidelines

Child support is an important resource for many children. In 2020, nearly 30% of children in the United States lived apart from a parent (Hemez & Washington, 2021). Children in custodial parent families are about three times as likely to live in poverty than children in households where both parents are present (Grall, 2020). When paid, child support helps to support the financial well-being of children and can act as an important tool for reducing child poverty (Cuesta & Meyer, 2018). Consistent receipt of child support helps custodial parents to cover regular costs associated with children's needs, such as food, shelter, transportation, and clothing (Ha et al., 2010).

A series of federal regulations enacted during the 1980s required all states to establish child support guidelines, which provide a consistent basis for determining child support order amounts. These regulations require that states use guidelines as a rebuttable presumption; that is, the guidelines are expected to be used, rather than advisory, but states must provide court officials with criteria for deviating from the guidelines and take into account the best interests of children (Child Support Enforcement Amendments of 1984; Family Support Act, 1988; Venohr, 2013). These requirements aim to promote fairness across cases, by providing a consistent, predictable, and streamlined basis for orders. They limit the use of judicial discretion, yet allow

for flexibility in circumstances when the guidelines yield an amount determined to be unfair (Brito, 2012; Pirog, Klotz & Beyers, 1998). States are responsible for implementing and periodically reassessing their guidelines within these federal requirements.

States determine what model to use as the basis of their guidelines and what criteria to use for guidelines deviations, yet state approaches to implementation vary. For example, most states use the Income Shares model, which takes both parents' income into account when setting order amounts. A minority of states use a Percentage of Income model, which bases the order amount on the paying parent's income alone. Other models also exist. In general, models share the underlying principle of "continuity of expenditures," which posits that children's resources should remain the same after relationship dissolution as they would have received if the parents had remained in a relationship (Venohr, 2013).

B. Child Support Guidelines and their Use in Wisconsin

In Wisconsin, all child support orders are set by the judiciary (Gentry, 2017). Judges or, in many counties, family court commissioners appointed by a county's circuit court, facilitate child support court proceedings (Wisconsin Court System, 2022; Wis. Stat. 767.13(1)(b)).

Wisconsin's child support guidelines are explicated as Chapter 150 of the Wisconsin administrative code.¹ They encompass a wide range of family situations and child support payor circumstances. They include circumstances in which both parents have court-order placement of at least 25% per year (shared placement cases), cases when this placement threshold is not met (non-shared cases), and cases involving two or more children in which each parent has

¹https://docs.legis.wisconsin.gov/code/admin_code/DCF/101_199/150. The Wisconsin Department of Children and Families makes publicly available a set of tools that correspond with the guidelines delineated within the administrative code. These tools include worksheets and calculators that allow users to enter information to determine the order amount yielded by the guidelines: <https://def.wisconsin.gov/cs/order/tools>.

placement for one child (split placement cases). They also address other special circumstances, including parents who have prior orders for children in other families (“serial-family” cases), payors with high or low incomes, and provide direction on combining orders across guidelines. Chapter 150 specifies gross monthly income as the basis for the order amount, and specifies that the court may impute income “in situations where the income of a parent is less than the parent’s earning capacity or is unknown... at an amount that represents the parent’s ability to earn (DCF 150.03(3)).” The statute further describes that if information about a parent’s actual income or ability to earn is unavailable the court may impute income based on minimum wage (\$7.25) at 35 hours per week of work. We provide additional detail about the guidelines most relevant for this report below:

- **Shared placement.** DCF 150.035(1) states that the shared placement formula may be used when “both parents have court-ordered periods of placement of at least 25% of 92 days a year” and also includes provisions for “equivalent care.”² Per the code, both parents’ incomes may be used in calculating the order amount in a shared placement case.
- **Nonshared placement.** DCF 150.035(2) specifies that when the conditions specified in the administrative code for use of the shared placement formula are not met, and parents do not meet the code’s criteria for use of the high- or low-income guidelines, the child support order amount is set based on a percentage of the paying parent’s income that starts at 17% of gross income for one child, and goes up to 34% for five or more children.
- **“Serial families.”** When a parent has child support orders for more than one family, the income used to calculate order amount for the case established later (the “subsequent family (DCF 150.041)”) is adjusted based on the amount of the previous obligation. Chapter 150 provides directives for application in instances when the previous order is a shared placement order (in addition to nonshared placement prior orders).
- **Low-income payors.** Wisconsin provides an alternate schedule of low-income guidelines for payors with real or imputed incomes between 75% and 150% of the federal poverty guidelines. It is updated each year to reflect changes in federal poverty guidelines (DCF 150 Appendix C). The schedule begins at 11% for one child and goes up to 22% for five

²Equivalent care is further defined in DCF 150.01(10) as “a period of time during which the parent cares for the child that is not overnight, but is determined by the court to require the parent to assume the basic support costs that are substantially equivalent to what the parent would spend to care for the child overnight. Blocks of time with the child of at least 6 hours may be considered the equivalent of a half-day if a meal is provided during that time period. Two half-day blocks may be considered the equivalent of an overnight.”

or more children. For one child, at the lowest income level (monthly income up to \$849), the current guidelines yield an order amount of \$95 per month. DCF 150.04(4)(b) describes that courts may order an amount below these thresholds, “If a payer’s monthly income available for child support is below 75% of the federal poverty guidelines, the court may order an amount appropriate for the payer’s total economic circumstances.”

- **High-income payors.** DCF 150.05 provides reduced percentages for the portion of a paying parent’s income that exceeds \$7,000 per month.

Wisconsin statute also allows for deviations under several conditions related to the needs of children and resources available to parents. Per statute, courts may deviate from the amount of child support determined by the guidelines upon request by a party, if the court determines the amount “by the greater weight of the credible evidence... is unfair to the child or to any of the parties” considering the following specific factors (Wis. Stat. 767.511(1m)):

- The best interests of the child;
- Financial resources of the child; financial resources of both parents, and each party’s basic self-support needs;
- Each parent’s earning capacity;
- Maintenance received by either party;
- The needs of people other than the child to whom a party has a legal support obligation;
- The standard of living the child would have had, had their parent’s marriage not ended;
- The “desirability” that the payee support “remain in the home as a full-time parent”;
- Childcare costs, when payees outside of the home, or “or the value of custodial services performed by the custodian if the custodian remains in the home”;
- Children’s education and physical, mental or emotional health needs, including health insurance;
- Awards of “substantial periods of physical placement to both parents”;
- Tax consequences to parties; and
- “Extraordinary” travel expenses incurred when exercising rights to physical placement.

The statute also allows court officials to deviate in response to “any other factors which the court in each case determines are relevant” (Wis. Stat. 767.511(1m)(i)), and directs court officials to record, verbally or in writing, the reason for the deviation. If parents mutually agree (stipulate) to an amount of child support that differs from the guidelines amount, they can ask the court to consider ordering the alternate amount; after an order is set, parents can file a stipulated agreement with the courts for review, on their own or with the help of an attorney; or request a review by their child support agency (Wisconsin Department of Children and Families, 2022). Families who receive certain public benefits may be constrained in their abilities to stipulate to zero dollar or low order amounts due to federal or state rules requiring their cooperation with child support (Gentry, 2017; Selekman & Holcomb, 2018); of particular relevance for this study, Wisconsin requires cooperation with child support for parents who receive Wisconsin Shares (childcare assistance) in situations when parents live apart, or parents are not married and paternity has not been established (Wisconsin Department of Children and Families, 2019).

C. Previous Research

IRP has conducted previous studies related to use of the child support guidelines, typically using quantitative methods and drawing on the Wisconsin Court Record Data (CRD). The CRD is a sample of child support-related cases filed in 21 Wisconsin counties. Some previous work has examined use of guidelines in specific circumstances, such as when children have disabilities (Costanzo, 2021). Hodges and Vogel (2019) explored recent changes to child support guidelines for low-income parents by reviewing documentation of changes to guidelines in states outside of Wisconsin and modeled order amounts for different types of low-earning obligors nationwide. Most relevant for the current study, IRP has drawn on the CRD to prepare a

series of reports examining use of the child support guidelines in Wisconsin over several decades (Hodges and Cook, 2019; Bartfeld et al., 2015; Cook and Brown, 2013).

Most recently, Hodges and Cook (2019) examined use of the guidelines in divorce and paternity cases entering the courts in the 21 CRD counties between 2010 and 2013. They examined the extent to which guidelines were followed, characteristics of cases where they were not, and looked for explicit reasons within the court record for deviations. The authors found modest consistency with the guidelines (with approximately 65% of classifiable cases yielding an amount consistent with the guidelines) and found that consistency with the guidelines increased relative to previous analyses of older cases. The authors found that consistency with guidelines varied considerably by case characteristics. The authors also found stipulated decisions, and cases in which both parents had legal representation at court (or the father only had legal representation), less likely to be consistent with guidelines. Regarding reasons for deviations, the authors found that most of the time records did not contain a written reason for deviations. The authors categorize the provided reasons into two main groups: reasons related to parent earnings or employment (such as a parent having high income, low income, or employability issues) or reasons related to households costs (such as child care, health insurance, or continued contributions to a mortgage).

Overall, existing research has provided substantial insight into the extent to which guidelines are followed, and the extent to which this differs according to specific factors that are documented in court records. At the same time, the processes and considerations underlying these outcomes remains opaque. Our study seeks to offer insight on the perspectives and processes contributing to the outcomes documented in past work.

III. THE CURRENT STUDY

This study aims to help inform our understanding of the circumstances under which court officials find it appropriate to order an amount that is different from that yielded by the guidelines formulas, by leveraging alternate sources of data. First, we conducted interviews with court officials in three Wisconsin sites to understand their experiences and perspectives. Next, we observed order establishment and modification hearings at these sites, to obtain an enhanced understanding of the processes through which order amounts are determined, and to gather information about the context surrounding decisions, including those that might go beyond the written record. Our analysis is designed to shed light on the previously undocumented perspectives and considerations that underlie outcomes; it is not designed to provide quantitative data on prevalence of deviations or the relative importance of specific reasons for deviations.

It is important to note that our analyses focus on court officials' experiences using guidelines and their experiences and perceptions of circumstances when the guidelines formulas yield an amount that the court finds unfair to a party on a given case. There are many reasons court officials might find it appropriate to order an amount that isn't consistent with the guidelines, and statute explicitly allows them to do so. This analysis focuses on learning more about those reasons.

A. Research questions

Our study is guided by the following research questions:

- **RQ.1:** To what extent do child support court officials perceive the guidelines as useful, relevant, and appropriate tools for setting child support order amounts?
- **RQ.2:** Under what circumstances do court officials deviate from the state guidelines, upward or downward, and under what circumstances do they follow them?
- **RQ.3:** To what extent, and how, do court officials perceive that their guidelines use has changed over time—generally and specifically during the COVID-19 pandemic?

- **RQ.4:** To what extent, and how, do court officials perceive that the reasons leading to deviations from guidelines have changed over time—generally and specifically during the COVID-19 pandemic?
- **RQ.5:** What role do state and federal guidance play in court officials’ use of, and deviations from, the guidelines? What, if any, additional guidance or clarification could help inform court officials’ decision-making on use of the guidelines?

We address all five research questions through interviews with court officials. For the second question, we augment court official insights from interviews with observations of court hearings.

B. Methods

1. *Sample and Recruitment*

We invited three counties to take part in data collection as study sites, in consultation with the Wisconsin Department of Children and Families (DCF). To facilitate variation in the experiences of counties included in the sample and characteristics of families within counties, we selected counties that differed in size and region as defined by Bureau of Regional Operations (BRO) within DCF. Each county came from a different region within the state’s five regions, and included one small, one medium, and one larger county. Sites varied in sociodemographic characteristics of the overall county population, including median household income, poverty rates, educational attainment, and heterogeneity by race and ethnicity.

We conducted internet research to identify a court official (judge or family court commissioner) who appeared to be involved in child support court hearings within each site and initiated outreach to that person via email to set up an initial meeting describing the study; this outreach was preceded by an advance email foreshadowing the communication from a member of the Bureau of Child Support (BCS) leadership team. In the initial meeting, we described the study and its components and gathered logistical information about order establishment and modification hearings within the county. In each instance, the court official we initially contacted

was also the official who regularly hears the order establishment and modification docket within the county (barring rare circumstances such as emergencies). All three officials agreed to participate in the study by completing an interview with the study team and allowing the study team to observe their court's establishment and modification hearings.

2. *Data Collection and Analysis*

a. *Interviews*

Within each site, data collection began with an interview with the selected court official (n=3). Interviews occurred between April and July of 2022 by Zoom, using semi-structured interview guides. The guides contained questions about officials' general perceptions of the child support guidelines, including perceptions of their usefulness, the extent to which they yield fair amounts, and situations in which officials perceive them to work more or less well; processes for determining child support order amounts; situations in which officials find deviations from the guidelines appropriate; how state or federal guidance shapes officials' approaches to using the guidelines; and changes to use of the guidelines and reasons for deviating over time, broadly as well as during the COVID-19 pandemic. Interviewee characteristics were also gathered in interviews. Officials had a range of experience serving in their roles, spanning several years to several decades. Two officials identified as female and one as male; all identified as White.

Interviews lasted 75 to 90 minutes. All study activities were approved and overseen by the University of Wisconsin–Madison's Institutional Review Board. Interview participants provided consent to take part in the study and permission to audio-record their interview. Interviews were professionally transcribed prior to coding and data were analyzed thematically. Each member of the study team coded each transcript independently, then reviewed initial coding and collaboratively identified themes (Braun & Clarke, 2006).

b. *Observations*

After the interview, the study team arranged to observe the court official’s order establishment and modification hearings within the site.³ Court hearings varied in format, with some hearings occurring virtually and others occurring in person; the research team attended both types of hearings. In counties with Zoom hearings, this format was being offered long-term (rather than a short-term pandemic response), with a goal of reducing barriers to attendance for parents. In Zoom-based hearings, observers muted themselves and turned off cameras.

Observations occurred between May and August 2022. Two to three observers generally attended each hearing. We observed orders set through paternity establishments or divorce judgments, as well as requests for order modifications, brought by the state or either party. In two counties, establishment and modification dockets occurred weekly; we attended the weekly dockets until we observed the target number of cases. In the small county, child support agency cases of all types were heard at a monthly docket; we observed these dockets, as well as other hearings potentially related to child support scheduled outside of the docket on that court official’s circuit, in an effort to reach targets, including, in some instances, divorce hearings. We aimed to observe 60–75 cases across the three sites resulting in establishment or modification of an order, and ultimately observed 62 cases for inclusion in our analysis (Table 1).

Table 1. Total observations and yield

	Total
Total court proceedings observed	125
Court proceedings resulting in an order establishment or modification	62
Yield (eligible/total observed)	49.6%

³In most instances, we observed court hearings of the official we interviewed. On one hearing date, we observed (with the permission of both court officials in the site) hearings for a substitute court official filling in for the primary official. These represented 25% of the observations within the site.

Most hearings we observed that didn't result in an order for support being established or modified occurred in the county whose monthly docket included a more expansive set of child support-related cases. Predominantly, cases that did not result in an order were instances in which the hearing was postponed (for example, because parties needed more time or hadn't been properly served) or dismissed, or the hearing was related to matters other than establishing or modifying an order for current support (such as a contempt issue, jurisdictional matter, or custody and placement matter). In some hearings, child support was held open, either for discussion at an upcoming hearing or when parents established at the outset (prior to discussion about what a child support guidelines amount would yield) that they did not want an order.

Observers took notes throughout the observational process. These notes were used to provide qualitative, contextual information about the order establishment and modification hearing process—to describe the process by which courts obtained the information that they need to determine child support, and the context surrounding reasons why order amounts might differ from guidelines formulas. The observation team coded notes independently, then collaboratively identified relevant themes. For observations in which orders appeared to differ from the amount that a guidelines formula would have yielded, these notes were further coded into categories. After hearings, the team used an internally-developed observational tool to categorize activities and case attributes observed in hearings. The tool provided categories for describing, when information was observable, case and party characteristics; factors affecting the order, such as placement arrangements, number of children, and the income basis; the order amount; whether that amount was higher or lower than the guidelines; and when differences occurred, factors discussed related to the order amount. Observers did not record names of parties, case numbers, or other personally identifying information discussed in hearings; as such, observations were

limited to what was observed within the context of the hearing and not compared against court records. As a data quality check, observers debriefed after each hearing to discuss observations and compare recorded responses. Observation data was then entered into Qualtrics and descriptive statistics were generated using STATA12.

IV. FINDINGS

In this section, we present findings related to our study's research questions. We first share findings from interviews with court officials. Quotes have been lightly edited for clarity and brevity. We then present key findings related to courtroom observations.

A. Interview Findings

1. General Perceptions of Guidelines

The court officials we spoke with broadly described the guidelines as very helpful for their child support judicial practice. Key benefits of the guidelines highlighted by court officials included that guidelines help facilitate consistency and reduce subjectivity in decision-making; improve fairness and perceptions of fairness in outcomes; and are easy to use. From the perspective of the court officials we spoke with, the existing statute is generally helpful in laying out clear reasons for potential deviations. Described one court official:

They're super helpful so that I can be consistent with my orders with similarly situated people. So I'm not just randomly ordering one thing and another thing over here... they do exactly what they should do.

Similarly, another court official stated:

I think they're extremely helpful. I mean, I wouldn't want to be in a system where it was entirely subjective. So I do find it to be quite helpful... I try and stick to the guidelines. I think they're there and they serve a purpose.

A court official elaborated on the value of fairness and perceptions of fairness for fostering trust in the system:

I think that guidelines are important so that, you know, that there's a degree of fairness. That people are across the board are being treated similarly by the court system, so there aren't these wild deviations going on. Because I do think that, you know, if one party watched the court and [another case has] the same set of facts, and makes the same kind of income, and has to pay \$100 in child support, but the first one has to pay \$500, they walk out the door and go, 'How did you get such a good deal?' Well, you know, I think when you have things like that, people lose faith in the system. So, I think the guidelines serve an important function.

Court officials shared that that the guidelines work well in most situations, particularly as they are designed to work for a broad array of family circumstances and parent financial situations. The extent to which the guidelines are sufficiently broad to encompass many families, from the perspectives of these officials, mean that the guidelines generally work well when the formulas are applied without deviations. Described an official:

I mean, the vast majority of cases are just a straightforward guidelines case.... For the most part, the guidelines are just straightforward and they're used quite easily in most cases. For the most part, I think the guidelines work really well.

Court officials noted that the guidelines work particularly well when parents have a regular source of income in an adequately-paying job. Described an official, "Really I feel there's this bubble of people that they're probably pretty fair for. And that's more of the people that make decent income." Officials noted that the ability to deviate from the amount yielded by the formulas is important because that allows them to address circumstances in which the formulas yield an amount that is unfair to a party or a child. While the guidelines cover many family configurations and circumstances, they cannot not account for all possible situations. However, they described the frequency with which they need to deviate as relatively low, given the scope of conditions covered within the guidelines. Described an official:

You should deviate it when it is a good reason to deviate. But, you know, I guess that I don't deviate that much because, you know, most of these cases, they have a tendency to look alike, the facts are pretty similar, and the guidelines are set up to handle that.

A point that emerged when discussing how well the guidelines work for families is what it means for a child support order amount to be "fair." Officials highlighted several aspects of a "fair" order. Key among these aspects was that orders be set at levels that parents are able to pay, while also meeting their own basic needs. Described an official:

Fair and equitable under their circumstances, they're going to be capable of working, capable of paying, and can still support themselves. That's what I want to make sure. Because I don't want to set the order and then, they can't even afford food for themselves because that would not work.

Another court official emphasized the importance of setting orders right-sized to a parent's earnings, noting that right-sized orders are more likely to be paid. The official elaborated:

We really are looking at trying to find right sized orders, because I know that if people feel like the sum is so large, they feel overwhelmed and they just quit. They don't even try. If you get an amount that's within reach, I think a lot of people do want to pay their child support. And they want to feel like they're contributing and they're paying for their child. But if it's so large and overwhelming, and they're choosing between [child support] and 'Am I paying my rent and having food for the kid?'

One court official described an order as fair when it works for the family and the family perceives it as fair. This official observed having seen more parents reach agreements on their own and more collaborative approaches to parenting over the decades of their practice, and noted that from their perspective, families typically know best what their needs are. They described:

This generation is way more acceptable to [shared placement] arrangements and it's also, in my opinion, far easier for them to reach agreements that take those things into consideration. I can't tell you how many times I've approved an agreement and I will say this, I say, well I find this to be in the best interest of the children and it's fair and equitable. And I make that finding because the parents believe that it's fair and equitable. And they're in the best position to know.

2. *Use of Guidelines, Deviations, and Changes Over Time*

a. *Use of Guidelines*

We asked court officials to discuss how they determine which guidelines are appropriate and how they use the guidelines in their practice. Court officials described that before applying the guidelines, several key steps occurred. One such step was determining whether current support must be ordered. Court officials described that when custodial parents receive certain forms of public assistance—childcare assistance and cash assistance—they need to order support regardless of whether the custodial parent asks for support to be ordered. Determining whether these benefits are received by families helps officials determine next steps in instances when custodial parents express a desire not to have support ordered. Described a court official:

If they're not asking for it and they're not requiring it, I'm not going to put conflict between these family members because they're probably doing pretty well co-parenting and there's probably money being exchanged in other ways. You know, paying for the backpack or the school supplies or, 'I will pay for that extracurricular activity.'

Court officials described the importance of collecting all the necessary information for determining the basis of the order—including the number of children on the case, placement arrangements, whether the payor has prior orders, and parent income—by taking testimony and obtaining information from the child support attorney. Once the facts of the case are determined, they determine which guidelines are appropriate, calculate an order amount based on the relevant guidelines formula, and determine whether deviations are appropriate. Described one official, “And then, of course, you know, once I'm pretty satisfied, I figured out, you know, what the gross monthly income is and I just simply apply the guidelines to it.” Stated another,

I'll ask each of them what they earn, if it's a shared placement arrangement. And I just simply do the math. And then you also look at, are they a serial family payer? Because you got to do that calculation as well.

Described the third official:

I start with the guidelines in every single case. And then, if we need to deviate then we talk about that. But every single case starts out with, 'What's your income? How many children? Shared placement?' That sort of stuff. So we do that in every case.

Officials discussed keeping the statutory list of deviation factors on hand for assessing whether deviations might be appropriate for a given case. Described one official, "I can't say I'm searching for deviations. But there are things that get stated that sort of lead to mind and you're like, 'You know what? I should really look at that statute.'"

A crucial and sometimes challenging step in using the child support guidelines formulas is determining the income basis for the order, using testimony from parents, information from the child support agency about earnings, and when relevant, financial disclosure statements.

Described an official:

I almost always require parties to file their financial disclosure statement and make sure that the other side has had a chance to see it before the hearing. So, I try and do that and I work off of those financial disclosure statements. I'll take testimony in court regarding the incomes of the parties to see if the financial disclosure statements are accurate.

An official described reviewing motions ahead of the hearing to understand the case circumstances and help prepare for questioning parties in court:

When we get the motion, the affidavit should have some of that information. It would say what the prior order was, the reason why they want the change, what their wages are, and what the percentage would be. So normally, when I'm prepping, I can already see, 'Okay, the order is \$50, and they want to adjust it to \$75 based on new wages or whatever.' Then when we have the hearing, assuming that the payor is there, the child support attorney would state, 'This is what we're asking for.' And then, the payor would let us know if they agree or disagree. If they agree, then I don't do too much more questioning because they've said, 'Yes. This is what I can pay and this is fine.' If they say no, then we'll find out if we have the accurate wages, if they have any other expenses, any other orders, and then, sometimes, I'll actually print off a copy of the reasons to deviate and give it to them and say, 'Which of these do you want me to consider,' so that they can look at it to tell me why. And then, sometimes, what I also do is I tell them, 'You

tell me what you think is the fair number.’ And then, if the payee is there and they agree, we enter that as the order or the payee would tell me a number, child support tells me number, they tell me a number, then everybody will tell me why they want their number, and then I would decide what’s fair and they could pay.

When payors work regular hours in a consistent job for which wage information is available, and parents appear in court to provide testimony about their current circumstances, these determinations are relatively straightforward. Court officials described that determining income becomes complicated, however, when payors work off-the-books jobs, have an inconsistent work history or work for temp agencies, are self-employed, or aren’t currently working. One court official described the challenge of determining self-employment income, and described self-employment as situations where close examination of the paying parent’s income available for child support is needed, stating:

In these self-employed situations, I don’t know of any other set of rules that would be any better. I mean they’re not perfect because it’s an imperfect world and you know, when you’re self-employed, I mean, it’s easy to cheat the tax man and it’s easy to cheat the child support man. That’s just the way it is when you’re self-employed. You just have to look at it a little more closely that’s all.

When wage information is not available, such as for unemployed payors or payors with irregular earnings or work histories, court officials described imputing an amount on which to base the order. They arrived at this amount by looking to previous wage information and taking parent testimony about their earnings history, or when no reliable information was available—and one court official described, particularly when the paying parent did not appear in court to provide testimony—imputing income assuming minimum wage. Described one official:

We have lots of restaurants that are begging for workers, lots of minimum wage places. We also have a great big outlet mall that’s retail that’s looking for people, too. I typically use the minimum wage when I’m studying orders, unless the person is there. So if they’re not working, then I’ll default to minimum wage, which I do think is lower than what they could earn [locally], but I don’t want to set the orders too high at a \$15 an hour order and then, they’re struggling if they’re not working. If they don’t come to court and we don’t have any wage

information, then I use the \$7.25 an hour. If they're there and they have a history of working at a higher rate, even if they're not working, then I would maybe impute the higher rate, too.

One court official described that, when income history information is not available and for situations in which payors are self-employed, state-provided data about prevailing wages within their region for a given occupation can provide useful information for determining an appropriate income basis derived from real data. Described the official:

One of the things I use is WisConomy.⁴ You can research county and state wage rates. And that is very helpful, too, especially when you have people who are self-employed. Because, you know, I'm not a construction worker. I don't know what those ranges are. I don't know what's reasonable. I don't know what beginners are as opposed to those who are very experienced. So that's a very useful tool... I'm going to look at what [a given job] pays in this state, you know, statewide but mainly focus in on what's happening locally, and it is very helpful data to help setting an order. It's got to be evidence-based, right?

Several officials described that in some circumstances of significant hardship for the payor, they also set order amounts lower than what minimum wage assumptions would yield (for example, based on the lowest income category within the low income guidelines).

b. Deviations

Court officials described that the guidelines work well, without adjustments to the formula-derived order amount, most of the time. They also described their perspectives on times when they might find the guidelines formulas, applied without deviations, not to be appropriate. Officials emphasized the importance of arriving at order amounts that work, and are sustainable for families, while keeping fairness to parties and children as the overarching consideration.

⁴WisConomy is a web resource provided by Wisconsin's Department of Workforce Development: <https://jobcenterofwisconsin.com/wisconomy/>

Court officials described the following types of situations in which they sometimes find it appropriate to deviate from the formula-derived amounts.

Stipulated agreements. When parents reach agreements on their own, absent a compelling reason not to, such as concerns about potential intimidation of one party to another or receipt of certain public benefits, court officials described that they generally approve agreements.

Described one court official, “If people want to deviate on their own and it’s what they want to do and there’s no other legal reason to intervene... I usually don’t step on their toes and say, ‘No, you can’t do this.’” The official went on to caution, however, that in instances in which there is a significant imbalance in parent resources and the custodial parent is asking for a low amount or no child support, they ask detailed questions to gain insight into whether issues of abuse or intimidation might be in play. The official elaborated:

If there’s a wild—you know, for instance, Parent A’s got primary placement and making \$30,000 a year and, you know, Parent B is making \$200,000 a year and [Parent A says they]... not going to ask for any child support. Well, then I start asking an awful lot of questions at that point. It’s not to say that I haven’t approved them. I have. But you start to ask a lot more detail on it. I mean, listen, there are some people that want out of a relationship so badly that they will sacrifice heaven and earth to get out. And courts have to be aware of that; for instance, there could be abuse under the surface that you’re not aware of.

Another court official described that stipulations are prevalent among non-IV-D divorce cases in particular, but also occur among IV-D cases, noting:

If it’s a pro se divorce and no one has an attorney, most of the time, they do have an agreement on child support. They won’t want it, or they’ve agreed to a certain amount... The IV-D cases are the ones where people really just don’t know until they get here and then they talk, but they still will agree more often than you’d think... I regularly get stipulations to change child support. I regularly get... [for example] ‘Oh, our child graduated. Let’s change it on our own.’ And so we do get written stipulations, but never even come to court. They both sign, send it to child support, they take a look, they sign it, send it to me for final approval. We get those all the time.

Across counties, court officials noted that they are constrained in their ability to approve stipulations for amounts lower than the guidelines specify when parents receive certain forms of public assistance. Described one official:

For the IV-D cases, if they're getting childcare benefits through the state or W-2 benefits through the state, typically, there's no deviation because those are substantial state benefits. So, child support is real strict about those. If they just get BadgerCare and/or FoodShare, then I'm open to deviation as well.

Very high- or low-earning payors. Court officials described situations related to parent earnings that can sometimes result in reasons for deviations. Regarding very high-income payors, several court officials described that for a very small subset of high-earning families, the guidelines as applied without deviations have the potential to yield an amount that is unfair to the paying parent. Described an official: "There comes a point when, you know, there's enough child support to be paid... when does child support end and a windfall begin? If you know what I mean. That's with high payer situation." Another elaborated, stating:

And then we have the high-income earners where we see some really high child support orders... How much money do they need, right? How much—at some point are you using that to be a custodial parent who's not inspired to work? And that would be very, very high.

Two court officials described orders for very low-income payors as particularly challenging, as order amounts can be lower than what a custodial parent needs to raise a child, and yet for some payors, higher than what they are able to pay while meeting their own basic needs. One described setting orders at amounts below the lowest specified within the low-income guidelines as rare, stating:

We typically don't go below that low-income guideline, but I also try to find out why they're not working. So I would ask questions because sometimes, people choose to go to school, or choose to have their significant other's support, so there's different reasons.

Another court official described that in their county, requests for deviations to an amount lower than the lowest amount shown on the low-income guidelines typically came at the request of the child support agency attorney. Described the official:

I would say those are the people that come on through the child support agency and they will make recommendations of \$20 a month for a child support amount. Or they might say, 'It's just never going to happen; we should terminate.' That is something that is more in the provenance of the child's support agency making a recommendation to me. I would say if they are at that low of income, or they have health issues or they've been so inconsistent in paying, it's really those moms have already given up. They're not filing motions in front of me. I mean it's more the child support agency and we will sometimes just set something to zero because all it is accruing [arrear] and they're never going to make it... So, yes, we do sometimes set zero orders that like I said, it's coming more probably from the child support agency's request.

High expenses incurred by one parent. Court officials highlighted instances in which one parent bears a disproportionate cost for caring for or spending time with children, such as costs for private insurance or significant travel costs due to geographic separation from children. How these expenses factored in varied by case circumstances. Described one court official:

We don't have a lot of them, but sometimes we do have a parent who lives in a different state. And the further away they are, the more costly it's going to be for them to travel to see the child, spend time with the child. So that might be a reason to deviate.

Another court official noted that in their county, health insurance and travel expenses incurred due to moves for well-paying employment accounted for most deviations beyond stipulated agreements. The official stated:

At least in my area, the biggest issue is extraordinary travel expenses. People have moved out. You know, as an example, when the Bakken oil fields were really kicking in, there was an awful lot of people, they took off for North Dakota because there was a ton of jobs out there and they're well-paying jobs. And so, you have that travel expense... We don't see as many of those as we used to but that was an example. You know, they left a job here, making \$25,000 a year because they could make \$65,000 a year in North Dakota. So, we have a lot of those cases. And then, you know, obviously, the medical insurance is the other big one. Beyond those two, you know, the other ones that come up, they're so rare

and in-between and unique that they really don't even rise up on a statistical level of being meaningful.

Another court official described aiming to ensure that the non-moving parent does not incur additional costs due to the other parent's decision to move, noting the potential importance of income differentials across parents and specific factors related to the case:

Sometimes if people are traveling a long distance, if someone voluntarily moved away, and you want those kids to come see you - sorry you're paying for that, right? And it's not so much we factor that in guidelines. Or if you move away and because your spouse got a different job and your kid is back here, and your spouse now has a super great job out of state. I'm not going to make this parent who's still got their sort of middle-income job pay for transportation for that child to come visit you- you can pay for transportation. So those are like one example of how we start looking at deviations under that statute.

Complex families and multiple orders. One official noted that when paying parents have complex families, and in particular multiple cases across states or counties, order amounts can become quite large relative to the paying parent's income. Described the official:

When someone has multiple children with different partners, the guidelines already build that in for the older minor children, so I'm already factoring that in. But if that person has had young or minor children, it doesn't allow for me to factor that in unless I deviate. And it makes it hard. There have been times when I've sat down and I'll have four cases for one person and they're paying—their orders were not in alignment, and they're paying over 50%, 60% of their income for children in different households because the guidelines just don't get me through that. So then, I have to take them all together and then try to fix that for people. I could do that if they're all my case in [redacted] County, but I can't do that if they have a [redacted] County case. If they have cases in different counties, the guidelines don't really help me figure out how I can do the orders very easily.

c. Changes Over Time

Generally, court officials reported few changes to their practice related to the guidelines over time and using the guidelines very consistently. Court officials also noted several social changes that had occurred over time related their use of guidelines in practice and reasons for deviations. First, one court official, whose practice had spanned decades, described the growth in

shared placement cases over time, and shifts in gender roles related to parenting, leading to increased use of the shared placement guidelines. This court official also noted an increase in stipulated agreements; from their perspective, parents over time have shifted towards a more collaborative approach to parenting and sharing time, and have become more likely to reach agreements on their own that work for their families. Next, a court official described that following the passage of the Affordable Care Act, more families in their area had access to affordable health care, which reduced the likelihood of deviations due to extraordinary medical costs. Finally, two officials described that during the COVID-19 pandemic, families in their counties experienced income changes and greater economic need, which temporarily affected the frequency with which they set orders on a basis lower than minimum wage. Both described significant economic rebound within their counties since and that these changes related to guidelines had since passed.

3. *Guidance Used and Desired*

In most domains, court officials reported feeling that they have the information and guidance needed to use the guidelines effectively. Court officials cited the helpfulness of the guidelines documentation and calculators available to them, as well as the helpfulness of Chapter 150 and the list of deviation factors in particular, with two officials stating that they have printed out the list of factors for easy reference and refer to it frequently. Described one official:

The thing I find the most helpful is in the statute, how to deviate from the standard. That's the one that I'll sometimes print out, hand to people, that goes through that laundry list of why we could deviate. So that one is super helpful.

Officials offered several suggestions for additional guidance or resources that the state could provide to help their practice related to the guidelines. Broadly, these suggestions were aimed at enhancing accessibility, transparency, and consistency related to child support orders.

First, several officials suggested that more direction related to determining income for self-employed obligors, and more direction around the basis for income imputation, could help facilitate consistency in determination of the income basis for order amounts in situations where earnings are unclear. Related to this suggestion, one court official called for using an assumption higher than minimum wage rather than minimum wage orders when imputing earnings, due to local prevailing wages for most jobs locally outpacing minimum wage. The official stated:

Nobody's paying minimum wage anymore, so I think you can set a child support order that's artificially too low by imputing the minimum wage job. Because a minimum wage job in Wisconsin is what, \$7.45 an hour? And, you know, the reality is, is McDonald's pays \$15 an hour... It's obvious now it needs to be looked at again. You know, when you see child support orders that come across of, you know, \$112 a month, you know, you kind of look at it and go, that's not enough. Yeah. It's just not enough.

Next, one court official requested more guidance on setting orders that involve cases from multiple jurisdictions. From their perspective, orders for parents with cases across multiple jurisdictions can quickly become outsized to wages, and this official desired a process for streamlined inter-jurisdiction collaboration towards addressing these cases. They stated:

I wish they would figure out a better way for us to do multijurisdictional orders. My nightmare cases where they have multiple kids all over the state, or even other states, which is tough, and I've got to figure out the fair order. I wish there was like—almost like a centralized clearinghouse that even though the initial orders were in three counties, one county moves forward with all of them. ... I know that would never work for a million reasons because you've got custody and placement and people can't get to court, but there's got to be something they could do.

Additionally, several court officials suggested that clarification and simplification of the equivalent care component of Chapter 150⁵ could help facilitate more consistency in application. From their perspectives, the wording and logic of the statutory language is confusing and can lead to some officials avoiding it, potentially leading to inconsistent use. Described one official:

I can tell you the least helpful one that I never use, because I deviate from it every time, and we all hate it, is called “equivalent care.” I have never once used it. I will never use it. I will always deviate away from that.... To say that we have 380 overnights a year is ridiculous, and I refuse to do it. And I don’t do it.

A second official concurred with the assessment that the statutory language is confusing and leads to avoidance, noting that a state-provided calculator could potentially help support court officials—and described calculators as broadly helpful for any sorts of calculations required by court officials. The official stated:

I think something that would be very helpful for other counties... our corporation counsel developed a little calculator where you can plug in the numbers when we have equivalent care. I will tell you, I don’t think you’ll find anyone in any judicial role that is fan of that equivalent care. It makes sense, but it’s hard because there’s more than 365 days in a year. If I had to hazard a guess, I bet a lot of people aren’t doing it. A lot of lawyers don’t propose it. It’s something that I have looked at, but it takes more time, and I do have a little calculator that they jerry rigged for me, so I can plug in those numbers. I think if they could do calculators—if they’re going to do anything sort of off-script other than usual, they could create little calculators. They can send that right on their listserv to us and people will use them.

While not directly related to the guidelines themselves, several court officials called for more clear, easily readable, simplified paperwork for parents, including simplified templates for child support orders, and simpler forms for filing court motions and stipulated agreements. From

⁵Equivalent care refers to a provision within Chapter 150 (150.035(1)) related to determinations of shared placement. Equivalent care is defined in DCF 150.01(10) as “a period of time during which the parent cares for the child that is not overnight, but is determined by the court to require the parent to assume the basic support costs that are substantially equivalent to what the parent would spend to care for the child overnight. Blocks of time with the child of at least 6 hours may be considered the equivalent of a half-day if a meal is provided during that time period. Two half-day blocks may be considered the equivalent of an overnight.”

the perspective of court officials, these changes would likely help improve parents' access to court processes; reach agreements together and file them for the court's consideration; and understand the components of their ordered support—thereby likely improving their ability to comply with the order. Described a court official:

If you look at these orders, especially paternity orders, they look like a product warranty... It's ridiculous. There are no headings. Everything's sort of crammed in... I can't tell you how often [parents] say, 'Oh, I didn't know that.' I'm like, 'Well, it's in your order.' They couldn't read it. Because it's so poorly crafted. I mean people move away, and they don't realize you have to file a motion before you can move away. And to me I don't so much blame the litigants. It's just poorly crafted. I mean, no matter what our reading level, no matter what our skill set, we're used to chapters, we're used to subject headings. And there's none of that in any of those orders. They are horrible.

Another court official described that the standard Wisconsin Courts stipulation to change child support form (FA-604A) is complex, difficult for parents to understand and complete correctly pro se, and “very confusing and very wordy and awful.” From the perspective of the official, the complexity of the form creates barriers to parents reaching an agreement on their own, and leads to frequent rejections—due not to the substance of the agreement, but to parents filling out the form incorrectly. Noted the official, “There is just so [much] room for error in the state form because that one is just lengthy.” Finally, a court official highlighted that streamlined communication across BCS and local court officials when policy changes related to the guidelines occur could help facilitate greater consistency in application. The official suggested that judicious use of a statewide listserv (so that officials are not overwhelmed with unnecessary information) could help ensure that all court officials obtain necessary information as a means to facilitate consistent practice. They elaborated:

I think there needs to be better communication between the Bureau of Child Support, judges, and court commissioners in terms of when they make changes to guidelines [so that we] all kind of get the same information at the same time. We have two family court commissioner conferences every year. And we have some

people who are very active on our listserv who are great soldiers for informing us... If you're good about reading the listserv, you can keep yourself up to speed. But it relies on those sort of activist listserv people to keep us up to date, and they shouldn't have to do it. It should be coming from the source itself. I think an active listserv, that we could all be part of. You could populate who you need on that listserv. There could be subsets, too, right? I don't need to hear about every single change at the child support agency. We get that version of a listserv. People won't read it. But if you keep it down to the essential changes, and updates, and guidelines, that would be very helpful.

B. Findings from Courtroom Observations

1. Observational Context

Courtrooms are busy and fast-moving environments, with a number of different actors involved in the hearing process. Within each courtroom we observed, a court official oversaw the court hearing. In IV-D cases (the majority of cases observed), one or more attorneys on behalf of the child support agency were present; other child support agency staff appeared in some courts and not others. Clerks were present to support the work of the court (such as calling parties who did not appear or coordinating with correctional institution staff), as was a bailiff in the one county we observed in person. One or more parents often, though not always, appeared. Children were generally not present (and sometimes not allowed), though infants occasionally accompanied parents. Attorneys for either parent were present in a minority of cases we observed. Law enforcement staff appeared at times in all sites we observed, most commonly to facilitate phone or video appearances for incarcerated parents. In a few hearings, translators were present to assist parents for whom English was not their first language, and in several cases guardians ad litem were present on behalf of children on the case or a minor parent.

Court hearings that occurred as part of regular dockets followed a fairly consistent pattern, within and across counties. Court officials confirmed service of process when parents did not appear, to determine whether the hearing could proceed without the parent; several

hearings were rescheduled due to court officials determining that notification processes had not been sufficient, with court officials noting that parents had a right to be present. Once hearings began, court officials explained to parents the matter before the court that day. Court officials provided consistent explanations of key decision points and terminology across the cases we observed, and often explicitly referred to statute when explaining options related to a hearing (such as reasons for deviations). While cases on dockets moved quickly (typically lasting 5–15 minutes), in the hearings we observed, court officials provided parents with opportunities to ask questions, used simplified language when parents expressed uncertainty or confusion, and clarified hearing parameters (such as when parents raised issues outside of the scope of the motion filed for the current hearing) and steps for requesting hearings on other matters when necessary. In paternity cases in which placement had not yet been established, court officials explained the difference between custody and placement to parents, took parent testimony about their wishes, and set orders. Then, typically, the court official moved on to addressing child support and other relevant issues (such as orders for birthing costs, health insurance, addressing genetic testing or other fees, tax issues, variable expenses, and directives about keeping the child support agency updated on changes to circumstances). One court's standard orders directed parents to work with local employment partners, for general employment services or services for individuals with prior criminal justice system involvement, in case of job loss or current unemployment, with the court official taking time in court to explain the benefits of those programs to parents.

Courtrooms can also be, from the vantage point of the research team, potentially intimidating environments. Parties are asked to share personal details of their lives, often without representation, to understand circumstances surrounding the case that might impact an order, and

their participation and disclosure of accurate information is an important part of the process. In many hearings we observed, court officials took steps that appeared to convey respect and help put parents at ease, such as confirming pronunciation of names; recognizing and verbally acknowledging positive co-parenting practices; and apologizing to parents when processes went awry (such as when information parents reported to the child support agency did not make it to the court ahead of the hearing) or when information about a hearing was unclear.

2. *Gathering Information Related to Order Amounts*

Court officials heard, and sometimes made space for parents to work with child support attorneys or their own attorneys to finalize, proposed stipulations. Court officials would sometimes ask questions to clarify aspects of agreements. Officials also sometimes took testimony from parents who had discussed their preferences for the order prior to court and came to court with an informal consensus around their desired outcome. In the cases we observed, many parents came to court not as the result of requesting child support services on their own, but due to a referral from a public benefits office or another motion brought by the child support agency. Court officials were explicit about when they needed to require an order amount above zero to be set, in cases in which custodial parties received childcare benefits or cash assistance. Officials expressed understanding about the frustration many parents expressed about not wanting an order, using language such as “We’re not trying to impose something on you” or “I’m not trying to make him take it. I just want to make sure he knows what he’s agreeing to,” when responding to parent concerns. They were also responsive to the concerns some payees expressed about payors potentially not believing that the order had been set as the result of state action due to public benefits receipt, rather than the request of the payee; officials often

preempted this concern by explaining to payors, on cases in which orders were required, that the order was requested by the state—not the other parent.

When it came to setting child support order amounts, court officials worked through a fairly standard battery of questions to ascertain key facts of the case, taking testimony from parents and based on information shared by the child support attorney, such as the number of children on the case, where the children stay, the number of nights spent with each parent, and whether the paying parent has previous support orders for other children. Key in this process is determining the income basis for the order amount. In some instances, determining gross monthly earnings was relatively simple; when parents had current employment and a regular employment history, and both parents and the child support attorney agreed on earnings, calculating the order amount was a matter of confirming these facts and entering them into the relevant guidelines calculator to yield an order amount. In the hearings we observed, officials and attorneys were generally explicit about which guidelines formulas they used to calculate a resultant amount.

Determining the income basis for an order, however, was much less straightforward when a payor did not appear to provide information about their earnings—particularly when limited or no information about earnings history was available to the child support attorney; when parents disagreed on what their earnings were; when one parent believed the other parent to be hiding income or assets; or, when the paying parent had an irregular or sporadic work history, worked for cash, or was self-employed. In these instances, court officials took testimony from parents, when present, about their earnings and employment circumstances, and the child support attorney searched for information about prior earnings to inform a recommendation for an amount at which to impute. One court official asked a particularly detailed set of questions of

parents in these instances, inquiring about the payor’s most recent earnings, earnings trajectory, and highest paying job, and explained to parents that the court’s goal was to set an order amount right-sized to earnings. As this official described in their interview, when other information was unavailable or incomplete, the official and the child support attorney used the DWD’s WisConomy site in court to identify local prevailing wages for a given occupation.

3. *Observation Findings*

In total, we observed 62 cases for which we were able to compare consistency between the child support guidelines and the amount of child support ordered. In this section, we describe the characteristics of the cases we observed; summarize various dimensions of the resulting orders; and discuss the range of reasons that appear to underlie differences between amounts yielded by the guidelines and ordered amounts. In doing so, our goal is not to quantify the importance of various factors regarding differences, but simply to illustrate the way particular circumstances seemed to observers to be relevant in these cases.

Table 2 provides descriptive information on characteristics discussed or addressed in observations, as general context for our subsequent discussion of differences between ordered amounts and amounts yielded by guidelines formulas. All information shown in Table 2 reflects information available to the observers in court; it does not reflect additional information that might have been available in the court record—which we did not access for this study. Therefore, this information specifically reflects the observation team’s characterization of parents and circumstances based on information introduced or discussed during the hearings, and the table indicates when no relevant information was available. Information not discussed verbally within the court proceeding is not reflected in the information presented below.

As shown in Table 2, most cases we observed involved paternity cases (81%) and a minority involved divorcing parents (19%). Most (71%) were new orders and the rest (29%) were modifications. In most (81%) cases, neither parent had an attorney present; we note (not shown) that most cases involving attorneys were divorce cases. Most cases we observed involved parents who shared placement, either equally (13%), mother-primary⁶ (45%) or father-primary (8%); in 19% of cases we observed, children resided in out-of-home care at the time of the court hearing. Table 2 also describes what we were able (or unable) to observe about benefit receipt based on the hearings, included here because referrals from public benefits agencies are one pathway into the child support system and may have implications for the extent of judicial discretion in order determination. Among the 43% of cases in which public benefits were discussed as received during the hearing, nearly half (21% of the total) involved a custodial party receiving childcare assistance, a benefit that requires the court to set an order for ongoing support. We observed families from a wide array of backgrounds. Because of the observational nature of this study, we do not present demographic information, though we note that consistent with predominant trends, most payors were male and most payees were female. The sample appeared to reflect some diversity by race and ethnicity (though most parents appeared White, consistent with overall state demographics).

⁶We use the terms “mother-primary” and “father-primary” broadly (rather than using a specific time threshold), as specific of placement schedules were not always discussed in court. We coded a case as “primary” if the court official used that term to describe the arrangement (with or without specifying time thresholds), or if a placement schedule was discussed that involved any amount of regular time with both parents that was not equal.

Table 2. Observation sample characteristics (N = 62)

Characteristics	Percent or Mean
Case characteristics	
Case type	
Divorce	19%
Paternity	81%
Order type	
New order	71%
Existing order modification	29%
Benefits receipt referenced in hearing (custodial party or children)	
Benefits referenced; explicitly indicated none received	10%
Benefits not referenced/uncertain	47%
Benefits referenced; explicitly indicated receipt of any	43%
<i>Child care assistance explicitly indicated as received</i>	21%
Placement arrangements	
Mother-sole	5%
Equal shared	13%
Mother-primary	45%
Father-primary	8%
Child(ren) in out-of-home care	19%
Other/uncertain	10%
Parent representation	
Both represented	8%
Neither represented	81%
Payor represented; payee not represented	5%
Payee represented; payor not represented	3%
Uncertain	3%
Family characteristics	
Payor employment	
Employed, any employment type	53%
Known unemployed (including incarcerated)	21%
Uncertain	26%
Payor median gross monthly earnings (if employed and known)^a	\$3,273
Payee employment	
Employed, any employment type	23%
Known unemployed	3%
Uncertain	74%
Payee median gross monthly earnings (if employed and known)^a	\$2,409
Number of children on order	
One	68%
Two or more	32%

Note:

^aIn some cases, gross monthly earnings were provided in court; in these instances, we used the amount provided in court. When earnings were provided as an hourly wage and number of hours worked per week, we estimated earnings using the formula (Hours per week * Hourly wage * 4.3 weeks in a month = monthly gross earnings).

In just over half of cases we observed, the payor was employed in any full-time, part-time, or self-employed job; among those known to be employed for whom current wage information was provided, average gross monthly earnings were \$3,273 based on information reported. Including incarcerated payors, 21% of payors were unemployed. We were unable to document employment status for 26% of payors. A few of these were stipulations in which court officials stated that the order amount was set based on income, but employment status was not discussed explicitly; most of these cases were instances in which the payor did not appear, the child support agency lacked conclusive information, and the order was set by default. Payee employment was discussed and known less frequently (in 26% of cases), reflecting a substantial number of cases involving an out-of-home placement and orders set using guidelines formulas that do not take payee earnings into account). About two-thirds (69%) of cases involved orders for one child on the order (versus more than one child).

In Table 3, we summarize additional information contributing to the determination of the order amount, including the income basis for the order, placement arrangements for the case, and guidelines used. We also show the distribution of cases with order amounts consistent with guidelines, higher than guidelines, lower than guidelines, and resultant order amounts. About one-quarter of cases involved a default order in which the payor did not appear in court. In most (61%) cases, orders were set based on actual income and over one-third used an imputed amount. Most frequently, these cases used the lowest income category within the low-income guidelines (e.g., monthly income up to \$849); 11% were imputed at full-time minimum wage; and 5% were imputed based on a prior wage. Most cases we observed used either the low-income guidelines (39%) or standard percentage (39%), and 21% used the shared placement guidelines. In 8% of observations, orders were adjusted for previous orders for other children. The average amount

ordered across observed cases was \$317 per month. Finally, most (72%) of the cases we observed resulted in the court official ordering an amount that appeared to observers as consistent with the amount derived from a guidelines formula. Below, we discuss the circumstances of the 17 cases where order amounts that appeared to differ from guidelines formulas, which provide illustrative examples of how the specifics of cases may lead to orders outside guidelines-based amounts.

Table 3. Order basis and consistency with guidelines

N=62	Percent or Mean
Default order	
Yes	24%
No	76%
Income basis	
Actual income	61%
Imputed amount	39%
% <i>At full-time minimum wage</i>	11%
% <i>At lowest category within low-income guidelines</i>	23%
% <i>At previous earnings wage</i>	5%
Guidelines used^a	
Shared placement guidelines	21%
Nonshared (standard percentage) guidelines	39%
Low-income guidelines	39%
High-income guidelines	2%
Adjusted for previous orders (serial payor)	
Yes	8%
No	92%
Consistency with guidelines formula	
Same as guidelines formula amount	72%
Higher than guidelines formula amount	5%
Lower than guidelines formula amount	23%
Order amount	
Average per month ^b	\$317

Notes:

^aDoes not equal 100% due to rounding.

^bIn some cases, orders were stated on a monthly basis; in these instances, we used the amount provided in court. When orders were provided as a weekly amount, we estimated monthly orders using the formula (Weekly amount *4.3 weeks in a month = monthly order amount).

4. *Consistency with Guidelines and Reasons for Differences*

Most differences between order amounts and guidelines amounts resulted in below-guidelines orders. In 14 of 62 observations, the amount ordered was lower than the amount derived from the guidelines; in 3 of 62 observations, the amount ordered was higher. Below, we summarize contextual factors surrounding these differences, and potentially relevant observable case characteristics. We note that we are only able to describe factors discussed in court and either stated explicitly as a reason for setting an order amount that differs from the guidelines by the court official or discussed as context by parties or attorneys.

Broadly, the context surrounding cases in which guidelines were set higher or lower than guidelines amounts aligned with court officials' reports in interviews of circumstances in which they find it appropriate to deviate from the amounts indicated by guidelines formulas. Across both interviews and observations, agreements of parents for amounts that differed from guidelines, circumstances of payors with low incomes, and distribution of variable expenses emerged as frequent reasons contributing to differences.

a. Cases in Which Order Amounts Were Higher Than the Guidelines

In three cases, the amount of child support ordered was higher than the amount indicated by the guidelines formula. Two of these cases were divorce cases with expenses affecting the order amount. In one of the two, one parent had primary placement and the parents agreed in court to an amount higher than the guidelines formula to offset health insurance costs. In the other, parents shared placement, and stipulated to an agreement in which one parent paid the other more than the amount specified by the guidelines. Childcare expenses incurred by one parent were discussed, but not explicated as the reason for the difference. Amounts differed by \$100 to \$300. The third case was for two new orders set simultaneously, for three children

placed in out-of-home care. While the total amount ordered was the same as the amount indicated by the low-income guidelines, the court official redistributed the amounts equally across the three children, rather than calling one order the “first” order and applying the serial payor adjustment to the second; the official explicated fairness to the children (because the orders were set simultaneously) as the reason for the order amounts set.

b. Cases in Which Order Amounts Were Lower Than the Guidelines

Of the 62 observations, 14 resulted in an order amount lower than the amount yielded by a guidelines formula (Table 4). The reasons for orders being set lower than the amount specified by the guidelines broadly fell into two main categorical buckets: (1) the payor and payee mutually agreed to an amount lower than the guidelines formula would have yielded, or the payee asked for an amount to be ordered that was lower than the guidelines amount, and (2) the financial circumstance of the payor or payor’s earning capacity. Categories presented in Table 4 are not mutually exclusive; in many cases, multiple factors contributing to the difference in order amount were discussed. In particular, agreeing on lower orders often occurred in the context of financial circumstances of the payor. Additional reasons were discussed as factors, either in addition to or separately from these main groupings. We provide additional detail about the reasons order amounts differed from formulas, and contextual information about those differences.

Table 4. Requestor of and reasons for orders set lower than guidelines in observed cases

N = 14	n
Requestor/initiator of lower amount	
Child support attorney	3
Court official	1
Payor alone	2
Payee alone	3
Mutual agreement of payor and payee	4
Reasons for difference^a	
Parties agree no support wanted and/or payee wants lower amount	7
Financial resources of payor/payor's earning capacity	7
Fairness to children	1
Variable expenses	1
SSDI child benefit adjustment	1
Fairness to paying parent	2
Additional contextual factors discussed	
Recent incarceration explicitly cited	3
Children placed in out-of-home care	6

Notes:

^aReasons sum to greater than 14 (N=14) because reasons are not mutually exclusive.

1) *Mutual Agreement of Parties or Request of Payee*

Most frequently, in 7 of 14 cases (half of cases in which order amounts were lower than an amount resulting from the guidelines calculation), the payor and payee involved in the case mutually agreed that they wanted an amount that differed from the amount yielded by the guidelines formula or the payee requested a lower amount. Most (4 of these 7 cases) were situations in which both parents mutually agreed that they did not want any amount of support, after the official calculated and shared the amount the guidelines would have yielded. All four involved shared placement arrangements (three equal-shared and one father-primary). In 2 of the 4 cases, the parents had been referred to child support due to receipt of public benefits other than child care assistance. The fourth case was a divorce in which the parents mutually agreed to \$0 in

child support for a period of at least two years. Order amounts would have been under \$100 a month in two cases, and over \$500 per month in two cases.

In the other 3 of 7 cases in this category, the payee asked the court to set the order amount lower than the guidelines amount. Two of these cases involved mother-primary placement, and one involved children placed in out-of-home care with a relative. In two cases, the payee expressed that the paying parent would experience significant financial hardship and likely be unable to pay the amount derived from the guidelines formula, and requested that the court lower the amount. In the third, the payee did not want support ordered, but the child support agency would not accept a zero-dollar order because the payee received child care assistance; in this instance, the order was set below the amount yielded by the guidelines, but higher than zero. The difference between the amount yielded by guidelines formulas and the amounts ordered ranged from \$133 to \$350 in these cases.

2) *Financial Circumstances of the Payor*

The second broad category of reasons for orders being set lower than guidelines formula amounts, arising in 7 of 14 cases was reasons related to financial circumstances of the payor. In 3 of these 7 cases, the child support attorney requested that the court order an amount lower than the lowest amount shown on the low-income guidelines chart. In all three cases, the attorney described limited or no work history for the paying parent; the paying parent did not appear in court (and the order was set by default); and the children associated with the order were placed in out-of-home care. In all cases, the difference between the ordered amount and the guidelines amount was \$45.

In 3 of these 7 cases, a payee or payor requested that the order amounts be set lower than guidelines due to the financial circumstances of the paying parent. Two of these 7 cases in this

category overlapped with the cases above; payees requested order amounts be set lower than the guidelines formulas due to the hardship the guidelines amount would cause the payor. In the other, the payor asked the court for lower amount due to being currently incarcerated, having limited work experience, and owing support for other children in out-of-home care in a different state; the order before the court was also for a child in out-of-home care, within the county. As with the three aforementioned cases in which children were placed in out-of-home care, the order amount was \$45 lower than the lowest amount indicated by the low-income guidelines chart. The seventh case within this category involved a parent's financial circumstances broadly, and receipt of Social Security Disability Income (SSDI) income specifically. In this instance, the paying parent was disabled and living on a very low income consisting only of SSDI; in this case, the court official subtracted the order amount derived from the guidelines by the amount of the child's disability benefit already received by the child support payee,⁷ a \$50 difference.

Several trends emerged across the cases in this category, in addition to the economic hardship experienced by the paying parent. Compared to the overall sample of cases observed, the cases in this category disproportionately involved payors who were mothers and orders set by default. Most involved instances in which income was unknown; when income was known, it was typically low or zero. In three cases, the paying parent's recent or current incarceration was discussed. In two of these cases involving orders for mothers of children in out-of-home care, the paying parent or payee provided testimony that the children's father did not have a support order in place for these children in out-of-home care, and the court official acknowledged the unfairness to the parent being ordered to pay when setting the order amount. Five of the seven

⁷This adjustment is explicitly permitted in statute, within DCF Chapter 150 (150.03(5)(a)).

cases in in this category referred to the low-income guidelines, and all five involved orders set at amounts differing from the guidelines amount by a relatively low amount (around \$50).

3) *Other Reasons Orders Set Lower Than Guidelines Amounts*

There were two other cases in which other factors arose as reasons that ordered amounts were lower than guidelines. In one, a divorce with mother-primary placement, the parents stipulated to an order amount lower than the guidelines due to their agreement for splitting variable expenses. The final case is simply the inverse of the case in which an order amount was set higher than the guidelines specified due to two orders for children in out-of-home care set simultaneously; as one order was set higher than the guidelines amount, this order was set lower, with the court official citing fairness to children across orders as the reason for the lower amount.

V. CONCLUSIONS

This report sought to build on previous research related to use of the child support guidelines in Wisconsin. Whereas prior work (such as Hodges & Cook, 2019) has taken a quantitative approach to exploring consistency with the guidelines, this report used different methods—interviews with court officials and observations of court hearings—to provide insights into court officials’ perspectives on and use of the guidelines, and the circumstances under which court officials find it appropriate to order an amount that differs from an amount yielded by a guidelines formula. The court officials we interviewed perceived the guidelines as useful for facilitating consistency and reducing subjectivity in order determinations, and described them as sufficiently flexible to be applied across most families and circumstances. Our observations of court processes were consistent with interviews; in most instances, the amounts court officials ordered aligned with the amounts yielded by the guidelines formulas.

In interviews, court officials identified several situations in which they might find it appropriate to order an amount that differs from the guidelines formulas—in particular, when parents agree to a different amount, when payors have very low or very high incomes, or when payors have orders across multiple families. These reasons for differences aligned closely with court observations, with the financial circumstances of parents, and agreements reached by parents, comprising most reasons for differences. Payor financial hardship was also identified as a common reason for deviations, in Hodges and Cook’s (2019) analysis. In contrast to that work, which excluded out-of-home care cases, a significant share of cases involving differences between guidelines amounts and ordered amounts in our study were cases in which children were placed in out-of-home care and payors appeared to be experiencing financial hardship. In summary, in nearly all cases we observed, orders that were set at amounts that differed from guidelines were set that way with court officials responding to the explicit wishes of parties, or in response to the financial limitations of a struggling payor.

A. Limitations

This study has several limitations. First, we conducted the study in only three counties. Court officials perspectives and experiences may differ in other counties, and may vary across officials within the same county. Further, the local contexts in which courts operate differ, and therefore factors surrounding the determination of order amounts, may differ across localities. Next, findings related to our observation data are not statistically generalizable; they are intended to provide insights into guidelines use, but do not represent a broader pool of cases. Our analyses are purely descriptive, not causal. Our observations were limited to a specific point-in-time (summer of 2022), and economic conditions contributing to employment circumstances of parents—and therefore orders—may well look different across varying time points. Our sample

size was also limited to 62 cases, of which almost three-quarters received orders that were the same as amounts derived from guidelines formulas, resulting in only 17 that differed. Examination of those differences provide illustrative examples of some of the considerations at play, but the relative prevalence of various circumstances should not be interpreted as generalizable. A longer time period with more observations might yield different or additional insights. There were also cases that we did not observe within sites; for example, in two of three counties we did not observe divorce trials set outside of the regular docket, and across counties, if parents stipulated to an agreement not heard aloud in court, we did not observe it. Further, and importantly, our analyses are limited to observational data and were not connected to court records, which might have additional detail about cases. Additionally, it is possible that our presence within court led officials to behave differently than they otherwise might; while we took steps to minimize our intrusion, we were not invisible, and particularly in the courtroom we attended in person, our presence was noticeable. However, we note considerable concordance between the descriptions of court processes and reasons for order amounts differing from guidelines that court officials gave in interviews and our observations of court proceedings.

B. Potential Implications

Despite these limitations, we feel that our analysis provides insights related to policy and practice, and possible areas of future research.

1. Simplified Court Documents and Orders

One frequent reason for differences between child support order amounts and the amounts yielded by guidelines formulas was situations in which parents reached an agreement approved by the court for an amount other than that which the guidelines yielded. Court officials expressed that setting orders that work for families is important, and that orders that do not

reflect the wishes of the family have the potential to serve as a source of conflict. Officials also highlighted that the standard state court-provided paperwork for stipulated agreements is confusing and not written in a parent-friendly manner, which presents barriers to parents filing such agreements. State efforts to create and share with counties and courts simplified, user-friendly forms and instructions, that are easy to access through websites and other means, could help increase parent access to court processes by making it easier to file pro se motions. Further, we heard in interviews that the complexity of stipulation paperwork can lead to these forms being rejected. Simplified paperwork, therefore, could potentially help reduce the likelihood of rejections and reduce inefficiencies in application and review. Further, exploring opportunities to fund and connect parents to mediation resources to reach stipulated agreements, and low-cost legal resources to navigate court processes, is worthy of consideration.

We also note that the opportunity to create simplified paperwork, documentation, and child support orders extends beyond stipulations alone, to court orders and all other print material related to court processes. As noted in previous IRP work (Vogel, 2021), to the extent that state agencies and courts can systematically review and simplify all paperwork associated with child support court, doing so could help parents understand expectations related to their orders and potentially reduce the odds of inadvertent noncompliance due to misunderstandings. Future research could help support these efforts by exploring how well parents understand expectations related to their orders after child support hearings, aspects of paperwork and court documentation that are confusing for parents, and opportunities to improve parent understanding of child support processes and outcomes. Given the complexity of court processes and documentation, such policy and research initiatives are likely to be most beneficial for

historically marginalized and underserved parents, including parents of color (Pate, 2016), low-income parents, parents with less education, and parents with literacy and language barriers.

2. *Setting Orders for Payors Without Regular, Known, Sufficient Income*

Findings from this study also underscore the challenging nature of setting order amounts when parents have low incomes, as well as the challenge of determining the income basis for an order when income is irregular or parents are self-employed or work in the informal labor market. As previous research has identified, and as discussed by court officials in interviews, orders that are right-sized to earnings are more likely to be complied with (Bartfeld & Meyer, 1994; Hodges et al., 2020; Huang et al., 2005; Meyer et al., 2008; Takayesu, 2011), as are orders based on actual versus imputed income (Demyan & Passerella, 2018; Venhor, 2018). Aligned with these findings, the federal Office of Child Support Enforcement (OCSE) has also provided recent guidance to states about considering the individual payor's circumstances when setting order amounts (U.S. DHHS, 2016). In the cases we observed, court officials made use of guidelines tools for low-income payors; for example, orders set lower than guidelines formulas often involved payors who were struggling financially, and more orders were set assuming parents had income at the lowest level within the low-income guidelines than were imputed at minimum wage. Future research could continue to examine order amount determination for low-income parents; quantitative analyses could help shed insights into trends and patterns for cases with low or no income information broadly; and future qualitative work could include interviews with a broader array of court officials, child support attorneys, and child support agency staff to broaden our understanding of how order amounts are determined when income is low or unclear. Policymakers could consider whether additional guidance related to income determination, particularly when income is very low or unknown or in situations where payors are self-

employed, could potentially help support court officials' efforts. These could potentially include the dissemination of state resources such as WisConomy (as utilized by one county in this study) or other new or existing resources. As discussed in interviews, streamlined dissemination broadly across court officials could help facilitate consistency in use of such resources.

While resources to help make decisions about the income basis for orders when income is unknown would partially address this problem, another potential policy solution involves connecting payors who are having employment difficulties to regular, adequately-paying employment. In addition to helping payors address their own self-support needs by providing income, and providing a real income basis on which to set orders, payors working in the formal labor market generally pay child support through automatic wage withholding—a crucial factor in facilitating regular child support payments that can help meet childrens' needs. One county included in this study has adopted the practice of including expectations for participation in employment services upon job loss as part of their orders pre-emptively at the time of setting an order, potentially helping to encourage these connections before a payor falls significantly behind on support. The state could consider exploring opportunities to connect courts with information about local employment resources, and helping to facilitate conversations across CSAs and courts, as a means to broaden these connections and incorporation into orders.

3. Setting Orders When Children Are Placed in Out-Of-Home Care

Findings from this study also underscore the unique challenges presented for setting orders when children are placed in out-of-home care, and parents do not participate in the order setting process and/or have very low or unknown incomes. Previous IRP research has indicated that ordering support for children in out-of-home care is associated with longer stays in foster care (Cancian et al., 2017). It is potentially worth considering, at the state level, the goals

associated with ordering support when children are in out-of-home care, and whether current practices align with that goal. Such reconsideration is consistent with recent guidance from the federal government, which encourages states to enact policy changes that require child support orders for children in out-of-home care very rarely (U.S. Department of Health and Human Services, 2022). Researchers, for their part, could help facilitate continued learning about this issue by continuing to explore the effects of charging support for children placed in out of home care, and exploring how counties, more broadly, handle these cases currently.

4. *Orders for Families Who Receive Public Benefits*

Findings from this study highlight that some in some cases, parents end up in child support court not because they have sought services or want an order, but because they are required to have one due to receipt of childcare benefits (or less often, cash assistance). In some of the cases we observed, this information appeared to come as a surprise to parents. The state could consider opportunities to help ensure that parents fully understand the cooperation requirements that result from receipt of benefits, and childcare assistance specifically.

Researchers could potentially help support this effort by exploring areas of potential disconnect (for example, whether this information is shared in a format that is not easy for parents to navigate and digest, or whether opportunities exist to streamline communication processes across economic support offices and child support related to this topic).

We also observed that establishment of an order as the result of receipt of childcare assistance or other public benefits has the potential to create or exacerbate conflict between parents. Positive co-parent relationships have been identified as predictors of father involvement in the lives of children after parents are no longer romantically involved (Carlson, et al., 2008); both positive coparenting relationships (Amato, et al., 2011; Herrero, et al., 2020; Lamela, et al.,

2016) and father involvement have been found to have positive impacts on children’s well-being (Adamsons & Johnson, 2013; Ray, et al., 2021; Wilson, et al, 2011). We also note that due to intersection of race and poverty, children of minoritized backgrounds, including Black and Hispanic children, are disproportionately likely to experience poverty (Shrider, et al., 2021) and to live in custodial parent households (Carlson, et al., 2022; Grall, 2020), creating the likelihood of racial disproportionalities in families entering child support through public benefits pathways. Further, unpaid child support can act as a pathway to judicial enforcement and incarceration, which has been found to disproportionately impact low-income and minoritized parents and can potentially perpetuate economic disadvantage (Battle, 2018; Haney, 2018; Middlemass & Josephson, 2021). Re-examining the potential costs and benefits of requiring custodial parents’ cooperation with child support as a condition for receipt of childcare benefits—particularly in situations when neither parent wants an order for support—may be worth considering.

5. Alternative Formats for Participating in Court Processes

Finally, several of the courtrooms we observed had provided alternate formats for court hearing participation, such as virtual hearings via Zoom. As previous IRP work has identified, and as court officials explicated as a goal for virtual hearings, offering hearings in multiple formats has the potential to reduce barriers to participation for some parents (Vogel & Yeo, 2022; Vogel et al., 2022). Previous research has indicated that default orders can result in order amounts higher than low-income obligors are able to pay (Cancian et al., 2019; Sorensen & Oliver 2002; Sorensen, 2004). Future research could explore the relationships between virtual offerings and rates of orders set by default, parent experiences participating in virtual hearings, and relationships between hearing format and compliance with obligations.

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