

STATE OF NEW MEXICO

2014 CHILD SUPPORT GUIDELINES REVIEW
COMMISSION

FINAL REPORT

SEPTEMBER 2014

Table of Contents

2014 CHILD SUPPORT REVIEW COMMISSION	1
BACKGROUND	1
FORMATION OF COMMISSION AND PUBLIC MEETING	1
EXAMINATION OF CASE FILE DATA	2
ECONOMIC DATA ON THE COST OF RAISING CHILDREN	3
RECOMMENDATIONS	4
1. EXPAND THE LOWEST COMBINED ADJUSTED INCOME IN THE SCHEDULE TO COVER \$0 TO \$800 PER MONTH.	4
2. CLARIFY THAT THE HIGHEST AMOUNTS IN THE SCHEDULE ARE NOT INTENDED TO BE A CAP.	4
3. ADOPT THE TWO MINOR CHANGES (ABOVE) AND PROVIDE FOR A MORE COMPREHENSIVE, TWO-YEAR STUDY.	5
4. IN RESPONSE TO THE SENATE JOINT MEMORIAL 26, THE COMMISSION FINDS THE CHILD SUPPORT GUIDELINES ARE EQUITABLE AND THAT THE GUIDELINES ARE EQUITABLY APPLIED.	5
ACKNOWLEDGMENTS	6

APPENDIX:

ECONOMIC REVIEW OF THE NEW MEXICO CHILD SUPPORT SCHEDULE (REPORT BY CENTER FOR POLICY RESEARCH)

2014 CHILD SUPPORT REVIEW COMMISSION

Representative Kelly K. Fajardo
District 7 Representative
Belen, New Mexico

Gabriel Ortega
Noncustodial Parent
Albuquerque, New Mexico

Pam Garcia, Esquire
Child Support Enforcement Division
Albuquerque, New Mexico

Elizabeth Price, Esquire
Child Support Enforcement Division
Las Cruces, New Mexico

Larry Heyeck, Esquire
Deputy Director
Child Support Enforcement Division
Santa Fe, New Mexico

Honorable Mark Sanchez
District Court Judge
Lovington, New Mexico

Stephen Klump, Esquire
Child Support Hearing Officer
Albuquerque, New Mexico

Honorable Deborah Davis Walker
District Court Judge
Albuquerque, New Mexico

Betina McCracken
Deputy Director
Child Support Enforcement Division
Santa Fe, New Mexico

Anne Wright
Custodial Parent
Corrales, New Mexico

Senator Richard C. Martinez
District 5 Senator
Española, New Mexico

Administration and Technical Assistance

Administration and technical assistance was provided through the New Mexico Child Support Enforcement Division: Jeremy Toulouse (Policy Supervisor) and Julie Ann Hephzibah Doolittle (Management Analyst). Economic analysis and technical assistance was provided to the Commission by Dr. Jane Venohr, an economist and research associate with Center for Policy Research.

BACKGROUND

New Mexico child support guidelines are set in State Statute (NMSA §40-4-11.1). Federal and State law require that the appropriateness of the guidelines be reviewed at least once every four years.¹ The federal requirement is a condition for approval of the state plan for child support (42 U.S. Code §667). Some of the other conditions of the state plan are that a state have one set of child support guidelines that is to be used by all persons whose duty it is to set child support award amounts, and that a state's guidelines, at a minimum, must take into consideration all earnings and income of the nonresidential parent and address how the parents will provide for the child(ren)'s healthcare needs through health insurance coverage and/or through cash medical support, which is defined in federal regulations (45 C.F.R. § 303.31) as among other things, an amount ordered to be paid toward the cost of health insurance provided by another parent or otherwise, or for other medical costs not covered by insurance.

The purpose of the guidelines review is to ensure that the application of the Guidelines results in the determination of appropriate support award amounts in the State. Federal regulation (45 C.F.R. § 302.56) requires that a state's guidelines review: a) consider economic data on the cost of raising children; and, b) examine case file data to analyze the extent that the guidelines are applied and deviated from when setting child support awards. The federal intent is that guidelines deviations should be limited.

In addition, the Commission reviewed Senate Joint Memorial (SJM) 26 signed by the Senate and House on February 14, 2014 and February 26, 2014, respectively. SJM 26 requests that the Administrative Office of the Courts study the equity of requirements for the determination of child support payments.

FORMATION OF COMMISSION AND PUBLIC MEETING

The Child Support Review Commission was formed in July 2014 by the New Mexico Child Support Enforcement Division (CSED) and as provided in NMSA §40-4-11.3 (1978). The composition of the Commission reflects a wide range of stakeholders including parent representatives, state legislatures, judges, family law attorneys and CSED administrators.

¹U.S. Code §667(a) and NMSA §40-4-11.3.

A public meeting of the Child Support Review Commission was held on August 18, 2014 in Albuquerque and linked to videoconferences in Las Cruces, Santa Fe, Roswell, Farmington, Hobbs, and Silver City to facilitate public participation from other areas of the State. A public announcement about the meeting and videoconference was released in advance of the hearing, as well a solicitation for written comments.

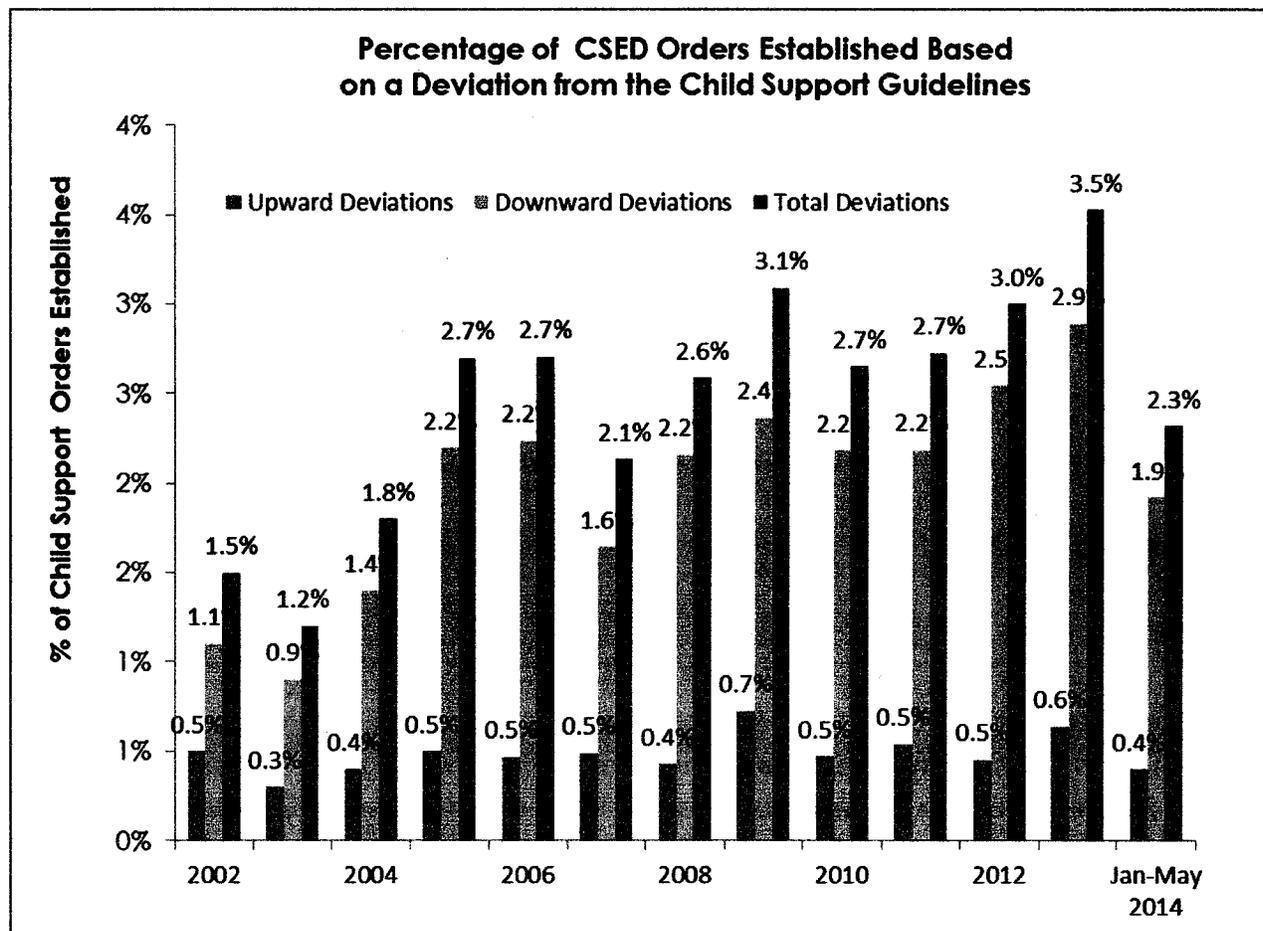
The Commission members in attendance of the August meeting were: Pam Garcia, Representative Kelly K. Fajardo, Larry Heyeck, Stephen Klump, Betina McCracken, Elizabeth Price, Honorable Mark Sanchez, Honorable Deborah Davis Walker, and Anne Wright. Absent Commission members were Senator Richard Martinez and Gabriel Ortega. Public in attendance of the meeting had no comments and no written comments were received. Dr. Jane Venohr, an economist with Center for Policy Research who has national expertise in child support guidelines, presented to the Commission. She was retained by CSED to provide information on the cost of child rearing. Her report is provided in the Appendix.

EXAMINATION OF CASE FILE DATA

The New Mexico Child Support Enforcement Division (CSED) provided information on child support guidelines deviations for all order establishments by CSED since 2002. The information was collected from the CSED automated system, which includes a data field for noting whether the guidelines were applied or if there was a deviation from the guidelines, and, if any the direction of the deviation. This information was used to calculate the guidelines deviation rate and is shown in the chart on the next page. From 2002 through 2004, the guidelines deviation rate was less than 2 percent. From 2005 through 2013, it ranged from 2.7 to 3.5 percent and did not consistently increase or decrease from year to year. The vast majority of the deviations, regardless of the time period, were downward.

New Mexico's guidelines deviation rate is generally less than those of other states. However, the data do not include non-CSED data. As pointed out in Dr. Venohr's presentation, other states that use actual court records to examine guidelines deviations are able to capture data from orders established or modified by the state child support agency and those that are established or modified outside the agency including parents with private attorneys and parents who represent themselves. The examination of court files can also

provide other information about the circumstances of the case (e.g., the incomes of the parents and the specifics of the medical child support order) that can be analyzed to determine how the guidelines are being applied.



ECONOMIC DATA ON THE COST OF RAISING CHILDREN

The Commission considered the economic evidence on the current cost of child rearing presented by Dr. Venohr. Specifically, this included cost of child-rearing studies developed by the United States Department of Agriculture;² Professor David Betson, University of Notre Dame,³ and a study commissioned by New

² Lino, Mark (2013). *Expenditures on Children by Families: 2012 Annual Report*. U.S. Department of Agriculture, Center for Nutrition and Policy Promotion. Miscellaneous Publication No. 1528-2012, Washington, D.C. <http://www.cnpp.usda.gov/publications/crc/crc2012.pdf>

³ Betson, David M. (2010). "Appendix A: Parental Expenditures on Children." in Judicial Council of California, *Review of Statewide Uniform Child Support Guideline*. San Francisco, California. Retrieved from: <http://www.courts.ca.gov/partners/documents/2011SRL6aGuidelineReview.pdf>

Jersey.⁴ The Betson study is of particular interest because he developed the measurements of child-rearing expenditures that underlie the New Mexico child support guidelines and the guidelines of 28 other states, and has since updated his study using more current data on family expenditures. The Commission also considered the appropriateness of these studies to New Mexico incomes and cost of living. In all, the conclusion is that the existing New Mexico schedule is not consistently too low or too high relative to current economic evidence on the cost of child-rearing.

RECOMMENDATIONS

The Commission developed four recommendations.

1. Expand the lowest combined adjusted income in the Schedule to cover \$0 to \$800 per month.

The current Basic Child Support Schedule provided in NM Stat § 4004-11.1(K), starts at \$800 per month and the guidelines do not specify an amount for incomes below \$800 per month. The Commission recommends that the \$800-income bracket be expanded to cover incomes of \$0 through \$800 per month. This will provide greater consistency in award amounts for incomes below \$800 per month. The schedule amounts at \$800 per month are \$100 per month for one child and \$150 per month for two or more children. Accepting the recommendation would apply these amounts as a rebuttable presumption to incomes below \$800 per month.

2. Clarify that the highest amounts in the Schedule are not intended to be a cap.

The current Schedule stops at combined gross monthly income of \$30,000 and provides no direction for incomes above that. It stops at this income because there are too few high-income families in the data set used to analyze child-rearing expenditures to which a reliable measurement could be developed. The Commission recommends clarifying that the highest amounts in the Basic Child Support Schedule, provided in NM Stat § 40-4-

⁴ New Jersey Child Support Institute (March 2013). *Quadrennial Review: Final Report, Institute for Families*, Rutgers, the State University of New Jersey, New Brunswick, NJ. Retrieved from: http://www.judiciary.state.nj.us/reports2013/F0_NJ+QuadrennialReview-Final_3.22.13_complete.pdf

11.1(K), are not intended to be a cap. Further, the Commission recommends that the guidelines provide that, with respect to the number of children for whom support is being determined, the highest basic obligations in the schedule are the minimum amounts to be applied when the parents' combined gross monthly income exceeds \$30,000 and provide judiciary discretion when combined gross monthly income exceeds \$30,000. An example of such language from another state is provided on page 45 of the technical report in the Appendix.

3. Adopt the two minor changes (above) and provide for a more comprehensive, two-year study.

The Commission believes that the first two recommended changes are minor and must be addressed now, while other issues would be better addressed comprehensively by a long-standing committee. This would facilitate the development of one set of recommendations that could be taken before the legislature as a packaged proposal. Some of the items identified for a two-year study are: the underlying child support guidelines model and economic data, provisions for medical child support and the Affordable Care Act, guidelines deviation criteria, high-income cases, the adjustment for shared parenting time, an in-depth analysis of issues identified in SJM26 and case law, the growing accumulation of child support arrears and whether it is likely to be paid, and the order amounts and income imputation provisions for low-income parents. The last issue became an issue for most states and is of grave concern at the national level. In all, the Commission recognizes that there are many guidelines issues worthy of more comprehensive study and that some of these issues are complicated so would benefit from a two-year study and the development of a coordinated and consolidated set of recommendations that consider multiple issues.

4. In response to the Senate Joint Memorial 26, the Commission finds the child support guidelines are equitable and that the guidelines are equitably applied.

The Commission, in all, finds that the child support guidelines are equitable. Across-the-schedule, they are consistently too high or too low relative to the most current evidence on the cost of raising children. Based on the low rate of child support orders in which the child support guidelines are deviated, the guidelines are also being applied equitably.

ACKNOWLEDGMENTS

The Commission Chair gratefully acknowledges the assistance and expertise of each Commission member in their thoughtful contributions to the Commission's deliberations when making recommendations.

Larry Heyeck, Chair

