

**Commission on Child Support
Meeting Agenda
Thursday, July 29, 2021
9am-12pm CDT**

**Kneip Building – Conference Room #3
700 Governors Drive
Pierre, SD 57501**

Join Zoom Meeting

<https://state-sd.zoom.us/j/95643701143?pwd=TGIXTVaeEFpMjBTMXRKY29IMEhZdz09>

Meeting ID: 956 4370 1143

Passcode: 959076

- 9:00-9:10 Chairman Myren – Call to Order
Roll Call (Marilyn Kinsman, DSS Senior Policy Analyst)
Introduction of Commission members
- 9:10-9:20 Public Comment at 9:10 am - *10 minutes for the public to address the Commission*
- 9:20-9:30 Duties of the Commission
- Executive Order 2020-03 and 2020-29
 - Attend Commission meeting and public hearings
 - Provide input in Commission discussions and vote
 - Review draft legislation
 - Review draft Commission Report and provide feedback
- 9:30-9:35 Summary of the Division of Child Support
- 9:35-10:30 Dr. Jane Venohr, Center for Policy Research
Overview of Federal Requirements
- 10:30-10:40 (Break)
- 10:45-11:45 Dr. Jane Venohr, Center for Policy Research
New Economic Data on Child-Rearing Costs and Updating the Schedule
- 11:45-12:00 Schedule future meetings/public hearings
- 12:00pm Adjourn

Exhibit 1: Excerpt of Federal Rule

45 C.F.R.

§303.56 Guidelines for setting child support orders

- (a) Within 1 year after completion of the State's next quadrennial review of its child support guidelines, that commences more than 1 year after publication of the final rule, in accordance with § 302.56(e), as a condition of approval of its State plan, the State must establish one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support order amounts within the State that meet the requirements in this section.
- (b) The State must have procedures for making the guidelines available to all persons in the State.
- (c) The child support guidelines established under paragraph (a) of this section must at a minimum:
 - (1) Provide that the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay that:
 - (i) Takes into consideration all earnings and income of the noncustodial parent (and at the State's discretion, the custodial parent);
 - (ii) Takes into consideration the basic subsistence needs of the noncustodial parent (and at the State's discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method determined by the State; and
 - (iii) If imputation of income is authorized, takes into consideration the specific circumstances of the noncustodial parent (and at the State's discretion, the custodial parent) to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.
 - (2) Address how the parents will provide for the child's health care needs through private or public health care coverage and/or through cash medical support;
 - (3) Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders; and
 - (4) Be based on specific descriptive and numeric criteria and result in a computation of the child support obligation.
- (d) The State must include a copy of the child support guidelines in its State plan.
- (e) The State must review, and revise, if appropriate, the child support guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support order amounts. The State shall publish on the internet and make accessible to the public all reports of the guidelines reviewing body, the membership of the reviewing body, the effective date of the guidelines, and the date of the next quadrennial review.
- (f) The State must provide that there will be a rebuttable presumption, in any judicial or administrative proceeding for the establishment and modification of a child support order, that the amount of the order which would result from the application of the child support guidelines established under paragraph (a) of this section is the correct amount of child support to be ordered.
- (g) A written finding or specific finding on the record of a judicial or administrative proceeding for the establishment or modification of a child support order that the application of the child support guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case will be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must take into consideration the best interests of the child. Findings that rebut the child support guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.
- (h) As part of the review of a State's child support guidelines required under paragraph (e) of this section, a State must:
 - (1) Consider economic data on the cost of raising children, labor market data (such as unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level for the State and local job markets, the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level, and factors that influence employment rates among noncustodial parents and compliance with child support orders;
 - (2) Analyze case data, gathered through sampling or other methods, on the application of and deviations from the child support guidelines, as well as the rates of default and imputed child support orders and orders determined using the low-income adjustment required under paragraph (c)(1)(ii) of this section. The analysis must also include a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment required under paragraph (c)(1)(ii). The analysis of the data must be used in the State's review of the child support guidelines to ensure that deviations from the guidelines are limited and guideline amounts are appropriate based on criteria established by the State under paragraph (g); and
 - (3) Provide a meaningful opportunity for public input, including input from low-income custodial and noncustodial parents and their representatives. The State must also obtain the views and advice of the State child support agency funded under title IV-D of the Act.

Other Provisions of the New Federal Rule that Indirectly affect Low-Income Provisions of State Guidelines

§303.4 Establishment of support obligations.

(b) Use appropriate State statutes, procedures, and legal processes in establishing and modifying support obligations in accordance with §302.56 of this chapter, which must include, at a minimum: (1) Taking reasonable steps to develop a sufficient factual basis for the support obligation, through such means as investigations, case conferencing, interviews with both parties, appear and disclose procedures, parent questionnaires, testimony, and electronic data sources; (2) Gathering information regarding the earnings and income of the noncustodial parent and, when earnings and income information is unavailable or insufficient in a case gathering available information about the specific circumstances of the noncustodial parent, including such factors as those listed under §302.56(c)(1)(iii) of this chapter; (3) Basing the support obligation or recommended support obligation amount on the earnings and income of the noncustodial parent whenever available. If evidence of earnings and income is unavailable or insufficient to use as the measure of the noncustodial parent's ability to pay, then the support obligation or recommended support obligation amount should be based on available information about the specific circumstances of the noncustodial parent, including such factors as those listed in §302.56(c)(1)(iii) of this chapter. (4) Documenting the factual basis for the support obligation or the recommended support obligation in the case record.

§303.8 Review and adjustment of child support orders.

***** (b)

*** (2) The State may elect in its State plan to initiate review of an order, after learning that a noncustodial parent will be incarcerated for more than 180 calendar days, without the need for a specific request and, upon notice to both parents, review, and if appropriate, adjust the order, in accordance with paragraph (b)(1)(i) of this section. ***** (7) The State must provide notice— (i) Not less than once every 3 years to both parents subject to an order informing the parents of their right to request the State to review and, if appropriate, adjust the order consistent with this section. The notice must specify the place and manner in which the request should be made. The initial notice may be included in the order. (ii) If the State has not elected paragraph (b)(2) of this section, within 15 business days of when the IV–D agency learns that a noncustodial parent will be incarcerated for more than 180 calendar days, to both parents informing them of the right to request the State to review and, if appropriate, adjust the order, consistent with this section. The notice must specify, at a minimum, the place and manner in which the request should be made. Neither the notice nor a review is required under this paragraph if the State has a comparable law or rule that modifies a child support obligation upon incarceration by operation of State law. (c) *** Such reasonable quantitative standard must not exclude incarceration as a basis for determining whether an inconsistency between the existing child support order amount and the amount of support determined as a result of a review is adequate grounds for petitioning for adjustment of the order.

Review of the South Dakota Child Support Guidelines

**Presentation to Child Support Guidelines Commission
(July 29, 2021)**

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303-837-1555



Outline

- Federal & State requirements for a periodic review of the child support guidelines
 - New requirements on how states must address income imputation and incarceration
 - New requirements on what must be considered in a review
- Review of economic data on the cost of raising children and schedule
 - List of economic data and assumptions underlying the schedule
 - What could be updated?
- Other issues
- Next steps

Quadrennial Child Support Guidelines Reviews

Required by

- State statute (SDCL 25-7-6.12)

The Governor shall, commencing in the year 2000, establish quadrennially a commission on child support. The commission shall review the provisions of this chapter, shall report its findings to the Governor and the Legislature, and may propose amendment thereof to the Legislature.

Previous Commission Report: https://dss.sd.gov/docs/childsupport/child_support_commission_report.pdf

- Federal regulation (45 C.F.R. §302.56)

- Federal requirements expanded in December 2016
- Most of the requirements are targeted to low-income parents in the IV-D caseload
 - Supreme Court decision in Turner v. Rogers, 564 U.S. 111, 131 S Ct. 2507 (2011) involved incarceration of a low-income obligor for non-payment of child support
- Timeline for meeting new requirements: year after completing the 4-year review commencing a year after December 2016 and longer with a waiver due to the Covid-19 pandemic, which SD has



Review Process & Federal Requirements

Federal Requirements (45 CFR §302.56)

1987: States required to have advisory guidelines

1989: States required to have rebuttable presumptive guidelines

2016: Major expansion of federal requirements

Objective of slides 5-21: review expanded requirements

A) Requirements of state guidelines

B) Requirements of state guidelines reviews

Does the current South Dakota guidelines meet the expanded federal requirements?

See attachments for full federal regulations

SD's Compliance with Federal Requirements of Guidelines

Continued Requirement	SD Complies
Provide one guideline, used statewide	☑
Consider all earnings and income	☑ 25-7-6.3
Be specific and numeric	☑
Provide for child's healthcare needs	☑ 25-7-6.16
Provide deviation criteria	☑
Require record of deviation	

New Requirement	SD Complies
Consider other evidence of ability to pay	
Consider parent's basic subsistence need	☑, but not explicit
Consider specific circumstances when imputing income	
Do not treat incarceration as voluntary unemployment with non-finalized* optional federal exception	

*U.S. Department of Health and Human Services. (Sept. 17, 2020). "Optional Exceptions to the Prohibition Against Treating Incarceration as Voluntary Unemployment Under Child Support Guidelines." *Federal Register*, Vol. 85, No. 244, p. 58029. Retrieved from. <https://www.federalregister.gov/documents/2020/09/17/2020-17747/optional-exceptions-to-the-prohibition-against-treating-incarceration-as-voluntary-unemployment>

Federal Requirement: Address Subsistence Needs

Federal Requirement	SD Provisions
<p>§302.56(c)(1)(ii) Takes into consideration the basic subsistence needs of the noncustodial parent (and at the State's discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method determined by the State</p>	<p><i>Provides a self-support reserve in emboldened area, but not explicitly stated. The current SSR is \$871/mo (2016 fed. poverty level adjusted for SD prices)</i></p> <p>25-7-6.1 Support obligation schedule.</p> <p>If the obligation using only the noncustodial parent's monthly net income is an obligation within the emboldened areas of the schedule, that amount shall be compared to the noncustodial parent's proportionate share using both parents' monthly net incomes. The lesser amount establishes the noncustodial parent's child support order.</p>

Embolden Area of Child Support Schedule

One option to make SD's compliance with federal requirement obvious

25-7-6.1 Support obligation schedule.

The emboldened areas of schedule includes a self-support reserve of \$871 per month. If the obligation using only the noncustodial parent's monthly net income is an obligation within the emboldened areas of the schedule, that amount shall be compared to the noncustodial parent's proportionate share using both parents' monthly net incomes. The lesser amount establishes the noncustodial parent's child support order.

Monthly Net Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
0-950	79	79	79	79	79	79
951-1,000	129	129	129	129	129	129
1,001-1,050	179	179	179	179	179	179
1,051-1,100	225	229	229	229	229	229
1,101-1,150	266	279	279	279	279	279
1,151-1,200	308	329	329	329	329	329
1,201-1,250	320	379	379	379	379	379
1,251-1,300	333	429	429	429	429	429
1,301-1,350	345	479	479	479	479	479
1,351-1,400	357	523	529	529	529	529
1,401-1,450	370	541	579	579	579	579
1,451-1,500	382	559	629	629	629	629
1,501-1,550	395	577	679	679	679	679
1,551-1,600	407	595	706	729	729	729
1,601-1,650	419	613	727	779	779	779
1,651-1,700	431	629	747	829	829	829
1,701-1,750	443	646	766	855	879	879
1,751-1,800	455	663	785	877	929	929
1,801-1,850	466	679	804	899	979	979
1,851-1,900	478	696	824	920	1,012	1,029
1,901-1,950	490	713	843	942	1,036	1,079
1,951-2,000	501	729	862	963	1,059	1,129
2,001-2,050	513	746	882	985	1,083	1,177

KY's Explicit Statement of Self-Support Reserve

(d) "Self-support reserve" means a low-income adjustment amount to the obligated parent of nine hundred fifteen dollars (\$915) per month that considers the subsistence needs of the parent with a limited ability to pay in accordance with 45 C.F.R. sec. 302.56(c)(1)(ii), and as applied under subsection (3) of this section

KY write's out the SSR-income thresholds instead of emboldens them

(3)

- (a) Except as provided in paragraph (b) of this subsection, the child support obligation set forth in the child support guidelines table shall be divided between the parents in proportion to their combined monthly adjusted parental gross income.
- (b) If the monthly adjusted gross income of the obligated parent and the number of children for whom support is being determined fall within the following defined areas, which represent the self-support reserve, the basic child support obligation shall be calculated by using the monthly adjusted gross income of the obligated parent only to provide the obligated parent with the self-support reserve:
 - 1. Equal to or less than one thousand one hundred dollars (\$1,100) with one (1) or more children;
 - 2. Equal to or less than one thousand three hundred dollars (\$1,300) with two (2) or more children;
 - 3. Equal to or less than one thousand four hundred dollars (\$1,400) with three (3) or more children;
 - 4. Equal to or less than one thousand five hundred dollars (\$1,500) with four (4) or more children; or
 - 5. Equal to or less than one thousand six hundred dollars (\$1,600) with six (6) or more children

North Carolina's Explicit Statement of Self-Support Reserve

Note that NC "shades" its SSR area while SD emboldens it

Self-Support Reserve: Supporting Parents with Low Incomes

The guidelines include a self-support reserve that ensures that obligated parents have sufficient income to maintain a minimum standard of living based on the 2014 federal poverty level for one person (\$973 per month) for obligated parents with an adjustment gross income of less than \$1,097 the Guidelines require, absent a deviation, the establishment of a minimum support order (\$50). For obligated parents with adjusted gross incomes above \$1,097, the Schedule of Basic Support Obligations incorporates a further adjustment to maintain the self-support reserve for the obligated parent.

If the obligated parent's adjusted gross income falls within the shaded area of the Schedule and Worksheet A is used, the basic child support obligation and the obligated parent's total child support obligation are computed using only the obligated parent's income. In these cases, childcare and health insurance premiums should not be used to calculate the child support obligation. However, payment of these costs or other extraordinary expenses by either parent may be a basis for deviation. This approach prevents disproportionate increases in the child support obligation with moderate increases in income and protects the integrity of the self-support reserve. In all other cases, the basic child support obligation is computed using the combined adjusted gross incomes of both parents.

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
0	50	50	50	50	50	50
1200	66	67	68	68	69	70
1250	101	102	103	104	105	106
1300	135	137	138	140	141	143
1350	170	172	173	175	177	179
1400	204	207	209	211	213	216
1450	239	241	244	247	249	252
1500	273	276	279	282	285	289
1550	295	311	315	318	322	325
1600	304	346	350	354	358	361
1650	313	381	385	390	394	398
1700	321	416	421	425	430	434
1750	330	451	456	461	466	471
1800	338	486	491	496	502	507
1850	347	520	526	531	537	543
1900	355	549	560	566	572	578
1950	364	562	594	601	607	614
2000	372	575	629	636	642	649
2050	381	588	663	670	677	685
2100	389	601	697	705	713	720
2150	398	614	732	740	748	756
2200	406	627	766	775	783	791
2250	415	641	784	809	818	827
2300	423	654	800	844	853	862
2350	432	667	816	879	888	898
2400	440	680	831	914	923	933
2450	449	693	847	947	959	969
2500	457	706	863	964	994	1004
2550	466	719	879	982	1029	1040
2600	474	732	895	1000	1064	1075
2650	483	745	911	1018	1099	1111
2700	491	758	927	1036	1134	1146
2750	500	771	943	1054	1159	1182
2800	508	785	959	1071	1178	1217
2850	517	798	975	1089	1198	1253
2900	525	811	991	1107	1218	1288
2950	534	824	1007	1125	1237	1324
3000	542	837	1023	1142	1257	1359
3050	551	850	1039	1160	1276	1397
3100	560	863	1055	1178	1296	1409
3150	568	876	1071	1196	1315	1430
3200	577	889	1086	1214	1335	1451

Federal Requirement: Consider Other Evidence of Ability to Pay

Federal Requirement

§302.56(c)

The child support guidelines established under paragraph (a) of this section must at a minimum:

- (1) Provide that the child support order is based on the noncustodial parent's earnings, income, and **other evidence of ability to pay** that:
 - (i) Takes into consideration **all** earnings and income of the noncustodial parent (and at the State's discretion, the custodial parent);

OCSE's explanation of the rule change cites PIQ-00-03. Retrieved from: <https://www.acf.hhs.gov/css/resource/state-iv-d-program-flexibility-low-income-obligors>

States may want to take steps to limit the imputation of income, for example, to cases in which the non-custodial parent has apparent assets and/or ability to pay, but is uncooperative. And, most importantly, States should make the maximum use of improved methods of determining income and resources of non-custodial parents, including the State and National Directories of New Hires as well as the Financial Institution Data Match (FIDM) and Multistate Financial Institution Data Match (MSFIDM).

SD Provisions

25-7-6.3 Determination of parents' monthly net income-- Source of income.

Determination of parents' monthly net income--Sources of income. The monthly net income of each parent shall be determined by the parent's gross income less allowable deductions, as set forth in this chapter. The monthly gross income of each parent includes amounts received from the following sources:

- (1) Compensation paid to an employee for personal services, whether salary, wages, commissions, bonus, or otherwise designated;
- (2) Self-employment income including gain, profit, or loss from a business, farm, or profession;
- (3) Periodic payments from pensions or retirement programs, including social security or veteran's benefits, disability payments, or insurance contracts;
- (4) Interest, dividends, rentals, royalties, or other gain derived from investment of capital assets;
- (5) Gain or loss from the sale, trade, or conversion of capital assets;
- (6) Reemployment assistance or unemployment insurance benefits;
- (7) Worker's compensation benefits; and
- (8) Benefits in lieu of compensation including military pay allowances.

Overtime wages, commissions, and bonuses may be excluded if the compensation is not a regular and recurring source of income for the parent. Income derived from seasonal employment shall be annualized to determine a monthly average income.

25-7-6.5. Assets considered when income insufficient

If a child's needs are not being met through the income of the parents, assets shall be considered. If the parents have savings, life insurance, or other assets in amounts unrelated to income, these holdings shall be considered. The parents' ability to borrow may be used to determine financial ability

New Federal Requirements Pertaining to Low-Income/Income Imputation Complement Agency Requirement to Take Reasonable Steps to Develop Factual Basis of Order Including Income Used to Determine Order

§303.4 Establishment of support obligations.

(b) Use appropriate State statutes, procedures, and legal processes in establishing and modifying support obligations in accordance with §302.56 of this chapter, which must include, at a minimum: (1) Taking reasonable steps to develop a sufficient factual basis for the support obligation, through such means as investigations, case conferencing, interviews with both parties, appear and disclose procedures, parent questionnaires, testimony, and electronic data sources; (2) Gathering information regarding the earnings and income of the noncustodial parent and, when earnings and income information is unavailable or insufficient in a case gathering available information about the specific circumstances of the noncustodial parent, including such factors as those listed under §302.56(c)(1)(iii) of this chapter; (3) Basing the support obligation or recommended support obligation amount on the earnings and income of the noncustodial parent whenever available. If evidence of earnings and income is unavailable or insufficient to use as the measure of the noncustodial parent's ability to pay, then the support obligation or recommended support obligation amount should be based on available information about the specific circumstances of the noncustodial parent, including such factors as those listed in §302.56(c)(1)(iii) of this chapter. (4) Documenting the factual basis for the support obligation or the recommended support obligation in the case record.

Examples from Other States: All, Actual Income & Other Evidence of Ability to Pay

NE	(D) Copies of at least 2 years' tax returns, financial statements, and current wage stubs should be furnished to the court and the other party to the action at least 3 days before any hearing requesting relief. Any party claiming an allowance of depreciation as a deduction from income shall furnish to the court and the other party copies of a minimum of 5 years' tax returns at least 14 days before any hearing pertaining to the allowance of the deduction.
ND	3. Net income received by an obligor from all sources must be considered in the determination of available money for child support. 7. Income must be sufficiently documented through the use of tax returns, current wage statements, and other information to fully apprise the court of all gross income . Where gross income is subject to fluctuation, regardless of whether the obligor is employed or self-employed, information reflecting and covering a period of time sufficient to reveal the likely extent of fluctuations must be provided.
CO	(c) "Income" means the actual gross income of a parent, if employed to full capacity, or potential income, if unemployed or underemployed . Gross income of each parent shall be determined according to subsection (5) of this section. (III) (C)(c) Income statements of the parents shall be verified with documentation of both current and past earnings. Suitable documentation of current earnings includes pay stubs, employer statements, or receipts and expenses if self-employed. Documentation of current earnings shall be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period. A copy of wage statements or other wage information obtained from the computer data base maintained by the department of labor and employment shall be admissible into evidence for purposes of determining income under this subsection (5) .
UT	(b) Each parent shall provide verification of current income. Each parent shall provide year-to-date pay stubs or employer statements and complete copies of tax returns from at least the most recent year unless the court finds the verification is not reasonably available. Verification of income from records maintained by the Department of Workforce Services may be substituted for pay stubs, employer statements, and income tax returns.
DC	§303.4 Establishment of support obligations. (b) Use appropriate State statutes, procedures, and legal processes in establishing and modifying support obligations in accordance with §302.56 of this chapter, which must include, at a minimum: (1) Taking reasonable steps to develop a sufficient factual basis for the support obligation, through such means as investigations, case conferencing, interviews with both parties, appear and disclose procedures, parent questionnaires, testimony, and electronic data sources ; (2) Gathering information regarding the earnings and income of the noncustodial parent and, when earnings and income information is unavailable or insufficient in a case gathering available information about the specific circumstances of the noncustodial parent, including such factors as those listed under §302.56(c)(1)(iii) of this chapter; (3) Basing the support obligation or recommended support obligation amount on the earnings and income of the noncustodial parent whenever available. If evidence of earnings and income is unavailable or insufficient to use as the measure of the noncustodial parent's ability to pay, then the support obligation or recommended support obligation amount should be based on available information about the specific circumstances of the noncustodial parent, including such factors as those listed in §302.56(c)(1)(iii) of this chapter. (4) Documenting the factual basis for the support obligation or the recommended support obligation in the case record

Some neighboring states (IA, MN, and WY haven't reviewed their guidelines or implemented changes yet.

Federal Requirement: Income Imputation

Federal Requirement	SD Provisions
<p>§302.56(c)(1)(iii) If imputation of income is authorized, takes into consideration the specific circumstances of the noncustodial parent (and at the State's discretion, the custodial parent) to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.</p>	<p>25-7-6.4. Rebuttable presumption of employment at minimum wage. Except in cases of physical or mental disability, it is presumed for the purposes of determination of child support that a parent is capable of being employed a minimum of one thousand eight hundred twenty hours per year, including while incarcerated, and the parent's child support obligation shall be calculated at a rate not less than one thousand eight hundred twenty hours at the state minimum wage. Evidence to rebut this presumption may be presented by either parent.</p>

1,820 hours per year is 35 hours per week, which was the average hours worked in SD in 2016

MT: Factors to Consider when Imputing Income

RULE 5: IMPUTED INCOME FOR CHILD SUPPORT (ARM 37.62.106)

(1) "Imputed income" means income not actually earned by a parent, but which is attributed to the parent based on the provisions of this rule. It is **presumed that all parents** are capable of working at **least 40 hours per week at minimum wage**, absent evidence to the contrary. It is appropriate to impute income to a parent, subject to the provisions of (6) of this rule, when the parent:

- (a) is unemployed;
- (b) is underemployed;
- (c) fails to produce sufficient proof of income;
- (d) has an unknown employment status; or
- (e) is a student.

(3) In all cases where imputed income is appropriate, the amount is based on the following:

- (a) the parent's recent work and earnings history;
- (b) the parent's occupational, educational, and professional qualifications;
- (c) existing job opportunities and associated earning levels in the community or the local trade area;
- (d) the parent's age, literacy, health, criminal record, record of seeking work, and other employment barriers;
- (e) the availability of employers willing to hire the parent; and
- (f) other relevant background factors.

(4) Imputed income may be in addition to actual income and may not necessarily reflect the same rate of pay as the actual income.

(5) Income is imputed according to a parent's status as a full- or part-time student, whose education or retraining will result, within a reasonable time, in an economic benefit to the child for whom the support obligation is determined, unless actual income is greater. If the student is:

- (a) full-time, the parent's earning capacity is based on full-time employment for 13 weeks and approximately half of full-time employment for the remaining 39 weeks of a 12-month period; or
- (b) part-time, the parent's earning capacity is based on full-time employment for a 12-month period.

(6) Income is not imputed if any of the following conditions exist:

- (a) the reasonable and unreimbursed costs of child care for dependents in the parent's household would offset in whole or in substantial part, that parent's imputed income;
- (b) a **parent is physically or mentally disabled to the extent that the parent cannot earn income, or is incarcerated for more than 180 days;**
- (c) unusual emotional and/or physical needs of a legal dependent require the parent's presence in the home;
- (d) the parent has made diligent efforts to find and accept suitable work or to return to customary self-employment, to no avail; or
- (e) the court or hearing officer makes a finding that other circumstances exist which make the imputation of income inequitable. However, the amount of imputed income shall be decreased only to the extent required to remove such inequity.

Examples from Other States: Factors to Consider when Imputing Income

NE	<p>(E) If applicable, earning capacity may be considered in lieu of a parent's actual, present income. Earning capacity is not limited to wage-earning capacity, but includes moneys available from all sources. When imputing income to a parent, the court shall take into consideration the specific circumstances of the parents, to the extent known. Those factors may include the parent's residence, employment and earnings history, job skills, educational attainment, literacy, age, health, and employment barriers, including criminal record, record of seeking work, prevailing local earning levels, and availability of employment.</p>
UT	<p>(b) If income is imputed to a parent, the income shall be based upon employment potential and probable earnings considering, to the extent known: (i) employment opportunities; (ii) work history; (iii) occupation qualifications; (iv) educational attainment; (v) literacy; (vi) age; (vii) health; (viii) criminal record; (ix) other employment barriers and background factors; and (x) prevailing earnings and job availability for persons of similar backgrounds in the community. (c) If a parent has no recent work history or a parent's occupation is unknown, that parent may be imputed an income at the federal minimum wage for a 40-hour work week. To impute a greater or lesser income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation. (d) Income may not be imputed if any of the following conditions exist and the condition is not of a temporary nature: (i) the reasonable costs of child care for the parents' minor children approach or equal the amount of income the custodial parent can earn; (ii) a parent is physically or mentally unable to earn minimum wage; (iii) a parent is engaged in career or occupational training to establish basic job skills; or (iv) unusual emotional or physical needs of a child require the custodial parent's presence in the home. (9) (a) Gross income may not include the earnings of a minor child who is the subject of a child support award nor benefits to a minor child in the child's own right such as Supplemental Security Income. (b) Social security benefits received by a child due to the earnings of a parent shall be credited as child support to the parent upon whose earning record it is based, by crediting the amount against the potential obligation of that parent. Other unearned income of a child may</p>
LA	<p>§315.11. Voluntarily unemployed or underemployed party A. (1) If a party is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of income earning potential, unless the party is physically or mentally incapacitated, or is caring for a child of the parties under the age of five years. In determining the party's income earning potential, the court may consider the most recently published Louisiana Occupational Employment Wage Survey. In determining whether to impute income to a party, the court's considerations shall include, to the extent known, all of the following: (a) Assets owned or held by the party. (b) Residence. (c) Employment and earnings history. (d) Job skills. (e) Educational attainment. (f) Literacy. (g) Age and health. (h) Criminal record and other employment barriers. (i) Record of seeking work. (j) The local job market. (k) The availability of employers willing to hire the noncustodial parent. (l) Prevailing earnings level in the local community. (m) Other relevant background factors in the case. (2) Absent evidence of a party's actual income or income earning potential, there is a rebuttable presumption that the party can earn a weekly gross amount equal to thirty-two hours at a minimum wage, according to the laws of his state of domicile or federal law, whichever is higher</p>

ND: Factors to Consider when Imputing Income

An obligor is "underemployed" if the obligor's gross income from earnings is significantly less than this state's statewide average earnings for persons with similar work history and occupational qualifications. 2. An obligor is presumed to be underemployed if the obligor's gross income from earnings is less than the greater of: a. Six-tenths of this state's statewide average earnings for persons with similar work history and occupational qualifications; or b. A monthly amount equal to one hundred sixty-seven times the federal hourly minimum wage. 3. Except as provided in subsections 4, 5, 6, and 7, gross income based on earning capacity equal to the greatest of subdivisions a through c, less actual gross earnings, must be imputed to an obligor who is unemployed or underemployed. a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage. b. An amount equal to six-tenths of this state's statewide average earnings for persons with similar work history and occupational qualifications. c. An amount equal to ninety percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months included in the current calendar year and the two previous calendar years before commencement of the proceeding before the court, for which reliable evidence is provided. 4. Monthly gross income based on earning capacity may not be imputed under subsection 3 if: a. The reasonable cost of child care equals or exceeds seventy percent of the income which would otherwise be imputed where the care is for the obligor's child: (1) For whom the obligor has primary residential responsibility; (2) Who is under the age of thirteen; and (3) For whom there is no other adult caretaker in the obligor's home available to meet the child's needs during absence due to employment. b. Current medical records confirm the obligor suffers from a disability sufficient in severity to reasonably preclude the obligor from gainful employment that produces average monthly gross earnings equal to at least one hundred sixty-seven times the hourly federal minimum wage. c. The unusual emotional or physical needs of a minor child of the obligor require the obligor's presence in the home for a proportion of the time so great as to preclude the obligor from gainful employment that produces average monthly gross earnings equal to one hundred sixty-seven times the hourly federal minimum wage. d. The obligor has average gross monthly earnings equal to or greater than one hundred sixty-seven times the hourly federal minimum wage and is not underemployed. e. The obligor is under eighteen years of age or is under nineteen years of age and enrolled in and attending high school. f. The obligor is receiving: (1) Supplemental security income payments; (2) Social security disability payments; (3) Workers' compensation wage replacement benefits; (4) Total and permanent disability benefits paid by the railroad retirement board; (5) Pension benefits, as defined in subsection 9, paid by the veterans benefits administration; or (6) Disability compensation paid by the veterans benefits administration based on an overall disability rating of one hundred percent. g. It has been less than one hundred eighty days since the obligor was released from incarceration under a sentence of at least one hundred eighty days. h. The obligor is incarcerated under a sentence of one hundred eighty days or longer, excluding credit for time served before sentencing. 5. If an unemployed or underemployed obligor shows that employment opportunities, which would provide earnings at least equal to the lesser of the amounts determined under subdivision b or c of subsection 3, are unavailable within one hundred miles [160.93 kilometers] of the obligor's actual place of residence, income must be imputed based on earning capacity equal to the amount determined under subdivision a of subsection 3, less actual gross earnings. 6. If the obligor fails, upon reasonable request made in any proceeding to establish or review a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, and if that information cannot be reasonably obtained from sources other than the obligor, income must be imputed based on the greatest of: a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage. b. An amount equal to one hundred percent of this state's statewide average earnings for persons with similar work history and occupational qualifications. c. An amount equal to one hundred percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months included in the current calendar year and the two previous calendar years before commencement of the proceeding before the court, for which reliable evidence is provided. 7. Notwithstanding subsections 4, 5, and 6, if an obligor makes a voluntary change in employment resulting in reduction of income, monthly gross income equal to one hundred percent of the obligor's greatest average monthly earnings, in any twelve consecutive months included in the current calendar year and the two previous calendar years before commencement of the proceeding before the court, for which reliable evidence is provided, less actual monthly gross earnings, may be imputed without a showing that the obligor is unemployed or underemployed. For purposes of this subsection, a voluntary change in employment is a change made for the purpose of reducing the obligor's child support obligation and may include becoming unemployed, taking into consideration the obligor's standard of living, work history, education, literacy, health, age, criminal record, barriers to employment, record of seeking employment, stated reason for change in employment, likely employment status if the family before the court were intact, and any other relevant factors. The burden of proof is on the obligor to show that the change in employment was not made for the purpose of reducing the obligor's child support obligation.

Factors to Consider when Imputing Income: CO Can Order Work Activities

(b)(I) If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income; except that a determination of potential income shall not be made for a parent who is physically or mentally incapacitated or is caring for a child under the age of thirty months for whom the parents owe a joint legal responsibility or for an incarcerated parent sentenced to one year or more.**(II) If a noncustodial parent who owes past-due child support is unemployed and not incapacitated and has an obligation of support to a child receiving assistance pursuant to part 7 of article 2 of title 26, C.R.S., the court or delegate child support enforcement unit may order the parent to pay such support in accordance with a plan approved by the court or to participate in work activities.** Work activities may include one or more of the following: (A) Private or public sector employment; (B) Job search activities; (C) Community service; (D) Vocational training; or (E) Any other employment-related activities available to that particular individual.**(III) For the purposes of this section, a parent shall not be deemed “underemployed” if: (A) The employment is temporary and is reasonably intended to result in higher income within the foreseeable future; or (B) The employment is a good faith career choice that is not intended to deprive a child of support and does not unreasonably reduce the support available to a child; or(C) The parent is enrolled in an educational program that is reasonably intended to result in a degree or certification within a reasonable period of time and that will result in a higher income, so long as the educational program is a good faith career choice that is not intended to deprive the child of support and that does not unreasonably reduce the support available to a child.**

II) In determining potential income, the court or delegate child support enforcement unit shall consider, to the extent known, the specific circumstances of the parent, including consideration of the following information, when available **(A) The parent’s assets; (B) Residence; (C) Employment and earnings history; (D) Job skills; (E) Educational attainment; (F) Literacy; (G) Age; (H) Health; (I) Criminal record; (J) Other employment barriers; (K) Record of seeking work; (L) The local job market; (M) The availability of employers hiring in the community, without changing existing law regarding the burden of proof; (N) Prevailing earnings level in the local community; and (O) Other relevant background factors in the case.**

Federal Requirement: Incarcerated Parents

Federal Requirement	SD Provisions
§302.56(c) (3) Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders;	<p>25-7-6.4 Rebuttable presumption of employment at minimum wage. Except in cases of physical or mental disability, it is presumed for the purposes of determination of child support that a parent is capable of being employed a minimum of one thousand eight hundred twenty hours per year, including while incarcerated, and the parent's child support obligation shall be calculated at a rate not less than one thousand eight hundred twenty hours at the state minimum wage. Evidence to rebut this presumption may be presented by either parent.</p> <p>25-7-6.10 Factors considered for deviation from schedule. Deviation from the schedule in § 25-7-6.2 shall be considered if raised by either party and made only upon the entry of specific findings based upon any of the following factors: (6) The voluntary and unreasonable act of a parent which causes the parent to be unemployed or underemployed, unless the reduction of income is due to incarceration.</p>

There is a proposed federal rule change* that would give states the options to provide for exceptions to the prohibition against treating incarceration as voluntary unemployment. The exceptions concern domestic abuse and nonpayment of child support. The public comment period for this rule ended November 6, 2020.

*U.S. Department of Health and Human Services. (Sept. 17, 2020). "Optional Exceptions to the Prohibition Against Treating Incarceration as Voluntary Unemployment Under Child Support Guidelines." *Federal Register*, Vol. 85, No. 244, p. 58029. Retrieved from. <https://www.federalregister.gov/documents/2020/09/17/2020-17747/optional-exceptions-to-the-prohibition-against-treating-incarceration-as-voluntary-unemployment>.

New Federal Requirements Addressing Incarcerated Parents Complements Agency Requirement on Providing Opportunity for Modifications to Incarcerated

§303.8 Review and adjustment of child support orders.

* * * * * (b)

* * * (2) The State may elect in its State plan to initiate review of an order, after learning that a noncustodial parent will be incarcerated for more than 180 calendar days, without the need for a specific request and, upon notice to both parents, review, and if appropriate, adjust the order, in accordance with paragraph (b)(1)(i) of this section. * * * * * (7) The State must provide notice— (i) Not less than once every 3 years to both parents subject to an order informing the parents of their right to request the State to review and, if appropriate, adjust the order consistent with this section. The notice must specify the place and manner in which the request should be made. The initial notice may be included in the order. (ii) If the State has not elected paragraph (b)(2) of this section, within 15 business days of when the IV–D agency learns that a noncustodial parent will be incarcerated for more than 180 calendar days, to both parents informing them of the right to request the State to review and, if appropriate, adjust the order, consistent with this section. The notice must specify, at a minimum, the place and manner in which the request should be made. Neither the notice nor a review is required under this paragraph if the State has a comparable law or rule that modifies a child support obligation upon incarceration by operation of State law. (c) * * * Such reasonable quantitative standard must not exclude incarceration as a basis for determining whether an inconsistency between the existing child support order amount and the amount of support determined as a result of a review is adequate grounds for petitioning for adjustment of the order.

Examples from Other States: Incarceration Is Not Voluntary Unemployment

<i>NE</i>	Incarceration may not be treated as voluntary unemployment or underemployment in establishing or modifying child support orders.
<i>ND</i>	Monthly gross income based on earning capacity may not be imputed under subsection 3 if: g. It has been less than one hundred eighty days since the obligor was released from incarceration under a sentence of at least one hundred eighty days. h. The obligor is incarcerated under a sentence of one hundred eighty days or longer , excluding credit for time served before sentencing.
<i>CO</i>	3) Potential income. If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, except that a determination of potential income should not be made for a parent who is physically or mentally incapacitated or is caring for a child under the age of 24 months for whom the parents owe a joint legal responsibility, or for an incarcerated parent sentenced to one hundred eighty days or more . A parent is not deemed “underemployed” if their actual employment is temporary and is reasonably intended to result in higher income within the foreseeable future; or if their actual employment is a good faith career choice that is not intended to deprive a child of support and does not unreasonably reduce the support available to a child; or if the parent is enrolled full-time in an educational or vocational program or is employed part-time while enrolled in a part-time educational or vocational program, based on the institution's enrollment definitions, and the program is reasonably intended to result in a degree or certification within a reasonable period of time; completing the program will result in a higher income; the program is a good faith career choice that is not intended to deprive the child of support; and the parent's participation in the program does not unreasonably reduce the amount of child support available to a child.
<i>UT</i>	(6) Incarceration of at least six months may not be treated as voluntary unemployment by the office in establishing or modifying a support order

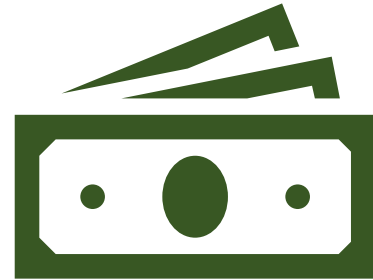
Examples from Other States: Incarceration Is Not Voluntary Unemployment

- LA, ND and UT provide that the period of incarceration must be at least 180 days so it consistent with 45 C.F.R. 303.8
- LA, ND, and OR suspend the order when an obligated parent is incarcerated.
- LA, DE, Proposed PA, and KS provide exception depending on the crime of the incarcerated parent.

LA	A. In accordance with the provisions of this Section, every order of child support shall be suspended when the obligor will be or is incarcerated for any period of one hundred eighty consecutive days or more, unless any of the following conditions exist: (1) The obligor has the means to pay support while incarcerated. (2) The obligor is incarcerated for an offense against the custodial party or the child subject to the support order. (3) The incarceration resulted from the obligor's failure to comply with a court order to pay child support.
DE	The new federal regulations issued in 2016 set the standard at 180 days, not one year. The Committee concurs that 180 days of continuous confinement is appropriate to trigger the entitlement to relief. However, contrary to some of the federal commentary to the new regulations, the Committee believes child support based upon pre-incarceration circumstances should continue for anyone with income or other resources with which to pay, or who is incarcerated for a crime against a dependent child or support recipient. It is also noteworthy that the Delaware General Assembly also took the extraordinary step of passing a Joint Concurrent Resolution specifically endorsing the Committee's recommendation. Key to that resolution was that the relief be automatic and not reliant upon the filing of a petition. Prospectively, every new order will contain a provision automatically reducing the obligation upon 180 days of continual confinement to, under current standards, \$50 per month for one child and \$80 for two or more children. Any party can file a petition to recognize the adjustment and to determine whether any of the exceptions apply. DCSS is authorized by the rule and has active plans to implement the adjustments administratively. Incarcerated persons with orders that predate the rule can still seek the adjustment by petition. A limited number who already received a reduction to a minimum order under the previous rule will not be able to seek further relief until the existing order is two and one-half years old.
PA proposed	(ii) Incarceration. Except as set forth in subdivision (d)(2)(ii)(B):(A) the trier-of-fact shall: (I) consider an incarcerated party's employment earnings reduction as an involuntary income reduction as set forth in subdivision (d)(2)(i); and (II) adjust the incarcerated party's net income accordingly. (B) A party's incarceration for the following reasons shall not constitute an involuntary income reduction: (I) support enforcement purposes; or(II) a criminal offense in which the party's dependent child or the obligee was the victim
KS	Incarceration considered by itself may not be treated as voluntary unemployment for purposes of establishing or modifying a new an order of support, preventing someone from filing a motion to modify a child support order, or denying a motion to modify. However, circumstances surrounding the incarceration of the obligor payor may be considered with all other factors and circumstances related to the incarcerated obligor payor's ability to pay support and any other equitable considerations relevant to the specific circumstances of the case

Plan to Fulfill Federal Requirements of Reviews

Continued Requirement		New Requirement	
Consider economic data on the cost of raising children	CPR preparing & on agenda today	Consider labor market data	CPR prepares
		Impact of guidelines policies on parents with low income	CPR prepares
		Factors that influence employment rates and compliance	CPR prepares
Consider case file data on application of and deviation from the guidelines	Agency extracting data for CPR to analyze in August	Rates of default, imputation, and application of low-income adjustment	CPR prepares
		Comparison of payments by case characteristics including default, imputation, and application of the low-income adjustment	CPR prepares
Review, and revise, if appropriate, the child support guidelines	Commission	Provide meaningful opportunity for public input, including input from low-income parties	Public hearing
		Obtain the views and advice of the IV-D agency	Commission
		Publish report on internet, membership of reviewing body, and effective date of the guidelines and next review	Department publishes Final Report



Analysis of Economic Data on the Cost of Raising Children

Child Support Schedule: Part Economic Data and Part Policy

Example:

1 Child

Parent A: \$1,300

Parent B: \$1,500

Combined = \$2,800

Basic obligation from schedule = \$688

Parent A% = $\$1,300 / \$2,800 = 46\%$

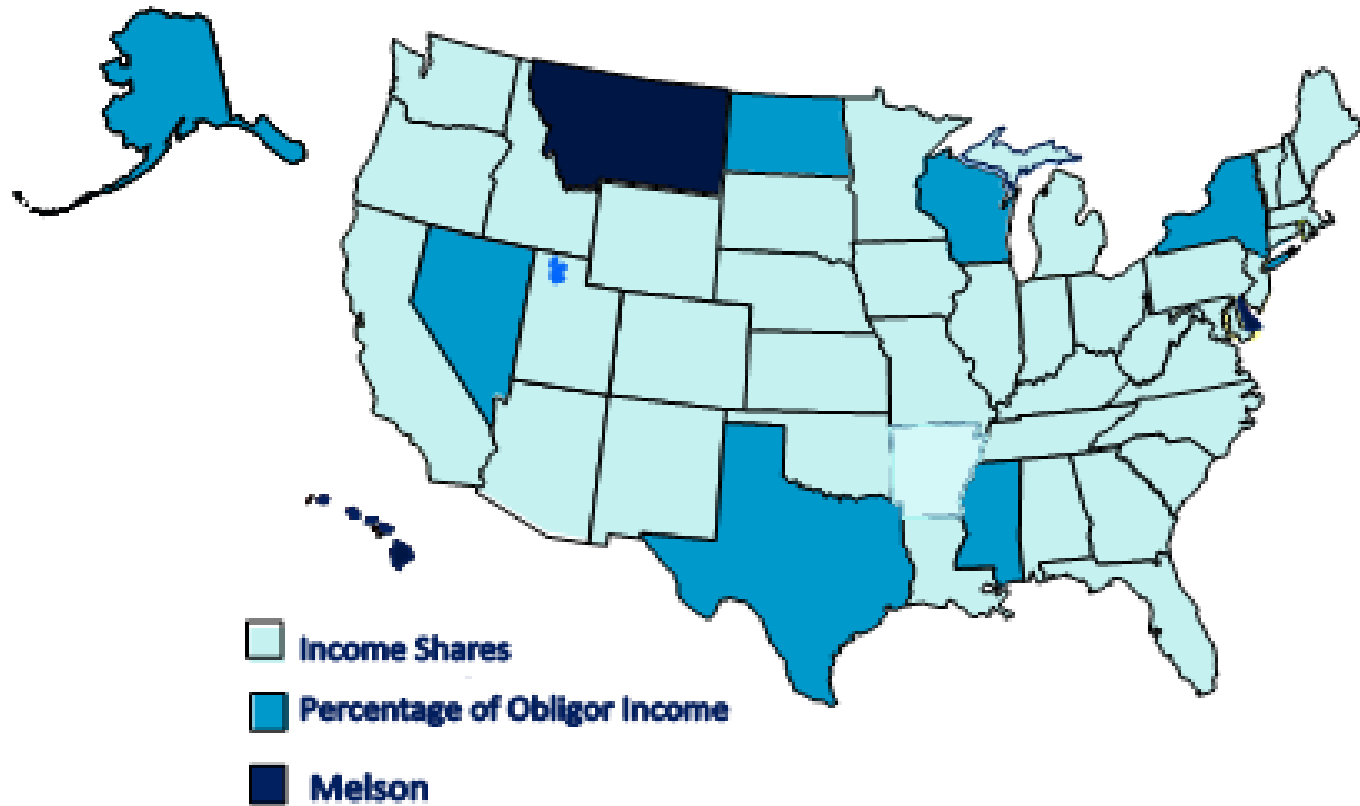
Order = \$688 X 46% = \$316/mo

2,051-2,100	525	763	901	1,006	1,107	1,203
2,101-2,150	536	779	920	1,028	1,130	1,225
2,151-2,200	548	796	939	1,049	1,154	1,251
2,201-2,250	560	813	959	1,071	1,178	1,280
2,251-2,300	572	829	978	1,092	1,202	1,300
2,301-2,350	583	846	997	1,114	1,225	1,332
2,351-2,400	595	862	1,016	1,135	1,249	1,358
2,401-2,450	607	879	1,036	1,157	1,273	1,383
2,451-2,500	618	896	1,055	1,178	1,296	1,405
2,501-2,550	630	912	1,074	1,200	1,320	1,431
2,551-2,600	642	929	1,094	1,222	1,344	1,461
2,601-2,650	653	946	1,113	1,243	1,368	1,487
2,651-2,700	665	962	1,133	1,265	1,392	1,513
2,701-2,750	677	979	1,152	1,287	1,415	1,539
2,751-2,800	688	996	1,171	1,308	1,439	1,565
2,801-2,850	700	1,012	1,191	1,330	1,463	1,591

Assumptions and Data Underlying Existing Schedule & What Could Be Updated

	Basis of Existing Schedule	Update Alternatives
1. Guidelines model	Income Shares	Other models
2. Price levels	2016	2021 (12.5% increase)
3. Measurement of child-rearing expenditures	3 rd Betson-Rothbarth study (BR3) from expenditure data collected in 1998-2004	BR5, USDA, and other studies
4. Extrapolate to higher incomes	Extrapolated high income from about \$27,000 to \$30,000/mo	All alternative measurements require extrapolation above \$10K-\$22K
5. Adjustments for state cost of living	Realigned for differences in SD & USA incomes as of 2007	<ul style="list-style-type: none"> Income realignment Price parity realignment
6. Spending more/less of after-tax Income	Use actual ratios with cap	District of Columbia approach
7. Highly variable child-rearing expenses excluded from schedule	Childcare & most healthcare costs are not in schedule, schedule includes \$250 per child per year for ordinary and routine medical expenses (<i>e.g.</i> , over-the-counter medicines)	Various options
8. Low-income adjustment & minimum order	Incorporates a self-support reserve of \$871/mo, minimum order of \$79/mo for \$0-\$950 net combined	Various options to be explored later
9. Capped increase	Legislature imposed 4% cap (applies to incomes of about \$4,150- \$12,500)	No cap

State Usage of Guidelines Models



41 income shares
7 percentage-of-obligor income
3 Melson Formula

Studies of Child-Rearing Costs

Minimum Needs

- Federal Poverty Guidelines (2021: \$1,073/mo for 1 person)
- SD Living Wage(\$12.61/hr for 1 adult)

“Continuity of Expenditures Studies”

- Most states use as the basis of their guidelines even if percentage of income guidelines
- E.g., Betson-Rothbarth (BR)

Other Methods or Studies

- Studies of expenditures in single-parent households
- Comanor’s “Monetary method”

Studies of Child-Rearing Expenditures

Study Name and CES Years	Study Year	Full Reference
Betson-Rothbarth 1 (BR1) CE: 1980-86	1990	David M. Betson (1990). <i>Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey</i> , Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, University of Wisconsin Institute for Research on Poverty, Madison, Wisconsin.
Lewin Report (compared methods)	1990	Lewin/ICF. (1990). <i>Estimates of Expenditures on Children and Child Support Guidelines</i> . Report to U.S. Department of Health and Human Services, Office of the Assist. Secretary for Planning and Evaluation. Virginia
Betson-Rothbarth 2 (BR2) CE: 1996-99	2001	Betson, David M. (2001). "Chapter 5: Parental Expenditures on Children." in Judicial Council of California, <i>Review of Statewide Uniform Child Support Guideline</i> . San Francisco, California
Betson-Rothbarth 3 (BR3) CES: 1998-2004	2006	David M. Betson (2006). "Appendix I: New Estimates of Child-Rearing Costs" in PSI, <i>State of Oregon Child Support Guidelines Review: Updated Obligation Scales and Other Considerations</i> , Report to State of Oregon, Policy Studies Inc., Denver, CO.
Betson-Rothbarth 4 (BR4) CE: 2004-09	2010	Betson, David M. (2010). "Appendix A: Parental Expenditures on Children." in Judicial Council of California, <i>Review of Statewide Uniform Child Support Guideline</i> . San Fran-cisco, California. Retrieved from: http://www.courts.ca.gov/partners/documents/2011SRL6aGuidelineReview.pdf
Rodgers-Rothbarth/NJ CE: 2000-11	2012	New Jersey Child Support Institute (March 2013). <i>Quadrennial Review: Final Report, Institute for Families</i> , 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
Comanor (CE: 2004-09)	2015	Comanor, William, Sarro, Mark, and Rogers, Mark. (2015). "The Monetary Cost of Raising Children." In (ed.) <i>Economic and Legal Issues in Competition, Intellectual Property, Bankruptcy, and the Cost of Raising Children</i> (Research in Law and Economics), Vol. 27). Emerald Group Publishing Limited, pp. 209–51
USDA (CE: 2011-2015)	2017	Lino, Mark (2017). <i>Expenditures on Children by Families: 2015 Annual Report</i> . U.S. Department of Agriculture, Center for Nutrition and Policy Promotion. Miscellaneous Publication No. 1528-2015, Washington, D.C. http://www.cnpp.usda.gov/publications/crc/crc2017.pdf
Rodgers-Rothbarth/Nat'l (2000-2015)	2018	Rodgers, William M. (2017) "Comparative Economic Analysis of Current Economic Research on Child-Rearing Expenditures." In Judicial Council of California, <i>Review of Statewide Uniform Child Support Guideline 2017</i> . San Francisco, CA. Retrieved from http://www.courts.ca.gov/documents/lr-2018-JC-review-of-statewide-CS-guideline-2017-Fam-4054a.pdf .
Betson-Rothbarth (BR5) CE: 2013-19	2020	Betson, David M. (March 3, 2021 revised). "Appendix A Parental Expenditures on Children." in Venohr, Jane and Matyasic, Savannah, <i>Review of Arizona Child Support Guidelines: Findings from the Analysis of Case File Data and Updating the Child Support Schedule</i> . Report to the Arizona Supreme Court Administrative Office of the Courts https://www.azcourts.gov/Portals/74/FCIC-CSGR/SupplementalPacket-030121-FCIC-CSGRS.pdf?ver=2021-02-26-161844-187

Study Options for Updating South Dakota Schedule

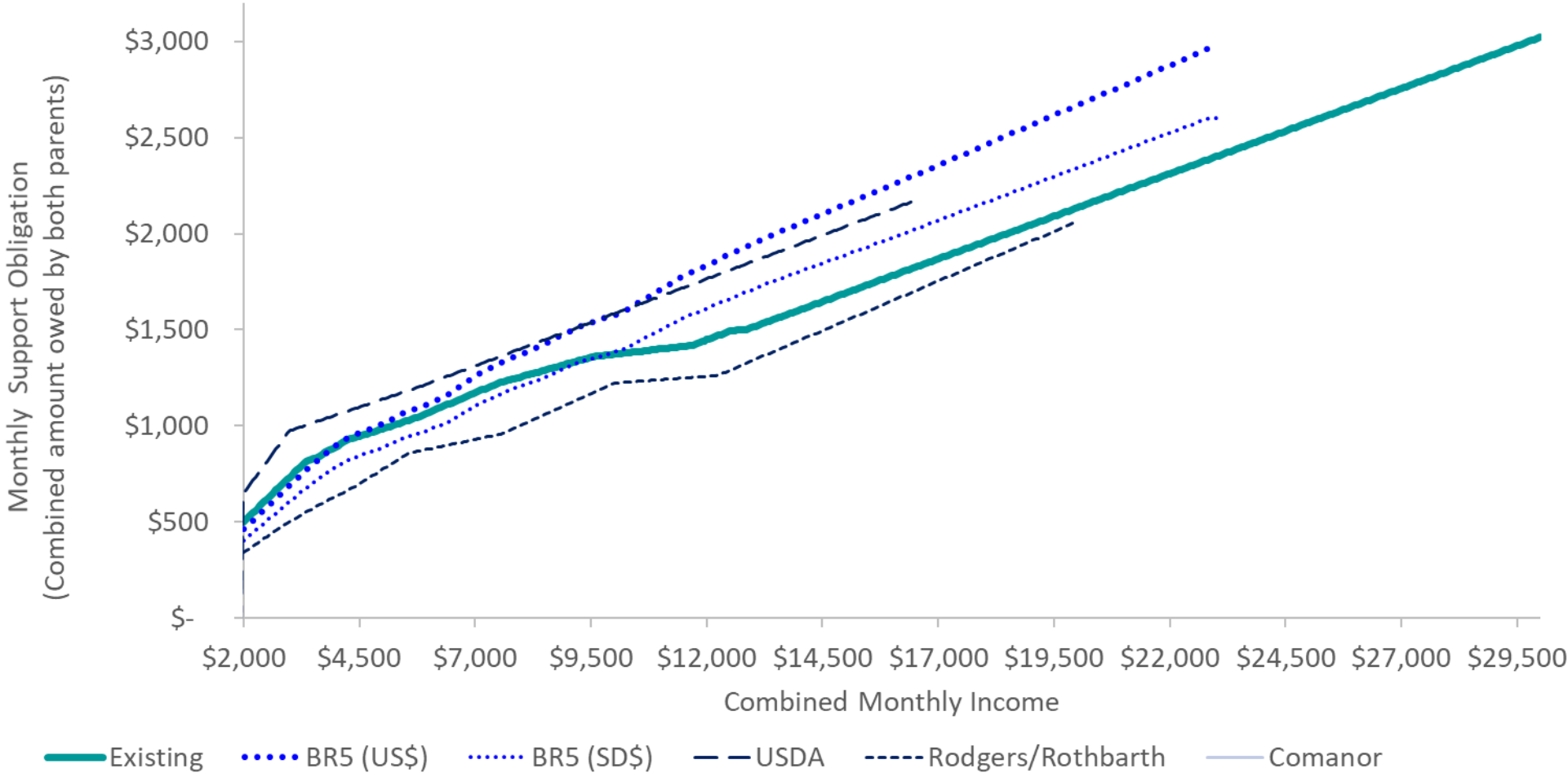
- Economists don't agree on which methodology best measures child-rearing expenditures
- Federal report (Lewin 1990) and most states consider anything between lowest and highest of credible amounts appropriate for state guidelines

Lower	About the Same	Higher
	BR3 (CE: 1998-2004)	
Comanor (CE: 2004-2009) Rodgers-Rothbarth (CE: 2000-2015)	BR4 (CE: 2004-2009) BR5 (CE: 2014-2019)	USDA (CE: 2011-2015) <ul style="list-style-type: none"> • MD and beginning in 2022 MN will partially use
<ul style="list-style-type: none"> • No state uses either study 	<ul style="list-style-type: none"> • 28 states + DC + Guam use BR 	BR5 at higher incomes (CE: 2013-2019) <ul style="list-style-type: none"> • In final approval stages in AZ, IA, MO & PA

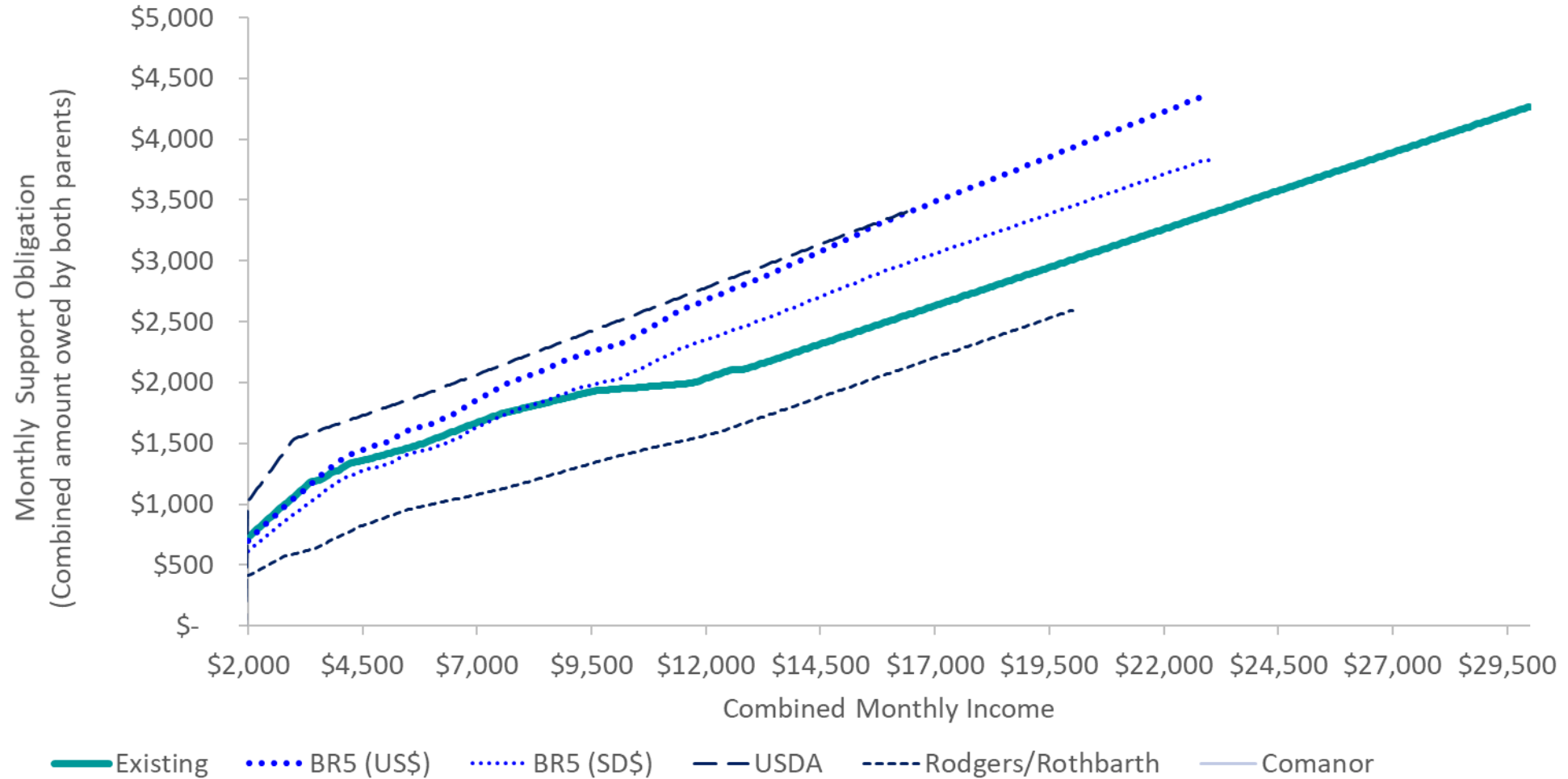
Most of uncounted states use much older studies or basis is unknown

CE – Consumer expenditure survey years

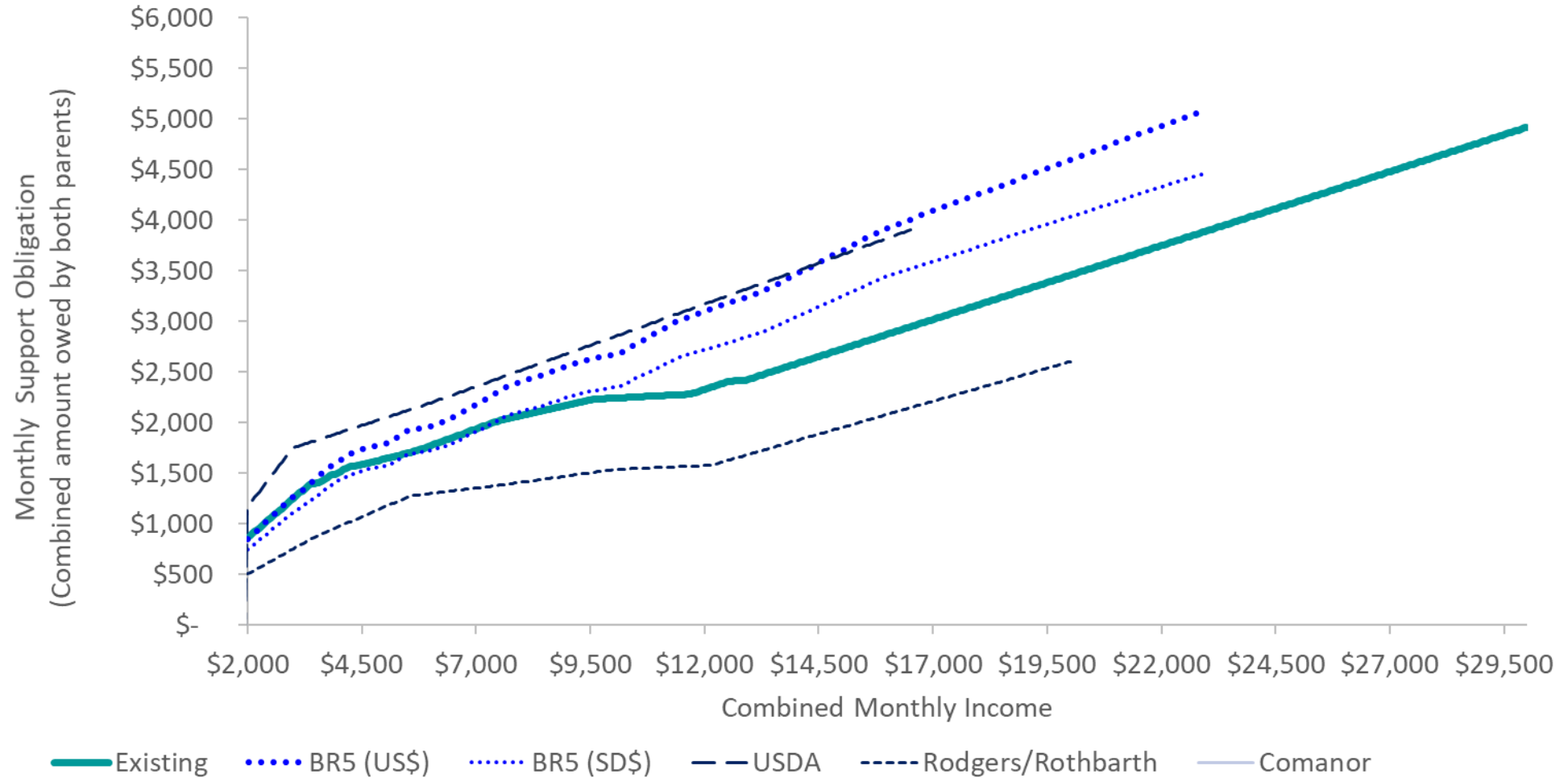
Comparisons of Major Studies: One Child



Comparisons of Major Studies: Two Children



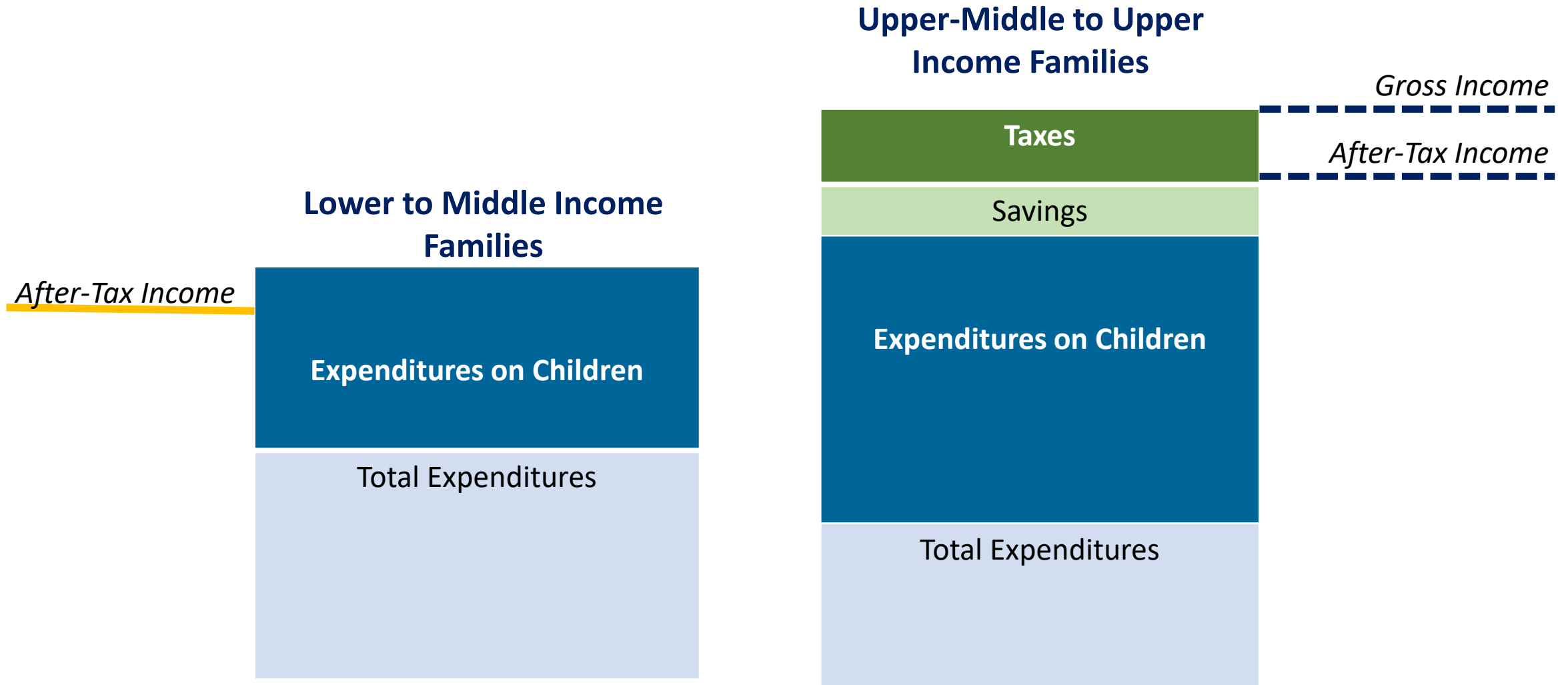
Comparisons of Major Studies: Three Children



Summary of Comparisons with Other Studies

- Comanor et al. is lower bound of estimates, produces near poverty levels
- Rodgers-Rothbarth is less than existing SD
 - Rodgers combines over 10 years of expenditures data, years with different tax assumptions and the decrease in expenditures during the 2007-09 Great Recession
 - Rodgers uses a different mathematical functional form for his Rothbarth model than Betson's
- BR5 (US\$) tracks closely to existing SD at \$2,500 - \$5,000 combined net
- BR5 (SD\$) lower than existing SD below \$7,000 combined net
- BR5 (adjusted for SD incomes) not calculated yet
- Substantial increases in BR5 at higher incomes regardless of US or SD prices
- USDA is generally the upper bound of the estimates
 - Except at high combined incomes (\$10,500 & \$18,500) when BR5 is more for 1 & 2 children

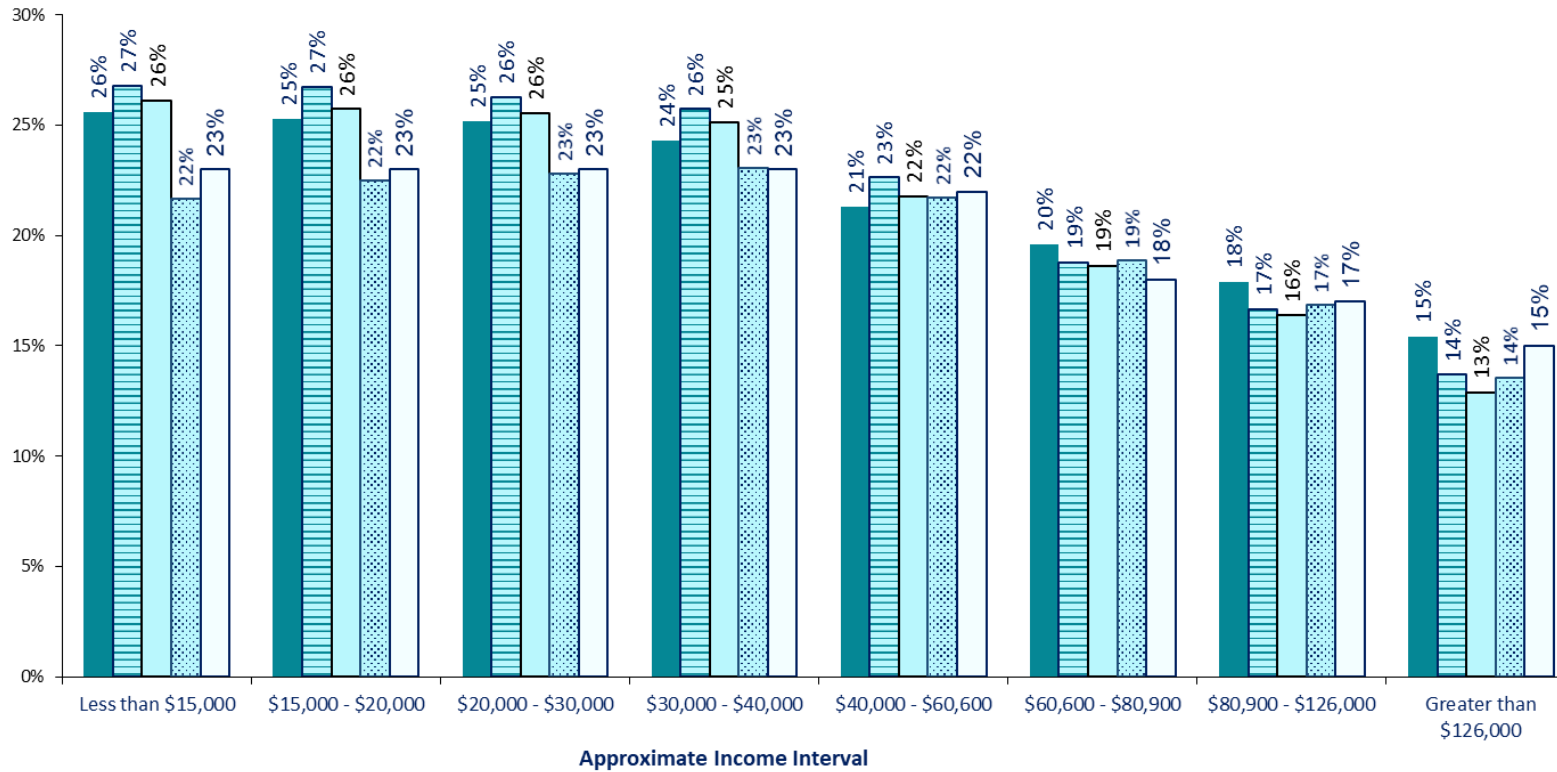
Average Expenditures to After-Tax Income Ratios



Betson-Rothbarth Measurements over Time

Approximate Percentage of Net Income Devoted to Child-Rearing Expenditures

Child-Rearing Expenditures over Time: One Child



■ Betson-Rothbarth:1980-86 data

■ Betson-Rothbarth: 1996-99 data

■ Betson-Rothbarth:1998-2004 data

■ Betson-Rothbarth 2004-09 data

■ Betson-Rothbarth: 2014-2019 data

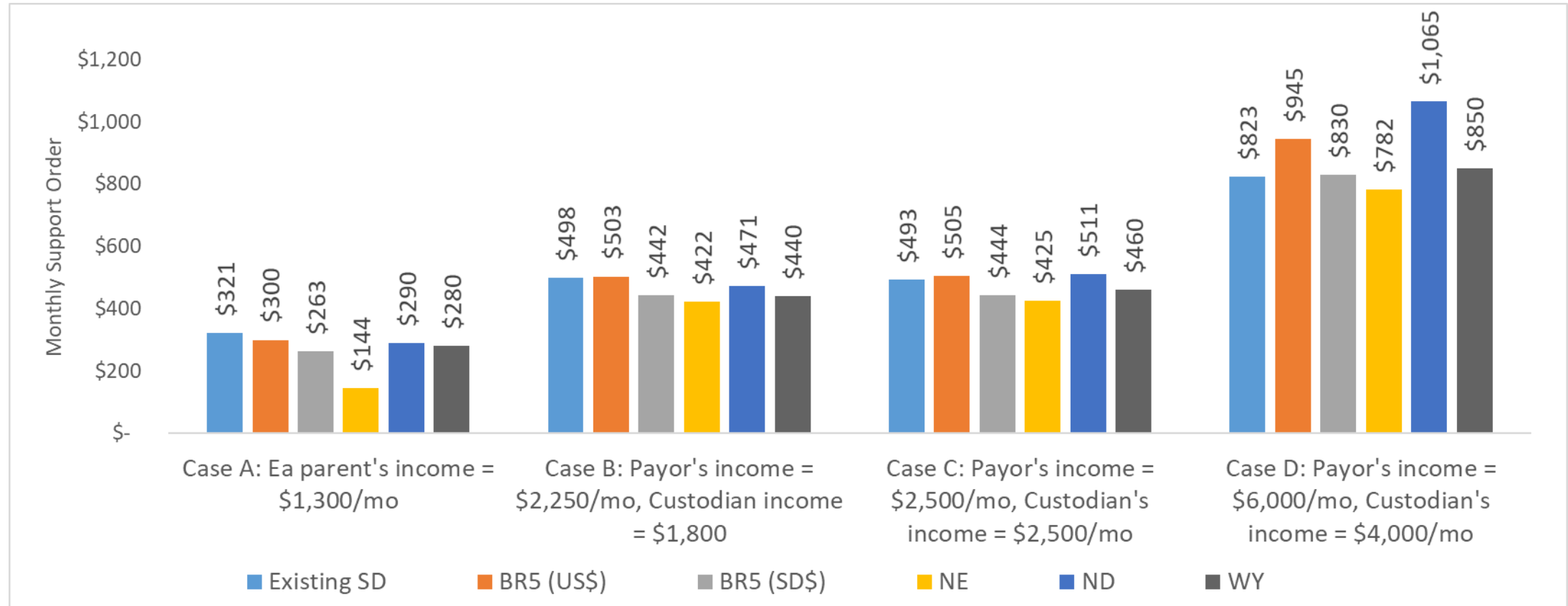
Changes over time

- Beginning with BR4
 - Uses improved definition of income developed by Bureau of Labor Statistics
 - Caused decreases at lower incomes
 - Uses expenditures-outlays rather than expenditures
 - Caused increases at higher incomes
- Beginning with BR5
 - Uses improved measure of taxes and after-tax income
 - Caused increases at higher incomes

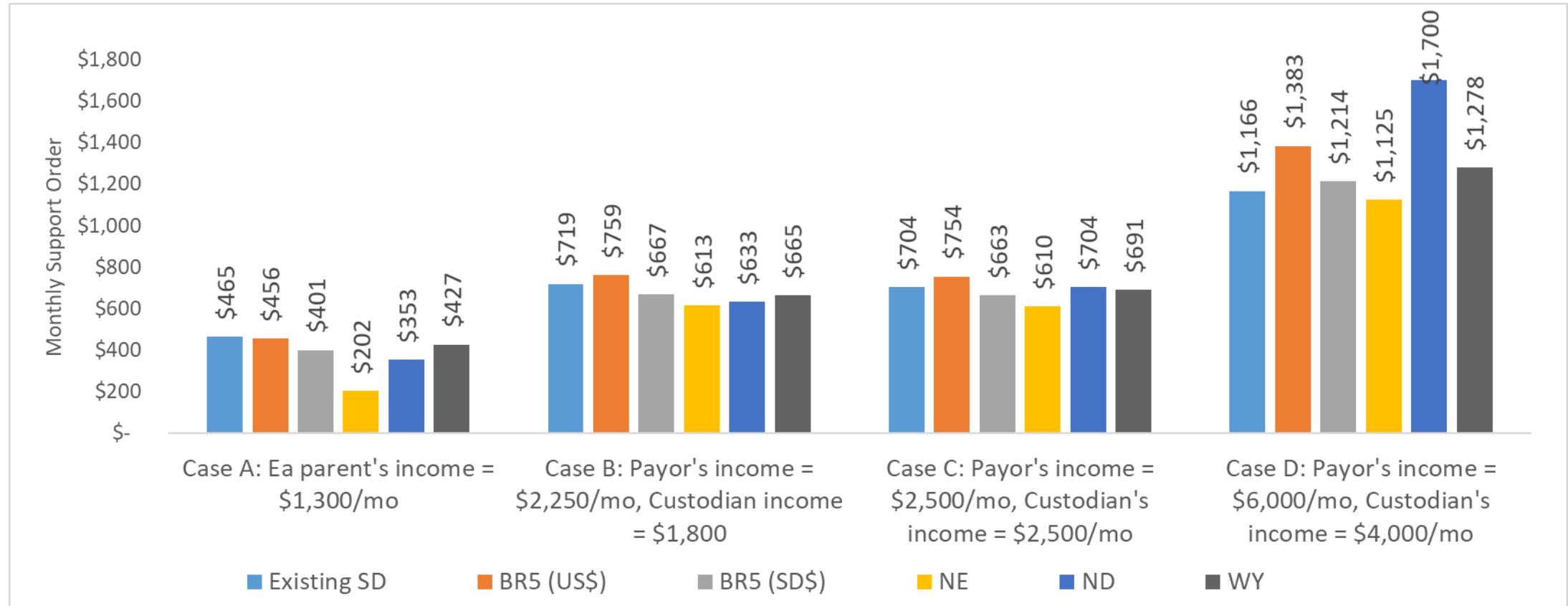
Comparison with Bordering States

	Income Base	Guidelines Model	Economic Study and Price levels	2018 Median Income (2-parents)	2018 Median Income (female-headed parent)	2018 Median Gross Rent	State minimum wage	Price Parity
Iowa	Net	Income shares	BR3 2012 (BR5 pending)	\$97,993	\$28,610	\$777	\$7.25	89.0
Montana	Net	Melson	Unknown	\$86,593	\$26,959	\$811	\$8.75	93.5
Minnesota	Gross	Income shares	USDA 2002/legislation passed in 2020	\$115,911	\$34,230	\$969	\$10.08	98.0
North Dakota	Net	Percentage of Obligor Income	Unknown	\$105,872	\$33,428	\$808	\$7.25	89.3
Nebraska	Net	Income shares	BR4 2018 adjusted for NE prices	\$94,551	\$28,927	\$830	\$9.00	89.5
South Dakota	Net	Income shares	BR3 2016, realigned for income & capped	\$91,544	\$29,694	\$734	\$9.45	87.8
Wyoming	Net	Income shares	BR4	\$96,110	\$29,419	\$818	\$7.25	92.8
U.S.				\$100,115	\$29,240	\$1,058	\$7.25	100.0

Comparison with Bordering States: 1 Child



Comparison with Bordering States: 2 Children



Considerations for Updating Low-Income Adjustment/Self-Support Reserve

- Low-income adjustment/self-support reserve layered on top of schedule update
- Change in methodology/assumptions?
 - Informed by findings from analyzing case file data

	Federal Poverty Level for 1 Person	Price Parity	State Minimum Wage	Monthly Income at Min. Wage @ 35 hrs per week	Self-Support Reserve	SSR Phase-Out	Minimum Order
2016	\$990	88.0 (2014 most current)	\$8.55/hr	\$1,297 gross (≈\$1,173 net)	\$871/mo	1 child: \$1,201 2 children: \$1,351 3 children: \$1,551 4 children: \$1,701 5 children: \$1,851 6 children: \$2,001	\$79/mo for Net income of \$0-\$950/mo where (\$950 - \$871) = \$79
2021	\$1,073	87.8 (2019 most current)	\$9.45/hr	\$1,433 gross (≈\$1,285 net)	\$942/mo (updated) or other options	TBD	TBD

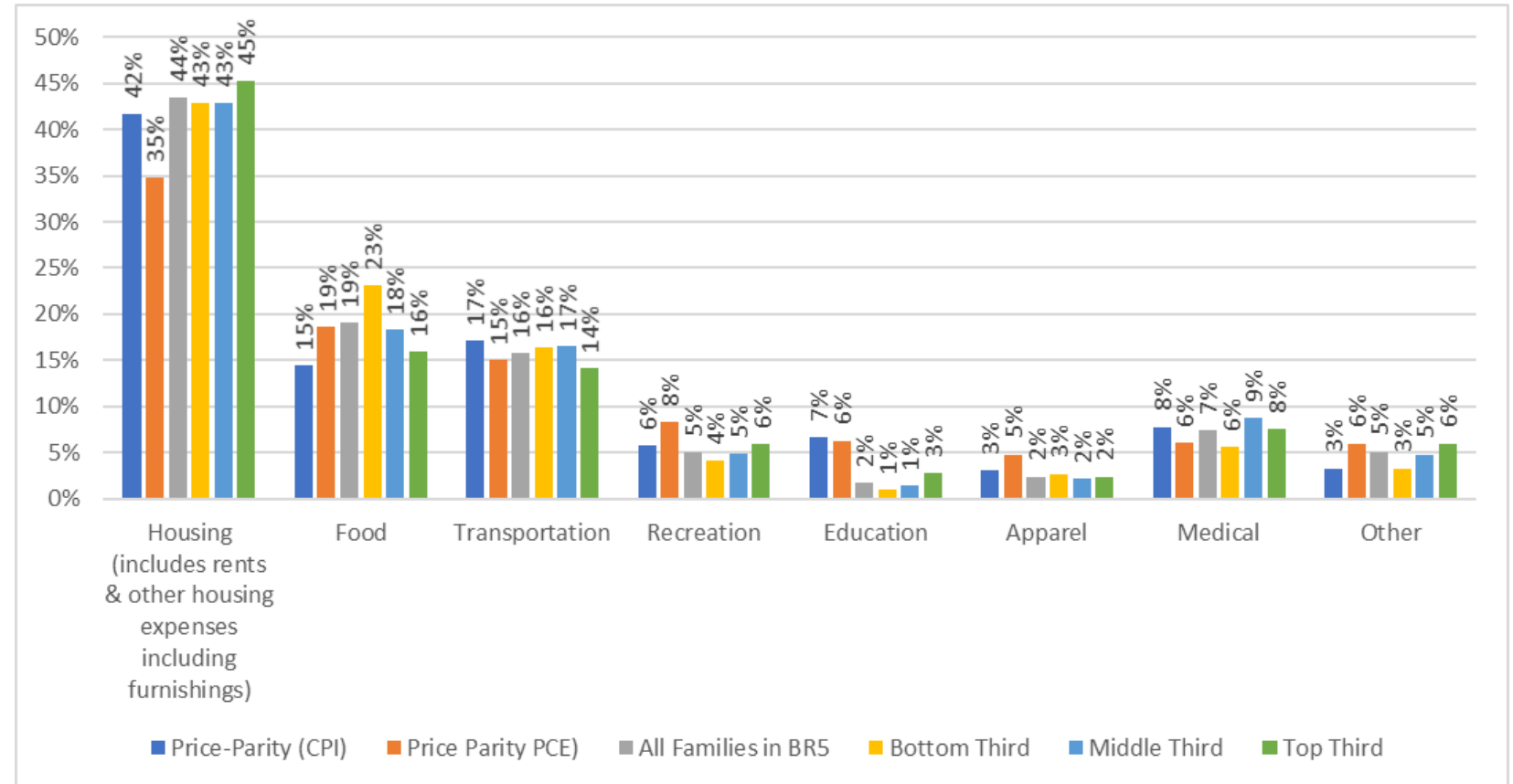
Adjustments for SD's Income or Price Parity

- **Price parity is relatively new measurement developed by the U.S. Bureau of Economic Analysis**
 - AR, MD, NM, & NE adjust national measurements for it
 - Venohr believes it may exaggerate lower housing costs
- **Income realignment**
 - Adjusts for income distribution differences between U.S. average and state
 - Typically a smaller adjustment than price parity
 - Adjustments larger at middle incomes and less at very low and very high incomes
 - CPR will prepare income realigned schedule for SD in August

4% Cap on Increase Imposed by 2017 Legislature

- Last review was in 2016
- Last schedule update was based on 2012 economic data including price levels
 - Prices had increased by about 10% between 2012 and 2016
 - Proposed increase was
 - 0.5-6.7% for one child
 - 0.5 – 7.2% for two children

One reason that increase is not consistent across the board is that expenditures shares differ across incomes. Further, this is exacerbated by price changes not being uniform across items (e.g., 15% increase in the price of used vehicles in the last year)





Alternatives to Ordinary Medical Expenses of \$250 per Child per Year in Schedule

Child's Health Care Cost

Schedule includes up to \$250 per child per year for ordinary, out-of-pocket medical expenses

- This approximates average out-of-pocket medical expenses
- 3 options with schedule:
 - i) include up to \$250 per child per year
 - ii) include \$0
 - Parents share receipts for ALL medical expenses
 - MI or OH approach: standard amount added into worksheet
 - iii) contract with Betson to include another amount

National Medical Expenditure Survey (NMES)

- 2017 Average out-of-pocket medical per child = \$270/yr
- 2015 Average out-of-pocket medical per child = \$248/yr
 - Ever public insurance = \$63/yr
 - Ever private insurance = \$388/yr
- South Dakota Child Medicaid and CHIP*
 - 87,760 children as of Feb. 2021: approximately 41% of SD's 213,228 children in 2017

*Source: <https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights/index.html> and data.census.gov

Child's Health Care Cost: Alternative Approaches

- VA and CT include no health care costs in schedule
 - Advantage:
 - No assumption about the amount of ordinary out-of-pocket medical expenses is necessary
 - Disadvantage:
 - Parents must track ALL medical receipts and exchange them
- OH and MI include no health care costs in schedule but include an add-on in the worksheet for a standard amount
 - Advantages:
 - Can change amount without changing schedule
 - More flexibility on a case-by-case basis (e.g., don't add in Medicaid cases)
 - Disadvantages:
 - Adds a step
 - Still requires an assumption

Ohio's Approach

	Parent A	Parent B	Combined
1. Annual Income	\$40,000	\$40,000	\$80,000
17. Percent of income	50%	50%	
18a. Basic child support obligation (annual)			\$20,000
23. Annual Cash Medical			\$388.70
24. Total Obligation			\$20,388.70
25. Each parent's share	\$10,194.35	\$10,194.35	

Cash Medical Obligation	
Number of Children	Annual Cash Medical Amount
1 child	\$388.70
2 children	\$777.40
3 children	\$1,166.10
4 children	\$1,554.80
5 children	\$1,943.50
6 children	\$2,332.20



Next Steps

Questions and Next Steps

- General Questions

- Does Commission need additional information for drafting rules to meet new federal requirements?
 - Consider all income and all income sources
 - Consider 14 factors when imputing income
 - Provide incarceration is not voluntary unemployment
- This is time to speak up about any alternative assumptions

- Next Steps for CPR

- Updated schedules using **same assumptions** except adjusted for most current BR measurements and SD incomes or price levels and no 4% cap?
- Analysis of case file data and labor market data
 - Case file data on guidelines deviations, application of existing low-income adjustment, imputed income, defaults and payment data
 - Labor market data on hours worked From South Dakota Department of Labor & Regulation
- The update of low-income adjustment (self-support reserve) is layered on to schedule and benefits from findings from analysis of case file data
- Doublecheck availability of 2018 National Medical Expenditure Survey data for \$250 per child per year in out-of-pocket medical expenses
- Other?

- Timelines

- Draft Commission report before Thanksgiving
 - Schedule finalized by early October