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Task 10B.2: States' Treatment of High-Income Payers

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Background

Federal law requires that states implement state-specific guidelines for setting child support order amounts; states must also apply these guidelines presumptively and establish explicit criteria for deviation (National Conference of State Legislatures (NCSL), 2013). Though states are required to develop and implement guidelines, they have discretion over the guideline model used provided the guidelines meet federal requirements. In developing guidelines, states must consider how best to meet the needs of children served by the formal child support system in the context of a number of policy tradeoffs, including issues of equity, consistency, and fairness for all stakeholders.

Deciding how to equitably determine order amounts for high-income payers can be particularly complex. In general, state guidelines strive to provide children with support amounts to achieve the same standard of living they would have experienced in an intact family. In particular, child support guidelines are based on estimates of the cost of raising children, which generally suggest that as total household income rises, families typically dedicate more, but a lower proportion, of their income to supporting the needs of their child (Venohr, 2013). Thus, a percentage-of-income guideline that is not adjusted by income level may be disproportionately generous (relative to expenditures in intact families) to children of high-income payers. In cases with high-income payers, states must balance the needs of the child and issues of equity with the perception that guidelines might provide income in excess of need for the child and custodial parent.

To illustrate, Wisconsin's percentage-of-income[1] guidelines call for most nonresidential parents to pay 17 percent of their income in child support for one child. Without a high-income adjustment, this would mean that a payer earning $150,000 annually would owe $17,000 more than a median-income payer earning $50,000 annually. On the one hand, an additional $17,000 is likely not needed to meet basic living costs of the child; on the other, in an intact family, the higher income family would typically be spending more on living costs (e.g. housing), and potentially be providing additional investments in their child's development such as funding for post-secondary education.

States take a variety of approaches in handling these trade-offs. This memo summarizes and reviews different approaches to high-income payers, followed by a comparison of Wisconsin's current high-income guidelines to alternate approaches.

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[1] There are three main guideline models used by states. The income shares model is the most widely used with order amounts generally based on the payer's proportional share of the total household income. Wisconsin and seven other states use the percentage-of-income model, which is generally a base percentage of the payer's income.
Three states use the Melson model, which requires more complicated calculations. For more information, see NSCL, 2017. NCSL does not include New York as a percentage of income model state, though it is commonly included in this group in other reviews of the literature (e.g., Noyes, 2011).

States' Treatment of High-Income Payers

Table 1 summarizes the approach taken by each state and the District of Columbia. The second, third, and fourth columns provide information about the income threshold at which high-income payer guidelines apply; the second column indicates the actual threshold used, the third column indicates whether gross or net income is considered for the threshold, and the fourth column delineates whether the income threshold refers to the income of the noncustodial parent (NCP) alone or the combined income of the NCP and custodial parent (CP). The fifth column in the table classifies the approach used (e.g. formula, discretionary) by the state, and the sixth and final column describes the specific formula or guideline used, if any.

Perhaps one of the most notable aspects of Table 1 is the wide variation in the income thresholds used to determine what constitutes a high-income payer. At one extreme, a number of states have their threshold between \$100,000 and \$150,000 of annual income; in some of these states, like Washington, this includes the income of both the NCP and the CP, which makes this a fairly low threshold relative to other states. Wisconsin, which has two different thresholds, includes one of the lowest thresholds at \$84,000 annually, though like most percentage-of-income states it considers the income of NCP alone rather than the combined household income. There are also a number of states with the threshold clustered around \$360,000 annually. Utah is at the high end of the spectrum; its guideline tables contain order amounts for income up to \$1,200,000 annually. Virginia is also at the higher end, though more in line with the remaining states with a threshold of \$420,000. While this variation is wide in and of itself, it also does not account for differences in what states define as constituting income, which may increase variation. For example, some states consider gross income in determining support amounts while other states consider net income, as indicated in the third column. The gross/net distinction further disguises variation across states as some consider adjusted gross income or may use different definitions of "available" income. In addition, states consider different sources of income, including variations in the inclusion of unearned income.

The decision of where to set the income threshold has important consequences for consistency, depending on the state's approach to high-income payers. Because many states grant courts discretion to set orders for payers above the threshold, a lower threshold may lead to greater variability within a state since a higher proportion of orders meet the criteria for high-income cases, and, thus, judicial discretion. Besides potentially impacting overall equity of order amounts within the state, this also increases the uncertainty for the payer.

In addition to a decision about what constitutes a high-income payer, states must also decide how to treat the income of high-income payers. Following Meyer, Soulen, and Weiner (2016), Table 1 classifies these approaches in four major categories: (1) guideline amount with discretion, in which case the guideline order amount from the high-income threshold—usually the highest earnings amount contained in the guideline table—either carries forward or represents the minimum order amount above the threshold, though the court may change the order amount based on a variety of factors; (2) discretion, where a decision-maker—usually the court—has full discretion in setting the order amount, though they may have factors that they are statutorily bound to consider; (3) formula, wherein a state uses a specific formula for high-income payers; and (4) formula plus discretion, which is a combination of either a recommended or required high-income payer formula with the option to increase or decrease the order amount.

The most common approach is equivalent to the first option described; an amount carries forward from the guideline schedule based on the order amount from the income threshold, with court discretion to modify the award amount based on statutorily-defined factors. Several of Wisconsin's neighboring states take this approach, including Illinois, Iowa, and Minnesota. Notably, though this general approach is common, the resulting award amounts across states may vary substantially based on the underlying guideline. Given the room for discretion in the award amount, child support orders in the same state may also vary.

Some states explicitly define their high-income payer policy as pure discretion. In those cases, the court or other decision-maker decides the appropriate amount of support for each case, without reference to a specific guideline. Often, state statue emphasizes certain factors that must be considered in this decision, which could include needs of the child, child's standard of living prior to union dissolution, or the circumstances of the custodial and noncustodial parents. Maryland, North Carolina, and South Dakota are example of states that use this approach. By explicitly using discretion as the policy for high-income payers, states are allowing for unique circumstances in each case, which may increase the perception of fairness. On the other hand, this may lead to wide disparities in the child support amounts of payers, as well as a decreased sense of transparency. Depending on the high-income threshold, these issues may affect a substantial portion of cases.

On the opposite end of the spectrum, some states provide a presumptive formula for order amounts for high-income payers. This is the case for many of the percentage-of-income states, including Wisconsin, though income-shares states take this approach as well. In some cases, states may have a recommended formula, but explicitly allow the court to deviate as needed (e.g., Nebraska, New Hampshire). The use of a formula may lead to increased transparency and understanding by payers, and it also should increase consistency in order amounts for payers within the state. On the other hand, while courts have the authority to deviate to account for special circumstances, a presumptive formula may contribute to concerns that such circumstances will not be appropriately considered.

In addition, three states use the Melson formula, and a handful of states use some other method for determining the order amount for high-income payers. In a few cases (e.g., New Mexico, Rhode Island), states do not employ any explicit guidelines or statues for high-income payers. In practice, these states may cap awards based on the highest income included in their guidelines table or they may employ judicial discretion above those amounts, but this is may not be explicitly described in the state's guidelines or statutes. Notably, in most cases, regardless of the

Table 1.

State	Threshold (Annualized) [a]	Gross or Net?[b]	Whose Income Counts?	Classification	Formula [c, d]
Alabama	$240,000	Gross	Both	Discretion	Discretion
Alaska	$126,000	Gross	NCP	Guideline with Discretion	20% of adjusted income capped at $126,000 ($25,200); Discretion to increase
Arizona	$240,000	Gross	Both	Guideline with Discretion	Guideline at threshold ($20,496); Discretion to increase
Arkansas	$60,000	Net	NCP	Formula	15% of income that exceeds income threshold added to maximum guideline amount ($8,292)
California	-	Gross	Both	Discretion	Pure discretion if formula amount exceeds needs of child
Colorado	$360,000	Gross	Both	Guideline with Discretion	Guideline at threshold ($30,420); Discretion to increase
Connecticut	$208,000	Net	Both	Guideline with Discretion	Minimum amount: Dollar amount at threshold ($25,064). Maximum: % of income at threshold (12.04% of income)
Delaware	-	Net	Both	Melson	Melson
District of Columbia	$240,000	Gross	Both	Guideline with Discretion	Guideline at threshold ($33,051) is the minimum order, with court's discretion to actual order amount.
Florida	$120,000	Net	Both	Formula	5% of income that exceeds income threshold added to the maximum support by guideline schedule ($17,244)
Georgia	$360,000	Gross	Both	Guideline with Discretion	Guideline at threshold ($26,832); Discretion to increase
Hawaii	$156,000	Gross	NCP	Melson	Melson
Idaho	$300,000	Gross	Both	Guideline with Discretion	Guideline at threshold ($22,596); Discretion to increase
Illinois	$360,299.88	Net	Both	Guideline with Discretion	Guideline at threshold ($26,892) is the minimum order; Discretion to increase
Indiana	$520,000	Gross	Both	Formula	7.1% of annual income that exceeds threshold
Iowa	$300,000	Net	Both	Guideline with Discretion	Guideline at threshold ($31,176) is the minimum order; Court's discretion as to actual amount
Kansas	$186,000	Gross	Both	Formula	Ages 12-18: income raised to .6669084 * 3.620808565; Ages 6-12: income raised to .6669084 * 3.620808565 * . 92; Ages 0-5 income raised to .6669084 * 3.620808565 * . 80
Kentucky	$180,000	Gross	Both	Discretion	Pure Discretion
Louisiana	$480,000	Gross	Both	Discretion	Pure Discretion
Maine	$400,000	Gross	Both	Guideline with Discretion	Guideline at threshold ($26,832) is the minimum order; Discretion to increase
Maryland	$180,000	Gross	Both	Discretion	Pure Discretion
Massachusetts	$250,000	Gross	Both	Guideline with Discretion	Guideline at threshold ($40,144); Discretion to increase
Michigan	$120,000 (combined)	Net	Both	Formula + Discretion	Court may use guideline formula for maximum incomes in tables or may use other factors. Guideline formula is 15.9% of annual income up to $116,208 ($18, 477.12) + 10% of annual income over $116, 208
Minnesota	$180,000	Gross	Both	Guideline with Discretion	Guideline at threshold ($22, 596); Discretion to increase
Mississippi	$100,000	Gross	NCP	Guideline with Discretion	14% of income (guideline amount); Discretion to change if amount is "not reasonable"
Missouri	$360,000	Gross	Both	Guideline with Discretion	Guideline at threshold ($26,436); Discretion
Montana	-	--	-	Melson	Melson
Nebraska	$180,000	Net	Both	Formula + Discretion	Guideline order amount at threshold ($26,412) + 10% over $180,000 (recommended but not required). Must not be less than threshold guideline
Nevada	$177,792	Gross	NCP	Other - Maximum	18% of income; Presumptive maximum of $13,656

Table 1, continued

State	Threshold (Annualized) [a]	Gross or Net?[b]	Whose Income Counts?	Classification	Formula [c, d]
New Hampshire	$366,708	Gross	Both	Formula + Discretion	19% of income; Discretion
New Jersey	$187,200	Net	Both	Guideline with Discretion	Guideline at threshold ($29,692) is the minimum order amount; Discretion to increase
New Mexico	$360,000	Gross	Both	Other	$35, 700 is the highest order amount in the guideline schedule with no explicit policy above this amount.
New York	$148,000	Gross	Both	Guideline with Discretion	17% of income up to threshold; Court may continue to apply afterwards, but may use discretion
North Carolina	$300,000	Gross	Both	Discretion	Discretion
North Dakota	$300,000	Net	NCP	Guideline with Discretion	Guideline at threshold ($42,000); Discretion to increase
Ohio	$150,000	Gross	Both	Guideline with Discretion	Guideline at threshold ($15,218); Discretion to increase
Oklahoma	$180,000	Gross	Both	Guideline with Discretion	Guideline at threshold ($16,464) is the minimum order amount, with additional, discretionary amount allowed
Oregon	$360,000	Gross	Both	Guideline with Discretion	Guideline at threshold ($23,844); Discretion
Pennsylvania	$360,000	Net	Both	Formula	Guideline at threshold ($34,068) + 8.6% of annual income above $360,000; Discretion
Rhode Island	$420,000	Gross	Both	Other	$33,804 is the highest order amount in the guideline schedule, with no explicit policy above this amount.
South Carolina	$360,000	Gross	Both	Discretion	Discretion
South Dakota	$360,000	Net	Both	Discretion	Discretion
Tennessee	$339,000	Gross	Both	Formula	$26,772 + 6.81% above $339,000
Texas	$102,600	Net	NCP	Formula + Discretion	20% of $102,600, with discretion to increase
Utah	$1,200,000	Gross	Both	Guideline with Discretion	Guideline at threshold ($70,896); Discretion to increase
Vermont	$300,300	Gross	Both	Discretion	Discretion
Virginia	$420,000	Gross	Both	Formula	Guideline at threshold ($23,868) + 2.6% of annual income over $420,000
Washington	$144,000	Net	Both	Guideline with Discretion	Guideline at threshold ($17, 904) (under 12); Discretion to increase
West Virginia	$180,000	Gross	Both	Formula + Discretion	Guideline at threshold ($16,056) + 8.8% of annual income over $180,000
Wisconsin	$84,000 & $150,000	Gross	NCP	Formula	17% of income up to $84,000; 14% income between $84,000 & $150,000; 10% income above $150,000
Wyoming	$154,800	Net	Both	Formula	12.7% of net income at threshold + 5.9% of all earnings over threshold

[a] For consistency, income thresholds are annualized. Many states use monthly or weekly amounts.

[b] For simplicity, table does not delineate what constitutes income beyond gross or net. Some states use adjusted gross income, or “available” income, or other formulas.

[c] Formulae/Guidelines are for one child.

[d] Formula varies by age in Kansas and Washington.

guideline approach used, payers may be able to petition the court for a modification of the order if they feel the amount is unjust, though this may be most relevant for states that employ a formula.

In addition to decisions that states must make regarding income thresholds and overall treatment of high-income payers, some states have implemented other policies that impact high-income payers and may increase the total amount of support owed beyond the guideline amount. In particular, the issue of post-secondary support, or support that continues beyond the age of majority for youth pursuing post-secondary education, may be particularly relevant for these payers. Children from higher-income families are more likely to enroll in post-secondary education than peers from lower-income families (Bailey & Dynarski, 2011); thus, in an intact family with a high-income payer, parental support for post-secondary education might be expected or likely. In order to provide the same standard of living, many states are considering requirements to support youth in post-secondary education. Some states, including Colorado, Iowa, Massachusetts, Missouri, North Dakota, New Jersey, Oregon, South Dakota, and Washington, allow courts to order post-secondary support beyond the age of majority depending on certain circumstances (NSCL, 2015; Stepien-Sporek & Ryznar, 2012). Similarly, Tennessee statutorily requires high-income payers specifically to pay additional money into a trust for post-secondary expenses in addition to the base child support award (Raatjes, 2011). Other states, including Wisconsin, may not statutorily address post-secondary support but do allow for the inclusion of such payments in child support agreements. Only one state, Alaska, explicitly disallows the inclusion of post-secondary support. In addition to post-secondary support, states, including Wisconsin, may allow for some of the support amount to go towards a trust; this, however, does not impact the overall amount owed.

Wisconsin's High-Income Payer Guidelines

Figure 1 below provides a graphical representation of hypothetical high-income payers in Wisconsin compared to other states that employ a guideline amount with discretion, formula, or recommended formula with discretion. Because discretion pays a role in many states' order amounts for high-income payers, this figure does not represent the full variation in orders. Some states—Melson states and others that rely on full discretion—are excluded. Additionally, in states that use a guideline amount with discretion, this figure represents a lower bound of order amounts since it relies on the minimum amount set forth in the guidelines. As Figure 1 indicates, Wisconsin's guidelines result in order amounts that are within range of other states' guidelines, though there is a concentration of states with lower guideline amounts (it is noteworthy that most of these are states with discretion). Because Wisconsin does not employ an income shares guideline model, the guidelines appear to call for higher orders when it is assumed that the custodial parent has an equally high income (i.e. payer earns half of the household income). Figure 2 depicts the annual order amounts in states that employ the percentage-of-income guidelines. Wisconsin current guideline amounts are similar to the resulting order amounts in

Figure 1
Annual Order Amount, Household Incomes $300,000 and $150,000: Non-Discretion States

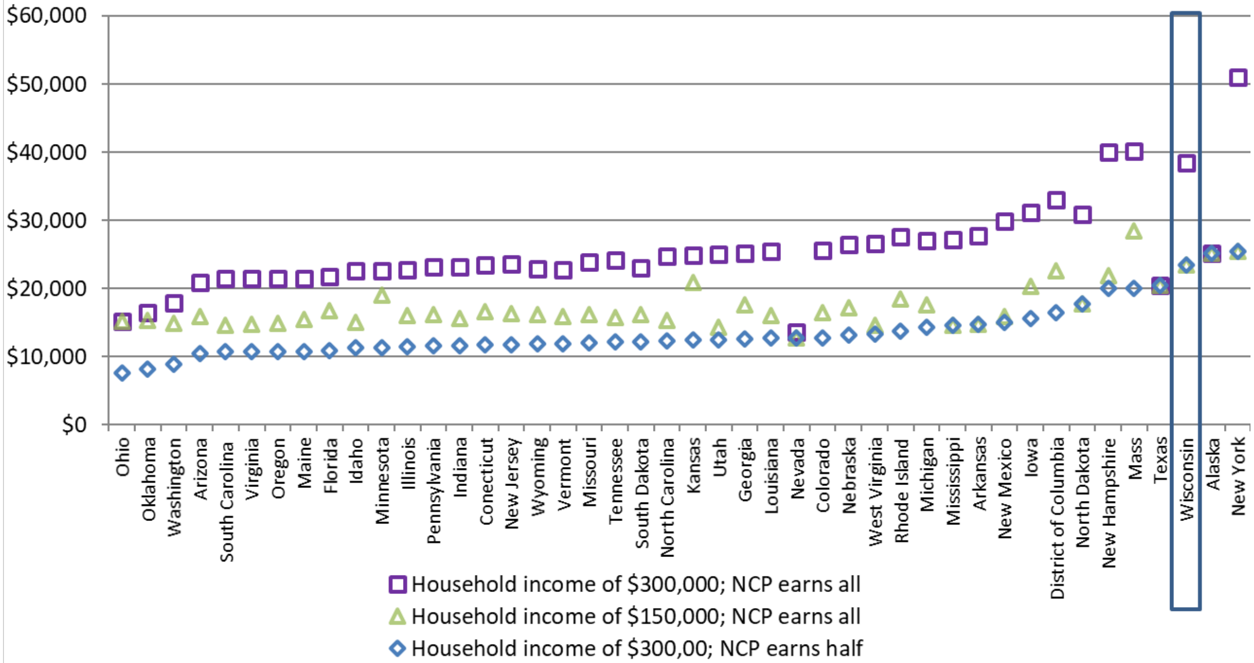
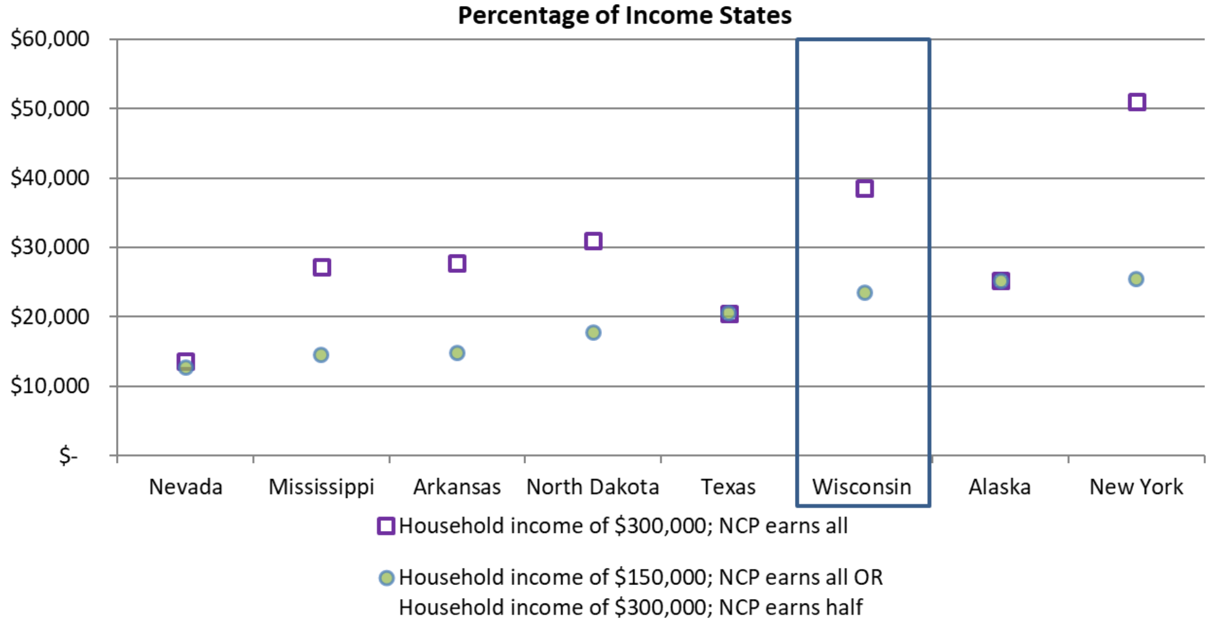


Figure 2
Annual Estimated Orders Based on Houshold Incomes of $300,000 & $150,000: Percentage of Income States



other percentage-of-income states, particularly for payers earning $150,000 annually. Notably, Wisconsin does not require additional support on top of the guideline amount as may be the case in other states. Figure 1 also highlights the wide variation in order amounts required by states, which may indicate the number of decision points for states in balancing the competing trade-offs in these policies.

In recent years, there has been some interest in the state legislature in adjusting the current Wisconsin high-income guidelines; the proposals have focused on lowering, rather than increasing, the order amounts for high-income payers (Beck, 2017b; Dodd, 2000; Wisconsin Child Support Guidelines Review Advisory Committee, 2015). Adjusting the guidelines may change the perception of fairness in the treatment of high-income payers and, potentially, lead to more or less deviation from the guidelines. On the other hand, any modification that increases discretion may lead to decreased transparency, increased variability in order amounts, or increased confusion for families. Modification would also likely entail some initial adjustment costs.

Understanding the number of cases impacted by high-income guidelines in Wisconsin may provide useful context. Based on a review of the stock of current child support cases in 2016 in state administrative data records, approximately 5 percent of payers earned income over the high-income threshold in 2015, with less than 1 percent reaching the upper high-income limit ($150,000). Estimates using 2016 earnings are similar.[2] Fewer than 0.5 percent of cases would be impacted by legislative changes for payers earning $300,000 or higher.

Conclusion

States must make a number of decisions when considering the complex issue of how to equitably handle child support order amounts for high-income payers. The outcome of this complexity is a wide range of approaches, which result in nonuniform order amounts across—and even within—states. As this memo has reviewed, different policy options impact consistency of order amounts, transparency, and considerations of equity for all stakeholders involved. An analysis of the adequacy of current guidelines or consideration of future modifications must seek to balance these multiple factors.

[2] In 2016, if we exclude missing earnings values rather than assume they represent no earnings, these estimates increase to 7 percent and just under 2 percent of all cases, respectively.

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