

Implementing Right Size Orders in California

Selis Koken, Chief Counsel

John Ziegler, Assistant Chief Counsel

Department of Child Support Services

Anna Maves, Principal Managing

Attorney





The Federal Final

New federal requirements for child support guidelines:

- ❖ Support orders must be based on **evidence of ability to pay**,
- ❖ Imputed or earning capacity income must be based on **specific circumstances of obligor**,
- ❖ Guidelines **may not substitute a standard amount**
- ❖ Guidelines must consider the **subsistence level needs of the obligor**, and
- ❖ **Incarceration cannot be treated as voluntary unemployment.**



Review of the Child Support

45 Code of Federal Regulations §302.56

Guidelines

- ❖ States must review their guidelines every 4 years

Family Code §4054(a)

- ❖ Requires the Judicial Council to conduct the review
- ❖ Ensure that the guidelines result in:
 - ❖ Appropriate child support orders,
 - ❖ Limit deviations, and
 - ❖ Ensure compliance with federal law
- ❖ Make recommendations to the Legislature



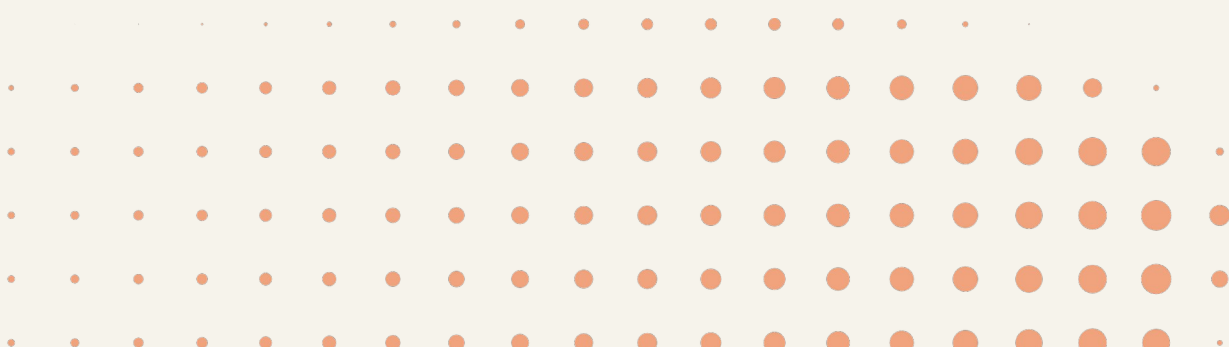


Review of the Statewide Uniform Child

Support Guideline 2022

★ **Recommendations for changes to comply with the Final Rule.**

- ★ Update low-income threshold to ensure basic subsistence needs
- ★ Update the income bands in the formula for low-income parents
- ★ Require consideration of the individual circumstances of the obligor when income is imputed
- ★ Provide that incarceration is not voluntary unemployment





Collaborating with

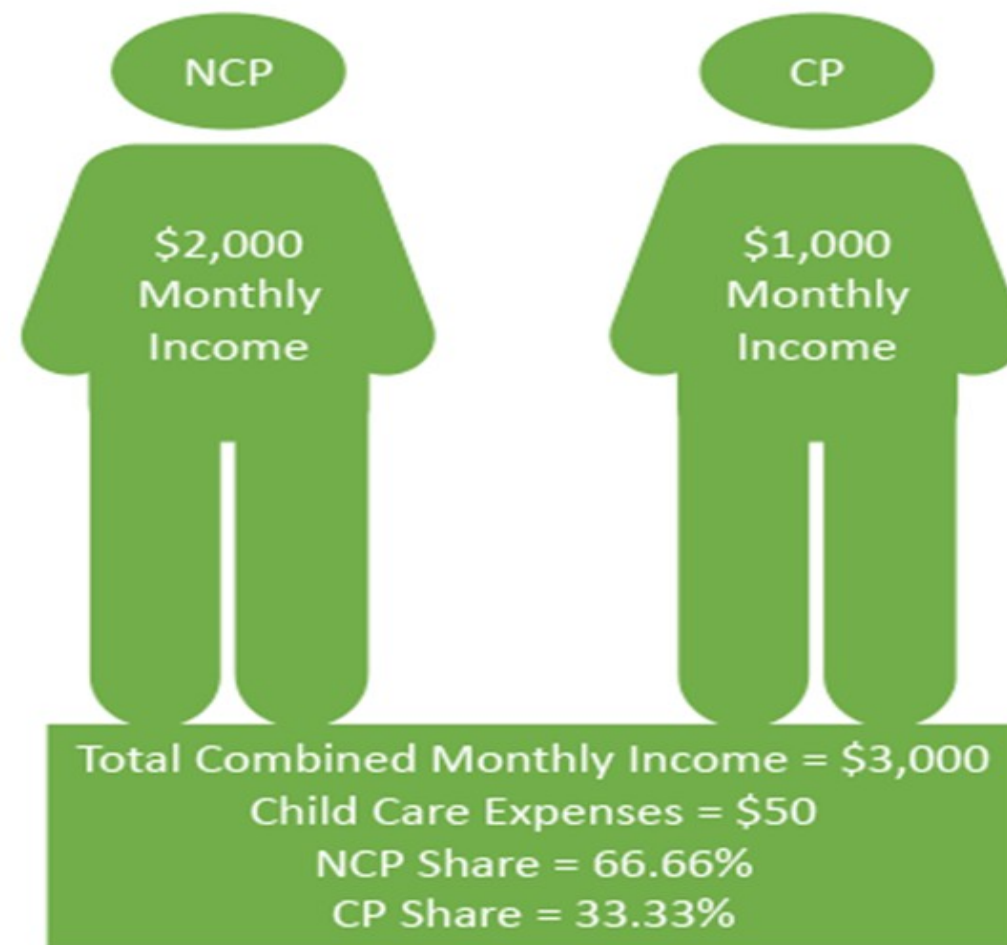
Family Code §407 Stakeholders

- ❖ Required Department of Child Support Services and Judicial Council to meet and confer
- ❖ Make recommendations for legislative changes
- ❖ Identify points of agreement and any differences

Meetings with key stakeholders to discuss proposed changes



Income Shares Model



NCP = Non-custodial parent
CP = Custodial Parent

Income Shares

Income Shares Model

1. The income of both parents is determined and combined.
2. A basic child support obligation is determined based on a statutory table or schedule.
3. A presumptive child support obligation is determined by adding other expenses such as child care and extraordinary medical expenses to the basic child support obligation.
4. The presumptive child support obligation is prorated between the parents based on their percentage of the combined income.

Model Example

1. \$3,000 total monthly income
2. \$500 basic child support obligation based on statutory table
3. \$500 basic child support obligation + \$50 child care expenses = \$550 presumptive child support obligation
4. \$550 presumptive child support obligation X 66.66% =
\$366.30 child support obligation





Child Support Public





California's Formula

$$CS = K[HN - (H\%)(TN)]$$

- CS – the child support amount
- K – the percentage of income allocated for child support
- HN – the high earner's net income
- H% - the high earner's timeshare
- TN – both parent's total net disposable income



Updated K- Factor Table

The K-factor

$$CS = K[HN - (H\%)(TN)]$$

Prior Table

Total Net Disposable Income per Month	K
\$0 - \$800	$0.20 + TN/16,000$
\$801 - \$6,666	0.25
\$6,667 - \$10,000	$0.10 + 1,000/TN$
Over \$10,000	$0.12 + 800/TN$

New Table

Total Net Disposable Income per Month	K
\$0 - \$2,900	$0.165 + TN/82,857$
\$2,901 - \$5,000	$0.131 + TN/42,149$
\$5,001 - \$6,666	0.25
\$6,667 - \$10,000	$0.10 + 1,499/TN$
Over \$10,000	$0.12 + 1,200/TN$



Low-Income Adjustment

Calculating the Low-Income Adjustment:

- ★ Low Income (LIA) Threshold Amount – \$2,773
- ★ Obligor's Net Monthly Income (Net) – \$1,864
- ★ Adjustment Percentage (AP)
 - ★
$$\frac{\text{LIA} - \text{Net}}{\text{LIA}} = \frac{\$2,773 - \$1,864}{\$2,773} = 33\%$$
- ★ Bottom LIA Range = Guideline Child Support x Percentage
 - ★ $\$347 \times 33\% = \115 LIA Range: \$232 - \$347
 - ★ $\$347 - \$115 = \$232$



Changes to the Low-Income

Adjustment

Effective September 1, 2024

- ★ LIA Threshold Amount changed to full time gross minimum wage
- ★ The lowest amount of the LIA range is presumed correct
- ★ The LIA range must be on the printout of the calculation





Imputation of Income

Federal Requirements (45 C.F.R. §303.4(b)):

- ✦ Take reasonable steps to develop a sufficient factual basis for the support obligation
- ✦ Gather information regarding the earnings and income of the noncustodial parent, or available information about their specific circumstances
- ✦ Basing obligation on the earnings and income of the noncustodial parent, or their specific circumstances
- ✦ Documenting factual bases for support obligation





Imputation of Income

Federal Requirements (45 C.F.R. §302.56(c)(1)(iii)):

If imputation of income is authorized, takes into consideration 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.





Imputation of Income in IV-D

Current Law in California: Pleadings

- ★ Known income or income history: apply the guideline formula
- ★ Unknown income or income history: presume income of full time (40 hrs/week) minimum wage





Imputation of Income in IV-D

Effective January 1, 2026. Pleadings

- ★ Three ways for the IV-D agency to plead based on income:
 - ★ Actual income
 - ★ Earning capacity in lieu of known actual income
 - ★ Earning capacity when income is unknown





Earning Capacity

As described by California Courts:

Earning capacity is composed of:

- (1) the ability to work;
- (2) the willingness to work exemplified through good faith efforts, due diligence and meaningful attempts to secure employment; and
- (3) an opportunity to work. See *In re Marriage of LaBass & Munsee* (1997) 56 Cal.App.4th 1331, 1337–1338





Earning Capacity

As codified by the California Legislature:

Requires consideration of the specific circumstances of the parent, to the extent known. Those include:

• Evidence of parent's assets	• Health
• Residence	• Criminal record and other employment barriers
• Employment and earnings history	• Record of seeking work
• Job skills	• Local job market
• Educational attainment	• Availability of employers willing to hire
• Literacy	• Prevailing earnings levels in the community
• Age	• Other relevant background factors





Earning Capacity

As codified by the California Legislature:

- ✦ As of September 1, 2024, courts are required to consider earning capacity when a parent's annual gross income is unknown
- ✦ Courts have discretion to consider earning capacity in lieu of income when income is known





IV-D Pleading After January 1,

When imputing income: 2026

- ✦ Complaint must inform the obligor of the factors considered to determine earning capacity
- ✦ If actual income is unknown, complaint must set forth steps taken by the local child support agency to determine income





IV-D Pleading After January 1,

When imputing income: 2026

- ✦ Complaint must be accompanied by a proposed judgment
- ✦ Must be accompanied by a motion for judgment
 - ✦ i.e., all cases based on earning capacity will go to a court hearing





IV-D Pleading After January 1,

At the hearing on the motion for judgment:

- ✦ Both parents are allowed to participate and offer evidence, and obligor need not have filed an answer
- ✦ Only if the obligor does not file an answer AND does not appear at the motion for judgment hearing shall the court proceed by default





IV-D Pleading After January 1,

At the hearing on the motion for judgment:

- ✦ If proceeding by default, support is capped by the amount pled
- ✦ If the obligor files an answer or appears at the hearing, court can order any support amount based on the evidence





IV-D Pleading After January 1,

Mandatory review by the local child support agency:

- ✦ If judgment entered by default where actual income is unknown:
 - ✦ Annual review for better evidence
 - ✦ Motion to modify prospectively within 60 days
 - ✦ Additional evidence constitutes a material change in circumstances
 - ✦ Requirement terminates after the order is modified





Set-Aside of Default Orders

- ★ Court may set aside a child support order contained in a default judgment based on imputed income if obligor's income or earning capacity was substantially different during the applicable time
- ★ Substantially different means the amount of income would result in support that deviates by 10% or more
- ★ Support can be set aside or reinstated for all or partial relevant periods of time
- ★ Court is not precluded from subsequent review after a partial set aside





Set-Aside of Default Orders

Motion to set aside default:

- ✦ Can be filed by any party, including the local child support agency
- ✦ Must be filed within 2 years of first collection of money through an earnings assignment order or income withholding order
- ✦ Local child support agency must notify both parties immediately after the first collection which triggers the 2-year time period





Set-Aside of Default Orders

- ✦ Party filing motion has the burden of proof
- ✦ Local child support agency is required to review a case within three months of the first collection to determine whether the order qualifies for set aside
- ✦ Subsequent action to modify an order prospectively does not preclude set aside relief



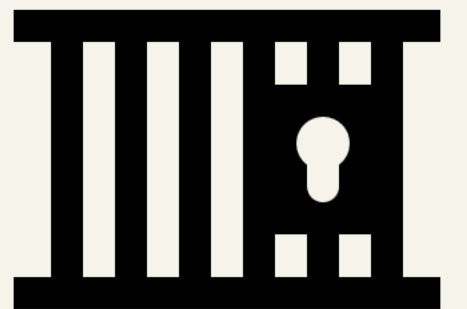


Incarcerated

45 CFR 302.56(c)(3) **Obligors**

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

(3) Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders.





Incarcerated

Obligors incarcerated obligors include:

“...the child support program is not an extension of the criminal justice system. Establishing, modifying, or enforcing a child support order is not a form of punishment for incarcerated noncustodial parents.”

Federal Register, Vol. 81, No. 244, p. 93538

Response to Comment #9



Incarcerated

Obligors

Final rule comments regarding incarcerated obligors include:

“The rule removes a collateral consequence of incarceration by requiring that orders for incarcerated parents be set based on the same standard as every other parent: ability to pay.”

Federal Register, Vol. 81, No. 244, p. 93525
Response to Comment #19



California's Legislative and Case Law History

Regarding Incarcerated Child Support

State of Oregon v. Vargas (1999) 70 Cal. App. 4th 1123

Obligors

The trial court imputed income to appellant and ordered him to pay child support while he was incarcerated. On appeal, the court held that appellant's ability and opportunity to earn had to be established before child support could be imposed based on imputed income.

"We simply decline to carve an exception to the rule that before earning capacity can be applied, its definition must first be satisfied."



California's Legislative and Case Law History

Regarding Incarcerated Child Support

In re Marriage of Smith (2001), 90 Cal. App. 4th 74

Obligors
The counties argued the exception should have been applied to these particular cases because the victim was either a child for whom support was owed or was an unrelated child living in the same household, or the crime was particularly heinous.

The court of appeals declined to adopt such an exception and held that the crime the parent is incarcerated for is not relevant to the child support determination.



California's Legislative History Regarding Incarcerated Child Support Obligors

- Beginning in 2010, the Legislature enacted a series of statutory changes to provide relief from current support for child support obligors who are incarcerated or involuntarily institutionalized. (CA Family Code Sec. 4007.5)
- In the first version of the statute that became effective on July 1, 2011, the relief was limited to cases enforced by the IV-D Department.
- In later versions of the statute, the relief became applicable to all child support orders.



California's Legislative History Regarding Incarcerated Child Support

33

SB 1355 (Statutes of 2010) added Section 4007.5 to the FC effective July 1, 2011, with a sunset date of July 1, 2015.

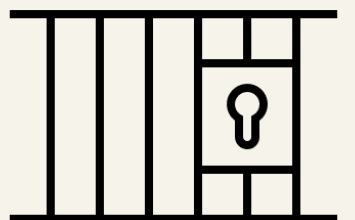
AB 2325 (Statutes of 2020) reestablished FC section 4007.5 effective January 1, 2021, with a subset date of January 1, 2023.

2015

2010

2020

AB 610 (Statutes of 2015) reinstated FC section 4007.5 effective October 8, 2015 due to urgency legislation approval, with a sunset date of January 1, 2020





California's Legislative History Regarding Incarcerated Child Support

Obligor

AB 207 (2022) amended FC section 4007.5 effective 9.27.22 to strike from statute the 1.1.23 sunset date as well as the exceptions related to the type of crime committed by the obligor. AB 207 also specifies that any period of incarceration or involuntary institutionalization after its effective date of 9.27.22 is considered for potential relief, regardless of when the order was issued or last modified, a significant expansion in eligibility for relief.

AB 1148 (2023) further amended FC section 4007.5 for an obligor who is released from incarceration or involuntary institutionalization after 1.1.24, to extend the suspension period until the first day of the 10th month after release.



What does “suspend” mean? (FC 4007.5(e)(2)):

“Suspend” means that the payment due on the current child support order, an arrears payment on a preexisting arrears balance, or interest on arrears created during a qualifying period of incarceration pursuant to this section is, by operation of law, set to zero dollars (\$0) for the period in which the person owing support is incarcerated or involuntarily institutionalized.



Application of FC 4007.5 relief in intergovernmental cases:

- Law of the issuing state or foreign country governs (FC 5700.604(a))
- Responding state applies its own enforcement procedures (FC 5700.604(c))
- FC 4007.5 is a substantive modification of the order by operation of CA law for the time periods concerned, so it would only apply to a CA order (also when CA has continuing exclusive jurisdiction and can and does modify the order)



Thank You!



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