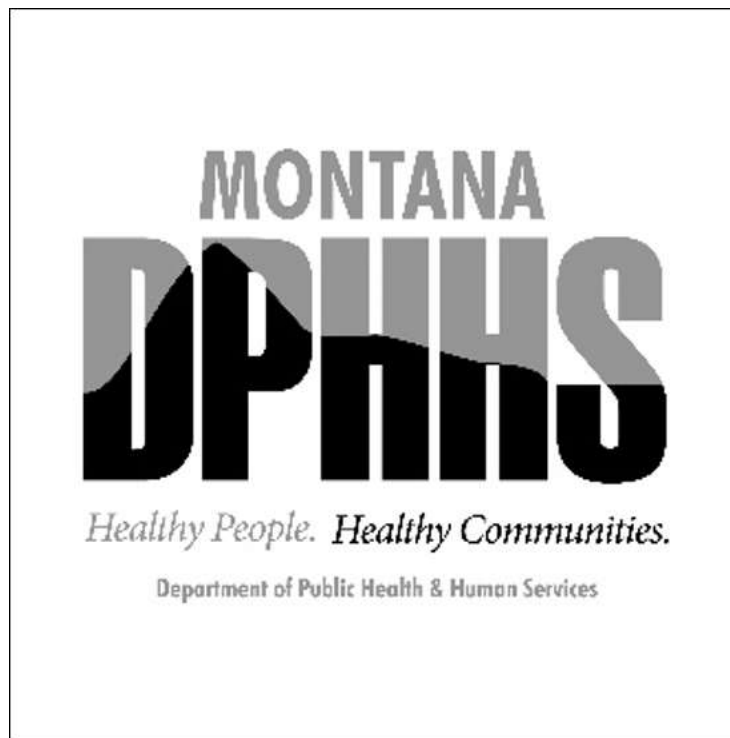

STATE OF MONTANA
Department of Public Health & Human Services
Child Support Services Division



2020 Quadrennial Report

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Purpose

The Child Support Services Division (CSSD) of the Department of Public Health and Human Services (DPHHS) for the State of Montana is required by both federal regulation (45 CFR § 302.56(e) (2016)) and state law (Montana Code Annotated, MCA § 40-5-209 (2019)) to review its uniform child support guidelines at least every four years. The guidelines are used by the courts of this state to determine how to set and modify child support obligations. Periodically the state will review the guidelines and, where appropriate, propose changes to the administrative rules governing them to ensure that the resulting support obligations adequately reflect our changing economy.

Most proposed changes to the administrative rules are based on requirements from the Office of Child Support Enforcement (OCSE). Many changes are relatively minor and will not significantly affect support obligations. Other changes are needed to address clarity, misunderstandings, or new circumstances.

Reviewing Committee

The Guidelines Review and Oversight Committee, hereinafter referred to as “the Committee,” convened multiple times over the previous four years to review and update the guidelines.

As of January 2020, the list of committee participants included:

Temple McLean, Billings
Guidelines Coordinator and Committee Chair

Lori Strandell, Helena
CSSD Bureau Chief

Patrick Quinn, Missoula
Staff Attorney with Office of Legal Affairs

Micheale Wigen, Great Falls
Regional Manager

Vaughn Rohrdanz, Billings
Team Supervisor

Casse Chaffey, Missoula
Compliance Specialist

Kimberly Watne, Helena
Compliance Specialist

Dena Helman, Butte
Compliance Specialist

Terressa McDaniel, Helena
Bureau Chief of Office of Legal Affairs
Liaison

Peggy Probasco, Butte
Member at Large

Nick Bourdeau, Great Falls
Consultant

Between meetings, the Guidelines Coordinator collects and answers inquiries from the public regarding the guidelines and their application. In the most recent fiscal year, the Guidelines Coordinator received and answered approximately seventy telephone and email inquiries. When an inquiry requires the full Committee's attention, it is placed on

an agenda for the next regularly scheduled meeting. At that meeting, the inquiry's corresponding rule is reviewed and clarified if necessary. The meeting minutes are approved, emailed to all CSSD staff, and saved electronically for future access.

Philosophy

The guidelines are based on the principal that it is the first priority of parents to, according to their financial ability, meet the needs of their children. When the guidelines are followed, a rebuttable presumption of the adequacy and reasonableness of child support orders is created.

The guidelines utilize a mathematical formula, incorporating each parent's income and deductions and providing a predetermined number of allowances for the parents and children. The formula calculates an obligation for each parent, which is presumed to be adequate and reasonable. Obligations are payable monthly to help ensure that child support payments are consistent and timely.

The guidelines are not intended to exactly determine specific obligations of the parents or their children, nor are they intended to apply to every case without consideration of the unique circumstances that exist in each family. Each presumption within the guidelines, as well as the overall determination, may be rebutted when extraordinary circumstances exist. Extraordinary circumstances may exist where it can be shown that strict adherence to the guidelines would be inequitable. The most important issue, and one the court is required to consider, is the best interest of the children.

The guidelines address a variety of situations, including co-parenting, sole parenting, third-party parenting, and other less common situations. The guidelines are meant to apply to almost all cases in Montana, and to create a rebuttable presumption of the adequacy and reasonableness of the child support amount.

Regulatory Factors

See Addendum A – Montana Code Annotated, pertinent sections of Title 40.

See Addendum B – Administrative Rules of Montana (ARM 37.62.101-37.62.148).

MCA § 40-4-204 requires the court to consider eight factors when determining child support, and to obligate one or both parents to pay child support. These factors include:

1. The financial resources of the child;
2. The financial resources of the parents;
3. The standard of living that the child would have enjoyed had the marriage (or union) not been dissolved;
4. The physical and emotional condition of the child and the child's educational and medical needs;
5. The age of the child;
6. The cost of day care for the child;
7. Any parenting plan that is ordered or decided upon; and

8. The needs of any person, other than the child, whom either parent is legally obligated to support.

The guidelines must be applied in all cases, as required by MCA § 40-4-204(3)(a). If a court finds an equitable basis to determine the calculated amount is inappropriate or unjust, the court must state the reasons and may order a different amount. MCA § 40-4-204(3)(b). Court-ordered modifications of child support are controlled by MCA § 40-4-208.

MCA §§ 40-5-201 through 40-5-291 provide the framework for the CSSD to establish paternity and to establish, modify, and enforce child support, including health insurance. The CSSD provides these services to applicants receiving cash assistance from the State of Montana Office of Public Assistance. Applicants who do not qualify for public assistance may also apply directly to CSSD for services. The CSSD procedures are found at ARM 37.62.101 through 37.62.148.

During the last four-year review period, the CSSD implemented the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs (FEMCSEP), a change required by 45 C.F.R. §§ 301, 302, 303, 304, 305, 307, 308, and 309. The Administrative Rules of Montana were amended to address these changes, and by December of 2017, the new regulations were implemented. Major changes also came after the United States Supreme Court ruling in *Turner v. Rogers*, 564 U.S. 431 (2011), where the Court held that a parent’s “ability to pay” is a critical element in any child

support enforcement proceeding. Logically, the OCSE extended this “ability to pay” concept to child support establishment and modification proceedings. This was especially important involving low-income or incarcerated parents.

Economic Considerations

As mandated by the OCSE the Committee looked to the Montana Department of Labor & Industries (DL&I) for information about Montana’s present economy. The CSSD reviewed data regarding the service industry and noted that many workers in that field are no longer able to attain a 40-hour workweek. The hospitality sector of the service industry comprises nearly 67% of Montana’s non-agriculture and non-government economy. Based on this review the Committee decided that the income would no longer be imputed to a 40-hour workweek, if a 40-hour workweek was generally unavailable. Instead, income is determined using the hours typically available to the industry. CSSD examines all factors to determine hours, including the availability of work within the parent’s geographical region, recent work history, and occupational and professional qualifications. The CSSD imputes a 32-hour workweek to those working 20 hours or less as appropriate.

The Committee audited child support guidelines that were calculated by both the CSSD and Montana courts between years 2016-2019. The focus of the audit was to ensure that both the CSSD and the public, attorneys, and courts of Montana understood the guidelines and the 2017 changes to the Administrative Rules of Montana (ARM)

regarding imputed income for child support, and to assess what other facets of training might be necessary. The CSSD provided additional training highlighting the new approach. Training occurred across the five regional offices in the last quarter of 2019.

Under CFR 302.56(h)(1), the Committee Chair examined calculations performed in 2019, identifying obligor case participants with income at or below 200% of poverty.

The data analysis is explained in the accompanying addenda—namely, in Addendum E (the guidelines calculation tables, worksheets, and policy) and Addendum H (the resulting case analyses).

Data Selection and Extraction

The Committee determined to select cases where the gross income was at or less than 200% of poverty (or \$34,680 in 2019). That figure represents 200% of \$17,240 for a two-member household (one adult and one child).

We chose to analyze data from 2019 calculations for two reasons. First, 2019 was the first year that calculations using 2018 tax laws were performed; and second, year 2019 calculations allowed for at least eighteen months from the order's entry to evaluate the arrears data into and through the COVID-19 pandemic.

Of the 361 calculations performed in 2019, we sorted the data by gross income (smallest to largest) and retained 188 calculations that fell below the \$34,680 value for continued analysis.

Additional calculations involving modifications for incarcerated individuals, as well as those that did not result in entry of an order, were removed. The most common reason an order was not entered was dismissal of the action for failure to obtain service on a case participant. The removal of those calculations narrowed the selection down to a final 103 calculations.

Our continued analysis studied those calculations that had no data at Line 17 of the calculation worksheet, to focus especially on low-income case participants. If there is no data at Line 17, this means the income level of that parent required usage of the minimum support obligation table. This guidelines worksheet table is shown in Addendum E. Data entries at guidelines worksheet line 17 indicate income sufficient to use the standard of living adjustment (SOLA) table, also shown in Addendum E.

The data was sorted additionally to first indicate those calculations using the minimum support obligation table discussed above, followed by those resulting in *default* orders (case analysis 1).

The final sorting criteria considered the arrears balance (or delinquency) from smallest to largest.

The use of “C” in the arrears balance column indicates cases that have since closed and contained a zero balance at the time of closure (case analyses 2 and 3).

The remaining case analyses (4 and 5) provide a snapshot of default status cases where father obligors are distinguished from mother obligors.

Addendum H has additional information contained within the worksheet to assist the Committee with further consideration and analysis of the minimum support obligation and standard of living allowance percentages as we enter the reporting period for our 2024 quadrennial report.

Overall Analysis

Of the 103 calculations, forty (38.9%) represent use of the minimum support obligation table for no data at Line 17. Conversely, sixty-three (61.2%) represent sufficient income to use the standard of living adjustment (SOLA) table.

Minimum support obligations. We focused initially on those calculations that utilized the minimum support obligation, relative to the default order rate. Of the forty calculations identified, thirty-two (80%) were entered as default orders. A closer examination showed that within the 80% of default orders using the minimum support obligation table, twenty-seven calculations (84%) held an arrears balance.

Default orders (Addendum H). Additional focus on the relationship between default orders and arrears balance gave additional insight for our future review. We considered especially those with delinquencies equal to or more than six months of the support obligation (case analyses 2 and 3).

Default Orders with Minimum Support Obligation Table with Arrearages

Sorting for default orders that did not have data at Line 17 (the minimum support obligation table), thirty-four of forty calculations represent the cases that were not closed at the time of the data selection. Of the thirty-four calculations that used the minimum support obligation table, twenty (60%) had arrearage balances equal to or more than six months' worth of the monthly obligation. Of those twenty calculations, thirteen (65%) had arrearage balances equal to or more than twelve months.

Conversely, the remaining seven calculations (35%) that were not default orders had arrearage balances; three (42%) had arrearage balances equal to or more than six months' worth of the monthly obligation. Of those three, two (66%) had arrearage balances equal to or more than twelve months.

Default Orders with Standard of Living Allowance Table with Arrearages

Sorting for default orders that did have data at Line 17 (SOLA), fifty-nine of sixty-three calculations represent the cases that were not closed at the time of the data selection. Of the fifty-nine calculations that used the SOLA table, twenty-seven resulted in default orders, of which thirteen (48%) had arrearage balances equal to or more than six months' worth of the monthly obligation. Of those thirteen, eight (61%) had arrearage balances equal to or more than twelve months.

Conversely, seven (21%) of the remaining thirty-two calculations that were not default orders had arrearage balances equal to or more than six months' worth of the monthly obligation. Of those seven, only four (57%) had arrearage balances equal to or more than twelve months.

Recommendations

Based on the overall analysis of the data in Addendum H, the Committee recommends the following:

1. Addition of the term "Residence" to our rule for imputing income.
2. Addition of case events to our system. These case events will allow future extraction of calculations containing imputed income. The calculations can be examined relative to default orders and correlating arrears balances. (The new case events were added June 2021. The Committee will conduct its first extraction in January 2022 for the first six months of use.)
3. Hire an economist to study Montana's use of federal Poverty Index Guidelines compared with the cost of raising a child for primary support allowance values.

General Extraction of Case Data for Analysis

In early 2019, the Committee adopted a simple random sampling (SRS) method to select cases for analysis. In the past, cases were only selected from the year the report was due. The current review period contains a review of cases from each fiscal

year of the quadrennial review period. The Guidelines Review and Oversight Committee determined that:

1. From the 2015-2016 fiscal year there were an average of 1,910 administrative orders. Under the SRS method, CSSD collects and audits a total of 200 sample cases—about fifty from each of CSSD’s four geographic regions in Montana—for the year.

2. The Central Case Registry¹ (CCR) is used to review district court orders, which are also reviewed using the SRS method.

3. The CSSD measured the effects of the tax law changes on child support orders by entering tiered incomes in guideline calculations. This allowed the CSSD to analyze the effect of the tax law changes on those various incomes, and also allowed CSSD to focus on the standard of living adjustment (SOLA) factor in the calculations. The Committee recommends the SOLA factor receive further testing during the 2021 biennium, in conjunction with review of the self-support reserve component known as the “personal allowance.”

Flexibility, Efficiency, and Modernization

Before FEMCSEP and in response to the Affordable Care Act (ACA), Montana produced separate guidance from the Committee concerning medical support, directing

¹. Each State is mandated by federal law to maintain a Central Case Registry. It contains a registry of all child support cases and orders in the state

caseworkers how to allocate the household insurance premium among the parents for the respective children (either as children of the calculation, or as “other” children). The guidance was an extension of the statutory authority for medical needs in MCA § 40-4-204 and took into account ACA. The same direction set forth examples within the instructions outlined for completion of the worksheets. Under the Tax Cuts and Jobs Act (TCJA), the earlier guidance was reviewed and reinforced despite eliminating the penalty under ACA. Addendum C is the guidance issued and the annual medical review policy.

The 2017 changes to the Administrative Rules of Montana were amended to implement FEMCSEP. CSSD changed its internal policy regarding incarcerated parents to comply with the 2015 changes observed at the federal level. In accordance with the Supreme Court’s ruling in *Mooney v. Brennan*, 257 Mont. 197, 848 P.2d 1020 (Mont. 1993), Montana had continued to charge the child support obligation to the incarcerated parent and to not allow for modification of child support orders based solely on incarceration. A CSSD committee was formed to institute changes in accordance with OCSE, later adopted with the 2017 change, specifically at ARM 37.62.106(6)(b). The policy instituted before 2017 remains in effect and is shown in Addendum D. Chad Dexter (CSSD director) conferred with Diane Degenhart (OCSE regional program manager) regarding our policy and such modifications approved by the courts.

Another major focus of the 2017 rule changes was the matter of how a parent's income is imputed. The CSSD reconsidered its earlier presumption of a 40-hour week, as discussed above under Economic Considerations.

Guidelines History in Montana

In 1987 the first Montana child support guidelines were adopted by the Montana Supreme Court. The first such guidelines were based on the income-shares model. In the 1991-1992 review, Montana changed from an income-shares model to a modified Melson model. Using this model, Montana has continually updated the guidelines for simplification and fairness. A comprehensive history of Montana's guideline history can be found at <https://dphhs.mt.gov/cssd/services/guidelines>.

Public Outreach

The Committee focused its public outreach efforts on educating the public about the 2017 law changes, 2018 tax changes, and CSSD's new online application. Pursuant to the Montana Administrative Procedures Act, the public was given notice to the changes to the guidelines in the Montana Administrative Registry. Additionally, CSSD sent the proposed guidelines to over 150 interested parties, including attorneys for low income parents and all of Montana's district courts. The public and interested parties were given an opportunity to comment. The Montana Administrative Procedures Act created under MCA 2-4-302 is available at these links:

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- https://leg.mt.gov/bills/mca/title_0020/chapter_0040/parts_index.html
 - https://leg.mt.gov/bills/mca/title_0020/chapter_0040/part_0030/sections_index.html

The Guidelines Coordinator works with the Department of Justice / Access to Justice Self Help Law Clinics (SHLC) to help educate their staff and parents who use the SHLC's services. The icon for the CSSD's online application is now available on the desktops of many publicly available computers of SHLC. Parents can easily apply for child support services with CSSD when receiving assistance from SHLC. The partnership between CSSD and SHLC creates a convenient process for the parties. This is important because a child support order must be established before a dissolution with children is finalized by the district court. Additionally, this leads to support orders being established early, thus providing support for children as soon as possible while also reducing child support arrearages. Ultimately the icon will appear on every computer at every clinic/kiosk across the State.

The CSSD, with the Yellowstone Area Bar Association, Family Law Section, jointly hosted a continuing legal education seminar covering the imputation of income rule and tax changes affecting child support calculations. The seminar was especially helpful for practitioners who use the private sector version of the calculator, the Montana Child Support (MTCS) software.

The Committee recommends additional activities via the CSSD website to foster more input from the public with respect to the next quadrennial review, including low-income self-represented litigants and representatives of low-income litigants.

Addenda

This document is accompanied by the following set of addenda (A–H):

A: Montana Code Annotated (MCA) – statutes governing CSSD.

B: Administrative Rules of Montana (ARM) – rules governing CSSD.

C: CSSD policy on health care premium considerations in child support calculation.

D: CSSD policy on review of orders for incarcerated parents.

E: CSSD guidelines worksheets, tables, forms, and instructions, publicly available at <https://dphhs.mt.gov/cssd/AboutCSSD> / <https://dphhs.mt.gov/cssd/PolicyManual>.

F: Guideline rules under the ARM (with ARM references), as the focus of the 2017-2020 quadrennial review for this report.

G: Frequently asked questions from 2002, related to the proposal for changes to Montana’s child support guidelines around that time.

H: Case analyses of calculations with incomes at or under 200% of poverty.