

## 45 CFR 302.56 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.





**If imputation of income is authorized in guidelines, they must take into consideration specific circumstances of the NCP (and at state discretion, CP):**

- Assets
- Residence
- Employment and earnings history
- Job skills
- Educational attainment
- Literacy
- Age
- Health
- Criminal record and other employment barriers
- Record of seeking work
- Local job market
- Availability of employers willing to hire NCP
- Prevailing earnings in community
- Other relevant background factors



## LOW INCOME PAYERS

**Recommendations:** Modify the Child Support Guidelines for low-income payers as follows:

Retain the current formula for low-income payers at DCF 150.04(4)

Modify the current language for imputing income based on earning capacity in DCF 150.03(3) as follows:

**(3)** Determining income imputed based on earning capacity. In situations where the income of a parent is less than the parent's earning capacity or is unknown, and in the absence of credible evidence to the contrary, the court may impute income to the parent at an amount that represents the parent's ability to earn, based on the parent's education, training and recent work experience, earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary physical placement, and the availability of work in or near the parent's community. If evidence is presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unavailable, the court may impute to the parent the income that a person would earn by working 10 to 35 hours per week, based on the availability of work in or near the parent's community for individuals in similar circumstances of the parent, for the higher of the federal minimum hourly wage under 29 USC 206 (a) (1) or the state minimum wage in s. DWD 272.03. If a parent has gross income or income modified for business expenses below his or her earning capacity, the income imputed based on earning capacity shall be the difference between the parent's earning capacity and the parent's gross income or income modified for business expenses.

Provide that the low-income formula can be combined with the shared, serial and split placement formulas.

Provide language suggesting job search and/or the Children First program as alternatives to imputing income in low-income cases.

Remove the words 'up to' from Appendices C and D in DCF 150 to clarify that the amounts in the low income and birth costs charts apply to incomes at or above 75% of the federal poverty level. The court should exercise its discretion in setting support for payers with incomes below 75% of the federal poverty level.



## **Justification**

- A. It is important to retain the provisions authorizing the imputation of income to address the payers who are shirking their responsibility to their children.
- B. Many low-income payers work multiple part-time jobs to support themselves and their families and may often work less than 35 hours per week.
- C. It is not realistic to require proof of actual income given the large number of payers who fail to show up for their court hearings.
- D. Most of the automated calculators being used by attorneys are programmed to calculate a support obligation for payers with incomes below 75% of the federal poverty level.

## **Discussion Points/Considerations**

- A. Although the Committee did not make any recommendations for changes to the current formula for setting support in low-income cases, the Committee agreed that income should not be improperly imputed to payers, resulting in orders they can't comply with.
- B. Many pro-se litigants don't know to ask for application of the low-income formula. The court should be encouraged to utilize these provisions where applicable.
- C. The Committee felt this approach uses credible information when it's available and offers guidelines for when it's not.

