

# **Administrative and Judicial Processes for Establishing Child Support Orders**

## **Final Report**

Prepared for

Department of Health and Human Services  
Office of Child Support Enforcement

Prepared by

Karen N. Gardiner, The Lewin Group  
John Tapogna, ECONorthwest  
Michael E. Fishman, The Lewin Group

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Stephanie Laud at The Lewin Group and Charisa Flaherty at ECONorthwest analyzed the administrative data from five states. At Lewin, Julia Graffam spent many hours formatting the document and always kept a sense of humor about her.

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Finally, work on this project was funded by the Office of Child Support Enforcement in the Department of Health and Human Services. The project benefited from the oversight and assistance of James Rich, the OCSE project director, and Gaile Maller, the director of research.

## **Executive Summary**

### **A. Background**

While the federal government has mandated the use of a number of enforcement techniques, states and localities still have considerable flexibility in designing the processes by which they establish child support. States have discretion in terms of shaping and running their child support programs. In many states, courts play a key role in child support order establishment, as well as other aspects of the program. In others, executive-branch agencies establish orders administratively.

In the most general terms, an administrative process is one in which the IV-D agency establishes support orders, often without a hearing. If an order is contested, the tribunal for hearing the case is in the executive branch, and the presiding officer is a non-judge, such as a hearing officer; attorney involvement is limited. Through Federal Financial Participation (FFP), program outlays, including staff salaries, are matched at a rate of 66 percent. In judicial processes, the order is established in the court. While IV-D agency staff play a large role in this process (e.g., locating parents), the order is generally established on a specified court date. A judge or judge surrogate (e.g., magistrate) presides. Contested orders are also heard in court. Attorneys play a central role, often representing the IV-D agency before the court. Judges' salaries and travel costs are not eligible for federal matching dollars.

Despite the widespread use of the terms “judicial” and “administrative,” no study has tried to define each process—or a range of quasi-judicial processes. The 50 states and the District of Columbia each has its own order establishment process with its own set of “players.” This study seeks to go beyond the administrative/judicial dichotomy and explore the nuances of state child support establishment processes.

This study addressed the following questions:

- What key characteristics define administrative and judicial processes, as well as the host of hybrid (quasi-judicial) processes? Is it possible to classify state processes into four or five key categories or types?
- Are there similarities, as well as differences, between the processes?
- How do cases progress through each of the process types? Are there differences in the number of people or agencies involved in the process? Do clients perceive the processes as fair and accessible?
- Do cases appear to move more quickly through one process or another?

### **B. Methodology**

To answer the study questions, the Lewin Group and ECONorthwest team undertook three principal tasks:

*Development of a taxonomy of judicial and administrative processes.* Building on work already completed by the Center for Law and Social Policy (CLASP) and other research groups, the research team assessed the characteristics of judicial, quasi-judicial, and administrative processes in all 50 states and the District of Columbia.

*In-depth review of processes in nine states.* We selected nine states that span the continuum of processes for in-depth review. For each state, we examined a number of program characteristics, including intake process, service of process, income determination, stipulations, hearings, and appeals. Through this task, we identified areas of variation between judicial and administrative states, as well as variations among states with similar processes. The states were Arizona, Colorado, Iowa, Massachusetts, Maine, Montana, Oregon, Texas, and Virginia.

*Site visits to five states.* Drawing from our taxonomy and in-depth review of state processes, we selected five states for site visits. Two were classified as highly judicial (Arizona and Massachusetts); two were highly administrative (Maine and Oregon). One was classified as quasi-judicial (Colorado). In each state, we met with a number of stakeholders, including state-level officials, local office caseworkers, district or county administrators, and court officials. Interview protocols ensured that similar types of information were collected at each site.

In addition to interviews, for each state we reviewed a sample of cases to determine the length of time between a case opening and order establishment. We also identified how much time elapsed between the case opening date and a number of milestones, such as in-person meetings and date of service.

### **C. General Findings**

When we began this project, we classified states in terms of this two-dimensional system. Through our project activities—creation of a taxonomy to further classify states along a continuum of administrative and judicial, in-depth studies of nine states, and site visits to five states—we modified our understanding of what it means to be “administrative” and “judicial”. The project activities revealed nuances that render the simple administrative/judicial labels overly simplistic. Similarly, there is a tendency to presume that either an administrative or judicial process produces superior program outcomes. We did not attempt to systematically address this question in this study.<sup>1</sup> However, we did explore program performance across the five measures outlined as part of the Child Support Performance Act of 1998 (paternity establishment, cases with orders, collections on current support, cases paying towards arrears, and cost-effectiveness) for the nine states we studied in-depth. We also examined the timing of award establishment for the five states we visited. With regard to performance, we found:

- Among the nine states we reviewed in-depth, program performance across the key measures varied significantly, both within type of process (i.e., administrative, quasi-judicial, judicial)

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<sup>1</sup> Another study by the Lewin Group is exploring whether a state’s economic, demographic, and programmatic factors are associated with its performance on five indicators (paternity establishment, cases with orders, collections on current support, cases paying towards arrears, and cost-effectiveness). One variable, based on the taxonomy, seeks to determine whether a state’s order establishment process affects any of the performance measures.

and between the types of processes. However, we found no systematic pattern with regard to the effectiveness of any type of process.

- Among the five states we visited, our review of administrative data found that four of the states (the two administrative and two judicial states) had comparable establishment time frames. The quasi-judicial state had a shorter timeframe.

We found that variation in the practices within broad clusters of processes is more significant than previously understood. As a result, it may be very difficult to meaningfully categorize states as administrative or judicial and ascribe program performance to those categories.

The project consisted of three key activities:

*Development of National Taxonomy.* We explored the forum where uncontested and contested child support orders are established, who presides when an order is contested, and the extent to which attorneys are used by the IV-D agency. We found that order establishment processes fall along a continuum, ranging from highly judicial (court forum, judge presides, attorneys involved) to highly administrative (IV-D agency sets order without hearing, limited attorney involvement).

*Nine-state document review and interviews.* Through a in-depth review of legal documents, policy documents, and training materials, we explored a number of establishment milestones. These included notification of the non-custodial parent, service of process, in-person meetings, imputation of income, establishment of default orders, process for contested orders, and general role of the court. We looked at three judicial states (Arizona, Massachusetts, Texas), four administrative states (Maine, Montana, Oregon, Virginia), and two quasi-judicial states (Colorado, Iowa). In terms of the establishment milestones, we found that “clusters” of administrative, judicial, and quasi-judicial states shared certain practices. For instance:

- Service of process varied according to forum. All three of the judicial states and both quasi-judicial states rely primarily on in-person service, while the administrative states were more likely to use certified mail.
- The timing of the revelation of the order amount differs by process. The administrative states reveal the order amount early in the process; two of the four states include the proposed order amount in the first correspondence with the non-custodial parent. The judicial states reveal the order amount on the court date, while the quasi-judicial states are mixed.
- Deviations from state child support guidelines differed by forum, with caseworkers in administrative states having more discretion to deviate than their counterparts in judicial or quasi-judicial states.
- The use of in-person meetings also differed by forum. All of the judicial states have some mechanism for meeting with one or both of the parents, while none of the administrative states did so. The quasi-judicial states were mixed.



- Use of attorneys differed by forum. They were involved in all aspects of order establishment in the judicial states and rarely involved in the administrative ones. They handled court-related business in the quasi-judicial states.

Some establishment steps were not related to process. For example:

- Imputation of income was not related to forum. All states use databases to determine if there are wage records for the non-custodial parent. In the absence of financial information, seven of the nine states (all three judicial states, three administrative ones, and a quasi-judicial state) impute the minimum wage for a 40 hour week, while one administrative state and one quasi-judicial state impute income at a higher level.

During the nine-state review, we also began to understand how states *within* administrative and judicial clusters differ from each other. For instance:

- Not all administrative states use certified mail to serve non-custodial parents. One of the four relies primarily on in-person service.
- Not all administrative states allow caseworkers to deviate from guidelines.
- Quasi-judicial processes differ in terms of contact with non-custodial parents and court involvement. Colorado holds negotiation conferences as a matter of course, while Iowa will schedule a conference only if a parent contests the order. Moreover, contested orders in Colorado are referred to the court. In Iowa, parents have the option of a IV-D negotiation conference or a court hearing.
- While all judicial states hold in-person meetings, the timing of the meetings differs. One state gives counties the option of scheduling a negotiation conference in advance of the court date, while the other two meet with parents on the date of the hearing only.
- For contested orders, we found diversity within the administrative states in terms of where the tribunal is located. Hearing officers were housed in the IV-D agency, the IV-D umbrella department, or an entirely different department.

*Site visits.* Through our site visits, we encountered additional nuances and discovered that the a process can differ across offices within a state and be determined by the preferences of IV-D and court staff. Our general findings include:

Simply knowing a state's process does not always give an observer a sense of how the support order establishment process will unfold from the client's perspective. For example

- The judicial forum ensures only that the process will be linked to the court calendar and that parties will have to interact with court clerks. It does not ensure that a client will see a judge or enter a courtroom. For instance, some orders in Arizona are stipulated in pre-hearing negotiation meetings between the attorney and parents because this is the preference of the attorney involved. Other attorneys in the state take all of their cases before the judge. Similarly, in Massachusetts, on the day of the hearing, IV-D staff first try to reach an

agreement with the parents in an effort to avoid a hearing and expedite the entry of the support order.

- Administrative processes exhibited differences in terms of contact with parents. In Oregon, caseworkers attempt to contact parents early in the process and if appropriate, deviate from the state guidelines. In Maine, the administrative process is more formulaic. Caseworker deviations are possible but rare. One staff person noted that he would prefer to let the hearing officer handle a situation where the non-custodial parent disputed the order amount.

Judicial processes incorporate administrative practices. Key practices include:

- Caseworkers do a considerable amount of case research prior to the court date. In Arizona, caseworkers check databases to learn about non-custodial parent earnings and presence of other child support orders. Massachusetts IV-D staff gather income information from databases and financial statements sent to the non-custodial parent.
- Attorneys try to get the parties to stipulate to orders. In Massachusetts, an attorney or non-legal staff person meets with the parents on the day of the hearing, collects any outstanding financial statements, and calculates the order amount. The parents can agree to the order on the spot. Only contested cases go before the judge. Thus, the process is somewhat similar to an administrative process in that IV-D staff calculates the order and the parents sign off. However, the forum (courthouse) and timing of the hearing is different. We found a similar process in Maricopa County, Arizona. Attorneys have the option of meeting with the parents on the day of the hearing to attempt to work out an order. Only the contested cases go before a judge.

Caseworkers in administrative states have considerable authority. Both administrative and judicial states agreed that caseworkers in administrative states have more responsibility. In Maine and Oregon, caseworkers draft the proposed order. They collect financial information and have the authority to deviate from the guidelines. In Oregon, there are 16 categories of allowable deviations. Caseworkers in Maine also have the authority to deviate from the guidelines if they can show that the guidelines would result in an order that is not equitable or just. Staff also have a role in contested cases. Caseworkers in Maine represent the IV-D agency before the administrative hearing officer. In Oregon, program supervisors believe the increased authority was not only appropriate given staff qualifications but contributes to a higher degree of job satisfaction. The administrative states suggest that this produces a number of benefits: It frees up IV-D attorney time for tasks that require legal expertise, controls costs, and ensures buy-in from line workers who are empowered because their knowledge and skills are utilized.

County-administered states exhibited variations in process across offices. In Arizona, Colorado, and Oregon, counties administered all or part of the child support program. In each state, processes differed somewhat by county. In Arizona, for example, an attorney in Maricopa County generally holds pre-trial negotiation conferences with clients at the courthouse. In the majority of cases, she negotiates a settlement and the case does not go before a judge. In Pima County, however, negotiation conferences are rare. Staff noted that they have little time on the day of the hearing to meet with parents and suggested that the commissioner is the best person to determine the order amount, not the attorney. In Oregon, state case managers establish and

enforce support administratively, while the establishment processes for non-TANF cases by county case managers vary across the state, and in one case, even within the same office. Rural counties with smaller populations also rely on judicial processes in establishing orders for non-TANF clients while larger counties used the administrative process. In Colorado, we found county differences in terms of whether IV-D caseworkers calculate debt owed to the state or retroactive support. There was also variation in the level of custodial parent participation in the process. Some Colorado counties invite custodial parents to the negotiation conferences while others do not. In Massachusetts and Maine, staff report the processes do not vary much by county. The child support programs are state-administered. Guidance on how a case flows through the system comes from the central office.

Analysis of case flows suggests administrative and judicial states are meeting the expedited timeframes for support order establishment. For each of our site visit states, we requested data to illustrate the flow of cases through the establishment process. Our analyses of four of the five states (Arizona, Massachusetts, Maine, and Oregon) show roughly comparable establishment timeframes. These states establish the large majority of cases within one year, with a sizable clustering of establishments within six months. Our simple analysis of Colorado data suggests the state processes establishment cases somewhat faster than its counterparts. Some of the difference may relate to caseworkers' quick action on the case subsequent to locate and very specific timeframes for case conferences, which are enforced by the state's automated system. Colorado's estimated timeframes may also benefit from a more routine reclassification of cases with failed service into locate status. If caseworkers fail to reclassify cases (from establishment to locate status) in which a non-custodial parent has eluded service, it can give the appearance that the state's establishment process is slower than it actually is.

#### **D. Topics for Further Study**

This project documented key differences and similarities between states that use an administrative process to establish child support orders, those that use a judicial-based forum, and those that use a process that mixes the two. Through that documentation, we have a better sense of the range of establishment practices used across the country. Areas for further study include:

*Is there a relationship between the child support order establishment process and measures of program effectiveness?* The 1998 Child Support Performance and Incentive Act (CSPIA) links incentive payments to state child support agencies based on performance in five areas: paternity establishment, order establishment, collections on current support due, cases paying towards arrears, and cost-effectiveness. Another study the Lewin Group is conducting for the Office of Child Support Enforcement (OCSE) uses the taxonomy to explore the association between order establishment process and performance on the CSPIA indicators.

*Are higher default order rates related to forum or other features of the establishment process?* Child support staff noted that default orders were common (typically in the range of 20 to 35 percent); they could not pinpoint an exact figure. They also expressed concern about the ability of non-custodial parents to pay orders established through default. An interesting future study would focus on whether default orders are more common in certain types of child support

establishment processes. For example, are administrative or judicial states more likely to issue default orders?

*Does a state's imputation method contribute to its default order rate?* In the absence of reliable information about the non-custodial parent's earnings, states use a variety of methods to attribute income. The most common method in our nine-state study was imputing the minimum wage for a 40-hour week. Other states used the state average wage for all workers or the average wage for parents in the IV-D system. Arguments exist in support and in opposition to each method.

*Do states with in-person meetings have better compliance with child support order payments?* States that hold in-person conferences note that such meetings offer the opportunity to educate the non-custodial parent about the child support process and obtain buy-in. If a parent understands why timely child support is important, staff suggest that they will be more likely to pay support. Other states suggested that requiring meetings is unnecessary because a large proportion of non-custodial parents comply with the process, and efforts to meet with them adds an expensive step to the process.

*Would county- or office-level experiments reveal information about effective practices independent of forum?* Our site visits revealed a great deal of intrastate variation in states that have county-administered child support programs. Future research could use analysis of intrastate variation to learn about effective elements of order establishment processes.

*Does the timing of the revelation of order amounts affect contests?* The states we visited differed in terms of when they reveal the order amount. The administrative states tended to reveal the amount early in the process, and staff suggested this gave parents time to "mull over" the award amount and whether to contest it. The judicial states tended to reveal the amount at the court on the day of the hearing. If a parent wishes to contest the order amount, he or she must do so that day. Future research could explore whether states that reveal the order amount on the day of the hearing have a higher level of contested orders than those states that reveal the amount earlier in the process.

*Do links to the courts in administrative states improve parental responses to the order establishment process?* Officials in administrative states suggested that non-custodial parents take notices from a court more seriously than those from executive branch agencies.

*Can the clarity of notices and orders improve compliance with the establishment process?* Interviewees were nearly unanimous in their views that the clarity of their orders could be improved. Research should identify best practices in the area and determine whether the clarity of notifications and orders can improve program performance.

## I. Introduction

### A. Background

Since the child support enforcement program was created in 1975 (Title IV, Section D of the Social Security Act), policy makers, researchers, and advocates have sought ways improve its performance. Attention has focused on how to establish orders more quickly and, once an order is established, how to collect the amount due. The passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996 renewed interest in child support enforcement, because in addition to work, regular child support payments were viewed as a key to helping single-parent families become self-sufficient.

States have discretion in terms of shaping and running their child support programs. In many states, courts play a key role in child support order establishment as well as other aspects of the program. In others, executive-branch agencies establish orders administratively. Seeking ways to improve the performance of the child support enforcement system, Congress has enacted a number of laws to widen the scope of administrative processes—both to establish and enforce child support orders.

In 1984, Congress adopted the child support amendments, which mandated states to implement administrative or judicial *expedited* processes for establishing and enforcing child support orders. An expedited judicial process reduces the time it takes to establish an order by giving authority to a “judge surrogate” to take testimony, evaluate and make initial decisions, enter default orders, and approve stipulated agreements. Then, in 1993, Congress required expedited processes for paternity establishment.<sup>2</sup>

The *expedited* standards that directly affect state choices around administrative processes are that:<sup>3</sup>

- Within 90 calendar days of locating the alleged non-custodial parent, the IV-D agency must establish an order for support or complete service of process (or document unsuccessful attempts to serve process).
- The IV-D agency must resolve 75 percent of all pending cases in 6 months.
- The IV-D agency must resolve 90 percent of cases in 12 months.

To meet these timeframes, states had to design means to speed cases through overburdened court systems or simply bypass the court systems altogether. A number of states adopted full *administrative* processes, which authorized IV-D agencies to establish and enforce IV-D orders with very limited judicial involvement. Other states developed quasi-judicial systems that allocated certain tasks to the IV-D agencies and others to the courts.

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<sup>2</sup> The expedited processes can be waived if a judicial system can process cases quickly.

<sup>3</sup> Office of Child Support Enforcement, 19<sup>th</sup> Annual Report. Chapter 3. Available online: <http://www.acf.dhhs.gov/programs/cse/rpt/ch3a.htm>

Until 1996, expedited processes were not synonymous with administrative processes. That is, the federal government was concerned that states meet the specified, expedited timeframes but did not prescribe an administrative or judicial process. With the enactment of PRWORA, Congress showed a preference for administrative processes for certain establishment and enforcement actions. Specifically, the law mandated that states give the IV-D agencies the authority to order genetic tests, subpoena financial documents, request wage information, order income withholding, and seize lump-sum payments to satisfy arrearages.

During the development of PRWORA, the Clinton Administration argued that enactment of the administrative processes would have a greater impact on collections than any other enforcement tool in the bill, including the new hire registry and license revocation measures. Although the argument of strong impacts was persuasive, the Administration lacked empirical data to support it. Despite the lack of data, the Congressional Budget Office (CBO)—based largely on the testimony of state IV-D directors—estimated that the provision would generate more than \$750 million in new collections in Fiscal Year (FY) 2002 alone. In doing so, CBO implicitly agreed that the administrative processes were the single most effective tools in the bill.

Another development that has spurred additional state focus on performance is the new incentive payment structure passed in 1998.<sup>4</sup> The Child Support Performance and Incentive Act (CSPIA) revised the incentive structure to reward states for performance in five areas:

- Paternity establishment;
- Establishment of child support orders;
- Collections on current support due;
- Cases with collections on arrears (past support due);
- Cost effectiveness (i.e., total collections divided by total administrative costs).

Linking incentive payments to specific areas may renew state interest in assessing whether administrative or judicial processes are more efficient in establishing and enforcing orders.

## **B. Purpose of the Study**

While the federal government has mandated the use of a number of enforcement techniques, states and localities still have considerable flexibility in designing the processes by which they establish child support. In the most general terms, an administrative process is one in which the IV-D agency establishes support orders, often without a hearing. If an order is contested, the tribunal for hearing the contested case is in the executive branch, and the presiding officer is a non-judge, such as a hearing officer; attorney involvement is limited. Through Federal Financial Participation (FFP), program outlays, including staff salaries, are matched at a rate of 66 percent.

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<sup>4</sup> Under the law that existed up to 1998, the federal government based a state's incentives payment on a percentage of their TANF and non-TANF collections. The incentive payments were determined by measurement of the state program's cost-effectiveness—defined as the state's total collections divided by its total administrative costs.

In judicial processes, orders are established in the court. While IV-D agency staff play a large role in this process (e.g., locating parents), the order is generally established on a specified court date. A judge or judge surrogate (e.g., magistrate) presides. Contested orders are also heard in court. Attorneys play a central role, often representing the IV-D agency before the court. Judges' salaries and travel costs are not eligible for federal matching dollars.

Judicial and administrative processes each have their supporters. Proponents of the judicial process note that it provides more protection for the legal rights of the non-custodial parent and offers a wide range of enforcement activities (e.g., civil contempt and the possibility of incarceration). The perceived drawback of the judicial process, however, is that it can be cumbersome, time consuming (given that it is tied to court schedules), and expensive (it relies on judges, magistrates, and attorneys as opposed to caseworkers). Supporters of the administrative process note that it can be quicker because it does not involve filing an order with the court clerk, awaiting a signature of a judge, or working around a court schedule.<sup>5</sup> Some argue that the lack of formality results in a lower degree of compliance with the order once it is established.

Despite the widespread use of the terms “judicial” and “administrative,” no study has tried to define each process—or a range of quasi-judicial processes. The 50 states and the District of Columbia each has its own establishment process with its own set of “players.” This study seeks to go beyond the administrative/judicial dichotomy and explore nuances of state child support establishment processes.

This study addressed the following questions:

- What key characteristics define administrative and judicial processes, as well as the host of hybrid (quasi-judicial) processes? Is it possible to classify state processes into four or five key categories or types?
- Are there similarities, as well as differences, between the processes?
- How do cases progress through each of the process types? Are there differences in the number of people or agencies involved in the process? Do clients perceive the processes as fair and accessible?
- Do cases appear to move more quickly through one process or another?

The focus of this study is whether *order establishment* varies according to state process, and if so, how. As such, we examined only one aspect of the child support process. Other facets that are likely to vary according to state process, such as enforcement, are not addressed here. It is important to note that the speed in which a case moves through the order establishment process does not imply non-custodial parent compliance with the resulting order.

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<sup>5</sup> U.S. House of Representatives, Committee on Ways and Means (1998). *The Green Book*. Washington, D.C.: Government Printing Office.

## C. Methodology

To answer the study questions, the Lewin Group and ECONorthwest team undertook three principal tasks:

*Development of a taxonomy of judicial and administrative processes.* Building on work already completed by the Center for Law and Social Policy (CLASP) and other research groups, the project team assessed the characteristics of judicial, quasi-judicial, and administrative processes in all 50 states and the District of Columbia. States were “scored” on a number of criteria, including the forum for uncontested and contested orders and, in the latter cases, the type of presiding officer. We used the resulting taxonomy to select states for in-depth review.

*In-depth review of processes in nine states.* We selected nine states that span the continuum of processes for in-depth review. For each state, we examined a number of program characteristics, including intake process, service of process, income determination, stipulations, hearings, and appeals. Through this task, we identified areas of variation between judicial and administrative states, as well as variations among states with similar processes. The states were:

- Arizona
- Colorado
- Iowa
- Massachusetts
- Maine
- Montana
- Oregon
- Texas
- Virginia

*Site visits to five states.* Drawing from our taxonomy and in-depth review of state processes, we selected five states for site visits. Two were classified as highly judicial (Arizona and Massachusetts); two were highly administrative (Maine and Oregon). One was classified as quasi-judicial (Colorado). In each state, we met with a range of stakeholders, including state-level officials, local office caseworkers, district or county administrators, and court officials. Interview protocols ensured that similar types of information were collected at each site.

In addition to interviews, we reviewed a sample of cases for each state to determine the length of time between a case opening and order establishment. We identified how much time elapsed between the case opening date and a number of milestones, such as in-person meetings and date of service.



## II. Child Support Establishment: Taxonomy of State Processes

### A. Background

Our first project activity involved classifying states according to their order establishment processes. The taxonomy was used to provide a rank-order of processes for all 50 states and the District of Columbia and to guide our selection of states for in-depth study. This broad, macro view of processes was based on secondary sources. Our goal for this activity was not to collect detailed information on order establishment but to construct a method to classify states. Some factors we explored in classifying state processes were:

- *Ministerial functions*: To what extent does the IV-D office establish support orders without a hearing?
- *Forum*: Where is the order established? Is it the judicial or executive branch? Does the forum differ if the order is contested?
- *Presiding officer*: If the order is contested, is the presiding officer a judge, a non-judge attached to the court, or an executive agency hearing officer?
- *Attorney involvement*: does an attorney represent the IV-D office in the order establishment process?

We used responses to the 1997 CLASP survey of state IV-D directors to lay the foundation for our state classification exercise. The CLASP survey asked IV-D directors, or their designated staff, to identify the key “players” in their child support programs. Two questions specifically asked about the entities that are involved in establishing support obligations in uncontested and contested cases. For purposes of this study, an uncontested case is one in which the parties generally follow the standard establishment process and do not appeal the state’s decision to a review agency or governing body. In a contested case, one or both of the parties disagree with a preliminary outcome in the establishment process and requests a review of the guidelines finding. Directors were instructed to check off entities from a list (see *Exhibit II.1*).

### Exhibit II.1: Possible Child Support “Players”

The state IV-D agency

State Attorney General (elected or appointed?)

State Office of Administrative Hearings

County welfare offices

District attorneys (elected or appointed?)

Judges

Judicial officers (such as clerk of court or court administrator, elected or appointed?)

Private attorneys/law firms

Other private contractors

Many states checked multiple players, indicating that they employ a mix of judicial and administrative elements. To clarify state processes, we incorporated information from other sources. Specifically, we consulted the following studies:

- The National Child Support Enforcement Association (NCSEA) Interstate Roster and Referral Guide,<sup>6</sup> which provided profiles of each state’s regulations and procedures on support order establishment;
- West Virginia Bureau for Child Support Enforcement study of state administrative processes,<sup>7</sup> which included profiles of Colorado, Maine, Missouri, Montana, Oregon, South Carolina, and Virginia;
- Canada Department of Justice study of expedited child support,<sup>8</sup> which included profiles of Alaska, California, Colorado, Connecticut, Maine, Montana, Oregon, Texas, and Washington; and,
- Policy Studies, Inc., report on Minnesota’s administrative process.<sup>9</sup>

<sup>6</sup> National Child Support Enforcement Association (1999). *Interstate Roster and Referral Guide*. Washington, D.C.: NCSEA.

<sup>7</sup> 1997 unpublished document.

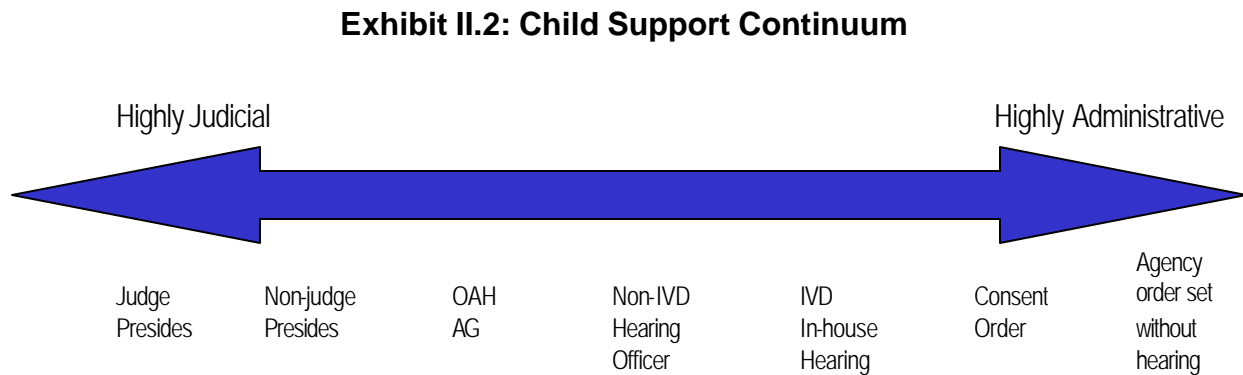
<sup>8</sup> Canada Department of Justice (2000). *Expedited Child Support: An Overview of the Commonwealth Countries’ and United States’ Procedures for Establishing and Modifying Child Support*. On-line: <http://www.canada.justice.gc.ca/en/ps/sup/espo/expedited2.html>

<sup>9</sup> Williams, V. (1993). *A Comparative Analysis of Minnesota’s Administrative Process*. Denver: Policy Studies, Inc.

After completing a draft of the taxonomy, we shared it with the state IV-D directors to solicit feedback. A response form asked whether we classified their states correctly and if there were any elements missing from the taxonomy. Twenty-one states replied.<sup>10</sup>

## B. Taxonomy Elements

Using these sources, we developed a continuum of state policies, ranging from highly judicial to highly administrative. As *Exhibit II.2* indicates, we assigned state processes into one of seven categories. Each category is described below.



*Judicial forum, judge presides.* This is the most judicial process. The tribunal is in the court. A judge hears cases and sets the orders.

*Judicial forum, non-judge presides.* States in this category have tribunals in the judiciary—either the court or an administrative office of the court. However, the presiding officer is not a judge, but an appointed magistrate, master, or another type of hearing officer, such as an administrative law judge. This judicial officer holds hearings and sets orders.

*Administrative forum, office of administrative hearings (OAH) or attorney general (AG).* States in this category have tribunals in the executive branch of government, although not in the same agency that houses the child support division. The presiding officer could be an administrative law judge or another type of hearing officer.

*Administrative forum, IV-D umbrella agency.* In this category, the tribunal is located in an agency that houses the IV-D unit (e.g., Department of Social Services, Department of Revenue), but not in the IV-D agency itself. The presiding officer is generally not an administrative law judge, but some other type of hearing officer.

<sup>10</sup> About half had some type of change to their state score.

*Administrative forum, IV-D agency.* Some states use IV-D staff to convene hearings and set orders. Like the previous category, the hearing officer is generally not a formal administrative law judge. Often child support workers conduct hearings.

*Administrative forum, consent order.* Some states make significant use of consent orders—the IV-D agency creates an order using guidelines and the non-custodial parent signs the consent if he or she accepts. In some states, the consent order is finalized by a IV-D administrative hearing officer, while in others it goes to the court for sign-off and only becomes official when signed by a judge. We classify a state in this category if the majority of orders are set by the consent process, regardless of whether the order requires IV-D hearing officer or judicial sign-off.

*Administrative forum, no hearing.* States using this most administrative forum create orders administratively without any hearing. IV-D staff set orders.

*Attorney involvement in process.* In addition to the seven categories just described, we examined whether the IV-D office is represented in the proceedings by an attorney (e.g., district attorney or attorney general). Our theory is that states that use attorneys extensively have more formal, judicial-like processes.

*Uncontested and contested orders.* States often use different forums and players depending upon whether the order is uncontested or contested. For example, a state may have an administrative process for uncontested cases and a judicial process for contested ones. Thus, we identified the type of process used for contested and uncontested cases in every state.

To classify states across the spectrum of judicial, quasi-judicial, and administrative processes, we developed a scoring system. For example, we assigned seven points to a full judicial forum (court-based, judge presiding), and one point to a full administrative process (IV-D office-based, no hearing). We use the scores to classify states. It is important to note that a high score is not better than a low score or vice versa. In addition to scoring the processes associated with both contested and uncontested orders, we assign additional points if an attorney represented the IV-D agency in the establishment processes. For example:

- A state that uses a judge to set both uncontested and contested orders received a score of 14. If attorneys represent the IV-D agency for both types of orders, the score was 16.
- A state that set uncontested orders without a hearing (1 point), used IV-D staff to hear contested orders (3 points), and did not use attorneys received a score of 4.
- A state that used a consent process for uncontested orders would get a score of 2. If judges in the courts heard contested orders, the score would be 7. If attorneys represented the state agency in contested cases only, the state received an extra point. This state's total score would be 10.

Some states were difficult to classify in one of the seven categories. Many of the state feedback forms had multiple boxes checked for uncontested and contested orders. In some cases, states had multiple levels of hearings (e.g., the first hearing occurs within the IV-D agency and the subsequent hearing within the larger department). In these instances, we based scoring on the

entity that had the ultimate decision (in the example above, it would be the higher-level agency). In other states, the order establishment process differs by county, with judges hearing cases in some counties and magistrates hearing cases in others. For these states, we classified the state by the process used in highly populated counties. Still other states have both administrative and judicial processes operating side by side. We classified the state according to which process was used to establish the majority of orders. There were also questions about how to treat consent or stipulated orders. For instance, some states have stipulation conferences at the IV-D agency. If the parents agree to the order, the order might be signed by a caseworker or judge, but no further action is necessary on the part of the parent. In other states, there is a process similar to a consent order that occurs in the court. Parties appear on the date of their child support order establishment hearing, meet with an attorney, and may agree to the order amount, in which case they do not have a hearing before the judge. Some states suggested that this constitutes a consent process. We chose to classify such states as judicial states because the conference is tied to the court calendar.

### C. Taxonomy Findings

As *Exhibits II.3 and II.4* indicate, taxonomy scores range from 16 to 4. For the purpose of this study, we define any state that has a score of 14 or above as “highly judicial.” States with these scores generally establish all orders in a judicial forum and use IV-D attorneys for both uncontested and contested cases. States that score under 10 are classified as “highly administrative.” These states generally set uncontested orders without a hearing, through a consent process, or through hearings within the IV-D agency. Contested cases are heard in an administrative forum; attorney involvement is uncommon. States in the 10 to 14 range are classified as “quasi-judicial” because they employ a mix of administrative forums for uncontested orders and judicial forums for contested ones. Some also use attorneys for both types of processes.

*Exhibit II.3* provides details on each state’s score. As it shows, uncontested orders (marked “U”) are more likely to be established administratively than contested ones. About 37 percent of states use an administrative forum to establish uncontested orders. However, only about 20 percent of states use an administrative forum to establish contested orders (marked “C”). Thirty-seven states use IV-D attorneys in their order establishment process. Most of these states (81 percent) use attorneys in both uncontested and contested orders.

*Exhibit II.4* demonstrates that when uncontested orders, contested orders, and attorney involvement are combined, the majority of states cluster towards the judicial end of the taxonomy. Forty-five percent of states have scores of 14 or above, while 23 percent have scores of nine or below.

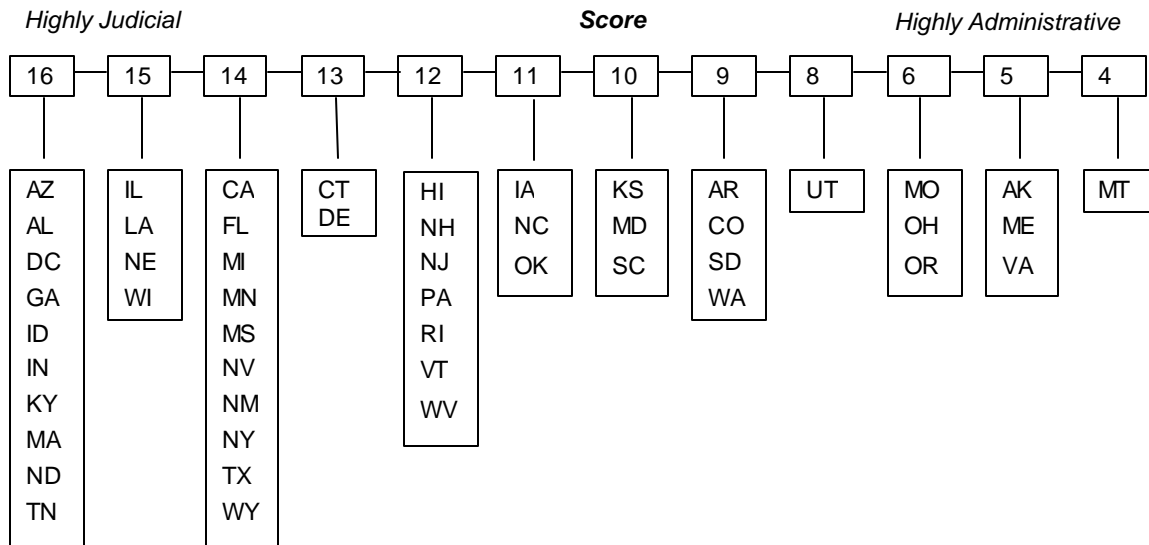
**Exhibit II.3: Taxonomy Classification**

	Judicial Forum		Administrative Forum					Attorney Represents IVD Agency (1,1)	Score
	Judge Presides (7)	Non-Judge Presides (6)	OAH or AG (5)	Non-IVD Hearing Officer (4)	IVD Conducts In-House Hearings (3)	Consent Order (2)	IVD Sets Order without Hearing (1)		
Alabama	U, C							U, C	16
Alaska				C			U		5
Arizona	U, C							U, C	16
Arkansas	C					U			9
California		U, C						U, C	14
Colorado		C				U		C	9
Connecticut		U, C						C	13
Delaware		U, C						C	13
District of Columbia	U, C							U, C	16
Florida		U, C						U, C	14
Georgia	U, C							U, C	16
Hawaii			U, C					U, C	12
Idaho	U, C							U, C	16
Illinois	C	U						U, C	15
Indiana	U, C							U, C	16
Iowa	C					U		U, C	11
Kansas		C				U		U, C	10
Kentucky	U, C							U, C	16
Louisiana	C	U						U, C	15
Maine				C			U		5
Maryland		C				U		U, C	10
Massachusetts	U, C							U, C	16
Michigan		U, C						U, C	14
Minnesota		U, C						U, C	14
Mississippi	U, C								14
Missouri				C			U	C	6
Montana					C		U		4
Nebraska	C	U						U, C	15
Nevada		U, C						U, C	14
New Hampshire		U, C							12
New Jersey		U, C							12
New Mexico		U, C						U, C	14
New York		U, C						U, C	14
North Carolina	C					U		U, C	11
North Dakota	U, C							U, C	16

**Exhibit II.3: Taxonomy Classification (continued)**

	Judicial Forum		Administrative Forum					Attorney Represents IVD Agency (1,1)	Score
	Judge Presides (7)	Non-Judge Presides (6)	OAH or AG (5)	Non-IVD Hearing Officer (4)	IVD Conducts In-House Hearings (3)	Consent Order (2)	IVD Sets Order without Hearing (1)		
Ohio					C	U		C	6
Oklahoma			C	U				U, C	11
Oregon			C				U		6
Pennsylvania		U, C							12
Rhode Island		U, C							12
South Carolina	C				U				10
South Dakota		C				U		C	9
Tennessee	U, C							U, C	16
Texas		U, C						U, C	14
Utah				C	U			C	8
Vermont		U, C							12
Virginia				C			U		5
Washington			C			U		U, C	9
West Virginia		U, C							12
Wisconsin	C	U						U, C	15
Wyoming		U, C						U, C	14

**Exhibit II.4: Taxonomy Spectrum**



### III. Nine State Comparison

The taxonomy, although informative, is based on a limited number of questions and sources. Using the taxonomy, we gained a sense of how many states can be classified as judicial, administrative, or somewhere in the middle. To improve our understanding of the complex differences in processes across states, we conducted in-depth reviews of the order establishment processes in nine states.

#### A. State Selection and Methodology

We kept a number of factors in mind when choosing the states. We wanted a selection of administrative, judicial, and quasi-judicial states. We also sought regional diversity within each category. We gained additional background information on the states by reviewing state scores for the newly implemented performance indicators.

In consultation with the Federal Project Officer, we selected nine states (see *Exhibit III.1*).

#### Exhibit III.1: Study States

Judicial	Quasi-Judicial	Administrative
<ul style="list-style-type: none"> <li>• Arizona</li> <li>• Massachusetts</li> <li>• Texas<sup>11</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Colorado</li> <li>• Iowa</li> </ul>	<ul style="list-style-type: none"> <li>• Maine</li> <li>• Montana</li> <li>• Oregon</li> <li>• Virginia</li> </ul>

We contacted each IV-D director to explain the nature of our study. IV-D directors typically referred us to a senior staff person who compiled a range of documents, including policy manuals, flow charts, training materials, applications, guidelines, and program brochures. We also obtained information about state performance on the five CSPIA performance measures. The senior staff person answered follow-up questions and reviewed our written summaries of the state's process.

For each state, we explored the following dimensions of the establishment process:

- *Notification of order establishment*: How are non-custodial parents notified that the child support agency is undertaking an action to establish an order?
- *Service of process*: What is the formality of service (i.e., is it in-person or via mail)? What information is included in the service documents?

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<sup>11</sup> Texas operates both judicial and administrative processes. For ease of analysis, we focus on the judicial process here.



- *Income imputation*: In the absence of financial information provided by the non-custodial parent, what sources of information do states use to attribute income for order establishment purposes?
- *Deviation from guidelines*: Under what circumstances, if any, are IV-D agencies able to deviate from the guidelines?
- *In-person meetings*: To what extent do IV-D agencies attempt to meet, in-person, with the non-custodial parent prior to establishing the order?
- *Default orders*: Under what circumstances do states issue default orders, and how is income calculated for such orders?
- *Contested orders*: What is the forum for contested orders?
- *Appeals*: What is the forum for appeals?
- *Attorney involvement*: Do attorneys represent the IV-D agency in uncontested or contested order establishment?
- *General role of the court*: Are orders ultimately signed by a judge? Are they filed in court?

After reviewing state materials and interviewing staff familiar with state policy, we drafted short reports for each state. We shared the reports with our state contacts and asked for feedback. Copies of each state report are included in *Appendix A*.

## **B. Key Findings**

Below, we summarize the findings from our nine-state review. For each establishment element, we explored similarities and differences between process type and within process type. We found significant variation not only between categories but within them.

### **1. Comparison of State Performance**

We began by comparing state performance on the five CSPIA measures across judicial, quasi-judicial and administrative states. The findings are reported in *Exhibit III.2*. The measures are:

- Paternity establishment<sup>12</sup>
- Order establishment<sup>13</sup>

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<sup>12</sup> States can calculate the paternity establishment percentage in one of two ways: (1) The number of children in the IV-D caseload in the FY (or at state option the end of the FY) who were born out of wedlock with paternity established, divided by the number of children in the IV-D caseload as of the end of the preceding FY who were born out of wedlock or (2) The total number of minor children who have been born out of wedlock and paternity has been established or acknowledged during the FY, divided by the total number of children born out of wedlock during the preceding FY.

- Current collections<sup>14</sup>
- Cases paying towards arrears<sup>15</sup>
- Cost effectiveness<sup>16</sup>

As the Exhibit indicates, there is variation both within processes and between processes. With regard to *paternity establishment*, eight of nine states performed better than the national average (65 percent) in 2000. The differential ranged from 18 percentage points above the average in Virginia to almost 41 percentage points in Massachusetts.

On *cases with orders*, administrative and quasi-judicial states all scored above the national average (62.2 percent). In some of the states, the margins were large: two administrative states (Maine and Montana) and one quasi-judicial state (Iowa) scored over 20 percentage points above the average. The remaining administrative and quasi-judicial states scored between four and nine percentage points above average. Massachusetts was the only judicial state to perform above the national average (67 percent).

**Exhibit III.2: State Performance**

	Paternity Establishment		Cases with Orders		Current Collections		Cases with Collections on Arrears		Cost-Effectiveness	
	1999	2000	1999	2000	1999	2000	1999	2000	1999	2000
<b>Judicial</b>										
Arizona	22.41	69.26*	49.00	57.37	42.24	44.65	46.73	50.67	3.27	3.72
Massachusetts	107.93	106.20	69.82	67.09	54.68	58.72	51.92	55.34	4.77	3.50
Texas	103.84	104.57	45.08	55.78	50.14	65.10	63.29	63.44	4.53	4.96
<b>Administrative</b>										
Maine	90.81	90.95	87.61	88.64	55.73	57.30	67.05	68.67	4.96	4.90
Montana	70.77	105.3	85.55	83.86	51.31	56.80	56.83	66.73	4.37	3.58
Oregon	84.22	89.36	66.89	66.29	58.94	59.65	56.18	55.49	6.10	5.54
Virginia	76.85	83.79	64.18	67.85	53.66	56.50	52.05	54.22	4.76	5.00
<b>Quasi-judicial</b>										
Colorado	89.14	103.39	71.52	78.11	47.27	50.72	59.03	62.51	3.71	3.23
Iowa	101.80	92.7	85.96	85.90	49.47	62.37	60.44	54.76	5.29	4.24
<b>Nat. Average</b>	<b>64.39</b>	<b>65.32</b>	<b>59.80</b>	<b>62.17</b>	<b>52.63</b>	<b>56.07</b>	<b>54.83</b>	<b>59.88</b>	<b>4.44</b>	<b>4.21</b>

\*Data deemed unreliable based on audit

On two measures, current collections and cases with collections on arrears measures, states were very similar. The national average for *current collections* was 56 percent in 2000. Two judicial

<sup>13</sup> Percentage of the number of IV-D cases with orders for support divided by the number of IV-D cases.

<sup>14</sup> Dollars collected for current support in IV-D cases divided by dollars owed for current support in IV-D cases.

<sup>15</sup> Number of IV-D cases with at least one payment toward arrears divided by number of IV-D cases with arrears due.

<sup>16</sup> IV-D dollars collected divided by IV-D dollars expended (federal and state shares).

states, one quasi-judicial state, and all four administrative states performed better than average. Unlike the paternity and order establishment measures, the range of scores was more limited for current collections. Oregon, at about 60 percent, had the highest collection percentage. The other states clustered around 57 percent and 58 percent. Fewer states scored above average on the *arrears* measure. The national average was about 60 percent; one judicial state, one quasi-judicial state, and two administrative states exceeded this threshold. The high performer, Maine, scored 69 percent. Other states ranged from 62.5 to 67 percent.

Finally, administrative states appear to perform well on the *cost-effectiveness measure*. The national average was \$4.21. Three administrative states exceeded the average; Oregon, the highest scorer of the group, exceeded it by \$1.33. One quasi-judicial and one judicial state performed above average on this measure (Iowa and Texas, respectively). Iowa's ratio was \$0.03 above the average, while Texas' was \$0.75 above the mean.

A reliable evaluation of relationships between establishment processes and state performance is not feasible for this limited number of states. Moreover, such an evaluation is outside the scope of this study. However, through a concurrent federal research project, the authors are exploring relationships between state establishment processes and performance in all 50 states and the District of Columbia.<sup>17</sup> Through this related research, we explore association between a state's establishment process and its performance, while holding constant a number of economic, demographic, and programmatic factors.

The remaining subsections focus on specific dimensions of the establishment process.

## **2. Notification of Order Establishment**

There were more similarities than differences in terms of how states notify the non-custodial parent of the intention to establish child support. In all types of states, the first notice is generally service of process. State officials suggested the first contact with the non-custodial parent should constitute service of process; otherwise, non-cooperative parents may attempt to evade subsequent service attempts by moving and/or changing jobs. States varied, however, in the type of information included in the notification of establishment. One key difference was whether administrative process states were more likely to include a proposed order amount in the first notification to the parent.

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<sup>17</sup> See Tapogna, John; Karen Gardiner; Burt Barnow; Michael Fishman, and Plamen Nikolov. Forthcoming 2002. *Study of State Demographic and Economic Variables and their Impact on the Performance-Based Child Support Incentive System*. US Department of Health and Human Service. Office of Child Support Enforcement. Washington, DC.

INFORMATION CONTAINED IN NOTIFICATION OF ORDER ESTABLISHMENT					
	Notice to Appear at a Judicial or Administrative Hearing	Invitation to Appear at a Voluntary Conference	Request for Financial Affidavit	Preliminary Order Amount Based on Guidelines Calculation	Notification Constitutes Service
<u>Judicial</u>					
Arizona		X	X		
Massachusetts	X		X		X
Texas	X		X		X
<u>Quasi Judicial</u>					
Colorado	X		X		X
Iowa			X		X
<u>Administrative</u>					
Maine			X		X
Montana			X	X	X
Oregon			X	X	X
Virginia			X		

- There was variation in the judicial states. In Texas, the first contact with the non-custodial parents is service to appear in court. In Arizona, some counties send a letter to both parents inviting them to participate in a negotiation conference. The conference is not mandatory, and the letter does not constitute service. In counties that do not utilize the negotiation conference, the first notification is service. Finally, Massachusetts sends non-custodial parents a “welcome letter,” which does not constitute service. It indicates the Department of Revenue is establishing a support order. This is followed by service.
- In the two quasi-judicial states, the first notice is the service of process. Colorado sends a Notice of Financial Responsibility, which includes the date and time of the negotiation conference, information about debt owed to the state, and a request for financial information. Similarly, Iowa’s Notice of Support Debt requests financial information but does not include a scheduled hearing.
- The administrative states generally use service as the first notification to the non-custodial parent. In two states, Montana and Oregon, the documents report an order amount (see below). Maine sends a Notice of Proceeding to Establish Child Support and statement of resources, which constitutes service. Virginia, on the other hand, sends a letter and financial statement; service occurs later.

### 3. Service of Process

Service of process formally alerts the non-custodial parent that an order establishment process is underway. As noted above, most states’ first contact with the non-custodial parent is service. The two primary methods are certified mail and in-person service (e.g., via sheriff, private process

server). Each method has its supporters. States that use certified mail claim it is cost-effective and fast. States that rely on process servers note that they have more confidence that the correct individual will be served and notified of the child support order establishment process. They fear that using a process other than in-person service heightens the possibility that the wrong person was served or that the correct person never received the paperwork.

We found variation in how judicial, quasi-judicial, and administrative states serve the non-custodial parent. Judicial states are more likely to use process servers and in-person service; administrative states rely heavily on certified mail.

- All three judicial states rely on in-person service to some extent. Arizona contracts with process servers. The documents served include a complaint to establish support, a court date, and a financial statement that must be completed by the non-custodial parent. Texas sheriffs or constables serve non-custodial parents; documents include a complaint and a court date. In Massachusetts, a process server mails a copy of the notice to the non-custodial parent;<sup>18</sup> additionally, the process server leaves a copy at the last and usual place of residence. The documents include a complaint and a financial statement.
- The quasi-judicial states use in-person service (either process servers or sheriffs). In Iowa, as noted above, the papers served on the non-custodial parent request financial information. In Colorado, the Notice of Financial Responsibility alerts the non-custodial parent of the establishment process and identifies the time and date of the negotiation conference.

<b>METHOD OF SERVICE FOR MAJORITY OF CASES</b>		
	<b>In-person</b>	<b>Certified Mail</b>
<u>Judicial</u>		
Arizona	X	
Massachusetts	X	
Texas	X	
<u>Quasi Judicial</u>		
Colorado	X	
Iowa	X	
<u>Administrative</u>		
Maine		X
Montana		X
Oregon		X
Virginia	X	

- Two of the four administrative states (Maine and Oregon) rely primarily on certified mail to serve non-custodial parents. Two also have the option to use other methods. Montana serves non-custodial parents via certified mail, first class mail, or a process server, depending on the case. In Virginia, service most commonly occurs through a sheriff (65 percent of cases),

<sup>18</sup> Postal verification is part of the locate process in Massachusetts.

followed by certified mail (20 percent) and in-person service at the child support office (15 percent).

**4. Income Imputation**

<b>IMPUTATION METHOD IF NO INCOME DATA ARE AVAILABLE</b>			
	Minimum wage for a 40-hour week	Median Income for NCPs and CPs on IV-D Caseload	Average Annual Wage for all Workers in State
<u>Judicial</u>			
Arizona	X		
Massachusetts	X		
Texas	X		
<u>Quasi Judicial</u>			
Colorado	X		
Iowa		X	
<u>Administrative</u>			
Maine			X
Montana <sup>a/</sup>	X		
Oregon	X		
Virginia	X		

<sup>a/</sup>Under certain circumstances, Montana caseworkers use the TANF grant to impute an order amount.

All states try to base child support order amounts on financial information provided directly by the non-custodial parent. Most often, a financial statement is included in the service documents.<sup>19</sup> In the absence of information provided by the non-custodial parent, states use a number of methods to impute—or attribute—income. There are competing theories on how best to impute income. States using the minimum wage run a risk of underestimating the non-responsive parent’s true wage and setting an inappropriately low order. In such states, a non-responsive parent may intentionally accept an imputed order based on minimum wage—knowing that by providing full financial information, his or her order would increase. By contrast, using the average annual wage could overestimate the order amount for non-responsive parents, making it difficult for the parent to pay. However, a high, imputed order may get the parent’s attention during the establishment phase and make them more likely to come forward with his or her actual financial information.

We found no clear pattern according to establishment process category. Generally, states will first try to find reliable information on current or past employment through Department of Labor (W-4) or Unemployment Insurance records. States may also base imputations on the testimony of the custodial parent, who may identify a specific wage or occupation. In cases in which a custodial parent identifies an occupation, practices vary in determining the related wage. For

<sup>19</sup> States with income shares guidelines also need financial information for the custodial parents. This is generally available through the IV-A databases if the parent is on TANF or the application for services if the parent is not on public assistance.

example, Oregon caseworkers use occupational handbooks, while caseworkers in other states use educated guesses about common occupations (e.g., convenience store clerks, security guards). If the state truly has no data upon which to base the imputation, most use the minimum wage for a 40-hour week to impute income. Others use the mean wage in the state or the mean earnings of the average parent in the IV-D system.

One administrative state (Montana), one quasi-judicial state (Colorado), and three judicial states (Arizona, Massachusetts, and Texas) also impute income if there is evidence of underemployment. For example, if a non-custodial parent is qualified for employment at a higher wage than he or she is currently earning (e.g., the parent has a plumber's license but is working at a fast food restaurant), the caseworker or judge can impute income at the higher rate. Moreover, if the non-custodial parent is working part-time or seasonally, the caseworker or judge can attribute full-time, year-round work unless the parent proves special circumstances.

Imputation methods include:

- Current employment. All nine states use state Unemployment Insurance and Department of Labor records to determine if the non-custodial parent is employed and his or her wage.
- Past employment history. Eight states will impute income based on work history.<sup>20</sup>

In the absence of reliable earnings information, states use:

- Minimum wage for a 40-hour week (Arizona, Colorado, Massachusetts, Montana, Oregon, Texas, Virginia)
- Average yearly wage, as determined by state Department of Labor (Maine)<sup>21</sup>
- Median income for parents in the IV-D caseload (Iowa)<sup>22</sup>
- Maximum TANF payment or the child's actual needs, as alleged by the custodial parent (Montana)
- Information about education or skills (Massachusetts)

### **5. Deviation from the Guidelines**

All states use guidelines to determine child support orders.<sup>23</sup> Guidelines generally take into consideration the needs of the child, other dependents, and the ability of the parents to pay. Eight of the states in our study use income shares guidelines, which bases the order amount on both parents' income (Arizona, Colorado, Iowa, Maine, Massachusetts, Montana, Oregon, and

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<sup>20</sup> In some instances, wage data cannot be more than one year old. The states that use past wage data are Arizona, Colorado, Iowa, Massachusetts, Montana, Oregon, Texas, and Virginia.

<sup>21</sup> In 2000, this figure was \$26,520.

<sup>22</sup> In 2001, this was \$1,312 per month for non-custodial parents and \$678 per month for custodial parents.

<sup>23</sup> States must use guidelines unless it can be shown that they are inappropriate in a particular case.

Virginia). One state (Texas) uses a percent of obligor guideline, in which the number of children determines what percent of the non-custodial parent’s income will be paid in child support.

In some cases, the non-custodial parent, custodial parent, or IV-D agency may seek to adjust the order amount based on unique circumstances. For example, if a non-custodial parent had a catastrophic illness and accrued high medical bills, the IV-D agency may seek a lower order amount. States differ in terms of how difficult it is to deviate from the guidelines. Generally, states assume the guidelines produce the correct child support order and report that deviations are rare.

<b>Deviation from Guidelines</b>		
	<b>Judges/Magistrates Only</b>	<b>Caseworkers and Higher Level Officials</b>
<u>Judicial</u>		
Arizona	X	
Massachusetts	X	
Texas	X	
<u>Quasi Judicial</u>		
Colorado	X	
Iowa		X
<u>Administrative</u>		
Maine		X
Montana		X
Oregon		X
Virginia		X

- In the three judicial states, only judges can deviate from guidelines, and they do so only in specific cases. In Arizona, for example, judges deviate only if application of guidelines is inappropriate or unjust and the best interests of the child are taken into consideration. However, if the parties agree to a deviation during a negotiation conference or pre-hearing meeting, and put their agreement in writing, the judge may consider it. In Massachusetts, the court must adhere to the guidelines in establishing a support order. And, if the court enters an order that deviates for the guidelines, it must make written findings explaining why application of the guidelines are unjust or inappropriate. Texas court masters (who officiate at hearings) can take into account certain factors (e.g., age of children, visitation, child care expenses, education beyond secondary school, health insurance, and uninsured medical expenses) when determining whether to deviate from the guidelines.
- We found mixed policies in the quasi-judicial states. In Colorado, only magistrates can deviate. In Iowa, however, the caseworker can deviate if the non-custodial parent, custodial parent, or children would incur substantial injustice, or if an adjustment is necessary to provide for the needs of the children. Examples of reasons for deviations include excessive health care costs, multiple non-custodial parent families, and if the non-custodial parent is on public assistance. A supervisor must approve deviations.



- Caseworkers in administrative states generally have more authority to deviate. Oregon caseworkers appear to have the most discretion to deviate from the guidelines. The state recently expanded the caseworkers authority, and rules permit deviations in roughly 20 categories, including the cost of visitation-related travel and parental education expenses. Both parents must agree to the deviated order amount. Oregon’s Division of Child Support routinely disseminates examples of deviations to caseworkers across the state. In Maine, the caseworker can deviate from the guidelines if there is evidence that the amount derived from the guidelines is not equitable or just. Any deviation must be accompanied by a justification for the deviation (i.e., how it serves the best interests of the children). Montana caseworkers have limited authority to deviate from the guidelines. Virginia caseworkers can deviate in rare cases, such as when either parent has children from another family.

**6. In-Person Meetings**

<b>ROUTINE IN-PERSON MEETINGS FOR UNCONTESTED CASES</b>	
<u>Judicial</u>	
Arizona	Yes
Massachusetts	Yes
Texas	Yes
<u>Quasi Judicial</u>	
Colorado	Yes
Iowa	No
<u>Administrative</u>	
Maine	No
Montana	No
Oregon	No
Virginia	No

Another area explored for this study is the extent to which IV-D caseworkers or attorneys meet in person with non-custodial parents prior to establishment of an order. On the one hand, meetings offer the opportunity for IV-D staff to explain the child support process to non-custodial parents as well as allow non-custodial parents to ask questions or voice concerns. It also can help verify that the person for whom the agency is establishing an order is in fact the non-custodial parent. On the other hand, the in-person meeting adds another step—and costs—to the child support process. It requires action on the part of all non-custodial parents, regardless of whether they have concerns or issues about the order amount. We found that in-person meetings are more common in the judicial and quasi-judicial states than the administrative ones.

- All three judicial states hold in-person meetings. The forum is often the court. In Massachusetts, IV-D attorneys or non-legal staff meet with the parents prior to the hearing to discuss the case. They calculate the order amount and attempt to get the parties to agree to the amount. If an agreement is reached, there is no hearing. In Arizona, involvement in pre-

hearing meetings varies by county and attorney preference. In addition to the on-site court meetings, some Arizona counties invite both parents to a voluntary stipulation conference. At the meeting, a IV-D caseworker calculates the order amount. Parents can sign the agreement, thus avoiding a court date. State staff note that stipulation conferences have a very high rate of success. When both parents attend, the stipulation rate is over 85 percent.<sup>24</sup> In Texas, the Court Master will ask at docket call whether any parents want to have a conference to work out issues.

- The quasi-judicial states differ from each other in their approach to meetings. To the extent that meetings take place, they are more structured and formal than court-based meetings in the judicial states. In Colorado they are mandatory, while in Iowa they are one of two methods for dealing with contested orders (the other being the court). The negotiation conference is a central part of the Colorado order establishment process. All non-custodial parents receive a time and date for the in-person conference in the service documents. At the conference, the caseworker reviews financial information and calculates an order amount. It is also an opportunity to describe the child support enforcement process, explain the importance of paying orders, and answer any questions the non-custodial parent might have. In Iowa, an in-person meeting is not a routine part of the order establishment process. However, a non-custodial parent can try to settle a contested order through a negotiation conference.
- In-person meetings are rare in administrative states. Three of the four states (Maine, Montana, and Virginia) have no in-person meetings. Oregon, however, notifies parents when they are served that they may contact a child support case manager. This may be done either in-person or by telephone. Non-custodial parents can also call their caseworkers.

### **7. Default Orders**

Default orders are entered when the non-custodial parent does not respond to requests for financial information, or to requests to appear at a negotiation conference or in court. The order is based on available information (see Imputed Income above). Most of the states we studied do not track the precise share of orders that are defaults, but interviewees who were willing to guess typically placed the range at 20 to 35 percent of all orders.<sup>25</sup>

There is a difference by process in terms of who can calculate the default order amount, as well as whether additional review by a judge or judge-surrogate is required.

- In all three judicial states, the judge reviews the case information and issues an order. As noted above (“Imputed Income”), judges will use wage or occupational information if it is available. If not, the default order will be based on the minimum wage.

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<sup>24</sup> The problem facing Arizona child support officials is the low attendance rate at the conferences. In Maricopa County, only 6 percent of orders overall are stipulated because most parents do not attend the conference.

<sup>25</sup> The exception is Colorado, which uses a slightly different judicial review method for default orders, and therefore, tracks defaults separately. Colorado staff report that default rates have fallen from about 40 percent to about 30 percent over the past five years.

- Caseworkers in quasi-judicial states determine the default order amount and then submit the orders to court for review. In Iowa, the IV-D caseworker will issue a default order using wage rate information or the median income of IV-D non-custodial parents. The order is sent to both parties, and each has time to contest the order amount. If neither party contests the order, an administrative support order is entered and submitted to a district court judge for signature. In Colorado, the IV-D agency will issue a default order if the non-custodial parent fails to appear at the negotiation conference. The order is filed with the court and reviewed by a magistrate.
- In the administrative states, if the non-custodial parent does not respond to the proposed support order, it stands. In Montana, the IV-D worker will attempt to reach the parent by phone. If that is unsuccessful, a Notice of Default is sent to both parents by mail. The non-responsive parent has 10 days to respond. If there is no response, the original order stands. Virginia will summon the non-custodial parent to the district office to provide financial information. If he or she does not contact the child support office, an order is established using available information.

### **8. Award Amount Revelations**

We found key differences among the processes in terms of when the order amount is revealed to the non-custodial parent. Two administrative states, Montana and Oregon, reveal a proposed order amount in the first correspondence to the non-custodial parent. Virginia's initial notification, as indicated above, consists of a letter and financial statement. The next step of the process, formal service, includes a proposed order amount. Maine calculates the order after the parent has been served and notifies him or her via mail. In contrast, the judicial states reveal the order amount on the date of the hearing. Massachusetts, for example, tries to stipulate orders in pre-hearing meetings.

The quasi-judicial states differ on timing. Colorado, as noted above, schedules negotiation conferences for all non-custodial parents. The order amount is calculated during this in-person meeting. Iowa caseworkers calculate the order amount based on returned financial statements and state databases, then mails the proposed order. In this sense, the state is similar to Maine.

### **9. Forum for Contested Orders**

If a parent disagrees with the proposed order amount, he or she can contest the order. Judicial, quasi-judicial, and administrative states, by definition, have different forums for contested orders. There is variation, however, in terms of who officiates at the hearings and when the hearings occur.

- Two of the three judicial states use judges to hear contested child support cases. In Massachusetts, the cases are heard by judges in the Probate and Family Court. All child support cases are heard on a specified day of the week (known as "block time"). Arizona uses commissioners to hear cases. Commissioners are similar to judges, except the presiding judge, rather than the governor, appoint them. Texas uses court masters to hear child support cases. As noted above, judicial states have in-person meetings on the court date. If parties

agree to the order amount, they sign the order. If they contest it, they have a hearing before the judge or judge surrogate that same day.

- In quasi-judicial states, if a parent contests an order, the case is referred to court; there is no executive branch tribunal. In Colorado, magistrates in the District Court hear child support cases. They do not have the same powers as judges (e.g., they cannot hear jury trials). Judges in the District Court hear Iowa child support cases. Unlike the judicial states, the hearing is scheduled for a later date. The amount of time that elapses is a function of the court calendar.
- Contested orders in administrative states are heard in a wide variety of locations. In all states, a hearing officer presides. Two states locate the hearing officers in the same department that houses the IV-D agency, but not within the agency itself (the Department of Human Services and Department of Social Services in Maine and Virginia, respectively). In Montana, hearings are held in the Office of the Administrative Law Judge, which is part of the IV-D agency. Oregon uses hearing officers in an entirely different department (the Employment Department). Like the quasi-judicial states, time elapses between the request for a hearing and the hearing date. Unlike these states, the executive branch agency sets the hearing date; resolution is not tied to the court calendar.

### **10. Appeals**

If a parent is unsatisfied with the final agency action (i.e., the parent contested the order and had a judicial or administrative hearing) he or she can appeal to a different entity. In judicial and quasi-judicial states, appeals of child support orders are generally heard by a different court, while administrative states tend to have a second-level administrative hearing before the case moves into the judicial system.

- In judicial states, appeals of court orders are referred to the Court of Appeals in both Arizona and Massachusetts. In Texas, however, parents can appeal the decision of the court master to a judge in the District Court. The higher level of appeal is the Court of Appeals.
- Appeals of child support orders in both quasi-judicial states are heard by higher courts. The Court of Appeals hears cases in Colorado; the Supreme Court hears appeals in Iowa.
- Three of the four administrative states have a second-level administrative hearing. New evidence is not introduced at these hearings. Rather, the hearing officer reviews the file and record of the previous hearing. An administrative appeal in Maine is heard by a different hearing officer; the next level of appeal is the Superior Court. The Administrative Law Judge (ALJ) decision in Montana can be appealed within 20 days. The same ALJ considers the appeal. The next step is a judicial review by the District Court. In Oregon, parties can request a reconsideration of the hearing officer's decision, which is heard by a different hearing officer; the next level is a Circuit Court hearing. Virginia, however, does not have a second-level administrative hearing. Appeals to the hearing officer's decision are heard in the Juvenile and Domestic Relations District Court.

## 11. Attorney Involvement

As noted in the taxonomy section, our theory is that states that use attorneys extensively have more formal, judicial-like processes. We found extensive use of attorneys in the judicial states, limited use in the administrative states, and use in court-level activities in the quasi-judicial states.

- In all three judicial states, attorneys are used at every stage of the establishment process. Even in Arizona's stipulation conferences, the attorney reviews the order, signs it, and files it in court. Arizona, Massachusetts, and Texas use attorneys to prepare court cases and argue the state's case in court. Attorneys also attempt to hold pre-hearing meetings with the parents in an effort to reach an agreement.<sup>26</sup>
- Attorney involvement is more limited in the two quasi-judicial states. Colorado does not use IV-D attorneys in uncontested cases. For contested cases, however, attorneys take the lead in preparing cases for the hearing and presenting the state's case before the court. Like the judicial states, the attorney will try to meet informally with both parties before the hearing and try to work out an agreement. In Iowa, attorneys are involved, to a limited extent, in all cases. For uncontested ones, they submit orders to District Court judges for signature and file the orders with the clerk of the court. Like Colorado, IV-D attorneys present the state's case in court for contested cases.
- Attorney involvement in the four administrative states is very limited. Attorneys are not generally involved in the preparation of administrative orders or, if the case is contested, the administrative hearings process. In limited cases, they may help the caseworker prepare for the administrative hearing if there is a technical or legal question. If the case is appealed to court, however, attorneys represent the state.

## 12. General Role of the Courts

One final area we examined was the overall role of the court in establishment processes. This is not limited to the forum for uncontested and contested orders, but whether judges or judge-surrogates must review orders or whether orders must be filed in court. Proponents of filing orders in court suggest that it is easier for other states to find orders and to determine if parents owe child support for other families. Moreover, when copies of the order are requested, they appear on court letterhead with a file number. Others contend that filing orders in court is an unnecessary and time-consuming step. Filing administrative orders in court does not, by itself, improve coordination because court files systems can be outdated and fragmented. A central case registry operated by the IV-D agency could be equally useful.

- In the judicial states, the courts, not surprisingly, play a central role. The court is the forum for determining orders. Judges or their surrogates sign orders, and orders are subsequently filed in court. Judges also preside over contested cases.

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<sup>26</sup> In Massachusetts, non-attorneys also hold pre-hearing conferences.

- In the quasi-judicial states, IV-D attorneys submit uncontested orders to judges for signature and then the order, along with documentation, is filed with the clerk of the court. Also, as noted above, the court is the tribunal for contested cases in Colorado and Iowa.
- Courts have a limited role in the administrative states. In rare instances, contested orders are appealed to courts. In addition, one state, Oregon, files orders with the court. They are not reviewed or signed by a judge. The other three administrative states do not file orders with the court.

### C. Summary

We began this task with a general understanding of what constitutes a judicial and administrative state. As part of the taxonomy, we explored the forum, the presiding officer for contested cases, and the use of attorneys. However, review of nine states necessitated a more nuanced categorization. Some aspects of the order establishment process differed by forum. We also found areas where administrative and judicial states had similar elements.

One question we explored is whether state administrative or judicial processes tended to perform better on the incentive measures (i.e., paternity establishment, cases with orders, collection on current support due, cases with payments on arrears, and cost-effectiveness). There was little evidence to support the theory that one process might have a comparative advantage over the other.

We also explored eleven areas where order establishment processes might differ between judicial and administrative states. Areas where establishment functions varied by process include:

- Service of process. All three of the judicial states and both quasi-judicial states relied primarily on process servers. All four of the administrative states utilized certified mail to some extent to serve parents, and two of the four used it exclusively. Only one administrative state reported that the majority of service was in-person.
- The timing of the revelation of the order amount. The administrative states reveal the order amount early in the process. Montana and Oregon include the proposed order amount in the first correspondence with the non-custodial parent. Virginia includes a proposed amount when the non-custodial parent is served, while Maine calculates the order after service. The judicial states reveal the order amount on the court date. The quasi-judicial states are mixed; Iowa collects financial statements and notifies parents via mail of the order amount while Colorado calculates the amount at the negotiation conference.
- Deviations from guidelines. Generally, caseworkers in administrative states have more discretion to deviate from the guidelines. Caseworkers and attorneys in judicial states defer to judges or their surrogates. The quasi-judicial states were split on deviations.
- The use of in-person meetings. All of the judicial states have some mechanism for meeting with one or both of the parents. The forum for the meeting might be the court or it might be a stipulation conference. One quasi-judicial state, Colorado, also used stipulation conferences.

None of the administrative states had in-person meetings prior to order establishment for uncontested cases.

- Use of attorneys. Attorneys were involved in all aspects of order establishment in the judicial states and rarely involved in the administrative ones. They handled court-related business in the quasi-judicial states.

Some establishment steps were not related to process. For example:

- Imputation of income. All states used databases to determine if there are wage records for the non-custodial parent. In the absence of financial information, seven states (all three judicial states, three administrative ones, and a quasi-judicial state) impute the minimum wage for a 40 hour week, while one administrative state and one quasi-judicial state impute income at a higher level.
- Initial notification. For seven states, service of process is the initial notice that an order is being established. All nine states include a financial affidavit with the notice. The one difference was the inclusion of a proposed order amount in the initial notification documents. Two administrative states, but no judicial or quasi-judicial ones, included an order amount.

During the nine-state review, we also began to understand how states in a general administrative or judicial cluster differ from each other. For instance:

- Not all administrative states use certified mail to serve non-custodial parents. Virginia relies primarily on in-person service.
- Caseworker discretion to deviate from guidelines varies in administrative states. Oregon caseworkers have 16 categories in which to deviate. Caseworkers have more limited authority in other administrative states.
- Quasi-judicial processes differ in terms of contact with non-custodial parents and court involvement. Colorado holds negotiation conferences as a matter of course, while Iowa will schedule a conference only if a parent contests the order. Moreover, contested orders in Colorado are referred to the court. In Iowa, parents have the option of a IV-D negotiation conference or a court hearing.
- While all judicial states hold in-person meetings, the timing of the meetings differs. Arizona gives counties the option of scheduling a negotiation conference in advance of the court date, while Massachusetts and Texas meet with parents on the date of the hearing only.
- For contested orders, we found diversity within the administrative states in terms of where the tribunal is located. Hearing officers were housed in the IV-D agency in Montana, in the IV-D umbrella department in Maine and Virginia, and in an entirely different department in Oregon.

## IV. In-Depth Review of Five States

Our final project task was site visits to five states. Because these states were a subset of the nine reviewed as part of Task 2 (in-depth review), we already had an understanding of the basic order establishment process. However, the information we gathered for the previous task consisted of published reports, state training manuals and policy documents, and limited phone conversations with state-level child support staff. Our site visit goals were twofold:

- To learn more about the nuances in the establishment process of each state, including variation by local office or county, and
- To determine whether establishment processes that appear similar at a macro level (i.e., highly administrative or highly judicial) are in fact similar, or whether taxonomy scores hide more subtle differences.

*Exhibit IV.1* lists the states we visited and the dates.

**Exhibit IV.1: Site Visit States**

Administrative	Judicial	Quasi-judicial
Maine <i>August 21-23</i>	Arizona <i>September 18-20</i>	Colorado <i>April 2-4</i>
Oregon <i>September 11-13</i>	Massachusetts <i>August 7-9</i>	

We spent three days on-site in each state. During our visits, we met with a range of staff:

- State IV-D staff, including the IV-D directors, policies and procedures staff, and data staff
- County-level IV-D staff, including supervisors and caseworkers
- IV-D attorneys
- IV-D appeals-related staff
- Court staff, including judges, judge surrogates, and administrators

We developed detailed interview protocols for each group of individuals in advance of our visit. Although some aspects were customized to each state, the questions generally remained the same to facilitate comparison of findings. Below, we describe similarities and differences within the administrative states and the judicial states. We also describe how the quasi-judicial state we visited has elements similar to both the administrative and judicial processes.



## A. Findings: Administrative States

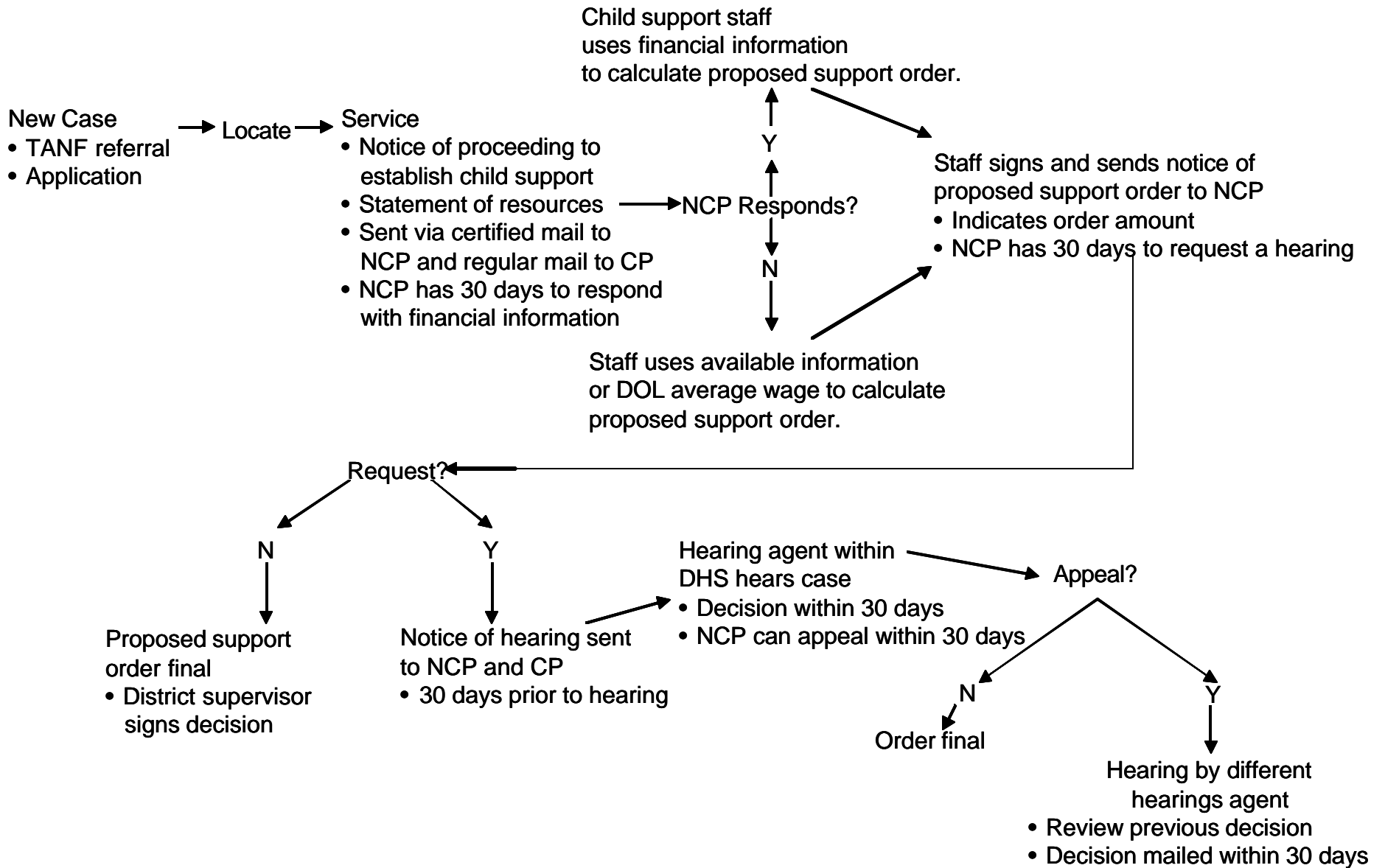
### 1. Similarities

The taxonomy scores for Maine and Oregon (5 and 6, respectively) suggest that the states share many elements. As *Exhibits IV.2 and IV.3* depict, the order establishment process in the two states appear to be similar in many ways. Common elements of both state programs include:

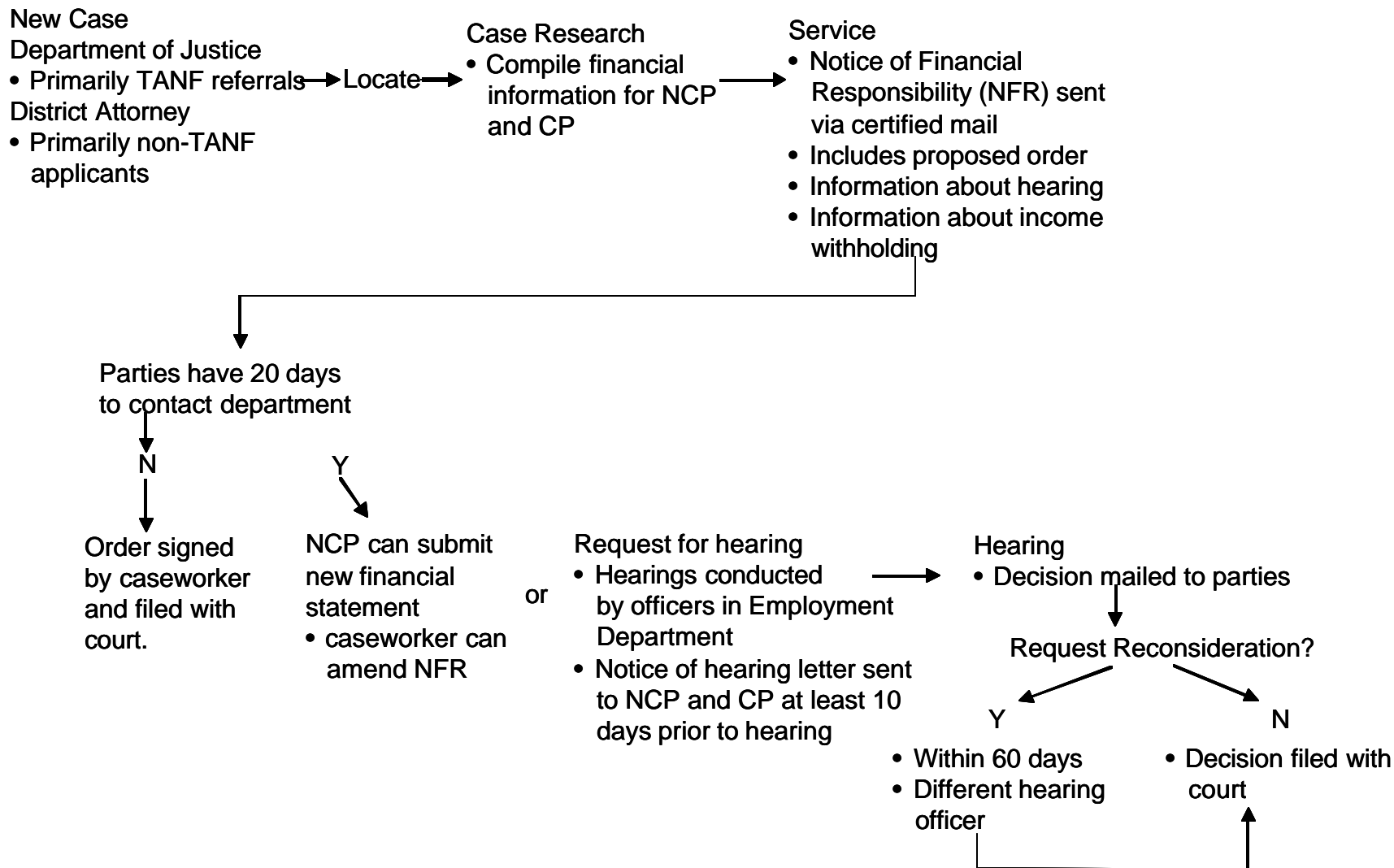
- Non-custodial parents are served via certified mail. The notice explains the child support establishment process, the non-custodial parent's rights and responsibilities, and includes a financial statement that must be returned in a given time frame (20 and 30 days in Oregon and Maine, respectively).
- Caseworkers collect information about non-custodial parents' earnings from statewide databases. If the financial statement is not returned, caseworkers will search for information on past employment and may impute wages based on previous occupation. If no information is available, caseworkers in Oregon will impute the minimum wage; those in Maine can impute mean state earnings, but they do not have to. If there is evidence that the non-custodial parent is unemployed, caseworkers will often impute the minimum wage.
- Caseworkers calculate the order amount and past support due. Non-custodial parents are notified via mail of the order amount.
- Caseworkers can deviate from the guidelines. In Oregon, caseworkers are authorized to deviate, although deviations are rare. There are approximately 20 categories of deviations. Caseworkers we talked with noted that some of the more common deviations include union dues, child care expenses, braces, costs associated with visitation, and medical expenses. Oregon officials routinely collect and distribute case studies that detail the purpose and amount of guideline deviations. Caseworkers in Maine can deviate from the guidelines if there is evidence that the guidelines are inequitable and unjust. In both states, staff report that deviations are rare.
- There is little contact with the non-custodial parent prior to calculating the order amount and no in-person meetings.
- The tribunals for contested cases are in the executive branch. The state-level child support office reviews cases to ensure that the agency is a proper forum for a hearing (e.g., custody or visitation are not the reasons for the appeal) and then schedule hearings. Hearings focus on the order amount only and do not address issues pertaining to visitation or custody.
- Hearing officers conduct the hearings.
- Decisions are not announced at the hearing and are sent via first class mail to all parties.
- If the non-custodial parent does not attend the hearing, the proposed order stands.
- There is a second level of administrative hearings before the case goes to court.

- Appeals to court are possible but rare.
- IV-D attorney involvement is minimal in both uncontested and contested orders.
- Judges, or judge surrogates, do not sign the final orders. In Maine, the district supervisor signs orders. In Oregon, the establishment worker does so.

**Exhibit IV.2: Maine Establishment Process**



**Exhibit IV.3: Oregon Establishment Process**



Despite the similarities between the Maine and Oregon establishment processes, there are some key differences. Some are attributable to the structures of the state child support enforcement programs. Others are procedural differences in the areas of order establishment or hearings.

## 2. **Structural Differences.**

One key difference between the states is the entity that administers the child support program.

- In Maine, the program is state-administered. We observed little difference in the establishment process in the three localities we visited. Some establishment functions, such as locate, are housed in the central state office.
- Oregon, on the other hand, has a state-administered program with both state and county offices. Thus, while the state determines the general rules of the establishment process, counties have some discretion in how they establish orders. For example, caseworkers in all counties conduct upfront case research in which they collect financial information on the non-custodial parent before drafting the order. Some counties actively call the non-custodial parent or send a letter requesting information; other counties expressed concern that the non-custodial parent might try to leave the area if he or she knows an order is being established. In another example, one county runs administrative and judicial processes side by side. While individual county case managers select a judicial or administrative process based on their backgrounds and preferences, all state case managers use an administrative process. Moreover, in Oregon, counties have different entities that establish orders for TANF and non-TANF cases. Public assistance cases are referred automatically to the Division of Child Support (DCS), located within the Department of Justice, for establishment and enforcement. Non-public assistance cases, however, are established and enforced through the county District Attorney's office. Custodial parents must apply for services.

Another key difference is program universality.

- Maine is a "universal" state. All child support orders are processed through the IV-D agency. If a court addressed child support as part of a divorce decree, the order is still enforced by the child support agency. Conversely, Oregon is not a universal state, so many orders remain outside the IV-D domain.

Finally, while both states hear contested cases in the executive branch, the tribunals are housed in different agencies.

- Maine's tribunal is in the Department of Human Services (DHS), the agency that houses the IV-D agency. Hearing officers preside over cases relating to all DHS programs, including child care, TANF, and child support. About two-thirds of all cases are child-support related. Oregon's tribunal is in the Employment Department (ED), which is a separate agency from the one that houses DCS (the Department of Justice). ED originally established the hearing officer unit for appeals to the Unemployment Insurance program. Of the 11 ED hearing officers, 7.5 are dedicated to child support cases.

### 3. Differences: Order Establishment Procedures

There are differences in when the order amount is revealed to the non-custodial parent.

- In Oregon, the first document that the non-custodial parent sees, the Notice of Financial Responsibility (NFR), contains a proposed order amount. Prior to sending the NFR, the caseworker checks labor databases for current work or recent work history. If no information is available, the caseworker can contact the custodial parent for additional information about the non-custodial parent's earnings history. If no information is available, the minimum wage is imputed. The NFR constitutes service and includes information on how to request a hearing, as well as a financial affidavit. A copy of the NFR packet is sent, via regular mail, to the custodial parent and certified mail to the non-custodial parent. The parents have 20 days to respond with new information. If valid information is provided, the order amount is amended. If there is no response, the proposed order stands.
- In Maine, the first contact between the IV-D agency and the non-custodial parent is the Notice of Proceeding to Establish Child Support (NOPECS). The NOPECS does not contain information about the proposed order. It contains a financial statement; the non-custodial parent is allowed 30 days to return it. Otherwise, the order will be based on imputed income. Once the financial information is in hand, the caseworker calculates the order and mails a Notice of Proposed Support Order to both parents via first class mail.

After the order is created, the filing process also differs.

- In Oregon, the establishment caseworker signs the order and files it in the court. In Maine, the district supervisor signs the order. It is filed with the central CSE office but not the court.

### 4. Differences: Hearings Procedures

The timeframe for requesting a hearing is similar in both states (20 to 30 days). However, there are some procedural differences. For instance, the states differ as to which parent can request a hearing.

- In Maine, only a non-custodial parent can request a hearing. In the past, most custodial parents were welfare recipients and the state viewed child support as a vehicle for recouping welfare payments made to custodial parents. Thus, the state considered the custodial parent's interest to be limited. Today, many custodial parents have never been on TANF, but their ability to participate in the child support establishment process remains limited. Conversely, in Oregon, either parent can request a hearing. Custodial parent participation in the hearings also differs. In Maine, the custodial parent generally is not present for the hearing. In Oregon, both parents are encouraged to participate.

Another difference between the states is the setting for the hearing.

- Most hearings in Maine are in person. Hearing officers travel to the district offices to conduct hearings on site. Each regional office has a designated hearings room. In Oregon, most

hearings (98 percent) are conducted over the telephone. A parent can request an in-person hearing, which is held at a regional employment office, but few do so.

Finally, there are different roles for child support staff.

- In Maine, the caseworker who prepared the order attends the hearing and presents the agency's case. In Oregon, case managers do not routinely participate in the telephonic hearings. They do send written testimony to the hearing officer for inclusion in the record.

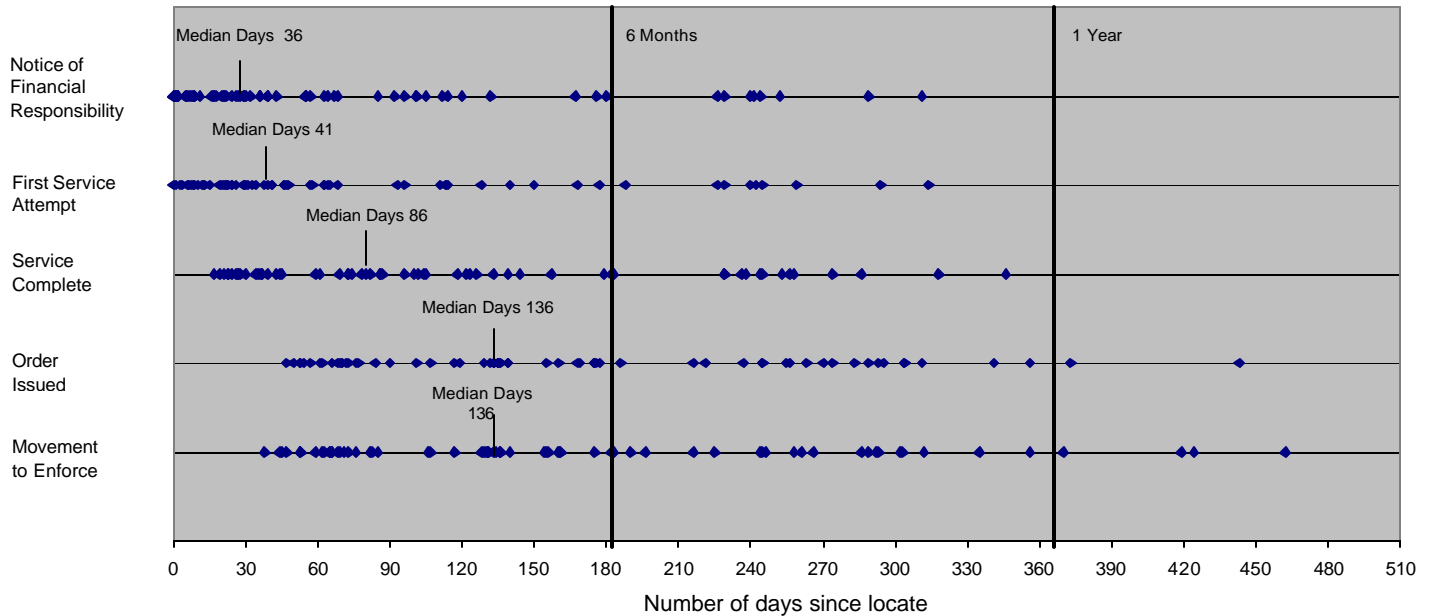
### **5. Case Record Analysis**

Neither Maine nor Oregon reported problems meeting the establishment timeframes set in federal law. To gain a better understanding of how cases move through the systems, we requested that each state provide a census of new establishment cases for a two-week period. We then asked the states to report major steps in the establishment process from the verification of a postal address (that is, a confirmed locate) to order establishment and ultimately wage withholding. To limit the imposition on the states' staff, we requested a report with only those actions that are automatically tracked by the computer system. Other actions, tracked through manual computer entries, are not captured here.

*Exhibit IV.4* reports our findings for Oregon. We tracked 71 new cases with locate information that the state believed was highly reliable. When a state has reliable locate information, a caseworker enters a "movement to establish an order," at which point the federal timeframes come into play. Federal law calls for 75 percent of cases to be established within six months of locate and 90 percent of cases within one year. The exhibit tracks the number of days between the successful locate and five subsequent steps in the process: generation of the NFR, first attempt to serve, service completion, issuance of an order, and a movement to enforce.

## Exhibit IV.4: Oregon Order Establishment Time Frames

(71 New Oregon Cases Entering June 2000)



For the typical or median case, 36 days passed between locate and the generation of an NFR. A handful of cases show the NFR being generated more than six months after the movement to establish, which suggests the locate information on the case may not have been reliable.

The first attempt at service follows soon after the generation of the NFR, with the typical case at 41 days following the movement to establish. Service was complete for the typical case on the 86<sup>th</sup> day, so somewhat more than a month passes between the first service attempt and service completion of the typical case. The data indicate that an order was formally issued 136 days—or about 4.5 months—after the state initiated the establishment process, particularly if there is a contest to the pleading. The movement to enforce, which is usually accompanied by a wage withholding order, is usually entered the same day that the state issues the order.

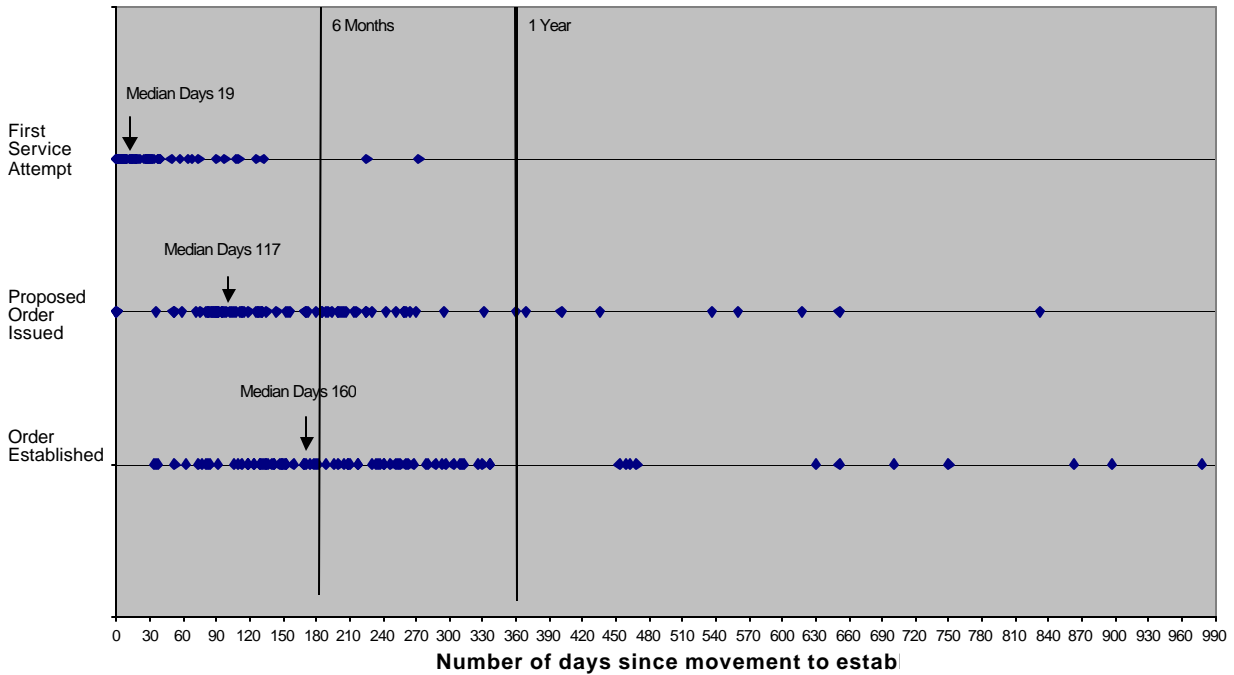
The data from Maine followed 89 establishment cases that were opened during July 1998 (see *Exhibit IV.5*). Unlike Oregon, the Maine data does not take into account that some activities are still in the locate function and not establishment-related. Moreover, the Maine system does not have codes that automatically recorded the key steps in the establishment process. Caseworkers can enter a variety of codes to indicate service, hearings requests, and enforcement. To facilitate our analysis, IV-D staff grouped a number of codes into three key steps in the process: service of the notice, generation of a proposed support order, and order establishment. The data indicate—for the typical, sampled cases—the state issued the original service within 19 days of having received reliable locate information. For the typical case, roughly three months passes between the service of notice and the development of a proposed order. While a sizable majority



of cases show a proposed order within a year of locate, a handful of cases were problematic and required well over a year to reach this stage. For the typical case, the time between issuance of a proposed order and order establishment is relatively brief—roughly one and half months. The typical duration of the establishment process—from start to finish—was 160 days or slightly more than five months.

**Exhibit IV.5: Maine Order Establishment Time Frames**

(89 New Maine Cases Entering July 1998)



We caution against direct comparisons between the Oregon and Maine data. As noted above, the Maine data had to be grouped and coded by hand. It is likely that a number of cases never had successful locates and that this, in turn, extends the timeline for order establishment. Moreover, caseworker decisions about when to formally initiate the establishment process—which hinges on perceived reliability of locate information—affects the estimates. In both Oregon and Maine, the data suggest that, for a handful of cases, the original locate information was either not reliable or a parent was successful in evading service. Moreover, different rates of contests (requests for administrative hearings) may also explain difference in estimated timeframes.

**6. General Perceptions**

The administrative states suggested a number of advantages to their process. It is a cost-effective and fast way to establish orders and makes efficient use of staff resources. Attorney time can be dedicated to legal issues. Caseworkers or other front-line staff are recognized as being effective and knowledgeable. Administrative hearings are viewed as less intimidating than court hearings, and court time is saved. Specifically, key advantages of the administrative process include:

- Caseworkers have considerable authority. This frees up IV-D attorney time for tasks that require legal expertise, controls costs, and ensures buy-in from line workers who are empowered because their knowledge and skills are utilized.
- Administrative hearings are less intimidating for the parties involved. The environment in an administrative hearing room is more relaxed and informal. Staff suggested it is less daunting to sit around a table with agency staff than to stand before a judge in a black robe. The discussion is less formal and it is easier to follow the proceedings. Parents do not need attorneys. Staff noted that some clients fear the court and judges, whereas it is easier to meet with agency staff in an informal setting or via telephone.
- Court appeals are rare in administrative states. Despite concerns that non-custodial parents would want their “day in court,” the administrative states find that court-level appeals are rare. Due process requires that all parties have access to the courts. In Maine, non-custodial parents can appeal their cases to the Superior Court. In Oregon, either party can appeal to the Circuit Court. One concern about the administrative process that was voiced by judicial state staff was the effect on the courts. There was a perception that administrative orders are more likely to be appealed and would overwhelm the court calendar. Appeals to the judicial level in the two administrative states, however, are uncommon. In the last year, for instance, Oregon established about 1,300 orders with only about 51 appeals (for an appeal rate of less than 4 percent). In Maine, no overall data are available, but one Superior Court judge in Augusta, the state capital, has had only three order establishment appeals during his seven years on the bench.

## **B. Findings: Judicial States**

### **1. Similarities**

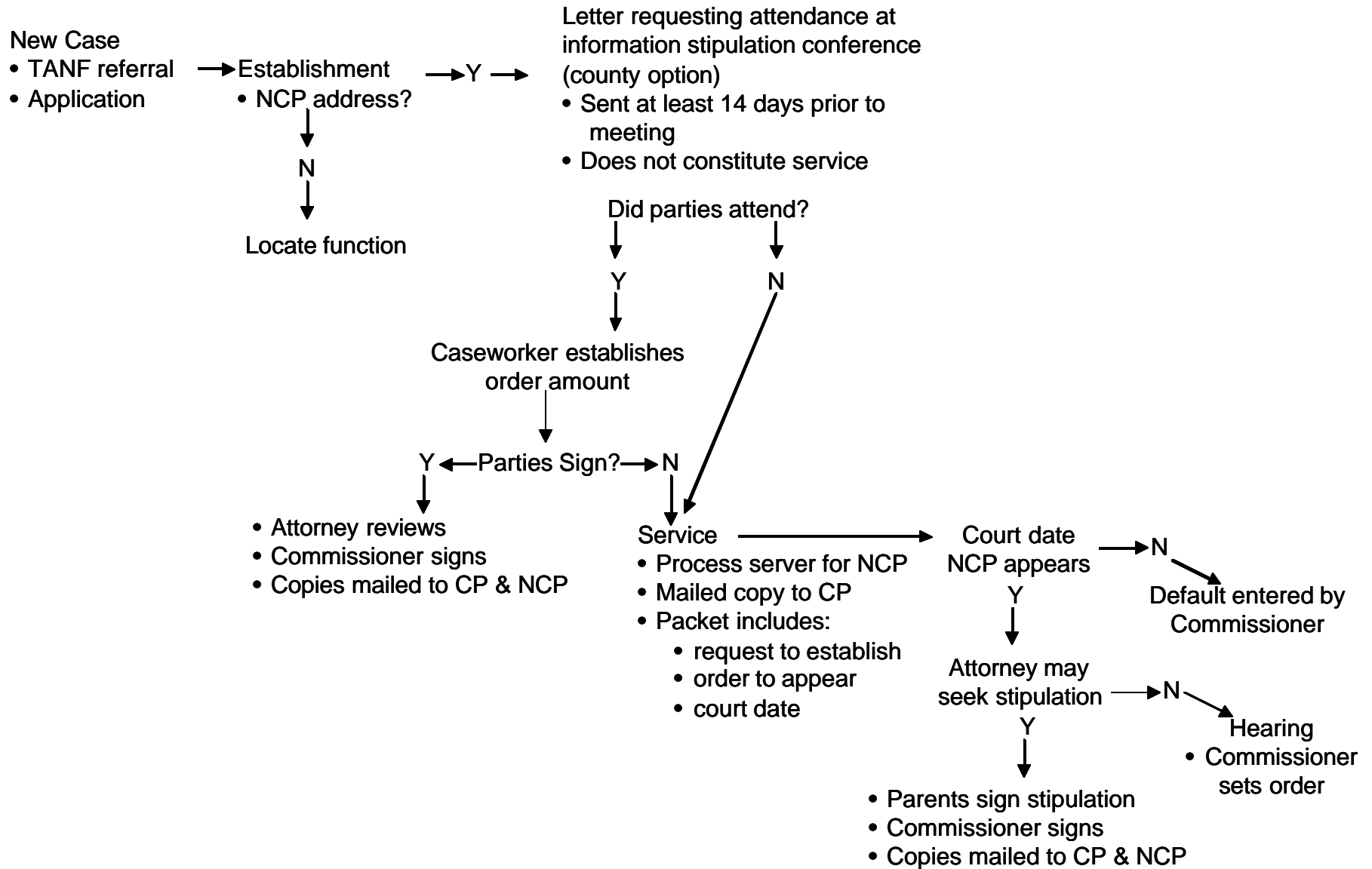
The taxonomy scores for Arizona and Massachusetts are the same (16), suggesting the states have very similar order establishment processes. *Exhibits IV.6 and IV.7* depict the process in the two judicial states. While there are many similarities, there are also some key differences. Common features of both state programs include:

- Non-custodial parents are served with an order to appear and a financial affidavit. Arizona uses in-person service. In Massachusetts, process servers mail a copy of the notice to the non-custodial parent and leave a copy at the last and usual residence.
- The Notice of Hearing Date is mailed about two weeks in advance of the hearing.
- IV-D does not calculate proposed orders in advance of the hearing date.
- IV-D attorneys are actively involved in case preparation. They also present contested and default orders to judges.
- When the case is heard before a judge, the decision is generally issued at the time of the hearing.
- Judges sign all orders; orders are filed in the court.

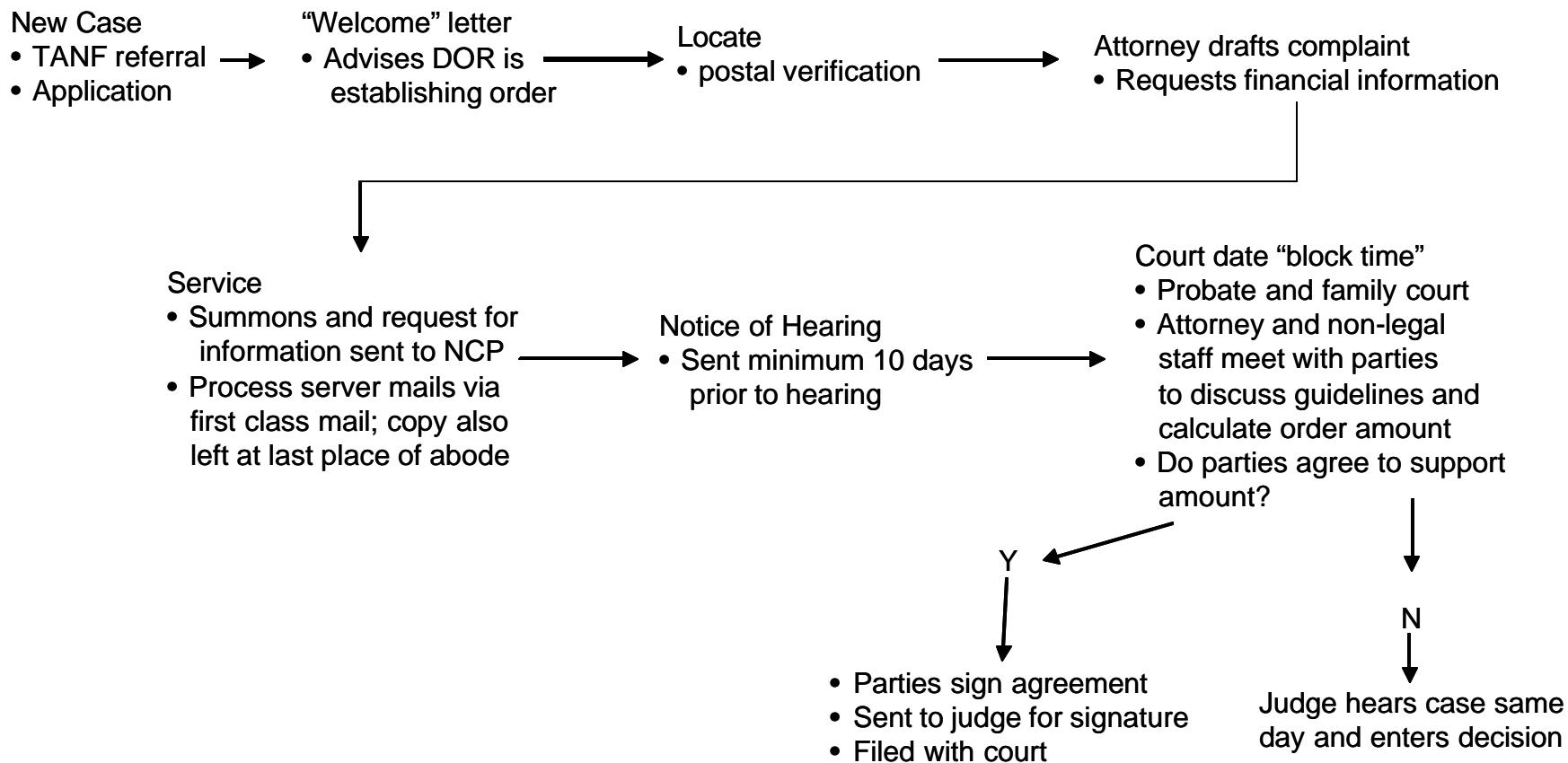
- Appeals to higher courts are possible but rare.

The states, however, are dissimilar in many ways. The two states differ structurally: Massachusetts is a state-administered program and Arizona has a mix of state and county administered jurisdictions. Other differences exist in the use of stipulation conferences, upfront discovery of financial records, and the means by which cases are scheduled for court hearings.

**Exhibit IV.6: Arizona Establishment Process**



**Exhibit IV.7: Massachusetts Establishment Process**



## 2. Structural Differences

The entity that administers the child support program differs in Massachusetts and Arizona.

- The Massachusetts child support program is state-administered, with the Department of Revenue operating the program. Thus, we would expect the order establishment procedures to be similar across the state. Local offices might exhibit small variations, but overall the structure of the program is uniform.
- In Arizona, on the other hand, the state administers the program in some counties and supervises it in others. The IV-D agency is housed in the Department of Economic Security (DES). The state contracts with counties and private vendors to provide child support services. Counties have the first right to provide services. Six of the 15 counties exercised their right, and their county attorney offices provide services. In seven counties, DES operates the program in conjunction with the Attorney General's office. In two counties, DES contracts with a private company to provide child support services. The fact that different entities are involved in Arizona's process results in procedural differences among counties. We visited two counties (Maricopa and Pima) and found a number of dissimilarities, which will be discussed in more detail below.

## 3. Procedural Differences

One notable difference between Arizona and Massachusetts is that stipulation conferences prior to the *hearing date* are possible in the former but not the latter.

- In Massachusetts, neither IV-D caseworkers nor attorneys attempt to reach a settlement on the order amount prior to the hearing date. While IV-D staff (attorneys as well as non-attorneys) make a great effort to reach an agreement on the day of the court hearing—and are successful in many cases—the custodial and non-custodial parents must report to court on a designated date.
- Arizona counties, however, have the option of holding stipulation conferences prior to formally serving the parties. Some offices within Maricopa County (Phoenix) attempt to schedule conferences, whereas offices in Pima County (Tucson) no longer do so, citing limited participation. In counties that schedule conferences, both parents receive a letter advising them that a stipulation conference will be held in an attempt to reach an agreement on the child support order. The IV-D caseworker will calculate a proposed order amount in advance of the meeting using state databases to collect information on the non-custodial parent.<sup>27</sup> At the stipulation conference, the caseworker presents the order amount; if the parents agree to the amount, they sign it. A IV-D attorney reviews the order and forwards it to the court for signature by a commissioner (similar to a judge). Maricopa County finds that when parents attend the conference, they agree to the order amount in about 90 percent of the cases. However, the challenge staff face is convincing parents to show up. The stipulation

<sup>27</sup> If the custodial parent is on public assistance, the minimum wage is imputed. If the custodial parent is not on public assistance, she or he provides financial information in the application for services.

conference is voluntary. The conference can go forward in the absence of the custodial parent; however, the non-custodial parent must be present. If the parents do not attend, the case is referred to the Attorney General's office, the non-custodial parent is formally served, and a court date is established.

The states also differ in the level of case research conducted by IV-D staff or attorneys prior to the hearing date.

- In Massachusetts, IV-D caseworkers generally do not collect financial information before forwarding the case to an attorney. Parents are sent a financial affidavit, but most do not return it in advance of the court date. Shortly before the hearing date, the attorney or paralegal will check the state tax data base. However, staff report that most non-custodial parents do not appear on the database. Thus, IV-D attorneys often have no financial information prior to meeting with the parties at the court. The morning of the court date, IV-D staff meets with both parents, reviews the financial affidavits, and uses them to calculate an order.
- In Arizona, the IV-D attorney usually has some financial information prior to the hearing date. After the non-custodial parent is served, a IV-D caseworker will check state databases for employment information, as well as for payment histories on other child support orders. This information is included in the file that is forwarded to the IV-D attorney. While the attorney does not calculate the order amount prior to the hearing date, he or she has a general idea of what it will be. Non-custodial parents also are sent financial affidavits, which they usually bring to court the day of the hearing. All of the information is used to calculate the order.

There is also some variation in terms of scheduling hearings.

- Massachusetts uses “block time.” In each of the state’s 14 Probate and Family Courts, one day each week is devoted to child support. Up to 100 cases are scheduled during each block time.<sup>28</sup> In Arizona, the case scheduling is more dispersed, with local counties determining when cases are heard. In Maricopa County, for instance, two courts handle child support cases. There are multiple commissioners that hear child support cases, so hearings are scheduled throughout the week.

Finally, the states differ as to whether IV-D attorneys try to stipulate an order on the *day of the hearing*.

- In Massachusetts, stipulation meetings are the norm. Both parents are asked to appear at court. After they arrive, IV-D staff will collect financial affidavits and forward them to the attorney assigned to the case. The attorney (or non-legal staff) calculates an order amount based on the information and meets with the parents (either individually or together) to explain the order amount. The parents can stipulate to the amount by signing an agreement. If they choose not to stipulate, they go before the judge.

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<sup>28</sup> Slots are not limited to order establishment cases. Many hearings relate to enforcement issues.

- In Arizona, however, the use of court-day stipulation meetings varies both by county and within county. There is no statewide rule that requires a pre-hearing meeting with IV-D attorneys. In Pima County (Tucson), IV-D attorneys do not try to stipulate before the hearing due to lack of time. They present the state’s case to the commissioner. The commissioner then determines the order amount. Some IV-D attorneys in Maricopa County, on the other hand, actively try to meet with parents prior to the hearing and attempt to reach an agreement. One attorney reported that she is successful in reaching agreements with most parents. Commissioners, too, report that many cases are resolved before they reach the courtroom. On one particular day, 48 child support cases were scheduled for hearing but only 4 cases actually went before a commissioner. Other IV-D attorneys, though, report that they do not try to stipulate. Their preference is to present cases before a commissioner.

#### **4. Case Record Analysis**

As with the administrative states, we requested case-level data from Massachusetts and Arizona for cases that newly entered the establishment process. As with the administrative states, neither Massachusetts nor Arizona notes any recent problems in achieving the federal timeframes for order establishment.

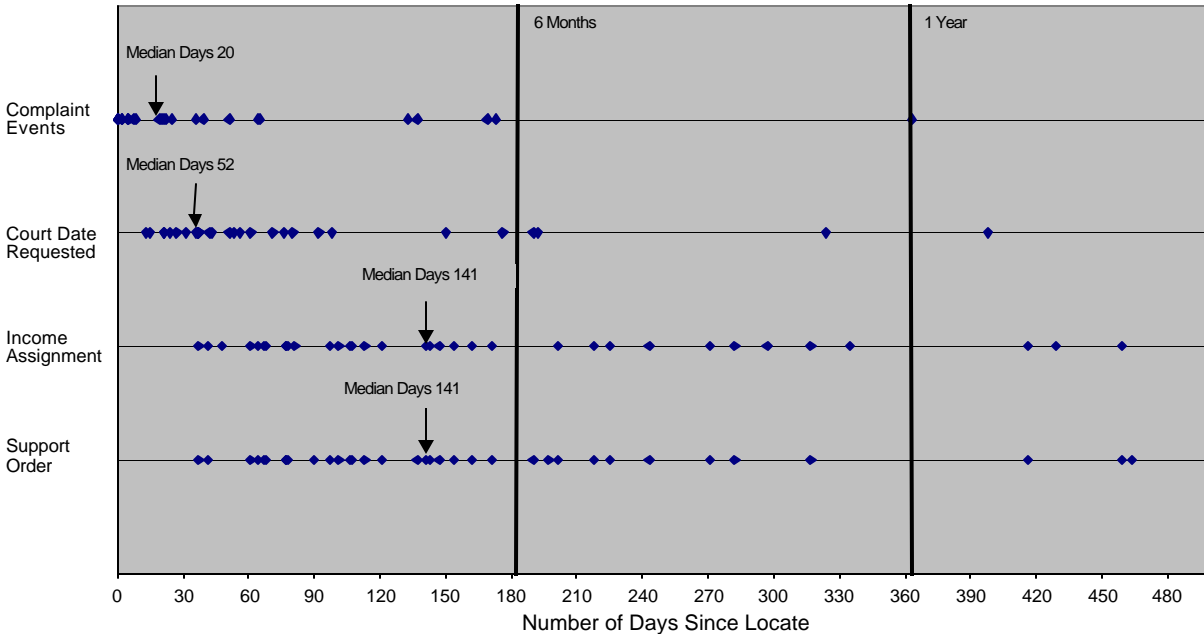
The Massachusetts establishment process begins with the locate attempt and a postal verification. We found several cases with multiple postal verifications suggesting that the state was having difficulty locating the non-custodial parent. For the purposes of this analysis, we tracked the time following the last postal verification identified before the non-custodial parent was successfully served. Following the postal verification, we were able to observe generation of a notice to establish (called a “complaint event” in Massachusetts’ system), assignment of a court date, order establishment, and income assignment.

For Massachusetts, we found 40 cases that required only order establishment and were opened during July 1999. For the typical, sampled cases, we found 20 days passed between locate and the generation of a notice to establish support. Once the notice was generated, the system reported another 32 days passed for a typical case before a court date was scheduled. The Massachusetts system does not automatically record the dates of each court hearing but does record the issuance of an income assignment and official court order. For the typical, sampled case, the income assignment and court order generally occurred on the same day, 141 days after locate. Clearly, as with all the states we reviewed, there is a range of outcomes with a handful of cases established within the first month and several established a year or more after locate.



### Exhibit IV-8 Massachusetts Order Establishment Time Frames

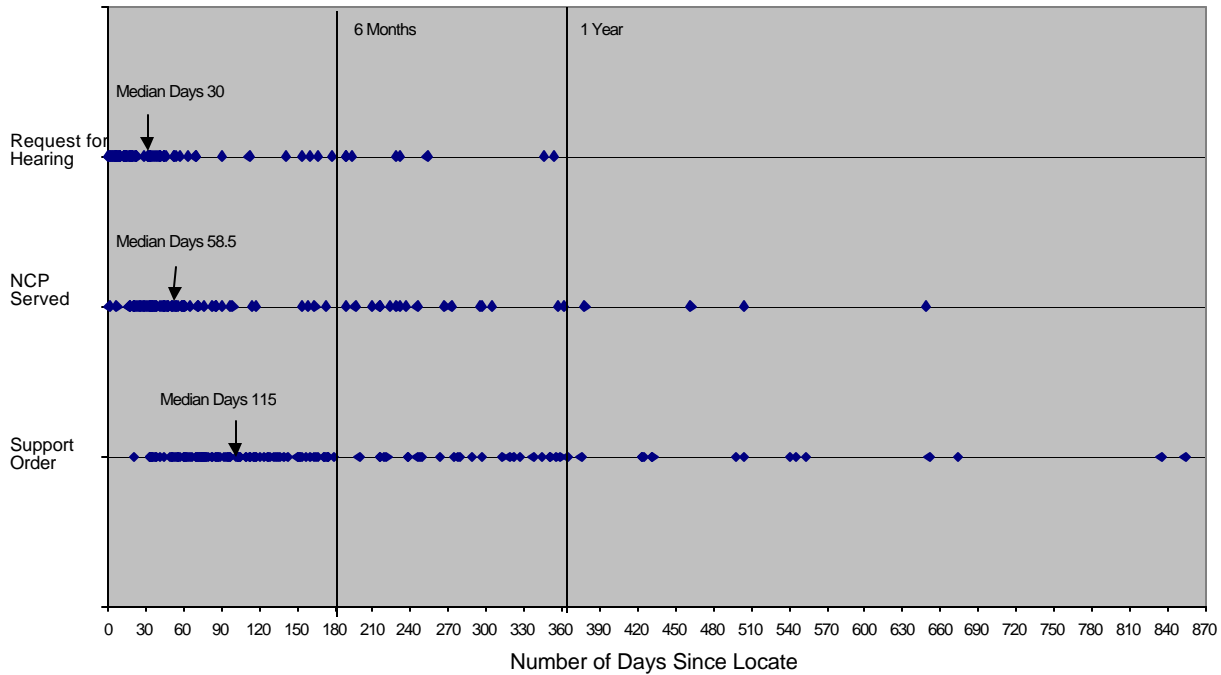
(40 New Massachusetts Cases Entering July 1999)



In Arizona, the state system tracks three key steps in the establishment process: request for a child support hearing, service, and order establishment. For 146 cases for which workers were confident they had locate information for the non-custodial parent in June 1999, state data show that workers requested a hearing date from a court within 30 days for the typical case. At the 59<sup>th</sup> day after locate, the typical case had been served with a notice to appear in court; and by the 115<sup>th</sup> day after locate, the typical case had an order in place. Data show the system establishes a large majority of cases within one year. The handful of cases that take longer than a year are those with complicated contests or which involve parties that successfully elude service by the state.

### Exhibit IV.9 Arizona Order Establishment Time Frames

(146 New Arizona Cases Entering 1999 or 2000)



Although the simple medians suggest differences in the timeframes between the Massachusetts and Arizona processes, we would characterize the reported findings as roughly comparable. Both states establish the large majority of cases within one year and show a clustering of establishments prior to six months. Moreover, each state’s data suggest a handful of cases that enter establishment are not successfully served and may take a couple years or more to resolve. For those cases that elude service after a postal verification, a state’s reported outcomes can improve significantly if state caseworkers reassign the case from establishment to locate status—thereby resetting the establishment timeframe. Caseworker practices likely vary in this area.

#### 5. General Perceptions

Staff from judicial states described the advantages of their process. They noted that courts can address multiple issues at once (e.g., visitation, job training). Moreover, parents respond better to courts. They are more likely to take notice of a letter from the court or a process server, whereas a document sent from an executive agency is “just a letter from the department.” Staff also suggest that courts provide parents with a sense of impartiality.

- The court forum can address a range of issues. A commissioner in Arizona noted that many issues can be addressed in court that could not be addressed in an administrative hearing. For example, at an establishment hearing, she will notice if a father is not working and can send him to a program under court order (e.g., fatherhood program, job training, parenting skills).

In addition, if non-custodial parents want to discuss visitation, she can schedule a hearing while the parents are still in court.

- The court commands attention. The court can have an added impact in the establishment process. Specifically, many staff suggested that non-custodial parents take orders issued by judges more seriously than those issued by a state agency, even if they have the same weight under the law. Staff in the judicial states suggested that courts instill a sense of gravity. According to a Massachusetts staff person, “if you fail to pay, the courts will be after you,” adding that non-payment becomes a criminal matter. Courts also lend “credibility” to the process and make orders easier to enforce. “People take orders more seriously,” said an Arizona IV-D worker. Similarly, another Arizona official believes that when the court serves parties, its name on the envelope return address induces non-custodial parents to respond.
- Perceived impartiality of the courts. Judicial states questioned whether the same agency that establishes orders should also enforce them. Moreover, clients may suspect the motivation of the IV-D agency in administrative states. For example, because states retain child support collected on behalf of public assistance clients and receive incentives funds tied to performance, it may give the appearance that IV-D is trying to maximize the number of orders established and their amounts. Judicial states also suggested that IV-D may not be perceived as impartial, instead giving the appearance of advocating for the custodial parent in administrative states. On the other hand, these staff noted that judicial systems are perceived as even-handed and not in the “pocket” of the child support agency or custodial parent. According to a Massachusetts staff person, the court gives the child support agency “cover. The courts set the amount, we simply make sure it’s paid.” While the IV-D agency might not like the courts because they do not always decide in the agency’s favor, a judicial process fosters a system of checks and balances.

### C. Quasi-judicial state: Elements of both processes

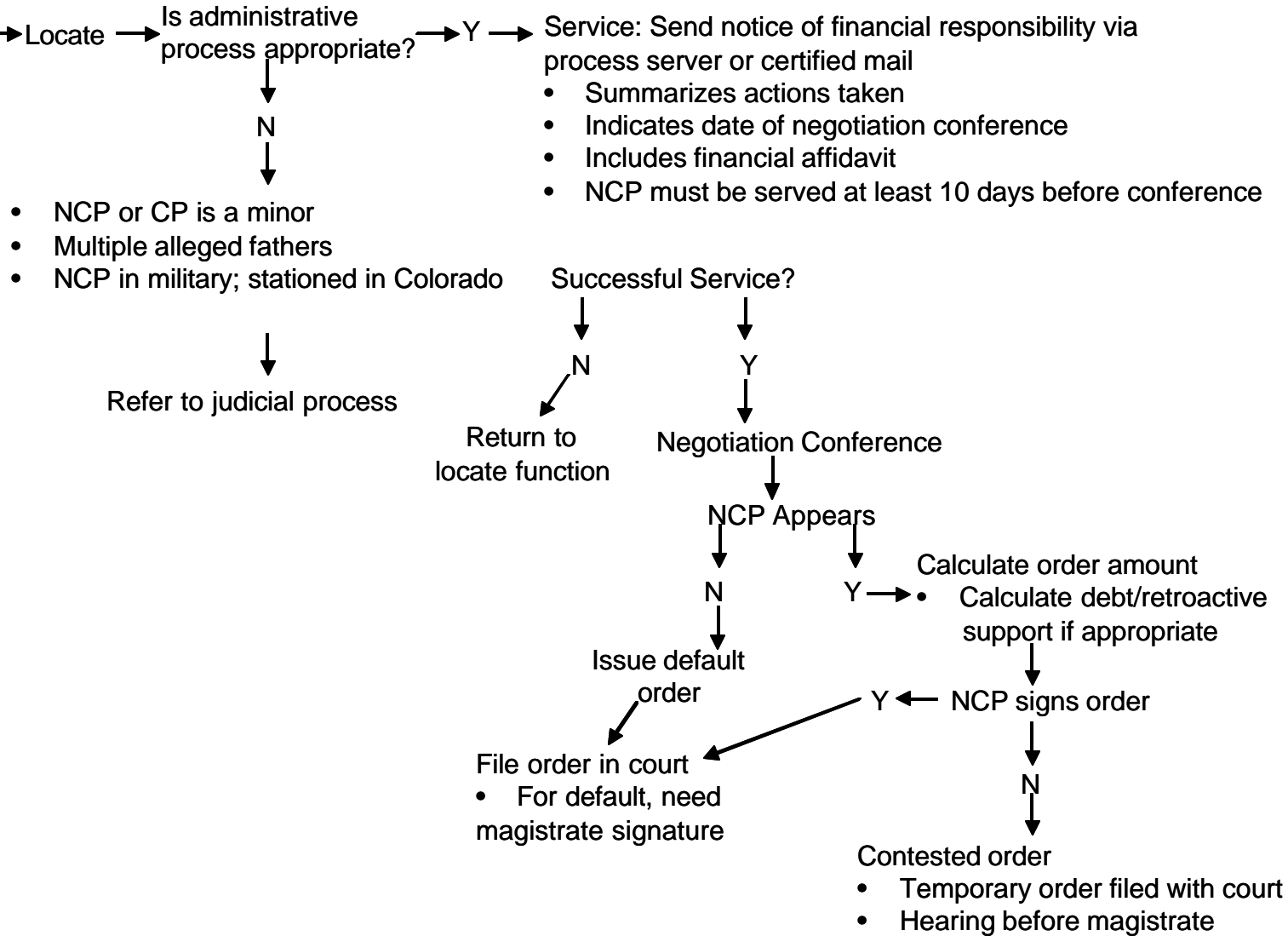
*Exhibit IV.10* depicts the order establishment process in our quasi-judicial state, Colorado. As the label indicates, the state shares elements with both the administrative and judicial processes. In Colorado, uncontested orders are established administratively. The IV-D caseworker collects financial information, schedules a stipulation conference, and, if there is agreement, forwards the order to the court for filing. A magistrate (judge surrogate) does not sign the order. If no agreement is reached during the stipulation conference, the case ceases to be an administrative case and becomes a judicial one. Once it is in the courts, a case can never return to the administrative process.

We noted more differences than similarities between Colorado’s establishment process for an uncontested order and the processes described above for the administrative states (Maine and Oregon). In the same way, Colorado features many elements of the judicial processes described for Arizona and Massachusetts, but also some key differences.

**Exhibit IV.10: Colorado Establishment Process**

**New Case**

- TANF referral → Locate
- Application



### 1. **The Administrative Process: Uncontested Orders**

Colorado has a state-supervised, county-administered child support program. Therefore, there are variations in the process by county. Most counties operate their child support programs through the Department of Social Services, but some use the District Attorney and one uses a private contractor.

Similarities between Colorado and the administrative states are:

- Uncontested orders are established in the IV-D agency, by IV-D staff, without IV-D attorney involvement.
- Default orders are issued by the IV-D agency based on available information or the minimum wage. However, they must be reviewed and signed by a magistrate (judge surrogate).
- Uncontested orders do not need a judge's signature.

However, there are a number of differences between Colorado's order establishment process and those of the administrative states. One key difference is service of process.

- While Maine and Oregon use certified mail to notify non-custodial parents of the state's intent to establish a child support order, Colorado uses a process server. And, whereas Maine's service papers include no order amount and Oregon's included a proposed order amount, Colorado's Notice of Financial Responsibility (NFR) includes a debt amount (i.e., the amount the non-custodial parent owes to the state for past public assistance paid on behalf of the custodial parent) but not a monthly support amount.

Another difference is the negotiation conference.

- The negotiation conference is a central part of the order establishment process in Colorado. It is the forum for informing the non-custodial parent of the order amount. The conference date is included in the served documents. Conferences are usually conducted in person. The non-custodial parent brings in financial documents, including the financial affidavit, pay stubs, tax returns, and health insurance information.<sup>29</sup> The IV-D caseworker describes the order establishment process and calculates the order amount using the guidelines. It is also an opportunity for the parent to ask questions. If the non-custodial parent agrees to the order amount, he or she signs the stipulation. It is then forwarded to the court and filed. Stipulated orders are not reviewed by or signed by magistrates.

Unlike the administrative states, IV-D caseworkers in Colorado cannot deviate from the guidelines.

Finally, in Colorado, a contested case goes directly to the courts. Unlike Maine and Oregon, there is no executive branch tribunal.

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<sup>29</sup> In some counties, the custodial parent also is invited to the conference.

## 2. The Judicial Process: Contested Orders

In Colorado, the process for contested orders is similar to the processes in the judicial states in many respects. For instance:

- The IV-D attorney takes the lead in preparing the case for court. If the case goes before a magistrate, the attorney presents the state's case.
- The court sets the date for the hearing and notifies the parties involved.
- Like Massachusetts, attorneys meet with the non-custodial parent and try to reach an agreement on the order amount the day of the hearing. If no agreement is reached, the case goes to a hearing.
- IV-D attorneys usually do not suggest guideline deviations to magistrates.
- If the case goes to a hearing, the order amount is determined at the time of the hearing and not a later date.

However, there are a number of key differences.

- Stipulated orders are not reviewed or signed by a court official.
- Colorado makes use of temporary orders. Thus, if the non-custodial parent does not agree to sign the order amount at the negotiation conference, the IV-D agency enters a temporary order with the court, which is enforced between the time of the conference and the hearing date.
- Following the negotiation conference, a new “enforcement” IV-D caseworker takes the case over from the previous caseworker.<sup>30</sup> This caseworker not only begins working with a IV-D attorney to prepare for court, but will attempt to contact the non-custodial parent and offer the opportunity to resolve issues and agree to an order amount prior to the date of the hearing. Once a hearing is scheduled, neither Arizona nor Massachusetts attempts to stipulate prior to the court date.<sup>31</sup>
- While IV-D attorneys do not suggest guideline deviations to court officials, they will negotiate changes in the debt (support owed to the state) or retroactive support (support owed to the custodial parent) amounts if both parties agree to the changes.
- A magistrate (judge surrogate) hears contested cases.

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<sup>30</sup> In smaller counties, the same caseworker may remain on the case.

<sup>31</sup> While some Arizona counties schedule stipulation conferences, they are held prior to service of process. Once the case is in the domain of the courts, caseworkers do not try to reach an agreement with the parents.

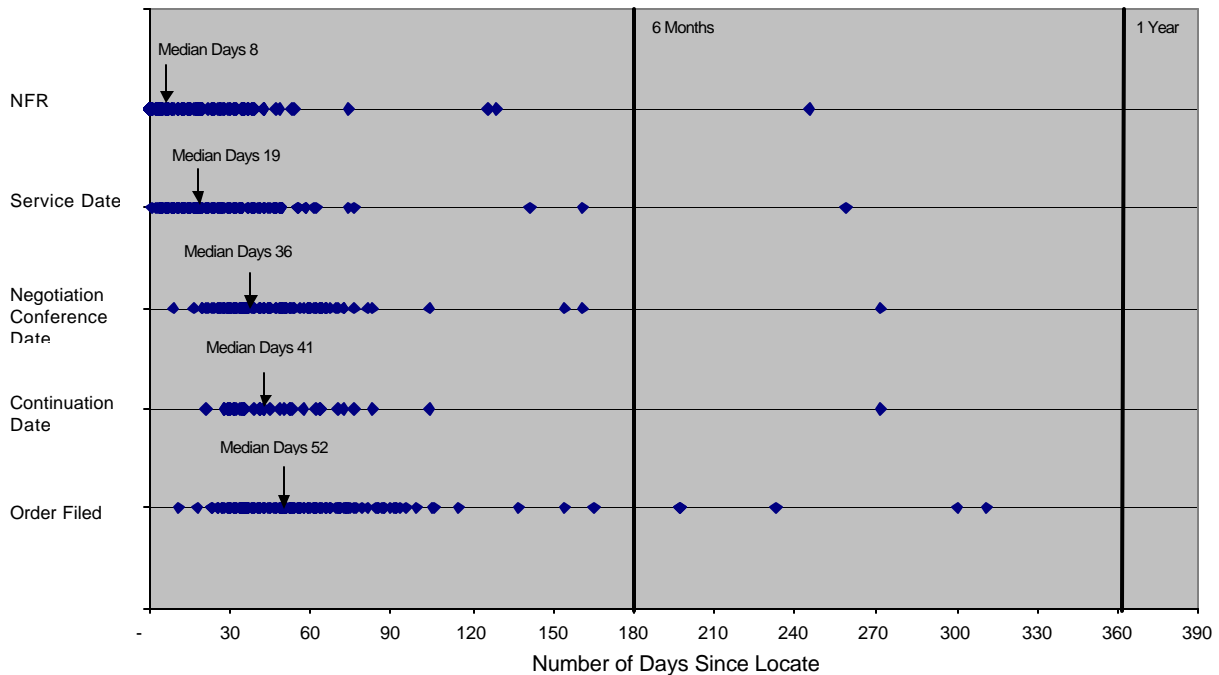
### 3. Case Record Analysis

Colorado provided 164 cases for review with each initiated during June 1998. Our analysis of the data indicate that once Colorado caseworkers were confident they had located the non-custodial parent and moved to establish the case, only eight days passed before the worker generated a NFR. An additional 11 days passed before service on the non-custodial parent was successful for the typical case. Once served, the non-custodial parent can attend the negotiation conference on the date set in the NFR or request a continuance. Those who did not request a continuance typically had a negotiation conference scheduled within 36 days of the state’s movement to establish the case. By contrast, for cases with a continuance, about 41 days passed before a IV-D worker met with the parents. For the sample of 164 cases initiated in June 1998, Colorado records indicate that the typical order, in some cases a temporary order, was filed with court 52 days after IV-D moved to establish the case.

Colorado’s data suggest that the state’s establishment process moves cases more quickly than the processes in the other states we visited. A number of factors potentially underlie the differences in the timeframes estimated for Colorado versus those estimated for the other four states. Some of the differences relate to expedited practices, and others probably relate to the classification of cases in the sample.

#### Exhibit IV.11 Colorado Establishment Time Frames

(164 New Colorado Cases Entering June 1998)



- **Expedited practices.** First, the data suggest that caseworkers are quick to issue a NFR once the non-custodial parent is located, with the typical NFR issued within eight days of locate and service achieved within 19 days. Moreover, upon issuance of the NFR, Colorado’s automated system is very rigid and requires the caseworker to schedule a negotiation conference about one month after the generation of an NFR. Caseworkers can reschedule a conference if parties show good cause, but the rescheduled conference is typically set within days of the original proposed date. Finally, virtually all negotiation conferences conclude with the filing of an order. For cases that stipulate or default, the order is final. For cases that request a hearing, the order is temporary, but nonetheless is placed in enforcement status. While the terms of an order may change in court if new income or expense information become available after the temporary order was filed, the effective date of the order changes only in very rare circumstances.
- **Case reclassification.** Colorado’s data show only a handful of cases that persist for long periods of time in the establishment process. In fact, Colorado data suggest no cases from the selected sample remained in the establishment process for more than a year, while data from each of the other states showed several cases persisting for a year or more. This is likely the result of Colorado caseworkers more routinely reclassifying a case to “locate” status if service on the NCP was unsuccessful after the verified postal verification. If caseworkers fail to reclassify the cases to locate status, it can give the appearance that the state’s establishment process is slow—when, in fact, the state simply does not have a valid address for service.

#### **4. General Perceptions**

Staff in Colorado suggested that their process strikes a balance between administrative and judicial systems, as uncontested orders are established in the IV-D agency and contested orders are scheduled for court hearings. Specifically, the negotiation conference offers the opportunity to meet with the non-custodial parent and discuss the award. Attorneys get involved only if the parent does not agree to the order amount.

- Negotiation conferences provide a forum for discussing issues. The conference is a required part of the order establishment process. While it is used primarily to collect financial information and determine the order amount, staff note that the in-person meeting is also an opportunity to discuss with the non-custodial parent the order establishment process and describe why it is important to pay child support in a timely manner. Moreover, it provides the non-custodial parent with the chance to raise concerns he or she has with the process. Staff note that sometimes a parent only wants to feel like he or she is being heard.
- Courts are involved when necessary. Staff note that non-custodial parents can easily get their “day in court.” Failure to stipulate to the agreement sends the case directly to court; there is no administrative tribunal.

#### **D. Summary**

Following our review of the nine states, we had more specific ideas about how judicial, administrative, and quasi-judicial states operated. We discerned areas where the processes were



similar, and areas where the processes were very different. The nine-state review provided a macro-level view of each state's child support order establishment process. The on-site interviews, however, added another dimension to the study. Not only did we learn more about how administrative and judicial processes share some elements and differ on others, we discovered how states that we initially categorized as administrative or judicial also had similarities with and differences from each other.

Administrative states share a number of initial processes. Similarities include the method of service, the collection of income information, use of caseworkers to calculate orders, the minimal contact with non-custodial parents, caseworker issuance of default orders, infrequent IV-D attorney involvement in order establishment, and minimal judicial involvement (e.g., judges do not sign orders).

However, there are some key differences. Many differences emanate from the structure of the state programs.

- Maine is state-administered; Oregon is state-administered with both state and county offices. As such, we observed variation in terms of upfront discovery and use of judicial process by office.
- Different government entities establish orders for TANF and non-TANF cases.

There are also a number of establishment procedures that differ between the two states.

- In Oregon, the first document the non-custodial parent receives includes a proposed order amount. Thus, the caseworkers in Oregon do some upfront research prior to service of process. In Maine, the non-custodial parent first receives a financial affidavit and has 30 days to return it.
- Once an order is established, the filing process differs: Oregon file all orders in district court. Maine does not file orders in court.
- Hearings procedures also differ in some key respects. Maine houses its hearing officers in the Department of Human Services, the same agency that houses the IV-D agency. Oregon's hearing officers are located in the Employment Department, which is entirely separate from the IV-D agency. The former does not use dedicated hearing officers while the latter does. The non-custodial parents can contest an order in Maine, while either parent can do so in Oregon. Maine conducts in-person hearings, while Oregon conducts phone hearings. Caseworkers attend hearings in Maine and present the agency's case. They are not routinely involved in hearings in Oregon.

Like administrative states, the judicial states exhibit similarities. Non-custodial parents are served in person with an order to appear in court, IV-D staff does not calculate the orders in advance of the court date, IV-D attorneys are actively involved in all stages of the process, judges sign all orders, and orders are filed in the court.

However, the states are dissimilar in many ways. Again, many differences stem from the program structure: Arizona has a mix of state- and county-administered jurisdictions while Massachusetts is state-administered. Individual counties in Arizona differ in terms of:

- Use of stipulation conferences prior to the court date.
- Use of stipulation meetings on the court date.

Conversely, Massachusetts IV-D staff do not try to stipulate prior to the hearing date. On the day of the hearing, however, staff attempt to stipulate as many orders as possible.

The states also exhibit differences in terms of scheduling hearings. In Massachusetts, each of the 14 Probate and Family Courts schedule a block of time dedicated specifically to child support-related cases. In Arizona, hearings are more dispersed and set at county discretion.

Finally, while the quasi-judicial state, Colorado, establishes uncontested orders administratively, the process was markedly different from those of the administrative states. Specifically:

- Service of process is in-person.
- In-person meetings, in the form of a negotiation conference, are a key step of the process.
- Contested cases go directly to the court.

Colorado's process for contested orders is judicial, yet, it differs from the two judicial states in a number of ways, including:

- Stipulated orders are not reviewed or signed by a judge.
- Temporary orders are enforced when a non-custodial parent contests the order.
- IV-D attorneys negotiate changes in debt or retroactive support.

Regarding timelines for establishing orders, direct comparisons between states are difficult. Data was drawn from five different systems using different codes. Generally, the administrative and judicial states show comparable timeframes. That is, most of the cases are established within one year, and a large cluster are established within six months. Data from the quasi-judicial state, Colorado, indicate a quicker timeline. The average case is established in the first two months. This could be a function of quick work on the part of the caseworkers, very specific time frames for holding negotiation conferences, and use of a temporary order when agreement is not reached at a conference.

## V. Conclusion

### A. General Findings

This study reviewed and documented administrative and judicial child support order establishment processes used across the United States. When we began this project, we classified states in terms of this two-dimensional system. Through our project activities—creation of a taxonomy to further classify states along a continuum of administrative and judicial, in-depth studies of nine states, and site visits to five states—we modified our understanding of what it means to be “administrative” and “judicial”. The project activities revealed nuances that render the simple administrative/judicial labels overly simplistic. Similarly, there is a tendency to presume that either an administrative or judicial process produces superior program outcomes. We did not attempt to systematically address this question in this study.<sup>32</sup> However, we did explore program performance across the five measures outlined as part of the Child Support Performance Act of 1998 (paternity establishment, cases with orders, collections on current support, cases paying towards arrears, and cost-effectiveness) for the nine states we studied in-depth. We also examined the timing of award establishment for the five states we visited. With regard to performance, we found:

- Among the nine states we reviewed in-depth, program performance across the key measures varied significantly, both within type of process (i.e., administrative, quasi-judicial, judicial) and between the types of processes. However, we found no systematic pattern with regard to the effectiveness of any type of process.
- Among the five states we visited, our review of administrative data found that four of the states (the two administrative and two judicial states) had comparable establishment time frames. The quasi-judicial state had a shorter timeframe.

We found that variation in the practices within broad clusters of processes is more significant than previously understood. As a result, it may be very difficult to meaningfully categorize states as administrative or judicial and ascribe program performance to those categories.

The project consisted of three key activities:

*Development of National Taxonomy.* Our first project activity, creation of a system to classify states in terms of players in their order establishment processes, revealed that the range of processes is far richer than an administrative/judicial dichotomy. We explored the forum where uncontested and contested child support orders are established, who presides when an order is contested, and the extent to which attorneys are used by the IV-D agency. We found that order establishment processes fall along a continuum, ranging from highly judicial (court forum, judge

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<sup>32</sup> Another study by the Lewin Group is exploring whether a state’s economic, demographic, and programmatic factors are associated with its performance on five indicators (paternity establishment, cases with orders, collections on current support, cases paying towards arrears, and cost-effectiveness). One variable, based on the taxonomy, seeks to determine whether a state’s order establishment process affects any of the performance measures.

presides, attorneys involved) to highly administrative (IV-D agency sets order without hearing, limited attorney involvement).

*Nine-state document review and interviews.* Our second project activity, the review of processes in nine states, revealed further nuances in the processes. The states were selected for review in order to represent a variety of points on the taxonomy continuum. Through an in-depth review of legal documents, policy documents and training materials, we explored a number of establishment milestones, such as notification of non-custodial parent, service of process, in-person meetings, imputation of income, establishment of default orders, process for contested orders, and general role of the court.

In terms of the establishment milestones, we found that “clusters” of administrative, judicial, and quasi-judicial states shared certain practices. For instance:

- Service of process varied according to forum. All three of the judicial states and both quasi-judicial states rely primarily on in-person service, while the administrative states were more likely to use certified mail.
- The timing of the revelation of the order amount differs by process. The administrative states reveal the order amount early in the process—two of the four states include the proposed order amount in the first correspondence with the non-custodial parent. The judicial states reveal the order amount on the court date, while the quasi-judicial states are mixed.
- Deviations from state child support guidelines differed by forum, with caseworkers in administrative states having more discretion to deviate than their counterparts in judicial or quasi-judicial states.
- The use of in-person meetings also differed by forum. All of the judicial states have some mechanism for meeting with one or both of the parents, while none of the administrative states did so. The quasi-judicial states were mixed.
- Use of attorneys differed by forum. They were involved in all aspects of order establishment in the judicial states and rarely involved in the administrative ones. They handled court-related business in the quasi-judicial states.

Some establishment steps were not related to process. For example,:

- Imputation of income was not related to forum. All states use databases to determine if there are wage records for the non-custodial parent. In the absence of financial information, seven of the nine states (all three judicial states, three administrative ones, and a quasi-judicial state) impute the minimum wage for a 40 hour week, while one administrative state and one quasi-judicial state impute income at a higher level.

During the nine-state review, we also began to understand how states in a general administrative or judicial cluster differ from each other. For instance:

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- Not all administrative states use certified mail to serve non-custodial parents. One of the four relies primarily on in-person service.
  - Not all administrative states allow caseworkers to deviate from guidelines.
  - Quasi-judicial processes differ in terms of contact with non-custodial parents and court involvement. Colorado holds negotiation conferences as a matter of course, while Iowa will schedule a conference only if a parent contests the order. Moreover, contested orders in Colorado are referred to the court. In Iowa, parents have the option of a IV-D negotiation conference or a court hearing.
  - While all judicial states hold in-person meetings, the timing of the meetings differs. One state gives counties the option of scheduling a negotiation conference in advance of the court date, while the other two meet with parents on the date of the hearing only.
  - For contested orders, we found diversity within the administrative states in terms of where the tribunal is located. Hearing officers were housed in the IV-D agency, the IV-D umbrella department, or an entirely different department.

*Site visits.* Through our site visits, we encountered additional nuances and discovered that the process can differ across offices within a state and be determined by the preferences of IV-D and court staff. We explored more in-depth how administrative, judicial, and quasi-judicial states differed from each other as well as how states in each general category exhibited both similarities and differences. Our general findings include:

- Simply knowing a state's process does not always give an observer a sense of how the support order establishment process will unfold from the client's perspective. For example
  - The judicial forum ensures only that the process will be linked to the court calendar and that parties will have to interact with court clerks. It does not ensure that a client will see a judge or enter a courtroom. For instance, some orders in Arizona are stipulated in pre-hearing negotiation meetings between the attorney and parents because this is the preference of the attorney involved. Other attorneys in the state take all of their cases before the judge. Similarly, in Massachusetts, on the day of the hearing, IV-D staff first try to reach an agreement with the parents in an effort to avoid a hearing and expedite the entry of the support order.
  - Administrative processes exhibited differences in terms of parental contact. In Oregon, caseworkers attempt to contact parents early in the process and if appropriate, deviate from the state guidelines. In Maine, the administrative process is more formulaic. Caseworker deviations are possible but rare. One staff person noted that he would prefer to let the hearing officer handle a situation where the non-custodial parent disputed the order amount.
- Judicial processes incorporate administrative practices. Key practices include:

- Caseworkers do a considerable amount of case research prior to the court date. In Arizona, caseworkers check databases to learn about non-custodial parent earnings and presence of other child support orders. Massachusetts IV-D staff gather income information from databases and financial statements sent to the non-custodial parent.
- Attorneys try to stipulate orders. On the day of the hearing, an attorney meets with the parents, collects any outstanding financial statements, and determines the order amount. The parents can agree to the order on the spot. Only contested cases go before the judge. Thus, the process is somewhat similar to an administrative process in that IV-D staff (an attorney) calculates the order and the parents sign off. The forum (courthouse) and timing of the hearing is different, though. We found a similar process in Maricopa County, Arizona. After the IV-D agency serves the non-custodial parent, the Attorney General's office checks quarterly wage records and other databases to determine employment and wage history. On the day of the hearing, the attorney meets with the parents and attempts to work out an order. Only the contested cases go before a judge.
- Caseworkers in administrative states have considerable authority. Both administrative and judicial states agreed that caseworkers in administrative states have more responsibility. In Maine and Oregon, caseworkers draft the proposed order. They collect financial information and have the authority to deviate from the guidelines. In Oregon, there are 16 categories of allowable deviations. Caseworkers can talk with non-custodial parents and make appropriate adjustments, so long as there is agreement from the other parent. Caseworkers in Maine also have the authority to deviate from the guidelines if they can show that the guidelines would result in an order that is not equitable or just. Staff also have a role in contested cases. Caseworkers in Maine represent the IV-D agency before the administrative hearing officer. In Oregon, program supervisors believe the increased authority was not only appropriate given staff qualifications but that it contributed to a higher degree of job satisfaction. The administrative states suggest that this produces a number of benefits: It frees up IV-D attorney time for tasks that require legal expertise, controls costs, and ensures buy-in from line workers who are empowered because their knowledge and skills are utilized.
- County-administered states exhibited variations in process across offices. In Arizona, Colorado, and Oregon, counties administered all or part of the child support program. In each state, processes differed somewhat by county. In Arizona, for example, an attorney in Maricopa County generally holds pre-trial negotiation conferences with clients at the courthouse. In the majority of cases, she negotiates a settlement and the case does not go before a judge. In Pima County, however, negotiation conferences are rare. Staff noted that they have little time on the day of the hearing to meet with parents and suggested that the commissioner is the best person to determine the order amount, not the attorney. In Oregon, state case managers establish and enforce support administratively, while the establishment processes for non-TANF cases by county case managers vary across the state, and in one case, even within the same office. In the Benton County District Attorney's office, for example, one caseworker uses the judicial process for establishing orders because she is familiar with it; thus, she steers her clients through the court. Her colleague across the hall, however, uses the administrative process. Rural counties, with smaller populations also rely on judicial processes in establishing orders for non-TANF clients while larger counties used the administrative process. In Colorado, we found county differences in terms of whether IV-

D caseworkers calculate debt owed to the state or retroactive support. There was also variation in the level of custodial parent participation in the process. Some Colorado counties invite custodial parents to the negotiation conferences while others do not. In Massachusetts and Maine, staff report the processes do not vary much by county. The child support programs are state-administered. Guidance on how a case flows through the system comes from the central office.

- Analysis of case flows suggests administrative and judicial states are meeting the expedited timeframes for support order establishment. For each of our site visit states, we requested data to illustrate the flow of cases through the establishment process. Our analyses of four of the five states (Arizona, Massachusetts, Maine, and Oregon) show roughly comparable establishment timeframes. These states establish the large majority of cases within one year with a sizable clustering of establishments within six months. Our simple analysis of Colorado data suggests the state processes establishment cases somewhat faster than its counterparts. Some of the difference may relate to caseworkers' quick action on the case subsequent to locate and very rigid timeframes for case conferences, which are enforced by the state's automated system. Colorado's estimated timeframes may also benefit from a more routine reclassification of cases with failed service into locate status. If caseworkers fail to reclassify cases (from establishment to locate status) in which a non-custodial parent has eluded service, it can give the appearance that the state's establishment process is slower than it actually is.

## B. Topics for Further Study

This project documented key differences and similarities between states that use an administrative process to establish child support orders, those that use a judicial-based forum, and those that use a process that mixes the two. Through that documentation, we have a better sense of the range of establishment practices used across the country. Areas for further study include:

*Is there a relationship between the child support order establishment process and measures of program effectiveness?* The 1998 Child Support Performance and Incentive Act (CSPIA) links incentive payments to state child support agencies based on performance in five areas: paternity establishment, order establishment, collections on current support due, collections on arrears, and cost-effectiveness. Another study the Lewin Group is completing for OCSE uses the taxonomy to explore the association between order establishment process and performance on the CSPIA indicators. Further refinement of the taxonomy could include more detailed information about establishment processes (e.g., county variation, uses of negotiation conferences in court settings). This could be used to explore whether states clustered in the administrative, judicial, or quasi-judicial categories systematically do better on certain performance measures. Researchers hypothesize that given their streamlined nature, administrative states might perform better on the order establishment and cost-effectiveness measures. On the other hand, staff in both the judicial and administrative states suggested that non-custodial parents might take orders issued by judges more seriously than those issued by a state agency, even if they have the same weight under the law. If this were the case, judicial states might perform better on the collections-related measures.

*Are higher default order rates related to forum or other features of the establishment process?* An in-depth review of prevalence and performance of default orders was beyond the scope of the project. However, we did address the general default order policy with staff as part of our nine-state review and site visits. Child support staff noted that default orders were common (typically in the range of 20 to 35 percent) though they could not pinpoint an exact figure. They also expressed concern about the ability of non-custodial parents to pay orders established through default. An interesting future study would focus on whether default orders are more common in certain types of child support establishment processes. For example, are administrative or judicial states more likely to issue default orders? A related question is how default orders are related to other steps in the establishment process. For instance, are defaults more or less common in states that use in-person service as opposed to certified mail service? Are defaults less common in states that attempt to have in-person contact with the non-custodial parent, either through a negotiation conference, upfront discovery, or an in-person meeting at the court?

*Does a state's imputation method contribute to its default order rate?* In the absence of reliable information about the non-custodial parent's earnings, states use a variety of methods to attribute income. The most common method in our nine-state study was imputing the minimum wage for a 40-hour week. Other states used the state average wage for all workers or the average wage for parents in the IV-D system. Arguments exist in support and in opposition to each method. For example, states using the minimum wage run a risk of underestimating the non-responsive parent's true wage and setting an inappropriately low order. In such states, a non-responsive parent may intentionally accept an imputed order based on minimum wage—knowing that by providing full financial information, his or her order would increase. By contrast, using the average annual wage might overestimate the order amount for non-responsive parents, making it difficult for the parent to pay. On the other hand, a high, imputed order may get the parent's attention during the establishment phase and make them more likely to come forward with his or her actual financial information. A future study could explore the relation between imputation method and non-custodial parent involvement in the establishment process. For instance, are non-custodial parents less likely to come forward with financial information if they know the order amount will be based on the minimum wage? What is the relationship between imputation method and default orders? That is, are non-custodial parents more likely, or less likely, to be involved in the process if they know that the minimum wage will be imputed?

*Do states with in-person meetings have better compliance with child support order payments?* States that hold in-person conferences note that it offers the opportunity to educate the non-custodial parent about the child support process and obtain buy-in. If a parent understands why timely child support is important, staff suggest they will be more likely to pay support. Colorado's child support establishment process, for example, includes a negotiation conference during which caseworkers explain the paternity and order establishment processes and provide written materials on fatherhood issues and the importance of child support. State-level officials strongly believe the time investment upfront with the non-custodial parent ultimately pays off through more stable support payments and lower arrears. Arizona, however, had a different experience with negotiation conferences. Counties have discretion as to whether to schedule them. Some IV-D offices have recently abandoned their attempts to hold negotiation conferences with parents because of high "no show" rates. Staff felt it was not cost-effective. Unlike Colorado, however, the negotiation conference was never a required step in the child support



establishment process. It is possible that the failure to schedule conferences was a reflection of the voluntary nature of the meetings.

Some states suggested that requiring meetings is unnecessary because a large proportion of non-custodial parents comply with the process, and efforts to meet with them adds an expensive step to the process. Maine, for example, abandoned its practice of scheduling all cases for hearings within the department. The IV-D agency found that in the majority of cases the non-custodial parent agreed with the proposed order or did not participate in the process at all. Now hearings are held only at the request of a non-custodial parent.

*Would county- or office-level experiments reveal information about effective practices independent of forum?* Our site visits revealed a great deal of intrastate variation in states that have county-administered child support programs. Future research could leverage intra-state variation to learn about effective elements of order establishment processes. For instance, a state could test in one county whether an in-person meeting at the IV-D office resulted in a faster establishment process or better payments on orders in relation to a county that does not add this element. States could explore whether sending a ‘welcome letter’—one that explains in clear and easy-to-understand language what the IV-D agency will do to establish an order—in advance of formal service is associated with better responses on the part of the non-custodial parent. Similarly, states could include implement in one office or county the practice of including contact information for the caseworker or attorney in charge of the case on all documents sent to the non-custodial parent in the event that questions arise.

*Does the timing of the revelation of order amounts affect contests?* The states we visited differed in terms of when to reveal the order amount. The administrative states tended to reveal the amount early in the process, and staff suggested this gave parents time to “mull over” the award amount and whether to contest it. In Colorado, staff reveal the amount at the negotiation conference. In all three states, staff thought it was possible that the time that elapses between revealing the order amount and the hearing date for the contested order provided a “cooling off” period, giving non-custodial parents time to think about the order. The judicial states tend to reveal the amount at the court on the day of the hearing. If a parent is going to contest the order amount, he or she needs to do so on that day. Future research could explore whether states that reveal the order amount on the day of the hearing have a higher level of contested orders than those states that reveal the amount earlier in the process.

*Do links to the courts in administrative states improve parental responses to the order establishment process?* Officials in administrative states suggested that non-custodial parents take notices from a court more seriously than those from executive branch agencies. In Maine, for example, several interviewees noted that parents do not believe the Department of Human Services has the authority to enforce child support until after the agency establishes support and begins withholding wages. Some non-judicial states have links to the courts. In Colorado, for example, the IV-D agency ultimately files all administrative orders with the court, so notifications of administrative establishments have the same form as official court documents. Colorado officials believe that the official court format of order notifications gets the attention of non-custodial parents and increases the “show rate” at negotiation conferences. Future research could study whether administrative states that link their processes to the court filing and

documentation process experience better non-custodial parent participation (e.g., fewer default orders).

*Can the clarity of notices and orders improve compliance with the establishment process?* Interviewees were nearly unanimous in their views that the clarity of their orders could be improved. Virtually, everyone from frontline staff to judges agreed that the majority of non-custodial parents simply do not understand what is happening to them in the establishment process. Most states convene “form committees” that critique the readability of child support forms and make recommendations for improvements. In addition, some states have explored simple, brightly colored cover pages to their notices that highlight the key issue of concern and consequences of non-compliance. Research should identify best practices in the area and determine whether the clarity of notifications and orders can improve program performance.